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COURS UNIFIES DU QUBEC

(Chambre criminelle & p,nale)

PROVINCE DE QUBEC

DISTRICT: MONTRAL

CAUSE NO: 500-01-017372-928

TAPE: PROCES

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 LECOURE
PROCUREUR DE LA COURONNE

DATE D'AUDITION: 2 JUIN 1993

FICHER : 2631

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WITHOUT JURY

Me PIERRE YVES BOISVERT :

My name is Pierre Yves Boisvert, I'm a lawyer for the Montreal Urban Community, and I was wondering whether it would be possible for me to address the Court for a few seconds. I'm sorry about the gown, I didn't think that I would be here this morning.

THE COURT :

The gown, as you know, is obligatory.

Me PIERRE YVES BOISVERT :

I can go and fetch mine, My Lord, and I'll be back...

Me PIERRE YVES BOISVERT :

What is the subject that you wish to address me about?

Me PIERRE YVES BOISVERT :

My understanding is that there's been five employees of the 911 emergency center to testify here, there's one here again today to file the recordings that have been subpoenaed. And there are a few submissions that we would like to make about the number of witnesses that have been here...

THE COURT :

Then if you have submissions to make, I would suggest that you go and gown, and when you've done that I'll hear what you have to say with regard to your submissions.

Me PIERRE YVES BOISVERT :

Thank you, My Lord.

THE COURT :

In the course of the weekend, or more particularly Saturday night, at seven thirty (19:30), between seven thirty (19:30) and twenty to eight (19:40) accompanied

with my wife I attended at the funeral parlor and expressed my sympathies to juror number 12. If anyone has any difficulty with that, they're welcome to have them. In order to complete that aspect, I would simply like to produce into the record a fax that goes back to April the twentieth (20th) that concerns doctor Stern's last visit to Court, which I'm producing as Exhibit T-4. T-4 or?

Me JEAN LECOIRS :

J.

THE COURT :

J-4.

THE COURT CLERK :

That's a Court exhibit?

THE COURT :

Court exhibit, yes.

J-4 : Fax from doctor Stern

I would also produce another note that relates to another juror and medical appointments. As it turned out, these medical appointments were able to be integrated with other adjournments which took place. And while the note draws to my attention that there was a medical appointment on June the fourth (4th), the juror managed to re-schedule that and accordingly the problem, at least to date, has been looked after. So I produce that as 5.

THE COURT CLERK :

(Inaudible) C-10.

THE COURT :

Oh, C-10, okay then. Fine.

C-11 : Fax from doctor Stern

J-4 : Note of jury member.

Now I would also like to file in the Court record... excuse me... On the lighter side, I'm happy to say that juror number 4 became a father on the thirty-first (31st) of May for the second time, and everyone is doing well. And he wrote me a very short note to that effect that I would like to file together with three notes dated respectively May twenty-fifth (25th), May twenty-seventh (27th) and June the second (2nd) relating to that. In the note of June the second (2nd) he wonders whether we could adjourn this afternoon but he points out that if I feel that there's too much of a disruption, he can easily arrange alternate transportation for his wife and child home. And I've asked him if he would be kind enough to arrange alternate transportation this afternoon, given the number of adjournments we've had, we'll press on today. So I would simply produce these four... three notes and the one letter to me with the envelope as... en liasse as J-12... 5?. Whatever it is.

J-5 : Notes en liasse from members of the jury

And in... I'm sorry, there's one thing I missed. In connection with the decease of juror number 12's daughter, there was a very short note that I received from doctor Stern on May the twenty-seventh (27th) last, she had asked that... she asked what is the best way to discuss this. And I had made arrangements for doctor Stern to come to Court on Friday afternoon. As it happened, we didn't need to go through that. So I file that as well.

C-12 : Notes from doctor Stern

And the only other thing hanging is a note that I dealt with in Court, which I received from Mr. Morrisette, which related to the question of the status of the 911 recording.

C-13 : Note from Mr. Morrisette

One other thing which is in essence a modification of a ruling I made last week in the light of some work which I did over the weekend, and it relates to the question of the tape recording. I'll try again to make the distinction between the tape recording which Mr. Fabrikant proposes to file and the 911 tape. I admitted the 911 tape because the 911 tape comprised direct evidence of the commission of the infractions outlined, or certain of the infractions outlined in the indictment. It contained a confession, occurred in the course of the incident, and quite apart from the fact that it was direct evidence relating to these infractions, it would have been in any event admissible as part of the res gestae.

It, in my view, has the same status as a videotape may have, had any part of that incident been videotaped. I can see no real distinction between the two. That was why the 911 tape was admitted.

The tape recording relating to a conversation in nineteen eighty-eight (1988) between Mr. Fabrikant and Mr. Sankar does not of course have the same status. Mr. Fabrikant proposes to file that tape recording; however, as I understood it, as an indication of the tone of the conversation which took place at that time, I had said last week that I found an incident in nineteen eighty-eight (1988) too remote. I was perhaps a little hasty in making that ruling. The tape recording itself cannot be produced in my view as proof of its content. It is not sworn testimony; however, if Mr. Fabrikant wishes to hear Mr. Sankar, the tape recording may be admissible, dependent upon a number of things. The first thing it would dependent upon would be whether Sankar's testimony with regard to his nineteen eighty-eight (1988) meeting is pertinent. However, in the hypothesis that Sankar's testimony on that question is pertinent, then the tape recording may well be admissible, in order to give the added dimension of phrasing, tone, inflection or volume which in many instances cannot be described by most witnesses.

And the authority for that is a series of cases originating in the United Kingdom but it probably makes manifest good sense. I say that the tape recording is not on its own admissible on the same basis as the 911 tape because that would constitute an attempt to... through the tape recording to make evidence of an incident which Sankar is, as I understand it, perfectly capable of testifying to. I leave aside for the moment any question of the use of the tape recording to refresh his memory, you'll recall that I never ruled that possibility out if it became necessary. But as to the production of the tape as real evidence in order to demonstrate tone and inflection, depending on Sankar's answers and depending upon whether the tape passes the tests to which a tape is subject, I'm preparing to leave that question open and to discuss it further when the

time arrives. That basically is all I have to say.

Jury please.

VALERY FABRIKANT :

There are some other questions that we wanted...

THE COURT :

I think we're going to go on with the trial for the moment.

MEMBERS OF THE JURY ARE PRESENT IN THE COURTROOM

THE COURT :

Would you repeat the exclusion of witnesses, please, madame Desrosiers.

EXCLUSION OF WITNESSES

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), on this second (2nd) day of the month of June, personally came and appeared :

MICHEL BUJOLD, Director of security, born on May tenth (10th), nineteen hundred and sixty-two (1962);

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

EXAMINATION BY Mr. FABRIKANT (CONT'D):

Q. Have you refreshed your file, may take a look at whatever additions are there now?

A. My Lord, I reviewed the files as requested, and I have located a file from my predecessor, Mr. Barnab,...

THE COURT :

Q. Mr. who?

A. Mr. Roland Barnab,e, which he had invoices related from a security (inaudible) related to this case.

VALERY FABRIKANT :

May I take cognizance of...

THE COURT :

Yes, you may. Would you show that file to Mr. Fabrikant, please?

A. My Lord?

Q. Yes.

A. There's one page here with names of the dean and directors of the university with addresses and phone numbers, may I leave it out?

VALERY FABRIKANT :

I know their names and phone numbers.

THE WITNESS :

A. And their addresses, My Lord.

THE COURT :

Q. Would you show me this paper please, just the piece of paper in question. Yes, that may be left out.

VALERY FABRIKANT :

Why cannot I see the...

THE COURT :

I said it can be left out.

VALERY FABRIKANT :

Well, I believe there is a lot more of that. This is just tip of an iceberg.

THE COURT :

Would you just put your questions?

VALERY FABRIKANT :

Well, my question is there is a lot more than that.

What I found here is just the tip of an iceberg.

THE COURT :

Mr. Fabrikant, you have the file, put your questions on the file.

VALERY FABRIKANT :

All right, my question.

Q. I suspect there is a lot more, could you please answer this question, there is a lot more document than what you presented here, a lot more.

A. I brought the file in its entirety, My Lord.

Q. Well, there must be yet another file or files?

A. My Lord, these are the files that I had in my possession.

Q. Okay. When you testified last Thursday were you aware of the content of the file?

A. I had reviewed that file over one or two years ago, and I had brought it with me but had not presented it.

Q. So you had knowledge of the file, you brought it here but you chose not to present it?

A. At the break, My Lord, after the break I intended to present it but the trial continued and I was unable.

Q. Would you please be more specific, what do you mean that you intended to present but what, your hands were tied, you felt dizzy, what happened, why didn't you present it?

A. I attempted to address the Judge and I was unable to finish my statement.

VALERY FABRIKANT :

Well, does anyone recall his attempting and not finishing any statement...

THE COURT :

I certainly recall that he started to speak and I said to him, would you simply answer the questions, first thing. The second thing...

VALERY FABRIKANT :

Well, I asked him what...

THE COURT :

Excuse me, excuse me. And the second thing, the second thing is that you sent him a subpoena attached to which was a duces tecum which tells him what to bring, and that is what you're entitled to have him bring. You now have a file that you asked him to go back and look for, which he went back and looked for.

VALERY FABRIKANT :

Well, do you recall that I...

THE COURT :

Now let's get on with it, let's see if we can get somewhere, so far (inaudible).

VALERY FABRIKANT :

Would you please stop protecting witness.

THE COURT :

I'm not protecting the witness, I'm wishing you'd get on with matters.

VALERY FABRIKANT :

I am getting on with matters.

THE COURT :

Good, get on with it.

VALERY FABRIKANT :

You are too concerned with the safety of Concordia.

THE COURT :

Get on with it.

VALERY FABRIKANT :

You can write it down there if you want. It is ten fourteen (10:14).

Q. Now, so you have wrote here and what prevented you from taking it from your suitcase and put it on the table together with everything else?

A. After the break I had it on the table with everything else, My Lord.

Q. Why didn't you have it on the table right from the very beginning?

A. I don't know, My Lord.

Me JEAN LECOURE :

It was not his file, My Lord.

VALERY FABRIKANT :

Well, this is not the point, his or not his file.

THE COURT :

Go... let's...

VALERY FABRIKANT :

I don't ask for his personal file.

THE COURT :

Let's get on with your questions.

VALERY FABRIKANT :

Well, let Crown be a little bit smarter than that.

THE COURT :

Get on with your questions.

VALERY FABRIKANT :

Q. So why from the very beginning you didn't put it on the table?

A. I don't know, My Lord, I had it in my possession and I didn't put it on the table.

Q. Okay. Now, do you remember also that I asked you explicitly whether you have anything else and you said, no, do you remember that?

A. No, I do not recall.

Q. You do not recall. All right. I also asked you to get the continuation of at least what was the first page of something, and I asked you for the other pages, did you get them?

A. If I understand, My Lord, I testified that that was the only page that was present, and from the operations officer's notes, and he's been subpoenaed to comment on that, I believe.

Q. Well, did you or didn't you find other pages?

A. No, I did not find other pages.

Q. Okay. May I take a look at the rest of what you have, maybe you just forgotten something, just to check if what I have seen last time is exactly the same thing which I have today?

THE COURT :

Pass the file.

VALERY FABRIKANT :

Q. What abbreviation D.O. means?

A. I'm sorry?

Q. Abbreviation D.O. means?

A. Duty officer.

Q. How to understand the phrase duty officer open page 929-24 for distribution grand master?

A. The duty officer opened the envelope that contained the key to 929-24 by the distribution department.

Q. And what was the purpose for that?

A. Could you tell me what the date was, please?

Q. The date was November twenty-fourth (24th).

THE COURT :

Which year? Ninety-one ('91) or ninety...

VALERY FABRIKANT :

Ninety-two ('92).

THE COURT :

Pardon?

VALERY FABRIKANT :

Ninety-two ('92). And then on twenty-six (26) November.

THE COURT :

Again ninety-two ('92)?

VALERY FABRIKANT :

Yes.

Q. Now, do I understand correctly that this document was also not present last time?

A. My Lord, that was the document that you requested that I go through my... duty officer's logs and bring documentation pertaining to opening up 929-24.

Q. Okay then, let's go through all this... on the first (1st) September, ninety-two ('92), duty officer send out (inaudible) accounts to Diane Brown (inaudible), is it in any way related to my office?

A. I do not think so, My Lord.

Q. Why did you highlight?

A. We highlight duty officers' reports when we read them initially, to help us later on when we refer back to them to show us what was important or relative for that day.

Q. Now, after that, "agent Th,riault at H929 with grand master for Mr. Bujold", what is this?

A. What was the date then, please?

Q. It's the same, September first (1st).

A. I do not recall, My Lord. May I clarify, My Lord?

THE COURT :

Q. Yes.

A. After August twenty-fourth (24th), My Lord, my duties were very occupied between twelve (12) and eighteen (18) hours a day on a five to six day a week basis. It's difficult to recall exactly... with exactitude my actions, and there was days preceding... I'm sorry the days after August twenty-fourth (24th).

Q. After.

VALERY FABRIKANT :

Q. So you cannot say anything about it?

A. I don't recall, My Lord.

Q. Okay. Agent Foster intercepts secure armed guards in the lobby with twelve (12) gage shotgun, what is that?

A. That was probably... We have the security agents come to pick up money, My Lord, and they are supposed to follow a designated route and she intercepted them, they probably came in through the lobby.

Q. Now, September third (3rd) H929-24 was open for (inaudible), what was the purpose of that whole thing?

A. Is the name Mark Hogben on the same line?

Q. Yes.

A. Okay.

Q. And Sergeant "Gus".

A. Mark Hogben... mister... Doctor Bertrand is the Vice-Rector, Services who on August twenty-fourth (24th) identified Mr. Hogben's body in 929-24. And Mark Hogben

wanted to go over the facts with doctor Bertrand that day and they had gone up. If I may add, which isn't recorded on those notes, that I had escorted Mark Hogben up previously, he wanted to see where his father had been murdered.

Q. What did Sergeant Gus... what is he?

A. Sergeant Gus is a contracted security agent.

Q. Now number 11, there is no way for you to recall what was the purpose of opening?

A. No, My Lord, I do not recall.

Q. Well, there is nothing... Now I also asked you, do you recall what documents were taken by Mr. H, bert from my office on September twenty-second (22nd)?

A. No, I do not recall, I was just informed.

Q. Well, my understanding was that you are present there, correct?

A. I was only present to unlock the door and periodically check on Mr. H, bert and see if he needed anything.

Q. How on earth would you know what he took if you were not there?

A. Because during the course of that day, he told me what he had taken out of the office.

Q. Do you remember the timing of that event? Was it morning, was it afternoon?

A. From the duty officer's log I assume it was in the afternoon.

Q. The duty officer log which is here, afternoon is just not there. It ends by fifteen hours (15:00) and...

THE COURT :

Could you show the document to the witness?

THE WITNESS :

A. There's a log entry at fourteen hundred hours (14:00) it says: "D.O. to look at grand master from M. Bujold for the compactor electrical box." I had the grand master in my possession, he must have paged me and I called back to talk to him.

VALERY FABRIKANT :

Q. This is the timing of Mr. H, bert's entrance in the office, right?

A. Approximately, My Lord.

Q. Correct. Do you know how long he stayed there?

A. No, I do not recall.

Q. Well, what was the timing from the moment you let him in till the moment he told you that I took this, this and this? Was it one hour, was it two hours, what?

A. I can't recall, I would be speculating, My Lord.

Q. He did not tell you specifically what exactly document he took?

A. No, not specifically, no.

Q. Now, I also asked you to find hiring of body guards for the senate, do you remember I told you I saw...

THE COURT :

Before we get into that question of the senate, would you like me to ask the jury to go out while you make your representations?

Me PIERRE YVES BOISVERT :

I wouldn't know whether it's necessary or not, My Lord.

THE COURT :

All right then, I will ask the jury to go out and you can make your representations then.

MEMBERS OF THE JURY LEAVE THE COURTROOM

WITHOUT JURY

VALERY FABRIKANT :

Why did you interrupt me at some interesting moment?

THE COURT :

Be seated. Excuse me, sit down for the moment, Mr. Bujold. Ma@tre?

Me PIERRE YVES BOISVERT :

Pierre Yves Boisvert, I'm a lawyer for the Montreal Urban Community, I'm here to address a few points with respect to the witnesses of the 911 emergency service.

THE COURT :

Yes.

Me PIERRE YVES BOISVERT :

First of all, My Lord, my understanding is that there has been... there's been five witnesses so far, all of those who were in any way shape or form involved with the calls during the events have been heard, the fifth witness is at the moment in the hall waiting to file cassettes that have been subpoenaed. That witness is the Operations Manager, she's been here for more than half a day already, was heard for five or ten minutes and now she's back. She told me that she was not at all involved in the events, so all she can do is file the cassettes. If it were at all possible, we would like her to file the cassettes as soon as possible and then leave. If she were to be examined, I was wondering whether it would be possible for me to be here and assist her in that. I'm not here to question the relevance of things because that question has been raised and you've ruled on it, but there are matters of public interest that might be raised, and we would like to be heard on those matters if they were raised. In terms of convenience, if at all possible, that witness that's waiting now in the hall is a ten minute walk away from the court hall, could it be possible to excuse her and call her and she'd be here within ten minutes when she's called upon to come. As I said, if she's here just to file the cassettes then there's no problem. If she's here to be asked questions, we would like to be here, and if there are questions of public interest that are raised, we would like to be heard on those.

THE COURT :

Well, as far as your being here if you wish, that's your privilege, and I would presume that you can make whatever arrangements you might have to make with her, if as and when she is called. But I agree with you, I don't see why she should spend days upon end cooling her heels while this thing goes on. You will be, Mr. Fabrikant, how long with Mr. Bujold, and I presume we're talking about madame Audet, is that right?

Me PIERRE YVES BOISVERT :

That's correct.

THE COURT :

And when do you propose to call madame Audet?

VALERY FABRIKANT :

Well, I can make it even simpler for her, if she... probably she remembered the questions which I asked, if she is the right person to answer those questions that's fine, if she's not, then let her file the cassette, her presence for that is not needed. And let her find the

proper person who can address my questions and we will arrange the subpoena for that particular person at a later time or even later date.

THE COURT :

Let's not complicate the matter, I asked you how long are you going to be with Mr. Bujold and is madame Audet your next witness? That's all I want to know.

Approximately.

VALERY FABRIKANT :

Well certainly, I can accommodate her but how long with Mr. Bujold I really cannot say because I found some new documents here so it might be for a while.

THE COURT :

Maitre Boisvert, I wonder if you would advise your client that she may return to her office and I'll ask Mr. Belleau to give her a call when the time comes for her to be called. And if she can be here in ten minutes then that would be perfectly satisfactory to me.

Me PIERRE YVES BOISVERT :

Thank you, My Lord.

THE COURT :

As far as your other questions of public policy or whatever, I cannot even devine that and I'll worry about that if it arises later on.

Me PIERRE YVES BOISVERT :

Thank you, My Lord.

VALERY FABRIKANT :

But let her find out if she's the right person to answer my questions, maybe she is not, then we'll let her alone and call the right person, she knows what the questions are.

THE COURT :

Listen, there is no way I know whether she's the right person to answer your questions until she's called and is asked your questions.

VALERY FABRIKANT :

She knows, she was here, I asked her the questions.

THE COURT :

Okay, thank you very much. Jury please.

MEMBERS OF THE JURY ARE PRESENT IN THE COURTROOM

WITNESS: MICHEL BUJOLD -- UNDER THE SAME OATH

EXAMINATION BY VALERY FABRIKANT (CONT'D):

Q. So, you know that I saw you personally with one of this person who was my neighbor and who I know was a bodyguard at the senate meeting during the year nineteen ninety-one (1991), ninety-two ('92), did you bring the contract of hiring of that person?

A. The surveillances in senate I did myself, My Lord, I don't understand who he's talking about.

Q. Well, you were sitting at the senate with gentleman approximately that size...

THE COURT :

Were you making a statement or are you asking him if he recalls sitting at the senate?

VALERY FABRIKANT :

Q. Do you recall sitting in the senate next to a gentleman of that size approximately?

THE COURT :

Mr. Fabrikant indicating a rather large gentleman.

VALERY FABRIKANT :

Yes.

THE WITNESS :

A. No, My Lord, I do not recall.

VALERY FABRIKANT :

Q. So what you are saying, you never hired anyone, bodyguards, security guards, agency person, whatever for the senate meeting?

A. To my recollection, My Lord, I did the senate meetings' surveillances, in my absence it would have probably been dealt with by one of the Concordia University security officers and not a contracted security guard.

Q. What can one do if I saw it with my own eyes, what in this situation one can do?

THE COURT :

I told you before, these situations arise every day of the week, you have the witness' answer, he said, "No I don't recall. My policy was such and such."

VALERY FABRIKANT :

Okay, well...

THE COURT :

You saw him with somebody else, you saw him with somebody else. But at the moment your affirmation of course does not make proof of the fact that he was there with anybody else because he said, ladies and gentlemen, he said no to that, I don't recall being there with anyone. So in the situation where a witness answers in the negative or doesn't recall, you must be vigilant to make sure that you do not treat the question in the manner in which it's put as proof.

VALERY FABRIKANT :

Q. Okay. You remember last time when I asked you why was there a need for bodyguards, your response was because I filed complaint with the University, do you recall that?

A. No, My Lord, my response was to comfort the individuals in the areas that had to deal with Mr. Fabrikant.

Q. Yes, but you never mentioned that I filed at that time grievance against University and that was the reason?

A. In the course of the questioning, yes, I did.

Q. You did. You also remember I asked you if I made any threats, and your answer was no, do you remember that too?

A. Yes.

Q. All right. Now, in view of these answers and taking into consideration... well, these documents were also not here yesterday...

THE COURT :

Mr. Fabrikant, there's no point reproaching the witness for documents that weren't here yesterday or whatever you're talking about, that weren't covered by your duces tecum attached to the subpoena.

VALERY FABRIKANT :

Q. Okay. Were you at the senate meeting or nearby, or at least at the campus November first (1st), nineteen ninety-one (1991) when I was arrested?

A. No, My Lord, I was on the Sir George Williams campus. But I was called later to the Loyola campus once the incident was finished.

Q. Okay. And what did you there...

A. I spoke...

Q. ...when you came?

A. I spoke with the duty officer in charge who informed me

of what had happened.

Q. You spoke to the duty officer. Who was the duty officer?

A. Mr. John Yelle, My Lord.

Q. Okay. Did you meet anybody else?

A. I believe doctor Mckenzie was still on... at the area, My Lord.

Q. Nobody else?

A. Possibly the police officers were still there, My Lord.

Q. Well possibly they were there?

A. I believe they were there, My Lord.

Q. Did you meet with them?

A. No, I let the duty officer speak with the police officers.

Q. You personally didn't meet with them?

A. I introduced myself to them but I had no interaction with the police officers apart from acknowledging my presence.

Q. If you look at the police report, they're saying that they met with you.

A. That's correct, My Lord, I introduced myself to the police officer.

Q. That's all?

A. To my recollection, yes, My Lord, that's all.

Q. Why didn't you talk to them?

A. I have a personal policy of not interfering with the duty officer's role in incidents, and I've been attempting to do that as frequently as possible, My Lord.

Q. So this arrest has, from your point of view, no bearing on positioning of bodyguards after that?

A. It was requested afterwards that somebody watch over senate chambers' meetings in the event that there would be some type of disturbance following this arrest.

Q. Ah, okay. So the senate meeting was also watched?

A. As I just testified, My Lord, I personally conducted the surveillances of the senate chambers.

Q. Okay. What were you informed? Was I in any way disruptive when I was at the senate meeting, what was the information you received?

A. I was informed that due to the fact of this disturbance of senate with the police having arrested doctor Fabrikant, that there might be a possibility that he might come to raise this point in senate. And I was asked to conduct a surveillance or be present, if you will, in the senate chambers in case the vice-rectors and the rector would have to address this particular incident in senate.

Q. So first you arrest somebody then you put security there if there's somebody, God forbid, would come and asked questions, right?

THE COURT :

I don't know whether that's a question or I don't know whether that's argument, I don't know whether it's sarcasm but...

VALERY FABRIKANT :

It is a question.

THE COURT :

...it's not a question that will fly, so you better rephrase it.

VALERY FABRIKANT :

Well, I'm just trying to understand.

Q. Is my understanding correct of what they did? That's all.

A. My understanding, My Lord...

Q. No, my understanding, the way I expressed it, is this the right understanding?

A. Could you repeat your statement, please?

Q. All right. So is such understanding correct that first you arrest someone with no reason whatsoever then you put security just in case this person would come and ask questions, why did you arrest me. Correct the understanding of the situation?

A. I believe so.

Q. Yes. All right. Now, and since you have somebody arrested with no reason whatsoever, you find it also necessary to position some bodyguards there, too? That was for the purpose of what? That I will come to CONCAVE and ask them why... why what? Why was it posed then at CONCAVE Center?

THE COURT :

Q. Do you understand the question?

A. I believe so, My Lord.

VALERY FABRIKANT :

Q. All right.

A. That came upon a request from my supervisor to put security, contracted security agents at the 924 of the Hall building in 907, and at CONCAVE building research center.

Q. Well, why these particular places?

A. I believe...

Q. Well, why these particular places? I was not arrested there, I had no incident in...

THE COURT :

You're arguing with the witness, if your question is why did he receive instructions, if he knows he'll tell us, if he doesn't know...

THE WITNESS :

A. I do not know, My Lord, that's what I was told.

THE COURT :

You don't know.

VALERY FABRIKANT :

Q. But you never wondered why?

A. ...

Q. You didn't ask questions why, why this particular place?

A. At that specific period I don't recall, but I don't know, My Lord, if I did or did not.

Q. Now, did you at any time inform Mr. Yelle about any problems or any threats I ever made?

A. No, I did not, My Lord.

Q. Were you aware yourself of any threats I made at any time?

A. I was only aware of rumors, My Lord, and I did not take those rumors as fact, My Lord.

Q. Okay. Could you describe what rumors you heard?

A. There are only two to my recollection, one was something to the fact that doing something the American way, and another recollection was Mr. Fabrikant apparently allegedly calling certain people and asking if they knew what their children were wearing that day.

Q. You're director security, aren't you supposed to verify those rumors and to get to the bottom of it?

A. I looked into the rumors, My Lord, but it was just that,

rumors, and I could not identify that it was factual in any way.

Q. Let's start with first one, what exactly about... what was it, you said American something? Okay...

A. Doing the American way.

Q. Please more detail, what exactly American in what? What did you hear and from whom?

A. I do not recall from who but what I heard was something to the effect of the only way to get something done is to do it the American way, in reference or... not in reference, but trying to say like shooting people in some way. I do not recall where that came from but, as I said before, it was a rumor.

Q. Well, how is it possible, you director of security, hear that kind of stuff and instead of immediately writing it down who told you, when, and start an investigation, you now are standing here and telling you don't know who told you that? Why didn't you write it down immediately?

A. I do not know, My Lord.

Q. Well, are you director of security?

A. Yes, I am, My Lord.

Q. Is it one of your duties, when you hear that terrible threat, referred to by somebody else immediately try to report on it, question that particular person and ask who told him that, isn't it one of your duties?

A. Part of my duty is to investigate factual complaints, My Lord.

Q. You didn't answer my question.

A. Well, if it's a rumor it's difficult to verify therefore, yes, we look into it, but if there's no factual content to it, we can't proceed.

Q. Would you please answer my question. Mr. X or Mrs. X came to you and said: Fabrikant threatened to kill a lot of people, aren't you supposed to take the name of Mr. X immediately and start an investigation?

A. Yes, My Lord, providing that Mr. X or Mrs. X is the first person in that event and not... that the information wasn't gained second, third, fourth hand.

Q. What if Mr. X is tenth, then you should ignore?

A. No, My Lord, it just becomes more difficult to look into.

Q. Well still, isn't it one of your duties?

A. Yes, My Lord.

Q. So why didn't you write down the name of the person of Mr. or Mrs. X?

A. I do not know, My Lord.

Q. And this Mr. X never came to you?

A. As I said before...

Q. Could that be the reason?

A. ...the only two rumors that I recall, My Lord, were the ones that I stated.

Q. Okay. What about second rumor, you again didn't write the name of the person who gave it to you, time, whatever, you ignored it?

A. I did not write it down, My Lord.

Q. And again question, why?

A. I do not know.

Q. I don't know, good answer. Okay. That's all what you know about any kind of threats perpetrated by me at any time to... against anybody?

A. Apart from when I reviewed Mr. Barnab,'s file, I notice a report that I wasn't aware of, My Lord.

Q. Okay. Now, let's go to this file, when did you read this file?

A. Initially I read it when I took the office over two years ago, and I reviewed it again when it was requested of me.

Q. You read it first when? Two years ago it was what?

A. I believe I start... I was acting director in nineteen ninety (1990), I believe, in August or September of nineteen ninety (1990).

Q. So August or September nineteen ninety (1990), you were acting director and you were aware of content of this file?

A. I had read the file, yes.

Q. You had read the file. Now would you please inform the jury about what is in this file?

THE COURT :

No, I think you have to ask the witness specific questions.

VALERY FABRIKANT :

Well, because file is remarkable. Okay, let's go specific.

Q. First of all, on the file it's written, "document refused to Fabrikant access information request August tenth (10th), nineteen ninety-two (1992)."

A. That was in the other file folder, My Lord.

Q. Now, which request for information you mean, that can we get to this request for information? The request for information must be somewhere in here, eh? Yes? I don't see it here. Is it somewhere in here?

A. I don't recall if it's there, My Lord.

Q. Do you mean that this inscription mean that I was informed that there exists a file but I'm just denied access to this file, or I just... this file was never mentioned to me, how was it?

A. My Lord, I believe the request from the Secretary General to the Security Department was for a specific time period which did not include the invoices that I presented this morning.

Q. What is written here, documents refused means that I did request them, that they were refused, it doesn't mean that they didn't follow in the time span, correct?

A. May I see that note, My Lord?

THE COURT :

Certainly. Show the witness the note.

THE WITNESS :

A. No, the note says documents released to doctor Fabrikant under access to information on August tenth (10th), nineteen ninety-two (1992) which should not be in this folder. I had put it in the other folder as a reminder when I testified on Thursday, what I had to answer for...

THE COURT :

Q. I see. So that note that you have in your hand under your right thumb belongs to the other folder?

A. Yes.

Q. I see. Okay.

VALERY FABRIKANT :

Q. It was released not refused?

A. Released.

Q. Okay. Now let's go to the file itself. Do I understand correct that in nineteen eighty-nine (1989) you had a private investigator following me twenty-four (24) hours, correct?

A. My Lord, I didn't arrange for this surveillance nor did I put the contents of the file, it was generated by someone else, I can only speculate to agree or disagree.
THE COURT :

Q. Well, you're not here to speculate, if you have no knowledge of the... if you have no knowledge of that then you have no knowledge of that.

VALERY FABRIKANT :

Well...

THE COURT :

Well, you can't have the witness testify as to something, if you can establish that the witness has knowledge of what happened in the theory that you're talking about, that's fine. But simply because the witness happens to be the director of security today, doesn't qualify him to speak to incidents about which he knows nothing and had nothing to do with.

VALERY FABRIKANT :

All right. Now let me put it different and probably...

Q. So the only way is to call Mr... whoever... Who was director security at that time?

A. Mr. Roland Barnab,.

Q. Okay. Is he still alive?

A. I spoke to him in September of ninety-two ('92) so I haven't spoken to him since, I believe so.

Q. Okay. So the only way is to get him to testify on that?

A. Otherwise it would be my...

THE COURT :

Unless the witness has any...

VALERY FABRIKANT :

Well, I don't have any lawyer, you know...

THE COURT :

I don't know how long the witness was there, I don't know what the witness has knowledge of these facts, that's the first thing you might wish to canvass with the witness.

VALERY FABRIKANT :

I believe I'm entitled at least of some kind of legal assistance.

THE COURT :

You have some kind of legal assistance and you've had all sorts of legal assistance which you dispensed with.

VALERY FABRIKANT :

I understand. This is why, right?

THE COURT :

Have you got a question to put to the witness?

VALERY FABRIKANT :

Full, full white.

THE COURT :

Actually I think what we'll do is we'll take fifteen (15) minutes at this point.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITNESS: MICHEL BUJOLD -- UNDER THE SAME OATH

EXAMINATION BY VALERY FABRIKANT (CONT'D) :

Q. Well, I believe I can ask that question, do you know content of this file?

A. I briefly read it, yes, My Lord.
Q. Okay. Would you kindly inform the jury of your understanding, what is in this file?

THE COURT :

No.

VALERY FABRIKANT :

All right, let me put it differently.

Q. Did you find in this file any specific threats made by me?

A. My Lord, there's one incident report for a threat, yes.

Q. Okay. Threat made to who, about what?

A. I believe it was a threat made to two individuals about the Rector of the university.

Q. Who are those two individuals?

A. I believe doctor Catherine McKenzie and Mr. Grendon Haines.

Q. So it was made to them directly by me, is that your understanding?

A. That is my understanding, yes.

Q. Okay. And the details of those threats, what exactly I threatened to do?

A. I do not recall, My Lord, I have to review the file.

THE COURT :

Well, you might establish if he has any personal knowledge of that, I have no idea if he was even at Concordia at the time.

VALERY FABRIKANT :

Well...

THE COURT :

No, I know but listen, you are not going to put in evidence through the witness reports of someone else that the witness had nothing to do with. That's what you've done, I don't know whether it helps you or hinders you but, you know, you're told again and again and again and you persist. Now that doesn't make it valid proof. I mean, there's no point giving me that winning smile and say I've got around, you haven't gone around a thing. That's simply not valid evidence.

Now, if you can establish that the witness was there, that the witness had some personal knowledge of this, all right, fine. But you're not going to have him testify on other people's reports because that's hearsay, and it's dangerous hearsay.

VALERY FABRIKANT :

Don't you find it strange that I am trying to make public and to discover the document which claimed that I have made threats, though for every person it would look like I'm trying to damage myself, right?

THE COURT :

You may, you may not, I've no idea. But you know, whether you're trying... whether you're trying... whether you're...

VALERY FABRIKANT :

(Inaudible) that you are the one who preventing me from doing that.

THE COURT :

I'm not preventing you from doing a thing, Mr. Fabrikant. What I am trying to do is apply as well as I can the rules of evidence. Because the rules of evidence are there for a purpose. And the purpose of the rules of evidence is to give the jurors, who are

required finally to appreciate the evidence, some sense that what is put before them is evidence upon which they can rely, that is put according to a certain rule, set of rules. These rules have been designed to best get at the truth. And when you have somebody testifying on what somebody else discovered or what somebody else wrote or what was reported to somebody else, you don't really have evidence on which anybody can base themselves to come to any conclusion, it's not very good evidence. That's why the rules are there. You seem to think, I'm attempting to block something, I have no interest in blocking anything, save and except what isn't pertinent to this trial because otherwise it will go on till nineteen ninety-seven (1997). Yes, I have an interest in...

VALERY FABRIKANT :

My threats are not pertinent?

THE COURT :

A second, a second, in trying to filter what is put and I'm the guy who decides what is pertinent, not you. Now, quite apart from that, what is or may be pertinent, and I told you before I bend over backwards to allow you to make evidence that I have serious doubts about as far as the pertinence is concerned, but I would prefer to let it go and look at it later when the whole thing is in and in my instructions to the jury, tell them what is pertinent and what is not. And that's my job. But apart from that, you have to make the evidence in a legal way. If you're not going to make it in a legal way, then evidence just isn't good evidence and nobody can rely on it. That's why the rules, they're not... the rules aren't there to frustrate you, I mean, I have no interest in frustrating.

VALERY FABRIKANT :

This is not what I'm talking about. What I'm talking about, I believe nobody in his right mind might think that evidence that I allegedly threaten someone is irrelevant, it is relevant, is it? Just answer one question, evidence that I allegedly threatened someone at the university, is it relevant?

THE COURT :

I'm not sure I understand well enough what your defense is to answer that question.

VALERY FABRIKANT :

Whatever defense is, maybe I want to get convicted, it's my right.

THE COURT :

But I certainly think that if you make... if you make that sort of evidence, if you make that sort of evidence it risks being interpreted as evidence of motive, which isn't an essential ingredient of any of the things you're charged with but it certainly helps. It can serve that purpose.

VALERY FABRIKANT :

So?

THE COURT :

Now, I'm not... I'm not... I'm not...

VALERY FABRIKANT :

So it is relevant?

THE COURT :

It may be relevant but I, you know, I don't know enough about your defense to know whether it's relevant. I haven't stopped you making it, I said to you, make it legally, there's a difference, you don't seem to appreciate that.

VALERY FABRIKANT :

No, this is not the point I'm trying to make.

THE COURT :

Well, it's the point I'm trying to make.

VALERY FABRIKANT :

That's fine, I agree with you, I'm not arguing this. What I'm arguing is the evidence concerning alleged threats made by me to someone at the University. It is relevant, there is no doubt about it. It may be irrelevant not to Defense, it may be relevant to the Prosecution, maybe I want to get convicted first degree murder, who cares? This is not the point here, the point is that it is relevant evidence. Now, would you kindly issue a Court order to get bailiff arrested the Security Department and get from them all the information concerning me, because this is just the tip of an iceberg.

THE COURT

It will do you no good to make that sort of speech.

VALERY FABRIKANT :

Well, it was...

THE COURT :

Witnesses told you...

VALERY FABRIKANT :

...(inaudible) to the justice, why don't you say that?

THE COURT :

No, listen, don't you reproach me, I don't have any duty at all to send subpoenas in your behalf, I'm not your counsel. Furthermore, you...

VALERY FABRIKANT :

Well, I don't have any lawyer.

THE COURT :

Furthermore... well, that's your problem, not mine and it's your fault now.

VALERY FABRIKANT :

It's my fault?

THE COURT :

Furthermore you sent a subpoena. Have you got that subpoena, madame Desrosiers, please, may I see Mr. Bujold's subpoena?

Me JEAN LECOURES :

It was in the file, My Lord.

THE COURT :

It was in the file. There we are, there it is, Mr.... May I see that please? And that subpoena says to Mr. Bujold: (inaudible) yourself hence come here and bring with you - I'm translating loosely - contracts and bills relating to bodyguards engaged by Concordia from private companies since nineteen eighty-eight (1988). That's all it asks him to bring. Now, you can't stand there and reproach him for not having this and not having that, documents of which we don't even know of the existence. I don't know where it comes this fixation with documents. How can you expect me to issue all sorts of orders requiring him to go and bringing forth

a series of documents in which I would be able to do no more than speculate as to their existence and which I'm even detailed in front of me. So you're way... you're way out of place, you're way out of order.

VALERY FABRIKANT :

I explained to you that subpoena was issued by Mr. Belleau not what I told him, and this is why from now on we're doing it in writing. And besides that, Mr. Belleau raised the question that he's not going to do anything anymore unless and until you explicitly order him to do so. And I think it's about time maybe Mr. Belleau decides to resign (inaudible)...

THE COURT :

I'm not going to have a discussion with you on that or anything else. Mr. Belleau is here...

VALERY FABRIKANT :

Well, to reserve time today to discuss...

THE COURT :

Oh, we have plenty of work to do and let's get on with it. Now, if you want to establish through the witness that he has knowledge of these documents, you go right ahead and establish it. If you don't establish that, then it's not the witness to be answering the questions.

VALERY FABRIKANT :

Q. Well, you already answered this, you just forgot, you already answered it yes, he had knowledge of this document since his induction into his position. Is my recollection correct, Mr. Bujold, that you knew about this file from the very beginning of your career at the university, right?

A. I read the file when I became acting director of security, My Lord.

Q. So you know of its content. Now, if you knew of its content, you said that I have threatened the Rector, what exactly did I threaten, to kill him, to what?

A. I do not know, My Lord.

Q. Well, you never wondered what the threat was about?

A. I just read the incident report, My Lord.

Q. Okay. Two people are named there, McKenzie and Mr. Haines. Why didn't you contact any of those to ask what kind of threat was made?

A. I do not know, My Lord.

Q. I ask you once again, is this one of your duties as director of security to know this?

A. Yes, My Lord.

Q. So why didn't you do your work, sir?

A. I do not know, My Lord.

Q. You don't. When you met with doctor McKenzie, how often those meetings were?

A. Periodically, I think at least once a month, My Lord.

Q. At least once a month. And knowing content of your predecessor's file, when doctor McKenzie told you to put security guards at two places, at no time you asked her about this old file? Did you or didn't you?

A. My Lord, I believe that two years had gone by and I did not ask about this old file.

Q. Didn't you find it appropriate to ask about that file specifics as director of security?

A. No, because they related to an event that had occurred two years or more before. It was not relevant to the

problems we were dealing with at the time.

Q. How do you know it wasn't relevant? You never asked what the problems were, did you?

A. Not specifically, no.

Q. So how do you know it wasn't relevant?

A. I did not know.

Q. So was it one of your duties to do that?

A. Yes, it was.

Q. Now, I ask you the most important question. Could it be that you didn't ask those questions because you knew very well that this was just a false concoction, that there's no truth behind any of those documents about my threats? Could this be the reason why you didn't ask her?

A. No, My Lord.

Q. Now let us... let's find out, you hire bodyguard, what kind of disturbance did you inform bodyguard about, what was the possible disturbance?

A. When the security agents were briefed, they were told that there was a possibility of arguments or disruption to the regular business of the departments they were being posted at.

Q. What kind of disruption?

A. Well, arguments or the possibility of a physical assault.

Q. Like what, fist fight?

A. Well pushing or something to that effect.

Q. Did I do any of those in my life time?

A. Not to my knowledge, My Lord.

Q. But to your knowledge I threatened to kill somebody, right?

A. According to what I've read in the file, yes, My Lord.

Q. So why didn't you expect that kind of stuff?

A. It's not something that stayed in my mind, My Lord.

Q. Well, if this is all true, should not this be state of your mind?

A. My Lord, the first time I saw those files, (inaudible) my predecessor's personnel files and another incident report related to security files, so it's possible that I neglected to note it in my mind.

Q. You neglected to note in your mind that lives of people might be threatened, you director of security?

A. ...

Q. Well, it was a good question, was it?

A. The answer is yes, My Lord.

Q. And you are still director of security?

A. Yes, My Lord.

Q. Now if these documents are not fake, and at least I believe the payment notes are not fake, maybe is, I don't know, how much money were paid together?

A. I have to look at the file, I don't recall, My Lord, I believe approximately three or four thousand dollars (\$3,000 - \$4,000).

THE COURT :

What is the possible pertinence of how much was paid?

VALERY FABRIKANT :

How about...

THE COURT :

What is the possible pertinence of how much was paid for security?

VALERY FABRIKANT :

I just want everyone to know how, not just the

spectacles they played, but also how expensive those spectacles were just to ruin my reputation.

THE COURT :

This is not pertinent to your trial, we're wasting our time.

VALERY FABRIKANT :

It is not pertinent?

THE COURT :

No. Nor is the issue what the Security Department did or didn't do.

VALERY FABRIKANT :

If you kind of missed what I'm trying to prove then not, if it is not obvious that they invented all those threats, just to ruin my reputation, and then everything is easily explained. Why he didn't ask anyone, why it didn't come to his mind that this could happen, because he knew it was all false and concoction.

THE COURT :

For the minute, you're the one who's made proof of the threats.

VALERY FABRIKANT :

I do not need proof of the threat, I believe everyone who has elementary logical thinking what understand that if this were all real they wouldn't act the way they are. Isn't it obvious? No, it is not obvious?

THE COURT :

I don't live by believing in logic, go ahead.

VALERY FABRIKANT :

Q. Now, I would like to take a look at the sheet which you didn't let me see, the address is closed, I just want to see the rest. Because on address is right here, St-Germain 605.

THE COURT :

There is absolutely no need for you to see that sheet with addresses and phone numbers...

VALERY FABRIKANT :

Well, if there is nothing but addresses and phone numbers...

THE COURT :

Don't bother arguing with me, I said no...

VALERY FABRIKANT :

I want to see the rest.

THE COURT :

...you are not seeing the sheet. I am satisfied as to what is on the sheet, I'm satisfied that the sheet contains names and addresses and home phone numbers.

VALERY FABRIKANT :

All those phone numbers are listed and here is one address and phone number...

THE COURT :

That may well be but that particular sheet...

VALERY FABRIKANT :

You as a Judge assure me that there is nothing there...

THE COURT :

I'm not assuring you of anything, I'm just saying...

VALERY FABRIKANT :

Well, I want to see the rest.

THE COURT :

Pass me the sheet.

VALERY FABRIKANT :

If there is nothing else there but addresses and phone numbers, all right.

THE COURT :

There are names of Osman, Sankar, Hoa, T.S. Sankar, Swamy, McKenzie, Haines and Kenniff. And there are telephone numbers, and there's... and there are addresses for each one. That is what is on that sheet.

VALERY FABRIKANT :

All right. You may laugh I have the same sheet right here.

THE COURT :

If you have exactly the same sheet, then you have exactly the same sheet. But you'll give that sheet back because that... Is that a sheet of your own material?

VALERY FABRIKANT :

Yes.

THE COURT :

Or is that the file of the witness?

VALERY FABRIKANT :

There are no addresses, don't worry.

THE COURT :

Is that the file of the witness that you have in your hand?

VALERY FABRIKANT :

Yes.

THE COURT :

Well then, you'll be returning that to the witness...

VALERY FABRIKANT :

I will return definitely as soon as I finish, I don't need it. But... All right.

Q. Now, could you explain then after the shooting, did you make any statement to police?

A. No, My Lord, I did not make a statement to the police.

Q. Now could explain again why?

A. I do not know, My Lord, I wasn't asked.

Q. Taking into consideration that you are aware of alleged threat, though you don't ever bother to find out what exactly I threaten, would you believe that? After the shooting, shouldn't you at least inquire doctor McKenzie or Mr. Grendon Haines what the threat was about, maybe it is useful information to the police. Did this thought come to your mind?

A. I don't recall, My Lord.

Q. Did you show this file to the police?

A. Yes, I did, My Lord.

Q. You did? So this thought came to your mind. Who did you show it to?

A. I showed the file to Sergeant Detective H, bert, My Lord.

Q. Mr. H, bert never mentioned it.

THE COURT :

Mr. Fabrikant, you're asking questions, you're not making statements.

VALERY FABRIKANT :

All right.

Q. And what, they just disregard it? Why didn't they use it?

A. I do not know, My Lord.

Q. Maybe because they also knew that it was false?

THE COURT :

You're speculating, Mr. Fabrikant, you're out of line.

VALERY FABRIKANT :

Q. Do you remember the date when you showed the file to Mr. H, bert?

A. I believe it was the evening of August twenty-fourth (24th), My Lord, nineteen ninety-two (1992).

Q. Okay. Did you show this file to policemen who arrested me on November first (1st)?

A. No, My Lord.

Q. Why not?

THE COURT :

Which year, ninety-two ('92)?

VALERY FABRIKANT :

Ninety-one ('91).

THE COURT :

Ninety-one ('91).

VALERY FABRIKANT :

I was arrested November first (1st), ninety-one ('91).

Q. Why not?

A. I don't know, My Lord.

Q. If police is called to arrest me on suspicion that I might have weapon and about to commit a crime, and you allegedly know that in nineteen eighty-nine (1989) I allegedly threatened Rector, shouldn't you show this file to the police?

A. I was not the person making the complaint, My Lord.

Q. You are director of security, you met policemen, didn't you feel obligated to show this file to the police?

A. No, I did not, My Lord.

Q. Could you explain why?

A. Because the duty officer in charge, Mr. Yelle, was dealing with the police officers, and the police officers were speaking to doctor Catherine McKenzie who is my supervisor, who is the person who made the complaint, and it is the person who informed the police of why they had been called to the university premises.

Q. Still, you as director of security, when you met the policemen, didn't you feel obligated to convey to them this file?

A. No, I did not, My Lord.

Q. Again, the same question. Maybe you didn't do it because you knew this was false?

A. I believe I didn't do it, My Lord, because I didn't recall I had the file in my possession or the content of the file itself.

Q. How many people at Concordia to your knowledge has threatened something you never bother to find out what Rector?

A. There are many threats in a university in one context or another, My Lord.

Q. Well Rector, how many threats against Rector?

A. I cannot say, My Lord.

Q. Okay, one, ten, hundred (100)?

A. In my involvement, My Lord, I would say this is the only one to my knowledge.

Q. If this is the only one, doesn't it make something outstanding to be remembered and to be used if it is not false stuff?

A. It might be something to be remembered, My Lord, yes.

Q. Well, but again, could it be that it wasn't used for one reason, that you knew that it is false and it was used only to discredit me, to undermine my reputation rather

- than for real security reasons, could that be the case?
- A. No, My Lord, the information contained in the incident report was considered as factual.
- Q. Well, you never bothered to ask neither McKenzie nor Haines, correct?
- A. That is correct, My Lord.
- Q. How on earth can you consider this information factual then?
- A. Because it was reported and written down on an incident report by a security officer.
- Q. Well, don't you know that you have to get first hand information to consider something factual? Do you know that?
- A. Yes, My Lord.
- Q. So why didn't you make it really factual during all these years?
- A. My preoccupation was the incidents at hand and not this specific report that occurred two and a half years ago, My Lord.
- Q. But when you had to post bodyguards at two places, at that time did you think it is important to recover this file and to review it again and to warn maybe bodyguards that their life was in danger?
- A. No, My Lord.
- Q. Is it useful to ask why?
- A. Because in my mind, My Lord, I was dealing with the incident at hand and occurrences which were present, and I did not feel that this report had relevance to this specific request from doctor McKenzie. I may have been mistaken, My Lord.
- Q. So you... I'm sorry. Police was called allegedly because I might have had weapon with me, right?
- A. That's correct, My Lord.
- Q. And police was informed that I made previous threats, correct?
- A. I do not know, My Lord, I did not make that statement to the police.
- Q. Well, did you ask Mr. Yelle as to what he said to the police?
- A. I just recall Mr. Yelle briefing me on the occurrences, I don't recall that specific.
- Q. Do you know at least your own file, sir? You're familiar with your own file, are you?
- A. Yes.
- Q. Okay. In your file one document is for this report, did you read it?
- A. Yes, I did, My Lord.
- Q. So do you recall in the police report it is written black and white... do you recall on the police report it is written that I threatened to kill the whole world?
- A. I do not recall, My Lord, I would have to refer to the document.
- Q. Okay. The original (inaudible) is "Tirer tout le monde." Do you recall that?

THE COURT :

If you're trying to refresh the witness' memory...

VALERY FABRIKANT :

I'm looking for it.

THE COURT :

...in order to be fair to him, put the document in front of him.

VALERY FABRIKANT :

That's what I'm trying to do, it was somewhere here.

Q. Well, this is not phrase which one can easily forget, is it? Would you like to refresh your memory, sir?

A. Yes, please.

THE COURT :

Take your time, refresh your memory to yourself and...

THE WITNESS :

A. Yes, My Lord, "tirer tout le monde" is indicated in that report.

VALERY FABRIKANT :

Q. Which means in English?

A. Shoot everybody.

Q. Yes. Maybe you would be kind enough to translate to the jury the whole paragraph of that or just part of it?

THE COURT :

The witness isn't here to do translations, I'm sorry. The witness is not... and nor is the witness here to read that into the record, and it will not be read into the record, he may use that to refresh his memory, period. You may not have him produce it, you may then determine whether it refreshes his memory and put your question.

VALERY FABRIKANT :

Well, I want to produce it because...

THE COURT :

I don't care whether you want to produce it, you're not going to produce it. Now you ask him questions about what you want to ask him questions about, that's a document that is more or less contemporary, I suppose, with the time that you're touching on, which he may use to refresh his memory, period.

VALERY FABRIKANT :

Okay. Could you explain why am I not allowed to deposit it into the record?

THE COURT :

Because you're not allowed to deposit it into the record. The rule is that he'll testify today from his recollection. Now, if the document helps him refresh his memory then the document helps him refresh his memory, but the document itself doesn't get produced. The rule being that what he says today is what his testimony is. You're not going to produce his testimony in the form of what it was in a statement to the police or whatever whenever he made it. Ask him questions on...

VALERY FABRIKANT :

This is not my point. Some of the documents here I want to produce into the record regardless of his testimony. Do I have the right to do so?

THE COURT :

I'm not saying anything beyond dealing... I'm not dealing with anything beyond that document at the moment. He may use it to refresh his memory, you may then formulate questions to him on that document, depending on the answers he gives, you may refer to that document, but you're not going to read that into the record.

VALERY FABRIKANT :

Okay. I want to still produce it, I do not have a

lawyer...

THE COURT :

You are not going to produce it. Now, do I have to say it three times or five?

VALERY FABRIKANT :

What, you refuse me or I'm not following the right procedure?

THE COURT :

I refuse you the right to produce that document, because that document is not pertinent as far as his testimony is concerned. His testimony is his testimony you...

VALERY FABRIKANT :

It is pertinent to my defense.

THE COURT :

...you may use that document to refresh his memory, that is all.

VALERY FABRIKANT :

Okay. Document is pertinent to my defense and I want it to be deposited in the Court record.

THE COURT :

It's not going to be deposited through this witness. You may ask him questions on the incident, if that helps him answer your questions that helps him answer your questions. That is my decision.

VALERY FABRIKANT :

So if I want to deposit I have to call those policemen who wrote the report?

THE COURT :

Whether you are able to produce it through these policemen or not is another question.

VALERY FABRIKANT :

I have to understand. Why did you allow me...

THE COURT :

Never mind why I did anything, you may have the witness refresh his memory with that document and put questions. Now go ahead and put questions.

VALERY FABRIKANT :

Well, I'm trying to understand the rules of the game, that's all. I want to play according to the rules.

THE COURT :

I told you twice the rules of the game, or three times. The rules of the game are that he testifies from his knowledge.

VALERY FABRIKANT :

That's fine with me, but some of his documents I want to be deposited now...

THE COURT :

We're dealing with one document at the moment.

VALERY FABRIKANT :

Yes.

THE COURT :

Okay? And that document, unless the Crown consents, is not going to be... is not going to be filed as such in lieu of his testimony. Now that is the thing, the document cannot serve in the place of his testimony.

VALERY FABRIKANT :

It is not in the place, it is in addition.

THE COURT :

In the place or in addition or whatever, what counts is the testimony he gives before the jury.

VALERY FABRIKANT :

Well let's...

THE COURT :

Inasmuch as his memory, inasmuch as his memory understandably may be weaker today than it was then, he is allowed to look at that as you're asking him to do, to refresh his memory.

VALERY FABRIKANT :

Can I ask the Crown if they object to the document?

THE COURT :

I suppose you can, I don't know what the answer will be.

Me JEAN LECOURES :

Well, My Lord, I will give you my view point on objections. As far as I know and I see it, most of his defense, most his questions, most of his documents are illegal. When I don't make objections it's because I believe it's damaging for him. But I never take for granted that it is legal. If you want to have a legal trial it's your business. From a tactic view point, I don't object all the time.

THE COURT :

If you're objecting to the production of the document, the document... you know...

Me JEAN LECOURES :

Obviously there are about five reasons why it's illegal, okay?

THE COURT :

Of course.

Me JEAN LECOURES :

First I would like to see it.

VALERY FABRIKANT :

Sure, you have the right to see it. I wonder why you didn't see it, it's...

THE COURT :

Mr. Fabrikant, just... you're perfectly right. All I'm saying is that if the Crown has no objection and the Defense wishes to produce it, then that may be a separate issue. I realize fully that the document...

Me JEAN LECOURES :

We don't have the same interest, you have the interest of conducting a legal trial, I have also some tactical considerations.

THE COURT :

Absolutely. Absolutely.

Me JEAN LECOURES :

So I might not object to illegal evidence if I consider it's damaging for the accused. That's the difference between you and me.

THE COURT :

Yes.

VALERY FABRIKANT :

One can only ask why if this document is damaging to me, why police didn't find and produce it themselves? Isn't it funny that it looks like I'm producing documents which are damaging to me. Am I crazy or what? Wouldn't it be natural that police file this document, produce it?

THE COURT :

Not at all.

VALERY FABRIKANT :

Not at all?

THE COURT :

Not at all. And the police, in all probability, could never had produced that document.

VALERY FABRIKANT :

Why not, that I was arrested prior to that?

THE COURT :

Never mind why not, I'm not here to give you an opinion.

Me JEAN LECOURE :

Okay. First it's not introduced by the right witness...

THE COURT :

Fine.

Me JEAN LECOURE :

...second it's hearsay, even from the police officer that wrote them, the only person that could testify about the incident, if we want to be legal, is Fabrikant himself or the people that arrested him. But I have absolutely no objection if you decide to introduce it in evidence because I consider it very damaging for the accused. Not because it's legal, understand me well.

THE COURT :

As far as I'm concerned, I have gone as far as I'm prepared to go, I have allowed the witness, if it's his statement to refresh his memory with it.

Me JEAN LECOURE :

Well, you're the boss.

THE COURT :

That is as far as I'm prepared to go.

VALERY FABRIKANT :

Would you believe Crown cares for me and doesn't want to introduce document which might be damaging for me.

Me JEAN LECOURE :

I said, yes.

THE COURT :

I said no.

VALERY FABRIKANT :

You care for me, gosh, isn't it fantastic. If you cared for me would you do me just one favor, order the door of my cell to be open so that I couldn't do (inaudible) preparation for defense...

THE COURT :

Mr. Fabrikant...

VALERY FABRIKANT :

...how about that?

THE COURT :

Mr. Fabrikant, you're in jail and that's where you're staying.

VALERY FABRIKANT :

I am not talking about being out of jail...

THE COURT :

You put... you put your question.

VALERY FABRIKANT :

...just to leave the door of my cell open, just little little thing.

THE COURT :

You put your question.

VALERY FABRIKANT :

How about that caring?

THE COURT :

I don't run the jail, Mr. Fabrikant.

VALERY FABRIKANT :

You don't have to run the jail, you can make orders.

THE COURT :

Have you another sensible question to put?

VALERY FABRIKANT :

Q. Okay, so you refreshed your memory? First may I have it back, please? Now, do you see here some kind of difference in the threat, first of all now I'm threatening to shoot the whole world, and by whole world I mean the senate now. So this particular report claims that I threatened to shoot the senate, correct?

A. The report says "tout le monde", My Lord, loosely translated that's everyone.

Q. No, no, continue...

THE COURT :

Q. Is this your... This is your statement is it? This is a statement which you made that you...

A. No, My Lord.

THE COURT :

I thought that the witness...

Me JEAN LECOURS :

It's not a statement at all, My Lord, it's a police report filed by Mrs. McKenzie.

THE COURT :

Let me see this, please.

VALERY FABRIKANT :

Well, it's report filed by the police but they confirm...

THE COURT :

Mr. Fabrikant, you know, I told you, I made it very clear to you, if you want to show the witness something that the witness wrote to refresh his memory, you may. Now one has to take every document you want to use and look at it. You're not being honest, you're not being honest.

VALERY FABRIKANT :

You just missed the point. I wanted to ask him whether he had knowledge of this document and if yes, then my question. I never claimed that he was the one who wrote it.

THE COURT :

You asked him to read that into the record.

VALERY FABRIKANT :

Yes, so what?

THE COURT :

So this is not a document that he wrote.

Me JEAN LECOURS :

No, My Lord.

VALERY FABRIKANT :

I never claimed that he was the one who wrote it, so you better apologize calling me dishonest.

THE COURT :

I think I know very well what I heard.

VALERY FABRIKANT :

Well I said that he wrote the document?

THE COURT :

I said if you wish to use a document that contains a statement that he made, he may refresh his memory with that statement, that's what I said.

VALERY FABRIKANT :

That's what you said, I never said that he made the statement.

THE COURT :

All right. All right.

VALERY FABRIKANT :

I just wanted...

THE COURT :

You may not use that.

VALERY FABRIKANT :

Well, let me see if I can. Because my question relates to his state of mind and I do not want...

THE COURT :

What is his state of mind, I thought we were talking about your state of mind?

VALERY FABRIKANT :

Don't worry about my state of mind, my state of mind comes eventually, but at this particular time...

THE COURT :

Now, you better... put your question, we'll see.

VALERY FABRIKANT :

Yes.

Q. My question was, if you recall, how did Mr. Yelle report to you his meeting with the police? That was my question. And you said, you do not recall. Then I said, this is what Mr. Yelle allegedly called the police, and does this correspond to your recollection of what Mr. Yelle told you. Now, is it a good question or what? Am I improving?

THE COURT :

In that context your question...

VALERY FABRIKANT :

You see...

THE COURT :

...your question is all right.

VALERY FABRIKANT :

By the end of trial, I will qualify as a junior assistant to a lawyer.

THE COURT :

Hardly.

THE WITNESS :

A. My Lord, when I arrived on the Loyola campus, Mr. Yelle explained specifics about that he had called the police, that the police had arrived, that they had placed Mr. Fabrikant under arrest for the purpose of searching his bag and that doctor McKenzie was speaking with the police officers at that time, and that's the best of my recollection.

VALERY FABRIKANT :

Q He never mentioned to you how he explained to the police the need for search?

A. I don't recall exactly, but I don't think so.

Q. As director of security again, having one of professors arrested, shouldn't you be concerned with what were the reasons for the arrest, should you?

A. My Lord, the officer was filing a complaint, it's a judgement call on his part on how to proceed but the complaint did specify that security be called and once security was called, that the police be called simultaneously.

Q. You didn't answer my question.

A. Well please rephrase it.

Q. I don't need to rephrase it, the question was all right.

A. Could you please repeat it?

Q. As security director, didn't you feel obligated to find the reasons why one of professors has been arrested on campus by the police and searched?

A. No, because you were arrested by the police officers, to my knowledge, in order to conduct a search. Because legally I think they weren't able to search you before you were placed under arrest.

Q. Should I repeat my question?

THE COURT :
He said no to your question. He said no, because...

VALERY FABRIKANT :
Well, because has nothing to do with my question. I asked him whether he as security director had to find for himself what were the reasons. And he responded that police had to search and put me under arrest in order to make search. This is not the answer. I asked him whether he, as security director, should verify for himself, for his knowledge what was the reason for arrest.

THE WITNESS :
Which I did, My Lord.

VALERY FABRIKANT :
Q. Oh, you did? Then how do you explain of those reasons?

A. Because there was a complaint that... the possibility that you were carrying a concealed weapon and that the duty officer had received a complaint, and upon (inaudible) of the complainant to call the police to the Loyola campus.

Q. Why was there reason to think that I'm carrying a weapon in the first place? Did I behave suspiciously...

THE COURT :
You're asking the witness to repeat hearsay, to what degree I do not know. He arrived later, he wasn't there when the complaint was made, do you want...

VALERY FABRIKANT :
Well, you pretend not to understand what I'm trying to make the point. He didn't ask because he knew it was a dirty spectacle, this is why he didn't ask any question.

THE COURT :
This is your theory.

VALERY FABRIKANT :
Exactly.

THE COURT :
I haven't heard the witness say that. The fact that you... You can say it twenty-five (25) times, unless the witness says it, it doesn't mean a thing.

VALERY FABRIKANT :
But when you make this assumption, that it was just a dirty spectacle and nothing else, then his behavior becomes logical. Then it is understandable, why he didn't ask why I was arrested, well this is understandable why he didn't comment this event.

THE COURT :
Listen, listen, you make... whether you put this in the form of an argument or whether you put this in the form of a question...

VALERY FABRIKANT :
Of course we can put it in a form of an argument because you pretend you do not understand what I'm questioning him about.

THE COURT :

The witness is here to testify as to facts, he's not here to testify as to hearsay double and triple digit he might have picked up along the way.

VALERY FABRIKANT :

Don't you worry about hearsay, I want to produce to the jury not the hearsay but to demonstrate the state of his mind at that time, which was clearly inconsistent with events if those events were actual events, I mean if it was not a staged dirty trick when I was arrested. This is what I'm trying to present to the jury and triple hearsay has nothing to do with it. I'n perfectly legal.

THE COURT :

No, you're not, not for the minute you're not.

VALERY FABRIKANT :

Well, for the minute not because I argue with Judge, eh?

THE COURT :

No, no.

VALERY FABRIKANT :

No?

THE COURT :

Your last question, your last question isn't. Sorry.

VALERY FABRIKANT :

My last question...

THE COURT :

If you want to go and ask him what he did and why that's one thing.

VALERY FABRIKANT :

Well, that was exactly my last question if I recall it... What was my last question?

THE COURT :

Your last question was whether or not in his capacity as director of security he did not feel that he had the obligation to find out what the reasonable and probable...

VALERY FABRIKANT :

What's the reason for the arrest.

THE COURT :

...causes were. Well no, that was the one before your last question.

VALERY FABRIKANT :

Yes...

THE COURT :

You were asking him about what were the reasonable and probable motives that Yelle had to ask the police to search you. And if he wasn't there, I have some wonder as to whether he can testify to that. I don't know why you want him to testify to that because you're simply trying to put through his mouth whatever Yelle may have believed and that's illegal, sorry. So I'm right, you're wrong.

VALERY FABRIKANT :

I don't know. To the best of my recollection was did Yelle explained it to him rather than what was Yelle's motives. I don't think I said it like that but...

THE COURT :

Yes. Yes, but the way you put it you see, you tried to put it... you tried to bring it through him for the purpose of making proof of what Yelle's motives were and that I'm not going to do.

VALERY FABRIKANT :

No. But the proof of making that he would not behave the way he behaved if he did know that was all just a dirty spectacle.

THE COURT :

Well, if you want to ask that question, put that question clearly to him and see what he says.

VALERY FABRIKANT :

Q. Well, would it be the right explanation to your behavior that you just knew that my arrest was dirty spectacle and nothing but, and this why you acted the way you acted?

A. No, My Lord.

Q. All right. Now, I see here something new which wasn't here before, you have yet another, I believe, report from Mr. Malenfant, correct?

A. Yes.

Q. Do you have any other reports of Mr. Malenfant...

A. No, My Lord.

Q. ...except those two?

A. It's the same report, My Lord.

Q. Well, why Malenfant has filed only two reports, one on... It was not the same day.

THE COURT :

Would you show the report to the...

VALERY FABRIKANT :

Q. According to those reports, those two events happened the same day.

A. Yes, My Lord, may I clarify?

THE COURT :

Q. Certainly.

A. The... after the incident... with the encounter with Mr.

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">Fabrikant, Mr. Malenfant wrote a report on a loose leaf sheet of paper, and I believe when he presented it to Mr. Francesco, the Operations Officer, he had requested that he place it on a university declaration or statement form. But it is essentially the same incident.

VALERY FABRIKANT :

Q. Well, would you please read one and read the other and you will see that those are two different reports.

A. I can't explain it, My Lord, they're dated the same day and approximately fifteen hundred hours (15:00) on both of them.

Q. Well, first of all would you agree that those are two different reports, referring to different events, is that correct?

A. I would say that they're worded differently, yes, My Lord.

Q. Well, is it two different events?

A. I do not know, My Lord.

Q. Well, what is the first one about?

A. That you have...

THE COURT :

Listen, the witness is not the person to speculate on Malenfant's motives or anything else. If you want to ask about these reports, about the reports he wrote, why don't you ask the person who's the author of them. The witness isn't here to interpret documents for you.

VALERY FABRIKANT :

Well, witness brought these documents.

THE COURT :

That doesn't matter whether the witness brought the document, the document was in the witness' file. The witness had custody of the document. That does it make him competent to speak to the document.

VALERY FABRIKANT :

Now, what would happen, suppose Malenfant is here, and documents... can I keep those documents, because Malenfant is here and the documents are not here, how can I present them to him, you definitely have a problem here.

THE COURT :

You have no problem at all, the document can be conserved the same way as another one was conserved under... madame Desrosiers, what heading did we use for...

LA GREFFIERE :

Identification.

THE COURT :

Identification. There we go.

VALERY FABRIKANT :

All right, so can we put those two to the same place?

THE COURT :

Surely.

VALERY FABRIKANT :

Can we put this police report until Mr. Yelle testifies?

THE COURT :

Yes. I-2 en liasse and I-3.

I-2 : Rapport de M. Malenfant.

I-3 : Rapport de police.

If you're talking about the police report you, I presume, are talking about the author of the police report. It contains what purports to the statement from Mr. Yelle but he's not the author of the police report, as I understand it.

VALERY FABRIKANT :

Well, still I believe I can ask Mr. Yelle if this was correct statement which he made to the police, can I?

THE COURT :

That may be.

VALERY FABRIKANT :

I don't mind calling those police too but I would like in this case you do no make declaration that I'm here until nineteen ninety-seven (1997).

THE COURT :

It may be... it may be...

VALERY FABRIKANT :

It is you who make the procedure longer than it is necessary.

THE COURT :

Oh no, no, no.

VALERY FABRIKANT :

Well, don't you reproach this to me please. Don't you reproach this to me that...

THE COURT :

The rules apply to you just as they apply to anybody else.

VALERY FABRIKANT :

Besides I swear once again, if three months from now I'm not finished, I will say I'm finished. So I guarantee you that. So it will be not ninety-seven ('97), not ninety-five ('95), it will be ninety-three ('93).

THE COURT :

Well, let's get on with it.

VALERY FABRIKANT :

I would like also to preserve the whole file here until we get, I don't know, Mr. Barnab, or...

Q. Who is Mark "Strauss"?

A. I'm sorry?

Q. Mark Strauss, do you know who he is?

A. I do not know, My Lord.

Q. Okay. Would you like to take a look at the first page and maybe you would be able to identify with it?

A. The author of this memo, My Lord.

Q. Yes, but who is he?

A. Service ... (inaudible).

Q. Is it employee of Concordia?

A. No.

Q. Is it employee of Broderick?

A. I do not know.

Q. Well, from the text of the memo, could you understand at least whether it comes from Concordia or from the agency?

A. ...

THE COURT :

Q. You have to answer, there's no point in shaking your head.

A. No. No, I'm just... It's not someone from the university, possibly somebody from the agency because it says agent de s,curit, affect, ... l'Universtit, Concordia.

Q. So it is what, it is instructions from the security agency to the agents, right?

A. Yes, I believe, yes.

Q. Is my understanding correct that instructions effectively put me under twenty-four (24) hour surveillance, is that correct?

A. That's correct.

Q. Well, how many days was I under surveillance?

A. Beginning April first (1st), April first (1st), nineteen eighty-nine (1989) until... I'm sorry this is what it says, thirty-first (31st) of March, eighty-nine ('89) till the

thirteenth (13th) of April, eighty-nine ('89).

Q. Okay. Where is the report of this investigator, did he find any criminal activity?

A. I do not know, My Lord.

Q. You paid more than ten thousand dollars (\$10,000) for that, of tax payers money, now there must be a report somewhere, did I traffick narcotics, did they find anything at all during that time?

A. I do not know, My Lord.

Q. Well where is the report, there must be report. You didn't pay ten thousand (\$10,000) for nothing, did you?

A. I wasn't involved, My Lord, I do not know.

THE COURT :

There you are.

VALERY FABRIKANT :

Q. Well, could you look again into your file and find the report?

A. I've done that, My Lord, and I brought all the documents that I could locate...

THE COURT :

Q. Does that mean you do not have the report, does it or what?

A. I assume so, I could not find any report, this is what I brought, this is what I found.

Q. This is what you brought, okay.

VALERY FABRIKANT :

Well, would you believe that?

THE COURT :

The witness said.

VALERY FABRIKANT :

The witness said, yes.

THE COURT :

If you think that somebody else has the report then I suppose you can ask somebody else. Okay, I think we'll adjourn at this point until two fifteen (14:15).

MEMBERS OF THE JURY LEAVE THE COURTROOM

THE COURT :

Excuse me, madame Desrosiers, you asked me something? You require that file?

VALERY FABRIKANT :

Well, during the break I would like to look at it, yes.

THE COURT :

Q. You're aware of everything that's in the file are you, Mr. Bujold?

A. Fine, what I had.

Q. Fine.

VALERY FABRIKANT :

I wish you could trust me a little more than your witness.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

MEMBERS OF THE JURY ARE PRESENT IN THE COURTROOM

WITNESS: MICHEL BUJOLD -- UNDER THE SAME OATH

CROSS-EXAMINATION BY Mr. VALERY FABRIKANT (CONT'D):

Q. Now, could you please identify this as who written it and if you can read it probably because I couldn't. Could you read the handwriting there?

A. It looks like Mr. Barnab,'s handwriting, My Lord.

Q. Well, is it possible to read it?

THE COURT :

No.

VALERY FABRIKANT :

What if we cannot find Mr. Barnab,?

THE COURT :

I don't know, if you can't find Mr. Barnab, it doesn't go in.

VALERY FABRIKANT :

Sorry?

THE COURT :

If you can't find Mr. Barnab, then either it doesn't go in or we'll discuss how it goes in at the time, but it doesn't emanate from the witness, so the witness can't testify to it.

VALERY FABRIKANT :

Well, just I want to see what is written there. I cannot get the handwriting. All right.

Q. Could you tell me, the whole file was assembled by Mr. Barnab, or it was by you?

A. The file was assembled by Mr. Barnab,.

Q. Okay. When did you start your employment as director?

A. In August or September of nineteen ninety (1990).

Q. All right. So if this is the case then, as you say Mr. Barnab, was the one who assembled the file, then could you explain how the paper dated November nineteen ninety (1990) is here?

A. I do not know, My Lord.

Q. Well, who attached it there?

A. I do not know, My Lord.

Q. Who except you has access to those files?

A. Just myself and my secretary.

Q. All right. Now, you remember also you said that you did not give picture to the agents of my... my picture to the agents?

A. That's correct.

Q. Okay. Does this look like my picture given to the agents?

A. That's a copy of your I.D. card.

Q. Oh? And it was given to the agents?

A. Not to the agents from the Canadian Security Agency.

Q. Okay. So those agents were supplied with my picture?

THE COURT :

The witness just said it was not given to the agents from the Canadian Security Agency.

VALERY FABRIKANT :

Well, we just (inaudible) little file, we couldn't get in the little file. Because that does not allow to subpoena all three. There is file one with all the necessary things and the second file...

THE COURT :

Excuse me. Nobody said you can't subpoena anything, don't blame that on me, you know what's on that subpoena, I read it to you this morning and there is absolutely nothing about what you're questioning on now on that subpoena. Now, his answer was, "it was not given to the agents of Canadian Security Agency."

VALERY FABRIKANT :

But it was given to...

THE COURT :

I have no idea who it was given to, he told you what he said before.

VALERY FABRIKANT :

Q. So, to the best of your knowledge, was this picture given to the people who observed me twenty-four (24) hours?

A. I do not know, My Lord.

Q. Well, how do you know that is picture from my I.D. then?

A. Because it states your name and your social insurance number which was what the I.D. card...

Q. Well, it could be many other things, couldn't it? I.D. is not

the only thing where my social security number is there.

A. In the format it appears, it looks like your faculty I.D. card.

Q. Now, could you explain me what my contract is doing here in this file?

(CHANGE OF TAPE)

Q. Was the system for Mr. Haines persons aimed at, that sounds interesting. Persons aimed at Osman, Swamy, T. Sankar, S. Sankar, Hoa, Haines, McKenzie, Kenniff. Now, would you like to comment on that, I made threats on all of them, any knowledge of that?

THE COURT :

Show him the document and see if he can tell you anything about the origin of the document first. He can't comment on a document that he didn't write.

VALERY FABRIKANT :

Well, you respond instead of him, let him respond that.

THE COURT :

I'm telling you...

VALERY FABRIKANT :

I asked him...

THE COURT :

I'm telling you what is a fair way to question the witness. Now let him see the document.

VALERY FABRIKANT :

I showed him document and I asked him whether (inaudible), he said yes.

THE COURT :

You show him... you show him the document. You're the one who wishes documents to be shown to you every time you need them, now you show the document to the witness.

VALERY FABRIKANT :

He said that he remembers the document.

THE COURT :

And then let's establish what the document is, once you've shown the document to him.

VALERY FABRIKANT :

You're trying your best to save witness, write it down it's fourteen thirty (14:30).

THE WITNESS :

A. These are my predecessor's notes, yes, My Lord. I don't know what it refers to in terms of license for gun, police record and arrangements for meeting with Chair Dean, Mr. Haines.

THE COURT :

Q. They're not your notes?

A. No, My Lord.

VALERY FABRIKANT :

I never claimed that this is his notes, I just asked him...

THE COURT :

How do you expect him...

VALERY FABRIKANT :

...if he can comment in any way.

THE COURT :

How do you expect him to be able to speak for somebody else's notes?

VALERY FABRIKANT :

Well let him say... You just kind of giving him leading advice, tell you cannot comment. Don't you see what you are doing right now?

THE COURT :

Not at all.

VALERY FABRIKANT :

You are doing him, you're making advice to him say if he cannot present...

THE COURT :

I'm not making advice to him, you know quite well...

VALERY FABRIKANT :

Well it's obvious what you're doing.

THE COURT :

...what you have to show him is a memo that he wrote.

VALERY FABRIKANT :

You know very well what you did right now, it was leading and I think it was illegal what you did.

THE COURT :

Do you?

VALERY FABRIKANT :

Yes.

THE COURT :

Well you go ahead with your next question.

VALERY FABRIKANT :

I will.

Q. So you got what he wants you say, that you cannot comment.

We'll get...

THE COURT :

Well, now we'll mark that one down, madame Desrosiers, fourteen thirty-one (14:31).

VALERY FABRIKANT :

Q. So you cannot comment on any of those, can you?

A. No.

Q. From professional point of view, if you just, as a professional, see this kind of record written by another professional, could you make some kind of conclusion RCMP means what, to contact RCMP?

A. I can't come to any conclusion, it's just notes. Was he going to contact, did he contact...

Q. Okay. Let me ask you what is even your knowledge then. Was there system for Mr. Haines, was it installed to the best of your knowledge?

A. No. No. There's no (inaudible) Mr. Haines' office.

Q. Okay. Are you aware of any threats of mine against Osman, Swamy, both Sankars, Hoa, Haines himself, McKenzie?

A. No, I am not.

Q. Now, would you be able to say something about this note:

"Can this outrageous bills for unpleasant situation as discussed early be dumped into some services accounts. Thanks. Catherine."

I believe it is addressed to you, is it?

A. No, it is not.

Q. It is... Catherine it means doctor McKenzie, is it?

A. I believe so.

Q. Okay. Who is it addressed to?

A. I believe my predecessor Mr. Barnab,.

Q. What is his first name?

A. Roland.

Q. Do you know if it was dumped to any service account those ten thousand dollars (\$10,000)?

A. No, I do not know.

Q. There is another note here:

"As discussed, please have account go to the attached forward accounts payable. Doctor Gigušre agrees this will be an overexpenditure on your

budget. Thanks."

Could you identify who's signature is this?

A. It's signed Shirley.

THE COURT :

Q. That wasn't the question you were asked, if you can identify whose signature it was.

VALERY FABRIKANT :

Q. Yes Shirley, Shirley who? It is written Shirley?

A. Yes.

Q. Do you know who Shirley is?

A. Not with exactitude, My Lord...

Q. Well...

A. ...just the first name that's written down.

Q. Well... What is someone from Gigušre's office, someone from your office, any idea who it might be?

THE COURT :

It's not any idea, it's a question whether he knows.

VALERY FABRIKANT :

Yes. Yes.

Q. Could you specify who it was?

A. I can speculate, My Lord.

Q. Well, do you know anyone named Shirley who could sign this document?

A. Shirley Maines who works in the Vice-Rector's office.

Q. Okay. Vice-Rector Finance?

A. Services.

Q. Vice-Rector Services. Okay. Thank you. Now, look at the next or previous, there are indication of three special projects, could you say what was the first special project, the second special project and the third special project?

A. Could you show me, please?

Q. Well, it is on the bill just there.

A. That one?

Q. Yes. Project number to special and the next page you see project number phase special and then the first you see project number 1 special, you had three projects of spying on me?

A. I do not know what those numbers are, My Lord.

Q. So there is nothing you can explain there? No. Okay. Now, do you do in your practice the following, suppose someone threatens an exposure of something criminal action, and you pretend that this one threatened you, hire a bodyguard... sorry, hire someone to surveillance him for twenty-four (24) hours just to see maybe he goes to another lady or something else so that if he tries to do something, you could show him, just try it, we'll show you something else.

THE COURT :

Why don't you state your...

VALERY FABRIKANT :

Q. Did you do anything in your practice like that?

THE COURT :

Why don't you stick to facts and stop asking the witness to speculate.

VALERY FABRIKANT :

I'm not asking to speculate, I'm asking from his experience whether he did something like that. Question is all right.

THE WITNESS :

A. No, I do not.

VALERY FABRIKANT :

You see? I'm asking all legal questions. Do you agree with me, it was a good question. I'm sure I am a good student.

Q. So you never did anything like it?
A. No, I did not.
Q. No. Okay. Give me an idea, what could be the point of following someone twenty-four (24) hours just as to where he goes? It's explicit there that not to follow me inside university, and definitely not to follow me inside my house, so...
THE COURT :
Look, I'm sorry, you are trying to do indirectly what you can't do directly, the witness can't speculate on notes that he didn't make, or instructions that he didn't give. You're going to have to put...
VALERY FABRIKANT :
You are again giving him leading...
THE COURT :
I am not. I told you this morning that I am not going to permit you to make proof that's blatantly illegal. That's...
VALERY FABRIKANT :
I'm not making any proof.

THE COURT :
You are. You are attempting to make proof.
VALERY FABRIKANT :
I'm asking from his experience what...
THE COURT :
You cannot do indirectly what you can't do directly.
VALERY FABRIKANT :
Well, whatever I'm doing as long as this is legal...
THE COURT :
The question is disallowed, it is illegal.
VALERY FABRIKANT :
I asked him about his personal knowledge.
THE COURT :
The question... the question in relation to that note is illegal.
VALERY FABRIKANT :
Well just wait, we'll get to bottom and then it will be legal, right? So...
THE COURT :
We'll see.
VALERY FABRIKANT :
That's it. All right.

Q. Could you tell me about security file, when you are asked to present summary of security file of somebody, what procedure do you have to follow?
A. To review the file and indicate incident reports or abnormalities in the file.
Q. It means to review complete file, correct?
A. That's correct.
Q. Okay. Now then, could you explain me why... Okay, I'm doing it legally. Do you recall filing a security report on June twelfth (12th), nineteen ninety-two (1992)?
A. Can I see it, please?
Q. Would you like to consult it first?
A. Yes, please. Yes, I do.
Q. All right. Now, would you explain me how come such important event as threatening Rector is just not there?
A. I do not know, My Lord.
Q. Could you do something better than that?
A. No. I don't know why it was neglected in this.
THE COURT :

Q. Is that the witness' report, is that your report?
A. Yes, it is. Yes.
VALERY FABRIKANT :
Q. But it was supposed to be there, correct?
A. Depending on what the request was from doctor McKenzie was, if it was for a specific period or the complete dossier.
Q. Well, you just recently said that she asked you for complete security report?
A. Therefore it should have been included.
Q. Again, could it be that it was not included because you knew that this was all fake?
A. No, My Lord.
Q. But you cannot give any better reason of not including it except that I don't know, correct?
A. Correct.
Q. Now, I would like to have all this... Yes, one more question about the files, could you look at the last page, please. Yes, the last one, yes. Yes. What is it?
A. It's a medical note from Kilder Family Medicine Associates.
Q. Yes, what does it say?
A. Retour au travail le dix-sept (17) d,cembre nineteen ninety (1990).
Q. And it is dated?
A. The twenty-eighth (28th) eleven (11) ninety ('90).
Q. Okay. So it means that I'm sick from twenty-eighth (28th) November till seventeenth (17th) December, right?
A. I believe so, My Lord.
Q. Now, could you explain why is it in my security file if I become sick?
A. I cannot explain it, I'm not the... I didn't gather the information that was in this file.
Q. Well Mr. Barnab, wasn't there at the time, who did it?
A. I do not know, My Lord.
Q. Who sent it to you?
A. I do not know, I didn't receive this documentation.
Q. Could you explain the relevance of this?
A. I cannot.
Q. Could it be that somebody understood that they tortured me to such extent that I got sick...
THE COURT :
That question is disallowed.
VALERY FABRIKANT :
And...
THE COURT :
That question is disallowed. The witness said he does not...
VALERY FABRIKANT :
Why?
THE COURT :
Because you're inviting the witness to speculate and you will not invite the witness to speculate.
VALERY FABRIKANT :
No, I'm not inviting, I'm asking for his knowledge and let him respond...
THE COURT :
Disallowed.
VALERY FABRIKANT :
....say no, I don't know.
THE COURT :
Disallowed. Disallowed.
VALERY FABRIKANT :
You didn't hear the question.

THE COURT :

I heard enough of the question to know that you're inviting the witness to speculate.

VALERY FABRIKANT :

Well, witness can say by himself I don't know, as he usually does.

THE COURT :

No, the question has to be legal before the witness can say a word.

VALERY FABRIKANT :

It is a legal question because there is no way to... other way to explain why.

THE COURT :

That's your answer.

VALERY FABRIKANT :

Medical certificate that I'm sick in my security file, what is going to...

THE COURT :

I'm not going to argue with you, the question is disallowed. Move on to the next question or sit down, one or the other.

VALERY FABRIKANT :

You don't look very happy with my examination do you?

THE COURT :

No, it's not exactly one that would inspire me but any way.

VALERY FABRIKANT :

Yes. It would look much better if this witness looked a little bit... how to say it...

THE COURT :

Mr. Fabrikant, if you have another question.

VALERY FABRIKANT :

Yes.

Q. Now, you said that to this files has access you and the secretary?

A. That is correct.

Q. So if it was not you who did it, then it is the secretary, right assumption?

A. It is possible that the documentation in this file was put there by Mr. Barnab, at the time.

Q. You said Barnab, wasn't there in December, was he?

A. I still can't recall if it was ninety-one ('91), September of ninety-one ('91) or September of ninety ('90) that I became acting director.

Q. All right. The secretary you are talking about of that time, is it the same secretary you have now?

A. Yes, it is.

Q. Nobody else but you and the secretary could do that, correct?

A. Unless it was when Mr. Barnab,...

Q. Okay, so...

A. ...was gathering this, that's correct.

Q. It's one of those three. Well, I think I will get to bottom of it. Okay, thank you.

VALERY FABRIKANT :

I would like this file again to be put until we get Mr. Barnab, to testify. Leave this page please. And oh, probably his secretary.

Q. What is the name of your secretary?

A. Angela Mancuso.

Q. Okay.

VALERY FABRIKANT :

Would you please write it down, Mr. Belleau. And this until we see Mr. Francesco. And this until we see Mr. Yelle.

- Q. I don't know if I can ask you what my r, sum, is doing there?
A. It was part of the documentation, My Lord.
Q. Well, who sent it to you?
A. Can I see it, please? I don't know, but it's stamped by the office of the Dean, the Faculty of Engineering.
Q. Did you ask the Dean to send it to you?
A. No, I did not.
Q. It's dated August eighteenth (18th), nineteen ninety-two (1992).

VALERY FABRIKANT :

Can we keep it until we talk to Dean Swamy?

THE COURT :

Well, you're aware that it's there.

VALERY FABRIKANT :

Sorry?

THE COURT :

It's a document, I presume, that Dean Swamy has in his own possession, you don't need to keep that.

VALERY FABRIKANT :

Well, I never... On August eighteenth (18th) I...

THE COURT :

Oh sure, if you wish to keep it, fine, give it an I number and...

VALERY FABRIKANT :

I didn't submit to him any r, sum, s of mine.

THE COURT :

It's there, it'll be marked as an I number for the time being.

VALERY FABRIKANT:

- Q. Well, Mr. Belleau advised me if you could give him address of Mr. Barnab, .

A. I do not have Mr. Barnab, 's address, My Lord.

- Q. Well, if he calls you later would you be kind enough to give me that address?

A. Yes, I will. I don't have it in my possession but I can try to locate him, because he's moved since he retired, My Lord.

THE COURT :

I see.

VALERY FABRIKANT :

- Q. Okay. Here is your file, please check if everything is there except... except those documents which (inaudible).

A. Yes, My Lord, I think everything is here.

- Q. Okay. Now this, you might find it ridiculous, but those are very dangerous things I'm not allowed to have it in the cell, so they were taken by guards and now I'm returning it to you. Thank you for coming here.

Me JEAN LECOURES :

I have no questions.

THE COURT :

- Q. Thank you.

A. Thank you, My Lord.

AND FURTHER DEPONENT SAITH NOT.

VALERY FABRIKANT :

Well, I believe 911 asked for the hearing so let's accommodate because I think it will take just couple of minutes.

THE COURT :

Fine.

SANDRA TRAINER - INTERPRETE

ASSERMENTE

EN L'AN DE NOTRE SEIGNEUR, mil neuf cent quatre-vingt-treize (1993), en ce deuxi me (2e) jour du mois de juin a comparu :

MARIE-CLAUDE AUDET, administrateur, opérations, 911, n, e le quatre (4) octobre mil neuf cent cinquante-trois (1953);

LAQUELLE, après avoir pr[^]t, serment sur les Saints vangiles, d, pose et dit ce qui suit :

INTERROGE PAR VALERY FABRIKANT :

- Q. Well, have you brought the tape with you which I asked you for?
- R. Oui.
- R. Yes.
- Q. May I have it please? Thank you. So those are the calls which were received by 911 except the call in which I participated, correct?
- R. Tous les appels que l'on a eus au Centre d'urgence 911...
- R. All the calls we received at 911...
- R. ...relativement ... cette affaire-ci sont inclus dans les deux bandes.
- R. ...in relation to this case are included in those two tapes.
- Q. Okay. Now can you answer any questions concerning time discrepancy which were observed and reported to you the first time you were here?
- R. Sur l'appel que vous me posez la derni[^]re fois?
- R. On the call that you reported to me last time?
- Q. Yes.
- R. Est-ce que je pourrais obtenir copie de cette carte d'appel?
- R. May I have a copy of that calling card?
- Q. I'm afraid I didn't expect you today and I didn't bring it with me but I can describe you what it was there. First of all, the beginning of the call was about fifteen eleven something, about fifteen twelve (15:12) at the beginning, the end was sixteen zero two (16:02) and transferred to Mr. Major's office until sixteen about twelve. And from that time on it was transferred to Mr. Grignon until sixteen eighteen (16:18) which is not in agreement neither with transcript which we have of the conversation which lasts from fifteen twelve (15:12) to sixteen ten (16:10), nor is it in agreement also with my own playing of the tape which is not fifty-eight (58) minutes, it claims to be, so we have two discrepancies there.
- First of all the tape itself doesn't last fifty-eight (58) minutes as it is on the transcript, and second the length of the conversation doesn't match what is on the transcript because conversation ended at sixteen eighteen (16:18) rather than at sixteen ten (16:10). So if you could explain all those discrepancies, it would be very nice of you.
- R. Pour le moment je n'ai pas eu copie de la transcription de cet appel.
- R. Firstly I did not receive copy of that transcript of that call.
- R. Les heures qui ont ,t, marqu,es sur l'appel dont vous vous faites part...
- R. The hours entered for the call that you are talking about here...
- R. ...sont les heures que l'on a sur notre Dictaphone 5000. Alors quand vous parlez...
- R. ...are the hours or the times that we have on our Dictaphone 5000. So when you speak of...
- R. ...de l'appel qui est rentr, peu pr[^]s quinze heures douze (15 h 12)...
- R. ...the call that came in at approximately fifteen twelve

(15:12)...

R. ...d'un deuxième appel vers seize heures treize (16 h 13)...

-R. ...and the second call around sixteen thirteen (16:13)...

R. ...et qui aurait termin, vers seize heures dix-huit (16 h 18)...

-R. ...to have concluded around sixteen eighteen (16:18)...

R. ...ce sont les heures d'entr,e et de finition des appels au 911.

-R. ...those are the times of entry and end of call at 911.

Q. Well, what is the answer still? There is a discrepancy, can you explain that?

R. Non. Comme je vous explique, je ne peux pas expliquer, d'abord je ne sais pas de quelle transcription que vous parlez.

-R. No. Firstly as I explained, firstly I don't know what transcript you are talking about.

R. Les heures d'entr,e des appels sont celles enregistr,es au 911...

-R. The times of entry of the calls are those recorded at 911...

R. ...s'il y a eu transcription #a n',mane pas du Centre d'urgence 911.

-R. ...and if there was a transcript, it does not come from the Centre d'urgence 911.

Q. So can we... maybe Crown would be kind enough to demonstrate the 911 transcript to the witness because I don't have it with me.

Me JEAN LECOURE :

It's P-87.

THE COURT :

P-87.

LE TMOIN :

R. O.K. Alors cette transcription ne vient pas du Centre 911, Centre d'urgence 911.

-R. This transcript does not come from Centre d'urgence 911.

R. Donc, je ne peux pas expliquer les heures qui sont not,es sur cette transcription.

-R. Therefore I cannot explain the hours noted in this transcript. VALERY FABRIKANT :

Q. All right. Would it be correct then to assume that timing, which is on your sheet, namely from fifteen twelve (15:12) to sixteen eighteen (16:18) is the right timing?

R. Ce que je peux vous dire ce sont... c'est que les heures inscrites au Centre d'urgence 911 dans cet appel-l.....

-R. What I can tell you is that the hours entered in that call at 911...

R. ...sont les heures d'entr,e enregistr,es sur nos appareils Dictaphone 5000...

-R. ...are the times of entry entered on our Dictaphone 5000...

R. ...sur des bobines ma@tresses.

-R. ...on master tapes.

Q. How to make you answer the question which I asked. I repeat once again, that was not my question. My question was: Did the call duration from fifteen twelve (15:12), total duration, from fifteen twelve (15:12) to sixteen eighteen (16:18) is correct duration of the call?

R. Les heures not,es sur la carte d'appel...

-R. The hours noted on the call card or calling card...

R. ...c'est-...-dire celles que vous dites actuellement sont les heures enregistr,es au Centre d'urgence 911.

-R. ...the one you're talking about presently are those required at the Centre d'urgence 911.

Q. Should I understand your answer as, yes, the duration of the call was indeed recorded at 911 from fifteen twelve (15:12) to sixteen eighteen (16:18), is my understanding of your response correct?

R. Oui.

-R. Yes.

Q. Now, who then can explain us the discrepancy? Anyone at Urgences Sant,... Sorry, anyone at 9-1 can explain the discrepancy?

R. Je le r,pšte, je ne peux et personne au Centre d'urgence 911...

-R. I repeat that I cannot and no one at Centre d'urgence 911...

R. ...ne peut expliquer les heures inscrites ... une trancription...

-R. ...can explain the hours entered in a transcript...

R. ...qui ne provenaient pas du Centre d'urgence 911.

-R. ...which does not come from Centre d'urgence 911.

Q. Let us change the subject, let's forget about transcript. The playing time of the tapes, tapes were provided by 911, correct?

R. Oui.

-R. Yes.

Q. The playing time of those tapes do not correspond to one hour and six minutes, how about this discrepancy?

R. Je ne comprends pas bien votre question.

Q. Okay, I repeat.

-R. I don't understand your question very well.

Q. The playing time of the tapes produced by 911 service, even if we take testimony of Mr. Major which makes them fifty-eight (58) minutes, does not come to sixty-six (66) minutes it is supposed to be. Can you explain it?

R. Comme je vous explique, les heures qui sont inscrites sur les cartes d'appel...

-R. As I explained, the times entered on the calling cards...

R. ...sont les heures qui sont enregistr,es sur nos appareils de bobines ma&tresses...

-R. ...are the times recorded on the recording machines containing our master tapes...

R. ...malheureusement je ne peux pas vous dire plus que #a.

-R. ...unfortunately I cannot say more.

Q. You are director at 911 there must be specialist there who could explain the discrepancy. Would you take the task to discuss with your employees and send someone who can explain the discrepancy? Could you be so kind?

R. Il n'y a pas personne qui pourrait vous expliquer autre chose que ce que je vous explique actuellement.

-R. No one else would be able to provide an explanation other than that I'm doing here today.

R. Les appels entrent au Centre d'urgence 911...

-R. The calls coming in to Centre d'urgence 911...

R. ...ils sont enregistr,s sur des bobines ma&tresses...

-R. ...are recorded onto master reels or tapes...

R. ...ces bobines ma&tresses sont sur un appareil Dictaphone 5000...

-R. ...and these master tapes are installed or mounted on a Dictaphone 5000...

R. ...cet appareil nous indique l'heure d'entr,e de l'appel...

-R. ...and that device tells us the time of entry for that call...

R. ...et c'est tout, il n'y a pas d'autre heure possible.

-R. ...that's all, there's no other possible time.

Q. So are you assuming that your electronic clock during one hour

can be wrong six minutes, is this what you're implying?

R. Ce que je veux dire c'est que les appels que vous avez eu copie ont une heure marqu,e.

-R. What I'm telling you is that the calls for which you obtained a copy had a time of entry.

R. Et cette heure-l... est l'heure enregistr,e au Centre d'urgence 911.

-R. And that time is the time that is recorded at Centre d'urgence 911.

R. S'il y a une marge entre les heures d'entr,e et les transcriptions dont vous avez copie, comme exemple ceci...

-R. If there's a discrepancy in the times between the times of entry and that of the transcripts like the example of the one I have here before me...

R. ... je ne peux pas expliquer les heures marqu,es sur une transcription qui n',mane pas de chez nous.

-R. ... I cannot explain the times of entry figuring on the transcript that does not come out of our department.

THE COURT :

Q. Okay, that's not what he's asking you to do.

-Q. Ce n'est pas ce qu'il vous demande de faire.

Q. Major came here and over a lunch hour went off and listened to the cassettes which were filed, which were supposedly true copies from the master tape. Major came back and said these total fifty-seven (57) minutes and ten seconds. What Mr. Fabrikant wants to know is how come Major's fifty-seven (57) minutes and ten seconds, how come that does not jive with the sixty-eight (68) minutes about on your cards. That's your question?

R. Je peux pas expliquer #a, est-ce que cet appel-l... comprenait l'appel au complet?

-R. I cannot explain that, now did that call contain the entire call in its entirety?

VALERY FABRIKANT :

What can I do, I believe they should be better than that.

THE COURT :

Well, look... do you want me to send the jury out, I made the suggestion to you before.

VALERY FABRIKANT :

Suggestion of what?

THE COURT :

If you want to check the timing of the master tape from the time it came in to...

VALERY FABRIKANT :

Yes.

THE COURT :

It would seem that there is your... there would be your means of checking out the time, and then I have no idea whether that will concord, I don't know what that will concord to. I don't know whether that will jive with your one minute and six... your sixty-six (66) minutes or whether that will concord with the fifty-eight (58) minutes, I have no idea. So whatever it does, then you know the cards need to be explained or they don't need to be explained, I don't know.

VALERY FABRIKANT :

Well, they need to be explained, there might be nothing major there..

THE COURT :

That's right.

VALERY FABRIKANT :

...I agree with you, it be might something absolutely minor

which is not worth for doing, but my dealing with police before kind of make me think that there is something there.

THE COURT :

My suggestion was that first of all, on a voir-dire, if you want to have the master tape brought here with Sauvageau's gismos, well we'll listen to it and time it out. If you want to do that, that's fine.

VALERY FABRIKANT :

Well, they can do it themselves and see what is their timing?

THE COURT :

If you would like to do that's fine, I suppose with... that's fine with me.

VALERY FABRIKANT ;

Q. Well, so could you first of all, this master tape is still there you did not destroy it.

R. Non.

-R. No.

Q. So could you play the master tape and just mark time, this is beginning and play, play, play, play, this is the end, take on your watch and see what is the length of the tape?

THE COURT :

That's your first question, after that will determine...

VALERY FABRIKANT :

After that we'll see whether...

THE COURT :

What ever else has to be explained.

VALERY FABRIKANT :

...we need to do anything else.

THE COURT :

Yes.

VALERY FABRIKANT :

All right. And if this length is indeed sixty-six (66) minutes, then we'll have to check what is on master tape with the transcript and give the tape which we have, probably something is missing, then maybe it is not important, maybe it is important. You never know. Thank you for coming.

Me BELLEAU :

Well, let the witness take the transcript with her instead of going back and forth.

THE COURT :

Yes, that would be a useful idea.

Me BELLEAU :

Then she can compare the transcript with the master tape.

THE COURT :

The witness, you have no objection to the witness withdrawing P-87, I'm sure, to do the...

Me JEAN LECOURES :

No, she can withdraw, better to work with...

CONTRE-INTERROGE PAR Me JEAN LECOURES

PROCUREUR DE LA COURONNE :

I have one or two questions.

Q. Madame Audet, if we listen to these tapes and we also look at the transcripts, it's supposed to be a reproduction of the master tape, right? But... Right? Just yes or no?

R. Oui, pour les bandes...

-R. Yes, for the tapes...

Q. Okay, but we had the occasion to follow and it's the same, but let's work with the transcript assuming that the cassette and this is the same, okay? This looks like only one conversation but actually the phone was hung up at some occasions. Is it

your practice, when you make a copy of the master tape, let's say between the gaps or the silence when the phone was hung up it's not reproduced, let's say there was a five minute silence between two conversation, or three minutes silence between two conversations, when you made the reproduction of the tape, you did not reproduce the five minute silence between when Mr. Major or Mr. Grignon called back or something like that?

R. Oui, c'est vrai.

-R. That's true.

Q. Is it your usual way of copying?

R. Oui.

-R. Yes.

R. Nous "tapons" uniquement les appels qui entrent au 911.

-R. We tape only the calls that come into 911.

R. Nous n'enregistrons pas les silences entre les appels, particulièrement...

-R. We do not tape the silence or periods between calls and especially...

R. ...et particulièrement s'il y a quelqu'un d'autre qui a d-rappeler.

-R. ...especially if someone would have tried to call back.

Q. Okay. For instance if Mr. Fabrikant and Mr. Grignon are talking to each other and Mr. Fabrikant hangs up, and five minutes later Mr. Grignon calls back would you, on the cassette, reproduce the five minutes silence?

R. Non.

-R. No.

RINTERROGE PAR VALERY FABRIKANT :

Q. Well, is my understanding correct that the master tape moves regardless there is call or there is no call?

R. Oui.

-R. Yes.

Q. So if master tape moves regardless there is call or there is no call, it means that silence is effectively recorded?

R. Peut-être.

Q. And when you reproduce it on tape, I don't think that technician listens to reproduction, uh, huh, it looks like nothing there, I don't think this is the way it is being done...

Me JEAN LECOURE :

You have your answer.

VALERY FABRIKANT :

Well, you just made question in the wrong way. If master tape continues moving during silence, it means it is there and when they reproduce it, technician does not listen to whether there is sound at the time or there is no sound, he just makes a copy, correct?

THE COURT :

There is your question, now get your answer.

LE TMOIN :

R. Il faut comprendre que nous avons quarante pistes en même temps...

-R. One has to understand that we have forty (40) tracks simultaneously...

R. ...si un appel entre sur la ligne d'urgence 911...

-R. ...and if a call comes in to the emergency line at 911...

R. ...comme je l'ai expliqué,, nous avons l'heure d'entrée de cet appel.

-R. ...as I explained, you have the time of entry for that call.

R. Si ce sont des appels internes ... la ligne d'urgence 911...

-R. If they are internal calls on the emergency line 911...

R. ...c'est parce que c'est un appel qui est fait ... partir du systŠme SL-1.

-R. ...it is a call coming from within the SL-1 system.

R. Ce n'est pas tout ... fait pareil.

-R. It's not exactly the same thing.

R. C'est que nous avons des boutons d'entr,e et de sortie du systŠme...

-R. We have buttons for entry and exit of the system...

R. ...qui n'ont rien du tout ... voir avec les lignes d'urgence 911.

-R. ...which have absolutely nothing to do with the emergency lines of 911.

R. Si les appels ont ,t, plac,s par des boutons internes...

-R. And if the calls were placed by internal parties or pressed internal buttons of the system...

R. ...soit de sortie par un sept chiffres...

-R. ...either for an exit comprising of seven numbers...

R. ...ou par une entr,e ext,rieure par un sept chiffres...

-R. ...or an external entry comprising seven numbers...

R. ...il est difficile de calculer le temps r,el...

-R. ...it is difficult to calculate the real time...

R. ...parce que les bobines tournantes...

-R. ...because the tapes which are rolling...

R. ...il peut y avoir plusieurs types d'appels qui sont rentr,s sur ces lignes de sortie ou d'entr,e.

-R. ...could contain different types of calls which would have come in from these exit lines, if you will.

R. Ce qui veut dire que lorsque nous reproduirons l'appel entr, sur une ligne ... sept chiffres par exemple...

-R. So when we will reproduce an incoming call, a line comprising seven numbers for example...

R. ...nous allons reproduire cet appel-l... ... partir du moment o- nous l'avons sur bobine...

-R. ...we will copy that call from the moment when we have it on tape...

R. ...donc nous ne pouvons pas savoir si entre les deux appels sur ce sept chiffres-l......

-R. ...therefore we cannot tell that if between those two calls within that seven numbers...

R. ...il y a un nombre de minutes certain entre un appel 911...

-R. ...there's a certain number of minutes between 911...

R. ...et un appel fait par l'ext,rieur.

-R. ...and a call made outside or from outside.

R. Je ne sais pas si c'est clair, ce que je veux souligner c'est que si un appel 911 entre...

-R. I don't know if this is clear but what I want to underline is that if a 911 call comes in...

R. ...nous pouvons reproduire cet appel-l... ... l'heure dite d'entr,e.

-R. ...we can copy that call or reproduce that call at the time of entry.

R. Si nous devons rappeler le citoyen par un sept chiffres...

-R. And if we have to call back a citizen through a seven number call or line...

R. ...nous ne pouvons calculer de fa#on int,grale le temps entre les deux appels.

-R. ...we cannot fully calculate the time between the two calls.

VALERY FABRIKANT :

Q. I don't think there is any point to spend more time today, would you just kindly get to the master tape, listen to it, mark the timing of the beginning and the end, and this is

first, and second then compare what you have with what is on the tape. And then I believe the real question because this time I don't think there is any point to ask any more questions.

Me JEAN LECOURE :

Q. Could you as well note if the silences are reproduced on the master? Why they are not on the copies?

R. Okay.

THE COURT :

Mrs. Trainer, would you translate?

Q. Okay?

R. Okay. I'll try.

THE COURT :

Thank you, madame Audet. Maître Boisvert, merci beaucoup.

VALERY FABRIKANT :

Well, at least I remember there was never five minutes of silence, that's for sure.

THE COURT :

Okay, we'll stop for ten minutes.

SUSPENSION OF THE HEARING

REOPENING OF THE HEARING

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993) on this second (2nd) day of June, personally came and appeared :

VICTOR FRANCESCO, Operations officer, Security Department, University of Concordia, born on November fourteenth (14th), nineteen hundred and sixty-five (1965);

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

EXAMINATION BY VALERY FABRIKANT :

Q. May I start with taking a look at the documents that you have?

THE COURT :

Are these the same documents that you were looking at this morning?

VALERY FABRIKANT :

No, I don't think so.

THE WITNESS :

A. My Lord, may I make a comment?

THE COURT :

Q. A comment no, but if you feel there's something you need to say in relation to these documents that will enlighten us then...

A. These are the same documents which on my subpoena were requesting these statements or these invoices for the bodyguard since nineteen eighty-eight (1988) and they're the photocopies of what Michel Bujold has presented.

Q. I see.

VALERY FABRIKANT :

Well, let me just take a look...

THE COURT :

Take a look.

VALERY FABRIKANT :

...and if this is the case then it will take just one minute.

THE WITNESS :

A. As in Mr. Bujold's case, there's a list with the contents of phone numbers.

THE COURT :

Q. Would you remove that list?

A. Yes, sir.

VALERY FABRIKANT :

Those phone numbers are in white pages, what kind of comedy they are playing when I'm in jail.

Q. How long have you been working at Concordia University?

A. Since February twenty-seventh (27th), nineteen eighty-five (1985).

Q. So you were at Concordia at the time Mr. Barnab, was there?

A. That's correct, I was a security officer at the time.

Q. Do you know when Mr. Barnab, departed from Concordia?

A. To my recollection, it was some time late summer, early fall of nineteen ninety (1990).

Q. Then after that Mr. Bujold became director, correct?

A. He was acting director, that's correct, from then on till he was appointed officially.

Q. Do you have access to all those documents and files?

A. From files which were from the previous director, no.

Q. Okay. Do you recall any details related to twenty-four (24) hour surveillance in eighty-nine ('89)?

A. No, sir.

Q. You do not because nobody told you that or your position didn't allow you to know that, what was the reason?

A. The position which I held at the time would not make me privy to that kind of information.

Q. The position of yours in eighty-nine ('89) was different from your position now?

A. Correct.

Q. Could you describe what is it Operations Officer and what was your position in eighty-nine ('89)?

A. In eighty-nine ('89)? I was simply a security officer in charge of a shift, I had my own shift, I did not have any more responsibility other than that.

Q. And operations officer what is your responsibility now?

A. I oversee the day-to-day operation on Sir George Williams campus, and I report directly to the director of security.

Q. So would it be correct to say that you are effectively director of security at Sir George more or less?

A. No, sir.

Q. Well anyway, you are in charge of total security at Sir George campus?

A. I do not have the final say.

Q. But you are in charge effective, are you?

THE COURT :

You have the witness' answer.

VALERY FABRIKANT :

Q. Now, what do you know about hiring of bodyguards in November of ninety-one ('91)? How did it start, who told you what, when?

A. I've been instructed by Mr. Bujold to arrange to have two security agents posted one at the ninth floor, I should say the suite of offices in room 907, and one at the CONCAVE annex on the Loyola campus.

Q. How was it explained to you why there is need?

A. He reported to me that the staff were feeling a little bit apprehensive or they were nervous, and they would like to have some sort of security presence while they were there, while they were working. This was only during normal operating hours.

Q. Well, why at these particular rooms, did I do something there, did I threaten anyone in these particular rooms?

A. I had been ordered by my director to arrange to have the coverage for those two locales.

Q. You were never explained the reason why?
A. The reason they explained to me, like I said, was that the staff are feeling apprehensive and they wanted to have someone from security there.
Q. But who they, did he ever tell you who, they, were apprehensive?
A. He never mentioned any names, sir.
Q. But he said they were apprehensive, not say Swamy, not Sankar, you were told they were apprehensive, that's how you were told?
A. There's not one particular name which was brought out or directed to me when I was instructed to arrange for the coverage.
Q. But what was the wording, the staff was apprehensive, that was the wording?
A. Well, I mean this was two years ago, sir, I'm saying that they were either afraid or apprehensive or nervous, the exact word I do not recall from them.
Q. You never asked to clarify were there any events which prompted that?
A. I was following the order of my director, sir.
Q. I just asked whether you asked the question, did you or didn't you?
A. To my recollection, no.
Q. You were not interested or it is just your policy, you are ordered to do something and you do it?
A. Again, sir, I was following orders, he had asked me to do the arrangements to have the two agents posted in those two rooms.
Q. So it is effectively your policy, you never ask questions. You're told to do something and you do it, correct?
A. I was following the directions, sir.
Q. Okay. Then what happened? You were told that, what did you do next?
A. The agents were contacted to... I contacted the company, I requested to have two agents assigned to the university, they presented themselves on November the fifth (5th), I believe, in my office, where we met with Mr. Bujold and the two security agents. They were briefed, Mr. Bujold briefed them at that time as to their main function and...

THE COURT :

Q. Excuse me, they arrived what date?
A. Sorry, I believe it's November the fifth (5th). They were briefed on as to what they would have to do. At that time it was mentioned that you were the person who was having difficulty with the department and they were simply there to maintain a security present, they were not to interact in any kind of way unless there was some sort of physical intervention. They were there as passive observers.

VALERY FABRIKANT :

Q. That was what Mr. Bujold told them?
A. No, sir, I was there, I stated that we were there on November the fifth (5th), the four of us, Mr. Bujold the two agents and myself on the day which they commenced being stationed at the two locales.
Q. Well, who made the instructions?
A. Mr. Bujold instructed them.
Q. Mr. Bujold instructed them.
A. Informed them... informed them as to their main reason of being there, I may have instructed them as to what to do in the event that there was a problem.
Q. So you both instructed them?

A. In our own way.

Q. Okay. So could you please go into details as to what was the first instruction and what was the second instruction. I mean what Mr. Bujold instructed them about and what you instructed them.

A. All I can recollect at this time that I would have instructed them to do was that if there's any kind of physical confrontation between yourself or anybody within those areas, that they were to try and stop it right there. And if necessary, they would have called for assistance.

Q. How would they stop it? Do they have training in some kind of martial arts?

A. Well their background I'm not familiar with, sir, they're obviously professionals at their job, I didn't ask for their credentials.

Q. So you never even questioned what is their background and what is their ability to stop any fight if there is a fight?

A. They're professionals, sir, I take it at face value.

Q. Okay. What is bodyguard mean from your professional point of view? What should be the background of that person? If person is a bodyguard what he is supposed to know?

A. How to protect the person he's supposed to be protecting, or people.

Q. Okay. What exactly? He should be familiar with some kind of "jujitsu", "sambo", whatever?

A. I believe it would be standard for him to be familiar with methods in which to restrain people in the event he would have to do that, but that's as a last resort.

Q. Okay. What do you call methods, do you mean some specific martial arts?

A. No, I'm not referring to martial arts.

Q. Okay. Then they should learn something somewhere or it is just the person who calls him some bodyguard. Is there any training for people who call themselves bodyguard?

A. I'm sure there is, sir, but I do not know whether or not they followed any kind of training. Like I said, they're professionals, they're from a reputable company and therefore it was taken at face value.

Q. You never ask them what their abilities were?

A. No sir, not that I recall.

Q. Okay. Now, did they ask any questions?

A. They asked simply for a description and a physical description was given. Also you would have been... if you had been around or if there was a problem, you would have been pointed out to them, but that was the only way that any kind of description was given.

Q. And what happened next? What did you do the same day?

A. Mr. Bujold left with one of the agents to go to CONCAVE and introduce the agent to staff members there. I went with the other agent up to the ninth floor to the 907 suite of offices to introduce the agent there.

Q. Who did you introduce him to?

A. I believe I introduced him to the receptionists that were there in the front of the 907 suite of offices, and I believe I did introduce him also to Dean Swamy.

Q. Okay. How did you present him to receptionist, who... what did you tell to the receptionist?

A. To the best of my recollection, I would have said that this is a security agent that will be present, that will be roaming in the offices. He wasn't directed to remain in one certain location, he was free to go in and out as he pleased.

Q. Didn't you tell him, this will save you from Fabrikant you are so scared of?

A. I can't remember.

Q. Well, could it be that you said something like that?

A. I wouldn't think so, sir.

Q. Well still, shouldn't you explain it to them that now they're safe and Fabrikant cannot harm them?

A. My main purpose was to assign the guard there, introduce him to the staff and they would remain there.

Me JEAN LECOURS :

These are all leading questions, My Lord.

THE COURT :

It's not a rule that's written in stone.

Me JEAN LECOURS :

What?

THE COURT :

The question of leading questions.

Me JEAN LECOURS :

I know, that's why I let go all the time. But...

THE COURT :

I don't think they're susceptible to causing any grief to the Crown's case.

Me JEAN LECOURS :

No, not at all.

THE COURT :

Well...

Me JEAN LECOURS :

I understand that Mr. Fabrikant can cross-examine his own witness...

THE COURT :

I'm not talking about cross-examining his own witness, there's a distinction between leading questions and cross-examining his own witness.

Me JEAN LECOURS :

Well, but that's the key part of cross-examination, leading questions.

THE COURT :

It is but there is a distinction between cross-examination of one's own witness and leading questions.

Me JEAN LECOURS :

Okay. For the record I point that Mr. Fabrikant is cross-examining and asking leading questions for all the witnesses.

THE COURT :

I note your objection.

VALERY FABRIKANT :

Can I help the Crown, the witness testified...

THE COURT :

Don't bother arguing, just continue.

VALERY FABRIKANT :

Effectively people were afraid of me, you should be glad...

THE COURT :

Mr. Fabrikant would you just continue?

VALERY FABRIKANT :

...they're testifying something your case doesn't it?

THE COURT :

Would you just continue?

VALERY FABRIKANT :

So enjoy. All right.

Q. So you do not recall at all what you said to the receptionist concerning me. Did you ask receptionist when Fabrikant comes,

would you please show the security guard who Fabrikant is?

A. It's possible.

Q. Could you be more definite than that?

A. It's possible I asked the receptionist, I may have asked someone else in the ninth floor, the 907 area.

Q. To show them when I arrive, to show the bodyguard how I look when I arrive, correct?

A. That's correct, sir.

Q. Okay. Did it never crossed your mind that you're undermining my reputation by doing so?

A. Like I said, I've been directed to put the agent there, and since in essence you were the reason that they were there, I was just following what I'm supposed to do.

Q. What you are saying, I was following my orders, correct?

A. That's correct.

Q. You know, all Nazis are on trial for the same thing following orders.

THE COURT :

Mr. Fabrikant, we don't need any of that. Enough.

VALERY FABRIKANT :

Well four people are dead.

THE COURT :

Let's not discuss that at the moment.

VALERY FABRIKANT :

No, they...

THE COURT :

Put your question to the witness.

VALERY FABRIKANT :

No, you forgot we are on trial for that? I didn't. We are on trial for murder of four people.

THE COURT :

That's right. That's right.

VALERY FABRIKANT :

So you don't forget.

THE COURT :

No, I don't forget that. Quite frankly, if you'd come to that point we might advance this thing a little quicker.

VALERY FABRIKANT :

That's exactly what I am doing.

THE COURT :

Are you?

VALERY FABRIKANT :

You bet I am.

THE COURT :

Well, save me the promises and ask the questions.

VALERY FABRIKANT :

Well I asked he didn't answer.

Q. Did you think that it was a grave attempt at my reputation when you're doing that?

A. That's not one thing I was thinking about.

Q. Well, shouldn't you have thought about it?

THE COURT :

His answer was that he was not thinking about your reputation when he took the guard around, there's your answer.

VALERY FABRIKANT :

Well, I ask second question. Shouldn't you have thought about...

THE COURT :

He is not here to soul search, he's here to testify as to facts.

VALERY FABRIKANT :

Q. So did any of the receptionists who you explained that this

guard is guarding them against me, did any of them ask you, what the hell Fabrikant did that you need to protect us from him?

A. Not that I can recollect.

Q. Did you know what I did so that someone needs to be protected by that time?

A. All I heard were rumors that... and these were second or third hand rumors, that you may be having difficulty with departmental heads.

Q. Well, if I'm having difficulty with department heads, as you said it, why didn't you protect department rather than Deans' office? How do you explain that?

A. The request that was made of me was to place the guard in the suite of offices 907 because of the staff and not one individual personally.

Q. Still, you said that I was having problems in the department, right?

A. Those were rumors which I had heard.

Q. Well, why not protect department then?

A. I have stated that if the agent was there in the suite of offices of 907 and he could come and go as he pleased within those offices into the corridors, we was not stationed at one place.

Q. No, but he was not to go to the department, was he?

A. He was in the department offices, as I said, the suite of offices, as you are well aware, there's many offices in the 907 area.

Q. Well he was seated at the entrance to 907...

THE COURT :

Could you stop arguing with the witness?

VALERY FABRIKANT :

I am not arguing.

THE COURT :

Yes, you are.

VALERY FABRIKANT :

All right.

Q. Where was he seated?

A. I was not watching him while he was doing his duty. As I said, he could sit wherever he wished, he was free to sit wherever he wanted, so I wasn't there watching him.

Q. But still, his duty was to protect 907, right?

A. Yes.

Q. Not 915 for example?

A. No.

Q. Not 929?

A. No.

Q. So he was supposed to be near 907, correct?

A. That's correct.

Q. So, we get back to my question, why not to protect 929 if I had problem with the department?

A. The request had been made of me to place in the suite of offices of 907.

Q. Now, would you please open the file with handwriting, with my description, maybe you forward it to me and I will show you the page. Yes, exact, and this is the page. Now whose handwriting is this?

A. That is mine.

Q. That is yours. Now, could you explain why there's only one page there?

A. These are the first three days which the agents had been assigned to us, I was just trying to get a pattern to see as

to what time they would start their day, what time they would finish. The agency told me that they would supply me with a sheet or a list as to the hours of all the agents, so I ceased from there on end.

Q. Well, you did it in order to compare with the bill which you received?

A. But the agents...

Q. Bills received in future, correct?

A. If I was going to receive... If I were not to receive a detailed billing but I was assured I would.

Q. Well, it's my understanding that you wrote this note in order to be able later on to compare it with the bills which you received?

A. Only if I did not receive a detail billing to which I was told that I would and there are copies which I believe you also have of those hours of each agent on the dates that they worked and the locations.

Q. Would you please just answer my question, did you write it in order to compare your recording with the bill you received?

THE COURT :

The witness answered your question, you might not have liked his answer, but he answered your question. He said, I did it at first until I was informed that I would get a detailed billing, and when I was informed I'd get a detailed billing, I stopped doing it. That's what he said. You may not like that answer but there it is.

VALERY FABRIKANT :

He didn't say until, and he didn't say that because I have been told that I stopped. He was informed...

THE COURT :

I'm not going to argue with you, that's the sense of his answer as I took it, and I think it was very clear.

VALERY FABRIKANT :

That is what you wanted him to respond so that it would look nice, but this is not what he responded. I bet you would be here performing much better than him, I have no doubt about it. He does not perform that well.

THE COURT :

Now, have you another question to ask the witness? Go ahead and ask.

VALERY FABRIKANT :

You remember very well that Bujold testified that this was for verification of the bill, not for other purposes...

THE COURT :

Would you ask any other questions you have?

VALERY FABRIKANT :

Okay. Let me have it again.

Q. Now this phrase here, seventeen forty-five (17:45) doctor Swamy leaves, agent Malenfant leaves, can it be understood as a clear indication that agent was not defending staff but rather Mr. Swamy, because Swamy leaves, agent leaves. Could it be interpreted that way?

A. He may have been the last person to leave the suite of offices, I don't know.

Q. So it cannot be interpreted that way. I will return... When you wrote this, it was you who wrote this, right?

A. That's correct.

Q. So if you wrote this it means that you knew what happened there, didn't you? Swamy lives, agent lives.

A. I was informed by the agent the next day when he told me he

left, and when he left he left with Dean Swamy. I did not ask whether he was the last one to leave, he was instructed to be there as long as there were people in the office.

Q. Okay. Were you aware of any threats of shooting people, taking Rector hostage, and so on and so forth?

A. No, sir.

Q. You never heard any of those?

A. When would I have heard them or when are you referring to?

Q. Well you don't ask me, I'm asking you. From nineteen eighty-five (1985) till November ninety-one ('91) you were at Concordia, and in November all this time you never heard any rumor of me threatening to kill a lot of people or threatening to kidnap or take hostage Rector and to tell someone about children, whatever, none of those ever, did you hear any of those?

A. Not between that time period you just informed me of. Not up until nineteen ninety-one (1991), no.

Q. No. You mean that you didn't hear about it until June the second (2nd), nineteen ninety-three (1993) sixteen twelve (16:12), is that what you want to say?

A. No.

Q. No. Okay, when did you hear this rumor?

A. In the last year, over the last year there are certain things, certain rumors I may not have heard about, like I said, the rumors I had heard about you were having difficulty with the department.

Q. Yes. And instead you protected Dean. Is there any logic in it, I have problem with the department and you go and protect Dean?

A. Like I said, I was instructed to put him in 907 in the Dean's office area, the suite of offices and their numerous staff members who worked there.

Q. All right. Anyway, you didn't hear any rumors whatsoever until after the shooting, correct?

A. I don't know if it's after the shooting, sir, or before the shooting. All I know is that up until nineteen ninety-one (1991), which you've pointed out, I had not heard such rumors.

Q. None whatsoever?

A. Of those kinds, no.

Q. Did you hear that I was arrested November first (1st) by police?

A. At what location?

Q. I'm just asking you, did you hear that I was arrested November first (1st) by police at any location?

A. I heard that there had been an incident at Loyola campus during a senate hearing, whether you were arrested or not, I have no... I do not know.

Q. There was no reports coming to you through official or unofficial channel?

A. The activities in Loyola campus are not under my jurisdiction.

Q. The whole university knew I was arrested, you're the only person who seems not to know it, and you are security officer, you are supposed to know better than anybody else, aren't you?

A. I knew that the police were there, whether they put you under arrest or not, I cannot attest to that, sir.

Q. Well, so now we are coming a little bit closer. First you said that you heard some kind of incident. Now you say that you knew that police was there. Now, that's all what you know? What was police there for? Was it for Mr. Johnson, for me or somebody else?

A. It's my understanding that they were there for you or because

of you.

Q. All right. So you see we are moving a little bit. Now, what else did... that's what you heard, you never questioned, okay, so what did he do?

THE COURT :

What did who do, the police?

VALERY FABRIKANT :

Policemen.

THE COURT :

You haven't even established that he was there, how can he possibly know, this is pure hearsay this whole thing, you're wasting everybody's time.

VALERY FABRIKANT :

Oh no, I think everyone understands that he is just not telling the truth, and this is what I'm doing. The whole university knew that, he was the only one whose supposedly not to know that, and he if he's not telling truth to that...

THE COURT :

He wasn't... you haven't established that he was at the...

VALERY FABRIKANT :

You don't have to be there. It was such an event that the whole university was buzzing. It has never happened before that university professor be arrested and searched for weapon in (inaudible) university. And you pretend to be child and believe that what he's telling here...

THE COURT :

Would you stop lecturing me and put questions to him, your last question it was pure hearsay.

VALERY FABRIKANT :

Well, you asked for.

THE COURT :

I did not, the last question illicited pure hearsay.

VALERY FABRIKANT :

You don't...

THE COURT :

He's not here to testify on hearsay.

VALERY FABRIKANT :

I said that your behavior is such that you asked to be lectured, that's what I said.

THE COURT :

I don't ask to be lectured from you, Mr. Fabrikant, and your last question...

VALERY FABRIKANT :

Well then, behave yourself.

THE COURT :

Your last question is disallowed.

VALERY FABRIKANT :

Then behave differently...

THE COURT :

Your last question is disallowed.

VALERY FABRIKANT :

What was wrong with my last question, when I asked what did the police do if you were told anything what the police did?

THE COURT :

Yes, well that's where I intervened. Ask your next question.

VALERY FABRIKANT :

So what's wrong with that question? I'm not...

THE COURT :

Because what he was told... what he was told he's not here to talk about.

VALERY FABRIKANT :

Well, it is important to me to establish...

THE COURT :

I don't care how important it is...

VALERY FABRIKANT :

...his state of mind at that time and why he acted this or other way.

THE COURT :

No, it's not... I don't care what is important for you, you're not going to have him read into the record what is pure hearsay. So you ask him what he knows, that's what he's here to testify about.

VALERY FABRIKANT :

This is what I asked...

THE COURT :

If you don't like that sit down.

VALERY FABRIKANT :

If he knew at that time what the police did.

THE COURT :

He told you he heard, he wasn't there.

VALERY FABRIKANT :

He didn't say it, let him answer it. Let him...

THE COURT :

I let him answer it, that's what he said.

VALERY FABRIKANT :

No.

THE COURT :

Perhaps you don't interpret very well but that's what he said.

VALERY FABRIKANT :

Well, let us hear it again.

Q. Were you ever told what police did to me?

A. All I was told is you were searched, whether you were put under state of arrest, that I do not know.

VALERY FABRIKANT :

Okay. So you see, we're moving.

THE COURT :

Q. Were you a witness to this?

A. No, sir.

Q. Fine.

VALERY FABRIKANT :

This is not the point, what I'm trying to establish here that he was told all that. This is important fact.

THE COURT :

You've established that he was told, fine.

VALERY FABRIKANT :

But before he said that he knew absolutely nothing about incident, he just knew that there was some kind of incident. You don't follow the dynamics of his testimony. At first he said that he knew absolutely nothing, then he knew that something happened at Loyola but he didn't know what exactly.

THE COURT :

Listen, listen...

VALERY FABRIKANT :

Then we discover that yes, he knew that I was... was put...

THE COURT :

If you have another question to put to him, put it.

VALERY FABRIKANT :

I have another question.

THE COURT :

Don't bother giving me a speech.

VALERY FABRIKANT :

Well, if you don't interrupt me I will not bother giving you

a speech.

THE COURT :

All right, we'll adjourn this until tomorrow morning, ladies and gentleman.

AND FURTHER DEPONENT SAITH NOT.

MEMBERS OF THE JURY LEAVE THE COURTROOM
WITHOUT JURY

VALERY FABRIKANT :

Are you afraid to overwork?

THE COURT :

What was that last remark you made?

VALERY FABRIKANT :

I said you are afraid to overwork.

THE COURT :

Thank you, sixteen twenty (16:20).

VALERY FABRIKANT :

Sixteen twenty (16:20).

THE COURT :

Sixteen twenty (16:20). Okay. I am the one that decides what is relevant and what questions you may ask, not you. Now, if you're not going to live by that, then you're not going to be able to ask your questions. I'm sorry about that, but that's the way it's going to be. And if that means this thing ends next week or tomorrow, or three days from now, then again, that's how it's going to be. But I am not going to be run by you and get that through your head.

VALERY FABRIKANT :

Well, you were wrong.

THE COURT :

I was perfectly correct. I'm not going to argue with you.

Now sit down. Would you sit him down, ladies.

VALERY FABRIKANT :

Why do you shout at me?

THE COURT :

Because you are simply doing your level best to disrupt this hearing, that's all you're doing.

VALERY FABRIKANT :

I'm not disrupting anything.

THE COURT :

We are going absolutely nowhere with this nonsense.

VALERY FABRIKANT :

There is no nonsense here.

THE COURT :

That is total...

VALERY FABRIKANT :

My question was legal, you allowed it after all.

THE COURT :

Your question, as it was finally put, as it was finally put was fine. Your question as it was originally put was aimed at bringing out what was reported to him and that is illegal, I'm sorry.

VALERY FABRIKANT :

It was exactly the same question.

THE COURT :

Well then you formulate your questions a little more clearly.

VALERY FABRIKANT :

Well, I'll get tape and I will get the recording what I was...

THE COURT :

I don't really wish to hear the tape, I know what I heard.

VALERY FABRIKANT :

Well, of course you don't want to hear because...

THE COURT :

Did you have anything, Mr. Belleau, you wished to raise with me?

Me BELLEAU :

Yes, I'm sorry to lay this at your feet but...

THE COURT :

Would you sit down, Mr. Francesco, please.

Me BELLEAU :

There's an ongoing discussion between myself and Legal Aid Center parallel (inaudible) if you will, and the latest that came out of that is that photocopy cost will not be refunded to me and it's already running in the couple of hundreds of dollars so... And that apparently stems from the tariff itself which specifically excludes this expense. So I think that for practical purposes I can't fulfil properly my duties towards Mr. Fabrikant if I can't provide him with some copies of jurisprudence or whatever when the time comes that it's necessary.

THE COURT :

What has been the bill so far, have they refunded these...

Me BELLEAU :

No, and the position is that they will not. I hadn't submitted any accounts and I discussed it yesterday for the first time with Me Deslongchamps and she told me to forget about it, that it would not be refunded. And like I told you, I've run into a couple of hundred dollars in cost.

THE COURT :

From your experience is this the normal position that...

Me BELLEAU :

I think so, because it's written in the tariff, so this is the regulation, this is double...

THE COURT :

It's written in the tariff that photocopies will not be...

Me BELLEAU :

I think the text, if I may quote it up the top of my head, is "l'avocat n'a pas droit ... ses frais de photocopies."

THE COURT :

Have you monitored your photocopying costs so far?

Me BELLEAU :

Yes. Yes, I have. I don't have the exact figure but... I could have it.

THE COURT :

Okay. Would you please continue to monitor your photocopying costs and inasmuch as you are named by me as a friend of the Court, in order to reply to his requirements as he might have chosen to formulate them to you his questions. There will be an order that you be reimbursed by the Attorney General.

Me BELLEAU :

Thank you.

VALERY FABRIKANT :

Okay, we are talking about a particular thing that maybe we...

THE COURT :

I'm not talking to you about anything. We're adjourning until tomorrow morning.

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.

J'ai signé,

MICHEL DAIGNEAULT, S.O.

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">CANADA
COUR SUPRIEURE

(Chambre criminelle)

PROVINCE DE QUBEC

DISTRICT: MONTRAL

CAUSE NO: 500-01-017372-928

TAPE: PROCES

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

NOM DES PARTIES:

SA MAJEST LA REINE
Plaignante,

c.

VALERY FABRIKANT
Accus,

COMPARUTIONS:

Me JEAN LECOURE
PROCUREUR DE LA COURONNE

DATE D'AUDITION: 3 JUIN 1993

FICHER : 2787

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IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993) on this third (3rd) day of June, personally came and appeared :

VICTOR FRANCESCO, Operations officer, Security Department, Concordia University, born on November fourteenth (14th), nineteen hundred and sixty-five (1965);

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

THE COURT :

Just a second. Okay. Yesterday afternoon, stage at which we had reached was that you had asked the witness, who was not at the Loyola Campus at the time of your arrest, whether he was aware of your arrest. You then asked a further question which was disallowed which bore upon the cause that the guard had to invite the police to do what he did. And then you asked the witness again in a question that was a combination of argument, cross-examination and testimony from you as to whether or not he was aware that you were arrested. I think that is the stage we were at.

VALERY FABRIKANT :

I would suggest that we play this part...

THE COURT :

I would suggest we do not. If that is not where you were put the question that you had to put again.

VALERY FABRIKANT :

No, this is actually where we were but you interrupted me illegally saying that my question was wrong. I listened to the tape, my question was absolutely correct...

THE COURT :

Mr. Fabrikant...

VALERY FABRIKANT :

...and I would appreciate...

THE COURT :

...put your question and we will see where we go from there.

VALERY FABRIKANT :

Yes, and I would appreciate in the future you do not interrupt the examination unless I really do something wrong.

THE COURT :

Mr. Fabrikant, you get this and you get this clear, the Charter grants you, yes, a full and complete defense, that is a fair trial. The Charter may be the supreme law of Canada in the sense that it is part of the Constitution, but the Charter does not exist in a vacuum. Your Charter of Rights must be exercised within the rules of evidence, that you exercise them properly according to the law is a pre-condition of their exercise. I have extended you all sorts of latitude in this case. This witness is not and has not been declared a hostile witness. You have nevertheless been permitted to put leading questions, that is within the trial judge's discretion but by and large putting leading questions to your own witness is discouraged. It is discouraged for three reasons. First of all, a witness is presumed to have something to say in favor of the party who calls him. It may not be so in the case of this witness but that is one of the reasons for the rule. Furthermore, it lets the witness agree to a question that is put to him, that is another reason why it shouldn't be asked. Thirdly, it reduces the witness to a passive position and lets him answer while the examiner effectively testifies, that is the third reason why leading questions are not permitted in law. You have asked them, you're not a lawyer, I have extended to you as much latitude as I can, but what you have no right to do and what you persist in doing and why I intervened is because you insist on cross-examining your own witness, which you may not do. Save and except if that witness has been shown to my satisfaction to be hostile.

Now, you argue consistently after I have ruled. One of the rules of the game, one of the rules of Court is that I am the person who has the right to decide whether a question is legal, whether the evidence that it proposes to put in the record is pertinent, and whether the question should be permitted. You're not required to like my rulings, you are... you may even hold the view that they are wrong, but you are required to respect them, you are required to respect them. What do you? Every time you argue with me, since the beginning of this trial I have been insulted on a daily basis, you

have committed contempt of Court on a regular and ongoing basis. And in the teeth of the fact that the Judge has the right to control and direct the trial, what options do I have? Argument is inadmissible, you persist in arguing. For the first time in almost ten years here, you are the first person that I have ever had to cite for contempt. Now, I do not care if that tells you something, but it certainly tells me something. First time in ten years, never done it before, never had to.

I have on a daily basis had to record incidents which ran from contemptuous, to insolent, directed against me, and directed against the Court in which I am sitting, directed against other witnesses, directed at the process in general. I will not live with this sort of thing. I will not put up with it from you any longer. You are conducting your own defense, that is the situation you are in. You merited being removed from the courtroom yesterday afternoon, yet I am left with a practical problem, how I do I run your trial with you removed from the courtroom particularly at the stage of your defense, so there is no solace for me there. There is no solace for me in gagging you, there is no solace for me in finding you in contempt because you thumb your nose at all rulings that I make. You joke about times and notes in the proc'ss-verbal, you make it virtually impossible.

Quite frankly, the only remedy, if you are not going to live by the rules, and I thank you very much for the lecture about my interrupting you, but it is out of place, if you are not going to live by the rules is foreclosure.

I am conscious of the fact that you say that you are entitled to a full and complete defense, but I say that is conditional upon your respecting the rules of Court and conforming to them. And if you do not it is your head that is on, it is your decision. So that is the way it is going from now on.

VALERY FABRIKANT :

First of all, I do follow the rulings, second...

THE COURT :

Mr. Fabrikant, I did not wish an answer from you, I wish you to put your questions now to Mr. Francesco.

VALERY FABRIKANT :

Well again, can I say that this is unfair? If you pose certain points, I believe I should be allowed to respond....

THE COURT :

Mr. Fabrikant, you and I are not having a debate, that is a decision I reached on the basis of your conduct yesterday afternoon, now go ahead and put your questions to Mr. Francesco.

VALERY FABRIKANT :

Well, this is unfair. If you make certain remarks you should allow me to respond.

THE COURT :

You and I are not in a public debate, you appreciate your role and I appreciate my role.

VALERY FABRIKANT :

Well still, my questions were legal, this witness...

THE COURT :

Would you like me to stop right now and have you removed, or are you going to put your next question? Because that is my next step.

VALERY FABRIKANT :

You don't leave me much choice, do you?

EXAMINATION BY VALERY FABRIKANT :

Q. Okay. We stopped yesterday at you saying that you knew that police searched me, now who told you that?

A. I had learned this from Mr. Bujold.

Q. Okay. What else did he tell you? Did he tell you the reason for such a search?

A. Searched because for some... they believed that possibly you may have had some sort of weapon...

Q. Okay.

A. ...on your person.

Q. Did he explain to you what was the reason for such belief?

A. Not at the time, no.

Q. You never asked?

A. No.

VALERY FABRIKANT :

Now, let us go according to the rules of evidence. There is section 9.1 and 9.2 of Canada Evidence Act. If you review testimony of this witness, yesterday and today concerning this particular incident, it is quite obvious that witness is eluding questions. First he said he never heard anything, then he was forced to admit that yes, he heard about incident at Loyola... Well first he asked where, as if he didn't know what I was talking about. Then he admitted, yes, it was at Loyola Campus, but again he didn't know anything about it. Then he admitted that yes, he heard that police was called. And still at this point, when I asked, do you know what police do or... sorry, yes, did you know what police do, I was interrupted at that place as if my question was illegal. Though question was legal and he answered later on that he knew that I was searched. So effectively, witness clearly trying to avoid as much as possible.

Before that he said that he didn't hear any rumors whatsoever. When I asked him, did you learn about these rumors on June the second (2nd), nineteen ninety-three (1993), sixteen twelve p.m. (16:12), you said no before that but again he wasn't sure when.

Now, I do believe that it's quite obvious that the witness is faking his real knowledge, and therefore I would appreciate if you declare witness adverse. If you wish, we can play the previous testimony of his and testimony now, and the conversation which goes, even the last part of the conversation, would you believe such an outrageous happened, professor is arrested, Bujold tells him that professor was searched for weapon. It's not, you know, something weapon. And he didn't bother to ask why the hell, what was the reason for that. Would you believe all those answers?

THE COURT :

This is not the time for you to argue the case...

VALERY FABRIKANT :

I'm not arguing the case, I'm arguing section of Canada Evidence Act, that witness is definitely not sincere in

his testimony.

THE COURT :

Have you anything to say, Mr. Lecours?

Me JEAN LECOIRS :

I think it's sufficient but anyway Mr. Fabrikant is already cross-examining him, so.

VALERY FABRIKANT :

Well I don't need favors, I need to be in the rules that witness is declared adverse and I question him normally.

I do not want it to be put to me as if some favors are being done to me. I don't need those favors, witness is adverse and I have the right to cross-examine him.

That's all.

Me JEAN LECOIRS :

I don't think we have sufficient grounds up to this point.

THE COURT :

There is clearly, in my view, not sufficient ground to permit cross-examination at large of this witness. The witness has proved neither adverse so far, nor has he proved hostile, and your application is denied. You will put direct questions to the witness and if these tend to go into suggestive questions, I do not propose to be dreadfully sticky about that, but you will not cross-examine at large this witness.

VALERY FABRIKANT :

So you feel that witness is telling all he knows?

THE COURT :

Did you hear what I said? I ruled, all right?

VALERY FABRIKANT :

Fine. Okay.

Q. Did you read the file left by Mr. Barnab,?

A. The time that I've read the file that was left by Mr. Barnab, was the first time that I looked at, glanced at, I didn't read it in depth, was last Friday.

Q. Before that you were never informed about its content, were you?

A. That file belonged to the Director, it wasn't something that I might had access to nor would I have daily access to it.

Q. Do you think the content of this file might be relevant?

THE COURT :

You're cross-examining the witness and what he thinks is not in any sense relevant. That question is disallowed.

VALERY FABRIKANT :

All right.

Q. What were instructions given to bodyguards in November of nineteen ninety-one (1991)?

A. As I stated yesterday, the agents were there as passive observers at the request of the department, in the event there were kind of problem or interaction, physical, between yourself and anybody in the office, that's what they were there for. As a last resort that they would intervene, otherwise they were not to do anything else.

Q. Has ever possibility of firearms interaction was mentioned?

A. I do not believe so, no.

Q. Having in mind that you knew that I was searched for weapon, do you think you put your bodyguards in mortal danger at that time?

THE COURT :

That is not a question that is admissible. First of all, it calls for a conclusion on the part of the witness, it does not and is not in the distinct facts...

VALERY FABRIKANT :

Well, can I ask about his state of mind at that time?

THE COURT :

The question is disallowed.

VALERY FABRIKANT :

Q. Did you warn the bodyguards about possibility of firearm interaction?

A. I do not believe so.

Q. Well, did you or didn't you?

A. I do not believe so.

Q. Do you have any written instructions to the bodyguards?

A. No, sir.

Q. Could you explain why?

THE COURT :

You are cross-examining the witness now.

VALERY FABRIKANT :

Well, I'm just asking why he doesn't have it, why is it cross-examination? I don't doubt truthfulness, cross-examination means that I doubt truthfulness of his answer?

THE COURT :

Not necessarily. Not necessarily. All right, I will permit your question so far.

THE WITNESS :

A. The reason there were no instructions, their task was simple, it did not require to have a list of instructions, therefore they were just verbally instructed on what to do and we remained at that.

VALERY FABRIKANT :

Q. Well, are you aware of incident between me and one of your guards, bodyguards?

A. Yes, he reported it.

Q. Okay. Could you describe what was reported to you?

A. My Lord, may I consult the file?

THE COURT :

Well, would you please establish, first of all, that it was reported to him?

VALERY FABRIKANT :

He said it was reported to...

THE COURT :

He said it was reported, I do not know if it was reported to this witness.

VALERY FABRIKANT :

Q. Well, was it reported to you?

A. Yes, it was.

THE COURT :

Yes.

THE WITNESS :

A. Agent Malenfant reported that on the nineteenth (19th) of November, nineteen ninety-one (1991), at approximately fourteen fifty (14:50), that you had entered the suite of 907 and had gone to see Dean Swamy's secretary, and you were discussing with the secretary. At approximately fifteen hundred (15:00), he reports that you suspected that he was following you in the office. At that point, according to the agent, he puts down here that he asked you or you asked him why he

was following you. He had responded that he wasn't following you and you asked...

THE COURT :

Excuse me, I stop you right here. Now, you will be very careful with this. This cannot be taken as proof of the facts of what occurred that day, unless it is established that this witness was there, this is vintage hearsay. If the evidence is being made simply to demonstrate that a report was made to the witness, that is one thing. But as far as the content of it, it is hearsay unless the witness saw it himself, and Mr. Malenfant cannot testify through the mouth of this witness to establish these as facts.

I am going to interrupt here because I am not going to let you read into the record a report that came from Malenfant since it is obvious to me that your purpose is to prove the facts in that report. If you have another purpose then I think you have to rephrase your question so as to...

VALERY FABRIKANT :

This is just auxiliary thing...

THE COURT :

All right.

VALERY FABRIKANT :

...to inform the jury that I'm not trying to prove the fact as such. All I'm trying to do is to convey the content of this report so that I would be able to ask the next question, and it would look natural to the jury why the next question is the way it is. That's all.

THE COURT :

Well I am sorry, but you are not allowed to convey the content of that report because the net effect of conveying the content of that report is to put into the record facts that the witness did not see and cannot testify to.

VALERY FABRIKANT :

Well, I am putting there only...

THE COURT :

So you will have to rephrase your question, I am stopping the witness as far as reading from that, from Malenfant's report is concerned.

VALERY FABRIKANT :

Well, let him answer the question I put at first. What was reported to you, what was...

THE COURT :

No, that comes to the same thing.

VALERY FABRIKANT :

No, what was your knowledge about the incident?

THE COURT :

No. No. That is disallowed, that is hearsay.

VALERY FABRIKANT :

I'm not asking him to testify as to the facts...

THE COURT :

I am not going to argue with you, I said, no, that is hearsay.

VALERY FABRIKANT :

I know, I'm not establishing the facts of the content.

THE COURT :

Then you will have to change your question if you are establishing something else with this witness.

VALERY FABRIKANT :

Well, I asked him whether...

THE COURT :

I am finished with the point, you will please discontinue your answer and you wait for the next question.

VALERY FABRIKANT :

Q. So was this incident reported to you?

A. Yes, it was.

Q. Now, what was your understanding as to what happened there? What was your perception of events at that time?

THE COURT :

That is another attempt to do the same thing. The only person that can speak to that incident and what happened in that incident is Mr. Malenfant.

VALERY FABRIKANT :

I'm not concerned with the facts as such.

THE COURT :

If you want to...

VALERY FABRIKANT :

I want to...

THE COURT :

If you want to ask the witness what he did as a consequence of that report, that is fine, but...

VALERY FABRIKANT :

But in order to continue with my question as to what he did, and to found my question on solid base, there is a need to specify precisely what he was told. This is not the first time, I fail to understand why I can ask him what Mr. Bujold told him about my arrest at Loyola, it was admitted, it was fine. Why now I cannot ask what he learned from the incident with Malenfant.

THE COURT :

Because you were...

VALERY FABRIKANT :

Just the name is different.

THE COURT :

Because you are attempting through this witness to put before the jury Malenfant's observations, and that you cannot do.

VALERY FABRIKANT :

I'm not putting his observation, you want...

THE COURT :

I am not going to argue with you about it, you may not have him continue to read from Malenfant's notes as to what happened.

VALERY FABRIKANT :

Okay, let's him not read from there.

THE COURT :

One way or the other it comes to the same thing, that question is disallowed.

VALERY FABRIKANT :

Well then explain to me what the difference is?

THE COURT :

I am not going to explain anything to you, that question is disallowed.

VALERY FABRIKANT :

Why it was allowed to tell what Bujold...

THE COURT :

If you say one more word, you go through that door and

we adjourn.

VALERY FABRIKANT :

Well, can I comment that this is...

THE COURT :

Ladies, would you remove him from the courtroom, we will adjourn for fifteen (15) minutes, ladies and gentlemen. Take him out of here.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

MEMBERS OF THE JURY ARE PRESENT

VALERY FABRIKANT :

Well, I would like to file a motion of recusation of Judge because I believe there is reasonable apprehension of bias in all your past behavior that totally denies me possibility of having even appearance of fair trial. And your refusal to explain the difference why I was allowed to ask what Mr. Bujold told him and I'm not allowed to ask what Mr. Malenfant told to him, this is clearly bias behavior. So I would like to entertain this motion.

THE COURT :

I am entertaining the motion right now, it is rejected. Put your next question.

VALERY FABRIKANT :

Well, I didn't present it yet.

THE COURT :

You have presented your motion, it is rejected.

VALERY FABRIKANT :

No.

THE COURT :

Put your next question.

VALERY FABRIKANT :

Well, can we put a date for presentation?

THE COURT :

No, you cannot put a date for presentation, we are in the middle of the trial, if I have made a mistake you can argue that later on.

VALERY FABRIKANT :

Well, but still you refuse to hear the motion?

THE COURT :

Are you going to put your next question or do I move to the next step?

VALERY FABRIKANT :

Well, I'm going, I'm asking, you refuse to hear the motion because I did not present the motion.

THE COURT :

You told me that... You asked me to entertain that motion and I said I dismiss that motion. So there you are.

VALERY FABRIKANT :

Without hearing it?

THE COURT :

Put your next question to the witness or I will declare the witness' examination closed.

VALERY FABRIKANT :

I need then to confer with Mr. Belleau because I still need some explanation, you refuse to give me this explanation, I'm not a lawyer, I see something is absolutely illegal here, so I would like to get legal...

THE COURT :

Have you more questions to put to this witness?

VALERY FABRIKANT :

I have but I need before that with Mr. Belleau to explain something to me.

THE COURT :

All right.

VALERY FABRIKANT :

It doesn't look right, it looks....

THE COURT :

We will adjourn for fifteen (15) minutes to let Mr. Belleau explain something to him.

VALERY FABRIKANT :

...it looks totally wrong.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

MEMBERS OF THE JURY ARE PRESENT

VALERY FABRIKANT :

Well, after consultation with Me Belleau, I can come to two conclusions. One is that having allowed me to ask questions as to what Mr. Bujold told the witness is exactly the same as ability to ask him what he knew from the report or what Mr. Malenfant told him. Both either are illegal or both are legal. They cannot be... there is no distinction between, since you allowed one you should allow the second one too. Besides that, I've learned that there is rule of exception concerning hearsay which says that message conveyed to the witness by the third party is a hearsay when it is adduced in order to prove the fact which is conveyed in the message. It is not hearsay if it is presented as original evidence, namely to demonstrate that message was indeed conveyed to this particular witness in order to explain his further actions or his state of mind. And this is exactly what I'm doing. I'm not trying to prove here that Mr. Malenfant indeed followed me inside the office. All I'm trying to prove here is to make the witness admit that yes, he knew from Malenfant the incident took place, the content of the incident was that he followed me everywhere I went. And the main purpose of this preliminary stuff is to ask Mr. Francesco after that to explain whether this particular agent was following his instruction or he was abusing his instruction. So there is no way for me to come to this particular question unless I'm able to illicit from this witness his knowledge that incident took place, that incident was about Mr. Malenfant following me wherever I went, so I should be permitted to ask those questions.

THE COURT :

Have you anything to say, Mr. Lecours?

Me JEAN LECOURES :

No, My Lord.

THE COURT :

What is the position of the Crown in this particular line of questioning?

Me JEAN LECOURES :

I would let it go.

THE COURT :

The Crown has no objection?

Me JEAN LECOURES :

No.

THE COURT :

Is the Crown saying that any ground of hearsay that...

Me JEAN LECOURE :

No, of course...

THE COURT :

...the accused proposes to establish should be permitted on the basis of the fact that hearsay may have been permitted yesterday in certain circumstances or the day before, is that what the Crown is saying?

Me JEAN LECOURE :

Not at all, My Lord.

THE COURT :

I wonder if the Crown would be very clear about that.

Me JEAN LECOURE :

Okay. Please let me explain. I totally agree with you when you explained to the jury to disregard that as proof of the fact. I think once you rendered this explanation to the jury, after that it's only proof that the message was conveyed. I agree both with you and Mr. Fabrikant on this issue. I don't want to commit myself on any further or previous hearsay.

THE COURT :

That is what I wanted to make sure of. What was pointed out to you by Mr. Belleau was the rule, the Subramaniam rule, that you may establish through the use of an exception to the hearsay rule, that an incident was reported. But what you set about to do was not that. What you set about to do was have the witness read into the record word for word the report of Malenfant, and that is not what I am prepared to admit.

VALERY FABRIKANT :

Not only I didn't ask him to do so...

THE COURT :

I listen to you, would you kindly listen to me.

VALERY FABRIKANT :

Well, if you allow me to respond after that, usually you don't.

THE COURT :

Do we go on like this all day or do I stop again?

VALERY FABRIKANT :

I did nothing wrong.

THE COURT :

You opened your mouth when I was speaking.

VALERY FABRIKANT :

All right, I'm sorry.

THE COURT :

Fine. Yesterday, and the reason why that proof was permitted, resides exactly in the application of the Subramaniam rule. The proof was permitted in order for Bujold to relate what transpired later from his point of view rather than to prove the truth of the fact.

Now, it is up to me to attempt to devine what the purpose is. And quite frankly, what you state the purpose of proof to be and what I devine the purpose to be are not necessarily the same thing. When you ask the witness to read from the report into the record what Malenfant has written going from point A to point B to point C, it becomes clear to me that what you are attempting to do through the witness is prove the truth

of that fact. If you wish to prove that a report was made concerning events, whatever they were, in 907 obviously you can do that, I have no objection to that, the Crown has no objection to that. But I come back to exactly where I was at the beginning, you cannot do through this witness, you cannot through this witness have Malenfant testify.

Now, is that the position of the Crown or is the Crown going further and is the Crown saying that it has in this instance no objection to that particular report?

Me JEAN LECOURE :

I object that he testifies in the place of Mr. Malenfant, of course.

THE COURT :

Yes, exact. Okay, fine.

VALERY FABRIKANT :

May I respectfully submit that I never asked him to read, it was witness who asked permission, may I, he said, consult the report. I never asked him to read it. He himself said, may I consult and started reading it. I myself never asked him to read nor do I now want him to read the report.

THE COURT :

Fine. Then you will rephrase your question and we will see where we go from there. And just one last thing. The distinction between the ruling yesterday and the ruling today resides in the exception to the hearsay rule to which you referred, but on the strength of a ruling one day it may not be that you may make illegal proof the following day. If there is no objection, for example, from the Crown, I am likely to be far more lenient. I suppose I could on every occasion turn to the Crown prosecutor and say, have you any objection to this proof being made. The better rule really is to follow what the true rule is and not make these exceptions. Because of course if any exceptions are made, as has been my experience in this trial, to extend to you, English not being your first language, although a language which you speak perfectly well, that what is extended to you is reversed upon me every day.

VALERY FABRIKANT :

Well still, I did nothing illegal, my questions were proper and I just will continue the same thing what I had.

THE COURT :

You did something illegal because what you could have said to me was: I defer. I defer, I do not wish him to read it. Now if that is the stage we are at let us go ahead and you put your question, he will not read from Malenfant's report and we will not get a word by word from Malenfant through his mouth.

VALERY FABRIKANT :

Well, I don't expect you to admit that you were wrong but it's all right, really, as long as I'm allowed to put my question.

Q. So you learned... did you have personal encounter with Mr. Malenfant, did you discuss with him the incident as such?

A. I do not recall if I spoke to him that day in particular.

Q. Did you ask him to write the report or he wrote it on

his initiative?

A. As I had said about the instructions to the agents, any kind of interaction or any kind of abnormality they would have to report in writing.

Q. Okay. And when you read the report, what actions, if any, you took with that report?

A. I took none.

Q. Okay. Does it mean that Malenfant acted within your instructions?

A. I read the report, I saw that he had had that interaction or that discussion with you, and I just left it at that.

Q. Well, did you learn from the report that Malenfant followed me everywhere I went, and does it confirm to the instructions which you gave him?

A. It is my understanding from the report that he didn't follow you everywhere, he happened to follow you into the 907 area, and that's my interpretation of his report.

Q. Okay. Do you recall having conversation with me, too?

A. I recall you came down to my office, I believe that day or later on...

Q. Yes. Did I complain on Malenfant really following me, did I make a complaint?

A. Well, you verbalized a complaint to me.

Q. Well, did the content of the complaint was effectively what?

A. The exact content I do not remember.

Q. No, just general, what was it all about, what did I...

A. I believe you asked me why was someone following you.

Q. All right. So you decided that I made a mistake, nobody followed me, right?

A. I was not there, I don't know from... if he was following you or not, sir.

Q. Well, at least you clearly had two different opinions, mine and Mr. Malenfant, which by the way does he deny that he followed me in his report?

A. As I said, he stated in his report that he followed you into the 907 area.

Q. Ah, so he did follow me. Now, would please answer if this is in accordance with his instruction or he abused his instruction?

A. His instruction was to be present in 907 and he can go where he pleased. There was no direct instruction saying not to follow anyone in particular.

Q. But when agent does follow the suspect, which you call it, does he do it on his own or he is instructed to do so, how is it organized there?

A. As I said, they were left the leeway to patrol freely within the areas.

Q. So did you find his behavior the way even he described it, acceptable and according to the mission he had to do?

A. I do not find he did anything wrong.

Q. The fact that I noticed him, isn't it the best proof that he did follow me?

THE COURT :

Now you are asking the witness his opinion on what happened when he was not there, and you are asking him to infer something from a meeting with you. I do not know if the Crown has any objection to that, I have no

idea.

Me JEAN LECOURES :

Well, My Lord, my position it's longer to argue the objection than to let the witness answer. I said to you most of the questions are illegal, but we have intelligent witness that can answer all the questions. And I don't think any answer from any witness can hurt my case, so...

VALERY FABRIKANT :

Well I, in addition, can quote interesting quotation with "Seeboyer" which says that, try to present full answer in defense depends on being able to call evidence necessary to establish a defense and to challenge the evidence called by the Crown. The rule of the evidence which prevents the trier of fact from getting at the truth by excluding relevant evidence in the absence of clear ground of policy or to justify the exclusion run afowl of the fundamental conception of justice and fair trial. And the relevancy cannot be determined in vacuum.

THE COURT :

I agree with that completely. All I am saying is...

VALERY FABRIKANT :

You agree with that completely.

THE COURT :

All I am saying is you must do it.

VALERY FABRIKANT :

So there is no harm done if I ask this question.

THE COURT :

Well maybe, you must do it within the framework of the rules.

VALERY FABRIKANT :

I have...

THE COURT :

In any event there is no objection, so go ahead with your last question.

Me JEAN LECOURES :

It's clearly illegal as far as I know but shorter for the witness to answer.

VALERY FABRIKANT :

Q. So could you answer the question?

A. Would you repeat it please?

Me BELLEAU :

I have it written down if you want me to read it.

VALERY FABRIKANT :

Yes.

Me BELLEAU :

Is the fact that I noticed him, isn't that proof that he was following me?

THE WITNESS :

A. I do not believe so.

VALERY FABRIKANT :

Q. Did you make to him any recommendations for the future in terms of following or not following me?

A. To the best of my knowledge, no, the instructions remained the same.

Q. Did you think that the scene which took place in the dean's office when I demanded this person to identify himself, and he had first lied that he's a student there, and then he admitted that he's not a student, and everyone was there watching the scene, do you think that

it was extremely insulting to my dignity that kind of scene?

THE COURT :

That question is a totally illegal question, he is not here to express his opinion, and you have factored into that a number of things to which he wasn't witness, I'm sorry. That is a totally illegal question, it is not permitted.

VALERY FABRIKANT :

Okay, I will rephrase.

Q. Do you think that you acted recklessly and inviting violence by allowing your guard to follow an innocent person and create in people around impression that this person is a criminal?

THE COURT :

The question is argumentative, Mr. Fabrikant, it calls for an opinion and it reduces itself to cross-examination and it is not permitted.

VALERY FABRIKANT :

Q. Do you know person named Sistani, one of your guards?

A. Can you pronounce it please?

Q. Sistani.

A. Do you have the spelling of that name?

Q. Yes, S-i-s-t-a-n-i.

A. It's not familiar to me.

Q. Do you know all your guards?

A. We have approximately sixty (60) on contract at the university, a great part I recognize the names from seeing on rosters and reports, but that name to the best of my knowledge is not recollected.

Q. What kind of notes each guard is supposed to do during his shift?

A. I don't understand by notes.

Q. Okay. I have seen in the file some kind of sheets with notes, such and such time, such and such thing done. Such and such time, such and such thing done.

A. In which file are you referring to?

Q. Well, if you forward it to me... Is it the same which Mr. Bujold had?

A. Yes, it is.

Q. Okay. Would you please forward it to me and I will find it.

A. Is it the file from nineteen eighty-eight (1988) you're referring to or before?

Q. No, it is file nineteen ninety-two (1992).

A. My Lord, this is the same note from yesterday.

Q. I wonder if Mr. Martin feels that this kind of action is prejudicial to my defense, because it creates in jury impression that I'm so dangerous that even being in jail and in chains, still I cannot be shown addresses of the people while listed in white pages. It's absurd in itself and it's done for one purpose, to damage my defense and to damage my credibility in front of jury. There is absolutely no reason of any kind to do this kind of demonstration.

THE COURT :

If the sheet had been removed from the file, you would have complained that the sheet had been removed from the file. There are confidential telephone numbers of various officials of the university there; in the circumstances of this case I find it perfectly

reasonable that you should not be given that.

VALERY FABRIKANT :

They are not confidential, they're all in white pages.

THE COURT :

I am not arguing with you, I have said I gave him permission to remove it and that is that. I am not going to argue with you about it.

VALERY FABRIKANT :

So you don't feel that it is detrimental to my defense? They could have covered those phone numbers and not advertise to jury...

THE COURT :

Mr. Fabrikant, you asked to look at the file so that you could ask a question.

VALERY FABRIKANT :

Q. Well, it is incomplete. Bujold had numerous sheets on which it is stated that such and such started his shift at certain time, then at certain time he gave keys to such and such person. Then he did this, then he did that, how do you call this document?

A. What I believe you're referring to is the officers, duty officers' log from their shift.

Q. Duty officers' log, okay. So what events are supposed to be registered in the duty officers' log?

A. Any... Daily events of the shift, any abnormalities, our place there if it's deemed fit to place on the roster.

Q. Okay. If you, for example, put somewhere note: Fabrikant dangerous, don't let him in. Where would that note be? Would it be in that operating log, would it be at separate sheet of paper, at separate sheet of paper at the guard's desk? Where would such warning belong?

A. Such a warning, or such a directive, which is not necessarily a normal directive, would be posted for the duty officer on a separate memo, since it would not be... I'm not saying in this case but in any other special directive that's what would happen.

Q. Okay. Would you confirm that such memo did exist?

A. I can't confirm or deny at this point.

Q. Well, did you personally write any memos like that to the officers?

A. I cannot recall if I did or did not.

VALERY FABRIKANT :

Now, is this enough to declare witness adverse?

THE COURT :

No.

VALERY FABRIKANT :

No. Any reasonable person could imagine that such a note, Fabrikant dangerous, do not let him in, can escape his memory whether he did or didn't write it?

THE COURT :

Different people have different capacities to memorize, to remember things. The answer is no, the answer was no, the answer is no.

VALERY FABRIKANT :

Okay. Let me put it differently.

Q. How many memos of such kind had you write in entire life of yours?

A. Of such kind, can you explain? What do you...? In denying access, in special attention, in what?

Q. I think I gave you precise text, Fabrikant dangerous, do

not allow in.

A. Are you asking me to say the exact verbatim a memo such as that one?

Q. Well, not exact verbatim but similar to that, Fabrikant, Mr. X, Mr. Y dangerous, do not allow in. How many memos did you write in your life like that?

A. I've written memos instructing guards on all sorts of manners. As such as that one, I cannot say.

Q. Well, did you write one, ten, one hundred (100) such memos in your life?

A. I do not know.

Q. But you did write this kind of memos?

A. I've written memos when people were not allowed to be in university buildings to say that they are not allowed to be there.

Q. You are evading questions. Memo with text such and such dangerous, do not allow in.

A. And I just said I do not recall.

Q. I'm asking you, did you write any such memo in your lifetime?

A. I do not recall if I wrote anything in that manner.

VALERY FABRIKANT :

Do you believe that?

THE COURT :

You have the witness' answer.

VALERY FABRIKANT :

I have the witness' answer, I want him to be declared adverse.

THE COURT :

I am not going to declare him adverse.

VALERY FABRIKANT :

He's not...

THE COURT :

Just because he does not give the answer that you want him to give, I am not going to declare him adverse.

VALERY FABRIKANT :

It's not the answer that I want him to say, it's obviously... This is not an ordinary note and he claims... There is even jurisprudence that when witness claims totally absurd lack of memory, this witness is the best definition of adverse witness. When the witness claims absence of memory, which is so ridiculous...

THE COURT :

Mr. Fabrikant...

VALERY FABRIKANT :

... that any reasonable person understands that he cannot possibly forget that kind of stuff and for... I have read it even in jurisprudence, that this seems to be the best proof that witness is adverse, that witness is evading questions. He couldn't possibly forget that.

THE COURT :

There is no doubt that one measure of a witness' being adverse or hostile might reside in hiding behind a bad memory. That may be. But that is not necessarily so. What the law requires me to do is take into account the witness' general demeanor, the manner in which the witness addresses your questions, the interest of the witness, if any. My impression of whether the witness is honestly trying to answer the question or is trying to evade the question, to consider the fact that not

everyone has the sort of memory you expect them to have, and to decide whether, in the light of all that, because you have given him rather strict parameters, either you or someone else dangerous do not allow in, the witness has said the use of these words, I cannot remember writing a memo using these words. He added or he said to you a couple of questions ago, I know I have said that certain people were not to be allowed into certain university buildings where they had no right to be, but in the context of the words you have used, I cannot remember. If I have to, and I am the one who has to decide, whether that "smacks" of a witness who is purposely trying not to respond to your question, I have to answer in the negative.

VALERY FABRIKANT :

All right, let me make a little bit difference.

- Q. Do you recall in August of ninety-two ('92), more precisely of the second half of August, and maybe more precisely around twenty-fourth (24th) writing such a memo?
- A. I was on vacation the previous week prior to the twenty-fourth (24th) of August, the first day back to work was the twenty-fourth (24th) day of August.
- Q. Okay. So before leaving on vacation or right after coming from vacation, did you write any memo like this?
- A. To my knowledge, that I can remember, no.
- Q. Did you write any memo like this before that, I mean one week before that?
- A. That I can recall, no.
- Q. But you're not sure, you might have?

THE COURT :

Now you are cross-examining the witness, he is your witness, you called... he is the witness you called, you called the witness, you asked him and he said, to my knowledge I can't remember, that I can remember, no. That is... There you are, you have had his answers and now you are cross-examining him in his answers, you may not do that. So that last question is disallowed.

VALERY FABRIKANT :

Well, I may not do that because you still do not feel that he's adverse, that's too bad, you're impeding my ability to question him, that's all.

THE COURT :

You have my decision.

VALERY FABRIKANT :

Yes.

- Q. So can you recall as far as the threats goes, when did you learn any of them, at least was it prior to the shooting or after the shooting?
- A. I believe it was some time before.
- Q. Could you be a little bit more precise how much some time before?
- A. No.
- Q. Well, how much time before?

THE COURT :

He said he cannot say when.

VALERY FABRIKANT :

- Q. Okay what rumor we are talking about, which one is it?
- A. The rumors that you were having problems with the department heads and that was a little bit... an amount before then, before the August incident, rumors that you

were going in and out of the office without saying anything or doing anything, just going in and out and just roaming around the offices.

Q. Which offices you are talking about?

A. The 907 area.

Q. When was it?

A. I'm sorry?

Q. When was it?

A. When was what?

Q. You just said going in and out of 907 area.

A. I had stated that I had heard those rumors a considerable amount of time prior to the August twenty-fourth (24th), as you had asked me, when I had heard those rumors, I do not know the exact date, just a general time frame, over the past year.

Q. Well, who told you that?

A. I had heard from my own superior, the Director of Security.

Q. And?

A. Some of the secretarial staff mentioned that you'd come in but then you'd leave and you wouldn't say anything, you wouldn't do anything.

Q. Well, how many times did this happen, hundred (100) times, thousand times (1,000), two times?

A. That I do not know. That I do not know.

Q. Well, if it was mentioned to you then there was some worrisome, something there, was it? Why was it mentioned to you? Someone enters office, so what?

A. I do not know why someone would mention it to me. They mentioned it to me, again just as a fact, as a statement, and that was it.

Q. Well, I'm.... this is not what I'm asking you. I'm asking you about threats, threats against rector, threats to shoot the whole world, threats against someone's children, any threats. Did you hear any rumors of that.

A. But those I only learned about after August twenty-fourth (24th).

Q. You're probably the only one in the university.

VALERY FABRIKANT :

Now this also does not convince you of anything, this kind of answer? He is security officer, everyone in the university knew except him, this does not convince you?

THE COURT :

You are testifying, you are putting questions to him, he has given you his answer.

VALERY FABRIKANT :

It's all right with you. He's not adverse, he's not eluding, he's telling truthful story?

THE COURT :

If you are making a motion to have him declared adverse it is denied.

VALERY FABRIKANT :

Denied, all right. Thank you.

Me JEAN LECOURES :

No question, My Lord.

THE COURT :

Thank you very much.

AND FURTHER DEPONENT SAITH NOT.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993) on this third (3rd) day of June, personally came and

appeared :

SUSAN O'REILLY, administrator, born on the second (2nd) of June, nineteen hundred and forty-two (1942);

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

EXAMINATION BY VALERY FABRIKANT :

Q. Well, did you bring the file with you?

A. Yes, I did.

Q. Okay. May I take a look at it?

THE COURT :

Yes, you may hand that to Mr. Fabrikant, and then come back.

VALERY FABRIKANT :

It is danger to employment to Mr. Belleau but I think his salary will suffer.

THE COURT :

You may sit down for a minute, until the questions are asked.

VALERY FABRIKANT :

Q. Do I understand correct that you have effectively here two copies of the same file?

A. Yes, I brought the originals and one set of photocopies.

Q. Yes, all right. So, would it be convenient for you if I give you the originals and I will ask you some questions, so you will have in front of you the original and I will refer to certain documents, and you will give your comments. But before that, I think that you should state your duties at the university as what? You are?

A. Director of Human Resources.

Q. So you are in charge of personal files or what? What shortly your duties?

A. The Human Resources Department encompasses a number of units, and one of our responsibilities is that we have the personal files of all the employees of the university.

Q. Okay. Now I refer you to the first document of hiring, do you see the first document?

A. December twentieth (20th), nineteen seventy-nine (1979)?

Q. Yes. Now my salary at that time was what?

A. Seven thousand dollars (\$7,000).

Q. Which was what, per year?

A. That's what it says here, seven thousand dollars (\$7,000).

Q. Per year?

A. Annual salary, yes.

Q. It was paid from what source?

A. I'm trying to find the information here.

Me JEAN LECOURES :

It's thirteen (13) years before the events, My Lord.

THE WITNESS :

A. It was paid from a research grant, and the research grant number is 040...

THE COURT :

Q. Just a second, just a second, just a second.

A. Sorry.

Me JEAN LECOURES :

It might be too remote to be relevant.

THE COURT :

It seems to be stretching it pretty far. No, I do not think we need to go back to nineteen seventy-nine (1979). The objection is maintained.

VALERY FABRIKANT :

Well, how do you know, maybe you will ask me the relevance first. Why don't you give me courtesy of asking me...

THE COURT :

Excuse me, you are...

VALERY FABRIKANT :

...what the relevance is...

THE COURT :

You are correct.

VALERY FABRIKANT :

...and then render your decision?

THE COURT :

You are absolutely correct, yes.

VALERY FABRIKANT :

Because you are abusing the procedure so blatantly, you don't even care that appearance of...

THE COURT :

What is the relevance of your salary back in nineteen seventy-nine (1979)? Excuse me, you are correct. What is there?

VALERY FABRIKANT :

Because all my defense is based on the fact that I was abused from the first day I appeared in Concordia. It was not ninety-one ('91) that something happened. This is Morrisette's delusion that something happened in ninety-one ('91). It started in seventy-nine ('79) the whole thing. This is why it is relevant.

One does not explode in one day. In order for someone to explode is to build up pressure for years and years and years. So it is not remote at all.

Me JEAN LECOURE :

Well, My Lord, persecution is relevant for insanity defense but it's not relevant for killing people.

VALERY FABRIKANT :

You don't know my defense yet.

Me JEAN LECOURE :

It has to be sudden.

THE COURT :

I will ask you to withdraw for the moment, please.

MEMBERS OF THE JURY LEAVE THE COURTROOM

WITHOUT JURY

Me JEAN LECOURE :

I'm afraid as well that we might spend years, every single incident in thirteen (13) years is "d,cortiqu," with a magnifying glass, three months is certainly not sufficient.

VALERY FABRIKANT :

Well, didn't I promise you, if three months passed and I haven't finish, I will declare I finished, so don't you worry about it.

THE COURT :

That is not the basis, Mr. Fabrikant, on which - if you would like to sit down go ahead - on which I would decide whether this is admissible or whether it is not. I do not know, I mean, I share Mr. Lecours' concern that you propose to analyze every year from nineteen seventy-

nine (1979) until nineteen ninety-two (1992). And unless you can... unless you can convince me that this is indeed relevant to what you wish to raise as a defense, my first reaction is the same as my reaction now, that we are going awfully far back.

Now...

VALERY FABRIKANT :

Well, how on earth can you put some kind of boundary? What? Eighty-five ('85) is it far or it is not far? And if you say eighty-five ('85) is not far then how about eighty-four ('84)? How on earth can you put any boundary on anything unless you know the whole defense. And you mentioned yourself that suppose even in case of provocation, accumulation is very important part. Now, the more accumulation, the better chance I have that, yes, provocation took place. So I think that it's quite logical that I start from the very beginning where abuse began.

And if you wish, I can read you once again the same from Seeboyer, it says that:

"The right to present full answer in defense depends on being able to call evidence necessary to establish a defense and to challenge the evidence called by Crown. The rule of evidence which prevents trier of the fact from getting at the truth by excluding relevant evidence in absence of clear ground of policy or law to justify the exclusion runs afowl of fundamental concepts of justice and fair trial."

THE COURT :

I think you have to sketch for me what you propose to do going back to nineteen seventy-nine (1979) and what evidence you propose to call at this point. I think you have to tell me so that I can appreciate whether this is really relevant or not, or whether this is the first chapter in a long, long volume which isn't going to help us at all.

VALERY FABRIKANT :

It will help us because this is just my hiring contract. I see no reason whatsoever for Crown to object that this hiring contract is being deposited.

THE COURT :

Now I am asking you to tell me where you are going with all of this, what do you propose to do?

VALERY FABRIKANT :

Well, to prove that I was abused, you know that. That I was abused, mistreated, provoked, you name it, it is there. It was done intentionally, deliberately, recklessly, for all this I need documents to prove.

THE COURT :

And you are advancing this in support of a defense of provocation, is that correct?

VALERY FABRIKANT :

One part of it, yes, because my defense is not limited to provocation, but provocation will definitely part of it.

THE COURT :

Would be the what?

VALERY FABRIKANT :

Provocation is part of my defense, yes.

THE COURT :

And what is the other part of your defense?

VALERY FABRIKANT :

Well, I think that is enough to justify this time. I think you can imagine any... several other types of defense and just give me benefit of the doubt that it will be relevant. I do not introduce anything which is not relevant, it is not in my interest.

THE COURT :

Okay, I am prepared to permit you to make the evidence. Jury please.

MEMBERS OF THE JURY ARE PRESENT

WITNESS: SUZAN O'REILLY -- UNDER THE SAME OATH

EXAMINED BY VALERY FABRIKANT (CONT'D) :

Q. So could you explain the grant number 040119, what kind of grant is it, personal grant, departmental grant?

A. A research grant number.

Q. Could you specify as to the origin of this funding?

A. No, I don't have that information, I just have the grant number in front of me.

Q. All right. Do you know anyone in your office who would be able to provide those details?

A. No, it would not come from our office.

Q. Okay. Could you indicate who would be able to testify as to the origin of this finding?

A. I would suggest the research office.

Q. You mean Mrs. Williams?

A. Mrs. Williams is the Director of Research Services, yes.

Q. Okay. Go to the page 5 please. This is yet another contract and now funding comes from seemingly two sources, is it correct?

A. Could you give me the date of the document you're referring to?

Q. May fifteenth (15th), nineteen eighty (1980).

A. And the question?

Q. Question: Funding comes from two sources?

A. On this document, yes, funding comes from two sources.

Q. Could you identify those signatures?

A. One with the signatures, I believe it's Dean Swamy's signature, the top one...

Q. Yes.

A. ...and the lower signature is that of Doctor Sankar.

Q. Okay. Which Sankar is it?

A. I believe it's Tom Sankar.

Q. Now let us go to document dated May thirteen (13), nineteen ninety-one (1991).

A. Yes.

Q. We seem to have now three sources of funding, is that correct?

A. Yes.

Q. Or there is four because there is something there. Can you specify R01125 and after go 046101, any explanation as to source of this funding?

A. No.

Q. Okay. But again, the same two people signed, right?

A. Yes.

Q. Now go to the next page please, June twenty-first (21st), nineteen eighty-two (1982), how many people now

fund my salary?

A. There are three grant numbers on this form.

Q. Yes. Could you identify the people under this grant?

THE COURT :

Excuse me, it is what date in June, I missed that?

VALERY FABRIKANT :

Twenty-first (21st) of June, nineteen eighty-two (1982).

THE WITNESS :

A. I would speculate that the initials appearing here, M.N.S.S. against one of the grant numbers would be Dean Swamy, that the initials T.S.S. vis-a-vis one of the other grant numbers would be Doctor Sankar, and I have no idea what G.D.X is.

VALERY FABRIKANT :

Q. Could it be Xistris?

A. Possibly.

Q. All right. I'm trying to find the appointment letter of eighty-two ('82), appointing me research assistant professor. Is it somewhere around here? I cannot find it. Do you have it in your file?

A. Who would have been the author of that letter?

Q. Vice-rector it's supposed to be.

A. December the sixth (6th), nineteen eighty-three (1983)?

Q. No, it was in eighty-two ('82), in December sixth (6th) I was promoted to research associate professor. Before that, I was appointed as research assistant professor.

A. There is a copy of a contract in the file with the stamp on it June the eighteenth (18th), nineteen eighty-two (1982).

Q. Yes, okay, what page is it? Where is it? Where did you locate it?

A. Following the document that is stamped June twenty-eighth (28th), nineteen eighty-two (1982).

Q. How many pages approximately I have to go?

A. Well, I think the problem may be that a piece of paper such as this doesn't easily photocopy, so you may just have a blank page in your file.

THE COURT :

Q. Well, the question was fairly clear I thought, have you anything in your file that indicates when Mr. Fabrikant was appointed research assistant professor?

A. Yes, June first (1st), nineteen eighty-two (1982) to May thirty-first (31st), nineteen eighty-four (1984).

VALERY FABRIKANT :

Q. Well, yes, you're referring to the document dated twenty-first (21st) June, eighty-two ('82), you're referring to this document, eh?

A. No.

Q. Okay. Is there letter attached to this appointment, because there was a letter attached to this appointment.

A. There was no letter attached to the copy that we have in our files.

Q. Well, where is this letter?

A. I would not know.

Q. Okay, maybe this letter is at the Faculty Personnel office, could that be?

A. Anything is possible.

VALERY FABRIKANT :

Now, we won't go much into the details of the rest, I would ask Court's permission to deposit all these

documents which were brought under the D-6, I think.

THE COURT :

Okay, let us identify which ones you are talking about first of all, May the fifteenth (15th), nineteen eighty (1980)...

VALERY FABRIKANT :

Well I did not... I should go through each sheet of...

THE COURT :

Well, not necessarily, I'm just...

VALERY FABRIKANT :

It's mainly all the contracts and extension...

THE COURT :

I am just trying to make sure the notes are accurate here. May the fifteenth (15th), nineteen eighty (1980), May the thirteenth (13th), eighty-one ('81), June the twenty-first (21st), nineteen eighty-two (1982). Now I am not sure where you are going after that, I am not sure whether you are referring to the document that Mrs. O'Reilly was looking at but you did not or maybe it did not photocopy well, the green document, that indicated your appointment as a research assistant professor as of June the first (1st), nineteen eighty-two (1982) to the period May thirty-first (31st), nineteen eighty-four (1984), I do not know whether you included that.

VALERY FABRIKANT :

Well, I include more than that, I include the whole pile of the documents related to my contracts and extensions because they will be needed when I will present my testimony in proof.

THE COURT :

Well, you better show all of these to the Crown prosecutor and see if he is in agreement. He has not seen the file...

VALERY FABRIKANT :

All right.

THE COURT :

....as far as I know, or he has not got the file in front of him, so.

Me JEAN LECOURE :

Well, I don't see any problem.

THE COURT :

Fine. So you wish to produce that en liasse as D-6?

D-6: Documents en liasse (Concordia University)

Me JEAN LECOURE :

I certainly have no objection that we file copies.

Me BELLEAU :

Instead of the originals.

THE COURT :

Are you satisfied with the cost? Fine.

VALERY FABRIKANT :

Q. Do you know anything of the university merit award in terms of who was given, what was the conditions of this award?

A. No, I don't have any knowledge of that.

Q. Do you know who at the Iniversity was in charge of implementation of merit award program?

A. The merit exercises take place in the individual departments.

Q. Yes, but the regulations were developed between which bodies? Was it CUFA and administration, was it just administration's exercise, what was...

A. No, the regulations are part of the collective agreement between the Concordia University Faculty Association and the university.

Q. So from the university part, it must be who in charge of implementation?

A. The person who signs the collective agreement on behalf of the university with the Concordia University Faculty Association generally is the Vice-Rector, Institutional Relations and Finance.

Q. Which is what, Cohen?

A. Doctor Cohen at this moment, yes.

Q. Okay, thank you for coming.

Me JEAN LECOURE :

I have no questions.

THE COURT :

Thank you. Thank you very much, Mrs. O'Reilly.

AND FURTHER DEPONENT SAITH NOT.

VALERY FABRIKANT :

Do we have time for Mrs. Freed?

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993) on this third (3rd) day of June, personally came and appeared :

PAT RAE FREED, Director, Faculty Personnel Office, Concordia, born on the twenty-eighth (28th) of September, nineteen hundred and fifty (1950);

WHOM, having solemnly declared, doth depose and say as follows :

EXAMINATION BY VALERY FABRIKANT :

Q. Could you tell me what is the difference between your office and Human Resources Office?

A. My office deals with personnel matters dealing solely with the academic faculty.

Q. Okay. So if certain documents are in your file, it means that this person is faculty member?

A. In some case... in most cases sometimes I do have documents from prior employment in my files.

Q. Explain in which case you might need...

A. If someone transferred from a job within the university, I might have copies of previous contract.

Q. Okay. May I take a look at what you brought with you, please. It contains documents from eighty-eight ('88) on and something totally unsystematic before that. What was written in your subpoena? Could you please...

A. To bring all the contacts that I had to deal with you.

Q. Well nineteen eighty-two (1982) is one of the contracts, isn't it? And...

A. I'd have to look at them to answer your question.

Q. Do you have another copy so that we could work simultaneously?

A. Maëtre Freedman has them.

Q. Well, if you go into contract of nineteen eighty-two (1982), from first (1st) June, eighty-two ('82) till thirty-first (31st) May of eighty-four ('84)...

A. I'm not sure which one you're referring to.

Q. Well, research assistant professor engineering.

A. Right, these are from prior... this is prior to you becoming a faculty member.

Q. Well, this is your opinion that this is prior to me

becoming a faculty member, but the letter...

A. These are research grant and (inaudible) contract.

Q. Yes, but the letter which was accompanying this contract stated explicitly that I am a faculty member and this letter seems to be missing. Of course, if I were paranoid I would thought that you made this intentionally...

THE COURT :

Mr. Fabrikant... Mr. Fabrikant you are supposed to be asking questions, the letter is not there, there letter is not there, the letter is not there. You might ask where the letter might be, that is all.

VALERY FABRIKANT :

Well, the letter is there, it just wasn't brought.

THE WITNESS :

A. I brought all the contracts that were in your file.

VALERY FABRIKANT :

Q. Well, do you know that this contract was accompanied by a letter?

A. This is the contract, I can't answer that question without having...

VALERY FABRIKANT :

So can we postpone the testimony and ask the witness to go back to her files to find it really complete and to come back...

A. I'd like to point out that my subpoena just required me to bring contracts.

Q. Well, this is part of the contract.

THE COURT :

Q. There is a letter that transmitted the contract with it, is there?

A. As I say, I can't say.

Q. Well, perhaps you would check during the adjournment.

We will adjourn now until two fifteen (14:15), and perhaps you would check and make sure that you bring with you the correspondence that accompanied this things.

VALERY FABRIKANT :

And maybe you could use this break also, not to ask you once again, to bring also the promotional file, if it is possible, because it also relates to contracts.

THE COURT :

Well, if you... if the witness can put her hand on that file easily, that is one thing. If you did not subpoena that file in might be a little difficult for her to find it, I do not know.

VALERY FABRIKANT :

Well, it was not explicitly subpoenaed, but obviously promotion is also new contract, so...

THE COURT :

I have no idea of that.

VALERY FABRIKANT :

... that's what I thought.

THE COURT :

I have no idea of that at all.

VALERY FABRIKANT :

Anyway, if this is not interpretation, we may just cancel this appearance, we will rewrite subpoena so it would be totally unambiguous and...

THE COURT :

I think if you ask, if you ask Mr. Freedman what it is you want, we can perhaps have that problem solved by this afternoon.

VALERY FABRIKANT :

All right, so if Mr. Freedman approach me...

THE COURT :

Yes, he... Fine. So we will adjourn until two fifteen (14:15).

VALERY FABRIKANT :

...I would be glad to settle...

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

MEMBERS OF JURY ARE PRESENT

WITNESS: PAT RAE FREED -- UNDER THE SAME OATH

EXAMINATION BY VALERY FABRIKANT (CONT'D) :

Well, this file seems to be fairly complete. Would it be appropriate to save the Court time just to ask that it to be deposited as some... after Crown reviews it?

THE COURT :

Well, let the Crown look at it first of all, I have not got the foggiest idea because I have never seen it, and I have no way of knowing whether what is in it is of any pertinence at all.

VALERY FABRIKANT :

This is complement of the file which was...

THE COURT :

Produced this morning.

VALERY FABRIKANT :

...presented before that, this is addition from another office because the first one was Human Resources which was giving you one side of the thing, and this is faculty office which deals with academic affairs.

Me JEAN LECOURE :

This is the index, maybe you can have a look. I would rather suggest that we quote it as I and let's say if it's a letter from Mrs. "Shynan", Mrs. Shynan would introduce it, because these are not contracts these are a lot of faculty documents.

VALERY FABRIKANT :

Well, if Crown insists that those letters be eliminated, I have no objection, but the rest could stay. Because it will just take more time, I am prepared to eliminate those letters if Crown insists on that. Because "Sheehan" will be testifying here anyway and those letters will be deposited. And majority of those letters are not private letters, letters signed by Shirley Maynes it is contract letters.

Me JEAN LECOURE :

No objection.

THE COURT :

If certain letters are withdrawn is that...

Me JEAN LECOURE :

Well the way it works, if we say it's hearsay or it's part of the next day the witness will be in the corridor and will be asked to testify, so...

THE COURT :

So you have no objection?

Me JEAN LECOURE :

The way I see it, all these people that signed the letters like Mrs. Shynan and Mr. Sankar and Mr.... will

be... have subpoenaed. So, to save our time...

VALERY FABRIKANT :

Yes, that's what I mean, just to save time without going into...

Me JEAN LECOURE :

Okay, en liasse.

VALERY FABRIKANT :

...all the details.

THE COURT :

En liasse as D-7, or do you want an I number for the minute or what?

Me JEAN LECOURE :

Well, that's what I suggested but from the information I got from him, it doesn't change anything, in the end it will end up being in the record because all the witnesses would be subpoenaed, so...

THE COURT :

Fine, so D-7 en liasse.

Me JEAN LECOURE :

D-7

D-7: Documents en liasse

THE COURT :

I have the index here.

Me JEAN LECOURE :

This is part of D-7.

THE COURT :

Yes, I know.

THE WITNESS :

A. There's no chronology in this file that...

Me JEAN LECOURE :

Q. Pardon?

A. There's no chronology in the file...

THE COURT :

Q. No, I think you should not talk... Okay?

A. I'm sorry.

Me JEAN LECOURE :

Well, please could you tell the Court.

THE COURT :

Q. You can tell me.

A. There's no chronology in the file that Mr. Fabrikant has, that's the only difference in the two.

Me JEAN LECOURE :

Q. Okay, and the chronology is a working paper you did yourself, right? Okay, so let's exclude it.

THE COURT :

Q. This is the chronology here?

A. Yes.

Q. Just show that to Mr. Fabrikant, would you please, if he has not seen it. If that is not in the file he has, I would like him to see it. It is a list, Mr. Fabrikant, from beginning to end, it seems to me there is some ninety-one ('91) pieces, ninety-four ('94). Mrs. Freed, that is a list that you produced, is it?

A. My office produced it, yes.

Q. That your office produced.

VALERY FABRIKANT :

Well, there is one thing here which is incorrect, and I don't know, if I file this stuff it might mean that I implicitly agree with what is written here, correct?

THE COURT :

It would be your exhibit, yes, and I... well, that is why I said, I asked you to examine that.

VALERY FABRIKANT :

Yes. Well, there is one thing which I cannot agree here, therefore either...

THE COURT :

But why don't you leave that list out?

VALERY FABRIKANT :

Or maybe we could clarify... Let me ask just short question.

Q. It's written here on June first (1st), eighty-two ('82) letter of appointment and research employee contract, does it imply that you do not consider me faculty here?

A. A research grant employee is not a faculty member.

Q. Well, if you look at the letter of appointment, would you... Okay...

A. I don't have the copy.

Q. I will give it to you.

A. Thank you.

Me JEAN LECOURE :

Q. Are they the originals? You prefer to file copies I guess?

A. These are copies.

Q. Okay.

VALERY FABRIKANT :

Q. This is one of the tricks Concordia University wanted to play on me. If you read the letter of June first (1st)...

THE COURT :

Nineteen eighty-two (1982)?

VALERY FABRIKANT :

Yes.

Q. You have it in front of you?

A. Yes, I do.

Q. Would you please read the first paragraph?

A. "Enclosed, please find an official offer of appointment to the full time faculty of Concordia University, together with the proof of membership form which is self-explanatory and a faculty manual."

Q. So it is full time faculty, correct?

A. That's what that letter says.

Q. And this is why you didn't bring it first time, right?

A. No, I was subpoenaed to bring...

Q. You didn't want me...

A. Excuse me, I was subpoenaed to bring the contracts only the first time.

Q. Well, this is part of the contract and you excluded this particular letter, hoping that I would not...

THE COURT :

Mr. Fabrikant, you are now cross-examining your own witness.

VALERY FABRIKANT :

Yes. Yes, yes, yes, yes. But again, witness is adverse.

THE COURT :

No, the witness is not adverse.

VALERY FABRIKANT :

Okay, let us see. Witness written here, written letter of appointment research employee contract, while witness knows perfectly well that letter of appointment

designates me as full time faculty. Now, is this enough to declare witness adverse?

THE COURT :

No.

VALERY FABRIKANT :

No. What can I do about it? Anyway. So as kind of table of content this stuff is useful, so I would like to have it deposited under reservation that the wording here I do not accept, I don't think there is any point to argue between me...

THE COURT :

There is no point, you have made your point about the letter that accompanied the contract.

VALERY FABRIKANT :

Yes. So...

THE COURT :

So give everybody the intelligence, the credit for the intelligence of having heard the point you wanted to make, for having had it pointed out to them that that letter says what was just read.

VALERY FABRIKANT :

Yes. So I would like it to be deposited with the reservation that there is no legal implication as to this line here, as to designating me as research employee because this is just what the witness typed on the paper, it has no legal value or legal force. And with this reservation, I would like it to be filed so that we have kind of table of content...

THE COURT :

That is item number what?

VALERY FABRIKANT :

It is not a separate item.

THE COURT :

No, no, I know, but the letter that you referred to has an item number beside it on that index, what is it? Just give me the number from the left-hand column.

VALERY FABRIKANT :

Number 5, yes. Number 5 is marked incorrectly and intentionally incorrect.

THE COURT :

Well, now you are testifying.

VALERY FABRIKANT :

Well, I'm just explaining and you just instruct the jury to disregard this, that's all.

THE COURT :

I have noted that you agree to the production of that index with a reservation regarding number 5 which...

VALERY FABRIKANT :

Exactly.

THE COURT :

....the witness has testified to.

VALERY FABRIKANT :

Exactly. Should I return this copy?

THE COURT :

Yes, if you hand that to Mr. Belleau he will hand it to the clerk.

VALERY FABRIKANT :

Thank you so kindly.

Me JEAN LECOURE :

I have no questions.

THE COURT :

Thank you very much.

AND FURTHER DEPONENT SAITH NOT.

VALERY FABRIKANT :

Okay, I understand that we have witness who is again
pretty quick one.

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

SANDRA TRAINER - OFFICIAL INTERPRETER

DULY SWORN

EN L'AN DE NOTRE SEIGNEUR mil neuf cent quatre-vingt-treize (1993), en ce troisiŠme (3e) jour du mois de juin a comparu :

MARIE-CLAUDE AUDET, administrateur, op,ration par int,rim, n,e le quatre (4) octobre mil neuf cent cinquante-trois (1953);

LAQUELLE, aprŠs avoir pr^t, serment sur les Saints vangiles d,pose et dit ce qui suit :

INTERROGE PAR VALERY FABRIKANT :

Q. Well, I understand that you have some new results, would you please inform the Court about your results?

R. O.K. Alors ce matin nous avons repris complŠtement la conversation...

-R. This morning we listened to the entire conversation once again...

R. ...et nous avons trouv, que l'appel commençait ... quinze heures douze (15 h 12)...

-R. ...and we found that the call starting at fifteen twelve (15:12)...

R. ...et se terminait ... seize heures dix-huit (16 h 18).

-R. ...ended at sixteen eighteen (16:18).

R. Pour un total de soixante-cinq (65) minutes quarante-cinq (45) secondes.

-R. For a total of sixty-five (65) minutes and forty-five (45) seconds.

R. Le premier appel, tel qu'il ,tait inscrit sur les cartes d'appel...

-R. And the first call, as entered on the phone cards...

R. ...,tait donc ... quinze heures douze (15 h 12)...

-R. ...therefore was at fifteen twelve (15:12)...

R. ...jusqu'... seize heures deux (16 h 02).

-R. ...up to sixteen-o-two (16:02).

R. Le deuxiŠme appel...

-R. And the second call...

R. ...qui est entr, sur la ligne 202664...

-R. ...which came in on line 202664...

R. ...,tait de seize heures trois (16 h 03) ... seize heures onze (16 h 11).

-R. ...was from sixteen-o-three (16:03) to sixteen eleven (16:11).

R. Et le troisiŠme appel...

-R. ...and the third call...

R. ...qui est entr, sur la ligne 2698...

-R. ...which came in on line 2698...

R. ...est entr, de seize heures treize (16 h 13) ... seize heures dix-huit (16 h 18).

-R. ...came in at sixteen thirteen (16:13) to end at sixteen eighteen (16:18).

R. De plus, la transcription...

-R. Furthermore, the transcript...

R. ...ne r,vŠle que deux appels.

-R. ...reveals only two calls.

R. C'est-...-dire le premier appel et le dernier appel.

-R. That is the first and the last call.

R. Ce qui expliquerait la diff,rence de huit minutes.

-R. Which would explain the eight minute discrepancy.

Q. So I am not that paranoid after all.

THE COURT :

I suggested from the beginning what method you might take to cover that if you made the point.

VALERY FABRIKANT :

I thought you would say I never thought you are paranoid.

THE COURT :

Your next question.

VALERY FABRIKANT :

Well, I don't think there is any need for any questions. What I would like to know is what are the legal implications of all this, I would like to talk to Mr. Belleau, maybe not now when we finish, because right now I think everything is clear that the tape which was played is incomplete. But I really don't know what it all means from the legal point of view.

THE COURT :

Well, it would seem that it is incomplete. Excuse me. Now, I don't know what position you propose to adopt with regard to that.

VALERY FABRIKANT :

Well, I just don't know yet, I need to consult with Mr. Belleau on that. At this moment I have no more questions to this witness...

THE COURT :

Okay. So if you have no more questions...

VALERY FABRIKANT :

I think that situation is clear, I was right, it is sixty-six (66) minutes conversation, that's all I wanted to establish, it is established. As far as any conclusions, I really don't know exactly.

THE COURT :

Then that is in your domain, if you want to speak to Mr. Belleau about that, that is fine.

Me JEAN LECOURES :

Then for sure, My Lord, I would say that I want the complete picture definitely. I might... we might introduce it in defense or in re-opening of the Crown's case, but we have nothing to hide, of course.

THE COURT :

Yes, I know, but these things should not happen, should they?

Me JEAN LECOURES :

I agree with you, I totally agree.

THE COURT :

I am just making the observation...

Me JEAN LECOURES :

Yes.

THE COURT :

...it is absolutely and utterly intolerable that this sort of thing happens.

Me JEAN LECOURES :

I have no comments but I agree with you.

THE COURT :

Okay, so you are finished with madame Audet, you have no questions for madame Audet?

Me JEAN LECOURES :

No.

VALERY FABRIKANT :

I appreciate your coming here.

AND FURTHER DEPONENT SAITH NOT.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), on this third (3rd) day of the month of June personally came and appeared :

CATHERINE MCKENZIE, Assistant Professor, Department of Art History, born on the the fifth (5th) of July, nineteen hundred and forty-eight (1948);

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

EXAMINATION BY VALERY FABRIKANT :

Q. Okay, again, first of all if you could show me what you brought with you in terms of the documents...

A. Yes.

Q. ...just for a brief look.

A. Can I explain to you what I brought or do you just...

Q. Well, I just want to browse first and then maybe...

A. Okay. I have some personal notes that I've drawn up for myself for my agendas. I don't know if that...

Q. Well, if you can...

THE COURT :

If you have occasion to refer to your personal notes during your testimony, Mr. Fabrikant will have the right to inspect them.

Me JEAN LECOURES :

If you ever refer to them.

THE COURT :

Leave them where they are just now, but if you do refer to them...

A. Oh, I see, yes.

VALERY FABRIKANT :

Am I entitled to take a look at those...

THE COURT :

Not at the moment, but if she refers to them for the purposes of her testimony as an aide-memoire you are entitled to look at them.

VALERY FABRIKANT :

Personal notes cannot be subpoenaed?

THE COURT :

Not as such, not as such, if you know of their existence beforehand and they have some pertinence to the case, they possibly could be, but if they are notes that she has made for the purpose of testifying, and if she refers to them in the course of her testimony then you may... then you may ask to look at them, that is all. Take a look at the file for the minute, let us get going. But you can take it that you will be entitled to look at these notes because since she arrived the witness has been refreshing her memory with them, or looking at them in any event.

VALERY FABRIKANT :

Well, I must say that this is obviously something very, very incomplete, what was in the subpoena, all documents relating to Fabrikant, well, you cannot say better than that. Okay.

Q. Those notes which you have in front of you, those notes were made for your testimony today or those notes were made in eighty-nine ('89)?

A. These were made for my testimony today.

Q. So there is nothing in your possession there which dates back as some contemporary recording of eighty-nine ('89), ninety ('90), whatever?

A. Yes, I have notes going back as far as nineteen eighty-nine (1989) based on the agendas that I have at home.

Q. Okay. But you didn't bring it here, the agenda, didn't you?

A. The agendas, no.

Q. No.

A. They're my own personal property.

Q. Okay. May I take a look at those?

A. Of course, do you want the original or a copy?

Q. Whatever, it doesn't...

A. And perhaps I should explain what documents I did bring.

THE COURT :

Well, okay, but basically, Mr. Fabrikant, the witness will testify first of all from her memory. I am going to ask her to put her notes aside.

VALERY FABRIKANT :

Q. No, there's no chronology, I see...

A. Yes.

Q. ...there is nothing there except the chronology.

THE COURT :

Fine.

VALERY FABRIKANT :

Q. Okay. I think it would be useful if you have two copies of that, that I have one of them...

A. Sure.

Q. ...so it would be more convenient for me to ask the questions.

VALERY FABRIKANT :

If I have this copy it's all right?

THE COURT :

If you have... There is no objection, I...

VALERY FABRIKANT :

It is just dates...

THE COURT :

That is fine.

VALERY FABRIKANT :

There is nothing, just dates, dates and time here.

Q. What I don't see here is some memos which you have written to the Rector. Could you explain why those memos are not here?

A. Yes. I was advised to bring the documents from my previous administrative position, which was as Associate Vice-Rector of Services. As I say, I'm on administrative leave, those documents were not really mine anyway but the office allowed me to go in and get those documents.

Q. But you didn't bring it here.

A. I brought everything that was in the office at the Vice-Rector of Services, which was where I was previously employed.

Q. Well, I understand that but we met first when you were executive assistant to the Rector, and definitely subpoena implies those documents too.

THE COURT :

A subpoena, Mr. Fabrikant, implies nothing. A subpoena says what it says and it says the documents that were in her possession. Now, if the documents she brought with here were the documents which were the ones in the office which she occupied at, I presume nineteen ninety (1990), ninety-one ('91), I don't know, then that is a reasonable enough interpretation of the subpoena. If you have a problem with the documents, I am sure that ma^{re}tre Freedman will be happy to get you what documents you need. If you...

VALERY FABRIKANT :

I also don't think that we will have much problem with that, if they cooperate we'll have those documents. All right.

- Q. So let us start according to chronology. So when we met first, what was the date, what was the purpose of the meeting, and if you could describe the meeting itself, please.
- A. The first time that we met was on January the twenty-fourth (24th), nineteen eighty-nine (1989), the purpose of the meeting was to respond to a request that you had made to have a meeting with the acting Vice-Rector, Academic at the time which was Doctor Kenniff. The meeting transpired, and that was a very long time ago, so this is to the best of my recollection, with you making allegations against Tom Sankar along the following lines, that you had allowed him to put your name on his... or his name on your papers for a long time, and that since you had stopped doing that, refused doing that, that you were running into difficulties. That you wanted a tenured position in another department, either in the Faculty of Engineering or in another faculty, and that if you did not receive that position, that you would either go to the lawyers or the newspapers. You then went on, and to the best of my recollection, I believe it was at this meeting, but it may have been at a subsequent meeting, to talk about how disappointed you had been when you came to North America, that you had had great expectations of what you would meet in North America. And that you had come to the conclusion that it was a society, I don't remember the precise words that you used, that did not live up to your expectations. And that you had discovered or learned that the way people in North America got what they wanted was to shoot a lot of people.
- Q. Could you please first, because it is very important moment here, first speak please louder, I have all the recordings of yours which are totally inaudible. So this is very important for...
- THE COURT :
- If you wish the witness, just ask me and I will ask her. I can hear what she says but I think some of the jury may be having some difficulty. Or is it clear, no problem?
- VALERY FABRIKANT :
- This is not the point, when we will need to reproduce it we won't be able to do it.
- THE COURT :
- I think the microphone is quite sensitive enough.
- Q. But if you can...
- A. Yes.
- Q. ...speak a little louder.
- VALERY FABRIKANT :
- Q. So, the phrase which I said, could you please repeat it once again and as loudly as you can.
- Me JEAN LECOURS :
- I think Mr. Fabrikant should speak in the microphone.
- VALERY FABRIKANT :
- Well, me it is fixed now.
- THE WITNESS :
- A. To the best of my recollection, you said that...
- VALERY FABRIKANT :
- Q. Louder.
- A. ...you had discovered that in North America the way people got what they wanted was to take a gun and shoot a lot of people, or shoot people. I don't remember the exact phraseology, that's the... what has remained in my mind, words to that effect.
- Q. You just repeated it twice, and I believe two times you repeated certain different things. Now, do you remember our

meeting November twelfth (12th)?

THE COURT :

Of what year, Mr. Fabrikant?

VALERY FABRIKANT :

Q. Nineteen ninety-one (1991)?

A. Yes.

Q. Now, do you remember making similar statement at that meeting?

A. Yes.

Q. Now, if I read to you what you said then, would you kindly confirm that that is correct or incorrect to the best of your recollection:

"And at this point he said to me at least twice that now he understood what North American society was like, that he was very disappointed in expectations after all he has been through, and in order to get in America what he wanted is to go in and shoot a lot of people and that was what he intended to do."

Q. Is it the right quotation...

A. I may have said that.

Q. ...of what you said? Sorry?

A. I may have said that at that meeting, I don't have the record as you do. That... I don't remember the precise wording of what you said.

Q. Okay. So you effectively agree that it recreates more or less precisely what you said then?

A. I don't have a record of that meeting, I can't remember what I said then with any great precision, that I may indeed have said that.

Q. All right. Now, I would like to bring to your attention that you also were present at the hearing June second (2nd).

A. Uh, huh.

Q. And at that hearing you said approximately the same thing with one difference, you said: "I'm not sure at all whether he said that he intended to do so", do you remember that part?

A. Yes.

Q. You do?

A. Uh, huh.

THE COURT :

June second (2nd) what year?

VALERY FABRIKANT :

Nineteen ninety-two (1992).

Q. Could you please explain the addition that "that was what he intended to do" is so extremely important that from November ninety-one ('91) to June ninety-two ('92) to become no longer sure of whether I did or didn't say it sounds strange. Would you please reconcile those two statements?

A. The only reconciliation that I can put forward is that I was left with the impression in nineteen eighty-nine (1989) that you would be prepared to do such a thing. I am not sure, I have gone back over in my mind any number of times over the last three, four years as to whether you actually made any suggestion that that is what you would do. Obviously, if you had said you intended to do that, then I think actions would have proceeded very differently. That is the impression that was left in my mind. I don't know whether you said it or not.

Q. But on November twelfth (12th) you didn't express any doubt to this effect whatsoever, right?

A. I may not have been distinguishing between my impression and what I can remember at that point.

Q. Well, I wish again to bring to your attention that November

twelfth (12th) that was the main defense you advanced to justify my arrest. So it is not a minor point.

A. No.

Q. Do you recall that this particular part, that that was what I intended to do was justification for you to call police at that time, correct?

A. No. My fear that you would do that was my justification for calling the police, not the specificities of your statement, my fear that you would do that.

Q. Well, fear definitely is based on the way you quoted me then. You never expressed any doubt whatsoever on November twelfth (12th). And so far, we didn't find any logical explanation to that.

A. As I say, the only logical explanation that I can give is that I was confusing impression with what you said. I can assure you that had you said that, that I would have taken very different actions in nineteen eighty-nine (1989) than I did.

Q. Well, this means that I didn't say it, does it?

A. I have said already that I cannot remember you saying that, and I cannot remember the exact words in terms of how you talked about North Americans and what they did to get what they wanted.

Q. Well, if you could make that kind of mistake, could you make a mistake about the rest of the phrase too?

A. Obviously, that is possible. I do remember you saying something along those lines. That was a long time ago...

Q. So something along those lines, does it look good enough to terrorize somebody on the base of the phrase which you cannot even recall? Because this is exactly what you did to me during years and years. So my question is, can one on basis of the phrase, which you are not sure at all, to terrorize a person for years and years...

A. I was in possession of other information, sir.

Q. ...which ended in tragedy after all.

A. Is that a question?

Q. Yes.

A. I was...

Q. Do you find it appropriate?

A. I was in possession of other information that also led me to view you as a concern to the public security at the university under certain conditions.

Q. Okay. You didn't answer to this question.

Me JEAN LECOURS :

She did, My Lord.

VALERY FABRIKANT :

Q. Well, your answer to this question is that that was not the only information you had, this is why you behaved that way?

THE COURT :

That is right, that is the answer that she gave.

VALERY FABRIKANT :

Q. All right. I don't know what... Okay, let's proceed chronologically first. Now, do you recall that I asked for tenured position or just I asked for being transferred?

A. I recall it as...

Q. Try to recall well.

A. ...tenured position.

Q. Why would I ask for tenured position if I was not even tenured track? Try to remember well what I asked.

A. Uh, huh.

Q. Didn't I just ask transfer?

A. No.

Q. No.

A. Not to my recollection.

Q. Didn't I tell you that those people mistreat me so badly that I just want to get away from them, I didn't put any conditions at that time?

A. You did put conditions, you said that if you did not receive such a position that you would in fact go to the press or to your lawyers with your allegations of research prostitution I gather... I recollect was the expression used.

Q. Did I in any way explain why is it I am on a research position wanted to get immediately into tenured position, did I justify it in any way?

A. No.

Q. No.

A. Not to my recollection.

Q. So maybe if you are wrong, if you are not sure about that important part, then how could you possibly be sure about whether I demanded tenure or non tenure position?

A. To my recollection, you asked for a tenured position.

Q. All right. Was the purpose of my coming to your office tenure or contract or it was something totally different? What did I come to argue about? What was my main complaint at that time?

A. I don't know if I could ascertain one particular main complaint, you were concerned, you felt that you had been mistreated in terms of your early... request for early promotion to research professor, but at that first meeting that did not seem to be the direction which you were seeking assistance. It was in terms of receiving, as I said before, a tenured position in another department within or without the Faculty of Engineering, and that certain conditions would follow if you did not receive such a position.

Q. Do you remember that you wrote two memos to the Rector?

A. Yes.

Q. One single of those memos was concern with tenure, was the word tenure mentioned in those memos?

A. No, they were in reference to your concern about the early promotion to full professor.

Q. This was the subject of my coming to you, not tenure.

A. I didn't say that your... the subject of you coming to me was tenure, I said it was the acquisition, one of your subjects was the acquisition of a tenured position in another department.

Q. Why didn't the memos, both memos, concern with one subject only, promotion?

A. Because at either the first or second meeting, I do not remember how precisely things unfolded, I informed you that in no way would the university consider transferring you. And that, into another department, and that the area that we should be working on was that of the early promotion to professor. I also told you that we would not act upon your allegations unless you were prepared to put them in writing, that was an entirely separate issue that did not have to do with the acquisition of a position in any other department. So my memos were then directed towards the subject of your denial for early promotion, which had recently been given.

Q. Okay. Now how did this memos appeared, why the first memo appeared, could you give the details of the first memo?

A. Only to the best of my recollection, I have not seen those since last year when you brought them to the code of conduct hearing. The first one was a request to Doctor Kenniff, as I

recall, to allow me to explore the possibility of the Department of Mechanical Engineering reopening your case for early promotion to professor.

Q. Yes, but why this memo was written in the first place?

A. Because it was an intervention in a normal process of career development.

Q. Well, why was this intervention attempted? Try to go into detail.

A. To the best of my recollection, you said that you had information which was not available at the time that the department had made its decision. I believe it was teaching evaluations, and it might have been that... no. That's all I can say with certainty, that you had some recently completed teaching evaluations, and you felt that that would in fact allow the department to reopen and to reconsider and possibly give you the promotion.

Q. Do you recall that I threatened that I will go public with all this if the harassment and extortion at the department does not stop?

A. I don't recall that, you may have said that. That I... as I have already said to you, the allegations were not going to be considered in any way shape or form unless you were prepared to put them in writing in some form, which you did not do.

Q. Well, just five minutes ago you confirmed that yes, I threatened to go public, now you say you don't remember that.

A. You threatened to go public if you did not receive a position in another department, that's very different, that's not saying that intimidation, or whatever the words you used, were to cease.

Q. We are totally confused. Try to remember that the only reason this memo appeared was that I said that unless you fix the situation, I'm going public. And you asked me: Well, what can we do right now? And I told you: I understand that department needs some excuse to go back on its decision, excuse not a new evidence, they knew everything. And what was in this memo, it was a spectacle which we agreed to play since you took serious my threat about going public. And this was a spectacle to be played that I agreed not to go public, you agreed to go to the department and ask them to reconsider. Now, does this refresh your memory well enough?

A. I do not recollect any conversation of that sort, and indeed I told you a number of times, I urged you a number of times to in fact go public, to put your allegations in writing.

Q. So that was not the reason that first memo appeared?

THE COURT :

Now you are arguing with the witness. You have been cross-examining the witness for the last fifteen (15) minutes but now you are arguing with the witness. I mean, it goes from bad to worse.

Me JEAN LECOURES :

He got his answers, My Lord.

THE COURT :

And he got his answers.

Me JEAN LECOURES :

He might not like them, but...

VALERY FABRIKANT :

Q. Okay. So you deny that the only reason this memo appeared it was because there was an attempt to kind of make a compromise...

A. It was indeed an attempt to make a compromise, Doctor Fabrikant...

- Q. Okay, now you recall it.
- A. ...in the sense that you wanted out of your department and I attempted, with the assistance of Mr. Grendon Haines, the resident consultant, who I asked to work with you, to stick to the issues that were pertinent to your existence in the department in which you were a member. If you want to call that a comprise you can.
- Q. No, that was not the point. The point was that I said that if you do not fix the situation with harassment, I am going to go public with that.
- A. That is not how I recollect our conversations at all.
- Q. All right, but at least you admit that I threatened to go public.
- A. If you did not receive a position outside of the department or the faculty.
- Q. And I never said that I want you to fix the situation inside the department?
- A. Not to my recollection.
- Q. Not to your recollection.
- A. And I could not have because you did not put them in writing.
- Q. Now, how do you then reconcile one threat which is more or less of non criminal nature to another threat which looks not just of criminal nature but looked kind of idiotic the way it is formulated? How do you reconcile those two?
- A. I don't understand your question.
- Q. Okay. You admit that during that meeting I threatened to go public, and that is, yes, the threat I did. Now, if someone threatens to go public, why on earth the same person would say something like that, "in order to get in America what he wanted is to go in and shoot a lot of people, and that was what he intended to do." Now how do you match does two together?
- A. I don't, I can't.
- Q. Now, let us try to think the meaning of the phrase itself.

Me JEAN LECOURE :

Where does this thing, this phrase come from, My Lord?

VALERY FABRIKANT :

This phrase is...

THE COURT :

It comes from notes that Mr. Fabrikant has in front of him that he put to the witness several minutes ago.

VALERY FABRIKANT :

The witness admitted that she said it.

THE COURT :

The witness admitted that she may have said something like that, that is as far as the witness went, she said she could not recall what her exact words were, to be fair to the witness.

Me JEAN LECOURE :

But was it recorded proceeding like the Court here, I don't know, that's...

THE COURT :

Well, I have no idea. For the minute Mr. Fabrikant read from what could have been notes that he took or it could have been anything. He can read from the book of "Duturonomy" if he wishes, if that happened to be discussed.

Me JEAN LECOURE :

Well, I have nothing to hide but I would like maybe without the jury to know how he got these notes, from the recording...

THE COURT :

For the minute he is perfectly entitled to refer to what he has in front of him.

VALERY FABRIKANT :

I have no secret, it was recorded and this is exact transcript...

Me JEAN LECOURES :

By whom?

VALERY FABRIKANT :

By me.

Me JEAN LECOURES :

Well, then...

VALERY FABRIKANT :

Well, maybe we should play the recording.

THE COURT :

No, not at the moment. Continue with your examination for the time being.

VALERY FABRIKANT :

So the quotation is exact.

THE COURT :

Yes, I know, but now you are testifying you see, but it is not your fault that you are testifying since the Crown prosecutor brought it up. If you want to look at whatever you have in front of you and say whatever you like to the witness, that might be, you have not or had not until the Crown brought it up, raise the point that this was something that you had recorded. So I am leaving it at this point that it is something you have referred to whether it be reduced to writing from whatever source, it is something that you referred to which you are perfectly entitled to do and to ask her if she recalls that conversation, you have got her answer.

VALERY FABRIKANT :

Q. Well, all right. So let us try to understand the meaning of the expression. "In order to get in America what he wanted, is to go and to shoot a lot of people." According to your statement, I wanted whatever, tenured position, promotion, something, correct?

A. Uh, huh.

Q. Now, if you go in and shoot a lot of people, you end up right here, not in tenured position, not in promotion, it's exactly where I am now. But did I...

THE COURT :

Look, just a second. No. This will not work. You are questioning the witness with regard to a meeting, okay?

VALERY FABRIKANT :

Yes.

THE COURT :

You refer to notes or you refer to whatever you like and you ask the witness what was said, was this said and was that said, so far so good. The witness has one recollection of that meeting, you for all I know may have the same one or you may have another one. But to then go into a cross-examination of the witness in trying through the use of deductive logic to prove which statement was made or which statement was not made is a waste of everybody's time. What we are here to hear from is the witness' recollection of the meeting, period and full stop. So the last question will not work.

VALERY FABRIKANT :

Well, what I'm trying to do, with all the due respect, to show that I could not have possibly said it because phrase is meaningless, I never say anything meaningless.

THE COURT :

Then...

VALERY FABRIKANT :

I believe you know by now that this is just not what I do.

THE COURT :

Whether you say anything meaningless or not is not going to... you cannot through this witness ask her to make inferences as to what might be or what might not be. She is not here to give us her opinion, she is here to give us her recollection of what transpired. So I maintain the position I took with regard to your last question.

VALERY FABRIKANT :

Okay. What if the witness is in bad faith and just intentionally misleading the Court? What if this is the case? What if, just if. What I really threatened was to go public and what they concocted together...

THE COURT :

Mr. Fabrikant that is...

VALERY FABRIKANT :

...that I threatened violence, and they need to support it somehow.

THE COURT :

That is your position.

VALERY FABRIKANT :

The...

THE COURT :

You have called the witness, nobody has demonstrated to me that the witness is trying to evade your questions, is trying not to answer your questions, is hiding behind a bad memory or anything else. The witness is being asked to go back to nineteen eighty-nine (1989) and to remember precise words. She has told you from the very beginning the tenure of the statement you made was such and such, I cannot remember the exact words. She said that when she testified at the senate hearing she pointed out that she was not sure if you had intended or you had said you intended to do this. Listen, what do you want from the witness?

VALERY FABRIKANT :

Well, there is... very simple.

THE COURT :

Now... No, just a second. Whatever it is, you cannot get it with the last question. The last question is enlisting, if you like, the witness along with you and inviting her to go through some process of logic in order to say, no, it is not likely that you would have said that or yes, it is likely that you would have said this, or whatever. That is not what she is here for.

VALERY FABRIKANT :

But the fact that it doesn't look natural to you and truthful that the witness on November twelfth (12th), nineteen ninety-one (1991) had no doubt whatsoever in quoting me that this was what he intended to do. And just several months later, she said: "I am no longer sure whether he said that was what he was intending to do."

THE COURT :

I...

VALERY FABRIKANT :

Does this look to you natural?

THE COURT :

The only decision I have to take on that I have not to

appreciate it in any sense beyond whether it looks to me on the strength of that that the witness is trying not to answer the question or is hiding behind a lie or whatever, and I'm not coming to that conclusion. Okay?

VALERY FABRIKANT :

That's too bad, but to me it is kind of obvious. That kind of, this part of the phrase to be sure on November twelfth (12th) and not to be sure on June second (2nd) of the next year, taking into consideration that the whole thing transpired in eighty-nine ('89), just cannot be true.

THE COURT :

Mr. Fabrikant...

VALERY FABRIKANT :

It's either or.

THE COURT :

....truth is a very illusive thing. One is not declared hostile or adverse for failing to recall. One may be declared hostile or adverse because one attempts to allude or downright tries to avoid, or downright... and obviously lies. But this, you always come back to this but I cannot from my point of view find that. Now I leave it to the jury to appreciate what they believe in this case, that is not for me to do. But as far as declaring the witness hostile is concerned, no, I am not prepared to that, if that is what you are asking me to do. And whether the witness was declared the most hostile witness in the world, the last question would still not be admissible because it recruits the witness to participate along with you in an exercise in logic that supposedly leads to a particular answer being more likely to be given and that is not what the witness is here to say. So the subject as far as I am concerned is closed, you can go on to the next one.

VALERY FABRIKANT :

But still I think you should appreciate that the witness definitely hiding behind that memory rather than anything else.

THE COURT :

I am unable to see it that way.

VALERY FABRIKANT :

All right.

q. Okay, let us continue then what happened next? How did it come to the first memo, it was not because I threatened to go public, it was because you really discovered something which department didn't know?

A. To my recollection, you had said you had something that the department didn't have.

Q. Not at all, I told you that we could give department an excuse...

THE COURT :

Mr. Fabrikant...

VALERY FABRIKANT :

...that they may pretend they didn't...

THE COURT :

...this is not the question.

VALERY FABRIKANT :

All right, I'm arguing, I agree with you. All right.

THE COURT :

You are arguing or you are testifying, one or the other.

VALERY FABRIKANT :

We need those memos, maybe we can go further today and get to

those memos tomorrow.

Q. Okay. February twenty-eighth (28th) what was then? You have some kind of meeting too?

A. It was a continuation, I guess, of our first meeting. I believe that you brought me some papers to show me, I believe, that demonstrated in your mind some of the allegations that you had made in the first meeting.

Q. Okay. So I brought you proof?

A. You brought me papers that in your mind demonstrated something. You did not agree to put your allegations in writing.

Q. Well, one second, could you be more specific as to what papers I brought and whether what was in my mind would be in mind of any logically thinking person what he saw those papers, what exactly did I bring to you?

THE COURT :

Let us stay with the first part of the question, what did I bring to you, that bit is fine.

THE WITNESS :

A. To the best of my recollection, you brought some kind of research application from a faculty member in the Department of Mechanical Engineering that you said demonstrated that he didn't understand what he was doing. You may have brought along with that, because you did link, to the best of my recollection, his work with your work, you may have brought one of your papers, or something along those lines. I believe, but I could be mistaken here, that you brought a paper that had handwritten notes and it was a typed paper, I think, of handwritten notes that you indicated were written by a colleague in the department and that that was his sole contribution to what became a publication.

Q. Which colleague? Who was that colleague?

A. I believe it was... if I'm expected to answer that?

THE COURT :

Q. Yes, sure.

A. I believe it was Doctor Ziagos... Sankar.

VALERY FABRIKANT :

Q. What else did I bring?

A. I don't recollect anything specifically other than those two issues, if you will, those are the ones that...

Q. All right.

A. ...are the ones that I remember.

Q. Now...

A. I was not especially interested in those, until such time as you were prepared, which you were not, to put your allegations in writing, to me they were just documents.

Q. But if I brought to you the "evidentary" proof, isn't that enough to get you interested and investigate?

A. I had been informed that I was not to do anything about... with any allegations unless you were prepared to put your allegations in writing, otherwise those were just pieces of paper.

Q. Well, you were told this by whom?

A. Doctor Kenniff.

Q. So Rector told you, no matter what kind of evidence I bring, unless I put in writing all my allegations, all this evidence should be ignored, that's what he told you?

A. I don't think he put it in exactly those words. He said we...

Q. Okay. Meaning, that was the meaning of what he told you?

A. What he said was, we don't deal with allegations unless they are put in writing.

Q. Now, try to recall also that of you and Mr. Haines indicated to me that if I do put it in writing, then there was one university, when someone put it in writing and person was fired. Do you remember that tacit remark which you made?

A. I don't remember that, I may have made that, if people make allegations that are false, then very often procedures will follow.

Q. It was not false, it was tacit indication, we invite you to write but if you do write please beware that most of all you will be out of the university. This is how it was put to me, was it?

A. That is not anything like I recollect our discussions of these allegations. That may be your recollection but it's certainly not mine. I asked you to put those allegations in writing.

Q. There was even reference to specific university...

THE COURT :
No, you are making... again, you are making a statement, you are not asking a question.

VALERY FABRIKANT :
All right. All right. All right.

Q. So if I bring to you an article which was handwritten by me and in the handwriting of Sankar was just the names of the authors, and some small changes of definite and indefinite articles, now does one have to be very qualified to understand that this is not a scientific contribution?

A. Doctor Fabrikant, I would have no idea where that would stand in the process of research and writing. I have thesis students who I may go through a draft with ten times, the last draft may have only three notations by me, that does not mean that I have not been involved in that procedure from the beginning to the end. The last but one document does not tell all the story. That is why allegations would have to be documented.

Q. Well, did it...

A. And a piece of paper would not suffice.

Q. First of all, I think I brought to you a... the drafts too...

THE COURT :
If you wish to put that in the form of a question, fine.

VALERY FABRIKANT :
Yes, all right.

Q. Did I bring to you the draft papers as well?

A. I don't recollect that, you may have.

Q. And those draft papers were also written in my handwriting, were they?

A. If I don't recollect seeing them, I don't... would not recollect whether they were in your handwriting.

THE COURT :
Okay, I think we will stop at this stage for ten minutes.
SUSPENSION OF THE HEARING
RE-OPENING OF THE HEARING
WITHOUT JURY

THE COURT :
Mr. Belleau, you asked me to come in without the jury?

Me BELLEAU :
My Lord, I would like to settle the problem of two witness who have been waiting, and I suspect that Mrs. McKenzie will be on the stand for a little while and...

THE COURT :
It would be my impression.

Me BELLEAU :
Yes, so I'm just asking Mr. Fabrikant if we can...

THE COURT :

Go ahead.

Me BELLEAU :

...have any idea of when we could order them back.

VALERY FABRIKANT :

Not today for sure.

Me BELLEAU :

No, I understand that.

INAUDIBLE DISCUSSION

Me BELLEAU :

Could we call in those two witnesses please, Mr. Cantin and Malenfant. They were subpoenaed for today, My Lord, and what I will do is request an order from the Court that they come back on Monday, because tomorrow we won't have the time to hear them. Mr. Cantin is the first one and Mr. Malenfant is right behind him.

THE COURT :

The second witness is who?

Me BELLEAU :

Mr. Malenfant.

LA COUR :

Bon. Monsieur Cantin et monsieur Malenfant, vous ^tes ordonn,s de vous pr,senter lundi matin ... neuf heures trente (9 h 30) ici en chambre 301 sans la n,cessit, qu'aucun autre subpoena vous soit signifi,. Est-ce que vous avez bel et bien compris #a? Oui? Tps bien. Donc ... lundi, merci beaucoup, messieurs.

Do you need a translation of that or... Fine. That is all that you wanted...

Me BELLEAU :

That's all for now, yes.

THE COURT :

Jury please.

MEMBERS OF THE JURY ARE PRESENT

WITNESS: CATHERINE MCKENZIE -- UNDER THE SAME OATH

EXAMINATION BY VALERY FABRIKANT (CONT'D) :

Q. Do you recall at which particular meeting I said this phrase about North America?

A. I don't, I think it was the first or the second meeting, but I do not recall which of those two meetings.

Q. So you are not sure which meeting it was?

A. No.

Q. Okay. What was your reaction when you heard these words?

A. I was not... I was disturbed.

Q. No, this is not my question. Did you say anything in response to me?

A. Not to my recollection.

Q. Well how come? You hear such a phrase and you don't even ask...

THE COURT :

You are cross-examining the witness and you may not do that.

VALERY FABRIKANT :

Well, isn't it obvious that something is wrong in her testimony, so declare her adverse and allow me to cross-examine.

THE COURT :

I am not going to accede to that and I am not going to get into that argument again. I told you that last question is disallowed.

VALERY FABRIKANT :

So you find it natural that person here is that kind of...

THE COURT :

Do we go through again what we went through this morning? I told you what the only solution I have left if this goes on.

VALERY FABRIKANT :

There is another solution, to be logical.

THE COURT :

Mr. Fabrikant, put your questions or that is the end of it with the witness.

VALERY FABRIKANT :

Q. So you didn't say anything in response to that, correct?

A. To you, not to my recollection.

Q. Okay. Did I say anything after that? How did it go after these words? You didn't say anything, I just continued talking?

A. I don't recollect whether it was at the end of the meeting, in the middle of the meeting, so I can't answer that question.

Q. Okay. What... Did you inform Rector about that?

A. I can't remember if I informed the Rector of that particular phrase, I certainly informed the Rector that I had met somebody that I found very disturbing in a number of ways.

Q. And this particular phrase you are not sure whether you mentioned it to him or no?

A. I can't remember if I mentioned it to him specifically or if I simply said that I have encountered someone who I find very disturbing and that there were certain actions that I would want to take.

VALERY FABRIKANT :

You need more proof that witness is clearly not answering the truth?

THE COURT :

I am not about to come to that conclusion, I am nowhere near that conclusion.

VALERY FABRIKANT :

Witness here the word that someone says that he intends to kill a lot of people and she comes to Rector and she does not remember whether she told it to the Rector or not.

THE COURT :

Mr. Fabrikant...

VALERY FABRIKANT :

All right.

THE COURT :

...various people in this world remember things...

VALERY FABRIKANT :

Fine. You find it all right? I'm not arguing with you.

THE COURT :

...in different ways.

VALERY FABRIKANT :

I'm a new Fabrikant.

THE COURT :

Good.

VALERY FABRIKANT :

You said no, fine. I'm not arguing.

THE COURT :

Fine.

VALERY FABRIKANT :

Q. So at this point I would like to go back to your previous statement and read to you what you said on November twelfth (12th):

"Question Fabrikant: Did you at least inform the Rector about it?

McKenzie: Of course.

Fabrikant: Did you write a memo about it?

McKenzie: No.

Fabrikant: Why not?

McKenzie: Because I thought we could handle it in a different way."

Do you recall making those statements?

A. Again, I might have, I don't know if those are my exact words.

Q. Those are your exact words, you bet. If you want, I can play it for you.

VALERY FABRIKANT :

THE COURT :

What was not clear...

VALERY FABRIKANT :

...(inaudible) examine her in this contradiction?

THE COURT :

Pardon? What was not clear in your question first of all was what you are referring to.

VALERY FABRIKANT :

Oh, it was obvious what I was referring to because I can read previous steps, if you wish.

THE COURT :

You are reading from something, I do not know what you are reading from, but you are asking the witness if she recalls saying certain things on a certain date.

VALERY FABRIKANT :

Okay, okay, okay. I will read previous...

THE COURT :

Now, the way your question was put it was not clear...

VALERY FABRIKANT :

Yes, I will read previous phrase...

THE COURT :

...whether you are asking if she recalled.

VALERY FABRIKANT :

Yes. Yes. Yes.

Q. I ask:

Dr. McKenzie someone comes to you and says that he's going to shoot a lot of people, shouldn't you lift the telephone and call the police?

McKenzie: I didn't know what I should do at time.

What I did do, I have got a lot of people involved, as I recollect I got Grendon Haines involved.

And he spent much time to make you feel more secure in the department? Yes, you are right, in a logical way, today, more experienced, older, I should have taken the phone and called the police.

Fabrikant: Have you at least informed the Rector about it?

McKenzie: Of course.

Fabrikant: Did you write a memo about it?

McKenzie: No."

Now, is it now clear what is it what we are talking about?

THE COURT :

Now ask, in that context ask the witness if she recalls having that conversation.

VALERY FABRIKANT :

Yes, well, that's what I said.

Q. Do you recall making that statement?

A. I don't recall making that statement but it's entirely possible that I did.

VALERY FABRIKANT :

Well, so can I cross-examine her? It is contradictory statement. Because now she says that she just told the Rector that there is some kind of disturbed person there without even mentioning the specifics.

THE COURT :

Look, at the moment...

VALERY FABRIKANT :

Isn't it contradictory?

THE COURT :

No, you have read from notes, you have read from notes of whatever they are, we are no further than that. And you said: At the meeting of November the twelfth (12th) do you recall having said that? And her answer to you was: I don't recall these words, I might well have said that. No, you may not cross-examine her.

VALERY FABRIKANT :

Well, let us adjourn, play the tape, hear these words and then I would like to cross-examine.

THE COURT :

At this point, on the strength of what you have said and what she has said, you may not cross-examine.

VALERY FABRIKANT :

Well then that's what I said. So let us play the tape and we...

THE COURT :

Would you please.... No. Would you please continue with your questions.

VALERY FABRIKANT :

Why you disallow me to play the tape?

THE COURT :

Because I do not see any basis for permitting you to cross-examine at large with regard to that. If you are saying that you wish to examine on a prior statement reduced to writing, then that is something else.

VALERY FABRIKANT :

Yes.

THE COURT :

If that is what you are saying, I will send the jury home and we will go on to the next step.

VALERY FABRIKANT :

To the next step what? Playing the tape or what?

THE COURT :

To the next step.

VALERY FABRIKANT :

You mean what? To consider...

THE COURT :

I have no idea what you have in your hand. I have an idea but as far as the proof is concerned, I do not know what that is.

VALERY FABRIKANT :

Okay. You want to start voir-dire now. I can make it this way not to lose time, I will continue and we'll return to that place maybe tomorrow morning, if you require I will play the tape, we can make voir-dire, I...

THE COURT :

There are a lot of steps to go through before a tape is played.

VALERY FABRIKANT :

Well, maybe I should confer with Mr. Belleau then about it, I don't know, but I definitely need to cross-examine, this is very important point. I can continue now in order to save the

Court time, so that we use it useful and return back to this point at later...

THE COURT :

Fine, continue in other things and you may come back to that later.

VALERY FABRIKANT :

All right, okay.

Q. Okay, now what happened next? You said also that you... that you had some additional proof of me being dangerous, let's go to this part now. You remember you said that that was not the only thing, there was something else. So let us go to this something else.

A. I said I had indication of the potential for violence or for dangerous behavior.

Q. Okay, what is it?

A. Statements that were made to me by Mr. Grendon Haines in the course of working with you, in an attempt to establish a more harmonious... mutual harmonious I guess you would put it, working environment for you in the Department of Mechanical Engineering. References to the fact that you either, and I can't remember precisely, either possessed a gun or were considering acquiring a gun, statements that indicated or where you were alleged to have said that you knew where the Rector's office was and it would be very easy for a person...

Q. Something new, not children...

THE COURT :

Let the witness finish.

THE WITNESS :

A. ...would be very interesting if you or could... would be possible for a person to take hostages in that manner. There was a day when Mr. Haines called me and said that you had said you were going to get the Rector, whatever that meant.

VALERY FABRIKANT :

Q. Just like that. Okay.

A. And there were also references to alleged, not threats but indirect, intimidating remarks I guess you could call them, that were passed on by the members of the Faculty of Engineering in a meeting, I believe on March the thirtieth (30th), to the best of my recollection. But I may have been to some of those earlier.

Q. Okay. Could you please specify then what came first, Rector or other members?

A. Came first in what? Since...

Q. Well in time, first in time? My threat against Rector or my threats against members, or whoever?

A. I don't know.

Q. Well, you have your agenda.

A. Yes.

Q. So consult your agenda and tell me when approximately was it. Didn't you recall...

A. I have no recollection of the sequence of those events, or those pieces of information and when I started to receive them.

Q. Okay. Grendon Haines calls you: Fabrikant wants to get Rector hostage, he has a gun, and you didn't bother to write it down in your agenda this particular moment?

A. That is not what he said. What he said on a number of occasions when we talked on the phone, were that in the context of discussions he was having with you, that you had mentioned that you, and as I say I cannot recollect with any precision whether it was that you had a gun or that you were

considering acquiring a gun. On another occasion he mentioned that you had said that you knew where the Rector's office was and it would be possible for someone to take people hostage. That was not at the same time, they were not linked conversations at all. The incidents of the time where Mr. Haines called me and said that you had said to him you were going to get the Rector, I remember very specifically because we did have security guards from the university then accompany Doctor Kenniff from, I believe he was out at Loyola and to bring him back downtown.

Q. So what was the date then?

A. I don't remember the date.

Q. Okay. He calls you and tells you that I told him that I have a gun or I'm going to acquire a gun. Could at least this be more specific...

A. In terms of the date, no, Doctor Fabrikant, I'm sorry, I can't be more specific.

Q. Well, in terms of information at least whether I have or I'm acquiring.

A. I can't recall the precise information that Mr. Haines gave me.

Q. Well, it is not important at all?

A. Of course it's important.

Q. Why didn't you write it down? After you heard me allegedly saying that I intend to kill a lot of people, now Grendon Haines calls you: Fabrikant wants to get a gun. Doesn't these two match together to jumping and shouting loud: Gosh, get police quickly.

A. I had the...

Q. And you didn't even mark it.

A. I had the Director... my agendas are from meetings, they're not for what goes on in... transpiring with my work. I did contact the Director of Security at some point and worked closely with the Director of Security to take some security measures and to acquire some information about you.

VALERY FABRIKANT :

Isn't it obvious again, she is lying all this time? It's not obvious to you. Just say yes, no, we continue.

THE COURT :

No, you will listen till you hear me out. For the nth time, different people recall different events in different ways. I do not know whether you are one of God's children who happens to be blessed with a good memory, probably you are. Some people have very indifferent memories, some people have middling memories and different people remember things in different ways. My basis for deciding whether the witness is evading your questions or not goes far, far further, as I said this morning than simply determining or looking or simply looking or considering the fact that whether she remembers or whether she does not remember. It goes to demeanor, it is a judgement call I have to make, it is my judgement call, nobody else's.

VALERY FABRIKANT :

This is not what I'm referring to. Now I'm not referring to the memory, now I'm referring to the way of action which is so unnatural that it cannot possibly be true, this is what I'm referring.

THE COURT :

Well listen, if the witness is not telling the truth, if the witness' recollection is different from yours, these are two different things.

VALERY FABRIKANT :

No, this is not recollection. Would you imagine logical...

THE COURT :

I am not going to... I am not going to decide that. If it is ever pertinent for the jurors to consider this and decide it, and that we will see later as this unfolds, then they will decide what they believe, which version they believe, how much they believe of what the witness says or what they do not believe. But objectively, I have no basis to declare the witness hostile. You have systematically asked me to do so with every witness virtually who has testified, and by and large you have been disappointed because in real life it is very, very seldom, very seldom indeed that a witness is declared hostile.

VALERY FABRIKANT :

Well, you find it quite natural the behavior she's describing? You find it natural behavior, truthful behavior of a normal person?

THE COURT :

First of all... first of all the last question, the last question which was totally illegal because it was in the nature of cross-examination, was spread all over the place. You have been jumping back and forth, the witness has been invited to address a whole series of different circumstances and different situations. We have some difficulty knowing how she keeps the thread of where you are at any given minute, from where you are going at the next. No, I do not find, I do not find that the witness' demeanor is so obviously misleading you or the Court that I should allow you to cross-examine at large.

VALERY FABRIKANT :

So the way she describes her actions looks to you natural and truthful. All right.

THE COURT :

I have no another word to add. I have said it, there it is.

VALERY FABRIKANT :

Q. So you got one call from Mr. Grendon Haines, you don't remember then, you didn't react about that. Then you got from Mr. Haines that I know where the Rector's office is, it was separate message, correct?

A. Uh, huh.

Q. And again, you didn't link it at all to what I allegedly told you about killing a lot of people?

A. Of course I linked it in the sense that it made me increasingly concerned about the kind of language you used, and I did, as I have said before, undertake to work very closely with the Director of Security to take a number of measures that I felt were important.

Q. Well, when was it when you heard about gun, when you heard about where the office of the Rector is, when you heard that I'm going to get the Rector, when I...

A. I've already answered that I don't remember precisely.

Q. How come all three different statements very important had no written anything in your agenda anywhere, how come?

A. I don't keep those kinds of notes. I suspect that Mr. Haines may have notes that may be helpful for you.

Q. All right. Now you have here March twenty-fourth (24th), ten a.m. (10:00), FA telephone call, what is that?

A. I have a note in my agenda, it says March twenty-fourth (24th), nineteen eighty-nine (1989), ten a.m. (10:00), it says FA and I don't believe that I met with you that day. To the

best of my recollection, there was a time when I had a telephone conversation where Mr. Haines was present and we had it on the speaker phone. Now, I suspect that it was that day. I do not know for certain.

Q. What was the conversation about?

A. I have no recollection whatsoever, I recall being very nervous about whatever I was going to transmit to you, but I do not know what the conversation was about.

Q. But was it before or after those threats, of any of them, could you locate this conversation with any of those threats?

A. I cannot say with any certainty, I remember being very nervous about it, so I suspect that it would have been after I received some of that information. If not all.

Q. Why didn't... did you mention this information back to me?

A. No, I did not.

Q. Why not?

A. Because I knew that you were working reasonably well with Mr. Haines, although there was a time when I had to intervene, if you will, through a letter. And I did not want you to realize at that point that anything that you said to him would necessarily be transmitted to me. I was very concerned about what...

Q. Do you call it...

THE COURT :

Excuse me, let the witness finish.

Q. I was very concerned with?

A. I was very concerned with what type of individual we were dealing with and I felt that it was very necessary to have somebody working with him for whom he had some respect and trust.

VALERY FABRIKANT :

Q. So you find it good working if one day I say that I'm buying gun, another day I'm allegedly saying I know where the Rector is, then I'm all of a sudden deciding that I need to get to Rector? This you call good working with Mr. Haines?

A. You were working with Mr. Haines and he was getting an opportunity to assess you in some ways, and also to do what he could to make sure that whatever could be accomplished in terms of your feeling of comfort in the department would be accomplished.

Q. Does it look like it went to some feeling of comfort if I ended up saying that I'm going to get the Rector?

VALERY FABRIKANT :

Look, it's total absurd, I believe you are the only one in this room who does not understand how badly he lied, she lied. She just doesn't keep it in track what she is saying. It's total absurd.

THE COURT :

Have you another question to put? Go ahead.

VALERY FABRIKANT :

You don't have it that feeling. All right. Fine.

Q. Okaya. So do you have any record as to...

THE COURT :

First of all, I do not know at what point in time you are talking about. One minute you are in March of nineteen eighty-nine (1989)...

VALERY FABRIKANT :

We never moved from eighty-nine ('89).

THE COURT :

... and on other occasions you are in ninety-two ('92).

VALERY FABRIKANT :

One second. We never moved from eighty-nine ('89), we never moved beyond March of eighty-nine ('89). And if I refer to ninety-one ('91) it's only to contradict the witness, we've always been and never moved from eighty-nine ('89).

THE COURT :

Before the question of what you read from over there, you were referring to a meeting on November the twelfth (12th) of nineteen ninety-two (1992). You have been all over the place.

VALERY FABRIKANT :

November twelfth (12th)...

THE COURT :

So please make your questions, if you want the witness to try to recall, please make your questions precise from the point of view of, from the time frame that you...

VALERY FABRIKANT :

Well, let me clarify first of all if it was November twelfth (12th) it was nineteen ninety-one (1991), it couldn't possibly be ninety-two ('92) I have... (inaudible) was in jail...

THE COURT :

You are right, yes, in ninety-one ('91) it must have been.

VALERY FABRIKANT :

So...

THE COURT :

But ninety-two ('92) was... Yes, you are right.

VALERY FABRIKANT :

I couldn't possibly be.

THE COURT :

But anyway, we have been in ninety-one ('91), we have been in eighty-nine ('89).

VALERY FABRIKANT :

Ninety-one ('91), this ninety-one ('91) referred only for the purpose of reminding the witness previous statement, nothing else, we never been in ninety-one ('91) as such.

THE COURT :

I would suggest to you, do as you like, I would suggest to you that you try to orient your questions in terms of time if you expect the witness to try to recall.

VALERY FABRIKANT :

Witness understands very well.

Q. Doctor McKenzie, do you have any doubts at any moment that we are talking about nineteen eighty-nine (1989), right?

A. At the moment we are talking about nineteen eighty-nine (1989).

Q. Yes, and we never called, talked about anything else yet, correct?

A. We talked about nineteen ninety-one (1991).

Q. Well, just for the purpose of comparison of what you said then, but otherwise we are talking eighty-nine ('89), and we didn't move beyond March, correct? So we do understand each other.

THE COURT :

Well, would you please for my sake be a little clearer as to...

VALERY FABRIKANT :

All right.

THE COURT :

...what point in time you are talking about.

VALERY FABRIKANT :

All right, I'll do my best.

- Q. So when did this last threat came up? Can you locate it in time in any way, at least with accuracy of a month?
- A. Which last threat?
- Q. Last threat, I'm going to get... Well, I understand the last was I'm going to get Rector, was it? Or you don't remember what you were saying?
- A. I don't remember in what order they came.
- Q. Ah, you don't even remember in what order they came?
- A. No, I do not.
- Q. Oh, that is interesting. Okay. So, we have three threats, one I'm going to get a gun or I have a gun, second I know where the Rector's office is and something like it is easy to get him hostage, no?
- A. No.
- Q. Okay. Reformulate please all three, what you heard and...
- A. Which I want to make clear I have not said are threats, certain language and phrases that led me to be concerned about your potential for violent behavior. At some point, Grendon Haines informed me, and these are not in any specific order, that in the midst of a conversation about something, that you informed him, and as I say, I don't recall whether is that you had a gun or that you were going to acquire a gun or wanted to acquire a gun, might acquire a gun. Second, was that you knew where the Rector, and this I again stress not in any order, second that you knew where the Rector's office was and that it would be possible for someone who wanted to take hostages, not that you would take hostages, these were not direct threats. The third was that on one particular day, I do not remember what day it was, I received a call from Grendon Haines saying that you had said you were going to get the Rector. That was, I assume but I do not know, directly before his phone call. That again can be interpreted in any number of ways, I think that's obvious.
- Q. And he never asked me to specify what exactly I'm going to get, maybe I'm getting a present for him. What exactly I'm going to get? You never bothered to ask me to clarify what I'm saying?
- A. I don't know what Mr. Haines asked you.
- Q. Did you ask him? Did you ask him if he has clarified it with me?
- A. No, I did not. I got off the phone immediately and called security.
- Q. All right. So at least now we have some kind of (inaudible). Okay. So you called security. Now we can, I think, locate it in time, can we? If you called security then it could be located in time, when was that?
- A. I suspect it could be located in time in terms of security records. I do not have a location of time in my possession.
- Q. Okay was it what? April, March, April?
- A. I have a feeling that this was in March.
- Q. In March. Okay. And you called security, you said what?
- A. I said I want a couple of security guards to accompany Doctor Kenniff back downtown.
- Q. All right. Did you explain to them why?
- A. I probably said that someone or yourself had indicated you were going to get the Rector.

VALERY FABRIKANT :

All right. I think this is the time to show the witness file of Mr. Barnab,, because I believe this is where we can get the connection, can we get I something? Sooner or later we'll get to bottom of it. Yes, I think this is...

THE COURT :

It is I what?

VALERY FABRIKANT :

....Mr. Barnab,'s file. And...

LA COUR :

C'est I quoi?

THE CLERK :

5.

Me BELLEAU :

I-5.

VALERY FABRIKANT :

Q. If I understand correct... yes, if I understand correct it was March twenty-first (21st), sixteen twenty-nine (16:29)...

THE COURT :

You have the document there, now if you have a question to put concerning a document which the witness has knowledge of then that is fine.

VALERY FABRIKANT :

Okay.

Q. So you called security and you asked to (inaudible). Okay, so now we locate it in time, it is... If this is not a false document then it was March twenty-first (21st). You can mark it in your agenda...

A. I don't have a pen.

Q. ...it was March twenty-first (21st), and if we believe this document it was...

THE COURT :

Mr. Fabrikant... look, would you desist from making these sorts of comments. If there is a document there emanating from the witness the proper thing to do is show the document to the witness...

VALERY FABRIKANT :

Well, it does not emanate from the witness. I'm trying to help her memory.

THE COURT :

What are you referring to?

VALERY FABRIKANT :

I'm referring to the security report. That Doctor McKenzie complained to security...

THE COURT :

I see, all right. Okay.

VALERY FABRIKANT :

...on March twenty-first (21st), sixteen twenty-nine (16:29). If this is the right documents I will locate it in time, so I'm trying to refresh Doctor McKenzie's memory.

THE COURT :

Okay.

VALERY FABRIKANT :

Q. Okay, so we are on March twenty-first (21st). Now you have March...

Me JEAN LECOURS :

The witness should be shown the document, My Lord.

VALERY FABRIKANT :

Well, I think she believes me that I did it the date correct.

THE COURT :

Your last question was what? Could it have been March twenty-first (21st) or what?

VALERY FABRIKANT :

I asked her whether she called security and I said that now I can help you in pinpointing the time, that's all. So we pinpointed the time, it's March twenty-first (21st).

Q. In your agenda you have March twentieth (20th)...

Me JEAN LECOURE :

We are not looking at the same document.

THE COURT :

Would you show the document to the Crown prosecutor that you referred to?

VALERY FABRIKANT :

He's seen this document.

Me JEAN LECOURE :

I would like to see it.

VALERY FABRIKANT :

Sure, this is not a secret document.

Me JEAN LECOURE :

Okay, I found it, thank you.

VALERY FABRIKANT :

Q. Is there any reason why Mr. Haines could not himself call security and do what you did? Why was it necessary to do it that way? Mr. Haines was at Loyola and allegedly I was at Loyola, all he had to do is to just make five steps because he is exactly where security is...

THE COURT :

There is not point asking the witness why Mr. Haines did anything, you may have to direct that question to him.

VALERY FABRIKANT :

Q. Anyway, you didn't ask Mr. Haines why he didn't call security? This is the right question.

A. No, I did not.

Q. You didn't ask, okay. So you called security, Rector was safe from me, but you in your agenda had three p.m. (3:00), March twentieth (20th) and it's written Grendon Haines.

A. Uh, huh.

Q. Maybe something happened on March twentieth (20th). Try to recall, I maybe you got this information on March twentieth (20th) rather than March twenty-first (21st).

A. March the twentieth (20th), and here I don't again precisely recall, March the twentieth (20th) may have been the afternoon where Mr. Haines and I went from his office to consult with a psychiatrist at the Adler Institute.

Q. Say it again. March twentieth (20th) you and Mr. Haines did what?

A. I don't know, I think it was but I don't know, where we went to see a psychiatrist, or psychologist, I didn't make the arrangements, at the Adler... Adler Institute, I believe. It's not marked in my agenda but I think it was that day.

Q. Well anyway, because this is something new and something interesting. So you two went to Adler Institute, what is it Adler Institute? Never heard about it.

A. It's an institute for the study of psychology or whatever Adlerians do, psychology, psychiatry.

Q. Where is this institute located?

A. I don't remember where it was.

Q. Okay, just...

A. It's somewhere...

Q. ...in general what part of Montreal is it?

A. I think in... I can't remember. Mr. Haines and I went there.

Q. Okay. How did you go? Someone had to drive you there?

A. I think we took a taxi, to the best of my recollection, although we may have driven.

Q. Okay. Who did you see there?
A. A psychiatrist or psychologist, I'm not sure.
Q. Okay, do you remember the name?
A. No, I don't.
Q. You didn't mark in your agenda at all who you met there?
A. No.
Q. How was it? You just came there and asked: Hey, who is free here to talk to us?
A. Mr. Haines had made the arrangements for that visit.
Q. Okay. So probably he knows the name of the person. Okay. And what was the conversation about?
A. The conversation was about, if indeed it took place on that day, about how he would assess an individual who had made the kinds of statements, not threats but statements that you had, who seemed very agitated about his treatment in the university, and did we have a right to be concerned, are we right in being concerned about such behavior.
Q. May I ask you why you don't call it a threat if someone says that in order to get what you want you have to go and shoot a lot of people, and this is what I'm going to do, and you don't call it a threat? Could you explain that semantics?
A. I have indicated and testified here today that I do not specifically remember you saying those words. I remember being left with the impression that you would.
Q. Oh, oh, now it's getting even funnier. So now you... even the first part of your statement take back.
A. No.
Q. Is this correct?
A. No.
Q. Okay...
A. The business about guns and that's how you do things in North America, you said that. As I've already indicated today, what I said on November the twelfth (12th) may have been a mixture of what I had heard and what I... the impression it left with me.
Q. So what part of this you are sure of? Is there any part of the statement...
THE COURT :
No, now you are cross-examining the witness, I am sorry, you cannot do that.
VALERY FABRIKANT :
Well, don't you see it's total absurd.
THE COURT :
Listen, you will not cross-examine the witness unless you have permission to cross-examine the witness at large.
VALERY FABRIKANT :
Fine.
THE COURT :
And you have not.
VALERY FABRIKANT :
You still don't see it, fine. I think you should be interested in, first of all...
THE COURT :
You have my answer, there we are, put your next question.
VALERY FABRIKANT :
All right. Fine.
Q. So you asked that question and what was the answer then?
A. The answer was that indeed we should be concerned that the, and I'm not somebody who's familiar with the language of psychologists and psychiatrists, so I don't even know if I recollect, I don't recollect with any precision the kind of

language that was used. What this individual indicated to us was that there was a great potential for danger.

Q. Let me make it clear for myself. Even in March you couldn't reproduce to this psychologist, psychiatrist, what I said?

A. Pardon me?

Q. In March you still could not reproduce to this psychologist, psychiatrist, what I said?

THE COURT :

That is not what the witness said.

VALERY FABRIKANT :

Well, that's what I'm trying to clarify.

THE COURT :

What the witness, if I understood correctly, what the witness said was: I don't know the jargon or the lingo these people speak. I can recall that we were told that we should be concerned, there was great potential for danger, but I don't know in what terms...

Q. Was that what you meant?

A. Uh, huh.

THE COURT :

...in what terms the person put it.

VALERY FABRIKANT :

Q. But you repeated to him my words at that time precisely or at that time you also were not sure what exactly I said?

A. I repeated whatever it was I recollected at that time of the conversation that I had had with you. Grendon Haines repeated what he said.

Q. Well, so could you recollect what exactly you repeated?

THE COURT :

I am sorry, you cut the witness off again.

Q. You said what?

A. Mr. Haines transmitted the comments that he had heard from you as well.

VALERY FABRIKANT :

Q. Well, could you repeat to the best of your recollection now what was transmitted to those psychologists, psychiatrists?

A. I cannot remember, I'm assuming that what I said was comparable to what I had said, that there was reference to the use of guns, if you were, in North America for getting what one wanted.

Q. This phrase never looked to you absurd?

THE COURT :

You are cross-examining the witness again, the question is disallowed. So we will adjourn until tomorrow morning nine thirty (9:30).

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,,

PROVINCE OF QUEBEC

DISTRICT: MONTREAL CITY: MONTREAL

CASE NO: 500-01-017372-928

TRIAL

PRESENT: HONOURABLE MR. JUSTICE FRASER MARTIN, J.C.S.
(AND AN ENGLISH JURY)

THE QUEEN

vs

VALERY FABRIKANT

APPEARANCES: Me JEAN LECOIRS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: June 4th, 1993

GS: 1371 FILE: 2613

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CONTINUATION JUNE 7TH, 1993

(THE JUDGE TAKES THE BENCH)
(THE JURY TAKES THE BENCH)
(DISPENSE WITH THE CALLING OF THE JURY)
(ALL ARE PRESENT)

CATHERINE MCKENZIE
July 5th, 1948, Assistant Professor, Art
History
(Address confidential)
DULY SWORN

EXAMINATION BY THE ACCUSED: (CONT)

Q. Okay. Do you want to get your file back, please.
A. And I have some additional material that I brought in

from the office of the Rector.

Q. This is extremely interesting material indeed.

BY THE COURT:

No, read it to yourself.

BY THE ACCUSED:

Q. Okay. We ended yesterday at the moment when you called the security to escort the Rector, (inaudible) Rector, from Loyola campus. Do you know where was I at that time?

A. No.

Q. So maybe I was waiting to kill him at...

BY THE COURT:

That question invites speculation. The answer to your question was, no, I don't know where you were at the time.

BY THE ACCUSED:

Well, so I am asking wasn't it interest to escort him to Sir George campus? Maybe I was right there waiting for him. Did you check it?

A. To the best of my recollection, we locked the doors into the area of the Rector's office.

Q. Well, but during transportation, during transportation you didn't even check where I was?

A. I have said I don't know where you were.

Q. One irrelevant thing, I tried to listen to the tape.

It's absolutely impossible. So even if possible, put this microphone as close to you as you possibly can and please talk to this microphone again as close as you can, because the tape was totally unworkable, which is very important.

BY THE COURT:

Madame Desrosiers, would you check to see if that tape is unreadable from yesterday. And would you have them verify that Mrs. McKenzie's words are being recorded.

BY THE ACCUSED:

Well, the microphone is fine. It's just the way she talks.

Q. So you didn't check it, but the Rector was saved anyway. What happened next?

A. According to my chronology, the next major event was a letter from Dr. Kenniff to yourself regarding a number of matters that you had raised concerning your treatment by the Department.

BY THE COURT:

Q. When was that, Mrs. McKenzie?

A. March twenty-third (23rd), nineteen eighty-nine (1989).

BY THE ACCUSED:

Okay.

A. This letter having been given to Dr. Fabrikant this morning.

Q. Okay. Could you summarize the contents of that letter? What was the advice to do in this letter?

A. Dr. Kenniff indicates the procedure which he wishes you to follow concerning allegations that you had made concerning questionable publishing endeavours, asking you to meet:

"... accompanied by Mr.
(inaudible)... with the colleagues
involved for the purpose of
discussing and, if possible,
resolving differences of opinion

concerning the history of your joint publications and research grant application. If the above does not lead to a resolution, or should a meeting with your colleagues not appear to be an acceptable approach, you should officially address your complaints along with the substantiating evidence either to Dean Swamy or to the Administrator of the Code of Conduct, non-academic, and request an investigation."

It goes on to indicate that:

"You have been told a number of times that we cannot deal with verbal allegations and that it is not considered appropriate for anyone to question verbal the professional integrity without being prepared to document the situation."

Then it goes on to indicate that he was convinced that:

"The Department Personnel Committee followed due process with reference to the application for early promotion to research professor."

And the letter concludes:

"It is my strong conviction that in the course of discussing with your colleagues, both the issue of research collaboration and the status of your request for early promotion, you will come to recognize they have high regard for your accomplishments and are positively disposed towards the eventually of your integration into the (inaudible) faculty."

Q. Okay. Would you kindly confirm that in addition to this letter I was again advised very (inaudible) that if I do write I most probably will lose my job. Would you confirm that?

A. No, I cannot confirm that.

Q. Okay. I did not write, but though I have presented material which even for a person absolutely outside any science would look very, very convincing at to my first accusation...

BY THE COURT:

Are you asking a question, Mr. Fabrikant, or...

BY THE ACCUSED:

Yes, I'm asking a question.

BY THE COURT:

Well, ask the question.

BY THE ACCUSED:

Q. Did I, or didn't I present material so convincing of this fraud at the university that you and the Rector on their own initiative should start an investigation?

A. You presented evidence which as I have indicated perviously was not convincing in any way, shape or form.

Q. All right. Let us... I would like to show it to the jury

with an explanation what it is, and I think for a person who has nothing to do with science it would be absolutely clear where do you stand.

BY THE COURT:

Mr. Fabrikant, you asked the question. The answer you got was the evidence was not convincing in any way, shape or form. Now, we are not...

BY THE ACCUSED:

Yes. At this stage I would like...

BY THE COURT:

No, you will not though this witness. You will not cross-examine this witness.

BY THE ACCUSED:

I'm not cross-examining.

BY THE COURT:

Yes, you are.

BY THE ACCUSED:

I just want to show to the jury...

BY THE COURT:

My decision is that if you go through this routine with this witness, this amounts to cross-examination of this witness, and it is not permitted.

BY THE ACCUSED:

Okay.

BY THE COURT:

That is the decision.

BY THE ACCUSED:

Okay.

Q. Do you recognize the article which was submitted to you? Do you recognize it, this article?

A. Yes.

Q. Okay. Now, did you look through this article, according to my notes, what exactly I presented?

A. Yes.

Q. Okay. Now, did you see that the article is written in my handwriting, except for here the names, who are the authors is written by another handwriting. Is that clear? Was that clear to you at the time?

A. Yes. I guess.

Q. Just the name of the authors...

A. I'm not a handwriting expert.

Q. ... for some reason it is written by somebody else. And did I tell you who this somebody else was?

A. To the best of my recollection, yes.

Q. Yes. Who was that?

A. Dr. Sankar.

Q. Yes.

BY THE COURT:

I don't think you need to keep bending forward.

A. Oh, sorry.

Q. If you just talk as loudly as you can, because you'll tire yourself out doing that all day.

BY THE ACCUSED:

Well, is the result a good recording, and it is important.

BY THE COURT:

I'm having the recording checked. It's all important.

BY THE ACCUSED:

Yes.

Q. And after that, I also indicated to you that the contribution of D.S. Sankar, here, was in changing just

some words here, here, here, which... again, let us just read the text, and it will be clear...

BY THE COURT:

Excuse me, I'm not at all clear what you're doing. I ruled that you had the witness' answer, that it was not convincing in any way, shape or form. That is the answer of the witness.

BY THE ACCUSED:

Yes.

BY THE COURT:

Now, are you attempting to contradict the witness? What are you attempting to do?

BY THE ACCUSED:

I'm attempting to clarify her answer. That's all. I'm not contradicting her.

BY THE COURT:

Her answer is perfectly clear, and this whole...

BY THE ACCUSED:

Well, I want to just go in a little bit more detail.

BY THE COURT:

This whole line of questioning is of the nature of a cross-examination and it is not permitted.

BY THE ACCUSED:

Well, I just want to know what part... how did she look at it, and what part of the...

BY THE COURT:

You have the witness' answer. The witness' answer was: to me it was not convincing in any way, shape or form. That is the witness' answer. To go further is to cross-examine the witness and is to challenge the conclusion the witness came to.

BY THE ACCUSED:

I am not challenging.

BY THE COURT:

That you are not doing.

BY THE ACCUSED:

I'm not challenging. I'm just asking what procedure did she follow. Period. Nothing else. Maybe she is absolutely right.

BY THE COURT:

Limit then your questions to that. But your questions are now veering toward cross-examination from where I'm sitting.

BY THE ACCUSED:

Well, you are very scared that it will be obvious that the witness is lying.

BY THE COURT:

Would you put that... would you write that down, again. Would you remove him from the courtroom, please. We'll adjourn for fifteen (15) minutes.

(THE JUDGE LEAVES THE BENCH)

(THE JURY LEAVES THE COURTROOM)

SHORT RECESS

(OUT OF THE PRESENCE OF THE JURY)

(THE JUDGE TAKES THE BENCH)

(THE ATTORNEYS AND ACCUSED ARE PRESENT)

BY THE COURT:

If that scene has to be repeated, it will be repeated. But I told you the other day and I'm deadly serious that I am sick and tired of listening to your insults. I don't propose to tolerate it any longer. I propose to deal with you for every one. And, in fact, the last one that you mentioned, you will be dealt with as soon as I have the exact words from the recording. I'm not going to put up with this any longer. I told you the other day that when I ruled I ruled. I don't give a tinker's damn whether you like the ruling or whether you don't like the ruling. When I rule, I rule. If I am wrong the Court of Appeal is there to correct me.

BY THE ACCUSED:

Well, you shouldn't be that wrong as you are, because you are biased.

BY THE COURT:

I don't wish to hear from you at the moment. You have your opinion and if you think I am biased, you can take your complaints to the seventeenth (17th) floor in due course if you need to. But when I say that it's cross-examination and that it is prevented, you will stop. And if you don't stop, you will be removed. If you argue with me you will be removed. I am prepared to listen to you put forward your point. I listened to you put forward your point. I'm prepared to let you go one or two more questions to see whether indeed you are not attempting to cross-examine the witness, although it is my distinct impression that you are. You will be permitted to go your next couple of questions till I'm certain. But when I decide to stop it, I will stop it, and you will respect that.

BY THE ACCUSED:

Okay. What is the definition of cross-examination so that I would know whether I am cross-examining or whether I am not? Could you be so kind to give me the details.

BY THE COURT:

If, Mr. Fabrikant, you respected the rules and did not put leading questions to the witness, you would be perfectly clear in your mind as to what is cross-examination, or what is not. Leading questions, while not themselves cross-examination are of the nature of cross-examination because they are the instrument that is used in cross-examination. But cross-examination is when you commence to put into question, either directly or indirectly, and to challenge, either directly or indirectly what the witness has said. The witness' answer was clear. You may not like it, you may not agree with it, but it was clear.

Now, if my reading is correct, what you were attempting to do is, through this witness, convince the members of the jury that the witness' conclusion is unreasonable. That is done by means of cross-examination. That is cross-examination. And that is what I said you may not do.

BY THE ACCUSED:

Well, in the Canada Evidence Act, as far as I understand, it's written that I cannot... I cannot undermine the credibility of my witness by evidence of general bad character.

BY THE COURT:

That's the Canada Evidence Act.

BY THE ACCUSED:

Yeah. But...

BY THE COURT:

There is more to the law than the Canada Evidence Act.

BY THE ACCUSED:

I'm not doing this. I'm not introducing evidence of bad character.

BY THE COURT:

That's right. What you are doing, though, is cross-examining your own witness, and that you may not do.

BY THE ACCUSED:

Well, but it is written...

BY THE COURT:

Except in... except in the instances which are specified in the law which are exceptions to the general Common Law rule. But you may not question the credibility of the witness that you produce.

BY THE ACCUSED:

Well, I can question credibility if the witness is saying absolutely something outlandish, something totally wrong. This is the case where...

BY THE COURT:

You may not. You may prove by others that the opposite is true, but you may not put in question the credibility of your own witness.

BY THE ACCUSED:

Well, I can ask questions which would lead by themselves to the fact that the witness is either untruthful, or unreasonable, or adverse in any sense.

BY THE COURT:

I'm sorry.

BY THE ACCUSED:

This I can do, and this is what I am doing.

BY THE COURT:

This you cannot.

BY THE ACCUSED:

How on earth then do I get to prove the witness is adverse, or...

BY THE COURT:

The witness is not here to prove, or to be an instrument through which you prove that she is adverse. The witness is here to answer questions...

BY THE ACCUSED:

Yes.

BY THE COURT:

... within the course of answering direct questions from you.

BY THE ACCUSED:

Well, if the witness obviously answers something which is not true... you cannot imagine... you are not that naive to think that the person who was an associate, well, executive assistant to the director, would be saying something in my favour? You are not that naive, are you? You agree with me?

BY THE COURT:

Be very careful. Be very careful.

BY THE ACCUSED:

I don't think...

BY THE COURT:

You are right on the edge again. This is not a university here. I am not required to be told I'm naive, or to have the suggestion made I am naive, or to have my intellect questioned by you. Now, I am telling you what the rule is.

BY THE ACCUSED:

I know what the rule is.

BY THE COURT:

The general rule, I cite. The general rule against impeaching the credit of one's own witness is as stated in Buller's (inaudible) and is quoted by Lord Benman. We go back to eighteen thirty-three (1833), and the rule is still in force:

"A party never shall be permitted to produce general evidence to discredit his own witness, for that would be to enable him to destroy the witness if he spoke against him, and to make him a good witness if he spoke for him."

BY THE ACCUSED:

Beautiful. I'm not doing any of those.

BY THE COURT:

Let me decide...

BY THE ACCUSED:

I am not producing general evidence...

BY THE COURT:

Let me decide... let me decide what you are doing.

BY THE ACCUSED:

Well, I am not doing this. General evidence means evidence just of bad character, that person is just a liar.

BY THE COURT:

No, it doesn't.

BY THE ACCUSED:

This is what general evidence is.

BY THE COURT:

No, it doesn't. No, it doesn't.

BY THE ACCUSED:

Well...

BY THE COURT:

And we're talking about general evidence of bad character.

BY THE ACCUSED:

Well, what is general evidence?

BY THE COURT:

We are talking about contradicting one's own witness. Now, if you can't get your mind around that, that's too bad.

BY THE ACCUSED:

Okay. What is the definition of general evidence then? This is not general evidence what I was producing. It was specific evidence. It was not general evidence.

BY THE COURT:

You have the witness' answer on that point. Now, you are not going to cross-examine Mrs. McKenzie on that question.

BY THE ACCUSED:

I'm not cross-examining her. I'm just going in a little bit more detail.

BY THE COURT:

I said you may go one or two more questions until I satisfy myself in my mind that your questions are legal, or they are not. And when I decide they are not, you will stop if I tell you to stop. And we will not have an argument about this.

And, furthermore, to answer your other observation, the witness is not here to be used and tinkered with as an instrument until you finally find what you think can be arguably called an inconsistency between one response and another and then force me to listen every five minutes to the claim that you seem to have on your... the desire that you seem to have fixed in your mind that you must generally cross-examine this witness.

BY THE ACCUSED:

Of course, I mind, because she was the most instrumental...

BY THE COURT:

Well, you're not going to be allowed to use the witness in this sense. You are going to put your questions to the witness, whether they deal with sensitive areas, or whether they do not deal with sensitive areas, and the witness will respond. And don't turn to me every time you think that you have caught the witness in some minor contradiction with the manner in which you do it, attempting to make me look like some sort of fool by telling me I'm the only person in this courtroom who is unable to see what the witness is doing. It may be I am the only person in this courtroom who is unable to see what the witness is doing, if your consensus is right. But I'm the one that gets to call the shots.

BY THE ACCUSED:

Well, it's the way you should...

BY THE COURT:

So that's the way...

BY THE ACCUSED:

... but don't put yourself in that kind of position.

BY THE COURT:

That is the way it is going to be.

BY THE ACCUSED:

Well, this is not my fault that you look the way you mentioned you looked.

BY THE COURT:

Listen, my friend, I am telling you, I am the one that has the right to decide whether the witness is evading the question or is not. And you are not going to convince me by some little contradiction that you managed to manufacture. Lawyers have staged/managed this sort of things for years.

BY THE ACCUSED:

I managed to ...

BY THE COURT:

Just a second, I'm speaking to you. Lawyers have played this trick for years. It's the same sort of argument as you indulge in the university. I went there, too. I happily didn't stay. But I went there, too.

So you will... I'm sorry, but I will run this trial, and you will respect these rulings, and if you don't respect these rulings, it's two things. Your examination of the witness will be terminated, and if I have another instance of you insulting me as you did, and making the sort of comments against me that you do, you'll go

straight out that door as you did the last time.

BY THE ACCUSED:

Now, tell me one thing. Is the guard allowed to use physical force when I am not resisting...

BY THE COURT:

If I ask a guard to remove you from the Court, she will remove you from the courtroom.

BY THE ACCUSED:

But I'm going myself. She has to push me and pull me?

BY THE COURT:

She will remove you from the courtroom if I ask her.

BY THE ACCUSED:

When I leave... you answer my question, please.

BY THE COURT:

She will remove you...

BY THE ACCUSED:

Is she supposed to use physical force when I'm not resisting.

BY THE COURT:

You heard my answer. If I ask her to remove you from the courtroom, I presume she will remove you from the courtroom.

BY THE ACCUSED:

So what does it mean? If I am going myself, she still has to push me?

BY THE COURT:

I am not negotiating with you...

BY THE ACCUSED:

I am not arguing with you, either.

BY THE COURT:

... your exits and your entrances, Mr. Fabrikant.

BY THE ACCUSED:

But you should be ashamed of what you are doing and what you're permitting guards to do.

BY THE COURT:

Mr. Fabrikant, there is one very recent way for you to see this devolve in an orderly manner. It is to behave. It is that simple. And you don't behave. You have not behaved from the beginning. And, I'm sorry, I am not going to put up with it any longer. I don't need that sort of difficulty. I have enough problems with this trial, without having to worry about your behaviour and the way this trial looks and the manner in which justice is administered generally in this country. I have enough on my plate without having to worry about that.

BY THE ACCUSED:

It is not I who did this circus. It's you who did it.

BY THE COURT:

Mr. Fabrikant, you...

BY THE ACCUSED:

This is a monkey trial, and you know that.

BY THE COURT:

... you, you are the one who failed to do what you were told. You are the one who threw at me an insult that ran along the lines "you're so scared that the witness will be caught lying." That is not permissible.

BY THE ACCUSED:

Well, this is...

BY THE COURT:

That is contempt of Court.

BY THE ACCUSED:

Well, this is an insult when it is not true. I agree with you. But this is true...

BY THE COURT:

Mr. Fabrikant..

BY THE ACCUSED:

... so therefore it is not an insult.

BY THE COURT:

... you then exercise some restraint and keep your perceptions for the Court of Appeal. Please don't treat me to them, because treating me to them in here adds up to contempt of Court, and that's what you did and that's what you'll be dealt with. And I'm not going to put up with it any more.

The jury, please, Mr. ...

BY THE ACCUSED:

You just realize that this is a two way and as long as you do not break the law, I...

BY THE COURT:

Mr. Fabrikant, you are not here to judge me.

BY THE ACCUSED:

Well, I'm a free person in terms of...

BY THE COURT:

Mr. Fabrikant, be quiet.

(MEMBERS OF THE JURY TAKE THE BENCH)
(DISPENSE WITH THE CALLING OF THE JURY)
(ALL ARE PRESENT)

CATHERINE MCKENZIE
UNDER THE SAME OATH

EXAMINATION BY THE ACCUSED: (CONT)

- Q. So, on April third (3rd), according to this paper you have received from Grendon Haines certain material submitted by me as a proof of fraud in Mechanical Engineering. Correct?
- A. I received a fax from Grendon Haines saying that this was given to Grendon by Dr. Dr. Fabrikant on Friday.
- Q. Did he tell you why I gave it to him?
- A. He did not need to, because I had seen this material before. You had showed it to me.
- Q. All right. But you looked at it through, with me?
- A. Yes.
- Q. Okay. You noticed on the first page of this material that the names of authors are written by Sankar, and the rest of the article is written by me? Did you?
- A. That is what you alleged.
- Q. Yeah. But did you notice that the handwriting was different in this?
- A. There were different handwritings in the material.
- Q. Okay. And the names of the authors were written in a different handwriting from the rest of the article?
- A. They appear to be.
- Q. And in the same handwriting, you did, or didn't you notice certain changes were made in the text, like, it is written "three-dimensional ones", and instead of ones, there was the word written problem, "three-dimensional problems". Did you notice this change?
- A. Yes.

Q. The next change was, original text was: two-dimensional problems was discussed by Barbara", and corrections were "two-dimensional problems were discussed later by Barbara"?

A. Yes.

Q. You noticed that change also? In the original text it was written "first of all" and the corrected text reads "at the outset".

A. Yes.

Q. And that was all what was correct on the first page, if we can use the word corrected. On the second page, the only thing which was changed was the word "whole" . It was changed by the word "entire". Did you notice that?

A. Yes.

Q. And on the third page the changes were the following. A definite article, "the" was introduced between two words?

A. Yes.

Q. The word "deals" was changed by the word "yield".

A. Yes.

Q. The definite article "this" was changed by an indefinite article "an".

A. Yes.

Q. The word "analogous" to "previously given". The word "one" was introduced. It reads now "analogous to the one previously given."

A. Yes.

Q. And below "the normal displacement of the boundary" an addition was made "are to be determined". And instead the original phrase was "determined the normal displacement of the boundary". And the correction version reads "the normal displacement of the boundary had to be determined". Now, and at the last line, original text read "the result should be expected" and the correction is "the result is evident." Do you notice that?

A. Yes.

Q. Okay. And on the next page the word "formula" was changed by the word "solution".

A. Yes.

Q. And the wording "these stresses", the words was written "stresses" vanish. And the wording "these stresses" was changed by "they". And "all the properties stay for an arbitrary load", and the correction is "may all the properties stay the same for an arbitrary load", "the same" was introduced. And below the wording "acting in opposite directions", was replaced by the word "opposite force". That's all. On the next page, now. Yet on another page we have what was the original text "shows" and the correction is "indicates". No correction in any formulas was noticed so far. No correction on the next page.

And to save our time would you agree that there is no correction of any formula in any of the pages presented. Is that correct?

A. I would agree.

Q. And all the corrections which are made it is definite articles, indefinite articles, or a substitution of a word by its synonym. Would it be a correct characterization?

A. Yes.

Q. It is. Okay. After that... after that you also received

material from Dr. Osman's application for a grant. Did you?

A. Yes.

Q. All right. What was I claiming in this one?

BY THE COURT:

Q. Can you situate this in terms of time, please?

A. The actual material from Dr. Osman?

Q. Well, I don't know, he said after that. I don't know how long after that, whether we're talking a month, two months, or...

A. Oh, sorry. It's attached to the same file. That's what he means by after.

BY THE ACCUSED:

After means not in time. After means just in the same pile of documents.

BY THE COURT:

I see. Okay.

BY THE ACCUSED:

Q. So, what did I claim in the next documents submitted to you?

A. What... you presented some quotations from his nineteen eighty-six (1986) FCAR application, which describes what he did between eighty-two ('82) and eighty-five ('85), and what he was going to do in eighty-six ('86), eighty-nine ('89). Then you compared this to the same for the years nineteen eighty-five (1985) to nineteen eighty-eight (1988), and eighty-nine ('89), ninety-two ('92), respectively.

Q. And what did I claim there?

A. That there were a number of parallels, a large number of parallels and passages.

Q. Could you be more specific, what do you mean by parallels?

A. That he seemed to be describing the same kind of work being done.

Q. Would it be more precise to say that it is just exactly the same wording, not just a parallel. He just took the application for a grant from one year, made a cut and paste, put it at on another application and send it and got governmental money. It is this what I was claiming?

A. There's no reference in any material to whether he got money for these grants or not.

Q. Well, there is no reference to material, but do you know that a grant application... maybe you could explain to the jury this grant application, what is it? It is a document which is submitted to who and for what purposes?

A. In this case I gather it would have been submitted to FCAR...

Q. FCAR.

A. ... FCAR for the purposes of obtaining funds...

Q. Okay.

A. ... to do research.

Q. Okay. So this is the document which a researcher writes, submits to governmental agency, and in exchange for the document he gets money. That's correct?

A. Yes, they determine that his research project is viable.

Q. Yes. All right. And in this document, effectively what a scientist is supposed to write, the main part? Would it be correct to say that first he must say what he did so far, then he has to say what he intends to do...

A. Uh, huh.

Q. ... and then how much it would cost?

A. Yes.

Q. That's effectively what a grant application is?

A. Uh, huh.

Q. Now, what was my (inaudible) with respect to this grant application, that he described what he did so far in eighty-two ('82), eighty-five ('85), and eighty-six ('86), eighty-nine ('89)...

A. Uh, huh.

Q. ... he described exactly the same thing. Correct? That was my contention?

A. Pretty much...

Q. Okay. And what...

A. ...in that the wording was not identical.

Q. And what he planned to do for the year eighty-two ('82) to eighty-five ('85) was exactly the same thing what he planned to do for the year eighty-six ('86) to eighty-nine ('89). Is that also correct?

A. It would appear to be, yes.

Q. Yes. So if a scientist submits an application and promises to do some job during eighty-two ('82) to eighty-five ('85) and then in three years after that submits exactly the same application, does it mean that he didn't do any job during this three years and he wants to get yet another money for exactly the same proposal? Is this a logical conclusion?

A. There are a number of logical conclusions you could reach.

Q. He may not have got the funding in the first FCAR application. I don't know that. This is taken out of context. I don't know at which point these segments appear in either sets of applications.

Q. Well, but each...

A. And, in addition, FCAR has juries that follow these applications through the years.

Q. I'm sorry, you are not answering my question. My question was, if a scientist submitted an application, and you could easily check that he did get the money, and three years after submits exactly the same application, and again gets the money, then probably something dishonest is being done.

BY THE COURT:
Is that a question?

BY THE ACCUSED:
Well, I'm... okay. I will reformulate...

BY THE COURT:
Because the question is disallowed.

BY THE ACCUSED:

Q. Did I inform you simultaneously that, yes, he did get money all this time? He did get money...

A. I don't recall you informing me of that. But you may have.

Q. Okay. And if a scientist submits one application and gets money for that, and submits then exactly the same application, which means that he didn't do anything all three years, just spending this money, does this in your mind create the impression that something dishonest is being done in the Department?

A. No.

Q. No. Would you care to elaborate why, no?

A. Yes, I would care to elaborate. As I said before, these

are not the full applications. I don't know what sections they're taken from in relation to that. I also realize that FCAR has its own system for evaluating the validity of research projects. I do not imagine that they give out money on a regular basis to people who are doing the same thing all the time.

Q. Well, do you really think that this jury remembers three years from now what Dr. Osman wrote three years before?

BY THE COURT:

That is purely speculative. How can she speak as to what the jury does or doesn't.

BY THE ACCUSED:

All right. I will change the words.

Q. Do you find your objection that the jury is in charge there valid taking into consideration that three years has passed, and the jury might have changed, and the jury does not have to remember what was in previous applications? So do you consider your objection valid in view of all this?

BY THE COURT:

Look, first of all, your question contains a number of elements which haven't been proved. Secondly, your question is in the nature of cross-examination. The witness gave you an answer. She said, first of all, the things are out of context, (b) I know that FCAR has a method of policing their grants, and (c), I don't know what the nature of each application is. She gave you the answer. Now you're attempting to discredit the witness' answer.

BY THE ACCUSED:

No, I'm just going into more detail again. That's all.

BY THE COURT:

But you're not going to discredit the witness' answer by going into more detail.

BY THE ACCUSED:

How do you know that I am going to discredit? Maybe I want to enforce her answer.

BY THE COURT:

Well, let's say that I devine that that's what you're attempting to do. Let's just say that.

BY THE ACCUSED:

Let us wait for the answer, and we'll see. Maybe...

BY THE COURT:

Well, the last question... the witness... the last question is purely speculation.

BY THE ACCUSED:

No.

BY THE COURT:

Furthermore, it's cross-examination.

BY THE ACCUSED:

All right. I will change the question.

Q. Was my contention, at least, that Osman got money several times for the same grant application, that he didn't do any work which he promised to do, and if someone comes with such... okay. First of all, was this my contention at that time?

A. That contention sounds familiar. Whether it was at that time, I don't know. I do remember you indicating that...

Q. Well, that at some time I raised that question.

A. ... Mr. Osman did not understand what you were submitting.

Q. No, no, he understood perfectly what...
BY THE COURT:
Would you stop arguing with the witness, Mr. Fabrikant.
BY THE ACCUSED:
Okay.

Q. It was not my point that he did not understand what he was submitting. I never said... did I ever said that he did not understand?
BY THE COURT:
I'm sorry. This has degenerated again into a combination of argument, cross-examination, and testimony. Furthermore... furthermore, you got into this area by attempting to establish that you had been subjected to a certain treatment by the University. Getting into the nature of your complaints against Osman is very, very far from what you are permitted to do when this line of questioning was authorized.
BY THE ACCUSED:
Well, it is... may I explain? It is related because the treatment which I was getting there was based on two things. One, that I refused to include Sankar and other people into my papers, and second, it was their fear that I knew too much and I might be tempted to disclose this information. So this is the second part, and this is just an explanation why I was treated the way I was treated.
BY THE COURT:
Well, please spare us the explanations why. Get to the second part, if that's what you want to do.
BY THE ACCUSED:
Yeah. I'm just explaining to you the second part is relevant, too.

Q. So that was my contention, and I brought to you copies, parts of eighty-two ('82) to eighty-five ('85), and eighty-six ('86) to eighty-nine ('89) applications. And you could check that they are word-per-word, not part of... they are exactly the same word-per-word. You checked it? It was?

A. I checked part of it.

Q. Yeah. It was word-per-word?

A. In certain sections, yes.

Q. Yes, it was word-per-word. Seeing all this, you still didn't feel it necessary to question any of them as to my contention?

A. I may have asked or mentioned to them that you were making such allegations. I was not going to ask them whether it's true, because you had not put them in writing as you had been urged to do over and over again, so that a formal investigation could be initiated.

Q. I'm not sure I understand. You did, or you didn't question those people concerning my allegations?

A. I most certainly did not.

Q. You most certainly did not. You did not because you found it all non-convincing?

A. Dr. Fabrikant, even if I had found it convincing, the University would not proceed, as you were informed, to investigate allegations against faculty members unless these were put in writing.

Q. Well, you knew very well that I was advised. Did you or didn't you know that I was very tacitly advised that if I do put it in writing, then most probably I will lose my

job? But, of course, you are not aware of it, are you?

A. I am not. I do remember, recall saying to you that if you continued to make these allegations without putting them in writing, that it might be possible that your colleagues would bring legal action against you.

Q. But it was not about the administration and my work, no?

A. I don't understand your question.

Q. I'm asking, this is the only thing which you mentioned. You never said that my work is unsecure, and I still depend on these people for the continuation of my contract and, therefore, I have to think very well before I'm writing anything?

A. No.

Q. It was very diplomatic stuff, no?

A. No.

Q. No.

A. I may, it's possible. It would be a reasonable thing to say that you'd better be clear on what your allegations are.

Q. Well, it never crossed your mind to say that if this is true, don't be afraid to write it. The Rector is on your side. He will investigate thoroughly. If this is true, you have nothing to fear. Did you ever say something like that to me?

A. I don't recall precisely how I told you repeatedly that the only way your allegations could be dealt with would be to put them in writing.

Q. Exactly.

A. I would not have said that the Rector would be behind you, because the Rector would not be behind anyone. The Rector would be objective until the completion of an investigation.

Q. Well, how one should understand the wording that, you have to be careful because your work depends on exactly the same people you want to complain on?

A. Those are your words.

BY THE COURT:

Well, what are you doing there? What are you attributing these words to?

BY THE ACCUSED:

Q. You never said anything like it?

A. Not to my recollection.

Q. Ah. Now was the Rector informed when he was escorted from the Loyola campus that it is Fabrikant who made an attempt on his life, or something like that?

A. No.

Q. How was it explained to him?

A. I explained to him that you had called and said, as I recollect Grendon saying, that you were going to get Dr. Kenniff.

Q. Okay. And again, in all cases, when I say I'm going to kill a lot of people, for some reason you didn't ask me any clarification, like what do you mean by that? And when I allegedly said that I'm going to get the Rector, to the best of your knowledge, Mr. Haines, also, didn't bother to ask me, what exactly do you mean by going to get the Rector? Was it like this?

A. As I explained yesterday, it was very important in my mind to have someone who you seemed to work reasonably well with, who you seemed to trust, would basically keep us informed of the situation. So I did not certainly

Q. speak to you about anything that Mr. Haines had said to me. It is my understanding that Mr. Haines, however, did speak with you about the use of violent terminology, and how that was counter-productive to your interests.

Q. He did speak with me. It's interesting you asked him.

A. That's my understanding.

Q. Okay. But you, could you explain why you didn't ask me to clarify any of those statements you attribute to me?

A. The statement concerning the fact that you had discovered that's the way North Americans got what they wanted, was to use guns and shoot a lot of people, no, I did not ask you for an explanation of that.

Q. Can you explain why not?

A. Because I was frightened.

Q. You were, what, frightened for yourself?

A. I was frightened.

Q. Frightened for yourself?

A. I don't know if I was frightened for myself, or who I was frightened for, but I was frightened.

Q. Well, if you were frightened, why you did not react, at least informing the Rector about it? Yesterday you said you didn't bother even to inform him?

A. I did not say that. I said I can't remember whether I informed him of those exact words. I informed him certainly that I had met someone who disturbed me deeply. I probably did tell him, but I can't remember using those exact words. And he and I talked about perhaps me working with the Director of Security to see what measures we could take to reassure ourselves that you were not, in fact, potentially dangerous. And I did, indeed, go on to work with the Director of Security on those issues.

Q. So at least at the time the Rector was escorted from Loyola, was he given complete information that I am going to buy a gun, that I intend to shoot a lot of people, that I'm going to kidnap him?

A. You have just made a series of statements that I would not recall having been made. You did not make a direct threat in terms of the hostages. You said you either had a gun or were going to get a gun. That's not a direct threat. He was informed of the information that we had.

Q. What... if I said that I am going to get the Rector, this is not a direct threat to you?

BY THE COURT:

No. Now you're arguing with the witness.

BY THE ACCUSED:

Okay.

BY THE COURT:

And your question is in the nature of cross-examination and it's disallowed.

BY THE ACCUSED:

All right.

Q. How would you call a phrase, I'm going to get the Rector. Would you classify it as a threat, or would you classify it differently?

A. I would classify it as a potential threat, but not a direct threat.

Q. What would you... what is your idea of a direct threat? If I say, I'm going to get the Rector, it's an indirect threat. How would it be a direct threat?

A. I said it could be perceived as a indirect threat.

Q. Okay. And what should I have said that you would qualify it as a direct threat?

A. I'm going to get the Rector and I'm going to do something to him. Whatever that might be.

Q. The best of my understanding of the English language, to get means to do something harmful. Maybe I'm wrong. Am I good enough in my English to interpret that if I am saying I'm going to get you, it means that... it's not that I am just...

BY THE COURT:
You've asked the witness what she did. She has told you. You are now cross-examining the witness, and your last question is disallowed.

BY THE ACCUSED:

Q. Okay. What is your interpretation of the English expression, I'm going to get someone?

A. It depends very much on the context in which it is said. I'm going to get someone, can mean all kinds of things. I'm going to get them in trouble. I'm going to embarass them, a whole series of things. That's why I say it cannot be considered to be a direct threat, in my view. It's a potential threat in the context of other information that we had about you.

Q. You never... you never...

BY THE COURT:
The question should have been, how did she perceive it? That's the only question that's legal. Her interpretation of the word is of no importance. But her perception of the words is what, is the only thing that you might have asked her.

BY THE ACCUSED:
Okay. English is not my first language. Maybe I didn't use it precisely.

Q. Did you ever attempt to ask Mr. Haines in what context it was said, how it was said, what was the meaning? Was it a threatening meaning?

A. To the best of my recollection, Grendon and I did have a conversation about that after we put the guards on. And, again, to the best of my recollection, you were becoming increasingly agitated by the fact that you didn't have a meeting, hadn't had a meeting with Dr. Kenniff, and that you left his office, or wherever he had run into you, and said, I'm going to get the Rector. That could, as well, have meant that you were just going to get him and see him. I was not prepared to take that to this calibre.

Q. Well, if the meaning was that I just wanted to have a meeting with him, why was there a need then to call guards and to escort him?

A. As I have indicated, based on the information that I had coming in, my own perception of you, I could not be certain that that is what it meant. I considered it to be a possible threat.

Q. Well, I was arrived there. Why not to ask me?

BY THE COURT:
Mr. Fabrikant, you're cross-examining the witness. We've gone as far as we're going to go on this line of questioning. Move on to something else.

BY THE ACCUSED:

Q. Well, did it ever come to your mind... did it make sense to talk with me directly about all this?

A. Mr. Haines was doing that, as I've already indicated.

Q. He was doing it. And what was the result?

A. To the best of my knowledge.

Q. What information did I give to him? Do you know anything about it?

A. My understanding as to what he talked to you about was the fact that your use of allusions to a language...

BY THE COURT:
Excuse me, this is hearsay, pure hearsay.

BY THE ACCUSED:
I know it is hearsay. I just want to...

BY THE COURT:
Well, the witness is not here to testify as to hearsay.

BY THE ACCUSED:
No, no, let me explain what I am doing because, again, I want to question about her next action. And her next action was definitely influenced by the conversation which she had with Grendon Haines.

BY THE COURT:
Fine. Then the way to put the question is: without telling us what Grendon Haines told you, what did you do? You can put the question to Grendon Haines. That's how you get around that problem.

BY THE ACCUSED:
Well, there must be an explanation why she did this, or why she did that, therefore...

BY THE COURT:
Eventually there will be an explanation, Mr. Fabrikant.

BY THE ACCUSED:
So I need to clarify what was her knowledge of the situation at the time she was trying to do this or that.

BY THE COURT:
No, you don't. Everybody is intelligent enough to follow what... to put all this together in the end when Haines testifies.

BY THE ACCUSED:
Well, it will be...

BY THE COURT:
So you can put your question: without telling us what Grendon Haines told you, what did you do next? That's... that's the right way to do it.

BY THE ACCUSED:
Well...

BY THE COURT:
But you're not going to... you're not going to put in front of a jury a conversation that took place between you and Haines to which she wasn't privy.

BY THE ACCUSED:
No, no, no, no, no, that's not what I am asking.

BY THE COURT:
Well, I don't care what you refuse to say.

BY THE ACCUSED:
I'm asking what was her knowledge... what was her state of mind when she decided do this or do that.

BY THE COURT:
Ask her what she did.

BY THE ACCUSED:
Well, then... then...

BY THE COURT:
Not her state of mind, or her state of knowledge, or

whatever, because if you ask her her state of knowledge, then you're going to, through her mouth, have her relate a conversation between you and Haines, and that's illegal.

BY THE ACCUSED:

Well, it was the same thing...

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

... yesterday it was allowed.

BY THE COURT:

... I have decided. It sometimes is allowed. It sometimes isn't.

BY THE ACCUSED:

Well, I wish I had the wisdom...

BY THE COURT:

I told you yesterday that I...

BY THE ACCUSED:

... to understand the difference. So far I see no difference in those two. And, again, it raises in my mind something which if I say, you are going to explode again.

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

You put me in a bad condition.

BY THE COURT:

... you may not through this witness make proof of what Haines said. It is exactly the same thing as yesterday. Eventually yesterday you stopped having the man read from the notes. You stopped reading into the record the words that were inscribed in the notes concerning who did what at what minute. That was what you were doing. And the effect of the last question to Mrs. McKenzie, is to invite her to relate what Grendon Haines told her about his conversations with you. And that seems to...

BY THE ACCUSED:

Well, during the last...

BY THE COURT:

That you may not do.

BY THE ACCUSED:

During the last hour she was telling us a lot of what Mr. Haines told her.

BY THE COURT:

You are exactly...

BY THE ACCUSED:

And is it not...

BY THE COURT:

You are exactly right. It's not for me to object every time. I try to intervene when it's blatant. The Crown Prosecutor has chosen not to object. That's his position, because I suppose he doesn't wish to see himself objecting every two or three minutes. Am I correct?

BY THE CROWN:

Yes, My Lord. Moreover, all this evidence is a completion of my case.

BY THE ACCUSED:

So...

BY THE COURT:

It shows that Mr. Fabrikant has a motive.

BY THE ACCUSED:

So why would anyone object? I am nailing nail by nail into my coffin. Just let me do it.

BY THE ACCUSED:

Mr. Fabrikant, I'm here, whichever way it works, to see as best I can that the evidence is put in according to the rules.

BY THE ACCUSED:

I'm not putting this as evidence of fact, what Grendon Haines told to Dr. McKenzie. What I am trying to verify at this time, the motives for her next action. That's all.

BY THE COURT:

Well, fine. Put the question and determine what she did, and she'll tell you what she did. You might ask her if she did it as a result of a discussion with Haines. That may be. And give the ladies and gentlemen there the credit for the intelligence of managing to put together the whole story when Haines finally testifies. But don't...

BY THE ACCUSED:

There is nothing wrong if she says what he told her.

BY THE COURT:

You have my decision.

BY THE ACCUSED:

All right.

Q. So what did you do after the Rector was escorted? You said he started cooperating with security. What exactly did you do?

A. Difficulty recollecting in what sequence things moved. I certainly instituted, through the Director of Security, requested from the Director of Security certain surveillance measures, to the best of my recollection, extending outside the confines of the University. There may have been at that time that I asked him to do what he could to ascertain whether or not you had a permit for a gun, whether there had been any police record of violence, previous violence. I can't remember, because I haven't seen stuff on that for a very, very long time. But I stepped in and began to take some actions.

Q. Okay. I think I should refresh your memory at this stage. Let us get the Barnab, file, and we'll try to refresh the memory of the witness. According to the record here you put me on twenty-four (24) hour surveillance. Is that correct?

A. Uh, huh. I don't recall on what date, however.

Q. Well, the date was March twenty-eighth (28th). The alleged threat was March twenty-first (21st)?

A. Uh, huh.

Q. What transpired between those dates? Did you discuss it with the Rector, the necessity to put me on twenty-four (24) hour surveillance?

A. To the best of my recollection, we actually put surveillance on the Rector's home for two or three days, in that intervening period, and then decided that actually the best way to deal with the concerns that we had that did not involve the Rector, but involved a number of other possible individuals, possible victims, if you will, we decided that the best route to go was to put you under twenty-four (24) hour surveillance. I discussed those matters very briefly with the Rector.

The bulk of my conversations took place with Roland Barnab,, who was the Director of Security.

Q. Well, what did the Rector recommend to you to do, to put a twenty-four (24) hour surveillance, to put...

A. I don't believe that he recommended it to me. I think I probably went and said to him, we think that this is the best thing to do.

Q. And he agreed?

A. Yes.

Q. Okay. What was the purpose of this twenty-four (24) hours surveillance? What did you expect to find out about me?

A. I don't think we expected to find anything out about you. We were concerned that you might go to the houses of a number of people, that you might acquire a gun, you seemed to be acquiring a gun... is the kind of, if you will, information that we were seeking.

Q. What was the mandate of the surveillance? What they were supposed to do?

A. I don't remember working out any specific mandate. That would have been Mr. Barnab,'s function. I simply wanted us to know where you were at all times.

Q. Would you please go into more details. What information would it give you where I was?

A. That would inform us that you weren't at, driving around the houses of certain individuals about whom we had some concerns, would inform us as to whether you were purchasing a gun, or purchasing ammunition.

Q. How on earth would you know if I'm purchasing a gun?

A. I assume that people buy guns in gun stores.

Q. Well, do you think that people who buy guns in gun stores just come in and buy and go?

A. I don't know Dr. Fabrikant. I've never bought a gun.

Q. Well, then shouldn't you inform yourself, first of all, about how it is done.

BY THE COURT:

You have the witness' answer as to what she thought she would find out. You are now drifting into cross-examination.

BY THE ACCUSED:

It would be nice if you define what cross-examination is.

BY THE COURT:

I have told you what cross-examination was.

BY THE ACCUSED:

When I'm trying to show that the witness is...

BY THE COURT:

Mr. Fabrikant, the discussion is closed. Please continue.

BY THE ACCUSED:

Okay.

Q. Was this... was this guard supposed to go with me whenever I go, or he was supposed to stay outside?

A. I don't know. That was left up, as I say, to Mr. Barnab,.

Q. Well, according to this, what I have here, that he was supposed to go with me wherever I go, but do not enter...

A. Uh, huh. Yes.

Q. ... if you do not enter with me wherever I go and just wait...

BY THE CROWN:

It's there, My Lord, it mentioned his own house, not

wherever he goes.

BY THE COURT:

I haven't got that in front of me, but...

BY THE ACCUSED:

Okay. Maybe we have interpreter to translate it. Okay.

BY THE CROWN:

It will be translated later, but the phrase is:

"S'il entre chez lui se poster ...
l'ext,rieur et attendre qu'il
sorte."

BY THE ACCUSED:

Yeah. Of course, he couldn't go into my house. That's obvious.

BY THE COURT:

Well...

BY THE ACCUSED:

And at the University also, do not enter the University.

BY THE COURT:

What you might do once you have the interpreter is tell the witness what you're reading from, read from it and ask her if that serves to refresh her memory on the mandate of the guards. That's your first thing. In fact, that's your only step in this instance.

BY THE ACCUSED:

Q. You never discussed with Mr. Barnab, as to what kind of surveillance you want, what exactly you want to be checked? You never discussed it with him?

A. With Mr. Barnab,, I said that I wanted to be able to know where you were at all times, and obviously where you weren't, in the sense of whether you were going near the houses of people for whom we had concern.

Q. Okay. What was the result? How long was I under this surveillance?

A. I have no recollection whatsoever.

Q. You were so frightened, you were so concerned, you arranged a twenty-four (24) hour surveillance, and you know absolutely nothing about the results or conditions of this surveillance. This is a classical example of bad memory. Isn't it?

A. Do you want me to answer that?

Q. No. I am talking now to the Judge.

BY THE COURT:

Are you able... are you able to add any precisions to the length of the...

A. Not to the length, sir.

Q. Not to the length of the surveillance?

A. No.

BY THE ACCUSED:

Well...

BY THE COURT:

Q. Are we talking weeks, months, or what are we talking?

A. I suspect it was somewhere in the order of two, three weeks. I really don't remember.

BY THE ACCUSED:

No, that was not what she did not remember. It is what was the results of the surveillance. This is what is the funniest part of it.

A. I can answer that.

Q. Oh, you can?

A. Yes.

Q. So would you, please.

BY THE COURT:

That wasn't the question you asked.

BY THE ACCUSED:

I did.

BY THE COURT:

The question you wanted to know was how long it had lasted?

BY THE ACCUSED:

Yes.

BY THE CROWN:

Which was the last, My Lord.

BY THE ACCUSED:

And after that I asked...

BY THE CROWN:

No.

BY THE ACCUSED:

I didn't.

Q. All right. So what was the result of the surveillance?

A. The result was Mr. Barnab, was in contact with the surveillance agents, and did not feel that there was anything worth reporting to me. In other words, that you had not gone near the homes of people we were concerned about, and you had not purchased any weapons, to their knowledge.

Q. Did you feel, yourself, paranoid at this time?

A. No.

Q. No. Do you feel that you should have?

BY THE COURT:

That question is not permitted.

BY THE ACCUSED:

All right.

BY THE COURT:

And I think we'll stop here for fifteen (15) minutes.

(THE JUDGE LEAVES THE BENCH)

(THE JURY LEAVES THE COURTROOM)

SHORT RECESS

(THE JUDGE TAKES THE BENCH)

(MEMBERS OF THE JURY TAKE THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

CATHERINE MCKENZIE

UNDER THE SAME OATH

EXAMINATION BY THE ACCUSED: (CONT)

Well, I understand we now have an interpreter. Maybe it is time to translate the instruction to the...

BY THE COURT:

All right. If you will put to the witness the question that I have certain notes which are in Barnab,'s file and they say the following, does that refresh your memory? And that's the purpose of it.

BY THE CROWN:

The author is a certain Mark Stass.

BY THE ACCUSED:

Fine.

BY THE CROWN:

Maybe we should...

BY THE COURT:

Yes.

BY THE CROWN:

... draw the attention of the witness to this name.

BY THE COURT:

Yes. You will have to do that. You...

BY THE ACCUSED:

Well, she might not know the...

Q. Do you know the name of...

BY THE COURT:

Well, I have no idea that...

BY THE ACCUSED:

... Mark Stass, who he was?

A. No.

Q. No. Do you know what company Mr. Barnab, has contacted?

A. To the best of my recollection, it's Broderick, but I couldn't be certain.

Q. Oh, would you like to fresh your memory as to what the instructions were given to this surveillance person?

A. It wouldn't be refreshing my memory, but I would certainly be interested in hearing the instructions.

Q. Okay.

SANDRA TRAYNOR
Official Interpreter
French/English
DULY SWORN

BY THE COURT:

Now just before you interpret that, Mrs. Traynor, might I see a copy of that thing? Might I simply see the document that Mrs. Traynor is going to be asked...

BY THE CROWN:

Yes, My Lord. The first step should be to refresh only the witness' memory in private. She might understand French. I don't know. Just to read for herself.

BY THE COURT:

Q. Do you understand French, Mrs. McKenzie?

A. I read it. I can't say it's with absolute perfection. No.

Q. Just a second, let me... Okay. Now, this is an internal memo which was raised within the security agency, as I understand it.

BY THE CROWN:

I'm not sure whether service ... la clientŠle is Broderick or Concordia University. It's not written on Concordia official paper.

BY THE ACCUSED:

My understanding it is Broderick. But I understand it was in agreement with Concordia instructions.

BY THE COURT:

Fine. You might ask the witness to privately take cognizance of this and see whether that refreshes her memory, If she has any difficulty Mrs. Traynor will help her out.

BY THE ACCUSED:

Well, I would like to submit that in any case I want this in the Court record. Then I have to find Mark Stass, get him here.

BY THE COURT:

Well, it doesn't find it's way into the Court record with this witness. You may use it to refresh the witness' memory.

BY THE ACCUSED:

Then I would like the Crown not complain that I am calling too many witnesses, because every little piece of paper I have to call a witness.

BY THE COURT:

Mr. Fabrikant, the witness is reading the document just now. If you have difficulty with a word, Mrs. McKenzie, Mrs. Traynor is at your side. And you're simply being asked to look at that to see whether that refreshes your memory. That's the question Mr. Fabrikant will put to you next.

Would you hand it back to Mr. Fabrikant, please.

A. Yes.

Q. Thanks, Mrs. Traynor.

BY THE ACCUSED:

I'm just kind of puzzled. I'm helping the Crown in your case. I am introducing evidence that I threatened people, I was surveilled by security guards, and they object that this information be read in the Court record. I fail to understand the logic.

BY THE CROWN:

It could be done by the proper witness, otherwise it's complete anarchy, My Lord.

BY THE COURT:

That's right.

BY THE ACCUSED:

Well, why would you object It strengthens your case?

BY THE COURT:

Listen, there's a way to do things. Every time a rule is not relaxed to favour you, but... because rules are relaxed all the time as far as proof is concerned, generally by consent. Every time one is relaxed with regard to one thing, you cite it as a precedent to try to do the same thing in another context, whether it be the next day or three days later, and there's always a problem, why was it allowed yesterday and it's not allowed today, you know, quite obviously that does not go into the record unless there is consent on both sides except through the appropriate witness.

Now, you are allowed to use it. It came out of a... it came out of a file. You are allowed to use it and you've shown it to the witness to see how if it refreshes her memory. Maybe it does. Maybe you will get...

BY THE ACCUSED:

So that's all right. I am just wondering why the Crown would object...

BY THE COURT:

Well, don't wonder why the Crown... the Crown has its job to do, and you have yours.

BY THE ACCUSED:

Yeah. All right.

Q. So does this in any way correspond to what your intentions were in hiring the surveillance guard?

A. Yes.

Q. Yes. Okay. So what were your intentions then? If it corresponds, then could you describe more or less precisely what were your intentions, what this guard was supposed to do?

A. I believe I've already answered that question. But I'll go through it again.

Q. No. In more details, in terms of... for example, if I am

going to a store, is he following me?

A. We wanted to know if you were going anywhere in the vicinity of the private residences of a number of individuals, we wanted to know... I wanted to know if you had purchased a weapon during the time you were under surveillance, or ammunition. And that's basically what my intention was in asking Mr. Barnab, to put you under twenty-four (24) hour surveillance.

Q. Well, still the question is, what were the instructions as to how to obtain this information?

A. Those would be... have been handled by Mr. Barnab,, who is an experienced ex-RCMP official. I left all of that up to him.

Q. Why you were concerned about... okay, I said I'd get the Rector. Why were you concerned with... how many more people you were concerned with?

A. I don't have the list that's referred to in that document. I don't remember precisely what that list would have been. Mr. Barnab, may have had it.

Q. Okay. Would this list refresh your memory, Osman, Swamy, P. Sankar, S. Sankar, Hoa, Haines, McKenzie, Kenniff?

A. That may be the list, although I can't understand why, or I can't remember why Dr. Hoa would be on that list.

Q. Ha, ha, ha. You don't have logic...

BY THE COURT:

Mr. Fabrikant, just please save us the comments. You asked the witness the question. She...

BY THE ACCUSED:

Well, because it is funny.

BY THE CROWN:

Maybe he could show her the paper in Mr. Barnab,'s file, as well.

BY THE COURT:

The paper he has in front of him, you mean?

BY THE CROWN:

Yes.

BY THE COURT:

Would you show the witness the paper.

BY THE ACCUSED:

Would you like to see it?

A. Uh, huh.

Q. They are calling me paranoia.

BY THE COURT:

Would you please spare us the comments. Now, I'm going to find you in contempt if there's one further comment like that. You are here to ask questions. Wait until the witness has looked at the document and ask your questions.

BY THE ACCUSED:

I fail to understand why you get so angry. It's a classical case of paranoia, and you just get angry because this is...

BY THE COURT:

Mr. Fabrikant, enough.

BY THE ACCUSED:

All right.

Q. So is this the list of people who were supposed to be protected?

A. To the best of my recollection that's the list of people whose addresses we wanted to make sure you weren't going near, or houses, sorry.

Q. Uh, huh. Well, and do you answer your own question, how did you compile this file? From what logic whatsoever you used to compile this file?

A. At some point along the line a meeting with the various members of the Engineering Faculty, mention was made of a list of people who you said you might get. Again, that was unequivocal...

Q. Oh, this is interesting. You have something...

A. ... a statement, as I say, that has a lot of room for interpretation. I don't remember any discussion of Hoa, that it may have been in that context, or it may have been in relation to who was on the DPC. I can't remember.

Q. Okay.

A. That list was drawn up after a number of meetings and conversations.

Q. Now, you mentioned here that I was friendly and in a trusting friendship with Mr. Haines. Did you?

A. It appeared to be so, yes.

Q. Then kindly explain why Mr. Haines was supposed to be protected from me?

A. Mr. Haines had some concerns in dealing with you.

Q. Well, please make some kind of agreement within those two statements? A friendly and trusting relation is one thing. Concern to the level of paranoia, to check whether I'm near somebody's house is another thing. Could you reconcile those two?

A. Uh, huh. I can.

Q. Yes.

A. Our perception was that you felt you had a friendly and constructive relationship with Mr. Haines. That does not necessarily mean it went both ways.

Q. I don't get it. Whose perception was what?

A. Our perception, Mr. Haines and mine, was that you trusted him, worked with him well in trying to bring some kind of order to your affairs in the Department of Mechanical Engineering. That is not the same thing as saying that he perceived it to be that way. But I suggest that he would be in the best position to answer your questions.

Q. I don't get it. So you thought that I am trusting and in a good relationship with him. But Haines, himself, didn't think so. Is that what you are trying to say?

A. Haines I think would be best to answer for himself. All I can say is he was concerned about his safety in working with you.

Q. The witness again is clearly...

BY THE CROWN:
He got his answer, My Lord.

BY THE ACCUSED:
... contradicting to herself. She could not possibly have the impression that I have a trusting relationship with him if Mr. Haines himself told her that he fears for his safety. It's absurd.

BY THE COURT:
It's not absurd at all. My understanding of the witness' testimony is that in trying to review it, it was perceived that you had a viable relationship with Haines, who was aiming or who was attempting to assist you in the resolution of a problem in the Department. But Haines' perception of the overall situation was that he was afraid. That's the manner in which I interpreted the

witness' testimony.

BY THE ACCUSED:

Well, how could it be?

BY THE COURT:

I don't know how it could be. But that is what she is what she said.

BY THE ACCUSED:

But doesn't it look... doesn't it look absurd what she said?

BY THE COURT:

Mr. Fabrikant, it may be open to you to argue that it's absurd later on. I don't know.

BY THE ACCUSED:

Well, I'm not later on. I am right now, that the witness is just trying to reconcile two statements which are totally irreconcilable, and again you don't see it, because you don't want to declare the witness hostile.

BY THE COURT:

It's not a question of I don't see it. I simply...

BY THE ACCUSED:

You do see it.

BY THE COURT:

... understand what the witness said, and I summed it up a moment ago.

BY THE ACCUSED:

Yes. And it is not a blatant contradiction?

BY THE COURT:

Not in my mind.

BY THE ACCUSED:

In itself. Okay. Let's imagine the situation...

BY THE COURT:

Mr. Fabrikant, I'm not declaring the witness hostile on the basis of that. Go on.

BY THE ACCUSED:

You declared Mr. Bujold on much lesser evidence hostile right away. You didn't even...

BY THE COURT:

You see, there we go again. You do something one day, therefore do it the next day. Mr. Fabrikant, I am...

BY THE ACCUSED:

No, not at all.

BY THE COURT:

Last word: not declaring the witness hostile. Continue.

BY THE ACCUSED:

Right.

Q. Would you kindly clarify once again this stuff. Whose perception was that that I'm in a friendly relationship with Mr. Haines?

A. My perception.

Q. What...

A. And Mr. Haines perception was that you trusted him, and that you were able to do constructive work with him towards diminishing the feelings of discomfort you had working in your department.

Q. So Mr. Haines' perception was also that I am friendly and trusting with him. Correct?

A. Uh, huh.

Q. And at the same time, he feared for his safety?

A. Yes.

Q. Did he give you some facts for that?

A. I think it would be best if you spoke to Mr. Haines

yourself.

Q. These people are sick. All right. You introduced your own name. Did I ever threaten you personally in any way?

A. No, in no way.

Q. So why did you put your name there?

A. Because I was concerned about you as a possible... or a person who could possibly entertain violent actions.

Q. Well, did you have any facts whatsoever, anything, directed towards you from me which might make you think that way?

A. Only that I was not accomplishing what you wanted me to accomplish.

Q. What about Hoa, how did he get there?

A. I had said earlier... I can't recollect any discussion of Dr. Hoa. There may have been some discussion. There's obviously a reason he's on the list. I do not recollect what it is at this point in time.

Q. Swamy, how did he get into the list?

A. Swamy, because he was purported to be on a list of people that you said to someone, and it was merely an allegation, that you would get.

Q. Continue, continue.

A. With what?

Q. Well, that I would get what?

A. That you would get.

Q. Ah, okay. So... all right. So now we have yet a new allegation which was not mentioned before by anyone. So I allegedly what... could you specify, I allegedly said to who what?

A. We were told... I was told... I believe Mr. Grendon Haines was there, as well, that there had been references in the Department to a list of people you intended to get, whatever that meant. This was brought to our attention in a meeting with the number of members of the Department of Mechanical Engineering.

Q. Well, who said that?

A. I do not recall, and they do not recall. They did not at the time recall who said it to them.

Q. Who said it at the meeting?

A. I cannot recall at this time.

Q. Oh, isn't it important? It was something, a new allegation. Why didn't you write it down?

A. Of course it was important.

Q. So why didn't you write it down there?

A. I wasn't taking notes at that meeting. The meeting called for...

Q. You didn't have to take notes. But when someone comes up with yet new allegations you should have written it down, shouldn't you?

A. I said I did not write it down.

Q. Why?

A. Because I was not taking notes at that meeting. It's possible that Mr. Haines wrote it down.

Q. Why should not take notes at the meeting. Let us just think, from a common sense point-of-view...

BY THE COURT:

Listen, you are not going to lecture the witness on what she should have done...

BY THE ACCUSED:

I'm not lecturing. I'm asking a question.

BY THE COURT:

You are not asking a question. You are now lecturing the witness on what she should have done, or what she shouldn't have done. She told you, I did not take notes at the meeting. That's the end of the question. Move on to your next question.

BY THE ACCUSED:

I'm moving on to my next question.

Q. So you recall that in January I allegedly threatened to kill a lot of people. Correct?

A. To the best of my recollection now, what you said was that you had come to understand that the way people got what they wanted in North American society was to shoot a lot of people.

Q. Good. And you didn't answer me anything to that?

A. No, I did not.

Q. After that you heard from Mr. Haines that I am buying or having a gun. Correct?

A. Uh, huh.

Q. After that you heard from Mr. Haines that I know where the Rector's office is, and it is easy to get him hostage?

A. I did not say that, that it would be possible for someone to take him hostage.

Q. You did not say it?

A. That you had said it would easy for you to take him hostage. That's not what I said.

Q. Well...

A. And I don't know in what order that information was coming in.

Q. And you never questioned Mr. Haines as to details of all that?

A. Mr. Haines and I had many, many discussions during that period. I'm sure I did. Nothing appeared...

Q. But you don't... but you don't remember details?

A. I don't remember details. I remember that nothing that he told me at that point seemed to be a direct threat.

Q. Okay. Now, after that you hear that I am going to get the Rector, and they had to call Security to save the Rector. Then you are sitting at a meeting where something new appears, that I have a hit list?

A. That is not what I said.

Q. Okay. I have a list of people which I said allegedly I'm going to get?

A. Yes.

Q. And you are sitting there scared for your life, because you wanted security to observe if I am going to your house, and you do not take a piece of paper and write down the name of the person who told you that, and details of all this. Correct?

A. Not to my recollection.

Q. Okay. And, of course, I am not allowed to ask, does it look like anything truthful, or it is obvious that the witness is lying.

BY THE COURT:

You have a wonderful time with that line. Listen...

BY THE ACCUSED:

Well, something doesn't add up here. We are not dealing with a bunch of people with no brains. So what, people with Ph.D's. And they do not... they cannot possibly act the way she describes.

BY THE COURT:

Listen, I don't care whether we're talking about people with B.S.'s. I don't care whether we're talking about people with M.S.'s, or people with Ph.D's. All I care about is that you put the questions to the witness and that the witness answers them. The fact that one has a Ph.D three times over doesn't necessarily imply that one has a better memory for what happened four years ago.

BY THE ACCUSED:

I'm not talking about memory. I'm asking why she didn't write it down.

BY THE COURT:

Yes, well, leave the academic nonsense off the top of it, and let's just treat this case like anything else.

BY THE ACCUSED:

This is not academic nonsense.

BY THE COURT:

And... pardon?

BY THE ACCUSED:

It is still not...

BY THE COURT:

She said she didn't write it down. Now, you're not going to cross-examine her on why she didn't write it, and she says I didn't write it down. There you are. There is your answer.

BY THE ACCUSED:

Maybe she didn't write it down because there was no threat.

BY THE COURT:

Well, Mr. Fabrikant, that is an inference you make.

BY THE ACCUSED:

Yeah. All right.

BY THE COURT:

And that's an argument that you'll make, I suppose.

BY THE ACCUSED:

Okay. Let us try to see a little bit stronger that.

Q. Did I understand correct that is notes which you took on January twenty-fourth (24th)?

A. Uh, huh.

Q. Now, would you please read your notes to the jury in its entirety.

A. "Meeting with Fabrikant, two p.m. (14:00), twenty-fourth (24th), January, nineteen eighty-nine (1989). Rejects routes for due process. Alleges that was used... quotation marks... in terms of names attached to authorship, Sankar... in quotation marks... classical pimp. Contracts were made for nineteen eighty-seven (1987), eighty-eight (88), originally S. Sankar, Osman, and Swamy agreed... in quotation marks... on a one year extension and then termination. Changed their mind after... in quotation marks... a threat."

And there's another sub-section:

"Letter from Rice at Harvard, Harrington at Syracuse, Love at University of Melbourne. Other

testaments, vis-a-vis book applications, Potential Theory in Math Mechanics. Osman's promise would be promoted to research professor, withdrawn. Denies promise.

Twenty-third ((23rd), January, nineteen eighty-nine (1989). Letter from Osman indicating that DPC had decided not to consider it a case for early promotion. Fake... in quotations marks... letter, re workload to discredit. S. Sankar would not approve research program. Osman FCAR applications dishonest. Mathematics, Civil and Electrical, Physics, Computer Science. Accept a tenured position. Difficulty coping."

And in a box on the other side:

"Wants to speak to speak to Dr. Kenniff... and an arrow... if not will go outside. Rector... an arrow... Rector, Swamy, directive approach."

- Q. All right. Is this all what was written on January twenty-fourth (24th), or there is yet another page somewhere?
- A. To the best of my recollection, this is all that I wrote.
- Q. Now, could you kindly explain to the jury that you managed to describe the whole conversation in sufficient detail and for some reason did not mention at all the threat to kill a lot of people. How do you explain that?
- A. I said before that I'm not sure if... at whatever meetings we had, it may have been the first, or the second meeting that took place, I doubt very much sitting in front of you, even if I had been at the first meeting that I would have written that down. This does not a report the conversation in complete detail. It has points that are brought up. There were a lot of terms, words used that I did not write down.
- Q. Well, but this is very important stuff, isn't it?
- A. This was my first meeting with you and I wanted information.
- Q. Well, couldn't you, okay, when the meeting finished, to note somewhere else, threatened to kill a lot of people, if this happened?
- A. If it happened at that meeting, I suppose I could have turned the piece of paper over and done that.
- Q. Yeah. Did you?
- A. No.
- Q. Why?

BY THE COURT:

Mr. Fabrikant, you're now cross-examining the witness, and you're not going to cross-examine the witness. The last question is disallowed. She said she didn't note it. She's given you her reasons. She's given you her explanations. Now let's move on.

BY THE ACCUSED:

- Q. Could it be that you didn't note it because this was

never said?

A. No.

BY THE COURT:

That is cross-examination. And that will not be allowed.

BY THE ACCUSED:

I should be allowed cross-examination because this piece of paper is such a nonsense.

BY THE COURT:

You're not allowed cross-examination of the witness.

BY THE ACCUSED:

You still believe it. I could have said what she alleged I said, and she did manage to notice that.

BY THE COURT:

Mr. Fabrikant, you confuse...

BY THE ACCUSED:

Now, if you say it is all right, I will continue. Let's not spend time.

BY THE COURT:

... you confuse the question of appreciation of the witness and the witness' testimony with the question of a witness who is attempting to evade your question. She's not attempting to evade your questions at all, as far as I'm concerned. Whether the witness is telling the truth, whether the witness isn't telling the truth, is something the jury will decide eventually when they consider the whole case.

BY THE ACCUSED:

This is not the point. The jury will decide. I have no doubt about it. But in the meantime you do not allow me to put proper questions, because you do not want to recognize that...

BY THE COURT:

Mr. Fabrikant, be very careful. You're back right where you were earlier this morning.

BY THE ACCUSED:

I am not back. I am saying that the witness is contradicting to herself, and you don't want to recognize it.

BY THE COURT:

Mr. Fabrikant, first of all, I don't note a contradiction. Secondly, I told you before it's an old game to, in a series of questions and answers, questions and answers, manufacture what appears to be a difference between one answer one moment and another answer the next. That's an old game. Lawyers have played it for years.

BY THE ACCUSED:

So what? A lawyer could do whatever they want.

BY THE COURT:

It does not mean...

BY THE ACCUSED:

I am doing what I need to do.

BY THE COURT:

It does not mean that the witness is trying to evade your questions.

BY THE ACCUSED:

This is not my claim. My claim is that the witness is not telling the truth. She's not evading the question.

BY THE COURT:

Well, Mr. Fabrikant, you have your way of seeing things. It's not for me to decide whether the witness is telling

the truth.

BY THE ACCUSED:

All right. All right. It's fine with you. That's all right.

Q. Okay. Since we have that detailed note, I think it would be useful to elaborate on what the conversation was about. For example, alleged that was used in terms of names attached to authorship. This is... refers to what, that I claim that I had written papers and other people were included as co-authors.

A. Uh, huh.

Q. Correct. Now, I called Sankar a classical pimp. Why?

A. Because to the best of my recollection, you called yourself either a prostitute or a whore. And you also referred, to the best of my...

Q. I called myself what, say it again?

A. A prostitute or a whore.

Q. A scientific prostitute probably?

A. Possibly.

Q. Yeah.

A. To the best of my recollection there was also a reference to rape. But that...

Q. Okay.

A. That's to the best of my recollection.

Q. Okay. But why did I call him a classical pimp?

A. I don't have the slightest idea. I don't know what a classical pimp is, as opposed to a pimp.

Q. I did... I did not elaborate on that. Did I mention that his other papers were obtained exactly the same way from other prostitutes?

A. You may have. I don't recollect that, but you may have.

Q. Because a pimp has to have several prostitutes. Right? Maybe that was why I used the term which I did. Do you recall that?

A. I don't have the slightest idea what a pimp has to be to be a pimp.

Q. But do you recall my explanation?

A. No, I do not.

Q. Okay. What did I tell you about my contract renewal in eighty-eight ('88)? Do you recall anything?

A. Yes, I believe for eighty-seven/eighty-eight ('87/88), according to these notes.

Q. Well, what was the problem then? Do you recall what I complained about in this sense?

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

You complained about the fact that they were not going to render your contact... I guess it would be for a full two year period. But we're going to extend your pre-existing contract for one year and then terminate our employment.

Q. Well, that is what they threatened me to do. This is what I told you. Correct? That they threatened to terminate my contract, and I qualified it as an attempt to extort papers from me. That was my contention?

A. That sounds familiar.

Q. Yeah. So...

A. Whether you said it then, or at another point, I don't know.

Q. But, anyway, you got this information from me that...

A. Uh, huh.

Q. ... as soon as I stopped including these people as the authors, at the next contract renewal, they wanted to terminate my employment within one year. You remember that?

A. Yes.

Q. Okay. And after that it is written, changed their mind after a threat, in quotation marks. Do you remember how I threatened them?

A. Yes. You indicated that you threatened them by saying that you would go public with this information...

Q. Exactly.

A. ... about their research practices.

Q. Exactly. I did not threaten them with any violence. Right?

BY THE COURT:

Would you stop making statements.

BY THE ACCUSED:

Okay. I'm asking questions.

BY THE COURT:

You're supposed to be asking questions.

BY THE ACCUSED:

Q. So I threatened them to go public. And as soon as I did it, the matter was fixed, and I got a two year extension. That's what I told you then?

A. That's what you told me.

Q. Yeah. Okay. And after that I showed you letters from Professor Rice from Harvard...

A. Uh, huh.

Q. ... another professor from Syracuse, from the University of Melbourne, some opinions on my book, and all those opinions and references from Harvard and other universities. What did it say about my qualifications?

A. To the best of my recollection they were highly favourable qualifications of your research... characterizations of your research.

Q. Okay. Now, after that I complained to you that Osman promised me a promotion and later said that he never promised me one. Correct?

A. Yes.

Q. Okay. And after that I gave you a letter of the twenty-third (23rd) of January indicating that the DPC decided not to consider me for a promotion. Right?

A. Correct.

Q. And did I explain to you at that time that the only reason was that before considering me for promotion Sankar again tried to extort papers from me. Do you remember that, and that I refused, and that was... as a result of that I didn't get the promotion? Was that the essence of my complaint?

A. Again, it sounds familiar. Whether you said that to me at that meeting, or subsequent meetings, I do not... or in any number of documents...

Q. Well, it doesn't matter. But it sounds familiar?

A. ... I don't know. But it certainly goes with the tenor of your discussion that day.

Q. So I complained that there is an extortion. If you want to get promoted, start prostituting yourself. If you don't prostitute yourself, you don't get the promotion. That was my complaint. Right?

A. Essentially.

Q. Okay. And after that I showed you the letter of January twenty-third (23rd), where the reasons for denying promotions are outlined. Correct? After that I showed you that letter of January twenty-third (23rd). Did I?

A. I'm not sure. I know I've seen that. It's in the file. I don't know if you gave it to me that day.

Q. Okay. And the reason which DPC raised there why they do not want to promote at that time was what? Do you recall the reason of theirs?

A. I thought I had it. It's in your set of documents. It specifies it quite clearly, to my recollection.

BY THE COURT:
If you have the document in front of you, would you be kind enough to show it to the witness, or do you have it now?

BY THE ACCUSED:
I'm looking for it. I did have it.

A. I'm sorry. I'm trying to find it. It should be in his package. Yes.

BY THE COURT:
You have it?

A. It's attached to the eighth (8th) of March letter to Dr. Kenniff from myself.

BY THE ACCUSED:
Q. What was the main reason of theirs?
A. "Teaching is not of sufficient length for a proper judgment to be made, and the record of supervision of graduate students and of graduation of graduate students at Concordia University is not sufficient for a proper judgment to be made."

Q. Uh, huh. And what was my objection to this? Do you recall why I considered this illegal?

A. I don't recall.

Q. Okay. Would you like to refresh your memory with the Collective Agreement and conditions for promotions to professor, or maybe you recall yourself what is the main requirements for promotion to professor?

BY THE COURT:
If you are trying to use that to refresh the witness' memory with regard to what was discussed that day, that's one thing.

BY THE ACCUSED:
Yes.

BY THE COURT:
If you're trying to elicit from the witness an opinion on the validity of the DPC letter or anything else, spare me.

BY THE ACCUSED:
No, I am not. I am not. I am just trying to refresh her memory as to what conversation took place.

A. Mr. Fabrikant...

Q. Yes.

A. ... I don't believe that we had an extensive conversation about the issue of promotion to professor, full professor, research professor in that first meeting.

Q. Well...

A. That may have been in a... I know that we had discussed that at length. But that would be in our later meetings when we were trying to... I was trying to get you to focus on the subject your current position in the Department, and not a position in another department.

Q. Well, since we both do not recall, and I am sure that everything was said during the first meeting, so I think this is not an issue, the issue is, what was my argumentation as to why I considered it just a cover-up for extortion. If you remember, I complained of extortion, and the letter which I brought to you, which didn't bring any valid reasons the rejection of promotion, I argued somehow that this is just a cover-up. This letter is totally illegal. And I based myself on a certain part of the Collective Agreement. Do you recall...

BY THE COURT:
Are you asking the witness if she remembers that at that meeting?

BY THE ACCUSED:

Q. Do you recall all that?

A. I recalled a discussion of, certainly of grounds for a promotion to full professor. I can't remember the details. There's a document in here that would undoubtedly assist my memory.

Q. Okay. Do you recall that the main criteria is for promotion to full professor is contribution to knowledge made by a faculty member be recognized as a substantial...

BY THE ACCUSED:
Mr. Fabrikant, I told you do not get into a discussion of the terms of the Collective Agreement...

BY THE ACCUSED:
All right.

BY THE COURT:
... with the witness.

BY THE ACCUSED:
Okay. Maybe she wants just to refresh her memory of it.

BY THE COURT:
The only question is whether... with reference to that she can recall whether...

BY THE ACCUSED:
Yes.

BY THE COURT:
... the criteria were discussed.

BY THE ACCUSED:
Yes.

BY THE COURT:
That's all.

BY THE ACCUSED:
Yes.

Q. Well, just refresh your memory with this criteria, and try to remember if we discussed those criteria. Would you like...

A. I'm sure we did discuss them.

Q. We did discuss them.

A. But I don't remember when, and in what detail.

Q. Okay.

A. But undoubtedly once you moved into the point where you were

willing to consider the issue of reopening your situation in the department in which you were then occupied, we did have a discussion, because in subsequent documents there are references to criteria for promotion to professor.

Q. Yeah. And those criteria, if you remember, I indicated to you I based on research solely. Do you recall that?

A. I recollect that that probably is something you... well, probably is something you would have said.

Q. And this is what is in the Collective Agreement, because I showed it to you in the Collective Agreement...

A. Uh, huh.

Q. ... that this is the criteria. Correct?

A. Uh, huh.

Q. Okay. And their refusal is based on what they claim insufficient teaching. Correct?

A. And graduate supervision...

Q. Yeah.

A. ... which is a form of research participation.

Q. Did I explain to you my position did not allow me to have any graduate students until eighty-six ('86). Do you recall that, too?

A. That sounds familiar, yes.

Q. So if I did not have the right to have graduate students, then I couldn't possibly graduated them. They couldn't reproach this to me. That was my logic?

A. They couldn't reproach you, but you may not have built up a dossier sufficient to be considered for promotion to professor.

Q. Well, dissemination... well, dissemination of knowledge, there isn't any word of graduate student supervision here in promotion to professor.

BY THE COURT:

Mr. Fabrikant, Mr. Fabrikant, you are not arguing about the terms of the Collective Agreement, the interpretation of the Collective Agreement, and what it means.

BY THE ACCUSED:

Yeah, I'm just... I am trying to recall our conversation. I'm not arguing.

BY THE COURT:

No, you're not. You're not trying to recall your conversation. You are trying to open up a legal argument to defeat the particular document that came from the department committee.

BY THE ACCUSED:

Well, I am...

BY THE COURT:

The last question is disallowed. We'll adjourn here for lunch until two-fifteen (14:15).

(THE JUDGE LEAVES THE BENCH)

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

LUNCH ADJOURNMENT

AFTER THE LUNCH ADJOURNMENT

(THE JUDGE TAKES THE BENCH)

(MEMBERS OF THE JURY TAKE THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

CATHERINE McKENZIE
UNDER THE SAME OATH

EXAMINATION BY THE ACCUSED: (CONT)

- Q. Do I recall correct that we ended at the place where the argumentation concerning the letter of January twenty-third (23rd) indicated that they were unhappy with teaching and the Collective Agreement says not a single word about teaching as far as promotion to full professor is involved. Correct?
- A. I don't have the Collective Agreement in front of me so I couldn't verify that.
- Q. Would you like to refresh your memory?

BY THE COURT:

The only question is whether you discussed the terms of the Collective Agreement in the course of that meeting. We are not getting into the witness' interpretation of the Collective Agreement, or how the Collective Agreement might relate to the status of the Department Committee Report. The question is simply whether you referred the witness to the Collective Agreement during that meeting.

BY THE ACCUSED:

Well, yes, and whether the information which I provided to her was a correct one. So I think it makes sense for her to refresh her memory.

BY THE COURT:

If you wish to refresh her memory with the Collective Agreement, let's start by showing her the Collective Agreement, but then we will go back to your questions and see what they are.

BY THE ACCUSED:

Yes. It's around here.

- Q. So you recall that there is not a word here about teaching, or graduate students. Correct?

BY THE COURT:

That is bearing on the interpretation of the Collective Agreement. The question which will be permitted is one bearing upon what was discussed at that meeting. We are not getting into the interpretation of the Collective Agreement.

BY THE ACCUSED:

No, no, I'm not getting an interpretation. I just...

BY THE COURT:

Or the application of the Collective Agreement. We are getting into... we are dealing with your meeting, period, with Dr. McKenzie.

BY THE ACCUSED:

- Q. Well, so did I tell you that teaching, according to the Collective Agreement, has nothing to do with promotion to full professor?

- A. I suspect that you did at whatever meeting we discussed this...

Q. Okay.

- A. ... but that certainly wasn't the basis of your request.

- Q. All right. Now, the rest... I would like you to recall me what it is, because I do not recall... a fake letter, workload to discredit. What was it all about?

- A. I do not have the slightest recollection of what that means.

Q. You wrote that.

- A. I know I wrote it.

- Q. Okay. As far as ... Osman FCAR applications dishonest, it was concerned with what I showed you that he... two times happened, he filed the same application to get money. That was the information I gave you. Correct?
- A. I don't know if you went any further at that first meeting.

Certainly at some meeting you produced the papers that we have looked at today.

Q. Uh, huh. Now, after that I told you that I am strong enough in Mathematics, in Civil Engineering, in Electrical Sciences, in Physics, in Computer Science. So I am sufficiently qualified to teach in any of those departments. That's what I told you, according to the next record?

A. I don't recollect if you said that. You certainly said you would be interested in a position, and wanted a position in one of those other departments.

Q. Not only interested, but I think I claimed that I am qualified to teach in all those areas?

A. You might very well have.

Q. Okay. Now, again, there is not a slightest indication here... there is a threat here that if not, I go outside. It means that I threatened to go public. Correct?

A. You threatened to go to the lawyers or to the press.

Q. Right. So this you did write. But such a minor stuff that I threatened to kill a lot of people, for some reason, it just didn't enter here. Correct?

A. It is not on the piece of paper.

Q. Yes. It is not on the piece of paper. All right. And as a result of this meeting, if you recall, appeared in the first memo of yours dated March eighth (8th). And if you recall I suggested that to make it look good we need to give the department some kind of excuse, to pretend the Department didn't know that I did have graduate students, that I did a have good teaching record, and to play this spectacle, in exchange I was prepared not to go outside. That was our agreement, and this is how the first memo appeared. Is that correct?

A. That is not correct to my recollection.

Q. All right. Then explain this text of the memo, which without this explanation would look pretty ridiculous. Would you read it, please.

A. Which memo?

Q. March eighth (8th).

A. "In the course of discussion..."

BY THE COURT:

Excuse me. That is a memo, March the eighth (8th), from you to Dr. Kenniff. Is that correct?

A. Yes.

"In the course of discussions with Dr. V. Fabrikant concerning a number of issues which had caused him to question the treatment he has received from his colleagues in the Department of Mechanical Engineering, the subject came up of his denial of promotion... denial in quotation marks... to research full professor.

As the attached document indicates, the reasons stated for the Department's refusal to consider his application for early promotion to the rank of research full professor do not associate themselves obviously with the criteria stipulated in the Collective Agreement, and this has caused Dr. Fabrikant considerable concern.

Nonetheless, he now has the results of

his teaching evaluations for the course he taught in the fall of nineteen eighty-eight (1988), and has recently guided a graduate thesis through to conclusion. With these in hand, he was convinced that the Department of Mechanical Engineering is in a position to re-evaluate positively his application.

As I understand it, the department has declined to re-open his case. Although I realize this is a rather extraordinary request on my part, I would propose that a representative of the office of the Vice-Rector, Academic, intercede to suggest that Dr. Fabrikant's great distress might be alleviated were the Departmental Personnel Committee to consider the evidence that the candidate wishes to present."

Q. And the signature of Kenniff...

A. Saying I agree.

Q. I agree. So was it really a new evidence or it was pretend new evidence? Did the Department really not know about what you are talking about in this memo?

A. To the best of my recollection you told me that they did not have this.

Q. Well, they had no idea that I had a graduate student, eh?

BY THE COURT:

You're now arguing with the witness.

BY THE ACCUSED:

I'm not arguing. I am asking.

BY THE COURT:

You are not asking. That was a statement. And that last statement is disallowed.

BY THE ACCUSED:

Oh, I will rephrase it.

BY THE COURT:

Fine.

BY THE ACCUSED:

Q. Is it your recollection that I told you that the Department had no idea that I have hidden a graduate student under my bed?

A. I'm sorry, could you ask that question again.

Q. Is it your recollection that I was hiding this graduate student from the Department, and nobody in the Department had any idea that I had a graduate student?

A. No, you did not say that.

Q. Okay. Now, from your university experience it is possible to conceal a graduate student until graduation?

A. No.

Q. No. So is it possible that members of the department didn't know that I have a graduate student?

A. No.

Q. No. This couldn't possibly be in your information for them, could it?

A. What is stated in the letter is:

"... has recently guided a graduate thesis through to completion."

I assumed that meant that that had happened since you had last asked the Department...

Q. Well, yesterday...

A. ... to consider your case.

Q. ... yesterday the thesis wasn't ready, today it is ready.
The thesis has been written in one day?

A. I think this is completed in the final day of its completion.

Q. Well, it is not done in one day. So either... if it was close to completion, then it was well-known to the Department, wasn't it?

BY THE COURT:
Listen, you cannot possibly through...

BY THE ACCUSED:
I will rephrase. I will rephrase.

BY THE COURT:
No, you will hear me out. You cannot possibly through this witness, establish what the Department knew or what the Department didn't know. Whether the contention that the Department ought to have known, should have known, must have known, that is a question for argument, or it is a question to be put to the appropriate person in the Department. But by Dr. McKenzie's... through Dr. McKenzie's own experience, you're not going to answer that question.

BY THE ACCUSED:
Well, this is not the question I am asking her. I am asking her effectively the phrase, "the Department Personnel Committee to consider new evidence", the phrase is false and she knew that it was a false phrase. This is my question.

BY THE COURT:
I don't know whether the phrase is false or not. She has said that was not to her recollection of the matter, and she has given you her answer.

BY THE ACCUSED:
Well, then it is quite clear from the rest that this phrase could not possibly be not false.

BY THE COURT:
Then leave the matter alone. It's one for argument. There's nothing more the witness can add which is going to put any more cherries on the cake, if you're correct.

BY THE ACCUSED:
Well, let's just put them on, the cherries.

BY THE COURT:
No. That last question calls for the witness to come to a conclusion about a Department she's not even in, on a subject that you can't even address. No.

BY THE ACCUSED:
Okay. So you can still maintain that this was really a new evidence to be presented to the Department?

A. In my understanding it was new evidence. Perhaps it was not. But in my understanding it was new evidence that would allow your dossier to have more in it than it had at the time you asked them originally.

Q. Well, maybe you still recall that it was not new evidence, but an excuse for the Department instead of admitting that they tried to extort papers from me, to be able to save their faces and to reconsider the matter. Maybe this was the case. Was it?

A. This is certainly not my interpretation of what I did for the Department's behaviour.

Q. Okay. I refer you to yet another phrase. Does the phrase:
"As the attached document indicates, the reasons stated for the Department's refusal to consider his application for early promotion to rank of research full

professor do not associate themselves
obviously with the criteria stipulated in
the Collective Agreement,"

does this phrase mean that you came to a conclusion that the
Department has abused the Collective Agreement?

A. No.

Q. No. Then explain this phrase, please.

A. The criteria stipulated in the Collective Agreement pertains
to research and scholarship as is outlined in a letter much
later on which you did not pick up co-signed by myself and
Dean Swamy. The Collective Agreement also refers to, in
addition to the criteria for the rank of associate professor,
which is in the first line of that text that you...

Q. Well, you are jumping to another document. We'll get to it.

A. No.

BY THE CROWN:

My Lord...

BY THE ACCUSED:

Would you please speak to this document.

BY THE COURT:

Would you let the witness answer, please. She's answering in
relation to the question you put to her... the document. At
least I presume you are. Is your answer in relation to the
phrase that he referred you to in that memo?

BY THE ACCUSED:

No. She referred to another document.

A. I may have gone beyond...

BY THE COURT:

Well, please stay with the phrase in the memo you send to
Kenniff.

A. The criteria stipulated in the Collective Agreement indicate
research and scholarship as the primary emphasis. And the
DPC's document referred to teaching and graduate supervision.

BY THE ACCUSED:

Q. So at least this phrase indicates that they did not conform to
the Collective Agreement. Correct?

A. No.

Q. No. Then explain again.

A. That's what I was endeavouring to do before. There is
another...

Q. But do not jump to another document.

A. Okay. I'm not going to jump to another document. I wanted to
jump to the Collective Agreement.

BY THE CROWN:

She can answer what she has to answer.

BY THE COURT:

Yes. Yes, she can. And again your tone has passed straight
into cross-examination.

BY THE ACCUSED:

My tone?

BY THE COURT:

Yeah. The witness will answer the question as she sees fit to
answer the question. She's not going to be cross-examined by
you on the...

BY THE ACCUSED:

Well, I just asked her to interpret the phrase in this
particular document.

BY THE COURT:

She told you she would interpret the phrase in that particular
letter, and to do so, she wishes to refer to something that,
a point she made later on. That's the way I understand it.

A. Later on, or by referring to the Collective Agreement, either document would suffice, where it is indicated in the opening sentence that in addition to the criteria used for associate professor, that brings one back, forces one to bring oneself back to the criteria for associate professor, which does include teaching.

BY THE ACCUSED:

Q. Are we talking about a research position, or we are talking about a regular position? What position are we talking about?

A. The Collective Agreement only covers that position. It did at that time.

Q. But we are talking about what position?

A. We are talking about a position which was not defined in the Collective Agreement, but which was guided by the principles of the Collective Agreement.

Q. And since I was already associate professor, it means that I satisfied all those requirements, otherwise I would not have been promoted to that position. Right?

A. Correct.

Q. So those previous conditions were satisfied already?

A. Again, we would be moving into the interpretation of the Collective Agreement. And that is not how it has been interpreted at Concordia University.

Q. Anyway, the phrase that the Department's refusal did not associate obviously...

A. Uh, huh.

Q. Obviously, you said here...

A. Uh, huh.

Q. ... with the criteria stipulated in the Collective Agreement?

A. Uh, huh.

Q. And you still do not interpret it as departmental non-conformity with the Collective Agreement. Right?

A. No, I do not.

Q. All right. Finished. You do not. Okay. And you deny that this particular memo did fake new information to be presented to the Department which was not new to them at all, is not a result of our agreement that you go and try to fix the situation, in exchange I do not go public. There was no conversation of that kind whatsoever?

A. I would not participate in that kind of conversation and, therefore, to the best of my recollection, it never took place.

Q. It never took place. All right. Now, let us move in time from January, eighty-nine ('89) to March twentieth (20th). That was the day... did you refresh your memory well enough that that was the day you allegedly went to some psychiatric or psychological institute?

A. I have no way of refreshing my memory any further than I did yesterday.

Q. May I ask you, since you did record at least some notes of our meeting...

A. Uh, huh.

Q. ... may I suggest that probably you did record the contents of other meetings, too?

A. Not to my recollection. And certainly they don't exist in any file.

Q. So this is the only thing which does exist?

A. That's the only handwritten material that's in the Rector's office. I do not recollect taking other notes. It's possible I did, but I don't recollect doing so.

Q. Okay. Maybe you would take a look and find them, because this

particular piece is so important, you cannot imagine how important it is.

BY THE COURT:

What is this that you are referring to? The notes of what?

BY THE ACCUSED:

This is the notes of the meeting of January twenty-fourth (24th), which contains every detail except my threat to kill everybody. Isn't it important?

And can we request maybe Dr. McKenzie to take a good look into her files and I believe she would find a lot more things which will be very, very useful. Because yesterday to the best of my recollection she testified that she has no record of any of the meetings.

Q. Right? Is my recollection correct?

A. I don't remember if I said that yesterday.

Q. Well, I asked you about...

A. It's possible. I went to the Rector's office last night and asked them to give me everything pertaining to your case in the files until the point that I proceeded dealing with you as executive assistant. I do not have anything at home.

Q. Well, I would like to respectively submit that Concordia University does not really feel in any way obligated to be honest in any way. For example, here is a memo from Mr. Francisca, which he, when he came here, didn't have in his possession. Now, isn't it obviously that Concordia University does not respect anything that emanates from this Court. This is a memo signed by Mr. Francisca. When he was asked, if he has anything else, he didn't have it. All of a sudden I discover it in Dr. McKenzie's possession. Now, does it mean that Mr. Francisca perjured himself here when he testified that he brought everything he has? I believe there is a lot more there.

BY THE COURT:

I have no idea what you've got in your hand. I've got no idea what it's...

BY THE ACCUSED:

Here. Would you like to read it? And you will see that Mr. Francisca was in contempt of Court.

BY THE COURT:

That's a large word, Mr. Fabrikant.

BY THE ACCUSED:

Well, do you think only I am in contempt in Court? I would like to respectfully remind that a number of people came here, swore on the Bible that the 9-1-1 tape was exact and correct and verified their master and all of this stuff. And all the paranoia (inaudible) doubted that this is correct. How do you feel about all this? Shouldn't the Crown withdraw this tape?

BY THE COURT:

Where did this particular document come from?

BY THE ACCUSED:

Well, from Dr. McKenzie's file.

A. From the office of the Vice-Rector, Services. It was in the security file.

BY THE ACCUSED:

Q. So maybe...

BY THE COURT:

Just a second. Would you hand that back to Mr. Fabrikant, please.

BY THE ACCUSED:

Well, maybe we should make some kind of independent body who would go to Concordia University and really get... really get

all the documents.

BY THE COURT:

We're not going to constitute some board of independent body because there is no basis for constituting some sort of independent body.

BY THE ACCUSED:

Well, we find all the time something which was not shown before.

BY THE COURT:

Mr. Fabrikant, I've been sitting here, whether between listening to motions starting in January, or whether listening to the trial starting in March, and I have heard of goings on which range all the way from nineteen seventy-nine (1979) until nineteen ninety-two (1992). It doesn't surprise me at all that this generated a lot of paper. It doesn't surprise me at all that this paper found itself and found its way into various files in various places. It therefore doesn't surprise me at all that pieces of paper, because we're a society of people who seem to hoard and exchange pieces of paper, sometimes don't always drop out. Now, I don't necessarily attribute that to bad faith on anybody's part.

BY THE ACCUSED:

Well, do you...

BY THE COURT:

That's for sure.

BY THE ACCUSED:

... recall that I asked Dr. McKenzie yesterday if she made any records of the meeting and she said, no? Do you recall that... remember that?

BY THE COURT:

No, not off the top of my head, not without checking.

BY THE ACCUSED:

Well, you have it all recorded. Why don't you check, if I asked.

BY THE COURT:

What do you mean if I have it all recorded? I have my notes. I'm not a stenographer.

BY THE ACCUSED:

Well, would you like to...

BY THE COURT:

What's your point?

BY THE ACCUSED:

Well, the point...

BY THE COURT:

No, I'm not going to check my notes on your request, What's your problem?

BY THE ACCUSED:

Well, the point is that definitely there is a lot of documents which are concealed.

BY THE COURT:

Q. What were the guidelines that you gave the Rector's office last night?

A. Legal counsel gave guidelines... rather, to have everything that in the file pertaining to Dr. Fabrikant during the period while I was accepted as Assistant to the Rector. I went up and I verified that what was there was all there was there. I do not believe, I cannot think of any document that would still be there, but it's possible. I do not believe so.

Q. Would that have been the only way your notes could have gone, or could your notes have gone in another direction, or could they have...

A. Obviously there's some...

Q. I mean, I've no idea what the copying...

A. Yes, yes.

Q. ... what the copying modalities are at Concordia University. I haven't the foggiest idea.

A. Obviously there's a note from me to Barnab, that he has, a handwritten note. I can't think of anywhere else that they would have gone. I have nothing at home.

Q. You've searched at home?

A. Yes, I have. Uh, huh.

BY THE ACCUSED:
Could we subpoena the original of the agenda instead of the copy, and take a look at the original of the agenda. Can we?

BY THE COURT:
You can subpoena what you like. I have absolutely no control over what you wish to subpoena, Mr. Fabrikant.

BY THE ACCUSED:
Well, but you would not allow me after Dr. Mckenzie testified already to call her again with some documents. Would you allow that?

BY THE COURT:
You will... since Dr. McKenzie is here, you'll ask her to bring back whatever she has on Monday, if we're talking about Dr. ... are you talking about Dr. McKenzie's personal agendas?

BY THE ACCUSED:
Yes.

BY THE COURT:
Fine. If your personal agendas would be of assistance to you in recalling.

A. No. I've put everything down that I have in the personal agendas.

Q. You have gone through each and every one of your personal agendas?

BY THE ACCUSED:
Well, it might be...

A. Yes, yes, and added things that aren't in there that I recalled.

BY THE COURT:
Pardon?

A. I added things that were not in the agendas that I could recall because of the timing of certain things.

BY THE ACCUSED:
Well, it might be of assistance to me, maybe some phrases there in the agenda would be of some value to me.

BY THE COURT:
How many agendas are we talking about?

A. I have an agenda for eighty-nine ('89), ninety-one ('91), ninety-two ('92). So three.

Q. These, of course, touch every facet of your life?

A. Uh, huh.

Q. There are other things in there...

A. Absolutely.

Q. ... I suppose, than Fabrikant?

A. Yes. They are my office agendas.

Q. I can't see any basis for requiring Dr. McKenzie to bring these agendas on Monday.
Me Freedman, what were the instructions given last night, if you are able to tell me?

BY Me FREEDMAN:
Sure. The instructions were given exactly as Dr. McKenzie mentioned. After Court we went up to the Rector's office. We

asked for all documents relating to Dr. Fabrikant that corresponded to Dr. McKenzie's tenure as Executive Assistant to the Rector. And that was what we brought. As we have with all subpoenas, let me just make a general statement. All subpoenas are adhered to the best of our ability. No documents have been removed from any files that have every been brought here during the course of this trial.

BY THE COURT:

You are, I understand, counsel for the University?

BY Me FREEDMAN:

That's correct.

BY THE COURT:

Thank you very much.

BY THE ACCUSED:

Okay. Then I would like to remind Dr. McKenzie what she said on... I am just jumping to twelve (12) of November, ninety-one ('91), not because we are there, but just to remind what she said there about the same meetings of ours. So we are not jumping in time. I'm just reminding her statement.

Q. "Did you write anything, any memo about it?

A. No.

Fabrikant: Why not?

McKenzie: Because I thought we could handle it in a different way.

Fabrikant: Why didn't you document it?

It was, according to you, an extremely disturbing statement? Why didn't you document it?

A. Maybe because I approach things in a different way. Putting things on paper is not my idea of action. Dealing with a situation is my idea of action."

Now, really, she denies here... she says that her idea is just not putting anything on paper. She did put it on paper. Very well. The whole conversation is there. All what was there, at least to the best of my recollection. Everything is here. Everything, except statement that I am supposed to kill a lot of people. Everything is there.

Now, may I invoke 9.1 at this point and try to declare the witness adverse, and from there we may be going to an examination which I do need.

BY THE COURT:

You will have to repeat what you said again.

BY THE ACCUSED:

All right. I will start even from an earlier point.

"Fabrikant... "

BY THE COURT:

Sorry. You're referring to what now? What is that that you have in front of you? I have no idea what it is.

BY THE ACCUSED:

A previous statement.

BY THE COURT:

All right. A previous statement that you have in hand?

BY THE ACCUSED:

Yes.

BY THE COURT:

Fine.

BY THE ACCUSED:

I have a tape. I'm prepared to play it and to confirm...

BY THE COURT:

Okay. So I'll ask you to withdraw for the minute, ladies and gentlemen, while I go into this.

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

(OUT OF THE PRESENCE OF THE JURY)

BY THE COURT:

Okay. Let's start with the previous statement that you say is reduced to writing

BY THE CROWN:

Yes.

BY THE COURT:

Are you prepared to waive the playing of the tape for the moment?

BY THE CROWN:

Well, I would like to follow Milguard, My Lord, with the statement... just for my information, I don't know when and where. I cannot admit something I don't know. BY THE

COURT:

Okay.

BY THE CROWN:

And I think Mr. Fabrikant should take the box and explain in a dry run what it is all about.

BY THE COURT:

Uh, huh.

BY THE CROWN:

And it's not for me, it's for the witness to recognize that it his her statement.

BY THE COURT:

Yeah. I'm simply talking about the basis for what is reduced to writing at the moment. I gather then that you wish us to go through the whole procedure. So that's fine with me.

BY THE CROWN:

It's not out of bad faith. It's just to understand what is going on.

BY THE COURT:

I appreciate that.

Dr. McKenzie, would you take a seat for the minute.

A. Yes.

Q. Okay. You better start by proving that... by proving what you have in your hand.

BY THE ACCUSED:

Well, should I go testify?

BY THE COURT:

You will have to take the stand.

VALERY FABRIKANT

January 28th, 1940

DULY SWORN

BY THE ACCUSED:

No, I should explain the tape. We had a meeting on November twelfth (12th), to the best of my recollection.

BY THE CROWN:

In which year?

BY THE ACCUSED:

Nineteen ninety-one (1991). At this meeting were present, Mr.

Relton, Mr. Bujold, Dr. McKenzie and myself. The purpose of that meeting was to explain to me the reasons why I was arrested on November first (1st). And since this meeting was I deemed it very important I have it recorded.

BY THE COURT:

How did you go about recording it?

BY THE ACCUSED:

Well, it's very simple ... this is the recording.

BY THE COURT:

Tell me how.

BY THE CROWN:

For the record...

BY THE COURT:

For the record, would you explain.

BY THE ACCUSED:

Well, I had a tape recorder with me. I pressed on the button "recording". It records.

BY THE COURT:

And the tape recorder was a recorder that you had in your pocket. You pressed on the record button and you recorded the conversation?

BY THE ACCUSED:

Yes.

BY THE COURT:

What happened to the tape after that?

BY THE ACCUSED:

Well, after that I transcribed the tape myself.

BY THE COURT:

Do you remember when you transcribed the tape?

BY THE ACCUSED:

Well, almost immediately after that while it was fresh in my memory, because some passages might be in dispute, therefore I knew that the quality of the recording in certain places might be not of the best quality, therefore I did it immediately while it was still fresh in my memory.

BY THE COURT:

Was the quality doubtful just in some places, or is the quality doubtful throughout the whole tape?

BY THE ACCUSED:

Oh, no, the quality just in some places.

BY THE COURT:

And you would have transcribed that in what, within what, a couple of days, or a week, or what?

BY THE ACCUSED:

Well, yes, it was a couple of days, yes.

BY THE COURT:

What sort of machine did you use to record it? It's a machine that carries a mini-cassette, is it?

BY THE ACCUSED:

Micro cassette.

BY THE COURT*:

Micro cassette. And was it a new tape? Was it a fresh tape, or was it a tape that had previously been used and erased?

BY THE ACCUSED:

I think it was a fresh tape. But I am not certain. At that time I had no idea that I would need be testifying on that anywhere. I just thought that it might be useful one day for my protection, but not in this surrounding, and not in these circumstances.

BY THE COURT:

The tape itself you saved in what fashion?

BY THE ACCUSED:

That I what?

BY THE COURT:

Has that tape been in your possession or in the possession of your family since?

BY THE ACCUSED:

It was always in possession of me, but when I was in jail, definitely it was not, not on me.

BY THE COURT:

In your possession, obviously.

BY THE ACCUSED:

It's always been in the apartment, not on me. I didn't carry it with me.

BY THE COURT:

Beyond playing the tape to describe the notes that you have over there, because I gather that what you have over there is a transcription of the tape?

BY THE ACCUSED:

Yes.

BY THE COURT:

Was it played on any other occasion?

BY THE ACCUSED:

No.

BY THE COURT:

It wasn't. So it was played only the time or the times you were required to played it in order to reduce to writing what...

BY THE ACCUSED:

Yes.

BY THE COURT:

... took place?

BY THE ACCUSED:

Yes.

BY THE COURT:

Have you any questions you wish to put?

BY THE CROWN:

No.

BY THE COURT:

Okay.

BY THE CROWN:

I would be interested to hear the tape and look at the transcription, and the third step to be, to verify whether there is contradiction, and then...

BY THE COURT:

Well, this is where we're going. So you're satisfied with the circumstances in which the tape...

BY THE CROWN:

Well, I...

BY THE COURT:

... was made and you're satisfied...

BY THE CROWN:

Well, it's not a question of being satisfied. I know about them now. That's the only thing.

BY THE COURT:

You know about them now. Okay.

BY THE CROWN:

I wanted to know about them.

BY THE COURT:

Mr. Belleau, would you... do you authorize Mr. Belleau to reach for that transcription?

BY THE ACCUSED:

Well, I can get it...

BY THE COURT:

You can get it. Fine.

BY THE ACCUSED:

You don't think that I'm so dangerous that God forbid those two powerful guards...

BY THE COURT:

Mr. Fabrikant, never mind the...

BY THE ACCUSED:

... they are not even...

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

... one meter of me and everybody's in danger.

BY THE COURT:

Would you like me to suspend this?

BY THE ACCUSED:

Well, because...

BY THE COURT:

The purpose...

BY THE ACCUSED:

... you do not understand how resentful...

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

... it is. That's too bad.

BY THE COURT:

Mr. Fabrikant, I think... I think... I think you're right out of order. The paper was lying there. The paper you had previously referred to. You would not have had to walk over hand he reached across and passed it to you. That was all I asked you.

BY THE ACCUSED:

Well, because you didn't want me to move from a security point-of-view.

BY THE COURT:

No, not at all. I couldn't... Mr. Fabrikant, I'm not concerned from a security point-of-view at all, at the moment.

BY THE ACCUSED:

Why then do you keep those chains on me if you are not concerned?

BY THE COURT:

At this moment I am not concerned.

BY THE ACCUSED:

Why do you keep those chains on?

BY THE COURT:

Mr. Fabrikant, we're not going through that again. Now, have you got... you have the document in front of you?

BY THE ACCUSED:

Yes.

BY THE COURT:

Okay. Would you show it to the Crown Prosecutor.

I would presume that you wish to file that as VD-D-1. C'est un voir-dire en d,fense. I think it's the first voir-dire in defense. I think it is. VD-Defense-1.

EXHIBIT VD-D-1: transcription

May I have that, please. Mr. Serrat, would you make us three copies of this, please.

Sit down, Mr. Fabrikant.

I suppose we may as well adjourn, while he makes those rather than sit here and look at each other. We will resume as soon

as the copies have been made and go on to the next stage.
(THE JUDGE LEAVES THE BENCH)
SHORT RECESS

(THE JUDGE TAKES THE BENCH)
(THE ATTORNEYS AND THE ACCUSED ARE PRESENT)

BY THE CROWN:

Before starting the starting the main subject, can I ask you the permission that we finish at four-thirty (16:30) tonight. I have an appointment outside of town.

BY THE COURT:

Certainly.

BY THE CROWN:

Thank you very much.

BY THE COURT:

I'm just wondering whether, if we're now going to go through and listen to a tape of all of this, I should not release the jury for the day?

BY THE CROWN:

Yes. I want to assure again the Court that I'm ready to do everything I can to speed up the...

BY THE COURT:

Mr. Lecours, I appreciate that.

BY THE CROWN:

And, for instance, when I admitted the file... my admission was... it was a big file that was in the possession of Concordia. The admission is... it's in the file. Okay.

Let's file it. This I don't know. But in order to speed it up maybe we should use a first step, because if somebody has the knowledge to convey me some information and I can make the admission, then we could save time.

If I let Mrs. McKenzie read that, and it rings a bell and Mrs. McKenzie says it looks like the meeting that was held on that date, I might be ready to admit it as a previous statement reduced to writing and then we will save the hearing time.

BY THE ACCUSED:

Well...

BY THE CROWN:

I just want to verify...

BY THE ACCUSED:

... it's a good idea.

BY THE CROWN:

On the other hand, I've been told by Mr. Freedman that there might be about fifty (50) of these tapes. So, I don't know.

BY THE COURT:

Well, we're taking the tapes one at a time.

BY THE CROWN:

Okay. Definitely.

BY THE ACCUSED:

Well, I think this is the best. If Dr. McKenzie recognizes...

BY THE COURT:

Would you refer me to what part of this tape you are... that's one thing I want to ask you. Would you refer me to what part of it you wish to question Dr. McKenzie. Because you're saying there's a contradiction. Now, I haven't understood yet what you are saying. So would you please...

BY THE CROWN:

Well, My Lord, if you allow me. First, we have to...

BY THE COURT:

To be satisfied that this is...

BY THE CROWN:

Because it's...

BY THE COURT:

Now, I don't... you know.

BY THE CROWN:

And second, to make sure it's a contradiction. But if it's not even sure it's a tape full...

BY THE COURT:

I'm simply... I'm going to ask Mr. Fabrikant two things, if you let me.

BY THE CROWN:

Okay. I understand.

BY THE COURT:

If you let me. Okay.

BY THE CROWN:

At the face value ... you see there is no contradiction...

BY THE COURT:

On the face value I want to know, first of all, between page 1 and page 10 what Billy is referring to, before we... before you, we adjourn to do what you propose to do.

BY THE CROWN:

We should be fair also. Sometimes a citation out of context looks like a contradiction but it is not.

BY THE COURT:

Let's see what he indicates to me is the area in the transcript that he wants to... and then I have another question to ask him.

Would you be kind enough to tell me, Mr. Fabrikant, which area you...

BY THE ACCUSED:

Should I go to the box?

BY THE COURT:

You can do it from there. There's no problem. It's as if you are arguing.

BY THE ACCUSED:

My Court is over here.

BY THE COURT:

Yeah. Would you please give me the page number.

BY THE ACCUSED:

Well, one thing is... on the first page, and I want to indicate in the middle of the first page, she indicates here that I told it to her at least twice, not just once.

BY THE COURT:

Where do you see that? Which line?

BY THE ACCUSED:

Okay.

BY THE COURT:

Or at least I see McKenzie, the fourth...

BY THE ACCUSED:

One, two, three, four, five, sixth line. Sixth line, on the first McKenzie. She said here at least twice I told it to her. Not just once. Twice.

BY THE COURT:

Fine. Now where else are you... when we adjourned, or when I sent the jury out, which part were you referring to, because it had to do with memos?

BY THE ACCUSED:

Well, there will be... this is not the only thing which I will be challenging in the future, because there will be future

questioning. And I am sure there will be contradictions there, because I also want to bring to your attention...

BY THE COURT:

Mr. Fabrikant, let's take the contradiction...

BY THE ACCUSED:

All right.

BY THE COURT:

... you are raising at the moment.

BY THE ACCUSED:

At this time...

BY THE COURT:

At this time.

BY THE ACCUSED:

... it is page 9.

BY THE COURT:

Okay.

BY THE ACCUSED:

And you may try from the first Fabrikant...

BY THE COURT:

Where we see the words, "Let us try".

BY THE ACCUSED:

Yeah.

BY THE COURT:

To?

BY THE ACCUSED:

Let's say...

"Fabrikant: why didn't you document it?"

Somewhere below, the middle of the page.

BY THE COURT:

Down to, yeah, okay. Down to Dr. McKenzie's reply?

BY THE ACCUSED:

Well...

BY THE COURT:

Or further?

BY THE ACCUSED:

... this reply, or not use this reply, it doesn't change much, because we have obvious evidence that she did document it, except that the phrase is not there.

BY THE COURT:

So the part you're referring to starts with the third line where you say:

"Let us try."

BY THE ACCUSED:

Yes.

BY THE COURT:

And continues to, dealing... the words:

"...dealing with the situation is my idea of action."

BY THE ACCUSED:

Yeah.

BY THE COURT:

Okay. Now, you say that this is a contradiction... is in contradiction with something Dr. McKenzie said when?

Yesterday, today, or when?

BY THE ACCUSED:

It is in contradiction to what she said yesterday, to what she said today, to what she said on... in another hearing on June first (1st). We have a huge number of contradictions, because if this is not satisfactory, I have tapes also of the hearing.

BY THE COURT:

We're dealing with... we're dealing with this particular

contradiction at the moment.

BY THE ACCUSED:

Yes.

BY THE COURT:

If you are referring to a contradiction between this and an answer Dr. McKenzie gave yesterday... you get the tapes on a daily basis. Can you give me the time, please?

BY THE ACCUSED:

Well, I said that as far as yesterday's conversation, I tried to hear, and I was unable. That's what I told you. If you remember from the very beginning of the hearing I told you we'll get tapes which will be useable. You said, don't worry. It's none of your business. Well...

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

... now we come to this. We'll listen to those tapes...

BY THE COURT:

I need to know what the coordinates are of yesterday's tape.

BY THE ACCUSED:

No, that's what I'm telling you.

BY THE COURT:

Mr. Fabrikant, you may tell me that. I may well find that it's hearable. Now, there's one thing that you can hear on your tape.

BY THE ACCUSED:

Myself, yes.

BY THE COURT:

You can hear yourself...

BY THE ACCUSED:

Yes.

BY THE COURT:

... and you can hear the times, and you have, I presume, some indication of what part of the day the answer was given.

Now...

BY THE ACCUSED:

Well, first of all there is no times there. Second, you know very well that my walkie-talkie does not have any counter, therefore, there is no way I can give you any indication whatsoever. If you provide me the machinery which would be little bit better than what I have, I would be happy to do so.

BY THE COURT:

So you can't give me the coordinates on the tape?

BY THE ACCUSED:

Well, I just don't have the equipment.

BY THE CROWN:

Well, the time is on the tape, My Lord.

BY THE COURT:

Of course the time is on the tape. He says the time isn't on the tape.

BY THE CROWN:

The time, it's in French. But it's on the tape, all the time.

BY THE ACCUSED:

You know, I don't hear any time.

BY THE COURT:

The time is on the... unless it was stopped for some reason on problems of transcription. I don't know. But the last time I listened to one of these things, the time was on the tape.

BY THE CROWN:

It's always the second voice giving the voice on the tape.

BY THE ACCUSED:

I did not hear it. Well, I'm telling you sincerely I did not notice any. I can check it again...

BY THE COURT:

Are you able to give any indication...

BY THE CROWN:

You have the tapes with you now. We can...

BY THE COURT:

... of what part of Dr. McKenzie's testimony yesterday afternoon you say is in contradiction with page 9?

BY THE ACCUSED:

Well, you have your notes... you don't have anything?

BY THE COURT:

Look, Mr. Fabrikant, I have notes, but I'm not a stenographer, and...

BY THE ACCUSED:

Well, your notes do not indicate a question like, what did I say? Or, did you document it? Did you inform the Rector about it?

BY THE COURT:

Well, there are a number of... these things are there, yes.

BY THE ACCUSED:

Well, then again, this is also a contradiction. She said that she informed him in general, but not on this particular part. While on November twelfth (12th), she answered quite categorically, of course. Look at page 9...

BY THE COURT:

Uh, huh.

BY THE ACCUSED:

I ask her:

"Have you at least informed the Rector about it?

McKenzie: of course."

BY THE COURT:

Okay. I see what you're talking about, at least. I'll adjourn. I'll bring the jury in, I think, and let the jury go...

BY THE CROWN:

That is a good idea.

BY THE COURT:

... because this is pointless to keep them here. And would you... I'll adjourn and would you let Dr. McKenzie see that...

BY THE CROWN:

Well, it's ten pages so...

BY THE COURT:

I gather you're in agreement?

BY THE ACCUSED:

Yes. I think this is the best. If Dr. McKenzie accepts that, yes, this is an accurate account of what happened there, then I think we cannot get a better confirmation than that.

And not to forget, I don't know, maybe this is not the right time, but since it is Friday, I'm very forgetful, a Court order for the same four professors for Saturday and Sunday, please.

BY THE COURT:

Yes. Would you... the jury, please.

(MEMBERS OF THE JURY TAKE THE BENCH)
(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

BY THE COURT:

Ladies and gentlemen, I called you in really to bid you good day, because it's pointless to keep you here for another half hour or three-quarters of an hour, just to do fifteen (15) minutes that would remain in the afternoon. I'm not at this point quite certain how long it will take me to clarify the question that I have to clarify. It's a legal question. I'm in the process of doing so at the moment. So I'll continue to do that and there's no need for me to detain you. So it remains for me to wish you all a very good weekend, and I'll see you on Monday morning, nine-thirty (9:30).

I hope Juror No. 4, you're getting your sleep these days.

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

(OUT OF THE PRESENCE OF THE JURY)

BY THE COURT:

I think what I'll do then is I'll adjourn and let you show that to Dr. McKenzie.

BY THE CROWN:

Can I, as well, My Lord, borrow the tape recorder and the tape...

BY THE COURT:

Might he borrow the tape recorder and the tape, Mr. Fabrikant?

BY THE CROWN:

... for verification.

BY THE ACCUSED:

Well, I would like to be present during, if he wants to play it, I would like it to be done in my presence.

BY THE CROWN:

It may just to play one sentence or something.

BY THE ACCUSED:

Well, one sentence is fine in my presence.

BY THE COURT:

Then you will remain on the floor, in any event.

BY THE CROWN:

Well, I don't wish Dr. McKenzie and Mr. Fabrikant being in the same room.

BY THE COURT:

If you wish to play that, you can play it here...

BY THE CROWN:

Okay.

BY THE COURT:

... and Mr. Fabrikant will be there sitting in that corner.

If this presents a problem, I'll come on to the bench.

BY THE CROWN:

Okay.

BY THE COURT:

Okay.

BY THE CROWN:

So we'll leave it there then.

BY THE COURT:

So we'll leave it there. You will be in the box if this is being played.

(THE JUDGE LEAVE THE BENCH)

SHORT RECESS

(THE JUDGE TAKES THE BENCH)
(THE ATTORNEYS AND THE ACCUSED ARE PRESENT)

BY THE CROWN:

Dr. McKenzie, I guess... I don't know if she's under the same oath, so it's out of discussion, or she could be sworn in just for the voir-dire, but it looks like this is not an accurate transcription.

BY THE ACCUSED:

Well, I would like...

BY THE CROWN:

It leaves us with no choice but to listen to the tape and verify it.

BY THE ACCUSED:

Well, let us verify what exactly is not.

BY THE CROWN:

Well, the first, let's...

BY THE ACCUSED:

For example, let me give you...

BY THE COURT:

Just a second. Just a second. Just a second. One at a time.

BY THE CROWN:

Let Dr. McKenzie...

BY THE COURT:

Sit down, Dr. McKenzie, for the minute.

BY THE CROWN:

I would...

BY THE COURT:

Just a moment.

BY THE CROWN:

I'm almost finished.

BY THE COURT:

Just a moment. Okay. Finish.

BY THE CROWN:

Okay. I have one more sentence. I think we should invite Dr. McKenzie to comment, because the first step was to ask her if it was accurate, and she also verified something with the tape. And from what I gather, it's not accurate. So I'm not in a position to admit this.

BY THE COURT:

Would you be kind enough to swear in Dr. McKenzie at least as far as the voir-dire is concerned.

CATHERINE MCKENZIE
July 5, 1948
Asst. Professor, Art History
DULY SWORN

BY THE COURT:

Le voir-dire n'est pas priv,. C',tait uniquement la question de l',coute de la cassette. Ce n'est pas huis-clos. Ah bon, ça c'est une autre chose.

That's something else. But... okay. Mr. Fabrikant, go ahead.

BY THE ACCUSED:

Well, I...

BY THE CROWN:

Does it mean that we let the people in without...

BY THE COURT:

Pardon?

BY THE CROWN:

Does it mean that we let the people in without being searched?

BY THE COURT:

There is no search now? Are there many people there?

BY THE ACCUSED:

Well, I didn't write the preliminary remark when Dr. McKenzie said that she lost weight. And I said, still I can recognize her. I didn't write all this stuff which was irrelevant.

I didn't write also... for example, I just give example. In the first statement, Relton, he spoke about another complaint. Again, I didn't write the other complaint which it has nothing to do. What I did write it:

"Complaint by Dr. Fabrikant has to do with events after the Senate meeting last Friday, at which Dr. Fabrikant, Relton after that says, I believe..."

These words, "I believe", I didn't write.

BY THE CROWN:

Well, just...

BY THE ACCUSED:

But after that:

"... was arrested and searched."

That's correct. So if I omit something, it's just an expression like, "I believe"... which are meaningless. So if the Crown insists on listening to the tape, that's fine with me. But the main content is absolutely correct. The phrases which are of importance, they are accurate and correct. I guarantee it.

BY THE COURT:

Well, the part you wish to refer to in particular was at page 9.

BY THE ACCUSED:

Well, we can hear first the...

BY THE COURT:

Well, just a minute.

BY THE ACCUSED:

Okay.

BY THE COURT:

Let me finish. At page 9, am I correct that that was one part? That was the part that you wished to invoke as an inconsistent statement?

BY THE ACCUSED:

One of that, yes.

BY THE COURT:

No, not one of that. That was the one you invoked.

BY THE ACCUSED:

No, I invoked not one.

BY THE COURT:

You invoked another one on page 1...

BY THE ACCUSED:

Yes.

BY THE COURT:

... which was the use of the words, "at least" twice?

BY THE ACCUSED:

Yes.

BY THE COURT:

And then you invoked one at page 9?

BY THE ACCUSED:

Yes.

BY THE COURT:

Which starts with the words "Fabrikant, let us try"...

BY THE ACCUSED:

Yes.

BY THE COURT:

... down to the words "dealing with the situation is my idea of action."

BY THE ACCUSED:

Yes.

BY THE COURT:

Q. Was that last bit listened to?

A. No.

Q. You never... okay. Don't be nervous, so nervous.

A. I asked to hear the page 1 at least twice, through to the end of that sentence, and I could not hear it, and there were additional words that I believe were in there, in that sentence. I believe there's a "maybe that was what he intended to do."

Q. Well, unless you have an accurate transcription, it's very difficult to work with. That's my first observation. My second observation is this. At page 9 the whole section at page 9 is all in the context of the threat, or whatever it is. It's not in the context of the meeting you held with Dr. McKenzie. Now, you can point out to me on the Court tape if I'm wrong, but my recollection is that Dr. McKenzie never said that she wrote a memo with regard to the threats. I say threats, in quotation marks, whatever they were.

BY THE ACCUSED:

No, I asked her...

BY THE COURT:

We're turning... we're turning in circles in this thing.

BY THE ACCUSED:

I asked her... yes, I agree with you that there is no special memo... at least there is no special memo. There could be no special memo. There was no such threat. But this is not the point.

BY THE COURT:

What then is the point?

BY THE ACCUSED:

The point is that she invented this absurd phrase, totally absurd, which doesn't make sense. In order to get what you want in America you have to go and shoot a lot of people. Well, if you want to get an America right here, you go and shoot a lot of people. Yes.

BY THE COURT:

All right.

BY THE ACCUSED:

It's absurd.

BY THE COURT:

You say... well, you say she invented this phrase. Okay?

That's your version of events.

BY THE ACCUSED:

Yes.

BY THE COURT:

Her version of events is she didn't invent it, that she heard it.

BY THE ACCUSED:

Fine.

BY THE COURT:

So that's the situation we find every day.

BY THE ACCUSED:

Yes.

BY THE COURT:

The jury will listen to her testimony. The jury, if you elect to testify, will listen to yours, and will decide what they believe.

BY THE ACCUSED:

No, this is... this is not the point.

BY THE COURT:

Now...

BY THE ACCUSED:

The point is... let me then explain to you several things. First of all, if you want to listen to this at least twice, we can play it, because whatever inconsistency they can catch, that I didn't use those phrase "it was my understanding" or something, I didn't write those parts of phrase which are irrelevant to the text. I didn't write it. It was a big job and I didn't think I will present it in a criminal case.

BY THE COURT:

Well, that doesn't matter. I mean, that won't do. If you're going to...

BY THE ACCUSED:

Okay, we'll just listen to the tape.

BY THE COURT:

No. If you're going to invoke a statement reduced to writing, you've got to reduce the whole thing to writing. It's got to be accurate.

BY THE CROWN:

That's what we were told before, My Lord. We get another story now.

BY THE ACCUSED:

Well...

BY THE CROWN:

We were told that it was an accurate transcription.

BY THE COURT:

I know.

BY THE ACCUSED:

Well, it is accurate.

BY THE CROWN:

It is false.

BY THE ACCUSED:

They are just...

BY THE CROWN:

I cannot say it's Mr. Fabrikant's words.

BY THE ACCUSED:

They are just trying to catch flies. It is accurate. If I didn't write the word "it was my understanding"...

BY THE CROWN:

Why didn't you say so then?

BY THE COURT:

Well, listen... listen. There is no point our entering into recriminations as to whether it's accurate or whether it's not accurate, or why. Unless it's accurate it's not a statement reduced to writing. The first observation.

The second observation... and you haven't clarified anything for me.

BY THE ACCUSED:

Well, let us check the part...

BY THE COURT:

What... what do you want... no, what do you want to reproach to Dr. McKenzie, vis-a-vis page 9? What do you want to

reproach to her?

BY THE ACCUSED:

What... with page 9?

BY THE COURT:

Sure.

BY THE ACCUSED:

The page 9, it is an inconsistent statement. First of all, "have you at least informed the Rector about it?" Here she answers, "of course." And she testified here in part that she didn't. She just said in general things, that I was there and I was unhappy, and I was this and I was that. But that important part...

BY THE COURT:

She said two things. She said: "I don't know if I informed the Rector." And then she said today: "I believe I informed the Rector. I believe I informed the Rector in a general fashion."

BY THE ACCUSED:

Well, what does it mean "in a general fashion"? That Fabrikant was there. That's all?

BY Me BELLEAU:

According to my notes...

BY THE COURT:

Well, it's always about the question of... and you're only talking about one threat here in this statement. You're only talking about the North America statement.

BY THE ACCUSED:

Yes.

BY THE COURT:

There's no mention in this statement of any other.

BY THE ACCUSED:

Exactly. This is my next point which I would try to make. Yes. If she knew, this is... will be the next point. If she knew... because what I want to demonstrate here that she during the whole conversation never mentioned Grendon Haines, she never mentioned a single word about a gun, about a Rector, about a hostage, nothing is here, this is my next argument. It is just not there.

BY THE CROWN:

So what.

BY THE ACCUSED:

What, so what? If it was true, shouldn't she mention it?

BY THE COURT:

Well, that's an assumption you come to. I don't know why people mention things. I can phantom a number of guesses as to why, but you're not... you're not accurate.

BY THE ACCUSED:

Okay. Let us go to the definition...

BY THE COURT:

I'm sorry, no, wait a minute now. You're not even accurate in what... in your last answer to me. She said at page 9 in the very bit you referred me to, and I was sure I'd read that.

"What I did do, I have got a lot of people involved."

She said that yesterday.

"As I recollect, I have got Grendon Haines involved, and he spent much time to make you feel more secure in the Department."

BY THE ACCUSED:

Well, I do not reproach this part.

BY THE COURT:

Well, you just said two seconds that there was no mention...

BY THE CROWN:

Read that, My Lord, Fabrikant was tricking you again.

BY THE ACCUSED:

What trick? Why... what is it you're talking...

BY THE CROWN:

Mr. Haines is mentioned there.;

BY THE COURT:

Of course, Mr. Haines is mentioned.

BY THE CROWN:

He just said Mr. Haines was not mentioned at all.

BY THE COURT:

I know. I know. I read this.

BY THE CROWN:

And he's the...

BY THE ACCUSED:

(Inaudible).

BY THE CROWN:

I don't push to say that he is a liar, but I'm...

BY THE ACCUSED:

What the hell, didn't he understand what I mean. Haines was not mentioned at all.

BY THE CROWN:

Well, he is mentioned...

BY THE ACCUSED:

I didn't mean that his name was not mentioned. What I mean that she didn't mention at all that I allegedly threatened, told to...

BY THE CROWN:

Now it's another story, My Lord. It changes all the time.

BY THE COURT:

It changes all the time.

BY THE ACCUSED:

Stop pretending being that stupid. You are not.

BY THE CROWN:

I think you have to withdraw that.

BY THE ACCUSED:

Okay. I withdraw that.

BY THE COURT:

Well, you are a lot luckier than I.

BY THE ACCUSED:

Ha, ha, ha. Well, look, he cannot kick me out, therefore I behave differently. Since you can kick me out, then I prefer that.

BY THE COURT:

Look, there's... in that part on page 9... on page part on page 9...

BY THE ACCUSED:

No. Let me explain about Haines.

BY THE COURT:

... there's nothing there.

BY THE ACCUSED:

If he pretends not to understand what I meant by not mentioning Haines, I would make myself clear. I wanted to say that she did not mention that I allegedly uttered some threats to Mr. Haines. This is what I mean, that none of the threats which appeared here at this hearing were mentioned ever during the hearing... during the meeting of November twelfth (12th). In addition to that, I have also tapes of the hearing of June the second (2nd) where I explicitly asked her, could you

please state what are any rumours you would ever heard. Do you recall this document...

BY THE COURT:

Just a second. Let's not get into that yet. We're dealing...

BY THE ACCUSED:

Well, we are...

BY THE ACCUSED:

... we're dealing with one for the minute, November the thirteenth (13th)...

BY THE ACCUSED:

I understand that.

BY THE COURT:

... nineteen ninety-one (1991).

BY THE ACCUSED:

We are dealing with one subject, that the witness is adverse.

BY THE COURT:

You seem to have a fixation with this. And you know, this fixation is causing you to go around in circles.

BY THE ACCUSED:

You can call it any way you wish.

BY THE COURT:

Listen...

BY THE ACCUSED:

You are in a lucky position that you are a judge. You can say whatever you want. Nobody can kick you out of the room. What can I do about it?

BY THE COURT:

Well, I'm not being impolite to you when I say that. I'm simply saying you have a fixation with this.

BY THE ACCUSED:

Well...

BY THE COURT:

Now, listen... listen...

BY THE ACCUSED:

Well, a fixation implies some kind of craziness.

BY THE COURT:

Yeah.

BY THE ACCUSED:

Well...

BY THE COURT:

Would you...

BY THE ACCUSED:

... if this is impolite... if I tell you you have a fixation on something, how would you feel?

BY THE COURT:

A fixation is some sort of what?

BY THE ACCUSED:

If I say that you have a fixation.

BY THE COURT:

No, I mean a preoccupation is what you have with this.

BY THE ACCUSED:

It's not an preoccupation. I just need to cross-examine her. That's all.

BY THE COURT:

Mr. Fabrikant, listen, you have been given all the latitude in the world. There hasn't been a single objection with regard to one of your questions all day. There was not a single objection with regard to one of your questions yesterday. What I have not let you do is cross-examine at large your own witness. I'm on sound ground not to let you cross-examine your own witness. But you have been given the scope to put...

you're not even listening... you've been given the scope to put all the questions you like to Mrs. McKenzie, to bring out exactly what you want to demonstrate to the jury. What you want to demonstrate to the jury, if I understand you properly, is a threat, or what may be interpreted as a threat is serious. Why did you not write a memo... or did you not write a memo about it? No, I didn't write a memo about it. You've even been allowed to asked, why did you not write a memo about it? I cite that as an example. You've been given all that scope. Because I make a distinction in my mind between leading questions, on one hand... you can ask leading questions to a very friendly witness and get wonderful answers. And that is the instance where leading questions aren't allowed, because obviously you can then... if we are dealing with a very friendly witness, through leading questions, architect the answers, or design the answers which one wants to get.

I haven't concerned myself terribly much about leading questions here, because the witness was not, at least in my estimation, one who was here in order to give you answers that were necessarily the answers that you were seeking. But the witness hasn't demonstrated to me... this witness hasn't demonstrated to me that she's trying to evade your questions, or not answer them. And you've put before the jury that a number of things were mentioned at that first meeting in January. One was the North American thing, and the other was the questions which related to your situation in the department. She's told you, yes, I made a report of that, and you've been allowed to go as far as to say, isn't it curious that you didn't make a report upon the observation I made about North America?

Now, you have to live with the other part of her answer. And the other part of her answer is, it's not that I didn't take that seriously. In fact, I took it so seriously that I got Haines involved, and along with Haines we did this. Haines developed a relationship with Fabrikant to try and straighten him out in the department. But, in addition, we went off to the Adler Institute and we took whatever counsel we took there. You've been allowed to ask, why did you not write reports on that? All of that is what I presume you want to permit you to say to the jury, look, if I've made a threat, don't you think it would have been documented?

Now, that's argument. No amount of hammering, thumping and banging will permit you to say to the witness, under the guise of an answer, therefore, isn't it logical that it was never said. That's reasoning that you're trying to put into the whole equation through the witness' mouth, and that's not permissible.

Now, I have to wonder why you continue accusing me of blocking you and banging your head against the wall to try and get something in which is a conclusion that the jury is going to have to draw when they consider all of the evidence. It's a pointless exercise from a legal point-of-view. A pointless exercise from a legal point-of-view.

BY THE ACCUSED:

May I respond now?

BY THE COURT:

Sure.

BY THE ACCUSED:

All right. I, again, said at least one thousand (1,000) times that, yes, in some occasions, yes, you do allow me certain

questions which would not be allowed otherwise. But this is not satisfactory to me, because this looks like a favour to me. While what I consider to be an impartial judge, it would be, yes, to recognize the witness is adverse and presented not as a favour to me, but just as a normal exercise of my legal right. So this is why I'm so preoccupied. I do not want it to look like I'm being given favours.

BY THE COURT:

You're getting none.

BY THE ACCUSED:

I'm not finished yet.

BY THE COURT:

You're getting none.

BY THE ACCUSED:

Could you... may I continue? So this is the reason why I am fixed, preoccupied, whatever word you use, that I do not want it to look like I am given a favour.

The second thing, I would like to bring to your attention a very important jurisprudence, that's Regina versus Cassiber which you definitely know. And it says here that:

"The majority of Court held that adverse was not limited to hostility, but also included a witness who, though not hostile, was unfavourable in the sense of assuming by his testimony the position opposite to that of the party calling him."

This is exactly the case.

BY THE COURT:

It's not the case. You've misinterpreted Cassiber

BY THE ACCUSED:

How could I possibly misinterpret it?

BY THE COURT:

You've misinterpreted...

BY THE ACCUSED:

The position of this witness is definitely... do you really think that I called this particular witness to convey to the jury the message that I have been a menace to everybody all my life? Do you really think that that was my purpose of bringing the witness here? Of course not. So her position is totally different from mine. It's totally opposite. Now, the majority...

BY THE COURT:

Excuse me, just a minute. Just a minute. Let me answer what you just said. Yes. The Ontario Court or Appeal said what it said in Cassiber, because while Section 20 of the Ontario Evidence Act uses the word... I'm sorry. The Ontario Court of Appeal used the word, made the distinction in order to permit one to interpret Section 20 of the Ontario Evidence Act by, I suppose, extension Section 9 of the Canada Evidence Act, to permit you to get at, or to cross-examine on a document even if a witness was only adverse, rather than the whole way of being hostile, and that's the position I've taken right through.

If you have managed to show that a witness was adverse... in fact, if you showed to me that the witness has said something different than in the statement, I've given you the right. But the right is a limited one. It's not to cross-examine at large. It's only to cross-examine on the difference between the witnesses testimony here and what the witness ostensibly said in the statement. It doesn't go any further than that.

You have to have the witness... the witness has to be a hostile witness before you can cross-examine at large. Now, you say, and this is the trouble with you... why is it that I can do it here, and you don't let me do it there, and you let me do it in the case of Bujold? It's a judgment call I make. That's the only answer I can give you. I had the impression at the time when I made that decision that Bujold was not answering your questions on the line in a straightforward fashion. That's a call I make. I haven't had the impression that Dr. McKenzie was not answering your questions, one-for-one, straight on the line, to the best of her ability. And that's why in the exercise of these judgment calls, you'll get different consequences. You'll get different results. And lastly, you're not getting any favours. Don't worry about that.

BY THE ACCUSED:

Well, I know I am not. But what bothers me that you enunciate it all the time. I know I'm not getting any favours. I cannot get even myself open, so I know I do not get any favours.

BY THE COURT:

I'm not talking about the detention unit, or anything else.

BY THE ACCUSED:

Well, I am talking about...

BY THE COURT:

I'm talking about the trial.

BY THE ACCUSED:

Yeah. So, but you enunciate it each time that I do get favours.

BY THE COURT:

In any event, the Crown Prosecutor...

BY THE ACCUSED:

Let me finish with that. So this particular case did not distinguish between adverse and hostile. First of all, those two terms in jurisprudence are the same. Adverse and hostile, it is just in someone's mind that this is hostile and this is adverse.

BY THE COURT:

No, there's a distinction. I'm sorry.

BY THE ACCUSED:

No.

BY THE COURT:

And it's clear.

BY THE ACCUSED:

Well, even in the Criminal Code it said so, that adverse sometimes is called hostile. Because effectively what is the meaning of the term, why we need this term. We need this term for one reason, to be able to cross-examine a witness. And whether you call it adverse or hostile, both findings allows to cross-examine, according to Section 9.1, I believe. 9.2 deals with certain documents and allowing cross-examination on certain particular statements. But 9.1 allows cross-examination at large. And there is here a...

BY THE COURT:

No, it doesn't allow cross-examination at large.

BY THE ACCUSED:

Okay. Well, let me read it...

BY THE COURT:

Anyway, I think we're going to continue this on Monday morning, because I was asked if I would adjourn at four-thirty (16:30) this afternoon, and I said I would.

BY THE ACCUSED:

All right.

BY THE CROWN:

Thank you very much.

BY THE COURT:

Okay.

ADJOURNMENT

I, the undersigned, MICHEL DAIGNEAULT, Official Court Reporter, hereby certify the foregoing is a true and faithful transcript of the evidence in the above-mentioned case as taken by mechanical recording, to the best of the quality of said recording.

And I have signed.

MICHEL DAIGNEAULT,
Official Court Reporter

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PROVINCE OF QUEBEC

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: JUNE 7th 1993

OFFICIAL COURT REPORTER: MS. MAUREEN ROWE

CLERK OF THE COURT: MS. ROXANNE DESROSIERS

FICHER NO.: 2763

THE COURT TAKES THE BENCH

BY THE HONORABLE JUDGE FRASER MARTIN, J.S.C.:

We adjourned at four thirty on Friday afternoon. We were in the middle of a voir-dire in order to determine the question of whether or not questions could be put on the basis of VD-D-1 which was a transcript of a meeting held on November 13th.

The crown prosecutor had advised me that his preliminary hearing of the tape indicated that the tape did not appear to have been fully transcribed. Am I correct?

BY MAITRE JEAN LECOURE
ATTORNEY FOR THE CROWN:

That is correct, My Lord.

BY THE COURT:

Well if we press on with that, I suppose we'll have to hear the tape.

BY MR. VALERY FABRIKANT - ACCUSED
REPRESENTING HIMSELF:

And before we hear the tape, I would like to raise another question.

BY THE COURT:

No, I would like to continue with the voir-dire and get the voir-dire finished with and get on with the trial. Time is passing so let us ...

BY THE ACCUSED:

Maybe you will hear what I have to say.

BY THE COURT:

Well if it relates to the tape, that's fine. If it relates to the ...

BY THE ACCUSED:

It relates to the tape, yes, because on Saturday, I called the so-called friend of court, Mr. Belleau and asked him to come over and to bring the tape recorder with him since I'm not allowed to have it. I wanted to sit with him and to check the accuracy of the tape itself to mark down if there are any omissions. If there are, how many and what are they and he flatly refused saying that it is none of his duties.

So it is related to tape. Now, and this is not the first

time. I'm not getting help I definitely need. If it is not duty of Mr. Belleau, so first of my question to you, was it or wasn't it duty of Mr. Belleau to help me to clarify if there are any inconsistencies on the tape and if there are, how many of them? Was it his duty?

BY THE COURT:

It was not the duty of Mr. Belleau. Mr. Belleau had no instructions in that regard, nor were any asked for.

BY THE ACCUSED:

OK, so let ... let me make clear for myself what Mr. Belleau is or isn't obliged to do.

BY THE COURT:

Listen, I'm not getting into a debate at the moment on what Mr. Belleau is or is not obliged to do. We've been through that on a number of occasions.

BY THE ACCUSED:

Well I never get ...

BY THE COURT:

Generally speaking, if you require assistance on a question of law, you have the ... you have the duty of ... of indicating that and as far as it may be practicable, Mr. Belleau can help you.

You didn't ask for any assistance with regard to this and quite frankly, we're at the stage in the voir-dire where the crown on a cursory hearing of the first part of the tape says to me "it doesn't appear all to be there".

Now if that's so, then the only way I can determine that is for the tape to be played here and I'll look at this transcript and I'll follow along on this transcript and see what I hear.

BY THE ACCUSED:

No, you're not answering my question. I need such help and the more ... I have numerous tapes more, then I need a person, I need a court order. I will find another person who would be prepared to come over to bring the tape recorder, to bring necessary tapes and to sit with me and to listen to them and to make corrections, whatever needed (sic) because I have numerous tapes more and if Mr. Belleau is not supposed to do that, then somebody else should be allowed inside Parthenais.

Would you be prepared to make such a court order?

BY THE COURT:

Not at the moment.

BY THE ACCUSED:

Well, but I need it now.

BY THE COURT:

I wish to hear the tape at the moment and that's what I propose to do.

BY THE ACCUSED:

OK, when we are going to discuss it?

BY THE COURT:

I don't know when we're going to discuss it. We're going to proceed step by step at the moment and I'm going to listen to the tape.

BY THE ACCUSED:

Well are we going to discuss it today?

BY THE COURT:

I'm not sure whether we're going to discuss it today or not.

BY THE ACCUSED:

Well, but I need it today because there are numerous

other tapes which I need either to have this tape re-
corder with me, if you make that kind of order or some-
body else from outside be allowed to come over to bring
it and to sit with me and to do the job. What ... what

...

BY THE COURT:

Are you going to play me this tape now?

BY THE ACCUSED:

So you ignore what I asked?

BY THE COURT:

I ignore for the moment what you ask. I want to hear this
tape.

BY THE CROWN:

Can we make extra transcripts, My Lord. I think it would
be important that Dr. McKenzie follow at the same time.

BY THE COURT:

Well there were other ... there were three (3) trans-
cripts made.

BY THE CROWN:

There was one ...

BY THE COURT:

And there were three transcripts made because the thing
was ten pages (10) long and it took the time it took.

BY THE CROWN:

Because maybe one extra copy or ...

BY THE ACCUSED:

And I also ... I also ...

BY THE CROWN:

Mr. Belleau doesn't have a copy either I guess.

BY THE COURT:

I ... you don't have a copy of Mr. Belleau?

BY MAITRE LOUIS BELLEAU

AMICUS CURIAE:

No, I gave mine to Mr. Fabrikant because the original was
filed.

BY THE CROWN:

And I would appreciate ... I would prefer to give mine to
Dr. McKenzie.

BY THE COURT:

OK, I'll adjourn while Mr. ...

BY THE CROWN:

Two or ... two copies.

BY THE COURT:

... Mr. Sera has two other copies made.

BY THE ACCUSED:

Well I have also another request. We need at least equal
condition with crown. When crown comes to play a tape,
they have excellent equipment, they have earphones for
every person to hear and to put me in a condition when we
have this little little player for everyone to hear, just
to say an excuse, OK, everyone will say we can't hear
anything. This is unfair.

I believe I'm entitled to the same quality of equipment
the crown has to play this tape, not on this little lit-
tle tape player. So ...

BY THE COURT:

I'm not even sure that you're going to get as far as
having your tape played yet.

BY THE ACCUSED:

What do you mean? You just said that let us hear it.

BY THE COURT:

Well first of all, I'll tell you right now. If your ... if your transcription of what is on the tape is substantially incomplete, that's the end of the matter.

BY THE ACCUSED:

It's not the end of the matter in any way, even if transcription ...

BY THE COURT:

Secondly, if the transcription and the parts of the transcription to which you wish to refer are clear enough and form in part at least what could constitute a statement reduced to writing, the next question is: is there a substantial contradiction between what Dr. McKenzie said last week and what she said on this. That's the next question I have to decide and it has to be a serious contradiction.

BY THE ACCUSED:

You don't seem to hear what I said.

BY THE COURT:

You don't seem to hear what I'm saying.

BY THE ACCUSED:

Well I'm hearing what you're saying. I said we need to hear it.

BY THE COURT:

And ... and these, we're getting there, and these are two steps, these are two steps that have to be covered before there is any question of the jury listening to any tape.

BY THE ACCUSED:

But we need to ...

BY THE COURT:

Or before any cross ...

BY THE ACCUSED:

They need to hear it.

BY THE COURT:

Listen, listen.

BY THE ACCUSED:

And we need to hear it well. You don't seem to realize that you're sitting there and tape player playing there, you would not hear very much. You don't seem to realize that simple simple thing.

BY THE COURT:

We'll see, we'll see. So we'll adjourn while Mr. Sera makes two more copies of this thing but I can tell you, we're not going to bound up for months listening to tapes. I can guarantee you that.

BY THE CROWN:

And there's no way we're going to play things like that for the jury.

BY THE COURT:

Absolutely not.

BY THE CROWN:

We are not cross-examining two (sic), period.

BY THE COURT:

Absolutely not. There's ... there's a procedure to be followed and it is ... it has to be followed with regard to each tape, then there's going to have to be a determination made as to whether ... quite frankly as to whether we're working with a complete set of notes on the tape and that's not my responsibility to provide that, nor is it yours.

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

BY THE COURT:

OK, where is the tape?

BY AN UNIDENTIFIED VOICE:

This is the most sophisticated machine that the enregistrement could provide us with.

BY THE COURT:

For listening to these things.

BY AN UNIDENTIFIED VOICE:

Yes.

BY THE COURT:

Well let's see how good, better and different it is.

BY THE ACCUSED:

You are not going to press record instead of play?

BY AN UNIDENTIFIED VOICE:

Don't worry.

BY THE ACCUSED:

Well I wouldn't be surprised if you do that.

BY THE COURT:

If there's another remark like that, we'll stop and out you will go again.

BY THE ACCUSED:

Out I go? Don't threaten me.

BY THE COURT:

I don't want to hear that from you again. Now sit down.

BY THE ACCUSED:

I'll say whatever I want to say. You want me to go? I go.

BY THE COURT:

Mr. Belleau, close that. We'll adjourn.

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

BY THE COURT:

We will try again and I warn you, if there is any further intervention from you, Mr. Fabrikant, which is neither invited nor in its proper place, then this voir-dire will be declared closed and we will proceed with the cross-examination of Dr. McKenzie from the point where we were. Now we will try again. Mr. Belleau, would you care to play the tape please.

RECORDING PLAYED

BY THE ACCUSED:

This is beginning.

BY THE COURT:

Pardon?

BY THE ACCUSED:

This is beginning of transcription.

BY THE COURT:

It might give Dr. McKenzie a better idea if she set up at the witness box and listened to it there in closer proximity to it.

BY THE CROWN:

But by ... by now, we all know that it is not accurate at

all, My Lord. I don't ...

BY THE ACCUSED:

It's not accurate but the part ...

BY THE CROWN:

I don't know whether we should go further.

BY THE ACCUSED:

But the part ...

BY THE COURT:

We'll go a little further.

BY THE ACCUSED:

OK, let me quote.

BY THE COURT:

Now, just a second, Mr. Fabrikant, we'll go further.

BY THE ACCUSED:

The part important is there.

BY THE COURT:

Mr. Fabrikant, we will go further.

RECORDING PLAYED

BY THE ACCUSED:

Well this equipment seems to be ever worse than mine.

END OF RECORDING

BY THE ACCUSED:

All the important parts are there, they are clear.

BY THE CROWN:

I think it's grossly inaccurate and tricky. I think we should throw that out.

BY THE ACCUSED:

Well let me ... let me read from authorities about it.

May I?

BY THE COURT:

What authority are you reading from?

BY THE ACCUSED:

No idea.

BY THE COURT:

Well if you expect me to listen, I would suggest you give me the citation of the case.

BY THE ACCUSED:

Well you see, I'm at mercy (sic) of ...

BY THE COURT:

I'm not going to argue with you.

BY THE ACCUSED:

... this so-called friend of court.

BY THE COURT:

If you have an authority to cite, cite me the authority.

BY THE ACCUSED:

Well you ask me what this authority is. I'm explaining to you how I got this authority and Mr. Belleau gives me whatever he chooses. He chooses to give me the wrong authority, he chooses to give me the right authority and I have no idea what he gives me because I have examples which are so outrageous of what he gave me.

You remember we discussed question of tapes, whether tape is hearsay or not, do you recall that? The tapes are hearsay or not so I asked Mr. Belleau to get me a jurisprudence, whether tape is hearsay or not and do you know what? He gave me one and I was even prepared to apologize

that yes, he's right, tape is hearsay.
Luckily later on, he gave me a newest jurisprudence from 1991. That one was 1982 and that was one reversed everything completely and probably you know what I'm talking about. It is a decision ...

BY THE CROWN:

Ciboyer (sic)?

BY THE ACCUSED:

Yes, I believe so, so you know that. Now you see, I'm at the mercy of a saboteur. What would happen if he didn't give it to me? Then I would have apologized, I would tell ... told him: OK, I agree with you, tapes are hearsay and I cannot possibly introduce them.

Now at the Ciboyer, we have absolutely opposite stuff. We have a very very interesting thing here, that everything is admissible if it is necessary and reliable. Isn't that some kind of a bomb?

Now, and I'm at mercy, I repeat once again, of this saboteur because he gave it to me just recently. How many cases, when I was questioning witnesses, I could have won. If I knew this earlier and I could have ended the trial without even knowing all this.

Now is this acceptable situation that I'm at the mercy of this saboteur? Now he gives me another authority. What can I do? I read it and I'm pretty sure it might be not the best authority, but what can I do again. I'm at the mercy of this saboteur.

Now, unintelligible portions:

"The fact that portions of conversation recorded are unintelligible should not render the entire recording inadmissible. Much testimony is admitted of conversation or other observations made by witnesses whose observation is incomplete. The observation goes to weight, not admissibility."

And there is a reference there, so if parts are unintelligible and I just admitted them, I told you from the very beginning that Dr. McKenzie's voice is very specific, should I say it politely. It's so specific that the first day of her testimony, the same unintelligible (sic) as it is here and I saved as much as I could to the best of my ability.

I never thought when I was doing this that I would need it for criminal proceedings, therefore some general phrases were omitted, phrases like "I don't think or I believe so" or I never thought that word per word would be important, but putting this aside, the main portions which I'm referring to, they're very clear, they're there, that she said at least twice that now he understood what North America ... North American society was like and so on and so forth, it was clear, it was unambiguous, it was there. Now what is on 9 page, page 9, again it is not "Let's try if there is some omission there" but the question effectively stays the same.

The meaning of question stays the same, that someone comes and says that he's going to shoot a lot of people, shouldn't you leave the telephone and call the police, I missed here "right away". It's not there, it is on the tape and it doesn't change anything and again, whatever

she answered here, the main meaning of her answer is here, but again this answer is least important, but my question "Have you informed the rector about it" is clear. Her answer "Of course" is absolutely clear and absolutely unambiguous.

My question "Why didn't you document it? It was according to extremely disturbing statement, why didn't you document it", that question is also clear and her answer is absolutely clear and correct. So the main portions are there.

Besides that, I intend to invoke more than that. There was a place here that she says that conversation is so clear that she couldn't possibly forget it. It is so embedded in her memory that she cannot possibly forget that conversation and again this part is absolutely clear.

Now here she demonstrated on several occasions how forgetful she all of a sudden became.

First of all, I refer now to the beginning of examination when I asked her: "Do you have any recordings, I mean any notes from our meetings" and she said that there is some in the agenda but nothing else and just on Friday, she produced complete conversation of January 24th.

So again it is clear contradiction between what she said then and I mean, on Thursday and on Friday, documents all of a sudden appear.

I'm pretty sure that there are other documents and those documents were not produced for one reason only. First because we have a judge who allows to do it. This is the main reason for that.

Second, because in these papers, we have ... I believe we will find their plot together with Haines to create impression around university community that I'm in some way dangerous to justify their next step.

So we need to get agenda, original of agenda and it is very very improbable how come the first meeting was recorded and none of the other meetings were recorded whatsoever because on the second meeting, if my recollection is correct, it was ... Brendon Haines was present at that time and we discussed this compromise which I mentioned and I'm sure it was documented and she just doesn't want to produce it to show that it was just indeed a compromise, that I do not go outside and they are prepared to fix the situation.

Now from ... the second thing, when I asked her here whether she informed the rector, again she responded in some kind of general terms. How come in general terms, if she claims here that this conversation was so disturbing and so kind of ... how she said it, that it couldn't be just eliminated from your ... from her mind and all of a sudden, she tells that she informed the rector in general terms. What kind of general terms were they? It's total ... total absurd. (sic)

This is what she said and again it was clear on the tape this part.

"Never before or after I had a conversation which would even come close to the one I had with you and I cannot erase it from my memory as much as I would like to."

Now she claimed, November 1991, that it was so disturbing and so outrageous that she remembers each word of it. Now she all of a sudden gets forgetful.

Now I would like to quote this particular case, again in jurisprudence. I believe it is Michael Roy (sic) which says that if, on one statement, witness claims definite answer and on another statement, all of a sudden, witness says that she doesn't recall, she doesn't recollect, she ... she has difficulty remembering what was answered to that question, it is the same equivalent to a lie. I believe this is Michael Roy and Rouse (sic) something against the Queen.

I also would like to say that from the same, Regina vs Cassiba (sic), that meaning hostile (sic) means not hostile behavior, it means hostility of mind.

It means that the witness testifies something which is damaging to the party who called and whether a witness is hostile in mind is a question of fact.

"To determine this collateral issue, a trial judge should hear all and any evidence relevant to that issue. The fact that a witness had made a previous contradictory statement is relevant, admissible in most cogent evidence of that issue and the evidence alone may be accepted by judge as sufficient proof of hostility ..."

And I wish to underline:

"... irrespective of the demeanor and manner of the witness in the witness box."

Irrespective. So all your references that demeanor of the witness is fine has absolutely nothing to do with the question.

I also bring to your attention one more thing which I would like to invoke and it's repeated twice and it is clear. On page 1, Relton asked her: just that single comment made her to do what she did, just that single comment which disturbed you.

Now at this point, she was supposed to answer "No, I know from Mr. Haines that he threatened to buy a gun, that he threatened to kidnap the rector, that he threatened ... what was it, I forgot, to get ... to get rector. She didn't mention it here.

I also brought with me tapes of the hearing of June 2nd and I would like to play them too and here you will see even more evident contradiction of testimony today and there.

There, I explicitly asked her: "Tell me, whatever rumors you know please quote whatever rumors" and she started quoting something about children. She never mentioned during that hearing that Mr. Brendon Haines told her this or told her that or told her anything else and you see, she's nodding her head. I believe she remembers that. You do?

So is this enough contradictions or I should continue?

BY THE COURT:

I'm going to take these things one at a time. Are you finished? Then sit down if you're finished.

Mr. Lecours?

BY THE CROWN:

Well My Lord, I have this ... the impression that this witness is totally and absolutely honest all the way. I don't see any basic contradiction in anything that she said and if I quote McEnroe, it's open to the trial judge to conclude if a witness is lying. Mr. Fabrikant pretends all the witnesses are lying all the time. This is not ... this is clearly not the case.

When she testified that she has no recollection of an event and to therefore conclude that her evidence at trial is inconsistent to police, this is not a statement to police. She was tricked the first time by Fabrikant and she was tricked the second time by Fabrikant and she did her best all the time.

That's the only thing we can conclude.

BY THE ACCUSED:

I would like to know how she was tricked by Fabrikant. Maybe crown would care to elaborate. How exactly she was tricked by Fabrikant.

BY THE CROWN:

I don't talk to Fabrikant.

BY THE COURT:

Have you any ...

BY THE CROWN:

Well she was taped without her knowledge and Fabrikant was using exactly the same ... the same game as he did in court. You know, telling her she was a liar and bringing tiny details and never quitting and always asking why and arguing instead of asking questions, which is what he does all the time.

BY THE ACCUSED:

No, this is not ... this is not evidence of tricking somebody. Tricking is something else.

BY THE COURT:

Are you finished? Good.

I will dispose of this question, perhaps not in the most orderly fashion that I could imagine if I were to return to my office and write up a judgment but I don't think that's necessary.

It's trite to say that the evidence of the conversation which took place on the 13th of November 1991 is the tape and not the transcription. The tape itself appears to me to be substantially readable and certainly there are portions of it which are perfectly clear and which admit of no difficulty.

I cannot say the same for the transcription which is virtually useless. The transcription, as the crown prosecutor pointed out, contains a number of omissions. His word was grossly incomplete and that is no exaggeration and he also added that it is tricky.

I'm not sure I would wish to conclude that it is tricky but certainly, not only are the questions and answers incomplete, but words have been clearly changed. Page 7, for example, statement from Fabrikant:

"I allegedly said that what is needed is to come and shoot a lot of people."

What the tape showed were the words: "I kind of said" rather than "allegedly said".

The transcription is replete with that sort of thing and it would be grossly misleading to give any sanction to reliance upon it.

Furthermore, there is no question of an integral transcript going in front of the jury, not in this instance, at least as far as this meeting is concerned, is there any question of the integral tape going in front of the jury.

The witnesses are here. Mrs. McKenzie is here. Relton has testified. If Mr. Fabrikant is able to satisfy me that something has been said here that is substantially at variance with what is on the tape, then of course he's perfectly willing ... he's perfectly entitled to do so and to use that particular portion of the tape in order to demonstrate the contradiction in the event that the witness does not of his or her own volition adopt what the tape indicates what said at that meeting.

It seems useless to discuss tape recordings as evidence. The Ciboyer case and the observations to which I was referred alludes to evidence which is relevant and reliable. I have never said that a tape recording, if it was properly proved, is not reliable.

Whether it is relevant or not is another question because Mr. Fabrikant can take whatever position he likes. A tape recording of a conversation is not sworn testimony and unless that tape recording can be produced, whether as a part of the res gestae or as evidence of a confession, or as evidence of the actus reus as was that of the ... of the 911 conversation, it will not normally be admissible integrally. I admit the proposition that it can constitute real evidence in certain circumstances.

That is not the situation here. The situation here is an application, under section 9.2 to put to the witness a contradiction between the testimony which she rendered here and a conversation which was surreptitiously recorded on November 13th 1991.

The portion on page 9 which the witness proposes to put to the ... which the examiner or which the accused proposes to put to the witness is first of all grossly incomplete if we looked at the typed ... the typed portion and contains substantially no contradiction between what she has said previously and what she said here.

I can see absolutely no basis for permitting that sort of examination on the point at page 9 or on the point at page 1 which deals with the question of twice.

So for these reasons the application is dismissed. We will resume with the jury after fifteen minutes.

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

BY THE COURT:

You asked me to come in without the jury?

BY MR. BELLEAU

Please My Lord, for the following reason. It's that we have subpoenaed a witness from ENSERC and the witness came from Ottawa and I've raised the question with Mr. Fabrikant during ... at the end of the week and he proposed that I request the Court to suspend Mrs. McKenzie's testimony in order to have Catherine Armour

heard and I do make that request to the Court. Armour, A-r-m-o-u-r.

BY THE ACCUSED:

There are also two (2) other people from Friday who ordered to come here. (sic) Their testimony wouldn't take long. So I mean ...

BY THE COURT:

Well I'm not ... I don't like this idea of suspending one person.

BY THE ACCUSED:

Nobody likes this idea. We're just trying to more accommodating ... as accommodative (sic) as possible.

BY THE COURT:

Well we'll only be accommodative to the point where it's not disrupting the trial completely.

BY THE ACCUSED:

Well as far as disruption of trial is concerned, I think this is the least of those disruptions.

BY THE COURT:

Thank you. Have you any ...

BY THE CROWN:

I have no comments, My Lord.

BY THE COURT:

You have no comment.

(DISCUSSION IN LOW VOICE)

BY THE CROWN:

Well maybe it's not relevant at all, My Lord.

BY THE COURT:

Well I have no idea at the moment.

BY THE CROWN:

I don't see ... maybe Mr. Fabrikant could ...

BY ME BELLEAU:

Maybe out of courtesy for the ... the witness who has come in from Ottawa and ...

BY THE CROWN:

Maybe Mr. Fabrikant could explain the relevance of that witness.

BY THE COURT:

OK, I'll ... I'll accede to your request, Mr. Belleau and we will suspend the testimony of Dr. McKenzie until ... until this witness is heard.

BY THE ACCUSED:

Well there are two (2) more witnesses.

BY THE COURT:

I know there are two more witnesses, Mr. Fabrikant. We will hear this witness who is from out of town and then we will resume with ... with Mrs. McKenzie and we are not going to be suspending testimony each day of the week in order to hear another witness because that witness happens to have been brought here several days before that witness was needed. Jury please.

I wonder if you'd take a seat, if you'd go outside, excuse me.

BY THE CROWN:

First My Lord, could we ask what is the relevance of this witness?

BY THE COURT:

Let's have the witness called and the questions put and we'll see.

THE MEMBERS OF THE JURY ARE PRESENT

BY THE COURT:

At the completion of the legal matters that we were discussing this morning which were basically a continuation of those which I started on Friday afternoon, Mr. Belleau requested that the testimony of Dr. McKenzie be interrupted in order to accommodate a witness who is here from out of town.

I didn't see that there was any serious difficulty resulting from that request, although I regret having to interrupt any witness's testimony because it tends to spoil the flow.

How I agreed so we will .. we will hear this witness insofar as what this witness may have to say is relevant.

PROOF OF THE DEFENCE (cont'd)

CATHERINE ARMOUR
Program Liaison officer
February 8th 1943

SWORN

DIRECT EXAMINATION BY
MR. VALERY FABRIKANT - ACCUSED
REPRESENTING HIMSELF:

QFirst of all, I would like to know if you brought the documents which are mentioned in subpoena and if yes, I would like to take a look at them.

AThe documents are here.

BY THE ACCUSED:

Can I take a look at them please?

BY THE COURT:

Would you ... would you, before you take a look at the documents, would you put a number of introductory questions please in that establishing who this witness is, what her ... what her field of competence is and bring yourself to the point where you're ready to look at the documents and let me decide whether ...

BY THE ACCUSED:

If you kindly explain why, with Dr. McKenzie, I didn't have to bring myself to that stage. I was allowed documents right away but at this stage, I need ...

BY THE COURT:

I'm not explaining anything to you. Would you put your questions.

BY THE ACCUSED:

Nice way.

QOK, what are your duties at NSERC and what NSERC is and what are your duties there?

ANSERC is the Natural Sciences and Engineering Research Council where the government agency that funds research in universities across Canada and I have a number of du-

ties. I deal with a number of corporate areas. I also deal with ethical issues as pertaining to a variety of areas.

BY THE COURT:

QExcuse me, Natural Sciences and Engineering?

AResearch Council.

BY THE ACCUSED:

QOK, would you shortly describe how the funding of university is being done by NSERC?

BY THE CROWN:

Well My Lord ...

BY THE ACCUSED:

What is the general procedure.

BY THE CROWN:

... this witness is irrelevant to our case.

BY THE ACCUSED:

Well ...

BY THE CROWN:

I think Mr. Fabrikant should explain ...

BY THE ACCUSED:

Judge himself asked me to make introductory questions.

I'm doing that.

BY THE CROWN:

Well I think we have enough introductory questions and answers to realize that it's not pertinent.

BY THE ACCUSED:

Didn't ... didn't you ask me to do it?

BY THE COURT:

Yes I did. How could this ...

BY THE ACCUSED:

Well that's what I'm doing.

BY THE COURT:

How could this be relevant to your case?

BY THE ACCUSED:

Well you asked me introductory questions. I never planned to do any introductory questions. You asked me to do it. I'm doing them. Now you are not happy that I'm doing what you asked me to do?

BY THE COURT:

What could the relevance of that last question be to your case, whether it's an introductory question or not an introductory question?

BY THE CROWN:

The whole witness, My Lord, is irrelevant.

BY THE ACCUSED:

Well you asked me to ask those questions. If you feel that these questions are not necessary, I will not ask them.

BY THE COURT:

I asked you to bring the witness to the point where ...

BY THE ACCUSED:

Well ...

BY THE COURT:

.. you would be able to look at whatever you asked her to bring. I've no idea what it was. Now does it ...

BY THE ACCUSED:

Well let me bring you to that point.

BY THE COURT:

Well go to ...

BY THE ACCUSED:

If he interrupts me after each question I ask ...

BY THE COURT:

Go for the moment. Continue for the moment.

BY THE ACCUSED:

Thank you.

QSo could you describe very shortly what the procedure of obtaining fund is? What each particular scientist at the university has to do to obtain funding?

AThat depends on the kind of funding. The general procedure is to put in an application, a request for funding. The request is pre-reviewed, that means that any number of different mechanisms are used for that. A recommendation is made by the peers and the request may be funded then.

QOK, could you again very shortly describe what each request should contain?

AI'm sorry, but that's ... what each request should contain, I mean ...

QWell major parts, in terms of what it should contain? OK, I will give you an idea what I mean, that each request should contain the results obtained so far, correct?

AIt depends on the kind of request.

QWell in any request?

AThere are many different types of request for funding.

QIn any request, the applicant should explain what his results up to the moment in certain fields?

ANot necessarily. It's like I said ...

QOK, give example.

A... it depends on the request.

QWell then give example where is it not necessary because that was my perception that in every request, applicant should explain what he had done so far, what he plans to do and how much will it cost. If I'm wrong, then please give your own answer.

AThat's the case for a few of our programs, not for all of the programs.

QOK, then describe which programs do not require that?

AI'm sorry, we have over sixty (60) programs, Your Honor. I don't know if I can ...

QJust give one example which does not ...

A... from memory, give that kind of list.

QJust give one example which doesn't require that?

BY THE COURT:

Where are you going with this line of questions?

BY THE ACCUSED:

I'm doing introductory ...

BY THE COURT:

No, we're finished with the introductory, we've gone beyond the introductory. The introductory established that the witness was a representative of a federal agency, I believe it is, although it wasn't ... it wasn't clearly established. That's the introductory. Now where ... where are you going with this? What do you propose to establish?

BY THE ACCUSED:

What I'm proposing to establish? I'm proposing to establish exactly the same thing which was allowed if you remember questions concerning grants of Osman. You remember that?

When you asked me what is the relevance of grants of Osman, whether they were honest or dishonest and I res-

ponded then that the relevance is that I was persecuted for two reasons. One was that I included somebody else in my papers and then I stopped doing that and they extorted from me papers.

The second reason for persecution was that I knew too much about their crooked activity and that was sufficient for you to allow questions about Osman's grant applications and why and how they were dishonest.

BY THE COURT:

No, not why ... why and how they were dishonest.

BY THE ACCUSED:

Yes, so this is the same thing, that I knew too much and I have ... Mrs. Armour is responsible for scientific ethics and in particular scientific fraud at NSERC and I had several meetings with her concerning issue of scientific fraud and about how I was persecuted at Concordia with respect to that and I asked NSERC to investigate certain allegations.

BY THE COURT:

Mr. Lecours?

BY THE CROWN:

This is too remote, My Lord. This is not a trial about scientific fraud at universities.

BY THE ACCUSED:

This is not trial about scientific fraud.

BY THE CROWN:

Once we get the point that the accused might be convinced of that, that's enough. We don't have to verify what is or not scientific ... whether there is or not scientific fraud in the university community at large.

BY THE ACCUSED:

No, this is not the point. It is not the point, the accused is convinced. The accused might be just delusional paranoiac. This is one option and another option is that fraud did exist and accused signaled to NSERC about it and NSERC allegedly did nothing or we will hear from the witness what NSERC did about it because my meetings with representatives of NSERC and their reaction definitely influenced my state of mind at the time of crime. So ...

BY THE CROWN:

But she couldn't have any personal knowledge of anything. She's working in Ottawa.

BY THE ACCUSED:

Well just ... just sit down and listen if she had or she hasn't.

BY THE CROWN:

It could be only hearsay from ... from Fabrikant or somebody else.

BY THE COURT:

The line has to be drawn somewhere. This is ... this line of questioning is far too remote and it won't be permitted.

BY THE ACCUSED:

Well which line is too remote. Let me ... let me just start my question again. You will see how remote it is or not.

BY THE COURT:

Well all right, you start your questioning and we'll see if it is remote, but where you are just now, in the last question, is ... is not going to take us anywhere.

BY THE ACCUSED:

Well last question had nothing to do, last ...

BY THE COURT:

All right, fine then ask ... ask the next question then.

BY THE ACCUSED:

Well but I would like to see the files first.

BY THE COURT:

Ask your next question.

BY THE ACCUSED:

Why I cannot see the file?

BY THE COURT:

Because I'm not sure of where you're going yet and I want to be certain where you're going.

BY THE ACCUSED:

You had no idea with McKenzie where I was going.

BY THE COURT:

Please don't argue with me.

BY THE ACCUSED:

You allowed me to see the file.

BY THE COURT:

Are you finished arguing with me? If you have a question to put, put it.

BY THE ACCUSED:

QOK, so could you describe your duties in terms on scientific ethics please at NSERC?

A I deal with elevations of scientific misconduct. I transmit those to the universities and ask them to investigate and deal with the investigation report when it comes back.

QOK. Is NSERC concerned with the way taxpayers' money are being spent by the universities?

A It's ... it's accountable for the taxpayers' money so it's concerned about that, yes.

QOK. Do you have any policy in terms of ... NSERC policy concerning scientific fraud?

A There's a policy developed by the three (3) granting councils, that's in the final stages of being approved but it is not a formal policy yet.

Q So right now, you have no policy on that whatsoever?

A We have a draft policy.

QOK, by the time we met, did you have any policy at that time?

A We had a brief version of a draft policy which has been developed over the last I think two (2) years.

QOK, now what was the first communication between me and you or more precisely, between me and NSERC probably which went finally to you? Do you recall that?

A No, I don't recall that.

QOK. Do you have anything, any document received from me?

A Documents received from you? Yes we do.

QOK, do you recall what they were?

A Yes there is about six (6) inches of documents, a long letter with about, I remember, eight (8) or nine (9) or ten (10) attachments.

QOK. Do you remember what the letter was about?

A Well it was a very long letter so I don't remember exactly all what ... what was in it, no.

Q Well do you have it with you?

A Yes, it's with the documents that I have with me.

QOK, may I take a look at it?

BY THE COURT:

No, you're going to have to continue generally for the minute because I'm not satisfied at all that any of this is admissible. So we're not going into the details of your long letter for the moment. You had better convince me that this is pertinent.

BY THE ACCUSED:

OK, I'll ... well I would like the witness to take the letter and refresh her memory and inform the Court what it was about.

BY THE COURT:

If you wish the witness to look at the letter and refresh her memory, fine. Would you do that please. If you can ... if you can do that and state succinctly what ...

AI don't think I can do that, Your Honor, because I couldn't do that when I received it and that's something that was discussed at the time and a one-page handwritten note was afterwards added to the letter.

QI see.

BY THE ACCUSED:

Well ...

BY THE COURT:

Would you continue with your questions for the minute then.

BY THE ACCUSED:

Well I would like her to get ...

BY THE COURT:

Would you continue with your questions generally, would you continue with your questions generally as to where you're going with this witness because I'm ... I'm not getting for the minute into the details of that letter until I'm satisfied that this is pertinent.

BY THE ACCUSED:

Well it is pertinent as long as any question of scientific fraud and extortion and persecution at Concordia is pertinent. You cannot say a) and not say b) if everywhere I'm allowed to question whether I was persecuted, then I'm allowed to ask the same questions here.

BY THE COURT:

Would you continue ...

BY THE ACCUSED:

Then I ...

BY THE COURT:

Would you continue with your questions for the moment.

BY THE ACCUSED:

Well I need those letters and refer to it because ...

BY THE COURT:

We are not going into the body of that letter. If you wish the witness and she said she can't tell you generally what the letter is about, then that's one thing.

BY THE ACCUSED:

Well she could refresh her memory and tell what it is about.

BY THE COURT:

Yes, all right. Would you look at the letter, would you look at the letter and, for yourself.

BY THE ACCUSED:

Why it has to be that secret. The letter was written in English and my English is not that bad.

BY THE COURT:

The question is not that, Mr. Fabrikant. The question is

where we are going, that's what the question is.

BY THE ACCUSED:

Well we are going in exactly the same direction.

BY THE COURT:

No.

BY THE ACCUSED:

I want to demonstrate the events which preceded shooting and how each of those events affected my mind, that simple and in terms of persecution, I want to make clear ...

BY THE COURT:

Then... then Mr. Fabrikant, there is a expeditious way of doing that.

BY THE ACCUSED:

Well I believe I'm doing it as expeditious as I possibly can. I'm still within three (3) months which I requested. I told you: if three months are finished, I will tell you I finished.

BY THE COURT:

I don't wish ... would you just be quiet.

QNow Mrs. Armour, you take cognizance of that letter for yourself quickly and ...

A I'm sorry, Your Honor, but quickly, it's ...

QNo, but I presume you've seen it before.

AYes, I've seen it before. It's ... it's basically a letter full of I guess charges and discussions. There are what are alleged to be transcripts of conversations with third parties that are included in the letter, so it's a very long and very ... sort of involved letter.

QOK, there you are.

BY THE ACCUSED:

QWell you ... are you implying that you couldn't understand what the letter was about or you did understand what the letter was about and you can convey it to the Court in a more or less coherent and concise manner what it was about, can you?

BY THE CROWN:

It's hearsay and self-serving, My Lord.

BY THE ACCUSED:

It was not hearsay when I asked McKenzie about content of our conversations. It was all fine. Now all of a sudden, it is self-serving.

BY THE COURT:

The witness has given a thumbnail sketch of what's in the letter. Move on to your next question.

BY THE ACCUSED:

Well I would like to get into more details. So ...

BY THE COURT:

The witness has said that the letter contained a battery of charges and that there were a number of things which were attached to it, which were sent to her. Now fine, you've established that you sent a letter, that made a battery of charges. Go on with your next question.

BY THE ACCUSED:

Well ...

BY THE COURT:

Let's not lose sight of the fact that the only reason you're doing this is you claim that this affected your mind.

BY THE ACCUSED:

Oh yes.

BY THE COURT:

Fine, then we're not getting into the detail of that letter.

BY THE ACCUSED:

Yes, OK. so ...

BY THE COURT:

No way.

BY THE ACCUSED:

QWhen this letter was received?

AWhen was this letter received?

QYes?

AOn the 17th of June 1992.

QOK. Were there any prior signals of the same thing before that?

ABy ... you mean ... I'm sorry, Your Honor.

QWell similar text, did you receive it before that through electronic mail?

AI believe there was an electronic mail of some kind sent to the president of NSERC.

QOK, did he forward this electronic mail to you?

BY THE COURT:

QWell do you have personal knowledge that there was an electronic mail sent to ...

AWell I think there is a copy of something on file but ...

QThen would you check and see whether there is or not.

BY THE ACCUSED:

Well maybe at this stage, I would be allowed to take a look at the file?

BY THE COURT:

No, you will not. You will continue with your questions for the minute.

AWell there is a copy, a printout here of what looks like an E-mail message.

BY THE ACCUSED:

QOK, who ... who provided you with this message?

AI don't know, it's in the file.

QOK, did it fly by itself into the file? Did it walk, did it crawl?

BY THE COURT:

The witness said "I don't know", Mr. Fabrikant.

BY THE ACCUSED:

Well ...

BY THE COURT:

She said it's in the file.

BY THE ACCUSED:

QIs it your file?

ANone of the files belong to me. It's your file in fact.

QWell I understand. Let's ... how do we get out of the semantics. Is it my file or is it her file or is it NSERC file? How long are we going to play this game?

BY THE COURT:

We are ... I'm... I'm playing it.

BY THE ACCUSED:

This is circus.

BY THE COURT:

If you want to call it that. Until I'm satisfied that this is relevant and as each second goes by, I become more and more certain that this is totally irrelevant.

BY THE ACCUSED:

Well don't you see that the witness is evading questions.

BY THE COURT:

Now ...

BY THE ACCUSED:

I asked her ...

BY THE COURT:

Listen, listen.

BY THE ACCUSED:

... whether it is her file and she tells me it's my file.
Is it the answer?

BY THE COURT:

Listen Mr. Fabrikant, you maintain that your mind was affected. I ... I don't know by what, whether a decision that ... that this authority made or whatever. You've established that you wrote a letter. You've now asked the question: was there any prior letter. Yes, there was electronic mail, yes it's in the file. Fine.
There we are, that's where we are. Now let's ... let's see if we can keep ourselves in ... where we're going.

BY THE ACCUSED:

Don't you worry. I have mine. (sic)

BY THE COURT:

Fine, then go ahead.

BY THE ACCUSED:

QSo how did it get there? What was the physical location of this file? Is it in your office?

A No, this ... this file in kept in a locked confidential drawer in our registry room.

QOK, why is it so locked and confidential?

A Because all files dealing with ethical charges are kept confidential that way.

QOK, now who has access to this file?

A This particular file?

QYes?

A Well it says on the front ...

BY THE COURT:

Mr. Fabrikant, just a second. Who has access to it or who doesn't have access to it is of no importance. What you're attempting to establish is that your communications with this agency affected your state of mind so the last question is totally irrelevant. Now let's ...

BY THE ACCUSED:

Now let me ... maybe ...

BY THE COURT:

Let's stay where we are.

BY THE ACCUSED:

... maybe allow me first to explain the question before making your ruling. Would you be at least kind enough to do that?

BY THE COURT:

Would you then explain where you're going with that question?

BY THE ACCUSED:

Well, OK.

BY THE COURT:

Because I'm telling you, I'm having great difficulty seeing it.

BY THE ACCUSED:

You are very nice. My question to establish who has access to the file is to find out since if, for example, the answer is that this particular witness is the only

person who has access to the file, then my next question would be: so it means that it is you who put it there and if it is you who put it there, then you probably know who gave it to you.

Now is this line of questioning clear, why I'm asking who has access to the file?

BY THE COURT:

No, it's not clear at all, it's not relevant and it's disallowed.

BY THE ACCUSED;

It is relevant.

BY THE COURT:

It's disallowed.

BY THE ACCUSED:

Well I need to establish ...

BY THE COURT:

One more word and this witness's examination will be terminated.

BY THE ACCUSED:

Oh yes.

BY THE COURT:

OK?

BY THE ACCUSED:

QSo are you the one who put it, this electronic mail into the file?

AIt wasn't addressed to me so it would not have come to me.

QWell ...

ASo I wouldn't have sent it to the file.

QOK, do you have any idea as to who ... who went into this file?

AI assume whatever person works in the file room that received it from where it came from would have put it physically in the file.

QAll right, so you were not originally the person who was working with my file?

AIf you mean physically putting documents in the file, no, that's not part of my duties.

QOK, so who does physically put certain things in the file?

AThere are people who work in the registry room who physically put things in the file.

QOK, when you ... did you ...

BY THE COURT:

Mr. Fabrikant, what is the pertinence of this? We're wasting our time.

BY THE ACCUSED:

Would you be please patient?

BY THE COURT:

No and we are wasting our time.

BY THE ACCUSED:

The pertinence is that they knew about my allegations of fraud well before June. That is the pertinence.

BY THE COURT:

Well why ...

BY THE ACCUSED:

I want to establish that they knew very well before June and did absolutely nothing about ...

BY THE COURT:

Well would you ... why do you not ask the question di-

rectly?

BY THE ACCUSED:

Directly?

BY THE COURT:

The witness is there, ask the question.

BY THE ACCUSED:

Because this particular witness will say "I knew nothing about it". Very simple. I know already what this witness will answer. Would you kindly allow me to proceed the way I see fit at least, as long as it is legal way to proceed?

BY THE COURT:

It's not legal and it's not pertinent.

BY THE ACCUSED:

Well it is pertinent if you ...

BY THE COURT:

If you wish to establish that, then put a direct question that will permit you to establish when the agency became aware of your complaints.

BY THE ACCUSED:

Well ...

BY THE COURT:

It's very simple.

BY THE ACCUSED:

Should ...

BY THE COURT:

It's not very complicated. We don't have to take ... we don't have to go by Toronto and in order to get to Ste-Th,rŠse.

BY THE ACCUSED:

Well you want to bet that she will say "I have no idea, I'm not ...

BY THE COURT:

I'm not in the business of betting with you, Mr. Fabrikant.

BY THE ACCUSED:

All right so I'll go the way you advise it.

QCould you tell me when the agency has become aware about my allegations?

AThat's a difficult question because there were ...

QWell this is what I thought.

A... different communications. When we first became aware of I guess formal allegations was when you sent me the letter subsequent to a number of discussions we had.

QWell but still, when did you get the first documents from me alleging fraud and extortion at Concordia University? When was that?

AAccording to the records, that's the letter you sent us.

QWell do you have any date of previous, whatever you call it, whether you call it a document or you don't call it document, but there was something written, words were there and those words were alleging fraud and extortion at Concordia. When was the first such ...

QThe first ...

A... thing received by NSERC?

AWell that's difficult to say because you never made any specific charges until you handwrote them in my office so ...

QThis is not my question. She's eluding question.

BY THE COURT:

That's ..

BY THE ACCUSED:

QI asked when did you receive the first thing which would allege fraud? I'm not saying it was official charge, I'm not saying anything. I'm asking specific question. When did agency receive first thing, whatever you call it?

BY THE COURT:

Well there may be a difference between when did the agency receive the first thing and when did this witness become aware of your ... of your charges.

BY THE ACCUSED:

Well this is exactly why I was asking my previous line. Now we are coming to the situation that she will say "I'm not agency, I don't know." This is exactly what I wanted to avoid.

BY THE COURT:

Put your questions as clearly as you can.

BY THE ACCUSED:

I was putting clearly and I was doing the right thing and I was doing it the right way.

BY THE COURT:

I ruled, now would you put your ... if you think this witness became aware of your allegations beforehand, put your question and ask.

BY THE ACCUSED:

No, I need to know when agency became aware.

BY THE COURT:

She's told you when the agency became aware. When it got the letter of the 17th of June.

BY THE ACCUSED:

Well this is not my question.

QMy question is: when was the first written thing received by the agency.

AYou're not talking now about the access to information request which is something different?

QYes, I'm talking about allegations.

AAre you referring to the open letter to the university community that you sent, which ... of which ...

QAnything ...

A... NSERC received a copy?

QAnything which contained allegations? Whatever you call it? Anything which contained certain allegations which said that at Concordia University, there is fraud, there is extortion, there is this, there is that and this is how I personally am affected by that?

AWell I don't know exactly what the ... what the E-mail says, but that was received on the 25th of February 1992.

Q25th February 1992. Did anyone read it on 25th February?

AI ... I can't say. It was not sent to me.

QOK. Do you have any personal knowledge if someone read it?

AI would not have a personal knowledge of that, no.

QDo you have in your file any reaction to this, how to say it, mailing of February 25th? Acknowledgement that it was received or any other response whatsoever?

A.No.

QNo. So it was ignored. Could you please continue. What happened next? Next document in chronological order, what you have? So the first thing you received February 25th,

with allegations. What happened next?

A There's all kinds of papers on file about telephone calls concerning access to information and other things.

BY THE ACCUSED:

Well maybe it would be at this stage more pointing if I get the file and make my questions more precise.

BY THE COURT:

You will continue with your questions for the minute.

BY THE ACCUSED:

Well the ...

BY THE COURT:

You wish to establish I don't know what so go ahead and establish what you wish to establish.

BY THE ACCUSED:

OK.

Go then in chronological order. Whatever you have, could you just ... OK, February 25th is the first date which you have with allegations, correct?

A That's the first date on which there is an E-mail.

Q Well was there any allegations delivered to the agency before that?

A Before what?

BY THE COURT:

February 25th?

A Before February 25th? I don't know, there's nothing in the file.

BY THE ACCUSED:

Q OK, so go from February 25th please to the next document alleging or asking you: would you kindly respond? Do you have any document like this?

A No, the next document is ... is the letter of June 17th.

Q No, it cannot be. There were other ...

BY THE COURT:

Would you please stop making statements.

BY THE ACCUSED:

Well ...

BY THE COURT:

Well refer the witness to a date and ask her to look.

BY THE ACCUSED:

Well the witness just didn't bring then the complete file. I remember sending the letters asking them to respond.

BY THE COURT:

Apart from your letters, would you continue with the point you're proposing to make.

BY THE ACCUSED:

Q Well that's ... that's what I'm asking. Do you have ... if you don't have, could you tell me where they are?

A I don't know what letters you're referring to.

Q Well in March, I've sent at least two. In April, again there was reminders sent to NSERC. Do you have any of those? There were several electronic mail reminders. Do you have any of those?

A Not that I can find.

Q Well maybe ... either you need my help to find them.

BY THE COURT:

We will adjourn now.

Mrs. Armour, would you look through that file and be prepared to answer that question this afternoon.

BY THE ACCUSED:

Well maybe if she gave me file ...

BY THE COURT:

You're not getting as a general routine all sorts of files that are brought from whatever government agency or whatever to spend your time on.

BY THE ACCUSED:

It is my file. She has said herself it is my file. Why can't I see it?

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

THE JURY AND THE JUDGE LEAVE THE COURTROOM

SUSPENSION OF THE HEARING

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<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">THE HEARING IS RESUMED

THE COURT TAKES THE BENCH

THE MEMBERS OF THE JURY ARE PRESENT

BY THE ACCUSED:

Well before we start the question, I would like to read to you from Ciboyer.

"The right to present full answer in defence depends on being able to call evidence necessary to establish a defence and to challenge the evidence called by the crown.

The rule of evidence which prevents the trial facts from getting the truth by excluding relevant evidence in the absence of (inaud.) policy or law to justify the exclusion runs afoul of fundamental concepts of justice and fair trial."

And this is exactly what you are doing. You are abusing elementary rules of natural justice by not allowing me questioning this witness.

BY THE COURT:

Thank you. Now where were we before we adjourned? We were on the question of ...

BY THE ACCUSED:

Well I would like to see the file.

BY THE COURT:

No, you're not going to see the file. If you wish to put questions relating to letters that are in the file or show the witness copies of letters you say you sent, that's fine, but you're not going to do an audit of the file.

First of all, the file may deal with complaints submitted by you but it is not your file. It's not your property and I don't know what's in that file and I don't know who wrote various things that are in that file. I have no idea of what sort of investigations, memos or anything else that are in that file.

You're not going to do a general audit of that file.

BY THE ACCUSED:

Why I couldn't see the files?

BY THE COURT:

I'm not going to argue with you. That's my decision so put your question.

CATHERINE ARMOUR
(Under the same oath)

BY THE ACCUSED:

QSo the first document in the file is my E mail of February 25th, correct?

AThat's correct.

QOK, what is the next document? Could you please tell?

AWell they're not in chronological order.

QThey are not?

ANo, unfortunately they are not.

QWell they are in any order whatsoever?

ANo, most of them are in chronological order but some of them have obviously been misfiled.

QRight. Try to be as chronological as possible or just say what is the next document? Not in chronological, just in page order?

AThe document is just an internal memo on the ... on a conversation I guess you had with our ethic coordinator.

QI had conversation with who?

AWith our coordinator who deals with access to information.

QOK. What is the date of this conversation?

AThe 11th ... well I don't know what the date of the conversation is. The memo is the 11th of June.

QOK, so it's definitely not in chronological order. What is the next document in the file?

AThe next one is a memo from me to file on the 15th of June.

QA memo from you to who?

ATo file, it's a memo to the file regarding a telephone conversation we had.

QWhat was this conversation about?

AIt was about NSERC's policy on scientific integrity charges and I explained the procedure to you.

QOK, what is the next document?

AThe next one is a memo dated the 1st of April, I guess, regarding some of your conversations again with our access to information coordinator and I think at that time, you were looking for whomever was responsible for scientific integrity.

QOK. The next document?

AThe next one is April 2nd, another note from me to file on a telephone conversation we had in which I explained to you that allegations had to be written, signed and had to relate to specific charges.

QDid I say anything in response to that?

AWell in fact, it says here:

"As expected, he - I guess meaning you - stated that he had made such charges in an electronic message to Dr. Moran."

QOK, so I responded to you that I have already done this, correct?

AThat's right and I ...

QAnd did you check if I really did it?

AOh, I imagine I did.

QOK, what was the result? Were my charges specific? Were my charges clear? What was the result of this verification?

AWell the memo goes on to say that:

"I reiterated that this appeared to be a general memo addressed to the university community covering a number of topics and that this was not a signed specific letter."

QIt is what? Say it again? Not?

AIt was not a signed specific letter.

QWell you consider it not signed, I understand. Why did you write that it was not specific?

AWell I guess in my opinion, it mustn't have been specific.

QOK. Let me ask you. Did you read it?

AI ... the memo doesn't say, but I assume at some point, I must have read it, yes.

QOK. Was there any allegation that I had to include T.S. Sankar as co-author of thirty-five (35) publications of mine? Was it there?

AI don't know, I'd have to reread the ... the mail message.

QOK, do you want to refresh your memory?

AIIt talks about the collective agreement.

BY THE COURT:

Just refresh your memory quietly, Mrs. Armour and then answer the question.

AIIt bears ... what was the question again?

BY THE ACCUSED:

QOK, let me put it more simple to you. Is the name of T.S. Sankar mentioned there at all?

AYes.

QIt is. Now in what regard is it mentioned?

AIIt says that:

"In order to get promotion tenure or just keep the job, they had to include T.S. Sankar as co-author in their scientific papers and they did."

QIt is not sufficiently specific for you?

ANo, it says "they" which I had no idea who "they" are.

QWell if you read previous sentence, probably you would understand who "they" ... who are "they"?

AIIt ... it mentions everyone in the previous sentence.

QWell everyone in the department?

AWell I don't know. It says:

"Everyone knew ...

QEveryone knew. Yes?

AAnd I don't know who the "everyone" was referring to so ...

QOK and before that, maybe it will be then clear?

AIIt says:

"Absolute power corrupts absolutely."

QYes and?

A

"This is exactly what happened to the moral standards of the senior members of the department."

QYes, so I'm talking about senior members of the department. So now we are more or less clear who I'm talking about, yes?

AThat wasn't clear to me that everyone was the senior members of the department, I suppose.

QNow you... now you're lucky you came here, it became clear to you. You see, there was a purpose for your travel here.

AIIt's still not clear to me, I guess.

QAh, it's still not clear.

BY THE COURT:

Would you please try not to argue with him.

AOK.

These are not questions. That's purely gratuitous argument on his part.

AI don't have to answer any of this.

BY THE CROWN:

These are insults, My Lord.

BY THE COURT:

They are ... yes, you don't have to reply to that.

AOK, thank you.

BY THE ACCUSED:

QSo it is still not clear who I'm talking about here, yes?

Well this question, you have to answer?

A No, it's not clear.

QIt is still not clear, OK. Is ... may I take a look at that, at this document at least?

BY THE COURT:

If that's a document that emanates from you, you have it.

BY THE ACCUSED:

I don't have it.

BY THE COURT:

If you don't have it, that's your problem, but is that a document emanating from Mr. ...

A Yes.

Q Fine.

A According to the E-mail heading, yes.

BY THE ACCUSED:

What is the point to keep secret my own document from me.

BY THE COURT:

Listen, we are supposed to be ...

BY THE ACCUSED:

I don't have it. You're deceiving me.

BY THE COURT:

... talking about the effect of all of this on your mind.

BY THE ACCUSED:

I asked you to give me access to my computer file. This is why I asked you to give me access to it. You refused to do so. Now you're telling me that I have to have it.

How on earth? It was in my computer. I don't have it.

Now let me take a look at it.

BY THE COURT:

Would you separate that letter from the file please and

...

Did I understand you to say, Mr. Lecours, that all of these E-mail documents were handed to ...

BY THE CROWN:

More than once, My Lord.

BY THE COURT:

More than once?

BY THE CROWN:

Yes.

BY THE ACCUSED:

Not all of them.

BY THE COURT:

In any event, hand him that particular letter.

BY THE ACCUSED:

Q OK, all right, so the whole thing is just ... first of all, it was not that long? That's all what it was? Four pages (4) right, now I ... so just read next sentence.

Maybe it will ... with next sentence, it will become more and more clear whether accusations are specific or not.

Just the next sentence. So they had to include T.S. Sankar in their papers and they did. Now read the next sentence?

A I can't tell what's the next sentence anymore.

BY THE COURT:

Take your time.

A

"While being chairman, he averaged twelve (12)

papers a year plus even more conference presentations."

BY THE CROWN:

I think she should read it from ...

BY THE ACCUSED:

Before that, "I personally have ...

BY THE COURT:

Just a second. Take cognizance of the ... just take cognizance of the paragraph and then wait for the question from him.

BY THE ACCUSED:

Well witness is just eluding question. She understands very well.

BY THE COURT:

The witness isn't eluding questions, the question at all. The witness has ...

BY THE COURT:

Well you don't ... you don't see it but ...

BY THE COURT:

Also I'm not sure what the pertinence of this is. You said you complained.

BY THE ACCUSED:

It is the same pertinence of every other witness. Either you have to stripe me from all the witnesses or you have to allow me questions and give me benefit of doubt that I'm not spending court time for nothing.

BY THE COURT:

Well rather ... today is rather obvious that you are.

BY THE ACCUSED:

Well today's witness is not different from any other witnesses, except that for some reasons, you are so concerned with NSERC. It's such a big institution. God forbid it's ...

BY THE COURT:

Are you finished? One more remark and this interrogation is finished.

BY THE ACCUSED:

Well that ...

BY THE COURT:

You understand that?

BY THE ACCUSED:

You picked wrong person.

BY THE COURT:

All right, Mrs. Armour, thank you very much. We don't require your answers anymore. Have you any questions to put?

BY THE CROWN:

I have no questions, no questions, My Lord.

BY THE COURT:

THank you.

END OF THE TESTIMONY OF THIS WITNESS

BY THE ACCUSED:

That's nice.

BY THE COURT:

You were warned and warned and warned.

BY THE ACCUSED:

Well I need her testimony and I need to deposit docu-

ments.

BY THE COURT:

That's rather unfortunate, isn't it. Her testimony is finished.

BY THE ACCUSED:

Well too bad.

BY THE COURT:

You've been told that there is one way to do this.

BY THE ACCUSED:

Well you're ...

BY THE COURT:

That is to respect the rules and you respect the rules and you may ask your questions if they're pertinent. If you choose to insult me, you're not respecting the rules.

BY THE ACCUSED:

Well give me one more year in jail.

BY THE COURT:

Obviously you are not ...

BY THE ACCUSED:

But you cannot deprive me from a witness.

BY THE COURT:

You're not respecting the rules. Nothing ...

BY THE ACCUSED:

You will give me more years.

BY THE COURT:

Nothing works.

BY THE ACCUSED:

You have no right to do that.

BY THE COURT:

Thank you, thank you Mrs. Armour.

Now call your next witness or the next witness, I think is Dr. ...

BY THE ACCUSED:

Well there are two more people, Mr. Malenfant and ...

BY THE COURT:

We are finishing with the witness we started with, Mr. Fabrikant. We are not playing interrupt every time it suits you to go on and on and on.

BY THE ACCUSED:

It not suits me. (sic) I'm trying to accommodate them. It doesn't suit me at all.

CATHERINE MCKENZIE

Assistant Professor - Dept. of art history

Concordia University

July 5th 1948

SWORN

DIRECT EXAMINATION BY

MR. VALERY FABRIKANT

REPRESENTING HIMSELF:

QWell I would like to get the file back.

AYes.

BY THE ACCUSED:

Now if I ask why I can have this file and I couldn't have the other one, you will cancel this testimony too?

BY THE COURT:

These are different files in different circumstances dealing with different things.

BY THE ACCUSED:

Well I hope jury will understand the difference.

QNow did you bring the agenda of yours today?

ANo, it was my understanding that I didn't have to.

QWell agenda is necessary.

BY THE COURT:

Your understanding is perfectly correct.

BY THE ACCUSED:

Well I request that agenda, original agenda, be brought here. I need it.

BY THE CROWN:

You ruled on that, My Lord.

BY THE COURT:

I ruled on that.

BY THE ACCUSED:

You didn't see it. You cannot possibly rule on it, what you didn't see. (sic)

BY THE COURT:

I ruled on that. Continue with your questions.

BY THE ACCUSED:

QDid you have in your original agenda any notes...

ANo I did not.

Q... explaining anything at all?

ANo.

QAbsolutely?

ANone.

QThis is exact quotation from the agenda? There is nothing in agenda more than what is written here?

AYes.

QThere's more?

AThere are things that ... that are not marked in my book but I put in from my memory.

QNo, maybe you didn't understand my question. I'm giving you example: March 30th 1989, two p.m., Swamy, Osman, Haines plus others, question mark.

AHum, hum.

QConcerning this particular date and this particular time, in your agenda, do you have anything more than what is written here?

ANo, and in fact the plus others is not in the agenda.

QSo in agenda is even less than that?

AHum, hum.

QAnd concerning any other line, it's not more than that too?

AYou see, some things in here are not from the agenda. They're from my recollection.

QNow from agenda, could we get any additional information whatsoever concerning items listed here?

ANo.

QNow do you recall the first day of your testimony, I asked you if you have made any notes whatsoever contemporary to our meetings and do you remember that your response was only what was in agenda, nothing else, do you remember that response?

AI don't remember that response in that particular way, no.

BY THE ACCUSED:

OK, can we play it? Now I can tell you where it was.

It was at the beginning.

BY THE COURT:

And you find the time.

BY THE ACCUSED:

Sorry?

BY THE COURT:

You find ... you give ... give the time.

BY THE ACCUSED:

Well time is not on the tape.

BY THE COURT:

Time is on the tape. You receive the tapes every day.

BY THE ACCUSED:

Time is not on the tape. Maybe I'm receiving special tapes. I listen to them very attentively. Did you listen to any of the tapes yourself?

BY THE COURT:

Certainly not this tape, no.

BY THE ACCUSED:

OK, any of the tapes, did you listen to any?

BY THE COURT:

No.

BY THE ACCUSED:

No. So how do you know that the time is there?

BY THE COURT:

It usually is on the tape.

BY THE ACCUSED:

Well usually it is. It is not.

BY THE COURT:

Is the time on the tape?

BY THE CLERK:

Yes, but you have to change the ... comment on dit #a piste en anglais.

BY THE COURT:

The ... the track.

BY THE CLERK:

The track.

BY THE ACCUSED:

You have to have special equipment then.

BY THE COURT:

And he doesn't have the machine. I see.

BY THE ACCUSED:

I don't have that equipment so maybe time is there but I just don't have the equipment to read the time.

BY THE COURT:

And what was ... what was the ... you wish to listen to a tape?

BY THE ACCUSED:

Well ...

BY THE COURT:

Do you have the tape from your own at least?

BY THE ACCUSED:

Not with me but if I had tapes here, what is the point in ...

BY THE COURT:

We're not going to listen to hours and hours of a tape for you to ventilate this ... this question.

BY THE ACCUSED:

Well we have ...

BY THE COURT:

Suggest ... suggest to the witness what you think she said and ... and she'll listen to you and ...

BY THE ACCUSED:

QOK, would you like then to respond once again and then we maybe compare your response first time, your response this time and when we're going to play. Do you remember at least I asked you that question?

AI remember you asking me if I documented things and I said I didn't.

QThat's ... so that's effectively yes. So isn't this a documentation of things?

AYes.

QSo ...

AWhich I found in the rector's office Thursday evening.

QSo you misinformed the Court then? How do you reconcile those two (2) statements?

AThat was in a file, in a job that I left in 1989.

QThat was not my question. My question ...

BY THE COURT:

That sort of question ... that sort of question is not permitted, that sort of question that starts with the words "You misinformed the Court". The witness told you that she checked at the rector's office and found that particular set of notes, between her testimony on one day and her testimony on Thursday I guess and her testimony of Friday. That's what the witness said.

BY THE ACCUSED:

Well I asked witness what she did ...

BY THE COURT:

So your question that she misinformed the Court first of all is argumentative, secondly, specks of cross-examination and is disallowed.

BY THE ACCUSED:

Well I'm already changing the question. Aren't you happy? I'm changing question.

QSo how to reconcile those two statements, the one which you said that you didn't document anything. Now we see that you did document. Could you kindly reconcile those two (2) statements?

AI don't recollect, did not recollect documenting things.

QThe conversation which, according to you, made such terrifying impression on you that you said you couldn't forget it and you didn't remember that you did document it? Let me read it to you again?

"Never before or after, I had a conversation with ...

BY THE CROWN:

What is he reading, My Lord?

BY THE COURT:

He's reading from some notes that he has which are taken from something.

BY THE ACCUSED:

Well we played this tape today and this phrase, we have proven to be correct.

AIt's on the tape.

BY THE CROWN:

His own transcript.

BY THE COURT:

He's reading from his own ... yes.

BY THE CROWN:

Which you ruled was grossly inadequate.

BY THE COURT:

Which is inadequate and inaccurate.

BY THE ACCUSED:

Well let me ask the ...

BY THE COURT:

So you ask the question. You refresh your memory from whatever you wish to refresh your memory but you ask your question.

BY THE ACCUSED:

QYes, all right. Do you recall saying something which would sound like this?

AYes.

QYou already answered yes, you said it or you want to hear it?

AI recall saying something like that.

Q

"But never before or after, I had a conversation which would come even close to the one I had with you and I cannot erase it from my memory as much as I would like to."

Now do you recall saying something like that?

AYes.

QYes. Now if it was such a memorable conversation, how come you didn't remember that you documented it?

AI remember the feelings that I had in that meeting, I remember those. A lot of the circumstances around it, I do not remember. That was four (4) years ago. What I remember was the sense that ...

QThat was such a terrifying feeling that you didn't manage to write it down on this sheet of paper?

AThat's correct.

QWould you explain this?

AAAs I indicated I believe yesterday or perhaps the last time I testified, I'm not going to document something that's being said to me that frightens me.

QWell the more reason to document it. If it was so frightening, why didn't you write it down?

BY THE COURT:

Now you're arguing with the witness.

The witness has said she did not document it and would you stop cross-examining the witness. The witness is not subject to cross-examination by you.

BY THE ACCUSED:

All right.

QNow let's go to March 30th 1989, two p.m. No, March 24th 1989, ten a.m. You allegedly spoke with me and Mr. Haines was on another speaker or another something, listening to the conversation, correct?

AAAs I ... as I explained the last time you brought this up, in my agenda, it says ten a.m., F.A. What I said at that point was that that may have been the time when I had a telephone conversation with you when it was on the speakerphone and Brendon Haines was there. I'm not ... I cannot recollect specifically if it was March 24th.

QOK.

A1989. I'm merely speculating that it might have been that

telephone call.

QOK, what was the conversation about?

AI have no recollection whatsoever. I have also indicated that before. I remember ...

QWell was I advised that somebody else is listening to our conversation?

ANot to my recollection.

QSo why didn't you advise me that there is somebody else who is listening to conversation?

AI simply didn't.

QOK. When I recording somebody (sic), I'm a bad person. When you talk to me on the phone ...

BY THE COURT:

Would you please stop editorializing, Mr. Fabrikant. Ask your ...

BY THE ACCUSED:

That's a question.

BY THE COURT:

Ask your next question.

BY THE ACCUSED:

It is my question.

BY THE COURT:

That's not a question.

BY THE ACCUSED:

QSo why was it, there must be something special about this conversation if you had somebody else listening to the conversation without me being advised that somebody else is listening?

AHum, hum.

QSo then what was ...

AI, as I ...

QWhat the conversation was about if you ... if you remember the circumstances?

AAAs I indicated to you, the first day I testified, I remember that I was ... I was nervous about something. I do not recollect what it was. Now that I've seen the document, it may well have been your reaction to the receipt of Dr. Kenniff's letter but I do not know. I cannot recollect that.

QWell may I respectfully submit that Kenniff's letter was March what, March 23rd or what? OK, still why were you nervous and why Mr. Haines was to listen there secretly?

AI don't remember, as I told you now three (3) times, I don't remember why I was nervous.

QOK. Would it ...

AAnd why I wanted someone to be there.

QWould it be correct suggestion that you tried to make some kind of entrapment to have somebody as a witness who could testify about something? Would that be a too bold suggestion what was the purpose of that?

AIt would certainly be too bold in ... in my estimation. I do not remember what the conversation was about.

BY THE ACCUSED:

Well isn't witness faking loss of memory all of a sudden?

BY THE COURT:

No, witness isn't faking loss of memory all of a sudden in my estimation.

BY THE ACCUSED:

Oh no, she isn't.

BY THE COURT:

Next question.

BY THE ACCUSED:

Of course she isn't. Witness was nervous, witness remembers that kind of conversation but she doesn't remember just asking ...

BY THE COURT:

Would you ask your next question.

BY THE ACCUSED:

Yes, OK.

QSo do I understand correct that you probably expected me to ... to utter some threats or something? Was it something like that, no?

AI don't know.

QNo. Could ... could you give just a guess, what could be the purpose of Mr. Haines ...

BY THE COURT:

Please don't guess. You're not here to guess.

BY THE ACCUSED:

All right.

QNow after that, there was March 30th meeting?

AYes.

QWho was present there? What was the purpose of that meeting?

ADean Swamy was there, Sam Osman, Brendon Haines. I believe but I can't state this with absolutely accuracy that ... that Seshadri Sankar was there and Tom Sankar and I think, to the best of my recollection, that Dr. Kenniff there was ... was there for a few minutes. That's to the best of my recollection. That's why I have placed "and others" with a question mark.

QWould you say it again who was there? Swamy, Osman, Haines, you?

AAnd ...

QBoth Sankars?

AI said to the best of my recollection, but I may be wrong.

QAnd Kenniff?

AAnd Dr. Kenniff, I believe, was there for a few minutes.

QWhere was the meeting? What was the location of that meeting?

AI think it was Bishop Court, I think.

QBishop Court where?

AOn the second floor, there's a small conference room there. I believe it was held in that room.

QWho called this meeting?

AProbably I did.

QOK, what was the purpose of that meeting?

ATo meet with the department and to talk to them about the letter that Dr. Kenniff had sent to you in which it stipulated that ... that the department was to work with you in sorting out, resolving the issues of ... of publications as stipulated, as I said in Dr. Kenniff's letter and to indicate to the department that the department was expected to ... to work with you in ... in resolving any of these problems.

QWhat problems you are talking about now?

AThe problems pertaining to ... to the publications and in general, the issue of your request for early promotion to professor.

QOK and what ... what about publications for example? What was said?

A To my recollection, very little, just that the department was told that they were to work with you on that issue.

Q I fail to understand. How can one work with someone on issue when question was raised that people were included without making any contribution, so how to understand? You have to work with him on issue. Isn't it ... well explain what the whole thing means? What exactly they were supposed to do?

A I don't seem to have the letter that I quoted two (2) days ago from Dr. Kenniff that is in your package, indicating that you were to sit down and with the department and see ... Oh, that's it, is it? No. To see if you work it out in terms of misunderstandings or ...

Q OK, I understand.

A ... misconceptions and then if nothing ensued from that, then you had formal means such as the code of conduct to bring your complaint to or Dean Swamy.

Q Didn't you know ...

A Those options were given.

Q ... that Dean Swamy was one of the mafia?

A Excuse me?

Q Did you know that Dean Swamy was one of the mafia?

BY THE COURT:

Don't answer that question.

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<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">BY THE ACCUSED:

QOK, did you know that Dean Swamy was involved in the same thing?

AI believe at one point, in one of our meetings that when I had suggested "why hadn't you gone to see Dean Swamy about this", that you said that he was involved in similar kinds of things, yes.

QSo what was the sense of complaining to someone who in fact did exactly the same thing?

AYou were given two (2) options: the code of conduct which is not run by the faculty of engineering or any other faculty or the option of taking those allegations and putting them in light to the dean of engineering who then would have been required to investigate them.

QHum, hum.

AThat was stipulated, as I say, in that letter of March 24th ... 23rd.

QYes and Mr. Kenniff really wanted me to write it down and he really sincerely wanted to investigate the matter, right?

AYou would have to ask him that question.

QWell at least, your impression was?

AYes, it was my impression.

BY THE COURT:

The witness isn't here to give her impressions.

BY THE ACCUSED:

All right.

QAre you aware that in 1992, I did exactly that? I have written and I have made specific allegations and I have written to the code of conduct about all this, are you aware of that?

AI wasn't aware of the code of conduct. I was aware that you had written to either the rector or the board of governors.

QYes.

AAnd that an investigation did transpire in relation to some of your allegations.

QYes and none of them was substantiated, right?

AI haven't seen the decision but I have certainly heard that that was the case, yes.

QOK. What else was said at that meeting?

AI believe this was a meeting where ... where the department expressed concerns about working with you.

QHum, hum, yes?

AIn relation to ... to the best of my recollection, some reference to a list of names. I don't ... I don't recall what names were given, but recollect some description that you were alleged to have said you had a list to someone. No one would ... would indicate who. Dr. Osman indicated that you had made comments to him about solving things the American way and then like taking your arms like a gun which had ... or some ... some relation to what you had said to me.

There was, I believe to the best of my recollection, mention that ... that nobody wanted to work near you in the Concave Actions Structurantes team and that's why you weren't out at Concave and we simply indicated and stipulated that there had been nothing that ... that could demonstrably prove that ... that you were not capable of

working in the department and that they were not capable of working with you.

QOK, it was now Osman who I demonstrate what? Some kind of gesture with a gun?

ATo the best of my recollection, yes.

QOK. So and who's seen this hit list?

ANobody in that room had seen it. They simply said that they had heard about it and they couldn't give any names as to who had mentioned it.

QWell why would one need hit list? It was so long that I couldn't remember?

BY THE COURT:

There's no point asking that question of the witness. The witness is here to testify as to facts, not to speculate about why there were four or five or whatever names on whatever list.

BY THE ACCUSED:

OK.

QWas this hit list a long list or it was a short list?

Were you given at least contents of this list?

AIt was not a hit list. You had apparently said, we were told, that you had said to someone that there were ... you had a list of people you were going to get. That's a difference from a hit list.

QOK, so what was this list?

AI can't ...

QWere there any names mentioned?

AI can't remember if there were any names, specific names mentioned. There may have been, that may have been what led me to write out a list of names such as you read out last week but I'm not positive about that.

QSo the list of names were the same as list of names that Barnaby found?

AI ... I say I can't recollect. That may well have been what took place, but I can't remember.

QWell you were so terrified that you remembered every minute of what I told you, I repeat once again. It was such ... "I cannot erase it from my memory" and now you cannot possibly remember that you're sitting with faculty members and they're telling you that I allegedly, besides threatening to kill a lot of people, besides threatening to take rector hostage, besides buying a gun, now you have something new, that I have list of people that I'm going to get and you pay no attention who said that, to whom it was said? You cannot possibly recollect that?

AFirst of all, let me say that none of the things that you had said to Brendon Haines were in ... to my knowledge, were in any way direct threats. These were rumors of indirect threats as well.

QWell ...

AThat's what I remember.

QYou were terrified with my conversation, yes?

AI was afraid of what you might potentially do in a situation ...

QBut ...

A... where you employment would be terminated based on ...

QSo on ...

A... my meeting with you, the statement that you had made and subsequent meetings.

QSo on the basis of this, when you add to this such as

what you call indirect threats, that I'm buying a gun, that I know where the rector's office is and how easy it's to take him hostage and I'm going to get the rector and you hear more, that I'm going to get a list of a number of other people and you don't even care to remember who it was, right?

AI, as I said, I can remember that Sam Osman made the statement or one of the statements. I can't remember who it was that brought up the list. Concave, the only person that would make sense to have mentioned the ... the feelings at Concave would have been Seshadri Sankar who was director at Concave, but I don't recollect specifically them saying that.

QWell of course it is mine I'm saying. (sic)

AThat's the logical conclusion.

QI have just a list of people I'm going to get, of course, there is nothing to remember there. All right. Anything else transpired during that meeting?

ATo the best of my recollection, the ... the department or the members of the department wanted the rector and the administration to intervene and say that you were of sufficient danger, that your employment should be terminated and we said that there had been nothing ascertained, found that could allow that to take place or would allow that to take place and that they had to work with you in resolving your feelings of insecurity and the issue of ... of the allegations which didn't ... that did not take up a great deal of time in the conversation.

BY THE COURT:

QExcuse me, what date is this meeting?

AThis would be March 30th.

QOf?

BY THE ACCUSED:

Of?

ASorry, 1989.

BY THE COURT:

1989.

BY THE ACCUSED:

QDid you or didn't you tell them that I allegedly threatened to kill a lot of people?

AI may have.

QBut again, you don't remember if you did.

AI remember being very struck by the fact that what Osman said was comparable to what you had said to me and I may have said "Yes, he said something along those lines to me".

QWould you please be more specific? Did you or didn't you say it?

AI can't remember. I probably did but I can't remember.

QBut how much do you need?

BY THE ACCUSED:

How long is she going to fake her memory.

BY THE COURT:

Listen, listen, your impression is that the witness is faking her memory.

BY THE ACCUSED:

Of course, she is faking.

BY THE COURT:

My impression is not that the witness is faking her memory.

BY THE ACCUSED:

Well either ... either she's lying when she says in 1991, she says it. That was not 1991. In 1991, she was still so impressed in 1991 November, she was still so impressed that she said "I cannot erase it from my memory". Now and that was literally just one month from where allegedly I said it and she hears somebody else saying that and she doesn't remember whether she told them in response that or not and you believe that this could happen?

BY THE COURT:

Listen.

BY THE ACCUSED:

You believe that?

BY THE COURT:

I'm not here to believe or disbelieve. I'm here to gauge for the minute whether or not the witness is evading your questions or whether she is not.

BY THE ACCUSED:

Not only that ...

BY THE COURT:

It's not my impression.

BY THE ACCUSED:

The witness faking her memory, it is the same thing as evading question and you know that very well.

BY THE COURT:

That may be your interpretation of the events.

BY THE ACCUSED:

No.

BY THE COURT:

But you are not the one who's going to interpret the events. Now I'm not going to declare the witness hostile so we might as well move on to other things.

BY THE ACCUSED:

QWell in ... just read this ...

BY THE COURT:

I have made my...

BY THE ACCUSED:

(Inaud.) case.

BY THE COURT:

I have made my decision.

BY THE ACCUSED:

QDo you have any notes of that meeting?

A No, not to my knowledge.

QDid anyone write any notes?

A I don't know, Mr. Haines may have, I don't know.

QYou were the one who called the meeting, right?

A To the best of my recollection.

QSuch important things were said there, you didn't make any notes whatsoever, all right. Is the date, the exact date, March 30th?

A That's ... that's the date that I have that meeting listed in my agenda and I don't remember if that's the exact date when those other people were there. I think it was.

QOK, now did you inform the members ... OK, I think we can easily verify whether you informed members about my words that I'm going to kill a lot of people because if you did, probably they reacted somehow, did they?

A I, if I said anything and I suspect I did, would have said "yes he said something comparable to me about guns and how he solves problems."

QWell then how on earth could you justify, if I allegedly tell you that I'm going to kill a lot of people and those ...

AI did not testify that ...

QLet me finish my question please. How can you justify that, that members of the department are telling you that it is necessary to terminate my employment. You allegedly, well at least you know and it was your duty to inform them. Whether you did it or not, it was your duty to do so, that I allegedly threatened to kill a lot of people and after that, you're telling them that there is no ground for termination, everything is fine, continue working with Fabrikant. Could you hear better nonsense than that?

AI have not ...

BY THE ACCUSED:

QThis is insult to ... to common sense, what she is telling here. Mr. Martin, isn't it insult to common sense, the whole thing?

BY THE COURT:

I'm not here to discourse with you. Put your questions.

BY THE ACCUSED:

All right.

QSo does the whole thing looks to you like an insult to common sense?

BY THE CROWN:

This is argument, My Lord.

BY THE COURT:

It's argument. It's not ... the question disallowed.

BY THE ACCUSED:

The question is disallowed, OK, that's right.

BY THE CROWN:

There is a further step for argument, My Lord and I think ... I don't think the accused understands that.

BY THE COURT:

The accused ... the accused chooses not to pay any attention to any of the rules.

BY THE ACCUSED:

What, I don't ... I will rephrase it. What seems to be the problem? I will rephrase it.

BY THE COURT:

You're being ... you're being rude, you're cross-examining your witness. You knew perfectly well what the witness was going to say. You knew perfectly well what the witness's position was and you choose to call the witness to make her say what you wish ... what you wish her to say, what you know she's going to say and then you attempt to pounce on that through creating some sort of minor variation in her testimony between one day and the other and ask the witness be declared hostile.

I mean it's ...

BY THE ACCUSED:

Because I'm bad or you're bad?

BY THE COURT:

No, you ... you are, you are.

BY THE ACCUSED:

I'm bad?

BY THE COURT:

You're bad, yes.

BY THE ACCUSED:

Well our opinion do not coincide.

BY THE COURT:

You know, I mean that's not the way you do things, you know that.

BY THE ACCUSED:

Well ...

BY THE COURT:

So put your next question.

BY THE ACCUSED:

All right.

QSo you ... you do not recall any reaction from them on the subject, whether you told them or you didn't tell them. We cannot move from this place. Would you ... would you somehow clarify where we are with this meeting? Did they or didn't they know about this phrase of North America?

AI have said that I probably did say it. I can't recollect that I said it specifically, but I probably did.

QWell ...

AI remember reacting to Osman's comment.

QOK, so if you did, then how did you justify, how could you then tell them that there is nothing wrong, continue working with Fabrikant?

ABecause there had been no direct threats. I have said that repeatedly.

QHow more direct could one be if the saying is the way to get something is to go in and shoot a lot of people? Can you be more direct than that?

BY THE CROWN:

It's still arguing, My Lord.

BY THE COURT:

Yes, the question is disallowed. Objection maintained.

BY THE ACCUSED:

All right.

QDid you or didn't you inform also members that you put me on twenty-four hour surveillance at that time?

ADean Swamy certainly knew that you were under twenty-four hour surveillance. I do not know if the others were informed.

QWell Dean Swamy knew about it. Why? He saw somebody surveilling?

AI told him.

QYou told him?

AHum, hum.

QNow this, you do remember?

AI would have been the only one ...

QYou have a very selective memory. This, you do remember?

AI would have been the only one who would tell him.

QSo how come this, you do remember? Whether you told it to other members, you don't remember? Could you explain this selectivity?

BY THE COURT:

There's no point asking the witness to explain why her memory works one ... with regard to one fact and doesn't with regard to another and furthermore, it's cross-examination and it's disallowed.

BY THE ACCUSED:

All right.

QSo when and at what circumstances did you tell it to Swamy?

A To the best of my recollection, if this is the meeting that I'm thinking of, he was nervous about having it and I called him and he said he was nervous. I then phoned Mr. Barnaby to see if the surveillance could tell us where you were and this ... Barnaby ascertained from surveillance that you were at home. I told Dean Swamy that that was the case as he was exiting from the Hall building, I believe, if that's the day, there was a fire drill or an evacuation of the Hall building. He ran into you on his way over to Bishop Court and he commented to me. If that is the day and I believe it is, but ...

Q Well ...

A In any case, that ... that's why I understand or why I know that I must have told Dean Swamy.

Q Well first of all, I cannot understand how surveillance told you that I'm at home while Dean Swamy runs into me?

BY THE COURT:

Would you please spare us your comments on the witness's answer. The witness's answer is there. Now put ... if you have another question, ask it but please spare us your comments.

BY THE ACCUSED:

Well ...

BY THE COURT:

They're not of the form of testimony, they're not of the form of anything.

BY THE ACCUSED:

Well isn't it natural question to ask?

BY THE COURT:

That ... that was not a question.

BY THE ACCUSED:

OK, I will make it a question then.

Q If surveillance informed you that I was home and at the same time, Swamy reported seeing me at Sir George Campus did this mean that probably you are paying money for nothing?

A I certainly called into question in my mind the efficacy of using twenty-four hour surveillance.

Q OK, so what did you do about that if anything?

A I believe that it was fairly shortly after that that I ... again the chronology of when we brought in security, I can't remember, but I believe that it was not long after that, that we had surveillance removed from you. It was certainly within a few days, because of the meeting with Dr. Steiner which made it ...

Q Well ...

A ... things much calmer.

Q Hold it. Why first of all Swamy was nervous? Did he explain to you why was he nervous?

A I don't recall. He probably did, I don't recall what it would have been.

Q Remarkable details as to Swamy getting out, barging into me, coming there, everything is remembered. As soon as I ask ...

BY THE COURT:

I said would you please spare us the editorial.

BY THE ACCUSED:

This is part of my question.

BY THE COURT:

It's not part of your question.

BY THE ACCUSED:

It is.

BY THE COURT:

It's not part of your question.

BY THE ACCUSED:

Well let me just continue.

BY THE COURT:

No I won't, because you're cross-examining the witness if you're going to try to turn that into a question.

BY THE ACCUSED:

All right.

QWhen did surveillance start?

A I've already indicated to you, I don't know.

QOK, let's get the Barnaby file and we'll get more or less precisely when it started. Can you please ... it is I...

I-5, no? Maybe we should release the other witnesses because it doesn't look like we will end today.

BY THE COURT:

It certainly doesn't.

BY THE ACCUSED:

Yes, so maybe we should release them.

BY THE COURT:

Would you call the other two witnesses in and it doesn't look like you'll end ... when will you end? Will you end tomorrow or are you not able to say?

BY THE ACCUSED:

It depends on how often you interrupt me.

BY THE COURT:

Mr. Fabrikant, if you ask your questions properly, no one is going to interrupt you. As long as you don't ask your questions properly, you will be interrupted.

BY THE ACCUSED:

Well why don't you let crown do his job? Why are you ...

BY THE COURT:

Mr. Belleau, are you in any ... are you in any, any position to guess how long this may take? You're not?

BY MAITRE BELLEAU:

I'm not.

BY THE COURT:

Not at all.

BY THE ACCUSED:

But definitely we have today full, no doubt about it, the way it goes.

BY THE COURT:

Gentlemen, there's no point keeping you here for any longer today and I do not think that you'll be needed before at least eleven thirty (11 h 30) tomorrow morning. C'est totalement inutile de ... de vous laisser traîner dans le corridor aujourd'hui et nous n'aurons pas besoin de vous avant onze heures trente demain matin au plus t"t. Donc vous ^tes ordonn,s de revenir demain matin ... onze heures trente. Je vous remercie.

AThese bills, it would appear, cover the period of the 28th of March to the 10th of April.

BY THE COURT:

Q1989?

A1989.

BY THE ACCUSED:

QSo does it look like the surveillance was stopped because of me being seen simultaneously in two (2) places? I understand that I was seen simultaneously in two pla-

ces on March 30th. It didn't prevent you from using surveillance for next ten (10) days?

A To the best of my recollection, we had surveillance and I did not realize it at that time, on someone else for about two (2) weeks leading into April and some of these bills may pertain to that.

Q Well I believe all those bills about me.

A Not to the best of my recollection. Mr. Haines, I'm told, had asked Mr. Barnaby for a security to be ... a surveillance to be put on his home and I think some of these bills pertain to that.

Q Well you have ...

A Because I have ...

Q Now I don't know if it is right question to ask you. If yes, you answer, if not, you say you don't know. I understand that you had three (3) projects of surveillance on me, right? Three different projects?

A I'm not sure what you mean.

Q Well if you look at the bills ...

A Hum, hum.

Q ... you will see. Concordia special, project No. 1, Concordia special, project No. 2, Concordia special, project No. 3. So you had three (3) special projects?

A I don't think that they all related to you. I think that we had surveillance on you. We had some additional, to the best of my recollection, we had some additional guards in the university, although you would have to check that with the director of security. We did have surveillance on, it turns out, on another individual, specifically Mr. Brendon Haines for the latter part of the involvement.

Q Who was that other individual?

A Mr. Haines, I indicated.

Q You were ... you put surveillance on Mr. Haines?

A He asked Mr. Barnaby to have a surveillance on his home.

Q Well so still, it was against me, right?

A I would assume that he was concerned, but that's not for me to answer.

Q But it was not sufficiently ... it wasn't sufficient to watch me twenty-four hours, it was necessary ...

A What I'm saying is I don't think that at that period, it was ... it was going on simultaneously.

Q Well it ...

A There may be ... there may be a way of abstracting that information from here but I can't do it.

Q Well if you look at the dates, it seems like ...

BY THE COURT:

Listen, pass on. We've had enough of the surveillance. Pass on to your next subject.

BY THE ACCUSED:

No, I want to clarify one more point here though.

Q Is it legal to put surveillance on a member of university, paid from taxpayers' money, invade his privacy, instead of, if you have any reason to suspect that person is involved in illegal activity, I believe we have police for that, don't we?

BY THE COURT:

Would you please not answer that question. The question is argumentative.

BY THE ACCUSED:

OK. I will rephrase the question.

BY THE COURT:

I said we've had enough on surveillance. Move on to your next subject now.

BY THE ACCUSED:

Well it is important question.

BY THE COURT:

We've had enough on the question of surveillance. Move on to the next subject you wish to cover.

BY THE ACCUSED:

Well how could you possibly limit? If I ... if I ...

BY THE COURT:

I just did. Do you understand that? I just did. Now move off this question of surveillance from the 28th of March 1989 to 10/04/89 and move on to something else. We've wasted enough time on the question of surveillance. That is how I can possibly limit it, I just did, OK.

BY THE ACCUSED:

Why don't you just disallow me then questioning this witness at all? I believe that as long as I'm asking ...

BY THE COURT:

There is no point ...

BY THE ACCUSED:

... pertinent questions, I'm allowed to ask them.

BY THE COURT:

Yes, you are. That is ... we have ... we have exhausted that and I ...

BY THE ACCUSED:

Well you exhausted.

BY THE COURT:

I have the authority to decide when it's gone on too long on one subject and you've gone on too long on the question of surveillance. Now move on to the next subject.

BY THE ACCUSED:

Well I had many questions about surveillance. It's important part of my defence.

BY THE COURT:

Would you move on to the next subject.

BY THE ACCUSED:

Well I want to read it to you once again if you want. If you allow me to read it ...

BY THE COURT:

I don't wish you to read to me again.

BY THE ACCUSED:

The right to present ...

BY THE COURT:

Mr. Fabrikant, don't insist. Go on to your next question.

BY THE ACCUSED:

I'm not insisting, I just want to remind you some jurisprudence.

BY THE COURT:

I'm ... I'm perfectly aware of what you're going to read to me. Please go on to your next question.

BY THE ACCUSED:

OK, so I still didn't get the answer though, whether other members of the department were informed about surveillance.

AI cannot recollect that. I know that Dean Swamy was.

QWell he was ...

ABecause of the exchange that ... that took place prior to

this meeting, if that was the meeting.

QHe was informed before he was nervous or he got nervous because he was informed? How was that?

AI don't know. You'd have to ask him.

QNo, I'm asking you in terms of time?

AI don't recall. He may recall, I don't.

QSo you remember all the details except whether he was nervous before or he was nervous after he was told about surveillance, yes? That's what you cannot recall?

AI believe that ... that Dean Swamy had some concerns, certainly with reference to the meeting that we had with Dr. Kenniff which is referred in his ... to in Dr. Kenniff's letter of the 23rd of March 1989 and I don't have the date for that meeting, because the purpose of that meeting was to persuade Dean Swamy to ... to get involved in a meeting that would take place where you would be given basically ...

QSo ...

A... final assessment in terms of your concerns vis-...-vis the early promotion.

QOK, so he was not afraid to be in his office? He was afraid to cross the street, right?

AI don't know.

QBut who called who at that time? Swamy called you and said he was nervous?

AWe may ...

QOr you called him and ...

AWe may have been talking about something, I don't know. I don't recollect the specific circumstances. I recollect him however knowing that you were under surveillance at the time when this meeting was taking place, whether it was the 30th or another date, but I think it was the 30th and that I had assured him that you, according to ... to the surveillance report, was at ... were at home.

QOK, and when he comes to you and said that he just met me, what was your reaction?

BY THE COURT:

She's already answered that question. She's already told you.

BY THE ACCUSED:

That she stopped surveillance.

BY THE COURT:

No, it ...

BY THE ACCUSED:

This is not true. It doesn't come from the Barnaby file.

BY THE COURT:

The witness gave you her reaction.

BY THE ACCUSED:

Surveillance continued until April 10th.

BY THE COURT:

She told you what her reaction was.

BY THE ACCUSED:

OK.

QDid you contact police during all that time?

ANo, I did not. I believe Mr. Barnaby did.

QOK and what was the result? Were you aware of any result of Mr. Barnaby contacting police?

AYes, that you had no police record, also that you didn't have a gun permit.

QWell that's all what police was contacted for?

AYou would have to speak to Mr. Barnaby about that.

QNo, I mean what was your information at that time?

AIn terms of what?

QIn terms of contacts with police? What was your knowledge about contacts with police? Did you file complaint with police?

ANo.

QNo. Why not?

ABecause there was nothing, as I have said before, that was specific. Mr. Barnaby said that there was nothing specific that one could complain to the police about.

QWell if person threatens to come and kill a lot of people it's not specific?

BY THE COURT:

You're arguing with the witness. You've got the witness's answer. Move on.

BY THE ACCUSED:

OK.

QWas ... was the threat which I allegedly made not specific enough?

BY THE COURT:

You have the witness's answer. Move on to your next question.

BY THE ACCUSED:

QDid you find it appropriate effectively to take justice in your own hands by hiring surveillance at taxpayers' expense?

BY THE COURT:

The question is argumentative and it's disallowed.

BY THE ACCUSED:

OK.

QDid you commit fraud when you wanted to attribute over ten thousand dollars (10,000 \$) to another account to hide this expense?

BY THE COURT:

The question is out of order. It's disallowed and I think we'll break for fifteen minutes at this time.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ARE PRESENT

CATHERINE MCKENZIE

(Under the same oath)

BY THE ACCUSED:

QSo do you recall how these expenses were paid for surveillance?

BY THE COURT:

What is the pertinence of whether the expenses were paid or not?

BY THE ACCUSED:

The pertinence? Very simple. I'm trying to prove to the jury that I was dealing with bunch of criminals.

BY THE COURT:

The question is ...

BY THE ACCUSED:

And this is one of criminal actions.

BY THE COURT:

The question is disallowed, it's not pertinent to the case.

BY THE ACCUSED:

Of course.

QNow April 5th, afternoon, Steiner, Haines. Would you explain what it was?

AYes. I still had a lot of concerns, was still quite worried, wanted basically a second opinion in terms of what kind of individual we might have been dealing and so I phone health services and I asked if I could meet with a psychiatrist or a psychologist, I don't remember specifically which of the two I asked for, to discuss a case.

QYes and what transpired in the discussion?

AOK, Mr. Haines and I were given an appointment with Dr. Steiner. We talked about the ... the various things that we had heard from the department, some of the ... I guess any of the dealings that ... that myself and Mr. Haines had had with you and ... and he gave, indicating of course that since he had never met you, this was just an analysis at a distance if you will, he gave us his ... his opinion.

QI don't get it. What was his opinion?

AHis opinion was that you were the kind of individual who had learned certain patterns of behavior to ... to get what you wanted, patterns of intimidation, bullying and that that would ... would be what you would be like throughout your life and that it was very important to put limits on your behavior, to put limits on what was acceptable, deemed acceptable by the university and what was not.

He said that in his experience, people like that were very rarely violent. It's a possibility but not anything that ... that could be necessarily anticipated or predicted.

QI didn't get the last phrase. Not?

AThat couldn't necessarily be anticipated or predicted.

QI don't get it still.

AIn terms of ...

QWhat it means? That I still could be violent or I could not be violent or what?

AWhat ... what it means is, what it meant in my understanding was that yes, there was a possibility for violence as I suppose there is for everyone but it's not something that we could anticipate necessarily from you nor could we predict that that would happen.

BY THE COURT:

QNow this was April 5th 1989?

AYes.

BY THE ACCUSED:

QDid it contradict to the opinion (sic) which you got from Adler's Institute? (sic)

ATo the best of my recollection, it was quite a ... a different opinion.

QOK, so how did you resolve this contradiction, if any?

Did you try to get some further opinion?

AIt seemed ... no. Dr. Steiner's ...

QDid you ...

A... analysis appeared to make a lot more sense in the

final analysis than had the earlier one insofar as you had not during our now extended dealings with you, other than comments that ... that you had made to myself and Mr. Haines which as I say, were indirect. One could classify them as intimidate, intimidation, worth then nothing, that was escalating anything. You were by that time ... had gone to see, to the best of my recollection, had seen Dr. Osman a couple of times, that you seemed to be willing to work in the department and as I say, that there had been nothing that indicated any kind of escalation of ... of the kind of behavior that ... that Dr. Steiner said was ... was natural to the ... the type of individual he was describing.

QSo you mentioned here bully behavior. Did you notice me like a bullying behavior when I met you first?

ANot ... not at all. You were ...

QDo you recall that I was almost crying when I told you the story, how I was mistreated? Do you recall that?

AI don't recall you ... you almost crying, but there was nothing, there was nothing that ... that was bullying. You were very polite. You did later, I believe, become quite insistent in ... in telephone calls but nothing that ... that seemed to be outside of the range of behavior that Mr. Steiner or Dr. Steiner was describing.

QWell did anyone just had (sic) very a very simple thought. If you don't mistreat a person, he will never become a danger? Such a similar thought ...

BY THE CROWN:

Argumentative, My Lord.

BY THE COURT:

You're arguing, yes. It's argument, it's maintained.

BY THE ACCUSED:

No, I'm just asking if this thought crossed her mind.

BY THE COURT:

No, that is argument and the objection is maintained.

BY THE ACCUSED:

Well I did ask these questions before. There was no objections to that.

BY THE CROWN:

Now there is.

BY THE COURT:

And the objection has been maintained.

BY THE ACCUSED:

So I cannot person ... ask person whether she thought about this or about that?

BY THE COURT:

No.

BY THE ACCUSED:

All right.

QNow let's go to ... there's a document dated April 4th. Do you recall what the whole thing was about? It is memo from Mr. Haines to you.

AWhat it ... it certainly appears to allude to at any rate is an ongoing questioning of whether your ... whether the DPC's decision not to consider or reconsider your case for early promotion was in fact valid.

QYes and what was my arguing in this regard? Do you recall anything there?

AI mean I can speculate from this document. I don't recall.

BY THE COURT:

Don't speculate.

AYes.

BY THE ACCUSED:

QOK, does it ring any bell that I was alleging that everybody else was promoted to full professors within four (4) years from Associate?

AThat certainly ... certainly rings a bell, yes.

QYes. Did I also say that other people who were promoted to full Professor didn't have that remarkable record of supervision of graduate students either? Does this ring any bell?

AIt ... it may. I ... there were a lot of conversations taking place at that point.

QDid I ... did I ...

ACertainly you did discuss.

QDid I also mention that Dr. Rakheja was promoted without having taught very much, without having supervised very much and I was asking why one person is treated one way and another person is treated differently, do you recall that?

AI don't recall it, I can ... I can perceive from this document that that must have been said to either me or to Mr. Haines.

QOK, so from these documents, at least it appears probable that that was the case?

AHum,hum.

QNow, to this document, you responded ... you responded with some kind of playing comedy with Mr. Haines. Could you describe what this comedy was all about?

BY THE COURT:

The witness didn't say there was any comedy. That's your sarcasm, not the witness's answer.

BY THE ACCUSED:

Oh yes, I didn't say the witness said that.

BY THE COURT:

Would you ... would you rephrase your question.

BY THE ACCUSED:

All right.

QFrom the two documents which, both dated April 6th, it looks to me that you agreed with Mr. Haines to play some kind of comedy with me. Could you please describe details of this comedy? What was your role and what was Mr. Haines's role in this comedy?

BY THE CROWN:

She never mentioned any comedy.

BY THE COURT:

She never mentioned comedy.

BY THE ACCUSED:

She didn't mention, I don't say she mentioned. I said that ... I repeat once again. I refer to two documents both ...

BY THE COURT:

Then would you refer objectively to the documents and make your question objective.

BY THE CROWN:

Is it written comedy in the documents? I don't ...

BY THE ACCUSED:

It is objective. OK.

QCould you just read those documents aloud. Then I believe it will be obvious that it is a comedy played.

BY THE CROWN:

First to refresh her memory.

BY THE COURT:

QRead ... read the documents to yourself, OK.

AHum, hum.

QAnd then wait for the question.

BY THE ACCUSED:

Well I would like those documents to be read into the record. I will ask them to be deposited.

BY THE COURT:

You might ask them to be deposited. We will see what happens when you do that.

AYes.

BY THE ACCUSED:

QOK, so my first question is: those documents are related to the planned meeting with Swamy and before that meeting, in order to be able to argue, I asked for certain documents which would strengthen my position, correct?

AI'm ... certainly evidence is here that that's what you were doing.

QYes.

AI don't recollect it in that way but ...

QNow you and Mr. Haines and Swamy didn't want me to have those documents because they were too explicit and would strengthen my position so much that you would have difficulty reasoning, correct?

AIncorrect.

QIncorrect? OK. So would you kindly explain then ... well can we read those two documents because without reading them, it's difficult to ask the questions.

BY THE COURT:

Well what are the documents?

BY THE ACCUSED:

Those are exchange of two memos between Mr. Haines and Mrs. McKenzie and her response to him. Effectively in one ... Mr. Haines ...

BY THE COURT:

Would you show these two documents to the crown prosecutor.

BY THE CROWN:

And to the Court as well, I guess.

BY THE COURT:

Yes, take a look at them first and then I'll see.

BY THE CROWN:

Do you want them first?

BY THE COURT:

Go ahead, go ahead.

BY THE ACCUSED:

So can we read it?

BY THE COURT:

You can file them I suppose. I don't imagine there is any objection.

ANone whatsoever.

BY THE CROWN:

One is written by Mr. Haines, right?

BY THE COURT:

One is written by Mr. Haines to ... to Dr. McKenzie, yes.

BY THE CROWN:

No problem.
BY THE COURT:
Fine.
BY THE CROWN:
And I guess Mr. Haines will ...
BY THE ACCUSED:
No, I would like them to be read first.
BY THE CROWN:
No the way to do it is to file it.
BY THE ACCUSED:
As far ... as far as filing, I believe, we'll have to
file much more than that. I think we'll file the whole
file under one ...
BY THE COURT:
Not necessarily, Mr. Fabrikant, it depends.
BY THE ACCUSED:
Well it depends. Of course you can always refuse but
still I would like to ...
BY THE COURT:
We're dealing with the two memoranda. Just now stick to
the memoranda for the minute please.
BY THE ACCUSED:
I stick with the ...
BY THE COURT:
We're at ...
BY THE CROWN:
Maybe he could ask questions first.
BY THE COURT:
Pardon?
BY THE CROWN:
Maybe he could ask questions first.
BY THE COURT:
Yes, surely. I ...
BY THE CROWN:
Before filing it.
BY THE COURT:
Well if he wishes to file the two memoranda, it doesn't
make much difference, whether he files them now or whe-
ther he files them later. D ...
BY THE CLERK:
8.
BY THE COURT:
... -8, en liasse.
BY THE ACCUSED:
QWould you please read them aloud both?

A

"To Catherine McKenzie, Executive Assitant
to the rector.
From Brendon Haines, resident consultant
April 6th 1989
At our meeting of April 5th 1989 with Dr.
Warren Steiner, psychiatrist, he advised
us to record everything pertaining to Dr.
Fabrikant.
The following text which summarizes strate-
gies worked out by us yesterday when dealing
with Dr. Fabrikant at this time is in com-
pliance with that suggestion. We agreed that
you will send me a tough note remembering
that Fabrikant will read it. His request
through me will not be answered and if he wants

an investigation, he should contact the appropriate people.

The purpose of your tough note is to discourage Fabrikant from continually giving the orders and me being caught in the middle. Fabrikant has been using me a mediator.

I told him at the beginning that I do this reluctantly and for a short time to help out in this difficult situation.

Last week at a meeting with Osman, Swamy, McKenzie and myself, it was agreed that I will not continue in this role.

Another purpose of your letter is to give notice to Fabrikant that my previous role as mediator has terminated and I will act as a facilitator. This, I had done with Fabrikant in the past but he fails to accept that understanding of my role.

This memo from you will now give me the support to indicate to Fabrikant that I must accept these new ... these directives. I believe this summarizes where things stand now.

Thank you for being so prompt in sending me the memo. As requested by you, I have now ... have now received a memo in support of our position from Dean Swamy.

The second and ... and he refers to this letter which I then had already written earlier in the day.

"To Brendon Haines, resident consultant
From Catherine McKenzie, executive assistant
to the rector.

I'm in receipt of your fax note of yesterday in which you outline a series of questions for which Dr. V. Fabrikant has asked you to seek answers from the faculty of engineering and computer science.

Although the note doesn't call for any action on the part of this office, I do believe it calls for comment, if not outright instruction. As was determined last week, you were to act as a facilitator for discussion which we hoped would take place between Dr. Fabrikant and his colleagues. You were not to act as an advocate or an investigator. There are official and well established procedures and most notably, the code of conduct, non academic.

Thus, I would expect that any request of this nature contained in your note would not be conveyed to you, to any unit within the university but instead would be made in writing by Dr. Fabrikant himself."

Q Now was I right or was I right when I said that you and Mr. Haines tried to play some kind of comedy with me, that you send him a tough note and he will show me this tough note so that I would not blame him for not acting but rather understand that he's just forbidden from acting, correct?
A I'm not prepared to characterize it as a game. This was

a very serious reflexion or ... or result of our meeting with Dr. Steiner where we intended to put limits on your behavior.

You had been treating Grendon Haines as someone who was to go out and get information for you, who was to act on your behalf, do whatever you asked him to do. That had not been the original intention of ... of involving him and we determined, Mr. Haines and I, that this was the first step in a series of ... of moves that would limit you to the proper channels of investigation, i.e. you would have to place your concerns where they are properly placed and once again, the code of conduct, non academic is mentioned.

This was no comedy, I assure you. It was ...

QYes.

A... the beginning of, as I said, limitations on your expectations of ... of people who are not supposed to be doing this kind of work for you.

QSo it was not a comedy played?

AYes, indeed it was not.

QAll right and nobody thought that what you really needed to get tough is not with me but with people who were abusing me? This thought never came across your mind, did it?

AWe had already told the department that we expected them to work with you. That was in some respect against their objections. We had in many ways been tough with them as well.

QOK. What ... what happened after that? Do you know why I cancelled the meeting?

AYes.

QOK. What was the reason?

AMy recollection or I think it's in one of the documents is that you would not attend if you didn't get that information.

QWould it be more precisely to say (sic) that I understood since I get no collaboration in getting necessary information, then it would be useless meeting in the same as here to argue the charge about of my rights, so there was just no point to do so, is that correct?

BY THE COURT:

You're not required to be in a position to read Dr. Fabrikant's mind.

BY THE ACCUSED:

Yes, all right.

QOK, let's move to 1991 then. It looks like nothing happened between then and 1991 or something did happen?

AYes.

QDid something happen in 1990?

AYes.

QNothing at all?

AYes.

QYou haven't heard anything about my promotion in ...

AYes.

Q... 1990 which was ignored? You did hear?

AYes or I have heard.

QOK, so what was your knowledge about this?

AI don't know when I obtained that knowledge but I obtained certainly some indication that something was going on with respect to you, because in 1990 and I cannot remember when, Dr. Kenniff said to me once that he had

asked Dr. Sheinin to consult with me on ... on the matter of yourself.

QOK.

BY THE COURT:

Q Matter of what?

A Of ... of Dr. Fabrikant.

BY THE ACCUSED:

Q To consult who?

A To consult me.

Q Ah OK, so Dr. Kenniff consulted you about me?

A No.

Q OK, so ...

A Dr. Kenniff said to me that he had asked Dr. Sheinin to consult with me

Q Ah OK.

A About presumably 1989.

Q No, you said it was 1990, that Sheinin ...

A About my experience with you in 1989.

Q Ah all right.

A That's what I assumed he meant.

Q All right, so what was it about? Summer of 1990? When was that?

A Sometime in ... in that time.

Q Spring?

A I don't know, I really do not recollect that.

Q Well if you had a meeting with Sheinin, I believe it must be somewhere in your agenda.

A I did not say I had a meeting with Dr. Sheinin. Dr. Sheinin did not consult me.

Q Oh, she never asked you any questions?

A No, she did not.

Q OK, but I understand that Kenniff knew all the threats which I made by 1990, did he?

A To the best of my knowledge, yes.

Q OK. So probably she didn't consult you because he told her all about it.

BY THE COURT:

There's no point speculating on why Dr. Sheinin did anything.

BY THE ACCUSED:

All right.

Q Who else did you tell about North America, except rector and members of mechanical engineering or again, we still don't know if you told them, did you?

A I've said that I can't recollect telling them but then I probably did. I would have informed, although I don't know if I used your name, Dr. Steiner and the individual that we consulted at the Adler Institute.

Q Yes, who else? Swamy knew about it?

A Swamy, I assume if the ... if the other people did, yes.

Q Well maybe you informed him separately? He was very nervous, you remember? He had to have some reasons to be nervous, don't you think so?

A Hum, hum.

Q So maybe you informed him about my threat, that's why he was nervous?

A I can't recollect and he certainly was ... was present at the meeting when other rumors were discussed. You would have to ask him that question. I cannot recollect.

Q Well, you don't ... you remember that you told him about surveillance and doesn't it logical (sic) to somehow ex-

plain the surveillance? You just told him there is surveillance. He never asked why surveillance?

AAs I ... as I say, I don't recollect if I did but I'm perfectly willing to concede that I may have and it may have been at that time. It may have been earlier. I don't remember.

QOK. Who else? Did you tell Mr. Relton?

AIn ... certainly in 1991, in the meetings that I was involved with, with the university intervention team, yes.

QWell before 1991?

AI don't recollect, I don't think so, but again I'm not sure. I know certainly that these statements were ... were discussed on at least a couple of occasions in the fall, late fall of 1991, after the senate incident, but it may have been earlier, I don't remember.

QOK, let's get back to 1990. Can you at least locate in terms of spring, summer, winter, that Kenniff told you to contact Sheinin?

AHe did not tell me to contact Dr. Sheinin.

QAh, OK.

AHe told me that he had told Dr. Sheinin to consult with me.

QAll right, anyway could you locate this in time please?

ANo, I cannot. I can assume where it ... where it may have been in terms of my subsequent knowledge of what was going on but I cannot locate it from my own memory.

QOK. Did you ask him what ... what happened to Fabrikant, why was it necessary? Is he doing again something?

ANot to the best of my recollection, I don't remember asking.

QWhy, you were so ... you were so terrified by the conversation.

BY THE COURT:
Would you please spare the witness the sarcasm.

BY THE ACCUSED:
OK.

QMay I repeat once again, that "I cannot erase it from my memory as much as I would like to" and ...

BY THE CROWN:
We heard that five (5) times, My Lord.

BY THE ACCUSED:
And Kenniff ... I can read it as many times as I please.

BY THE CROWN:
I don't think so.

BY THE ACCUSED:
QSo and Kenniff asks you to ... to ... well whatever, something about Fabrikant, doesn't this ring any bell in you? Gosh, maybe he's going to kill somebody?

AYes.

QSo it does, but you never asked any questions?

AI remember that comment. I don't recollect if I asked any question. I do not recollect.

QWell just recently you said you didn't. Now you don't recollect whether you did?

AI don't remember asking ...

BY THE ACCUSED:
The witness is hiding behind that memory. She couldn't erase it from her memory and nothing of details she could possibly remember. So fine with you?

BY THE COURT:

I'm not here to ... for it to be fine with me or anything else.

BY THE ACCUSED:

No, it is.

BY THE COURT:

Good. Ask the witness your questions.

BY THE ACCUSED:

You understand perfectly well what I'm talking about, don't you?

BY THE COURT:

Listen, you have your way of looking at the witness and the witness's testimony.

BY THE ACCUSED:

All right, fine, fine.

BY THE COURT:

I have mine and I don't have to ... you know, I don't have to make excuses to you for mine.

BY THE ACCUSED:

Nobody asked you to make excuses. It's the wrong word. QOK, so Kenniff consulted you. You didn't try to find out what happens?

ANot to my recollection.

QOK, but you ... you did know that there was something wrong with promotion?

AI don't know if I knew that. I certainly found out later on.

QLater on when?

ASometime after the meeting in the MAA that ... that you and I have talked about before. Somebody told me that there had been a meeting that had taken place and it concerned your ... the issue of not promotion, but integration into the tenure stream faculty.

QOK. So someone told you after this meeting at MAA that there is problem with integration. Could you elaborate a little bit more. Who was that someone and what ... what exactly were you told at that time?

AI can't recollect which person it was.

QOK.

AI know obviously a number of the people who were at that meeting, it may have been one of them.

QOK.

AWhat I was told was that there had been a meeting and that the ... there was a discussion about whether or not you should ... should be brought into the full-time faculty and the department head said yes.

QAnd Sheinin wanted to have me fired, this also was told to you?

AMy understanding is that Dr. Sheinin had suggested that you not be brought into the full-time faculty. Now I don't know if I knew that at that time or subsequently.

QWell if ... if she suggested that I not brought in (sic) as you express it, effectively that could meant (sic) termination of my contract?

BY THE COURT:

Look, there is absolutely no point putting hypothesis to the witness. The witness is here to testify as to what she has personal knowledge of. If she wasn't at that meeting, then she can't talk about that.

BY THE ACCUSED:

You don't listen to the question I'm asking. I just asked to clarify her understanding.

BY THE COURT:

Please ... please be careful. Don't tell me I don't listen to the question.

BY THE ACCUSED:

Well what is wrong to tell you that you do not listen to the question, what's wrong with that?

BY THE COURT:

Because I do listen to the questions, Mr. Fabrikant.

BY THE ACCUSED:

Well if you do, then all my ... all I was ...

BY THE COURT:

And your question, your question ...

BY THE ACCUSED:

All I was asking, to clarify her own understanding.

BY THE COURT:

You ask the witness to speak, to speak for the mind of Dr. Sheinin and that, the witness can't do.

BY THE ACCUSED:

No, that was not my question. My question was to clarify witness's understanding of the situation, that's all.

Witness is ...

BY THE COURT:

Well then make your question clear because your question was not clear.

BY THE ACCUSED:

Well it was not clear? I ... if we could just play it back right away?

BY THE COURT:

Just put your question clear.

BY THE ACCUSED:

All right.

QSo what Dr. Sheinin effectively wanted, what was your understanding of not bringing into tenure stream position, what would happen to me? What was your understanding? Would that mean that my contract would be terminated? How did you understand that?

A I don't know if I understood that at the time. I mean it's ... it's clear and the letter has been in your E-mail that ... that it would have resulted probably in your contract being terminated.

QWell but ...

AOr being lived out to completion and then nothing in its place.

QWell so it means that if contract is not renewed, that yes, it is terminated, all right, so you ... so it means that you did know that in 1990, there was major problem in ... which might have resulted in me losing my employment. Did you ... did you know anything by that time, whether there was any security built up, any surveillance any guard, anything at all?

A I don't recall knowing it at that time. I certainly knew it some ... at some point, that ... that some offices, when you came to visit them, asked to have security guards there.

QAll right, so it was again the same hysteria, yes, at that time, was it?

BY THE CROWN:

She never spoke about hysteria, My Lord.

BY THE ACCUSED:

OK.

BY THE COURT:

I think you're going to have to put your questions far more carefully in terms of time.

BY THE ACCUSED:

All right, all right, all right.

BY THE COURT:

Far more carefully in terms of time.

BY THE ACCUSED:

QWell if, at the time I was coming of offices required some additional security, then I don't know which word to use, but definitely there was ... anyway, let me put it differently then. So there was again build-up of security at certain places at that time?

BY THE COURT:

At what time?

BY THE ACCUSED:

Well 1990, where there was question of my integration into tenure stream position, to the best of your knowledge?

ATo the best of my knowledge, there was. I don't know when and what offices and who asked them because what was involved, from my understanding, is just guards like coming down the hallway or whatever, sitting in rooms that did not require any special ... anything.

QWell but still, there was again some security measures because again, there was a question of my employment, correct?

AYes.

QAll right.

BY THE ACCUSED:

Now I just want to ask one thing because I have at least five (5) ten (10) minutes after adjournment, several things which I need to be settled. So if you wish to adjourn now, that's fine but if you wish, I can continue but still I want after we ...

BY THE COURT:

Fine, we'll adjourn, we'll adjourn now and you can wish whatever you wish to raise. Thank you, ladies and gentlemen. See you tomorrow morning.

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

BY THE COURT:

Thank you, Dr. McKenzie. You can sit down if you wish.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

BY THE ACCUSED:

Several problems we have here: one, I would like to clarify once again duties or whatever you call it of the so-called friend of Court because if I look back into the transcripts, in one case you said that whatever question I have, whatever technical difficulty I have, friend of Court is supposed to help me.

Then at another place, the same thing is totally opposite. So whatever I need, I have to ask you first and if you tell the friend of Court to do it, then and only then, he will do it. You understand that totally different things. (sic)

One is that I'm communicating with him directly. In ano-

ther thing, that I'm communicating with him through you. So could you be now specific. Where do we stand if I need something? Do I have to ask you first? Do I have to communicate with him directly? Where do we stand?

BY THE COURT:

Have you anything to say this, Mr. Belleau, because I do recall that at one point, you ... not that long ago, I think it was the week before last, that you made a request of me that you would prefer that requests that Mr. Fabrikant had to make to you, at least be made to me in the sense that I ... I authorize you to do whatever it was that he required, am I right?

BY MR. BELLEAU

I ... I don't recall that except for one specific matter which was the question of the subpoenas that I told Mr. Fabrikant that I would not send, unless you would order me to send them, but for the ... the rest, I feel that I've answered Mr. Fabrikant's request and although, when we began this trial, the understanding was that I would take orders only from the Court.

We felt, I believe, that it was not a very practical way of ... of managing things and so I felt that it was necessary that I deal directly with Mr. Fabrikant.

Now this is just for practical purposes. I don't wish it to be understood that I will do anything that Mr. Fabrikant requests me to do and if there is any case disagreement between him and me as to the extent of my duties, I won't hesitate to ask you to rule on that.

BY THE COURT:

That was where I thought we were and I didn't think anything had changed. I don't know what he's referring to, but I had rather gathered that the nature of your ... of your mandate and the ... the delicate problems that come up from time to time involve matters of which I neither require nor need not be privy and therefore I thought that you were ... were able to make yourself available to him as far as questions he might have and where you felt that you could answer them, you would.

I'm not talking about questions of law but where it involved doing something, where you had no difficulty, you would go ahead and if you felt that you were running into some difficulty, that you would ... you would mention it to me.

BY MR. BELLEAU

That's right.

BY THE COURT:

Whether we're talking about questions of law or technical difficulties or whatever, that's what I understood. Now I don't know why ... I don't know what the problem is, that ...

BY THE ACCUSED:

Well the problem is ... so let me start first with questions of law. In questions of law, there is an obvious sabotage and I just cannot assess the size of that sabotage because I'm assessing the size of sabotage from the information I'm getting from Mr. Belleau himself, as funny as it looks because he ... I mentioned already about it today.

If you remember, there was question of tapes and their admissibility to be played and he, instead of supporting me, stood up here in the court and said that tapes are

hearsay and therefore inadmissible. Do you recall that?

BY THE COURT:

Surely.

BY THE ACCUSED:

All right. So I asked him: would you kindly, Mr. Belleau, provide me with jurisprudence saying that tapes are indeed hearsay. After some effort, he did find jurisprudence which - I think this is here, he find some ... he found some jurisprudence, he found some jurisprudence saying approximately that and I told him ...

BY THE COURT:

It was only jurisprudence to say approximately that, it's ...

BY THE ACCUSED:

Yes, here is what he brought to me.

BY THE COURT:

It's ...

BY THE ACCUSED:

Here is what he brought to me, Regina vs Plage (sic) and he showed me page 35 which says and before I told him that if you finds that, then I will have to apologize and he brought it to me and on page 35, you read that:

"The evidence of conversation on the tapes can usefully be considered as being of the same kind as that given by a witness who had overheard a conversation between the accused and someone else, made an accurate note of it and repeated it before the jury what was said. The statements of the other party to the conversation are not on their own admissible against him as evidence of the truth, of the facts contained in that."

When I read all that, that tapes is effectively ... is if someone overheard came here and tell to the jury, this is obvious hearsay and I was prepared to apologize. Then ...

BY MR. BELLEAU:

That apology never came, may I add.

BY THE ACCUSED:

Yes, apology didn't come because he brought to me something else and this something else first was the literature that tapes are admissible as real evidence. First, tapes are admissible as real evidence and this, in itself crosses the whole thing out because even as real evidence it is extremely important to me.

Then he brought to me ...

BY THE COURT:

What is says is since it is not sworn, then it falls into the catch of ... of real evidence.

BY THE ACCUSED:

Yes, but, but, but ...

BY THE COURT:

Nonetheless ...

BY THE ACCUSED:

But ...

BY THE COURT:

As original evidence, it may surpass the testimony of a party to a conversation or ...

BY THE ACCUSED:

Exactly.

BY THE COURT:

... of an eavesdropper as to what was actually said.

BY THE ACCUSED:

Exactly.

BY THE COURT:

It may have given an added dimension of phrasing, tone, inflection involved.

BY THE ACCUSED:

Yes.

BY THE COURT:

I told you all this the day ...

BY THE ACCUSED:

This is ...

BY THE COURT:

Listen, the day after ...

BY THE ACCUSED:

Let me finish, let me finish.

BY THE COURT:

... we had the discussion, I looked at this matter and I came back onto the bench and I told you. I have looked at your question of the status of tape recordings over the weekend.

BY THE ACCUSED:

I know that.

BY THE COURT:

If was actually the Friday afternoon.

BY THE ACCUSED:

Yes.

BY THE COURT:

And I effectively said that I was prepared to modify what I ... what I had said.

BY THE ACCUSED:

Yes, would you let me ...

BY THE COURT:

And I did.

BY THE ACCUSED:

Would you let me finish? That you said it in court after I got from Mr. Belleau all this information and I was wondering, is it just a coincidence or Mr. Belleau is telling you everything what goes between us? Isn't it funny that as soon as I got this information, immediately you reversed yourself from there.

Now and I'm questioning loyalty of Mr. Belleau. It's just a coincidence? Funny, OK. I'm paranoid, this is coincidence, fine, but this is not the end of it, this is not the end of it. I think that ...

BY THE COURT:

Mr. Belleau and I do not discuss ...

BY THE ACCUSED:

Of course you never ...

BY THE COURT:

... these matters, Mr. Fabrikant.

BY THE ACCUSED:

Oh no, of course. Of course it is just a coincidence! Shit, stupid me, of course! This is just a coincidence. Now and after that, he brought me something which looks like a bomb and this is Regina versus Ciboyer and here, I have not only the decision of Supreme Court of Canada which totally reverses the whole thing, reverses to such

extent that from this decision, it's a revolutionary decision. From this decision, whatever is necessary and accurate and relevant become admissible.

Not only that, they go further than that. They go even to saying that even privileged information like counsel's advice, if it is necessary for defence, becomes no longer privileged.

How about that and you remember when I asked Sheinin what counsel advised her, you said "No way, you're going to get it because it is privileged information".

Now I do need it for my defence. If I knew this jurisprudence before that, I could have argued but by that time, I didn't know that, so I couldn't argue.

BY THE COURT:

You surely didn't need it for the fitness hearing which is what I believe we were involved in when the question came up.

BY THE ACCUSED:

Well ...

BY THE COURT:

Relating to the testimony of Mrs. Sheinin.

BY THE ACCUSED:

Let me finish please, let me finish please. It is ... whatever it was, I was supposed to know about it at the very beginning because it is such an important decision in terms of evidence. You could not overestimate it, it's ... it's like a bomb this decision.

BY THE COURT:

Oh, hardly, hardly.

BY THE ACCUSED:

Oh yes.

BY THE COURT:

Hardly.

BY THE ACCUSED:

Oh yes but so this is ...

BY THE COURT:

A few have been dropped but that's not one of them.

BY THE ACCUSED:

Yes. So this is as far as sabotage of Mr. Belleau is concerned and as I say once again, I cannot just estimate the size of this sabotage because I'm estimating it from information I'm getting from him, so it is just ... I cannot possibly imagine in how many more cases he deceived me and I just don't know about it.

BY THE COURT:

Well despite your concern, he will keep up the good work and pass to you whatever information he can on these various points.

BY THE ACCUSED:

Yes, well one day it will be ... it will be clear.

Now so this is as far as legal help is concerned. It is obvious sabotage and nothing else.

Now as far as technical work is concerned, we have to decide here and now whether he's supposed to do some work and if he's not, I'm prepared to designate someone from outside and I will ask you to make a court order that this person has access to me, because I have numerous tapes.

I need to prepare them, I need to play them. Mr. Belleau has refused this Saturday to come over. He again lied to

me that tape recorder was not with him. I asked here, tape recorder was with him. He said that he left it in ... in the courtroom. It was not left in the courtroom. He just didn't want to come.

Anyway he told me, when I said OK, I will get you another one if you left it at the courtroom, he thought that that would be excuse enough. I told him "OK, I'll get you another one, just come over." He said that he's not going to come and sit with me and making me correcting (sic) the tape.

Now if he ... if this is not his duty then, I would like you to make a court order for another person who would have access to me at necessary times and I would be able to do some preparatory work or make order that this tape recorder be allowed for me to keep at Parthenais and any way, I need ... any way that ... that person comes and bring me something and take something. Would you be prepared to ...

BY THE COURT:

Does this mini-cassette operate on batteries, Mr. Belleau?

BY MR. BELLEAU:

Yes, My Lord.

I'd just like to respond because the ...

BY THE COURT:

Yes.

BY MR. BELLEAU:

What happened was that on Friday, before I left, I ... I had this machine here and I wanted to leave it in the courtroom but since it's Mr. Fabrikant's machine, I slipped it under the calendar here so that it wouldn't be obvious.

So when he called me and asked me to come in the afternoon to Parthenais so that he could sit there and listen to tapes that he would play on the machine that I had in my possession, the private parloir is closed on Saturday afternoons so if I went there with this machine, he would be sitting on one side of the glass with the tapes and I would be sitting on the other side of the glass with the machine and not much would have been accomplished.

BY THE ACCUSED:

Well we ... we could transfer tapes.

BY MR. BELLEAU

And regardless of that, I don't feel that it is my duty to be the carrier of the machine and to sit there just while he listens to the tapes, this is absurd.

So of course, if the Court would order me to do it, I would gladly oblige but ...

BY THE COURT:

If this ... if this thing doesn't plug into the wall, is there any ... is there any difficulty with the Parthenais regulations?

BY MR. BELLEAU:

The concern ... the concern the authorities have is that this has a microphone and has recording ability. This is what the rules are at Parthenais. No recording device. I haven't questioned the ... the rationale for the rule or its validity but I know that is the rule and this the problem that we had in the very beginning of the case when we tried to provide him with a machine and you'll recall that it raised some difficulty because of the fact

that there was a microphone incorporated with the machine.

So this would be ... this would be the objection, I suppose to ... to the admission of this machine in Parthenais.

BY THE COURT:

Would you prompt my memory on one thing, because I may be wrong, but my recollection is that at one point, aide juridique was prepared to see to the transcription of these many cassettes. They never were or am I ..

BY MR. BELLEAU:

No.

BY THE COURT:

OK.

BY MR. BELLEAU:

No, they never were.

BY THE COURT:

OK, I thought there was a question of them not being released for the purposes of transcription by Mr. Fabrikant but I ... I could be wrong.

BY MR. BELLEAU:

I don't know, the only transcript request that I recall from Mr. Fabrikant was when two judgments by Judges Barbeau and Bishop and that was done and provided. He was provided with those transcripts, but the micro-cassettes to my knowledge, there was no request for transcripts.

BY THE COURT:

Well first of all, I mean it's ... how many micro-cassettes are there?

BY MR. BELLEAU:

I have no idea.

BY THE COURT:

You have no idea and I'm quite sure that ... well I can't speak ... I speak only from past history but I would ... doubt very much that legal aid would agree to pay for the cost of the transcripts.

BY THE COURT:

Anything to add?

BY THE CROWN:

No, My Lord and we already discussed the question of micro-cassette ...

BY THE COURT:

Well we said ... we discussed one tape this morning which ... one transcription which ...

BY THE CROWN:

No, no, what I mean, at the pretrial conference, you said "Go and get one without microphone and that's your problem". The question of the microphone was discussed.

BY THE COURT:

As far as the ...

BY THE CROWN:

Yes.

BY MR. BELLEAU:

There's another possibility, it's that these micro-cassettes can be transferred from micro-cassettes to the regular cassette and I've asked Mr. Hervieux to do it in one instance with one micro-cassette that Mr. Fabrikant left in my custody but my understanding is that he won't let me handle those ... the other ones, so that would make transferring them to regular tapes extremely difficult.

BY THE COURT:

Is Mr. Hervieux prepared to do it?

BY MR. BELLEAU:

I wouldn't ... I couldn't say that on a larger scale.

BY THE COURT:

Well you see, it all depends on how large the scale and what for.

BY ME BELLEAU:

No, exactly but this is a question that I'm not in a position to answer.

BY THE CROWN:

Well Mr. Fabrikant could have done that for ... for months now.

BY THE COURT:

I know that and ...

BY THE CROWN:

That was his problem.

BY THE COURT:

Yes. One thing is for sure, it would be far far easier if these things were on the regular cassettes that fit the courtroom machinery.

BY THE CROWN:

But then he wouldn't be able to record everybody as he did.

BY THE COURT:

Oh no, no, no, I'm saying for the purpose of the trial. I'm saying ... I'm saying for the purposes of the trial, but you ... you probably have a point there.

BY THE ACCUSED:

I think this is the biggest point he scored so far in the whole trial.

BY THE CROWN:

We'll wait for the end.

BY THE ACCUSED:

Sir?

BY THE COURT:

Would you ... would you explore with Mr. Hervieux on what conditions he might be prepared to ... to at least see these things transcribed onto the ... the other size tape?

BY ME BELLEAU:

Sure.

BY THE COURT:

So that ...

BY THE ACCUSED:

Well ...

BY THE COURT:

So that they can be worked with .

BY ME BELLEAU:

But there are two questions that should be answered.

First how many tapes are there and second, can we have them for the purposes of transferring them.

BY THE COURT:

Well we'll come ... we'll come to that, but why don't you ...

BY THE ACCUSED:

Well I have ...

BY THE COURT:

How many tapes are there?

BY THE ACCUSED:

I have another suggestion, what I said.

BY THE COURT:

I've just ...

BY THE ACCUSED:

I have a person designated.

BY THE COURT:

Just a minute.

BY THE ACCUSED:

With power of attorney and I would ask you just to make a court order that this person be admitted to me on the same grounds as Professor Antipa (sic) is admitted.

BY THE COURT:

Who is this person?

BY THE ACCUSED:

Well it's a person who I trust to do it.

BY THE COURT:

It could be, but who is this person?

BY THE ACCUSED:

You want the name?

BY THE COURT:

Sure.

BY THE ACCUSED:

OK, it's Mr. Karpetian (sic).

BY THE COURT:

The student?

BY THE ACCUSED:

Yes.

BY THE COURT:

What would you ... I thought he had free access to you, he came to visit you virtually every second day to discuss problems of his thesis or ... or whatever?

BY THE ACCUSED:

How? How could you know that?

BY THE COURT:

I can't, but he said it here when he testified, that's all, that he went to visit you frequently and his name figured in ...

BY THE ACCUSED:

All right but he can ...

BY THE COURT:

... in logs five days in a row.

BY THE ACCUSED:

Yes, but he can visit me through the glass. If you know how visits are done there, for one hour only and this is for his dissertation and I cannot in good conscience ... first of all it is through glass, therefore anyway this kind of stuff cannot be arranged.

I need a personal meeting the same way I'm doing this with Antipa and I need much more than one hour because it is a big job with all those tapes.

So would you kindly make a court order that he be allowed on the same grounds as Antipa is allowed?

BY THE COURT:

What would you propose that he do?

BY THE ACCUSED:

Well he would come and bring me necessary documents, whenever needed. He would come with say this and tapes and I could listen and maybe compare, because now I was pretty sure that this transcript was very very accurate. When I heard, I have discovered that when I made it, I made it the sense of what was said but many thing which were inaudible, I just missed them and I have another

transcript which I now need to verify, how they look like now because I don't want to get into similar situation when I go into box there and would swear that it is accurate transcript and after that, I discover, my Gosh, it is not that accurate as I thought it was.

BY THE COURT:

But ...

BY THE ACCUSED:

So I need ...

BY THE COURT:

If you're thinking of transcribing a whole series of these tapes ...

BY THE ACCUSED:

Yes.

BY THE COURT:

I mean, you could have done that I suppose at any time that you wished to but I would ... I would, if I were you, be asking myself for what purpose am I transcribing a whole series of tapes, because ...

BY THE ACCUSED:

Well because I want to present them as real evidence.

BY THE COURT:

I don't think they're going to be presented as real evidence. There will be ... there will be many objections to their being presented as real evidence and probably, from a practical point of view, unless there's a witness missing, unless you can't find a witness or whatever, it would seem to me that the best you could hope is that whatever the relevant part of the tape is, if you're able to demonstrate a contradiction, that the ... the tape may be used for the purposes of cross-examination of a witness.

BY THE CROWN:

I think it's very clear by now.

BY THE ACCUSED:

Well ...

BY THE CROWN:

You rule on a Friday afternoon and you rule a second time on the Monday morning and that's the end of it.

BY THE ACCUSED:

Well not at all.

BY THE CROWN:

So I think the debate is closed. He should go to the Court of Appeal if he's not happy.

BY THE ACCUSED:

I don't understand. What was the ruling? Tapes were ... he himself said that it's admitted.

BY THE CROWN:

What you just said is a ruling, what you just ...

BY THE ACCUSED:

Didn't you say yourself that tapes are admitted as real evidence?

BY THE CROWN:

No, he didn't say that.

BY THE COURT:

I said that ...

BY THE ACCUSED:

Well you reversed yourself, you remember?

BY THE COURT:

I said ... I said that if following the ... we were talking about Sankar.

BY THE ACCUSED:

Yes.

BY THE COURT:

I said that if, depending upon the examination of Sankar, if the question of tone and inflection became an important question, then independently of your right to use a tape either to refresh memory or to demonstrate that a witness had said something else, contradictory, on a different occasion, that you might be able to use it as real evidence to demonstrate the question of tone and this was the ... but I was careful to say that you were not going to be allowed to use the tape in lieu of a person's testimony and you're not.

BY THE CROWN:

That is ruled.

BY THE ACCUSED:

Well then ...

BY THE COURT:

And that is ruled, I mean that's ...

BY THE ACCUSED:

Well you ... you didn't say that, that I would not be allowed to use tapes. I can use tapes. It's written here black on white, that original evidence, it surpassed the testimony of a party to conversation because it creates exactly the atmosphere. What was ... not just what was said, but how it was said.

BY THE COURT:

All very much depends on the circumstances.

BY THE ACCUSED:

Well circumstances are ... I will give you an example.

BY THE COURT:

Sankar may remember very very well your conversation with him.

BY THE ACCUSED:

Well it is ... it is not relevant whether he remembers very well.

BY THE COURT:

But it is, but you're not going to ...

BY THE ACCUSED:

Well it is to you relevant.

BY THE COURT:

You see, and here you see is where ... what Mr. Belleau told you is absolutely accurate.

BY THE ACCUSED:

Well we ...

BY THE COURT:

You cannot shovel this stuff in under the guise of Sankar's testimony or anybody else's for that matter.

BY THE CROWN:

There is not only hearsay, there's self-serving in that.

BY THE ACCUSED:

What kind of self-serving? I was preparing this evidence knowing that I will be here in 1993? That's what you mean, self-serving?

BY THE COURT:

In any event, Mr. Belleau, you might, if you get a chance tomorrow morning, explore the question of ...

BY THE ACCUSED:

Well he ...

BY THE COURT:

... of transferring these onto ... onto a standard cassette.

BY THE ACCUSED:

Well you didn't ... you didn't answer my question about the court order because his help is not limited.

BY THE COURT:

I'm not issuing a court order this afternoon, that is for sure.

BY THE ACCUSED:

OK, when you are going to? I need it.

BY THE COURT

I don't know when I'm going to issue it if ever, but I have asked Mr. Belleau if he would kindly explore the question of the transfer of these. I'm waiting to hear from you and I have been for a while: how many cassettes ... many cassettes are involved?

BY THE ACCUSED:

Well I have many I'm not giving it to Belleau, I'm not obliged.

BY THE CROWN:

How many cassettes?

BY THE COURT:

How many cassettes are involved?

BY THE ACCUSED:

Well many cassettes.

BY THE CROWN:

Can we get a ...

BY THE COURT:

No he won't give a ... he won't give a number so ...

BY THE CROWN:

And can I get all the transcript he already prepared, although they are not accurate?

BY THE COURT:

I don't ... I don't think so.

BY THE CROWN:

But I'm asking, let him answer.

BY THE COURT:

If he wishes to give them to you, he's perfectly welcome.

BY THE CROWN:

Could you ... could he give all the transcripts?

BY THE ACCUSED:

Well of course, if they will played, you will get them.

BY THE CROWN:

In advance, in advance.

BY THE ACCUSED:

What ... what is the point?

BY THE COURT:

I'm not ... please don't misunderstand. I have never said that they would be played.

BY THE ACCUSED:

OK, you refuse it, fine. Now ...

BY THE CROWN:

Can we ...

BY THE ACCUSED:

... Mr. Belleau refuses to ...

BY THE CROWN:

... can you answer the question I asked? Can I get ...

if he answers no, the answer will be no but I would like to get the transcripts he already made for all ...

BY THE ACCUSED:

Well there is nothing, no point to give anything in advance unless it will be played.

BY THE CROWN:

Well ...

BY THE COURT:

There's your answer. I'm not ... I'm not here negotiating a deal as to what goes into the court record.

BY THE CROWN:

Listen I'm not surprised, but I was not bound by the same rules.

BY THE COURT:

I know, you can ... but please don't negotiate until I leave. I mean ...

BY THE CROWN:

No, I thought the ...

BY THE COURT:

(inaudible).

BY THE ACCUSED:

Well I have several more questions to discuss. One of them is refusal of Mr. Belleau to send subpoenas to people who are not ministers, not judges and not protected by anything at all. He just refuses.

BY THE COURT:

I told you, if there was a problem with subpoenas that Mr. Belleau had, he could raise it with me.

BY THE ACCUSED:

Well there is problem, well ...

BY THE COURT:

In court.

BY ME BELLEAU:

Well I can't raise it with you because he doesn't want me to tell you who the people are.

BY THE COURT:

But if he doesn't want to tell who it is, then you can't raise it with me.

BY THE ACCUSED:

No, no, one second. Let us first of all clear up that those people are not judges, those people are not ministers. Now I need to subpoena. Is this enough information to subpoena them because his explanation reads as follows:

"I don't want these people to wait ... OK, I feel it improper to have these people subpoenaed and waiting in the corridors for hours on end in order to force them to surrender documents, the relevance of which to the case is far from being obvious."

To him. Now where are we? Is it up to him to decide whether it is relevant or not? People are not ministers. I repeat once again and not judges.

BY THE COURT:

Then if Mr. Belleau has a difficulty, which precludes him from doing what he had done thus far and issue subpoenas then I have to take it on good faith that he has a professional reason for having these doubts, so then you're

going to have to tell me who you want to subpoena and in what circumstances.

BY THE ACCUSED:

All right, so you force me to tell you who I'm going to subpoena. So you force, I doing that. (sic) One of the person I want to subpoena is Gold.

BY THE COURT:

Is who?

BY THE ACCUSED:

Gold.

BY THE COURT:

There's no problem in this ... on this earth from ... preventing you ...

BY THE ACCUSED:

You see.

BY THE COURT:

... from subpoenaing Alan Gold.

BY THE ACCUSED:

So, is it settled, Mr. ...

BY THE COURT:

None whatever.

BY THE ACCUSED:

I forgot your name.

BY ME BELLEAU:

Fine, he'll be subpoenaed.

BY THE ACCUSED:

OK, the next name is ... so no problem with Mr. Gold. The next name is what?

BY ME BELLEAU:

You have your list.

BY THE ACCUSED:

I have it somewhere. Well to save the time ...

BY ME BELLEAU:

Don Boudrias.

BY THE ACCUSED:

Don Boudrias from Ottawa.

BY THE COURT:

He's a member of parliament.

BY THE ACCUSED:

Well he has what? Special privileges? As far as I know, not. (sic) Member or no member. We are all equal, aren't we or some of us are more equal than others?

BY THE CROWN:

The difference between Mr. Fabrikant and Mr. Belleau is that Mr. Belleau is bound by the code of deontology and it looks like Mr. Fabrikant is not all and ...

BY THE ACCUSED:

Well ...

BY THE CROWN:

... you know, in some way, to have ... to have a lot of people waste time because you're not bound by the code of deontology, I think we should ...

BY THE COURT:

I agree.

BY THE ACCUSED:

I'm not .. there was not ...

BY THE CROWN:

... respect Mr. Belleau's discretion.

BY THE ACCUSED:

Well there is not a single person so far.

BY THE COURT:

I think if it makes ... if it makes MaÈtre Belleau feel a little easier, I would presume that ... that you will treat ... treat Mr. Gold with the same courtesy as you have others, that you'll let him present himself on ... on half an hour's notice or whatever. He has a law practice ...

BY THE ACCUSED:

Yes, I think we accommodate everyone to the best of our ability.

BY THE COURT:

... or whatever to look after. As far as Don Boudrias is concerned, look, I don't know.

BY THE CROWN:

Mr. Gold, I don't know, if it's for the allegations of conspiracy and contempt of court, I think it doesn't make any sense. If it's as a chancellor of Concordia, maybe but ...

BY THE COURT:

No, Mr. Gold is not ... is not entitled to any ... Mr. Gold is a citizen like anybody else.

BY THE CROWN:

He was a judge at that time.

BY THE COURT:

It may be but ... but he can answer to a subpoena as can anyone else.

BY THE ACCUSED:

Well so there is nothing about Mr. Boudrias either? We can subpoena him with documents?

BY THE COURT:

Yes, I'm ... I'm wondering about that one because what ... what would you propose to show through Mr. Boudrias?

BY THE ACCUSED:

What I would propose to show ...

BY THE COURT:

I can... I can easily visualize what you want to do as far as Mr. Gold is concerned.

BY THE ACCUSED:

Well the same thing, what I was trying to propose through Mrs. Armour, it is the same, the same, the same logic.

BY THE CROWN:

In according with 6.98, My Lord, he has to convince you that it is ... it is material evidence. I don't think Mr. Boudrias has any ... any material evidence.

BY THE ACCUSED:

He has material evidence, he has documents from me.

BY THE CROWN:

Let's ... let's hear about it then.

BY THE COURT:

Well we'll hear about it tomorrow morning because it's five o'clock, so we'll continue this tomorrow morning but we've gone as far as Boudrias and I think you've got some convincing to do before ... before I authorize that, that's for sure.

ADJOURNMENT

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PROVINCE DE QUBEC

CHAMBRE CRIMINELLE ET PNALE

DISTRICT DE MONTRAL

CAUSE NO.: 500-01-017372-928

TAPE: PROCES - SUITE

PRSENT: L'HONORABLE JUGE MARTIN FRASER, J.C.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 8 JUIN 1993

FICHER: 2468

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VALERY FABRIKANT :

So may I continue?

THE COURT :

One moment. We were at the point where you were discussing the evidence you propose to produce by way of Don Boudrias. And before I issue a subpoena, 698 gives me not only the right but rather imposes on me the duty to... or at least the jurisprudence under 698 imposes upon me the duty to satisfy myself that Boudrias, who's a member of Parliament, is likely to give material evidence. So what is the material evidence?

VALERY FABRIKANT :

Well, it is exactly the same thing as Kenniff, as Gold, as Gervais, Finestone, those are the people who I complained to, those are people who were in one way or the other involved, and meeting with those definitely affected my state of mind, so it is exactly the same thing. I see no difference, Boudrias, Gold or Kenniff

or McKenzie, there is absolutely no difference whatsoever.

THE COURT :

Well, Gold, Kenniff and McKenzie have some attachment to Concordia University. Boudrias, as far as I know, is a sitting member of Parliament for some riding somewhere or other in Ontario.

VALERY FABRIKANT :

Well, Concordia has nothing to do with in the sense that the shooting took place there, but otherwise other people contributed exactly the same way as Concordia did, there is absolute... I see no boundary, this is Concordia, this is not Concordia. You mentioned yourself several times, this is not trial of Concordia.

THE COURT :

I'm not saying it's the trial of Concordia.

VALERY FABRIKANT :

It's the trial of me.

THE COURT :

But you happen to be at Concordia University and the people, the first people you mentioned, at least Dr. Kenniff, Mr. Gold and Dr. McKenzie were people who had some involvement in your complaints. I find it difficult to...

VALERY FABRIKANT :

Boudrias also had, Finestone also had...

THE COURT :

How did Boudrias have an involvement? How did... when you say Finestone, do you mean Mrs. Finestone, member of Parliament for Mount-Royal?

VALERY FABRIKANT :

Yes.

THE COURT :

Well, let's deal with Boudrias for the minute. How did Boudrias have... what could Boudrias say that would be relevant to this trial?

Me JEAN LECOURS :

From his personal knowledge himself.

THE COURT :

From his personal knowledge.

VALERY FABRIKANT :

Well, he will come and he will tell what he...

THE COURT :

What will he say?

VALERY FABRIKANT :

Well I cannot tell for the witness what he will say. You...

THE COURT :

What do you propose to establish through Boudrias?

VALERY FABRIKANT :

Well, I would propose to establish that he received certain documents from another member of Parliament, Finestone, and that I called his office on numerous occasions, and all those interactions definitely affected my mind and I want the jury to know what it was.

Me JEAN LECOURS :

How did it affect his mind, My Lord?

VALERY FABRIKANT :

Well that's...

Me JEAN LECOURE :

Mr. Boudrias doesn't know, it's Fabrikant's testimony.

THE COURT :

How can Mr. Boudrias testify as to what affected your mind?

VALERY FABRIKANT :

Well... it's very simple, if, for example, Mrs. McKenzie had me arrested by police, then I believe jury can figure by themselves how it's affected my mind, right? The same goes for Boudrias.

THE COURT :

I'm not agreeing with any statement you make, you can say right to me all you like, but I mean you're not going to get a reply from me.

VALERY FABRIKANT :

Well anyway, this is exactly the same thing, there is not difference, I really cannot understand why Mr. Boudrias should be treated any differently than Mrs. Armour from "Ensor".

Me JEAN LECOURE :

I think...

VALERY FABRIKANT :

Just because he is member of Parliament doesn't make him any different.

Me JEAN LECOURE :

I think the analogy is rather with the Gazette reporter, which you ruled out, you know. You can complain to the whole world, we won't be sitting, listening to everybody in the world.

VALERY FABRIKANT :

Well...

Me JEAN LECOURE :

And if he wants to speak about his state of mind, one day or later he will say: "I was frustrated because some people didn't want to support me", or something like that, period. We can sit for months.

VALERY FABRIKANT :

Well, these people has first to be called here and testify that yes, they were contacted, yes, they did this or they did nothing, or they said this, or they said nothing. It is exactly the same thing, I see no difference.

Me JEAN LECOURE :

I think it's exactly the same thing as the journalist of the Gazette that you ruled out, My Lord.

THE COURT :

Are you finished?

VALERY FABRIKANT :

Well, if you want some additional information, ask me what it is. I need documents which I submitted to him.

THE COURT :

I don't need... What documents do you need that you submitted to him?

VALERY FABRIKANT :

Well, I have submitted a lot of documents, you know the documents which I distributed along the road.

THE COURT :

Well, undoubtedly you have these documents, and you have access to these documents.

VALERY FABRIKANT :

No, some of them I don't have.

THE COURT :

There will be no subpoena issued or authorized for service on Mr. Boudrias.

VALERY FABRIKANT :

Well, would you explain it? Why is he any different?

THE COURT :

The ruling is there.

VALERY FABRIKANT :

Then why do you allow everybody else?

THE COURT :

I am not satisfied that Mr. Boudrias can give any relevant evidence in this case from what you've said to me.

VALERY FABRIKANT :

Well at least authorize him to return the documents.

THE COURT :

I'm finished, the judgment is rendered, finished.

VALERY FABRIKANT :

Okay. He has documents which I do not have a copy. Can you at least ask him to return?

THE COURT :

You forwarded these... if you forwarded these documents to him, you surely have a copy.

VALERY FABRIKANT :

I do not.

THE COURT :

That's unfortunate then, I do not believe you.

Me JEAN LECOURE :

At this point, My Lord, I might raise also an issue about the testimony of Mr. Antepa Tancrede and so on.

I don't see any relevancy for these... I know these people are involved in denouncing at large fraud at universities in the whole world, and everything they could say here is double or triple hearsay. Mr. Fabrikant presented them as evaluating his work.

THE COURT :

What you just said is news to me, I don't know what, Antepa and friends or colleagues do, I have no idea at this point.

Me JEAN LECOURE :

I'm just raising the issue. Okay. And these people, the way Mr. Fabrikant described them, are not even mechanical engineers, we know... of course it's outside the jury, that even a standard mechanical engineer cannot evaluate Fabrikant's work because it's too specialized. How come a chemist, or any person in any other field can bring something relevant here? I think these people are just there to poison the jury, or to contaminate the jury at large with triple hearsay about university fraud, or royal commission. And if... they are certainly not here to express opinion that this is a fraud and this is not a fraud. I just warn you.

THE COURT :

Okay. I'm perfectly prepared to wait and see what he proposes to adduce by these people before I take any position, and I presume that you will make your objection when...

Me JEAN LECOURE :

Yes, but I'm making it right now, from the information I get, because maybe he won't waste his time with these people, you know.

VALERY FABRIKANT :

It's been a bad day.

Me JEAN LECOURE :

And these are people also with grievances, I'm giving you the information, against their own universities, about fraud and things like that, you know.

VALERY FABRIKANT :

Yes. I think you should take advice from one of the editors. Court is disposal unit of killers, just dispose of me, that's all, shut me out, don't let me talk.

THE COURT :

This is not...

VALERY FABRIKANT :

Kick me out of Court.

THE COURT :

This is not an inquiry at large, this is not an inquiry at large into university fraud, the only only way that any of that becomes relevant may be through its effect on you...

VALERY FABRIKANT :

Exactly.

THE COURT :

...on the day in question. That is the only way, and you're going to be rigorously restricted to that particular point.

VALERY FABRIKANT :

Don't you worry, but the thing was with Boudrias, because interaction with him definitely affected me...

THE COURT :

In any event, the ruling is there... Well, that's something else, if you choose to speak, if you choose to testify, I suppose you can say that since you're the only person in this world that can talk about what the effect was in your mind.

VALERY FABRIKANT :

But before I need to present to the jury that indeed he received certain documents, and indeed this or that happened. I need him to say it, not me.

THE COURT :

My ruling is there with regard to Mr. Boudrias.

VALERY FABRIKANT :

Well, effects on people more equal than others.

THE COURT :

Mr. Fabrikant, you undoubtedly have copies of what you forwarded.

VALERY FABRIKANT :

I do not have.

THE COURT :

Well Mr. Fabrikant, I have great difficulty believing that. In any event, Mr. Boudrias, as far as I'm concerned, has nothing whatever to add to these proceedings from what you've said to me this morning. If it becomes apparent at some later date that indeed you have need of Mr. Boudrias, you can renew your request.

VALERY FABRIKANT :

Well I'm renewing, yes, I need him.

THE COURT :

I just disposed of it. If you feel later on that you need him, if it appears that you need him, if you are able to convince me that you need him as a result of what you may say or whatever, then I'm perfectly open to reconsidering the question. But at this point I'm certainly not satisfied and I'm certainly not going to issue a subpoena. That's what I'm saying.

VALERY FABRIKANT :

Well, I do not understand what could happen...

THE COURT :

Would you stop arguing, it's finished.

VALERY FABRIKANT :

Just explain to me what could happen...

THE COURT :

I have ruled it out for the time being, that is the decision. Now I don't want to hear another word from you on the subject at the moment.

VALERY FABRIKANT :

Okay. Fine.

THE COURT :

Sit down, unless you have something else to raise.

VALERY FABRIKANT :

Yes, Finestone. She's also more equal than others?

THE COURT :

Mrs. Finestone is in exactly the same position as Mr. Boudrias.

VALERY FABRIKANT :

Would you again care to explain why she is any different than Mrs. Armour from "Ensor"? I complained to "Ensor", I complained to the member of Parliament.

THE COURT :

There was an objection to Mrs. Armour's testimony from the first question.

VALERY FABRIKANT :

Well still...

THE COURT :

I allowed Mrs. Armour to testify, not because I thought that she had anything relevant to say, but rather because I preferred to listen before I ruled. I never got to the point of ruling because you decided to abuse the rules of Court, and I therefore applied the remedy that I told you I would apply, and put an end to your examination of Mrs. Armour.

VALERY FABRIKANT :

Well that was illegal remedy and you know that. You cannot possibly disallow me to question.

THE COURT :

If you feel that that was illegal in the circumstances of this case, you're going to have to plead that elsewhere, there's no point in pleading it to me. I am satisfied, in the circumstances, that it is perfectly appropriate. Because the question that this trial evolve and take place in an orderly fashion is at least the Canadian Society at large, of equal importance, as the rights of one V. Fabrikant. And the rights of one V. Fabrikant may be exercised as long as they are exercised according to the rules. If you wish to play Faust and (inaudible) with the rules, you take your risk.

VALERY FABRIKANT :

And you are embodiment of the rules of course, and Fabrikant is embodiment of Faust, correct?

THE COURT :

End of discussion.

VALERY FABRIKANT :

Okay. Mr. Belleau, everybody else will be subpoenaed, no problem, or there is probably something else...

THE COURT :

If you have something to speak to Mr. Belleau about, about the issuance of subpoenas, you will speak to him in the course of an adjournment, you won't speak to him at the moment, and if there is a problem, you will inform me.

VALERY FABRIKANT :

Well, number 8, I've written to a minister but I do not insist that the minister, so I don't think... if it is not minister, than there is no problem, Mr. Belleau? Would you ask him to respond? Because we need to...

Me BELLEAU :

The request is to subpoena the Minister of Transport.

VALERY FABRIKANT :

Not the Minister.

Me BELLEAU :

Or designated by him, person, as I quote from the list, I don't know who to send the subpoena to.

VALERY FABRIKANT :

Well, just call the ministry, ask them, he tells me that he's not investigator. Now, we're coming to another point. I need to subpoena certain people who I know, for example, they did this or they did that. In many cases I don't know the name, so there is a need to phone certain office to find...

THE COURT :

Well you have a phone, call them.

VALERY FABRIKANT :

...(inaudible) and so on and so forth.

THE COURT :

You have a phone. He's not your private investigator, it's perfectly true.

VALERY FABRIKANT :

Well, I do not have the phone to call long distance.

Me JEAN LECOURES :

Let's not get into the phone again, My Lord.

THE COURT :

We are not getting into the phone again, I am not going through all of this yet again. I have been through this since January, organize your life.

VALERY FABRIKANT :

Who is supposed to do this?

THE COURT :

Not I, and not Mr. Belleau.

VALERY FABRIKANT :

All right. Now, we are coming... I have given Mr. Karapetian power of attorney, he's representing me in every case outside, whatever is necessary, including right of signature. Now, I will need him to bring me certain documents and tapes to Parthenais and to hand it to me and to be able to sit with me and maybe do some work, whatever is necessary in terms of transcripts or

verification, in terms of handling documents, and I need for him a Court order that he be allowed inside as my attorney.

THE COURT :

He is not your attorney.

VALERY FABRIKANT :

Well, I have him the power of attorney, I have no choice, I do not have an attorney, and I need help from outside.

THE COURT :

Mr. Belleau, I wonder if you would be kind enough to determine what the rules are, because I don't know them by heart, of Parthenais relating to this gentleman and his contacts with the accused. If you wouldn't mind, and if you would let me know.

Me BELLEAU :

Of course.

THE COURT :

I don't know whether the request that I have received runs contrary to the policy of the detention center, I have no way of knowing, or whether it causes any problem, or what problem it causes.

VALERY FABRIKANT :

Well...

THE COURT :

Perhaps that may be the starting point.

VALERY FABRIKANT :

Well I think the answer is more than clear, he is exactly the same as Antepa, if Antepa was allowed, he can be allowed on the same basis, we need the same formality.

THE COURT :

Please spare me that argument.

VALERY FABRIKANT :

Why not?

THE COURT :

Please spare me that argument. Mr. Belleau, you were about to add something?

Me BELLEAU :

Oh yes, but the question is, what exactly privileges does Mr. Fabrikant want extended to Mr. Karapetian, that's the question.

THE COURT :

I don't know what Mr. Karapetian could do that he can't already do, that's my... that's my difficulty.

VALERY FABRIKANT :

Well very simple, right now we can meet only through the glass, he cannot transmit anything to me directly, I cannot give anything to him directly, and each visit can be not more than one hour, and it is not allowed more than two visits per week. This is absolutely insufficient and conditions are inappropriate. I repeat once again, Antepa was allowed access to me, the same thing, I have the right to ask somebody else who is here, Antepa in Trois-Rivières, he can do what he can do, this person is in Montreal, I am in jail and I need assistance.

THE COURT :

Would you please inquire and see whether this raises any difficulties as far as Parthenais is concerned. There

may well be difficulties from a security point of view.

Me BELLEAU :

I will.

VALERY FABRIKANT :

Well, what if there was no difficulty for Anteppa, what is the difference?

THE COURT :

I haven't got the foggiest notion.

VALERY FABRIKANT :

So you made the order for Anteppa, why can't you make the order for him?

THE COURT :

Because he's not Anteppa. You induced me to make the order by pointing out that Anteppa was a professor from the University of Quebec at Trois-Rivières...

VALERY FABRIKANT :

Yes.

THE COURT :

...who you wished to have testify on the value of your work.

VALERY FABRIKANT :

Yes.

THE COURT :

That is what you said to me.

VALERY FABRIKANT :

Yes.

THE COURT :

I had grave reservations about the relevance of that, but in any event I chose not to look at that problem yet and to simply deal with the question of your having access to Anteppa.

VALERY FABRIKANT :

But you didn't question security there, so why the question here, security, he has no criminal record.

THE COURT :

I'm just questioning it, okay. That's my privilege.

VALERY FABRIKANT :

Okay. But I hope you'll render your decision today.

THE COURT :

That's my privilege. I'll see if I hear from... if Mr. Belleau gets the appropriate information today, we'll see.

VALERY FABRIKANT :

Okay. Next thing. I would like the Crown to declare finally what documents were taken from my office, because there is huge number of documents which my wife cannot find, and I think now we have the reason why she cannot find, I would appreciate them to declare which documents were taken from my office.

Me JEAN LECOURES :

You got everything back.

VALERY FABRIKANT :

Well I would like Mr. H,bert to tell. What documents did you take...

Me JEAN LECOURES :

We have absolutely no originals, we just took a few copies in the attach, case and that's it. We left everything there, My Lord.

VALERY FABRIKANT :

A few copies of what?

Me JEAN LECOURE :

I gave you copy about three times now, photocopies.

THE COURT :

Would you stop arguing, please. I mean I'll take one person at a time but not two people shouting at each other across the courtroom.

VALERY FABRIKANT :

All right.

THE COURT :

Would you go ahead?

Me JEAN LECOURE :

Mr. Fabrikant has... we did not seize any originals in the possession of Mr. Fabrikant, Mr. H, bert took some copies of some documents inside his attach, case and Mr. Fabrikant requested, I guess to check, or to trick, I don't know, many times to compare, to see. And each time he requested to get these documents, I made a copy and I gave to him, and it's about three times now that I gave him the documents that I'm in possession.

VALERY FABRIKANT :

If you remember witness Bujold testified here that Mr. H, bert, on September twenty-second (22nd), came to pick up my briefcase and documents, because those documents which were given to me they were inside briefcase. He would not possibly know that Mr. H, bert took some documents if he just taken the briefcase, obviously there were some documents outside briefcase which were taken. I can name some of them which my wife cannot find.

Me JEAN LECOURE :

Well, the explanation is not us, My Lord, and you will remember that Mr. Bujold was not a witness of that, he just said he left Mr. H, bert in, and to the best of his impression, Mr. H, bert seized something that day but there's no personal knowledge of Mr. Bujold, he was not a witness of that.

VALERY FABRIKANT :

Well, do we know by now at least that Crown, or representative of Crown, politely speaking, mislead the Court under oath when he testified here how passionately he couldn't sleep night on August twenty-fourth (24th) counting my bullets.

THE COURT :

May very well be.

VALERY FABRIKANT :

He didn't take possession of them until September twenty-second (22nd).

THE COURT :

He said he did. He said he did, and the evidence...

Me JEAN LECOURE :

And Mr. Bujold was not a witness on the twenty... We know by now that some people might make mistakes.

VALERY FABRIKANT :

Briefcase was still in my office on September twenty-second (22nd).

THE COURT :

I'm satisfied that you have had returned everything that was...

VALERY FABRIKANT :

Well, some documents have not been there.

THE COURT :

Well, that's not my problem.

VALERY FABRIKANT :

How long police will be allowed to lie?

THE COURT :

You know...

Me JEAN LECOURE :

Everybody is lying in this case.

THE COURT :

Everybody's lying, you see...

VALERY FABRIKANT :

Not everybody.

THE COURT :

... if it occurred once that someone was lying, if you pointed out to me, I'm having a problem here because... that would be something, but everybody has lied from January the thirteenth (13th), everyone who has said something with which you disagreed has been branded a liar, you know, and I really can't take your allegations very seriously.

VALERY FABRIKANT :

Well how, explain then to me, they took briefcase... let me finish please.

THE COURT :

I'm not here to furnish you with explanations.

VALERY FABRIKANT :

If he took the briefcase on August twenty-fourth (24th), then what, on September twenty-second (22nd) he brought it back and took it back again?

THE COURT :

I haven't the foggiest idea.

VALERY FABRIKANT :

Well, do you have just a little bit exercise of your logic and you will see that those statements are inconsistent. He couldn't possibly not sleep night on August twenty-fourth (24th) counting the bullets if he came to pick them up on September twenty-second (22nd), could he?

Me JEAN LECOURE :

That will be for the jury to decide, My Lord.

THE COURT :

It certainly will.

VALERY FABRIKANT :

Well, it will be for the jury, yes, but for you too, because now I am talking about police lying.

THE COURT :

Are you?

VALERY FABRIKANT :

Yes. And either Bujold didn't tell the truth or Mr. H,bert didn't tell the truth.

THE COURT :

Or somebody was wrong.

VALERY FABRIKANT :

Yes, but what Mr. Bujold documented entrance of Mr. H,bert by his log...

THE COURT :

Listen, we're not advancing this at all. I'm satisfied, and I told you I'm satisfied, from what the Crown prosecutor says to me, and he gives me his word that he has checked this point, that you have had returned to you what was in your briefcase. I don't propose to get

involved...

VALERY FABRIKANT :

Well, there are some other documents which are missing, in particular there was complete computer list of publications of Swamy, it's no longer there.

Me JEAN LECOURES :

We never heard of that in our life, My Lord.

VALERY FABRIKANT :

So somebody took it, and they were not returned.

THE COURT :

Well I'm sorry, I'm not conducting an investigation into what happened here, there or anywhere else.

VALERY FABRIKANT :

Well, where are these documents?

THE COURT :

Would you bring in the jury please?

VALERY FABRIKANT :

Well I haven't finished yet.

THE COURT :

Well I have with you, we'll continue the case.

VALERY FABRIKANT :

So what...

THE COURT :

Sit down.

VALERY FABRIKANT :

Did you get the (inaudible) Swamy? Mr. Belleau, did you get the (inaudible) Swamy?

Me BELLEAU :

No.

VALERY FABRIKANT :

What the hell, he is not doing his job.

THE COURT :

Mr. Fabrikant, would you please be quiet? We're not here having a rap session, now would you just... you be quiet or you'll be removed.

THE JURY IS PRESENT IN THE COURTROOM

CONTINUATION OF PROOF OF THE DEFENSE

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this eighth (8th) day of the month of June, personally came and appeared:

CATHERINE MCKENZIE, born on July fifth (5th), nineteen hundred and forty-eight (1948), assistant professor, Department of Art History, confidential address;

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

EXAMINED BY VALERY FABRIKANT :

Q. Okay. We finished yesterday at the point when you said that in nineteen ninety (1990) you knew about the meeting in Montreal Athletic Association, and you knew that at that meeting question was discussed whether I should be hired or my employment at Concordia should be discontinued, correct?

A. I don't know if I knew those specific, specific details, I know that there had been a meeting concerning the issue of your integration into the full time faculty. My recollection of whatever conversation I had, whoever it was that told me was surprised that the department

did not seem to demonstrate a great level of fear were more than glowing in their assessment of your contributions to the department.

Q. So, did it look strange to you that at the meeting of March thirtieth (30th), at which you were present, members of department said that they feared me so much they didn't want to work with me, and so on and so forth. And in nineteen ninety (1990), October or November, they all seemed to change their tune completely, was it surprise for you?

A. It surprised me.

Q. Uh, huh. But you knew that Shenan was very strongly opposed to that and wanted to terminate my employment at Concordia, right?

A. I don't recall if I knew she wanted to terminate your employment, what I do recall at that point was that she was willing to assist the department in making arguments for non-integration if that's what they wanted.

Q. Well non-integration... you know, Hitler never said that they want to kill the Jews, he just solved Jewish problem. Here you have the same kind of shyness, to say that she wanted to terminate my employment, you use all the different words, just not the same what it was. Could you be more specific, what Shenan wanted, according to your knowledge, at that time.

Me JEAN LECOURE :

She said what she said, My Lord.

VALERY FABRIKANT :

Well, she's very evasive, and you only two people here who do not see...

THE COURT :

The witness is attempting to answer from what she knows herself, that's what she's...

VALERY FABRIKANT :

Yes, but the wording she uses...

THE COURT :

She knows she's required to do.

Me JEAN LECOURE :

Moreover it's hearsay.

VALERY FABRIKANT :

The wording she uses is so evasive that any other Judge would have declared her adverse a long time ago.

THE COURT :

Well I haven't, have I?

VALERY FABRIKANT :

All right, she's not evasive.

THE COURT :

Now are you asking a question?

VALERY FABRIKANT :

Yes. Well I asked, I didn't get the answer.

Q. So what was your knowledge at that time as to intentions of vice-rector...

THE COURT :

Q. If you had any knowledge.

A. I think basically what I said before, and I don't remember at what time I learned this. I've obviously read lots of stuff about it later in E mail from Dr. Fabrikant.

VALERY FABRIKANT :

Q. So what did you learn at that time? What were intentions of vice-rector? Could you be more specific?

THE COURT :

The answer is there, the witness has said she doesn't believe she can add to what she previously said. Next question.

VALERY FABRIKANT :

Well, I want witness to answer.

THE COURT :

Next question. She has answered.

VALERY FABRIKANT :

Okay.

Q. When did you learn about this meeting?

A. I do not recall.

Q. Okay. Approximately?

A. I don't remember. Some point during that year.

Q. At least it was in nineteen ninety (1990)?

A. To the best of my recollection.

Q. Okay. Did you know also about unsuccessful attempt of promotion the same year in nineteen ninety (1990)?

A. I don't know if I knew it that year or the next year after the incident in senate. I can't remember.

Q. Okay. But you know that there was significant buildup of security at that time you testified yesterday?

A. I don't know if I knew it at that time or later, and it wasn't a significant buildup of security, it was a question of, if you were going into certain offices, they would ask the security guard that was near us to just wander through that area, or sit there. I don't recollect when I knew that.

Q. Well, was it at least in nineteen ninety (1990)?

A. I think so, but I can't say that with any certainty, but I believe so.

Q. Yes. All right. Do you recall who told you that?

A. It might have been Michel.

Q. Michel Bujold?

A. Bujold.

Q. You had regular meetings with him at that time?

A. Not regular, but we certainly had meetings.

Q. So, in nineteen ninety (1990)...

A. Uh, huh.

Q. ...you were already in charge of security at the university, were you?

A. Yes.

Q. Well, how on earth then could you not know if there was certain buildup of security concerning me if you were in charge of security?

A. I was not in charge of security, security reported to me, so that if there were major occurrences or issues of budget, at that point, in nineteen ninety (1990), we were very much concerned about the aftermath of cole Polytechnique, we were working on getting more security on the Loyola campus, putting additional lighting in Loyolla campus, that was the kind of stuff that Michel and I generally dealt with, unless there were specific cases. I don't recollect any specific discussion with Michel but I'm sure that he would have told me something along those lines, there were no special requests made for any special outside agents or anything like that.

Q. Well, if there was intention to discontinue my employment, didn't you realize, in view of the threats which I made before, that something very dangerous might happen?

A. I don't recollect whether I knew that that was going on until after the M.A.A. meeting or not.

Q. Well... but at least at that time, did you or didn't you understand that you have major crisis on your hands? Did you?

A. The M.A.A. meeting, as far as I recollect, resulted in your receiving integration into the full time tenure (inaudible) faculty.

Q. Well still, I didn't know about that meeting, I could have gone and killed someone.

THE COURT :
Now you're arguing with the witness and you're asking the witness to speculate. You asked your question, you got your answer.

VALERY FABRIKANT :

Q. Well, did it cross your mind that since that meeting was very secret and never reported to me, that I still could assume that they want to have me fired, go and shoot somebody? Did this thought cross your mind?

A. No.

Q. No. Okay. Do you know anything...

VALERY FABRIKANT :
Of course I cannot ask why, can I?

Q. Why, if you were so under impression of my conversation that a year later, just seeing me, you immediately called police, and then you know about attempts of Shenan to discontinue my employment, and it doesn't even bother you at all, how...

Me JEAN LECOURES :
That's cross-examination.

VALERY FABRIKANT :

Q. How to understand that selectivity please?

THE COURT :
Absolutely cross-examination, question disallowed.

VALERY FABRIKANT :
Well... but you realized that you're depriving me from full defense by what you are doing, you realize it?

THE COURT :
I'm not depriving you of a thing, Mr. Fabrikant.

VALERY FABRIKANT :
All right, future will show.

THE COURT :
Just follow the rules.

VALERY FABRIKANT :
Rules, by the way, are established by Court, and Court has the discretion, when he sees fit for the ends of justice, to allow certain questions if they are important.

THE COURT :
Mr. Fabrikant, you have been given all the latitude in the world...

VALERY FABRIKANT :
Well, you promised not to use it anymore...

THE COURT :
You have been allowed to ask questions that are suggestive, you have simply not been allowed to cross-examine at large and you're not going to be allowed at this point to cross-examine at large. You have been allowed to ask leading questions, if I chose to insist that your questions be straightforward, and not be leading, you might, may have something to complain

about. You have nothing to complain about, and you are not allowed to cross-examine the witness, and I'm not going to get into a discussion with you on the subject.

VALERY FABRIKANT :

Oh, you're again implying that I'm given favor. Do you remember you promised me not to do it anymore?

THE COURT :

Not at all, it is not a question, it's a question of discretion, but you have suggested that you're not being allowed a full answer in defense, and that's simply not true.

VALERY FABRIKANT :

Anyway, I'm not getting any favors, correct?

THE COURT :

Could you put your next question?

VALERY FABRIKANT :

All right.

Q. Do you know anything about the so-called smell in the dean's office at the end of nineteen ninety (1990) when half of the office was closed, and some very interesting arrangements were made there, are you aware of that?

A. Yes. I think, there has been a number of physical problems at dean's Swamy's office. There was a period, I believe it would have been in nineteen ninety (1990) when there seemed to be an (inaudible) leak into his office.

Q. Uh, huh.

A. And to the best of my recollection, the physical plant people moved him out of there for some time, because they couldn't track down the location of the leak.

Q. Well... but did you know this very interesting arrangements which were made there at that time? There was some leak but Swamy was still inside 907 for some reason, do you know that?

A. I thought he had been moved out for a few days.

Q. Well, not only he was in but he was...

THE COURT :

Mr. Fabrikant, stop testifying, the witness said she...

VALERY FABRIKANT :

I'm not testifying...

THE COURT :

You are, the witness said she thought he had been moved out, that's the witness' answer. I don't need a discourse between you and the witness as to where Swamy was parked from day to day.

VALERY FABRIKANT :

Q. All right. So what did Bujold tell you about added security and at which places was it added at the time of nineteen ninety (1990), fall?

A. I don't recollect anything except that I think... I think I remember hearing that the person sitting at the Loyola desk would go down into the vice-rector academic area when you were going to be there.

Q. Uh, huh.

A. And maybe faculty personnel office, but I mean, as I said, I can't recollect if that's specifically what he told me, I think it is.

Q. Well, so I believe he made some kind of written arrangement for that, did he?

A. I don't know.

Q. Here is again, he testified here there was not a trace of that.

VALERY FABRIKANT :

How about that, Mr. Martin, are you satisfied that...

THE COURT :

No.

VALERY FABRIKANT :

No. You are not satisfied?

THE COURT :

No.

VALERY FABRIKANT :

Well, neither am I. We are missing a lot of documents.

Q. Now, I would like to also ask you if you recall the hearing of June the second (2nd) where I asked you specifically, first I asked you if you had some reservation for heard some rumors, or even heard some threats from me, why didn't you ever talk to me about it? Do you recall I asked you that question?

A. I recall something along those lines.

Q. Yes. And also I asked you, don't you find that that would be a civilized approach rather than having me arrested at senate without ever talking to me, without ever asking me to explain my alleged threats? Do you remember that question?

A. No, but it sounds like something you would have asked.

Q. Okay. It does not sound?

A. It sounds like something you would have asked.

Q. Okay. And do you remember, when I asked you, this is how in a civilized society it should be done, and you responded yes, do you remember that?

A. No, but I may have said that.

Q. All right. And then I asked you: "Could you please, since it is still maybe not too late, let us discuss whatever rumors are there, let us, like civilized people, sit down and discuss all your concerns and maybe we can straighten it out, so what are the rumors?", did I ask you something like that?

A. To my recollection.

Q. Yes. All right. And what were the rumors which you repeated at that hearing? Do you recall what were the rumors which you repeated to me?

THE COURT :

Excuse me, what hearing are you talking about?

VALERY FABRIKANT :

June second (2nd), nineteen ninety-two (1992). I'm not jumping in time, I'm just making point of previous statements.

Q. So do you recall what rumors you quoted to me?

A. There's only one that I recall.

Q. Yes.

A. And that was that you were alleged to have called someone to say do they know where their children were.

Q. Where their children were. Yes.

A. And what they were wearing.

Q. Okay. And did you find out who told you that?

A. No.

Q. Okay. Did you...

VALERY FABRIKANT :

Well, I cannot ask her why she didn't do it. She was so concerned, she hears that, another threat, and she doesn't track it down.

THE COURT :

Listen, you choose, you choose to make evidence of all of this, and then you choose to attempt, by the same stroke, to cross-examine the witness on sources of these rumors and everything else, you can't do that.

VALERY FABRIKANT :

It's all right, I just want to request it, and you to deny it to me. If you feel it's fair, that's fine with me.

Q. All right. Did you mention at any moment during that hearing, I insisted on more, and did you ever mention during this hearing that I allegedly made some threats to Mr. Haines?

A. No.

Q. No. Now, could you explain why not?

A. June nineteen ninety-two (1992) I was not prepared to involve anybody other than myself, the D.P.C., and U.I.T. and anything pertaining to your situation.

Q. I couldn't get the meaning of that, so you lied there or...

A. I was extremely concerned about...

Q. Okay. No. You mislead the hearing board then or you are misleading Court now? When you reconciled those things here, you mentioned at least three threats allegedly made to Grendon Haines, during our meeting, November... by the way, was it twelfth (12th) or was it thirteenth (13th)? Because my record states that it was thirteenth (13th).

A. My agenda says twelfth (12th).

Q. Well, anyway, I don't think we can clarify that, but still...

THE COURT :

Q. Excuse me, twelfth (12th) ninety-two ('92)?

VALERY FABRIKANT :

No, ninety-one ('91).

A. Ninety-one ('91).

THE COURT :

Ninety-one ('91).

VALERY FABRIKANT :

Ninety-two ('92) I was in jail.

THE COURT :

Not in June, Mr. Fabrikant, that's where we were.

VALERY FABRIKANT :

Well, November. Now I'm talking November twelfth (12th) or thirteenth (13th).

THE COURT :

Please make the dates precise as to what you're talking about.

VALERY FABRIKANT :

Well, how can you be more precise, November twelfth (12th) or thirteenth (13th)?

Q. So you did not mention... you remember during the meeting of November twelfth (12th) or thirteenth (13th), ninety-one ('91) Mr. Relton asked you explicitly, was it just this specific word of mine or there was something else? Do you remember him asking you?

A. Yes.

Q. And do you remember that by that time you also never mentioned threats made to Relton? Now, could you explain why?

A. I did not consider that either of those forums were the

appropriate place to give you any more information, therefore any more individuals to... it was in my opinion by that point harass, decry through E mail and whatever else.

Q. Say it again. Say it again. What? What? What? What? I didn't get it.

A. I was not going to involve anyone else, give you anymore information in those forms for you to pursue the kind of E mail campaigns and what in my opinion was, from what I had heard, harassment.

Q. November twelfth (12th), you already knew, November twelfth (12th), nineteen ninety-one (1991) you already knew that in February of ninety-two ('92) I will get into E mail campaign?

A. I'm talking about June second (2nd).

Q. Well, I'm talking now about November twelfth (12th) where you also didn't mention that.

A. November twelfth (12th) I did not mention anything, I mentioned as little as possible.

Q. So why? Then you couldn't possibly know about E mail campaign.

A. Because I didn't want to have to open up the whole question of any kind of special security measures that we were taking, undertaking at the moment, at that time.

Q. You're missing the point, this is not what I am asking you.

Me JEAN LECOURE :

He got his answer, My Lord.

THE COURT :

Uh, huh.

VALERY FABRIKANT :

I'm asking...

Me JEAN LECOURE :

I suggest that we take our pause at this time.

VALERY FABRIKANT :

Q. I'm asking you...

THE COURT :

Just a second.

VALERY FABRIKANT :

Q. I'm asking you why you didn't mention it, I am not asking you to reveal to me any of your security arrangements, I'm asking you why you didn't mention November twelfth (12th) or thirteenth (13th), nineteen ninety-one (1991) that you had heard also threats from Mr. Haines when Relton asked you about it, why didn't you mention?

A. As I've already indicated, I was not going to involve anybody else other than myself, or anybody you already knew in any of these events. We were having large numbers of discussions in that week prior to November the eleventh (11th) as to what could be done in the department, we were recommending a number of measures, I did not feel that that forum was the forum to give you a lot of information that you would then pursue, and pursue in whatever manner you chose to...

Q. If I really made those threats, then this information wouldn't be new to me, would it? Or, if you consider that that would be new information to me, then it means that I never made those threats. Would you please reconcile all that?

THE COURT :

The witness is not here to reconcile anything, the witness is here to give her answers. That last question is disallowed. This is not an exercise in logic.

VALERY FABRIKANT :

Q. So, did I understand correct that you didn't want to give me information which would be new to me so that I would not pursue certain people, right?

A. That was the essence of my testimony.

Q. Right. But if I already made those threats to those people, how come... then I definitely new about it, and I couldn't pursue those people anyway.

THE COURT :

That's argument and that's disallowed.

VALERY FABRIKANT :

Is it fair?

THE COURT :

What you're doing is totally unfair. We'll adjourn for fifteen (15) minutes.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITNESS: CATHERINE MCKENZIE -- UNDER THE SAME OATH

CONTINUATION OF EXAMINATION BY VALERY FABRIKANT :

I would like to play a small portion of that hearing of June second (2nd) because there is one important discrepancy. There she testified...

THE COURT :

Just a minute, I'm going to have to ask you to withdraw ladies and gentlemen, I'm sorry about that, I had no indication that this was coming.

THE JURY LEAVES THE COURTROOM

WITHOUT JURY

VALERY FABRIKANT :

Well I wanted the jury to hear that.

THE COURT :

I couldn't care less what you wanted the jury to hear. There is a way of proceeding, and the way of proceeding is...

VALERY FABRIKANT :

Okay. Let us proceed.

THE COURT :

Fine. Let us proceed.

VALERY FABRIKANT :

On June second (2nd) there was an interesting variation of the alleged threat. There, she said that I just called somebody to tell that I know where his children were, period. And this Court has heard it in...

THE COURT :

June second (2nd), nineteen ninety-two (1992) you're talking about now?

VALERY FABRIKANT :

Yes. And this Court has heard from Relton, and Dr. McKenzie made a variation again in the side that I called to know how children are dressed, and so on and so forth, this is definitely a new version which I never heard, so I think...

THE COURT :

She didn't... you said what they were wearing?

VALERY FABRIKANT :

Exactly.

THE COURT :

And that was what... well, whether what she said and what Relton said concord or not, and they do...

Me JEAN LECOURE :

Let the jurors...

THE COURT :

The jury is practically...

VALERY FABRIKANT :

No, no, this is not my point.

THE COURT :

Okay. What is your point?

VALERY FABRIKANT :

My point is that she is trying now to concord her testimony June second (2nd) with what Relton said here, this is my point, because during hearing on June the second (2nd), the only thing she said, that I called somebody allegedly and said: "I know where your children were", period.

THE COURT :

And there was no mention of the question of where?

VALERY FABRIKANT :

No mentioning that I said that I'm across the school, I see them here they are, and they are dressed this and this way, nothing. This fantasy appeared just recently. Fantasy at that time was only that I called someone and said: "I know where your children were", period. So I think the jury should listen to all these variations of rumors.

THE COURT :

Before the jury gets to listening to anything you're going to have to convince me that there is a discrepancy between what Dr. McKenzie said here and what she said there.

VALERY FABRIKANT :

Well, let us hear it.

Me JEAN LECOURE :

If one version is more complete than the other, it's not a discrepancy.

THE COURT :

It may not be. It may not be. Well, if you have... you might as well come forward and Dr. McKenzie, would you take a seat for the moment please?

AN UNIDENTIFIED PERSON :

I think it's on a regular cassette, I don't think we have the required equipment to proceed, I have a microphone, cassette player, this is the first that I hear about this.

THE COURT :

This is on a regular cassette, is it?

AN UNIDENTIFIED PERSON :

Apparently.

THE COURT :

Well apparently, because it must have been recorded on a regular cassette.

VALERY FABRIKANT :

A regular cassette, yes.

THE COURT :

Okay.

Me JEAN LECOURE :

I guess we'll have to make arrangements to get...

THE COURT :

We will have to adjourn until we have a cassette player.

VALERY FABRIKANT :

Well maybe Dr. McKenzie just admits that yes, indeed, what she said then was what I'm saying, and what she said now is different, and we don't need to play it then.

THE COURT :

Well let us have Dr. McKenzie come to the stand for the minute, and try without the jury, and see what Dr. McKenzie is prepared to say, and if it can be resolved that way, fine.

VALERY FABRIKANT :

Q. Well... So, do you recall that on June second (2nd) your version of this rumor was that I allegedly just called somebody and said: "I know where your children were", period?

A. I may have.

Q. This is your typical answer. I may have. You may conclude whatever you want.

THE COURT :

Look, I don't... it doesn't matter to me what you conclude, okay?

VALERY FABRIKANT :

Yes.

THE COURT :

I do not find that much difference, but if you want to demonstrate the she said that on June the second (2nd), and give the jury the answer "I may have", that's fine, and the jury then is able to assess what importance they attach to that.

VALERY FABRIKANT :

What importance they attach, there are two things there, I want the jury to listen to the tape what she really said, not may have, may have is so nice...

THE COURT :

Well then fine, then we'll adjourn then and get the equipment to play your tape. But I tell you, I'm, sooner or later, going to have to look at all of this and decide whether this incessant hair splitting isn't just that, incessant hair splitting, and whether really it's pertinent to your defense. I'm really going to have to, sooner or later, make that decision.

VALERY FABRIKANT :

Well, if I was making threats, what could be more pertinent? You cannot imagine anything most of the time.

THE COURT :

That's not what I'm saying. That's not what I'm saying to you. What I'm saying to you is that the foot dragging method you're using of going through your examination and jumping into cross-examination of these witnesses is simply using up far more time than we ought to be dedicating to each of these points.

VALERY FABRIKANT :

Well you're a Judge, you can say: "Okay, examination is finished", that's all.

THE COURT :

Oh, I know you would like me to do that.

VALERY FABRIKANT :

And I wouldn't even be surprised you do that.

THE COURT :

And perhaps not, but that's the point we're coming to, because quite frankly, if you had marked down on a piece of paper the points you wish to cover with the witness, it's very obvious what you want to cover with the witness, you could cover them in all probability in half an hour.

VALERY FABRIKANT :

Well, you probably could, I can't.

THE COURT :

Mr. Fabrikant, of course you can.

Me JEAN LECOURE :

By the way, My Lord, Mr. Fabrikant doesn't want any favor, I don't see why... I'm asking again to you, why we should allow leading questions. He has the choice to put the witness or not in the box. Obviously we don't expect the witness to be, let's say, on his side, but why should we distort the rule on allowing...

THE COURT :

I'm not sure you're distorting the rule, I think if you look in the authorities you'll find that the question, the decision of whether or not to permit leading questions is a discretionary one.

Me JEAN LECOURE :

Definitely.

THE COURT :

And it's not a question of a privilege.

Me JEAN LECOURE :

Because when I was in chief I never asked any leading question.

THE COURT :

Of course you didn't, but...

Me JEAN LECOURE :

It was always a question like: "What happened? What did you..."

THE COURT :

You supposedly... you're trained in the art of putting the questions, he may claim that he's not.

Me JEAN LECOURE :

Well, Mr. Fabrikant said himself he's a fast learner, so...

THE COURT :

I haven't... I haven't noticed that since the beginning of the trial quite frankly.

VALERY FABRIKANT :

Well, can I respectfully remind that when this ballistic expert answered something very very wrong, what you did was, was putting to him a leading question.

Me JEAN LECOURE :

Yes, and there was an objection.

VALERY FABRIKANT :

It's because it was so outrageous.

THE COURT :

Anyway, I'm not prepared to...

Me JEAN LECOURE :

It's much easy to question a witness with leading questions...

THE COURT :

Of course it is.

Me JEAN LECOURE :

...it's two different worlds, My Lord.

THE COURT :

Of course it is. Of course it is.

Me JEAN LECOURE :

And he's playing like a cat with mouse with his leading questions.

THE COURT :

And what went on before the adjournment was...

Me JEAN LECOURE :

All leading questions, non stop all the time. And it's much easier for the questioner then.

VALERY FABRIKANT :

How about Crown to read Seaboyer, just for a change.

THE COURT :

You are taking that case totally out of context.

VALERY FABRIKANT :

Of course. Of course. Then I understand (inaudible).

THE COURT :

That case related to the status of legislation, which has for its object to limit the kind of questions that can be put, in this case it was the "Rapeshields" law.

VALERY FABRIKANT :

Well, this case...

THE COURT :

Don't cite me what you cited to me yesterday as being the enshrinement of some great principle which we've known for years and years and years. You know...

VALERY FABRIKANT :

(Inaudible).

THE COURT :

...the Charter wasn't the start of everything.

Me JEAN LECOURE :

Because if you tell me, in your discretion you will continue allowing questions, I won't raise every question and make objections of course, but I suggest to you...

THE COURT :

I have said to you before...

Me JEAN LECOURE :

...he doesn't want any favor...

THE COURT :

I've said to you before, it's not a question of favor, it's a question of affording him the opportunity to present the defense that he wants to present. He is entitled to make the evidence that he feels he wishes, or needs to make within the context of a legal defense.

Me JEAN LECOURE :

But it's always...

THE COURT :

I know it's a problem. I know it's a problem.

Me JEAN LECOURE :

It's transformation into cross-examination all the time. The real question should be: "What did I say to you?", and he's bound by the answer. The way he proceeds is: "Did I say this and this to you?", and after that: "Why don't you recollect?", and "Why not?", and: "Did you do this...?" The real question should be: "What did you say?" or "What did you do?" and he's bound by the answer. What he does is: "Did you do that? Did you call the police? Why not?", and so on and so forth, it's never ending, it's all leading, and it always

brings us to cross-examination. If there was no leading question there would be no cross-examination the next question.

THE COURT :

I'm not sure about that, you might be right. I'm prepared to think about it because as far as I can see, far far too much time is being spent, in any event, on these questions. Where he's going is obvious, and...

Me JEAN LECOURE :

Because, if he doesn't like the answers, he has the choice not to put the witness in the box at the first place.

VALERY FABRIKANT :

Well, what if I have no witnesses which are not hostile, what if this is the case, or almost no...

Me JEAN LECOURE :

That's your problem.

THE COURT :

Maybe in your mind that's so, I don't know.

VALERY FABRIKANT :

Well, don't you see it, that every witness...

THE COURT :

My mind, no, isn't working on the same track as yours, that's for sure.

VALERY FABRIKANT :

...I put doesn't say much good about me does he?

THE COURT :

Uh?

VALERY FABRIKANT :

Every witness I put on the stand doesn't say much good about me, does he? Or she.

THE COURT :

Listen, the witnesses are here to talk about facts, they're not here to talk about you, nor are they here to talk about good or bad about you.

VALERY FABRIKANT :

Oh yes. Oh yes. And those facts are just so difficult to see that, for example she has one paper of January twenty-fourth (24th), for some reason she did write it, and there is absolutely nothing else to that. By the way, where is it? It disappeared.

THE COURT :

Well, you haven't been the most prodigious caretaker of your documents, have you?

VALERY FABRIKANT :

No, I'm sorry. Well, it is no longer here.

THE COURT :

So we will adjourn...

VALERY FABRIKANT :

It's here. It's here.

THE COURT :

I'm sorry, a second. We'll adjourn until we have a machine to play this thing, if that's the next step that we have to go through.

Me JEAN LECOURE :

But I would like to comment about arguing. I think he doesn't understand, or maybe he does understand and doesn't want to show it, but there is a step later to argue, once he made his point, there is no way that he should say: "Isn't it more logical this and this and

that? Isn't it absurd this and this and that?" He always, always comes back, you told him arguing is a further step, he does that all the time. I don't raise everytime either but...

VALERY FABRIKANT :

Well, I fail to understand why Crown is concerned, I'm leading evidence that I made constant threats, if I were Crown I was just sitting and enjoying myself.

THE COURT :

No, that's not what you're doing. You're leading evidence that you made constant threats, which the Crown didn't make, and then, having lead evidence that you made constant threats, you are trying to use that evidence as a means of demonstrating through the process of logic that you seem to favor. The witness, in answering your questions in that manner, must necessarily not be telling the truth because when examined against the background of the witness' action, that kind of conduct doesn't appear logical. That's what you're trying to do.

VALERY FABRIKANT :

(Inaudible).

THE COURT :

Everything, Mr. Fabrikant... Everything Mr. Fabrikant...

VALERY FABRIKANT :

This is not true.

Me JEAN LECOURES :

And the best example was...

THE COURT :

That is not what we're here for, that's not how we proceed.

VALERY FABRIKANT :

Oh yes, you are not here to listen to the truth.

THE COURT :

So you and I now agree that that is what you're trying to do, you make my next step very very much easier. Very much easier indeed. So we'll get the tape recorder and we'll see.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

AN UNIDENTIFIED PERSON :

Mr. Hervieux has provided me with the tape recorder that I have installed there, I don't know if you wish for me to play the tape or should Mr. Fabrikant...

THE COURT :

Well, I don't know whether the Crown prosecutor is prepared to make any concessions at all.

Me JEAN LECOURES :

Well, I guess (inaudible) you ordered that to be given to Mr. Fabrikant?

THE COURT :

Pardon?

Me JEAN LECOURES :

We're talking about the tapes of the hearing, right?

THE COURT :

I understood that he...

VALERY FABRIKANT :

Yes, it's tapes of the hearing June second (2nd), nineteen ninety-two (1992).

THE COURT :

That is the hearing at Concordia University?

Me JEAN LECOURE :

No, the hearing in Court.

THE COURT :

He said ninety-two ('92). Ninety-two ('92).

Me JEAN LECOURE :

I was under the impression he wanted a contradiction...

THE COURT :

No, no, nineteen ninety-two (1992).

Me JEAN LECOURE :

Well, no...

THE COURT :

So that's why I said 9.2.

Me JEAN LECOURE :

No, there's no concession.

THE COURT :

Fine. Okay. So it's a 9.2...

Me JEAN LECOURE :

Because of course, if it was the tape you ordered to be prepared I would be ready to...

THE COURT :

No, it's a tape which was put onto the larger cassette of a hearing at Concordia University, I...

VALERY FABRIKANT :

No, no, one second, I think there is a misunderstanding here.

THE COURT :

Maybe there is.

VALERY FABRIKANT :

If you think that I recorded it in a clandestine manner, this is wrong. It was officially recorded.

THE COURT :

That's what I assumed from what you have in your hand. This is the official recording of the hearing.

VALERY FABRIKANT :

Yes.

THE COURT :

You'll have to come and tell us what it is.

Me JEAN LECOURE :

Yes.

VALERY FABRIKANT :

Sure.

Me JEAN LECOURE :

To tell under oath it is the same.

VALERY FABRIKANT :

It's official. It is official...

THE COURT :

Just a second.

VALERY FABRIKANT :

...recorder.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this eighth (8th) day of the month of JUNE, personally came and appeared:

VALERY FABRIKANT, born on January twenty-eighth (28th), nineteen hundred and forty (1940),

WHOM, after having been duly sworn, doth depose and say

as follows:

VALERY FABRIKANT :

A. Well, this is the official tape of the hearing which I was provided as condition of the hearing, since the hearing was opened, every participant was supposed to receive a copy of this hearing.

THE COURT :

Q. What was this hearing called? Did it have a title?

A. Yes, it is hearing of my code of conduct, hearing board of my complaint against the university.

Q. As opposed to your complaint against...

A. Yes.

Q. ...Osman, Swamy et al.?

A. Yes.

Q. Okay. And that came into your possession...

A. Well officially from Mr. Relton, who was co-administrator, who did all the recording and provided me with copy.

THE COURT :

Have you any questions to put to Mr. Fabrikant?

Me JEAN LECOURES :

I have no questions, but I don't like the way Mr. Fabrikant is proceeding. If I was provided with these things in advance I would be in a position to make admissions. Now I have to take it and sit with Dr. McKenzie and... I cannot admit... I'm ready to admit anything that is true and relevant, but I don't admit something I don't know, or I was not provided with. I got the experience yesterday and it was inaccurate and Fabrikant swore in front of you that it was accurate, and it was not. I cannot take his word.

THE COURT :

Okay.

VALERY FABRIKANT :

My gosh, (inaudible) author of 911 tape who was even less accurate, and he is accusing me, gosh. Is there any shame on this planet?

THE COURT :

Well, I'm not sure shame is the word, but in any even you make... if you make...

VALERY FABRIKANT :

Well, you allowed him to reproach me something.

THE COURT :

You make a point.

Me JEAN LECOURES :

I provided everybody with the tapes.

VALERY FABRIKANT :

Look, I am not police...

Me JEAN LECOURES :

This is another story the 911 tape, okay. And it's one of the reasons why I don't take anybody's words on tapes.

THE COURT :

Okay.

Me JEAN LECOURES :

Because we know...

THE COURT :

You would like me to...

Me JEAN LECOURES :

...we know what is human nature and what is mistake, and what is error, and anything, I'm not in a position to admit something I don't know.

THE COURT :

You would like me to adjourn while you take cognizance of the tape. Mr. Fabrikant should know that the way to produce that tape, if one were to insist that it be produced in the proper manner, is to produce it through Relton, and have Relton...

Me JEAN LECOURE :

But this tape is not real evidence, it could be used to contradict.

THE COURT :

Listen, if... Yes, yes, I know that, that's all... Look, are we on the same... are we working on the same network? I said 9.2, he said Dr. McKenzie said one thing here, and she said another thing on June the second (2nd), and he said what she said. And she said, when we did try the dry run, she said "might have been", and he said: "Listen, I'm not satisfied with that, I want to demonstrate that there was a contradiction, and..."

Me JEAN LECOURE :

I understand.

THE COURT :

Okay.

Me JEAN LECOURE :

It's the word produce, in 9.2 we don't produce previous statements. You used the word produced.

THE COURT :

The word produced as used in the books is produced to the witness, a previous statement, it is not filed in the Court record.

Me JEAN LECOURE :

Okay.

THE COURT :

It's produced to the witness.

Me JEAN LECOURE :

Now we understand each other.

THE COURT :

Now, if you're talking about something that is a written statement, you produce it to the witness and say: "Dear witness, kindly read this".

Me JEAN LECOURE :

Okay, we're on the same length now.

THE COURT :

Now, "did you say it?", but produced in my book never meant...

Me JEAN LECOURE :

It's clear. It's clear.

THE COURT :

...produced as such.

Me JEAN LECOURE :

Okay.

THE COURT :

Now, she will listen to the tape eventually, if we get that far, and that piece of the tape, that piece of the tape can be played. Now, that raises for you another question, because if... the piece of the tape is played, just as a piece of a statement is read, the tape is not produced into the record, no.

Me JEAN LECOIRS :

Okay.

THE COURT :

That's...

Me JEAN LECOIRS :

I understand that.

THE COURT :

That's the answer, just this.

Me JEAN LECOIRS :

I agree with you, the proper person would be Mr. Relton, I'm ready to admit anything that is true and relevant, the only thing is I have to be satisfied that it's true and relevant before, because Mr. Fabrikant doesn't provide me with anything in advance.

THE COURT :

I'm aware of that.

Me JEAN LECOIRS :

So I'm not in a position to determine whether it's accurate or not.

THE COURT :

So let me adjourn, and you may take cognizance of the part that he proposes to play, I don't wish you to pass your day listening to the whole hearing.

Me JEAN LECOIRS :

No, five and ten minutes, I just want to verify...

THE COURT :

I don't care if it's ten or fifteen (15) minutes, verify the part...

VALERY FABRIKANT :

It's just a couple of minutes, you don't need even to adjourn.

THE COURT :

Well I would prefer to, because before I come back and deal with the next part of this, we're at the point where the Crown prosecutor, I suppose, could have said: "No, this isn't the proper way to produce it", he hasn't said that, he said: "I'd like to listen to it and see".

VALERY FABRIKANT :

Well still, I would like...

THE COURT :

After that we'll come to the next point, and the next point will be, since it hasn't been reduced to writing, to hear the part that you propose to play, then I have to decide whether there is a contradiction between what Dr. McKenzie said here and what she said on the tape. If I decide there is not, that's the end of the matter, if I decide that there is, then I will let you, with the jury present, refresh Dr. McKenzie's memory with that piece of the tape.

VALERY FABRIKANT :

Yes. I would like also to add that I made significant effort, if you remember January thirteenth (13th), when I complained on sabotage of Legal Aid, that they did not do a transcript of the tapes, those were the tapes I was asking to be transcribed. So I did my best from January to have them transcribed.

THE COURT :

I'm not going to get into an argument about that, that was fully discussed at the time.

VALERY FABRIKANT :

Because of Crown saying that I'm proceeding wrong, I did my best to have them transcribed.

THE COURT :

What the Crown is saying is, and what the Crown normally gets when there's a Defense counsel in the record, is a modicum of cooperation, so that the Crown knows what's coming up from day to day. You're the one that I recall howling that you wanted to know the order of the Crown's witnesses so that you could... and I understand that, so that you could look at the statements. Now, while you are not obliged to tell the Crown what you're going to do, it might help, not only the Crown, but it might help the progress of the case considerably if you were to do so.

VALERY FABRIKANT :

Well Crown never asks any questions of how...

THE COURT :

Well the Crown has asked you...

VALERY FABRIKANT :

So what is the point?

THE COURT :

The Crown has asked you a long time ago what was the order of the presentation of your witnesses.

Me JEAN LECOURE :

I asked repeatedly.

THE COURT :

And you replied that it was none of the Crown's business.

VALERY FABRIKANT :

Well, first of all it is none, and second, they don't even ask questions anyway, they need to put their questions.

THE COURT :

Well, they nevertheless have the right to ask questions if they wish.

Me JEAN LECOURE :

So he shouldn't ask me to make an admission about his case, he doesn't provide me with any tools to make admissions.

THE COURT :

Listen to the minutes that he wishes to...

VALERY FABRIKANT :

I'm working for you, I'm introducing evidence that I made threats. I'm doing your job, enjoy it.

THE COURT :

Mr. Fabrikant, this isn't funny, you know, it just isn't funny. You know, when four people are dead, it's not funny.

VALERY FABRIKANT :

No, no, no, but we need to find out why.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

Me JEAN LECOURE :

Well, My Lord, we're at the stage 3 of Milgaard:

"Upon retirement of the jury, counsel should advise the trial judge of the particulars of the application of producing the alleged statement in writing, or the writing to which the statement has been reduced."

We've been sitting down and hearing that I did not get anything from the State, and Dr. McKenzie got part of it but it's inaudible to her, we leave it to you to determine whether it's audible, and if it's contradiction or anything. Maybe Me Belleau could play it.

VALERY FABRIKANT :

Well I think we can make it simpler maybe, because since...

THE COURT :

Excuse me, what is this V-8 juice doing sitting here? Please, would you take it out, I mean... this question of comestibles kicking around the courtroom just isn't (inaudible).

VALERY FABRIKANT :

Since Mrs. McKenzie admits at least hearing that what she said, that I phoned someone to tell him that I know where his children were, this part she does admit.

Me JEAN LECOURE :

No, the conversation continues and it's inaudible. I think you should judge by yourself.

VALERY FABRIKANT :

Well, it's not inaudible.

Me JEAN LECOURE :

It's a way to trick the witness again.

VALERY FABRIKANT :

We need to have... I didn't make this recording, and I'm sure it was, again, in my (inaudible) mentality, it was intentionally made badly because the part...

THE COURT :

I'm sorry.

VALERY FABRIKANT :

...because the part of the tape with previous hearing is absolutely clear and clean, and everything can be heard, only this particular hearing is done in such a way.

So... But still, I believe that in twentieth century, if I had a good lawyer, we could find a good filtering equipment to play it in such a way that it be audible, that we could hear what is said there, and...

THE COURT :

If I can hear it...

VALERY FABRIKANT :

...I don't think that my defense should suffer because the machine which is here does not reproduce sufficient quality.

THE COURT :

If I can hear it, and it's discernable what is said, then we'll see where we go from there. If I can't, then I can't. Let's play it first and see where we go from there.

VALERY FABRIKANT :

Let me play it.

Me BELLEAU :

You have to adjust the control of the...

Me JEAN LECOURE :

It's not reduced to writing at this point.

THE COURT :

I'm not deadfully worried, Mr. Lecours, as to whether it's reduced to writing or not, as long as it's understanding.

Me JEAN LECOURE :

If it was reduced to writing, and the writing could help, I don't know, but...

LISTENING OF THE CASSETTE

VALERY FABRIKANT :

Well: "You said to someone that you know where his children were", now was this audible?

THE COURT :

Not to me it wasn't, from where I'm sitting.

Me JEAN LECOURES :

Mr. Fabrikant's voice, it's Dr. McKenzie's voice we're concerned with.

THE COURT :

Excuse me.

VALERY FABRIKANT :

Well come closer then.

THE COURT :

Just a minute. Just a minute. Now, you maintain that it's Dr. McKenzie's voice or your voice?

VALERY FABRIKANT :

Well first of all, let us ask...

THE COURT :

No, no, let us not ask. I'm still trying to determine what is on this tape.

VALERY FABRIKANT :

Well it's mine and her. It's my voice and her voice. I asked question: "Could you please state other rumors?" Before that, maybe... maybe it makes sense to hear the whole thing, because it's another important thing I'm asking her...

THE COURT :

Listen, let's stick with one thing at one time. We are talking about the question of children and clothing.

VALERY FABRIKANT :

Yes.

THE COURT :

Okay. That is all I'm interested in at the moment, that is what you propose to do. Let us not branch off into something else in the middle of looking into the first problem.

VALERY FABRIKANT :

Well I raised two questions, if you remember, in interrogation. I asked her: "Would it not be more appropriate to discuss it with me?" and she said: "Yes". Then when I asked her why she didn't mention that, then she said she didn't want any new people involved.

THE COURT :

That may be, but you did not propose to use this tape in relation to that question, you proposed to use this tape only in relation to the question of people's children and what they were wearing, and that's what I'm doing just now. Now, if I cannot hear it from there I will take the tape upstairs and listen to it myself.

LISTENING OF THE CASSETTE

VALERY FABRIKANT :

Well: "Any of them could present anything from their personal experience", I'm asking Dr. McKenzie, we are talking about those members of department, if any of them can specify any threat.

LISTENING OF THE CASSETTE

VALERY FABRIKANT :

"So didn't you ask them if they heard only the rumors, then wouldn't it be more appropriate to discuss those rumors with me?"

Me JEAN LECOURE :

We hear Fabrikant's voice, it's Dr. McKenzie's voice that we don't. It's inaudible.

THE COURT :

That's right.

LISTENING OF THE CASSETTE

VALERY FABRIKANT :

"Isn't it the right way to deal in a civilized society..."

THE COURT :

That's your voice, it's Dr. McKenzie's voice that I have to hear.

VALERY FABRIKANT :

Yes. Yes.

LISTENING OF THE CASSETTE

VALERY FABRIKANT :

She answered "yes", you hear that?

THE COURT :

All right.

LISTENING OF THE CASSETTE

VALERY FABRIKANT :

"So why didn't you ask them, why didn't you discuss those rumors with me?"

LISTENING OF THE CASSETTE

VALERY FABRIKANT :

"So there was reference that you called some member of the department, and again there was some reference that you mentioned where his children were?", heard that?

THE COURT :

No, I didn't, quite honestly I can't say I did. May I have the tape please?

VALERY FABRIKANT :

Well maybe we make it more simple then.

THE COURT :

May I have the tape? Wherever, at the point where it is, or the point where you wish to start.

VALERY FABRIKANT :

Well it is just a very small... very small piece. If you adjust the tonality, I believe it could be filtered in such a way that one could hear.

THE COURT :

It is such a little point, even if you're right, it is a niggling little point, and I'm not even certain that it's going to merit an authorization to examine on that part, I'm not even sure it adds up to a contradiction. I will go and listen to it and I will see whether I think it adds up to a contradiction.

Me JEAN LECOURE :

As we said, My Lord, if one answer is more complete than the other, it doesn't mean there is contradiction.

THE COURT :

I understand what you're saying. So we'll adjourn for several minutes.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

THE COURT :

I tried several times to listen to the passage that I

was asked to listen to and I must tell you that I can't make out Dr. McKenzie's voice at all, or at least I can't determine usefully what Dr. McKenzie said. I don't know whether anybody else finds themselves in the same position, I hear Dr. McKenzie's voice but I simply can't determine what it says.

Me JEAN LECOURE :

I can tell you that herself she can't, as well.

VALERY FABRIKANT :

Well at least... maybe we make it more simple. Assume for a second that yes, indeed, what she said was that I just told someone that I know where his children were, and compare it to what she said here, I think we should have started with that, assuming that this is there, would you render then judgment that this is sufficient thing to cross-examine her? I think we should have started with that, and if your decision is no, what the hell to spend time on tapes if you anyway would not consider it significant discrepancy. Does it sound reasonable?

THE COURT :

No, it doesn't, it sounds ridiculous, as usual. There's almost no point repeating this again. Even if you demonstrated, and you haven't, that there was a contradiction, you would be permitted first of all to attempt, with this tape, to refresh Dr. McKenzie's memory. And then if the tape refreshed her memory, and if she were to say: "Yes, that's what I said", you would, of course, have made the evidence of what she said, that would be the end of the question. If there was a contradiction and she didn't adopt it, you would be allowed to cross-examine her on the contradiction, on the contradiction, you would not be allowed to cross-examine her at large, and you're nowhere near to being allowed to cross-examine her at large. In any event, it's all academic because the tape is not susceptible of serving as an agent for the examination of Dr. McKenzie because I can't make out what she's saying, and secondly, or lastly, the manner of the rumor, what she reported as a rumor on that occasion and what she recollects as being a rumor here, involves such... and the word I used was "niggling" potential contradiction, that it will serve, in my estimation, for no purpose at all, therefore the application under 9.2 is dismissed.

Me JEAN LECOURE :

My Lord, can I submit to you that... we had enough of the rumors as well, the same way we had enough of the surveillance. We've been talking about these rumors which last about five seconds, and for four days questions are about the rumors. I think Mr. Fabrikant made his point, if he did not make his point in four days he will never make it.

VALERY FABRIKANT :

Well, I would like to respond to that, that the rumors were their major weapon, this is how they did the whole thing, this is what objectively isolated me inside the university, this is what those rumors were effectively the reason why I couldn't get anyone on my side in the university. This is why it is so important for me to demonstrate who initiated those rumors, how they penetrated university, what were they? Was there any

real ground for those rumors? Because if it were not for those rumors, the whole picture would be different, there would be no shooting ever at Concordia. This is why I am spending so much time on those rumors, and I think that Crown should give a little bit more to my... I don't know how to say, intelligence or... I don't know which word to use, if intelligence is suspected, a person who might be not fit to stand his trial, that I'm doing what I feel is best for my defense, not for the purpose of wasting anyone's time.

THE COURT :

It may be that you're doing what you consider best for your defense, but you have effectively made whatever point you want to make with regard to the rumors.

VALERY FABRIKANT :

Not at all. We still didn't even start with police arrest.

THE COURT :

The police arrest is something else.

VALERY FABRIKANT :

Well, so we are now... Call the jury, we'll start with the police arrest.

THE COURT :

What I'm telling you just now is there is no point in going further with regard to the question of the tape and niggling about whether the word was wearing or what the word was.

VALERY FABRIKANT :

I can explain to you why it was important to me, because I wanted to see the dynamics of those rumors, how they were twisted to fit certain picture. If you remember, Relton said here quite a different thing, that I said in order to get attention, you go and shoot a lot of people, and you think that was a slip of the tongue? This was a new invention because now they want to introduce in the mind of the jury that the whole shooting was made to get attention to me. It was not slip of the tongue.

THE COURT :

Listen... it may well have been Relton's recollection, I don't know, I wasn't there.

VALERY FABRIKANT :

Oh, no. Oh, no.

THE COURT :

But I don't have, you see, your (inaudible).

VALERY FABRIKANT :

Relton was present during the meeting.

THE COURT :

Now, I've tried to tell you a hundred (100) times that people perhaps don't recall things the same way as you do, I don't mind about all of that, the jury will filter out what, and will believe what they choose to believe. But we settled one thing, you and I, just before the adjournment, we settled what your method is of examining witnesses, and I said now I understand that, it makes my position very very much easier in the future. Because you are not going to... you used the word "demonstrate" the dynamics, the way you propose to demonstrate the dynamics, you're going to have witnesses testify with regard to facts, and we're going to do it as close to the rules as we feasibly can, and that's all you're

going to do.

VALERY FABRIKANT :

Well...

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THE COURT :

That's all you're going to do. I really don't think there's much point commencing with the jury at this stage.

VALERY FABRIKANT :

Well, we still can have some time.

THE COURT :

The jury normally go to lunch at twelve thirty (12:30).

VALERY FABRIKANT :

Why can't we make it at least twenty (20) minutes now and start...

THE COURT :

Because, you know, I'm tired of catering to your whims. At twelve twenty-five (12:25) it's time to adjourn, and we're going to adjourn.

VALERY FABRIKANT :

You are never catering to my... Maybe you could spend five minutes to settle a lot of problems.

THE COURT :

I'm not settling any problems for the moment.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

THE JUDGE AND JURY ARE BACK INSIDE THE COURTROOM

WITNESS: CATHERINE MCKENZIE -- UNDER THE SAME OATH

CONTINUATION OF EXAMINATION BY VALERY FABRIKANT :

Q. Do you recall in November twelfth (12th), ninety-one ('91), during conversation, when I asked you a question: "There was much more serious crisis last year - I meant nineteen ninety (1990) - as you probably are aware the university clearly postponed my reappointment it was really question of reappointment, there was really sharp situation". And you responded: "I was not aware of any of this". And just before the break you testified that you did know, not only did you know, but you know also about meeting the Montreal Athletic Association and so on, would you please reconcile those two statements?

A. As I said earlier this morning, I went into both of those hearings on November the twelfth (12th) and the subsequent hearing, November the twelfth (12th), nineteen ninety-one (1991) and June second (2nd), nineteen ninety-two (1992), with the intention of giving you as little information as possible.

Q. So effectively what you are saying, that you did not tell the truth on November nineteen ninety-one (1991) answering the question?

Me JEAN LECOURES :

She already answered the question, My Lord.

THE COURT :

Yes. Last question is disallowed.

VALERY FABRIKANT :

Q. And the reason for giving as little information as possible is what?

THE COURT :

It's already been stated, she's already answered that question. Move on to the next question.

VALERY FABRIKANT :

Q. And do you recall on hearing of June the second (2nd), nineteen ninety-two (1992), when I asked you that if you have some rumors about threats circulating, wouldn't it be better to discuss it with me, and this is how it is done in civilized

society. Do you recall that question?

A. Yes.

Q. And what was your answer?

A. My answer was yes.

Q. Well, how then do you reconcile this to, desire to give as little information as possible with agreement that those rumors should have to be discussed with me, those two, can they be reconciled?

A. I was not convinced that we were living in a civilized context at that point, that normal rules of behavior, etc., were applicable.

Q. On what side the behavior you considered as non-civilized?

A. By June the second (2nd) you had sent out large numbers of E mail, I believe, although I can't be certain, that it was around that time that I was told that you had left the grievance hearing saying the clock is ticking. There had been requests made to have someone brought in to do precisely what you've asked to, to try and track down the rumors, to try and find out specifically what was going on in the department. I didn't know where those requests stood, I felt very strongly that that was, as I've indicated before, not the forum to bring forward all of those issues.

Q. Well, all right. At June the second (2nd) there was a lot of E mail and you considered it to be uncivilized. How about November, there was no E mail at that time, why at that time wasn't the civilized way to do it to discuss it with me?

A. At that time you were under... or I should say we had brought in additional security, we were attempting to find the means of bringing some order to the situation. I did not want you to know about the additional security. I did not want to raise the whole past until there was a sense that we understood what the whole past might or might not have meant, and what we were facing at that present time.

Q. Well, this is exactly my question. In November ninety-one ('91) I didn't do any of those, so I behaved quite civilized, why didn't you behave civilized at that time?

THE COURT :

The question is argumentative, disallowed.

VALERY FABRIKANT :

Okay.

Q. Why, in nineteen ninety-one (1991), you preferred instead of discussing thing with me, why did you prefer to have me arrested?

A. It was not an issue of choice. Had I not attended that senate meeting, undoubtedly nothing would have happened, and you would have been spoken with.

Q. Okay. Let us move to this meeting. On November twelfth (12th) you explained how it happened that you came to the meeting in the following words, that you received the security report about prior incident in the whole building:

"And then I went just fine to the senate meeting last Friday, was sitting there, and then you come with that portfolio. And to be quite bluntly about it, all the concerns that I had about that conversation two and a half years ago came immediately to the floor, and I thought that the university leadership must be in danger. I went to the hall, there was someone, I called in the security and asked them from back up from police."

Do you recall making that statement?

A. I don't know if those were my exact words but that's certainly

the contents of what I intended to say.

Q. All right. I draw your attention to the phrase:

"And I went just fine to the senate meeting."

Well the truth was that you went not just fine, you went to the meeting from another meeting, could you describe that other meeting which you forgot to mention?

A. I did not forget to mention, I deliberately did not mention it.

Q. Oh, you deliberately did not mention it. Good. All right. And you deliberately didn't mention it because what?

A. I did not want to involve anybody other than myself, or anybody you might have known had concerns about you at that point. Now you wish me to describe the meeting of November the first (1st), nineteen ninety-one (1991)?

Q. No, before that, would you kindly explain, you had me arrested and instead of apologizing you decided that you need do quite opposite, to build up more security, could you explain this particular detail? You just recently said that I would have been spoken to in a civilized manner to clear the situation have not I been arrested. Since I have been arrested, you decided, uh, huh, now it is time to build more security. Could you explain this part?

A. Perhaps the best way of explaining things would be to take you through the sequence of events, the week leading from October the twenty-eighth (28th) or twenty-ninth (29th) to November the first (1st).

Q. All right.

THE COURT :

Q. Can you speak up just a little bit?

A. Sorry, yes. On October the twenty-eighth (28th) or twenty-ninth (29th), nineteen ninety-one (1991) I received a call from Grendon Haines conveying to me, he indicated that some members, or member of the D.P.C. of the Department of mechanical engineering were very concerned about what your reaction might be if the decision in terms of your contract renewal were to be negative. On October the thirtieth (30th), nineteen ninety-one (1991) I had a meeting with Michel Bujold, and I think Victor Francesco was there but I can't...

Q. What's the date of that meeting? Excuse me.

A. October the thirtieth (30th).

Q. Okay.

A. To ask Mr. Bujold to begin the process of finding some outside security individuals who could be brought in if it was perceived at a later point that it would be necessary.

VALERY FABRIKANT :

Q. May I stop you right here, if I'm allowed. Let's go back to October twenty-eighth (28th) or twenty-ninth (29th)...

A. Uh, huh.

Q. ...because some clarification definitely is in order. You got call from Mr. Haines that some department members were concerned what my reaction would be. Did they tell him anything threatening from me? Did they tell them anything at all which might create apprehension?

THE COURT :

What they told to Grendon Haines is pure hearsay.

VALERY FABRIKANT :

No.

THE COURT :

She received a call from Haines reporting something.

VALERY FABRIKANT :

I am asking what was... I will rephrase it.

Q. What was your knowledge, after you had conversation with Mr. Haines, about reasons of department members and their concerns in terms of my behavior? Did I, according to information you received...

A. Uh, huh.

Q. ...do anything which might create any apprehension?

A. Not to my recollection, he simply said that... not members of the department, but members, or a member of the D.P.C. had expressed concern about what your reaction might be were the decision on your contract renewal to be negative.

Q. Okay. Did it look to you like someone...

Me JEAN LECOURE :

It's an opinion, My Lord.

THE COURT :

You're right.

VALERY FABRIKANT :

Maybe you'll hear the question first, and then you rule, about that simple thing?

THE COURT :

No, I will not, because from the way the question was phrased in its beginning, that was exactly what it was: "How did it appear to you?" Perceptions to her are not what interest us.

VALERY FABRIKANT :

Okay.

Q. Did...

THE COURT :

So the objection is maintained.

VALERY FABRIKANT :

Q. Okay. Did such thought cross your mind?

VALERY FABRIKANT :

That's a good beginning?

Me JEAN LECOURE :

That's the same thing, My Lord.

VALERY FABRIKANT :

May I continue?

THE COURT :

You can't get through the side door what you can't get through the back door. So the objection is maintained.

VALERY FABRIKANT :

But you don't know what I want to say, why do you maintain it?

THE COURT :

Rephrase it. Rephrase or reformulate your question, what you're looking for is an opinion and you're not going to get an opinion.

Me JEAN LECOURE :

And moreover, My Lord, all his questions are leading.

THE COURT :

The questions are leading, and it's in the form of cross-examination.

VALERY FABRIKANT :

Q. Okay. Did you ask Mr. Haines as to what the reasons for department or members here was?

A. No. Not to the best of my recollection, it was a very brief conversation.

Q. Well, you knew all my threats, wasn't it natural to ask such a question?

THE COURT :

Cross-examination, disallowed.

VALERY FABRIKANT :

Q. Now, I would like to bring to your attention, again your phrase from that meeting, November twelfth (12th), I'm jumping

a little bit. I understand that you have been...

Me JEAN LECOURE :

This is not the way to proceed, My Lord, the witness is there to testify about what she saw and what she heard, not to be confronted with previous statements out of nowhere.

VALERY FABRIKANT :

Well, this is my right to confront her with statements.

THE COURT :

This is your witness.

VALERY FABRIKANT :

Yes.

THE COURT :

Let's not forget that. You are not cross-examining this witness at large.

VALERY FABRIKANT :

I am not cross-examining at large, but I am allowed, if witness has made a statement which seems to be contradictory, to bring it to her attention.

Me JEAN LECOURE :

You should ask questions in chief first.

THE COURT :

Yes.

VALERY FABRIKANT :

Well, I think I can proceed in any order I choose.

THE COURT :

No, you cannot. You will establish first of all what the witness' testimony is, and then if the witness' testimony is in... at variance with a previous statement, then we will see.

VALERY FABRIKANT :

Well, it is already at variance and now why I'm bringing it to her.

THE COURT :

No. No, no.

VALERY FABRIKANT :

You don't know what statement I want to bring and you already say no. Witness is already at variance.

THE COURT :

Then you will have to establish...

VALERY FABRIKANT :

This is what I'm doing, if you do not interrupt me every second.

THE COURT :

What are you referring to? What statement are you referring to?

VALERY FABRIKANT :

Well, just listen the what statement I'm referring to.

THE COURT :

Just tell me to what statement are you referring to.

VALERY FABRIKANT :

So...

THE COURT :

Tell me what statement you're referring to.

VALERY FABRIKANT :

The statement was the following. I...

Me JEAN LECOURE :

No, that's not the way to proceed, you should ask her if she ever made another statement at another date, and so on and so forth.

VALERY FABRIKANT :

This is exactly what I said.

Me JEAN LECOURE :

You just don't (inaudible), that's the second step in Milgaard.

VALERY FABRIKANT :

Q. Do you remember, on November twelfth (12th), you made the following statement: "I understand that you have been a successful member of this university, you were not someone I would be concerned about, nothing major, serious", do you recall that statement?

A. Uh, huh.

Q. Now, how to reconcile that statement with your knowledge, as you said right now, prior to November twelfth (12th), it was October twenty-eighth (28th), the department had intention to terminate my employment, how do you reconcile those things?

A. First of all that was not my knowledge on October the twenty-eighth (28th), secondly I've already stated in here that I had no intention, not here or any other, to involve anybody other than myself, unless they were people that you already knew about.

Q. Well, this is not an explanation, nobody forced you to say the wording: "I understand that you have been a successful member of this university" does not imply involvement of anyone or anything.

THE COURT :

You're now cross-examining the witness, please do not.

VALERY FABRIKANT :

Well, there is a contradicting statement.

THE COURT :

There's not a contradictory statement.

VALERY FABRIKANT :

So in your mind they are perfectly all right?

THE COURT :

You may make an argument that the conduct of the witness doesn't concord with what the witness' opinion was, but there's no contradictory statement.

VALERY FABRIKANT :

Isn't it synonym of the same thing?

THE COURT :

No.

VALERY FABRIKANT :

No. All right. Okay.

Q. So you got a call from Mr. Haines telling you that department personnel committee is concerned with my reaction about termination of my employment, you were not surprised, you didn't ask any questions, you decided to beef up security, you went, you called a meeting with Mr. Bujold and Francesco, right?

A. May we clarify one more time. It was not indication that they were going to give a negative response to your contract renewal, there was the possibility of that and they were concerned about what your reaction would be. My meeting on October the thirtieth (30th) was not to beef up security, it was to ask Mr. Bujold, to the best of my recollection, to ascertain what company we could use, what plain clothes agents could be used in the event that it was deemed necessary to increase security.

Q. Uh, huh. Did you, by that time, call... say Osman, and told him: "What the hell you are doing, he is good researcher and good teacher, why would you need to terminate his employment?" Did you make that kind of call?

A. I was the associate vice-director of services, I would have no

business whatsoever making that kind of call, that's an academic issue.

Q. Okay. But you knew about previous alleged threats by me to shoot a lot of people, didn't you find that this is playing Russian roulette to make that kind of decision of a person who already threatened?

Me JEAN LECOURE :

It's an opinion, it's an argument, it's leading and it's cross-examination.

THE COURT :

It's all four road into one. You can't ask that question.

VALERY FABRIKANT :

All right. It's perfectly all right with me. I will ask another question.

THE COURT :

And spare me the comments in between please, just ask the other question.

VALERY FABRIKANT :

It's not comments, I just agree with you. You don't seem to like whether I disagree, and even when I agree I cannot please you.

THE COURT :

I simply prefer you to put your questions.

VALERY FABRIKANT :

Okay.

Q. So you already prepared for war. Now...

Me JEAN LECOURE :

She never said so, My Lord.

THE COURT :

The question is argumentative and is disallowed.

VALERY FABRIKANT :

Disallowed.

Q. So what did you decide on October thirtieth (30th) with Mr. Bujold and Francesco?

A. To the best of my recollection we decided that he would look for a company that would have some agents that could be effective in terms of being in various places inside the university, and if necessary, outside the university.

Q. Uh, huh. Did you inform rector about it?

A. No, I did not.

Q. Did you think that it was totally unnecessary?

A. I did not know if it was going to be necessary or not at that point.

Q. Did the rector know... I'm jumping a little bit back. The material which Mr. Grendon Haines sent to you, I mean this article of mine, and grounds where I alleged fraud and extortion, did he see this material?

A. I don't recall if he saw this material, we certainly discussed the issue.

Q. Okay. Let me bring to your attention what I mean. I'm referring to the material which you allegedly received third (3rd) April, eighty-nine ('89) which I showed you, remember that?

A. Yes. Certainly.

Q. You received it and did you show it to the rector or you didn't?

A. I don't recall, I doubt very much that I would have because he had told me, and he was quite convinced that one would not get involved with allegations that were not in writing. He stated that to you in a letter of the twenty-fourth (24th) of... whenever it was, March...

Q. Okay. Did you tell him that you did receive fax from Haines, and the fax contained the following things?

A. I doubt it very much, I had already seen that material myself, I might of, in earlier conversation, discussed it with him, I can't recollect, if I told him about documents, I told him about the allegations to be sure.

Q. You seem to not recollect...

Me JEAN LECOURS :

This is a comment, My Lord, this is not a question.

THE COURT :

You're right.

VALERY FABRIKANT :

Q. So, on October thirty-first (31st) you received copy of incident report?

A. Yes.

Q. Well, what was your reaction?

A. I was concerned, not so much...

THE COURT :

Q. Sorry, October the thirty-first (31st).

A. Thirty-first (31st) nineteen ninety-one (1991).

Q. You received what?

A. A copy of an incident report that had taken place the previous evening.

VALERY FABRIKANT :

Q. Okay.

A. I was concerned, not so much, and to continue with what I'm sure you're going to ask me, not so much with the actual incident itself but with the possibility that you might have overheard a discussion pertaining to non-renewal of contract.

Q. And?

A. And?

Q. Well, I might have overheard, so what?

THE COURT :

That's cross-examination, you asked your question, she was concerned that you might have overheard a discussion.

VALERY FABRIKANT :

Okay.

Q. Then you were concerned with what? Could you be more specific, that I get a gun and shoot the department personnel committee? What was your concern?

A. I had concerns of that nature, that you might become violent, yes.

Q. So I will go and shoot department personnel committee?

THE COURT :

It's not what the witness said, the witness said: "I had concerns of that nature, that you might become violent", that was her answer.

VALERY FABRIKANT :

Okay.

Q. Did you think that every normal person would become violent in that situation?

THE COURT :

That requires an opinion on the part of the witness, which she's not here to give. Disallowed.

VALERY FABRIKANT :

No, I am asking her, did this thought cross your mind?

THE COURT :

Disallowed.

VALERY FABRIKANT :

Q. Did you think anything at all about the situation in terms of

probability of normal person getting violent in this situation?

Me JEAN LECOURE :

That's the same.

THE COURT :

Same question, objection maintained.

VALERY FABRIKANT :

I cannot ask what her thoughts were?

THE COURT :

No. Ask her what she did.

VALERY FABRIKANT :

I remember very well that question, if she thought about this or she thought about that, or anybody else, I usually allowed this kind of question.

THE COURT :

This time there was an objection, the objection was maintained.

VALERY FABRIKANT :

All right.

THE COURT :

Move along.

VALERY FABRIKANT :

Q. Did you have any thoughts at that time...

Me JEAN LECOURE :

This is the same thing again, My Lord, all the time.

VALERY FABRIKANT :

Well at least it is not leading.

THE COURT :

The witness is here to tell us what she did, her thoughts do not interest me. Question disallowed.

VALERY FABRIKANT :

Well they interest me.

THE COURT :

Question disallowed.

VALERY FABRIKANT :

All right.

Q. Okay. So you got concerned of possibility of violence. What in this report made you concerned? Did I threaten anyone during this incident?

A. No.

Q. Did I display any aggressivity toward those members?

A. No.

Q. Did you know that those four members effectively assaulted me, and in fact not just assaulted me, but it was like kidnapping, they forcefully accompanied me to the elevator and downstairs, did you know that?

Me JEAN LECOURE :

I think she was not there, My Lord.

VALERY FABRIKANT :

No, from the report.

THE COURT :

He means had she been informed...

VALERY FABRIKANT :

If she knows that from the report.

A. On the report I think that it indicated that the department personnel committee, some of them had accompanied you in the elevator down to the first floor, the garage.

Q. Isn't it what is called forceable confinement?

THE COURT :

It's not for the witness to give an opinion on what comprises

forceable confinement. Question disallowed.

VALERY FABRIKANT :

Q. Does this report designated to you me as a victim and the D.P.C. members as aggressors?

A. It did not indicate that to me, it did not indicate that there had been aggression of any real sort from the D.P.C. and no aggression whatsoever from your own part.

Q. Well, do you know what the word assault means?

A. Yes.

Q. Okay. When someone prevents...

Me JEAN LECOURE :

It's argumentation, My Lord.

VALERY FABRIKANT :

Q. ...somebody else from moving in a certain direction is it assault?

THE COURT :

You're now arguing with the witness, there's an objection and the objection is maintained.

VALERY FABRIKANT :

All right. Let's just read those reports. I would like those reports to be read into the record.

THE COURT :

The witness will take cognizance of the report, if you've got a valid question on the report, then you'll ask it, but we will recall that the witness was not there.

VALERY FABRIKANT :

I want those reports to be in the Court record.

THE COURT :

Well, they're not going into the Court record through this witness.

VALERY FABRIKANT :

So, who should I call to get them into the record?

THE COURT :

I am not practicing law these days, Mr. Fabrikant.

VALERY FABRIKANT :

Well, I don't have a lawyer, and you have been accused by every editor that you are acting as my lawyer here, so (inaudible).

THE COURT :

Mr. Fabrikant, if you have a question to put to the witness, put it now.

VALERY FABRIKANT :

All right. So I would like her to read those reports loud.

THE COURT :

Q. Would you take cognizance quietly of the two reports?

A. I don't have those reports.

VALERY FABRIKANT :

There's not two, there are four.

A. He has copies that I gave him, I didn't keep copies of those documents.

VALERY FABRIKANT :

Okay. Would you allow it to be read loud?

THE COURT :

No. I said the witness may take cognizance of the reports in anticipation of your next question, if that's what you want her to do. She's not the author of these reports.

VALERY FABRIKANT :

Anyway... all right.

Me JEAN LECOURE :

Even then, the reports should look like hearsay, the people that could testify about this incident are Fabrikant and the

four persons involved.

THE COURT :

This is true. This is true.

VALERY FABRIKANT :

All right. Let us continue then.

Q. So from those reports you found there was no aggressivity of any kind from my part, what made you think still that I might become violent?

A. My experiences with you in nineteen eighty-nine (1989) where I had, although very much reassured by some advice that we had received, that you could possibly become violent in a situation where your employment would be terminated. You had told me that you had applied for jobs in several hundred universities, as I recollect, I had the sense that this was your only possible place of employment, and...

Q. Isn't there possibility for every normal person become violent if he's...

Me JEAN LECOURES :

Again this normal person stuff, My Lord. It's opinion and argument.

THE COURT :

That question is argumentative and it won't be allowed.

VALERY FABRIKANT :

All right.

Q. Okay. So you rape neighbor's daughter, and then you suspect neighbor might become violent?

Me JEAN LECOURES :

It's argument, opinion and sarcasm as well.

THE COURT :

That question is disallowed.

VALERY FABRIKANT :

No, I just want to ask her if your situation is similar.

THE COURT :

This question is disallowed.

VALERY FABRIKANT :

All right.

Q. So you decided that, after you received the incident report, you decided I could have heard, and I might become violent. Okay. What was your next action?

A. To the best of my recollection I called Michel Bujold and said maybe we should bring in people from an outside company to...

Q. No, no, one second, you are mixing up. You brought him October thirtieth (30th), or on October thirtieth (30th) you knew already that the incident will take place, that there is some stage-up to catch me into something, was it?

A. Absolutely not.

Q. But it looks like it.

THE COURT :

You're cross-examining the witness.

VALERY FABRIKANT :

Q. Since October thirtieth (30th), you couldn't possibly know about this incident.

THE COURT :

You're cross-examining the witness and that last question is disallowed.

VALERY FABRIKANT :

Well, this is just another proof that it was staged.

THE COURT :

Now you are arguing, you argue at a later stage.

VALERY FABRIKANT :

All right.

- Q. So, after you received incident report, what you did?
- A. That's what I was starting to tell you. I called Michel Bujold and I said: "Maybe we should bring in people from the outside now". He said that would be impossible, and he said that he would make sure that there were additional patrols of our own security guards in engineering areas.
- Q. Okay. Could you explain how additional patrol could possibly help if what you expected me to do is to get a gun and start shooting? How external patrol can be useful in this situation?
- A. It would reassure the people in engineering, and obviously... if my worst fears were to be the case, I'm not sure they could have been controlled.
- Q. I'm sorry, would you please answer the question? What you expected was that I get a gun and start shooting...
- THE COURT :
The witness never said that, Mr. Fabrikant. The witness said, based on what her experience in the past, she felt that there was a potential for violence, and therefore... that is what she said.
- VALERY FABRIKANT :
Yes.
- THE COURT :
The words of get a gun and start shooting, in the context of this date are yours, not the witness'.
- VALERY FABRIKANT :
All right. So what...
- THE COURT :
Not all right, be fair with the witness. All wrong.
- VALERY FABRIKANT :
Of course I am unfair. Everyone here is fair, I'm the only unfair person here.
- Q. What kind of violence, if you had in mind violence, as far as I recall, I never threatened anything except shooting, right? I never threatened that I will go and slap somebody, I never threatened that I will shout at somebody, I threatened that I'm going to kill, right?
- A. I have never testified to that, I have said that you said to me that you understood how people get things in North America, and that's by taking guns and shooting people.
- Q. Yes. So what kind of violence, after this word, any reasonable person might expect?
- A. Any kind.
- Q. I'm sorry?
- A. Any kind.
- Q. I think that reference was to only one kind of violence.

Me JEAN LECOURS :

She's the one that answers, not you.

THE COURT :

The witness answers the question, you don't. The witness has testified as to...

VALERY FABRIKANT :

The witness is evading questions.

THE COURT :

The witness is not evading the question, and the witness has testified as to what occurred several years before, and she's testified as to what occurred in this particular instance and what she did.

VALERY FABRIKANT :

Well then...

THE COURT :

You will not cross-examine the witness on her thought processes or what she might have, or should have anticipated, that has nothing to do with the reason why we are here.

VALERY FABRIKANT :

I think it has everything to do, because this witness contributed so much...

THE COURT :

That is your opinion, and that is a question that you may argue.

VALERY FABRIKANT :

Well, I'm explaining to you why all this is relevant.

THE COURT :

This isn't relevant at all what you're doing at the moment. And furthermore, it's not legal. That's the prime objection to it, is leading, and you're not permitted to cross-examine your own witness.

VALERY FABRIKANT :

Well this is not my own witness, this is hostile witness, and I have a Judge who just doesn't want to declare hostile.

THE COURT :

You are not the one who declares witnesses hostile.

VALERY FABRIKANT :

That's what I'm saying, that I have Judge who doesn't want to do that.

THE COURT :

Then unfortunately you are going to...

VALERY FABRIKANT :

This is illegal part...

THE COURT :

Unfortunately, you're going to have to be governed by what these decisions are, and if you're not going to respect the decisions, then we're right back to where we were the other day, and you know what that means.

VALERY FABRIKANT :

Well you're not respecting them, I'm just explaining to you.

THE COURT :

I don't need your explanations, Mr. Fabrikant.

VALERY FABRIKANT :

That's fine, let me continue. So everything is perfect.

THE COURT :

No, everything isn't perfect. You're right out of order and you're one step away from having this put an end to. Now, put your questions to the witness if you have any.

VALERY FABRIKANT :

Well I had... the last question didn't answer.

Q. How external patrols could possibly help in the case I get a gun and start shooting?

THE COURT :

That calls for an opinion on the part of the witness.

Me JEAN LECOURE :

And she already answered, My Lord.

VALERY FABRIKANT :

Q. All right. So November first (1st), at twelve thirty (12:30), you had a meeting at which were present... You called that meeting or what?

A. No.

Q. Who called that meeting?

A. To the best of my understanding, it was Grendon Haines in conjunction with the D.P.C., but I'm not absolutely certain,

that's my current understanding.

Q. Okay. And what transpired at that meeting? Why Mrs. Horwood was there, in what capacity?

A. Capacity as an employee of Concordia University in the Department of mechanical engineering.

Q. Well, was she some kind of special employee? Why do you call secretary to a meeting comprising senior professor, dean of the faculty, the intervention team, yourself...

A. I was not responsible for drawing up that list.

Q. ...and all of a sudden we see secretary there? Could you explain this to me?

A. As I say, I was not responsible for drawing up a list of who was coming to this meeting, you would have to ask Mr. Haines that.

Q. All right. So what transpired in that meeting?

A. What transpired was what had been developing late in the day on October the thirty-first (31st) where people were calling each other, I gather, and then I received a call to have a meeting where we would attempt to ascertain what was going on in the department in terms of the incident that had happened on the night of October the thirty-first (31st), perceive need or the potential need for security coverage, basically to get a picture of what was happening in the department and to see what could and should be done to alleviate fears, take measures, whatever seemed to be appropriate, but to get a fix on what was going on in the department.

Q. Well, the best way to alleviate fears, wasn't it to tell them: "Don't fire a good worker and you will have nothing to fear"?

Me JEAN LECOURE :

Cross-examination.

THE COURT :

That is cross... absolutely, that's disallowed.

VALERY FABRIKANT :

Well, I think...

THE COURT :

I don't wish the comments, it's disallowed.

VALERY FABRIKANT :

Fine. This is process of justice. All right.

Q. Yes. And how did you alleviate their fears? What did you do, or anybody else?

A. I do not recall a great deal of that meeting, what we tried to find out about was the... why there was fear, or perceived fear. And there didn't seem to be any kind of consistency to the answers, in fact the department initially, some of the members of the department initially... or D.P.C., sorry, said that there was no fear, and there were attempts to probe that a little deeper. There was a certain amount of raised voices, I left at some point before the meeting was over, so you might want to question some of the other attendees as to what transpired throughout the rest of the meeting, but there was a discussion before I left, as I recollect, reference to some rumors that had been circulating.

Q. Okay. What exactly, could you repeat exactly what the rumors...

A. I can't repeat exactly the most specific...

Q. Okay. Not exactly. We already know those rumors, I think, by heart by now, just count them, which was mentioned.

A. To the best of my recollection reference to children.

Q. Who mentioned children?

A. I don't remember.

Q. It's interesting. You're not concerned with safety of

children at all?

Me JEAN LECOURES :

We've been on the rumors for days and days, My Lord.

THE COURT :

Well, the last question is disallowed in any event.

Me JEAN LECOURES :

Yes, but still, I make a general objection as well, I think Mr. Fabrikant made his point.

VALERY FABRIKANT :

Well, I think I would be allowed at least to decide what is important and what is not important for my defense.

THE COURT :

You are allowed to ask your last question about what rumors generally speaking, yes.

VALERY FABRIKANT :

Yes.

Q. And was it any variation about children, because we heard several versions of them, which version appeared then?

A. I don't recollect which version, as you call them, it was.

Q. Okay. There were two versions, one...

THE COURT :

The witness says she can't say which version, so it's pointless going on with that, move on to your next question.

VALERY FABRIKANT :

The witness said she doesn't know the version, so I just wanted to refresh her memory about versions, at least that's what my understanding of what witness said.

THE COURT :

I understood the witness to say: "I can't recall which version".

VALERY FABRIKANT :

Q. So you know those versions, how many versions do you know?

A. You call them versions, they may simply be parts of a whole. The most developed one that I have heard, but I don't remember when I heard it, it might have been at this meeting, it might have been later, was that you had called someone and asked if they knew where their children were and what they were wearing.

Q. Yes. And?

A. And then I'm assuming what you call the other version is the business of calling and asking where your children are.

Q. This is the first version. Second version was much more complete, I allegedly called someone, asking: "Do you know what your children are wearing? I am near the school yard, here I see them playing, and they're wearing... bla, bla, bla, bla, bla something". That was the most version which I've heard just recently, because I never heard that kind of version, but... so, could you recall who presented...

A. No, I can't.

Q. It was not that important to you, was it?

THE COURT :

The witness has said no, she couldn't. Now you're going into either cross-examination, sarcasm, one or the other, that last question is disallowed.

VALERY FABRIKANT :

All right.

Q. What else? Children, what else?

A. I can't remember, I remember there was, I think, more than one, but I can't remember beyond that.

Q. Well, did you inform them about your major (inaudible)?

A. I can't recall.

Q. Again...

A. No, I can't.

Q. ...such an important conversation...

THE COURT :

Would you stop arguing with the witness, the witness said: "I can't recall", there is the witness' answer. The jury will appreciate that as to whether they believe it or not.

VALERY FABRIKANT :

All right. I just wish to refresh her memory once again.

Q. Do you recall saying...

Me JEAN LECOURES :

When?

VALERY FABRIKANT :

November twelfth (12th), nineteen ninety-one (1991).

Me JEAN LECOURES :

It has been established that this is not an accurate transcript, My Lord.

VALERY FABRIKANT :

But this phrase was exact. If you wish we can get the tape and the phrase was exact.

THE COURT :

You put your question.

VALERY FABRIKANT :

Yes.

Q. Do you recall saying:

"And I cannot erase it from my memory, as much as I would like to."

This is how you were impressed, and now you do not recall whether you informed members of D.P.C. of something you could not erase from your memory. Did you or didn't you inform him?

A. I do not recall.

Q. Do you feel that you should have informed him?

Me JEAN LECOURES :

This is cross-examination.

THE COURT :

Yes. Last question is disallowed.

VALERY FABRIKANT :

You don't see that the witness is tinkering with her memory?

THE COURT :

The last question was disallowed.

VALERY FABRIKANT :

Well I understand that, but...

THE COURT :

And I don't need to hear anything more from you on the last question.

VALERY FABRIKANT :

No, no, it's not on the last question, it is on the status of the witness.

THE COURT :

I don't need to hear anymore from you on the status of the witness.

VALERY FABRIKANT :

All right.

Q. So you do not recall whether you told them about it or not?

A. I do not.

Q. All right. So did Mr. Haines tell them, in your presence, while you were there, about his portion of threats?

A. I don't recall, but I can't imagine that he would have done that, but I don't recall.

Q. Do you recall anything important of that meeting?

A. I recall very little of that meeting, as I indicated before,

in light of subsequent events.

Q. What did members of the department personnel committee want?

A. Excuse me?

Q. Did they formulate some kind of requirements or requests of their own? Did they come with certain requests?

A. As I left the meeting, I think they were discussing the issue of what kind of security the university could provide for them, that's to the best of my recollection.

Q. They didn't demand that the administration suspend me for being danger to the university when you were there?

A. They may have, at that point.

Q. But you don't remember such a minor thing, do you?

A. I am certainly aware that that's something that the department did want at some point anyway, it may have been at that meeting.

Q. But you're again not sure?

A. No, I'm not sure.

Q. So, almost nothing you remember from that meeting.

A. I have said that, yes.

Q. All right. After that meeting you went, just by coincidence to the senate meeting, and all of a sudden I'm there with big portfolio, what happened next?

A. I got out of my seat, I ran into the hall, I shouted at someone to get security and get the police's back up, something along those lines. And then I went into the senate chambers and I sat down beside you until, I believe, the first of the security officers arrived.

Q. Wasn't it that first security officer was there just in ten seconds after my arrival?

A. I don't recall how long it took for security to get there.

Q. Wasn't it all very well staged, taking into consideration that three security guards appeared from nowhere, almost immediately, does it create impression of being staged?

A. It may create that impression with you, it certainly did not with me.

Q. So it was not staged?

A. It was not.

Q. Okay. And what did you expect? On the one hand you understand you were so frightened that you ran out for security and asked them to call the police. On the other hand you sit just near me, and seem to be totally unafraid that if I start shooting you might be the first one who I shoot, could you explain that?

A. I sat beside you so that if that were to be the case I could try and stop you.

Q. Well, how on earth can you stop a person with a gun shooting at you?

THE COURT :

The last question is disallowed, the witness told you why she sat beside you.

VALERY FABRIKANT :

Q. On one hand you are so scared in eighty-nine ('89), you were scared even to ask me question to clarify my alleged statement, then November first (1st) you are so brave as to put your body against an armed person.

Me JEAN LECOURS :

That's very sarcastic, My Lord.

THE COURT :

This is totally sarcastic and it's cross-examination and it's disallowed.

VALERY FABRIKANT :

You don't see she's total fake, complete and actress.

THE COURT :

Ladies and gentlemen, we'll adjourn at this point.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

THE JUDGE AND THE JURY ARE BACK INSIDE THE COURTROOM

THE COURT :

If you have any questions to put to the witness, put them, I don't want to hear another outburst like the one we just heard before the adjournment.

VALERY FABRIKANT :

Well, I didn't get the answer to my last question.

THE COURT :

Put your question if you have a question.

WITNESS: CATHERINE MCKENZIE -- UNDER THE SAME OATH

CONTINUATION OF EXAMINATION BY VALERY FABRIKANT :

Q. I repeat it. How to reconcile you being so afraid just to ask me to clarify my alleged threat to kill a lot of people and you were not afraid at all to be shot first at the senate meeting, how to reconcile that? In first case you didn't risk anything, in second case you allegedly were prepared to risk your life.

Me JEAN LECOURE :

This is cross-examination, My Lord.

THE COURT :

The objection is maintained, the question is disallowed.

VALERY FABRIKANT :

Q. So, what happened next? You were sitting near me and you're expecting me each second to start shooting, right?

A. The security guards came into the senate chamber, one person arrived first, as I recollect, and then the second one, and maybe three. The senate meeting continued, I can't remember if I still stayed seated beside you or if I moved back once one of the security guards who I recognized was there. You moved and went and got some coffee, came and sat down, and then I think the second time you moved around to the side of the chamber, I think. Then the meeting came to an official close, although a lot of people stayed behind, and you exited. I went outside a little bit later, and by that time you were around in front of the building, the administration building, with police.

Q. What? What? What? Say it again, I was with police near administration building?

A. In front of the administration building, you were standing in the lawn, and I believe there were some police with you.

Q. Well, not right away, you definitely...

THE COURT :

I'm sorry, don't testify. You asked the witness a question, the witness is giving you her answer. There it is.

VALERY FABRIKANT :

Q. Yes, something was in between probably.

A. The rest of the meeting concluded, and then I walked...

Q. No, I mean... Okay. Let's put it this way. All right. You were sitting near me, you were very brave, you were prepared to risk your life...

Me JEAN LECOURE :

This is insulting and sarcastic, My Lord.

THE COURT :

Would you please stop this? I mean what does it take? I'll

put an end to this right now if that's what you want. Now would you stop it. You know well enough that you are being insulting, sarcastic and brutal, now stop it.

VALERY FABRIKANT :

May I give some explanation?

THE COURT :

No, you may not give any explanation, no explanation is required.

VALERY FABRIKANT :

Well I think I am entitled. If you make remark, I think I'm entitled to explain...

THE COURT :

I have said what I have to say, and I don't want another word from you on the subject.

VALERY FABRIKANT :

Q. So were you surprised that no shooting took place?

A. I don't know how to answer that.

Me JEAN LECOURE :

This is still sarcastic, My Lord.

THE COURT :

You don't have to answer that, Dr. McKenzie.

VALERY FABRIKANT :

Why do you think it is sarcastic?

THE COURT :

All right. End.

Thank you very much, Dr. McKenzie, we won't require you any further.

AND FURTHER DEPONENT SAITH NOT

THE COURT :

That is it.

VALERY FABRIKANT :

I didn't question the witness...

THE COURT :

I am not going to have any discussion with you, you went from one brand of sarcasm to another brand of sarcasm, and that was that.

VALERY FABRIKANT :

There was no sarcasm.

THE COURT :

The examination of the witness has now concluded, you will call your next witness. Call your next witness.

VALERY FABRIKANT :

Who is next witness?

AN UNIDENTIFIED PERSON :

You have two of them who have been waiting for three days outside, you know who they are.

VALERY FABRIKANT :

I'll call Mr. Malenfant.

THE COURT :

We need an interpreter.

Me JEAN LECOURE :

I believe Mr. Malenfant will be testifying in English.

THE COURT :

You do. I see. Okay. Just a second.

Okay, there's no point keeping you sitting here waiting for the interpreter, obviously she didn't anticipate that I would...

VALERY FABRIKANT :

Well, maybe we call the second one, the second one can testify in English maybe?

Me JEAN LECOURE :

Yes, that was my understanding.

VALERY FABRIKANT :

Hold it. Hold it. Yes, I know, but I want to deposit this material. This material I want to be deposited.

THE COURT :

The examination of the witness is finished.

VALERY FABRIKANT :

Well, I want to deposit the material still.

THE COURT :

It's not being deposited in a vacuum, so sit down just now. Who is the other witness? Call monsieur Cantin and we'll see if we can start with him. Someone was under the impression, Mr. Cantin, that you were prepared to testify in English, obviously you have a choice as to which language you testify in.

CLAUDE CANTIN JR. :

I will testify in English.

THE COURT :

You will testify in English, okay.

CLAUDE CANTIN JR.:

If I have any problems I'll take a little pause and I'll think of my words.

THE COURT :

Well, I don't think you have any problems, but if you do, fine. Let us know.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this eighth (8th) day of the month of June, personally came and appeared:

CLAUDE CANTIN JR., born on January thirty-first (31st), nineteen hundred and sixty-nine (1969), unemployed, confidential address;

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

VALERY FABRIKANT :

Well before he starts testifying I want to deposit the document. I want to deposit the whole file.

THE COURT :

What are you talking about you want to deposit? Files don't deposit.

VALERY FABRIKANT :

Well, you can abuse process to such an extent that to deny me depositing of documents, to deny me of questioning witnesses...

THE COURT :

Have you got questions to put to Mr. Cantin?

VALERY FABRIKANT :

Yes, but I want to deposit the document.

THE COURT :

Would you please put your questions to Mr. Cantin, documents don't deposit themselves, if you wish Mr. Cantin to deposit documents, if he is the proper witness, you'll deposit them through him.

VALERY FABRIKANT :

This is not proper, I want to deposit the documents which were brought by Mrs. McKenzie.

THE COURT :

Well, if you didn't deposit the documents, you didn't deposit the documents. Put your questions to Mr. Cantin for the

minute, that's what we're here to do.

VALERY FABRIKANT :

Well, I don't think you should abuse the procedure to deny me my defense.

THE COURT :

I am not going to get into an argument with you over that file. Now would you put the questions you have to this witness?

EXAMINED BY VALERY FABRIKANT :

- Q. Okay. How long have you been employed with the company?
- A. I've been employed with Canadian Security Agency since the seventh (7th) of July, nineteen ninety (1990).
- Q. What is your background, what training have you received?
- A. Well, besides from training from my superior officers at the agency, as far as guard duties and so on and so forth, I've always been interested in self-defense. I've had friends who take martial arts, I played football for nine years, always in training, basically that's what my background in defending myself is. And that's fairly pertinent to, I've taken a few other courses since being with the agency to further my knowledge in security proceedings.
- Q. So you are very proficient in martial arts, is it correct?
- A. No, I didn't say I was proficient, I did learn a few things here and there from friends who did take martial arts courses, due to my studies and to the fact that I had to work to pay for my university, I did not have the money nor the time to take any martial arts courses.
- Q. So what, for example, you can do against a person with firearms?
- A. Well, there's very little you can do with somebody who has a firearm and is not close to you, obviously, unless you're armed yourself. And even then, you might not necessarily be justified under the law to use a firearm to prevent against somebody else using one. And unless the person is very close to you, there's absolutely nothing you can do, try to disarm them in any way.
- Q. So effectively for someone with firearms you were useless, that would be correct to conclude?
- A. That would be only correct to the extent that the persons would declare their intentions if they were far away from me. If you were within distance of me reaching, or grabbing in some way, then I would not have been useless in any way. It would have been dangerous but not necessarily useless.
- Q. When were you hired by Concorida University? Do you recall?
- A. Exactly, no, but I think it was around the month of September nineteen ninety-one (1991).
- Q. Do you have any papers related to that time?
- A. Yes, I would have some, but I did not bring them with me.
- Q. Okay. What was your duties? How were you instructed what you were supposed to do?
- A. Well basically, my duty was to make sure that you did not get into the building without me being there, present, to make sure that there was no possible altercation between you and anybody else at the CONCAVE building.
- Q. Okay. Were you showed a picture of me?
- A. I'm sorry?
- Q. Were you shown a picture of me?
- A. I don't remember really. I did have a description though.
- Q. How would you know then if it was me?
- A. Well, the thing is is that the door, the main door at the front was locked, and I was told that as soon as you would be

seen, that somebody would come and tell me at the door so for further reference I would know, but I did have a general description that seemed very accurate.

Q. Okay. Who was that somebody who was supposed to tell you that it was me?

A. Well, they did have a few... if I recall correctly, on the first floor, there's a large section of windows where there's a lot of students that do research. And there is always somebody there that could have seen you come, either from the shuttle bus or from the side. On the side there were no windows except for one office, I believe, so I would have been warned that way.

Q. So the students were instructed, as soon as they see me, to advise you about that, correct?

A. I was told that's what they were told, yes.

Q. Every student was advised to do so?

A. I don't know, I was told that somebody would tell me because they had been informed. Now, as far as them knowing, it's a different story, but I was told that they were supposed to know.

Q. Well, is it correct to assume that you never know which one would notice me first, therefore each student should have been advised...

Me JEAN LECOURS :

That's argumentation.

THE COURT :

That's argument, it calls for a conclusion on the part of the witness, question is disallowed.

VALERY FABRIKANT :

All right.

Q. So those students on the first floor were supposed to advise you on my appearance, correct?

A. That's what I was told that they would do, yes.

Q. Okay. Now when you arrived at CONCAVE Center, were you with someone from Concordia security?

A. Sorry?

Q. Did anyone accompany you when you arrived first at CONCAVE?

A. The first day I worked, yes, I was accompanied, and somebody did give me a tour of the facilities, indicating the windows and the doors that were accessible from anybody from the outside.

Q. Okay. Who was that somebody?

A. I don't recall the gentleman's name but I did know his code name then, I always used to communicate with him with that code name, which was LP11. I don't know the gentleman, he was a gentleman in his fifties with a mustache, grey hair. He gave me a tour of the building, and I was also, I had some indications from Mr. Bujold and Mr. Francesco as to what the building looked like, where were the entrances, and so on and so forth.

Q. This person with mustache, was he what, employee of the university?

A. Yes, he was in a security agency hired by the company, the agency, who was touring around Loyola and the CONCAVE building and a vehicle provided by the university.

Q. What was his duty? Coordination of bodyguards?

A. No, that's not his duty, he was working with Concordia and he just seemed like a likely person to give me a tour of the facilities since he was doing a tour of the facilities all the time, making sure everything went according to all... so that he'd prevent problems, parking tickets and so on and so forth.

Q. But he was what, employee of Concordia or he was the employee of some other...

A. Well, yes, he was the security agency working for Concordia. Yes.

Q. So he was effectively security personnel of Concordia?

A. As far as I knew, yes, that's what he did.

Q. Okay. You knew his first name?

A. No, I did not know his first name. He'd very rarely come by and he'd just ask me how it went and then he'd turn around and go back.

Q. He never presented himself who he was?

A. Yes, he probably did, but I don't recall his name, sir.

Q. All right. Were you presented to someone in CONCAVE, like Sankar, other professor?

A. Yes, I did know Mr. Sankar, and a few other teachers at that time, but I don't recall many of their names. No.

Q. Okay. Who presented you to Sankar?

A. He presented himself. He came in to work and he presented himself, and that was it.

Q. So he knew that you were a bodyguard?

A. Yes, he seemed to know. Yes. Bodyguard is not exactly a correct term, that's what we used on our billing maybe because it described the job fairly well, but it's not exactly... it wouldn't be exactly fair to say it was bodyguard duty in any way. Because bodyguard duty would relate to one specific individual, which was not the case. I had to keep in mind that I had to ensure that person safety, maybe keep a closer eye on Mr. Sankar than anybody else, but I had to keep an eye on everybody that was in the building. In fact, I was more or less guarding the building than anybody.

Q. Were you informed that Sankar was in some kind of danger? Did you get an explanation as to why you were needed there?

A. I was fairly vague, and the only thing that I kept from the explanation that I had is that I had to keep a closer eye on that gentleman, yes.

Q. So effectively, it was underlined that you had to keep a close eye on Sankar. Did anyone mention that I threatened him in any way?

A. I was told by Mr. Francesco and Mr. Bujold of a prior history between you and Mr. Sankar, yes.

Q. What was this prior history? What were you told?

A. Well, I was told that you had threatened him on a few occasions but nothing specific.

Q. They told you that I threatened him personally? That's what you were told?

A. Or that it seemed like a threat to them anyway.

Q. No, no, no, please be precise. They...

A. Well sir, I cannot be precise if I was explained in vague terms, obviously. All I was told is that they told me there was some kind of friction between you and Mr. Sankar, and that therefore I was there to make sure that there's no friction that could lead to harm to anybody.

Q. Well friction is one thing, making threat is another thing. You were told that I, on several occasions, threatened Sankar, right?

A. No, what I was told is that there was friction, it sounded like it was threats obviously.

Q. Well...

A. I cannot actually describe something precisely if it was described to me vaguely.

Q. Did you ever mention the possibility that I might come with

firearms?

A. No, the only thing that was mentioned to me was that you did apply to get a firearms acquisition permit, and that you might have tried to have your wife get one since you were refused the first time. If I recall correctly that's what I heard.

Q. This is even more interesting. It was said what, in November?
A. Sorry?

Q. In November of ninety ('90)...

A. I don't recall if it was at the beginning or during the time I was there but I have been told that, yes.

Q. You were told that I was denied firearms permit?

A. That's what I was told, yes.

Q. Do you remember who told you that?

A. The same gentleman who I called LP11 before. It could have been speculation on his part, I can't know that, and I didn't take it officially.

Q. Would you be able to recognize this gentleman?

A. If I saw him I'd recognize him fairly easily, yes.

VALERY FABRIKANT :

Okay. Now, I need to confirm with Mr. Belleau, if you allow me for a couple of minutes.

THE COURT :

You would like me to adjourn five minutes?

VALERY FABRIKANT :

No, there's no need to adjourn, I need just to clarify, how can we get identification of that person, that's all.

THE COURT :

Mr. Belleau, I will adjourn if you feel that you can talk more easily without us all being here.

Me BELLEAU :

I'm not sure it will be necessary.

THE COURT :

Fine.

VALERY FABRIKANT :

Q. I've been advised by Mr. Belleau that code number would be sufficient for us to identify that person, right?

A. Well, I wouldn't know because I'm not in charge of giving out codes at Concordia, but it was certainly sufficient enough to get that person to come to me, if I needed help.

Q. All right. So what is his code number?

A. LP11.

Q. LP11. Okay. So I understand that Me Belleau will take care of finding this person. Okay. What else LP11 told you about? So he told you that I was refused firearms permit and I might use my wife to get one. In September of nineteen ninety-one (1991) he told you that?

A. No, I can't remember quite exactly when it was, during the time I was working, and I'm not sure it was Mr... the gentleman now I described as LP11, but I'm pretty sure it was him, because I was given very few details by Mr. Francesco and Mr. Bujold, who were my direct authority in that job.

Q. So he told you that I do not have firearm permit?

A. Well, as far as I remember, yes.

Q. All right. Do you think that they intentionally put you in mortal danger by deceiving you like this?

THE COURT :

That question...

Please don't answer that question, that question is disallowed.

Question is disallowed.

VALERY FABRIKANT :

Well, I didn't say anything, you are the best impartial Judge in the room.

THE COURT :

We'll adjourn, ladies and gentlemen.

THE JURY LEAVES THE COURTROOM

WITHOUT JURY

THE COURT :

Can you tell me why you should not be held in contempt for that last comment?

VALERY FABRIKANT :

Well, if you consider this insult to be called the best impartial Judge in the room, then it is contempt.

THE COURT :

Fine, then I find you guilty of contempt of Court and I sentence you to sixty (60) days in prison.

VALERY FABRIKANT :

All right, that's the best possible punishment for me. Now...

THE COURT :

Now (inaudible). I have put up with just about as much as I'm going to put up with from you. You have had the rules explained to you again and again, you have had your cross-examination of one witness terminated this afternoon because you refused to obey orders of the Court. You may have a right to a defense, you may have a right to what is called a full and complete defense, I've told you before, but it is subject to one thing, your respect for the rules of this Court. I don't care whether you respect me personally, that's not the point. You stand there with a smirk in your face, showing complete contempt for this process and everything that it stands for. At one point something becomes just as important as your rights, and that is that this whole thing devolve in an atmosphere that is conducive to having a decision rendered, and a proper decision rendered in this case. You obviously have no intention of doing that. I have no option, since you're defending yourself, but to simply terminate your examinations if you persist in behaving this way. It is not a question of putting you out and having you hear the proceedings on a microphone or anything else. You've chosen to defend yourself, that is the only control I have left, I've had to exercise it twice, I won't hesitate to exercise it again.

VALERY FABRIKANT :

Well, you have no right to deny me question witnesses. You have no right...

THE COURT :

I do not have to put up with...

VALERY FABRIKANT :

...to do that.

THE COURT :

I do not have to put up with rudeness from you.

VALERY FABRIKANT :

In other means, but you have no right to deny me questioning witnesses. You have no right to deny me depositing documents. You have no right...

THE COURT :

If you do not be quiet... Thank you. If you do not be quiet and obey the orders that are given to you as far as objections are concerned, then that is what is going to happen. And you can take it to whatever level you please.

VALERY FABRIKANT :

I followed your objections, you just used it as a pretext. At the time you cancelled my examination of McKenzie, I did absolutely nothing wrong.

THE COURT :

You commenced... Anyway. The record will show what transpired there. Jury please. We'll go on.

VALERY FABRIKANT :

And as far as contempt, I feel contempt for you, not for the Court, not for anything, I have no respect for (inaudible).

Me JEAN LECOURES :

He's insulting everybody all the time.

THE COURT :

It's just a further example, it's just a further example.

VALERY FABRIKANT :

You behave in dishonest and dishonorable manner.

THE COURT :

It is just a further example, one could meet these out ten, twelve (12) and fifteen (15) in a row, and it would make no difference whatever.

Me JEAN LECOURES :

All the witnesses have been insulted, My Lord...

THE COURT :

Yes.

Me JEAN LECOURES :

...the police, the friend of the Court, the Crown attorney, everybody is insulted all the time.

THE COURT :

Well, we have now got to the point where the process is going to go ahead and it's going ahead one way or the other.

Me JEAN LECOURES :

I totally agree with you.

VALERY FABRIKANT :

You don't allow me to ask questions, you don't allow me to...

THE COURT :

You may continue, I told you, but one step in the wrong direction and the same thing is going to happen, and it's going to happen again and again. I told you last week, if it ends this whole thing in two days, it ends this thing in two days. The choice is yours, sir, not mine.

VALERY FABRIKANT :

Well, you're just looking for pretext.

THE JURY IS BACK INSIDE THE COURTROOM

WITNESS: CLAUDE CANTIN JR. -- UNDER THE SAME OATH

CONTINUATION OF EXAMINATION BY VALERY FABRIKANT :

Q. Okay. So no one mentioned to you that I might appear with firearms?

A. Well, nobody mentioned it but it's always a possibility.

Q. Well, did anyone mention it to you?

A. No, not Mr. Francesco or Bujold, not that I remember, no.

Q. Did you ask them about it?

A. No, I didn't.

Q. Were you armed yourself?

A. No, I wasn't, sir.

Q. Did I ever appear at CONCAVE?

A. I saw you twice coming down from the shuttle bus and go into your car, which I believe you parked on the side of the building. Two days (inaudible), I believe it was the fifth (5th) of November and the seventh (7th) of November, that I did take down.

Q. Well you didn't answer my question. Did I ever appear at CONCAVE?

A. No, just in front, but never to the front door, no. I never (inaudible) come in.

Q. I left my car somewhere, yes.

A. Yes, it seemed to be fairly close to the building, or else you wouldn't have taken a shuttle bus all the way there to walk half the way back, obviously.

Q. How did you notice that it was me? Who came to you and said...

A. Well, the first time I had a student who came running to me and told me that you were the person in question.

Q. Good. Would you recognize that student?

A. No, because there was quite a few students there I've seen, and it's been a while, it's been a year and a half.

Q. Did I ever try to enter?

A. No, not in any way, if I remember correctly you'd step off the bus and start walking on the sidewalk.

Q. Directly to my car?

A. Well, I couldn't see if it was directly to your car because I didn't feel I had to leave the building right then and there. If you did reappear, let's say like going around the building, then maybe I would have gone out the building and make sure that you left.

Q. And even that was, looked as something suspicious I understand, correct?

A. Sorry?

Q. Even that kind of appearance of me was considered to be suspicious?

A. Well, if you are dealing with somebody who could cause problems, anything that happens in proximity to you is considered suspicious. If you have to do your job you have to consider everything as being possibly suspicious.

Q. It never crossed my mind. And a student came running to you that this is Fabrikant, eh?

A. Yes.

Q. Not walking, running?

A. Well running, it's an expression, a figure of speech.

Q. Well, he was moving pretty quickly because...

A. Well, the person wanted to make sure that I knew.

Q. Yes, because I might disappear, right?

A. Exactly.

Q. He should have gone quickly.

A. So I could have a good look, that would be logical, yes.

Q. Thank you.

THE COURT :

Have you any questions, Mr. Lecours?

Me JEAN LECOURES :

No questions, My Lord.

THE COURT :

Q. Thank you very much, Mr. Cantin.

A. It's my pleasure.

Q. Okay. You're excused.

A. Thank you.

AND FURTHER DEPONENT SAITH NOT

MARINA SURBANOVIC - INTERPRETER - FRENCH-ENGLISH

DULY SWORN

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this eighth (8th) day of the month of June, personally came and appeared:

ERIC MALENFANT, born on August seventh (7th), nineteen hundred and sixty-nine (1969), police officer;

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

EXAMINED BY VALERY FABRIKANT :

Q. Do you recall in nineteen ninety-one (1991) you were hired as a bodyguard at Concordia University?

-Q. Vous rappelez-vous d'avoir ,t, engag, en mil neuf cent quatre-vingt-un (1981) en tant que gardien de s,curit,, ou "bodyguard", c'est l'expression que vous utilisez, de la part de l'Universit, Concordia?

A. Oui, votre Seigneurie.

-A. Yes, Your Honor.

Q. Do you remember when you started working there?

-Q. Est-ce que vous vous rappelez ... quel moment est-ce que vous avez commenc, ... travailler ... cet endroit-l...?

A. Non.

-A. No.

Q. What were your instructions there?

-Q. Quelles ,taient vos instructions?

A. Mon instruction ,tait de surveiller au 907.

-A. To keep surveillance on 907.

Q. Surveillance against who?

-Q. Surveiller contre qui?

A. Monsieur Fabrikant.

-A. Mr. Fabrikant.

Q. Who gave you those instructions?

-Q. Qui vous a donn, ces instructions?

A. Le responsable de la s,curit,.

-A. The responsible of the security.

Q. Do you remember the name?

-Q. Est-ce que vous vous rappelez de son nom?

A. Non.

-A. No.

Q. Responsible for security at Concordia?

-Q. Le responsable de s,curit, pour Concordia?

A. C'est #a.

-A. Yes, that's right.

Q. Could you describe what those instructions were precisely?

-Q. Pourriez-vous d,crire pr,cis,ment quelles ,taient ces instructions?

A. C',tait de surveiller au 907 monsieur Fabrikant pour...

-A. It was to keep surveillance in 907, Mr. Fabrikant...

A. ...pour ne pas qu'il arrive rien de sp,cial.

-A. ...so that nothing special happens.

Q. Well, were you instructed to follow me in 907?

-Q. Est-ce que vous avez re#u des instructions ... l'effet de me suivre devant le 907?

A. J'avais le libre choix de surveiller le 907, partout, dans les bureaux, les secr,taires, puis tous les employ,s situ,s au 907.

-A. I had free choice to keep surveillance on 907, to do whatever I felt I should, to watch over the secretaries and staff on 907.

Q. When you first arrived, who you were presented to?

-Q. Quand vous ^tes arriv, la premiŠre fois, ... qui est-ce qu'on vous a...

THE INTERPRETER :

I'm sorry, could you please repeat?

VALERY FABRIKANT :

Q. Well, who he encoutered first.

-Q. Qui est-ce que vous avez rencontr, d'abord?
A. Le responsable de la s,curit, de l',cole.
-A. The security responsible for Concordia University.
Q. And together with him you went to 907, correct?
-Q. Et vous ^tes all, au 907 avec lui, est-ce correct?
A. C'est #a, il m'a montr, les lieux.
-A. Yes, to show me the premises.
Q. Okay. And who did he present you at 907 to?
-Q. Et qui vous a-t-il pr,sent, au 907?
A. Tous les employ,s.
-A. All the employees.
Q. Each and everyone?
-Q. Chacun d'eux?
A. Bien, les employ,s... le lieu qu'il m'a pr,sent, ainsi que les employ,s qui ,taient l..., j'ai pas parl,.
-A. The premises that he was presenting me, the premises that he showed me, that he showed, and also all the employees that were there, but I didn't speak to them.
Q. Okay. How it was explained to the employees your presence?
-Q. De quelle fa#on est-ce que votre pr,sence a ,t, expliqu,e aux employ,s?
A. Je le sais pas. J',tais pas l... quand il l'a expliqu,.
-A. I don't know, I wasn't there when he explained it.
Q. Well, how do you know it was explained if you were not there?
-Q. Comment savez-vous que #a a ,t, expliqu, si vous n'avez pas ,t, l...?
A. Ils savaient que j',tais gardien de s,curit,, c',tait seulement #a qu'ils savaient.
-A. They knew that I was a security guard, that's all they knew.
Q. Well, how do you know that they knew it? Did they tell you that they knew it?
-Q. Comment est-ce que vous savez qu'ils savaient? Est-ce qu'ils vous ont dit qu'ils le savaient?
A. Non.
-A. No.
Q. So how do you know that they knew it?
-Q. Alors, comment savez-vous qu'ils savaient?
A. Bien, ils savaient que j',tais gardien de s,curit,.
-A. They knew that I was a security guard.
VALERY FABRIKANT :
Witness is definitely evading, is he?
THE COURT :
No.
VALERY FABRIKANT :
No. He's not telling something, because how on earth could they know that employees knew if he wasn't there, nobody in his presence informed them, the employees never told him that they knew, how on earth could he know that?
THE COURT :
I don't know how he was dressed or anything else.
VALERY FABRIKANT :
Well, because he definitely is omitting something from his answer.
THE COURT :
Well then put your questions. Put your questions to him.
VALERY FABRIKANT :
Well I put my question, how did he know that the employees knew, and he didn't answer that question.
THE COURT :
Well all right, he said he believes they knew he was a security, he said: "They knew I was a security guard", there

we are, now go on from there.

VALERY FABRIKANT :

Q. Well how did they know? How do you know that they knew?

-Q. De quelle façon? Comment est-ce que vous savez qu'ils savaient? Comment est-ce que vous saviez, pardon, qu'ils savaient?

A. Bien l..., en passant plusieurs heures au même endroit, l..., ils savaient que j',tais agent de s,curit,.

-A. By spending many hours at the same place, they knew that I was a security agent.

Q. Did you... were you presented to Swamy?

-Q. Est-ce qu'on vous a pr,sent, ... monsieur Swamy?

A. Oui.

-A. Yes.

Q. So who presented you to Swamy?

-Q. Qui vous a pr,sent, ... Swamy?

A. Le responsable de la s,curit, de Concordia.

-A. The responsible for the security at Concordia.

Q. So what he tell you Swamy about you?

-Q. Qu'est-ce que Swamy vous a dit ... votre sujet, sur vous?

A. Il a rien dit, je me souviens pas, l...

-A. He didn't say anything, I don't remember.

Q. What do you mean? He didn't say: "Okay, Dr. Swamy, this is security guard" or something like that, or: "This is bodyguard" or this is this, this is that?

-Q. Il n'a pas dit: "Docteur Swamy..."

Q. Did he say anything at all?

-Q. "...c'est un agent de s,curit,, il est ceci, cela", il n'a rien dit du tout?

A. Le responsable de la s,curit, a seulement dit que j',tais comme garde de s,curit, pour le 907.

-A. The responsible for the security only said that I was a security agent responsible for 907.

A. J'avais pas rien d'autre ... faire que surveiller l..., j'ai pas pos, de question, j'ai rien fait d'autre que surveiller.

-A. I didn't have anything else to do but to... my purpose was to keep surveillance on that, so I didn't ask any question.

Q. Did Swamy ask you any questions?

-Q. Est-ce que Swamy vous a pos, des questions?

A. Non.

-A. No.

Q. So... he presented you to Swamy...

-Q. Donc il vous a pr,sent, ... Swamy...

Q. ...and that was the end of that meeting?

-Q. ...et ça a conclu cet entretien-l...?

A. J'ai pas parl, avec monsieur Swamy, c'est seulement le responsable de la s,curit,.

-A. I didn't speak to Mr. Swamy myself, it's only the responsible for the security.

Q. Okay. Do you recall November eighteenth (18th)?

-Q. Vous rappelez-vous du dix-huit (18) novembre?

A. Je me souviens pas d'avoir travaill,. J'ai travaill,, je pense, deux ou trois journ,es.

-A. I don't recall working on that day, I remember working two to three days.

Q. Do you recall the day when I came to Swamy's office and somebody else was in that office too except Swamy?

-Q. Vous rappelez-vous de la journ,e o— je suis venu au bureau de Swamy, et qu'il y avait une autre, ou d'autres personnes ... ce moment-l... dans le bureau?

A. Le onze (11), l... Je pense que c'est le onze (11) novembre...

-A. I think it may be on the eleventh (11th) of November but...

VALERY FABRIKANT :

Well, we need to refresh the witness' memory. Let's get I-5 and let's show it to him.

THE COURT :

Pass it to him.

VALERY FABRIKANT :

It's not there, it's the other document.

THE COURT :

It's I-1, is it?

Me JEAN LECOURE :

I-2.

THE COURT :

I-2.

VALERY FABRIKANT :

Q. Do you recall seeing those... writing those two documents?

-Q. Est-ce que vous vous rappelez avoir vu ces deux documents?

A. Oui, c'est moi qui les a r,dig,s.

-A. Yes, I drafted them myself.

Q. Did you write it the same day or it was in two different days?

-Q. Est-ce que vous l'avez r,dig, la m^me journ,e ou c',tait fait ... des journ,es diff,rentes?

A. M^me journ,e.

-A. The same day.

Q. Do they describe the events of the same day or it is events of two different days?

-Q. Est-ce que cela d,crit les ,v,nements d'une m^me journ,e ou #a d,crit les ,v,nements de plusieurs autres journ,es?

A. M^me journ,e.

-A. Of the same day.

VALERY FABRIKANT :

Okay. I would like both to be translated first.

-Q. J'aimerais que les deux soient traduits d'abord.

VALERY FABRIKANT :

And then I will ask another question. Translated and deposited.

THE COURT :

Do you need some time to translate these?

THE INTERPRETER :

In writing or orally?

THE COURT :

It should be translated in writing since... if he proposes to file the written documents, I don't know whether he proposes to file the two reports.

THE INTERPRETER :

It could be done for tomorrow, sir.

THE COURT :

It could be?

THE INTERPRETER :

Yes.

THE COURT :

Okay. What do you propose to do? Do you propose to file these reports, or are you simply asking for a translation of these reports?

VALERY FABRIKANT :

Well, if it creates delay I can continue questioning so that we maybe could release the witness and after that, or we will not be able to deposit them?

THE COURT :

Well, unless... if you and the Crown agree that that can be

deposited tomorrow, once there's a translation of it, there's no objection to that.

Me JEAN LECOURE :

No. He wrote the paper?

THE COURT :

He wrote the paper, I understand.

Me JEAN LECOURE :

Whether I object or not, he's entitled to file it.

THE COURT :

That's right, what he wants to know is whether it can be filed by consent tomorrow along with the translation and finish with the witness today.

Me JEAN LECOURE :

There's no problem.

THE COURT :

Fine.

Me JEAN LECOURE :

I don't have to consent, just postponement for the...

THE COURT :

No, the witness doesn't have to come back tomorrow to physically deposit it, it can be deposited tomorrow with the translation.

Me JEAN LECOURE :

Okay, but...

THE COURT :

Or it can be deposited now...

Me JEAN LECOURE :

...I don't expect the testimony of the witness to be finished today.

THE COURT :

Finished today. No. Or it can be deposited now through the witness and the translation will be filed tomorrow. It will be withdrawn for the interpreter to interpret.

VALERY FABRIKANT :

Well, I don't have that many questions, if you wish I think I could finish today.

THE COURT :

So we're at D-9.

Me JEAN LECOURE :

But I will... we never know, I might have some questions.

THE COURT :

Of course you might. Of course you might.

Me JEAN LECOURE :

I might, I might not.

THE COURT :

D-9 en liasse.

VALERY FABRIKANT :

But in order for the jury to understand my questions I think it would be... it is easy to translate it just orally, so the jury will understand what I'm asking.

THE COURT :

Why don't you try putting your questions and trust the jury has enough intelligence to remember your questions and answers, and we'll look at the report and the translation in due course. Just put your questions.

VALERY FABRIKANT :

Okay.

Q. First of all, would you please notice that the events are different, and timing is the same, therefore how could it be that different events took place at the same day? Maybe you

recall it better that it was to different days.

THE INTERPRETER :

I'm sorry, was that the question?

VALERY FABRIKANT :

All right, I repeat.

THE INTERPRETER :

Could you please repeat?

VALERY FABRIKANT :

Yes.

Q. If you look at the timing of the events...

-Q. Si vous regardez, si on prend les ,v,nements...

Q. ...it is more or less the same...

-Q. ...c'est plus ou moins le m^me...

Q. ...but events are different.

-Q. ...mais les ,v,nements sont diff,rents.

Q. So maybe you recall it better that those were events of two different days?

-Q. Est-ce que vous vous rappelez plus que c',tait des ,v,nements de deux journ,es diff,rentes, deux ,v,nements diff,rents?

A. Non.

-A. No.

A. Je me souviens pas.

-A. I don't recall.

Q. Well, then read the text attentively, at the timing of one event and timing of another event, and you will see that timing is more or less the same, but events are different.

-Q. Donc en ce qui concerne le temps ou le moment quand les ,v,nements ont eu lieu, si vous lisez attentivement, peut-^tre que ta vous rafra@cchira la m,moire en ce qui concerne le temps des ,v,nements, ou l'heure, la date.

A. C'est le m^me rapport, l..., sauf que j'ai ,labor, la discussion que j'ai eue avec monsieur Fabrikant.

-A. It's the same report, however the discussion I had with Mr. Fabrikant was crossed.

Q. Okay. Now, let's...

-A. ...elaborated.

VALERY FABRIKANT :

Let me take a look at that, and I would like to draw his attention to certain lines.

THE COURT :

Would you pass the...

VALERY FABRIKANT :

Oh, maybe make it simpler and faster.

Q. Describe please events in the first report... let's make it simpler. Describe events in the first report and describe events in the second report with timing.

-Q. Pour simplifier, d,crivez les ,v,nements du premier rapport, ensuite les ,v,nements du deuxiŠme rapport en ce qui a trait ... l'heure, ... la date.

A. C'est le m^mes ,v,nements, sauf que j'ai d,crit la discussion qu'on avait eue.

-A. Those are the same events, however I described the discussion that we had.

Q. Well, please in more details, what was the first event? I came to 907...

-Q. Donc pour plus de d,tails, de quoi s'agissait-il lors du premier ,v,nement? Je suis arriv, au 907...

Q. ...who did I see there?

-Q. ...qui est-ce que j'ai rencontr,? Ou qui ai-je vu l...?

A. La secr,taire de monsieur Sweiny.

-A. Mr. Sweiny's secretary.

Q. Swamy's secretary. Yes. And after that, what happened?
-Q. Donc la secr,taire de monsieur Swamy, et ensuite qu'est-ce qui s'est pass,?
A. Qu'est-ce que vous voulez dire?
-A. What do you mean?
VALERY FABRIKANT :
Well, I cannot ask leading questions. I think my question...
THE COURT :
Q. He wants you to tell him what occurred.
-Q. Il aimerait que vous lui disiez qu'est-ce qui s'est pass,.
VALERY FABRIKANT :
Q. Did you follow me to Swamy's secretary?
-Q. Est-ce que vous m'avez suivi jusque chez la secr,taire de Swamy?
A. Oui.
-A. Yes.
Q. Okay. And when I finished my business with the secretary, did you follow me again?
-Q. Et lorsque j'ai termin, mon entretien avec la secr,taire, est-ce que vous m'avez encore suivi?
A. Je vous ai suivi jusqu'... la sortie, de loin.
-A. I followed him until the exit but from far.
Q. From far. Then, nevertheless I noticed that you followed me and what did I tell you?
-Q. Toutefois j'ai remarqu, que vous me suiviez donc, et qu'est-ce que je vous ai dit?
A. Vous m'avez demand, pourquoi je vous suivais.
-A. You asked me why I was following you.
Q. Yes. And what did you say?
-Q. Oui. Et qu'est-ce que vous avez r,pondu?
A. J'ai r,pondu que je le suivais pas.
-A. I said that I hadn't followed him. I wasn't following him.
Q. Right. What was next?
-Q. Et ensuite?
A. Bien c'est ta, il m'a repos, la m^me question.
-A. That's it, he asked me the same question again.
Q. Yes. And?
-Q. Oui, et puis?
A. C'est ta, l..., il m'a demand, si j',tais ,tudiant ou pas.
-A. That's it, he asked me if I was a student or not.
Q. Continue, please.
-Q. Continuez, s'il vous plaEt.
A. Ça fait que c'est ta, j'ai r,pondu que j',tais ,tudiant en m,canique.
-A. I then answered that I was a mechanical student.
Q. And?
A. Puis j'ai arr^t, la communication.
-A. And I ended the communication.
A. Monsieur Fabrikant a t,l,phon, la s,curit, pour savoir ce que j',tais comme personne.
-A. Mr. Fabrikant called security in order to find out who I was as a person.
A. Puis aprŠs j'ai plus eu affaire ... monsieur Fabrikant.
THE INTERPRETER :
Q. Et aprŠs?
A. J'ai plus eu affaire avec lui, j'ai eu aucun contact avec lui aprŠs.
-A. And afterwards I never dealt with Mr. Fabrikant, I never had any contact with him.
VALERY FABRIKANT :
Q. So what happened after that? I called security, what

happened?

-Q. Et ensuite, qu'est-ce qui s'est pass, par la suite? J'ai appel, la s,curit, et qu'est-ce qui s'est pass,?

A. Monsieur Fabrikant est descendu avec les agents au local en bas, puis j'ai rest, en haut, au 907.

-A. Mr. Fabrikant came downstairs with the agents to the local, to the room...

THE INTERPRETER :

Q. Quelle chambre?

A. 907... Ah, en bas, je le sais pas, je l'ai marqu,.

-A. ...to the room downstairs, and I remained, I stayed in the 907.

Q. Okay. Now, another event. So on that day I did not have any meeting with Swamy, correct? I just met his secretary?

-Q. Donc cette journ,e-l... j'ai seulement rencontr, la secr,taire de monsieur Swamy, je n'ai pas eu affaire avec Swamy lui-même?

A. Je me souviens pas.

-A. I don't recall.

Q. Well read your report.

-Q. Lisez votre rapport.

A. J'indique pas sur mon rapport s'il a discut, avec, moi j'ai pas discut, avec Swamy.

-A. I did not talk to Swamy, and it's not indicated in my report.

Q. Well look at the second report.

-Q. Jetez un coup d'oeil sur le deuxiŠme rapport.

A. Oui, mais #a c'est la discussion.

Q. Well describe please events in the second report.

-A. Yes, but that's the discussion.

-Q. D,crivez les ,v,nements dans le deuxiŠme rapport.

A. Je viens de le d,crire, l...

-A. I just described it.

Q. Then what I call second, then the first one.

-Q. Ce que j'appelle le deuxiŠme, en fait le premier.

VALERY FABRIKANT :

Okay. Let me take a look. May I have it back for a second?

Q. Now, is my understanding correct that according to this report, whatever you call it...

-Q. Si je comprends bien, d'aprŠs ce rapport, que vous appelez...

Q. ...first or second...

-Q. ...que vous l'appeliez le premier ou le deuxiŠme...

Q. ...about three p.m. (3:00) I came to see the secretary...

-Q. ...vers trois heures (3 h) de l'aprŠs-midi je suis venu voir la secr,taire...

Q. ...then I caught you following me...

-Q. ...ensuite j'ai trouv, que vous me suiviez...

Q. ...then we had a discussion...

-Q. ...ensuite nous avons eu une discussion...

Q. ...and about fifteen ten (15:10) I called security...

-Q. ...et environ vers quinze heures dix (15 h 10) j'ai appel, la s,curit,...

Q. ...and I left for explanation. Now...

THE INTERPRETER :

I'm sorry?

VALERY FABRIKANT :

Q. And I went for explanation. Ask for explanation.

-Q. ...et je suis all, pour avoir une explication.

Q. According to second report, at fifteen hours (15:00)...

-Q. D'aprŠs le deuxiŠme rapport, ... quinze heures (15 h)...

Q. ...so it is the same time...

-Q. ...donc c'est la même heure...

Q. ...I came to see Swamy...
-Q. ...je suis all, voir Swamy...
Q. ...not the secretary.
-Q. ...et non pas la secr,taire.
Q. So could it be possible...
-Q. Donc, est-ce que ce serait possible...
Q. ...that on the same day, at three o'clock (3:00)...
-Q. ...que le m^me jour, ... trois heures (3 h) de l'apr's-midi...
Q. ...I came to see secretary...
-Q. ...je suis all, voir la secr,taire...
Q. ...caught you spying on me...
-Q. ...j'ai remarqu, que vous me suiviez...
Q. ...called security...
-Q. ...j'ai appel, la s,curit,...
Q. ...went down for explanation?
-Q. ...je suis all, en bas pour avoir une explication?
Q. And on the same day...
-Q. Et le m^me jour...
Q. ...the same time...
-Q. la m^me heure...
Q. ...came to see Swamy.
-Q. ...je suis all, voir Swamy.
Q. Could it be possible on the same day?
-Q. Est-ce que ce serait possible que ce soit le m^me jour?
A. Si je l'ai indiqu, #a doit ^tre #a.
-A. If I indicated it must be so.

VALERY FABRIKANT :

Let us adjourn, it's too much for one day.

THE COURT :

What's bothering you, Mr. Fabrikant?

VALERY FABRIKANT :

Well, you want to continue?

THE COURT :

No, I think we'll adjourn at this point, but you're the one that pressing the witness.

VALERY FABRIKANT :

I'm not pressing witness. Am I pressing? We have two reports...

THE COURT :

The witness has told you, look, he said if I marked it down, it must be so. Patently, he doesn't recall. So we'll adjourn, ladies and gentlemen, until tomorrow morning.

AND FURTHER DEPONENT SAITH NOT

VALERY FABRIKANT :

Now, what are we going to do with these documents?

THE COURT :

I am going to adjourn, that is what I am going to do.

VALERY FABRIKANT :

I have other questions to discuss, too. Now Mr. Belleau, what is going to be with these documents? I need these documents to be deposited.

PROCES CONTINU AU 9 JUIN 1993 - 9 H 30

Je soussign,, Michel Daigneault, st,nographe officiel
bilingue, certifie que les feuilles qui pr,c'sdent 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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PREUVE DE LA DEFENSE

Me BELLEAU:

Good morning, My Lord.

THE COURT:

Good morning, Mr. Belleau.

Me BELLEAU:

A few words if I may, with regards to the question you raised yesterday respecting Mr. Karapetian and the possibility of ordering a special visiting hours for him. I spoke to Mr. Andr, Laplante yesterday, and made him aware of the situation, asked him to look at the problem and call me back, which he did this morning. And, this is what he told me. And, I told him that you were considering ... that it was requested of you that you order special visiting hours and things like that. So, he was aware of the problem. He told me that friends and family have access to the parloir priv,, parloir ordinaire, rather, which is the general visiting area, and that's the general rules, that the private interview rooms are reserved, restricted to professionals, which would be the attorneys, probation officers, Legal Aid staff, et cetera, et cetera. Any other form of privilege would have to be ordered as they said, and they would complain(?) that it causes them apparently some difficulties, because they have to comply with the rules outside of the regular visiting hours, and provide personnel where they wouldn't normally do it. So, this is ... this is the response that I got from Mr. Laplante.

THE COURT:

Thank you. Jury, please.

Mr. FABRIKANT:

Well, we didn't decide ...

THE COURT:

That's right we didn't. I haven't decided yet.

Mr. FABRIKANT:

Well, I have some other questions to raise. Maybe, you'll listen to me.

THE COURT:

What other questions do you have to raise?

Mr. FABRIKANT:

Well, other questions ... well, first of all this question needs to be resolved. You don't want to resolve it.

THE COURT:

I will resolve it eventually.

Mr. FABRIKANT:

Well, okay, there is another question of similar nature. A professor from Boston is coming this Friday to testify on Monday. And, I need to him Saturday and Sunday, from nine A.M. (9:00) to nine P.M. (21:00).

THE COURT:

Who is the professor from Boston?

Mr. FABRIKANT:

Professor Kachanov from Da...(?) University.

THE COURT:

How do you spell his name.

Mr. FABRIKANT:

K-A-C-H-A-N-O-V.

THE COURT:

Mark?

Mr. FABRIKANT:

M-A-R-K.

THE COURT:

Okay. There will be an order similar to that for professor ...

LA GREFFIERE:

(inaudible).

THE COURT:

Pardon?

LA GREFFIERE:

Saturday and Sunday.

Mr. FABRIKANT:

Saturday and Sunday ...

THE COURT:

Saturday and Sunday.

Mr. FABRIKANT:

... from nine A.M. (9:00) ot nine P.M. (21:00).

THE COURT:

Nine A.M. (9:00) ...

LA GREFFIERE:

Six o'clock (18:00), I think (inaudible) ...

THE COURT:

Eighteen hundred hours (18:00), the last time, that's right.

Mr. FABRIKANT:

Well, why can't we make it nine P.M. (21:00)?

THE COURT:

We make it at nine (9:00) to sixteen hundred ... to eighteen hundred hours (18:00).

Mr. FABRIKANT:

Okay. Also, I would like to raise the question of 9-1-1 tapes, maybe they should be withdrawn. Since they're proven to be incorrect. Can you resolve this?

THE COURT:

The 9-1-1 tape has proven to be incomplete, because there was six (6) minutes on another track, which was not transcribed. The tapes themselves, that were played, have not proven to be incorrect as far as I know.

Mr. FABRIKANT:

Well, they played ... it was not an (inaudible), I listened to the tape, it goes just one by one. You cannot possibly, I mean, conversation which is between two (2), it has been done intentionally, there is no other explanation. And the reason they did it, because in the second (2nd) part, I talk about fraud in the university and they definitely wanted to eliminate it. There is absolutely no logical explanation why the second (2nd) part was ... I mean it was not an honest emission.

THE COURT:

To your mind, I am sure that is so.

Me LECOURS:

My Lord, Mr. Sauvageau is ready to testify on that to explain what happened, and I'm ready to make a motion when you judge the time appropriate to add the missing part.

Because I ...

THE COURT:

The time is not appropriate at the moment.

Me LECOURS:

I know, but I just let you know that whenever you feel it's appropriate, I'd ready to fill the gap and to let Mr. Sauvageau testify and to file the missing part.

Mr. FABRIKANT:

Well, to the best of my understanding, Crown has closed its case.

THE COURT:

That is correct.

Mr. FABRIKANT:

And there is no, absolutely no excuse for the Crown to re-open the case.

THE COURT:

That is not necessarily correct.

Me LECOURS:

I read the Robillard case, My Lord, for re-opening. It was an honest mistake and the witness will explain that, My Lord.

THE COURT:

What's the citation of Robillard, do you have it?

Me LECOURS:

No, I just said it out ... out of my mind, but if we look at the index in either MacWilliam or (inaudible), it should be at the beginning in the table of cases.

THE COURT:

In any event, the 9-1-1 tape will not be ordered struck from the record. At his point, I suppose you have the option of either completing it or not completing it, that's your decision, not mine. In the event that you choose not to, then the Crown has announced that it has a motion to make and I will entertain that motion in due time. For the moment, we will ... we will proceed ... we will proceed with the testimony of Mr. Malenfant and I will give you a decision with regard to Karapetian later today.

Mr. FABRIKANT:

Okay. I also need several things which Mr. Belleau refused to provide for me. Should I name them or what, I don't know. Because, he didn't give me any real explanation why he doesn't want to do it and it has been a long time.

THE COURT:

Is this something new or have we dealt with it previously?

Mr. FABRIKANT:

Well, if you call it dealt that you ignored it, in the sense that you ignored it, yes. I mentioned them and you ignored them.

THE COURT:

What are you talking about?

Mr. FABRIKANT:

I mentioned that I need statistics of judges' decisions in September of ninety-two (92), he refused to do it and I mentioned that.

THE COURT:

What do you ... what do you mean statistics of judges' decisions in September ninety-two (92)?

Mr. FABRIKANT:

Names of the judges, number of cases considered, number of years of sentence.

THE COURT:

What possible relevance could that have to your defense?

Mr. FABRIKANT:

It has.

THE COURT:

Well, unless you're able to tell me and demonstrate to me chapter and verse, I'm not gonna consider it any further.

Mr. FABRIKANT:

Alright. But you force me to disclose (inaudible) defense ...

THE COURT:

Oh ... oh, how terribly unfortunate.

Mr. FABRIKANT:

Well ...

THE COURT:

You have a choice.

Mr. FABRIKANT:

... now, you don't hear me choice ...

Me LECOURS:

You remember, it was already raised, My Lord ...

THE COURT:

It is raised.

Me LECOURS:

... I think, already raised and already (inaudible).

Mr. FABRIKANT:

Since you force me, I can tell you what it is.

THE COURT:

Fine. You go right ahead.

Mr. FABRIKANT:

Mr. Hogben have told me that Gold has assigned special judge, who he told me his daughter and wife were raped by some criminal, and now he got half crazy and puts everyone in jail. And this will be the judge who will be considering my case of contempt of Court. This is why ...

THE COURT:

You asked (inaudible) permission the other day, you didn't need my permission to send a subpoena to Mr. Gold. I suppose you can ...

Mr. FABRIKANT:

It's not Mr. Gold. I need the statistics whether the statement of Hogben had real ground, first of all.

THE COURT:

What you're requesting is totally far-fetched and it's ... it's refused.

Mr. FABRIKANT:

So it is irrelevant.

THE COURT:

It's refused, it's totally irrelevant.

Mr. FABRIKANT:

So, I don't need to present to the jury for exemple, the fact that Chalut, indeed, had outstanding record of jail sentences. If this is the case ...

THE COURT:

We are here on a murder trial.

Mr. FABRIKANT:

Of course we're here on a murder trial. If I was chantaged, in a certain way, I need to give to the jury the proof that chantage was there and it was well founded chantage.

THE COURT:

And furthermore, as far as I know, Judge Chalut is not a member of the Court over which Judge Gold was the Chief Justice.

Mr. FABRIKANT:

This is not the point. You are missing the point. When we are talking about something lawless(?), we are not going to look ... Judge Gold by the time was not even Judge Gold ...

THE COURT:

That's right.

Mr. FABRIKANT:

... this is beyond the point. You are missing the point ... (inaudible).

THE COURT:

You are the one who said assigned ... you are the one who used Judge Gold's name and said that he assigned a judge who ... et cetera, et cetera, et cetera. These are your words, not mine.

Mr. FABRIKANT:

Not mine either, Hogben's words. And I need to present to the jury the proof that chantage was based on certain informations.

THE COURT:

What you have asked for is totally far-fetched. It has no relation to this case at all, and I'm not going to order it.

Mr. FABRIKANT:

How more it could be related if I present to the jury ...

THE COURT:

I have finished, I've disposed of it.

Mr. FABRIKANT:

You've disposed of it, alright.

THE COURT:

Okay?

Mr. FABRIKANT:

Now, what are we going to do with the cases of Boudrias and Finestone? You said you can re-open it at later date.

THE COURT:

I have to told you, I suppose ...

Mr. FABRIKANT:

Explain it to me, what is later date ...

THE COURT:

I'm not here to give you explanations. I can't see for the minute what possible relevance the testimony of Boudrias of Finestone could have to your defense. You haven't satisfied me that they are, and I'm not about to

authorize a subpoena with regard to Boudrias.

Mr. FABRIKANT:

What is ...

THE COURT:

That's what I said.

Mr. FABRIKANT:

What is the difference of testimony of Mackenzie or Finestone? I spoke to Mackenzie and complained to her, I spoke to Finestone and complained to (inaudible) ...

THE COURT:

In the end ...

Mr. FABRIKANT:

... what's the difference?

THE COURT:

... in the end, you are the only one who can testify as to whether your complaints had any effect on your mind.

Mr. FABRIKANT:

Well, but ...

THE COURT:

And that is what you're (inaudible).

Mr. FABRIKANT:

But what is the point that jury first has to listen what was complained about, how conversation was, I cannot ...

THE COURT:

There comes ... there comes a point ... there comes a point when the whole world is entitled not to be disturbed. This is a situation where the whole is entitled not to be disturbed. So, there will be ... I am not re-opening the question, it was dealt with yesterday morning and that was that.

Mr. FABRIKANT:

Well, why then you've just cut me off every other witnesses. Nobody is entitled to be disturbed. Why do we disturb Mr. Malenfant? Why not he should be disturbed, because ... (inaudible).

THE COURT:

Because you have not ... because you have not satisfied me that Boudrias, a member of Parliament, can add anything to this debate.

Mr. FABRIKANT:

Well, why are you satisfied that Mr. Malenfant can? Maybe Mr. Malenfant is irrelevant to.

THE COURT:

Perhaps he is.

Mr. FABRIKANT:

So, why don't you ...

THE COURT:

The Crown will probably argue that he was.

Mr. FABRIKANT:

Well, why do ... why then did you allow to serve subpoena on him, and not on Finestone ...

THE COURT:

I take these things ...

Mr. FABRIKANT:

... because he's not a member of Parliament.

THE COURT:

I take these ... not at all ...

Mr. FABRIKANT:

(inaudible) as everybody else.

THE COURT:

... not at all, I take these things one at the time. And

you haven't satisfied that either Finestone or Boudrias have anything ... have anything pertinent to say.

Mr. FABRIKANT:

Well, is Mr. Malenfant had something pertinent to say?

THE COURT:

I didn't know.

Mr. FABRIKANT:

Well, but still he's here and he has been here for several days. He has been inconvenienced a lot.

THE COURT:

You know ... you know this ...

Mr. FABRIKANT:

But he's not a member of Parliament, so you couldn't care less.

THE COURT:

This juvenile way of arguing things, doesn't advance us at all.

Mr. FABRIKANT:

Well, you see ...

THE COURT:

You have not satisfy me ...

Mr. FABRIKANT:

... I cannot kick you from this room when you call me juvenile, but God forbid, I call you juvenile, you will tell ...

THE COURT:

I said ... I said ...

Mr. FABRIKANT:

... that I contempt the Court.

THE COURT:

... this juvenile way of doing things, of arguing things is ridiculous. Now, I've told you ...

Mr. FABRIKANT:

What if I tell you that you are ridiculous, then what?

THE COURT:

I have told you that I am not going to authorize the subpoenaing of Boudrias.

Mr. FABRIKANT:

Okay. But what if I tell you that you are ridiculous, then what?

THE COURT:

Oh, Mr. Fabrikant, pass on to something else. Are you finished?

Mr. FABRIKANT:

No, I'm asking you, if I tell you that you are ridiculous, then?

THE COURT:

Mr. Fabrikant, are we finished?

Mr. FABRIKANT:

No, we are not.

THE COURT:

Have you another point to raise? If you have another point to raise, raise it.

Mr. FABRIKANT:

No, but if you continue to ...

THE COURT:

Jury, please. Sit down.

ASSERMENTATION DE L'INTERPRETE

Madame Marina Subanovic, interprète officielle, jure sur les Saints Evangiles de traduire fidèlement et au meilleur de sa connaissance, du français ... l'anglais et de

l'anglais au français les propos tenus devant la Cour.
Note: Pour les besoins de la cause, les interventions de
l'interprète seront précédées d'un tiret (-).

IN THE YEAR NINETEEN HUNDRED NINETY-THREE (1993)
this ninth (9th) day in the month of June,

PERSONALLY CAME AND APPEARED:

ERIC MALENFANT

born on the 7th of August 1969, policeman,

WHO, after being duly sworn, doth, deposes and says as
follows,

EXAMINED BY Mr. VALERY FABRIKANT

Representing himself:

Q. Well, before I am disallowed to question this witness, I
think it's time to deposit the document first. So, then
whatever happens the document will be deposited.

THE COURT:

As I recall, you deposited the document yesterday under
exhibit D-9. Which were ...

Mr. FABRIKANT:

Well, there was no translation at the time. Now ...

THE COURT:

That's right.

Mr. FABRIKANT:

... I believe we have. So, I would like those
translations to be read.

THE COURT:

Do you have the translations of the documents?

THE INTERPRETER:

Yes, My Lord, they're not stamped (inaudible) so we'll
have to do it this morning during the recess. So, they
just need to have a stamp.

THE COURT:

Have a stamp put on them, okay.

THE INTERPRETER:

Have a stamp put on them.

THE COURT:

The translation will be filed and the jury can read them
in due course. Now, go ahead with your questions.

Mr. FABRIKANT:

Well, I would like it to be read in the record.

THE COURT:

If you have questions to put to Mr. Malenfant, put them.
His report is there, his report has been filed, the
translation is being filed, now if you have questions to
put to him, put them to him. The documents form part of
the record and they have been filed and produced.

Mr. FABRIKANT:

I would like for one (1) minute to confer with Mr.
Belleau, I do not understand the situation.

THE COURT:

Confer away. If you have a question to put to Mr.
Malenfant, would you put it.

Mr. FABRIKANT:

I have first of all legal question. I asked Mr. Belleau
to explain me in what case, because in some cases the

documents were allowed to be read, in some cases right now you don't allow them to be read. And I asked Mr. Belleau

...

THE COURT:

There is no need ...

Mr. FABRIKANT:

... to explain me what are the rules, so that I would know when you allow this and when you are not.

THE COURT:

Would you please put your questions to Mr. Malenfant, if you have any.

Mr. FABRIKANT:

I have questions, but I need to clarify ...

THE COURT:

The document ...

Mr. FABRIKANT:

... the state of oath.

THE COURT:

... the document is produced, the document forms part of the record, the jury will consult the document when they deliberate on the case. If you would like me to circulate the document, if that would help you, I'll do that.

Madame, would you circulate the document. The translation has not yet been sworn, is that it?

THE INTERPRETER:

Not yet.

THE COURT:

Would you take ... would you take the oath.

Me LECOURS:

I don't object, My Lord, no problem.

THE COURT:

Fine.

Me LECOURS:

We can just file it.

THE COURT:

He can file it.

Me LECOURS:

Yes ... yes.

THE COURT:

Fine.

Mr. FABRIKANT:

Wouldn't it be faster just to read it to everybody.

THE COURT:

D-10.

PIECE D-10: Traduction de la pišce D-9.

Would you circulate the translation to the members of the jury, perhaps you look at it two (2) at a time and pass it on. It'll form part of the record and you'll be consulting it in due course, when you ...

Me LECOURS:

I guess it's ... yes.

Mr. FABRIKANT:

Well, I still didn't get an explanation from Mr. Belleau.

THE COURT:

D-10.

Me LECOURS:

Can I suggest D-9A, when it's a translation. What did you do for the Crown's case.

THE COURT:

We did for the Crown's case added the next one, I think, it was the very, very next figure.

Me LECOURS:

Okay. So, let's continue the same principle.

THE COURT:

For exemple, if P-87 was the ... was the 9-1-1 tape, translation was P-88.

Me LECOURS:

Okay.

THE COURT:

So, we may as well follow the same ...

Me LECOURS:

Sure.

THE COURT:

... the same course.

Mr. FABRIKANT:

Still, I'm entitled to ...

THE COURT:

D-10.

Mr. FABRIKANT:

... someone to explain me the legal situation, if I want the documents to be read. Because (inaudible) public is excluded from knowing what is in the document, and public has the right to know what is in there.

THE COURT:

The public has the right to consult the record.

Mr. FABRIKANT:

Well, it's ... it's ...

THE COURT:

In any event, Mr. Fabrikant, the document is being circulated to the jury. Sit down.

Mr. FABRIKANT:

Well, I need ...

THE COURT:

Sit down.

Mr. FABRIKANT:

... I need a friend of Court who would be able to explain me the legal part of it, I'm entitled to that.

Q. Did you write your report every day of your service at Concordia?

- Est-ce que vous faisiez ... est-ce que vous ,criviez vos rapports tous les jours de votre service ... Concordia?

A. Non, seulement si j'avais un ,v,nement sp,cial.

- No, only if a special event occurred.

Q. How many special events took place during your service at Concordia?

- Combien d',v,nements sp,ciaux ont eu lieu durant votre service chez Concordia?

A. Deux (2).

- Two (2).

Q. Well, were you requested by someone to write a report or you did it on your own?

- Est-ce que quelqu'un vous a demand, de faire un rapport ou c',tait votre propre initiative?

A. Selon les directives, l..., j'avais ... faire ,mettre un rapport s'il y avait de quoi qui se passait.

- According to the directives, I had to write a report if something happened.

Q. Do you realize by now that those are two (2) reports of two (2) different days?

- Est-ce que vous vous rendez compte maintenant que ce sont ... #a repr,sente deux (2) rapports de deux (2) dates diff,rentes?

A. Oui.
- Yes.

Q. Which one was before and which was after?
- Lequel est arriv, avant et lequel aprŠs?

A. Lorsque j'ai eu communication avec monsieur Fabrikant, c'est le deuxiŠme (2e) ,v,nement.
- When I received the communication with Mr. Fabrikant, it was the second (2nd) event.
Le vingt (20).
- On the twentieth (20th).

Q. November twentieth (20th)?
- Le vingt (20) novembre?

A. Oui.
- Yes.

Q. So, how could your report then be dated November nineteenth (19th), you knew in advance that ...
- Donc, comment #a se fait que votre rapport porte la date du dix-neuf (19) novembre, vous saviez ... l'avance que ...
... that we will meet and have a conversation tomorrow?
- ... que n'allions nous rencontrer et avoir une conversation le lendemain?

A. Non, ce qui est arriv,, ce n'est pas ... je n'ai pas indiqu, de date, il y a quelqu'un qui a inscrit #a sur mon rapport, je ne peux pas savoir c'est qui.
- No, what happened is that I did not mark the date, somebody else indicated the date on my report, but I don't know who it is.

Q. So, it is not your handwriting on the date?
- Donc, la date ne repr,sente pas votre ,criture?

A. C'est #a.
- That's right.

Q. So, would you kindly describe why my visit to Swamy you consider as a kind of event worth writing about?
- Pouvez-vous, s'il vous plaEt, d,crire pourquoi est-ce que ma visite chez Swamy ... pourquoi est-ce qu'on consid,rait ma visite chez Swamy comme un ,v,nement qui m,rite d'^tre d,crit?

A. Ma fonction ,tait de surveiller monsieur Fabrikant, donc c',tait ...
- My function was to feep watch on Mr. Fabrikant, therefore it consisted an event ...
... c',tait un ,v,nement. Lorsque j'avais ... la rencontrer, je devais ,crire soit un rapport pour ...
- ... it was an event, so therefore when I had to meet him I had to write a report.

Q. Okay. So, my understanding is that whenever I appeared in 907 ...
- Donc, si je comprends bien, ... chaque fois que j'apparaissait au 907 ...
... this is event and you had to write about it.
- ... cela repr,sentait un ,v,nement et vous deviez ,crire l...-dessus.

A. Pas n,cessairement. Si j'avais ... juger que je devais r,diger un rapport, je le r,digeais. Si, je n'avais rien vu de sp,cial ...
- Not necessarily. If I had to judge that I had to write a report, I would then write it, but if I didn't see anything special ...
... si je n'avais rien vu de sp,cial, je n'avais pas ... r,diger de rapport, je jugeais que ce n',tait pas bon de le faire.

- ... then I would judge that it is not necessary to do so.

Q. So, was there a case that you saw me in 907, and didn't write a report?

- Donc, est-ce qu'il est arriv, ... est-ce que ça aurait pu arriver que vous auriez vu au 907 et que vous n'avez pas eu ,crire un rapport?

A. S-rement, je ne le sais pas.

- Probably, I don't know.

Q. Okay. What was deserving to be written in my meeting with Swamy?

- Qu'est-ce qui m,ritait d'^tre d,crit au sujet de ma rencontre avec Swamy?

A. Comme je disais tant"t, j'avais ... surveiller les faits et gestes de monsieur Fabrikant,

- Like I said previously, I was to watch on the moves, and the comings and goings of Mr. Fabrikant, que je jugeais, l..., qu'il ,tait n,cessaire de r,diger un rapport. C'est seulement ça que j'avais ... faire.

- and I was to judge whether I should draft a report. That's all I had to do.

Q. I think he's evading questions.

THE COURT:

Q. I believe he's asking you, what in particular occurred that day that caused you to write a report?

- Je crois qu'il vous pose la question suivante, qu'est-ce qui s'est pass, de particulier cette journ,e-l... qui vous a incit, ... ,crire ce rapport?

A. Bien quelle date, l..., le vingt (20) ou le dix-neuf (19)?

- On which date, on the nineteenth (19th) or the twentieth (20th)?

Mr. FABRIKANT:

Q. Meeting with Swamy, which ever date it was?

- La rencontre avec Swamy, quel que soit la date?

A. Bien l..., vous voulez que je parle des deux (2) journ,es.

- Do you like me to talk about those days.

Q. I visited Swamy only one (1) day ...

- J'ai visit, Swamy seulement ... une occasion ... une journ,e ...

... and I'm talking about this particular visit ...

- ... et je parle de cette visite-l... en particulier ...

... and this particular report.

- ... et de ce rapport-l... en particulier.

A. Je peux utiliser mes notes, Votre Seigneurie.

- Can I use my notes, Your Lordship?

THE COURT:

Certainly.

Q. Are these notes that you made at the time?

- Est-ce que ce sont des notes contemporaines aux ,v,nements?

A. C'est les m^mes qui sont ici, l..., le rapport.

- It's the same that we have here, it's a photocopy.

Q. It's the report, okay.

A. Le dix-neuf (19) ...

- On the nineteenth (19th) ...

... vers quinze heures (15:00), monsieur Fabrikant est venu au 907 ...

- ... around three P.M. (15:00), Mr. Fabrikant came to 907 ...

... ce moment-l..., il avait un porte-document qui avait une bosse... l'int,rieur, ça fait que ...

- ... that one time, he was carrying a briefcase that had a

bomp inside ...

... j'ai jugé, bon de rentrer au 907 pour vérifier les allées et venues de monsieur Fabrikant.

- ... that when I judged that it's necessary to enter inside the 907 to watch over the comings and goings of Mr. Fabrikant.

J'ai resté, l..., ... peu près cinq (5) ... six (6) minutes, monsieur Swamy ...

- I remained there for about five (5) to ... cinq ...?

Cinq (5) minutes, cinq (5) ... dix (10) minutes.

- ... five (5) to ten (10) minutes.

Monsieur Swamy m'avait demandé, de rester ... l'extérieur.

- Mr. Swamy had asked me to remain outside.

Mr. FABRIKANT:

Q. Outside what?

- A l'extérieur de ?

A. Du 907.

- Of 907.

Q. Or outside ... just outside the door of his office.

- Ou simplement ... l'extérieur de la porte de son bureau?

A. J'avais ... surveiller le 907, comme je le disais hier, je n'avais pas ...

- I was to keep ... I was to watch over 907, as I said yesterday.

Je n'avais pas d'endroit particulier ... surveiller.

- There was no particular area that I had to keep an eye on.

THE COURT:

Q. That was not the question, the question was, did Mr. Swamy asked to stay outside his own office or outside 907, that was the question?

- Ce n'est pas la question, la question est, est-ce que monsieur Swamy vous a demandé, de rester devant ... l'extérieur de son propre bureau ou simplement ... l'extérieur du 907?

A. A l'extérieur du 907, le matin ...

- Outside the 907 ...

... le matin le dix-neuf (19) (inaudible).

- ... in the morning of the nineteenth (19th), he had told so.

Mr. FABRIKANT:

Q. Well, at the time when I was inside Swamy's office ...

- Au moment où j'étais ... l'intérieur du bureau de monsieur Swamy ...

... Swamy went out and you were just where the secretary ... his secretary was, correct?

- ... Swamy est sorti et vous étiez l... où se trouvait la secrétaire, n'est-ce pas?

A. Peut-être possible, je ne me souviens pas, je ne l'ai pas noté,

- Possible, but I don't recall and I didn't mark it.

Q. So, effectively you were in his cabinet where the secretary was.

- Donc, effectivement vous étiez ... l'intérieur de son bureau où se trouvait la secrétaire.

A. Non, j'étais dans le passage, sûrement.

- No, I was in the passage.

Q. What passage? Maybe we use this ...

- Quel passage?

A. En face du bureau de la secrétaire, il y avait des ... deux (2) ... deux (2) chaises, j'étais assis l... ...

- On the other side of the secretary's office there were two

(2) chairs, and I was seated there ...

... quand monsieur Fabrikant ,tait ... l'int,rieur.

- ... when Mr. Fabrikant was inside.

Q. So you were on the ready, correct?

- Donc, vous ,tiez pr^t?

A. Bien, monsieur Fabrikant ,tait ... l'int,rieur avec Swamy, la porte ferm,e ...

- Mr. Fabrikant was inside with Swamy, the door was closed ...

... puis moi, j'attendais ... l'ext,rieur.

- ... and I was waiting outside.

Q. Did you get any specific instructions on that particular day, when I was suppose to meet Swamy?

- Est-ce que vous avez re#u des instructions particuli#res cette journ,e-l... o- j',tais suppos,ment ... suppos, rencontrer Swamy?

A. Comme je disais tant"t, le matin monsieur Swamy m'avait demand, de rester ... l'ext,rieur du 907?

- As I said previously, that morning Mr. Swamy had asked me to stay outside l'ext,rieur de? Du 907.

- Outside 907.

Q. Okay. But as soon as I entered, you followed me, correct?

- Mais d#s que je suis entr,, vous m'avez suivi, n'est-ce pas?

A. C'est bien #a.

- That's correct.

Q. Okay. And first I went, not to Swamy's office, but to some other office, correct?

- Donc, je me suis d'abord dirig,, pas au bureau de Swamy, mais vers un autre bureau, n'est-ce pas?

A. Monsieur Fabrikant s'est dirig, au bureau de la secr,taire, par la suite, l... ...

- Mr. Fabrikant was heading towards the secretary's office, and then later on ...

... le bureau de la secr,taire donnait acc#s au bureau de monsieur Swamy, #a fait que je n'ai pas vu les autres faits et gestes de monsieur Fabrikant.

- ... and the secretary's office was giving access to Mr. Swamy's office, but I didn't later on see what Mr. Fabrikant was doing.

Mon explication pourquoi je surveillais monsieur Fabrikant, ce que je disais tant"t, c',tait le ...

- My explanation for which I was keeping watch on Mr. Fabrikant was ...

... ... cause de son sac, l..., qui avait une bosse ... l'int,rieur, je ne savais pas c',tait quoi, #a fait que donc, je le surveillais ...

- ... because of his bag, because he had a bump inside, and since I didn't know what it was, I was keeping watch ...

... je le surveillais pour savoir ce qu'il faisait, l... C',tait mon travail.

- ... I was keeping watch on him to find out what he was doing. That was part of my duty.

Q. Alright. And, During the meeting Swamy went outside and told you something?

- Et durant l'entretien, qu'est-ce qui s'est pass,, Swamy est sorti et vous a dit quelque chose?

A. Comme je disais tant"t, Votre Seigneurie, il m... monsieur Swamy est sorti du bureau et m'a demand, de retourner ... l'ext,rieur.

- As I said previously, My Lordship, Mr. Swamy stepped out of his office and asked to wait outside.

Q. What did you expect that I might have in my bag?

- Qu'est-ce que vous vous attendiez que j'aurais pu avoir ... l'intérieur de mon sac?

A. Voulez-vous répéter la question s'il vous plaît.

- Could you repeat the question please.

Q. Well, as far as the bump in my bag is concerned,

- En ce qui concerne la bosse dans mon sac, what did you expect to have there?

- qu'est-ce que vous pensiez que j'aurais pu avoir l..., qu'est-ce que vous vous attendiez?

A. Je ne le sais pas.

- I don't know.

Seulement qu'il y avait une bosse, que peut-être qu'il pourrait avoir une arme ou peu importe l'objet, l..., c'était gros, ça fait que ...

- Only that there was a bump and it might have been a weapon or an object, it was large, therefore ...

Q. Were you informed that I might come with firearms?

- Est-ce qu'on vous a informé, que j'aurais pu venir avec des armes ... feu?

A. Comme je disais hier, mon travail était de surveiller monsieur Fabrikant ...

- As I said yesterday, mon duty or my job was to watch on Mr. Fabrikant ...

... donc, je prévois toutes les éventualités, ça fait que ...

- ... so, I was foreseeing all eventualities, and therefore ...

C'est pour ça que ...

Q. He's again evading the question.

THE COURT:

Q. Would you answer the question?

- Pouvez-vous répondre ... la question?

A. Si ... voulez-vous la répéter s'il vous plaît?

- Could you repeat it please?

Mr. FABRIKANT:

Q. The question was, were you informed by someone ...

- La question est la suivante, est-ce que quelqu'un vous aurait informé, ...

... that I might come with firearms?

- ... que j'aurais pu venir avec des armes ... feu?

A. Non.

- No.

Q. What were you informed of, could possibly happen?

- Qu'est-ce qu'on vous a informé, de ce qui pourrait possiblement arriver?

A. Les directives que j'avais c'était de surveiller monsieur Fabrikant, savoir ...

- The instruction that I received was to keep watch on Mr. Fabrikant ...

... savoir ce qu'il ... de pas rien qu'il fasse de particulier, l..., je n'avais pas aucun autres détails.

- ... in order to ... to ... in order to see that he doesn't do anything in particular, I didn't receive any other details.

Q. Well, nobody told you what you might expect me to do.

- Personne ne vous a donc dit qu'est-ce que vous pourriez vous que je fasse?

A. Seulement que j'avais ... surveiller monsieur Fabrikant,

c'est des directives que j'ai reçues, donc, je faisais ce que ...

- Only that I had to keep a surveillance on Mr. Fabrikant, those are the instructions that I received, and I was doing ...

... je ne faisais que faire, l..., que je jugeais qui ,tait bon de faire, l...

- ... I was only doing what I judged the thing good to do.

Q. How about making the witness just to answer the questions.

- Est-ce que vous pourriez r,pondre aux questions?

A. La directive ,tait ...

THE COURT:

You've asked him what his instructions were and he's told you what his instructions were.

Mr. FABRIKANT:

No, I asked him whether someone told him what he can expect, and the answer is: no, I wasn't told. Or: yes, I was told that I might expect this, this and this. And, instead he's saying that he was told to observe. I asked whether someone told him: Fabrikant might do this, this, this.

Q. Were you told that or not, that was my question?

- Alors, est-ce que quelqu'un vous aurait dit que Fabrikant aurait pu faire #a, #a ou #a? C'est ma question.

A. Non.

- No.

Q. Did you ask anyone, what I might expect this suspect to do?

- Est-ce que vous avez demand, ... quelqu'un qu'est-ce que je devrais m'attendre de ce suspect-l...?

A. Non.

- No.

Q. What is your professional background?

- Quel est votre ... votre ... sorry ...

THE COURT:

Q. Votre exp,rience professionnelle.

- ... votre exp,rience professionnelle?

A. Un dipl"me d',tudes coll,giales en techniques policišres.

- A college diploma in police technics.

Mr. FABRIKANT:

Q. Did they teach you in those colleges that when you go on surveillance ...

- Est-ce qu'on vous apprend ... ce collšge que lorsque vous allez surveiller ...

... you have to know the possibilities of certain behaviors of a suspect, did they tell you that?

- ... vous devez savoir les possibilit,s de certaines ... de certains comportements du suspect. Est-ce qu'on vous ... est-ce qu'on vous l'a dit?

A. Au collšge, l..., vous parlez du collšge?

- At the college, you're talking about the college?

Q. Yes, did they tell you that at the college?

- Oui, est-ce qu'ils vous ont dit cela au collšge?

A. S-rement.

- Most certainly.

Q. But you chosen to ignore that?

- Mais vous avez d,cid, de l'ignorer?

A. Non, Votre Seigneurie, l..., j'ai eu des cours en techniques policišres, je n',tais pas comme policier l...-bas, j',tais comme agent de s,curit,.

- No, Your Lordship, I received courses in police technics,

but there, I was working as a security agent and not as policeman.

Q. Then security agent should not be concerned of eventualities ...

- Donc, l'agent de s,curit, ne devrait pas ^tre concern, par des ,ventualit,s ...

... of certain behaviors of suspects, yes?

- ... de certains comportements de supects, n'est-ce pas?

A. Voulez-vous r,p,ter la question, s'il vous plaEt?

- Could you repeat the question, please?

Q. A security agent ...

- Un agent de s,curit, ...

... when he goes on surveillance ...

- ... lorsqu'il fait une surveillance ...

... should not be concerned ...

- ... ne devrait pas ^tre concern, ...

... with eventuality of certain behaviors ...

- ... avec la possibilit, de certains comportements ...

... of the suspect?

- ... des supects? Ou d'un suspect?

A. Comme je disais tant"t, ma directive c',tait de surveiller Fabrikant, donc ...

- As I said previously, my instructions were to keep a surveillance on Fabrikant ...

... donc, moi, quand je jugeais que c',tait bon de faire

... de surveiller le contenu de son sac, l... je jugeais bon de ... j'avais toutes les ,ventualit,s ...

- ... so when I was judging to .. to check or keep an eye on his bag, I had all the ...

... je savais qu'il ,tait suspect, parce qu'il ,tait ...

monsieur ,tait suspect, l..., parce qu'il le cong,diait, puis ...

- ... I knew the gentleman was a suspect, because he was going to be ... might go out ...

... ma fonction ,tait de surveiller pour pas qu'il fasse rien de sp,cial.

- ... and then my function was to verify that he doesn't anything special.

Q. Well, he didn't answer my question.

- Vous n'avez pas r,pondu ... ma question.

THE COURT:

Which question? What was your question?

Mr. FABRIKANT:

Q. The questions was, security agent when he goes on surveillance ...

- L'agent de s,curit, lorsqu'il effectue un travail de surveillance ...

... should he be concerned ...

- ... ne devrait-il pas ^tre concern, ...

... with sp,cific expected behaviors of the suspect?

- ... avec un comportement sp,cifique duquel on s'attend d'un suspect?

A. Comme je disais tant"t, j'avais ... monsieur, la description physique ...

- As I said previously I have received a physical description of the gentleman ...

... puis je savais justement ... juste seulement #a pour quoi m'en tenir, #a fait que ...

- ... and I knew only that, I knew that's what I should do

...

... je supposais toutes les ,ventualit,s, l..., de monsieur

Fabrikant, je ne savais pas ... quoi m'en tenir.

- ... I didn't know what exactly to expect, I could suppose all the eventualities in Mr. Fabrikant.

Peu importe le travail qu'on fait, on n'est jamais tout le temps au courant de rien, ça fait que ...

- No matter what the work is, we are never ... we're never aware of anything.

On a le stricte nécessaire comme information, ça fait qu'on s'en va avec ça quand on travaille.

- We're only given the information that is the strict necessary, and that's what we deal with, we start from there.

Q. Again, he didn't answer.

THE COURT:

He has told you that he didn't ... he was not told what you might do, and didn't ask any questions as to what you might do. That's the testimony of the witness.

Mr. FABRIKANT:

I know that. But I asked him whether he was ... first, I asked him whether he was taught in the police that he should ask those questions, he said: yes, I was taught that. Then, I asked him, why he ignore it, he said: because I was not a policeman there, but a bodyguard. Then, I asked him as a bodyguard was he supposed to ask these questions, and I didn't get any answer to that.

THE COURT:

I let the last question go in the interest of getting on with this, but ...

Mr. FABRIKANT:

Alright.

THE COURT:

... now, you're cross-examining the ... well, you've been cross-examining the witness for the last ten (1) minutes. Would you translate the last question?

Q. In his capacity as a bodyguard ...

- Donc, en tant que gardien de sécurité, ... alright, you could repeat the question.

Mr. FABRIKANT:

Well, alright. I'll let it go this question, I will never ...

THE COURT:

Go ahead.

Mr. FABRIKANT:

... get the answer. It's alright.

THE COURT:

Okay.

Mr. FABRIKANT:

Q. So, you were told that I'm being fired.

- Donc, on vous a dit que j'allais être congédié, .
Who told you that?

- Qui vous a dit cela?

A. Le responsable de la sécurité, .

- The responsible of the security at Concordia.

Q. So, he told you that I was fired and therefore ...

- Donc, il vous a dit que j'étais congédié, et que ...
(inaudible)

A. Pas qu'il était congédié, qu'il allait être congédié, .

- Not that he was fired, that he was going to be fired.

Q. Well, it's approximately the same thing.

- C'est ... peu près la même chose.

And because of that, he must have said, so you might

expect certain behaviors.

- Et pour cette raison-là, il a dû vous dire, vous devriez vous attendre ... un certain comportement.

Did he or didn't say it to you?

- Est-ce qu'il l'a dit ou il ne l'a pas dit?

A. Il a seulement dit que monsieur Fabrikant ,tait cong,di, ou il allait être cong,di, ...

- He only said that Mr. Fabrikant was fired or was going to be fir... get fired ...

... qui ... que j'avais ... le surveiller parce qu'il ne savait pas ce qu'il allait faire comme gestes ... faire des gestes (inaudible).

- ... that I had to watch on him because he didn't know what Mr. Fabrikant would be able to do.

Q. Did he mention to you, at any time, that Fabrikant has threatened to kill a lot of people?

- Est-ce qu'il vous a mentionn, ... quelque moment que ce soit que Fabrikant a menac, de tuer plusieurs personnes?

A. Non.

- No.

Q. Did you ask him whether I made some specific threats?

- Est-ce que vous lui avez demand, si j'avais fait des ... si j'avais prof,r, des menaces sp,cifiques?

A. Je ne me souviens pas, si je l'ai demand,.

- I don't recall if I asked.

Q. As professional, should you or shouldn't you have you asked those questions?

- En tant que professionnel, auriez-vous d- ou n'auriez-vous pas d- demander ces questions?

A. Est-ce que je dois r,pondre, Votre Seigneurie?

- Am I to answer, Your Lordship?

THE COURT:

Q. Oui.

- Yes.

A. Voulez-vous r,p,ter la question, s'il vous pla&t?

- Would oyu repeat the question, please?

Mr. FABRIKANT:

Q. As a professional ...

- En tant que professionnel ...

... should you or shouldn't you have asked those questions?

- ... croyez-vous que vous auriez d- ou que vous n'auriez pas d- demander ce genre de question?

A. Ca d,pend de l',v,nement.

- It depends on the event.

THE COURT:

Q. In this event?

- Dans cet ,v,nement-ci, qui concerne cet ,v,nement-ci?

A. Si je ne l'ai pas demand,, c'est parce que je jugeais pas bon de le demander, peut-être, je ne sais pas, je ne l'ai pas demand,, ça fait que ...

- If I didn't ask, it's because I didn't judge it necessary to do so. I didn't ask.

Mr. FABRIKANT:

Q. Did you ... did you realize that you were following me each time when I entered the office ...

- Est-ce que vous avez r,alis, que vous me suiviez ... chaque fois que j'entrais dans le bureau ...

... with everybody in the office knowing that you were security guard ...

- ... et que tout le monde dans le bureau savait que vous

,tiez un agent de s,curit, ...

... effectively, ruining my reputation.

- ... et qu'effectivement cela a ruin, ma r,putation.

Did you realize ...

THE COURT:

That calls for ... that calls for a conclusion on the part of the witness, that's not even ... that's not even valid cross-examination.

Mr. FABRIKANT:

Well ...

THE COURT:

You might establish that there were other people in the office when he followed you towards Swamy's office. You might establish how many, you might establish how many people saw this event. And then leave ... leave the matter to argue from these facts you'll establish.

Mr. FABRIKANT:

Q. What would you do ...

- Qu'est-ce que vous feriez ...

... if I came to the office ...

- Qu'est-ce que vous auriez fait si j',tais venu au bureau

...

... with a gun ...

- ... avec un revolver ... ou un fusil ...

... and start shooting?

- ... et si j'avais commenc, ... tirer?

THE COURT:

Purely hypothetical.

Mr. FABRIKANT:

Well, what were his instructions or what would he ...

THE COURT:

That's not what you asked. You said, what would he do if you came and went shooting ...

Mr. FABRIKANT:

Alright, I will rephrase it.

THE COURT:

... it's not in evidence that you came ... you came into the office shooting. The question is hypothetical, so it's disallowed.

Mr. FABRIKANT:

Okay. I will rephrase it.

Q. Were you prepared to ...

- Est-ce que vous ,tiez pr,par, ...

... be of any help ...

- ... de pouvoir ^tre ... de donner l'aide ...

... if I came to the office and started shooting ...

- ... si j',tais rentr, au bureau et commenc, ... tirer ...

... and of course you would be the first (1st) one shot?

- ... et bien s-r vous auriez ,t, le premier (1er) ... ^tre tir,?

What help would you have been able to provide?

- Qu'est-ce que vous auriez ,t, capable de faire, ... ce moment-l...?

A. Je serais mort.

- I would have been dead.

Q. I'm asking you, what help would you be able to provide, not that you were dead?

- Je vous demande quelle aide, est-ce que vous auriez pu donner?

A. Aide donn,e ... qui, l...?

- Help provided to whom?

Q. To those who you are supposed to supervise?
- A ceux ...
And safeguard.
- ... que vous ,tiez suppos, de garder et de surveiller?
A. Bien, si je n'avais pas ,t, tir,, s-rement j'aurais
essayer de sauver les autres qui ,taient l...
- If I had not been shot, I would've certainly try to save
the others that are there.
Je ne peux pas d,terminer des choses qui ne se sont pas
pass,es, #a fait que je ne peux pas ...
- I cannot determine things that did not happened, so
therefore I cannot ...
Je ne peux dire ce que j'aurais fait, #a aurait d,pendu de
la situation.
- I'm unable to say what I would've done, it would've had to
depend on the situation.

Q. Well, I described to you the situation.

THE COURT:

That's ... it's a hypothetical question, you put it in
such a way that ... that what might he have done had ...
what could he physically have done had you come in with a
gun, it's marginal, I allowed it, he's answered it,
finish. Pass on to the next question. Let's not flog
this to death.

Mr. FABRIKANT:

Q. Were you supposed to leave the office once Swamy was
leaving the office?

- Est-ce que vous ,tiez suppos, de quitter le bureau,
lorsque Swamy quittait le bureau?

A. La derniřre personne qui quittait le bureau.

- The last person that was to leave the office.

C',tait ... les jours que j'ai travaill,, les quatre (4)
jours que j'ai travaill, l...-bas, c'est Swamy qui partait
le dernier.

- And, of the four (4) days that I worked there, it's Swamy
that was leaving the last.

Q. Did you get any new instructions ...

- Est-ce qu'on vous a donn, d'autres nouvelles directives
...

... after I caught you following me?

- ... aprřs que je vous ai vu ... aprřs que je me suis rendu
compte que vous me suiviez?

A. Je peux utiliser mes notes, Votre Seigneurie?

- May I consult my notes, Your Lordship?

THE COURT:

Certainly.

THE WITNESS:

La derniřre situation qui s'est pass,e avec Fabrikant,
c'est le vingt (20), je n'ai pas eu d'autres directives
aprřs.

- The last situation that occurred with Fabrikant, was on
the twentieth (20th), and I did not receive any other
informations after.

THE COURT:

Any other instructions.

THE INTERPRETER:

Any other instructions, thank you.

Mr. FABRIKANT:

Q. Were you told that you did good that you followed me or
were you told that you should not have followed me ...

- Est-ce qu'on vous a dit que c',tait bien de me suivre ou

que vous avez bien fait de me suivre, ou que ce n',tait pas bien de me suivre?

A. Non, ils n'ont pas parl, de ... de ce qui ,tait bien, puis pas bien, l...

- No, they didn't speak about what was good and what was not good.

Q. But, they never told you that it was inappropriate ...

- Donc, ils ne vous ont jamais dit que c',tait inappropri, ...

... to follow a professor ...

- ... de suivre un professeur ...

... by security guard ...

- ... de faire suivre un professeur par un gardien de s,curit, ...

... in view of the whole staff there, you weren't told that there's anything inappropriate there?

- ... d'une faon ... exposer devant tout le personnel, on ne vous a jamais dit que c',tait inappropri, ou appropri,?

A. Non.

- No.

Q. Okay. Thank you.

- Tršs bien, merci.

Me LECOURS:

I have no questions.

- Je n'ai pas de questions.

END OF TESTIMONY BY THIS WITNESS.

Mr. FABRIKANT:

I understand that we have Mr. Sankar here, I called him only to deposit documents on the understanding that I would be able to call him later on to testify. Is my understanding correct?

THE COURT:

No, it isn't, because I understood that it was Mr. Osman you wished to deposit documents, not Mr. Sankar.

Mr. FABRIKANT:

Well, so now I'm raising this question because it will be applicable to several people. I need them to bring the documents first. Those documents have to be analyzed, then, I would be prepared to question them. And I hope, since that was their own (inaudible). In the case of Osman, Sankar is as good as Osman.

THE COURT:

I'll ask you to withdraw, ladies and gentlemen, for the moment, while I solve this particular problem.

Me LECOURS:

Could we see the subpoena of Mr. Sankar?

THE COURT:

Before we get into this question, there was one (1) question I meant to raise Mr. Lecours with you this morning. And you can ... you can solve it or sttle it in two (2) words. I terminated the examination of Mrs Harmer and Doctor Mackenzie.

Me LECOURS:

Yes.

THE COURT:

I didn't ask you ... I presume you would have said, had you wished, to direct any cross-examination to either of these people.

Me LECOURS:

That is correct, My Lord. I realized it, and I did not raise it because I agreed with you.

THE COURT:

Fine. Okay. Now, may I see the subpoena that was served on Sankar.

Me LECOURS:

Can I also have ...

Me BELLEAU:

I have the original here.

THE COURT:

Pass it first to Mr. Lecours, and then I'll ...

Me BELLEAU:

There's an annex concerning Mr. Osman, underneath the annex is Mr. Sankar's subpoena.

Me LECOURS:

(inaudible)

Me BELLEAU:

This is what I was saying, was the annex concerns Osman, and underneath that, Mr. Sankar.

Me LECOURS:

I'm a bit concerned, My Lord, I think it looks like a fishing expedition for every single witness that is coming, you know. There are lots of documents in this world, a lot of people have folders and folders, and boxes of documents, you know, I don't think private parties and private institutions are covered by Stinchcomb. Of course, the Crown has some duty, but unless we can point specific information, and it comes from specific points in examination, I don't know if a witness can come here with boxes of documents and Mr. Fabrikant flips through and if he finds something he likes, he uses it, and if he doesn't find anything he doesn't use it. I don't feel comfortable, we ... again we have nothing to hide, but I don't feel comfortable with this way of proceeding. Even the police officer, you know ...

THE COURT:

Well, I can't see how first of all, as far as Sankar is concerned, any of this relates ...

Me LECOURS:

First, it's not relevant.

THE COURT:

... to the Crown, first of all.

Me LECOURS:

First of all it's not relevant, but it's ...

THE COURT:

In any sense.

Me LECOURS:

Sankar, as far as I'm concerned, is totally irrelevant. He was irrelevant in the fitness hearing, and he's even less relevant now.

THE COURT:

The deuce tecum reads as follows, reports of Concave Center to Ministry of education, for nineteen eighty-eight (1988) and ...

Me LECOURS:

It looks like a ...

THE COURT:

... and nineteen ninety (1990).

Me LECOURS:

It looks like a Royal Commission of inquiry into allegations of fraud or things like that, I don't know ...

THE COURT:

Dissertation of Rangan Nathan(?).

Me LECOURS:

Well, that looks like the allegations ...

THE COURT:

Report of Concave Center on liquid tankers stability. And fourth (4th), your own course evaluations, last three (3).

Me LECOURS:

That ... this is totally and absolutely irrelevant.

THE COURT:

I don't know first of all whether you have any difficulty with the principle, that if this were relevant, that perhaps the most efficient way to see it into the record, or at least see it ... see the testimony handled, this to permit the production of relevant documents, subject to the witness coming back.

Me LECOURS:

No, I don't ... if we start that, it will be again a never ending story.

THE COURT:

It ... it ...

Me LECOURS:

If we open the door, working like that ...

THE COURT:

It depends to me ... it depends to me ...

Me LECOURS:

... I never saw that ...

THE COURT:

... on what the documents are.

Me LECOURS:

... in any case.

THE COURT:

No, I haven't neither. But, there are number of things I haven't seen here. But, I'm troubled, very troubled about the pertinence (inaudible) this.

Me LECOURS:

Sankar is totally, totally irrelevant, I would say.

THE COURT:

Well, Sankar is the one we're dealing with just now.

Me LECOURS:

Yes, we are.

THE COURT:

I am not dealing with Osman at the minute.

Me LECOURS:

Okay.

THE COURT:

There are things in ...

Me LECOURS:

Okay. We might be dealing in ...

THE COURT:

There are things in ...

Me LECOURS:

... with the relevance of Sankar, but right now about documents in general and the way to proceed.

THE COURT:

There are things in Osman's subpoena that ...

Me LECOURS:

Yes, I looked ... what, what I read was ...

THE COURT:

... that may be debate...

Me LECOURS:

Like courses ... to bring some professors with their own evaluation of course (inaudible) there are millions of

professors on earth, if Fabrikant wants to say he's a good professor, in his own evaluation there is a comparative or percentile scale. There's no point bringing hundreds and thousands of professors ...

THE COURT:

I'm trying not argue the Osman one for the minute, I'm trying to stick for the minute with the Sankar one.

Me LECOURS:

Sankar is totally, absolutely irrelevant as far as the Crown is concerned.

THE COURT:

How do you possibly justify reports of Concave Center to the Ministry of education for nineteen eighty-eight (1988) and nineteen eighty-nine (1989)?

Mr. FABRIKANT:

Well, first of all, I believe I should explain why Sankar is relevant in the first place. So far, we have heard the testimony, not complete, because the main witness for Defense, was not allowed to be examined till the end, if it were, it would be even more ...

THE COURT:

I'm sorry, I don't understand what you're saying.

Mr. FABRIKANT:

Mackenzie, you did not allow me to question till the end, she is the main witness for Defense.

THE COURT:

Well, that's ...

Mr. FABRIKANT:

If she were allowed to testify, it would be even more clear that Sankar is definitely involved. If you recall, even from the testimony which did come here, we saw the following, first in eighty-nine (89), Sankar was included in the list of people protected and allegedly threatened by me. So, it definitely goes to the motives. So, I'm working for the Crown. I'm surprised the Crown didn't bring all these documents, but since Crown didn't do it, I think it's very very relevant since as far as nineteen eighty-nine (1989) goes, I allegedly threatened Sankar so much that I was surveyed twenty-four (24) hours a day and the question was whether I go near his house. So, you cannot argue that Sankar is outside the picture, right?

THE COURT:

The Crown submitted that Sankar is outside the picture, that wasn't the nature of my question to you. My question to you ...

Mr. FABRIKANT:

Well, Sankar is not outside ...

THE COURT:

... related to Sankar, in the context of the documents that you're proposing that be deposited.

Mr. FABRIKANT:

I will get to the documents definitely, but let me first state a point out, that Sankar is definitely not outside. He was in the picture in eighty-nine (89), he was in protection and Crown should have brought this fact to the attention of jury and I would be prepared to explain why they didn't do it. Because, I don't think they did know about, did they. Would it be possible to ask Crown if they knew about all this.

Me LECOURS:

I'm not here to answer your questions.

THE COURT:

He's not here to answer your questions.

Mr. FABRIKANT:

Well, it would be nice if he did. But, anyway, so Sankar is definitely is in the picture. If we go to the year nineteen ninety (1990), again we see the picture that bodyguard is f...(?) not somewhere else, but exactly where the Concave Center was. Assuming that they had reasons to do so, this again goes to the motives, correct? So, Sankar is definitely there. More than that, witness here testified yesterday that he was specifically instructed to safeguard Sankar, so Sankar is definitely in the picture. Now, as far as his document is concerned, here comes the other part and the other part is as I mentioned to you, that one (1) reason for persecution which I experienced at the university, was that his brother has got a lot of publications to which his contribution was zero (0). Sankar himself ...

THE COURT:

Sorry, that Sankar's brother has a lot of publications?

Mr. FABRIKANT:

Yes, TS Sankar has.

THE COURT:

Has a lot of publications that what?

Mr. FABRIKANT:

Well, in which his name is listed as co-author, and his contribution was zero (0). More than that he doesn't understand the wording of those publications. His brother, later on, in eighty-eight (88) exactly, when ...

THE COURT:

Now, we're talking about Sheshadre.

Mr. FABRIKANT:

Yes. Now we are talking about the one who is (inaudible) documents. This particular document, eighty-eight (88), was the key document which on the one hand will establish to the jury that I was very good and this is what they reported to the Ministry. On the other hand, a different evidence will establish that Sheshadre Sankar exactly at the same time, when he reported to the Ministry that I was good, was telling me that he's prepared to give just one (1) year for me to get out of the university and my position will be terminated. Before that, he implicitly demanded that I included him as co-author in my papers. Which I refused. And, after that this attempt to have me fired, was made in eighty-eight (88). So, those documents are intertwined, from the one hand they show that official opinion of Sankar about me was good, on the other hand, another evidence, namely recorded conversations, will show that he in fact extorted from me a verse(?) to be included as co-author, and since I refused so, he told me that within one (1) year my position will be terminated. So, this is as far as those reports to the Ministry is concerned and the relevance to the proof I intend to do. I think it is unfair that I have to go to all the details of my defense in presence of the Crown, in advance. I think it is totally unfair practice, I think I should be given benefit of the doubt. So far, I didn't present a single document which would be irrelevant and I would ask this Court according to (inaudible), since there is absolutely no evidence to the contrary, there is no harm

done to anyone or anything if the documents, which I requested and I believe are important for my defense, just be deposited and argued about. And as soon as anytime during this argument or anything, Court comes to the conclusion that this is irrelevant, every moment it can be stopped. So, I don't think that the risk of jeopardizing my defense is worth the long time we spend on the argument whether this or this particular document is important. If you wish I can continue justifying, but I again feel that this is unfair, to practically force me to disclose all the details of my defense.

THE COURT:

Listen, when you are announcing that you are going to present a defense, which spends three (3) months, I have a duty to satisfy myself that what you wish to present is relevant. You and I don't agree, but as far as I'm concerned, you have wasted our time talking about the Court and the jury at length. Not only during the fitness hearing, but since the beginning of your defense. I don't know how the examination of Sankar will unfold, no idea. But I have to presume, if what you tell me is so, that you have knowledge of the content of these documents. I suppose you were going to say that all of this comprises Sankar's treatment of you, and that you are going to relate this to your state of mind. One thing I'm not going to do, is allow documents to be produced into the record on the basis of what you've said to me, en bloc, subjected to making a decision at some later point in time as to whether these documents are relevant and as to whether they'd be withdrawn. One thing appears clear to me, from what you said to me, you may have questions you want to put to Sankar. I've no idea what Sankar's answers may be, I've no idea what Sankar's attitude may be, I've no idea how that examination may unfold. You may well ... I've no idea, you may well establish that Sankar is a hostile witness, you may not, I don't know. Much will depend on what devolves from Sankar's testimony. Sankar may agree with very much of what you say, he may not, I don't know. So that, depending on how his testimony evolves, it may be that documents that you mentioned here will develop a certain significance. Your position is ... is one where you wish to call him, in order to establish certain ... certain principles that you wish to invoke in support of your defense, you perfectly free to do that. Contrary to what you might think, I haven't taken a narrow view of the defense that you proposed to present, what I've taken a narrow or a narrower view of, is the way you've gone about it and the way you've refused to conform to rulings I've made, and the way you've refused to conform to the manner of examining witnesses. You got up the question of Mackenzie, I'll finish the question of Mackenzie. You can talk about rights and Charters, all day, but those rights must, I underline must, be exercised according to the rules. That's the condition for exercising them. Far, far too often have we heard talk about rights, I'm sick of hearing the word in many instances, when it's used out of context and totally absent from the concomitant concept of duties. The other duty is that this whole process has to unfold and rightly or wrongly I decide which way it unfolds. Now, I have never said to you in the context of your defense, Sankar

was irrelevant, I wouldn't make that ... that statement. I certainly said within the context of the fitness hearing, Sankar was irrelevant. I see us getting into far more trouble by producing into the record a series of documents, and I don't believe you for a minute, Mr. Fabrikant, when you tell me that these documents need to be deposited then looked at for analysis. You know what these documents say, if you've put them in here and if you have crafted your defense around the existence of these documents, you know what they are. So, the normal route, I think, is the route which should be followed. When you deem it appropriate, and you'll deem it appropriate whenever you like, Sankar will be called as a witness and you will commence to establish through Sankar what you wish to establish. Remembering, I hope, that it is all geared to showing your state of mind, that's all that is relevant in the end. I am not going to conduct an inquiry into the goings-on in the faculty of engineering at Concordia University, if any there were. That's not my mandate. If someone had asked me to perform that mandate, that would be quite another thing, but nobody has. And I'm not going to divert this trial in that direction, and if I admit all of that without being able to see as I go along, and without being able to perceive the possible relevance, that's what I'm inviting. So ...

Mr. FABRIKANT:

Well, you ...

Me LECOURS:

I think the same should apply to Mr. Osman.

THE COURT:

The same ... the same certainly is gonna have to apply to Mr. Osman.

Me LECOURS:

To all witnesses without exception.

THE COURT:

Yes.

Mr. FABRIKANT:

So, you ... you're effectively ...

Me LECOURS:

I would like the Court, I'm sorry ...

Mr. FABRIKANT:

... overturning your own ruling.

Me LECOURS:

It's about ...

THE COURT:

If you want to put it that way, but I ...

Me LECOURS:

... it's not because you let Fabrikant go for a while, that you're bonded by ... you said that before.

THE COURT:

I'm not, I (inaudible).

Me LECOURS:

I would like to quote your colleague Mr. Justice Pinard, he says: every single fact and incident in ones life is relevant to his state of mind, from la premiŠre (le) fess,e au premier baiser. Everything could make up ones mind to a certain point. If we open that door, it will never stop. You know we're talking about four (4) murders that occurred August twenty-fourth (24th) nineteen ninety-two (1992).

THE COURT:

I know that. I'm trying to keep that in mind.

Me LECOURS:

If we open that door, Fabrikant was persecuted in U.S.S.R, everything would be relevant, then, for his own, quote/unquote, state of mind.

Mr. FABRIKANT:

So, what's wrong with that. What's wrong with that, why

...

Me LECOURS:

The system is not here for ...

Mr. FABRIKANT:

... let me ask you one question.

Me LECOURS:

... infinite trials.

Mr. FABRIKANT:

Let me just ask you one question. Why when Jean Chr,tien's son was on trial for rape, his mother from somewhere else was brought, and it was considered relevant. What I'm asking is ... now, let me explain why I ask those documents to be deposited before I question, because, I thought that would enough for you but since it is not enough, let me continue my argument then. I wanted this document to be deposited and to be analyzed by professor Kachanov who is coming, I want them to be released from Court so that he could ... he is professor of mechanical engineering at Taft(?) University, full professor. I wanted him to analyze and to give his expert opinion on those documents. So, this is why ...

Me LECOURS:

It's far-fetched, My Lord.

Mr. FABRIKANT:

... this is why I called those people here, just for deposition of those documents. I ask this Court to release those documents in custody of ... I don't know, me or Mr. Belleau, so that by the time professor Kachanov arrives, he would have access to those documents and I would be able to question him concerning those documents.

THE COURT:

Listen ...

Me LECOURS:

Now, it's really irrelevant, My Lord.

THE COURT:

... now, it's ... it's got clear that it is totally irrelevant. If that is your purpose. If your purpose ...

Mr. FABRIKANT:

This is one (1) of the purposes.

THE COURT:

... if your purpose ...

Me LECOURS:

(inaudible) do that with the three hundred (300) publications of Swamy and ... I don't know, we could do that with the sixty-five (65) publications of Fabrikant, we are totally sidetracked.

THE COURT:

I'm not interested in the value of these documents, I'm not interested ...

Mr. FABRIKANT:

It's not the value that I want ...

THE COURT:

... in professor Kachanov's opinion of them. I'm interested in your establishing through Sankar what you

wish to establish in relation to laying down the ground work for what the effect was on your mind. That's what I am ... that's what I'm keeping my eye upon. And, if Sankar comes here and says: yes, it is true what you related, or if you establish that Sankar, then there it is established, end of problem. If it isn't, and you say to me: there is a document that shows that this is not the case, then we'll see whether by other evidence you're able to contredict you own ... your own witness, we'll see.

Me LECOURE:

You know that's very (inaudible) he brings witness ... witnesses only for the only purposes of discrediting them.

Mr. FABRIKANT:

Well, what ...

Me LECOURE:

That's what he does all the time with all his own witnesses.

Mr. FABRIKANT:

Well, what if (inaudible) special situation.

THE COURT:

If you ... if you take on ... if you take on its face, what he says, then his position is not an easy one. And, there's no doubt that he is allowed to establish the facts in order to permit him to argue that his mind was affected. Mechanically how that's done, is ... is sometimes a little more difficult. He's been given latitude, the problem is every time he's given latitude he takes more and finally crosses the line. And ... and we

...

Me LECOURE:

Someone said ...

THE COURT:

... we have what's happened on two (2) occasions.

Me LECOURE:

... someone yesterday said that the accused should get some limits, to be imposed some limits, that's the only way to stop the whole process. If there's no limits, Mr. Fabrikant will use ... anything ...

THE COURT:

I'm talking about a limit.

Me LECOURE:

... it all depends.

THE COURT:

I am not ... I have said ...

Mr. FABRIKANT:

Dispose of Mr. Fabrikant, this is the best way to do it.

THE COURT:

I have said that I am not prepared on the basis of what has been said, and particularly the latest observation about ...

Me LECOURE:

Then it's the admission ...

THE COURT:

... professor Kachanov ...

Me LECOURE:

... yes, we're totally, absolutely sidetracked, it might be very interesting, but (inaudible) the subject ...

THE COURT:

We're not getting into that. The only question is his interaction with Sankar and the question of Sankar's actions or whatever upon his mind, period. I couldn't

care less about the truth of any of this, or whatever. I ... or the value of any of this, would be a better word, the value of any of this, or the Concave report to the Ministry, save end except in so far as they may relate to what the accused has called, my treatment by Sankar, which was a factor which affected my mind.

Mr. FABRIKANT:

Well, but isn't it important to establish that the treatment was grossly unfair and isn't it important that a specialist in the field would inform jury about it.

THE COURT:

No. Not that a specialist ...

Mr. FABRIKANT:

Why not?

THE COURT:

... in the field informs jury about anything.

Mr. FABRIKANT:

Why not?

THE COURT:

Because we're too far from ... we're too far from the question we're dealing with.

Mr. FABRIKANT:

How do you define what is far and what is not far?

THE COURT:

I have to define what is relevant and what is not relevant, and unfortunately it's not easy ...

Mr. FABRIKANT:

So ...

THE COURT:

... i.e. to evolve one formula that applies every circumstances. I can't evolve one formula that applies in every circumstances.

Mr. FABRIKANT:

So, the jury is not entitled to know whether I, in my perception, that I was mistreated, was right or wrong?

THE COURT:

The jury is not entitled to have that decision made for them by anyone else, in fact, the jury is not required to make that decision. The jury is required to know whether you perceive that.

Mr. FABRIKANT:

Well, it doesn't matter at all from the point of view of criminal responsibility, whether my perception was correct or incorrect. There is no way you can justify that kind of statement. When a person is mistreated, you wouldn't say that Lavall, e for exemple, would be acquitted irregardless whether her husband really beat her up or she thought he beat her up.

THE COURT:

Listen, I'm not getting into Lavall, e, I've told you.

Mr. FABRIKANT:

No, no, I'm just giving en exemple ...

THE COURT:

The extension of Lavall, e isn't going to happen.

Mr. FABRIKANT:

Isn't it important to establish that my perception was correct indeed? This is extremely important part.

Because, if I was really mistreated, this one thing, if I'm delusional, and perceive that I was mistreated, this is different story. Because in one case, we are heading for, say, automatism, in another case we are heading to

Pinel. Right?

THE COURT:

Listen, these are your words ...

Mr. FABRIKANT:

This is the difference.

THE COURT:

... I didn't use the word ... word of automatism, that's for sure, and you thus far haven't used the word Pinel. If you're now using the word Pinel, then ...

Mr. FABRIKANT:

I'm not using anything, I'm giving you examples that it is important to establish truth of the facts of fraud, and extortion and mistreatment. It is important to establish that it was not just in my head, this is important, and if you disallow me to establish it, you just don't allow me (inaudible).

THE COURT:

Well, you are not going to ... you're certainly not going to establish it through the opinion of a bunch of learned gentlemen, that's for sure.

Mr. FABRIKANT:

Why? How else it could be established ...

THE COURT:

I ... it will have to be ...

Mr. FABRIKANT:

... if not through expert opinion.

THE COURT:

... apparent from facts. It will have to be ...

Mr. FABRIKANT:

We are not specialists in mechanical engineering, they should be ...

THE COURT:

We are not getting into the intricacies of mechanical engineering, in order to have a bottom line whereby professor X, professor Y, or professor Z issues an opinion as to whether you were badly treated or not. That isn't evidence.

Mr. FABRIKANT:

Well, it is evidence.

THE COURT:

It is not evidence.

Me LECOURS:

The only people that could establish that the accused was badly or not treated is the jury.

Mr. FABRIKANT:

Well, how jury can make ...

THE COURT:

The jury may have that perception in the end, I don't know.

Mr. FABRIKANT:

How jury can make ...

Me LECOURS:

It might not even be relevant.

Mr. FABRIKANT:

How jury can make their judgement if for exemple Osman comes here and says that I was a bad teacher.

How you ...

THE COURT:

It is done ... it is done everyday. The jury ...

Mr. FABRIKANT:

Howth jury would able to establish if I cannot ...

THE COURT:

The same way that they would decide whether you're telling truth or whether you're not telling the truth. They'll look at Osman and say Osman, to themselves, Osman you're not telling the truth, Osman you're playing with the truth, Osman you're lying or you're lying on this point and you may be telling the truth on that point, that's what they're here for. They're here to appreciate it, we're not going through ...

Mr. FABRIKANT:

But, I ...

THE COURT:

... we're not going through a demonstration ...

Mr. FABRIKANT:

... unless I present ...

THE COURT:

... on the truth ...

Mr. FABRIKANT:

... qualified people ...

THE COURT:

... on a question that requires people's perception.

Mr. FABRIKANT:

People are not specialists. This is why (inaudible).

THE COURT:

Well, I'm sorry, you're not going to have that kind of trial. I'm not going to do ... I'm not going to get into that. I'm not to get into evidence from experts as to whether they believe that you were well treated, badly treated, abused, disabused or anything else.

Mr. FABRIKANT:

No, this not ... you ...

THE COURT:

You're going ... you're going to have to call your witnesses, one by one, and ...

Mr. FABRIKANT:

You're misquoting me completely. All what experts will be asked, is not whether I was mistreated or not mistreated, all the experts will be asked is to give their professional opinion on certain professional documents, period. Jury will decide to trust this expert, not to trust this expert, but experts are testifying as to value of certain technical material.

THE COURT:

That is ...

Mr. FABRIKANT:

And this is what experts are for.

THE COURT:

... that is far too broad a proposition for me to assent to in any sense of the word. I'm not telling you you can't ...

Mr. FABRIKANT:

(inaudible) you do not allow me the experts then.

THE COURT:

... I'm not telling you you can't ... I'm saying, I can't ... I'm not going to say that you can't call experts, but it's going to depend upon what you wish to ask the experts as to whether it is deemed relevant or not.

Mr. FABRIKANT:

Well, maybe you ... maybe you'll tell in advance what am I allowed to ask those experts.

THE COURT:

I'm not ... I'm only here to decide step by step, and it's hard enough that way, as we go along, what is relevant and what is not. That's what I'm here for ...

Mr. FABRIKANT:

Anyway, so you ...

THE COURT:

... and that's what I'm gonna do.

Mr. FABRIKANT:

... you deny me effectively material which I could have shown to the experts and you just denied me this possibility.

THE COURT:

I'm not going to permit on the strength of what you said, Sankar to produce this raft of material at this point in time. If you wish to call Sankar, whether it becomes relevant along the way or whether it doesn't, is another question.

Mr. FABRIKANT:

Well, and you would not allow expert to examine those documents.

THE COURT:

Listen, if you have these documents, I can't ... I have absolutely no control over who examines them or not.

Mr. FABRIKANT:

I don't. This is why I need Court assistance to have those documents and to allow experts to examine them. This is the problem.

THE COURT:

Well, I'm sorry you haven't convince me that that would lead to any evidence, that is admissible in your defense. That's for sure.

Mr. FABRIKANT:

Well, let me explain you what ... how it will be admissible. It is expert analysis for exemple, that ... I'm just giving you exemple, that grant application of Sankar, for exemple, or Osman, were written in such a way that one (1) copies the other three (3) years later, and this means that he during three (3) years didn't do any work and applied for another grant on the same basis without any changes. So, this amounts to criminal activities. Now, where does it stand in my case. Very simple, this will explain that Osman knew that I knew that, and this is why he mistreated me, he tried to intimidate me into silence, because he knew that there is a lot things which might be discovered of his inappropriate activity. Now, unless (inaudible) I establish that there was inappropriate activity, all my argument to the jury, that I was mistreated by, say Osman, because he knew that knew about his activity, would have no real basis. So, effectively, you just smashing foundation of my defense. And that's all what you are doing.

THE COURT:

I'm certainly not smashing the foundations of your defense, there are ... there are number of ways for you to attempt to show what you want to show, but I tell you, I'm certainly not going to ... to take as a start point that experts come here and deliver their opinion as to whether there was fraud and criminal activity on the basis of a number of government documents. And where that leads us is into an absolutely impossible morass of whether, let's

take your example, Osman was or was not justified, and it leads us down all sorts of side alleys which we're not going to take.

Mr. FABRIKANT:

What kind of side alleys, I do not understand ...

THE COURT:

I'm not ... I'm not ...

Mr. FABRIKANT:

... what you're talking about.

THE COURT:

... I'm not gonna argue with you. I'm not gonna argue with you.

Mr. FABRIKANT:

So, I cannot even co...

THE COURT:

You and I could stay here for twenty-four (24) hours and we will be no further ahead.

Mr. FABRIKANT:

No, no, one second ... just explain me one (1) thing. I cannot call Osman either? Because you before made such a decision, and you go back on your own decision.

THE COURT:

That's right. I go back on my own decision, when I have the kind of information that I now have in front of me.

Mr. FABRIKANT:

Well, about Osman you don't have anything.

Me LECOURS:

No, you just said ... he wants to do Sankar's trial, Osman's trial, we're not here for that.

THE COURT:

We're here for that. So, you'll have to call your witnesses and we'll see what documents become relevant. That's the way this is got to go.

Mr. FABRIKANT:

Well, I don't have then any witnesses to call.

THE COURT:

You were ...

Mr. FABRIKANT:

Close ... close my defense ...

THE COURT:

(inaudible) witnesses to call.

Mr. FABRIKANT:

... and let us finish with it.

THE COURT:

We'll adjourn for fifteen (15) minutes.

Me LECOURS:

You're gonna call Osman and Sankar, they're both here.

Mr. FABRIKANT:

No.

Me LECOURS:

You don't want to call them.

SUSPENSION

REPRISE

Me FREEDMAN:

My Lord, if I may address the Court.

THE COURT:

Yes, Mr. Freedman.

Me FREEDMAN:

On the issue of Concordia witnesses, I just wanted to clarify that since Mr. Fabrikant has indicated to me that

he does not wish to call doctor Osman and doctor Sankar at the present time, that they are released from their subpoenas.

Mr. FABRIKANT:

Not that I do not wish, it is that judge all of a sudden, changed his mind. I wish he'd stick at least to his previous decisions. This is the problem.

THE COURT:

Who are the next witness Mr. Fabrikant proposes to call?

Me BELLEAU:

Mr. Fabrikant indicated to me at the break, that it was Mr. Haines, who I called at eleven twenty-three (11:23), and he should be here momentarily.

THE COURT:

I see, okay.

Mr. FABRIKANT:

Because we had to change all the plans, it's totally, totally ruined the whole day what I planned to do today.

THE COURT:

So, I think we may as well adjourn until Mr. Haines is here, and then we'll resume with Mr. Haines and on we'll go.

Me FREEDMAN:

If I may, My Lord, there's ...

THE COURT:

Certainly.

Me FREEDMAN:

I still have ... I have firstly, are doctor Osman, doctor Sankar released from their subpoenas?

THE COURT:

What do you mean by release, Mr. Freedman, because I don't know, you know.

Me FREEDMAN:

In a sense that, if that they would require a further subpoena, that they're not on standby as you indicated like ordinary witnesses would be.

THE COURT:

Well, he would need to know whether one or the other is planning on taking a plane.

Me FREEDMAN:

There is one, doctor Sankar indicated to me that he is away, he's gonna give me the exact date later this afternoon, but I believe from the first (1st) week in July until the middle of August.

THE COURT:

Okay. Well, let's leave the situation until you have the coordinates of both doctor Sankar and doctor Osman ...

Me FREEDMAN:

Perfect.

THE COURT:

... before ... before they're released from their subpoenas. So that, we don't run into a problem of them not being available when ...

Me FREEDMAN:

Okay. Along the same lines, another witness, because I have seven (7) people who are still under subpoena from last week, Mrs. Nancy Torbut(?) who was subpoenaed last Wednesday I believe, she will be away on a conference for next week, that's June thirteenth (13th) to June twentieth (20th), and then her yearly vacation is planned for the

month of July, so there is a window of one (1) week, the last week in June, when she will be here. Of course, she's available this week.

THE COURT:

You've given this information to Mr. Fabrikant, have you?

Mr. FABRIKANT:

Well, maybe you just make it in writing and I will try to accomodate them. I will try to do my best, because I do not really ...

Me FREEDMAN:

I can certainly put it in writing.

Mr. FABRIKANT:

... remember who is ...

Me FREEDMAN:

So I understand, therefore that if no decision has been made by Mr. Fabrikant, then Mrs Torbut(?) must remain in the city available.

THE COURT:

Well, (?), she's going to conference next week?

Me FREEDMAN:

Yes, she's leaving Saturday, this Saturday to the following Saturday, then she'll be back for one (1) week, and then she has her family vacation planned for the month of July. So, there is one (1) week.

THE COURT:

Okay. There's one (1) week. Let us leave it until the end of the day.

Me FREEDMAN:

Perfect.

THE COURT:

And, we'll ... we'll see if we can address the question at the end of the day.

Me FREEDMAN:

Perfect. I just (inaudible) momentarily hop in a taxi when I called.

THE COURT:

Righto, fine. Thank you.

Me FREEDMAN:

Thank you.

THE COURT:

So, we'll adjourn for a few minutes, until Mr. Haines is here.

SUSPENSION

REPRISE

IN THE YEAR NINETEEN HUNDRED NINETY-THREE (1993)
this ninth (9th) day in the month of June,

PERSONALLY CAME AND APPEARED:

BRENDON HAINES

born on the 20th of September 1941, senior planning coordinator, Concordia University,

WHO, after being duly sworn, doth, deposes and says as follows,

EXAMINED BY Mr. VALERY FABRIKANT

Representing himself:

THE COURT:

Can you speak up a bit, please, Mr. Haines so that everybody can hear you and so that it goes on to the record.

Mr. FABRIKANT:

Q. Have you brought the file with you Mr. Haines?

A. Yes, doctor Fabrikant, I have.

Q. Okay. May I take a look at it?

THE COURT:

I have no idea what you to take a look at, for the minute. I have no idea what the subpoena covers or what it says, or what ...

Mr. FABRIKANT:

Well, it is the same as with Mackenzie. Exactly the same.

THE COURT:

It is exactly the same files with doctor Mackenzie. Fine.

Mr. FABRIKANT:

More or less. So, may I take a look at it?

THE COURT:

Surely. Senior planning coordinator.

THE WITNESS:

I have a copy that I kept, I made it from the entire file, My Lord, and I will give the originals to doctor Fabrikant.

THE COURT:

Yes, if you wish and keep the copy for yourself, for the moment.

THE WITNESS:

Thank you.

THE COURT:

Mr. Haines, if that's notes you just took out of your briefcase, put the notes away for the time being.

THE WITNESS:

Yes, Sir.

THE COURT:

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You can sit down for the moment.

Mr. FABRIKANT:

Q. At first reading, there seems to be nothing at all concerning meetings in November of ninety-one (91), is that correct?

A. Yes.

Q. Could you explain me why?

A. I did not take notes for those meetings in November or the fall of ninety-one (91).

Q. Isn't it ... how is it possible to explain that you took such scrupulous notes of every meetings, for exemple, February seventh (7th), ten thirty A.M. (10:30), Fabrikant, avenues(?), peaceful avenues(?), scientific ... something, anyway, any minute detail was written of each meeting. Now you, on meeting with departmental members, discussed I guess possibility of violence, and you didn't find it necessary to write a single solitary note on that.

Would you care to explain?

THE COURT:

Q. Do you understand the question?

A. Why I did not take notes in November or the fall of ninety-one (91)? I had not actually agreed to become involved in the fall of nineteen ninety-one (1991). I was called by the department to facilitate and to help out. I did not commit myself to do so. I decided that maybe I should check-in with other people in the university, specifically the group that is call the intervention team. And, I telephoned Nancy Torbut to ask her if this was in her area of competence, and whether she was interested in becoming involved. She consulted with the other members of the intervention team, and reported back to me, yes, this was in her area of competence and she was willing to see if they could be useful in the situation. I then reported that back to department of mechanical engineering and I agreed to arrange a meeting with the members or some members of that department and the intervention team, to introduce them to then ... for the intervention team then to take over. Therefore, I did not take any notes of that period. Because I did not see myself involved, other than to introduce the intervention team to the department of mechanical engineering.

Mr. FABRIKANT:

Q. So, everyone was under impression that you were the one who called the meeting, therefore, it is natural to assume that since you were the one who called the meeting to introduce one to the other, that you would keep at least some kind of appearance of the record there as to what was there.

Me LECOURS:

This is cross-examination, My Lord.

THE COURT:

Yes, I wish you wouldn't embark on cross-examination of the witness. The witness has told you, I didn't take notes, he's told you why he didn'y take notes. There you are, you have your answers.

Mr. FABRIKANT:

Q. Okay. Could you then state me what was at that time, your position, what were your duties at the university?

A. One (1) of the duties that I had, at the time, that I ... in which I was involved, was to act as a third (3rd) party consultant in helping parties within the university to resolve conflict.

Q. What is your background with respect to conflict resolution?
A. My education?
Q. Well, whatever you call it.
A. I have taken many courses in how to resolve conflict, I have studied the material, the library, I've read books on the articles ... on the material, and I have also taken courses in Toronto and elsewhere on how to resolve conflict. And thirdly, I've had a colleague at Concordia University, who is a faculty member, professor in management, who has helped me over the years in training me in conflict resolution.

Q. Okay. But, what is basic education?
A. I studied English ... studied music and grammar in London, England, in the early sixties. I then studied in Concordia ... at Sir George William University in a B.A. in English, and also I have teacher's diploma, teaching ... from ... the degree has been awarded from the University of Montreal. And also I have a master's in counselling psychology.

Q. And your master was from which university?
A. From the Alfred Adler Institute of Chicago.

Q. Now, there are two (2) options, there is a lot of material here which I would like to take a look, but to save the Court time, if I will be allowed to take this file during the break, so that I could take a look, I can pose questions now until the break and be more specific after the break, when I take a deeper look at the file.

THE COURT:
Pose your questions for the moment.

Mr. FABRIKANT:

Q. Okay. So, when and under what circumstances we met first, what was this meeting about if you recall?
A. May I refer to my notes, My Lord?
THE COURT:
Q. What notes are you talking about?
A. I have handwritten notes of the ... I think it is the first (1st) meeting with ... which I had with doctor Fabrikant.

Q. When were these notes made, Mr. Haines?
A. At the time.
Q. At the time.
A. Yes.

Q. Okay. You may refer to your notes.
A. Thank you. Maybe the day after, but at the time. When I met with you, doctor Fabrikant, you told me that everyone ...

Q. Excuse me, when was this Mr. Haines?
A. I don't have an exact date on the document, and I would imagine it's either late January nineteen eighty-nine (1989) or early February nineteen eighty-nine (1989).

Mr. FABRIKANT:

Q. To make sure that we are looking at the same thing, you have in your hands what?
A. Number 4, in the top right hand corner.
Q. Okay, yes. Alright. And, according to this note, what the conversation was about?
A. If I can remember, all the notes accurately, I hope I can. Doctor Fabrikant told me that everyone in his unit, or in the faculty, had received early promotion. Doctor Fabrikant had been teaching at Concordia University since nineteen eighty-one (1981), and he had a degree in nineteen sixty-six (1966), a Ph.D. degree I believe, and I think that meant he is one (1) of the oldest members in the department, in terms of number of years of teaching and scholarship. Although, I'm not sure

about that. In nineteen eighty-one (1981), several teaching evaluations were made available, doctor Fabrikant said the behavior, I think of the DPC, Department Personnel Committee, was not dishonorable, but stupid. He then showed me a letter dated the twenty-third (23rd) of December, and he had something in there about starting classes. I think the letter may have been from Francis White, but I don't know. He told me about other people in the department, professor Sankar, who was ... there were two (2) professors Sankar, one (1) older and one (1) younger. One's name was Tom, and the other Shadre, I think, start with S anyway, who was the director of the Concave, and he was the younger one. Doctor Fabrikant also told me that doctor Hoa, was on the Department Personnel Committee, and doctor Osman, and I think he told me that doctor Hoa was rapist. He also mentioned doctor Sankar, and professor Sein(?), and I think he told me that professor Sein(?) was afraid.

Q. Afraid of what?

A. All I have here, is afraid. I assume that he was afraid of you, but I'm not sure.

Q. If I can refresh your memory, that I told you that I spoke with professor Ling(?), and I told him about the situation and he asked me: and what chairman thinks about it. So, he was so afraid of chairman that he couldn't even express his opinion.

Me LECOURS:

The accused is testifying, My Lord.

THE COURT:

Yes, the accused is testifying.

Mr. FABRIKANT:

I'm trying to refresh his memory, maybe that was the case.

THE WITNESS:

I don't remember.

Mr. FABRIKANT:

Q. Well, could that be what I said?

THE COURT:

Well, he said I don't remember. He answered.

Mr. FABRIKANT:

Q. So, I told you that Ling(?) was afraid of me?

A. All I have here in my notes, is afraid. Of what, I'm not sure. Shall I continue?

Q. Sure.

A. Doctor Fabrikant told me that the members of his department wanted him out. That doctor Fabrikant had gone to the dean, and told him about an (inaudible) american, and that means to me that in America, when people don't get their way, they do things like this, and indicating, shooting.

Q. And that's what I told you?

A. That's what you told me.

Q. That I went to the dean and told like this, shooting. That's what I told you.

A. All I can tell you is what's in the notes. You went to the dean and told him about what goes on in America when they have problems.

THE COURT:

Q. Excuse me. Let's not misunderstand ...

A. Yes.

Q. ... about the notes.

A. Okay, Sir.

Q. You may use the notes, Mr. Haines, to refresh your memory.

A. Yes.

Q. Okay. Now, if the notes refresh your memory, that's fine.

A. Good.

Q. To some extent your questioner may refresh your memory by asking you whether you remember anything else. It's not testimony coming from him, but it's an attempt to refresh your memory. But, if the notes don't refresh your memory, then that's the end of it. If they do, then ...

A. Good.

Q. ... you may say what they mean.

A. Well, then I'd like to answer that question clearly then.

Q. Alright.

A. I do not remember doctor Fabrikant saying to me that he went to the dean, and told the dean that in America they shoot people. I do not remember that.

Mr. FABRIKANT:

Q. That's nice.

A. I do not remember him saying that to me.

Q. That's nice change. Okay. But ...

THE COURT:

Look, how many times ... leave the comments alone. I'm sorry, but I'm not going to put up with it.

Mr. FABRIKANT:

Q. Okay. So, if ... if this ...

Me LECOURS:

I think it's past recollection recorded, My Lord. It's like taking a licence number. You don't recall it now, but if it's in your notes, it's past recollection recorded.

THE COURT:

Yes.

Me LECOURS:

I guess he can testify about that.

THE COURT:

He can testify if he remembers, but he doesn't know the significance of the word, then ...

Me LECOURS:

Well, he might know if it's past recollection recorded.

THE COURT:

He says he does not know the significance of the word.

Me LECOURS:

Well, but he said, it's in my notes and I must have recollected that when I wrote it.

THE COURT:

Go ahead.

Mr. FABRIKANT:

Q. So, but ... okay. Let us stop for a moment at this particular point. At first (1st), you said that I went to the dean and told him, bla, bla, bla. Then you said, no, you don't remember whether I told you that. But since the phrase has come out of your mouth, then this phrase ... is this what you wanted to do?

Me LECOURS:

I just said it looks like ...

Mr. FABRIKANT:

So, I'm asking you.

Me LECOURS:

... past recollection recorded. I'm not talking to the accused, My Lord.

Mr. FABRIKANT:

Q. Appreciate, I'm helping you. So, since this phrase came out of your mouth, so somewhere, somehow, you got it from somebody, right?

THE COURT:

Q. Would you answer please, rather than nod, because ...
A. Yes. Yes, I did.
Mr. FABRIKANT:
Q. Or, you invented it yourself.
A. No.
Q. No. Then would you kindly indicate, from who could you possibly hear that?
A. I heard that from you.
Q. So, now you're sure you heard it from me that day.
A. No. Not that day, I am sure that I heard it like another day.
Q. At another day from me.
A. Yes.
Q. Fantastic ... continue. (inaudible), on that day I went to the dean and told about Americans, what was that, you don't know?
A. I don't remember that, no.
Q. Or it could be exactly that day that I went to the dean, because this seems to be a new rumor, that first (1st) I told to Mackenzie I shoot a lot of people now ...
THE COURT:
Listen, would you ... would you just ask your questions and stop cross-examining the witness.
Mr. FABRIKANT:
No, I'm not (inaudible).
THE COURT:
You're not here to cross-examine the witness.
Mr. FABRIKANT:
I'm not cross-examining.
THE COURT:
Well, then, don't editorialize, ask your question.
Mr. FABRIKANT:
I'm asking questions. You don't want to listen to the question.
THE COURT:
It didn't sound like a question to me, Mr. Fabrikant.
Mr. FABRIKANT:
You don't want to listen to the question. Let me at least finish the question, then you rule it inadmissible, I will change it, that's all. That's arrangement(?).
THE COURT:
I'm making no arrangements with you.
Mr. FABRIKANT:
Well, whatever.
Q. So, at this particular (inaudible), what ... what phrase say here, is: went to dean and told him about American, period. Now, your recollection is what? Say it again. What did I tell you to the best of your recollection?
A. I do not know what that statement means.
Q. Well, witness is constantly ...
A. I can't remember.
Q. ... changing his answers. This is unacceptable.
A. I can't remember.
Q. But just before that, he said that yes, he remembers, this is what I told him on that day.
Me LECOURS:
No, that's not what he said.
THE COURT:
That's not what the witness said.
Me LECOURS:
If it's in my notes, it might well be that.
Mr. FABRIKANT:
Can we play the ... the ...

THE COURT:

Sure, if you insist we'll play the last ... from twelve zero five (12:05) ... zero three (:03) to twelve zero two (12:02)

...

LA GREFFIERE:

Mr. Fabrikant started at (inaudible).

THE COURT:

I'm sorry, it's about twenty-four (:24), so from ...

LA GREFFIERE:

Twelve zero eight (12:08).

Mr. FABRIKANT:

Twelve fifteen (12:50).

THE COURT:

Pardon?

LA GREFFIERE:

He started at twelve zero eight (12:08).

THE COURT:

No, we'll start at ...

Mr. FABRIKANT:

Twelve fifteen (12:15).

THE COURT:

... twelve ... start at twelve nineteen (12:19), eighteen (:18), nineteen (:19).

Me LECOURS:

By ... My Lord, by the time the reel is ready, I think it will twelve thirty (12:30), shall we do that at two fifteen (14:15)?

THE COURT:

Yes, I suppose that would be a better idea rather than continue on.

Mr. FABRIKANT:

Alright, I can continue now, and we play ...

THE COURT:

Fine, okay.

Mr. FABRIKANT:

... it later.

THE COURT:

If you have other questions you can put for the next two (2) minutes.

Mr. FABRIKANT:

Q. I just want to use time as much as we can. So, you said what you said. Go on, TS and after that, what?

A. The next issue that you raised at the meeting was, that Ton Sankar was a member of the administration, and consequently, he requested that you quote him, his name, as an author on your papers.

Q. Yes, continue.

A. Then you told ... I have here, objective of the Center is fundamental research. I have here, offer to do service. I think that meant, you offered to do service. I'm sorry, My Lord, I don't know what it means.

THE COURT:

Q. Well, be careful ...

A. Yes.

Q. ... because there's no point ...

A. Yes, I understand.

Q. ... putting a meaning to it, if you don't know what it says. Please don't speculate, if you know what it says, fine.

A. Doctor Fabrikant also told me that Tom Sankar who told him that the position that he held would be eliminated in about a (1) year ... about a (1) year ago, previously. There are

other remarks here, My Lord, that I do not understand. Do I state them?

Mr. FABRIKANT:

Can I ... can I ... because before I was allowed to try to refresh witness memory about the meeting.

THE COURT:

Yes, you can ... yes, you can refresh the witness' memory, had been clearly understood that this is not evidence of ... it's not evidence out of Mr. Fabrikant's mouth, there are rather an attempt to refresh the witness' memory. You can do that.

Mr. FABRIKANT:

Q. Let us go up to TS. Probably I told you that when he was the chairman, then at that time, he forced me, I was forced to include his name as co-author in the article, because at the I spoke with you, TS Sankar was no longer administrator, correct?

A. I don't remember.

Q. Did the objective of the Center Fundamental Research, probably if you recall, I just showed you that in one (1) of the official documents it stated that Research Center has two (2) objectives, fundamental research and applied, and I told you that fundamental is the part which I was doing.

A. I don't remember.

Q. Also, note TS for the next, told me that my position will be eliminated about a (1) year ago, if you recall, I told you that when I stopped including them as co-authors in my papers, then Sheshadre Sankar told me that within one (1) year, my position will be eliminated and I will be out.

A. I remember you telling me that, My Lord.

Q. Ah okay, good, there's something he's remembered. Hugh McQueen, I just continue the story and I told you that, at that time, when Sheshadre Sankar tried to have me out of the university, because I refused to include his name in my papers, I spoke to Hugh McQueen and he ... I asked him to help me somehow in the situation to, because he was senior professor, and I asked him whether he could intervene and help me. And instead, I told you, he just started stuttering, ba, ba, ba, ba, like that, he couldn't even pronounce a word, so scared he was when I told him ...

THE COURT:

This is not the way to refresh a witness' memory.

Mr. FABRIKANT:

Well, what is the way. Here's a (inaudible).

THE COURT:

Does it help you recall if I mention the name of Hugh McQueen, do you remember anything? And have him tell us. But you simply stating what your version of events is, is not refreshing a witness' memory.

Me LECOURS:

He will relate all the meetings he got in the four (4) years, My Lord, the way it works now.

Mr. FABRIKANT:

Well, this is what I did before and I was allowed to ... to ...

THE COURT:

Ah, don't cite me that, please.

Mr. FABRIKANT:

Well, what is the difference of what I said now, with my attempt to refresh his memory ...

THE COURT:

Did you hear what I said? That's not the way to refresh his

memory. Relating your side of the conversation, I ... I suggested how you might do it. Now, if you don't want to take that suggestion, ask another question.

Mr. FABRIKANT:

(inaudible) I have to go step by step then.

Q. Do you recall that after I told you about attempt to have me fired, did you remember that I mentioned the name of McQueen?

A. Yes, Your Honor.

Q. And did I ... maybe you recall that I mentioned him in relation to this previous statement about attempt to have me fired?

A. I do not remember.

Q. Well, and that I asked him to help me somehow?

A. I do not remember.

Q. Now, after that do you recall anything of the rest, vertical dynamics, why didn't Sankar respond?

A. Not those to?

Q. Yes.

A. No.

Q. Department of mathematics?

A. Yes.

Q. So, what about department of mathematics?

A. I remember you suggested that there was a possible alternative to solving the problem, in that you'd be transferred to the department of mathematics, as a way of possibly resolving the problem.

Q. Alright. That was the end of the meeting?

A. That's all I have recorded, My Lord. That's all I remember.

Q. Okay. What was ... any result of this meeting? Was there any result of that meeting?

A. The next step was for me to also meet with Tom Sankar, doctor S... Sankar, Andy Swamy, and doctor Osman.

Q. Okay.

THE COURT:

Okay. Well, we will stop there until two fifteen (14:15).

SUSPENSION

REPRISE

Mr. FABRIKANT:

Well, it is clear and unequivocal, first (1st) he said: yes, this is what you told me. Then, the same clear and the same unequivocal, I do not remember that.

THE COURT:

It is, it is clear.

Mr. FABRIKANT:

Well, it is totally inconsistent.

THE COURT:

Pardon?

Mr. FABRIKANT:

Well, witness in good faith cannot possibly testify that way.

THE COURT:

Well, that's your view.

Mr. FABRIKANT:

Well, that's what section 90...(?) Canada (inaudible) Act says.

THE COURT:

Go on with your examination.

Mr. FABRIKANT:

So, my application is denied.

THE COURT:

Your application is denied.

Mr. FABRIKANT:

And how we go about his answers, the first (1st) or the second (2nd)? Which one counts?

THE COURT:

Well, I think what counts is that Mr. Haines was asked not to interpret his notes, unless he was able to interpret his notes, and he said, no. Then, I'm not able to interpret my notes, I can't remember. And that was his answer and that's what I take to be his answer. The distinction between what the Crown prosecutor underlined, is ... the licence number is an excellent exemple.

Mr. FABRIKANT:

Well, I didn't understand that exemple ...

THE COURT:

Well, if you didn't understand that, reflect on it ...

Mr. FABRIKANT:

(inaudible) will have to explain it to me.

THE COURT:

... and perhaps you'll come to an understanding, it's not very difficult.

Mr. FABRIKANT:

Well, alright. While witness is there, and I'm still allowed to question him, I would like just to file this exhibit, I'll explain why. I'm filing it because the previous exhibit which was filed with doctor ... oh, it was not filed. Or was it filed? With doctor Mackenzie, I think we filed a couple of sheets of paper, did we? Yes. And in that particular exhibit, it says: Fabrikant has seen me as mediator. And, I have here, handwritten draft of the same thing. It says: Fabrikant, Osman had seen me ... had been seing me as mediator. So, I think it would be interesting for the jury to see the dynamic, how the draft was and how it finally ended up.

Me LECOURS:

It should be presented to the witness first (1st), My Lord.

THE COURT:

Present it to the witness and see if the witness identifies it.

Mr. FABRIKANT:

Well ...

THE COURT:

Q. What are the notes, Mr. Haines?

A. The notes are the meeting that I had with professor Mackenzie and myself in Bishop's Court, they're undated, but they were three thirty (3:30) to four fifteen (4:15), and that would have been in ... this is in the first (1st) file, is it?

Mr. FABRIKANT:

Q. It is in A, yes.

A. Yes. So, that would have been the later at nineteen eighty-nine (1989).

THE COURT:

Go ahead, if you've some questions to ask the witness on those notes, ask them.

Mr. FABRIKANT:

Q. Well, effectively, maybe it is interesting just to read it to the jury, because it clearly indicates the kind of comedy they agreed to play with me. That, Miss Mackenzie will send him a tough note, and he will let me see that note. They were treating like a child. Is it possible to read it to the jury? Because it's a little bit different and more explicit.

Me LECOURS:

First (1st) we have to know what it is. Is it a draft from ... do we have the document or ...

THE COURT:

I ... I located it in terms of time, for him, I'm waiting for him to identify what it is. To ask the witness what it is and what it represents, and what it contains.

Mr. FABRIKANT:

Well, I suggested to be read, because ...

THE COURT:

No, no, no, let's establish what the thing is first of all.

Mr. FABRIKANT:

Well, can it be read?

THE COURT:

You go to establishing what it is.

Mr. FABRIKANT:

Well he already established what it is.

THE COURT:

In what circumstances he prepared it, what it covers, what ...

Mr. FABRIKANT:

Well ...

THE COURT:

If it represents what was discuss at the meeting, I don't know, I wasn't there.

Mr. FABRIKANT:

Well, I don't know if any questions in this is just a waste of time. It is ... document speaks for itself.

THE COURT:

You may be able to say that the document speaks for itself, and you may be right, but you're going to have to locate the document, it's been located for you in terms of time, he said a meeting with Mackenzie in Bishop's Court in the winter of nineteen eighty-nine (1989). Now, you better establish what the background of that meeting was, what the purpose of the meeting was before you get to the question on how to release the notes you made of that meeting.

Mr. FABRIKANT:

I don't know why is it necessary. To me it is not necessary. If you force me to do it, I can do it, but ...

THE COURT:

Would you please, do it?

Mr. FABRIKANT:

Sure, but the questions ... you the right to ask questions yourself.

THE COURT:

Would you ... would you please establish what it is?

Mr. FABRIKANT:

Well, he already answered that question, what it is. You want me to ask again, okay.

Q. So, could you establish what it is?

A. The notes, My Lord, are my recollection soon after that meeting of what we, doctor Mackenzie and myself talked about.

Q. Okay. And, what else you wanted me to establish? What ... what was the purpose of the meeting? Yes, what was the purpose of that meeting?

A. Let me try to remember accurately what the purpose of the meeting was. I had distinguished in my job and in my role the difference between being a facilitator and a mediator. And, a facilitator played the role of getting the parties together to resolve the issues themselves. A mediator role, that I separate ... defined, was one who would go back and forth trying to find a solution and maybe come out with a solution.

As a facilitator, I didn't see that as my role. I saw my role as someone who would get the parties together and facilitate interaction to resolve ... to get them to find ... define what the problem is or was and to find the solutions, so that both ... all parties concerned came out with a win-win situation.

Q. Now, could you explain why in the draft it is written that: Fabrikant and Osman stopped seeing me as mediator. And in the final, typed version, Osman is no longer there, just Fabrikant bad boy?

THE COURT:

Would you show Mr. Haines the ... the final copy? Would you refer him to the final copy, so that he can reconcile the two (2)?

Mr. FABRIKANT:

I think he recall the final copy ...

THE COURT:

I don't care whether he recalled it or not. Put in front of the witness the two (2) pieces of paper.

Mr. FABRIKANT:

Well, just I think we could demonstrate it. It is filed.

THE COURT:

Take cognizance of that quietly and then wait for the question.

Mr. FABRIKANT:

Well, I think it should be the same number, it should not be different numbers.

THE COURT:

Would you please mind your own business, the clerk was telling for my purposes what the number of that document was. You've taken cognizance of the second (2nd) one, now put your question.

Mr. FABRIKANT:

Q. Well, why the final version is different from the draft, that Osman is no longer there?

A. This is not a document, this first (1st) document is not a draft for the purposes of this letter. This document here, is a record of my recollection of what happens, so that I would have a record. The purpose of this letter was different. This was a result of the conversation with doctor Mackenzie. This was a summary that I put in writing of the meeting ... of the meeting, and that I (inaudible) confirm with doctor Mackenzie.

Q. Okay. Could you read the phra... the relevant phrase of some of the documents, the relevant phrase from your ... what I call draft, and would you agree that the only difference is that the name Osman is deleted, at least in ...

THE COURT:

He doesn't need to agree, just have him read the two (2).

THE WITNESS:

In the document that are my own notes, there's two (2) paragraphs, do I start from the beginning, My Lord? We agreed that Mackenzie will send me a tough note, remembering that doctor Fabrikant will read it. His request will not be answered and if he wants an investigation, he should contact the code administrator. The purpose of her tough note is to discourage doctor Fabrikant from continually giving me orders and me being caught in the middle. Both doctor Fabrikant and doctor Osman had been using me as mediator. I told both of them, at the beginning, that I do this reluctantly and for a short time, to help out in this difficult situation. Last week, at a meeting with Osman, Swamy, Mackenzie and myself, it

was agreed that I not continue in this role. The purpose of doctor Mackenzie's letter is to give notice to doctor Fabrikant that my previous role has a negotiator has terminated, and I'm a facilitator only. This I had done with doctor Fabrikant in the past, but he fails to accept that role of mine. This memo from Mackenzie will now give me support to indicate to doctor Fabrikant, that I must accept these directives.

Mr. FABRIKANT:

Can I consider this as answer to my question, why the name of Osman is no longer there?

THE COURT:

No, not yet. Not yet, he's read ... he's read his memo. Now, you want to refer to the letter, the note you produced, which originated I think from doctor Mackenzie, did it not?

THE WITNESS:

No, I sent that to doctor ...

THE COURT:

Q. Oh, you sent that to doctor Mackenzie ...

A. Yes.

Q. ... okay, fine.

A. And, the question is My Lord?

Mr. FABRIKANT:

Q. Well, the question is, in this draft, both Fabrikant and Osman. In the letter it is only Fabrikant, would you like to explain?

A. I was working to change the arrangement that I had with doctor Fabrikant. I was not working to change the arrangement that I had with doctor Osman. My concern was to stop playing that role with doctor Fabrikant. And therefore, the letter only indicate doctor Fabrikant's name. I had not expected to continue that role with doctor Osman and I did not experience ... well, that's all I can say. Thank you.

Q. Did doctor Osman receive the same letter?

A. No, I did not send a letter to doctor Osman.

Q. Well, then the question is, if both Fabrikant and Osan used you as a mediator, why did you play this comedy with Fabrikant only?

A. My Lord, I think the question is, why did I not send a letter to doctor Osman?

Q. No, why it was sent to Fabrikant only?

A. Because I had no problems with doctor Osman. Doctor Osman accepted the refusal for me to play that role and heard me and did not push, and continually try to convince me to play that role. He stopped.

Q. Alright. So, can we file it now.

THE COURT:

Yes, and you can file it.

Mr. FABRIKANT:

Good.

THE COURT:

But now it's filed with the proper explanation of the letter in the proper context.

LA GREFFIERE:

D-11.

THE COURT:

D-11.

PIECE D-11: Memo (Mackenzie-Haines)

Mr. FABRIKANT:

Can we consider it the same number, because it is version of the ...

THE COURT:

D-11.

Mr. FABRIKANT:

Alright.

Q. Now, I refer you to what is in your file B, page number 6.

A. Yes.

Q. Do I understand that this is note from some of the meetings you've had with me?

A. Is this the title of which is called, meeting with John Bronton and Michel Gamache? You said number 6, doc file number B.

Q. It's dated February seventh (7th) eighty-nine (89).

A. Oh, that's in file A, I believe.

Q. Well, we've made this file B.

A. This is document dated February the seventh (7th) nineteen eighty-nine (1989), ten thirty A.M. (10:30)?

Q. Hum, hum.

A. Yes, I have that in front of me.

Q. It was meeting between who and who?

A. This is a record of a meeting, the notes were taken soon after or during the meeting. It was between myself and doctor Fabrikant.

THE COURT:

Q. Sorry, the date of that, is what?

A. February the seventh (7th) nineteen eighty-nine (1989), ten thirty A.M. (10:30).

Mr. FABRIKANT:

Q. Could it be that doctor Mackenzie was present to?

A. Not at this particular meeting. No.

Q. You're sure about that?

A. Yes.

Q. If doctor Mackenzie was present, would that be noted there?

THE COURT:

You're now cross-examining the witness. The witness said, doctor Mackenzie was not present. Are you sure about that: yes. End. Next question.

Mr. FABRIKANT:

Q. Okay. There is two (2) phrases here which I would like you to explain. Peaceful avenues, am I reading it correct?

A. Yes.

Q. Face saving solution, am I reading it correct?

A. That's correct.

Q. Okay. Now, could you describe what is behind this face saving solution, which I proposed?

A. In the meeting I had with you, on that day, February the seventh (7th), you were telling me that there were two (2) solutions. One (1), a peaceful solution, and within that peaceful solution you said it would also be a face saving solution.

Q. Yes. Yes, what it was?

A. Oh. Then, the notes tell me, and ...

Q. Could you do it from your memory rather.

A. I cannot remember what the face saving solution was, but I do remember the notes that I have written in here, and they do reflect what I think took place in terms of your face saving solution.

Q. Alright. So, what was it?

A. You said that in the coming March, there was a regular routine evaluation of faculty taking place within the university. The normal time for evaluation. You mentioned that you had a graduate student and that he would be presenting his thesis,

it was supposed to have been done with joint supervision with another faculty member, but in the end you were doing it by yourself. This would be material that could be used for your evaluation, along with your teaching record and that would be a way for everyone to save face, if they awarded you what you wanted.

Q. What did I want?

A. I'm not quite sure at the time, there were two (2) possibilities, doctor Fabrikant, one (1) I think was either a promotion or it was a request for a merit increase, it was one (1) of those two (2) or maybe even a third (3rd) thing that you wanted, or that would be effective for this March meeting. I don't know what the Departmental Personnel Committee was deciding at that time, whether it was merit review, promotion or contract renewal.

Q. Well, witness is faking his memory.

THE COURT:

I'm not ... I'm not prepared to say the witness is faking his memory. The witness took certain notes at meeting ...

Mr. FABRIKANT:

Alright.

THE COURT:

... which took place a number of years ago.

Mr. FABRIKANT:

Okay. Let me see if I'm right. Could you ...

THE COURT:

Let's remember, as far as I know the witness wasn't running around with tape recorder stashed(?) in his pocket.

Mr. FABRIKANT:

Well, if I respond you, you'll say that I have to go out and witness is released.

THE COURT:

Just ... just ...

Mr. FABRIKANT:

This is what you want.

THE COURT:

No, I don't wish you to respond.

Mr. FABRIKANT:

You try to provoke.

THE COURT:

I don't wish you to respond. I wish ...

Mr. FABRIKANT:

You will not be successful.

THE COURT:

... I wish to give you the reason why I'm saying this.

Mr. FABRIKANT:

This time you will not be successful with me. Don't even try.

THE COURT:

Put your next question.

Mr. FABRIKANT:

Q. What was the reason for you to get involve with me in the first place?

A. I met with doctor Mackenzie and she had told me that she was quite concerned about a situation in the department of mechanical engineering, and she asked me if I might me of assistance. And, I said it might be a possibility, but I need to find out what the nature of the issue is. And to do so, means I would have to interview some people, one (1), to find out what's going on, and two (2), to see if there willing to try and resolve or try and find a solution in a mutually agreeable manner.

Q. Did she tell you at that time, what exactly she was concerned with?

A. No. She actually left it very open, and she did not tell me the nature of the problem, other than that she considered it rather serious and important. And she did not tell me what the nature of the issue was.

Q. And of course you didn't ask?

A. On purpose, no.

Q. And of course, I'm not now allowed to ask why you didn't ask this question?

A. I wanted to find out from the people directly themselves what the nature of the problem was, rather than give it ... have it being given to me by a third (3rd) person.

Q. Did doctor Mackenzie at that time, tell you that in conversation with her, I allegedly threatened to kill a lot of people?

A. On February the seventh (7th) or before that, no.

Q. When did you learn about it?

A. I learned about it on February the seventh (7th), at the meeting from you.

Q. I told you that I told doctor Mackenzie that?

A. No.

Q. I'm asking you when doctor Mackenzie told you, that I told her, that I'm going to kill a lot of people?

A. I do not remember when doctor Mackenzie told me, that you were going to kill a lot of people.

Q. Oh, she never showed it with you.

THE COURT:
Excuse me.

Q. Did I properly understand your answer to be that, neither on or before February the seventh (7th), did doctor Mackenzie tell you, but rather you learned on the February the seventh (7th) from Mr. Fabrikant.

A. I learned from doctor Fabrikant, yes, Your Lord, but I learned from doctor Fabrikant specifically that he told me that he would shoot Sankar. It is easier for me to get a gun and shoot them. I go as far as compromise as far as I can go, and I cannot wait until after March the first (1st) nineteen eighty-nine (1989).

Mr. FABRIKANT:

Q. We'll get to it. Still, would you please answer this particular question. Did you or didn't you ever learn from doctor Mackenzie that I allegedly told her: I'm going to kill a lot of people?

A. Can I paraphrase the question, My Lord, to make sure I properly understood?

Q. You cannot paraphrase, you can ...

THE COURT:

Q. Yes, you can ask ... you can ask ...

Mr. FABRIKANT:

Q. ... answer the question as it is.

THE COURT:

Q. ... for a clarification on the question, it's convoluted and it's circular in the light of your last answers, yes. Yes, you may ask for a clarification, surely.

Mr. FABRIKANT:

Q. Well, ask for clarification, what is unclear?

A. I understand the question to be that prior to February the seventh (7th), including February the seventh (7th), did doctor Mackenzie tell me that intended ... that she had heard from doctor Fabrikant, that he intended to shoot a lot of

people. The answer is, no, I did not hear from doctor Mackenzie up to February the seventh (7th) and including February the seventh (7th), that doctor Fabrikant said anything like that to her.

Q. After February the seventh (7th), did you hear it from doctor Mackenzie?

A. Second (2nd) answer, is, I do not remember doctor Mackenzie speaking to me, at this moment I cannot remember, that you said those things to her prior to February the seventh (7th).

Q. At anytime, did she at any time at all ... witness is evading to answer the question. Don't you see.

THE COURT:

Q. Did you answer, not at any time up till this day, do I recall doctor Mackenzie telling me that Fabrikant told her that?

A. Yes, Sir.

Mr. FABRIKANT:

This was not my question. I asked at any time, did she tell him that?

THE COURT:

If up to the present day, she hasn't told him that, I presume that takes care of the words, at any time. Is that correct?

Mr. FABRIKANT:

Well, this is my question.

THE WITNESS:

Up to the present day of February the seventh (7th).

THE COURT:

Q. Up to the day of February the seventh (7th).

A. Yes, My Lord.

Q. Okay. Now, he wants know after February the seventh (7th).

A. After that. I do not remember any specific conversation where doctor Fabrikant purposely told me that doctor Fabrikant had said these things. However ...

Q. Doctor Mackenzie.

A. Doctor Mackenzie. I may have been at meetings, or been in conversation with doctor Fabrikant ... with doctor Mackenzie in which she may have raised those points.

Mr. FABRIKANT:

Now, would you believe that.

THE COURT:

Would you please, spare me your comments.

Mr. FABRIKANT:

No, I'm asking you, I'm again invoking section 9.2.

THE COURT:

Denied.

THE WITNESS:

My notes, My Lord, tell me exactly what did happen at future meetings, in which that may have taken ...

Mr. FABRIKANT:

Alright.

THE COURT:

Q. Then ...

A. ... discussions may have taken place.

Q. ... if you're able to ... if you wish to refer to your notes, provided the notes were taken at the meeting or contemporaneously to the meeting, refer to them before your answer the question.

Mr. FABRIKANT:

Q. Now, did you at any time, tell doctor Mackenzie that I either have a gun, or want to buy a gun? Did you tell doctor Mackenzie at any time this?

A. I only remember telling doctor Mackenzie that you had told me

that you had a gun. I do not remember telling doctor Mackenzie that you could buy a gun.

Q. Okay. So, now we have at least that. When?

A. When did you ... when did I tell ...

Q. When did you tell her that I have a gun?

A. I would have done that soon after, if not the same day, that you told me.

Q. What was that day?

A. It would have been before April the sixth (6th), My Lord. It would have happened between February the seventh (7th) and April the sixth (6th).

Q. Okay. Why can't you be more specific, you're so meticulously writing everything I said? And this particular part, I bet is not there or it is there.

A. I don't know if it's here, I have to read my notes carefully, My Lord, can I take a few minutes?

THE COURT:

Q. Go ahead, sure.

Mr. FABRIKANT:

Q. Please do it very carefully.

A. I would have on or thereafter February the seventh (7th), informed doctor Mackenzie of what doctor Fabrikant told me about shooting doctor Sankar. I imagine also, My Lord, that I would've told doctor Sankar as well.

Q. That was not my question. I'm sorry. Witness again evading questions.

THE COURT:

Q. He asked you whether you ...

Mr. FABRIKANT:

Again, I evoke section 9.

THE COURT:

Q. ... he asked you ... he asked you whether you were able to be more precise about your answer between February the seventh (7th) and April the sixth (6th).

And that was what you said about to review your notes.

A. On or before March the twenty-second (22nd), and when I say before, it would just be a (1) day or two (2), doctor Fabrikant had given me a statement that he intended, I've got here, to kill them. I assume, my memory tells me that that was I believe the two (2) doctor Sankars, at least. Maybe others, I can't remember now, My Lord.

Mr. FABRIKANT:

Q. Well, it was such a minor thing, you cannot remember who I threatened to kill?

THE COURT:

Q. You have a note that reminds you of what ...

A. I just have here on March the twenty-second (22nd), in the report that I gave to Kenneth, doctor Swamy, doctor Mackenzie, that doctor Fabrikant had made a statement in which he intended to kill ... I think it was Osman and the two (2) Sankars, and then maybe someone else, I can't remember. The

...

Mr. FABRIKANT:

Q. Would you believe that he cannot remember who I wanted to kill, if he took it seriously.

A. All the people that he's mentioned to me, My Lord, at the time, I informed.

Q. But now you don't remember who they were?

A. I don't remember more than what I have said.

Q. Alright. What about the gun?

A. The gun?

Q. Yes.

A. I do not have an actual record of the date, in which that was said to me , but it would have been between March the twenty-second (22nd) and now I can say even before April the fourth (4th), My Lord.

Q. Would you be kind enough to explain why you didn't mark minor, minu detail that I have a gun?

A. I have here an undated note, My Lord, and it would be prior to April the fourth (4th), in which, and I do remember this, this is not just my notes reminding me, I remember doctor Fabrikant telephoning me and asking me for a response to his memo to doctor Mackenza... Mackenzie. He then advise me ... sorry, that's not the right note ...

Q. Well, would you please stick to the question about gun, I will ask you ...

THE COURT:
He's addressing, I think, that question. That's what he's looking for.

Mr. FABRIKANT:
He's not, he's answering all of something else. He's answering if I intend to kill Red...(?).

Q. Don't you worry, I will ask you about all this, don't you worry. If you think that I will miss all this, not for your life, I will ask all those questions. Newspapers will have what to write tomorrow, don't you worry. They will never write my part of the story, but what you say, they will write, don't you worry.

A. On April the sixth (6th), My Lord, I had a telephone conversation ... I had convers... phone call from doctor Fabrikant, and in the phone call on April the sixth (6th), at ten o'clock (10:00) in the morning, doctor Fabrikant told me that he had a conversation with his wife, and his wife and he had agreed that the talk about violence is not a good idea and he should stop having that talk about violence. And doctor Fabrikant wanted my advice on that. So, I do not remember the exact date, My Lord, when he told me that he had a gun.

Q. Okay. So, with gun, we finished, it is not part anywhere, right. You've probably forgot to falsify something there, so ...

THE COURT:
Would you please spare us these comments. That's right out of place.

Mr. FABRIKANT:
Alright, I'm sorry.

THE COURT:
And stop play acting.

Mr. FABRIKANT:
I'm sorry.

THE COURT:
I find that comment contemptable.

Mr. FABRIKANT:
Alright, I take it back.

THE WITNESS:
My Lord, I have notes here, that on February the fifteenth (15th) nineteen eighty-nine (1989), I met with dean Swamy, and I had to bring him up to date ...

THE COURT:
February fifteenth (15th), which year?

Q. Nineteen eighty-nine (1989).

A. Eighty-nine (89), okay.

Q. Part of that report, included an objective on my part to

encourage doctor Fabrikant to negotiate using a problem solving approach. In a meeting with doctor Sankar Jr. and a telephone conversation with doctor Osman, I discovered that doctor Fabrikant had allegedly said that when people in United States had these sorts of problem, they tend to get a gun and shoot people. This statement was later supported by others and repeated in similar fashion by doctor Fabrikant in a subsequent meeting on March the twentieth (20th) nineteen eighty-nine (1989) with doctor Mackenzie and myself. May I continue? Sometime in late March nineteen eighty-nine (1989), and I believe it was March the twenty-eighth (28th), but I'm not sure, in an interview in my office, doctor Fabrikant asked me to confirm the location of room numbers of the rector in Bishop Court. I asked him why he was asking. He mentioned his frustration in getting any solutions to his problems, and that he knew of one (1) way to get fast results. And that was, by taking hostages and shooting the rector. He also told me that he had the means to do so, quote: I know the layout of Bishop Court and I have a gun. I immediately reported the content of this statement to doctor Mackenzie.

THE COURT:

Q. What's the date of that, Mr. Haines?

A. This is a memo that I wrote to Maureen Habib, dated July the seventh (7th) nineteen ninety-two (1992).

Mr. FABRIKANT:

Q. Okay. But it is nowhere in contemporary notes, right?

A. The contemporary notes of nineteen eighty-nine (1989), no.

Q. What ... what, I want just to illustrate, how meticulous those notes were. Just in any case, avenues peaceful, scientific prostitution and extortion, a face saving solution, in March evaluation is coming, more teaching, graduate student will ... everything. He didn't miss a single solitary thing. Then, we cannot find or cannot seem to find, maybe you have it at home, maybe you'll bring it tomorrow, the note which says what you said right now in your report to somebody, which note which said that at such and such a day, I met with you and asked you for location of Bishop Court, and asked you how to take hostage rector and what, how to kill him? So, I hope tomorrow it will appear, alright. And at this time we'll finish at that, but I would ask you to take a good look, and I bet tomorrow we'll get it. So ...

A. My Lord, I did not need to take notes of that conversation I had doctor Fabrikant, I remember that ... I remember that to this day very clearly. The only thing I do not remember, is the date and time in which it was delivered.

Q. Fantastic. You did not hesitate to take note of me ... where was it, shooting Sankar, you were afraid that you will forget it, right. But about gun, you were so sure that you didn't make notes. Explain this, please.

Me LECOURS:

This is cross-examination, My Lord.

Mr. FABRIKANT:

It's not cross-examination.

THE COURT:

It is cross-examination.

Mr. FABRIKANT:

Well, it is ...

THE COURT:

Objection is maintained.

Mr. FABRIKANT:

... inconsistency.

THE COURT:

The objection is maintained.

Mr. FABRIKANT:

Well, I would like to refer you to jurisprudence.

THE COURT:

C. Boyer(?).

Mr. FABRIKANT:

No. Another one. If you look in the criminal Code you will find one (1). So, without name, the jurisprudence says the following: when an accused calls someone to testify, who allegedly admitted to him, to the accused of committing a crime, in this case ends of justice require that the accused be allowed to cross-examined such witness. Now, if you ask me how close this ... you recall this jurisprudence ...

THE COURT:

I think you missed a word. The word is the crime. Which happens to be the subject of the trial.

Mr. FABRIKANT:

Exactly, exactly.

THE COURT:

That's not what we're talking about at all.

Mr. FABRIKANT:

Well, let me explain that connection. Because, if you remember from the very beginning, I maintained that yes, these people have committed a crime. And, my proof that these people did commit crime is absolutely essential to my defense. And therefore, this is where I see the analogy. They committed the crime we are discussing here. They intentionally, deliberately provoked it, they knew very well what they were doing, for years they were preparing the tragedy, very longingly, very professionally. And I want to show exactly how professionally it has been done, and I can do it only by means of cross-examination of this witness, Mackenzie and others who participated in it.

THE COURT:

Well, with doctor Mackenzie you're finished, and this witness you're not going to cross-examined, so, continue.

Mr. FABRIKANT:

Alright.

Q. So, what I said was pretty explicit, first (1st) that I said that I will shoot Sankar, and according to you it happened on February seventh (7th). Then I said that I'm going to shoot rector, and did you tell all this to doctor Mackenzie?

A. You indicated that you might commit violence, I reported those incidents to doctor Mackenzie and I think to the director of security, and ...

Q. How come doctor Mackenzie did know anything about it?

THE COURT:

Listen, that question is right out of order.

Mr. FABRIKANT:

Well ...

Q. Do I understand that you reported it to doctor Mackenzie, not at different times, but rather since ... once second, gun, and hostage, and to shoot the rector, it all happened in the same day, right?

A. Yes.

Q. So, you reported it to doctor Mackenzie, the same day, not at different times?

A. That's right.

Q. That's nice. Can we play to this witness somebody else testimony?

THE COURT:

No. No.

Mr. FABRIKANT:

Alright.

Q. Now, if I threatened to kill so many people, so first of all Sankar, both Sankars, both, and I told you that I have a gun for that, correct?

A. No. You did not tell me you had a gun for that. You told me you would shoot doctor Sankar, but you did not tell me you had a gun.

Q. Just recently you said that I said I had a gun.

THE COURT:

It's not my recollection of his testimony.

Mr. FABRIKANT:

Alright.

Q. Did I at any time told you I had a gun.

A. Yes.

Q. Ah okay. So, I had a gun, I told you. Then, I told you that I was going to kill how many more people?

A. When you told me you had a gun, that was the day you also told me ... and at the meeting, you told me that you would shoot the rector.

Q. Alright.

A. Only the rector.

Q. But ... okay. You testified that I threatened to kill several more people, you don't remember who exactly, but you informed each and every one of them. Do you recall that testimony?

A. Yes, I recall.

Q. Okay. When was that? At the same day as the rector?

A. No.

Q. A different day?

A. Yes.

Q. So, it looks like each day I was coming to you, almost each time I was threatening to kill somebody, right?

A. No, I don't think each time we met (inaudible).

Q. Almost each time. We didn't meet that many time, did we?

A. We had many telephone conversations.

Q. Well, but I told you about my intention to kill this or that personality, when I came in person, right? Not on telephone.

A. On February seventh (7th), we met in person, and it was at that time, that one occasion, there may have been others, in which you told me that, in person.

Q. In person.

A. Yes.

Q. Alright. So, did you at that time February seventh (7th), did you tell doctor Mackenzie that I threatened to kill Sankar?

A. Yes, My Lord.

Q. Yes. You're sure about that?

A. Yes, My Lord.

Q. The same day.

A. Yes, My Lord.

Q. Doctor Mackenzie did not remember that.

THE COURT:

Mr. Fabrikant, you ... first comments are right out of place, and you do it on purpose. Now, please do not do it again, and don't tell me it was a mistake, it was no mistake at all. You did that absoluteley on perpose.

Mr. FABRIKANT:

But why I cannot mention somebody else testimony?

THE COURT:

Because the rules do not permit you to mention somebody else's

testimony.

Mr. FABRIKANT:

Alright.

Q. Are you sure that doctor Mackenzie heard what you told her?

THE COURT:

Now you're cross-examining the witness.

Mr. FABRIKANT:

I just want to make sure that, yes, it did happen, why is it cross-examination.

THE COURT:

He just said he told doctor Mackenzie.

Mr. FABRIKANT:

Well, I cannot ask him if he's sure ... okay.

THE COURT:

I suppose you can, I suppose you can.

Mr. FABRIKANT:

See ...

THE COURT:

Go ahead.

Mr. FABRIKANT:

We can find common language.

THE COURT:

Go ahead.

Mr. FABRIKANT:

Q. Are you sure that you told this to doctor Mackenzie?

A. Yes.

Q. What was her reaction?

A. I can't remember her reaction, I'd only be guessing what her reaction was, My Lord.

Q. Isn't it fantastic selective memory. How about, section 9 again. He remembers very well, so well, that he didn't even have to write about guns, so well he remembers that. He told it to doctor Mackenzie, and what was the reaction of doctor Mackenzie ... maybe it is because he has to invent this reaction that he does not remember.

A. My Lord, I'm confused. I thought the question was that the statement that he made to me about doctor Sankar, in shooting doctor Sankar, did I remember the ... did I recall doctor Mackenzie's reactions.

Q. Yes.

A. I do remember doctor Mackenzie's reaction when I reported that he told me he was going to shoot the rector and take hostage and had a gun to do so.

Q. No, no, no, that was not my question.

THE COURT:

Apparently it was not the question.

Mr. FABRIKANT:

(inaudible)

THE COURT:

When you have the slightest doubt about a question, ask for a clarification. Pardon?

Mr. FABRIKANT:

Well, I didn't get answer to my question.

THE COURT:

No, fine. Rephrase your question.

Mr. FABRIKANT:

Q. So what was reaction of doctor Mackenzie to you telling her that I intended to kill Sankars?

A. To shoot the Sankars, I do not remember her reaction. I can only assume that she was shocked and took ... and took it seriously.

THE COURT:

Q. Don't assume, if you don't remember her reaction, you don't remember her reaction.

Mr. FABRIKANT:

Q. Why is such a selective memory that you remember her reaction at shooting rector ...

Me LECOURS:

Cross-examination.

THE COURT:

Objection maintained.

Mr. FABRIKANT:

I will never be successful with section 9. whatever witness say, no matter how witness behaves, he'll never be delared adverse, right? At this time, can I apply?

THE COURT:

You can apply if you like.

Mr. FABRIKANT:

Yes.

THE COURT:

Are you applying?

Mr. FABRIKANT:

Yes.

THE COURT:

Denied.

Mr. FABRIKANT:

Q. Did you consider rector so much more important than the lives of both Sankars taken together?

Me LECOURS:

This is again cross-examination and leading.

Mr. FABRIKANT:

No, this is normal question.

THE COURT:

Objection maintained.

Mr. FABRIKANT:

It was not cross-examination, just separate question.

THE COURT:

Did you hear me?

Me LECOURS:

Moreover it was sarcastic.

THE COURT:

Well, yes, that's the other thing.

Mr. FABRIKANT:

Well, I didn't find anything in jurisprudence saying that sarcasm is forbidden in front courtroom.

THE COURT:

You're not permitted to cross-examine.

Me LECOURS:

Sarcasm and insults have no place in (inaudible), My Lord.

Mr. FABRIKANT:

This is not insult.

THE COURT:

There's no ... you're perfectly right, Mr. Lecours.

Mr. FABRIKANT:

This is not an insult.

THE COURT:

I have ruled, I am not going to argue with you.

Mr. FABRIKANT:

Q. So, you didn't tell to doctor Mackenzie that I'm going to get the rector, you told her explicitly that I was going to shoot rector, correct?

A. I don't understand, to get the rector, Your Honor.

Q. Well, then I have to explain him, because this is what ...
THE COURT:
No, you don't have to explain him. If you ask the question, precisely, what did you say to doctor Mackenzie, you might get an answer. I don't know what answer you'll get.
Mr. FABRIKANT:
Q. Then I still maintain my question. Did you tell her, that I was going to get rector or you told her that I'm going to shoot rector?
A. Your Honor, after March twenty-eighty (28th), when doctor Fabrikant told me these things about shooting the rector and taking hostage, I informed her exactly of that. I did not say, he is going to get the rector, at that time.
Q. So, you told her I was going to shoot.
A. Yes.
Q. You sure about that?
A. Yes. No, I told her that's what you told me you were going to do.
Q. Was I going to shoot him first (1st), then take hostage, or take hostage and then shoot him? Did I specify that, in any way?
A. I can't remember in which order you put it.
Q. Well, do you remember conversation so well that you didn't put it on paper ...
THE COURT:
Will you stop cross-examining the witness.
Mr. FABRIKANT:
Well, there is contradiction in his ...
THE COURT:
Will you stop cross-examining the witness.
Mr. FABRIKANT:
It is not a contradiction.
THE COURT:
Listen, the game you're indulging in is one of purposely setting out to create confusion and then wave section 9. It's obvious to me.
Mr. FABRIKANT:
I'm not creating anything. I don't need to create anything.
THE COURT:
Your last question ... your last question was of the nature of cross-examination, and it's disallowed.
And I think on that point we'll adjourn fifteen (15) minutes.
SUSPENSION

REPRISE

Mr. FABRIKANT:

Q. Okay. If I'm allowed, I would like to make some kind of summary. So, February seventh (7th), threats to kill both Sankars? You cannot answer without looking into your notes.
A. Your question is did you threaten to kill both Sankars, yes.
Q. February seventh (7th), is it a threat to kill both Sankars?
A. Yes.
Q. The next threat appeared, when? Okay. Could answer from your memory, what was the next threat?
THE COURT:
If you wish to refer to your notes, refer to your notes.
Mr. FABRIKANT:
Well, it was so indelible, he remembered that. He didn't even write it.
THE WITNESS:
The next threat would have been, oh, I would assume around

March the twenty-eighth (28th), and they're made in one (1) or two (2) threats, or allusions to threats, in between February the seventh (7th) and March the twenty-eighth (28th) as well, My Lord.

Mr. FABRIKANT:

Q. Okay. Which one was next after February seventh (7th)? Which one, what was (inaudible) that?

A. They would have ... if I remember correctly, would have been repeats of the first (1st) threat.

Q. Ah, again, threat to kill both Sankars.

A. And, I think some other people as well, doctor Osman and maybe someone else, and I as I told you, the people whom you threatened, I informed.

Q. Okay. There were so many people that you cannot remember.

A. No. There were maybe at the most four (4) or five (5), if that many, certainly two (2) or three (3), three (3) but maybe four (4) or five (5).

Q. Well, I fail to understand how you can miss just one (1) more name. It was threat ...

THE COURT:

Would you stop arguing ... would you stop arguing with the witness. You're not here to cross-examine him.

Mr. FABRIKANT:

Q. Anyway, but ... if you can search in your memory who was the next to be killed. So, two (2) Sankars and Osman, makes it three (3). Was there a fourth (4) name?

A. On February the seventh (7th), it may have been a fourth (4th) or a fifth (5th) name.

Q. Hold it, hold it, you just said February seventh (7th) there were only two (2).

A. No, I said ...

Q. Now ... now, now it's February seventh (7th) several.

A. No, I've been consistent I believe.

Q. Well ...

A. I did not remember the names of the others.

Q. Let us see if you are consistent. So, February seventh (7th), who did I threatened on February seventh (7th)? Was it both Sankars or somebody else?

A. Doctor Sankar ... T. Sankar, doctor S. Sankar, doctor Osman, and maybe one (1) or two (2) others, I do not remember.

Q. Just before, at the beginning I said, February seventh (7th) it was just two (2) Sankars, and you said: yes. Now, we have that February seventh (7th) was about four (4) or five (5) people. Then, I said what was the next threat, he said next threat was the same Sankars plus additional people. Now, he returns that it was February seventh (7th), both Sankars plus additional people. It's alright?

THE COURT:

Yes. Yes.

Mr. FABRIKANT:

Why is it alright?

THE COURT:

Move on.

Mr. FABRIKANT:

Witness does not remember what he lied about.

THE COURT:

Move on.

Mr. FABRIKANT:

Well, I didn't ... I didn't finish here. So, what happened on February seventh (7th)? Let us make it clear. Was it just the Sankars or was it (inaudible) people?

THE COURT:

I think Mr. Haines answered that question. He said it was the two (2) Sankars, he believes plus Osman, perhaps two (2) others, he cannot name them.

Q. Is that correct, Mr. Haines?

A. Yes, Sir.

Mr. FABRIKANT:

BNut his first (1st) answer was different, can we play it?

THE COURT:

No, continue.

Mr. FABRIKANT:

Alright.

Q. Then I refer to your own notes of February seventh (7th), go to the last page, please, and read the relevant part.

A. Is this the two (2) page document, doctor Fabrikant?

Q. It is three (3) page document, February seventh (7th), ten thirty A.M. (10:30), number 6.

A. So, the relevant part is ... starts with: the integrity of the institution?

Q. No. It is February seventh (7th) meeting ...

A. Yes, Sir. I have only two (2) pages ... oh, February seventh (7th), I'm sorry. The last page?

Q. Well, if you have it somewhere else, then fine. But just refer to the relevant place and read it.

A. Told Sankar that I would shoot him. It is easier for me to get a gun and shoot them.

Q. Alright. Now, interpret, that I told Sankar that I shoot him or I told you I will shoot Sankar, how to understand it. The way it reads, it looks like I told Sankar himself, that I'm going to shoot him. Or, I told you that I was going to shoot Sankar. And which one, there is no S here.

A. I'm confused as to the question, My Lord.

Q. Okay. I will ... I will separate it. First of all, the meaning of the phrase. Told Sankar that I will shoot him. Is it that I told you, that I told Sankar that I was going to shoot him?

A. Yes. That's my understanding.

Q. So, it is not that I told you that I was going to shoot Sankar, but I told directly to Sankar himself that I was going to shoot him.

A. You may have also told me ... hold it. Told Sankar that I would shoot him. You told me that you had spoken to Sankar, and told him that you would shoot him. You also said: it is easier for me to get a gun and shoot them. And you mentioned, three (3), four (4), five (5) names, including doctor S. Sankar and doctor T. Sankar.

Q. Now, okay, this is where the other names appeared. So, you just didn't write it here, but I said that it's easier for me to get a gun and shoot them. And, after them, I said explicitly, did I?

A. Yes.

Q. I said explicitly.

A. Oh, I don't know if you said after them, you said explicitly, but during that time you mentioned their names explicitly.

Q. Okay. So, what were those names?

A. Doctor S. Sankar ...

Q. Yes.

A. ... T. Sankar, doctor Osman and maybe two (2) or three (3) others, I do not remember, My Lord.

Q. Well, wasn't it important that ... person's life is involved

...

THE COURT:

You're cross-examining.

Mr. FABRIKANT:

Q. Alright. So, I will write it down. But you're sure for example, Osman was there?

A. Osman's name was mentioned, I'm sure.

Q. With respect to being shot.

A. Yes.

Q. So, it is both Sankars and Osman for sure, and plus ... can you at least give the number of names, more or less precisely?

THE COURT:

He's told you three (3), perhaps two (2) others, he then said one (1), one (1) other occasion perhaps two (2) or three (3) others. That's what he said.

Mr. FABRIKANT:

Alright.

Q. But if you cannot be more or less specific as to at least number of people involved ...

THE COURT:

You're cross-examining now, move on to your next question.

Mr. FABRIKANT:

I'm clarifying, I'm not cross-examining.

THE COURT:

You're not clarifying, it's perfectly clear. Move on to your next question.

Mr. FABRIKANT:

Alright.

Q. So, that was the threat made on February seventh (7th). Now, the next threat was made when? No, no, first of all, what about? What was the next threat?

A. The very next threat, I can't remember what the next threat was, the very next. I believe that doctor Fabrikant in conversations with me between February the seventh (7th) and March the twenty-eighth (28th), mentioned once (1) or twice (2), I don't know how many times, similar ... (inaudible) to similar threats, My Lord. The ... in those occasions though, My Lord, I don't remember him ever ... I don't think I remember him using any names, up till March the twenty-eighth (28th).

Q. So, next time, what did I say? I was going just to shoot them, something like this, what? Any ...

A. I think I have it in my notes, My Lord, may I look?

THE COURT:

Certainly.

Mr. FABRIKANT:

Q. Well, it's funny. He cannot recall anything at all without the notes.

A. You want me to do it without my notes?

THE COURT:

Q. I would like you to refresh your memory from your notes, and then answer the question.

A. I do not have a record in my notes of the times and dates, when he made references to comments that might be interpreted as being threatening.

Q. All was between the seventh (7th) of February and the twenty-eighth (28th) of March.

A. Yes, My Lord. I do remember, My Lord, speaking to doctor Fabrikant about the language that he used, and he said to me, they were figures of speech.

Mr. FABRIKANT:

Q. So, there is nothing between seventh (7th) and twenty-eighth

(28th)?

A. There is nothing that I have written between the seventh (7th) and the twenty-eighth (28th).

Q. How come you didn't write such important things?

THE COURT:

You're cross-examining the witness again.

Mr. FABRIKANT:

Okay.

THE COURT:

Question disallowed.

Mr. FABRIKANT:

Q. Then the next was what?

A. The next threat was on or about March the twenty-eighth (28th) nineteen eighty-nine (1989).

Q. Okay. March twenty-eighth (28th). Which document you're referring to now?

A. This is document that I have in my memory. I have not written that document down in eighty-nine (89).

Q. How come? I threatened the rector and you didn't write it anywhere at all. Could you explain that?

A. I did not need to remember that comment, it was clear in my mind and I reported it.

Q. Well, you cannot even remember the names of the people threatened on February seventh (7th).

THE COURT:

Now, you're cross-examining.

Mr. FABRIKANT:

Q. Well, you're reporting, was it in any written way?

A. I put a report in writing about your threat to shoot the rect... to shoot the rector and to take hostage and you know the layout of the wings in Bishop Court, in the summer of ninety-two (92).

Q. Okay. Where is this report?

A. This report is in the file that I've given you.

Q. In the ... it is what ... referred, please.

THE COURT:

No, but that wasn't the question.

Mr. FABRIKANT:

What doc...

THE COURT:

Q. The question, you said: I didn't not write it down, it was clear in my mind. We're talking always about the twenty-eighth (28th) of March nineteen eighty-nine (1989), it was clear in my mind, and you added the words: and I reported it.

A. Yes.

Mr. FABRIKANT:

Q. Well, so which document you're referring to, now?

A. Oh, I reported that verbally, My Lord.

THE COURT:

Q. You reported that verbally.

Mr. FABRIKANT:

Q. Why not in writing? Such an important statement.

Me LECOURS:

Again.

THE COURT:

Again, cross-examination, yes.

Mr. FABRIKANT:

Well, isn't it important to get answer to that question.

THE COURT:

He said he reported it verbally.

Mr. FABRIKANT:

Okay.

THE COURT:

You already got your answer.

Mr. FABRIKANT:

Q. Verbally to who?

A. I reported it to doctor Fabrikant ... to ... sorry, to doctor Mackenzie and ... I can't remember to who else, but I think to the director of security. I ... in other words to the authorities of the University who I felt had responsibility for security. And, I would have also reported it to doctor Kenneth(?).

Q. So, it was March twenty-eighth (28th). What ... what makes you sure about the date?

A. I think my note records here indicate that I met with you ... that I met ... what makes me sure about the date? All I could tell you is that it's certainly was between ... it was later in our conversation that you made the threat, doctor Fabrikant, and it was close to the period when we initially ended our discussions. So, the timing would be late March.

Q. Well ...

A. Because when I finished seeing you, very early April.

Q. Well, such a remarkable statement, that you didn't bother to write it down because you remembered it by heart, and you see now we are and we don't know what was the date. If you remembered it very well, so why didn't you remember the date?

Me LECOURS:

He got his answer, My Lord.

THE COURT:

He's got his answer, I'm sorry. It's cross-examination, (inaudible).

Mr. FABRIKANT:

This is not a normal question?

THE COURT:

No.

Mr. FABRIKANT:

Alright.

Q. But you did not document it in anyway till ... what, a (1) year later?

A. Till the summer of nineteen ninety-two (1992).

Q. Oh, till summer of nineteen ninety-two (1992). Okay. Then, what document you're referring to now?

A. It would be in ... in file that is marked, I think D, it's ...

Q. Yes.

A. ... in a letter, near the end of that, I think it's a document marked number 5.

Q. Document number ... number what?

A. Five (5).

Q. Okay. Document number 5, yes. Hum, hum.

A. It's a letter, part of a package there to Mr. Brendon Haines from Maureen Habib, a letter that would've sent me and response ...

Q. Okay.

A. ... that I returned to Maureen Habib.

Q. Okay. I think it would be very useful to read the letter of Miss Habib to. Could you please?

THE COURT:

Q. The letter is dated when?

A. Seventh (7th) of July nineteen ninety-two (1992).

Q. This a letter to you.

A. From Maureen Habib, executive assistant to the rector.

Q. Go ahead.

Mr. FABRIKANT:

Q. Okay. Read it, please.

A. The rector's secretary has brought to my attention the request from doctor Valery Fabrikant, department of mechanical engineering, that doctor Kenneth(?) signed a form entitled: recommandation pour l'obtention d'un permis de port d'arme ... autorisation restreinte pour le tir ... cible, on his behalf, copy enclosed. The University is considering lodging an objection to the issuance of such a permit with the "service des permis". I would appreciate your informing me in writing as to whether you have any knowledge or information which would serve to support such an objection. This could include any reference to possession or acquisition of a gun, reference to actions contemplated vis-...-vis any individuals or offices at the University or any other pertinent information which doctor Fabrikant has mentioned to you.

Q. Now, read your response totally.

A. Thank you for your memo dated July seventh (7th) nineteen ninety-two (1992) and received on July twenty-fifth (25th) nineteen ninety-two (1992). Paragraph. Sometime late in nineteen eighty-eight (1988), or early January nineteen eighty-nine (1989), doctor Catherine Mackenzie, executive assistant to the rector, asked me to facilitate a possible resolution to some issues raised by doctor Valery Fabrikant. In order to proceed I needed to interview doctor Fabrikant and other key parties concerned. This was consistent with the approach I had taken to insure the acceptance of my role. I needed to find out if all parties wanted to resolve the problems in an informal manner, not in a win or loose way, but in manner that would allow people to have their needs met. I interviewed doctor Fabrikant on several occasions, both in person and over the telephone. What follows is my account of what I understood to have taken place as it relates to your request in your memo. I relied on some notes that I have in my memory. Several years have now passed and what follows is the best of my ability to recall those events. One (1): on the February the second (2nd), doctor Fabrikant told me that there were two (2) avenues towards a resolution of the problems, a peaceful one and finally a solution on the outside. He indicated that the outside meant going to the rector, CUFA the Concordia University Faculty Association and to the courts. On February the fifteenth (15th) nineteen eighty-nine (1989), I met with dean Swamy to gather more information and to bring him up to date. Part of that report included an objective on my part to encourage doctor Fabrikant to negotiate using a problem solving approach. In a meeting with doctor Sankar Jr. and a telephone call ... conversation with doctor Osman, I discovered that doctor Fabrikant had allegedly said that people in United States have these sorts of problems, they tend to get a gun and shoot people. This statement was later supported by others and repeated in similar fashion by doctor Fabrikant in a subsequent meeting March the twentieth (20th) nineteen ninety-nine (1989) with doctor Mackenzie and myself. Sometime in late March nineteen eighty-nine (1989), March the twenty-eighth (28th)?, in an interview in my office, doctor Fabrikant ...

THE COURT:

Q. Sorry, what date?

A. March twenty-eighth (28)?

Q. Okay.

A. In an interview in my office, doctor Fabrikant, asked me to

confirm the location of room numbers of the rector in Bishop Court. I asked him why he was asking. He mentioned his frustration at getting any solutions to his problems, and that he knew of one (1) way to get fast results. And that was by taking hostages and shooting the rector. He also told me that he had the means to do so. Quote: I know the layout of Bishop Court, and I have a gun. I immediately reported the content of this statement to doctor Mackenzie. On April the fifth (5th) nineteen eighty-nine (1989), doctor Mackenzie and I met with doctor Warren Steinner(?), the psychiatrist of the University health services. He advised us to inform doctor Fabrikant that his behavior was unacceptable, that he should stop threatening ... stop threatening violence and that he should seek professional help. On April the sixth (6th) nineteen eighty-nine (1989), doctor Fabrikant phoned me and told me, he had a conversation with his wife, in which they had concluded that it was not a good idea to talk about violence and that he should stop. I told him my legal obligations, based in the advice from doctor St...(?), that if he should threaten people I was obliged to inform those threatened and the authorities. He responded by saying that he had not threatened anyone and that all his statements were figure of speech only. Six (6): On January the twenty-third (23rd) nineteen ninety (1990), doctor Fabrikant phoned me to tell me, quote: things were getting out of hand. He wanted me to inform the rector. I told him that I would inform that this remark was intended to be a dangerous message. He responded by saying: there was nothing dangerous in that statement. I reminded him what he had said nearly a (1) year ago to take hostages and shoot the rector. I further reminded him that I'm obliged to inform the rector those he threatens and the authorities. He responded by saying: his recollection of past events and my recollection were different. He denied making any threats of that nature. Seven (7): At a meeting with John R...(?), on August the twenty-seventh (27th) nineteen ninety (1990), I was told that it was now too late to deal with the alleged previous threats, that too much time had elapsed and that the most recent issues do not warrant a letter of reprimand that could lead to dismissal. Mr. R...(?) said that management needs to be briefed so that any future incidents will not go unnoticed. Eight (8): On September the thirtieth (30th) ... sorry, on September the third (3rd) nineteen ninety (1990), doctor Fabrikant told me the following: that he was sorry for all the trouble he was causing. He had made mistakes because he was stressed. He regretted what took place. He got upset and did and said things that were self defeating. Because of (inaudible) he was now seeking help, so that this would not happen again. He was prepared to meet with doctor Shennan and explain the background and the reasons for his behavior. Nine (9): On October the ninth (9th) nineteen ninety (1990), at the request of doctor Fabrikant I reported the above to doctor Shennan. Number ten (10): I had not spoken to doctor Fabrikant since October nineteen ninety (1990), except on February the tenth (10th) nineteen ninety-two (1992) when Angela Wilson, doctor Shennan's secretary, when Angela Wilson asked me to phone doctor Fabrikant to discuss his eligibility to lodge an appeal to the appeal committee on promotion to professor. I am secretary of the appeal committee on promotion to professor. I now no longer have an institutional responsibility for facilitating the resolving of destructive and dysfunctional

conflict in the university. I trust that the above answers your request.

Well ... I guess I'm not allowed to ask why certain documents are allowed to be read and certain documents are not allowed to be read. Am I?

THE COURT:

Ask your next question.

Mr. FABRIKANT:

No, I'm asking you. Am I?

THE COURT:

Ask your next question.

Mr. FABRIKANT:

So, I was not allowed, alright.

THE COURT:

You asked that that document be read, it was allowed to be read.

Mr. FABRIKANT:

Well ...

THE COURT:

There you are.

Mr. FABRIKANT:

...just earlier today, I intentionally did it because I wanted to see the document which was favorable to me. You never allowed to read it. It was just test for me that you allow this to be read.

THE COURT:

You asked for this to be read ...

Mr. FABRIKANT:

Maybe you knew its content.

THE COURT:

You asked for this to be read, it was read.

Mr. FABRIKANT:

Yes ... (inaudible), you never raise an objection to that, it was really interesting to me your reaction. I got it. You remember, hey, just today (inaudible).

THE COURT:

Have you a question to ask.

Mr. FABRIKANT:

Yes.

THE COURT:

Ask it.

Mr. FABRIKANT:

Q. So, my first (1st) question is, how come in this ... your response, you didn't mention such an important threat to kill both Sankars, Osman and several who cannot remember, why didn't you mention that?

A. When I received this letter from Maureen Habib, the letter was dated July the seventh (7th), and as I mentioned in my memo, I received it on the twenty-fifth (25th) of July, My Lord, and I was worried about the time delay, I did not understand why it took so long to get the memo. I was concerned about getting a response as quickly as possible to Maureen Habib, I pulled together as quickly as possible my recall and I omitted by accident that event ... those events.

Q. You didn't omit such a thing that ... what is on issue one (1), which is unrelated totally to gun permit. I would like to read it to you, that February second (2nd) Fabrikant told me that there were two (2) avenues, peaceful one and finding solution on the outside which means going to rector, faculty association and going to court. Which is peaceful statement and has nothing to do with gun accusation, and you put it

there. The other one, threatening lives of other people, you somehow ... shouldn't you just remember without any notes. I threatened to kill at least five (5) people, shouldn't have have remembered that without any notes.

Me LECOURS:

He gave the explanation, My Lord.

THE COURT:

Yes.

Mr. FABRIKANT:

He didn't.

THE COURT:

You had his explanation. His explanation is there.

Mr. FABRIKANT:

Well, I asked second (2nd) question. Threat to kill several people shouldn't be in his mind without any reference to his notes.

Me LECOURS:

That's cross-examination.

THE COURT:

I have no idea whether what should be in his mind.

Question disallowed.

Mr. FABRIKANT:

Well, you find it objective approach?

THE COURT:

We're not having, we're not indulging in scientific method here, you're asking questions, it's your witness.

Mr. FABRIKANT:

It's not scientific. I'm not talking science, I'm talking natural justice, elementary justice toward ...

THE COURT:

You are not cross-examining the witness. Now, put your questions.

Mr. FABRIKANT:

Alright.

THE COURT:

You've been giving very wide latitude with the witness.

Mr. FABRIKANT:

Alright.

THE COURT:

Nothing to complain about.

Mr. FABRIKANT:

Alright. So, you just ...

THE COURT:

I don't wish any further comment from you. Would you put your next question to the witness.

Mr. FABRIKANT:

I'm not commenting.

Q. Now, the letter dated July seventh (7th), did it come through university mail?

A. Yes, My Lord.

Q. Were you on vacation at that time?

A. No, My Lord.

Q. And it took university mail ... you said, from July seventh (7th) to July twenty-fifth (25th) to get to your office.

A. I received the memo on July twenty-fifth (25th).

Q. How do you know that it was July twenty-fifth (25th)?

A. I wrote it in this letter, which I answered several days after.

Q. Okay. I may ask you then different things. Did you have any meetings with Maureen Habib herself being present, where you have some or all of the threats repeated?

A. Did I have a meeting with Maureen Habib in which some or all of the threats were repeated. I can't recall.

Q. Well, would it be assumption since Maureen Habib wrote to you, not to John Sears for example, that she probably had some knowledge that you might answer something ...

THE COURT:
The witness ... the witness can't answer for Mrs Habib.

Mr. FABRIKANT:
Well ...

THE COURT:
You're asking the witness to conclude, he can't do that.

Mr. FABRIKANT:
... then I (inaudible) stick to my own question.

Q. Do you recall any meeting or ... do you recall telling Miss Habib directly, that I have threaten here or there?

A. I can't remember any specific meetings that I had with Maureen Habib, but my guess would be that I had conversations with her on organized meetings, but maybe conversations with her about the situation. But I do not remember an event, at this moment I don't remember any event, in which I talked to her it. But I would feel that I have spoken to her about it.

Q. So, did she or didn't she, to the best of your recollection, know that specific threats allegedly were made?

A. My guess is that she knew.

Q. She knew. She wrote to you a letter on July seventh (7th), and she never called you back to say: Mr. Haines, why are you not answering to our memo. Did she ever call you to remind you?

A. I never sp... I didn't speak to Maureen Habib after I wrote the memo ...

Q. No, no, my question is, she mailed it to you July seventh (7th), days are passing, she does not receive any answer, did she call you during that time to remind you, that she has not received an answer to such an important memo?

A. When I got the memo on July the twenty-fifth (25th), I phoned Maureen Habib myself to tell her that I just received it, and I would take action to respond to it as quickly as possible.

Q. This is not answer to my question.

A. She did not call me.

Q. That's all I'm asking you. She did not call you. Do you have any personal knowledge, why such an important information didn't go to the several letters which university allegedly send to police asking them not to issue gun permit, do you have any personal knowledge why none of those threats (inaudible) send to the police ...

Me LECOURS:
What is he talking about?

Mr. FABRIKANT:
... objection to issuing me the gun permit?

THE COURT:
Unless Mr. Haines was the one who ... who carried out that communication, if indeed any such communication was carried out. I don't see how he can answer that question.

Mr. FABRIKANT:
Well, you didn't hear my question. I'll repeat.

Q. Do you ...

THE COURT:
You better establish whether he has any knowledge of these ... of these discussions with the police, if they ever took place.

Mr. FABRIKANT:
Well, my ...

THE COURT:

Or as to (inaudible) to them.

Mr. FABRIKANT:

... question was ...

THE COURT:

You better establish that first.

Mr. FABRIKANT:

... do you have any personal knowledge why ... I ask him about his personal knowledge, why in the university letters ...

Me LECOURS:

Which university letters?

THE COURT:

I have no idea if there was one first of all, it had even been established that there was one.

Mr. FABRIKANT:

Well, he can answer himself. Now ...

THE COURT:

No, because again you see your question ...

Me LECOURS:

(inaudible) ...

THE COURT:

Yes.

Me LECOURS:

... which are not in evidence.

Mr. FABRIKANT:

Well, at least he reads the newspapers, all those letters were published. Why are you pretending to be children here. All those letters were published in the newspapers.

THE COURT:

Your question as it is put is a-out of order, to say the least. You might establish if he has any knowledge of this, maybe he has. Then we'll see.

Mr. FABRIKANT:

Well, I just ask about his personal knowledge, that's all. It was a normal question.

THE COURT:

No, I know. But that's not the way your question was phrase. Your question also assumed a letter. And you tell me that these were published in the newspapers, I told the jury that they were to decide this case not what was in the newspapers, but on what transpired in these walls and nowhere else. So, your question is out of order.

Mr. FABRIKANT:

Q. Alright. Are aware of several letters send by university administration to the police, requesting that I not be issued gun permit?

A. I think that in a telephone conversation that I had with Maureen Habib, when I phoned her to tell her I just received the memo, I believe she told me that a memo had already ... it was too late, that a memo had already been sent. But I don't know who wrote the memo, and I have no idea what was in it nor have I read any of those memos if they were printed in newspaper. I just heard that a letter was sent, but that's all.

Q. A letter was sent allegedly without this very very important information. Is that what she told you?

A. I don't know. She just said a letter had been sent, I don't know what was in the letter.

Q. Did you ask her whether your very very important information ...

THE COURT:

You're now cross-examining the witness.

Mr. FABRIKANT:

I'm not cross-examining ...

THE COURT:

He's told you he does not know what was in the letter or the memo that was sent. That's your answer.

Mr. FABRIKANT:

Well, I cannot ask him if he asked ...

THE COURT:

No.

Mr. FABRIKANT:

Mrs. Habib ...

THE COURT:

So, we'll adjourn at this point until tomorrow morning four... nine thirty (9:30).

END OF THE SESSION FOR THE DAY, CAUSE TO BE CONTINUED

ON JUNE 10TH 1993, AT 9:30 AM.

Je soussigne, JOCELYNE DEMONTIGNY, sténographe officielle,
certifie sous mon serment d'office que les pages qui précèdent
sont et contiennent la transcription exacte et fidèle des
paroles recueillies au moyen de l'enregistrement mécanique, au
meilleur de l'enregistrement, le tout conformément ... la loi.

Et j'ai signé,

JOCELYNE DEMONTIGNY, S.O.

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

PROVINCE DE QUBEC

DISTRICT DE MONTRAL

CAUSE NO.: 500-01-017372-928

TAPE: PROCES - SUITE

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

NOM DES PARTIES:

SA MAJEST LA REINE

Plaignante,

c.

VALERY FABRIKANT

Accus,,

COMPARUTIONS:

Me Jean Lecours
PROCUREUR DE LA PLAIGNANTE

DATE DE L'AUDITION: LE 10 JUIN 1993

FICHER: 3482

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WITNESS: GRENDON HAINES

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THE JUDGE AND THE JURY ARE PRESENT IN THE COURTROOM IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this tenth (10th) day of the month of June, personally came and appeared:

GRENDON HAINES, born on September twentieth (20th), nineteen hundred and forty-one (1941), Senior Planning Coordinator, Concordia University;

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

VALERY FABRIKANT : Well I asked Mr. Belleau to inform you that there are certain things outstanding to be settled.

THE COURT : Would you please continue your examination of Mr. Haines?

VALERY FABRIKANT : Should I understand that you...

THE COURT : Would you please continue your examination of Mr. Haines if you have further questions for Mr. Haines?

VALERY FABRIKANT : All right.

EXAMINED BY VALERY FABRIKANT :

Q. So we finished yesterday by reading the document of the year ninety-two ('92), and as far as I recall, Mr. Haines, you indicated that you were in a hurry to finish it, and this is why my threat to kill several people was not there, is my recollection correct?

A. That's what I said yesterday, My Lord, yes.

Q. Also, do I recall correctly that you mentioned that Miss Habib, or you called Miss Habib on July twenty-fifth (25th) and she told you that the letter has already

gone?

A. I remember by memory, if I remember correctly, there were two occasions in which I spoke to Miss Habib at that time, one was when I received the letter, so that's... I'll just check the date for that, please?

VALERY FABRIKANT :

Well, is it possible, this is not a complicated information, that witness just answers from memory?

THE COURT :

If the witness wishes to refresh his memory with regard to something like a date, surely he's entitled to refresh his memory with regard to something like a date.

A. Yes, I would have phoned her on July the twenty-fifth (25th) to let her know that I had just received the memo.

Q. Okay. And she told you that the letter has already gone at that time?

A. Either that day, or a few days later, I may have spoken to her on July thirtieth (30th), the day I actually mailed the letter, to tell her it was in the mail, and I may have asked her whether it was too... I did ask, I'm not sure it was on July thirtieth (30th) or July the twenty-fifth (25th), but I did ask whether it was too late.

Q. But on July twenty-fifth (25th) she told you: "Hurry up, we need it", something?

A. Yes, she said in effect: "Please, get it in as quickly as possible".

Q. Okay. And that was July twenty-fifth (25th)?

A. Yes.

Q. And when you mailed her, she told you that the letter already gone?

A. On July thirtieth (30th), I think it was July thirtieth (30th) that I phoned her to let her know that the letter had been sent, and that I asked her whether it was too late. And I think she indicated that a letter had gone from the university to whoever, and it already been sent, she didn't say to me it was too late, she said it had already been sent.

Q. Did she say when it was sent?

A. No, I didn't know that.

Q. Did you ask her about it?

A. No, I don't think I asked her about it.

Q. Did you ask her during the first call whether it is too late?

A. That I cannot remember, my guess is I didn't because otherwise, why would I have written the letter?

Q. Did Rector know all the facts which you knew?

THE COURT :

How can he speak for the Rector's knowledge?

VALERY FABRIKANT :

Okay.

Q. Did you inform the Rector in the due time of all the facts which you knew?

THE COURT :

I think you better make your question a little more precise than that.

VALERY FABRIKANT :

Q. Did you, at any time, before July thirtieth (30th), nineteen ninety-two (1992), inform the Rector of all the details of my alleged threats?

- A. Against Dr. Kenniff?
Q. Yes.
A. Yes.
Q. So, to the best of your knowledge, by July of ninety-two ('92), Rector knew everything?
A. I know that I told the Rector, I think in nineteen eighty-nine (1989), of the nature of your threats.
Q. Now, did you ask Rector or anybody else why they needed this information from you again if Rector was well aware of all those threats?
A. I didn't ask, but I think it was stated in the letter from Maureen Habib to myself dated the seventh (7th) of July, nineteen ninety-two (1992).
Q. Stated what?
A. This is the letter from Maureen Habib to me the seventh (7th) of July, nineteen ninety-two (1992).
Q. Well, my question was, what was the point if Rector knew all that?

Me JEAN LECOURE :

This is arguing, My Lord.

THE COURT :

Yes. Objection maintained.

VALERY FABRIKANT :

All right. At this point I would like to file this exhibit and ask for expertise as to when it was typed. The reason for such question is that the whole thing looks very strange. University wants to inform police that I should not be issued gun permit. Rector knows very well that I allegedly made threats at at least lives of five people, and himself also. The letter is written July seventh (7th), they didn't care, didn't bother to ask why Mr. Haines does not respond. Rector knew himself all those alleged facts. The letter to police on July thirteenth (13th), none of the facts is mentioned, and the letter, written by Mr. Haines, looks so suspicious that its purpose seems to be not to inform anyone, because Rector knew very well all those facts. Not for informing the police, because, for some reasons, which totally unexplicable if it was important, Miss Habib could just phone him July seventh (7th) and say: "Look, we need from you urgently this information, we want to inform the police". She seems to be not caring until July twenty-fifth (25th) when he called her. She didn't inform him that the letter already was sent.

THE COURT :

Look...

VALERY FABRIKANT :

And the content of the letter is, should I say, at the least irrelevant to the gun permit because the major thing that I threatened lives of five people is not there, he was supposed to hurry up July twenty-fifth (25th) to...

THE COURT :

Look, what are you proposing to do? Are you proposing, first of all, to produce this letter?

VALERY FABRIKANT :

Yes.

THE COURT :

If you're proposing to produce this letter of the seventh (7th) of July, produce the letter.

VALERY FABRIKANT :

And after that I wanted to be examined by an expert as to when it was typed, because it looks like a spectacle, I just do not understand what kind of spectacle. If it was typed recently, then spectacle is clear for the purpose of defaming me in front jury. If it was typed indeed on July twenty-fifth (25th), then some other game was there in order for the Rector, somehow, have an excuse why he didn't include all this information because Mr. Haines, for some reason, didn't inform him, which also looks stupid. But still, in any case, whatever the decision of the expert is, I cannot imagine situation more stupid than... it is, so I would like it to file and expertise as to the date of typing.

THE COURT :

If you wish to file the letter your first step is to file the letter.

VALERY FABRIKANT :

Yes.

A. Which letter is this, My Lord?

THE COURT :

I gather it's the one of the seventh (7th) of July, Mr. Haines, Mr. Fabrikant will confirm that to you.

VALERY FABRIKANT :

Yes. I believe you have the original now.

A. Yes, I do, yes.

Q. Yes.

A. It was attached to it, a photocopy of the gun permit form.

VALERY FABRIKANT :

Yes, it can be all done together.

THE COURT :

D-12. May I just take a look at it for a second?

VALERY FABRIKANT :

Is my request well founded or should I elaborate why I want it to be examined?

THE COURT :

I will tell you this, you have a version of Mr. Haines that he didn't receive that until the twenty-fifth (25th) of July. I don't know whether the author of the letter, who appears to be Miss Habib, or Mrs. Habib, is in a position to confirm when it was typed. You've taken the position that you consider this thing a gigantic fabrication, and you've asked for an expertise. Listen, if you want to have an expertise performed on that letter as to when it was typed, I'm not going to order it.

VALERY FABRIKANT :

Well...

THE COURT :

I would presume there's no objection from the Crown if you wish to withdraw the letter for the purposes of carrying out the expertise, I don't know. Isn't it?

Me JEAN LECOURE :

That is correct, My Lord.

THE COURT :

There you are.

VALERY FABRIKANT :

Well, Mr. Belleau is not doing any help to me in any regard of the expert...

THE COURT :

Mr. Fabrikant, I'm not going to order Mr. Belleau to do

anything in relation to an expertise on that piece of paper at this particular stage, but if you wish it withdrawn, permission is there, you may have it with you, you may withdraw it and you may have it expertised by whoever you deem appropriate.

VALERY FABRIKANT :

Well, I'm in jail.

THE COURT :

I'm not going to discourse with you on your current problems of detention or anything else, I've said what I have to say for the purposes of the trial.

VALERY FABRIKANT :

Well, you should be concerned that trial at least appears fair.

THE COURT :

Nor am I going to comment on the request itself. Next question.

VALERY FABRIKANT :

Q. From your personal experience, how long does it take for internal mail to get from one campus to another?

A. One day, My Lord.

Q. One day. Okay. And in this case we had about eighteen (18) days. All right. Now, you mentioned also some kind of threats allegedly made by me in presence of yourself and Dr. McKenzie. I looked through your file and I couldn't find any record of that, would you direct me please to appropriate document?

A. I don't know if I have that in my file, or to recollection, may I look, My Lord?

THE COURT :

Q. Would you look at your file please and see?

A. The only record I have, My Lord, is a note of a telephone conversation I had with Dr. Fabrikant on April the sixth (6th), nineteen eighty-nine (1989) at ten o'clock (10:00) in the morning.

VALERY FABRIKANT :

Q. You're not answering my question.

A. In which I tell him that my legal obligations, that if he should threaten people, is to inform them. And his response was: "I haven't threatened anyone". I reminded him of a statement he made with McKenzie and myself, his response was: "That's just a figure of speech". So I don't have in my files a record of that statement that he made in front of McKenzie and myself, I don't have a record.

THE COURT :

Q. Fine. Then you'll search your mind and see if you can answer the question.

VALERY FABRIKANT :

Do I understand correct that this is self-serving evidence because he implies that I told him something.

THE COURT :

You understand wrongly that this is self-serving evidence.

VALERY FABRIKANT :

Self-serving for him.

THE COURT :

You understand wrongly that this is self-serving evidence.

VALERY FABRIKANT :

Q. Anyway, I would like to get some original notes of yours

concerning a threat which I allegedly made in presence of you and Dr. McKenzie.

THE COURT :

As I understand it, Mr. Haines, you've looked through your notes and the only thing you find in your notes is a reference to a telephone conversation you had with Fabrikant subsequent to a meeting which you had with Fabrikant and McKenzie.

A. Yes, My Lord.

Q. Is that correct?

A. Yes.

Q. That's... Fine. The question stands, in any event, as to threats made in the presence of McKenzie and Fabrikant, would you then see if you can address that through your own recollection.

A. I don't remember the exact words that Dr. Fabrikant had made, mainly because I had heard several different versions of threats, so I'm not quite sure what threats he made in front of me and Dr. McKenzie. I do know though that it was of a nature that was serious enough for Dr. McKenzie to take it further, but I can't remember the exact words. I can only give you a range of...

VALERY FABRIKANT :

Q. With all due respect, Dr. McKenzie never mentioned any of those.

THE COURT :

Would you be quiet about what Dr. McKenzie mentioned, the witness is supposed to be able to testify without ostensibly or possibly being influenced one way or the other by what Dr. McKenzie might have said. You are the one who asked for exclusion of witnesses.

VALERY FABRIKANT :

Q. All right. Now, would you be able to explain how come you record almost everything, whatever anything was said, you do not record I have a gun, you do not record threat made in presence of you and McKenzie, there is not even trace that such meeting took place. Could you explain why every meeting is documented except this one? There is no trace even in the notes that such meeting took place. Could you explain that?

A. I have not recorded every meeting except these, there are several phone conversations and maybe meetings that I had with you and which I do not have a record. So it's just not this particular meeting.

Q. Could you explain what was the criteria for you in one case to record, in other case don't record?

A. I usually like to take down notes of meetings, it's my normal procedure. Why I don't have notes for some of these meetings, I don't know, My Lord. It's such a long time ago, I can't remember why I haven't got them here.

Q. Okay. Suppose that during the meeting you didn't make any notes, but right after you heard me making threats, why didn't you make the note of the threat after that?

A. In the case of the meeting with Dr. McKenzie, since she was there, I assumed that she would take the appropriate action that was necessary to deal with our conversation that we had with you.

Q. So, you know that she made, to the best of your knowledge, she made some record of those threats?

A. No, I don't know that.

- Q. Did you ask her, after that, did she make a note, did she undertake any steps with respect to those threats?
- A. No, I did not ask her if she did make any notes of those meetings.
- Q. Did you ask her what steps did she make?
- A. I can't remember that.
- Q. Could it be that you cannot remember that because it never happened?

THE COURT :

The question is argumentative and it's disallowed. It's furthermore of the nature of cross-examination, and you're not permitted cross-examination of the witness that you called.

VALERY FABRIKANT :

Well, I couldn't get the definition of cross-examination, if you'd be kind enough to give me definition, I will try to avoid cross-examination.

THE COURT :

It's something that I have to evaluate from the nature of your questions. Since you decided to be your own advocate, you'll have to make these decisions properly for yourself.

VALERY FABRIKANT :

Well, unless I hear definition which I can use, it would save us a lot of time...

THE COURT :

Is that so?

VALERY FABRIKANT :

...because if I know the definition I wouldn't go into cross-examination.

THE COURT :

Just ask your next question.

VALERY FABRIKANT :

So you refuse to give me such a definition?

THE COURT :

I'm not going to give you a definition.

VALERY FABRIKANT :

Okay. Maybe Mr. Belleau would give it to me in just thirty (30) second recess and I will save a lot of time not to go into that?

THE COURT :

Fine, we'll try that if you like. We'll try that if you like. Mr. Belleau, I'll adjourn for...

VALERY FABRIKANT :

No, no, there is no need to adjourn, just the definition.

Me BELLEAU :

There will be no public legal consultation with Mr. Fabrikant, so if we're going to have a consultation I wish you would adjourn.

THE COURT :

Yes, surely. I will adjourn for five minutes and you may consult with Mr. Belleau.

VALERY FABRIKANT :

I don't think you need...

THE COURT :

No, no. Mr. Fabrikant, I think you should have that information. We'll adjourn for five minutes, ladies and gentlemen.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITNESS: GRENDON HAINES -- UNDER THE SAME OATH

CONTINUATION OF EXAMINATION BY MR. FABRIKANT :

So here are the results...

THE COURT :

I don't need a report, you've talked to Mr. Belleau...

VALERY FABRIKANT :

No, I do need...

THE COURT :

...so would you just continue with your questions?

VALERY FABRIKANT :

Well, I didn't get anything, he told me to read chapter 6, the whole chapter. I asked just for definition, and I also asked him whether it is written anywhere that sarcasm is not allowed in questioning, and he didn't show me that either.

THE COURT :

Well, as far as I'm concerned, I'll tell you that sarcasm is not allowed in questioning. Okay?

VALERY FABRIKANT :

Well, I would like to see any authority on that.

THE COURT :

Here is the authority as far as you are concerned, okay? You're looking at it.

VALERY FABRIKANT :

I wish I considered that authority.

THE COURT :

That is immaterial whether you consider that to be an authority.

VALERY FABRIKANT :

Well, it is material to me.

THE COURT :

That it is immaterial whether you consider me to be an authority.

VALERY FABRIKANT :

I am still entitled to have access to something, what normal person considers as authority.

THE COURT :

Would you please continue with your questions? You've had your opportunity to consult, there you are.

VALERY FABRIKANT :

Well, I didn't get any answer, so I will just continue the way I did.

THE COURT :

Well, if you just continue the way you did you will run into possibly the same problems you ran in the other day, into the other day, sir.

VALERY FABRIKANT :

I did my best to avoid it.

THE COURT :

I tell you that.

VALERY FABRIKANT :

I did my best to avoid it, in good faith, I did my best...

THE COURT :

If that's for the record, that's for the record. I'll say for the record that I don't accept that.

VALERY FABRIKANT :

All right.

Q. Now, where was this alleged phone conversation?

Because I believe this is time to discuss it. In what

file is that? It is number what?

A. It's part of a group of articles, title number 11, that's in the first document, the file, it's called A, and in 11 there's a whole series there, I don't think they're necessarily connected, but it's the last page, and it's dated April the sixth (6th).

Q. All right. Okay. Good. Good. Okay. Now, let us take this conversation as... assume that this is how it was. So at the beginning of the conversation I admitted effectively that...

A. Sorry, I didn't hear. You admitted?

Q. At the beginning of the conversation, according to what you have recorded here, I allegedly admitted that yes, I made threats of violence, and I discussed it with my wife, and she told me that this is no good, right?

A. She said that... Yes.

THE COURT :

Q. Excuse me, what's the date of that document?

A. This is April the sixth (6th), nineteen eighty-nine (1989), ten a.m. (10:00), titled: Phone call with Fabrikant.

Q. Okay.

VALERY FABRIKANT :

Q. So you see, this is document. And just several lines after that, again, according to you, I said I haven't threatened anyone. Now, how is it possible, in the same conversation, the same person who just allegedly said that he spoke to his wife about threats of violence, which he allegedly made, and his wife told him not to do it, and just several lines later the same person says I haven't made any threats.

THE COURT :

What's your question?

VALERY FABRIKANT :

Well, isn't this a contradiction?

THE COURT :

Well that, first of all you're asking the witness for his opinion on what you said, the witness has said he recorded what you said, you've asked him what...

VALERY FABRIKANT :

No, I'm asking...

THE COURT :

...you've asked him what he has in that document, he says he recorded what you said. How can he possibly profer an opinion as to why you would have said one thing or another?

VALERY FABRIKANT :

I am asking question whether those two statements are contradictory, period. I'm not asking anything else.

THE COURT :

Fine. There you are.

A. May I re-read the document?

Q. Sure, read the context.

VALERY FABRIKANT :

Q. Well, you should by now know it by heart.

I imply by this...

THE COURT :

Pardon?

VALERY FABRIKANT :

If this document were genuine, and it reflected...

THE COURT :

Would you please leave the argument for the end?

VALERY FABRIKANT :

Well, that's why I each time I am asking the witness to respond from his memory, and for some reason, to very simply questions, he cannot respond without looking in what is written. What I am implying very clearly, that if person wrote truth, he wouldn't need that.

THE COURT :

Look, would you please spare the argument until the end?

VALERY FABRIKANT :

Well, I am asking you to ask the witness to respond from his memory.

THE COURT :

If the witness needs to refresh his memory from his notes, he's perfectly entitled to do so.

VALERY FABRIKANT :

This is not the way testimony should go. He read it already once, why is it...

THE COURT :

I'm not interested in your particular view point of how testimony should go.

VALERY FABRIKANT :

Well, isn't it unfair to allow... Okay, I understand witness can refresh his memory once, fine, but...

THE COURT :

A moment ago... he can refresh his memory, there's no limit to the number of times he can refresh his memory, particularly when he's being subjected to the kind of examination that you're putting him through at the moment when you're jumping from one thing to another, and from one memo to another, and coming back again and again. I don't blame him for looking at his notes if he wishes to look at his notes.

VALERY FABRIKANT :

I'm not jumping...

THE COURT :

The jury, generally speaking, will assess how good, bad or indifferent Mr. Haines' memory is, the jury, in turn, will assess whether they believe, generally speaking, the thesis you're advancing, or whether they believe what Mr. Haines is saying. At the moment you narrowed your question to: "Do you not find -- I think that was your question -- that these two entries, or these two recordings are contradictory?" He has to look at the memo before he answers your question. There we are.

VALERY FABRIKANT :

I even repeated to him those phrases.

THE COURT :

Q. Are you now in a position to... Fine.

A. Yes, My Lord. I remember two stages to the conversation, there was the beginning stage when Dr. Fabrikant did mention to me about the conversation that he had with his wife, and how his wife had advised him, and how he thought that maybe some of his quotes... his language that he'd been using, that you would call figures of speech, were inappropriate and maybe it scared some people, and were wrong. And then I told him that: "Yes, if you are going to use those languages any more, I have a legal obligation to inform people". At that point he changed, and said: "But I haven't

threatened anyone, that I have not done". And then he denied it, and then we quickly moved into something else, another part 3 here of my notes.

VALERY FABRIKANT :

Q. Well, what is written there, now you're changing your story.

Witness is contradicting to himself because what he has written is black on white, threat of violence. So... Now he's telling another story, that I allegedly told him not about threats of violence but just some concern about language I was using, those are two very different things.

THE COURT :

You're now arguing again.

VALERY FABRIKANT :

No, I'm applying under section 9 that witness is contradicting to himself.

THE COURT :

You're applying under section 9 that he's contradicting what? A previous statement?

VALERY FABRIKANT :

Yes.

THE COURT :

But he's not contradicting a previous statement...

VALERY FABRIKANT :

He is contradicting to himself, he is contradicting to what is written here.

THE COURT :

He has got notes that he's using to refresh his memory, and he's given you his recollection of the conversation. His notes are not a previous statement, his notes are a conversation with you. So, if it's an application under section 9, in relation to a prior contradictory statement, it's not a prior contradictory statement and the application is dismissed. If it's an application at large under the Common Law to declare the witness hostile, then I'm not going to conclude that this is a witness who is not desirous of telling the truth, and who is obviously trying to evade your questions and should be declared hostile, no. So under whatever umbrella you wish to present the application, it's dismissed.

VALERY FABRIKANT :

Well... But he, himself, let's forget notes...

THE COURT :

It's dismissed. Ask your next question, or you'll be foreclosed. This is the first warning.

VALERY FABRIKANT :

Q. So could it be, if you refresh your memory really well, the threat that I was talking on the telephone was threat which I always made, either to go public or to go to courts, I never mentioned on the telephone even the word violence. Try to refresh your memory, maybe this is what I told you I discussed with my wife.

A. That is not my recall, My Lord.

Q. But would you agree that if you interpret the first phrase the way I reminded you, then the whole thing becomes logical and non-contradictory?

Me JEAN LECOURES :

This is arguing, My Lord.

THE COURT :

This is arguing, and that last question is disallowed. You have the witness' answer, it is not his recollection of the conversation.

VALERY FABRIKANT :

All right.

Q. By that time when you alleged that you reminded me something which I allegedly said to you and Dr. McKenzie, at least by that time, did you know what you were talking about?

A. On April the sixth (6th)?

Q. Yes.

A. Yes, My Lord.

Q. Well, could you share it with us now what exactly were you talking about? Because so far you responded that you have no idea what exactly I threatened, who, what or why? And nevertheless you mentioned this during phone conversation, allegedly, and by that time you say you knew it, maybe you tried to recall. So what exactly was it that I threatened?

A. I believe I've answered those questions, My Lord.

THE COURT :

Q. Do you understand that question?

A. Yes.

Q. Okay.

A. I think he's saying that I haven't told the Court what were the nature of the threats that he made up to April the sixth (6th).

THE COURT :

I'm not sure that the question didn't relate to in the presence of Mr. McKenzie.

VALERY FABRIKANT :

Yes, it is.

Q. I asked you that, at the time of conversation, when you allegedly mentioned to me something which I allegedly said in presence of you and Dr. McKenzie, by the time of that conversation did you know what you were talking about?

A. Yes, My Lord.

Q. Okay. So try to remember then what the nature of threat was, what were the circumstances, what did I threaten?

A. This is the threat you're talking about with Dr. McKenzie and me, and the nature of the exact wording of that threat?

Q. As much as you can, to the best of your recollection.

A. I think I answered that by saying I cannot remember the exact words, I certainly remember that it was... it came across to me, very clearly, as a threat, whatever was said in front of me and Dr. McKenzie. But I can't remember what the expression was because there were other threats that were going around, alleged threats going around, and I can't remember which is which now. I did at the time, would have remembered which is which, but I don't now.

Q. First for you it is not alleged, it's I'm saying they are alleged, for you they are made, right?

A. The one with Dr. McKenzie and me was made, others that you may have made that were reported to me is what was alleged.

Q. No, I'm talking about your personal knowledge which was told in front of you.

A. Yes. And that was not alleged, that did take place in front of me.

Q. Right, but you cannot say anything at all as to what it was?

A. At the meeting with Dr. McKenzie and myself, no, I just knew that it was a threat.

Q. Well, we don't have that many threats. We have one February...

THE COURT :
He has told you he cannot, now would you stop cross-examining him and go on to the next subject.

VALERY FABRIKANT :
Okay.

Q. How many threats altogether you can count I made?

A. I haven't added them up, My Lord.

Q. Well, can we get some kind...

THE COURT :
No, this is cross-examination. Move on to the next question.

VALERY FABRIKANT :
Well, I still don't know what definition of cross-examination is.

THE COURT :
Move on...

VALERY FABRIKANT :
I think I'm asking normal question, how many threats did I make?

THE COURT :
You're not asking a normal question, you have beaten this question of threats into the ground, we've been on it for almost a day and a half now.

VALERY FABRIKANT :
Well, it is important.

Me JEAN LECOURS :
We've been in it for weeks, My Lord.

THE COURT :
I mean with this witness.

VALERY FABRIKANT :
Well, Crown should be happy. Why Crown should object? I'm leading evidence that I threatened everyone...

THE COURT :
Your last question is disallowed, Dr. Fabrikant.

VALERY FABRIKANT :
All right. Oh, I'm just tempt to file it, this document.

THE COURT :
Pardon?

VALERY FABRIKANT :
I would like to file it.

THE COURT :
File what?

VALERY FABRIKANT :
Well, this document which you don't allow me anymore questions. I need it for my further discussion because you don't allow me effectively to question on this.

THE COURT :
You're not cross-examining the witness, that's what you're not doing.

VALERY FABRIKANT :
All right, so I just want to file it.

THE COURT :

You're not filing the document.

VALERY FABRIKANT :

Why not?

THE COURT :

Because the document is a document in the form of notes that the witness used to refresh his memory. You are entitled to consult that document, you've had that document in front of you. The witness has established that that document was contemporaneous to the time when the conversations took place, he's used it to refresh his memory. But we come back to the fact that his testimony is his testimony here today. So you will not file his memo, or his notes.

VALERY FABRIKANT :

Well, why was I able...

THE COURT :

I'm not going to argue with you, you will not file his memo and his notes. Why were you allowed to file another report?

VALERY FABRIKANT :

Yes.

THE COURT :

You were allowed to file a report of a security agent that was made in the course of carrying out his investigation and which was submitted to the university, that you were allowed to file. You were allowed to file a letter which Mr. Haines received from Maureen Habib, and you were allowed to file a reply which he made in relation to her request, because that was a specific document which he directed to the university, which in itself, which stands by itself. His personal notes do not stand by themselves, his personal notes may serve as an "aide-memoire". That is all.

VALERY FABRIKANT :

Well, how will I be able to argue this point if there is nothing in...

THE COURT :

You have my decision. Please stop your perpetual consistent arguing.

VALERY FABRIKANT :

I'm not arguing, I'm asking question. This is normal question.

Q. Okay. There is something else here. I see April fifth (5th): McKenzie, Steiner, Haines, Health Services.

A. May I query what document you're referring to?

Q. Well just previous page.

A. Okay.

Q. Well, could you please read it?

A. It's a...

THE COURT :

Q. Read it to yourself, if it's in the form of notes. You won't read your notes into the record, Mr. Haines.

VALERY FABRIKANT :

Well, he did read it before.

THE COURT :

A document may be read if the document is susceptible to being produced, his personal notes are not.

VALERY FABRIKANT :

He read this page, totally, in the record. You didn't have any objection.

THE COURT :

Yesterday?

VALERY FABRIKANT :

Yes.

THE COURT :

That was the document that was forwarded to... are you referring to the document that was forwarded to Mrs.

Habib?

VALERY FABRIKANT :

No. This was his handwritten notes which he read yesterday and today he read it again, and you had no objection.

THE COURT :

Okay. Fine. Excuse me, if I allowed him to read it, excuse me, I don't recall allowing him to read it. But in any event, if I allowed him to read it, excuse me, my apologies.

VALERY FABRIKANT :

Five minutes ago...

THE COURT :

My apologies, Mr. Fabrikant.

VALERY FABRIKANT :

All right. So he cannot read it. All right.

THE COURT :

No, go ahead, if you...

Q. Did you read that this morning?

A. Yes.

Q. Yes. Go ahead. Go ahead, read it again.

A. It's a...

VALERY FABRIKANT :

Well, he didn't read this particular, he read previous page.

THE COURT :

From the previous page?

VALERY FABRIKANT :

Yes, not this page.

THE COURT :

Okay. If I let him read from the previous page, obviously he can read from that page.

A. This is a meeting between two thirty (2:30) and three thirty (3:30) on April the fifth (5th), nineteen eighty-nine (1989), Dr. McKenzie, Warren Steiner and myself.

My notes tell me the following:

"Informed Fabrikant that his behavior is unacceptable, that is threats of violence, and that he should seek professional help. This should be put in writing and sent to him."

THE COURT :

You are correct, that was read yesterday. Yes. My apologies.

VALERY FABRIKANT :

Q. Okay. Now, please give into details what was that meeting, who, what, when, and so on and so forth? What do you recall about this meeting?

A. The meeting was held on April the fifth (5th), two thirty (2:30) in the afternoon, in Health Services at Sir Georges Williams Campus I believe, with Dr. Warren Steiner, Dr. McKenzie and myself.

Q. Yes.

A. And the next question is?

Q. Well, what was discussed there? What was the purpose of the meeting? What was discussed?

A. The purpose of the meeting was to meet with a psychiatrist, with a professional, who had competence and... because we felt inadequate, on our own, in how to deal with the situation. And we thought that it would be useful to have a professional to give us advice on how to manage the situation.

Q. Yes. And?

A. And one of his pieces of advice was to tell you that your behavior is unacceptable, that we had to put downwards clear guidelines what's acceptable and what is unacceptable.

Q. Okay.

A. That specifically any threats of violence, which you call figures of speech, any of that language has to stop, and has to stop right away, and that it would be advisable if you would seek professional help.

Q. Okay.

A. And that Dr. Steiner recommended that something like that be put in writing and sent to you.

Q. Okay.

A. That's all I can remember of that meeting now, My Lord.
VALERY FABRIKANT :

Q. Did you tell Dr. Steiner that I threatened to kill Rector?

A. I can't remember what we told Dr. Steiner...

Q. There we go.

A. ... but my guess is that because this was on April the fifth (5th), My Lord, after March the twenty-eighth (28th), I would imagine that would have been included in the discussions with Dr. Steiner.

THE COURT :

Q. So you believe you did tell Dr. Steiner that?

A. Yes. Yes. It makes sense to me.

VALERY FABRIKANT :

Well, his memory is perfect, where it was, who was present, what was discussed. And such an important thing, whether he told Steiner that I threatened to kill Rector, not more not less, he didn't write it because it was so clear in his mind that I did do so. Now I ask him: "Did you inform psychiatrist about?", and he's not sure.

THE COURT :

He says he believes he did.

VALERY FABRIKANT :

Can you buy that kind of story?

THE COURT :

Whether I can buy that kind of story or not isn't the issue.

VALERY FABRIKANT :

(Inaudible) to...

THE COURT :

That is not the issue, and you've been told time and again that's not the issue.

VALERY FABRIKANT :

Witness is evading questions. There is no way he can possibly not remember such an important thing. He, yesterday, testified that he didn't write it because it was so important, and so ineradicable from his memory. And when I ask him this important and ineradicable from

his memory: "Did you tell it to psychiatrist?", and he's not sure.

THE COURT :

Well, I took his answers to say he believes he did tell it to the psychiatrist.

VALERY FABRIKANT :

This is not the answer. If he was so impressed by that, he should have no doubts to say: "Yes, of course, I said it".

THE COURT :

Look, he answers the way he answers, the jury assesses his answer, the jury will assess whether they believe his answer.

VALERY FABRIKANT :

This is not the point. This is witness extremely important for my defense, and you're depriving me from putting the right questions, which amounts to unfair trial.

THE COURT :

How are you possibly being deprived from putting the right questions?

VALERY FABRIKANT :

Because when witness is faking his memory, this witness normally is announced adverse and cross-examination is allowed. This is what I mean.

THE COURT :

You have been able to put every question you've wanted to put virtually to the witness, Mr. Fabrikant.

VALERY FABRIKANT :

Oh no, oh no, oh no, as soon as I am getting to nail the witness, I'm immediately stopped.

THE COURT :

Your answer is he believes that he told Steiner about the threat to kill the Rector, that was the witness' answer.

VALERY FABRIKANT :

Well, this is not good enough.

Q. Okay. Did you tell Dr. Steiner about my alleged threat made in presence of yourself and Dr. McKenzie?

A. I would have not reason to believe why that was not included also, My Lord. The purpose was to give Dr. Steiner a good background of what was happening, and what had taken place. And I'm sure that that would have been included in our report to put him in a position where he would be able to best give us advice.

Q. Okay. Did you tell him that I threatened to kill both Sankars, Osman, plus unspecified number of people?

A. That would have been included in my report to Dr. Fabrikant.

Q. By that time, did you remember who the other people were?

A. That would have been possible.

Q. Did you or didn't you remember?

VALERY FABRIKANT :

He does not answer a single question in affirmative. Each answer is "probably yes", this is not good enough.

THE COURT :

It may not be good enough for you, but that's what his memory permits him to do. And when you take his memory along with the oath he took, I suppose that's the answer

he's going to give.

VALERY FABRIKANT :

So you don't see that he's faking his memory now.

THE COURT :

I am not going to rule on whether he's telling the truth or whether he's not telling the truth, or whether he's telling part of the truth, or whether he just has a shaky memory. But what I am able to tell you is that I'm not going to conclude that he is in bad faith and attempting to mislead the jury.

VALERY FABRIKANT :

Okay.

THE COURT :

Or you.

VALERY FABRIKANT :

Okay. Why his memory becomes shaky only when I am talking about threats, otherwise he is not shaky at all.

THE COURT :

I have no idea.

VALERY FABRIKANT :

Well... one guess, maybe the threats were never made, this is why he's so shaky.

THE COURT :

Mr. Fabrikant, you are perfectly free to submit that the threats were never made, you're perfectly free to submit the threats were never made, you're perfectly free to submit...

VALERY FABRIKANT :

This is not my point.

THE COURT :

...that the threats were never made because the witness is not a believable witness, because the witness never took any particular notes, or whatever you wish to submit, you're perfectly free to argue that. All you're meant to be doing now with the witness is establishing what the facts are. What I told you you could not do was attempt to establish a number of things from the witness and then engage with the witness in a process of deductive reasoning in order to establish that something is or isn't likely. That's something that flows from argument and that's something that flows from what the jury will decide when they sit down and discuss this.

VALERY FABRIKANT :

Okay.

THE COURT :

We're not proving out something in a scientific fashion here.

VALERY FABRIKANT :

You are not, I am.

THE COURT :

No, you are not. You are not, I'm sorry, the rules... these are not the rules.

VALERY FABRIKANT :

Well, as long as I am allowed.

THE COURT :

Well, you're not allowed. Okay? You're not allowed.

VALERY FABRIKANT :

I'm not allowed.

THE COURT :

You can establish the facts and you can argue from the facts.

VALERY FABRIKANT :

All right.

Q. Was such letter sent to me, to the best of your knowledge?

A. I do not know of any letter that was sent to you.

Q. Okay. Do you have any knowledge why no such letter was sent to me?

A. No, I have no knowledge.

Q. Okay. At the meeting, when it was decided to send the letter, was it decided who was supposed to send such a letter?

A. I knew that that was not my job, my job was to facilitate problem solving, I had no authority.

Q. And of course you don't remember who was supposed to send such a letter, do you?

A. I don't remember that being discussed as to who would do it. I don't believe it was discussed.

Q. May I ask then additional question. What is the point to discuss that such a letter should be sent unless decision is made who is going to send such a letter?

A. May I answer that, My Lord?

THE COURT :

Q. Certainly.

A. This resulted in... I'm trying to get my memory accurately put together here, is that...

Q. Well, you've had your files in front of you for a couple of days, your memory should be accurately put together by now.

A. Yes. What happened, My Lord, is that we... I've forgotten with whom now, but certainly with Dr. McKenzie it was agreed that we would start to... we would send that tough note, that was one of the results. And Dr. Fabrikant was asking me to do certain things, to gather certain information, and that role of mine would terminate. And we had set it up that we would have a meeting with Dr. Fabrikant, and Dr. Fabrikant would be informed in person, clearly, that the language that he was using was unacceptable, and that he would be told that, and told to stop it. I think also we agreed that we would try and encourage Dr. Fabrikant, at that moment, to seek professional help. We had set up a meeting with Dr. Fabrikant to deal with this, and Dr. Fabrikant was supposed to come, I think, to my office for that meeting, and Dr. Fabrikant cancelled that meeting at the last minute. And therefore I never met with Dr. Fabrikant, we never had that meeting to be able to inform him of these things that were discussed with Dr. Steiner.

VALERY FABRIKANT :

Q. Maybe you try your memory better. The meeting which I cancelled was the meeting with Swamy, not with you, April sixth (6th) was supposed to be meeting with Swamy.

A. I believe that Dr. Swamy, and maybe even Dr. McKenzie, I can't remember who now, but that's possible that others were supposed to be at the meeting as well.

Q. So it wasn't meeting with you?

A. And others.

Q. Again, this is not answer to my question. Decision was to send me a letter.

Me JEAN LECOURE :

He explained, My Lord.

VALERY FABRIKANT :

Well, he didn't explain anything. I asked who was supposed to send such a letter, he didn't remember. Why this letter was not sent...

THE COURT :

He said the letter was not his job, it wasn't his job to send the letter, and he doesn't believe that the question of who was to send the letter was discussed, as I understand it. And he went on to say that what they elected to do was send the note, convoke you to a meeting, etc., etc., etc.

VALERY FABRIKANT :

Q. He said that instead they sent the tough note. Now, may I ask what the tough note has to do with violence, the tough note didn't even mention a word of violence. You are referring tough note is exceeded what, the nine (9), when I said they were playing comedy, that was the tough note. Anyway, the tough note didn't contain any mentioning of violence, correct?

A. No, I don't think so. The purpose of the meeting with you was more than just onefold.

Q. I'm not talking about meeting, I'm asking you question about the tough note.

A. Yes.

Q. The tough note didn't contain any mentioning of violence. You again don't remember.

A. No.

VALERY FABRIKANT :

My Lord, the witness has to testify finally, he cannot, each second, look into his records. Even if it is all fake, he, by now should have known what is in his file. Even if it is total fake.

THE COURT :

He's not here to undergo a test of how good his memory is, as far as memorizing what's in his file and parroting it back to you.

VALERY FABRIKANT :

(Inaudible).

THE COURT :

I agree with you, I would certainly prefer that he stood up there and answered your questions, that he answered them absolutely unequivocally, sometimes one's memory doesn't permit one to do that, in fact very few people have that kind of recall. Now, you don't make matters simpler because you continue to jump back and forth, because you're always on the border of cross-examination, you're over it, you're back, you're over it, back, you're on the line, and generally over the line. And, you know, the witness never knows from one minute to the other what particular thing you're after. He's told you the letter, it was not to him to send the letter, he doesn't know whether a letter was sent or whether it was discussed who was going to send the letter.

VALERY FABRIKANT :

All right.

Q. Do you recall going with Dr. McKenzie to Adler Institute for consultation?

A. Yes, My Lord.

Q. Do you have any record of that?

A. I don't have a record of that, My Lord.

Q. Could you explain why?
A. I don't know why...
Q. Do you have at least something of your meeting with Steiner? It was similar meeting, and it was an important one, you were seeking professional opinion. Wouldn't it be logical to make some note of that?
A. I can't remember now. No, I don't have a note of the results of that meeting, My Lord, the meeting was very short, shorter than what I was prepared for. The meeting lasted only about fifteen (15), twenty (20) minutes.
Q. Do you remember the date?
A. I don't remember the date but it would have been before April the sixth (6th) and after March the twenty-second (22nd), I believe, I cannot remember though.
Q. Do you have your agenda with you?
A. No.
Q. Maybe you would like to consult your agenda?
A. I don't have my agenda with me, My Lord.
Q. Okay. Can it be brought after the break so that we, at least, locate those events in time, it's extremely important. So would you kindly oblige, after the break?
THE COURT :
Would you please do that?
A. After the break, My Lord, there's no one at my office. I don't know how I'd get it here.
VALERY FABRIKANT :
Well...
A. I'd have to... I can go myself and pick it up.
VALERY FABRIKANT :
Q. I believe your secretary is right here.
BY Me BELLEAU :
After lunch...
THE COURT :
Pardon?
BY Me BELLEAU :
After lunch?
THE COURT :
Will you be for all morning with Mr. Haines?
VALERY FABRIKANT :
Oh yes. I believe his secretary is sitting right there.
THE COURT :
Q. Is your secretary in the courtroom?
A. Yes, My Lord.
VALERY FABRIKANT :
So she can go and pick it up.
A. Do you want me to send...
THE COURT :
I would suppose that would be the most efficient way to do it, we'll continue for the minute, but when I break you can...
A. I might add, My Lord, that she tried to get in the office this morning and couldn't get in, the key did not work, and she's called for the locksmith to open the door. I hope that that's been rectified by now.
THE COURT :
Q. I hope that that's been rectified, if not I would presume security or somebody can rectify that. I'm going to take it that that will be rectified and that she knows what your agenda is, and will bring your agenda here, because...

A. Yes, My Lord.
Q. Fair enough.
A. Yes.

VALERY FABRIKANT :

Q. Do you recall who you met at this institute?
A. Dr. Gerald Moser.
Q. Gerald...?
A. Gerald Moser.
Q. How do you spell it?
A. It's a Polish name, I think, and I can't remember the spelling, but it doesn't spell like Moser, it's M-o-d... I don't know the exact spelling right offhand, My Lord.
Q. Did you know him personally when you made the appointment?
A. Yes, My Lord.
Q. So if you knew him personally, probably his name is in your agenda?
A. Oh, I would think so, My Lord, yes, I would have that.
Q. All right. So we'll clarify it later. So he is what, psychologist, psychiatrist?
A. I believe he's a psychiatrist in Chicago, at the Veterans Hospital in Chicago.
Q. Did you go to Chicago for that?
A. No, he was in Montreal, My Lord.
Q. Okay. And there is what, branch of this institute in Montreal?
A. There is... some of the teaching takes place here in Montreal, yes, My Lord.
Q. Okay. What did you tell him in terms of threats, by that time all the threats were there or some were not pronounced yet?
A. Depending on the date that we saw him, everything that had taken place up to that point would have been told to him.
Q. Okay. But do you remember this conversation and which particular threats you conveyed to him?
A. No, I can't remember which particular threat, because I'm not sure, we may have met him before the March twenty-eighth (28th) incident, or we may have met him at the time of that incident, maybe in the same day, or the day after, or the day before, I can't quite remember. My guess would be it was the day after, or soon after, but my notes, certainly my agenda book might indicate the date in which I had that appointment with him.
Q. Okay. Let me put it this way, threat to kill Rector was so striking that I believe you could answer at least, was it before I threatened to kill Rector or after that?
A. I don't know, My Lord.
Q. Do you recall telling him that I threatened to kill Rector?
A. The only way I'm going to answer is to know when I met him, and then be able to deduce that if I met him after the twenty-eighth (28th), then I would be almost certain I would have told him that, My Lord.

THE COURT :

Q. When you put your mind, when you're trying to focus your mind on that meeting, Mr. Haines, can you not focus your mind on that meeting? Can you not see Moser sitting there, and McKenzie sitting somewhere else, and you sitting somewhere, can you not recall that? Certainly

if you can't, you can't, but...

A. I remember us arriving, I remember Dr. McKenzie being late for the meeting, and he, Dr. Moser himself had another appointment soon after. I think we were meeting something like eight (8:00) or nine o'clock (9:00) in the morning, and Dr. Moser had an appointment, forty (40) minutes or fifty (50) minutes later. And Dr. McKenzie was late for the meeting, and so we had a very short meeting. And in the meeting I would have tried, with Dr. McKenzie, to summarize the situation and to find out from the psychiatrist, Dr. Moser, what he might advise us on how best to manage the situation.

THE COURT :

Is this what you want or...?

VALERY FABRIKANT :

No. This is remarkable stuff, he remembers all the minute details, who was late, how much late, everything is remarkably remembered except minor details. My question was, did you or didn't you tell him that I threatened the Rector? You remember all the minute details, why can't you remember this, which is not minute at all?

A. The timing here, My Lord, is so close to events that I can't remember exactly when things took place.

Q. I'm not talking about timing, and I do not want him to manufacture in such a way: "Okay, if it was then, then I told him, if it was not then, then I didn't tell him". He remembers minute details, who was late, who was why, who was where. And I believe, with all those details, it should be opposite, he should have said: "I told him that you have threatened Rector, so definitely it was after twenty-eighth (28th)". This is what the normal testimony should be. It should not be otherwise, it should not be: "Well, you tell me when it was, then I will tell you if I said it or not". It should be quite opposite: "I remember I said it, therefore it was after", or "I know I didn't tell it then, it was before".

THE COURT :

It may be that you enjoy that kind of recall. It may be others enjoy that kind of recall and who wouldn't be able to understand why he does it, that there may be those who don't enjoy that kind of recall.

VALERY FABRIKANT :

I'm not asking him to enjoy, I'm just...

THE COURT :

Well, who possess then, I should perhaps have said.

VALERY FABRIKANT :

I'm just asking him if he was able...

THE COURT :

But he's told you, if I can determine...

VALERY FABRIKANT :

...to give all those details, maybe he can concentrate...

THE COURT :

He told you, he said: "I told him, I told Moser... I gave Moser what we had at the time".

Q. Is that what you said?

A. Yes, My Lord.

THE COURT :

Now he said: "I'm not sure what day we met, so I'm not sure if I knew of the threat to the Rector at that time". There you are.

VALERY FABRIKANT :

You know, it is obvious faking of memory. One cannot possibly remember details, who was late, who was not late, who was where, and just do not remember such facts which he didn't write because it was so "impressive" for him.

THE COURT :

It's useless, you and I debating what one can remember and what one can't remember.

VALERY FABRIKANT :

Well, it's useless because you just do not want to say: "Yes, witness is faking his memory, therefore he's adverse". What can I do about it?

THE COURT :

Put your next question.

VALERY FABRIKANT :

Yes, I will put my next question.

THE COURT :

That's what you can do.

VALERY FABRIKANT :

Yes.

Q. All right. So there is no way you can recall what were the threats which you did, for sure, mention to him?

A. I would have mentioned the threats, the alleged threats that I had heard from other people like Dr. Sankars, that you had made, the threats that in North America this is the way we do things around here. I would have told him about that threat. And if the meeting, again, My Lord...

THE COURT :

Pardon?

A. If the meeting that I had with Catherine McKenzie and Dr. Fabrikant was before that, I would have told him also about his language that he used at that meeting with me and Dr. Mckenzie. And the third is whether I told him about the threats against the Rector, I'm not sure if that was included, my guess is that there's a very good chance that was included. But I might be proven wrong once I get my notes here and find out that the meeting was before, I wouldn't want to mislead the Court.

VALERY FABRIKANT :

Q. Okay. Now we come to another point. You said alleged threats, so there is... except those threats which I expressed to you directly, you have heard about my threats allegedly said to somebody else. Please elaborate on that because you never touched that before.

A. I thought I had, My Lord.

Q. No.

A. I thought I had mentioned that when I interviewed Dr. Sankar, he had mentioned to me that Dr. Fabrikant, that he had said that in North America you have to go around shooting people to get things done around here, and this is the only way that one can do it, is to do that.

VALERY FABRIKANT :

Well just yesterday, with all the due respect, do you remember we played the tape, and he insisted that it was I who told him that I told it to Swamy and not to

Sankar, is this sufficient contradiction?

THE COURT :

It's a contradiction but, you know, listen, I've told you, every contradiction that you find isn't going to add up, and doesn't add up to a witness who's not desirous of telling the truth.

VALERY FABRIKANT :

All right. So this contradiction again is of no importance to you. All right.

Q. Do you recall, Mr. Haines...

THE COURT :

I'm not saying it has no importance.

VALERY FABRIKANT :

Well, I need to find out who told him, was it I, was it Swamy, was it Sankar? We have now three options, and we don't know where we stand. We cannot get from this witness at least this much, at first it was I, then he said that probably it was Swamy who told him, now we hear that it was Sankar who told him that.

Q. Which Sankar you are talking about now?

A. I don't see any inconsistencies, My Lord, I believe that Dr. Sankar did tell me this, I do believe that Dr. Fabrikant also told me this. I do know that Dean... I know what Dean Swamy said to me and... may I elaborate?

THE COURT :

Q. Would you please?

A. Yes. Dean Swamy said to me he had heard that he... Dr. Fabrikant had never done it to Dean Swamy but he had heard from others that Fabrikant had said to them that they go around in North America shooting people.

VALERY FABRIKANT :

Q. Okay.

A. And he was very clear, Dean Swamy, to say to me that Dr. Fabrikant had never said that to him, up to that point.

Q. Well, that was not his yesterday's testimony. How do you reconcile it with your testimony yesterday? If you look at page 4, it is clear:

"Went to Dean and told him about
American."

How do you reconcile it? Dean told you that I never told him that. Now this record clearly indicates that I went to Dean and told him all this stuff.

A. If I remember yesterday, My Lord, I clarified that, clearly.

Q. You didn't.

A. I do not see any inconsistencies, My Lord, maybe in the context of the question in which it is asked, that I may be confused, and there may be a different question than what I think maybe is being asked, but I think I am being consistent, My Lord.

Q. Well, no matter how you ask it, we had yesterday two options. I told you that I went to Swamy and told him about America, and the other option was that I told... that Swamy told you this directly that I indeed came to him...

A. I can't hear you.

Q. ... and said that. Now we have a third version, that Swamy never heard any of those, but quite opposite, it was to Sankar who I told that, and we still did not discover which Sankar it was.

THE COURT :

Continue.

VALERY FABRIKANT :

What, there's no contradiction, everything is fine?

THE COURT :

Continue.

VALERY FABRIKANT :

All right.

Q. Now which Sankar was it, who told you that?

A. Which Sankar told me what?

Q. You do not recall what we were talking about for the last five minutes?

THE COURT :

Q. You said that when you interviewed Sankar...

A. Yes, My Lord.

Q. ...you didn't say which, he mentioned the North America threat, we'll call it that, if we can settle on this term.

VALERY FABRIKANT :

For shortness sake, yes.

THE COURT :

Q. Now, which Sankar?

A. Both My Lord, I believe both Dr. S. Sankar and T. Sankar had mentioned that to me.

VALERY FABRIKANT :

Q. So, did they mention that I told it to both of them?

A. My Lord, I'm getting very confused here, different questions here, going back and forth.

THE COURT :

Q. Well look, I'm not you.

A. No. Well, I remember that I interviewed Dr. Sankar, both S. and T., and they were afraid because Fabrikant had said to them: Well, this is how they do things in North America. I remember that clearly, My Lord.

VALERY FABRIKANT :

Well, still my question stands not answered.

THE COURT :

He said both of them.

VALERY FABRIKANT :

Q. Well, did I tell this to both of them or I told it to one of them, and the other one just learned from the other one...

THE COURT :

He's got no way of knowing how one or the other, he spoke to both of them and they said what they said to him.

VALERY FABRIKANT :

Q. Well, did you ask question whether I told it to them directly?

A. I assume, My Lord, that they were telling me a conversation that they had with him directly.

Q. So, should I assume that I told it to both of them?

A. I did.

Q. I don't understand. You told them or they told you?

A. They told me.

Q. That I told both of them, separately or together? When they were together or on different occasions, I came to one and said it, and I came then to another and said the same thing?

A. That's my understanding, the latter.

Q. Do you have any record of your meeting with Sankar, with

Swamy?

A. I have a record of a meeting with Swamy, I do not have a record of the meeting with Sankars.

Q. Could you explain again why meeting, which resulted in such an important threat, and I believe you were concerned with threats by that time, was not recorded anywhere?

A. The purpose, My Lord, in meeting with Dr. Sankar, S., and Dr. T. Sankar, and eventually Dean Swamy, was to find out whether... to assess the situation and to decide whether I could be of any use, and be useful to the people involved, including Dr. Fabrikant. I was just gathering preliminary data to find out whether they, also, would want to use my resources in helping to facilitate or solving other problems. It wasn't really my job to keep a record of these meetings and to write up a document, analyzing and stating what was going on and what was wrong, or what was happening, my job was to get them eventually to do that.

Q. That was not my question. My question was, it was very important, and I believe frightening situation, that I was threatening almost everyone, and you didn't bother to document it in any way. Could you explain that?

A. Yes, My Lord. My understanding that when I spoke to Dr. Sankars and Dean Swamy, or at least to the two Dr. Sankars, that they had informed people, and so there was no need for me to take any action, that they had spoken to other people, i.e. Dean Swamy. And that, I understand, was not recent, i.e. to this period of February, March nineteen eighty-nine (1989), but it was my understanding that the statements that you had allegedly made to both Sankars had been made sometime prior to that, it wasn't a recent event.

Q. Well, even more important, if it makes the history of threat, shouldn't it be even more worrisome for you? So it means that it is continuous threats during certain protracted time, shouldn't it be recorded?

A. In the first instance, when I was meeting with Dr. Sankars in winter of eighty-nine ('89), these were the only threats, at the beginning, of which I was aware, and maybe two or three or four threats of that nature that you had made to Dr. Sankars, and maybe some others. And as far as I was concerned, they had taken actions to report it, that was not my job, my job was to check whether action had been taken, whether it had been reported, that had been done, therefore...

Q. You checked that it was reported to who?

A. I believe that it was reported to dean Swamy.

Q. Was it reported in writing to Swamy, to the best of your understanding?

A. I don't know, Dr. Fabrikant.

Q. Did you ask Swamy if he did something about it?

A. I remember having a meeting with Dean Swamy, I didn't... I think he had a chat with you, he spoke to you, but I don't know much more than that.

THE COURT :

Okay. We'll adjourn at this point for fifteen (15) minutes.

Q. Would you see if you can obtain that agenda, Mr. Haines?

A. Thank you, My Lord.

SUSPENSION OF THE HEARING

WITNESS: GRENDON HAINES -- UNDER THE SAME OATH
CONTINUATION OF EXAMINATION BY MR. FABRIKANT :

Q. Well, have agenda arrived yet?

A. No, My Lord.

THE COURT :

Can you continue with other questions?

VALERY FABRIKANT :

Okay. Yes.

Q. Do you recall a conversation on the telephone with me, Dr. McKenzie and you listening on a loud speaker?

A. I remember being in an office with Dr. McKenzie and you speaking with... and Dr. McKenzie speaking to you, and I remember being there. And the conversation was on a loud speaker?

Q. Well, you was overhearing the conversation on some other device, I don't know what it was.

A. I was in the room with Dr. McKenzie while she was speaking to you on the phone. I'm trying, My Lord, to remember if it was on a speaker or not.

Q. It doesn't matter, you were listening to the conversation, do you remember that conversation?

A. Remembering... yes, some of it.

Q. Okay. Could you explain, please...

A. I remember being there, I don't know if I remember the conversation.

Q. Could you explain one thing, why wasn't I advised that there is somebody else listening to the conversation?

A. I don't know why, I was not advised.

THE COURT :

Well, have you established yet whether Mr. Haines was simply present or was listening to the conversation?

That, I don't know.

VALERY FABRIKANT :

Well, I think he admitted that.

THE COURT :

I don't think he did at all.

VALERY FABRIKANT :

All right.

Q. So you were present and you were listening to the conversation through some additional device, correct?

A. I was present, an additional device, I had nothing in my hands, I was not listening over another telephone, I can't remember if it was put on a loud speaker system or not, My Lord. I heard Dr. McKenzie for sure speaking, but I can't remember if there was a loud speaker or not.

Q. Well, have you heard my answers, too?

A. I can't remember what the conversation was about, at the time, My Lord.

Q. Just answer the question if you heard my answers, regardless what it was about.

A. If I heard your answers, I guess it would have been Dr. McKenzie was summarizing things that had been said, that you had said, in that form, or if there was a speaker, I don't know.

Q. Well how often do you talk to somebody, listening to the conversation through the speakers, that you cannot remember whether such conversation did or didn't take place? Did you have many conversations like this?

A. I don't remember having very many conversations at all

over a telephone, answering machine that broadcast a speaker telephone.

Q. So was that the one which took place?

A. I don't remember.

Q. You cannot even... you cannot even say whether you were hearing the conversation or you weren't?

A. I would have heard Dr. McKenzie's conversation for sure.

Q. This is not my question.

THE COURT :

Why do we need to get into so much trouble over the whole question.

Q. Do you recall hearing the other end of the conversation? It's so simple, it's not...

A. No, I don't.

THE COURT :

Fine. There we are.

VALERY FABRIKANT :

Q. And you, of course, do not remember what the conversation was about?

A. All I remember is the preparation for the meeting, and why I would be around, My Lord. I don't remember the nature of the conversation. All I do know is that the purpose for me to be in the room with Dr. McKenzie was not... the purpose was not confirmed.

Q. I don't understand, what does it mean, purpose was not confirmed?

A. I think, if I remember correctly, one of the reasons that Dr. McKenzie was speaking to you was to see if you might utter any threats over the telephone. And as far as I know, and I remember very clearly, you did not.

Q. Okay. So now, now probably it makes sense for you to overhear the conversation, because it was kind of entrapment, right? So that makes sense for you to hear, you would be second witness to hear that, correct?

A. I still do not remember if there was a speaker phone, My Lord.

Q. Well anyway, that makes sense for you to be listening to the conversation, so it was some kind of entrapment, right?

THE COURT :

That requires... no, that question you can't ask.

VALERY FABRIKANT :

All right.

Q. So you arranged with Dr. McKenzie to have phone conversation with me, wishing to somehow provoke me into uttering some threats, correct?

A. No, My Lord, I did not arrange the meeting, the telephone conversation, I was asked to join in the room, and there was the apprehension that you might make a threat, and Catherine wanted me present if that should happen.

Q. Well then, definitely you must have listened to what I was saying, otherwise your presence was of no use, correct?

A. I don't know if I heard your end of the conversation, I do not remember that.

VALERY FABRIKANT :

This is childish.

THE COURT :

What's your problem now?

VALERY FABRIKANT :

Well, if he admits himself that he was there to make me

somehow utter some threats, then what is the point for him to be there if he couldn't listen to what I was saying? And again, you know that it is... I know it is forbidden, but since we are discussing it, you know that McKenzie said here that he was listening to the conversation and she was very nervous, she just didn't say what it was. And when I asked her whether it was entrapment, she denied it.

THE COURT :

Well fine, but what do you want me to do about it?

VALERY FABRIKANT :

Now he admitted that it was an entrapment. You see, I...

THE COURT :

That's your word, an entrapment, first of all, let's leave that, let's leave that, that's not the issue, what's the issue?

VALERY FABRIKANT :

The issue is that he again is faking his memory, that he definitely was listening to conversation, we have it from testimony of McKenzie, we have it from the nature of the call, since the call was made to check whether I will utter threats. There is no sense for him to be there unless he could listen to what I am saying.

THE COURT :

Listen, we'll go through this for the last time. Okay? The rule which permits the judge to declare or to authorize you to cross-examine your own witness is a very elastic rule. Okay? And it's a rule that resides in the judge's discretion. It has nothing... it is not bound up in itself in the question of whether the witness is right or wrong, telling the truth or not telling the truth, although that's a factor, or that may be a factor. If the judge is of the view that the witness is attempting to evade questions, is attempting to shelter himself behind a poor memory, is attempting not to answer key questions, then on a progressive scale the judge has the authority to allow you to sharpen your questions, to allow you to ask suggestive questions, and at the very far end of the scale, to allow you to cross-examine. You say Haines is faking it. That's your position. If he were, what does he need to bother remembering for, that he was there to see whether or not you would make a threat. That much he told you, what he says is: "I can't remember if I was listening in to one end of the conversation". You may be right, it might be perfectly logical to assume that he was. But what interest on this earth has he got to tell you: "I was there to be a witness, if you like, in case you made a threat, or in case you mentioned a threat", what interest has he got to go that far if he were blantly lying about whether he was listening to the other end of the conversation or not. So, I conclude from that that Grendon Haines probably needs to give his memory a "boot" but maybe he can't do that, I don't know, but I can't conclude that he's in bad faith. If he were in bad faith I wouldn't know why he would have told you what he was there for in the first place. So no, I'm not going to, on the strength of that, place the mark on him that you want me to place by authorizing you to cross-examine him at large. That has got absolutely

nothing to do with how the jury will appreciate Grendon Haines' testimony, whether they will think he has a good memory, a bad memory, whether they will even think that he was being less than frank with you or not. But Grendon Haines in his demeanour is not a witness at this point, in any event, at which I'm going to say is purposely misleading the Court, therefore I should exercise my discretion and let you cross-examine at large. Now, you've tried it with every single... I don't know what you think cross-examination at large holds for you, I don't know whether you think there resides in that concept some sort of magic wand that allows Fabrikant, the magician, to perform with some degree of brilliance. You've been allowed to go routinely, more than half-way, in asking the suggestive questions you've been allowed to ask, there hasn't been a single objection from the Crown Prosecutor in the last series of questions, there hasn't been a single intervention from me. Now, I'm sorry if you don't like it, but that's the exercise of the discretion that I'm exercising here, and I'm going to continue to exercise it, and I'm going to continue to exercise it that way. Now, there you are, so go on from there.

VALERY FABRIKANT :

Well, the reason for such thing is very simple, when someone tries to distort the truth, very often it is done in a very unwise manner. Because this is what he did with the telephone conversation of mine, he didn't bother to distort it in such a way that it would at least look natural, he distorted one part and didn't bother to distort the rest, and it looks ridiculous.

THE COURT :

Well, that's your thesis.

VALERY FABRIKANT :

The same as here.

THE COURT :

That's your thesis. Now I told you, if...

VALERY FABRIKANT :

The same as here, he just... well, I don't know if I can say it, inexperienced in distorting the truth, and since he is inexperienced, then he fails here and there, and we see it all the time, that's all it is.

THE COURT :

That's your thesis, that's your thesis that he's distorting the truth. Whether he's good at it, bad at it or different at it, that's something else.

VALERY FABRIKANT :

All right. I accept whatever you say.

Q. Could you explain to me why did you need me to utter additional threats if, according to you, you had more than ample evidence of me already uttering those threats to you, to both Sankars, to you and McKenzie? Why on earth did you need an additional threat from me?

A. ...

THE COURT :

Q. The question's there, answer it.

A. I'm not sure we were looking for additional threats, she wanted support, she wanted me to be present, in the conversation that she had with you, and in case you did utter a threat. I know though that if this telephone

conversation took place after we met with Warren Steiner, then the purpose would have been to use it as an occasion to put something in writing, I would imagine, to you, to say: "You cannot do this".

VALERY FABRIKANT :

- Q. Well, this is not the answer to my question. I already uttered more than enough so that you could put it in writing. For example, you could say: "It is totally unacceptable to threaten to kill Rector, usually it is not being done". Could you write to me something like that?
- A. I don't know when that telephone conversation took place, if it took place before you made those threats to me about taking the Rector hostage, then we didn't have enough information at that time.
- Q. Okay.
- A. I can't remember.
- Q. Why wouldn't you...
- A. Because it was just... there was alleged information that I had from the Sankars and Dr. Osman, but that was time at a date, it wasn't recent.
- Q. Okay. Let me put it differently then. At the time of conversation you didn't have any recent threats uttered to you or to you and McKenzie, right?
- A. I don't remember that because I don't remember when that conversation took place, telephone conversation took place with you and Dr. McKenzie.
- Q. Well, but this is important. Did you or didn't you have, by that time, threats uttered to you, to you and McKenzie, to McKenzie only?
- A. I may have at that time, yes, it's possible.
- Q. So why did you need an additional? Couldn't you just write to me a letter?
- A. It was not my job to write to you.
- Q. No, no, no, one second. You said you needed this additional threat to be able to write to me a letter, I don't care who was supposed to write this letter. But if you had additional threats, this letter, by whoever it would be written, could be written. Why did you need an additional threat?
- A. I didn't need an additional threat, I didn't any threats at all because I had no responsibility to write you a letter.
- Q. Okay.
- A. It's Dr. McKenzie that wanted me there so that I would be a witness if in case you did do that.
- Q. Well, why not you, why the arrangement was made to get yet another threat from me so that you would be... you, again, when I'm saying you, I don't mean you personally, that the team of whoever was there would be able to write to me a letter if threats were already there?
- A. That's a question I couldn't answer, that would be a question Dr. McKenzie would have to answer.
- Q. Could it be that the answer is that you didn't have any, and that would be the first one you would have had? Could that be the right answer?
- A. It could be possible but I had no personal, direct experience at that time, I'm guessing now, of any personal threats that you had made, which I had experience with. If the meeting took place before the meeting that I had with you and Dr. McKenzie and the

meeting that I had with you, in which you relayed to me the discussion about taking the Rector hostage.

Q. Okay. So I believe we at this point leave this particular part until agenda arrives and we probably will return back to this particular part. Now, would it be possible for you to explain why do you locate my threat to kill Rector at March twenty-eighth (28th)? Is there any particular significance of that date?

A. I remember when I wrote that down, in August, I was trying to find the date, and it was very difficult to ascertain whether it was March the twenty-eighth (28th). So I don't have a precise record or memory of whether it took place on the twenty-eighth (28th) or not, all I know is it is around that time.

Q. Well, did you regret by that time that you didn't write down my threat?

A. Did I regret at what time?

Q. When you needed to write...

A. In the summer of ninety-two ('92)?

Q. ...your letter...

A. Yes.

Q. ...you were so sure that you will remember that you didn't write it down. When it comes to the situation when you needed to write it down, it looks like you did not remember it.

A. When I wrote the letter in June or July of ninety-two ('92), I was looking in my records for the date, I was searching, and I couldn't find it.

Q. All right, but you said that you complained to security at that date, right?

A. After you had made the threat to take the Rector hostage, I reported that at that time to Catherine McKenzie who was in fact Associate Vice-Rector, whose portfolio included security, I reported to her and I believe to Mr. Roland Barnab,, and I reported that eventually, at a subsequent meeting, maybe that same day or soon after, to the Rector.

Q. Okay. When you reported it to security, you spoke to Mr. Barnab, himself?

A. Yes.

Q. It was the same date I allegedly made the threat?

A. I would think it would be, I would make it right away.

Q. So probably security has a record of that?

A. I don't know that.

Q. Well, I mean that would be the easy way to check when you heard it.

Me JEAN LECOURES :

This is argument, My Lord.

VALERY FABRIKANT :

All right.

Q. But there is no reason for you to put it at March twenty-eighth (28th)... was there any reasoning behind that, that you put it at March twenty-eighth (28th)?

A. Process of deduction, in other words it had to have happened before April the sixth (6th), before those letters. And then my book, when it comes, might be able to give me some rationale as to why I did that, why I chose March the twenty-eighth (28th).

Q. Okay. Could it be that you attached it to March twenty-eighth (28th) because twenty-four (24) hour surveillance started at that date? Could that be?

A. I did not know when the surveillance started, I heard that there was surveillance started, so if it started on March the twenty-eighth (28th), then the meeting that I had with you, in which you told me about taking the Rector hostage, could have then taken place on March the twenty-seventh (27th) or the twenty-eighth (28th). I imagine the security precautions were taken soon after.

Q. How were you informed about twenty-four (24) hour surveillance?

A. How was I informed that you were under surveillance for twenty-four (24) hours, or that I had a security guard outside my house for twenty-four (24) hours?

Q. Well, I didn't know that, but anyway, if you know even that, well share it with us.

A. Which one?

Q. Both. It's both interesting.

A. Well the second, the one where I found out that there was a security guard outside my house, I found out from my neighbours. They told me they were concerned about someone sitting in a car on the street, a few doors away from my house, and they were wondering what it was about. I was surprised, I didn't know anything about it, but I certainly made a guess. The neighbours had been to the police station nearby to find out why this man was there, they were worried for their children, and didn't know who he was. And the police investigated and reported back to my neighbours that he was there for good reasons and that's all they could say. So that's how I found out that there was a security guard outside my house. How did I find out that you were under twenty-four (24) hour surveillance? I don't know at what meeting or who told me, but I know that I would have heard it in a conversation that you were being followed. I've forgotten where right now I heard that, but I would have heard that soon after, maybe from Mr. Barnab, and... or Catherine McKenzie.

Q. But you don't remember who told you that?

A. I don't remember who told me that, no.

Q. All right. What you're claiming is that they put security guard outside your house without even asking you whether you need that, without even informing you about it, this is how it was done?

A. I remember... I think we had a conversation with Dr. Barnab, ... Mr. Barnab, and Dr. McKenzie, at which time I expressed worry and concern for what might happen or might not, and I said I didn't know what would happen but I was worried. And that's all I heard, I did not know anymore. They may again have talked at that meeting about some sort of additional security for the university, but how that would be manifested and employed, I did not know. That was not my responsibility to know, that was the responsibility of the security people at the university to take the appropriate action.

Q. So what kind of meeting was that?

A. The meeting with Dr. McKenzie and Roland Barnab,? I don't think it was an actual organized meeting, they may have met in someone's office very quickly, or at my office at Loyola Campus.

Q. So there were three of you?

A. I would think that the three of us were together at one

time, and may have been... Yes, that's about all.

Q. Yes. Okay. I hope you have a reflection of that in your agenda when it arrives. Did you discuss what exactly is to be done during that meeting? In terms of surveillance...

A. Not I. No.

Q. ...bodyguards, whatever.

A. No. Not I.

Q. No, I mean not you, there were three of you, you got together, you had to discuss something. So you just got together and you said: "Okay, certain measures should be taken. Goodbye"?

A. No, I think we got together to discuss the statements that you had made...

Q. Yes.

A. ...I was informing them, and then they may... they may had to face that certain actions had to be taken, and I left it in their hands. What actions those were, I don't know.

Q. So during that meeting, all what happened was that you repeated the threats which I allegedly made to you, that's all. And after that they said: "Goodbye" and off they go?

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

Oh, I may have stayed behind for part of it but I remember

very well I did not know. They may have talked about getting extra security, but how it was to be deployed, I had no idea.

Q. So, at that meeting there was absolutely no mentioning of twenty-four (24) hour surveillance or putting some security on your house, nothing at all?

A. There was no mention about putting any surveillance on my house or for me, there was talk about fixing my office up, quote, so that... with a panic button, and so that in preparation for the subsequent meeting, when you were supposed to come, which you cancelled, they had installed in my office, without my request, but I think concern, because I had expressed my worry, they had installed a panic button in which if Dr. Fabrikant... They were afraid for my life, My Lord, and because this is after he has told us, told me, sorry, that he has a gun. And so they set up themselves, on their own, telling me what they were going to do, they didn't ask me but they told me, and told me that they would set up a panic button in my office, and a system of signals to alert them if Dr. Fabrikant would take any action that might be dangerous to my being, and what would happen if that took place, and had set some arrangements for that.

Q. What reason did you have to fear for your life? Did I ever threaten you personally?

A. No, you had not threatened me personally.

Q. Was I ever hostile to you in any way?

A. Hostile... I'm not quite sure what the definition of hostile is, but I was... you did not threaten me, you've made no threats against my life.

Q. Look, when person says that he thinks his life might be in danger, he must have some good reason to say so.

A. Yes. Yes.

Q. Well, would you please express those reasons?

A. Yes.

Q. If you say that I never threatened you, when I asked you whether I was hostile to you, you thought for about thirty (30) seconds, which means again that, at least not that obvious.

A. When you told me you had a gun, and you had the ability to take hostages and (inaudible) Bishop Court, and when you told me that you would shoot the Rector, I had expressed my concern to both Dr. McKenzie and Roland Barnab, that, you know, in some cases like this, the third party, the person acting as the third person, facilitator, sometimes can get in the way and might get shot. I was concerned that Dr. Fabrikant was upset with me because he had expressed, pushed me to do certain things and get answers for him immediately, right away, that he might be very dissatisfied with the work that I was doing, and that he may take out his aggression against me. And I expressed that concern to Catherine McKenzie and to Roland Barnab, and that's all I did, I didn't ask for protection but then they afforded it to me, to which I was grateful, My Lord.

Q. Now, could you explain what was the reason to have both twenty-four (24) hour surveillance on me plus guard sitting besides your house? Why wasn't it enough just to survey me for twenty-four (24) hours? You expected somebody else to come to kill you or you expected me to hire somebody else to kill you, or...

A. I have no idea.

Q. Could you elaborate? Well, there might be some reason... Unless university just didn't know what to do with their money...

THE COURT :

Excuse me, the witness said that as far as the deployment was concerned, he had no part in that and knows nothing of it. That's the end of that part.

VALERY FABRIKANT :

All right.

Q. When you learned about it, what was your reaction? You learned that I'm under twenty-four (24) hour surveillance plus your house was surveyed.

A. What was my reaction when I was told on the street that I was under surveillance, when I realized, I wasn't told by the neighbours, but I put two and two together and guessed that's what it was.

Q. Well, it's kind of very strange to assume that university does such a thing without advising you about it, but all right, we take it at a face value. So, what was your reaction?

A. I was surprised, I was concerned for the neighbours, because they were scared, they were worried about what was going on, and I was concerned that they were worried for their children. I was also thankful, I don't know, grateful that the university, or at least Dr. McKenzie, I assumed, was responsible for the decision, I don't know to this day, I assumed that she was responsible for the decision and I was grateful to her to had heard me, listened to me, and had taken some steps to make things, care for me, I appreciated the consideration and the thought and the action that went behind that.

Q. Well, could you explain a little bit in detail how secure that thing was? What did you expect me, to come to your house?

THE COURT :

No, this will lead us nowhere, this is pointless.

VALERY FABRIKANT :

No...

THE COURT :

It's pointless, the question is disallowed.

VALERY FABRIKANT :

All right.

Q. Now, assume for a second that this is all true, and I intended to kill you...

Me JEAN LECOURE :

This is hypothetical from the start.

VALERY FABRIKANT :

All right, I will change it.

Q. How...

A. May I, My Lord?

Q. ...how would your panic button help you if I take the gun, which I allegedly mentioned to you, come to your office and shoot you dead?

THE COURT :

Listen, you're recruiting the witness in argument that you may eventually make, if you wish to say whatever you wish to say, but you're not going to be able to ask the witness that question. The witness told you what happened, told you about the installation of the panic button, about its... not so much about its functioning but what it was there for, period. What the witness may think about how efficient it would have been, or whatever, is of no moment, so you're not permitted to ask

that question.

VALERY FABRIKANT :

Well, if you recall, I asked exactly the same question Mr. Malenfant, what would his help be if I come to his office and start shooting, and this question was allowed.

THE COURT :

Well, Mr. Malenfant was permitted to answer that question because Mr. Malenfant, although not qualified as an expert, was nevertheless someone with some experience in security, and I thought that it would be fair to permit you that question to Mr. Malenfant. It isn't only experts that can give an opinion, and Mr. Malenfant, being in the security business, I thought was probably competent to answer that question.

VALERY FABRIKANT :

This is not the point of my questioning.

THE COURT :

I don't care what the point of the questioning is, the question is whether... the point for me is whether you can ask the question, and you can't ask the last question. So there you have the ruling.

VALERY FABRIKANT :

Yes. I cannot show that it was obviously playing a comedy rather than real security?

THE COURT :

If you want to argue later that it was playing a comedy, you can argue that it was playing a comedy, and I'm... you know, that you may argue if you wish. And that will raise two possibilities, that will raise one possibility as whether in the circumstances what was done was reasonable, although you may pretend that it was done according to a script of W.S. Gilbert, or it may have been perfectly reasonable in the circumstances. I don't know, but you certainly won't get the opinion of the witness as to whether it was reasonable or not. I think we'll adjourn at this point until two fifteen (2:15).

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITHOUT JURY

Me FREEDMAN :

I was just wondering if we could (inaudible) the jury whether I can address you with respect to the witnesses.

THE COURT :

Yes, sure.

Me FREEDMAN :

Okay.

THE COURT :

I came in to do something else but go ahead.

Me FREEDMAN :

Okay...

THE COURT :

You look poised, so...

Me FREEDMAN :

Thank you, My Lord. If you recall, I mentioned a couple of issues yesterday, I was just wondering... I haven't been able to get an indication from Mr. Fabrikant as to how long Mr. Haines' testimony will continue and as to whom is going to be next exactly. So, as I said, I have six other people, actually now seven other people under subpoena, not a problem for most of them, there are two difficulties with vacations and travel plans.

THE COURT :

Okay. Just a second.

How long will you be with Mr. Haines? Do you know?

VALERY FABRIKANT :

Well, today for sure, so if any witness there waiting, they can be released.

Me FREEDMAN :

I wasn't concerned about today.

THE COURT :

Today.

VALERY FABRIKANT :

So that was not your question, I understand.

THE COURT :

Tomorrow, who do you propose to pass to?

VALERY FABRIKANT :

I think we'll still have some discussion with Mr. Haines, but I'm not sure for how long.

THE COURT :

Then you better see if you can tell Mr. Freedman who you will require tomorrow.

VALERY FABRIKANT :

Well, I already told him, Miss Habib, Miss Torbit, if she's with documents, if not then we'll send her another subpoena.

Me FREEDMAN :

Who?

VALERY FABRIKANT :

Miss Torbit.

Me FREEDMAN :

She was subpoenaed without documents.

VALERY FABRIKANT :

So we need to send her another subpoena then. Okay. Then...

Me FREEDMAN :

The difficulty is Miss Torbit is scheduled to go on a conference next week, which she's willing to miss if she's going to be called, her difficulty is she really would like to take her family vacation in July.

THE COURT :

Uh, huh.

Me FREEDMAN :

So that's where we're at with that.

THE COURT :

Well, what is her situation next week? She's either going to her conference or she's not going to her... I don't know.

Me FREEDMAN :

Well, she's a bit disturbed by this whole thing of waiting and she said she's perfectly willing, if there's a question of her having to be available this week, she's perfectly willing not to go to her conference.

THE COURT :

Fine.

VALERY FABRIKANT :

Well, I do not want really to inconvenience her, if she is prepared to come with documents without subpoena then.

Me FREEDMAN :

When would that be?

VALERY FABRIKANT :

I do hope that I could examine her tomorrow...

Me FREEDMAN :

Uh, huh.

VALERY FABRIKANT :

...but again, it depends on how quickly we go today.

THE COURT :

Well, have you at least formulated what documents you want her to have?

VALERY FABRIKANT :

Yes. All the documents she has in her capacity related to me.

THE COURT :

Does that...

Me FREEDMAN :

I will ask her.

THE COURT :

You will ask her if she would do that?

Me FREEDMAN :

Certainly.

VALERY FABRIKANT :

And another thing, again to accommodate her, for example if I'm not finished with Mr. Haines, I would have no objection to interrupt for, say an hour or an hour and a half, and accommodate Miss Torbit and she could go to conference.

THE COURT :

Fine.

Me FREEDMAN :

I don't believe her testimony should be very long.

VALERY FABRIKANT :

Yes, that's what I mean, so I think that... I'm perfectly prepared to be as accommodative as I can.

THE COURT :

Friday. Okay. And if you would...

Me FREEDMAN :

I shall.

THE COURT :

...perhaps call her this afternoon and mention to her what documents Mr. Fabrikant would like, or...

Me FREEDMAN :

All documents related to Valery Fabrikant...

THE COURT :

That's right.

Me FREEDMAN :

... (inaudible) on most subpoenas. Okay. And the other issue, I guess, could wait a bit, that's for Seshadri Sankar, who is going to be out of the country as of now from July tenth (10th) to August seventeenth (17th), to England, India and various other destinations.

VALERY FABRIKANT :

Well, July tenth (10th) is still long way...

Me FREEDMAN :

Okay, that's...

VALERY FABRIKANT :

...but again, if he wishes to make it faster maybe he would cooperate voluntarily with submitting documents without subpoena, and then I would be able to prepare his examination earlier.

THE COURT :

There I take nothing to do with that.

VALERY FABRIKANT :

Yes, you have nothing to do with that.

THE COURT :

I have nothing to do with that.

VALERY FABRIKANT :

Absolutely not.

THE COURT :

If he wishes to give you a package of documents on his own, I

will... that, of course, has nothing to do with me, it doesn't require my authority or anything else. Whether the documents are pertinent to any questions you might want to put to him, whether there'll be any objections in relation to reference to these documents, I don't know, I'll look after that if and when it happens. So that's not anything I can get involved in, but you might anticipate, as I read it so far, looking at the speed with which these examinations are going, I would think if you want to call Sankar before he leaves, it would be a good idea to do so.

VALERY FABRIKANT :

Well again, I'm perfectly prepared to be as accommodative as I can, and I think there would be nothing wrong if he cooperates, he has nothing to hide, I believe he's honest person.

THE COURT :

I'm not talking about that, I'm simply saying if he's leaving on the tenth (10th), given the rhythm with which the witnesses are going by, and given the importance you seem to attach to Sankar, perhaps you would like to have him heard as soon as you can.

Me JEAN LECOURES :

My position is that Sankar is irrelevant.

THE COURT :

Well, your position...

Me JEAN LECOURES :

Maybe ten percent.

THE COURT :

But Sankar is... you know, I don't know what ground... I can guess what Mr. Fabrikant proposes to cover with Sankar, and...

VALERY FABRIKANT :

Is Mr. Haines relevant? May I ask the Crown...

THE COURT :

There are certainly areas of Sankar which will be...

Me JEAN LECOURES :

Certain areas, let's say.

THE COURT :

...which will certainly be relevant, so...

Me FREEDMAN :

Well, I'll canvass the issue of documents with Dr. Sankar.

THE COURT :

Yes, that's all you can do, and I think Mr. Fabrikant would appreciate your doing that.

Me FREEDMAN :

I shall.

THE COURT :

Obviously, you will underline that it's not with any order from me or anything else, I'm not mixing myself into that aspect.

VALERY FABRIKANT :

Anyway, I wish to emphasize that my purpose is not to inconvenience anyone with respect to this trial, and as far as I can go, I will go to accommodate every other activity of everybody else.

Me FREEDMAN :

Okay. So then I can indicate to Miss Torbit that...

THE COURT :

You can indicate to Mrs. Torbit that she'll be heard tomorrow.

Me FREEDMAN :

Perfect.

THE COURT :

Okay? And I, for my part, I don't think the Crown has any objection, I, for my part, see no difficulty in interrupting Mr. Haines' testimony with a view to accommodating Mrs.

Torbit.

Me FREEDMAN :

Perfect.

THE COURT :

Okay?

Me JEAN LECOURS :

Your correct in assessing my position, My Lord.

THE COURT :

Okay.

VALERY FABRIKANT :

Now, we have several more claims, I still didn't get your decision about Mr. Karapetian.

THE COURT :

Here it comes. Between Mondays and Fridays, days when the Court is sitting, you... Between Mondays and Fridays during the week, but I said to be specific, days when the Court is sitting, Mr. Fabrikant may meet and consult in private with Edgar Karapetian for the purpose of the preparation of his defense, subject to whatever security measures the authorities deem to be necessary and appropriate on two occasions between the hours of eighteen hundred hours (18:00) and twenty-one hundred hours (21:00).

Secondly, on weekends (on Saturdays and Sundays), he may, for the same purposes, and subject to the same conditions, meet and consult in private with Edgar Karapetian on one day, between nine hundred hours (9:00) and eighteen hundred hours (18:00) for a period of three hours.

VALERY FABRIKANT :

Well, this is not enough.

THE COURT :

Well, this is the best way I can balance between what you tell me your needs are and what the difficulties are that that creates, from what Mr. Belleau said to me, for the authorities at Parthenais. So that is it.

VALERY FABRIKANT :

I, for example on weekdays, I arrive at Parthenais at about seven p.m. (7:00) and you made it until twenty-one (21:00), why it cannot be done until twenty-two (22:00)?

THE COURT :

You have the hours, they're set down. I... Yes?

VALERY FABRIKANT :

There is one more thing, I don't know, either something is wrong with these chains but my legs hurt, I can hardly walk. Can we, a couple of days, do without them? I'm talking about shackle. Can it be removed to give rest to my legs? Because I'm the whole day in chains, and the situation now is... I don't know, I cannot find any...

THE COURT :

I will discuss the matter with the authorities from the detention unit and...

VALERY FABRIKANT :

Well, in courtroom you are the one who decides this stuff.

THE COURT :

Thank you very much. Thank you very much. I will discuss the matter with the authorities from the detention, and I will let you know.

Peut-^tre que vous pouvez demander le responsable, je crois

que c'est monsieur Marcil, de me voir ... l'ajournement, s'il vous plaEt. O.K.?

UNE PERSONNE NON IDENTIFIE :

D'accord.

THE COURT :

I asked that Mr. Marcil see me at the adjournment.

I received a letter from the jury foreman which I'll read to you and produce, and I will give them my answer when they come in.

"With reference to the upcoming statutory holidays, St-Jean-Baptiste, June twenty-fourth (24th) and Canada Day, July the first (1st), we understand that your Court will not be in session on these two Thursdays, and that the proceedings will continue on the Fridays, June twenty-fifth (25th) and July the second (2nd). While we are all in favor that this trial continue in the most expedient fashion, with a minimum of interruption, we are also in favor where possible of creating some extended time off in light of the Defense's position that the trial will continue into August. Hence we offer for your consideration the following, that you adjourn Court, for both or either of the dates of June twenty-fifth (25th) and July the second (2nd) to provide all of us with deserved four-day break."

I'm going to accede to that request, I think it's a very reasonable request in the circumstances, and I'm sure the same holds true for you. And I can tell you it holds true for me.

VALERY FABRIKANT :

And I am not here.

THE COURT :

Frankly, I don't count you in the same category, no. I really don't.

VALERY FABRIKANT :

Well, I don't think you should have expressed that kind of opinion.

THE COURT :

Well, there you are, but I don't...

VALERY FABRIKANT :

I'm innocent until proven guilty, you don't seem to...

THE COURT :

That's not what I'm saying.

VALERY FABRIKANT :

Well, you said it quite explicitly. Now, since we are not going to be there, maybe you could increase my visitation on Mr. Karapetian, because I will be working, you will be holidaying, I will be working.

THE COURT :

Careful, careful, I didn't say I would be holidaying.

VALERY FABRIKANT :

Well, I didn't mean you personally. You, of course, will be listening to the tapes. I mean everybody else will be holidaying and I will be working, and I need more time with Mr. Karapetian, can this be...

THE COURT :

I am prepared to consider that closer to the time. But no, I will not be holidaying, and I'm not so sure that the other lawyers involved will be either.

VALERY FABRIKANT :

Well, I already said that when I said you, I didn't mean you personally.

THE COURT :

Jury please.

MEMBERS OF THE JURY ARE PRESENT

CHANGE OF CASSETTE

THE COURT :

...from the foreman, about the weekend of St-Jean-Baptiste and Canada Day, and I think that's an excellent suggestion. I think what we'll do is we'll take a long weekend on both weekends. So on both weeks we'll adjourn on Wednesday evening and we'll resume the following Monday. That will let the grass be cut and the hedges trimmed, and the painting done.

WITNESS: GRENDON HAINES -- UNDER THE SAME OATH
CONTINUATION OF EXAMINATION BY MR. FABRIKANT :

Q. So do I understand that agenda is now here?

A. Yes, My Lord.

Q. So maybe we could put dates on certain events, and be more precise what happened when? Okay. So when was the first meeting?

A. The first meeting between you and myself?

Q. Yes.

A. I have here recorded on my book, on Thursday, January the twenty-sixth (26th) the name Fabrikant with his home telephone number, but I do not have here scheduled in the book a date for any appointment of the week of January the twenty-third (23rd), nor do I have anything scheduled before the week of January twenty-third (23rd) recorded in my agenda.

Q. Okay. So continue further in your agenda.

A. I have here a meeting to be taking place on Thursday, the second (2nd) of February, at nine thirty (9:30) a.m. at my office.

Q. Uh, huh. Any record of that meeting?

A. No, it's just an indication of the time of the meeting.

Q. Okay. Did this meeting take place?

A. I don't know if it took place on Thursday, the second (2nd) of February, nineteen ninety-three (1993), I'd have to check with my other notes to see if those dates coincide.

Q. So, did this meeting take place?

A. As I mentioned earlier in my testimony, I have here notes from a meeting that took place between Dr. Fabrikant and myself, on this paper though there is no date recorded, I would assume that it's the same.

THE COURT :

The witness' testimony before that, which I have in my notebook, was, the first meeting with Valery Fabrikant was late January or early February nineteen eighty-nine (1989), and he again referred to that piece of paper that had no date.

VALERY FABRIKANT :

I don't understand. How should I understand this remark? As what? As approval of or disapproval, or what?

THE COURT :

Nothing, I'm simply saying to you what my notes were with regard to his previous testimony, which...

VALERY FABRIKANT :

That's fantastic, but this is not what I'm aiming at.

THE COURT :

It may not be what you're aiming at but it's what he said when

he testified the other day.

VALERY FABRIKANT :

Well, I will just tell you what I'm aiming at. It's absolutely obvious that this is not, just not the first page, first page was deleted, this is what I'm aiming at.

THE COURT :

You'd better ask him that then.

VALERY FABRIKANT :

Because everything, every, his notes, when it starts from the beginning, and I remember myself when I was coming to him, the first what he wrote: Fabrikant, bla, bla, bla, date, time.

THE COURT :

I thought, a minute ago, I was being of some assistance when I said that...

VALERY FABRIKANT :

Of course.

THE COURT :

...according to his testimony, his first meeting was late January or early February, and he said the same thing as he said just now: "I don't have a date".

VALERY FABRIKANT :

Yes, exactly. Still, what I'm trying to point out is that definitely there is deliberate omission on one or two pages. It doesn't start from the beginning, it's clear it is middle of conversation, and this is why there is no date, there is no name. That was my purpose.

THE COURT :

Well that... this is a gratuitous observation on your part.

VALERY FABRIKANT :

Well, let us see what is gratuitous...

THE COURT :

And that's all it is.

VALERY FABRIKANT :

Now the first statement is: "Everyone has received early promotion", I couldn't have possibly come to his office and started with this, definitely there was something said before that.

Q. So, my question, Mr. Haines, where is the beginning of these notes?

A. As far as I know, My Lord, that is the beginning of the notes, I have no other notes that I know of.

Q. Well, would you be then kind enough to explain how come your notes start from something which doesn't look at all as...

Me JEAN LECOURS :

This is cross-examination, My Lord.

THE COURT :

This certainly is, and this will not be permitted. Objection maintained.

VALERY FABRIKANT :

Well, you said you didn't provide any limitation on me, now it is limitation...

THE COURT :

What do you mean I said I didn't provide any limitation on you?

VALERY FABRIKANT :

No. No, no, you said that I was allowed such a latitude, and so on and so forth, now my question...

THE COURT :

Don't make me explain again what I said to you this morning.

VALERY FABRIKANT :

No, that's all right, since I still don't know what cross-examination is, I fail to understand what is wrong with my question asking him...

THE COURT :

Listen, if you fail to understand, I can't help that, but your last question is not allowed.

VALERY FABRIKANT :

Well, Mr. Belleau didn't give me definition, that's why I am in such a difficult position. Okay. Can I ask... Okay.

Q. To your recollection, does this first statement here indicate the beginning of conversation?

A. No, I would have introduced myself, I would have stated what I do in the university, my role, I would have explained that, and I would have explained the purpose of the meeting.

Q. All right. So probably there would be something else written on the first page of your notes, would it be the right assumption?

A. No, My Lord.

Q. Okay. Would you explain why did you start writing your notes without my name, without date, without anything, and with the words: "Everyone has received early promotion"?

Me JEAN LECOURE :

Again, My Lord, this is cross-examination.

THE COURT :

This is cross... Objection is maintained.

VALERY FABRIKANT :

I see no difference between this question and previous, but...

THE COURT :

The objection was maintained.

VALERY FABRIKANT :

I understood.

Q. All right. Do you think that there might be some additional pages somewhere in your files with respect to this meeting?

A. No, My Lord.

Q. Would you be able to explain why, on this particular, there is no date and name?

A. I have no idea why I did not put a date on or your name on the piece of paper.

Q. Do you usually do that?

A. I normally do that.

Q. In which cases you might have omitted that?

A. In this case.

Q. No, I mean what must have happened that you would...

Me JEAN LECOURE :

This is speculation, My Lord.

THE COURT :

It's pure speculation: "What must have happened?", he didn't write it down, I mean there you are, he said it's not there.

VALERY FABRIKANT :

All right.

Q. When you meet with someone for the first time, do you usually write the name of the person you meet with?

A. I don't always take notes, and I don't always put the name of the person on the paper, but normally I do, if I'm taking notes, it's a memory recall, and I know where to put it, in which file.

Q. All right. What goes next in your agenda?

A. In terms of meeting... with your name here, right?

Q. Not just me, so check please Swamy, Sankar, Osman, we need... all the events which were related to this first meeting. So it is February second (2nd). Can I write on this copy

February second (2nd)?

A. Yes. Well, I can't...

THE COURT :

If that's an original, I would not...

VALERY FABRIKANT :

No, this is not original, I have copy, original is there.

THE COURT :

You have the originals in front of you or...

VALERY FABRIKANT :

Yes.

THE COURT :

Q. Mr. Haines?

A. Yes, I have the original here, My Lord.

Q. All right.

A. I also have here, I just found a telephone message, My Lord, dated January the twenty-fifth (25th), time three ten (3:10), from Dr. Fabrikant with his telephone number at home. Then on February the sixth (6th) I have recorded a telephone number and S. Sankar at the CONCAVE, but that does not mean I had a meeting, I have just recorded the information there. On February the eighth (8th), it appears to me that I have a meeting at ten thirty (10:30) a.m. at the CONCAVE, second floor, with Dr. S. Sankar.

VALERY FABRIKANT :

Q. Okay. And of course, you have no notes of that meeting?

A. No, My Lord.

Q. Okay. Could you describe what happened during that meeting? So it was February eighth (8th).

A. February the eighth (8th), yes, My Lord. The purpose of the meeting was for me to meet with Dr. S. Sankar for me to get an understanding of what was happening from his point of view, and for him to meet me and find out whether I could be of any use to him in helping to resolve the issues between Dr. Fabrikant and the members of the Department of Mechanical Engineering.

Q. Yes. And what was his response?

A. He proceeded to tell me of some of the concerns that he had about his relationship with you, one was about your accusations, or alleged accusations about the authorship of papers, which he said was false, or was not true. That's 1). 2) He told me about the threats of the statements about in North America, this is what we do when we don't get our way. And thirdly, that he was willing to look at the possibility of meeting to resolve some of these issues, he was sceptical but he was willing, at least, to give it a try, but he wasn't sure whether it would be successful or not.

Q. Okay. Did he describe to you any circumstances under which I allegedly said something about North America?

A. No, he made the statement briefly, and near the end of the conversation, I remember that.

Q. And were you alarmed by such a statement?

A. Was I alarmed? One of the questions I was asking myself was: How serious is this? Is this real? Is this a recent event? It wasn't a recent event, and I was saying to myself: Is this something that one says when one gets angry and just says these things? So I was questioning to myself.

Q. Why didn't you question Mr. Sankar instead of questioning yourself? That would be very normal question to ask.

A. My job was not to carry out an investigation, and my job was to find out if Dr. Sankar was willing to pursue a process in which we could move towards resolving some problems. He told

me something, I left it as a fact of what he had told me. I was not out to find out whether it was true or false, I was interested to know if anyone else, whether he had reported that, and he said yes.

Q. Well, you asked him if I threatened him or he told you?

A. No, he told me.

Q. Because now you're saying that you asked him.

A. I asked him... no, not if you had threatened anyone else, I asked if Dr. Fabrikant, if he has reported it to someone else, another authority in the university, the information that he had about you allegedly making threats to him.

Q. Okay, but any details, didn't you think that since you were dealing with me, it would have given you quite useful information about me?

Me JEAN LECOURE :

This is argumentation.

THE COURT :

Yes, it is, it's cross-examination as well. Objection maintained.

VALERY FABRIKANT :

Q. Anyway, you didn't ask any question. Fine. What about those papers in co-authorship, he said to you what? That he contributed to papers more than I, or something like this? What exactly he was saying about authorship of papers?

Me JEAN LECOURE :

That would surely be hearsay, My Lord.

VALERY FABRIKANT :

I am not introducing it as a proof of fact, I'm interested into the personal knowledge of Mr. Haines at that time, that's all.

THE COURT :

So what you want to ask him is what was the nature of the discussion bearing upon the authorship of the papers?

VALERY FABRIKANT :

Exactly.

A. Dr. Sankar acknowledged that Dr. Fabrikant had made these statements, and he denied them clearly to me.

Q. He denied what? Please go into more details, that he contributed to the papers?

A. He denied any allegations of fraud on his part in the question of authorship of his papers.

Q. All right. He was talking about papers allegedly co-authored by me and him, that was your understanding?

A. It could have been co-authored by you and him and/or others.

Q. But eventually me and him, plus somebody else maybe, but me and him, correct?

A. I don't remember that detail.

Q. No, I mean, you were talking about paper on which the authors were listed, my name, his name and possibly somebody else or maybe not?

A. And possibly someone else.

Q. Yes, but at least me and him there?

A. Yes, My Lord.

Q. All right. You are talking about Seshadri Sankar at CONCAVE Center, correct?

A. Yes. He's the younger, isn't he?

Q. Yes. I don't know how to break it to you but I never had any publications with him, so he couldn't possibly tell you that.

THE COURT :

Look...

VALERY FABRIKANT :

No, no, I understand. I will rephrase it. Sorry. Sorry, I will rephrase it. I will rephrase it. I will rephrase it. I just need to concentrate how to rephrase it.

Q. Were you aware, at that time, that no joint publication of me and Seshadri Sankar ever appeared? So there was no subject for discussion.

A. I was not aware of any publications of yours or of yours and other people.

Q. So could it be that your memory serves you not well and you are mixing up conversation with T.S. Sankar and conversation with S. Sankar?

A. All I can remember is Dr. Sankar, S. Sankar denied any alleged fraud in co-authorships of papers between himself, and yourself and others.

Q. All right. There is no way I can...

Me JEAN LECOURE :

He got his answer, My Lord.

THE COURT :

Uh, huh.

VALERY FABRIKANT :

Well, he couldn't possibly deny it, we didn't publish anything.

THE COURT :

Mr. Fabrikant, look, look, you've got his answer. Now let's suppose, let's suppose, for the purposes of discussion, you're correct, okay, and you establish later on that you and Seshadri Sankar never had any publications, then that will permit you to say that Mr. Haines' recollection is faulty, it will permit you to say a number of things. Leave the question, go on to something else.

VALERY FABRIKANT :

All right.

THE COURT :

You know, you persist in taking a hammer...

VALERY FABRIKANT :

Okay. Okay.

THE COURT :

...and battering up the nail.

VALERY FABRIKANT :

All right. All right.

Q. So, who did you meet next?

A. Well, I don't know who I met next, but I can tell you what is recorded in the book that relates to you. I have here:

"On February the fourteenth (14th), nine thirty (9:30) a.m., Dr. Fabrikant, 80221..."

That's in my office, and it appears that there's a word going through it that says "cancelled". Then I have a meeting at one thirty (1:30) with Dr. Fabrikant in his room, in H929 at one thirty (1:30).

Q. What date?

A. That would be February the fourteenth (14th).

Q. How about February seventh (7th), for some reason I didn't come to that?

A. On February the seventh (7th) I do not have in my agenda book the meeting that I had with you.

Q. Okay. How then can you explain this note dated February seventh (7th)?

A. I remember clearly having a meeting with Dr. Fabrikant in which the issues that are listed in this note were discussed, My Lord.

Q. Well... so you cannot offer any explanation for February seventh (7th) note?
THE COURT :
But he's offered an explanation, he said he recalls, he says there's a February seventh (7th) note in the file where he said he had a meeting with you, it doesn't happen to be in his diary, there you are.
VALERY FABRIKANT :
No, no, no, I don't understand. February seventh (7th) is not in his agenda, right?
THE COURT :
Yes, that's what he said, it's not in his agenda.
VALERY FABRIKANT :
Well how to reconcile?
Me JEAN LECOURE :
We don't have to reconcile...
THE COURT :
You don't have to reconcile, no, of course not.
VALERY FABRIKANT :
I think I have an idea how to reconcile it.
Me JEAN LECOURE :
But he could explain that later.
THE COURT :
Mr. Fabrikant, perhaps in your view of the ordered world these things all need to be reconciled, but I don't think everybody else necessarily falls into the same category as you.
VALERY FABRIKANT :
All right, I appreciate your sarcasm but I would appreciate if you just let me continue, because today I'm not going to say anything.
THE COURT :
Fine.
VALERY FABRIKANT :
For your use. I need this witness.

Q. Could you please look at your agenda on February seventh (7th) and see what other meetings you had on that day?
A. I have a meeting at two thirty (2:30) in the afternoon and a meeting at four thirty (4:30). I have here a meeting at ten o'clock (10:00) in the morning that has been crossed out, so I assume... and that person that I crossed out at ten o'clock (10:00) in the morning came to see me at two thirty (2:30) in the afternoon, I saw you at ten thirty (10:30) in the morning.
THE COURT :
Q. Sorry, which day are you talking about?
A. February the seventh (7th), My Lord.
VALERY FABRIKANT :
Q. But just recently you said that this meeting is not in your agenda, now you say that this meeting is in your agenda.
THE COURT :
Perfectly right.
A. Pardon?
Q. He's perfectly correct.
A. No. I didn't say, I said this is the date on this piece of paper that says there's a meeting on February the seventh (7th) at ten thirty (10:30), in my agenda.
Q. No, but I'm sorry, but when you were looking at your agenda you gave information concerning the sixth (6th) of February...
A. Yes.
Q. ...where you had recorded the telephone number of Seshadri Sankar, at the CONCAVE Center...
A. Yes.

Q. ...and then you went to your agenda and you said: "The next entry in my agenda concerning Mr. Fabrikant is the eighth (8th), and you talked about a meeting at ten thirty (10:30) a.m., CONCAVE Center, second floor.

A. That's right, My Lord.

Q. Then you said that there was nothing in your agenda with regard to the seventh (7th), and now you say there was, I mean...

Me JEAN LECOURES :

He never said so, My Lord.

A. No. There's nothing in my agenda with Dr. Fabrikant's name there for February the seventh (7th), My Lord, I haven't written that.

THE COURT :

Q. I see. Okay.

A. No. Sorry.

VALERY FABRIKANT :

Q. Okay. May I take a look at this particular page?

THE COURT :

Q. Certainly. No mention of Dr. Fabrikant's name on the seventh (7th), in your agenda?

A. No, My Lord.

VALERY FABRIKANT :

Q. All right. Thank you. Now, you say that there was meeting on February thirteenth (13th), and there is no notes of February thirteenth (13th) meeting, though we have meeting of February seventh (7th).

THE COURT :

I think he said the fourteenth (14th).

VALERY FABRIKANT :

Or fourteenth (14th), whatever.

Q. There is no notes of February fourteenth (14th) meeting. On the other hand, we have notes for February seventh (7th), and it is not in agenda at all, my name is not there.

A. I'm not sure what the question is.

Q. Well the question is, is it possible for you to somehow clarify the situation why there is no notes of the meeting allegedly which took place on February fourteenth (14th)?

Me JEAN LECOURES :

Well, My Lord, the accused is asking why to every single fact that is elicited from the witness. It's his own witness, there's no point.

THE COURT :

There's no end to it if we go on like this. You may go through, Mr. Fabrikant, and you may establish the meetings. You may establish how the witness knows, you may establish that there are notes, there are not notes, but you're not going to go on a general cross-examination of the witness with regard to every entry in his agenda for the month of February that might pertain. I'm not permitting general cross-examination of the witness.

VALERY FABRIKANT :

So if I ask why, then it is cross-examination?

Me JEAN LECOURES :

He asks why for absolutely everything, My Lord.

VALERY FABRIKANT :

Well, so what if I ask why? So what? Where is it written that the word "why" is forbidden in this courtroom? What is Crown trying to do? I cannot understand.

THE COURT :

The Crown is not trying to do anything, all the Crown is...

VALERY FABRIKANT :

So what is wrong...

Me JEAN LECOURES :

I'm just trying to save time, My Lord.

THE COURT :

All the Crown is insisting upon is that you conform to the rules, just as everybody else must conform to the rules.

VALERY FABRIKANT :

Yes, and the word "why" is forbidden rule?

THE COURT :

There is one book of evidence that sets out the rules, and it applies to everybody. There is no separate book that says that: "Please apply this book in the case of Valery Fabrikant".

VALERY FABRIKANT :

You're not answering my question. So "why" is forbidden word or what?

THE COURT :

It's not a forbidden word, it's the sort of questions you're asking, by prefacing it with the "why", because you're going into a cross-examination of the witness, and you're putting in question the witness' credibility through an interrogation of him as to why one day he got up on the left side of the bed and why one day he got up on the right side of the bed, and why he put on a pink sock and not a grey one, you know, I mean...

VALERY FABRIKANT :

Well, I think that I'm doing much more intelligent work than what you described right now.

THE COURT :

Well, if you think...

VALERY FABRIKANT :

My question has a point, it is not pointless question, believe me.

THE COURT :

You say your questions have a point, ask your questions and make your point with your questions, there is...

VALERY FABRIKANT :

You don't allow me to ask this question, I asked him why, you don't allow me to ask this question, this is what's happening.

THE COURT :

The question, first of all, as to why he did one thing one day or why he did something another day, the Crown, as the Crown Prosecutor said, you've prefaced virtually every question with the word "why, why why".

VALERY FABRIKANT :

You counted those "whys"...

THE COURT :

That all smacks of a cross-examination, and...

VALERY FABRIKANT :

You counted those "whys"? What is it?

THE COURT :

It is simply that the same rules apply to...

VALERY FABRIKANT :

Anyway, you ruled, I continue, let's not spend time. All right.

THE COURT :

You're spending the time, not me.

VALERY FABRIKANT :

No. I'm prepared perfectly, you said no and I continue. It's final. So I cannot ask him why February seventh (7th) there is note and February fourteenth (14th) there is meeting but no notes, correct? I cannot ask this question?

THE COURT :

You can ask him if he can explain to you why he has a note one day and not the next, but then, when you get your answer, you take your answer and you leave it at that.

VALERY FABRIKANT :

That's exactly what I wanted to do. Crown intervened exactly at the moment when I asked this question.

THE COURT :

Ask him if he can explain to you why he...

VALERY FABRIKANT :

So I was right after all then?

THE COURT :

It may be in your formulation of the question that the problem arises.

VALERY FABRIKANT :

(Inaudible).

THE COURT :

No, just...

VALERY FABRIKANT :

It was exactly the same formulation of question.

THE COURT :

Q. Mr. Haines, can you explain why one day there's a note in your diary and the next... a note in your file with regard to one meeting and on another occasion there is a note in the diary but no note in the file?

A. I don't always keep a record of every meeting I've attended at the university. This is a meeting that I do remember having in Dr. Fabrikant's office, and I have no idea why I didn't take notes at that meeting and didn't record them.

VALERY FABRIKANT :

Q. All right. Just continue please in your diary, what was the next meeting and with whom?

A. The next meeting was on Wednesday, February the fifteenth (15th) at ten a.m. (10:00) with Dean Swamy.

Q. Okay.

A. Then following that...

Q. Could you describe this meeting?

A. I think I have notes on that particular meeting.

Q. You do or you don't?

A. Yes.

Q. You do. Okay. But try to describe it from your memory, please.

A. Yes. The purpose, again, of the meeting with Dean Swamy was to find out if there was any possibility for me to be involved to assess whether this is a situation that I could work with, and which I could get the parties together to resolve the problem. I was bringing Dean Swamy up-to-date as to what has been going on, and whether he... what he thought could happen next in terms of trying to get a meeting going with the parties concerned. That was one of the things that I was trying to move to, was to get all the parties together and try and find a solution, and to keep things going, so it wouldn't stall. So I met with him to find out what would be my next move, if any, whether I was involved. In other words, I needed his invitation to be there, I only worked with Dr. Fabrikant's invitation and all the other parties' invitation.

If someone doesn't want me to be there, then I'm not involved, and that was what I was trying to assess with the meeting with Dean Swamy. So I'd given him a brief summary of what I'd done up to then, I think by then I had probably spoken to Dr. Osman on the telephone, I had probably met with Dr. Sankar and I'd met with Dr. Fabrikant. And so I was now meeting with Dean Swamy to find out whether he felt that there was a possible meeting of the minds, and he wanted to know what the major issues were. And so I went through with him what I saw to be some of the issues and the concerns raised by Dr. Fabrikant. Some of those issues and concerns dealt with, I think, the fact that he wasn't promoted to the rank of associate research professor... No, anyway, I'm not sure what rank, but I think either it was the merit issue or on promotion issue that he was wanting to know why he wasn't promoted. And I know that Dr. Fabrikant had mentioned to me another possible solution, and that was a transfer to the Department of Mathematics as a solution. And then I know Dr. Fabrikant had mentioned the fact that he was thinking of going to the press, to the newspapers, or to the CUFA, or to Rector, or to others outside the faculty to expose the actions of his colleagues, or the actions being fraudulent... I think fraudulent application for grants as well, and fraudulent application of names of authorship on papers. I think those are some of the things that we talked about with Dean Swamy.

Q. Okay. What was Swamy's reaction to all this information?

A. I know that he was... on a recommendation about going to the press, or to the Rector, or to the courts, or whatever, that he saw that as blackmail, he was very angry. As to the Department of Mathematics, on a transfer there, I think he had no objection to that, but that required the Department of Mathematics to agree to. And as for the question of whether it was a promotion or a merit exercise, that there was in place, in the university, an established procedures, and that he should work through those established procedures to get either the promotion and/or the merit review in an appropriate way, i.e. through the Department Personnel Committee, then they decide, then they make a decision, it goes on up to the Faculty Personnel Committee, and then goes to the Vice-Rector Academic for her or his final approval. So I think the Dean was encouraging Dr. Fabrikant to pursue that road and make sure that it happens within the system as one way to resolve that particular issue. As to the other issues of questions of authorship and fraud, Dean Swamy says: "If he's going to say those things, we need it in writing, get him to put it in writing, get him to say in writing what he is saying and then the appropriate action will be taken".

Q. Did you mention to him that he was one of those who I accused of this fraud?

A. At this particular moment I can't remember, My Lord.

Q. Did you ask him if I threatened him?

A. I did not ask him if you had threatened him, but I do remember him saying that he had no direct experience of you making any threats, My Lord.

Q. Well, did he mention that somebody else complained to him?

A. Yes, he had mentioned that he had heard that from other people, that you had said something to the effect that in North America, when people did not get their way, they go around shooting people.

Q. Okay. Did he name you names?

A. I can't remember right now, My Lord.

Q. Well, was it so unimportant to you?

A. What was important was that he knew that these things had taken place, and also he told me that they were not recent events, and that there was nothing he was going to do about them at that time.

Q. Well, would you be able to explain how come not a single word of this is in your note?

A. May I look at the note now?

THE COURT :

Q. (Inaudible)?

A. These notes that I wrote, My Lord, were written before I had the meeting with Dean Swamy, they were not a record of the meeting, they were a record, if I remember correctly, of preparing for the meeting, the issues that I wanted to cover in the meeting with him. I did not, afterwards, write up a record of the results of that particular meeting.

VALERY FABRIKANT :

Q. Well, would you explain several more pages attached to the same sheet of paper naming Swamy and whether the remaining sheets in any way related to the meeting? As you see, there is one sheet of paper saying "Swamy", right? To this sheet, there are three more sheets of paper which content seems to be with no relation to the first page. So maybe you could explain why they are attached together and whether they have any relation to one another.

A. Well they are attached here... it's in October, and it's not been stapled, this is from a pad, and...

Q. All right.

A. ...and...

Q. You numbered your units which seem to be logically connected. For example, you have here two pages number 6, if those are all separate, then why they are stapled together? If those are notes from yet another meeting, then which one it is?

A. Well, I'm confused because... you talk about... in the meeting that... the note that I have here with Dean Swamy, you say there are four pieces of paper, I have three, My Lord.

Q. Okay.

THE COURT :

Q. Well, if you turn over the last one do you find something written on the back of it?

A. Yes, I just saw it.

Q. Then that one was, I think, photocopied, was it not, and that's the fourth one.

A. Oh, I see.

VALERY FABRIKANT :

Q. So this is explanation why there's four.

A. Oh, okay, so that's the fourth page, My Lord. I'm sorry, I'm not sure what the question is now.

Q. The question is how to relate it, if they are related, if they are not related, then what do they refer to?

A. May I read them carefully to see how they are related?

THE COURT :

Q. Yes.

A. These are all related to that for the preparation for that meeting, preparation notes for meeting with Dean Swamy, My Lord.

VALERY FABRIKANT :

Q. All right. What was after that?

A. After that, Dr. Fabrikant is again in my telephone notes here. Well, first of all I have on February the twenty-first (21st) a meeting at two o'clock (2:00) with Dr. Fabrikant in AD221,

that's my office, My Lord. And then I have here a telephone message from Dr. Fabrikant dated February the twenty-fourth (24th) at two fifty-five (2:55) p.m., My Lord, with his home telephone number. And I also have here a telephone message on February the twenty-second (22nd), this is a telephone note pad stick it in the book type, and it's a telephone call to me from Dr. Fabrikant at nine fifty-five (9:55) in the morning, and, quote, again at eleven fifteen (11:15) in the morning, and the question is:

"Have you arranged a meeting with the Rector yet?
And if so, when and where will it be?"

Then...

Q. Was there any meeting on February twenty-second (22nd) between me and you?

A. I think we met on February the twenty-first (21st), Dr. Fabrikant.

Q. Well, this is one thing, yes, but...

A. I do not have the meeting recorded here on February the twenty-second (22nd) with you, no.

Q. There is nothing in the agenda?

A. No. No, My Lord.

Q. But there is again notes of the meeting which allegedly took place at two p.m. (2:00) February twenty-second (22nd).

A. No, that's twenty-first (21st), My Lord.

Q. The twenty-first (21st) is...

A. Oh sorry, you're right. Sorry, I'm wrong. I'm wrong. February the twenty-second (22nd) there is a record of a meeting that was held... well, it says here February the twenty-second (22nd), nineteen eighty-nine (1989) at two p.m. (2:00), and in my agenda book I have no record of that, in fact I have a meeting here recorded at two thirty (2:30).

Q. With somebody else?

A. With someone else, yes.

THE COURT :

Q. In your agenda book, however, on the twenty-first (21st) of February, you have a meeting at two p.m. (2:00) in your office with Mr. Fabrikant.

A. Yes, My Lord.

VALERY FABRIKANT :

No, not in the agenda, he has notes of the meeting, but not in the agenda...

THE COURT :

Q. Would you look at your agenda for February twenty-first (21st)?

A. Yes, My Lord, on the twenty-first (21st) of February, at two p.m. (2:00), I have a record of the meeting...

VALERY FABRIKANT :

Q. Twenty-first (21st), yes.

A. Yes, at AD...

Q. But twenty-second (22nd) no.

A. Yes, My Lord.

Q. Okay. One thing though, I do not understand one word here, would you be kind enough to go to your document number 5 and turn to the second page, and at the bottom of the page it's written: "Physical:...", and after that what, "...slop"?

A. "...sleep".

VALERY FABRIKANT :

"Sleep", well I guess I shouldn't ask the meaning of this or I can?

THE COURT :

You can.

A. My understanding of that was that you were having trouble sleeping, but that's, again, I don't know.

VALERY FABRIKANT :

Q. All right. Let's continue. Then you had... what goes next in your agenda?

A. Okay, that's February twenty-first (21st), then the following week, the week of the twenty-seventh (27th), I have a meeting registered here on the twenty-eighth (28th) of February with Catherine McKenzie at ten o'clock (10:00).

Q. Uh, huh. And of course no notes of that?

A. I do not have any notes of that meeting.

Q. Okay. Is this the meeting where I allegedly threatened somebody but you don't know what it was?

A. This could have been the meeting, although I have you down... I have also a meeting down with Catherine McKenzie on Thursday, March the second (2nd) at nine o'clock (9:00) in the morning. It is possible, just because a meeting is recorded here, My Lord, is that it may have been cancelled, it may have been postponed. I don't if I had two meetings that week, all I'm quoting is what is in the book.

Q. And again, none has any notes whatsoever, correct?

A. I have no record, no notes taken of the meeting in which I was in attendance with Dr. McKenzie and she spoke to you over the telephone.

Q. When she spoke to me over the telephone, is it one of those meetings or it is other meeting?

A. I have here another record of a meeting, again with Catherine McKenzie, and I've got your name, and Fabrikant, Bishop Court, 201. This was a meeting that was supposed to have taken place on Friday, March the third (3rd) at ten a.m. (10:00) with you.

Q. Uh, huh.

A. And now I am remembering that you said that you couldn't come, and so the meeting was held on the phone between you and Dr. McKenzie, and it must have happened on March the third (3rd).

Q. No, I did come to Bishop Court. And try to recall that meeting, what was decided at that meeting.

A. Now which meeting is this? This is the meeting...

Q. March third (3rd), it was an important one.

A. This is the meeting that you were in attendance?

Q. Yes.

A. With Catherine McKenzie and myself at Bishop Court in 201.

THE COURT :

Q. Well, I'm sorry, just a second. You said...

A. Yes.

Q. ...you referred to your diary, and you looked at that thing and you said: "Ah, now I'm remembering, Mr. Fabrikant said he couldn't come and the meeting was held on the phone".

A. That's right.

Q. Now, Mr. Fabrikant then interjected and he said: "Oh, I was at that meeting" but I'm not sure exactly what your position is, what are we talking about? Are we're talking about a meeting...

A. If he was at that meeting, I do not remember that, My Lord.

Q. Fine.

VALERY FABRIKANT :

Q. Do you remember at all, let us skip the date, do you remember at all that we had meeting the three of us...

A. Yes, I remember we had...

Q. ...at Bishop Court?

A. At Bishop Court... No, My Lord, I do not remember.

Q. Okay. Let me try to refresh your memory.

A. Uh, huh.

Q. Was there a meeting at which we discussed how to settle the matter, and at the same time to save face of the department who was obviously wrong in denying my promotion, do you recall such a meeting?

A. I remember we met with Dr. McKenzie to talk about that as one of the problems, how to resolve your issue in terms of either the promotion or the merit, and what was the procedure to do in handling that.

Q. Okay. And do you recall what the face saving suggestion I made at that time?

A. One of your face saving suggestions was for the department to consider your course evaluations...

Q. Uh, huh.

A. ...and the results, I believe, of the thesis students, or graduate students...

Q. Yes.

A. ...and that there was enough data there, and maybe something else to add, I can't remember, but there was enough data there for them to be able to take into consideration, and for them to be able to either promote you or give you the merit.

Q. Exactly, it was a promotion consideration, because merit has nothing to do with it. So, that was the face saving stuff which we agreed to try. It was not really a new information for the department, correct, we just pretended it to be something new so that department could say: "Okay, we didn't know that, now we do know, and we are ready to reconsider".

A. Oh, I wouldn't know that, My Lord.

Q. Well, why would you call it then face saving if it was something genuine?

A. I did not call it face saving.

Q. All right.

THE COURT :

You see, now you drift into cross-examination.

VALERY FABRIKANT :

All right.

Q. Then I refer you to your document number 4... to the meeting... well, February seventh (7th) or whatever, which line 3 says "a face saving solution".

A. Yes.

Q. Do you remember that now? Does this refresh your memory?

A. I remember you suggesting a face saving solution.

Q. But what is the meaning of the word face saving? It means to introduce some excuse, which is not real but which would be allowed...

Me JEAN LECOURE :

It's the accused's word, My Lord, so...

VALERY FABRIKANT :

Well, all right.

Q. So what is your explanation of the word face saving solution?

A. It is what you told me it was, in March there would be a routine evaluation made for (inaudible) for promotion, and that you would have more teaching evaluations, I think, available. There was this graduate student that was coming through with his thesis, and there was enough material on which they could make a decision.

Q. Yes, but this was not really new information for department, correct?

A. That I would not know.

Q. Well, what is your explanation of the word face saving solution?

THE COURT :

No, he's told you before, that was your word, and he's told you what was discussed, that is as far as you may go on that point.

VALERY FABRIKANT :

Well, (inaudible) by him.

THE COURT :

He said that was your word.

VALERY FABRIKANT :

Well, right, but he has written it, and if it was a wrong term...

Q. Was it a wrong term or what?

A. It was the term you used, Dr. Fabrikant.

Q. I know. Was it a wrong term?

Me JEAN LECOURE :

You already ruled, My Lord.

VALERY FABRIKANT :

He already ruled what? I cannot ask him...

THE COURT :

Yes, you can't ask him what the meaning of a term was that you used?

VALERY FABRIKANT :

Well, he's written this word.

THE COURT :

And he's told you, in any event, what the discussion involved.

VALERY FABRIKANT :

All right. Finished.

Q. Do you know what was the result of the meeting in the Bishop Court as far as face saving solution is concerned?

A. Well, my understanding was that you would make your application, you would submit to the Department Personnel Committee, I can't remember whether you agreed to do that or not, you...

Q. You do not recall that it was that I said: "All right, so you do that and I'm not going to blow whistle and we settle it peacefully", you do not recall that at all?

A. At that meeting, you're asking me...

Q. At any meeting.

A. Yes, I do remember you saying that...

Q. All right.

A. ...if it wasn't settled this way, that you would blow the whistle and it would be settled out of Court... or out this arena and in another arena.

Q. Right. And the result of this agreement was the memo which Dr. McKenzie has written to the Rector?

A. I don't know about that memo.

Q. All right. Go just to the next step in your agenda.

A. Okay. So that's... I have nothing recorded, My Lord, on the week of March sixth (6th), and the week of March the thirteenth (13th)... I have nothing recorded there on the week of March the thirteenth (13th), My Lord, and the week of March the twentieth (20th)... I have several things here.

THE COURT :

Q. Excuse me, if I might, just for my own notes, back up a little. The notes that you referred to where the word face saving was written, that related to a meeting that took place when? Are these dated?

A. The notes... the word face saving is in my notes of February the seventh (7th).

Q. I see. Okay. Thank you.

A. Then I have here, on February the twentieth (20th), several things. I have Catherine McKenzie's...

Q. March the twentieth (20th) you mean?

A. Sorry, March the twentieth (20th). Yes. I think I have Catherine McKenzie's home telephone number, I have Dr. Fabrikant's home telephone number, and I have here Catherine McKenzie, at Loyola, and I think with Dr. Fabrikant. And in addition...

VALERY FABRIKANT :

Q. If I may interrupt you here. Try to recall, that was the telephone call which you and Dr. McKenzie placed to me and tried to record it, correct?

A. I don't remember because... if it was at Loyola, no, it was not, because it was... when Catherine McKenzie had the telephone conversation with you present, that happened in Bishop Court. The note that I have here, Dr. Fabrikant, is that "Catherine McKenzie at Loyola, Fabrikant".

Q. Okay. So we still didn't locate this phone call in time?

A. No.

Q. Okay.

A. And then I have, this is not a telephone message, which is a post-it note, I have: "Swamy", with a telephone number, "Osman" with a telephone number, and "Sankar" with two telephone numbers, I assume meaning for the two different Sankars. That's just a post-it note that's in my book for the week of March the twentieth (20th), what that means I don't know.

Q. Okay. I address you to the notes which suppose, I believe, existence of a meeting, Osman, both Sankars, McKenzie and you, March twenty-second (22nd), is it noted in your book, in the agenda?

A. No, it is not, My Lord.

Q. All right. Do you recall anything about this meeting?

A. My other notes tell me that I did have a note of the meeting on March the twenty-second (22nd).

Q. Do you recall anything from your memory about this meeting?

A. It's a meeting... I really don't remember having the meeting, My Lord.

Q. All right. Then would you please refresh your memory? Maybe this would help you to remember the meeting.

A. Yes. So, I have here notes, My Lord, that says that there was a meeting on March the twenty-second (22nd), nineteen eighty-nine (1989) at eleven a.m. (11:00), Osman, S. Sankar, T.S. Sankar, McKenzie and I assume myself.

Q. And then?

A. Then I have...

THE COURT :

Q. Sorry, Osman, the two Sankars, McKenzie...?

A. And myself.

VALERY FABRIKANT :

Q. Well, does this note refresh your memory in any way so that you could tell what happened in that meeting?

A. It may help. I got, for example, Dr. Steiner's name here, it may have meant that I was reporting, or Catherine McKenzie and myself were reporting on our meeting with Dr. Steiner or we were telling them that we were trying to meet with Dr. Steiner. I can't remember, My Lord. I spoke about what my role was in terms of being a facilitator and not a mediator,

the purpose of the meeting was to have an update of where we're at. And what should happen next, what's the next strategy, and how to manage the situation. And what I needed from the participants, Dr. Osman, Sankars, and Dr. McKenzie, was a commitment to what we were doing.

Q. Could you read what goes after that, because I couldn't read it.

A. Is this the line here, Dr...?

Q. Well number 2, what, "info"?

A. "Info".

Q. I guess it is information?

A. Yes, I would think so.

Q. Then goes "bring up-to-date" again, "what's next? Rules of the..." what?

A. That I do not know.

Q. Okay. Then?

A. Then we would have talked about the rules of the university for promotion, and then if someone wanted to file a grievance, then how that would be handled through the Concordia University Faculty Association.

Q. Who was that somebody? What the whole thing is all about, anything at all?

A. I think we would be talking here about what's the protocol in the university when there's a grievance, and what should happen, and how things are governed to make sure that we all understand the rules of the university.

Q. Why would you talk about that?

A. If I remember correctly, the idea was... you had proposed this face saving solution, and of putting things through the proper channels. And we were speaking to them about... there are proper channels within the university, and it's up to them to use them as well, and if they... that Dr. Fabrikant would be putting forward his proposal for a promotion to a higher rank, and that it would go before the Department Personnel Committee, and that's where it would be dealt with in their way that they wished to follow. And that if that did not work, then Dr. Fabrikant was entitled to take this to grievance, or wasn't.

Q. Well, you knew very well that I was not a member of CUFA and I couldn't file any grievance, didn't you?

A. I realized that sometime at this point, yes, and so that was not in fact.

Q. Probably it is not related to me, is it? Or it is?

A. Well, because I was probably exploring that as a possibility for a solution for you.

Q. Okay. And what is the next line after "grievance"?

A. It says: "Tension to tenure".

Q. "Tension to tenure"? Any way to explain it?

A. No, I have no idea.

Q. "Tension to tenure". It doesn't look like those notes refresh very much of information, does it?

A. ...

Q. At the bottom, it is addressed: "His threat to go to Rector"?

A. "Press".

Q. Oh, "His threat to go to press". And after that, all of a sudden: "Life threat". Could you explain that? How to relate: "Threat to go to press", and right after that: "Life threat".

A. These are...

Q. But please, only if you do know how to explain it.

A. We talked about his threat to go to the press, what life

threat means there, I do not remember now what it is, I would only be guessing, My Lord.

THE COURT :

Don't guess then.

VALERY FABRIKANT :

Q. All right. But if, for example, it was threat to the Rector's life, you would have remembered, would you?

A. The question is whether you had already threatened the Rector by this stage?

Q. Yes.

A. That's how I'm to understand the question, My Lord?

Q. Yes. Yes.

THE COURT :

Q. Mr. Fabrikant says yes.

A. Okay. I don't know, I can't remember, My Lord.

VALERY FABRIKANT :

Q. No, that was not my question. I said, if, by that time, I have already threatened the Rector's life, then would the meaning of this phrase be such and you would have remembered that?

A. I would not have discussed with them any threat that you made to me on the life of the Rector, I did not speak of that.

Q. You would not?

A. No.

THE COURT :

Okay. So we'll stop for ten minutes.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

VALERY FABRIKANT :

Have you decided anything about chains yet?

THE COURT :

No.

VALERY FABRIKANT :

He didn't come?

VALERY FABRIKANT :

Just ask your question to Mr. Haines.

WITNESS: GRENDON HAINES -- UNDER THE SAME OATH

CONTINUATION OF EXAMINATION BY MR. FABRIKANT :

Q. So we cannot really find much about meeting of March twenty-second (22nd), correct?

A. ...

Q. Could you continue in your agenda then?

A. Okay. The week of March the twenty-seventh (27th), although there's a post-it note in here dated March the twenty-third (23rd), one twenty-five (1:25), Grendon, Barnab, and Mr. Barnab,'s telephone number.

Q. March twenty-third (23rd)?

A. Yes.

Q. Okay. Does it ring any bell for you?

A. ...

Q. No? Maybe it was the day when I made the threat?

A. I have no idea why I spoke to... if I spoke, or what that note is about.

Q. All right.

A. All I can tell you is I have a note there.

Q. But we did not have any meeting, according to your record, since February twenty-second (22nd), and according to your agenda?

A. March the twenty-second (22nd)?

Q. No, no. From February twenty-second (22nd) you went through, and we came to March twenty-second (22nd) with Osman, Sankar, Sankar, McKenzie and you, and there was no meeting with me during all that time, according to your agenda, correct?

THE COURT :

Q. You might look at the third (3rd) and you might look at the twentieth (20th).

A. The third (3rd), yes, My Lord.

VALERY FABRIKANT :

Q. Third (3rd) what?

A. Third (3rd) of March, I have a record here of a meeting with Catherine McKenzie and Fabrikant, Bishop Court, 201.

Q. Yes, but there is no record of that, okay?

THE COURT :

Yes, but that wasn't your question.

VALERY FABRIKANT :

Yes, I understand. Yes. Yes. Yes.

Q. And?

A. And then the next note in my agenda book is March the twentieth (20th): "Catherine McKenzie at Loyola, Fabrikant".

Q. So March twentieth (20th) we meet three of us or what?

A. All I can tell you, My Lord, at this stage, in my agenda book it is written there.

Q. So March twentieth (20th) you, McKenzie and myself, what...

THE COURT :

At Loyola.

A. At Loyola, My Lord, that's all that's there.

VALERY FABRIKANT :

Q. All right. Any clarification to that? Nothing?

A. I have no clarification, and my memory does not serve me about what that's all about.

Q. All right. And there is no notes or anything to that matter?

A. No.

Q. Okay. So twenty-second (22nd) there was Osman, Sankar, Sankar, McKenzie and yourself we know very little about, and what is next after that?

A. I have here at four o'clock (4:00), on March the twenty-eighth (28th), Dr. Fabrikant, AD221 at the Loyola Campus.

Q. Uh, huh.

A. I also have here an appointment at three thirty (3:30) with Dr. Warren Steiner, and the word "cancelled" has been written through that.

Q. All right. So with myself it was what date?

A. With you, on March the twenty-eighth (28th), My Lord.

Q. Was there the meeting on March twenty-eighth (28th)? Did it take place, to the best of your recollection?

A. I believe that is the meeting that I had with you on that date, in which you informed me that you had a gun, you knew the location of the Rector's offices...

Q. And I'm going to kill him.

A. ...and you're going to, I think, shoot him.

Q. Fantastic. Now, I would like, at this point, I would like... this is why you have written in your memo in July ninety-two ('92) that I probably threatened Rector on March twenty-eighth (28th), right?

A. Yes, My Lord.

Q. So this note in your agenda gave you the impression that this is what it was?

A. Yes, My Lord.

Q. Okay. Now, after we reviewed all this stuff, could you be more certain that indeed it took place on March twenty-eighth

(28th)?

A. I feel more certain that it took place on or about March the twenty-eighth (28th).

Q. Well, on or about is what is written in my indictment, we need a little bit more precision here.

THE COURT :

The witness is being as precise, I suppose, as he can, but that won't do to say: "We need a little more precision".

VALERY FABRIKANT :

Well, what does it say about? Either it was on the twenty-eighth (28th), whether it wasn't on the twenty-eighth (28th).

THE COURT :

He believes it was on the twenty-eighth (28th), he...

VALERY FABRIKANT :

That's it, so the word "about" shouldn't go there.

THE COURT :

Pardon?

VALERY FABRIKANT :

The word "about" shouldn't be there, that's all.

Q. Okay. Would you please describe in more details? I believe it was so shocking to you that you couldn't possibly forget details of that meeting.

A. Of what you said on March the twenty-eighth (28th)?

Q. Yes.

A. In my office?

Q. Yes.

A. Yes. I think you started the conversation fairly quickly by asking me about the location of the Rector's offices.

Q. So just out of blue?

A. And you had mentioned that they were in Bishop Court, and you then quoted me room numbers, and you wanted me to confirm those room numbers. I didn't know whether they were correct or wrong, and I told you that, I said: "I don't know". And you said that when you're frustrated you know how to get things done around here, and that is to take a hostage. And I said to you that this is not the way we do things in Canada, we do things differently, we try to work things out, and anyway you can't get a gun in Canada like you can in the United States, it's not as easy, it's very, very difficult. And then you told me: "I have a gun".

Q. Just out of blue, that the whole conversation (inaudible) somehow come to that?

A. That was the conversation, there may be other things we talked about, but that is the only part that I remember of that conversation of that day.

Q. But since it was a meeting, probably you had some kind of... well, any note whatsoever, anything... you probably prepared for that meeting, did you? Could you describe... Okay, I came to you, usually you'd pick the paper and start writing, you remember every our meetings started usually like that, correct? Whenever I came to you, usually you'd pick the paper and started writing, is the recollection correct?

A. No, I don't do that at every meeting, and I don't remember now whether I did that at that meeting or not, I do not have a record of that meeting in writing here, or anywhere.

Q. Well, still... how did it come to that?

THE COURT :

You're drifting back towards cross-examination, you've gone straight into cross-examination, as a matter of fact.

VALERY FABRIKANT :

Okay, I will rephrase my question.

Q. Do you recall the beginning of the meeting? Was it just from the very beginning what I told you?

A. My recollection is that you went into this fairly quickly at the beginning of the meeting.

Q. Well, quickly or we talked about something else, or it was just like that?

A. I cannot remember more than what I have said, My Lord.

Q. All right. And after I said: "I have a gun", what did you tell me?

A. I cannot remember what I said or what happened after that point, I was shocked.

Q. But you just said nothing? I said: "I have a gun", you said: "All right", something like that?

Me JEAN LECOURS :

The witness did not say so, My Lord.

THE COURT :

No, he did not.

VALERY FABRIKANT :

No, I'm asking.

THE COURT :

It is cross-examination, the last question is disallowed.

VALERY FABRIKANT :

All right.

THE COURT :

He said: "I can't recall".

VALERY FABRIKANT :

Q. It was so shocking to you that you decided not to write it down, being sure that you will remember for the rest of your life, correct? This is why you didn't write it down. Is my recollection correct how you explained it why you didn't write it down?

A. I reported it right after our meeting, I didn't bother to take the time to write it down, I reported it right away.

Q. Yes, but you mentioned yourself that you didn't write it down because you were sure that you will remember, is that your own testimony here?

A. I remember it to this day, yes, My Lord.

Q. So what happened just after that? I stood up and off I go? What?

A. I do not remember, I'm pretty sure it didn't end just like that but I do not remember how it ended, how the conversation ended, and where we went on to.

Q. Well any explanation how come? It was like what, like...

THE COURT :

Look, he said he does not remember.

VALERY FABRIKANT :

All right. Fine.

THE COURT :

Fine.

VALERY FABRIKANT :

I believe this is the time to show him Barnab, file.

THE COURT :

Just show it to Mr. Fabrikant first.

VALERY FABRIKANT :

Q. Now you said that you reported it to whom?

A. I would suspect I reported it to Dr. McKenzie and/or Roland Barnab,.

Q. And/or... what, you are not even sure who you reported it to?

A. Sure, I reported to both of them.

Q. You reported to both of them?

A. Yes. Yes.

Q. Who was first?
A. That I do not remember.
Q. It was such a shocking experience you don't remember who you contacted first?
A. I do not remember who I spoke to first.
Q. Okay. What was the reaction of Dr. McKenzie? You told her not that I'm going to get Rector, you told her that I'm going to shoot Rector, correct?
A. That's right.
Q. Uh, huh. What was her reaction?
A. I do not remember the conversation that I had with Dr. McKenzie in which I made the report, I just know I reported it to her. I do not remember her reaction.
Q. It was so shocking, how could you forget the whole thing?
THE COURT :
You're cross-examining.
VALERY FABRIKANT :
Okay.
Q. What was reaction of Mr. Barnab,?
A. I do not remember the reaction of Mr. Barnab,.
VALERY FABRIKANT :
There is no point to ask again how come.
THE COURT :
No, you have your answer.
VALERY FABRIKANT :
All right.
Q. Now, according to the security report, which says, first of all, it is dated March twenty-first (21st), which according to your notes, and agenda, we didn't have any meeting, and on March twenty-first (21st), allegedly, happened the following. This is security report of that day:
"I was replacing..."
Somebody, I don't know the name:
"...for a short break..."
Me JEAN LECOURS :
Who writes that? Is it the witness?
THE COURT :
I don't know yet. What are you quoting from?
VALERY FABRIKANT :
From the security.
Me JEAN LECOURS :
Let's show to the witness.
THE COURT :
May I see this report?
VALERY FABRIKANT :
Sure.
THE COURT :
Well you can't put this report into the record through this witness.
VALERY FABRIKANT :
No, I just want to read it to him...
THE COURT :
You can't.
VALERY FABRIKANT :
...and ask some questions.
THE COURT :
You can't read it to him. You can ask him about the manner in which the report was made, you can ask him to whom he spoke.
VALERY FABRIKANT :
It was not him, this is the point. His named is mentioned there...

THE COURT :

Could you show that to the Crown Prosecutor, please?

VALERY FABRIKANT :

His name is just mentioned there.

THE COURT :

His name is mentioned there. Yes.

VALERY FABRIKANT :

It was not he who wrote it.

THE COURT :

Of course it was not he who wrote it, then you can't...you can't read that document to him.

Me JEAN LECOURS :

That's as simple as that, My Lord.

THE COURT :

You simply can't. You can't read that document into the record through the guise of asking the witness a question. Why? Because I said you can't. It's not a writing emanating from the witness, it's not a report emanating from the witness. If you want to ask the witness details about the manner in which a report was made, fine, but you can't read from that to the witness.

VALERY FABRIKANT :

Well, according to this report...

THE COURT :

Don't please do it by way of argument, I'm just saying you cannot read this report into the record under the guise of asking the witness a question.

VALERY FABRIKANT :

Okay. Let me put it differently then. I would like him to look at the report and maybe this will refresh his memory, because his name is mentioned there, how about that?

THE COURT :

If you wish to direct the witness' attention to the report, and in particular to the date on the report, without reading from the report, he looks at the report, he takes cognizance of the report, certainly.

VALERY FABRIKANT :

Let him read it.

A. Okay, My Lord.

THE COURT :

Q. Just hand that back and wait for the question.

A. Yes, My Lord.

VALERY FABRIKANT :

Q. Okay. Is what you read clear to you?

A. Yes, My Lord.

Q. Okay. From this security report, does it follow that, if I made a threat to the Rector, it must have been March twenty-first (21st), right?

A. Yes, My Lord.

Q. But on March twenty-first (21st) we didn't have any meeting, right?

A. Yes, My Lord. Right, My Lord.

Q. So you just invented the whole thing, did you?

A. No, My Lord, this is another incident, My Lord.

Q. So this report is not where I threatened life of the Rector, this is something else?

A. This is another issue, My Lord.

Q. This is another issue.

A. Another event.

Q. Okay. Then describe what happened on Marth twenty-first (21st), we didn't meet on that day.

A. I believe this incident is a telephone call that was made to my office by Dr. Fabrikant, and was reported to me. I wasn't in the office, I was out of the office, and I had a telephone call from my secretary who reported a conversation that she had with Dr. Fabrikant.

Q. And of course I again threatened Rector on the phone?

A. In the conversation that Dr. Fabrikant had with my secretary, he said to her, 1: "I know that the Rector is on the Loyola Campus. I want to know in which room he is at. I am coming to see him." My secretary said she knew nothing about the location of the Rector and that was the end of the conversation. My secretary then telephoned me and reported the incident to me. I then reported the incident to Catherine McKenzie, I do not remember reporting it, as it says, to the security guard, as it's written in the report, but I do remember reporting the incident to Dr. McKenzie saying only that my secretary had just told me that she had a telephone call from Dr. Fabrikant who led her to believe that he knew the location of the Rector, and was coming out to see him, and wanted to know in which room he was at. That's what I reported to Catherine McKenzie.

VALERY FABRIKANT :

One couldn't invent more absurd story. I would call his secretary to ask about Rector, what the hell? Look, there is limit to what one can imagine, it's...

THE COURT :

Are you finished?

VALERY FABRIKANT :

He got caught, and he's inventing such an absurd...

THE COURT :

Mr. Fabrikant, there is nothing on this earth that will prohibit you later on from putting in your argument...

VALERY FABRIKANT :

I remember very well that McKenzie testified that that was the date when I threatened Rector.

THE COURT :

I have told you again and again that people's recollections differ, and cases never go together like jigsaw puzzles, which is what you seem to think that it should do.

VALERY FABRIKANT :

All right.

THE COURT :

Well anyway, I have been asked if I would adjourn at four thirty (4:30) this afternoon, so we will adjourn at this point and you can take up your other questions with Mr. Haines tomorrow. And I have said that I would interrupt the testimony of Mr. Haines, I don't think it will cause you any grief to hear one witness who, I am told, will not take very long, and who would not otherwise be available next week. So we'll do that tomorrow morning, I don't think it will cause you any grief at all. Okay. So until tomorrow morning, nine thirty (9:30).

AND FURTHER DEPONENT SAITH NOT

THE JURY LEAVES THE COURTROOM

PROCES CONTINU AU 11 JUIN 1994 - 9 H 30

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 QUEBEC

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 LECOIRS
ATTORNEY FOR THE CROWN

MR. VALERY FABRIKANT
REPRESENTING HIMSELF

MAITRE LOUIS BELLEAU
AMICUS CURIAE

DATE OF THE HEARING: JUNE 11th 1993

OFFICIAL COURT REPORTER: MS. MAUREEN ROWE

CLERK OF THE COURT: MS. GHYSLAINE LEGROS
MS. CECILE PROVOST

FICHER NO. 3031

TRIAL

CASE NO. 01-017372-928

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TRIAL TO CONTINUE ON JUNE 14th 1993

jz -2-
THE COURT TAKES THE BENCH

BY THE HONORABLE JUDGE FRASER MARTIN, J.S.C.:

You asked me, Mr. Belleau, to come in without the jury?

BY MAITRE LOUIS BELLEAU
AMICUS CURIAE;

It's a request from Mr. Fabrikant. I don't know what the
subject matter is.

BY MR. VALERY FABRIKANT
REPRESENTING HIMSELF:

Well I raise again question of those chains. They create
physical problems.

BY THE COURT:

That's unfortunate because I've reflected on the question
of the chains and I've completed my own enquiry and the
chains will stay on.

BY THE ACCUSED:

I spoke to Ma&tre Walsh from Manitoba. He's prepared to
come over to help me in my defence. Would we be able to
replace Mr. Belleau if he comes?

BY THE COURT:

No, he will not. He may help you in your defence and Mr.
Belleau will remain as amicus curiae as far as I'm con-
cerned. I have no idea of knowing how long Mr. Walsh may
last.

BY THE ACCUSED:

Well he ...

BY THE COURT:

I'm not ... that's not your decision or anybody else's

decision. You may have Mr. Walsh assist you in your defence if you wish. I for my part have named a friend of the court and we'll continue, we'll continue.

BY THE ACCUSED:

Well but will he be paid?

BY THE COURT:

Will who be paid?

BY THE COURT:

Mr. Walsh because this is question that legal aid might save a ...

BY THE COURT:

Well you can take ... you can take that question up with the legal aid. I'm not ... I'm not involved in that.

You can take that question up with the legal aid.

BY THE ACCUSED:

So effectively, you are forcing me, on me ...

BY THE COURT:

I'm not effectively forcing anything on you and I'm not going to presume to speak for what I thought or whatever was the policy established by the legal aid.

BY THE ACCUSED:

OK, there is another point. Prof. Antipa (sic) expressed his also wish (sic) to help me in questioning if you allow him to sit in my box.

BY THE COURT:

I will not.

BY THE ACCUSED:

May I ask why?

BY THE COURT:

No you may not ask why. He has a place and his place is in the body of the courthouse... the courtroom and if he

is called as a witness, he's called as a witness and that is that but he is not going to be tossed a gown for the purposes of the ... of the hearing nor is he going to be allowed to install himself in the dock with you to ... to provide you with questions.

If Mr. Antipa wishes to brief you before you set off to question one or the other of the persons that you wish to question, that's something else.

BY THE ACCUSED:

Well it is important that I have some kind of help.

BY THE COURT:

But I'm not conferring on Mr. Antipa the ... I'm not going to confer on Mr. Antipa the status of honorary lawyer.

BY THE ACCUSED:

Well if I appoint him a counsel for me?

BY THE COURT:

You will not appoint him a counsel for you. He's not an advocate and he's not a member of the bar.

BY THE ACCUSED:

Well he's not ...

BY THE COURT:

So the answer is ...

BY THE ACCUSED:

... performing legal ...

BY THE COURT:

The answer is no and furthermore, if you have Mr. Walsh, presuming Mr. Walsh ...

BY THE ACCUSED:

Mr. Walsh is not coming if you ... if he's not paid and clearly legal aid would tell me: we cannot pay somebody

with ...

BY THE COURT:

Well I have no idea what legal aid would tell you and I'm not going to ... I'm not going to speculate on what legal aid would tell you.

BY THE ACCUSED:

Well there is nothing to speculate.

BY THE COURT:

I know ... I know what Mr. Belleau's status is.

BY THE ACCUSED:

Legal aid will pay saboteurs, legal aid doesn't pay honest lawyers, it's obvious.

BY THE COURT:

Pardon?

BY THE ACCUSED:

Legal aid pay only saboteur lawyers.

BY THE COURT:

Mr. ... Mr. Fabrikant, if you wish to bring Mr. Walsh, you're perfectly free to do so and provided Mr. Walsh is accredited by the Quebec Bar to ... to assist you in this case, I don't think there'll be any objection from anyone.

BY THE ACCUSED:

Well how about replacing Mr. Belleau. Mr. Walsh be friend of court, that he ...

BY THE COURT:

Pardon?

BY THE ACCUSED:

... will last as long as you want so you will have no problem for ...

BY THE COURT:

No, I ... I have my friend of the court, thank you very much and my friend of the court will remain in place.

BY THE ACCUSED:

Oh yes, your friend of the court also friend of prosecution as well, not just friend of the court.

BY THE COURT:

Good. Have we finished all of this? Jury please.

BY THE ACCUSED:

Yes, there is one more thing. I need order for Prof. Antipa for this weekend.

BY THE COURT:

Well you can bring that up later.

BY THE ACCUSED:

Well later, you will be prepared?

BY THE COURT:

Madame, if you can put your hand on an order for Prof. Antipa for last weekend, you'll find the pattern that I followed last weekend, OK.

THE MEMBERS OF THE JURY ARE ALL PRESENT

PROOF OF THE DEFENCE (Cont'd)

NANCY TORBIT
Director - Health Services
Concordia University

SWORN

BY THE COURT:

Now before we go any further, do you think you can talk a little more loudly.

AOf course. Do I ... am I supposed to put this on?

Well you can if you like. That will make sure whatever you say is recorded even if you whisper.

AI can talk louder.

But the jury can't hear you if you ...

AI can talk louder.

OK, good.

BY THE ACCUSED:

I mentioned that I'm whole day in chains and my legs has rings right now.

BY THE COURT:

You're mentioning this for effect, are you? All right, go ahead.

BY THE ACCUSED:

No, I'm asking you, maybe you could at least allow me to question sitting?

BY THE COURT:

You stand up.

BY THE ACCUSED:

Because the ...

BY THE COURT:

You stand up for the moment. You come upstairs without having chains on and the chains are only put on upstairs before you come out here.

BY THE ACCUSED:

Yes and the whole day, I'm in chains.

BY THE COURT:

And we have discussed the question, we have discussed the question of security arrangements before the jury came in.

BY THE ACCUSED:

OK so can I at least be sitting?

BY THE COURT:

If you wish to make ... no you can't, stand up and put your questions.

DIRECT EXAMINATION BY

MR. VALERY FABRIKANT - ACCUSED

REPRESENTING HIMSELF:

You want to play comedy that I'm dangerous, OK.

QSo could you describe your duties at the university?

AYes, I'm the director of two campus health services.

(sic) My responsibility is to provide health care, to ensure that health care is provided to the students, staff and faculty of the university.

QOK, what is your background?

AMy professional background is I'm a registered nurse. I have a degree in ... as well, after that, I went out and have a degree in community nursing. I have had training in group development and in a training development program. I have worked in psychiatry. At the Douglas, I was a head nurse for two (2) years. I worked at the Reddy Memorial in psychiatry for a year. I have been working at Concordia for twenty (20) years. I sit on the central

health and safety committee. I chair a sexual assault working group. I'm ... I've been a member of the university intervention team.

QHave you brought the documents which were subpoenaed?

AYes, originally I was informed that I was not to bring documents so what I did when I was to prepare to come without documents was that I went through to see what notes I had. I do not have formal notes on this case. It was not as if there was a consultation within the health services at which time there would have been a formal medical file, so I have a very ... very little.

QOK, may I take a look at it.

AHum, hum.

BY MAITRE JEAN LECOURE

ATTORNEY FOR THE CROWN:

Well I understand medical records are confidential.

Whose medical records are they?

AIt's not ... they're not medical records.

BY THE ACCUSED:

It's not medical record.

BY THE COURT:

Yes, there was no formal medical record ever opened. That was what Mrs. Torbit said. I don't know whether there is any objection with regard to the documents.

BY THE CROWN:

Well I would like to have a look first. No problem at all.

BY THE COURT:

Fine. You may pass these to Mr. Fabrikant through Mr. Belleau.

AMay I point out, Your Honor ...

QYes sure?

A... My Lord that the first page is ... that I typed was not part of the original documentation that I had but when I received my subpoena, I went through my agendas to find out the dates and ...

QI see, so the first page is a typewritten page that you have prepared in anticipation of your testimony?

AYes and I had prepared that prior to being told to bring documents.

QOK and that was what you put together through reference to your agendas which were the only thing that you had?

AYes.

QIn the form of notes?

AYes. Except these, well in the form of notes, I had some minor personal notes that I made, that I looked at to see, to try and jog my memory.

QOK.

ABut ... and that was why they were there.

QAnd these are in what you've handed to ... to Dr. Fabrikant?

AYes.

QOK. You might if you wish sit down while he looks through that. It wasn't made by Lazy-Boy.

BY THE COURT:

Excuse Madame, on your proc'ss-verbal, did you time in the swearing in of the witness, the beginning? Can I have the time please?

BY THE CLERK:

Sure, nine forty-seven (9 h 47).

BY THE COURT:

Thanks.

BY THE ACCUSED:

QOK, I understand that you were present on October 31st at Montreal Athletic Association?

AYes.

QWhere is it located, Montreal Athletic Association?

AI'm not sure, on one of the downtown streets in Montreal. It was the first time I had been there.

BY THE COURT:

October 31st of what year?

BY THE ACCUSED:

1990, twelve thirty (12 h 30) it says here.

QHow were you brought there? By taxi?

ANo, I walked.

QYou walked from ...

AFrom Guy.

QWell if you walk, usually you know where you're walking.

BY THE CROWN:

It's arguing, My Lord.

BY THE COURT:

Yes it is.

BY THE ACCUSED:

QSo did you notice which way you were going?

AI was going east.

QOK and if ... do you ... are you familiar with Montreal?

AYes.

QHow many years have you been living in Montreal?

AAll my life.

QSo ...

BY THE COURT:

You're cross-examining the witness. Would you please desist from cross-examining the witness. The witness said she attended a meeting at the MAAA at twelve thirty on October 31st. She walked there.

BY THE ACCUSED:

Well I'm trying to locate this place.

BY THE COURT:

Would you like to know where it is?

BY THE ACCUSED:

Yes.

BY THE COURT:

Continue with your questions.

BY THE ACCUSED:

Thank you. So ...

BY THE COURT:

But don't cross ... don't cross-examine the witness.

BY THE ACCUSED:

Well I really don't ...

BY THE COURT:

If you ... if you genuinely wish to know the ... the address of the place and where it's located, if that's ... if that's what you want, I'll ask the jury to go out and I'll see whether by consent you can be provided with that.

BY THE ACCUSED:

Well I think we can do it much faster without jury going out and in. I can hardly believe that person living in Montreal all her life and walking, walking distance from university ...

BY THE COURT:

Well anyway, you're not there to cross-examine the witness.

BY THE ACCUSED:

I'm not cross-examining.

QSo do you remember what streets you were passing on your way?

A No I don't.

QWhat direction did you go at first?

A I told you, I went east.

QEast, it is what? What street was that?

A I don't remember.

QWhere is your office located?

A My office is located at 2155 Downing. (sic)

QOK, did you go left when you exited building or did you go right?

A My recollection was that I went left.

QOK, so you're on Guy Street. Then did you go straight?

BY THE COURT:

This is a waste of everybody's time. Would you please ...

BY THE ACCUSED:

It's not waste of everybody's time.

BY THE COURT:

Yes it is. Would you please get to the pertinent questions that you wish to ask about that meeting. We are not going along a route card of the ... of the course she followed.

BY THE ACCUSED:

Well isn't it obvious, if person is walking there, she knows where she's walking.

BY THE COURT:

Please don't talk to me about what is obvious and what is not. Would you please put whatever questions you have to put relating to that meeting and let us get us off a walking tour of the downtown streets.

BY THE ACCUSED:

Well it is important.

BY THE COURT:

It is not important and it's a waste of time. Move on.

BY THE ACCUSED:

QHow long was the walk?

A To the best ...

BY THE CROWN:

It's still the same line of questioning, My Lord.

BY THE COURT:

Yes it is.

BY THE CROWN:

I think you already ruled.

BY THE COURT:

Would you ... would you cease this line of questioning and would you come to the point, of why the witness is here.

BY THE ACCUSED:

I have a point. You don't let ... you don't let me make the point. I have a point. I never ask question which is irrelevant. If it seems to you irrelevant, you just trust me that I know what I'm doing.

BY THE COURT:

Mr. Fabrikant, I will not trust you that you know what you're doing. The question of how the witness got to the MAAA is irrelevant.

BY THE ACCUSED:

Well so far there was not a single case where I was asking questions and at the end, it didn't turn out that all was perfectly aimed.

BY THE COURT:

Is that so?

BY THE ACCUSED:

Yes. Would you agree with that?

BY THE COURT:

I'm not going to comment on that. Would you please, put ... put your questions with a view to bringing out what the point of this examination is.

BY THE ACCUSED:

I need to ask those questions. They're important.

If you refuse, I will do something else, but I insist, I need to ask those questions.

BY THE COURT:

Ask your next question.

BY THE ACCUSED:

I didn't get answer to the first one. How long was the walk?

BY THE COURT:

Are you able to answer that?

AI mean I assume it was about twenty (20) minutes, it's not with any certainty that I can answer the question.

BY THE ACCUSED:

QDid you walk alone?

AI don't believe so, although I don't ... no I don't think I did.

QOK but ...

ABut I'm not sure. It was in 1990, it was a long time ago.

QWell who you were walking with?

AI would assume I would have been walking with Dr. Steiner.

QOK. Did you know where you were going?

AWhat ... what do you mean?

QWhen someone goes walking, usually he knows where he goes unless he doesn't know, he takes a taxi but if he goes walking, usually he knows where he goes. Did you know where you were going?

ANo, I already said that.

QNo.

AThat I didn't know where it was.

QOK so you just went any direction, hoping that no matter where you go, you will come finally to where you need to be?

BY THE CROWN:

This is sarcastic, My Lord.

BY THE COURT:

Yes, it's sarcastic and it's not what the witness said.

BY THE ACCUSED:

QWell how did you hope then to get to the point of your destination if you didn't know where you were going?

AWell Dr. Steiner, I guess, was with me because he knew where he was going, because otherwise I would have remembered, I would have written down an address.

QNow OK, so it was Dr. Steiner who walked you all the way? You had no idea where you were going? He knew the route?

ATo the best of my recollection, yes.

QOK. So you cannot possibly indicate as to where it was? It was downtown. Was it ... did you go down to underpass,

Guy? Did you go then on de Maisonneuve?

AI went on de Maisonneuve, west on de Maisonneuve and on some street, I don't know how many streets but beyond we turned, I believe it was right and I believe that the building is on the right hand side of the street.

QDo you know any reasons why the luncheon or whatever you call it, it was ... it was dinner?

AIt was a lunch meeting.

QYes, do you know why this particular place was chosen for this lunch?

ANo.

QThis is not a restaurant, is it?

AIt's a private club to my understanding.

QWere you member of that club?

ANo.

QDid you need membership to get in?

ANo.

QAnyone can get in there?

AI assume that the person who is hosting the luncheon is the one who has the membership.

QAh OK, so do you know ...

AOr there are rules of that sort, I don't know.

QOK, so it was Mrs. Sheinin who hosted the lunch?

ADr. Sheinin was the one who called the lunch, yes.

QAnd do you know who paid for the luncheon?

AI have no idea.

QJust you didn't pay?

AI didn't pay for the lunch, no.

QAll right. Now could you describe what transpired on this meeting to the best of your recollection?

ATo ... the memo that Dr. Sheinin wrote to Dr. Kenniff on November 16 ...

QWould you please, just from your memory if you can.

A... 1990 reflects a lot of what I remember so I can ...

QWell would you please just from your memory?

AReflect what I ... remember what I can? OK.

BY THE COURT:

Well just a second.

ASorry.

QIf you feel, if you have a memo which you ... where is this memo from? Your files?

AIt's a ... it's a memo, no, I received a copy of it but it's ... it's a memo that's been entered before because it's from ... to Dr. Kenniff from Dr. Sheinin. I believe Dr. Sheinin wrote ... read this in court when she was here.

QHave you previously refreshed your memory with that memo recently?

AYes.

QHave you ... OK fine, put it aside and ...

APut it aside, OK.

QPut it aside.

BY THE ACCUSED:

Well ...

BY THE COURT:

For the moment and attempt to answer the questions.

BY THE ACCUSED:

... isn't it obvious that witness, if she tries to confirm (sic) to the memo written by vice-rector to the rector, by definition, clearly tries to tailor her tes-

timony to this particular memo and witness shouldn't do that.

BY THE COURT:

Absolute nonsense. Put your questions.

BY THE ACCUSED:

So it is all right for the witness to consult memo written to the ... from the third person to the fourth person?

BY THE COURT:

It's surely perfectly all right for the witness to refresh her memory of a meeting with a memo of that meeting of which she received a copy.

Now I said to the witness: you have read it? She said yes, I said fine, put it aside, attempt to answer the questions without looking at the memo since that seems to be making you particularly antsy.

BY THE ACCUSED:

Particularly what?

BY THE COURT:

Nervous.

BY THE ACCUSED:

No, but you used some other word. What was it?

BY THE COURT:

Antsy.

BY THE ACCUSED:

What is it?

BY THE COURT:

Look it up.

BY THE ACCUSED:

How do you spell it?

BY THE COURT:

Mr., do you want me to terminate this right now?

BY THE ACCUSED:

Well I don't understand ...

BY THE COURT:

Would you please put your questions. Put your questions.

BY THE ACCUSED:

QWhat was the purpose of you being there? How you were explained your role at that meeting?

AI was asked to go by Dr. Sheinin. I didn't have a clear sense of my actual purpose there. My sense was that she was having ... had to make some decisions and that she wanted to meet with the members of ... of the department and talk with them about those decisions.

My recollection was that she thought that some of the faculty may be afraid and feeling particularly stressed and she I believe then asked me to go to ... to see if there was some way that I could provide her with some input about the situation and about her concerns.

QWell did she explain to you in any way what her concerns were, who would be afraid of who, what her intentions were?

AMy ... to the best of my knowledge, my recollection is that she did not talk in specifics but rather in generalities about there being a mood of fear and that she was concerned that there were other agendas or other ... not agendas, but other concerns that hadn't surfaced and so she was hoping that meeting at the MAA, that we would be able over a lunch to ... to just talk about what was happening and how the faculty members were feeling and what

their perceptions were.

QWell feeling about who?

AAbout you.

QSo she mentioned my name.

AYes.

QOK, then if she mentioned my name, probably she added something to it, did she?

AIn terms of what? I don't understand the question.

QI cannot ask you leading questions. I just asked you ...

BY THE COURT:

If ... you've been asking them since the beginning of the examination.

BY THE ACCUSED:

I'm trying to do my best not to ask and you should appreciate it. So I'm trying to be good.

QSo could you please recall, since you mentioned my name was pronounced, in what regard and all the details which you can remember?

AI recall that there was a concern about the renewal of your contract. I'm not an academic and so I don't get involved in the details of contracts.

QWell what ...

AI ...

QWhat Mrs. Sheinin told you? That she wanted not to hire me into tenure-track position or something like that?

What?

A My belief was that at the time and my understanding at the time was that Dr. Sheinin was trying to get information in order to make a decision.

QInformation from who?

AFrom the faculty.

QBut decision was about what?

AAbout... I believe it was about the renewal of your contract.

QOK and your presence there would be for what purpose?

If she wanted to get information from faculty, how would you be able to help her?

A Sometimes when ... I guess from the point of view of being able to ask some different questions or to hear some answers from the faculty to be able to perhaps try and piece together the ... my understanding was that there were gaps for Dr. Sheinin and she was trying to ... to piece together the gaps so it was a question of you know, were the faculty afraid, were they ... where were they on the situation. There had been ... I don't know, I think there had been, how can I say, she was concerned that the faculty were not saying what was really bothering them so she thought that if ... if I was at the meeting, that I might be able to help her.

QOK. Did you?

AI didn't speak at the meeting very much, no.

QOK. As little as you did, could you describe what you said and to who?

AI would ... had only asked a couple of clarifying questions and I don't remember what they were and my assumption would have been that they would have been, to the best of my recollection, to Dr. Osman but I don't know. I mean it's just a...

QYou asked Osman or Osman asked you?

A No, no, I spoke to him.

QOK. Do you recall ...

ANo, I don't recall.

QDo you have any notes from that meeting?

ANo, I don't.

QIn what you gave me?

ANo.

QDid you know by that time about alleged threats made by me?

ABecause the case goes on, I'm not clear of exactly what I knew at which point. To the best of my recollection, there were rumors as opposed to threats, rumors of threats as opposed to threats and I don't ... I don't recall what those were.

QOK, were those rumors as you call it repeated at the meeting?

ANo, not to the best of my knowledge.

QNone of them was mentioned?

ATo the best of my knowledge, no, but this meeting was in 1990.

QSo what then they were talking about if they didn't mention any rumors at that meeting, what was the conversation about then?

AThe conversation was about your ... whether you should be in the department or not and how the faculty felt about you being in the department.

QWell if you do not say that I made certain threats, then what might be the reason for me not being in the department? How was it explained to the members of the department?

AIt was a situation that ... I believe and again this is very much to the best of my recollection and I had not been involved in the department personnel committees or in any of the hiring and decisions that are made around faculty, but it was that ... my remembrance was that Dr. Sheinin had to make a decision and that she wanted to consult the members of the faculty.

QSo what ... what did she tell them? Do you remember what her words were to the members?

AI don't know.

QNothing at all?

AI remember her talking about her concern, you see I remember more of the tone of the meeting rather than of the actual ... the actual words.

QWell just the sense of the conversation, what for example Dr. Sheinin told members of DPC?

AMY Lord, I think I've already said that I don't recall enough of the content and if Dr. Sheinin said it, perhaps ...

BY THE COURT:

Well you're being asked. If you don't recall, you don't recall but ...

BY THE ACCUSED:

QWas anyone making any notes of that meeting?

AI don't know.

QWas the meeting recorded?

AOn a tape recorder you mean?

QYes?

ANo.

QAll right. What Dr. Steiner talked about at that meeting?

AMY recollection is they gave all the content of it, my recollection would have been that he would have asked several questions about ... about how people were feeling

and what ... what the behavior may have been and what the concerns were.

QAnd what was the answer?

ATo the best of my recollection, the answers were that you were a problem around contract time, that you were a good teacher, that the ... there were some difficulties in working with you but that was not necessarily to be taken into account and that ... those are the major things and that they had not been threatened.

QThey had not been threatened?

AYes.

QDid Dr. Steiner at that meeting express any opinion as to I might be dangerous?

ANo, he did not.

QDid he express any other negative opinion at that meeting?

AI do not recall a negative opinion being expressed.

QSo effectively he didn't express any opinion at that meeting?

ATo the best of my recollection, yes, he did not.

QOK. What rumors did you personally know about by the time of October 31st 1990?

APersonally, if you mean what had been reported to me?

QYes?

AAAs not directly from the person? You're talking about the rumors, OK. I had heard a rumor that you were at a schoolyard and ... or no, near a school and you had phoned and said to somebody "Do you know what color of clothes your children are wearing today?". I heard that you talked about doing things the ... that if you don't get what you want, now you know you do things the American way. I had heard that there was a concern at one point that you would take the rector hostage. I think those are the main rumors that I heard.

QOK, the first one, did I say it to someone or did I phone to someone?

AThe way it was related to me and as rumors go, they get changed as they get said to another person, but the way I heard it was that you had phoned someone.

QOK, do you know who told you that rumor?

ANo.

QWell you were not impressed at all that ... you don't even remember who told you that?

BY THE CROWN:

This is cross-examination, My Lord.

BY THE COURT:

Yes it is. You have your answer. The witness doesn't know.

BY THE ACCUSED:

So you are totally limiting my defence to such extent that it becomes absolutely unfair trial.

BY THE COURT:

The witness said that she does not know the source of the rumor.

BY THE ACCUSED:

I'm asking important question. This question is important.

BY THE COURT:

The question is disallowed.

BY THE ACCUSED:

QDo you know to who the call was placed?

ANo.

QDid you ask the person who conveyed it to you, to who I called?

AAAs with many of ... many if not all of the rumors that I heard, there was no person attached to it. There was no "He called so and so at such a time and said such and such a thing".

QOK.

ASo ...

QCould you describe in more detail about North America because North America is not a threat? Something went after that which sounded like threat so to the best of your recollection, what were the words said after North America?

ATo the best of my recollection, there wasn't much said after that.

QWell still, it seems it sounded like threats. There must be something...

AIt was interpreted ...

Q... which should sound like a threat.

AIt was interpreted as a threat by the person who told it to me, I assume because they were concerned about it, but it was "Well when you're... now I know how you do things in North America".

QYes and how you do things in North America? Was any clarification after that?

AIt's hard because there have been so many reports of different rumors at different times and you know, did I hear it or was it something that I read, I know what goes after that which is that you get a gun and you shoot a lot of people. My recollection of what I heard was not that. My recollection of what I heard was that you do things in North America like you know how to do things the North American way.

QWith ... with no clarification as to what exactly that mean?

AThat's right.

QWhen did you hear first that you go and shoot a lot of people in this variation?

AI don't remember.

QWell at least, with accuracy of a year?

AI'm sorry?

QWith accuracy of a year, was it 1990? 1989?

AI can't answer the question.

QWas it at least before meeting or after meeting?

BY THE COURT:
The witness said she can't answer the question so leave it alone.

BY THE ACCUSED:
No, I'm trying to locate in another way.

BY THE COURT:
You're cross-examining the witness now. The witness said "I don't know", the witness has said "At the time, here's how I remembered the thing. I've heard since, I don't know when I heard since", end of question.

BY THE ACCUSED:
Well sometimes one can refresh witness's memory by some other events.

BY THE COURT:
Yes, sometimes one can but in this instance, in this instance, the witness has said "I'm sorry". You asked her

to put it within a year and she said "I can't place it" now move on to something else.

BY THE ACCUSED:

I know I'm trying just to refresh witness's memory. There is nothing wrong with that.

BY THE COURT:

Then refresh her memory by saying "Fine, if ... does this refresh your memory".

BY THE ACCUSED:

That's what I was saying. That's exactly what I was saying. You are so eager to forbid my questions, even ...

BY THE COURT:

No, what you were doing ...

BY THE ACCUSED:

... even legal questions, you forbid.

BY THE COURT:

What you were doing was cross-examining the witness.

BY THE ACCUSED:

Not at all. I asked her whether ... if she thinks about the meeting of October 1st 1990, in terms of that meeting, would that help her in any way to place those threats in time. Was it before the meeting ... all right, after the meeting?

AI don't know, Your Honor.

QOK, now let's get to another event. November 1st, 1991.

AHum, hum.

QIf we go to that point, at that point, you already knew all those rumors?

AYes.

QOK, so you see we did locate it after all.

AI had heard about the rumors.

QSo in November 1991, you knew and again, you don't know about North American way, who told you? Do you know who told you about North America?

AThere were any number of people who could have told me that, but I don't ... I don't know for sure.

QBut even several people probably told you that, not just one?

AYes, probably.

QOK and kidnapping of the rector? Was it also several people who told you?

AYes, part of what happened with the rumors was that they became from several ... I just heard about them, but it was from several sources or if it was in a context or something and my concern, anyway my concern was that they were always unclear for me.

QOK, what about killing the rector or shooting the rector, whatever?

AI don't recall when I heard that.

QBut you ...

AYou're asking me is when I recall it or what are you asking me about?

QWell first whether you heard this rumor?

AI heard the rumor of taking the rector hostage.

QBut not killing him?

ATo the best of my recollection, no.

QAll right. So I would like first to find out what happened on Friday November 1st 1991? Who called you to that meeting?

AMr. Haines.

QMr. Haines called you to that meeting. How did he explain

to you the need for the meeting?

AHe, I believe, reviewed the fact that the DPC was making ... I'm sorry, the department personnel committee was making a decision or a recommendation about Dr. Fabrikant's contract and there had been some concern because the evening before, when they had been working in an office, Dr. Fabrikant had been outside the office. He asked if ... he said that there was going to be a meeting to review how ... where we go from here in terms that if the DPC was not going to renew your contract, how that would be done. QOK and what was to be your role in all that?

AAAt that point, my role was as part of the university intervention team.

QTo do what?

AWell the university intervention team exists within the university to ... to be of help in situations of violence or disruptive behavior and we are able to do ... provide different services depending on what the ... the situation is and so at that point, considering we had dealt with a number of cases, of difficult cases, of cases in which ... in which people were afraid and departments were afraid, then so we were called in to see if we could advise the group.

QWhat kind of advice you can do against person coming with gun and starting shooting?

AI have to answer that?

BY THE COURT:

Yes, you do because you ... you are there, you have said that "we were there to advise in ... in cases of problems and ...

AOK.

It's a hypothetical question but it's a hypothetical question that you have ...

BY THE ACCUSED:

It's not hypothetical at all.

BY THE COURT:

... that you have basically qualified yourself to answer and by saying who you are and what your background is and that you're part of the team, so yes.

ASo the question was: how do I advise about?

BY THE ACCUSED:

No, what ...

BY THE COURT:

He said how can you advise.

BY THE ACCUSED:

QWhat kind of useful advice can you give for the case when person comes with a gun and starts shooting?

AOK. That kind of advice would not be given at that time.

If someone ... the kind of advice that would be given is if there are any reasons for you to be concerned, you should phone security, you should phone 911. You should ensure that your exits are ... from your desk are ... are clear, that you can get out, that you should ensure that ... so what kind of advice can I give somebody if someone comes in shooting is not usually a situation. What ... what the situation often is is if someone is potentially dangerous, what can I do and so some of those same things applied.

The other ... the other advice that I ... that I give is that if ... if you're concerned and if you feel for your safety, that you can certainly go to the police and talk

to them and that we would encourage people to do that and

...

QYou don't seem to be answering my question. How calling 911 would help against ...

BY THE COURT:

Now you're cross-examining the witness. You asked the witness the question, the witness said "Look we don't give ..." what she said in essence was: "We don't give commando style advice as to how to defend oneself but if one is threatened, we advise them to make sure that the exits are clear, to ... to call 911 if they ... if they perceive that they're in any danger". That's the witness's answer.

BY THE ACCUSED:

Well I think my English is well enough to understand what answer was so if you wish to save time next time, do not repeat it.

I want to emphasize that answer wasn't given. This is not the answer to my question. If you feel the answer was all right, then I will continue. If you agree with me that that the answer wasn't given ...

BY THE COURT:

I'm puzzled that you feel the answer was not the answer to your question.

BY THE ACCUSED:

OK, so you feel the answer was given?

BY THE COURT:

It's not what I said. I said I'm puzzled that you feel it wasn't. I'm not trying to force you to ... to leave the question. I've permitted the question. Why do you feel you didn't have your question answered? What ... perhaps you would repeat your question.

BY THE COURT:

Well I asked next question to clarify that the question wasn't answered. You ruled that this is cross-examination.

BY THE COURT:

That's right.

BY THE ACCUSED:

Then I stick to my first question because it wasn't answered. It is obvious that you don't call 911 when someone is shooting at you.

You do not ... your clear passages would not help you when someone is here with a gun and shooting you. It is not an answer.

BY THE COURT:

But the witness never qualified herself as being ... as being able to give the sort of ... of answer that you wish her to give.

BY THE ACCUSED:

You don't seem to get the point of my question, you don't seem to get the point of my question.

BY THE COURT:

No, I don't get the point of your question.

BY THE ACCUSED:

Too bad. So this is not the answer. If you agree ...

BY THE COURT:

Well reformulate your question.

BY THE ACCUSED:

I don't need to reformulate.

BY THE COURT:

And we'll see.

BY THE ACCUSED:

My question was absolutely clear.

BY THE COURT:

Well reformulate it because I don't think ...

BY THE ACCUSED:

I can ... I can just repeat it. The question was allowed and I believe it is absolutely clear.

BY THE COURT:

Repeat it then.

BY THE ACCUSED:

QWhat advice if any can you give in the case when person comes with a gun and starts shooting?

AThe advice that I could give is advice for women who have taken self-defence courses and who have looked at what to do if there is someone in front of you with a gun and I could talk about that in terms of ... of how to try and disarm a person. If that were one of the choices, I could talk about the fact that in any situation like that, one needs to take a deep breath and to review what your options are rather than panicking. I can't answer it any better than that.

QOK, let's drop the question.

What transpired at that meeting? Did anyone at that meeting raise the question that I might come with gun and start shooting?

ANot to my knowledge, no.

QSo what was there? The members of DPC, what ... what they were saying? They were the one who came to the meeting?

AYes.

QThey asked for the meeting?

AMy recollection is yes, they asked Mr. Haines and Mr. Haines ... Mr. Haines phoned and asked ...

QOK.

A... the university intervention team to go.

QWhat did they ask? What kind of help they asked for? What were they saying?

AThey were concerned about the decision of the ... that the department personnel committee had made and once you received that information, how, what would happen and how they could prepare for that.

QOK, did they express any idea as to what might happen?

ANot to my knowledge. There was genuine ... I believe there was fear in the room.

QFear of what?

AA fear of you.

QNo, I'm not asking a fear of who. I'm asking fear of what? A fear that I do what?

AThat you would hurt them.

QOK, that I would hurt them how?

AOr hurt somebody else, that wasn't necessarily them specifically.

QThat I would hurt how? That I spit at them? Would I slap them? Would I shoot them? Would I just curse them? What?

AThey ... to the best of my recollection, they did not say "I'm afraid he's going to get a gun and shoot people".

QWell you, since people get together, you should discuss some eventualities, right?

AEventualities? That's what you're saying?

QSo yes, eventualities, yes.

AYou should discuss some eventualities?

BY THE COURT:

Well we're not discussing what ... you're not questioning on what should have been discussed.

BY THE ACCUSED:

All right.

BY THE COURT:

You're questioning on what was discussed.

BY THE ACCUSED:

I'll rephrase my question.

BY THE COURT:

There's a ... there's a difference.

BY THE ACCUSED:

QAny eventualities were discussed?

A No, it was really a meeting to hear what the concern of the ... of the faculty and the departmental personnel committee were and to take a look at what we, we as the university and we as the university intervention team and they, as the people who have to be involved in a situation might do in order for it to go as smoothly as possible.

Q Well did they express any fear? Did they explain the reasons for their fear?

A They were ... it was a meeting at which there was a fair bit of talking and people talking over one another and at times, very loudly. They ... they seemed to be concerned that ... that you would do something. They were afraid. They were afraid that when they placed the limit to say that I'm sorry, the decision that we're ... the recommendation that we're going to make to the faculty personnel committee is that you not be whatever. I don't know what it was, rehired or ... that you would then get really angry and that they were not sure then what that "really angry" would mean.

Q Did they say that we have reasons to be scared because in the past, he did this, this, this and this?

A My notes from that meeting, which are brief but indicate that it was just Osman with the North American hand gesture, that it was one of the threats.

Q Do I understand correct that this reflects at that particular meeting (sic) or this is something else?

A This ..

Q Which notes you refer to now? Maybe I would like to take a look.

A Yes, it's a ...

Q Which one is that?

A Well you see, the way that the university intervention team works and how we did it, was we go to the situation to hear what the concerns are and what the needs are and then we go back and try and look at a way to resolve it so, or to recommend. So what I was referring to was this document here.

Q Yes?

A Which I don't have dated but which I believe is the meeting of the ... of the Thursday or the Friday in Dr. Swamy's office as opposed to the meeting of the ... with the DPC. I do not recall an agenda for that meeting.

Q I reiterate my question. Which note refers to the meeting of November 1st?

A None. The ... I was referring to the meeting of November 7th which dealt ... which dealt with the content of

November 1st.

QOK. I'm looking at page No. 2 and I see at No. 2:

"Who has he ever threatened?

Osman: North America hard ...

AHand.

Q

"... hand gesture."

AYes.

QIs this from November 1st meeting?

ATo the best of my knowledge, it's from the meeting on November 7th or 8th, not from November 1st.

QBut you said on November 1st, Osman also mentioned North America?

AYes but I didn't take notes at the November 1st meeting and these are the notes that I took as we were discussing ...

QOK.

A... the ... what happened in the meeting and trying to look at strategy.

QDid you tell them at that meeting that it was not the only thing I allegedly did? That I allegedly also threatened to kidnap rector?

ADid I tell them that?

QYes?

AThat's your question? No, I didn't.

QWhy didn't you? Wasn't it important to inform them that I'm very very dangerous?

AThere were enough people talking about the rumors. I did not think that I needed to repeat them.

QWell but my understand is that at that particular meeting no rumors was (sic) mentioned except North America?

AHum, hum.

QDid you feel obligated to provide them with information which they probably didn't have at that time?

ANo. I felt obligated to try and find out the source of the rumors and to try and deal with them in an organized fashion as opposed to having them as rumors.

QWell if four (4) people come ...

BY THE CROWN:

This is cross-examination, My Lord.

BY THE COURT:

It is. You're arguing with the witness and you're cross-examining the witness.

BY THE ACCUSED:

QAnyway, you knew about those rumors. You didn't inform them, correct?

AThey already knew, I mean I ...

QWell they knew.

AThe people here I'm sure knew about the ... I would assume they knew about the rumors.

QWell how come they didn't raise them then at that meeting?

AI don't know.

BY THE CROWN:

This is argumentation.

BY THE COURT:

How can the witness tell you why someone did or didn't

raise this type of ...

BY THE ACCUSED:

I will rephrase this question.

BY THE COURT:

I don't know if it rephrases, I just don't think it ...
it works.

BY THE ACCUSED:

I will rephrase it.

QWhat makes you think that they knew all those rumors?

ABecause people had been talking about those things so I
don't imagine that they wouldn't have known.

QSo ...

AMy ...

QWould it be correct assumption effectively the whole uni-
versity knew all those rumors by that time?

ANo, that would be ...

QOK.

AThere were people in the university who did not know who
you were.

QWell OK, let's put it this way. When I say people at the
university, people who more or less knew me in the facul-
ty and higher up?

BY THE CROWN:

She cannot speak for others, My Lord.

ANo.

BY THE ACCUSED:

Well she already spoke for others.

BY THE COURT:

No, she didn't. She said "I assumed that everybody at the
meeting knew about these rumors."

BY THE ACCUSED:

QYes, OK so what they were demanding if anything, those
faculty members?

AThey were concerned about their security.

QThat's all?

ATo the best of my recollection.

QIf I try to refresh your recollection, did they demand
that I be immediately fired according to section 29.07 of
collective agreement?

AThat may have been raised at the meeting. It rings a bell
but I don't deal with collective agreements, so I don't
... would not have paid any attention to that.

QI'm not ... you didn't pay attention to collective agree-
ment, that's ... that's understandable. Did they or
didn't they demand that I be fired immediately as danger
to the university?

AI can't say with any ... any certainty.

QWell if it was said there, would you pay attention to
that?

BY THE COURT:

That is hypothetical. Your answer was "I can't say with
any certainty." She also said at one point "It rings a
bell."

BY THE ACCUSED:

QIf I show you a document, maybe then it will refresh your
memory better. All right, let's make it later on. So at
this meeting, November 1st, you are not sure whether DPC
members wanted or didn't want to have me suspended as
danger to the university?

AThat's correct, I can't say with any certainty.

QOK. You said the meeting was very loud and everyone was talking. It looks like what, there was a lot of arguing there?

AI didn't ... I don't recall it as arguing. I recall it as people being fairly emotional. I recall it as people feeling quite frustrated as opposed to arguing.

QOK, who was frustrated with who if you can recall?

AI ... I don't know the specific people. My sense is that there is ... that ... I can give a sense, I don't recall the dynamics of who spoke to who. I recall that ... that the departmental personnel committee had tried to make the decision about what they were going to do regarding the renewal of your contract. They were very concerned that if they did not renew your contract, they were concerned about what would happen. They were concerned ... concerned about what kind of retribution would be. They had used the word retribution, I use that, what would happen to them.

So basically it was all "Well what are we going to do and how are we going to do this and what about this and what about that" and it was that kind of ... of tone as opposed to ...

QWell this is exactly what I would like you to tell to the jury. What about this and what ... what exactly this means? What about what?

AWell what ... it was ... it was: Do we need security? Where do we need security? What ... how is the note going ... how is the information going to be given to Dr. Fabrikant? How is he ... who is going to present it to him? Will it be by mail? Will it be by ... in person? Those are the kinds of things that were being discussed. Were there any concerns? What about the secretaries, if there was any problem? It was those kinds of ...

QProblem of what?

ABecause they were unsure about what you would do if ... when you got the information from the DPC.

QYes what ...

AThe departmental personnel committee saying that you would not be whatever.

QWhat ... what secretaries have to do with that?

AWhat do the secretaries have to do with that? Well the secretaries and the support staff at any university are the frontline staff.

QYes?

AAnd so there's always a concern about how the frontline staff will respond and what they need to know and how they can manage.

QRespond to what?

ATo respond if there was a problem.

QWell could you be more specific?

ANo, I can't.

QRespond to what? Me coming with gun? To me coming with ...

A

Q... a stick? To me coming with a bomb? To me what?

A

QNo, to you going to say ... to you, going to say "I want to see Dr. so and so" and he's not there and the secretary says "I'm sorry, he's not there. What do I do". To the secretaries who may see increased security around, what does that mean for them? What should they do? Those

were the kinds of concerns for the support staff. They are the one that are the entrance to the ... to the faculty and to the dean and the chair and the rest of the faculty.

QYes and?

AAnd?

QAnd what? What ... what about the secretaries? What ... what has been decided?

AWell you see ...

QI don't understand that.

AIt was an atmosphere of concern and fear: what will happen when Dr. Fabrikant is given the information of the DPC. If he ... if the DPC has said that his contract will not be renewed, what will happen to Dr. Fabrikant, what will happen was the question.

QYes and?

AAnd so ...

QConcerning secretaries?

AYes.

QWhat exactly was expected? That I will do what?

AI don't think that it was expected that you would do anything. With secretaries, it was a question of what their role were, how they were to respond in situations? What resources they could use if they were having problems and that's ...

QWell what resources they can use? Could you be more specific? What exactly was discussed because all you're talking is just generalities which are useless.

AWell that's the most that my recollection is, generalities.

QWell I think that you talked some specific things, did you?

AIt was ... OK, at the meeting of the 1st you're still talking about, Dr. Fabrikant?

QYes, I'm trying to get something, useful information about that meeting.

AThe meeting was not ... the meeting was not a long meeting. The meeting was called so that the people in the department could talk about ... talk about what might be done when information was given to you from the departmental personnel committee.

QWell you ... you're just repeating yourself.

AWell then I guess that's my answer.

BY THE COURT:

Well you've got the answer from the witness and you're not going to cross-examine the witness any further.

BY THE ACCUSED:

OK.

BY THE COURT:

Which you've been doing for the last five minutes.

BY THE ACCUSED;

Well I'm trying to get from her answers and she ... instead she eludes those answers. What can I do?

BY THE COURT:

That's your point of view.

BY THE ACCUSED:

We have a judge who doesn't allow me to. (sic)

QOK how about ...

BY THE COURT:

First warning.

BY THE ACCUSED:

QHow about ...

BY THE COURT:

Move on, otherwise I will terminate this examination.

First warning.

BY THE ACCUSED:

QHow long did the meeting last?

AAn hour, an hour and a quarter is the best of my recollection. Somewhere around there. It wasn't a long meeting.

QOK, what was the conclusion of that meeting? Any decision was taken?

ANo, the meeting of November 1st you're referring to still?

QYes?

ANo, there was no conclusion.

QOK, so November 1st meeting, when did it start, do you remember?

ASometime around lunchtime.

QAt about what, noon?

AYes, that would be my guess.

QIt is accurate within what? Within one hour or within fifteen (15) minutes?

ATo the best of my recollection, it would be accurate within an hour.

QWithin an hour, so if ... if it was not twelve, then maximum it started at one o'clock (13 h 00) but not later, that would be correct assumption?

ATo the best of my recollection, yes.

QOK and it lasted, you said, for an hour and a half?

AI would say an hour, an hour, an hour and fifteen (15) minutes. I don't have ...

QOK.

AI don't know what ... it was not a long meeting.

QOK. Do you know why Mrs. Horwood was there at that meeting?

AI could assume why Mrs. Horwood was there but I don't know why she was there.

QOK, what was her participation in that meeting? Then we could maybe understand why she was there?

AWell Mrs. Horwood's position within the university is she was secretary to the chair of the department which is Dr. Osman and therefore in that position, Mrs. Horwood dealt with most of the enquiries from Dr. Fabrikant for Dr. Osman.

Mrs. Horwood also is one of the senior support staff and is responsible for the other support staff. So my assumption about the role of ... of why she was invited to the meeting is that she was representing support staff, representing herself and trying to take a look at what ... if there are any issues that need to be dealt with with the support staff.

QDid anyone during the meeting ask members of DPC what reasons did they have to terminate my contract?

ANo, that was not asked to the best of my recollection at all.

QDid anyone try to investigate? Maybe we can avoid all those problems if we find out whether his contract really deserves to be terminated? Did anyone ...

ANo, that was not the purpose of that meeting at all.

QThat was not the purpose of that meeting, of course not. All right and when the meeting ended, what, there was

agreement to meet again? There was what? Meeting ended with certain decisions: OK, we'll do this, this, this, or what?

ANo, I just said there were no decisions at the meeting.

QOK.

ANo, the meeting ended and what was decided was that Dean Swamy and Dr. McKenzie, Mr. Haines, Miss Belzon and Mr. Relton and myself would get together which is the meeting that you will see on Thursday, November 7th, with the main purpose of ... of trying to work out the details of the ... providing you with the information from the DPC, departmental personnel committee.

QOK, but since we are in chronological order, let's go to November 5th.

AHum, hum.

QMeeting with support staff.

AHum, hum.

QEffectively it was secretary (sic) plus Dr. Cheng?

AYes.

QCould you ... could you explain presence of Dr. Cheng at that meeting?

AHe felt he wanted to be there.

QDid he explain it in any way?

AHe ...

BY THE COURT:

QExcuse me, Dr. who?

ADr. Cheng.

QOK.

BY THE ACCUSED:

C-h-e-n-g for the one who will do the transcript. They always put the names inrecognizable. I think we need to do something about this for transcript purposes because all the names are wrong.

QSo why was he there?

AMy sense was he ... was that ... my sense was that he was there to lend support, that he was concerned and that he saw himself as someone who would try and take care of the staff who worked with him.

QOK, did he say at any time that he personally was threatened by me?

ANo, he did not say that.

QSo what was the reason for his concern then? Was it clear to him ...

AWell I can't you know ... we just think about what happened, when there are rumors and when people start to get afraid and when the fear starts to sort of permeate, people say: well you know, should I be afraid or shouldn't I? What are the issues? What should I be doing? and so I think Dr. Cheng ... I don't recall him saying that he was ... that he was afraid. My recollection was that he came to ... to be supportive and to talk about what he thought he could do if there was a problem. So that was why he was there.

QOK, so who started the meeting? First of all, whose initiative was it for ... for the meeting?

AI thought you'd ask me that question and I'm not sure, Dr. Fabrikant. I ... it would have been logical that it could have been the initiative of Susan Belzon and myself who are members of the intervention team or it could have been requested from Elizabeth Horwood. The meeting was held in the health services so it may well have been

on the initiative of the UIT.

QBut you just don't remember who requested the meeting or ...

AThat's correct, I don't remember.

QOK but who called who at least? Who informed you? How ... how it was arranged?

AElizabeth arranged that the secretaries would be there and she arranged it with me and Susan and we arranged a place.

QOK and Dr. Cheng is what? He called you that he wants to come or ...

AHe just arrived to the best of my knowledge.

QOK and OK, could you describe that meeting?

AYes.

QDid you preside the meeting?

AYes.

QOK, then describe what ... what happened?

AMyself ... myself and Susan Belzon. Basically it was an informal meeting. It was an attempt to talk with the support staff about again their concerns and to help them look at if there were any problems, what they might do. That's basically what it was so we took a look at some of the areas that they worked in and what options they would have if they had to leave or if they had to phone somebody and we asked if people were afraid and mostly there was not a sense of ... of personal fear but there was the concern of all the panic that seems to go around.

QDid anyone of the secretaries personally was asked whether they were afraid of me, said "Yes, I'm afraid of him"?

AMy notes to that meeting, Dr. Fabrikant, is this sheet and my recollection is no.

QNot a single secretary was afraid of me?

AWell I think that they were nervous because if you have increased security guards and you don't really know what's happened, I mean it was ... they get nervous but I ... nobody said "Yes, I'm absolutely afraid of him", to the best of my recollection, nobody said that.

QYes. That was probably the purpose of security guards, to make people nervous.

BY THE COURT:

OK, we'll stop here for fifteen minutes.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ARE ALL PRESENT

NANCY TORBIT

(Under the same oath)

BY THE ACCUSED:

QSo do you have any notes related to that particular meeting of November 5th 1991?

AI have some very brief notes that I wrote during the meeting, yes.

QWhich page is that?

AThe top of the page says: "Things are not as they used to

be" and it goes down to ... I had it just after the ...

no, I can't ... I've got the order wrong.

QOK.

A Do you see it?

Q Yes.

A OK.

Q OK, would you elaborate on what is written? This is what somebody said or what, that things are not the way they used to be?

A I'm trying to recall that. I'm not sure in what context that that was said at all, Dr. Fabrikant.

Q OK. After that goes what? Elise?

A Elizabeth, intermediary.

Q Yes, what about that?

A I just would assume that she's ... to me, it would mean that she's in a position of being between you and ... and Dr. Osman.

Q OK.

A That she's an intermediary.

Q OK and on the right: senate?

A Senate, at senate, I assume that would have meant the incident of senate on the Friday but that was not something that was talked about at that meeting, to the best of my recollection.

Q But since you marked it here, probably there was some references?

A There may have been.

Q OK, after that goes what? Loner? Laura?

A These were descriptions of some of the secretaries in terms of how they would describe you, that you were a loner, didn't interact with anyone, always expecting the worst and that you thought everything, on the right hand side there, it says "All against me", that you were at times impolite and persistent.

Q Well I believe it was Mrs. Horwood who said that, correct?

A I can't recall.

Q Persistent with her.

A Oh well ...

Q Motus vivendi.

A Perhaps. It seemed to be the general sense from the secretaries that were there.

Q OK. Here you talk about Elizabeth, right? At the beginning, it is Elizabeth and I understand whatever she said. After that goes another person, so I believe all this relates to Elizabeth and after that goes I believe some other names, so could you ...

A Well are you ... are you referring to this page again still?

Q Yes, I'm referring to this because ...

A Oh, then there is Elizabeth and then ...

Q After that, goes what?

A What is urgent and what is the crisis.

Q Hum, hum.

A Then what should I put up with. Those were some of the questions that we were trying to look at.

Q OK.

A Then do you want me to read the next part?

Q Yes?

A "Call Mr. Haines if any untoward behavior".

Q Hum, hum.

AThat they were not target, they were an ... not target, entry to profession ... professors, sorry, entry to professors.

BY THE COURT:

I would much prefer that you talked about what happened rather than that you simply read your notes. Your notes only serve to refresh your memory.

AOK.

BY THE ACCUSED:

Well some of the notes are interested (sic) by themselves.

BY THE COURT:

Well if you ... if you have the notes there, you might certainly ask the question. If you wrote such and such, do you recall what you meant by it?

BY THE ACCUSED:

Yes, but some I just cannot read. This is why I asked her to ...

BY THE COURT:

All right, fine, if you can't read a word, that's ...

BY THE ACCUSED:

If you could just read the whole page, then I would be able and in position to ... because I just cannot get the handwriting.

QAfter that if was what? Sheila or what?

AWhat would you like me to do, My Lord?

BY THE COURT:

I would like you to ... the words that Dr. Fabrikant has trouble with, I would like you to see if you can decipher it for him but I'm not asking you to read the whole page?

AOK, the word after Sheila is Dr. Teith (sic).

BY THE ACCUSED:

QAnd Sheila is what, is his secretary's name?

AYes.

QAnd Dr. Teith is who?

AI don't know.

QIt was you who wrote this?

AHum, hum.

QEleonore, after that?

AHe's ... he's asking for another word. Do you want me to do it?

BY THE COURT:

Yes, sure, give him ... give him the word.

AOK, intercom.

BY THE ACCUSED:

QWhat?

AIntercom.

QAh intercom, yes, OK and "Dr. Cheng, three stores (sic) plus basement, no security noticed and what?

BY THE COURT:

Mr. Fabrikant, read it to yourself and if you have trouble with a word ...

BY THE ACCUSED:

Well this is the best way to find where ...

BY THE COURT:

No, it's not the best way.

BY THE ACCUSED:

... where I have the problem.

BY THE COURT:

It's not the best way. The best way is I'll ask the jury to go out and ... and we'll have Mrs. Torbit read it to

you if that's what you want so that you have the note, so that you can understand what you're reading but the note is not susceptible of being read into the record like that. It is ... it is a note that she has made and she can use it to refresh her memory and that's that. Yes, you're entitled to know what the note says.

BY THE ACCUSED:

But isn't the note also a document? Because it is contemporary to something what ... which was written at that time.

BY THE COURT:

No, it's not necessarily contemporaneous, it's her note. It's not a formal proceedings-verbal of what was discussed or anything else.

BY THE ACCUSED:

I understand that but it is written at that time. Therefore ...

BY THE COURT:

It doesn't make any difference. It is ... because it's contemporary, she can use it to refresh her memory.

BY THE ACCUSED:

But it is a document, isn't it?

BY THE COURT:

It ... it is not a document in the formal sense of the word that is susceptible to production.

BY THE ACCUSED:

Well as far as I read this chapter of documents, I understand that every piece of paper on what something is written, if it is relevant and it can be proven as to who, what, when and so on and so forth is a document.

BY THE COURT:

No, it isn't.

BY THE ACCUSED:

Well this is what authority say.

BY THE COURT:

It isn't.

BY THE ACCUSED:

OK.

BY THE COURT:

Because the witness is here to testify from her knowledge. It's not the document that is here to testify. Crown prosecutor has great difficulty cross-examining a document.

BY THE ACCUSED:

Well I might wish some of those to be deposited at later date.

BY THE COURT:

Well ...

BY THE ACCUSED:

They're important for my defence.

BY THE COURT:

The same as ... the same as a policeman's notes or whatever, you can't have it deposited.

BY THE ACCUSED:

Well this is not policeman notes, this is ...

BY THE COURT:

It makes no difference.

BY THE ACCUSED:

This is a description of something that happened.

BY THE COURT:

No. This is her aide-m,moire to herself as to what transpired that day, which she may use to refresh her memory because it is contemporaneous. That is the rule.

BY THE ACCUSED:

Well I... why could we file let's say a report of Malenfant?

BY THE COURT:

Of who?

BY THE ACCUSED:

Malenfant.

BY THE COURT:

Because Malenfant made an official report which was submitted to the university. Malenfant made an official report which went into the security files at the university.

BY THE ACCUSED:

Well this is also in some files in the university.

BY THE COURT:

It may be in some files at the university but it's not ... it's not part of the university archives. It's ...

BY THE ACCUSED:

All right.

BY THE COURT:

It's part of the witness's archives.

BY THE ACCUSED:

QOK so after that, noticed what? After the word noticed, which word is that?

AIncreased. It's an arrow that goes up.

QIncreased?

AHum, hum.

QNo, it doesn't look like increased. "Three stores, plus a basement, no security noticed" and after that what?

AIt's an arrow that goes up.

BY THE COURT:

I'll tell you, ladies and gentlemen, I'll ask you to withdraw please and we'll see if we can get this clarified for the accused.

SUSPENSION OF THE PROOF OF THE DEFENCE

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

NANCY TORBIT

(under the same oath)

BY THE ACCUSED:

OK, just read the whole page and it will be faster then.

BY THE COURT:

QWould you read your notes, Mrs. Torbit please so that we can ...

AFrom beginning to end?

QFrom beginning to end on that sheet.

BY THE ACCUSED:

Well maybe since we are this way then, let's make it really from the beginning to end, from the first page Swamy, one what?

AAll of the notes now?

QYes, since we have ... yes, I think that would be the fastest way.

BY THE COURT:

Well what do you want with these things? Do you ... are you telling me you can't understand the writing that's in front of you?

BY THE ACCUSED:

Majority, yes.

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<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">BY THE COURT:

All right, fine.

BY THE ACCUSED:

Majority of it.

BY THE COURT:

Then read it slowly.

BY THE ACCUSED:

QSwamy what?

ACan I just ...

QOr what?

AAAt the (inaudible) is these are the sheets that I have

... was able to put together from my documents. Now ...

or from my ... what I had kept which are not documents.

They're just my own personal notes.

BY THE COURT:

That's fine.

AHe's asking me to read all of these.

QYes, he has all of these in front of him.

AI understand that, yes.

QI understand.

AYes, he does.

QYes. He says he can't read your writing now. So I've sent

the jury out because this doesn't form part of the proof

as such. You will read the words to him so that he can

understand what you've written.

AI will read every page, every word?

BY THE ACCUSED:

Yes.

BY THE COURT:

That would ... that would probably ...

BY THE ACCUSED:

That would be the fastest way.

BY THE COURT:

Have you got a pen or what?

BY THE ACCUSED:

Well I ... I think I will remember.

BY THE COURT:

Fine good.

AOK.

BY THE ACCUSED:

QJust read it. Swamy?

A

"Swamy concerned about someone has to talk with him. Swamy and John.

No. 1 - Tell him recommendation being made that he not be renewed. Copy of the DPC recommendation explaining the next steps.

No. 2 - People are concerned, behavior toward vice-rector's office.

3. Faculty CUFA.

And on the left hand side of that, it says:

"Coordinate UIT."

2. Who has he ever threatened? Osman, North America hand gesture.

3. Elizabeth and faculty.

4. From Catherine - security John."

QAnd this relates to what?

BY THE COURT:

No, no, no, she's reading you the notes just now, not what it relates to.

BY THE ACCUSED:

All right.

BY THE COURT:

Go on to the next page.

AWhich is the next one because mine are out of order.

BY THE ACCUSED:

QThis small piece.

AManagement, coordinate?

QHum, hum.

AThat one?

"Management, coordinate faculty personnel committee, non renewal of contract, encouraged. Recommendation from Rose, December 15th 91. Nose (sic) the pipeline, if unanimous at both."

And then Swamy is written in the corner.

QNose what? Pipeline?

A Yes, that's what it says.

QPipeline and the next word is what?

AAAt.

QAt?

ABoth. Oh sorry, nose pipeline, if unanimous at both.

QIt is one sentence?

AMy guess would be no, they would be separate, but I don't know.

BY THE COURT:

OK, that's something else. I ... I just ...

BY THE ACCUSED:

All right.

BY THE COURT:

I'm dealing with the fact that he says for the minute he can't read your writing.

BY THE ACCUSED:

All right.

AThe next page says:

"Confidential - pick up between the lines. Consistent appropriate approach. Department acting in responsible way. Decision made registered mail on Friday, request for personal safety at the Concave building and engineering building. Dean, green light, informs."

That's that note. Which is the next one that you have in your file?

QOK, errors.

ARight.

QTwo p.m.?

A

"Two p.m. Errors, administration now acting in a logical and responsible way. In past, faculty member, LTA, gets reappointed. Tenure-track, two-year (2) appointment. Acting ...

I have on the side:

"Acting in responsible way. Department may be drawing lines. Judgment within two (2) weeks. Concerned for self and others. Cross (sic) has said nothing to indicate danger. Nuisance. All done by December 15th 1991. Letters of denial if not set yet."

QIf not what?

ASet is what it looks like.

QSet?

AHum, hum.

QThis is ... this is character T?

AI believe so.

QAnd this is one sentence: letters of denial if not set?

AWell these are not things that I write in sentences.

They're thoughts, they're pieces of what is said.

QAll right. all right.

AIt's not my ... it's not a report that I'm writing or ...

QAll right, all right, all right.

AOK.

"From the point of view of the dean and chair administration."

And then in quotes, in a circle:

"Is not sure yet. Afraid of what will happen when gets copy of FPC. Chair of department has talked with the dean over one year ago. Concerned that vice-rector, December 15th. Chair concerned, spoke to dean. Dean has asked chair to call Grendon."

And next is this, where it says H9077 on the top on your copy, Dr. Fabrikant?

QYes, yes.

AOK.

"Recommend to Catherine and Swamy he's welcome to attend. Not ... let's hope not to send a delegate, not barred from Concave, may be armed, no orders to prevent him from entering."

QNo barred, what? No barred or what?

AOrders to ... not barred.

QAh, not...

AYes.

Q... barred from Concave, may be armed. No orders to prevent him from entering, all right. Yes, the next?

AAnd then I believe on the back of that?

QYes.

A

"Image developing. We don't quite believe that he is dangerous, that he is a dangerous man. It is serious, he has said he would be violent, to shoot people. Has a gun, threatened to kidnap."

QHum, hum.

AOn the next page, it's:

"The January message through Grandon from Dr. Fabrikant. Threat: will call husband, baseball bat."

QOne second, one second. I'm looking at another page.

AOh.

QOK, go ahead.

AOK, do you want me to start all over.

QFrom Grendon?

AYes.

"Message through Grendon from Dr. F. Threats will call husband, baseball bat. No one reports.

In brackets:

"(No one reports these episodes to Concordia or police). Request from Dr. Fabrikant ... Oh no, from Fabrikant to see Rose, didn't do until name came forward for full professor. Is he dangerous to students and faculty? He is a research professor. Letters, promotion to associate professor rank. Pressure tactics. DPC ...

I don't know, "Dean, promotion committee" was what I had written there or department promotion committee.

"Harassment, harassed those in office. Write or tape Judge Gold, Claude Ryan."

QOn the previous page, may I ask you once again? From Grendon, January?

AHum, hum.

QRead it again? What? Message?

A

"Through Grendon from Dr. F. Threats. Will call husband, baseball bat."

QWill call husband?

AThat's what it says.

QBaseball bat. No one what?

AREports these episodes to Concordia or police.

QI hope you know what it means.

BY THE COURT:

Never mind your comments.

BY THE ACCUSED:

OK.

AAnd the last document, Dr. Fabrikant, is a phone call from you at, it was I believe June 23rd when you ...

QYes?

A... 25th when you had received the letter. So it's just ... that's not hard to read I don't think. You want me to read it?

QOK and you missed one page at which we were in when the whole thing stopped.

AOh this one?

QYes. Two hours not ...

A

"Things are not as they used to be. Elizabeth intermediary."

QYes.

AThen I have a note: Senate, Concordia. Concord, I guess is Concordia.

"The right hand side, loner, doesn't want to interact with anyone. Always expecting the worst. All ... all against me. Impolite, persistent. What is urgent crisis? What should I put up with? Call Mr. Haines if any untoward behavior. Not target. Entry to professor. Sheila, Dr. Teith, Eleonore, intercom. Dr. Cheng, three storeys and a basement, no security. Noticed increased security."

It's an arrow, not a word.

"Concave won't open door. Increasing patrolling in the Hall building. Concave possibly a guard. No threats. Verbal harassment. Derisive. Susan, Fabrikant goes by her desk. Scenarios."

And I cannot read what I wrote underneath it.

"Eleonore would be afraid ... would be ... strange. Would be afraid if open door. Using intercom system. Question: someone outside dean's office all the time. Security, 911. Location, security should be ... see open the door." (sic)

On the back of that page is a ...

QThis is Bishop Court?

AI don't know, but I would not have assumed that we would have talked about Bishop Court in there.

BY THE COURT:

I don't want you to get into the details or him.

BY THE ACCUSED:

QAll right and on the opposite page?

AOn the opposite page: aggressive and then it says:

"Arlene, defence course."

And underneath:

"Can demand an assessment, look at contract. If someone's health put others at risk within the university. Uncertainty, panic, not knowing what is happening. Can do it now or after two weeks when further escalated. One p.m. if I want you."

BY THE ACCUSED:

OK. Thanks.

BY THE COURT:

So we'll bring the jury back and you can continue.

BY THE ACCUSED:

Mr. Belleau, can I ask you for a second ...

THE MEMBERS OF THE JURY ENTER THE COURTROOM

BY THE ACCUSED:

QSo as far as the meeting of November 5th is concerned your personal notes are only one page which you ... this is the page which is there, OK. If this page helps you in any way to describe what transpired during this meeting or if you can from your memory, to describe what was done? What was said there?

AThe meeting was called at three (15 h 00) in the afternoon and several people arrived late so it didn't start probably until about three thirty (15 h 30) and it began with an introduction because I didn't know a number of people. We stated that the purpose of the meeting was to get together and to speak with the support staff who were concerned, who were involved in mechanical engineering, to ask them if they had any concerns that they would like addressed, if they had any questions and that what we felt what we might do is because there seemed to be increased security, that we might go over with them some of the ... the situations that they might find themselves in and how they might best handle the situation.

QWell you're kind of talking very good except that for some reason, you didn't mention my name. I believe that you should have started probably from mentioning (sic) my name. It was not an abstract meeting, was it?

ANo, it was not an abstract meeting.

QSo could you be more precise?

AIt was not an abstract meeting, Dr. Fabrikant, but it was also not a meeting at which I wanted to tell the secretaries information that I didn't think was relevant to them. It was not an information meeting for me to give further information about what was going on. It was merely a meeting for me to talk with the staff and to see how they were perceiving the situation, what questions they had, what their concerns were about their personal safety if any and so, yes, the topic of the meeting, I guess, in terms of why we were there was you but it ... I'm not even sure I started the meeting like that. I ... I don't recall, but I know the intent of the meeting was to talk to the staff to see if they had concerns, for them to have a look at their work areas which we should all be doing anyway, even when there's no crisis and take a look and see what they might do if there was an emergency and to allow then someone to call if they were concerned, to ... to promote the fact ... the fact that that exists within the university.

QWell still you should have somehow invoked my name.

BY THE CROWN:

That's arguing, My Lord.

BY THE ACCUSED:

What?

BY THE COURT:

That is arguing.

BY THE ACCUSED:

Ah all right, I will change it.

QHow my name was invoked, in what context and describe it in more detail please?

AI don't have a good recollection of that, Dr. Fabrikant.

I ... your name was invoked because people, as you can see in the right hand corner, there are questions about how people perceive you: as a loner and ... and someone who didn't interact with a lot of people, but it ... the focus was not Dr. Fabrikant.

The focus was there seems to be things going on. There's increased security guards. If you are in a position that you are feeling frightened what do you do? If you ... what kinds of things do you have to put up with? Support staff are often left in the front without a lot of support and that was just a meet- ing to talk with them about that, nothing more, nothing less.

QWell with all due respect, still I would like to know were you talking to people "Do you need any support" or were you talking to people that Fabrikant is dangerous and we need to think how can we protect ourself against him?

A No, I would not have said that Fabrikant is dangerous and how do we protect ourselves against him. I would not have said that at that meeting.

QWell still somehow people were explained that the meeting is about Fabrikant, not about John Sears? Will you explain that?

A The meeting was about ... the meeting was about what was happening within the department. The increased security, there had been at any ... within any department, when there's problems, people talk. I mean I think that that's ... but it was not "We have Dr. Fabrikant and then this is what you have to do to protect yourself against him". That was not the tone of the meeting at all.

QWell still, what was described to them in terms of what was going on in the department? What increased security? What? There was some bodyguards somewhere? What do you mean by increased security?

A There was increased patrolling in the Hall building, there was to my knowledge a security guard at Concave, someone sitting at ... someone sitting outside of the dean's office so that support staff noticed this and ... and wondered what's going on.

QAh OK, so how was it explained to them? That's ...

A It was explained that there was a situation that people were trying to deal with and one of the ways was security guards. Did I think they were in danger, immediate danger" would they ... I said do they think they're in immediate danger? No, they don't. They were concerned: would you do anything to them? That was the reference to the note about the fact that probably not, because you weren't ... they hadn't done anything to you. I don't know how else to answer your question, Dr. Fabrikant.

QOK, all right. About scenarios, did you discuss any scenarios because there is a note here about scenarios?

A Yes, my ... to the best of my recollection, we looked at what would happen if a secretary were alone in the office. I believe there was one place where she had to go and open the door and ... and whether she had the right, if she were concerned, not to open the door. I think we talked about the scenario of if you were afraid, what would you do? If you had to leave your office, how would you exit? Those kinds of scenarios.

QIs it possible for you to decipher somehow security? At the bottom of the page, security, 911, location.

AHum, hum.

QLocation?

AHum, hum. Whenever I do any workshops or sessions with any staff, I always say: "If it's a crisis situation, you call security, you call 911 and you give them the location".

QOK.

AThat's a very standard kind of instruction to give to any staff.

QOK, and the second line if you could? If it gives you any recollection of what it relates?

AI don't ... I don't recall what that means.

QAnything else on ... on the ...

AI'm sorry?

QOn the other side of the page, anything relevant?

ANo.

QWell is ... this text relates to that meeting too?

AThe top part of the text is where there is a line. After course, it is not.

QOK, the other part relates to what?

AI'm not sure.

QDid you discuss anything in terms of panic, violence of any kind?

AI'm sorry, I didn't hear your question.

QDid you discuss any possibility of firearm being used?

ANot to my recollection, no.

QSo what was the result of that meeting?

AThe result of that meeting is just what the process of the meeting, what happened was that the secretaries went back and looked at their work environment and were ...

QWould it be correct that they were much more scared after the meeting than before?

AMy sense was not at all. Actually, my sense would have been the opposite but I didn't ask them that.

QOK, then come meeting of November 7th 1991.

AHum, hum.

QOK, what was this meeting about?

AThis was a meeting that was a follow-up meeting to the meeting with the departmental personnel committee on November 1st. The main intention of the meeting, to the best of my recollection, was that we were to look at how the recommendation of the DPC would be given to you.

QOK.

AWho would give it to you, how it would be given, when it would be given.

QOK and what was decided at that meeting?

AMy recollection of what was decided is that it would be given to you in person, that there would be Swamy and ... Dean Swamy and John Relton, that in fact that you would be informed of what the procedures were because the departmental personnel committee is just the beginning stage. You would be informed of what the procedures were at the faculty personnel committee and that in fact if that (inaud.) too, that you would be informed that if ... that any inappropriate or harassing behavior would not be accepted, would not be tolerated.

QI would be informed about it?

AIt was my recollection.

QOK. Does this refer in any way to that meeting?

AYes.

QOK.

AI believe it refers to that meeting or the one after that. There were both on the same topic.

QOK, who compiles this page effectively?

AMy recollection is that it was Mr. Haines.

QOK, so it was his writing, OK and part 2, collection of facts, information, threats, what went to whom.

AHum, hum.

QIt was what? One part of the work which had to be done to make a collection of the threats which I already done or which I was expected to be provoked into? What ...

AThe recommendation at that point was that we collect all the facts and information of what had happened, not what was going to happen, but what had happened.

QWell wasn't it already well collected at that time?

AIt was ... well collected in terms of rumors. It was not well collected in terms of facts.

QOK and who was assigned to finally clarify? Who, when, what?

AAAt that meeting, no one was assigned to do that.

QOK, was Mr. Haines present at that meeting?

AYes.

QOK.

AHe was.

QWasn't it obvious that majority of those so-called rumors originated from him?

AI ... I can't say that, I don't know.

QDid ... did he at this meeting mention that there is nothing to collect, it was said to me? No?

ANo.

QThat's interesting. So he, at the meeting, effectively agreed that there is a need to find out to who I have said that I'm going to kidnap rector, to who I have said that I have a gun, to who I have said that in North America, (sic), to who I have said about children, so all those rumors were still unidentified at that meeting?

ATo the best ...

QTo the best of your ...

AYes.

Q... understanding and recollection?

ATo the best of my understanding, yes. My understanding about many of these rumors and these ... of the threats is that is some way, it was hard to articulate whether they were threats or could be interpreted as bullying or I don't ... that's not a good word, but you know, the ... the concept of not necessarily a threat in a criminal sense of threat, so I thought it was important as well as everyone else at that meeting that we collect the accurate information, when the threat was said, to whom and what happened about it.

QHum, hum.

ASo that was a recommendation.

QAll right. Were at least the rumors classified at that meeting in terms of this, this, this, this?

ANo, not at all, no. This was just a recommendation of what needed to be done. It was not being done at this meeting.

QOK but at least which rumor should be followed and clarified to who it was said, when it was said?

ANo.

QOK.

AWhat ...

QWas a specific person assigned to do this job?

BY THE COURT:

No, just a second. Have you ... have you more to answer to that?

BY THE ACCUSED:

Yes, I'm sorry.

AI forgot. Was it ... you ask me if a specific person was assigned here? No, a specific person was not assigned here. At this meeting, it was decided that this would be a direction in which to go.

QI interrupted you. You wanted to say something? No?

AI can't remember.

QAll right. When you discussed this stuff, this item 2 was discussed in some way during that meeting?

A No, the major part of the meeting was actually the first part which was ... which was the immediate problem of information and recommendation from the departmental personnel committee.

QOK. The second thing, to give clear notice about his behavior and consequences.

AHum, hum.

QSo at that time, what, they were expecting additional threats or they were to give me notice about the alleged past threats? What was it?

A My sense of that was, Dr. Fabrikant, that it was really to say clearly what ... what is ... what is and what is not unacceptable behavior within the university.

QWell, but is my understanding correct that no unacceptable behavior so far was not documented in any way?

AI don't know whether it was ...

QIs this understanding correct?

AI don't know whether it was documented. I know that phoning people any number of times a day, asking repeatedly for information, there were some comments about what had happened to the vice-rector's office. I don't remember the details.

I think that one of the things when you are trying to work with a situation in which there's a difficulty is to talk about the limits and these are the things that you can do and these are the things that you can't and if you do this, fine and if you do that, this is the consequence and so that was really clearly what ...

QWell this is absolutely different story you are talking about now. You're talking about phone calls to somebody or you are talking about threats to kill rector? Those are very very different things, are they? So what was intended in ... in this second? (sic) Is it the alleged threats or is it phone calls to somebody? What ...

AIt was not me who was going to be giving you this information but my understanding was that it would be to say to you: look Dr. Fabrikant, these are the avenues that are available to you. This is the process. These are the things that we would like you to do. If you continue or if you do X, X and X, people will be encouraged to place complaints under the code of conduct or whatever, I don't know. It's just ... it was ... it was placing a framework around which what behavior would be acceptable. We have a code of conduct that talks about acceptable and non acceptable behavior.

QOK, but it was nothing to do with those rumors of threats?

A To my knowledge, I wouldn't ... what I would have said if I were sitting there was not ... not to do that anymore if that were true, not to threaten because those things are not going to be allowed. That would be ... but I wasn't sitting there so I don't know.

Q No, I mean you were sitting at that meeting?

A I was sitting at that meeting, yes, but I wasn't in terms of planning it. We didn't discuss everything in minute detail about what exactly they would say and since I wasn't going to be at that meeting, I didn't take a lot of notes of what ...

Q OK.

A ... what needed to be said.

Q OK. Do you have in here any notes which relate to this particular meeting?

A I'm sorry, I don't know what you're referring to.

Q We were discussing meeting November 7th 1991.

A Yes, 7th and 8th, yes, that's about ... that's the same meeting actually.

Q Why ... when did it start? Do you remember this, November 7th meeting?

A It was a lunchtime meeting.

Q OK, it was what? About ...

A I think it was lunch, either that or the day after was lunch because I remember we ordered sandwiches.

Q At about what? About twelve noon?

A Yes, that would be my assumption.

Q Until?

A One (13 h 00). They were again short meetings. They were not long, one, one thirty. (13 h 30)

Q OK and November 8th, it was the same continuation?

A About the same, yes.

Q From again about twelve to about one thirty?

A That's to the best of my recollection, yes.

Q Not all the things were discussed during one meeting? There was a need for the second one?

A Yes.

Q OK. Which pages here refers to that meeting?

A The pages that says Swamy on the top.

Q Yes, this is the page.

A That page and then the ... the brief agenda, those are the two things that refer to those two meetings.

Q And the other pages are irrelevant?

A From those meetings, yes.

Q All right. So this page and what the small one?

A Oh yes, these are ... those are just little notes and I have no idea. I remember one ... I don't ... I don't even know who did them. They're just ... they were little notes in terms of giving me the information about what the concerns were, so that as you can see, the ... one of them was that the decision would be made on November 15th and that you would be informed of the decision by November ... December 15th and then the other one that you're referring to is that people ... it's sort of like again how would it be done; registered mail, on Friday was one of the first things that we had talked about although we agreed I think not to do it and then the request for personal safety is on there, but that was not discussed at the meeting to my knowledge.

Q OK. Again there is one issue. 2 here is: who has he ever threatened?

AHum hum.

QAnd what? Someone answered that ... from Osman, do you know about North America, that's what happened there?

AHum, hum.

QOK and again you were there and you never stood up and said "Hey I know he threatened rector, I know he threatened some children"?

ANo.

BY THE CROWN:

This is cross-examination, My Lord.

BY THE COURT:

You're correct.

BY THE ACCUSED:

QOK, did Mr. Haines at that meeting stood up and say "He told me this and he told me that"?

AI don't believe so.

QDid you know that at least some of those rumors originated from Mr. Haines?

AThe question is: did I know that they originated from him?

QYes?

BY THE COURT:

The question was: did you know that some of these rumors

...

BY THE ACCUSED:

OK.

AI'm trying to think because the rumors went on for a long time. I may have been told that they were, I'm not sure, I'm not sure.

QDo you know it now that some of them originates (sic) from Mr. Haines?

ANo.

QYou don't know anything about kidnapping of rector or killing of rector or me having a gun, where it originates from?

ANo.

QYou mean today, at this moment, you don't know?

AWell today, at this moment, I don't know what? Where they originated from?

QYes?

ANo, I don't still to this day. I have ... there were many rumors that were ... I heard and I don't know exactly who told me then and when I was told these.

QBut it has never been circulated in such a way that Fabrikant told Relton that he is going to kidnap rector, in this variation? Did you ever hear that?

ANo, no.

QNo. It was what? Fabrikant threatened to kidnap rector, that's all?

AIt was usually more the content of it rather than who he told it to. If it had been Relton, because I work closely with him, I'm sure that he would have told me and I would have remembered.

QNo, I said Relton.

AI know, that's it, if it had been him that you had said it to, I work closely with ... with Mr. Relton so he would have told me and I would have known, so no, it was not him.

QBut with Mr. Haines, you do not keep contact?

AWell ... what was the question? With Mr. Haines what?

QWith Mr. Haines, what is your relationship? Is it suf-

ficiently closed on?

AMY relationship is ... no, I don't ... in these situations, I was merely called at various periods of time and so no, I would not ... I would not say that's a closed relationship, no.

QOK, would you ... would you call him Mr. Haines or you called him Grendon?

AI would call him Grendon.

QOK. So after that happened what? November 12th, lunch at Aldos. Aldos is what? The name of the restaurant?

AYes.

QOK and what was the purpose of that meeting?

AYou know, Dr. Fabrikant, I can't remember. When I went through my agenda to try and find out what meetings I had been at, it would have had reference because I was subpoenaed, I went through my agendas and that was there but there was no notes from it and I have no recollection at all. In fact, I'm not even sure if those who were present is right, I don't know.

QYou have no idea ...

ANo.

Q... what was discussed?

ANo, nothing. It's a blank.

QSo you took it what, from your agenda that there was such a lunch at such place?

AHum, hum.

QAnd you have absolutely no recollection as to what happened there?

ANo, I don't.

QThursday, November 14th, meeting follow-up with DPC.

AHum, hum.

QWhat was discussed there?

AIt was a week prior or almost a week that we had met with the DPC and it was the ... the intention to get back to the DPC and to talk with them about what had been discussed in the meetings on the 7th and the 8th and I do not have notes from that meeting and I don't have a lot of recollection from it either.

QWho was present at least?

AMY ... my recollection of who was present would have been the people that were present at the first one, you know, the one on ...

QNovember 1st.

AOn November 1st, yes.

QOK, now does this document refresh something in your memory which transpired in some of those meetings?

BY THE COURT:

Mr. Belleau, would you ... would you show that document first of all to the crown prosecutor.

BY THE COURT:

May I see that please?

BY THE CROWN:

This is signed by the members of the DPC, My Lord.

BY THE COURT:

I know. OK would you take cognizance of that silently and then wait for the questions that are put to you.

Now just hand the note back to ...

BY THE ACCUSED:

QIs this document familiar to you?

ANot at all, I've never seen it before.

QAt what meeting if you can recall, members of the de-

partment demanded that I be suspended from the university as immediate danger to the university? Was it on November 1st or on any of the subsequent meetings?

AI don't recall that.

QWell but ...

AI think I said that to you before when you asked me that question.

QWhen you said that it rings a bell. It means that at least on one of those meetings, they did demand it?

AThey possibly could have. I don't ... it was not a subject that I would have paid attention to in terms of your dismissal and I have never seen a copy of that letter.

QWell dismissal ...

AOr whatever word.

Q... of faculty member, as being danger to university is an extraordinary measure, isn't it?

AYes, but it's not anything that I would be ... that I would be ... for me to be making that decision or ...

QNo, no, no.

A... or to be requesting it.

QThis is not my question.

AOK, what is your question.

AQFirst of all, dismissal of a faculty member professor as being danger to the university is an extraordinary measure, is it?

AYes, I would assume so.

QThen probably it might have stayed in ... in the memory if someone ...

BY THE COURT:

Mr. Fabrikant, this is cross-examination, this is vintage cross-examination and you may not do that.

BY THE ACCUSED:

Well I wish you gave me definition of what it is.

BY THE COURT:

The witness has said she cannot recall. Her words were earlier "I can't say with any certainty that the question was discussed", she said it rings a bell. She said invoking these two same replies, she said "I can't recall at which meeting that question may have come up if it came up". That's the witness's answer.

Now you're not going to, by saying it's such an important thing, that surely you would remember and therefore permit yourself to infer that it was not discussed. That wouldn't even be legal as cross-examination.

BY THE ACCUSED:

No quite opposite. What I want to prove, that it was discussed and for some reason, witness just doesn't want to ... to say it.

BY THE COURT:

Oh I see, you want to invoke that the witness doesn't want to say. Well you may not.

BY THE ACCUSED:

Ah that ... that ...

BY THE COURT:

You have the witness's answer and the jury will assess the witness's answer.

BY THE ACCUSED:

This is not what I said. The witness is faking her memory.

BY THE COURT:

The witness is faking her memory. OK. Well you may not

ask the question. The question is leading.

BY THE ACCUSED:

All right.

QI refer you to your notes on page 7, two p.m. errors.

AHum, hum, yes.

QIt looks like it is notes from some meeting, from the text.

QNo, no. It's ... my recollection of it is it's notes from a phone call. It is not notes from a meeting.

QOK, it was phone call to who?

AFrom, rather than to.

QFrom? From who?

AAnd my ... my understanding and my recollection and I do not say this with a hundred percent certainty is that it was from Mr. Haines who was calling to ask me to come to this meeting on November 1st.

QSo you ...

ABut as I said, I don't ... I don't know with any certainty. That would be my guess.

QOK but it looks like it was pretty long decision, was it?

AA long discussion?

QA long discussion?

ANo, often when people phone me and they are telling me things, I write. I write quickly which is sometimes why you can't read it but I write so that I have something to refer to.

QOK.

AIt just keeps my mind on track.

QSo it was pretty long discussion. Maybe you ...

ANo.

Q... go into ... well just to read the whole page, it is ...

AI don't recall how long the phone call was.

QWell anyway, you discussed clearly here what ... could you just look at your notes? I believe a lot of things could be recollected from the notes.

AI've read my notes, Dr. Fabrikant. What would specifically want me to respond to?

QWell you discussed action of administration in the past.

AHum, hum.

QAnd action of administration at the time of conversation.

AHum, hum.

QAnd someone said that before it was irresponsible action, and now it is responsible.

AHum, hum.

QSo is it irresponsible, was it irresponsible when they kept me at the university and responsible when they tried to fire me? That was the kind of ..

ANo, my recollection of that was that you were ... you had been at the university a long time and that there had been some ... some irresponsibility or whatever the word was, that perhaps in the past things had not been done the way they could have been done but that now, the department was drawing the line and acting in a responsible way. My sense was that that was the history before and then moving it to the decision of the DPC, departmental personal committee.

QWell what was irresponsibly done?

ADr. Fabrikant, these are notes that I write when someone talks to me on the phone. I didn't ask any of the questions. It's not up to me to know what the university did

responsibly or irresponsibly. I was just told that this was the context in ...

QAll right.

A... which I was being asked to come in.

QAll right, but now since department decided to terminate my employment, this is a responsible action, that was the ... effectively the content of the conversation?

AYes, that was effectively the tone, yes.

QAll right and this is what Mr. Haines told you?

ATo the best of my recollection, yes.

QAll right and after that goes: concerned for himself and others, acting in responsible way. Professor has said nothing to ... to what? I again forgot, to ...

AYou want me to read it?

Q... to indicate danger. Which professor said nothing indicate danger?

AI don't know, I don't know.

QOK, that was conversation with Mr. Haines?

AThat is, to the best of my recollection, yes.

BY THE ACCUSED:

OK, I believe we could retain it for refreshing memory of Mr. Haines probably, can we?

BY THE COURT:

No, Mr. Haines's notes.

BY THE ACCUSED:

Yes but it might refresh his memory.

BY THE COURT:

What's your position on that manner of proceeding, Mr. Lecours?

BY THE CROWN:

The whole thing?

BY THE COURT:

No, the ... spare me, spare me that.

BY THE CROWN:

OK.

BY THE COURT:

On the use of Mrs. Torbit's notes to refresh Mr. Haines's memory?

BY THE CROWN:

I wouldn't mind quoting it I for identification and refreshing Mr. Haines's memory.

BY THE COURT:

Fine. If you have no objection to it being shown to Mr. Haines, then we'll put it aside.

BY THE ACCUSED:

Well in general, suppose something ...

BY THE COURT:

Let's not suppose a thing. Let's take things one at a time.

BY THE ACCUSED:

No, I mean can I make copy for myself of this stuff during the breaks so that I would be able to have a copy for the future arguing for example if ... if I forget something. I believe it is allowed, is it or if Miss Torbit would be kind enough, just to give me a present of her copy.

BY THE CROWN:

No, he might be entitled to a copy of the ... of the exhibits from Mr. Sera but not of the whole file.

BY THE COURT:

He's not entitled to ... to keep copies of the whole

file, no.

BY THE ACCUSED:

Well if ... if they are of importance, why not?

BY THE COURT:

Well then I guess you better summarize them over the lunch hour for yourself.

BY THE ACCUSED:

Well I ...

BY THE COURT:

These are not ... these are not exhibits and they are not produced and you're not ... you're not entitled to copies of ... of every note. Since she used the notes, you're entitled to read the notes.

BY THE ACCUSED:

Well OK.

BY THE COURT:

How you ... how you record for yourself what's in them is your business, not mine.

BY THE ACCUSED:

Well then may I ask for example if I had a lawyer, lawyer would do ... take it and make a copy, there would be no problem.

BY THE COURT:

You have my ... you have my answer.

BY THE ACCUSED:

Well so maybe ...

BY THE COURT:

So we'll ... we'll adjourn at this point until two fifteen (14 h 15).

BY THE ACCUSED:

So Mr. Belleau, could you make me a copy of all that?

BY MR. BELLEAU

Of what file?

BY THE ACCUSED:

Of the file.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ARE ALL PRESENT

NANCY TORBIT

(Under the same oath)

BY THE ACCUSED:

May I continue?

BY THE COURT:

Yes.

BY THE ACCUSED:

QI refer to a small note, this note on the blank of Concordia University. If you could recall what it is related to? Some kind of conversation you had?

BY THE COURT:

QFirst of all, is it in your writing, Mrs. Torbit?

AYes. I don't have a recollection of ... of when that was written, Dr. Fabrikant.

BY THE ACCUSED:

QOK, if not even when but still, what it is about?

AWell the first part of it, it seems to me that it was in line with ...

BY THE COURT:

No, excuse me, excuse me. There is a note there that you have. If the note refreshes the witness's memory as to events, that's one thing. If not, I don't want the witness to speculate on the note in any sense.

BY THE ACCUSED:

Nobody's speculating.

BY THE COURT:

So if you ...

BY THE ACCUSED:

I asked specifically ...

BY THE COURT:

If you would take cognizance of the note and see whether or not it refreshes your memory as to the subject.

We'll see.

BY THE ACCUSED:

That's exactly what my question was.

AMy assumption is that it referred to the meeting of November 7th and 8th meetings that we had. That's as far as I could imagine.

QOK and what part of this meeting, what specifically was discussed in terms of ... the record here refers to some part of discussion during that meeting?

AI don't recall enough about the note, Dr. Fabrikant, to adequately answer that question.

QAll right. At least the part which says that apart from Concave may be armed, they are so clear that one doesn't have to have that much imagination to understand what the whole thing is all about.

AI understand what it says. I don't remember in what context I wrote it down.

QWell if it says may be armed, it means that someone ...

BY THE COURT:

You have the witness's answer. She says she doesn't remember in what context she wrote it down.

BY THE ACCUSED:

Well isn't it obvious that the ... the memo, the message is so clear that one cannot possibly not remember.

BY THE COURT:

The witness ...

BY THE ACCUSED:

The phrase "May be armed" ...

BY THE COURT:

The witness says she doesn't recall in what context she wrote that down.

BY THE ACCUSED:

QWell at least could it be possible to understand that someone raised the question that I might be armed?

AYes, I would assume that that question has been raised in order for me to write that down.

QWell do you recall that discussion of me being possibly armed and what measures could be taken in respect to that?

ANo, I don't.

QIt was very unimportant stuff of course.

BY THE CROWN:

Always editorializing, My Lord.

BY THE COURT:

Oh always editorializing.

BY THE CROWN:

I think you explained very clearly that he shouldn't, My Lord.

BY THE ACCUSED:

OK, I will make ... I will make it differently, I'm sorry, I will make it differently. It will be not editorial.

QDo you think that question of firearm in possession, in my possession was an important issue to discuss there?

BY THE COURT:

The question is not what the witness thinks was an important issue to discuss.

BY THE ACCUSED:

OK.

BY THE COURT:

The question is what was discussed.

BY THE ACCUSED:

QYes. So to discuss the possibility that I might come with firearms, was it important issue to discuss?

BY THE COURT:

No, not was it an important issue.

BY THE ACCUSED:

QOK, was this issue discussed?

AThis information was given to me. It was not discussed. To the best of my recollection because I can't even place it so I don't know that.

QAnd I do not recall this, the meaning here: welcome, record to Catherine and Swamy, welcome? What goes after that?

BY THE COURT:

Yes, if you ...

AIt says: "Recommended to Catherine and Swamy he's welcome to attend but hope not to send a delegate". I said before that I really don't know in what context.

QAnd you can't ...

BY THE ACCUSED:

All right.

AI can't manufacture it because I don't know.

BY THE COURT:

Obviously not, obviously not.

BY THE ACCUSED:

OK.

BY THE COURT:

That's what I'm trying to avoid.

BY THE ACCUSED:

All right.

Q"Image developing, we do not quite believe that he is dangerous man", that was thought expressed by someone at the meeting?

ANo, I do not believe that that was discussed at the meeting. I believe that that was ... again, it's not something I can place well. It's on the same, on the back of the same sheet of paper.

QIt ...

AMy sense is that it was again a phone conversation but I ... I do not remember with any accuracy.

QOK. Is the next phrase "He has said he will be violent, to shoot people, has a gun and threatened to kidnap", is this related to the previous phrase?

AIt looks as if it is in my writing but I have no ... I have no recollection of writing that or when it was written so I don't know if it's related. My assumption is because it's on the same page and it's right underneath, that it would have been.

QIt's such a dangerous stuff and you cannot possibly remember it? Would it ... would it be possible for you to explain?

AAm I to answer that?

BY THE COURT:

That question ... yes, if you can answer that question, answer that question. It's cross-examination but I'll ... I'll permit it, I'll permit it.

AWould you repeat it so that I understand it exactly, dr. Fabrikant?

BY THE CROWN:

Without the editorial.

BY THE COURT:

Without the editorial, yes.

BY THE ACCUSED:

Well I just expressed my ... I just asked how ... how is it possible that such a dangerous ...

BY THE CROWN:

This is the editorial part, My Lord.

BY THE ACCUSED:

... expression do not raise any memories in you?

AHow is it possible? I mean memory is a very selective process which we all know. So I'll refrain from my own editorializing but however, I mean it is important, but this was given, this kind of information, these kinds of rumors went on all the time, and so to say who was this from, when, what, I don't remember. I don't and it's not that I don't think that they're not important, I thought they were terribly important and then I thought it was very important that we get to the bottom of them and that we do something about it and I don't see how whether I remember them or not remember them, anyway that's the best that I can answer that.

BY THE COURT:

Fine.

BY THE ACCUSED:

Well I don't think that anyone believes that.

BY THE COURT:

Well that's editorializing again.

BY THE ACCUSED:

No, this is ...

BY THE COURT:

And please don't.

BY THE ACCUSED:

... invoking section 9. This time, it's not editorializing. This is section 9 I'm invoking now.

BY THE COURT:

What are you invoking in section 9? A previous statement?

BY THE ACCUSED:

That the witness is definitely faking her memory.

BY THE COURT:

Oh you're invoking the common law and you're asking permission to cross-examine the witness at large, is that

it?

BY THE ACCUSED:

Yes.

BY THE COURT:

Refused.

BY THE ACCUSED:

Good. I had some ... some jurisprudence about fair trial. When I find it, I will read it to you because trial should not just be fair, trial should look fair. If you maybe know yourself which jurisprudence I'm referring to, then it would save time.

BY THE COURT:

Have you another question for the witness?

BY THE ACCUSED:

Well I believe ...

BY THE COURT:

Put it.

BY THE ACCUSED:

... I can refer to jurisprudence in certain cases, can I?

BY THE COURT:

I've declined to declare the witness hostile and permit you to cross-examine at large, so would you please ask your next question.

BY THE ACCUSED:

Yes.

BY THE COURT:

If a next question you have.

BY THE ACCUSED:

Yes.

QNow I refer to the small piece of paper which has writing on both sides, which starts with ... which part is first? Confidential?

AWell that ... that piece of paper, OK.

QThe very small, yes, the small white piece of paper.

AHum, hum.

QConfidential - pick-up B slash W (B/W) is what? Black and white?

ABetween.

QOh, pick up between the lines, would you be able to explain this expression? What does it mean, pick-up between the lines?

AI believe that referred to a conversation at which I was not being given the information but I was being said that ... told that things were being said between the lines.

QOK. Maybe then you could ... could recall what exactly it's referring to?

AMy ... to the best of my knowledge, it refers to the issues surrounding the DPC and November of 1991.

QYes?

AIt was information that I believe was given to me on the phone by Mr. Haines.

QOK.

ABut I don't know beyond that. It seems to me it was again more background.

QOK and Mr. Haines informed you according to these notes that Sheinin is going to make her decision by December 15th 1991.

AHum, hum.

QAnd did he also inform you what this decision was supposed to be?

A Well it's written on top, an honorarial contract. I don't ... I do not remember the conversation so ...

Q OK.

A ... that would not have been important to me, so I probably would not have remembered.

Q And after that, nose pipeline, this is also some kind of idiomatic expression, is it?

A It's not a word that I would use so it is the word that someone has said on the phone, said to me on the phone, I assume.

Q Yes and after that goes unanimous what? For what?

A If unanimous at both.

Q If unanimous what, for both?

A Yes, at.

Q OK, unanimous what for both?

A My assumption is that that refers to if the DPC was ... the departmental personnel committee was unanimous in its recommendation and if the faculty personnel was unanimous in its ... in its recommendation.

Q So this message was written after the decision of faculty personnel committee?

A No, I don't believe so.

Q It was before that?

A That was my ... that would be my assumption.

Q OK, in the corner Swamy.

A Hum, hum.

Q Does this mean that it was conversation with Swamy?

A No, it was definitely not a conversation with Swamy.

Q So reference to Swamy in ... in what sense is it here?

A I can only imagine that it would be in the sense that Swamy was on the ... from my understanding, on the faculty personnel committee.

BY THE COURT:

Well please don't ... I'd rather you didn't imagine. If ... if the note ...

A I don't know.

Fine. That's ... that's the answer. If the note doesn't jiggle your memory at all, then it's very dangerous to speculate and I don't want you to speculate.

A OK.

BY THE ACCUSED:

Q Now you ... I refer you to the part from Grendon, January message from Fabrikant, threat. I understand after that goes what? The next word is what before call ... call husband, what word is this? After the word threat, the next word is what?

A Do you want me to ...

BY THE COURT:

Yes, you can.

A Will call husband, baseball bat.

BY THE ACCUSED:

Q Oh, will?

A Hum, hum.

Q Will call husband, baseball bat. No one regards this what? After that, the word?

A No one reports these episodes to Concordia or police.

Q Ah no one reports these episodes to ... is my understanding that this is some kind of absolutely new threat which was never mentioned before, is it?

A I don't know, Dr. Fabrikant. When I pulled ... as I mentioned this morning, I ... when I was subpoenaed, I went

through any of my files that had anything to do, all of the small pieces of papers that I had. I looked and tried to put everything together. When I read this, it was not something that I recalled at all but I put it in because it has ... well it's my notes from this.

QOK, was it some kind of message that I threatened someone with baseball bat?

BY THE COURT:

The witness has told you that it doesn't help her to refresh her memory at all.

BY THE ACCUSED:

I understand, I understand English.

BY THE COURT:

Fine, so end of question.

BY THE ACCUSED:

I'm trying to find a way to refresh ...

BY THE COURT:

You're not ... no, you're trying to cross-examine the witness.

BY THE ACCUSED:

... I'm not cross ...

BY THE COURT:

You tried to refresh the witness's memory by referring her to the note. She said it doesn't refresh my memory. End of subject, move on to the next thing.

BY THE ACCUSED:

Well why cannot I try (sic) to refresh her memory by some ...

BY THE COURT:

You have done so, you have done so and it has not. Move on.

BY THE ACCUSED:

You didn't let me yet to refresh her memory.

BY THE COURT:

You ... you have refreshed her memory, you have shown her the note and she's told you: "It does not help me to tell you what it is about", so move on. End of question.

BY THE ACCUSED:

I cannot ...

BY THE COURT:

This is the second time of warning you.

BY THE ACCUSED:

QWhat goes after that? Request from ...

BY THE COURT:

Mr. Fabrikant, would you stop reading that memo into the record. Now one more faux-pas and I will end this examination. Pass on to your next question. You will not read that memo into the record. It doesn't refresh the witness's memory. That is the end of the question.

BY THE ACCUSED:

Well I try to remember for myself whether I can formulate the question. She read it to me, now I do not remember anymore.

BY THE COURT:

Then look at it quietly and decide what your question is but move on to the next issue.

BY THE ACCUSED:

I'm moving on to the next issue.

BY THE COURT:

And you're not going to read that memo into the record.

BY THE ACCUSED:

I'm not reading it, I do not understand the next word.

BY THE COURT:

Fine. I'll ask the jury to go out and you'll have the witness read to you the memo again. I wonder, ladies and gentlemen, if you'd give me five minutes to see if we can solve this.

SUSPENSION OF THE PROOF OF THE DEFENCE

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

BY THE COURT:

You respect nothing, you follow nothing but we'll get there.

BY THE ACCUSED:

Nothing is the wrong word.

BY THE COURT:

We'll get there.

QNow would you read him the memo again please?

BY THE ACCUSED:

I think I was very specific and who I do not respect, not what or anything else. (sic)

BY THE COURT:

QWould you read him the memo please.

A

"January message through Grendon from Dr. F. Threat, will call ..."

BY THE ACCUSED:

QPlease slowly.

A

"... will call husband, baseball bat."

and in brackets:

"(No one reports these episodes to Concordia or police). Request from Fabrikant to see Rose. Didn't do ..."

QOne second. OK, we?

ASorry?

QTo see Rose, yes.

AYes, "didn't do".

QDidn't do?

AYes.

QAnd after that?

AAfter that:

"Until name came forward, full professor."

QUntil?

AHum, hum, that's until.

QName came forward, yes?

AFull professor.

QOK, Is he dangerous to students and faculty. He is a research professor?

AHum, hum.

"QLetters, promotion to associate professor rank. Pressure tactics?

AHum, hum.

QHarassment office. Write or tape. Judge Gold, Claude Ryna. OK and since we are here, OK and on the page starting with the word "aggressive"?

BY THE CROWN:

Could I see it one second My Lord first?

BY THE COURT:

Surely.

AYou want me to read that page?

BY THE ACCUSED:

QYes, aggressive, the next word is what?

AArlene.

QOh Arlene, OK, Arlene?

ASelf-defence course.

QAll right. After that goes?

ASomething that is separate from it, it goes: Can demand an assessment.

QOK. Hum hum?

ALook at contract.

QOK?

AIf someone's health puts others at risk within university and that's the little bracket there, Dr. Fabrikant and then it goes on to the uncertainty.

QAt the university, yes and uncertainty, yes?

AAnd not knowing what is happening.

BY THE CROWN:

Can I make a comment, My Lord? Can I make a comment?

BY THE COURT:

Certainly, Mr. Lecours.

BY THE CROWN:

It looks like a fishing expedition into every witness's notes.

BY THE COURT:

It is a fishing expedition par excellence. There is no question about it.

BY THE CROWN:

I'm not sure this is proper.

BY THE COURT:

It is ... it is surely not proper with regard to the last memo. I have a couple of questions to put to the witness.

BY THE COURT:

But even ...

BY THE COURT:

To see if I've properly understood the witness's testimony.

BY THE CROWN:

I understand that since Stingcomb was enunciated, it applies to police officers but ...

BY THE ACCUSED:

OK, can we do it ... can we do it ...

BY THE CROWN:

Let me finish. A university is a private party and when ... if you don't know what you're talking about, you cannot go and say to everybody: bring all your notes of all your life about anything and then I will look if there is something interesting and then I will ... I think we might be sidetracked in this respect.

BY THE COURT:

Well as far as the notes are concerned, if I'm going to err, I'd rather err on the side of ... of the accused. The situation basically is this. The witness, on receipt of the subpoena - if you'd sit for the minute - got out

her notes and on receipt of the subpoena, if I understood her testimony this morning refreshed her memory or looked at her notes or put her notes together and read them.

BY THE CROWN:

He doesn't understand and it's standard to refresh your memory with notes.

BY THE COURT:

So ...

BY THE CROWN:

But Fabrikant is taking a note, what is this?

BY THE COURT:

That's right, that's ... that's where ...

BY THE CROWN:

What do you recall from that and let's see if there is something interesting there.

BY THE COURT:

That's where ... now, Fabrikant, having no knowledge of ... of her notes, asked for a file. As it turns out, the file doesn't exist but what does exist are her notes, her personal notes taken three (3) years ago, four (4) years ago or whatever it is. Now if she's going to come here, leaving aside who called her here, I could have been much much clearer in my position if ... if the crown had been calling her here.

BY THE CROWN:

Yes.

BY THE COURT:

Than ... than I am when he is but given that he calls her here and asked her to testify as to facts that occurred four (4) years ago and she refers to notes to refresh her memory, the point at which if I'm erring, I would rather err on the side of caution, is that he's entitled to look at these notes.

BY THE CROWN:

OK, listen, if ... if he finds ...

BY THE COURT:

Now just a second, let me finish. He's entitled to look at these notes and he's entitled to understand what he's ... he's reading there which is what I did this morning and what I'm doing just now.

Now what he is not entitled to do is dissect these notes, note by note by note and read them into the record as if they were original reports through the guise of trying to refresh the witness's memory. We ... you know and I know and anybody sitting here knows that that is illegal.

BY THE CROWN:

OK, I understand very well your viewpoint. For instance, if we talk about the November 5th 1991 meeting and he asks the witness: do you have notes of that meeting? Would you like to refresh your memory? Then I think he's entitled to do what he's doing.

BY THE COURT:

Yes.

BY THE CROWN:

But when he takes the whole and says: Oh this looks interesting, what is this?

BY THE COURT:

That's what I'm going ...

BY THE CROWN:

To what does it refer? This is not to refresh the memory. There's no main subject. There's no pre-question.

BY THE COURT:

That's right.

BY THE CROWN:

That's ... that's my only point, My Lord.

BY THE COURT:

I was prepared to let him go to the point that you have a note, let's say the baseball note for want of a better expression.

QNow you've read the baseball bat note. Does any element of that note relate to any of the meetings we've talked about do you recall?

BY THE CROWN:

If not, that's the end of it though.

BY THE COURT:

If not, that's the end of it and that was the question I was going to put to ... to Mrs. Torbit when he had finished.

BY THE CROWN:

Because I'm not concerned in hiding anything. My concern is, with this process, I can imagine, again as I said, a never ending story.

BY THE COURT:

Oh it's ...

BY THE CROWN:

If all the witnesses come in with ... the next witnesses will be coming with boxes, you see. If we take every word in every box and ask what is it and do you recall something about this word, I'm just preventing us sitting for ... for months or years in this trial. There's, as I told you, as far as I'm concerned, there is nothing that can hurt my case. We have nothing to hide. I'm not fearful of anything coming out ... coming out of any witness but I don't ... it's the public's money, this trial, you know. I'm just concerned about not wasting our time. I hope you understand that.

BY THE COURT:

I understand very very clearly what you're saying and I must tell you that from an evidence point of view, this trial has a different twist every day. I mean, I'm able to wake up in the morning and come here, happily not knowing what is going to fall out of the sky.

BY THE CROWN:

I totally ...

BY THE COURT:

And ... and that's what makes life interesting but ...

BY THE ACCUSED:

Well I think you should appreciate my talent in this regard and...

BY THE COURT:

I suppose that's one way to put it.

BY THE ACCUSED:

Well, if you like it, but I would like comment on what crown said. If crown seems to be in very bad memory, let me repeat once again. When three (3) months is passed, three (3) months, not years and stop whining about years please, when three months is passed, three months which I requested and was given, don't forget that.

BY THE CROWN:

My Lord, my own experience with Mr. Fabrikant ...

BY THE ACCUSED:

I have not finished yet please. Three months I requested and was given three months. When three months passed and I'm not finished, then I promise you, I say I'm finished. Are you satisfied? You're not going to whine again that you are going to sit here for years.

BY THE CROWN:

Mr. Fabrikant has no promise to make to me, My Lord. This is not part of our judicial system.

BY THE COURT:

No, it's not and Mr. Fabrikant has no promise of three months either.

BY THE ACCUSED:

What do you mean?

BY THE COURT:

Mr. Fabrikant has his ... may present his defence and if it takes two (2) weeks, it takes two weeks or if it takes one month, it takes one month. If it takes six (6) weeks, it takes six weeks but ...

BY THE CROWN:

But I remember Mr. Fabrikant crying to everybody he wanted to waive his preliminary enquiry. I offered him to waive it and then he ... he decided I want my preliminary enquiry. So ...

BY THE COURT:

Well in any event ...

BY THE ACCUSED:

So what?

BY THE COURT:

You have ... have you ... have you completed your notes?

BY THE ACCUSED:

No, he interrupted me and I would like to say that it is definitely in my right to ask questions, not necessarily about meetings but about telephone calls which witness had too or just personal encounters ...

BY THE COURT:

Listen, if ...

BY THE ACCUSED:

... which resulted in these notes.

BY THE COURT:

You have ...

BY THE ACCUSED:

They are also important.

BY THE COURT:

If the witness does not, if no element of that note refreshes the witness's memory ...

BY THE ACCUSED:

I didn't ask any element ...

BY THE COURT:

... then that is the end of it. I don't know that yet. I will find that out in two seconds.

BY THE ACCUSED:

It might be that one line doesn't refresh and another line does refresh.

BY THE COURT:

That is correct, Mr. Fabrikant. You are so right. That's the question I was going to put to the witness.

BY THE ACCUSED:

And this is exactly what I'm doing. I'm not dissecting anything.

BY THE COURT:

No, you're not ... you're not doing it fairly, you see because what you're doing is benefiting from the fact that you can go line by line by line to read the note into the record and that is what you're not allowed to do.

BY THE ACCUSED:

Let me ask you just one question.

What the hell use for me (sic) to read into the record that I threatened somebody with baseball bat? I'm getting acquitted for that. What do you present me? As some kind of dishonorable person who tries to put into the record something favorable for him? Not at all.

I'm just trying to put whatever I can to understand what happened at Concordia and for everybody else to understand what happened, that's all.

BY THE COURT:

That's ... that's fine.

BY THE ACCUSED:

I'm not concerned with my well-being or anything. What I'm concerned, the truth to come out and I think you should be concerned with that too.

BY THE COURT:

What I'm not concerned about, except marginally, and where it relates to your defence is what happened at Concordia.

BY THE ACCUSED:

Exactly.

BY THE COURT:

You may ... you may make proof of what happened at Concordia insofar as it relates to your defence to charges of murder.

BY THE ACCUSED:

And this is exactly what I'm doing.

BY THE COURT:

Second, that ... that generally is what you may do. You may not make proof generally of what happened at Concordia, if anything happened at Concordia which does not have some bearing upon your defence. I told you before, this trial involves only one issue: your state of mind from two points of view. One from the point of view of intent and the other, I suppose from the point of view of planning and deliberation. Nothing else as far as I can see at this juncture.

Now that being said, your state of mind may well have been affected by the events of November 1991, at least maybe it was, maybe it wasn't. I have presumed for the moment that it was or that was going to be your position and that was why you were making proof.

So far so good, but there are after all certain rules. I told you what the rules were. When you have experienced some particular difficulty, not through inability or anything else, but some particular difficulty in making the proof generally, you've ... you've been granted as much latitude as you've needed to make the evidence you've had to make. That's ... that's ... for anybody it's granted but you may not cross-examine the witness on events through the use of a memo which it appears she has no recollection of and cannot put in context. You may not do that.

Now you may not do that, why? Not because I don't want to

let you do that or not because I care what happened at Concordia on any given day leading up to this whole thing or what happened in 1991 or how your contract negotiations went or what Osman said or Swamy or anybody, I couldn't care less how that devolved, but what I could care less about is that the proof that goes into the record be proof that is as reliable as possible and that's what the rules of evidence are for.

Now listen, I ... I'm sick and tired of giving you this sermon because you do what you like anyway or you try to and I stop you and I propose to continue to stop you and that's that.

Q Now as far as that baseball bat memo, do you ... do you ... are you able to relate any element of that sheet of paper, any phrase on it, any anything to the meetings that took place at that time?

A No.

Q You're not.

You see, so that is the end of it.

BY THE ACCUSED:

Well first of all, it's very hard to believe for any normal person to hear some phrase like - we are all grown-ups here: threat, message from Fabrikant, threat and it was going for months and months and new threat from Fabrikant and it sounds some like (sic) "We'll call husband baseball bat" which is totally new to me and no one reports these episodes to Concordia or to police, this is very troublesome stuff and witness faking her memory, cannot understand anything at all.

BY THE COURT:

Well you see that's where we run into trouble, that's where we run into trouble. You choose to say ...

BY THE ACCUSED:

I would never ...

BY THE COURT:

You choose to say witness ... and this is your favorite, every witness has lied, every witness has fakes their memory.

BY THE ACCUSED:

Oh no, that at all, not ...

BY THE COURT:

Every witness has ... has purposely set about to mislead the jury.

BY THE ACCUSED:

Not at all.

BY THE COURT:

Look, the witness explained why she can't ...

BY THE ACCUSED:

Don't oversimplify please.

BY THE COURT:

Look the witness explained why she can't recall.

BY THE ACCUSED:

Well how witness could possibly explain it? She ... you didn't allow me to ask her to explain how it is possible that she didn't recall.

BY THE COURT:

The witness, three answers, three (3) answers ago, said that she made no attempt to minimize that. She was sorry that she simply could not relate it in terms of time and space to any of the meetings, not could she say who the information came from and that the ...

BY THE ACCUSED:

Well this is classical case of faking memory.

BY THE COURT:

Well that's what you say it's a classical case of faking memory. I don't happen to agree with you.

BY THE ACCUSED:

Well ...

BY THE COURT:

You see and if it was so obvious to me ...

BY THE ACCUSED:

I don't believe one second ...

BY THE COURT:

If it was so obvious to me as it is to you that it was a classical case of faking memory, I would say: Mrs. Torbit this is a classical case, this appears to me to be a classical case of faking memory. I don't believe you but ...

BY THE ACCUSED:

Well you would have said that if it was case of Concor- dia.

BY THE COURT:

I'm the one ...

BY THE ACCUSED:

I'm (inaud.) don't forget it.

BY THE COURT:

I'm the one that gets to say that.

BY THE ACCUSED:

Yes.

BY THE COURT:

Not you.

BY THE ACCUSED:

Well I know why you don't say it.

ACan I say something?

BY THE COURT:

Well I think not for the minute. Now I don't know, I'll ask you again.

BY THE ACCUSED:

Well Mrs. Torbit wanted to say something.

BY THE COURT:

QHave I properly ... have I properly understood that you can't relate any part of that memo to anything? If that's ... if that's so then ...

AYes, that's so.

QThat's so.

AThe only thing that you said just before was that I didn't know who it was from and it's clear on there that it was through Grendon.

QIt was through Grendon?

AYes so that part of it ...

QThat .. that is ...

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

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">ABut I ... but it doesn't place anything.
QBut it doesn't place anything in any context for you?
AAnd when I read it at home, it didn't place anything either.
BY THE ACCUSED:
I think one day it will go into classical example of faking memory.
BY THE COURT:
Do you think so?
BY THE ACCUSED:
Oh yes.
BY THE COURT:
Oh.
BY THE ACCUSED:
I think many things from this trial will go into classical cases of dishonesty ...
BY THE COURT:
Do you? Well all right.
BY THE ACCUSED:
... and all other low human qualities.
BY THE COURT:
That may be, that may be.
BY THE ACCUSED:
Oh, you bet it will be.
BY THE COURT:
But for the minute, that's the end of it.
BY THE ACCUSED:
I couldn't care less.
BY THE COURT:
That is the end of it.
BY THE ACCUSED:
I couldn't care less. I know that time will show everything, no matter how you try to hide it. That I guarantee.
BY THE COURT:
Would you sit down. Might I have the jury please?
BY THE ACCUSED:
But we ... I believe we didn't finish the last ...
BY THE COURT:
We'll just ... we'll just continue where we are because you profess your next question properly after we finished with this one.
BY THE ACCUSED:
Well just one sentence was there. "Can do it now or" before the jury come.
BY THE COURT:
"Can do it now or"?
AOr after two weeks when further escalated.
BY THE ACCUSED:
QOr after two weeks when further what?
AEscalated.

THE MEMBERS OF THE JURY ENTER THE COURTROOM

PROOF OF THE DEFENCE (Cont'd)

BY THE ACCUSED:

OK, well I think we will leave it for Mr. Haines then since it is message from him.

QDo I understand that at some moment in time, you discussed with someone necessity of psychiatric assessment or something?

AWhat was your question? Did ... do I ... do you understand that I discussed with someone?

QWell I now refer to your note. It is a numbered with the ... the last one which we discussed.

AHum, hum.

QYou ... which brings me to this question: did you discuss with someone necessity of psychiatric assessment of me?

AI don't recall discussing it with someone about a psychiatric assessment for you.

BY THE ACCUSED:

Now again, section 9.1 and section 9.2, when message here is so clear that one doesn't even need to have any recollection of anything because it says black and white it can demand an assessment, look at the contract, "If someone's health put another at risk at the university," so

...

BY THE COURT:

If you're referring the witness to ...

BY THE ACCUSED:

What more clearer it could be and witness ...

BY THE COURT:

... that note, would you refer the witness ...

BY THE ACCUSED:

... reading this message says that she cannot recall at all.

BY THE COURT:

Would you refer ...

BY THE ACCUSED:

Isn't it a classical case of faking memory?

BY THE COURT:

Would you refer the witness to the memo.

BY THE ACCUSED:

I referred already.

BY THE COURT:

And ask her whether or not any element of that memo triggers anything in her memory at all? For example, you might start with where it came from and you might try to locate it in terms of time.

BY THE ACCUSED:

I asked much better question. I asked question whether she discussed with anyone necessity of having psychiatric assessment of me and this note leaves no doubt whatsoever that yes she did and she answered, looking at the note, because I referred her to the note, she answered it does not ring any bell.

BY THE COURT:

Perhaps your route might be ...

BY THE ACCUSED:

Now what more classical do you need?

BY THE COURT:

Perhaps your ... perhaps your route might be to ask her if in the course of the month of November 1991, there was at any of the meetings any question of a psychiatric assessment of Fabrikant. I don't know what she'll say but you may manage ...

BY THE ACCUSED:

I made even more general question. I made it even more general.

BY THE COURT:

You may manage to ... you would be ... you would be perhaps accused of being suggestive but that's the worst you could be accused of in putting that question.

BY THE ACCUSED:

Why should I do that? I did it much better way. I asked: did she at any time anywhere whatsoever discuss it and this is the best possible question and the answer is so clear in this message that only person totally faking her memory could answer: No, I don't know, I don't remember that.

BY THE COURT:

Well that's ... that's your opinion. Have you any further questions to put?

BY THE ACCUSED:

Well it doesn't coincide with yours?

BY THE COURT:

It's certainly not ... it's certainly not going to give you license to cross-examine at large, no.

BY THE ACCUSED:

All right, all right.

BY THE COURT:

And it's not a 9.1 or a 9.2 question. It has nothing to do with a prior statement that the witness made.

BY THE ACCUSED:

It's not prior statement but when witness faking memory, it is the same thing. It is classical example of hostile witness. If you wish, I can read it to you from ...

BY THE COURT:

Perhaps it was in the ... in the context of the case you're citing to me.

BY THE ACCUSED:

Sorry?

BY THE COURT:

Perhaps ... perhaps that was the judge's impression in the context of the case you're citing to me.

BY THE ACCUSED:

It doesn't matter. If witness is obviously faking her memory or his, this witness is declared hostile.

BY THE COURT:

Well I'm not going to come to that conclusion.

BY THE ACCUSED:

It's the whole stuff.

BY THE COURT:

I'm not going to come to that conclusion, I told you that.

BY THE ACCUSED:

Well this is well ...

BY THE COURT:

If you wish to keep it up, keep it up but I mean ...

BY THE ACCUSED:

Well this is well-known case.

BY THE COURT:

Is it? How well-known is it?

BY THE ACCUSED:

Well if it is ...

BY THE COURT:

Where ...

BY THE ACCUSED:

If it is known to me ...

BY THE COURT:

Where did that come from? Where is that, where is that subject from?

BY THE ACCUSED:

All right, it was in Cassibel (sic), Mr. Belleau, could you remind me? It was in Cassibel?

BY MAITRE BELLEAU:

It must be, yes.

BY THE ACCUSED:

Hey?

BY MAITRE BELLEAU:

I'm sure it is.

BY THE ACCUSED:

In Cassibel, right?

BY THE COURT:

Well if it is in Cassibel, it's the Ontario Court of Appeal and the Ontario Court of Appeal was not dealing in first instance with the witness who was ostensibly faking. I suppose the trial judge would have been ... and the Ontario Court of Appeal possibly endorsed the decision the trial judge reached but the Ontario Court of Appeal doesn't hear cases at first instance, the last time I looked.

BY THE ACCUSED:

So there is no point to spend time raising it to you?

BY THE COURT:

There certainly isn't.

BY THE ACCUSED:

All right, but you know that, that if witness faking his or her memory, this is sign of hostile witness, you know that?

BY THE COURT:

I will concede that it might be one of the ... one of the yardsticks that one would apply depending on the circumstances, yes.

BY THE ACCUSED:

Well but one cannot find a better circumstance than that.

BY THE COURT:

That is where you and I differ.

BY THE ACCUSED:

Fine.

QDid you at any time see that situation escalates which ... escalates to such an extent that it might lead to panic or something? I refer to you next note.

AThat is not ... I don't ... it's not referred to the next note. I recall one incident where it seemed that behavior had changed and there was some concern expressed, yes.

QBehavior, you mean my behavior?

AYes, that your behavior had changed.

QYes, OK, could you elaborate when was it? Who noticed?

What was noticed?

AOn Thursday the ... on the Thursday before August 24th, so I don't know the exact date, if we could bring it back, I received a phone call from Elizabeth Horwood who was concerned about the fact that you seem to be going up

and down the halls and very erratic I think was her word and she was concerned.

QSo it was Thursday August 20th probably?

AIf that's the Thursday before the Monday, yes.

QYes and she saw me what? Say it again?

AShe reported that she thought your behavior had changed and you were wandering in and out of offices and it was ...your behavior was erratic, that's what she said to the best of my recollection.

BY THE ACCUSED:

You see how beautifully we go. All of a sudden, everything is in memory. Who, what, when including days. Maybe this way we will progress back to the first one. Maybe you make an effort and you also comment on the first too? Would you please?

BY THE CROWN:

She already did, My Lord.

BY THE COURT:

I hardly need to make the comment. You ... you will ignore the latest sermon.

BY THE ACCUSED:

Well ...

BY THE COURT:

You asked your question, the witness gave you the answer.

BY THE ACCUSED:

You again didn't ...

QSo OK, I ... I direct you to just several lines before that, would it be correct to assume that this also refers to August of 1992?

ANo, that would not be correct at all to assume that. I cannot assume it to anything and that's what I told you before.

QOK, but at least it is on the same piece of paper and ...

AThe question that you asked me, Dr. Fabrikant, after that, was just about escalation. It was not specifically about that and that's why it's very difficult in referring to the notes. If you asked me about what happened, I can remember what I remember about what happened. I merely brought the note because I was asked to bring all the documents. I didn't want to leave anything at home even though ...

QWell ...

A... I didn't understand all of what was in them.

QWell I think you did beautiful job. I have no reproach with this respect or anything. It's just that you for some reason remember one thing and don't remember others. Did you ... did you in August know that situation was sharp and something was in the making and so this, the whole thing, I understand, relates to August 1992?

ANo, I did not say that at all, Dr. Fabrikant. The only thing that relates to August 1992 is the word escalate.

QWell but it is ... the word escalate is inside the whole expression, so I don't know, how can you take the word out of the ...

AI'm not. You asked me a question, Dr. Fabrikant, that said "Was there at any time any behavior" I don't know the exact wording "or anything that happened where there ... where there was escalation", I ... that's what I was responding to, not to the note at all and I need to make that very clear to you.

QOh OK, so the whole note, it is still ...

BY THE COURT:

Why don't you refer the witness to the note and say: listen would you take cognizance of that note. Now can you locate that note in terms of time as to when you wrote it? I don't know what she'll answer, we'll see.

BY THE ACCUSED:

Well let's try.

ANo, I can't.

BY THE COURT:

Wait for the question from him.

AOh, I'm sorry.

BY THE ACCUSED:

QOK then ... OK, relate whatever you ... so you had on August 20th, you had a phone call from Mrs. Horwood.

AHum, hum.

QThat my behavior looked to her erratic?

AHum, hum.

QNow did you ... what did you do after you got that call? Did you contact anybody? Swamy, whatever?

ANo I ...

QTo ask what is going on?

ANo, I recommended that Mrs. Horwood phone the rector's office.

QAh OK. Did you know if she did or did you after that call rector's office and ask what happened?

ANo, I did not ask what happened and I ... I think she did but I don't know. You'd have to ask her.

QDid any other time you got any phone call from Mrs. Horwood or anybody else concerning me, that you ... which is not reflected in the notes but which has bearing on our trial which would be useful for you to relate here?

AThere were times when Mrs. Horwood consulted me as a health professional but I don't think that's relevant here.

QNo I mean in terms of me and my behavior? If it is with respect to me and my behavior, then it is relevant and it doesn't necessarily have to be Mrs. Horwood. It can be anybody else.

ACan you repeat the question please?

QAll right. I asking you (sic) if you got any other phone calls related to my behavior which you received from somebody else at any time?

AWell I'm trying to... I'm taking a long time because I trying to figure out exactly how to answer it. I mean not specifically in light of what I just said about Mrs. Horwood calling on the 20th. That, to me, was a specific time.

BY THE COURT:

I took it as being another question.

BY THE ACCUSED:

Yes, it is.

BY THE COURT:

QDid you receive any calls from anybody else?

BY THE ACCUSED:

Yes.

BY THE COURT:

QApart from Mrs. Horwood?

ARight.

QBearing upon Fabrikant's behavior at any time, he said. Now at any time is pretty large so I don't know how ...

how far back he wishes to go.

BY THE ACCUSED:

Well ...

AAAnd I guess that's what I'm having trouble with too, My Lord.

BY THE COURT:

So I think at any time, you better ... you better try to put limits on that or ...

BY THE ACCUSED:

Well I think it is the best question.

BY THE COURT:

Well all right, if you think it's the best question, when do you mean? Any time between 1979 and 19... and 1992, is that what you mean?

BY THE ACCUSED:

That's would fit me too.

BY THE COURT:

Fine, there you are. Now I don't ... there you are, there's the question.

BY THE CROWN:

I think My Lord she's covering the situation that Fabrikant might have made the people sick and they asked for help. She's the person in charge of health at the university.

BY THE COURT:

I know that.

BY THE CROWN:

I don't think we should cover that.

BY THE COURT:

I'm prepared to permit the question as it was put because the question was phrased in such a way as calls from anybody in relation to his behavior during that period of time when he was at the university. To that extent, the question is permissible.

BY THE ACCUSED:

Why would crown object? I just wonder.

BY THE CROWN:

I'm taking care of the individuals who might have ...

BY THE COURT:

Never mind. The crown is ...

BY THE CROWN:

... their health file disclosed. That's the only thing.

BY THE COURT:

No, no, I ...

BY THE ACCUSED:

Well we are dealing with doctor who knows professional ethics. She will not answer anyone's secrets. She knows that better than you.

BY THE COURT:

The question was permitted as far as your behavior was concerned.

AI find it a difficult question to answer My Lord, because there were many conversations with different people. In terms of the specific people within the department, were there other secretaries who called me or were, you know, any of the faculty within the department, did they call me with concerns? To the best of my recollection, aside from any professional contact, no.

BY THE ACCUSED:

QSo what is the answer? Were there any calls or there were none?

BY THE COURT:

QWithout going into who or without going into the nature of the professional consultation, were there any calls, he asked, routed in his behavior?

ANot from people in the immediate area. I mean I think that there were calls, that we've talked about some. I mean there would have been a call at one point from, you know, Mr. Haines because there was the connection with that and then there may have been a call from the vice-rector's office about ... I find it a very difficult question to answer because I don't have like a crisp answer to that.

QNo, no, OK.

AI'm really ... and I'm not trying to be vague but I just don't have the answer.

BY THE ACCUSED:

QAll right, let's be then more specific, OK. From Mr. Haines, did he try to consult you about something? Did he call you concerning anything in terms of my behavior?

AMr. Haines called and requested a meeting with ... with Dr. Steiner at some time in 1989 and at that time, he did talk about some of his concerns. Dr. McKenzie, from time to time ...

QOK, well let's stop on Mr. Haines. OK, what were his concerns to the best of your recollection?

AThe concern seemed to center around fear and concern that ... that there were .. that there were fears from around you in terms of what would happen if you didn't get what you wanted.

QYes. Did he ... did he give you specific examples of base of his fear?

ANot to the best of my knowledge. I ... there was so much rumor and so much speculation that it's so very hard to differentiate it into phone calls. I'm ...

QWell when Mr. Haines came to you or phoned you and asked for psychiatric whatever, conversation ...

AHum, hum.

Q... I believe he ... if I'm right, he mentioned to you certain facts he would like to consult about, did he?

AHe said that there was a faculty member that he was having trouble with and he'd like to talk to Dr. Steiner and I can't remember exactly. What I remember initially talking to him and more what I ... than what he said, I remember initially saying to Mr. Haines that it was important that limits be set and things be put in writing and that ... that ... those were the main things and then I arranged the ... the interview or the appointment with Dr. Steiner.

QOK, did he name my name?

AI don't recall.

QWere you present during this meeting?

AI'm not sure about that either. I ... I thought about that and I'm ... I don't know, I don't know whether I was there or not.

QWell how many do you have professors threatening life or ...

BY THE COURT:

The question is disallowed.

BY THE ACCUSED:

You didn't hear the question.

BY THE COURT:

The question is disallowed. I'm disallowing it from its form.

BY THE ACCUSED:

OK, I will change it.

QIs it ... OK, is it ordinary event at the university when professor threatens to kill a rector?

AIs it an ordinary event? No.

QNo, would it be possible to call it extraordinary?

BY THE CROWN:

It's nothing My Lord, it might be, it might not be.

BY THE ACCUSED:

Well let the witness answer.

AI asked if I had to answer.

BY THE COURT:

Yes.

AI mean I ...

QAnswer the question.

AAnswer the question?

QAnswer that.

AI suppose if, I mean, you're asking a theoretical question. A theoretical question is yes. If I heard specifically someone threatened to kill the rector, that would be a very unusual event and I would be very concerned about it, yes, that's right.

BY THE ACCUSED:

QWell and ...

AIt would be an extraordinary event because it's not every day that people want to kill the rector.

QExactly.

ASometimes ...

QAnd if you are present during the meeting of Mr. Haines and psychiatrist and this is mentioned and later on you cannot recall you were present at that kind of meeting?

BY THE COURT:

Now you're cross-examining the witness.

BY THE ACCUSED:

Oh yes.

BY THE COURT:

Sorry, sorry, look ...

BY THE ACCUSED:

How about elementary justice?

BY THE COURT:

Listen, it's time in any event to take a break so we'll take a break.

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

BY THE COURT:

You have arrived at the point where you are spinning out of control, where we are getting nowhere, where the questions are not in any sense an examination of this witness but you're simply going on for the pure purpose of going on and you're going absolutely nowhere.

I would suggest that you use the next ten minutes to structure your questions and ask them because otherwise there's no point continuing this examination.

BY THE ACCUSED:

Well we can always have me excused and not let me examine.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ARE ALL PRESENT

NANCY TORBIT

(Under the same oath)

BY THE ACCUSED:

QDo you recall when the meeting between Mr. Haines and Dr. Steiner took place in 1989?

A No, I don't recall.

QHow many meetings were there?

A To the best of my knowledge, there was one.

QWas there any other meetings after that between Mr. Haines and Dr. Steiner?

A Not to my knowledge.

QOK, you also mentioned some phone calls from vice-rector's office?

A Yes.

QWould you relate the content of those calls? Was it in 1989?

A No.

Q1990?

A No, it would have been in, let me think, in 1991 I would think, I'm not sure though, late 1991, early 1992.

QAnd what it was about?

A There were questions about, I'm trying to recall exactly, mostly, often it was ... often, several times, it was a request to speak to Dr. Steiner.

QSo mainly, so it was calls late 1991, early 1992 and they were requesting to speak to Dr. Steiner?

A That's my best recollection.

QOK. Anything related to you personally?

A To me personally when they called? To tell me anything?

QYes, to tell or to ask or anything, with respect to me?

A There was a question about a young woman who had phoned to the vice-rector ... vice-rector's office.

QHow is it related to me? Did I rape her?

A I don't know what exactly she told them. She said that she had had some experience with you prior.

QI was almost right, hey? When was that?

A When was what?

QThis call?

A The call? I've told you I'm not quite sure when it was.

QWell, so there was call not to you, there was call to vice-rector?

A Yes, that was to the vice-rector's office.

QAnd they contacted you?

A Yes.

QAnd did you ...

A Mainly to speak to Dr. Steiner.

QAnd did you talk to that lady?

A No, I did not.

QWhy not? She seemed to have complained about me?

A There was no reason for me as director of health services to talk with her.

QWas she complaining about me?

BY THE COURT:

The witness did not speak to the person.

BY THE ACCUSED:

QWas it what, a student?

AMY understanding is that she was ... had been a student yes.

QOK, so who from the vice-rector's office contacted you, do you remember the name?

ANo, I don't remember. It was a replacement secretary, I believe.

QWho usually contacted you from the vice-rector's?

AWho usually? I didn't have that much contact with them. Angela Wilson-Wright might have, sometimes the secretaries who were replacement secretaries who I don't know.

QOK, isn't again that there's some kind of very rare event, isn't it?

AYes.

QDid you make any mark (sic) anywhere that Fabrikant raped a student?

BY THE COURT:

The witness never said that and the witness said that she was not the one who took the call.

QThe call was not ... I think that was right, that you did not have the conversation, is that correct?

ANo, I spoke with the ... with the secretary yes, but she didn't want ... they wanted to speak with Dr. Steiner.

QDr. Steiner.

BY THE ACCUSED:

QOK and Dr. Steiner spoke to that lady?

AI believe he did, yes or I don't ... I don't know who he spoke to. I believe he spoke to someone in that office.

QAnd it was in 1992?

AI believe it was after there was something in the Gazette about ... there was something in the Gazette, whatever date that was about a gun permit.

QIn the Gazette about what?

AAbout a gun permit or something, I don't ... I don't know.

QWhat gun permit has to do with rape? Did I rape her with a gun?

ANo, that's not what I said at all. You were asking me in terms of time and I was trying to approximate the time.

QOK.

AI don't know when it was. It was later on, it was probably in 1992 but I don't know for sure. There .. my understanding was that something had appeared in the paper and that this student had called the vice-rector academic's office.

QWith respect to what?

AWith respect to something that had happened between you and her previously stated, that she stated.

QBut it is not related to gun?

ANo, the relation to the guns was I think that it was when that was in the paper, that that sparked her to call. It was not related to guns, no.

QBut what was in the paper? In the paper was something about me?

AI don't recall, Dr. Fabrikant.

QWell if it was in the Gazette about me, it was April 1st.

AThen that's ... that one that was in the Gazette about applying for firearms or something, I don't even know what the article said.

QAll right. But anyway it was someone from ... it was either Wilson-Wright or who else could it be from the vice-rector's office?

AIt was a secretary and I don't know who she was.

QYou know Mrs. Wilson-Wright well enough?

AYes, I do.

QAnd you cannot recall with who ... if it was her?

AIt was not her.

QIt was not her?

ANo.

QHow many secretaries are at the vice-rector's office?

AI have no idea.

QAny other call from the vice-rector's office which you might remember?

ANot that I remember, no.

QNow returning back to all those meetings and all those so-called security measures, did it ever cross your mind when you were discussing that you were actually inviting violence rather than trying to prevent it?

AI would not ... if it had crossed my mind that I thought we were inviting violence, I would have recommended very many different things, so no.

QDo you believe it now?

BY THE COURT:

That question is irrelevant.

BY THE ACCUSED:

It's very relevant.

BY THE COURT:

Yes, irrelevant.

BY THE ACCUSED:

All right. Thank you.

BY THE COURT:

Have you any questions for Mrs. Torbit?

BY THE CROWN:

No, My Lord.

BY THE COURT:

Thank you very much, Mrs. Torbit.

END OF THE TESTIMONY OF THIS WITNESS

BY THE ACCUSED:

I would like to retain this material for Mr. Grendon Haines to refresh his memory for ... for the time being.

BY THE CROWN:

I guess there was only one or two memos?

BY THE COURT:

There was one memo.

BY THE CROWN:

One ...

BY THE ACCUSED:

No, there was more than one.

BY THE COURT:

And you have ... you have material there. Would you please hand it back for the minute. Would you find the two (2) memos that you think you ... you saw.

Sit down. Madam, that will be under this, these memos that are going to be retained will be the I- number. I guess we're at about I-6 or something.

BY THE ACCUSED:

One is through Grendon and the other one is a small one.

BY THE CLERK:

I-9.

BY THE COURT:

I-9, OK.

BY THE ACCUSED:

And I understand also ... no, I understand that the page saying "errors", it was also conversation with Mr. Haines.

BY THE COURT:

Have you found these? The memos that you are talking about?

BY THE ACCUSED:

You mean ...

BY THE COURT:

Yes, because they'll be produced, they'll be kept as I-9.

BY THE ACCUSED:

Oh, I thought you need originals, no? You don't need originals?

BY THE COURT:

They're not ... they're simply ... you simply wish to use them, I understand?

BY THE ACCUSED:

Yes.

BY THE COURT:

To ... to refresh Haines's memory. Now if you give ... has the rest of the file been given back to ... to the witness?

BY THE ACCUSED:

Well I understand that they're prepared to give me that copy.

BY THE COURT:

Fine. Thank you very much.

BY THE ACCUSED:

So we continue with Mr. Haines? Before Mr. Haines comes, I would need court order for tomorrow, I mean for Monday, to bring security reports for the year 1989, March.

BY THE COURT:

Security reports from where?

BY THE ACCUSED:

From Concordia, because we are definitely at a very very peculiar situation. It is necessary to establish where exactly and when did I threaten to kill the rector because right now, as you remember from the ... another testimony we got, that it was March 21st and as a proof was this Barnaby file presented.

As we ended the testimony of Mr. Haines, he insists that it was March 28th therefore there must be some security report there.

BY THE COURT:

I don't know. We're not ... we're not recalling witnesses that we've already heard, that's for sure.

BY THE ACCUSED:

No, not witnesses which we heard, just to ... to produce the document.

BY THE COURT:

I don't even know that such a document exists, I have no idea.

BY THE ACCUSED:

Well if ... if such document doesn't exist, then again it

will be proof that something is wrong in the testimony of Mr. Haines.

BY THE COURT:

Well I suppose that's a question that you should have put to Bujold.

BY THE ACCUSED:

Well I couldn't put it to Bujold when he was here.

I didn't hear the testimony of Mr. Haines at that time.

BY THE COURT:

Listen, we are not going to start recalling witnesses over and over again.

BY THE ACCUSED:

No, we can call Mr. Relton.

BY THE COURT:

You are getting no order from me. Now if you have any questions to put to Mr. Haines, put them.

GRENDON HAINES

September 20th 1941

Senior Planning Coordinator

SWORN

DIRECT EXAMINATION BY

MR. VALERY FABRIKANT - ACCUSED

REPRESENTING HIMSELF:

QOK, do you have your agenda with you, Mr. Haines?

AYes.

QCould you please describe once again the conversation which you allegedly had March 28th in your own words please?

AThis is a meeting that I had with you in my office in which you came into my office and very soon into the conversation, asked me about the room numbers of the rector in Bishop Court.

You wanted me to confirm whether they were right or wrong and I said to you, I didn't know whether they were right or wrong and you said well you knew the layout of Bishop Court and ... and if things ... can't get things done around here, that one way to do them is to take a hostage and shoot the rector and I said to you "Well that's not the way we do things in Canada, that it's not possible to get guns and we don't take hostages in Canada" and at that point you told me you had a gun.

QAll right. Yesterday you said that I was going to get rector hostage. Today you said that I was going to shoot him. Could you reconcile those two things? Did I say take hostage or did I take ... say shoot him?

AI don't remember me saying that you were going to get the rector. I remember that being said yesterday but I don't think I said that. I remember saying you were going to shoot the rector and that you had a gun.

QWell no, no, you didn't understand what I said.

AOK.

QYesterday you said that I was going to get him hostage. You didn't use the word shoot yesterday.

AI heard you say at the meeting that you were going to take the rector hostage and shoot him.

QSo now you're changing it again. So it's hostage and shoot?

AI ...

QWe have three different (3) versions now.

ANo, I think that's what I said yesterday, My Lord.

QWould you like ...

AThere was another incident in which you started to talk to me about March 21st and that's a different incident.

QOK, we'll get to it.

AOK.

QFirst of all, I would like to clarify this point. If you wish, we can play yesterday's recording or if you believe me, I can give you the transcript of what he said yesterday. You said the following:

"You asked me about location of rector's office. You mentioned that they are in Bishop Court. Then you quoted the room numbers and asked me to confirm them and I said "I didn't know whether they were right or wrong" and he said that he knows how the things are done around here and this way is to get a hostage and I said: "This is not the way we do things in Canada. You do things differently in Canada. You try to work it out and negotiate and besides you cannot get gun in Canada. It is not as easy as it is in United States. It is very very difficult" and then you told me: "I have a gun".

AYes, so I think that the... I don't see anything inconsistent. I may have said something like ...

QWell inconsistency is tremendous.

BY THE COURT:

Inconsistency doesn't appear from my notes to be tremendous.

BY THE ACCUSED:

Well he didn't mention at all...

BY THE COURT:

Well my notes ... my notes indicate that he did.

BY THE ACCUSED:

Well let's ...

BY THE COURT:

This was the meeting where he informed him of the gun, the question of the location of rector's office and that he would kill the rector.

BY THE ACCUSED:

Well let us play it. I ... this, what I read is the truth.

BY THE COURT:

Listen, continue with ... continue with your question. This is your witness. We are not going to waste the next six (6) months listening to tapes. Go ahead with your...

BY THE ACCUSED:

It's not six months.

BY THE COURT:

Go ahead with your questions to Mr. Haines.

BY THE ACCUSED:

In three (3) months, I will finish.

BY THE COURT:

Go ahead with your questions to Mr. Haines now or this will be finished.

BY THE ACCUSED:

I invoke section 9.2. He made contradictory statement.

BY THE CROWN:

There is no contradiction there, My Lord, not at all.

BY THE ACCUSED:

Well if first time, he said that I was going to take him hostage and just today, he twice said two different things.

He said to kill without taking hostage, then he changed it again and said: to take hostage and to kill and the second version is totally absurd. If you want to kill, why the hell do you need to take anyone hostage? This is absolute absurd.

BY THE COURT:

Your application under 9.1 or 9.2 is denied. Would you continue to put your questions to Mr. Haines.

BY THE ACCUSED:

You didn't even hear the recording.

BY THE COURT:

Would you put your questions. I don't need to hear the recording. I've looked at my notes, I'm satisfied with what ...

BY THE ACCUSED:

Your notes are wrong.

BY THE COURT:

I'm satisfied with what took place.

BY THE ACCUSED:

I've ... I've read you the transcript.

BY THE COURT:

Go ahead.

BY THE ACCUSED:

What I read is a transcript.

BY THE COURT:

Go ahead, go ahead with your questions.

BY THE ACCUSED:

Well you cannot deny it without hearing it.

BY THE COURT:

Listen, go ahead with your questions.

BY THE ACCUSED:

QSo did you or didn't you yesterday just said that I was going to take him hostage only?

BY THE COURT:

You have Mr. Haines's answer. Go on to your next question.

BY THE ACCUSED:

QNow is there a contradiction if I allegedly asked you for location of rector's office and then I quoted you the room numbers? Then it mean that I knew the location?

BY THE CROWN:

This is argumentation, My Lord.

BY THE COURT:

Yes, it is.

BY THE ACCUSED:

OK.

BY THE COURT:

Objection maintained.

BY THE ACCUSED:

QDo you ... OK, I quoted you the room numbers. Does it

mean that I knew the location?

AYou asked me if these were the correct room numbers.

QAll right. Do you know that there exist the telephone directory at Concordia?

AYes My Lord.

QDo you know that room numbers are indicated there?

AYes, My Lord.

QDo you know that rector's office is listed there?

AYes, My Lord.

QAnd that the rector's office is listed in both campuses?

AYes, My Lord.

QSo and the room number is right there in the telephone directory, correct?

AYes, My Lord.

QWhy would anyone needs confirmation from you if it is ...

BY THE CROWN:

This is argumentation again, My Lord and cross-examination.

BY THE COURT:

Yes it is. Objection maintained.

BY THE ACCUSED:

QWhy don't you allow me to show that the witness is lying.

BY THE COURT:

The objection has been maintained.

BY THE ACCUSED:

Well you shouldn't maintain it.

BY THE COURT:

The objection is maintained.

BY THE ACCUSED:

All right. Well that's enough.

QAnd also the telephone numbers of both rector campuses are also in the telephone directory, correct?

AYes, My Lord.

QAll right. Now is there any rule anywhere which says that I need to call your secretary if I want to know or to ... to go to see the rector? Do I have to call your secretary for that?

ANo, My Lord.

QOK. Then look first of all in your agenda. Do you find ... you have all the phone calls there, right?

ANo, My Lord.

QWell at least, would you please show it to the jury that you have at least some of them, just show your agenda to the jury please?

BY THE COURT:

You will not hold up his agenda and show it to the jury. That would serve for no purpose at all. The agenda is there as an aide-memoire like anything else.

BY THE ACCUSED:

QOK, do you have some of the phone calls there?

AI have some phone calls listed here, yes My Lord.

QOK, do you have that alleged my phone call (sic) of March 21st?

ANo My Lord.

QWell how would you explain that such an important call, the rector was threatened? Your secretary didn't take note of that?

AI'm not sure if I said that the rector was threatened.

QWell ...

AI didn't use that word, I don't think, My Lord.

QAnyway, it was a call which made your secretary some kind of apprehensive, right?

AYes, My Lord.

QWell, and she didn't record this call into any of those messages you have in your agenda?

ANo, no, My Lord.

QWould you explain that?

AIt's not normal for my secretary to take a record of telephone calls and record them in my agenda book, My Lord.

QNot in the agenda book, just to give it to you?

AIt could have been recorded on a slip of paper, these posted notes that are telephone messages books, My Lord.

QThis is exactly what I'm talking about.

AI do not have it, My Lord.

QWell this is my question. How come you have so many phone calls ...

BY THE CROWN:

This is cross-examination, My Lord.

BY THE ACCUSED:

... and you don't have this one?

BY THE COURT:

Objection maintained, objection maintained.

BY THE ACCUSED:

QAnyway, you don't have it. Now I understand that that alleged phone call, could you describe once again what was in my phone call to your secretary?

BY THE CROWN:

How many times will he describe it, My Lord?

BY THE ACCUSED:

Just once.

BY THE COURT:

Objection maintained and while you're at it and while you have been talking, I have looked twice and I've found in my notes two occasions before the luncheon adjournment yesterday where the question of shooting of rector was said very clearly in relation to the March 28th meeting.

BY THE ACCUSED:

Exactly, yes, but this is exactly what I'm talking about.

BY THE COURT:

So ...

BY THE ACCUSED:

You don't seem to understand ... let me just explain.

Exactly, that was my point, that he mentioned on several occasions that I threatened to kill rector on March 28th. When I asked him explicitly: now describe the conversation, detailed conversation and this description of detailed conversation, he didn't mention the word kill.

BY THE COURT:

Listen, we are not ...

BY THE ACCUSED:

This is exactly what I'm talking about.

BY THE COURT:

We are not going to waste our time with this constant hair splitting, OK.

BY THE ACCUSED:

It's not hair splitting at all.

BY THE COURT:

I know what he said yesterday and it's very clear what he said yesterday from my notes.

BY THE ACCUSED:

It's not clear, he changed it many times. This is the point, that he said on one occasion to kill, on another occasion, to take hostage and just today, he again changed it.

BY THE COURT:

The witness is not an automatic machine.

BY THE ACCUSED:

What do you mean, automatic machine? If it is ... if it is kill, it is not automatic machine. He didn't write it because it was so in his ... in his memory.

BY THE COURT:

In any event, I'm satisfied it was said yesterday. I'm satisfied that was his testimony yesterday, so there you are.

BY THE ACCUSED:

This, his testimony was double yesterday. He said on several occasions to kill, then he said to take hostage. When ... just before adjournment, when I asked him to describe the conversation ...

BY THE COURT:

You are playing games. That is all you are doing.

BY THE ACCUSED:

No.

BY THE COURT:

You are playing games, you are wasting my time.

BY THE ACCUSED:

Not at all.

BY THE COURT:

And you're wasting the time of everybody else here.

BY THE ACCUSED:

When person ... person is lying, he doesn't remember what he lied before. This is usually well-known thing.

BY THE COURT:

Have you ... have you any further questions to put to this witness?

BY THE ACCUSED:

Yes, this is why I'm asking to describe what was in my phone conversation to his secretary.

BY THE COURT:

That has already been gone into, I have ruled that we've had that answer. Move on to other things.

BY THE ACCUSED:

We had it but I asked him to say it again.

BY THE COURT:

You are not going to cross-examine the witness in this manner. This is a game you've been playing since the beginning of this whole thing. Move on to the next subject, otherwise you'll be foreclosed.

BY THE ACCUSED:

QDoes one need to call your secretary to know what is the rector's room at Loyola campus?

BY THE CROWN:

He just asked this question, My Lord.

BY THE COURT:

The question was asked, the question was answered. Question disallowed.

BY THE ACCUSED:

All right.

BY THE COURT:

It's your witness too, I'll add.

BY THE ACCUSED:

It's not my witness. It's hostile witness. You just don't want to recognize it.

BY THE COURT:

Next question.

BY THE ACCUSED:

QIs there any rule at the university which says that one has to call your secretary before going to see rector?

BY THE COURT:

The question has been asked, the question is disallowed.

BY THE ACCUSED:

QDoes your secretary has anything to do with the rector?

A No, My Lord.

QDoes your secretary anything to do (sic) with appointments to the rector?

A No, My Lord.

QDoes one have to inform your secretary if one wants to go and see the rector?

BY THE COURT:

The question was answered. Disallowed. You're turning in ... you're turning in circles.

BY THE ACCUSED:

I'm not turning in circles. I'm just trying to show how absurd it is, that's all.

QNow why ... suppose it was the call, why if someone calls ... no, I mean why if I called your secretary and asked her the location of rector's room, whatever and tell her that I'm going to see the rector, not to kill, not to kidnap, to see the rector, why should your secretary get worried about it? Was she informed ...

BY THE CROWN:

This is argumentation and cross-examination.

BY THE ACCUSED:

No, no.

BY THE CROWN:

And moreover, it's not the secretary that is in the box, My Lord.

BY THE COURT:

The question will ...

BY THE ACCUSED:

The secretary will be in the box.

BY THE COURT:

The question wasn't finished. The question ...

BY THE ACCUSED:

QWas she informed by you that I present some kind of danger and she should be vigilant?

A I don't think I told my secretary that she should be vigilant but she would have been aware of some of the conversations because I passed my notes over to the ... to my secretary for filing. She certainly would be aware of some of the things that may have been said or had happened.

QOK, what ... by March 21st, what kind of information she might have had from you which would make her so suspicious of innocent call or at least which looked like innocent? What exactly did she know by that time?

A I ... I couldn't remember exactly what she would know or not know, My Lord. She would know ...

QWell consult your memos, your notes, whatever you wish. What by that time ...

BY THE COURT:

It is a question that invites pure speculation on the

part of Mr. Haines. I don't know where you're going with that question in any event and the question is disallowed.

BY THE ACCUSED:

I'm going to the ...

BY THE COURT:

The question has been disallowed.

BY THE ACCUSED:

Maybe you will at least ask me why I ask it.

BY THE COURT:

The question is disallowed. It's speculative.

BY THE ACCUSED:

You just yourself allowed the question. You just even allowed me to finish the question and then all of a sudden you disallow it.

BY THE COURT:

He ... he answered your question. He said "She may have seen some of the memos that I ... that I was working with at that time".

BY THE ACCUSED:

OK, OK, so ...

BY THE COURT:

That was ... that was your answer.

BY THE ACCUSED:

And I just ask for clarification, that's all. Which memos and what was content of those memos?

AShe would have had, My Lord, evidence that I had up to that date, that is in the file, that is before Dr. Fabrikant now.

QSo in terms of ... in terms of threats by that time, how much had been accumulated for her to know?

AI really am not sure how much she actually did know, My Lord.

QWell what she ... what you knew by that time in terms of threats?

BY THE COURT:

We're not going through that again. Get on with it.

BY THE ACCUSED:

Well then I'm returning back.

BY THE COURT:

No, you're not returning back. Move on to the next question. You're wasting time.

BY THE ACCUSED:

QWhat did the secretary know by that time?

BY THE COURT:

Ask her. He ... he can't tell you.

BY THE ACCUSED:

All right.

QWhy did you perceive the call which I just want to see the rector as threatening call, worth immediate reporting? (sic)

AWhy did I ... I'm sorry, I don't understand the question My Lord.

BY THE COURT:

Then have him repeat it.

AYes, could you repeat the question.

BY THE ACCUSED:

QWhy did you perceive the call allegedly stating that I was going to see the rector as a threatening call, worth reporting?

AI did not necessarily, My Lord, see the ... the telephone call as threatening. I felt though that I needed to inform the office of the rector or Catherine McKenzie of what took place. I did not say it was a threatening call to her. I just gave her... her office, her, information as to what transpired. I did not use the word threat.

QWell what did she respond to you?

AI can't remember the response, My Lord.

QDid you yesterday say that you remember very well reporting to Dr. McKenzie, saying the following:

"That my secretary just got telephone call from Dr. Fabrikant which made her to believe that he knew location of the rector and was coming to see him and he wanted to know in what room he was."

AYes My Lord.

QWell would you kindly explain why you remembered so well what you said to Dr. McKenzie and cannot recall anything at all what she responded to you?

BY THE COURT:

That's cross-examination again. Disallowed.

BY THE ACCUSED:

Well how many times witness has to be in that stupidous (sic) situation when he obviously faking his memory until you would be able to make the decision that he's indeed faking his memory? How many times does it have to happen?

BY THE COURT:

Question disallowed.

BY THE ACCUSED:

All right.

QDid you ... did you know that she contacted immediately security and reported it as a threat?

AI do not, My Lord.

QDid she inform you that she contacted security and reported it as a threat?

AI do not remember that, My Lord.

QDo you recall the timing of the meeting which you mentioned between you ...

ASorry, I didn't hear that, someone called.

QOK, do you remember the timing of the meeting which you had with Mr. Barnaby, yourself and Dr. McKenzie discussing security measures against me? Do you remember when it was?

AI do not, My Lord.

QWell at least, could you place it, whether it was before I threatened to kill and take hostage rector or it was after I threatened to kill and take hostage the rector?

AI'm not sure, My Lord.

QWell this was such a tremendous event.

BY THE CROWN:

We don't need the editorial, My Lord.

BY THE ACCUSED:

No, it is part of my question.

QIt was extremely outrageous event which you didn't bother to record because you remembered it so much, then try to recall in terms of this event whether one of the arguments for placing me under twenty-four hour surveillance was the fact that I threatened rector or it was not one of the factors and this way you can easily decide

whether it was before or after. Was it one of the factors?

AThat ... that would be correct if ... if it was when the surveillance was ordered, then I would believe that it was ... that was the time when I reported that you had threatened to take the rector hostage.

QSo that you discussed the three of you necessity of security measures when I have already threatened rector or I didn't at that time yet threaten rector?

AMy Lord, I did not discuss the need or anything about security measures.

BY THE ACCUSED:

Well he just testified yesterday that there was meeting of three of them and they discussed the need for security measures. He doesn't seem to remember what he testified yesterday.

QDid you or didn't you testify yesterday?

AI testified yesterday I believe that I informed them of what had taken place in my office.

QSo it was discussion between you, Dr. McKenzie and Mr. Barnaby right? Was it?

AI can't really remember at this moment. I'm confused as to whether we actually had a meeting or how that discussion took place, My Lord, but I would not have discussed security measures. They may have talked about it in my presence but I do not remember any discussion about security measures.

QOK, well let's put it differently. There was a meeting between you, Mr. Barnaby and Dr. McKenzie in your office correct?

AI don't know where that ... if that meeting took place, I can't remember talking, how we ... how that followed through. There could have been a meeting, I don't know and I don't know where it was or it took place, but my records, My Lord, may tell me whether there was a meeting or not.

BY THE COURT:

Well look at your records then.

AThank you, My Lord.

BY THE ACCUSED:

Well couldn't he just remember what he testified yesterday? Shouldn't witness remember what she testified (sic) yesterday?

AI don't have a record here of an actual meeting taking place right after with Mr. Barnaby and Dr. Catherine McKenzie, My Lord, there and I'm almost certain I don't have a record, no I don't have a record of ...

QYou don't have to have a record. I'm asking you whether you did or didn't testify about it yesterday?

AI reported the incident to both Dr. ... to Mr. Barnaby and to Catherine McKenzie. I cannot remember, they may have been together, they may not have, My Lord, I do not know.

BY THE ACCUSED:

Well he testified yesterday that they did.

BY THE COURT:

Well you better tell him at what time yesterday he said that and you better play ... play it to him then if you insist.

BY THE ACCUSED:

I ... I found one place which was important. You didn't allow me to play it but ...

BY THE COURT:

No, because there was no contradiction in what you found before.

BY THE ACCUSED:

OK, if you see no contradiction, tell me at least one thing, that I would know: did I threaten just to kill? Just to kidnap or both? You tell me, what was it?

BY THE COURT:

I will tell you ...

BY THE ACCUSED:

To kill, to kidnap or both?

BY THE COURT:

I will tell you nothing, OK.

BY THE ACCUSED:

That's fine but I would like to know what did I threaten in the final (sic) because he ... he presented it in all three versions: just to kill, just to kidnap and both and I don't know what is ...

BY THE COURT:

That is your interpretation of what he said.

BY THE ACCUSED:

Well just today, would you like to play the beginning of today's testimony and you will hear that at first he said to kill, then when I questioned him again, he said to take hostage and to kill.

BY THE COURT:

And shoot rector, that's right.

BY THE ACCUSED:

Well it cannot be both right. Either I threatened just to kidnap or just to kill or whatever ridiculous it look, both because one doesn't do both. It's absurd.

BY THE COURT:

What we are on at the moment is the question of the meeting between Mr. Haines and Barnaby.

BY THE ACCUSED:

Yes.

BY THE COURT:

Now would you either consult your notes or consult your memory and tell him when that meeting took place. That's ...

BY THE ACCUSED:

But ... but you remember that he mentioned that there was a meeting. You remember he said that after that, there was security in his house and he was so grateful, otherwise he wouldn't be alive here today, if there was not security at his house.

You remember his testimony, how grateful he was to the university? They saved his life.

BY THE COURT:

Spare me the sarcasm. Do you have ...

AI've checked my notes, My Lord.

QFine.

AI do not have a record in my notes of a meeting with Dr. McKenzie and Mr. Barnaby.

BY THE ACCUSED:

But he testified that it ... that this meeting took place. It doesn't have to be in his notes.

Find the place where he says that he's grateful to the university. That was the time when before that he testi-

fied that there was a meeting.

BY THE COURT:

Well you tell me where it is.

BY THE ACCUSED:

I don't know, to tell or not to tell?

BY THE COURT:

You don't ... you don't have it?

BY THE ACCUSED:

I'm not sure what you're saying. Not to tell?

BY THE COURT:

You tell me when it took place. I ... I recall ...

BY THE ACCUSED:

Well again the time ...

BY THE COURT:

I recall him talking about surveillance, yes.

BY THE ACCUSED:

Well first of all, I repeat once again. If I find it even on the tape, I would not be able to tell time because the walkie-talkie I have doesn't produce time so I will try to do my best to find it, but I can only find it so far it was on the tape but not more than that.

BY THE COURT:

It's certainly difficult to find it because your questions cover a fairly wide range of subjects and they jump back and forth.

BY THE ACCUSED:

I ... I don't jump, we are still in 1989. I don't jump at all. We still have to cover 1991 and 1992 so I'm not jumping at all.

OK, if you wish, I can proceed to other questions and we return to that question Monday.

BY THE COURT:

OK, go right ahead.

BY THE ACCUSED:

QYes, if you recall, we also tried to locate in your agenda the date for your visit of Adler Institute and it looks like we didn't find it, is it correct?

AYou didn't find it but I've been able to do a little of my own detective work.

QOK.

AAnd I think I know when it may have taken place, My Lord.

QSo you can say it now when it took place?

AI have reason to believe it took place on Friday, the 17th of March, My Lord because I have Dr. Gerald Moger's (sic) name in my book for a lecture that he gave at six thirty (18 h 30) that evening.

QOK. How do you spell his name?

AI still don't have his ... I looked for the spelling of his name in my book, the agenda books and I still don't have it, My Lord.

BY THE COURT:

QBut you said your ... the spelling, you had the name in your book.

AI just have his name, first name, My Lord, Gerald.

QGerald, I see.

AYes.

BY THE ACCUSED:

QAnd do you know where this institute is located?

AIn Chicago?

QNo, I mean in Montreal?

AIn Montreal.

QWhere did you see him in Montreal?

AI saw him on Grosvenor Avenue or I don't know the last three digits but it's four thousand and something on Grosvenor Avenue.

QIt is Adler, A-d-l-e-r?

AYes.

QAdler Institute?

AYes, My Lord.

QOK. Do you recall the result of your consultation with Dr. ...

ANo, I ... I do ... the result of the conversation?

QWell what did he advise you? After all, you came for some kind of advice, did you?

AI don't remember much what happened at the meeting, My Lord. The meeting was very short. We were late in starting and we ... he had another appointment and so that very little took place.

We were there to give him information and to have an assessment from him about the seriousness of the issue, of the situation and whether there was appropriate action for the university to take, how to handle a situation like this and to the best of my memory, he advised us that it would be wise if we could get Dr. Fabrikant to seek some ... an assessment, to seek help to see, to have a professional assessment made to see how serious the situation was and secondly, that there was no way of telling, based on the information that we gave him, how serious it was.

He could not assess whether it was very serious or not serious at all. That's all I remember as a result of that conversation with Dr. Gerald Moger.

QDidn't he tell you that it is dangerous indeed?

AHe ... my memory is that he said it could be dangerous, it may not be dangerous. You just don't know.

QWhat information did you provide to him in terms of threats?

AI would have told him the information that I knew up to that point, My Lord but I can't remember the details of what information I gave him or what Dr. McKenzie told him.

QDid Dr. McKenzie tell him that I allegedly said that in order to get what you want, you have to go in and shoot a lot of people and that was I was intended (sic) to do?

AI do not remember that, My Lord.

BY THE ACCUSED:

Well, one has to have some limits. Not to remember that kind of phrase, it's impossible. It is impossible.

BY THE COURT:

That is your view.

BY THE ACCUSED:

Yes, it is my view.

BY THE COURT:

Good. Well I don't agree with it.

BY THE ACCUSED:

All right.

BY THE COURT:

OK.

BY THE ACCUSED:

So it is possible not to remember.

QDid ... OK, let me put it differently. Have you heard from Dr. McKenzie that I allegedly tell her such a thing?

AHave I heard from Dr. McKenzie that you allegedly said to her that in North America, we do these sort of things?

QNo, that I said to her, I will quote to you more or less, that in order to get what you want in North America, you had to go in and shoot a lot of people and this was what I intended to do?

AAnd did I hear that from her on that date, on March 17th, is that the question?

QNo, at any date? I put you absolutely general question, at any date.

AMy Lord, I would imagine that I had a conversation with Dr. McKenzie in which statements like that were shared between the two of us.

QBut you're not sure?

AThere were so many conversation that we had that to get together, to talk about these things, we must have had some sort of grounds in which to talk about so I would imagine that that was one of the statements on which we were getting... based our rationale for getting together to talk about the situation so I would think, but I do not remember the actual occasion when that was said but I'm almost absolutely positive that we talked about it.

QWell I'm not asking you the date when it was said. I'm just asking you if it was said to you at any date?

AI don't know if I can say more than what I have, My Lord.

QWell do you know this phrase attributed to me? Now, today, do you know this phrase?

AYes, My Lord.

QYou do, OK. Since when do you know this phrase? Do you know this from 1989?

AYes My Lord.

QWell that's all what is required. So from 1989, you knew from Dr. McKenzie that I allegedly said that in order to get what you want in North America, you have to go in and shoot a lot of people and that was I was intended to do. Is this precisely what you have heard?

AAgain My Lord, I know that I heard that, I know that for sure, Catherine McKenzie and I would have discussed the statement. Whether it was Catherine McKenzie that first informed me of that statement or not, I do not know that My Lord.

QWell who else could have informed you that? Could it be that somebody else told you that?

AWhich statement is it again, could you repeat please?

QOK, I can repeat it again: in order to get what you want in North America, you have to go in and shoot a lot of people.

AI heard ...

QAnd that was what I was intended to do?

AYes I heard that from other people, My Lord.

QNot from Dr. McKenzie?

AMaybe with Dr. McKenzie as well, My Lord.

QAnd the wording is exact, correct? The wording, I mean is there any doubt in your mind in terms of the wording of the statement?

AI have no doubt in my mind as to the theme of the statement. As to the exact words, I wouldn't remember word for word, but certainly what ... how you've just put it is what I do remember.

QOK, one doesn't have to be exact. The main issues here are first purpose: in order to get what you want, is the purpose what you heard? Was that in order to get what you want?

AI don't understand My Lord. The purpose?

QThe purpose of the next .. what follows in the statement?

So statement consists of the following thing: the

purpose, the means and intention. So purpose ...

AAh.

Q... to get what you want, that was what you heard?

AYes, right My Lord.

QNow means, to go in and shoot a lot of people?

AYes, My Lord.

QAnd intent, that exactly what I intended to do in 1989, right? (sic)

AI can't remember that remark, I can't remember that last third part, My Lord.

QOK, was this third part quoted to you by anyone?

AI do not at this point remember, My Lord. Sorry, I didn't understand the question.

QIsn't it that the third part is most important? When you hear the third part, you should lift telephone and call police and you don't remember whether it was there or not?

AThere are so many conversations. I may, I may have heard that third part and I assume I did, but I'm not positive now My Lord. I wouldn't even know.

QWhere the hell is it?

AI've heard it in ... in the court, I've read it in the newspapers My Lord. I'm ... I'm confused as to the ... the third part but I do ...

BY THE COURT:

QSo you do not know if you heard it?

AThat I intend to shoot people, as a third person telling me that, of a quote that Dr. Fabrikant made?

BY THE ACCUSED:

QNot the third person. First of all, it has been identified the source as Dr. McKenzie who allegedly heard it from me. Do you know at least that much? That the source, the person to who I allegedly said it was Dr. McKenzie, do you know that much?

APrecisely the statement is that I intend to do it.

QThat is not now my question. My question now is do you know that statement was allegedly made to Dr. McKenzie? Do you or don't you?

ABy you to Dr. McKenzie? When I first became involved, I did not know that you had said that to Dr. McKenzie, no. I did not know that.

QHow come? He didn't (sic) share it with you? Shouldn't it be the first thing he should have told why you need to be involved in the first place?

AMy Lord, I remember clearly that when I first became involved and just before meeting with Dr. Fabrikant and Dr. Osman and ... and the Sankars, that I did not know of the threats. They had little ... very little information had been given to me about the nature of the problems. I came in with a table rase and it was my job to find out from the ... the people, participants directly what the nature of the issues were. I did not want to know from Dr. McKenzie what her understanding of the problem was. I wanted to know directly from the people who were invol-

ved.

Now after getting that information, I'm quite certain that Dr. McKenzie and I talked about these statements and on many occasions and I would be certain of that.

QWell so by the time you were at Adler Institute ...

AYes.

Q... by that time, did you know this statement which I allegedly made to Dr. McKenzie?

A I knew of the statement but I'm not ... I do not remember if I knew of the statement on the March 17th, of the final statement is "and I intend to do it", that, I do not remember if I knew that on March 17th.

QWell how on earth can one not remember that?

BY THE COURT:

Well if ... if he doesn't remember it, he doesn't remember it. It may be difficult for you ...

BY THE ACCUSED:

He's faking.

BY THE COURT:

... to conceive. Well that's your view.

BY THE ACCUSED:

It's just not my view. I think that ...

BY THE COURT:

Well it's not mine.

BY THE ACCUSED:

Well I know.

BY THE COURT:

The witness's ... the witness's memory may be ... may be questionable. You may argue about that, you may say the witness is confused. You may say a number of things.

BY THE ACCUSED:

Witness is not confused. He's faking confused. He's not confused at all.

BY THE COURT:

There you are. See there, we disagree.

BY THE ACCUSED:

He ... well he demonstrate remarkable recollection that the doctor was late, the doctor was going up somewhere else, the doctor did this, the doctor did that and he cannot remember whether he told the doctor this terrible phrase, that was the purpose of him going there, to tell the doctor that Fabrikant intends to kill a lot of people.

QWasn't that the purpose of your ... of your voyage?

AThe purpose of the meeting was to tell Dr. Moger what had been said and what had been going on and for him to make a judgment call on how serious the situation was, based on the information that we gave him and I cannot ...

QWell OK, so what was the information which was given? Was this particular phrase told to Dr. Moger?

A I've reported My Lord that I cannot remember the exact terms and words used at that meeting.

QWell not the exact.

ABut certainly, certainly the statement of in North America, we do these ... this is how one does things to get one's way in North America was said.

QWell we do things what? Was there the word "killing a lot of people" mentioned to doctor?

A I do not remember that, My Lord.

QWould you believe that?

AIt may have, it may not have been, I don't know.

QYou do not remember whether you mentioned the phrase "to kill a lot of people"?

AI do not remember the exact words, My Lord.

QI'm not asking exact words. I'm asking the words which would imply killing many people, in any way you express it?

AOh yes, My Lord. Absolutely clear.

QSo it was said?

AThe ... the idea was given to Dr. Fabrikant ... to Dr. Moger clearly that the threats, the alleged threats made were of the tone that people would be shot or could be killed, that many people could be killed.

QSo it was said to the doctor?

AYes.

QAll right and by that time, you didn't know who I allegedly told those words?

AI would have known that you had told those to Dr. S. Sankar, T. Sankar and that Dean Swamy had told me that he had heard from others that that is what you had said.

QBut not from Dr. McKenzie? She kept it secret from you?

AI cannot remember now, My Lord, whether Dr. McKenzie at that time mentioned what had happened between her and Dr. Fabrikant prior to my intervention.

QNo, I mean on September 17th?

AIn fact, I'm not very sure if I ever ...

QOn September 17th, she still kept it secret from you?

AI didn't think she was keeping secrets from me, My Lord.

QWell OK, let's put it differently. On March 17th, she still didn't tell you about it, did she?

AI can't remember what he said My Lord, more than what I've said.

QNow we also ... we also didn't find anything in your agenda attesting to the fact that T.S. Sankar also told you that I said about American way and made a hand gesture or something with a gun like. Do you remember that you testified about it yesterday that both Sankars told you, do you remember that?

AYes, My Lord.

QAll right. Now Seshadri Sankar allegedly told you when you saw him at Concave Center, right?

AI met him in Concave Center, yes My Lord.

QOK. T.S. Sankar, when he told you that?

ATold me what My Lord?

QWell exactly the same thing? You forget what we are talking about?

AI do not remember the ... there were several expressions made, such as shooting people in North America. I'm not sure if you're wanting me to be accurate as to the quote or accurate as to the ... to the ... to the message?

QOK, yesterday you testified that the same message was ... first you testified that I told you that. Then you testified that it was Dean Swamy who told you that. Then you testified that it was two Sankars who told you that and they reported it to Dean Swamy. Do you recall all those things in your testimony?

AYes, yes My Lord.

QThis is the statement I'm talking about. Now when did T.S. Sankar tell you that?

AMay I look at my book, My Lord?

BY THE COURT:

Certainly.

AOK.

BY THE ACCUSED:

QWithout book, there is no way you can find it out, when it happened? I'm not asking you for date.

AOh.

QJust ...

AIt would be roughly the same time I met ...

QWhat it ... it was meeting between you and T.S. Sankar? Was it meeting between whatever?

AYes.

QWhat was it? When?

AIt was a meeting between me and T.S. Sankar and it was a meeting soon or after or before with the other Sankar. It happened very very close together, My Lord.

QOK, when did ... when and where did you see T.S. Sankar?

AThe younger Sankar, I saw, is that the T.S. Sankar?

QNo.

AOK, T.S. Sankar, I cannot remember where we had the meeting. I ... I don't remember that where the meeting was held.

BY THE ACCUSED:

Well again I would like to bring to attention of this Court that he never mentioned that he had a meeting with T.S. Sankar and there is no mentioning of any meeting with T.S. Sankar, neither in his agenda, nor in his notes nor in anything else.

QMaybe you didn't meet after all. Could that be?

ANo, I met Dr. T.S. Sankar.

QOK. Then describe where, first of all, where you met him?

AI would have met him wherever his office is and I don't know where his office is located at this moment, at that time.

BY THE ACCUSED:

Isn't it funny? When you asked him, what did he say, he respond: well it depends on the date. If the date was such, then I probably said date. If the date was different then I probably said something else.

When I ask him where, he says at his office, but he does not know where his office is. So wherever his office is, it was in his office. Well isn't it absurd.

BY MAITRE BELLEAU:

My Lord, I'm sorry to interrupt. If the case is going to go on, I'm going to have to make a phone call to make some plans for the evening.

BY THE COURT:

No, no, we're ...

BY MAITRE BELLEAU:

Because it's five o'clock now.

BY THE COURT:

No, no, I'm going to ...

BY MAITRE BELLEAU:

I'm sorry.

BY THE COURT:

I'm going to let this particular phase finish and then we'll stop.

BY THE ACCUSED:

QSo you effectively don't know where his office is? You met him at his office but you don't know where his office is?

AI can't remember where his office is, was in 1989, My

Lord.

QWell but you met with him, right?

AYes, My Lord.

QWas it at least in Hall building?

AI do not remember My Lord.

BY THE COURT:

OK, we'll adjourn at that point until Monday morning.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

ADJOURNMENT

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PROVINCE OF QUEBEC

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 LECOIRS
ATTORNEY FOR THE CROWN

MR. VALERY FABRIKANT
REPRESENTING HIMSELF

MAITRE LOUIS BELLEAU
AMICUS CURIAE

DATE OF THE HEARING: JUNE 14th 1993

OFFICIAL COURT REPORTER: MS. MAUREEN ROWE

CLERK OF THE COURT: MS. ROXANNE DESROSIERS

FICHER NO.: 2886

TRIAL

CASE NO. 01-017372-928

I N D E X

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PROOF OF THE DEFENCE (cont'd)

REPRESENTATIONS

GRENDON HAINES

Direct examination

9

TRIAL TO CONTINUE ON JUNE 15th 1993

THE COURT TAKES THE BENCH

THE MEMBERS OF THE JURY ARE PRESENT

PROOF OF THE DEFENCE (Cont'd)

GRENDON HAINES
Senior Planning Coordinator
September 20th 1941

SWORN

BY MR. VALERY FABRIKANT - ACCUSED
REPRESENTING HIMSELF:

Well I found the following contradictions in testimony of
(sic) Mr. Haines. On June 9th ...

BY THE HONORABLE JUDGE FRASER MARTIN, J.S.C.:

Sorry, on?

BY THE ACCUSED:

June 9th, in the afternoon, in responding (sic) to one of
my question, he said:

"I do not remember Dr. McKenzie reaction (sic)
when I reported to her that threat to shoot
Sankar but I do remember Dr. McKenzie reaction
when I reported to you that you told me that
you were going to shoot rector and take
hostages and you had a gun to do so."

This is transcript. On June 10th in the afternoon, when
I asked him what was reaction of Dr. McKenzie, he said "I
don't remember".

About the meeting last Friday, you asked me where did he
testify that there was such a meeting. I found the place.
It is June 10th about twelve fifteen (12 h 15), side 3.
I do not have time on my tape but it is very close to ad-
journment for lunch.

About North America, from the very beginning, two contra-
dictory statements. First of all, he remembered that dean
or no dean, then he didn't remember, then it was no lon-
ger dean, it was Sankar. Then it was no longer Sankar, it
was two (2) Sankars and as far as Sankar is concerned,
his testimony was definitely contradictory to common
sense because Seshadri Sankar couldn't possibly complain
to him on the authorship of papers. I never published
anything with him.

March 20th, in his memo, July 1992, he said I threatened
in presence of him and Dr. McKenzie, something about
North America, bla bla bla. When during examination, he

was asked on several occasions what threat was made in presence of him and Dr. McKenzie. He said "I don't remember."

Then the question is how on earth could he put in his memo in July 1992 if now he says he doesn't remember, he has no record of anything to support it. Then he ... for some reason, he remembered or there was a record for that and if you wish, I can continue the list of inconsistencies.

When he was asked on February 7th who I threatened to kill, it was Sankar, then both Sankars, then I asked him for additional threats and he said there were additional names between February 7th and March 28th. Then he changed the whole story. All threats were made on March 7th so the whole testimony is total fake of memory. The witness clearly hiding (sic) information, evading questions and behaves in classical adverse witness way.

And also record shows that each time the witness is in a difficult position, that crown immediately raises the objection as to cross-examination and ... and objection is maintained.

This clearly hampers my defence. I believe that all these facts are more than sufficient to declare witness adverse and allow me to cross-examine him at large.

BY THE COURT:

You're finished?

BY THE ACCUSED:

With this subject, yes.

BY THE COURT:

What have you to say, Mr. Lecours? Anything?

BY MAITRE JEAN LECOURES

ATTORNEY FOR THE CROWN:

I think, My Lord, you already ruled that in your own mind, you believe this witness is testifying in good faith. That's the ... that's the criterion, that's your discretion, not Fabrikant's discretion. Maybe this is material for later argumentation but up to now, I think that there is nothing to show that this witness is adverse.

BY THE ACCUSED:

Well up to now, it hampers my questioning of the witness. This is the point. I could argue later, yes, but I'm still not allowed to go as deep as I need to go. This is very important witness because he seems to be the one who proliferated all the rumors in the university which eventually led to tragid events of ... of August 24th and I need to go to the bottom as to what happened, how it happened, who did it, how it has been done, all the details of that. It's extremely important for my defence.

BY THE COURT:

I should be extremely surprised if after two and three days of examination, that there did not emerge in a witness's testimony a number of contradictions.

I should be extremely surprised if what one witness says meshed completely with what another witness said. In fact, if I were to find that what a witness said meshed perfectly with what another witness said or what a whole series of other witnesses said, I in my own mind anyway would have reason to believe that the testimonies had possibly been discussed or rehearsed. You have spent all of the time that this witness has been

on the stand moving back and forth between one date to another date, what person he spoke to, when he spoke to him, what he said on that particular day and you have succeeded in importing into the testimony of the witness a certain amount of confusion.

The jury are surely sensitive to the distinction that I have attempted to draw from the beginning, that the question of their appreciation, of the value of this witness's testimony, their assessment of this witness's recollection, the amount of reliance they may wish to place on this witness is something for them to decide, not I, but it is for me to decide whether a witness is evading questions, not whether a witness is telling the truth or whether the witness isn't telling the truth but whether the witness is evading questions and is not desirous of answering them.

If the witness contradicts himself, depending on the nature of the contradiction, that is something that the jury will in due time assess in attempting to see how much value they place in the testimony of the witness and in this particular instance, insofar as it may be pertinent, the question of whether these threats were in fact made or whether they weren't, insofar as it may be pertinent.

I'm not ... I'm not inclined to change my position one bit on the basis of what you've said and I'm sick and tired of these requests being repeated every three minutes.

The witness, as far as I'm concerned, is a witness that you have called. He's not a witness who is a hostile witness. He's not a witness that you're going to have permission to cross-examine at large and if you persist in cross-examining the witness, you will be stopped. If you persist in declining to examine him as you properly may, in a proper fashion, then I'll have no choice but to consider putting an end to the witness's testimony and I warn you in advance. So let's proceed.

BY THE ACCUSED:

Well there is one more thing which I would like to bring to your attention.

BY THE COURT:

I would prefer that you continued your examination of the witness. I really ...

BY THE ACCUSED:

It's just one minute and it is important before I continue because it ... it weighs on this. It's important now.

BY THE COURT:

Why did you not bring it to my attention before?

BY THE ACCUSED:

Because this is another question.

BY THE COURT:

I've had enough. You ... you put your questions.

BY THE ACCUSED:

Before, because I didn't have this material.

BY THE COURT:

Put your questions, Mr. Fabrikant, to the witness now.

BY THE ACCUSED:

It is important to ...

BY THE COURT:

Mr. Fabrikant, put your questions to the witness now.

BY THE ACCUSED:

Well we ended by not finding out whether there was meeting with Barnaby, McKenzie and Haines or there was no meeting.

QYou testified on June 10th that there was such meeting. Do you recall that?

AI reported to both Dr. McKenzie and to Rolland Barnaby the results of the conversation that I had with Dr. Fabrikant of March 28th, My Lord.

QSo was there meeting between you, McKenzie and Barbaby? You didn't answer my question.

AI can't ...

QWas there such a meeting?

AI can't remember the date or the time of meeting with them to make the report but I would have made the report almost immediately after the incident on March 28th, My Lord. It may have been made over the telephone initially or in person. That I do not remember.

BY THE COURT:

QDid I recall you to say that you had in your diary a posted note for the 22nd or the 23rd of March?

AOK, My Lord, I was referring initially to my answers to that event of March 28th, so now to the 22nd? I have no ... I have here March 23rd, My Lord, Brendon, Barnaby, his telephone number, that's all I have.

BY THE ACCUSED:

Well he didn't answer my question.

QDid you or didn't you have a meeting with them?

BY THE COURT:

He told you he couldn't recall whether there was a meeting or whether it was discussed over the telephone, OK. Pass on.

BY THE ACCUSED:

It's not OK, on June 10th, he said there was a meeting, the three of them in his office. You want to play it?

ADo I answer My Lord?

BY THE COURT:

Answer.

AI would have been making a good guess at that stage that I met with them, but I cannot actually remember the actual physical meeting, My Lord.

BY THE COURT:

Well don't guess please.

AThank you. So I do not actually remember how I communicated with them. Either in person or by telephone or My Lord, both.

BY THE ACCUSED:

QDo you have any medical condition for your memory?

BY THE COURT:

The question is sarcastic. It's disallowed.

BY THE ACCUSED:

It's not sarcastic, it's very serious.

BY THE COURT:

The question is ... the question is disallowed.

BY THE ACCUSED:

Because if he has ...

BY THE COURT:

The question is disallowed.

BY THE ACCUSED:

QSo whether it was in person or on the telephone, when did it take place? Before March 28th or after March 28th?

AWhich incident is that, My Lord. I don't know when he refers to "it", I don't know what it is, My Lord.
QWell on June 10th, you testified that there was a meeting between you, McKenzie and Barnaby to discuss situation and for them to decide whether any security measure need to be taken.

Now you recanted that it might not have been the meeting but just the phone conversation. Regardless what it was, could you please place the date. Was it before March 28th or after March 28th?

AIf he's to talk about the security of my office, My Lord, the ... the panic button, I would have had a discussion with Mr. Barnaby and Dr. McKenzie prior to the ... Oh, I remember. There was a meeting that I had with Dr. Fabrikant. I would have to check my notes to find that now, the date of that meeting, but I do ... I think I'd have to look at my notes, My Lord. May I?

BY THE COURT:

Look at your notes then.

AOK. Yes, the ... the panic button would have been installed before the meeting that I had with Dr. Fabrikant on the 28th of March at four o'clock (16 h 00).

BY THE ACCUSED:

QWell how do you know that?

ABecause I remember that the ... the machine, the panic button was installed for one meeting that I had with Dr. Fabrikant. It could have been installed in fact that morning or the week before, but I know it was in place at that meeting on March 28th.

QBetween previous ... in previous testimony, you said you never discussed any specific security measures with Barnaby. Now you're saying that you discussed installation of panic button and it was indeed installed prior to March 28th. Could you reconcile those two statements?

AShould I answer, My Lord?

BY THE COURT:

Well yes.

AYes, all right. I ... I discussed and I remember saying in this court that I did not discuss other security arrangements. The only arrangement that I discussed with Mr. Barnaby and Dr. McKenzie were those that pertained to my office. I did not discuss the security arrangements about having a guard placed outside my house or a guard following you. I did not discuss those.

BY THE ACCUSED:

QNo, that was not your testimony. You said that you never ...

BY THE COURT:

Stop arguing with the witness.

BY THE ACCUSED:

Well I'm not arguing.

BY THE COURT:

Yes you are.

BY THE CROWN:

You've got his explanation, My Lord.

BY THE COURT:

Yes.

BY THE ACCUSED:

OK.

BY THE COURT:

Yes.

BY THE ACCUSED:

QDo you recall that your actual statement was that you never discussed any security measures?

AI remember being clear about what I discussed, what security I did discuss, what security I did not discuss.

QOK. Can we play it, his previous testimony?

BY THE COURT:

We will ... we will continue. If we go on like this, we'll be here until Christmas. You're cross-examining the witness. Stop cross-examining the witness and get on with your examination.

BY THE ACCUSED:

It is not ...

BY THE COURT:

Otherwise I will stop it.

BY THE ACCUSED:

It is not my fault that ... if he contradicted himself.

BY THE COURT:

Would you please continue and put your questions.

BY THE ACCUSED:

Well I asked questions, he doesn't respond.

QNow could you indicate in whatever notes you have what exactly triggered your memory now in terms of panic button? Is there any indication in agenda or notes about panic button?

AI answered that question and I'm mentioning the panic button in my testimony of last week, My Lord.

QNo, you didn't know when it was installed then. Now you know when. So what triggered your memory now, that now you do know when it happened?

BY THE COURT:

You're cross-examining the witness again. Disallowed.

BY THE ACCUSED:

All right.

QDo you recall, on several occasions, when you were asked what kind of threats was uttered (sic) in presence of yourself and McKenzie and your answer was "I don't remember". Do you recall such testimony?

BY THE COURT:

Cross-examination. Disallowed.

BY THE ACCUSED:

It's not cross ... I'm just asking if he ...

BY THE COURT:

It is of the nature of cross-examination. That's where you're going. Ask the witness about what you wish to ask the witness about but let's leave his prior testimony alone and let's get on with this.

BY THE ACCUSED:

Quite opposite. Section 9.1 allows ...

BY THE COURT:

Let's get on with this.

BY THE ACCUSED:

... allows me to remind witness his prior testimony.

BY THE COURT:

Let's get on with this. Put your next question.

BY THE ACCUSED:

What do you mean, get on? Section 9 is still there.

BY THE COURT:

Pass on to the next subject.

BY THE ACCUSED:

You don't allow me to ask...

BY THE COURT:

No, I don't allow you to cross-examine the witness.

BY THE ACCUSED:

I'm not cross-examining.

BY THE COURT:

Yes, you are.

BY THE ACCUSED:

I'm just reminding previous statement.

BY THE COURT:

You are ...

BY THE ACCUSED:

This is in agreement with section.

BY THE COURT:

You are asking questions in the neighborhood of cross-examination and that last question is disallowed.

BY THE ACCUSED:

How can I remind the witness previous statement?

BY THE COURT:

Let's get on with what the witness has to say about the events, whatever they are.

BY THE ACCUSED:

It is not ...

BY THE COURT:

And let's stop continually niggling over what he said at three fifteen and what he might have said at three forty-two.

BY THE ACCUSED:

It is important. Those are important events.

BY THE COURT:

We have had to (inaud.) all we need to have on those particular events.

BY THE ACCUSED:

I don't get it, we have to what?

BY THE COURT:

We have had enough on those particular events.

Move on to another event.

BY THE ACCUSED:

But it is not clear to me what happened. It is clear to you?

BY THE COURT:

Well if it's not clear to you, I ... I'm relatively satisfied that it's clear to everybody else so move ahead.

BY THE ACCUSED:

OK, you forbid me to examine him ...

BY THE COURT:

Yes.

BY THE ACCUSED:

... as to his previous statement?

BY THE COURT:

Yes.

BY THE ACCUSED:

All right.

QNow how do reconcile the statement of North America which was originally, according to you, made to the dean, then to one Sankar, then to both?

BY THE CROWN:

It's still a cross-examination, My Lord.

BY THE COURT:

Yes it is. Objection maintained.

BY THE ACCUSED:

I'm reminding his previous statement.

BY THE COURT:

Objection maintained.

BY THE ACCUSED:

So you abolish section 9 right now? Is my understanding

...

BY THE COURT:

Not at all, Mr. Fabrikant.

BY THE ACCUSED:

Well if not, then I'm allowed to remind him his previous statement. I'm allowed to do so.

BY THE COURT:

Mr. Fabrikant, go on with your next question.

BY THE COURT:

Well he didn't answer my first one. I'm reminding his previous statement.

BY THE COURT:

Go on with your next question. The last objection was maintained.

BY THE ACCUSED:

So you abolish section 9 then.

BY THE COURT:

Everybody has heard what the witness has previously said and what the witness is saying now. It's not a situation that falls within the purview of section 9.

BY THE ACCUSED:

Well not everybody remembers what he said before.

BY THE COURT:

Continue. The last objection was maintained.

BY THE ACCUSED:

QHow many discussions did you have with Mr. Barnaby, McKenzie and yourself concerning security?

AI remember having the one discussion dealing with the ...

the setting up of the equipment in my office and then I would have had some discussions with Mr. Barnaby about where and the positioning of the button and maybe even with another security guard. I think ... I've forgotten his last name, I think his name is John, about what arrangement would be made in case something went wrong, what would I signal, what would the signal mean if I pressed the button and we had discussions and some sort of coordination, My Lord between I think it was John and maybe Mr. Barnaby. I can't remember that but certainly with John about what signal would mean what.

QWell if by that time, I didn't threaten rector yet, why did you think that you needed the panic button?

AI was apprehensive. There was the ... several, prior to that event, implied threats that I had heard of and ... and the statement that you had said to me as well about shooting them, in my office.

QWell that was February 7th, was it?

AThat was earlier, yes.

QWell was it February 7th?

AMay I check my notes, My Lord?

BY THE COURT:

Yes.

AThat is February 7th, My Lord, yes.

BY THE ACCUSED:

QSo when did you become apprehensive then? Was it February 7th?

AI was apprehensive the first time I had a meeting with you.

QOK. Now February 8th, you meet Seshadri Sankar. He tells you about threats I allegedly made to him. You are apprehensive and you didn't ask any questions. Could you explain that?

BY THE COURT:

No, that's cross-examination and that's disallowed.

BY THE ACCUSED:

Oh yes.

BY THE COURT:

Yes.

BY THE ACCUSED:

You are too emotional.

BY THE COURT:

I have not ruled the witness hostile and ...

BY THE ACCUSED:

It's all right.

BY THE COURT:

... you may not cross-examine the witness.

BY THE ACCUSED:

Why are you so nervous? It's all right.

BY THE COURT:

Good, pass on to something else.

BY THE ACCUSED:

Sure, just don't be that nervous.

QOK, then you met on February 15th Swamy and he repeated again threats and again you didn't ask him any questions while you were apprehensive. Could you explain why?

BY THE COURT:

Cross-examination, disallowed.

BY THE ACCUSED:

QAnd do you recall the date of meeting T.S. Sankar?

AI do not remember the date that I met T.S. Sankar, My Lord.

QOK, just with accuracy of a month, was it in February?

A No. It would have been after I met Dean Swamy so that's after if you ... you said I met Dean Swamy on February the 15th so it would be after that date.

BY THE COURT:

QBut you're the one I presume that knows when you met Dean Swamy?

AOK, I'll have to check. He said that, I'll have to check my notes.

QWell check.

A Yes, Dean Swamy at ten o'clock (10 h 00) on the 15th of February so it would have been after I met with Dean Swamy and so it would have been in the last two (2) weeks or early March that I met with T.S. Sankar.

BY THE ACCUSED:

QAnd he again repeated to you my alleged threats, correct?

A Yes, My Lord.

QDo you remember anything else from the conversation with him?

AI remember us discussing the question of fraudulent use of authorship on papers and I asked Dr. Sankar if he was aware of these statements and Dr. Sankar said yes, he was

aware of them. He said they were not true.

Q So you discussed that with both Sankars and both Sankars said they contributed to my papers, correct?

A No, I did not say that both Sankars ...

BY THE CROWN:

These subjects were covered before, My Lord.

BY THE ACCUSED:

Exactly. I'm just reminding ...

BY THE CROWN:

The accused is taking back the same subjects every day.

BY THE COURT:

Yes.

BY THE ACCUSED:

I'm reminding him of his previous statements.

BY THE COURT:

Then you're cross-examining him and that's disallowed and it's got nothing to do with section 9.

BY THE ACCUSED:

Well reminding ...

BY THE COURT:

He's giving one testimony that is a continual testimony to all intents and purposes.

BY THE ACCUSED:

Well reminding of previous statements is not cross-examination, is it?

BY THE COURT:

Yes, in the ... in the manner in which you're doing it, it is.

BY THE ACCUSED:

Well I would like to meet Mr. Belleau and ask him what manner can I use to ask about previous statements so it be legal. Would you allow me thirty seconds?

BY THE COURT:

I'll adjourn if you wish.

BY THE ACCUSED:

I don't need for adjournment.

BY THE COURT:

Oh, Mr. Belleau declines to have these discussions with you in the presence of everybody and I agree with him. So we'll adjourn for ten minutes ladies and gentlemen.

BY THE ACCUSED:

There's no need for ten minutes.

BY THE COURT:

I'm correct Mr. Belleau that you ...

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

BY THE CROWN:

Can I address the Court?

BY THE COURT:

Certainly.

BY THE CROWN:

I think My Lord, if I can make a suggestion, I know you're very lenient with the leading questions of the accused but if you block leading questions, all the other problems would be solved at the same time.

You know, when it's your own witness, you're not entitled to ... the only type of question you can ask is what

happened, what did you see, what did you hear and period.
I would say ninety ... ninety-nine percent of the questions of Mr. Fabrikant are leading.

If you remember, when I was in chief, I never asked any leading questions. I was bound by the rules and the witnesses were in the box and I said what did you see, what did you hear, what happened next and period. He never asks this type of question himself. After four (4) days in ... in the box, I think we don't progress very much.

BY THE COURT:

We're not progressing at all, there's no question about that.

BY THE CROWN:

And the same questions are asked every day and it's totally normal there are these small contradictions and then he nails the witness with the small contradiction and he makes a summation in accordance with section 9 and then you rule and then ...

BY THE COURT:

Section 9 has nothing to do with it in any event.

BY THE CROWN:

I know but ...

BY THE COURT:

Absolutely nothing.

BY THE CROWN:

... he insults you and then you said move on and I think a way to block the whole thing would be to forbid leading questions.

BY THE COURT:

You may be right, you may be right. There's absolutely no advantage in ... to the progress of the case in granting that accommodation that has been granted so far.

BY THE CROWN:

I respectfully submit that to you, My Lord.

BY THE COURT:

Yes, I think you're right.

BY THE ACCUSED:

No, but it's funny.

BY THE COURT:

Do you think it's funny?

BY THE ACCUSED:

Yes, would you allow me to respond.

BY THE COURT:

Do you think it's funny?

BY THE ACCUSED:

Because you didn't even ask for my response.

BY THE COURT:

I really don't care to hear your response, Mr. Fabrikant.

BY THE ACCUSED:

You should have, you should have asked for my response.

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ARE PRESENT

GRENDON HAINES

(Under the same oath)

BY THE ACCUSED:

Well as a result of the consultation, I have discovered two things. First of all, the jury should not be asked to leave except at request or with consent of defence and each time when we're discussing admissibility of certain evidence, you exclude the jury and I repeatedly mentioned that I'm totally against it.

BY THE COURT:

I will ... I will decide when to exclude the jury and when not.

BY THE ACCUSED:

Well it says here it should be done with consent of the defence.

BY THE COURT:

I will decide when to ask the jury to go out and when not.

BY THE ACCUSED:

So you just ...

BY THE COURT:

Now would you care to go ahead with your ...

BY THE ACCUSED:

No, I haven't finished yet. The second thing which is important here also, that:

"Admissibility evidence need not be determined by testimony given in advance and in absence of jury."

And you practiced it again several times which I believe you are abusing the process and you're factually trying to hide from the jury all the lawlessness, what is being done here and yet another example, what I have found, it is submitted that:

"Where the witness has no independent recollection, the memorandum should be entered as an exhibit."

Certainly if the jury have the right to see them, they should be entered as exhibits and are in substance in evidence and this is what you've forbidden to do me (sic) yesterday and again this is lawlessness.

BY THE COURT:

That's your opinion.

BY THE ACCUSED:

Well this is authority. I believe it is McWilliams which says that and you're abusing all this procedure and in addition to all that, each time witness is in difficulty you preventing (sic) me from asking questions and this creates reasonable apprehension of bias on your side and therefore I hereby ask you to recuse yourself from the case.

BY THE COURT:

I refuse.

BY THE ACCUSED:

Thank you.

BY THE COURT:

Now would you go ahead with your ... your examination of this witness.

BY THE ACCUSED:

Yes, I invoke section 9.1 and I want ...

BY THE COURT:

In connection with what?

BY THE ACCUSED:

Well I want to discuss all the inconsistencies of this witness, according to Milgaard rule. That's what Mr. Belleau told me.

BY THE COURT:

This witness has testified during this trial. That is not another testimony given on another occasion or anything else so that the ...

BY THE ACCUSED:

It is ...

BY THE COURT:

Whatever the inconsistencies are, if there are any, the jury has heard them. The jury has had a chance to appreciate them and will appreciate them along with the rest of this testimony. So section 9.1 or 9.2 has absolutely no application to the ... the point that you're raising.

BY THE ACCUSED:

Well this is not what Mr. Belleau told me. That previous statement is previous statement, regardless where it has been done five (5) minutes ago or a year ago. It's previous statement.

BY THE COURT:

Well that may well be ... that may well be Mr. Belleau's opinion but I can tell you that a previous statement is ... is exactly that, a previous statement and ... and the section uses the ... the words "on another occasion".

BY THE ACCUSED:

Yes, so it was yesterday.

BY THE COURT:

No, that was here, you see.

BY THE ACCUSED:

Anyway, you express a lot of lawlessness, one more lawlessness wouldn't change very much so you ...

BY THE COURT:

"... at other times, a statement inconsistent with his present testimony."

His present testimony is what he gives on Thursday, on Friday, on Monday, on wherever. We're not ... a previous statement is a previous statement given on another occasion.

Otherwise it makes no sense. The jury have heard the previous statement. They're able to assess it.

BY THE ACCUSED:

Well, but you don't allow me to question this.

BY THE COURT:

You're ... you're not going to cross-examine the witness and you're not going to lead the witness.

BY THE ACCUSED:

Of course, it is witness so favorable to me that I can just construct. About leading questions, again I can read it to you if you wish about leading questions.

BY THE COURT:

You have ... you have had and you have enjoyed a certain amount of latitude thus far and ... and you abuse it every time that you ... that that latitude is not objected to so I have to conclude that from now on, it will

objected to and if it's objected to, there will be rulings.

BY THE ACCUSED:

So there is no point to read to you what authority says here, just you ignore all those.

BY THE COURT:

You have been given ...

BY THE ACCUSED:

All those rules, you just ignore.

BY THE COURT:

You have been given all sorts of latitude within my discretion. It doesn't matter what you're given now.

BY THE ACCUSED:

All right, all right, fine with me.

QOK, let's go to the year then 1990. I'm referring to your file B. You seem to have a meeting on January 17th. Could ... could you tell who was present and what was discussed?

AThis is a meeting on January 17th 1990 at four o'clock (16 h 00) in the afternoon, My Lord with Dr. Sheinin, the vice-rector, academic.

QYes. What was the purpose of that meeting?

AThe purpose of the meeting was the following: one, Dr. Fabrikant had contacted me prior to January 17th but a few days or that day or a couple of days before saying that he had sent a letter to Dr. Sheinin and he had not had a response and he wanted me to intervene, to see if I could get a response for him.

I told him that that's not my job, to act as a messenger.

He pushed and pressured me to speak to Dr. Sheinin. I said I cannot guarantee that. I then contacted Dr. Sheinin's office to set up an appointment with her and met with her on the 17th to find out from her whether she - because this ... she was new now and this was the first time I was meeting with her on ... to talk to her about Dr. Fabrikant and I told her that he had telephoned me and had requested a response to his letter and that I wanted to know from her what role, if any, she wanted me to play.

I told her that my job was not to be a messenger, not to pass messages back and forth, that Dr. Fabrikant was insisting that I use my office to try and get her to respond to his letter. She wanted to know more background as to why I was involved with Dr. Fabrikant.

So I spoke to her about what I call two issues: one of content, what was his message that he was wanting to deliver, that is a response to his letter but also his style, of how he goes about requesting information from people and that he had an aggressive style and that he had used language in the past that had the impact of intimidating people and used implied threats such as "In North America, when people want something, they do things they shoot people".

She wanted to know more. I told her that I had dealt with Catherine McKenzie with the issue and that she might know more, have more information and that ... that we had met with Dr. Warren Steiner, the psychiatrist, to find out from him an assessment of the situation.

So I in effect brought her up to date on the information that I knew up to that time on the things that Dr. Fabri-

kant had allegedly said to others and had said to me, My Lord and to see if there was any role, a further role for me to play and it was my understanding that I had no further role to play and that she would be responding to Dr. Fabrikant in due course in writing, that she would write him a letter.

I have, My Lord, additional notes in my file. If you would like, I could look at them to see if they could refresh my memory even further as to what was discussed at that meeting with Dr. Sheinin.

BY THE COURT:

I would wait for the next question.

AThank you, My Lord.

BY THE ACCUSED:

QWould you please serve your memory and tell us more.

AYes. One of the things I raised with her was the one discussion that I had with Catherine McKenzie and Warren Steiner, the psychiatrist, the year before or the ... nearly the year before in 1989, in which ... well there is a statement here, something to the effect: the University of Montreal incident was not enough of an ... of an incident to cause Dr. Fabrikant to ... to act out in a way.

I'm ... again I'm not sure what that means, My Lord. All I can say ...

BY THE COURT:

QBut they're your notes? Do they ... do they refresh your memory or do they not?

AThey are, I believe ... what I do remember about the statement, My Lord, is that we were wondering if that was enough of an incident to cause Dr. Fabrikant to act in what they call a copycat way at Concordia University and Dr. Steiner had told us, no, it was not enough, that he had said in fact that he would probably need another type of trigger, I've got "need another trigger", another event that might cause Dr. Fabrikant to overreact and that the only way to find out is eventually to call his bluff and if he was to be denied promotion or review, to do it and not to be intimidated into not doing what the university thinks should be done.

That's all I have here, My Lord.

BY THE ACCUSED:

QCould you explain what exactly you wanted to call bluff?

I understand that during conversation with you, did I make any demands of any kind?

AI ... you demanded a response to your letter to Dr. Sheinin.

QOK, when ... when letter was sent?

AWhen letter you've sent?

QYes.

AThis is a letter I think you've sent in December of 1989.

QOK, so a month has passed. I didn't receive any response.

Do you find it natural that person asks to be responded?

AI think it is reasonable to expect a response.

QSo ...

AWithin a month.

QWhat do you call then bluff or anything? Could you explain the word bluff then? Vice-rector didn't respond for the whole month. A person asked OK, would you kindly help me to get a response and you call this bluff?

AMaybe I should be more precise, My Lord. When ... this is

not ... this was the recommendation from Dr. Warren ... the discussion, sorry, with Dr. Warren Steiner, that I was reporting back to Dr. Sheinin.

BY THE COURT:

QThat was I thought you said, yes, that you had reported to Dr. Sheinin a discussion you had had with Steiner?

AYes, My Lord.

QIn which ... in which this figured?

AYes, My Lord.

BY THE ACCUSED:

QWell still, what it has to do with my request to get an answer to my letter? Why was it such ... such an alarm that you conveyed meeting, vice-rector, you and her executive assistant? A person is asking to get response. Within month, he didn't get response. He asked to get response. What is so alarming in that?

AI do not find anything alarming in requesting a response to a letter in a timely fashion, My Lord.

QSo what was the need for the whole convocation?

ADr. Sheinin, My Lord, had asked me for background material as to what had happened in the past and I included that information and some of the things and information that I'd gathered from events that had happened in the past.

QStill, wouldn't be more natural just to respond to the letter.

BY THE CROWN:

This is argumentation and cross-examination My Lord.

BY THE COURT:

This is ... yes. Objection maintained.

BY THE ACCUSED:

QOK, did you at that meeting, give her advice just to respond to the letter?

BY THE CROWN:

This is leading.

BY THE COURT:

Yes. Objection maintained.

BY THE ACCUSED:

Fine.

QDid you give to vice-rector any advice with respect to my request?

AI remember telling the vice-rector that I thought it was appropriate that a timely response be given to the letter, that it was a lengthy time and that it was ... it was a little longer than what should normally take place in my opinion. I did tell her that, My Lord.

QAnd what did she say?

AShe agreed and she said "I'm at fault and I should be responding faster but I have a lot of work to do. I'm still catching up, I'm still ... " she had just arrived I think in September of 1989 and she was overwhelmed with all the ... well overwhelmed, that's my own personal word but she had a lot of work to do My Lord and she was intending to get around to it.

QOK, what ... did you tell her that I threatened to kill rector and ...

BY THE CROWN:

This is leading, My Lord.

BY THE COURT:

Yes, objection maintained.

BY THE ACCUSED:

QOK, which specific threats did you mention to ...

BY THE CROWN:

This is still leading.

BY THE COURT:

Objection maintained.

BY THE ACCUSED:

This is not leading.

BY THE COURT:

This is leading. What did you tell the rector is the only question you can... you can ask.

BY THE ACCUSED:

Well I cannot ask if he's talked about threats?

BY THE COURT:

No, not ... not in the manner in which you asked the last question.

BY THE ACCUSED:

QOK, any conversation about threats allegedly made by me?

AI told Dr. Sheinin, My Lord, that ... that it had been reported to me that one, Dr. Fabrikant had said in the university to Drs. Sankars, both and to others, Osman, that "Is this the way one does things in North America to be able to get what one wants". Two, I told her that Dr. Fabrikant had said to me that he would shoot or kill, I can't remember which, it's in my notes, My Lord, but ...

BY THE COURT:

Well then if you need to refresh your memory with your notes, refresh your memory.

AOK.

QNow this is what you told Dr. Sheinin? That's what ...

AYes, My Lord. I would have told her that Dr. Fabrikant said that he would shoot Dr. Sankar and that it's easy for him to get a gun and shoot them, meaning others than just the two Sankars and I would have told her thirdly that in my presence, he told me that he intended ... that he told me that he wanted ... he knew the layout of the room numbers of Bishop Court and wanted me to confirm those locations and that he ... to get his way, he would take the rector hostage and shoot him, My Lord.

QOK, and what was her reaction?

AHer reaction, My Lord is, "This is the first I've heard of this." I know she was horrified and she said "What am ... what am I involved in here?" and then she said "You can tell him that he will be getting a letter from me in due course and his questions will be answered in my letter to him."

QDid she ask you why you didn't call police at that time?

BY THE CROWN:

This is leading, argumentative and cross-examination.

BY THE COURT:

Objection maintained.

BY THE ACCUSED:

QOK, was a question of police intervention discussed?

BY THE CROWN:

Still leading, My Lord.

BY THE ACCUSED:

Well this is normal question.

BY THE COURT:

The question is marginal. I'll permit that one.

ACould I hear the question again, My Lord.

QWas the question of police intervention discussed?

AI do not remember discussing the question of police intervention with her, My Lord.

BY THE ACCUSED:

QDid you call police in 1989?

A No, My Lord.

QCould you explain why didn't you?

BY THE CROWN:

This is cross-examination.

BY THE COURT:

Absolutely, objection maintained.

BY THE ACCUSED:

QDid you take the threats seriously?

AI felt it's not my duty to either ... I felt it was my duty to hear what you said and to report verbatim what you had told me to the authorities of the university, specifically to the senior officer of the university who is responsible for security.

QDid you contact police after August 24th 1992?

A No, My Lord, I did not.

QCould you explain why?

BY THE COURT:

No.

BY THE CROWN:

Again My Lord.

BY THE COURT:

Yes. Objection maintained.

BY THE ACCUSED:

Well this is a very good question. This is unfair to object ... to say ...

BY THE COURT:

You may not ask that question.

BY THE ACCUSED:

QAfter four people were killed, did you feel obligated to share your information with police?

BY THE COURT:

That question may not be asked either.

BY THE ACCUSED:

What? It is cross-examination? It is what?

BY THE COURT:

Pardon?

BY THE ACCUSED:

Why? Why this question cannot be asked?

BY THE COURT:

The question is of absolutely no pertinence.

BY THE ACCUSED:

Well let me explain the pertinence.

BY THE COURT:

I'm not here to explain anything to you, Mr. Fabrikant.

BY THE ACCUSED:

No, I ...

BY THE COURT:

The question is disallowed.

BY THE ACCUSED:

You should ask my reason first before disallowing.

BY THE COURT:

Mr. Fabrikant, it is patently obvious that the question as to the witness's conduct after the 24th of August has no bearing upon what transpired on that date.

BY THE ACCUSED:

It has bearing on his credibility. Very much so.

BY THE COURT:

The question is disallowed. You are not allowed to impeach his credibility.

BY THE ACCUSED:

I'm not allowed to impeach his credibility by general evidence of that character but I'm allowed to ask questions to show ...

BY THE COURT:

Your question ...

BY THE ACCUSED:

... to the jury that he is not believable witness.

BY THE COURT:

Your question is disallowed.

BY THE ACCUSED:

Well that's another ...

BY THE COURT:

You'll have to find another one.

BY THE ACCUSED:

That's another thing that you just don't allow that but I am allowed to attack my own witness. I'm allowed.

All right.

QGo ... go please to the next statement, January 23rd.

BY THE COURT:

What year?

BY THE ACCUSED:

1990, we are now in 1990. Is he allowed to read the statement?

BY THE COURT:

I have no idea what you're talking about.

BY THE ACCUSED:

Well it is his note again of telephone conversation he allegedly had with me.

BY THE COURT:

Well then you will ask him questions about his conversation. You will ask him legal questions about his conversation and if he's got a note that was made contemporaneously, he may if he needs to refresh his memory with it.

BY THE ACCUSED:

Hum, hum.

BY THE COURT:

He may not read the note.

BY THE ACCUSED:

All right.

BY THE COURT:

The note may not serve as his testimony.

BY THE ACCUSED:

QOK, so I called you later on, did I?

AYes, My Lord.

QWhat date was it?

AOn January 23rd, My Lord.

QAnd what did I ask you?

AYou asked me a question I still to date do not understand. I'd have to read the question My Lord.

BY THE ACCUSED:

Is witness ever ... you disallowed me to ask question about medical condition of his memory but if he doesn't have any medical condition, then he's obviously faking because only person very very sick, I believe everybody probably know by heart after three (3) days of testimony many things which he still needs to consult.

There might be two explanations for that. One, his memory is sick and then well he should be excused. Another, it is so faked, he's so scared to say something different, that he needs each time to consult what is written there and if he doesn't have medical condition, then the second applies.

So my question was very good. You just disallowed that.

BY THE COURT:

Your question wasn't very good at all.

BY THE ACCUSED:

It was.

BY THE COURT:

QDid you ... did I take it that you didn't understand the question but you recorded it?

AYes My Lord.

QWould you refresh your memory from your notes and would you .. would you state what that question was.

ABut there are several questions, My Lord, but the first question deals with: he wanted when I'd seen the vice-rector, academic. Did I see her before Maureen Habib had telephoned him last week or after? I told him that I saw Dr. Sheinin the next day.

BY THE ACCUSED:

QWell what ... what about answer to my letter, effectively that was purpose of my call, was it?

AYou wanted to know if ... when you would be getting the answer to your letter and what I remember, My Lord, was that although this is in my notes, is that I reported back to Dr. Sheinin that there were some secretarial problems within the office of the vice-rector and two of the staff people there had relatives who had died very very recently that week or were at funeral services and they were away. I was explaining to Dr. Fabrikant the rationale in other words, for ... part of the rationale for the delay in the response from Dr. Sheinin and that in due course, he would expect a response from Dr. Sheinin and that he could continue having a direct dialogue between her and Dr. Sheinin in writing but not through me, My Lord.

Now there may be again more things in my aide-memoire, in my note that might refresh my memory more about what took place on that telephone call with Dr. Fabrikant.

BY THE COURT:

Wait, wait for the question.

BY THE ACCUSED:

Well I would like the witness to testify from memory because there is a fake (sic) in this here and I want him to pronounce it from his memory.

BY THE COURT:

I have told you before that if the witness recorded notes, he may look at these notes to refresh his memory. Now if you have a question to ask the witness, ask the witness the question. I don't know what you want the witness to address.

BY THE ACCUSED:

Well you don't allow me to ask the proper question.

BY THE COURT:

You're not going to ask leading questions. If you ...

BY THE ACCUSED:

Yes, so actually you don't allow me to ask any questions right now. Any sensible questions now it is allowed.

BY THE COURT:

If you're not competent to put the questions, that is your problem.

BY THE ACCUSED:

I'm very competent.

BY THE COURT:

Good, then put them.

BY THE ACCUSED:

QNow could you tell to the jury how you tried to entrap me once again during that conversation?

A Dr. Fabrikant, when I responded about the illness of the secretaries, My Lord, said "Well that's not good enough. All she has to do is dictate the message to an acting secretary and they just type it up and it could be sent right away" and then he said "Things are getting out of hand" and then I said "Are you making another threat? Are you implying something when you say things are getting out of hand" and I then reminded him of what he had said to me about nine (9) months prior to that, I reminded him of him saying that ... about taking the rector hostage, knowing the location of the rooms and intending to shoot the rector and then he responded by saying "Well your memory, your recall of that event is different than mine. I deny in effect saying that to you, ever having said that to you" and then we proceeded on with the rest of the conversation which ended fairly quickly after that, I would imagine.

QNo, no, continue. What is in your m,moire? (sic) How is it written? I think it would better just to read it exactly as it is written.

BY THE COURT:

He will not read his aide-m,moire. You will put questions to him that are designed to bring out the facts that you wish to establish.

BY THE ACCUSED:

QWell here you said that ...

BY THE COURT:

No, and don't ... don't you say what he said.

BY THE ACCUSED:

OK.

BY THE COURT:

You put questions designed to bring out what you wish to establish.

BY THE ACCUSED:

Yes.

QAre the words in your aide-m,moire more precise than what you were saying now?

AThe general comments, I would think, are very compatible to what I'm saying now, but again there may be additional material there that may help me, my memory.

BY THE ACCUSED:

He doesn't answer my question.

QAre the words in your aide-m,moire more precise than your description now or they were also written in a loosely manner and did not really describe the content of the conversation?

BY THE COURT:

That's argument, so that won't ... that question won't work.

BY THE ACCUSED:

OK, then just first part of it?

BY THE COURT:

Well you got an answer to that. He said I think that they're every bit as precise as the answers I'm giving now except that there may be some things in my aide-m, -moire that ... that I haven't mentioned and that would refresh my memory.

BY THE ACCUSED:

Well compare ...

BY THE COURT:

Now if you want him then to read the aide-m,moire, but he's not going to answer questions in a vacuum. You've ... you have to put the question to him.

BY THE ACCUSED:

Don't you worry, I will.

QSo here, you said "Then he told me that things were getting out of hand and he wanted me to inform the rector". I told him "I would do so if that was a dangerous message". Is this the precise wording of what you told me?

A I see that as compatible to what I have said, My Lord.

QWell wasn't it obvious to you that phrase "out of hand" has nothing to do with dangerousness?

BY THE COURT:

Now you're cross-examining the witness. Disallowed.

BY THE ACCUSED:

All right.

QDo you think ... OK, no, did ... did your response smack of entrapment? (sic)

BY THE COURT:

Now you're leading the witness, if you're not cross-examining him. That won't work.

BY THE ACCUSED:

All right, you just don't allow me to question about it, fine.

BY THE COURT:

And I think at this point we'll ...

BY THE ACCUSED:

I think the jury will see how you behave.

BY THE COURT:

... take fifteen minutes.

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ARE PRESENT

GRENDON HAINES

(Under the same oath)

BY THE ACCUSED:

Now would it be appropriate at this time to file the letter in question to which I couldn't get an answer?

BY THE COURT:

I don't think this is the appropriate witness to file that letter through.

BY THE ACCUSED:

All right. It would just sound logical but if it is not, then it is not.

Then I believe it is appropriate witness to file the material which I gave him to prove fraud at department of mechanical engineering. Could you go to the end of file A and you will see the article and some material. No it's ... this is the one, yes. So I would like to file it.

BY THE CROWN:

It looks like it's written by ...

BY THE ACCUSED:

It's OK, many witnesses there and ...

BY THE CROWN:

... Mr. Fabrikant so the proper witness would be Mr. Fabrikant.

BY THE ACCUSED:

Well I gave it to him as proof ... to commentary (sic) proof of fraud at Concordia so I think .. well if it is necessary, I can go into the box and say yes, I gave it to him, but this is the proper time, because after he's gone, the material is gone.

BY THE CROWN:

That is completely irrelevant as far as I'm concerned.

BY THE COURT:

Yes.

BY THE CROWN:

You already ruled on this.

BY THE COURT:

Yes, it's ... first of all, it's totally irrelevant and secondly, this isn't the appropriate witness, so ...

BY THE ACCUSED:

Well ...

BY THE COURT:

... you may not produce it through this witness.

BY THE ACCUSED:

Who is the appropriate witness? Me? Well you want me again to consult with Mr. Belleau? We can save a lot of time if you just say who is the proper witness because I gave it to him to present it to the rector as proof of the fraud.

BY THE COURT:

It is secondly ...

BY THE ACCUSED:

So he's the appropriate witness.

BY THE COURT:

It is secondly irrelevant.

BY THE ACCUSED:

Well proof of fraud at Concordia which I presented is irrelevant?

BY THE COURT:

Yes.

BY THE ACCUSED:

How come?

BY THE COURT:

It's irrelevant.

BY THE ACCUSED:

So why is he relevant in the first place because all I ...

BY THE CROWN:

That's a very good question, My Lord.

BY THE ACCUSED:

Maybe nobody is relevant.

BY THE CROWN:

I don't think that this witness is relevant either.

BY THE ACCUSED:

Let us finish the defence and that's it. If all this stuff is irrelevant and you ignore all the law anyway, then it would be good idea just to stop everything and that's it. Trial is finished. How about that idea?

BY THE COURT:

Proof of fraud at Concordia is irrelevant.

BY THE ACCUSED:

It is relevant as much as it affected my state of mind.

BY THE COURT:

You may not ...

BY THE ACCUSED:

It is relevant, because this is the reason, this submission of this document was the reason of my future persecution so it is very relevant. Because of the document which I submitted to Mr. Brendon Haines, the next events were explained by this submission.

BY THE COURT:

You may ...

BY THE ACCUSED:

Because if it was not this submission probably the whole chain of events would be different.

BY THE COURT:

You have put into evidence the circumstances of your meeting with Mr. Haines. You have put into evidence the circumstances of ... the material or the matter that was discussed and that is as far as we're going. We are not getting into an analysis of fraud at Concordia University. So you ...

BY THE ACCUSED:

We don't need to get into analysis.

BY THE COURT:

You are not ...

BY THE ACCUSED:

I just want to ... this document was submitted to him as proof. I don't ask you to verify whether it was yes or no, but the fact that the document was submitted ...

BY THE COURT:

He said it was submitted. You don't need to encumber the record with that document. So your request to produce that document is refused.

BY THE ACCUSED:

Well I demonstrate ... at least I was ...

BY THE COURT:

I ruled.

BY THE ACCUSED:

OK, I want the jury to see the document of this.

BY THE COURT:

I ruled.

BY THE ACCUSED:

What?

BY THE COURT:

That you may not produce the document.

BY THE ACCUSED:

OK, but jury has the right to see it.

BY THE COURT:

I ruled that the document will not be produced. There-

fore the jury will not see the document.

BY THE ACCUSED:

No, you're wrong. Let me read it to you again, that even if document is not produced, but it was used in testimony jury has the right to see it. You want me to read it to you?

BY THE COURT:

I'm aware.

BY THE ACCUSED:

Are you aware of that?

BY THE COURT:

I'm aware.

BY THE ACCUSED:

So you just don't ... don't care about the law?

BY THE COURT:

It's not a question of I don't care about the law. In the circumstances of this case, that document has ... has no pertinence.

BY THE ACCUSED:

Well why? You're afraid the jury is going to see it?

BY THE COURT:

I'm not afraid of a thing, Mr. Fabrikant.

BY THE ACCUSED:

You don't ...

BY THE COURT:

I have told you ... I have told you: it is not being produced and it's not going before the jury and that ... there you are.

BY THE ACCUSED:

OK, then because I didn't ask any questions about this document. I thought that I could just produce it but I ... I still have the right to ask questions about the document, right.

BY THE COURT:

You will ask whatever questions you think you have a right to ask and these questions will be ruled on if there is any objection one by one.

BY THE ACCUSED:

I see.

BY THE CROWN:

I submit already, My Lord, that all the line of possible questions is irrelevant.

BY THE ACCUSED:

Isn't that nice! So I shouldn't even try?

BY THE COURT:

The question of fraud at Concordia, as I have said, is irrelevant, insofar as you had a meeting with Haines where you raised that question, he's testified as to that. Whatever possible effect that might have had on your mind, either then or later, is ... is something else that together with the other proof, I suppose you will ... you will put into ... into some form of submission but the document itself is not going into the record.

BY THE ACCUSED:

Well how then I'm going to illustrate if document is not there?

BY THE COURT:

I haven't the foggiest idea but the question of fraud at Concordia University is not pertinent.

BY THE ACCUSED:

Well as long as it affected my mind, it is pertinent, is

it?

BY THE COURT:

I have ruled. It is not pertinent.

BY THE ACCUSED:

All right, but I still can question him on the document?

BY THE COURT:

I have ruled it is not pertinent.

BY THE ACCUSED:

I don't understand. I can or I can't?

BY THE COURT:

I don't know what you're going to question on.

BY THE ACCUSED:

All right, so ...

BY THE COURT:

You ... you question him and we'll see.

BY THE ACCUSED:

That's right.

QSo I refer you to this document which you just took in your hands and do you recall under what circumstances and for what purpose I have submitted it to you?

AThis document was submitted to me, not at the first meeting that I had with Dr. Fabrikant but soon after that My Lord. It was Dr. Fabrikant's argument that there had been fraud in grant applications and in published papers and he was presenting me documentation to prove his case. I told him that it wasn't my job to decide that in one way or another. It wasn't my job to look into whether there's fraud here or not and he insisted that I take this and show it to the authorities of the university as proof that there was fraud.

QOK, could you explain to the jury? I did something in color there, I highlighted something there. What ... what was it?

BY THE CROWN:

That's irrelevant, My Lord.

BY THE COURT:

This whole line of questioning is irrelevant, this whole line of questioning is irrelevant.

BY THE ACCUSED:

How do you know? You don't even know the answer to the question.

BY THE COURT:

You have the ruling.

BY THE ACCUSED:

Fantastic!

QSo what did you do with this document?

AI faxed this document, My Lord, to the ... Catherine McKenzie, Associate vice-rector ... associate, no, executive assistant to the ... to the rector.

QOK and are you aware of anything, what happened after that with that document? Did she show it to the rector?

A No, My Lord. Did she show it to the rector? I don't know.

BY THE COURT:

How can the witness speak for what Dr. McKenzie did or didn't do.

BY THE ACCUSED:

Well I asked for his personal knowledge, whether he is aware of anything what happened to the document.

BY THE CROWN:

That would be hearsay.

BY THE COURT:

That would be hearsay, absolutely. Objection maintained.

BY THE ACCUSED:

Well I'm asking about his personal knowledge. I'm not trying to introduce it as proof at all.

BY THE COURT:

How can the witness speak to the question of what Dr. McKenzie said to anyone? He cannot. It's that simple. That would be hearsay. So the objection is maintained.

BY THE ACCUSED:

I repeat once again. If I want to introduce it as a proof of content of what she said, yes, it is hearsay but if I asking (sic) about his personal knowledge ...

BY THE COURT:

The witness gave you his answer.

BY THE ACCUSED:

... from anybody ...

BY THE COURT:

He said he sent it to Catherine McKenzie. That is his answer.

BY THE ACCUSED:

QOK, was there any feedback from McKenzie or rector to you with respect to this submission?

ANo, My Lord.

QSo it was ignored effectively.

BY THE COURT:

That is not a question. That is a statement and I ...

BY THE ACCUSED:

Was it ... was it ignored ...

BY THE COURT:

That is a statement from you which the jury will take no account of.

BY THE ACCUSED:

Well I'm asking: was it ignored to the best of your knowledge?

BY THE CROWN:

He couldn't know, My Lord.

BY THE COURT:

How could the witness possibly know that.

BY THE ACCUSED:

Well witness can answer himself.

BY THE COURT:

The question is disallowed.

BY THE ACCUSED:

QWas the document submitted to you ... what was the nature of the document submitted to you?

BY THE COURT:

Mr. Fabrikant, I told you, this whole line of questioning is irrelevant. Move on to something else and get away from that document. It has nothing to do with the issues.

BY THE ACCUSED:

Well you think it is irrelevant. I know my defence better and I know it is relevant.

BY THE COURT:

It is ... as far as I'm concerned, the question of fraud at Concordia is irrelevant.

BY THE ACCUSED:

Why did the shooting take place then if it is irrelevant?

How can you say that, such an absurd ... so you don't

allow me to ask any questions about that?

BY THE COURT:

No.

BY THE ACCUSED:

QDo you recall in 1989, when I brought you this document, telling me that if I want to pursue the matter further, I might lose my job?

BY THE CROWN:

This is leading, My Lord.

BY THE COURT:

The question is highly suggestive and it's ...

BY THE ACCUSED:

It is suggestive but he is not the witness who ...

BY THE COURT:

The question ...

BY THE ACCUSED:

... would try to please me with answer which I want.

BY THE COURT:

The question is ...

BY THE ACCUSED:

So I think question should be allowed.

BY THE COURT:

The question is not permitted. Objection maintained.

BY THE ACCUSED:

Before you did permit these questions and your argument was that it is not the witness who will try to please with answers.

BY THE COURT:

In any event, you went over this three, four days ago.

BY THE ACCUSED:

Yes and this question never ...

BY THE COURT:

Now there's an objection and now the objection is maintained.

BY THE ACCUSED:

All right.

QDid you, in January, convey to vice-rector some threat from me?

A

No, My Lord.

BY THE COURT:

In January of what year?

BY THE ACCUSED:

QA

Sorry, in January of 1990, did you convey to vice-rector Sheinin any threats from me?

AI'm aware of no threat that you made to Dr. Sheinin.

Q

And I also ...

QA

In January of 1990.

BY THE ACCUSED:

And I also have seen here that I can put to one witness testimony of another one. It's also written here and you always forbidden me to do that.

BY THE COURT:

There are a lot of things ...

BY THE CROWN:

No, no, that's not the rule, My Lord.

BY THE COURT:

Yes. There are a lot of things that are written there, that if taken out of context, can be misread.

BY THE CROWN:

That's completely wrong, My Lord.

BY THE ACCUSED:

No, it's not out of context. It is allowed.

BY THE COURT:

Anyway, in any event, you're ... you're correct. You cannot put the testimony of another witness to this witness.

BY THE ACCUSED:

Well you just don't allow but it is allowed.

BY THE CROWN:

No, the Queen vs Marcadonis (sic), 1935, Supreme Court of Canada.

BY THE ACCUSED:

It is allowed, correct?

BY THE COURT:

Listen, I'm not ...

BY THE ACCUSED:

You just don't allow me to do that.

BY THE COURT:

I'm not answering your questions in a vacuum. If we arrive at some situation ...

BY THE ACCUSED:

Well I do. OK, question arise, yes. I wanted at this moment for example to present to him testimony of Sheinin who said that ...

BY THE CROWN:

No.

BY THE COURT:

No.

BY THE ACCUSED:

... Grendon Haines in January ...

BY THE CROWN:

Totally illegal, My Lord.

BY THE COURT:

You may not, you may not, that's totally illegal. That is totally illegal.

BY THE ACCUSED:

It is not illegal.

BY THE COURT:

If you ... if you want to bring ...

BY THE ACCUSED:

(inaudible)

BY THE COURT:

First of all, whatever testimony Sheinin gives is not pertinent to the part of the trial we're at now, first of all and secondly, if you wish to bring Sheinin to testify, that's something else, but this witness will testify on the facts as he understands them, from his memory, aided by his notes insofar as his notes either help him or ... or are contemporaneous, period. That's the rule.

BY THE CROWN:

And it's for the jury to decide.

BY THE COURT:

Absolutely.

BY THE ACCUSED:

No, this is not the point. What I want ...

BY THE COURT:

Don't please tell me what the point is. Have you a further question to put to Mr. Haines?

BY THE ACCUSED:

Yes.

BY THE COURT:

Because I'm sick and tired of having arguments with you

every two or three minutes.

BY THE ACCUSED:

Well it is not my fault that I'm giving you the rules.

BY THE COURT:

Put ... put your questions.

BY THE ACCUSED:

And you just ignore them.

BY THE COURT:

No, you're not giving me the rules.

BY THE ACCUSED:

Fine.

BY THE COURT:

You're torturing the rules.

BY THE ACCUSED:

I am? I read it to you.

BY THE COURT:

Now put your question.

BY THE ACCUSED:

All right.

QNow I have seen somewhere here, yes, here it is, where my letter of February 1st is, there is handwritten note of yours. Would you please take cognizance of it?

AI have My Lord. That is not my handwriting, My Lord.

QIt is not your handwriting?

AThose are not my notes, My Lord.

QWell but handwriting is yours?

AIt is not my handwriting, My Lord.

QAre you aware whose handwriting is this?

AI believe they are the handwriting of Maureen Habib, My Lord.

QOK, go to February 12th note of yours.

AWhich year My Lord?

Q1990. We are now in 1990. Would you please tell about this discussion, what was the purpose and what was the content of the discussion?

AI had a brief discussion with Dr. Sheinin, My Lord and she told me that she had written to Dr. Fabrikant, informing him about his reappointment or appointment and she told me also at that point that she wasn't interested in him staying at the university, unless he was getting professional help. She thought it might be a good idea that if at the same time he was working at the university, that he would be seeing someone professional to help him handle ... to work with him.

I asked her if there was anything more that she wanted from me, was there anything more for me to do and she said no My Lord.

QOK, who did she mean by professional help?

AI ...

QIf you're aware of that?

AI understood that to be a psychologist or a psychiatrist.

QWhy did she say so? Did she observe anything abnormal in my behavior at that time?

BY THE COURT:

How can the witness possibly speak for Dr. Sheinin?

BY THE ACCUSED:

No, I'm asking if she explained to him in any way her desire to ...

BY THE COURT:

Well first of all, that wasn't your question and secondly your question was leading.

BY THE ACCUSED:

OK, I'm changing it.

QDid she explain to you the part of her request that I saw some help?

A No, My Lord.

QDid you ask her why she felt that way?

A No, My Lord.

QDid you ask her as to who was supposed to tell me that?

A No, My Lord, no.

QDid she indicate it to you as to how this message would be ... or would be at all, this message, conveyed to me?

A No, My Lord.

QDo you know anything that whether this message was conveyed to me?

A There was a conversation, My Lord, that I had with Dr. Fabrikant later. I have the dates here.

QNo, I'm talking about February.

AIn which ...

QWe'll get to that. Would you please stick to the question.

A May I ask a question, My Lord.

BY THE COURT:

Your question didn't limit itself in terms of time. Your question was a general question.

BY THE ACCUSED:

Well you ... you like the jumping? After that, you will accuse me that I'm jumping from one point to another.

BY THE COURT:

Not at all, but you put your question in a general sense and the witness started to answer.

BY THE ACCUSED:

My question was very simple, as to who was supposed to convey me this message in February?

A I do not know, My Lord.

BY THE COURT:

There's your answer.

BY THE ACCUSED:

QAll right, now let's go in chronological order. Now we have a meeting, August 28th. Did something happen between February and August 28th?

A Yes, My Lord.

QOK, what was that?

A You filed an application for an appeal to the university appeal board on June 26th 1990. I'm the Secretary of the university appeals board and I received notices of intent to appeal.

QOK, anything else besides this appeal?

A That's not related to the appeal?

QYes?

A Then on August the 27th, My Lord, I met with John Relton ... I met with MichŠle Gamache who also invited me to meet with John Relton.

QYes? What was this meeting about?

AAAs I've mentioned My Lord, I was invited by MichŠle Gamache to join her at a meeting with John Relton in his office at ten thirty (10 h 30) on August 27th. We made the following conclusions. I remember the following conclusions, My Lord, from that meeting, that I was told that the ... we cannot deal with the old issue. Those old issues meant threats that were made some time ago, that the timeframe had gone on too long, that they were now

out of date.

Secondly that ... that whatever should happen should all happen within the confines of the collective agreement. In other words, there's procedures and methods for hiring at the university and they are governed by the collective agreement and that should be held ... whatever is at stake here should be dealt with in that, in the normal flow of events at the university policies.

Thirdly, that whatever current issues existed at the time, that they did not warrant a letter of reprimand that could lead to dismissal and fourthly, that management needs to be briefed so that any future incidents will not go unnoticed.

QWell regretfully, what happens is witness just reading his notes. He just read exactly the notes. He's not testifying.

BY THE COURT:

The witness, as far as I'm concerned, is testifying with the aid of his notes. If you want him to ... to spit out what was agreed to at a meeting or what the conclusions of a meeting were, it's not particularly disturbing that he looks at his notes.

BY THE ACCUSED:

No, it's not disturbing at all. It's just question when I tried to introduce something ...

BY THE COURT:

Listen, very little would ever satisfy you. There you are. You have your answer. Continue.

BY THE ACCUSED:

You didn't allow me to do that.

BY THE COURT:

Continue.

BY THE ACCUSED:

QWell could you add anything at all to what you just simply read from what is written there? From your memory?

BY THE COURT:

No, it's ... you have to ask a direct question. That's not a direct question. That's a fishing expedition that you're ... you're engaging upon.

BY THE ACCUSED:

Well you ...

BY THE COURT:

If you have a question to ask the witness, put the question to the witness.

BY THE ACCUSED:

I cannot satisfy you. When I ask direct, you say it is leading. When I ask general, you are not happy either.

BY THE COURT:

That's not my problem, but simply to say to the witness ...

BY THE ACCUSED:

It is your problem.

BY THE COURT:

Simply to say to the witness: can you remember anything else won't do.

BY THE ACCUSED:

Well there is nothing wrong with that question.

BY THE COURT:

I don't know what you want to ask him. You may wish to

ask him who brought up the old issues or ... or whatever I don't know.

BY THE ACCUSED:

Well then crown ... then crown will say that it is a leading question. Don't put me in catch 22. I ask absolutely non leading ...

BY THE COURT:

Well your last question ... your last question was not a question. It was ... it was simply a fishing expedition. It wasn't a question at all.

BY THE ACCUSED:

It's not fishing. I'm just asking him if he can recall anything else from that meeting.

BY THE COURT:

You have to find another way.

BY THE ACCUSED:

Well there is nothing wrong with this question, but if you ... if you manage to disallow even this question ...

BY THE COURT:

It's not ... it's not even a question.

BY THE ACCUSED:

It is question. What else do you recall from this meeting? Very normal?

BY THE COURT:

Do you recall anything else from this meeting? OK, fine go ahead.

BY THE ACCUSED:

Good. We spent about three minutes to convince you on such a simple thing.

AYes, My Lord. I remember I was wanting to know whether one could, as a condition of employment, continuing employment, ask an employee whether he or she should ... could be, as the condition of employment, required to seek professional help. I wanted to know if that was a legitimate request that one could put on as a condition of re-employment.

QWell, who did you ask this question to?

ATo either Michèle Gamache or John Relton or to both of them.

QOK and what was the answer?

AIt was my understanding that they said ... they said no, that was not possible.

QWas at that time any threats made or anything at all which might lead to conclusion that I do need or I did need the so-called professional help?

AI'm not quite sure of the timeframe that Dr. Fabrikant is talking about My Lord. I was not aware during the summer of any ... any new information or any threats that Dr. Fabrikant had made.

QWhy then if there was nothing in my behavior which would be abnormal, why still you asked the question about professional help?

AThe question is abnormal, whether your behavior was abnormal, My Lord, I found in dealing with Dr. Fabrikant on the university appeal board material during the summer, I did not hear Dr. Fabrikant make any threats. However, he was aggressive, he was pushy, he was impatient with me. He ... he frequently demanded me to respond instantly and there wasn't a lot of that, but there was some of that, not as much as there were ... was on

previous occasions such as ... such as in mid-winter of 1989.

QWell ...

AAnd My Lord, they may have had other reasons to ... that I don't know what their other reasons may have been though. At that stage, I know that MichŠle Gamache had discussions with other people, I ... I believe with Dr. Sheinin but I was involved in those discussions, My Lord.

QWell he didn't answer still. Was there or wasn't any round for recommending me seeing help?

AThere were no new threats that I was aware of, My Lord.

QOK, about this appeal, were you aware of details? Why I asked for appeal? What was the situation?

AYou filed an appeal to the university appeal board and you were denied right to appeal.

QYes, I was denied even the right to appeal, yes. All right, so could you be a little bit more in detail (sic) about collective agreement concerning hiring? What exactly was discussed there?

AI do not remember. I would be adding what I think would have been discussed there, My Lord. I don't remember. All I remember is that whatever happens in terms of the collective agreement, that should be the proper way for dealing with this situation and there is an orderly flow of events that happens for hiring and renewal of contracts for faculty members.

QOK. What was the purpose of the meeting in the first place if there were no threats, no abnormal behavior of me, why was the need for the meeting at all?

BY THE CROWN:

He did not say there was not abnormal behavior, My Lord.

BY THE COURT:

No, he didn't.

BY THE ACCUSED:

QWell was there abnormal behavior observed?

BY THE CROWN:

He already mentioned some ... some behavior like persistent and harassing and all that.

BY THE COURT:

You're correct.

BY THE ACCUSED:

Well I would like him to specify: does he consider this abnormal?

BY THE COURT:

He has already told you.

BY THE ACCUSED:

Well ...

BY THE COURT:

He was not aware of any threats but in relation to the university appeal board, you pushed him very hard, you were ... you were very aggressive. These were what ... the words he used.

If you wish to ask him if that is what he considers abnormal, go right ahead.

BY THE ACCUSED:

This is exactly what I asked and crown again spent about two and a half minute. That was my question.

AYes, I found that very unusual behavior. I've never been treated like that at the university by a faculty or a staff member before, My Lord.

QWell what exactly did I tell you then? Could you go into details. I bet you will say I don't remember. Examples of pushiness, demanding and so on and so forth?

AIf I pull the file, I may have some quotation.

BY THE COURT:

Just testify from your memory, Mr. Relton. (sic)

AHe would be asking me "Did I get ..." I received the notice of intent to appeal. I wrote him promptly, My Lord, saying that I would study ... I would contact both CUFA and the administration to find out if he had a right to appeal. I would then ... I sent that letter off to CUFA and the administration immediately or soon after asking them.

He would phone up and push me for a response from them. I would tell him "I've sent the letter, I've told them, I've asked them for a response. They have not responded to me". He would again phone me back and say "When do you .. have you received the response", I said no, I have not and I would tell him that there was nothing I could do, that it's in their hands to respond to me. He said "Well I want you to do something and you get in touch with them and let them know that I'm waiting".

I would do that, My Lord. I would phone them up and let them know: "Listen, Dr. Fabrikant is still waiting for the letter" and that went on for sometime, like that, My Lord, until eventually I did get responses from CUFA and from the administration stating that he ... well one letter, the letter from CUFA said that well he wasn't a member of the bargaining unit and therefore they didn't have much interest in the case but that they would not be adverse to the appeal board hearing the case.

The administration wrote me and said no, that he did not have the right to appeal to the university appeal board.

QOK, when this decision was received, did I curse you in any way? Did I push you? Did I demand anything after the decision was received?

ANo, when I told you the decision, you ... you didn't threaten me, you didn't ... you were ... you accepted the decision and that was the end of it.

QOK. What was the next meeting? August 28th?

AWell I have here a record but I don't remember the meeting, My Lord, of a meeting that I had with Rose Sheinin on August 28th dealing with Dr. Fabrikant. What I do remember is that I don't know why I was speaking with her and I don't know how it came up, but I know that Dr. Fabrikant had spoken to me about wanting to know the procedures or process or the ... of how to make grants for applications (sic) or something like that, that he wanted to know some procedures for a particular purpose and he wanted to get that information from Rose Sheinin and he asked me that.

BY THE COURT:

QYou meant to say applications for grants, I presume?

AI think that was it, I do not remember for what purpose it was but it was some procedural policies that he wanted and he wanted to know ... he had asked me that, I remember. He wanted to know why he couldn't have that information.

That should be legitimate information that he ... he should be entitled to and that he'd asked Rose Sheinin for this and ... who is responsible for giving it to him.

It was one of his questions: how does he get this information and does the dean inform him, does the chair inform him of the ... of the procedures and Dr. Fabrikant wanted to know also if there were other requests for this information.

So I had spoken ... so Dr. Fabrikant had asked me those things before, either had ... had asked and then I spoke to Dr. Sheinin about those issues that he had spoken to me about.

QSo again, I was pushy, I was threatening, I was insulting? How was that?

AI cannot remember now the tenure of that ... of his conversations with me over this particular issue, My Lord.

QHow come do you remember conversations about university appeal board and you do not remember this conversation?

BY THE COURT:

That is cross-examination and the question is disallowed.

BY THE ACCUSED:

QOK, were those two conversations more or less contemporaneous?

AThe two conversations? The one initially with you and then one with Dr. Sheinin?

QNo, about university appeal board and about those grants?

AI think the phone calls about the university appeal board went on from about early July to late August, early September.

QOK and this?

AThis happened, I spoke to Dr. Sheinin on August 28th and I would suspect I had had a chat with you soon before that but I don't remember the exact date.

QSo it was approximately the same time?

AYes.

QBut you remember nothing about it. All right, now could you go into details of meeting, what it was, September 3rd.

AMy Lord, I might add that I have September 3rd marked on there with Dr. Fabrikant on the note. I'm not sure if I did meet him on September 3rd but that note is there. There could be an error that I made in putting that on there, but in the note that I have here, this is a conversation ...

QWell let's first establish the date.

AYes.

QBecause it was definitely not September 3rd. Maybe you could look into your agenda and find it more precisely what it was?

AI have to go to my next agenda, My Lord. Yes, September 3rd is Labor Day. The ... it's ... Oh, October 3rd, My Lord, I have a meeting registered here. I have eight thirty (8 h 30), Fabrikant on October 3rd, My Lord.

QOK, so it was not September 3rd, it was October 3rd. Well describe what happened then?

AYes, I remember you saying that you wanted to speak to Dr. Sheinin but you were finding it very difficult to get a hold of her and you were coming to see me, you were wanting me to deliver a message to Dr. ... to Dr. Sheinin and you thought it was an important message that she'd get and you were concerned that she wasn't going to get it. She was hearing you and basically your message was several parts.

One was that you were sorry for all the commotion that

had been caused in the past and you regretted that. You said that you had made mistakes and those mistakes though were made because of all the problems that you had experienced at the university, people abusing you, people taking advantage of you, people treating you as if - and you used this word - as if you were a prostitute.

However you regretted and you apologized to me and you wanted that apology to go to the vice-rector, academic.

QI would like you to address to what really happened there. This list of all those regrets, it was written by your hand, correct?

AThis is my handwriting, this is what I wrote, My Lord.

QAnd it is not what I told you, it is what you told me I should tell Sheinin, right?

A No, My Lord.

Q No.

A My Lord ...

Q You wrote it at my dictation? I dictated you all this?

BY THE COURT:

The tone is aggressive, you're cross-examining the witness. There's a way to do this if you want to do it properly.

BY THE ACCUSED:

OK, I'll do it properly.

BY THE COURT:

Do it.

BY THE ACCUSED:

I'm emotional when I see some falsification, I'm sorry.

Q So did I dictated you all that or you wrote all this, telling me that those are the conditions, if I want to stay at the university?

A My Lord, he came in. He told me what he was saying, he said it and this is my summary of what he said and I read this summary, My Lord, to him, back to him and I said to him "Is that correct? Have I understood you correctly?" and he said yes.

Q You didn't answer my question. Did you write this?

BY THE COURT:

The witness did answer your question and now you're cross-examining him again. You asked the witness a question. The witness gave you the answer.

BY THE ACCUSED:

That was not answer to my question.

BY THE COURT:

That was certainly an answer to your question. He told you what that was.

BY THE ACCUSED:

No, I asked him whether I dictated him this text or ...

BY THE COURT:

He answered your question. He said that was his summary of the substance of what you said which he then read back to you and said "Is this what you're saying" and he said you said yes.

BY THE ACCUSED:

Q OK. Did you at that time tell me that those are the conditions if I want to keep my job?

A No, My Lord.

Q OK, what happened after you wrote all this?

A I met with Dr. Sheinin.

Q No, no, no.

A No.

QNot yet. What happened after you wrote this in your cabinet?

AAfter I wrote this in my what?

QIn your cabinet? In your office?

AIn my office.

QYou wrote this. What did you do next?

AOh, yes I remember. I ... I had taken something of an oath myself, My Lord, not to pass messages on any further to Dr. Sheinin or to anyone else on behalf of Dr. Fabrikant. On this occasion, I thought that there was a possible good reason to speak to Dr. Sheinin about it. So I said, I phoned Dr. Sheinin's office and I spoke to one of the secretaries there and I said "Dr. Fabrikant has given me a message, that he wants himself to deliver to Dr. Sheinin. I don't know whether I should deliver this message or not. I do have some information. Does Dr. Sheinin want to? Does she want to invite me to give it to her" and eventually I got a call back setting up a meeting with Dr. Sheinin for October 9th.

QOK. Did you or didn't you read on the telephone all what you have written here to Sheinin's secretary?

AI believe I did so My Lord and I do believe I did so in the presence of Dr. Fabrikant.

QYes. What was the purpose of that? What was the purpose of ...

AI wanted to make sure that I was ...

Q... reading it to the secretary of Sheinin, not to the Sheinin (sic) and emphasizing that I'm sitting there?

AI wanted to make sure, My Lord, that I was delivering accurately and I wanted Dr. Fabrikant to be his own witness as to what message I was delivering.

QIt was not yet another attempt of entrapment and self-incrimination?

BY THE COURT:

That question is totally out of order. That's cross-examination.

BY THE ACCUSED:

Well this is what this witness deserves because this is what it was. Well you don't allow, you don't allow.

BY THE COURT:

No, I don't.

BY THE ACCUSED:

Fine.

Go please to another sheet of paper. This is would like to file, because this seems to be like a document. Maybe I could file all of it, can I, because this is remarkable stuff?

BY THE COURT:

Mr. Fabrikant, would you please keep your cracks concerning the content of these various memos to yourself.

BY THE ACCUSED:

This is not crack. I said it's remarkable stuff. What's crack about?

BY THE COURT:

Then keep your comments to yourself.

BY THE ACCUSED:

Anyway ...

BY THE COURT:

If you wish to file a document, the first thing is to show it to the ... the crown prosecutor and see whether

he's in agreement.

BY THE ACCUSED:

Mr. Belleau? No, I'm not saying anything.

AI have a copy of that, My Lord.

BY THE CROWN:

May I just see it?

AOh, sorry.

Thank you. It was written by the witness? I have no objection.

(DISCUSSION IN LOW VOICE)

BY THE CROWN:

We're talking about that page, right?

BY THE COURT:

Well I ... that's what I'm not sure about. We have four (4) pages there.

BY THE ACCUSED:

Well I think ...

BY THE CROWN:

Oh, let me see all the full document then. Maybe the witness could explain a little bit, to see who is the writer of the ...

BY THE ACCUSED:

All right. So the first note was already explained. The second was explained, the third was explained. The fourth is what I just showed, what he has written in his hand about how sorry I was about this, this, this and this and after that, he went to the telephone and in my presence said that "Here is Fabrikant and he said this, this, this and this" and after that goes document of October 9th and I think it deserves to be read in its entirety.

BY THE CROWN:

Well put your questions to the witness.

BY THE COURT:

Well you might ask... you might establish what it is and you might establish the authorship of it first of all.

BY THE ACCUSED:

Yes, sure, sure, sure.

QCould you tell me what it is?

AThis is the ... the summary, My Lord, of that telephone call and conversation I had with Dr. Fabrikant and a possible message that I was ... could deliver to ... to Valery Fabrikant on behalf of Dr. Sheinin if she agreed to. It was used as a basis of a discussion that I had with Dr. Sheinin. I presented this to her on October ... I think on October 9th. It's dated October 9th. I assumed I made ... that may have been typed the day before or the day of.

QAll right, so could you read it now.

ASo the message that I gave to her from Dr. Valery Fabri- </pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">kant was the following.

QWell first of all, read it as paraphrased by myself.

AYes. 1 ...

QThis part is important, that you paraphrase it same, politely.

A1 ...

QOK, so paraphrase the message, read it.

A1. You are sorry.

2. You have made mistakes because you were stressed.

3. You regret what took place.

4. You got upset and did / said things that were self-defeating.

5. Because of that, you are now seeking help so as that will not happen again.

6. You are prepared to meet with Dr. Sheinin and explain the background and why you behaved the way you did.

The following part, the next stage ... well I'll continue then.

Possible message that I could deliver to V. Fabrikant on behalf of Dr. Sheinin:

1. If you are willing to get help, Dr. Sheinin is willing to work with you. She needs to know how you are going to do that.

2. There is a list of three (3) possible referrals. You must be willing to do something. If you are not, then she is not.

3. What needs to be reported back: who you are seeing, your schedule and any change to that schedule. We are not asking anything beyond that. We need to know with whom you are meeting and with what frequency.

My Lord.

QSo what happened to that document? Was it delivered to somebody, was it discussed with somebody?

AI met with Dr. Sheinin and presented this to her, My Lord.

QAnd?

AAnd she heard my ... what Dr. ... the paraphrase of my conversation I had with Dr. Fabrikant and these three possible suggestions that I was making to her and her answer was no.

QDid she explain why no?

AMy understanding and my recall tells me that Dr. Sheinin felt that too much had gone on, that there was a possibility at one time, but was no longer possible and it was her intention to act in a different direction.

QNamely to terminate my employment, correct?

AShe didn't tell me that. She just told me that she would be informing me.

QShe what?

AShe would ... she didn't tell me what she would ... she didn't tell me if you were going to be terminated or not, I don't know.

QOK.

Can we file it now?

BY THE CROWN:

I have no objections, My Lord.

BY THE COURT:

D?

BY THE CLERK:

13.

BY THE COURT:

13.

BY THE ACCUSED:

QSo what happened next if anything? That was the end of it?

AI believe a letter was sent to you from Dr. Sheinin.

QNo, I mean not ...

AThis is next, this is what happened next.

QI mean what you and me ...

AOh.

Q... or was there any meeting between you and me? Was there any meeting between you and Sheinin?

ANo, there ...

QAfter that?

AI do not recall speaking with you or meeting with you after that.

QRight. Did I ... did I threaten vice-rector in any way in your presence?

AI do not know of any time when you threatened the vice-rector, academic, Rose Sheinin.

QAll right. Then now, let's go to the document which states that "veiled threats conveyed through my staff and through Mr. Grendon Haines must stop immediately". If you admit yourself that I didn't make any threats, why Sheinin ... what ground did she have to write to me about ...

BY THE COURT:

You have to put that question to her.

BY THE ACCUSED:

Yes, I think I have to put it to her, all right, but you didn't ...

BY THE COURT:

OK, we'll adjourn at this point until two fifteen (14 h 15).

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

BY THE CROWN:

May I address the Court shortly? I noticed, My Lord, at twelve thirty, you stop the proceedings for lunch and can I suggest to you: we are in our fourth month now and we're working five days a week and we have also our daily life commitments. We have to make appointments sometimes at five o'clock, sometimes at one o'clock.

Most of the times, we respect these ... these time limits but could we ... could we be in a position that we can make any type of arrangement to make sure that most of the time, we finish at twelve thirty and four thirty since we expect another let's say month or two or three in this trial.

BY THE COURT:

Yes.

BY THE CROWN:

Thank you very much.

BY THE COURT:

That's very reasonable.

SUSPENSION OF THE TESTIMONY OF THIS WITNESS

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE COURT TAKES THE BENCH

THE MEMBERS OF THE JURY ARE PRESENT

GRENDON HAINES

(Under the same oath)

BY THE ACCUSED:

QAt the time of our meeting in October of 1990, do you recall me telling you that I feel like I'm being mentally tortured?

AI couldn't quite hear the question, My Lord.

QOK, I repeat. At the time of our meeting in October 1990, do you recall me telling you that I felt like I'm being mentally tortured?

AI do not remember that comment, My ... my Lord.

QDid I, at any time, during that meeting tell you that if there are some misunderstandings or problems, let's discuss them?

AYes, My Lord.

QDo you recall that all I was reproaching to myself during that meeting was writing a letter to Sheinin?

BY THE CROWN:

This is all leading, My Lord.

BY THE ACCUSED:

It is trying to refresh witness's memory, not leading.

BY THE COURT:

Are you referring to the memo that you were talking about this morning? That question is disallowed.

BY THE ACCUSED:

I'm just refreshing witness memory by oral questions.

BY THE COURT:

Yes, but that's not what you are doing. Because you don't like the witness's answer, you're not refreshing his memory, you're trying to contradict him. I maintain ...

BY THE ACCUSED:

I'm just asking if he recalls that.

BY THE COURT:

I maintain the position I took, I maintain the position I took. The question is disallowed.

BY THE ACCUSED:

Well let me just read you the ... what authority says and after that, you'll say that it is disallowed. Would that be sufficient for you?

"The process of refreshing the memory of a witness may border on the process of cross-examining."

You are aware of that? And also it is written here that the questions might look like leading questions. Where is it, to save our time. Are you aware of that too? Mr. Martin, are you aware of that?

BY THE COURT:

The question is disallowed. OK?

BY THE ACCUSED:

So you ignore all this?

BY THE COURT:

Did you hear me?

BY THE ACCUSED:

Sure. McWilliams to you is not authority?

BY THE COURT:

It's sitting here.

BY THE ACCUSED:

Sorry?

BY THE COURT:

The book that you are reading from is sitting here.

BY THE ACCUSED:

Well ...

BY THE COURT:

Your last question is disallowed.

BY THE ACCUSED:

If it is sitting there, you should know that then?

BY THE COURT:

I certainly do. It depends in what ...

BY THE ACCUSED:

So you just ignore, you just ignore ...

BY THE COURT:

It depends on the circumstances, Mr. Fabrikant.

BY THE ACCUSED:

You just ignore that?

BY THE COURT:

No, it depends on the circumstances.

BY THE ACCUSED:

Well I ... I read to you the full quotation.

BY THE COURT:

Good, good.

BY THE ACCUSED:

It doesn't say ...

BY THE COURT:

Good for you, Mr. Fabrikant.

BY THE ACCUSED:

... if it is Mr. Haines and Mr. Martin, then it is not applicable. In a lot of cases, it is applicable.

BY THE COURT:

Your last question ...

BY THE ACCUSED:

It doesn't say that.

BY THE COURT:

Your last question is disallowed and the objection is maintained.

BY THE ACCUSED:

By the way, I didn't hear any objection. You ... you made the objection and you maintained it. You had nothing to maintain. You forgot that.

BY THE COURT:

I think the crown suggested the question was leading.

BY THE CROWN:

Well of course, My Lord. I made the objection.

BY THE COURT:

I thought so.

BY THE ACCUSED:

I didn't hear that.

So I have that conversation recorded. Since witness does not recall all that stuff, I will continue with questions by now (sic) but at the proper time, I would like to play the recording so that it would be clear that, yes, it did happen.

BY THE COURT:

Oh no. If you are ... if you have that recorded, then there is a question of law to debate at this point.

BY THE ACCUSED:

No, not at this point. I want to continue with questions.

BY THE COURT:

Well if you don't do it now, you're not coming back to it. So take your pick.

BY THE ACCUSED:

Well then, I cannot seem to find the tape. I ... I put it somewhere here but I cannot find it.

BY THE COURT:

Well that's too bad. You can go on with your questions or you can ... or you can make your application under 9.2.

BY THE ACCUSED:

Well we can make it tomorrow.

BY THE COURT:

No, you can't make it tomorrow. You'll make it now if you've got one to make in relation to this part of his testimony.

BY THE ACCUSED:

OK, well let's ... let's make an adjournment and send someone to Parthenais. I'll get it.

BY THE COURT:

No, we're not making an adjournment and sending somebody to Parthenais.

BY THE ACCUSED:

Well if you do this for any other witness, I believe it is just fifteen-minutes drive. We can get the tape and play it.

BY THE COURT:

You should learn to organize your life properly so that you have what you need beside you. Have you any further questions to put to this witness.

BY THE ACCUSED:

Yes.

BY THE COURT:

Good, put them.

BY THE ACCUSED:

QOK, anything else happened in the year 1990?

ANo, I don't believe so, My Lord.

Q1991, do you recall anything in 1991?

AYes, My Lord.

QOK, what is it?

AI remember getting a call, a telephone call from the department of mechanical engineering and they said the following: I, was that the department personnel committee either had made a decision or was about to make a decision on Dr. Fabrikant and they were concerned what Dr. Fabrikant's reaction might be and they wanted me to intervene.

I said that I'm no longer involved but that there is another group of people in the university who sometimes get involved and let me speak to them first and find out if this is in their area of competence and jurisdiction.

I phoned Nancy Torbit and I told Nancy Torbit that I, the department had requested that I become involved and I told her I didn't think that this was an appropriate role for me to play because I was not ... there was no way that I could facilitate the ... any intervention at this stage and was this her area of competence and jurisdic-

tion and she said that she would like to speak to the members of her intervention team, John Relton and Susan Belzon and she would get back to me, but she felt that in all probability, this was her area of competence and jurisdiction.

She got back to me and said yes, that they might be helpful and so we arranged that I would set up a meeting between the department, the members of the department and the intervention team and so I convened a meeting on I think it was November 1st, My Lord and what Nancy had assumed was that the ... based on my conversation with her, that the message that was to be conveyed to Dr. Fabrikant was a negative one, in other words, one that he would not like and it was her position that instead of mailing that to him, that it might be a good idea for members of the department to meet with him personally instead and explain the note, hand it over to him, the letter and explain it to him and so that's what her ... she felt would be useful to happen on that meeting of November 1st and so the purpose of that meeting then was for me to introduce the intervention team to members of the department and secondly for Nancy Torbit and the members of the intervention team, to present to the department a way of how to best manage this situation and then it was my hope that I would then no longer be involved in the situation, My Lord.

QSo what happened at the meeting?

AI chaired the meeting, My Lord and so most of my time and energy was devoted to what I call issues of process, process issues.

In other words, my job was to set up a safe environment for a discussion to take place between members of the department and the ... and the intervention team. I set guidelines for the discussion. People would not interrupt each other. Who ever had the floor would be allowed to finish and complete their sentences. I tried to get an orderly way of proceeding with the discussion between all the participants because there were quite a few there and so my job was to look after the chairing of the meeting and my job was not too involved in the content of what was talked about, My Lord and so I do not have much more of a recall than what I've already said as to what was the purpose of the meeting and what we tried to achieve.

QAre you implying that you were not even listening to what people were saying?

AI was listening intently and trying to moderate a very difficult discussion with people wanting to have the floor and for example, I asked the people not to interrupt each other and that I would intervene if they did. That was not easy to maintain, My Lord. I did the best I could. I wasn't always able to maintain that and so my attention was drawn to the process and not to the contents and I don't remember very much about what was happening.

What was important to me was that I would not be continuing anymore with ... in this situation.

QStill it seems to be like it was a heated debate, was it since you had to intervene many times?

AThere were differences of opinions spoken.

QOK, so if there was difference of opinion, could you relate what opinion was whose and what was the different

opinion?

AI would be guessing, My Lord, now as to what the differences of opinion were at the time. I would be speculating I think.

QPeople are discussing...

BY THE COURT:

Pardon?

BY THE ACCUSED:

People are discussing life threatening situation. He doesn't remember anything what was said. He's faking his memory again. We already have some information as to what transpired at that meeting and he seem to not remember anything at all.

BY THE COURT:

You have his answer.

BY THE ACCUSED:

I have his answer. He's faking.

BY THE COURT:

That's your opinion. Pass on.

BY THE ACCUSED:

It's not yours? OK.

QSo what effectively was said? Did Osman say anything at all during that meeting?

AI remember setting the rule, the ground rule, My Lord, of saying no interruptions while anyone who had the floor and people ... someone else had the floor and Mr. ... Dr. Osman says "No, I have something to respond to right away. I do not want to wait for that person to finish and I intend to interrupt that person and I'm ignoring that ground rule."

I do remember that, My Lord.

QBut as to what exactly he said, you of course don't remember? You just remember that he wanted to interrupt but what he was going to say, you of course don't remember, do you?

AI do not remember at this moment, My Lord.

QSo what effectively was discussed? Was it ... OK, let's try to refresh Mr. Haines's memory. We have something from Mrs. Torbit. Maybe this would help him. Where are those depositions which we had from Mrs. Torbit?

BY THE COURT:

Well ask Mr. Fabrikant what he wants.

BY THE ACCUSED:

When I'm questioning, I told you I need somebody to help me. I cannot ...

BY THE COURT:

You're going to have to help yourself.

BY THE ACCUSED:

... be questioning and asking and writing. I ... I just cannot do that. I need help and I asked you to permit Professor Antipa to be sitting in my box. You remember that and you refused to do so.

BY THE COURT:

And I do again.

BY THE ACCUSED:

QDo you recall talking to Mrs. Torbit at any time in 1991?

APrior to the November 1st meeting? Yes, My Lord.

QHum, hum. So do you remember what you told her?

AI remember phoning her up and asking her if she was interested in becoming involved in this situation, My Lord.

QAnd do you remember telling her something like "Adminis-

tration is now acting in logical and responsible way and in the past, it made errors"?
AI remember saying to Mrs. Torbit that the department personnel committee was making a decision and that they were nervous and concerned about the decision they were making and wanted to ... want I guess protection from me. What was the question again?

BY THE CROWN:

I think the witness should be exhibited the document. If I recall, it was notes taken by Mrs. Torbit.

BY THE COURT:

I don't think the witness should be exhibited Mrs. Torbit's notes for the minute. The question ... the question was the question. It was suggestive but in any event, the question was there. There was no objection to it. The answer bore upon what the witness remembered but then he said what was the question and repeat the question.

BY THE ACCUSED:

Well he didn't answer the question.

BY THE COURT:

Well repeat the question.

BY THE ACCUSED:

Repeat the question, OK.

QDid you tell her that previous administration made errors but now administration is acting in logical and responsible way and the department is drawing the line, does this refresh your memory at all?

AI don't remember that wording, My Lord. There is an ... something else I do remember, that might be similar to that My Lord.

BY THE COURT:

Well either that refreshes your memory in one sense or another. If it refreshes your memory in one sense, then ...

AYes, I remember My Lord. I remember saying to her that it appeared to me that the department was making a decision that was different from the last decision that they made and that they were intending to follow through on that decision in a responsible way. That's all I remember, My Lord.

BY THE ACCUSED:

QWhat about the administration itself, did you make any remarks about administration of this university?

AActing in a responsible ... I don't remember saying that, My Lord and I don't know who the administration would be. I don't know what that meant.

QWell did you mention that administration in the past made some errors?

AI don't know of any mistakes that the ... quote, "the administration" made in the past.

QWell one might assume that errors were that I wasn't fired long ago?

BY THE COURT:

Now, you're cross-examining the witness.

BY THE ACCUSED:

It is just suggestion.

BY THE COURT:

Not permitted.

BY THE ACCUSED:

QDid you tell her also that everything will be done by December 15th 1991?

AI told ... you are refreshing my memory, I can remember this: I told Nancy Torbit that the process required that a letter from the vice-rector with the decision be issued by December 15th, My Lord.

QWas any conversation concerning dean and the chairman?

AConcerning?

QDean Swamy and chairman of the department?

AWas there any conversation that I spoke of? I don't understand the question, My Lord.

QWell did you tell to Mrs. Torbit anything concerning the involvement of the dean, of the chairman?

AI do not remember, My Lord.

QDid you consider decision of the department not to renew my contract as well founded one?

BY THE COURT:

No, you may not ask that.

BY THE ACCUSED:

Well he thought about it. The department is acting in a responsible way so it means that he knew some details.

BY THE COURT:

That's not what he said. He said that the department had made a decision which was different from its previous one and was following through on it. That was his answer. So the last question, you may not ask.

BY THE ACCUSED:

Well you just didn't hear the full answer what he said.

He said that department was acting in responsible way.

QDidn't you Mr. Haines?

AI don't remember saying that, My Lord.

BY THE COURT:

Yes, you did, at least I have got a note it was following through responsibly.

BY THE ACCUSED:

So ...

AYes, in a responsible order, in other words sending ... doing its evaluation and then sending that on to the faculty personnel committee and then that would be sent on to the vice-rector.

BY THE COURT:

In any event, the ... the last question, Mr. Haines's opinion is ... is neither here nor there.

BY THE ACCUSED:

Well ...

BY THE COURT:

Finished.

BY THE ACCUSED:

QDo you recall also making yet another call to Mrs. Torbit which contained some kind of message about ... message from Fabrikant, threat "will call husband", baseball bat?

AWill call what?

QWill call husband, baseball bat, no one reports this episode to Concorcia or police? Does this refreshes (sic) your memory?

AI know nothing about that, My Lord.

QDid you discuss question: is he dangerous to student's faculty?

AI do not remember that, My Lord.

QDid you have any discussion which contained some words "nose pipeline"? (sic)

AI cannot hear you very well.

QDid you have any discussion with Mrs. Torbit which would say something like "Nose pipeline"?

AI don't know what he said? Nose pipeline, I don't know what the expression means.

Q"Unanimous at both" which meant did you discuss the option that department personnel committee and faculty personnel committee would come to the same decision?

AI don't remember that. I'd be speculating if I answered, My Lord.

QDid you send to her a letter or document in which you asked her to read between the lines?

AI don't know what document we're talking about, My Lord so I don't know anything about reading between the lines.

QAny document which you sent to her and told her that she needs to read between the lines?

AI do not remember, My Lord.

BY THE ACCUSED:

Now according to the thick book which is at your disposition when certain memo does not refreshes witness's memory, it is allowed to be deposited as exhibit. I want it to be deposited.

BY THE COURT:

What's your authority for that proposition, Mr. Fabrikant?

BY THE ACCUSED:

The same one.

BY THE COURT:

Give me the page.

BY THE ACCUSED:

Sure.

BY THE CROWN:

These memos, My Lord, are telegraphic, they mean nothing. There's no ... no sense to make ...

BY THE ACCUSED:

They mean nothing to you. These don't measure others at your level.

BY THE COURT:

What page are you referring to?

BY THE ACCUSED:

Page 36.

BY THE CROWN:

I thought My Lord that insults were not allowed anymore in this courtroom.

BY THE ACCUSED:

This is not insults.

BY THE COURT:

They're not allowed.

BY THE ACCUSED:

I just said that people are different. You do not understand because you were not there. I was there, so probably there's something tells to me. (sic)

BY THE COURT:

What page no. are you referring to?

BY THE ACCUSED:

36.14.

BY THE COURT:

Of chapter?

BY THE ACCUSED:

Well chapter means 36, I think.

BY THE COURT:

No.
BY THE ACCUSED:
What do you mean no?
BY THE COURT:
Look at the top, you will see some numbers.
BY THE ACCUSED:
36.20223.

BY THE COURT:
Can you decipher what this is please.
BY MAITRE BELLEAU:
It's from McWilliam, it's in chapter 36, paragraph 36-2-
20223.

BY THE COURT:
Oh OK, 20223?
BY MAITRE BELLEAU:
20223, 2-0-2-2-3.

BY THE ACCUSED:
At the bottom.
BY THE COURT:
OK, now at the bottom, you will see page numbers.

BY THE ACCUSED:
Yes, I told you, 36 ...

BY THE COURT:
36 what?

BY THE ACCUSED:
14.

BY THE ACCUSED:
At the bottom of the page.

BY THE COURT:
Just a minute, I prefer to read a little bit before the
bottom.

BY THE ACCUSED:
All right.

BY THE COURT:
Well I can only conclude that you have misinterpreted the
three decisions of the Saskatchewan Court of Appeal.

"It is submitted that where the witness has no
independent recollection, the memorandum should
be entered as an exhibit."

That is where the witness has no recollection except for
what the memorandum triggers. The memorandum in this ins-
tance contains random words and has triggered absolutely
nothing as far as these last words that you've questioned
on are concerned.

BY THE ACCUSED:
Yes, this is exactly the point. Since witness does not
recollect anything, then the memorandum itself ...

BY THE COURT:
No, that's not what ... that's not what the rule says.
Sorry.

BY THE ACCUSED:
Well let's read it.

"Where the witness has no independent recollec-
tion, the memorandum should be entered as an
exhibit."

BY THE COURT:

Where the witness ... what they haven't ... what the author hasn't written there, what Mr. McWilliams hasn't written there because it's ... it's rather obvious is beyond ... independent recollection beyond what the memorandum triggers but the memorandum triggered nothing. He wasn't able to tell you the slightest thing from the memorandum.

BY THE ACCUSED:

Exactly.

BY THE COURT:

So...

BY THE ACCUSED:

But it's the same thing.

BY THE COURT:

The memorandum, in these circumstances, won't be produced.

BY THE ACCUSED:

Well it is the same thing if he ... he didn't recollect anything beyond what is written here. This is exactly the case.

BY THE COURT:

Listen, if he recollects nothing ...

BY THE ACCUSED:

Yes.

BY THE COURT:

... and the memorandum doesn't help him recollect anything ...

BY THE ACCUSED:

Yes.

BY THE COURT:

... the status of the memorandum is zero.

BY THE ACCUSED:

What do you mean zero? He just ...

BY THE COURT:

It has no status, that's ... that's what it means.

BY THE ACCUSED:

But he ...

BY THE COURT:

It's proof of nothing.

BY THE ACCUSED:

Well he did not challenge the content. He didn't recollect either ...

BY THE COURT:

I couldn't ... we don't have to get into whether he challenged the content or not.

BY THE ACCUSED:

OK, how about ...

BY THE COURT:

No.

BY THE ACCUSED:

OK, how about what was said yesterday with Mrs. Torbit when she again ... I read to her those lines if you recall, about ...

BY THE COURT:

Mr. Fabrikant, I don't think you heard me. I said you may not produce that memorandum. OK?

BY THE ACCUSED:

How about this one: uncertainty, panic, not knowing what happened and so on and so forth, it is very clear what it says. It didn't trigger anything in her in addition to what it said and you didn't allow me to deposit it. You

remember that?

BY THE COURT:

You are not depositing the current memorandum, OK.

BY THE ACCUSED:

Well how about this one?

BY THE COURT:

I'm not going to argue with you about that one. I'm telling you, you're not depositing that one.

BY THE ACCUSED:

Well you did mistake yesterday.

BY THE COURT:

You are not depositing the current one.

BY THE ACCUSED:

Well it is the same thing. What yesterday happened ...

BY THE COURT:

You are not depositing that one, OK.

BY THE ACCUSED:

Did you make mistake yesterday?

BY THE COURT:

Is this discussion finished or are you going out and is this witness ending?

BY THE ACCUSED:

QDid you discuss with her my alleged harassment with Judge Gold and Claude Ryan?

A No, My Lord.

QAre you aware that I harassed Judge Gold and Claude Ryan?

AI have heard, I remember someone telling me, My Lord, that Dr. Fabrikant had been in touch with the Ministry of education and Judge Gold's office. I remember hearing that, My Lord, yes, but I don't know if it was Nancy Torbit or I don't know who told me that.

QOK, do you know ... what do you know exactly about these contacts as you've mentioned it?

AI know nothing more than that, I was not interested in knowing anything more. I did not ask for anymore information. I was told it, I did not question it.

QOK, so you said that you didn't participate in any way in meeting of November 1st. You considered yourself to be outside of the problem, how to present the decision of DPC to me, is my understanding correct?

AI may have suggested - again I don't remember My Lord - but I do have in my notes here a suggested agenda for the meeting.

QSo after all, you did participate then if you suggested something? How to reconcile it?

BY THE COURT:

QA suggested agenda for what meeting?

AFor the meeting between the fac ... between the department personnel committee and the intervention team, My Lord.

QThat was the meeting which you were going to chair?

AThat's right My Lord.

QYes.

AYes and I had spoken to Nancy prior to that meeting and she had made suggestions to me as to what might happen at that meeting and I have here the content of those suggestions which I have already up to now reported on some of those to the Court.

BY THE ACCUSED:

QWell are you sure it was suggestion for the meeting between DPC and intervention team or it was suggestion for

meeting between Swamy and me?

AFor both, My Lord.

QBoth. Then describe the first one, then describe the second one please. The first one, what were your suggestions? Which documents you're referring to?

AThis is a document you have in your file, the top of which is called "File: Fabrikant" and there's a number 1 and it's in the file beginning, titled C.

QYes.

AAnd in there ...

QAnd this is what, suggestion for which meeting?

AFor the meeting with ... on November 1st, My Lord.

QWell read please the first line?

AMeeting with Dr. Fabrikant.

QSo it was not meeting with me on November 1st, was it?

ANo, this is was a proposal for a meeting with you to...

it was ... this was the agenda items for the meeting to be discussed on November 1st and one of the items on the agenda included meeting with Dr. Fabrikant.

QSo that means that you're not just giving people the floor but you prepared some very fundamental documents which means that you participated very actively in the whole thing.

BY THE COURT:

You're now cross-examining the witness and you're not permitted to do that.

BY THE ACCUSED:

Well witness is clearly contradicting to himself.

BY THE COURT:

The witness isn't contradicting to himself at all.

BY THE ACCUSED:

All right.

QDid you or didn't you say that all what you had to do on November 1st is giving people the floor but in no way, absolutely no way, you were to participate in what was discussed there, correct? Did you say that?

BY THE CROWN:

He didn't say that My Lord.

BY THE ACCUSED:

QDid you or didn't you?

AI had an idea, My Lord, of what we would talk about when we arrived at the meeting. I had a suggested agenda in my head which is reflected here.

BY THE COURT:

You asked the witness yourself whether he listened to what was going on and he said he listened intently. "I was having difficulty directing traffic during that meeting. I had to control that meeting."

BY THE ACCUSED:

No.

BY THE COURT:

That's what he said.

BY THE ACCUSED:

No, you do not recall what he said. He said that he just didn't pay much attention, this is why he cannot recall what was said. He just remembered for example that Osman didn't want to listen to somebody and wanted to talk.

BY THE COURT:

That's right.

BY THE ACCUSED:

But what Osman was talking, he didn't remember and neither he did remember what was talking anybody else (sic) because he said he just wanted to introduce them and after that, to eliminate himself from the whole thing.

BY THE COURT:

That's not what he said at all.

BY THE ACCUSED:

Now we are finding out ...

BY THE COURT:

That's not what he said at all and all he said there was he put together an agenda.

BY THE ACCUSED:

Read your notes and we see the document which indicates that he was very actively involved in the way how the whole thing has to be presented to me because that was the purpose of the meeting and he already proposed the decision for the meeting. Would you call it passive, just chairing of a meeting, without any active participation?

BY THE COURT:

You may have questions to put to him.

BY THE ACCUSED:

It's absurd.

BY THE COURT:

You may have questions to put to him on that agenda.

BY THE ACCUSED:

Well that is what I did put and you don't allow me to put.

BY THE COURT:

I haven't ... I haven't stopped you asking questions on the agenda.

BY THE ACCUSED:

You did.

BY THE COURT:

I stopped you cross-examining the witness on the agenda but I haven't stopped you putting questions on the agenda.

BY THE ACCUSED:

There is no other way.

BY THE COURT:

Of course, there is.

BY THE ACCUSED:

There is?

BY THE COURT:

Of course, there is.

BY THE ACCUSED:

Of course there is, so let's try it.

QSo this is the document which you prepared before the meeting, correct?

AYes, My Lord.

QAnd this document effectively may be considered kind of plan of further actions, right?

AYes, My Lord.

QSo this means that you actively participated in the meeting? You even suggested the ways to ... to proceed, correct?

AI prepared in advance of the meeting this document. I don't know if I distributed this document at the meeting or not, My Lord but it was a framework for me to conduct the meeting, around which I would conduct the meeting and it was based on the conversation that I had with Nancy Torbit, My Lord.

QWell so it means that your conducting of the meeting was not just limited to ask who is going to speak next, but you were actively participating in that meeting?

BY THE COURT:

That's not what the witness said, Mr. Fabrikant?

BY THE ACCUSED:

No, I'm asking.

QWas you ... were you actively participating in the work of the meeting?

APart of the process at the beginning of the meeting was to establish why we were there, My Lord and what did we hope to accomplish by having this meeting.

QHum, hum.

AI left that to Nancy Torbit and others to spell out, but I knew in advance that this was a possible framework and it was up to Nancy and Suzan Belzon and others to do the work but this is something I had discussed in advance with Nancy and we had some sort of agreement that this was a possible agenda that could be used for the meeting, My Lord.

QOK. So why don't you read it?

AOK.

BY THE COURT:

It will do no good reading out from the agenda, if the witness cannot tell you whether ...

BY THE ACCUSED:

OK.

BY THE COURT:

... all of these things were discussed.

BY THE ACCUSED:

All right. He definitely can't, he doesn't want to.

QOK, so you described first of all how the meeting with me should have been done. You described the purpose of the meeting, correct?

AI don't understand the question, My Lord.

QAll right, at that meeting, you planned actions how to present me the decision of DPC so that in response, I wouldn't pull a gun and shoot everybody dead there, right?

BY THE CROWN:

This is leading.

BY THE ACCUSED:

Very leading.

BY THE COURT:

Objection.

BY THE CROWN:

It's cross-examination.

BY THE COURT:

The objection is maintained.

BY THE CROWN:

And asking for an opinion and so on and so forth.

BY THE ACCUSED:

Very leading.

BY THE COURT:

The objection is maintained.

BY THE ACCUSED:

Oh yes, of course.

BY THE COURT:

Would you please spare me these asides every time there is a ruling. I've warned you twice. If I warn you again with regard to this witness, I will stop the examination

of this witness. Is that clear?

BY THE ACCUSED:

I'm not sure what I did now. What did I do now?

BY THE COURT:

You muttered "Oh yes" in your usual sarcastic fashion at the moment.

BY THE ACCUSED:

Oh Gosh ...

BY THE COURT:

And I said would you please stop doing that.

BY THE ACCUSED:

So yes, I ...

BY THE COURT:

And I've warned you twice in relation to the examination of this witness and if I have to warn you again, I'll stop the examination of this witness and make you go on to the next one. Is that clear?

BY THE ACCUSED:

OK, so now yes, it's forbidden, all right. All right is all right?

BY THE COURT:

Your sarcasm is not to be tolerated, that's all. It's very simple. Just ask your questions.

BY THE ACCUSED:

Did you ...

BY THE COURT:

Don't worry about anything else.

BY THE ACCUSED:

QOK, describe your planned way of action? What exactly you were proposing?

AIt was my plan, My Lord, to ask Nancy Torbit to spell out what ... the purpose of the meeting and it was for her, not me My Lord, but for her to make the recommendations on how to handle the situation.

QSo could you explain that trick? You did the whole work but you wanted somebody else to present it as theirs?

AThat is not what I said, My Lord.

QI know this is not what you said, but this is how it looks, does it? You did the work, didn't you? This work was done by you?

ANo, My Lord, it was done by ...

QAnd you wanted somebody else to present it as if it was theirs?

BY THE COURT:

He explained to you what the purpose of that was. Now would you stop cross-examining the witness on the document.

BY THE ACCUSED:

I'm just putting ordinary questions.

BY THE COURT:

No, you're not. You're cross-examining the witness on the document.

BY THE ACCUSED:

You didn't give me the definition what cross-examination is. Anyway you asked ...

BY THE COURT:

All right, that's it. Mr. Haines, have you any questions for Mr. Haines?

BY THE ACCUSED:

Well I didn't finish with him.

BY THE COURT:

You ... I'm stopping the examination of Mr. Haines. I'm tired of your ...

BY THE ACCUSED:

I didn't ... I didn't ...

BY THE COURT:

I'm tired of your arguments and your ...

BY THE ACCUSED:

I didn't do any argument.

BY THE COURT:

... and your insubordination.

BY THE ACCUSED:

I didn't do any arguments, I didn't do any sarcasm now.

I just explained to you that I do not know what cross-examination is.

BY THE COURT:

You know extremely well.

BY THE ACCUSED:

So I'm asking normal questions.

BY THE COURT:

Well one more slip and that's it.

BY THE ACCUSED:

QSo you asked somebody else to present it, correct?

A No, My Lord.

Q Didn't you just say that you asked Mrs. Torbit to present it?

A Mrs. Torbit and I had a conversation in which she proposed this as a way of intervening and I said fine "Would you ... when I ask for the purpose of the meeting, I expect that you will do that" and she agreed.

Q Well could you explain why, if you did the job, you didn't present it yourself?

A My job was to chair the meeting, not to deal with the contents of the meeting. That was left to Nancy Torbit and the participants to deal with the contents of the meeting, My Lord.

Q Well still you didn't answer my question. Why didn't you present your ... your own work?

BY THE COURT:

You're now cross-examining the witness again. The question is disallowed.

BY THE ACCUSED:

All right.

Q So describe in details what you proposed to do?

A What Nancy Torbit proposed should happen was the following, My Lord. Instead of sending Dr. Fabrikant a letter, that he should be called to a meeting and that the letter be handed over to him and that he be told the process, what would happen next and where he could appeal and where he could write letters and notes, how the system according to the collective agreement works. He was also ... it was proposed by Nancy to me that he be given clear notice about his behavior and if his behavior... and then consequences to that behavior.

It was also proposed by Nancy Torbit to me that the possible people that could do this job were 1, the dean, the dean with John Relton or others and that Dr. Fabrikant, also be advised that there was going to be a meeting and that ... who would be at it and that he be invited to bring someone along with him. It could be an advisor, it could be someone from CUFA and there was a discussion whether it could be a lawyer and the decision was, as

long as the lawyer was a member of the bargaining unit. It was also discussed that he should be told facts and be given information in a straight forward way, that if he had made threats, that when he had made threats, what threats they were, when, to whom and that it be clear what they were talking about.

The question was raised as to how that would be communicated and who would do those communications. That was what Nancy Torbit, My Lord and myself talked about in preparation for that meeting as a possible outcome to the meeting of November 1st 1991.

QWell if you have something else here, could you elaborate a little bit on the subject communication? Who, how, decision, information, support? What ... what the whole thing means?

AThat would mean who is going to communicate. How that communication would take place, where it would take place, who would be involved, who ... what was the decision, what decision would be handed over to Dr. Fabrikant, what information had to be supplied to him and I've got written here support. I don't know what that means now, My Lord.

QOK, returning back a little bit, could you elaborate: "To give clear notice about his behavior and consequences", did I do anything at that time which I should be warned about?

AFrom the moment I spoke to you, I think on January 23rd 1990, until this moment of November 1st, I'm not aware of any veiled threats or new threats that you have made, that you had made.

QSo then, what the whole sentence was talking about? Did you expect that I will produce some new threats? That's what was expected?

AI had no expectations of you producing any new threats.

QThen explain please the phrase: to give clear notice about his behavior? If there was nothing bad in my behavior or was it?

AIt would be my understanding, My Lord, that ... it was my understanding that it dealt with all those issues that had gone on before January 23rd 1990, yes, those issues before that.

QNow OK so ...

ANow there may have been other issues after January 23rd but I heard of none and I knew of none, no more.

QSo when you wrote this sentence, you meant the previous threats, is that correct?

AYes and ...

QSo what did you mean precisely there, to give clear notice about his behavior? What exactly was I suppose to be told?

AIt would be told ... well, you would be told as all the events of alleged threats and threats that you had made and that if they would continue or if there was going to be any... if there was to be anymore, that they would inform you in advance what the consequences would be ...

QSo ...

A... for anymore threats.

QSo effectively, you did expect that by receiving ...

BY THE COURT:

You're now cross-examining the witness. You asked your questions, you've got your answer.

BY THE ACCUSED:

QOK. Did you try to provoke me into new threats by this decision?

BY THE COURT:

That question will not be allowed.

BY THE ACCUSED:

Why? It is not cross-examination, it's nothing.

BY THE COURT:

It's cross-examination and it's argument.

BY THE ACCUSED:

I'm not arguing at all, I'm just asking ...

BY THE COURT:

"Did you try to provoke me into new threats".

BY THE ACCUSED:

Yes?

BY THE COURT:

No, you will not be allowed that question.

BY THE ACCUSED:

But it is not cross-examination, it's not ... it's not anything. It's not even leading.

BY THE COURT:

You're not allowed that question.

BY THE ACCUSED:

All right.

QWhy ... why was it necessary, you deemed necessary to give some kind of clear notice to me if I didn't make any threats for about two (2) years prior to this decision?

AIt was my understanding My Lord that Nancy Torbit was worried and concerned and anxious and felt that boundaries had to be made clear to Dr. Fabrikant what is acceptable behavior and what is not acceptable behavior based on the past events and she may have been aware of other events as well, My Lord.

QYou didn't answer my question.

BY THE COURT:

You have your answer.

BY THE ACCUSED:

Fine.

QThen what were ... you said Mrs. Torbit made you aware of some new threats or something?

ANo, I did not, My Lord.

QWell what ... what she made you aware of?

AShe did not, she may ... I said that she may have been aware, I don't know.

QWell you just ... just now you said that she gave you some new information.

ANo, My Lord.

BY THE CROWN:

He didn't say that My Lord.

BY THE COURT:

No.

BY THE ACCUSED:

Well he said that she made him aware of some new threats or something.

BY THE CROWN:

No, he said she might have been aware.

BY THE ACCUSED:

Well might have been means that he had some reason to say so.

BY THE COURT:

He said he couldn't ... he didn't know what she was aware of. Was that your answer?

ANo, that's right My Lord.

BY THE ACCUSED:

QWell but OK, I'll put it this way. So she ... it was not you who wrote this sentence, to give clear notice about his behavior. It was Mrs. Torbit who wrote this sentence?

AI transcribed this based on our conversation, My Lord.

QSo it was her suggestion?

AVery much so, My Lord.

QSo what is yours here then? Before you said that you were the one who developed this document?

AYes, based on consultations with Dr. ... with Nancy Torbit and it was clearly her idea, it was clearly her suggestion that a letter be given to Dr. Fabrikant and just not mailed to him at his home. Then I may have asked some questions such as well who should give it and how is that done. She would have answered those questions.

QThat was not my question. My question was: why was there a need to give clear notice about my behavior if there was nothing to reproach in my behavior for almost two (2) years?

BY THE CROWN:

Cross-examination.

BY THE ACCUSED:

That was the question to which ...

BY THE COURT:

It's cross-examination and the question has been answered. Pass on to other things.

BY THE ACCUSED:

QAll right. Now item 2, collection of facts, information, threats, what went to whom. Did you mean new threats or did you mean old threats?

AI certainly meant old threats, My Lord.

QSo didn't you know what went and to whom? It was to you, wasn't it?

BY THE COURT:

You're cross-examining again. Disallowed.

BY THE ACCUSED:

All right, I will change the question.

QWhen you meant threats and you said old threats, then what was ...

AYou said old threats or all threats?

QOld threats, then elaborate please, what was necessary to collect in terms of what went and to whom?

AThe idea behind this part of the agenda, My Lord, was to make it explicitly clear to Dr. Fabrikant what was being ... what were the issues and what were the concerns of people. It was not to be vague. It was to be very precise. When did it happen? Where did it happen? With whom did it happen and that it was important to have a collection of this data and this be conveyed to Dr. Fabrikant in very clear and direct language.

QWas it because it has never been conveyed to me in this way?

AIt was felt that the boundaries were not made clear enough to you and that someone in the university had to do it.

QSo but you didn't answer my question. Was it ever conveyed to me in such a direct way as you mentioned now? When, what, to whom and so on, was it ever before con-

veyed to me?

AWell I remember one occasion that I have recorded here, My Lord, that on January 23rd 1990, in a telephone conversation with me, I told you "When you say ... use language like that, that's inappropriate and if you mean that ... that that is a dangerous expression you are using, that I will report it to the authorities."

QWell I would like to recall again January 23rd, I just told you ... what did I tell you then? That things are out of hand, right?

AYes, My Lord.

QAnd you tried to provoke me, saying "is it dangerous statement"?

BY THE COURT:

Now you're arguing with the witness.

BY THE ACCUSED:

No, no, no, I'm just recalling.

BY THE COURT:

No, you're not just recalling.

BY THE ACCUSED:

All right.

BY THE COURT:

Now, you're arguing with the witness.

BY THE ACCUSED:

OK, I will not argue.

BY THE COURT:

Fine. Move on to something else.

BY THE ACCUSED:

Well he mentioned it and I think ...

BY THE COURT:

You asked him whether it had been conveyed to you and he said "Yes, I conveyed it to you".

BY THE ACCUSED:

Yes, I would like to ...

BY THE COURT:

There you are.

BY THE ACCUSED:

I'd just like to make the recollection ...

BY THE COURT:

No.

BY THE ACCUSED:

... more precise what he did.

BY THE COURT:

That's... that's it. You've got the answer. The answer is there. If you don't like it, that's too bad. Don't ask the question.

BY THE ACCUSED:

Well I like the answer. I just want to get a little bit more precision.

BY THE COURT:

We've got absolutely plenty precision, Mr. Fabrikant, on this.

BY THE ACCUSED:

All right.

BY THE COURT:

And if you don't hurry up and move on to something else, I'm going to terminate this examination. This is... this is simply wasting time.

BY THE ACCUSED:

QSo that was supposed to be told to you. So you told me just about attempt to kill the rector, but the rest was

supposed to be told to me during that meeting, correct?
AI told you that when you say to me that you will ... you wanted to know the room numbers of the rector and you wanted to take ... and that you would take the rector hostage and you would shoot him, that that was the example that would be conveyed back to you. That would be one of the items under the collection of facts and information that would be reported back to you.

QAll right, but the rest, was it by that time reported to me in any way?

AThe rest?

QWell the remaining threats?

ACould I have the question over again My Lord?

QThe remaining threats, were they ever conveyed back to me that you said at this time this, you said at this time that?

AIn a very precise and detailed manner? Not that I'm aware of, My Lord.

QOK. During the meeting with Swamy, are you aware whether this particular part was fulfilled, whether during meeting with Swamy, anybody mentioned to me either threat to kill rector or any other threats?

AMy Lord, I don't remember having a meeting with Dean Swamy and Dr. Fabrikant?

ANo, I mean to the best of your knowledge, was this part of your plan fulfilled?

BY THE CROWN:

This question is not clear, My Lord.

BY THE COURT:

The question is very unclear and it ...

BY THE ACCUSED:

QWell that was the plan of the meeting with me, correct?

AThis was a proposal ...

QYes.

A... that we were to discuss, supposed to discuss at that meeting on November 1st, that a meeting be held ... hold ... held with Dr. Fabrikant in which these things would be spelled out, My Lord, yes.

QYes.

AWhether it took place or not, I do not know.

QOK, was this plan of action accepted during the meeting of November 1st?

AI do not remember what the decisions were made eventually after that meeting, My Lord. All I knew is that the meeting ended and I had left then the whole management of this over to the hands of the intervention team. I was no longer involved. That was not my job to follow through on these things anymore.

QWere you present during meeting of November 7th?

ANovember 7th? May I look at my agenda, My Lord.

BY THE COURT:

Certainly.

AThere is one meeting I do remember attending. I don't know if it was before or after November 1st with John Relton, Nancy Torbit, Suzan Belzon and myself. That may be the meeting of November 7th and that would be me teeing up things and making sure that hopefully that these things would happen, but I don't know.

I do not have ... this is 1991. I do not have a meeting recorded for November 7th 1991, My Lord.

BY THE ACCUSED:

QI'm trying to refresh your memory. Thursday, November 7th, 1991, meeting at Swamy's office. Present: Swamy, Haines, McKenzie, Belzon, Relton and Torbit.

AI now remember having a meeting. I don't know if it was on November 7th, My Lord but I remember there was a meeting yes.

QWell?

AI remember more now My Lord. At the meeting that we had with the department and ... and the intervention team, I think it was decided at that point that we would meet with Dean Swamy to bring him up to date as to what next should happen and what should happen on ... after the meeting and I attended that meeting, My Lord, after the meeting of November 1st and it was to meet with Dean Swamy to bring him up to date as to what was discussed here and to plan the next stage and also to involve him in the process, My Lord.

QWell wasn't Dean Swamy present on November 1st meeting?

AAAt first I didn't think so, but now, I think he was there but I can't remember. I'd be speculating now. I ... I know he came to one meeting in which he stayed for a very short time and then he left. I'm not sure if that was the meeting of November 1st or not.

QSo if he was there, then he was well aware of what transpired there, wasn't he?

BY THE COURT:

No, you can't ask that question. That's in the nature of cross-examination first of all and secondly he can't speculate as to what Dean Swamy was aware of or was not.

BY THE ACCUSED:

No, this is ... OK, I will rephrase it.

QSince Dean Swamy was present on November 1st, then November 7th meeting could not possibly be done to bring him up to date or something?

BY THE COURT:

You're cross-examining the witness, question disallowed.

BY THE ACCUSED:

All right.

QSo what was the purpose of November 7th meeting?

BY THE COURT:

He's told you, it was to bring Dean Swamy up to date.

BY THE ACCUSED:

But Dean Swamy was present on November 1st and he knew.

BY THE COURT:

He said that he may have only been present for a short time on November 1st.

BY THE ACCUSED:

All right.

QSo what was Dean Swamy informed about on November 7th meeting?

AHe wouldn't have been so much informed about, My Lord. It would have been to bring him up to date as to what was discussed and to involve him in looking at how to best proceed. It wasn't there to give him a set of rules and directives and tell him what had to be done next, My Lord. It was to tell him: here are some suggestions on how best to proceed and what do you think and how shall we do it and who should do it.

QOK. Could you go into more details? What exactly you proposed him to do, how it should ... was supposed to be

done?

AI remember, My Lord, that it was proposed that there would be a meeting held with Dr. Fabrikant and the question was raised: who would be with him and what would be said and who would be in attendance.

QYes and what exactly was proposed?

AI'm recalling on ... on my feet here, My Lord. I remember that it was proposed that a meeting ... that they ... it was agreed to meet with Dr. Fabrikant instead of sending him a letter or at the same of sending him a letter, but at the same time concurrently meet with him. I think Dean Swamy still wanted the letter mailed, registered mail but also agreed that concurrently he would meet with Dr. Fabrikant, I think with one of the members of the intervention team, John Relton, in attendance.

QAnd what would be the content of the conversation?

BY THE COURT:

If you know.

AThe content of the conversation would be to report to Dr. Fabrikant the results and the decision of the department personnel committee, My Lord.

BY THE ACCUSED:

QThat's all?

AThere may have been other things. I ... I do not recall at this moment. I do not recall what happened to the question of addressing the threats or alleged threats to Dr. Fabrikant. I don't know what happened to that part of the agenda, My Lord.

QWell isn't it an important part?

BY THE COURT:

You're cross-examining. Disallowed.

BY THE ACCUSED:

OK.

QIf you look at your plan of action, what part of this plan of action was or wasn't? For example, to explain the process, was it still there?

AIt was my understanding that you would be told by Dean Swamy the next stage of the ... of the procedures and all the way through, as according to the collective agreement and where you might be able to get in additional input.

BY THE ACCUSED:

This, he does remember. About threats, he doesn't remember. Isn't he faking the memory?

BY THE COURT:

Would you please stop your comments.

BY THE ACCUSED:

I'm asking you.

BY THE COURT:

Would I please what?

BY THE ACCUSED:

All right. I just asking question about section 9 of Canada Evidence Act.

BY THE COURT:

Section 9 has no application here.

BY THE ACCUSED:

QOK. About clearer notice about his behavior and consequences, was it still there on November 7th?

AI do not remember, My Lord.

QWhat about threats, collection of facts, what went to whom, was it still there on November 7th?

AI would be speculating, My Lord, if I answered that.

QWasn't the whole thing done because of the threats? I mean the whole procedure of terminating my employment, were not the roots of that termination in the alleged threats?

AI do not know what the grounds for their decision were, My Lord.

QOK.

AThat was not my business.

QOK. Was the reason for decision then fear that I will blow whistle on all fraud and extortion at the university?

BY THE CROWN:

This is leading and cross-examination, My Lord.

BY THE ACCUSED:

Well it is not leading at all.

BY THE COURT:

Objection maintained.

BY THE ACCUSED:

QOK, now about the rest, communication, who, how, what about that part, was it still there on November 7th?

AI remember it was agreed that Dean Swamy and John Relton would meet with you to convey these... to speak with you.

QBut still could you elaborate. Decision, information, support, what the whole thing means?

AThe decisions were to be about the decision of the department personnel committee. Information would be about the process according to the collective agreement of what the next stage is and where Dr. Fabrikant was entitled to file appeals and support, I don't know what that means now My Lord.

QSo did ... did it look like we hit over head (sic) and here is some medicine for you? Did it look like that?

BY THE CROWN:

What is this question?

BY THE COURT:

I have no idea what this question is. You better rephrase your question.

BY THE ACCUSED:

All right.

QThey were making decision to terminate my employment. At the same time, decision totally unfounded in any way, at the same time, they were thinking about providing some information and support. What kind of dirty comedy is that?

BY THE COURT:

I have no idea, but are you asking a question or what?

BY THE ACCUSED:

So I'm explaining ... well this, I'm just explaining the nature of my questions.

BY THE COURT:

That doesn't help make your question any ... anymore comprehensible.

BY THE ACCUSED:

It sounds ... it sounds rather strange that someone ... for example, to rope someone and then give him ten cents that he could go to the police to report it.

BY THE COURT:

Mr. Fabrikant, save that for argument.

BY THE ACCUSED:

Well I'm just explaining my question. My question still stays the same.

QWas it ... did it look like hitting somebody over head and then offering him band-aid?

BY THE COURT:

It's not for the witness ...

BY THE CROWN:

This is leading and arguing and cross-examination.

BY THE COURT:

The question ... the question is disallowed.

BY THE ACCUSED:

The question is disallowed.

QHow long did the meeting last on November 7th?

AI have no idea, My Lord.

QWell was it an hour, five (5) hours?

BY THE COURT:

The witness has said he has no idea. End of question, pass on.

BY THE ACCUSED:

All right.

QWould it be correct to assume that you didn't finish the business since you met again on November 8th at the same place with the same people?

AI do not remember, My Lord. May I look? I have absolutely nothing here, My Lord. In fact, I'm supposed to be in a workshop all day on November 8th, nine until four thirty according to my book.

BY THE COURT:

OK, we'll stop here for ... we'll stop for ten minutes. The crown prosecutor asked me to see if it would be possible to adjourn promptly at four thirty and I said yes, surely, it would ... it would be reasonable in the circumstances, so we'll stop for ten minutes but we'll try and restrict it to then and then we'll resume.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ARE PRESENT

GRENDON HAINES

(Under the same oath)

BY THE ACCUSED:

QSo do you recall continuation of that meeting on November 8th with the same people present and you too?

AI do not remember that, My Lord.

BY THE ACCUSED:

This is beyond any limits.

BY THE COURT:

Pardon?

BY THE ACCUSED:

This is beyond any limits.

BY THE COURT:

Have you any other questions to ask him?

BY THE ACCUSED:

QSo you have no recollection whatsoever of being there?
AI have no recollection that the meeting was reconvened to the following day, My Lord, I have no recollection of being there at all.

QOK. Does the word "Aldos" (sic) ring any bell?

AThe word?

QAldos?

AAldos? What's ... I don't know what Aldos means, My Lord.

QWell restaurant, do you remember lunch at Aldos?

ARestaurant, lunch at Aldos?

QPresent: McKenzie, Haines, Relton and Torbit?

AThat's an Italian restaurant?

QDon't ask me.

AI don't ... I don't recall, My Lord.

QDo you remember having ... having meeting at any restaurant, Italian or otherwise, with present this: McKenzie, you, Relton and Torbit, November 12th?

AI do not recall, My Lord. I would be speculating now. I really ... it's far away.

QOK, does this document ring any bell in you?

BY THE COURT:

Would you show that first of all to the crown prosecutor?

AI have a copy of that in my file, My Lord, a copy of which I have given to Dr. Fabrikant.

QWell describe what this document is?

BY THE CROWN:

Well it's a document from DPC My Lord.

BY THE COURT:

It's not ... it's not ... the witness hasn't ... never signed that, I don't believe.

BY THE CROWN:

I don't think so.

BY THE ACCUSED:

Well witness was ... copied this document, so I suspect he discussed it.

BY THE CROWN:

It doesn't change anything.

BY THE COURT:

Have you a question to put in relation to the document.

BY THE CROWN:

It's hearsay for ... for the witness.

BY THE ACCUSED:

Yes, I have question for the witness.

QWas this document discussed?

AI cannot remember if this document ... I'd have to read this document, My Lord. I ...

BY THE COURT:

QTake cognizance of the document.

AMay I sit down to do so, My Lord?

Certainly.

BY THE ACCUSED:

QSo what is this document? Would you describe it?

AThis is a document from the department personnel committee to Dr. ... to Maitre Beranger-Gaudet, Secretary General of the university.

QWhat it is about?

AIn a nutshell ...

BY THE COURT:

Well it's not ... it's not a document emanating from the witness.

BY THE ACCUSED:

Well he was receiving a copy of it. Copy of it was sent to him.

BY THE CROWN:

Well it doesn't change anything in ... in the rules.

BY THE ACCUSED:

This document ...

BY THE COURT:

You might ask him why he received a copy of it or whatever but ... but you're not ... you're not going to put the document into the record through ... through the witness.

BY THE ACCUSED:

I'm not putting document to the record.

BY THE COURT:

Well then put ... put a question on the document.

BY THE ACCUSED:

I put questions. I'm ... first of all, I'm identifying what this document is about, it's normal question.

BY THE COURT:

What was your question?

BY THE ACCUSED:

What this document ... to identify the document, what it is about.

BY THE COURT:

QWhat is it?

AThere are several things in here, My Lord.

QNot what's in there, was it it?

AOh it's a ... by registered mail, extremely confidential dated November 7th 1991 from the department of mechanical engineering to Maître Beranger-Gaudet. There's no "re", it's Dear Maître Gaudet.

BY THE ACCUSED:

QYes, what is it about?

AAre you wanting me to summarize what is in here?

BY THE COURT:

QNo, are you aware of why you received a copy of that memo or letter?

AI was aware when I did receive a copy of the letter of asking myself why am I getting this. I do not know why I was getting this, this copy. I assumed that they sent me a copy because I had had some involvements at that point but I was disengaging or trying very hard to disengage myself and that they sent it to me, but I don't know why I would have been sent a copy of this memo, My Lord.

QFine.

BY THE ACCUSED:

QSo what it is about? Maybe we will understand why it was sent to you.

BY THE COURT:

QIn very general terms, can you answer that? In general terms?

AYes. I think they're asking for more security, My Lord. This is what this letter is about.

BY THE ACCUSED:

QWell by way of what?

BY THE COURT:

Well if you know, but if you don't know, you don't know.

ANo, I don't, I don't, My Lord.

BY THE ACCUSED:

What do you mean, don't know. He read it. It's written

there black and white.

BY THE COURT:

Well it doesn't matter, whether the witness read it or not. He's not the appropriate witness to ... to give you information with regard to that document.

BY THE ACCUSED:

This is not my purpose. My purpose is to introduce what he received and then so I would be able to question him and for that purpose, I need at least in general to indicate what this document was about.

BY THE COURT:

What questions do you want to put to him on that document?

BY THE ACCUSED:

The question is clear. I repeated at least five times. What this document is about?

BY THE COURT:

He's told you, he said it deals with extra security.

BY THE ACCUSED:

Well how?

QBe more specific please? What exactly is required, it is not ...

BY THE COURT:

If the witness has no knowledge of what is in that document, how can he possibly address the subject of that document?

BY THE ACCUSED:

He knows, he sat down and read it.

BY THE COURT:

He's not the appropriate witness to discuss that document.

BY THE ACCUSED:

I'm not discussing the document. I'm just asking what it is about. He's answering wrong.

BY THE COURT:

He's told you what it is about.

BY THE ACCUSED:

No, he answered wrong. Read it again and answer correct. What members of DPC demanded in this document?

BY THE CROWN:

I'm sure the question will be asked to the members of DPC if ever they testify in this trial.

BY THE COURT:

I'm sure ... I'm sure it will.

BY THE ACCUSED:

Well, but otherwise I would not be able to ask my further questions. Why are we arguing about all this?

BY THE COURT:

Because there's a way to do things and I'm doing them the way they're supposed to be done. So your question is disallowed.

BY THE ACCUSED:

Well I always ask for any other document to say what it is about and after that, to pose questions.

BY THE COURT:

It is not a document ...

BY THE ACCUSED:

Why ... why now you ...

BY THE COURT:

It is not a document emanating from the witness and he cannot recall why he received it.

BY THE ACCUSED:

Well could it be that he received it because he was still very deeply involved in the so-called security of the department?

QCould that be the reason why you received it?

A No, no, My Lord.

QNo? Then I would like to demonstrate to you yet another letter. This time it is written by you. Would you like to read it.

A I have a copy of that. That's my ...

QYes, I think so. I can ...

AYes.

QMaybe you return me the other document too. All right, thank you. So would you like to read it?

AShould I read this document, My Lord?

BY THE COURT:

Yes, you may read that document.

BY THE CROWN:

For himself?

BY THE COURT:

Well ...

A No, it's a note to Catherine McKenzie.

Just a second. Is there an objection to that document being read?

BY THE CROWN:

Well he's the author.

BY THE COURT:

He's author of the document.

BY THE CROWN:

The proper way is to ... is to file it.

BY THE COURT:

If he wishes ...

BY THE ACCUSED:

Well I want ...

BY THE CROWN:

If it's easier to read it, no problem.

BY THE COURT:

Fine, read ... read the document.

AOK.

"November 6th 1991

Catherine,

I wish to underline my concerns requesting that the appropriate officials of the Montreal Urban Police be contacted. There have been three (3) recent incidents which can be interpreted as potentially menacing.

1. The incident at the department personnel committee meeting Wednesday, October 30th, 1991 in the Hall building at eleven thirty (23 h 30) at night.

2. The call for police at the senate meeting last Friday, November 1st.

3. The unexpected visit at the Concave Center on Tuesday, November 5th 1991.

I'm not competent in areas of this nature. I believe that people who have more experience and expertise should be called upon for their advice and possible action.

My Lord.

BY THE ACCUSED:

QOK, does this mean that you so tried to get disengaged...

BY THE CROWN:

Well is he filing it or ...

BY THE COURT:

I have no idea.

BY THE ACCUSED:

Of course I will be filing it. This is a pearl.

BY THE COURT:

Now your question.

BY THE ACCUSED:

QSo the question is: you just stated on several occasions today that you tried very strongly to get disengaged from the whole thing. Nevertheless on November 6th, on your own initiative, you write a letter to Dr. McKenzie demanding that police be contacted. Does it look like you were trying to disengage or you were very very much engaged?

BY THE COURT:

I don't know whether there's an objection but the question ...

BY THE CROWN:

Well I'm sure the witness has a good answer, My Lord.

BY THE COURT:

The question ... the question is cross-examination.

BY THE CROWN:

I know but it's always ...

BY THE ACCUSED:

Well witness has a good answer. Let him ...

BY THE CROWN:

Sometimes it's shorter when there's a good answer from the witness than to argue so ...

BY THE COURT:

If you wish to establish the purpose of that, ask him that?

BY THE ACCUSED:

No, I wish ...

BY THE COURT:

What was his purpose in writing that letter.

BY THE ACCUSED:

I wish ...

BY THE COURT:

I'm not going to permit you your last question.

BY THE ACCUSED:

Well I want to establish that the witness was misleading the court. This document proves definitely that he was very well engaged, not disengaged.

BY THE CROWN:

We can argue about that, My Lord.

BY THE ACCUSED:

What is wrong with that?

BY THE CROWN:

We can argue, we can look at this document and see a sign of disengagement in it, so ...

BY THE COURT:

Absolutely.

BY THE ACCUSED:

What? I didn't get what the crown said, what? I didn't get it? What, he agreed with me or he ...

BY THE COURT:

No, he doesn't.

BY THE ACCUSED:

Yes and?

BY THE COURT:

He says he sees a sign of disengagement in the letter itself. That's his interpretation of it.

BY THE ACCUSED:

He sees sign of disengagement.

BY THE COURT:

And he says ... and he says that that can be argued about. You ... in any event the last question is not permitted.

BY THE ACCUSED:

Well it's not permitted just because it is not permitted but not because there is sign of disengagement there?

BY THE COURT:

No, no.

BY THE ACCUSED:

It's just not permitted?

BY THE COURT:

It's not permitted the way you put your last question.

BY THE ACCUSED:

All right.

BY THE COURT:

It's ... it's of the nature of cross-examination and I'm not permitting you that.

BY THE ACCUSED:

All right. In any case, when witness is definitely trying to mislead the Court, there is no way I can point it out?

BY THE COURT:

You may think he's trying to mislead the Court. That's not my view.

BY THE ACCUSED:

Well all right. He said here that he was trying to get disengaged on November 1st. Now we learned that at least he participated in November 7th meeting, so he was not disengaged.

Beyond that, I have information that he participated November 12th and November 13th and November 8th in each of those meetings. He's just faking his memory, that he doesn't remember that.

Now we have a letter of November 6th which seems to be unbelievable.

BY THE COURT:

Well you may find it unbelievable.

BY THE ACCUSED:

Well ...

BY THE COURT:

But you ... you called the witness. There's nothing ...

BY THE ACCUSED:

How ... how to ...

BY THE COURT:

... preventing you asking the witness what ...

BY THE ACCUSED:

All right.

BY THE COURT:

... was the nature of his involvement in that ... that letter, why did he write it. That's the way to ask the question.

BY THE ACCUSED:

OK.

BY THE COURT:

You may have to make a subtle argument if you think that he's ... if you think that he's misleading the Court or misleading the jury but it doesn't mean that you're allowed to ... you're allowed to go bluntly and go into cross-examination and it may well be that he has ... he has an explanation.

BY THE CROWN:

And there is no contradiction. The witness said he tried to disengage. It doesn't mean he succeeded.

BY THE ACCUSED:

Ah all right. So he was forced to be engaged, right? OK so let's ...

BY THE COURT:

That's not what Mr. Lecours said.

BY THE ACCUSED:

Well he tried, he was not ...

BY THE CROWN:

I just said there's no contradiction, My Lord.

BY THE ACCUSED:

He tried, he was not successful. It means that somebody forced him to do it, right?

BY THE COURT:

In ... I suppose in your way of looking at it, but not in mine.

BY THE ACCUSED:

All right, anyway.

QCould you clarify please for the jury: on the one hand, you said that you tried to get disengaged. On the other hand, we just see that you are very well engaged. Is there any contradiction there?

AI see no contradiction, My Lord. My job was to pass over the responsibility of handling this thing to the intervention team. I wasn't able to accomplish it in one or two meetings. It took several meetings and my job was to get them fully entrenched so that they could take over after and I do not see this memo as a contradiction. In fact, it supports my attempt to get out of the situation altogether.

QWell by December 15th, the situation was ended by itself, didn't it?

AI do not know.

QWell you just early admitted that you were telling to Mrs. Torbit that by December 15th, Sheinin will take her decision and the matter will be closed. Do you recall that?

AI told Dr. ... Nancy Torbit that on December 15th, that's the date established by the collective agreement in which letters of renewal are issued from the vice-rector's office. I was informing her of what is in the collective agreement, My Lord.

QSo if you tried to get yourself disengaged by December 15th, that would look equivalent as if you were engaged all the time, does it?

BY THE CROWN:

This is cross-examination, My Lord.

BY THE COURT:

Clearly, objection maintained.

BY THE ACCUSED:

All right.

QReturn to November 6th document. Could you tell the jury

what prompted you to write the letter?

A Could I have it back?

BY THE CROWN:

D-14.

A It would have been in the meetings that I attended on November 1st and others in which it was expressed by the people there that they were alarmed and they were quite concerned and worried.

Therefore I thought if their concerns and worries are legitimate, then we need to call in someone who is a professional, who's had experience in this area to assess the legitimacy of their concerns and to make appropriate recommendations and if necessary, to take appropriate action to deal with them.

Q So now it looks like you do remember something of what was said at the meeting? You before claimed that you don't remember anything at all, so now you do remember that the members of DPC expressed ...

BY THE CROWN:

This is ... My Lord, this is not a question.

BY THE COURT:

Yes.

BY THE ACCUSED:

What?

BY THE COURT:

Are you asking a question?

BY THE ACCUSED:

Yes.

BY THE COURT:

Well this isn't a question.

BY THE ACCUSED:

No. Just let me finish, it will be question.

BY THE COURT:

Well make it a question and make it a short question.

BY THE ACCUSED:

Well ...

BY THE COURT:

You don't have to go into ... you don't have to go into a long dissertation.

BY THE ACCUSED:

Well I'm doing the best I ...

BY THE COURT:

Attempting to justify your question.

BY THE ACCUSED:

I'm doing the best I can.

Q So how to reconcile those two statements. Before you said that ...

BY THE CROWN:

This is cross-examination.

BY THE ACCUSED:

... you do not remember anything, which has been said at the meeting. Right now you just said that there ...

BY THE COURT:

There's a way to put that question. The crown prosecutor is perfectly right. That's cross-examination the way you have put it. The objection is maintained.

BY THE ACCUSED:

Well if I ... if there is a contradiction, cannot I ask (sic) to clarify this contradiction? Maybe it is not a contradiction at all, maybe I just misunderstood.

BY THE COURT:

Maybe not.

BY THE ACCUSED:

So it is not cross-examination then.

BY THE COURT:

QMr. Relton (sic), does that letter of the 6th assist you in recollecting what transpired at those meetings in early November, insofar as you didn't remember earlier what the content was?

That's how you put that question.

BY THE ACCUSED:

Beautiful.

AIt helps me remember ...

Nobody could beat that.

A... the tone, My Lord. I don't remember exact words and exact statements but it does reflect very carefully the tone of the meetings that were there, My Lord. It does recall ... make me recall that.

QOK, so maybe you recall something more than that. So we now established, if my understanding correct, that on November 1st meeting, members of DPC expressed fear for their safety, right?

AThey expressed concern for their safety, that they expressed concern that adequate safety measures be taken.

QSo maybe you recall then whether the members of DPC had some grounds presented for their concern?

AIn setting up this meeting on November 1st, My Lord, when I spoke to members of the ... of the department, I asked them clearly whether there were any recent events that gave them cause to believe that Dr. Fabrikant was making any threats and their answer to me was no.

QWell did you inform them at any time that I made threat to kill and kidnap rector?

BY THE CROWN:

I think the question has been asked for about twenty times now, My Lord.

BY THE ACCUSED:

No.

BY THE CROWN:

To this single witness.

BY THE COURT:

Pardon?

BY THE CROWN:

The question has been asked at least twenty times just to this single witness.

BY THE COURT:

Yes.

BY THE CROWN:

I'm not counting the other ones.

BY THE ACCUSED:

What? I asked question whether he informed DPC?

BY THE COURT:

Yes.

BY THE ACCUSED:

How could I ask this question if we're just now in 1991?

We never discussed 1991.

BY THE COURT:

Anyway, go ahead. Ask ... ask your question.

BY THE ACCUSED:

Well I did ask.

AI did not, My Lord.

QWell didn't you feel obliged if people scared for their life?

BY THE COURT:

Now you're cross-examining the witness. Disallowed.

BY THE ACCUSED:

QOK. Could you explain why you didn't share your own experience with members of DPC?

AIt was my duty at the time that those messages were given to me by you to inform the authorities of the university and those who you threatened and no one else.

QThis is not answer to my question.

BY THE COURT:

That is the answer to your question.

BY THE ACCUSED:

QOK, did you inform members of DPC about threats on the life of the rector at any other time before 1991?

A No, My Lord.

QWho did you inform personally about it?

A I informed the rector, Dr. McKenzie, Rolland Barnaby.

BY THE COURT:

I'll stop you right there.

Do not get back into this business. We've been through this with this witness when you covered the other year and we covered 1989 and we're not going through it again. You are ... you are foreclosed from going any further as far as this is concerned. This is examination is turning right around.

BY THE ACCUSED:

Well if I see some kind of contradiction into previous, (sic) I believe I have the right to point it out.

BY THE COURT:

No, you do not at the moment and there's no contradiction.

BY THE ACCUSED:

Well you don't know yet.

BY THE COURT:

I'm telling you: you are not going to continue cross-examining the witness.

BY THE ACCUSED:

I'm not cross-examining.

BY THE COURT:

Yes, you are.

BY THE ACCUSED:

All right.

QSo how could you explain then that everybody at the university knew about it? Do you have an explanation?

BY THE COURT:

This is cross-examination. Disallowed.

BY THE ACCUSED:

All right.

QNow you mentioned here DPC meeting, October 30th in the Hall building, eleven thirty at night. Where did you get that precise information if you tried to get disengaged yourself?

BY THE CROWN:

The last part of the question is arguing, My Lord.

BY THE COURT:

All right, cross it out.

A So the question is?

BY THE COURT:

Where did you get the information concerning eleven
thirty at night and all?

BY THE ACCUSED:

QSo precise information?

AI guess My Lord I would have heard that at the meeting on
November 1st, unless I'd forgotten about that but that's
where I would have heard that. That was raised at the
meeting of November 1st, My Lord.

QOK, so we now come to the situation that something else
was triggered in your memory. Maybe you recall something
else of November 1st meeting. You see, I'm a good student
of yours.

AI don't recall right now, My Lord.

QWell you said that this, you have heard at November 1st
meeting. You have heard ...

BY THE CROWN:

It was a guess, My Lord.

BY THE ACCUSED:

QWell try to recall who told you? What ... what were you
told about this incident in ... in the Hall building?

AI remember being told but I don't know by whom, My Lord
and I don't know when I was told, My Lord.

QOK, at least what you were told?

APardon?

QWell you said it was menacing.

BY THE CROWN:

It's all hearsay, My Lord. He was not there.

BY THE COURT:

No.

BY THE ACCUSED:

This is not the point I'm trying to make. I'm not in-
troducing evidence of the incident. I'm trying to elicit
from the witness ...

BY THE COURT:

What he remembers?

BY THE ACCUSED:

Yes.

BY THE CROWN:

So for what purpose? How is it relevant?

BY THE ACCUSED:

Well let me bother about it, how is it relevant.

BY THE CROWN:

I suggest that it is not relevant, My Lord.

BY THE ACCUSED:

I'm doing the ... I'm making my defence.

BY THE CROWN:

A lot of people are involved in this incident, not this
witness.

BY THE ACCUSED:

This is not the point.

BY THE CROWN:

I think a lot of time will be already spent with all the
witnesses that will be there, without starting the whole
process with people who were not even there, My Lord.

I suggest it is a waste of time.

BY THE COURT:

Recall charter of rights. I'm entitled to full response.

BY THE COURT:

You were asking about who told him, is that it?

BY THE ACCUSED:

Yes, who told him? What he was told?

BY THE CROWN:

No, no, the question was what was told. He didn't remember who told him. I'm not concerned in hiding anything. I'm concerned with saving time.

BY THE COURT:

I know, I realize your ...

BY THE ACCUSED:

Well if saving time ...

BY THE CROWN:

A lot of people will be able to answer these questions.

BY THE COURT:

Yes, I think that ...

BY THE ACCUSED:

He would have responded ...

BY THE CROWN:

All the members of the DPC.

BY THE COURT:

I think you're correct.

BY THE CROWN:

Mr. Fabrikant himself, if ever he chooses to testify.

BY THE COURT:

The objection ... the objection is maintained.

BY THE ACCUSED:

He would have responded a long time ago.

BY THE COURT:

The objection is maintained.

BY THE ACCUSED:

All right.

QSo what do you know about call for police at the senate meeting last Friday, November 1st?

BY THE CROWN:

First he should ... the accused should establish that he was there. Otherwise it would be hearsay, My Lord.

BY THE COURT:

You're correct.

BY THE ACCUSED:

Well I'm asking not to establish the fact of arrest, I'm establishing fact of his personal knowledge at that time.

BY THE CROWN:

For what purpose again? It's not relevant.

BY THE ACCUSED:

It is relevant.

BY THE COURT:

It relates generally to that memo which was produced as D-14. The question is permitted.

AThe question is, My Lord, how did I find out about the incident on November 1st?

QYes, what did you find out about the senate meeting?

AI was in my office that afternoon, My Lord. I think that's a Friday and the senate meeting, I assume, had ... had finished and Dr. Catherine McKenzie came into my office and she told me that 1, that Dr. Fabrikant was at the senate meeting and 2, that he had a big valise, that he was carrying around and 3, that she got worried that there might be something in it and 4, she telephoned the police and the police opened up the portfolio and found nothing inside and Dr. Fabrikant was released.

BY THE ACCUSED:

OOK, then if this ...

AI think that's all, My Lord.

QIf this is what you heard, could you explain why you called this menacing?

BY THE COURT:

Now you're cross-examining the witness. You may not.

BY THE ACCUSED:

Well I'm just asking question concerning ... I'm not cross-examining, I'm not doubting anything.

BY THE COURT:

I'm sorry, you're correct, you're correct. Go ahead.

BY THE ACCUSED:

It is (inaud.).

QWhy do you call this menacing?

AIt was put to me, My Lord, as if Dr. Fabrikant was acting in a menacing way when he arrived at the senate chambers.

QWell ...

AAnd that is why Dr. McKenzie called the police. So it was how she described it to me.

QWell what ... what ... would you be more precise as to what I was doing so that ...

BY THE CROWN:

He was not there, My Lord.

BY THE COURT:

He wasn't there, he told ... he said that was an impression he garnered from the way McKenzie related the incident to him and that's why he used the word menacing in the memo. That's his answer.

BY THE ACCUSED:

QSo McKenzie told you that I acted in a menacing way?

AYes, My Lord.

BY THE COURT:

OK, we'll adjourn until tomorrow morning, nine thirty. (9 h 30).

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

BY THE ACCUSED:

I have some small questions to resolve if possible.

BY THE COURT:

What questions do you have to resolve?

BY THE ACCUSED:

Well I need ... I need the machine for playing micro-cassettes at Parthenais because when I have a visitor, they do allow me to ... to play something but the limitation which you put on the times of visit makes it non viable.

BY THE COURT:

Well you'll just have to find a viable way. I'll see you tomorrow morning.

ADJOURNMENT

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NO: 500-01-017372-928

SUPERIOR COURT

CRIMINAL CHAMBER

UNDER THE PRESIDENCY OF THE HON. F. MARTINI, J.S.C.

THE QUEEN,

Plaintiff,

- vs -

VALERY FABRIKANT,

Defendant.

-----TRIAL

APPEARANCES:

MR. JEAN LECOIRS,
For the Queen;

MR. VALERY FABRIKANT,
For the Defendant.

June 15, 1993.

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In the year nineteen ninety-three (1993), the
fifteenth (15th) of June,

CAME AND APPEARED:

GRENDAN HAINES

Senior Planning Coordinator, date of birth
September 20, 1941.

WHO doth declare and say:

QUESTIONED BY

MR. VALERY FABRIKANT:

Well, while the witness is still here, I believe
I didn't file yet his note of January twenty-
three (23), nineteen ninety (1990). Correct?
January twenty-three (23), nineteen ninety
(1990).

THE COURT:

What note was that?

MR. FABRIKANT:

This is a note of alleged phone conversation that
he had with me and on which he claimed that he
reminded me that I threatened to kill the Rector.

THE COURT:

Well, first of all, would you show that to Mr.
Lecours.

MR. FABRIKANT:

I think Mr. Haines could show it.

THE CROWN:

I have no objections, My Lord.

THE COURT:

You have no objections to that being filed?

THE CROWN:

No.

THE COURT:

P-15.

MR. FABRIKANT:

Well, I would like also to file for the future of
my testimony the proof of the fraud which I gave
him. By the time when I will testify, you decide
whether it is relevant and admissible.

THE COURT:

I'm not permitting you to file it. You're not
filing it through this witness.

MR. FABRIKANT:

Not through this witness. You don't understand
what I'm saying. Just to ...

THE COURT:

I'm not certain it's being filed at all but
you're certainly not filing it through this
witness and you're not filing it under I.

MR. FABRIKANT:

Here is what the authorities say about it.

THE CROWN:

I understand you ruled on that yesterday.

THE COURT:

I did. There's no point going through it again.

MR. FABRIKANT:

Well ...

THE COURT:

We continue to hear. No.

MR. FABRIKANT:

Well, how long are you going to abuse the process? There is an authority which says quite opposite to what you're saying. This is totally (Inaudible).

THE COURT:

What is the authority?

MR. FABRIKANT:

The same. I have the authority only what I'm doing. I have no choice, no freedom to go to any of the authorities.

THE COURT:

What do you wish to cite?

MR. FABRIKANT:

Well, it says here ...

THE COURT:

Where?

MR. FABRIKANT:

Page 3615.

THE CROWN:

The rule, it was not relevant, My Lord.

THE COURT:

I know I did. I just want to hear what he has to say.

MR. FABRIKANT:

You go to page ...

THE COURT:

3615.

MR. FABRIKANT:

Yes. On top, there is quotation from Bigmore(?) and the last two (2) sentences here, (Inaudible)

A: "The record verified and adopted becomes a present evidentiary statement of the witness and as such it may be handed or shown to the jury by the party offering it." So, I have the right first to show it to the jury, which you denied me illegally, and second, I can make it part of evidentiary statement.

THE COURT:

We're talking about past recollection of a witness. That has nothing to do with past recollection of a witness.

MR. FABRIKANT:

It is part ...

THE COURT:

These documents ...

MR. FABRIKANT:

... of recollection.

THE COURT:

These documents, for whatever they're worth, Haines never denied receiving. He said he received them. He said he discussed them with you. The general nature of the discussion was related to the jury. What I ruled on yesterday

was they were not pertinent to a murder trial and they're not pertinent to a murder trial. So, the authority to which you refer me, of course, is inapplicable and you will not produce that.

MR. FABRIKANT:

Okay.

THE COURT:

End of question.

MR. FABRIKANT:

Fraud which gave ...

THE COURT:

End of question.

MR. FABRIKANT:

Alright. What about other ... this stuff, all this stuff? It has been verified that it is his past recollection, not mine.

THE COURT:

These are notes that he used to refresh his memory. He spoke about these notes.

MR. FABRIKANT:

Yes.

THE COURT:

They weren't the only thing that refreshed his memory. He had a recollection of the meetings themselves.

MR. FABRIKANT:

Well ...

THE COURT:

My view would be that they did not become part of the record.

MR. FABRIKANT:

On many of them ...

THE CROWN:

I agree with you, My Lord.

MR. FABRIKANT:

On many of them, he didn't have anymore recollection than what is written in the memo.

THE COURT:

Yes, he did. And very frequently, the record triggered something in his memory that he was able to talk about. So, you're not producing these.

MR. FABRIKANT:

In any case, whether he did or didn't, still Bigmore applies that this is a past recorded ... past record of past ...

THE COURT:

In the circumstances ...

MR. FABRIKANT:

... it had been verified by him ...

THE COURT:

In the circumstances, you're not producing that.

MR. FABRIKANT:

Well, it is clearly written that I can produce it.

THE COURT:

It's not clearly written that you can produce it. You've misapprehended the rule again.

MR. FABRIKANT:

Well, what it could be not clear? "The record verified and adopted ..."

THE COURT:

Did you hear me? I've ruled. One more word from you and we pass on to the next witness.

MR. FABRIKANT:

So, none of those you allow it to be presented.

Okay. We started at the point where I asked Mr. Haines ...

THE COURT:

And Mr. Haines has now been here something in the direction of four (4) days. I would suggest that you wind up in the next half hour, otherwise you'll be wound up. Far too long in Canadian Criminal Law has the myth existed that one can examine and examine and examine ad infinitum, invoking when it suits one. This magic phrase of full answer and defence. Full answer and defence ...

MR. FABRIKANT:

Then foreclose.

THE COURT:

... has its limits.

MR. FABRIKANT:

Then foreclose.

THE COURT:

Full answer and defence has its limits. So, there you are.

MR. FABRIKANT:

If you feel that it is (Inaudible), then foreclose.

THE COURT:

As I said, you've half an hour to wind up with the witness.

MR. FABRIKANT:

I'm not going to any of those. I'll ask questions regardless time.

THE COURT:

Oh no, you won't. Oh no, you won't, Mr. Fabrikant. You know where you're going, so get to the point.

MR. FABRIKANT:

QSo, the letter of October six (6) ... Okay. Unexpected visit at Concave Centre, Tuesday, November fifth (5th). What did you know about it and why was it threatening?

AMy Lord, I don't have a copy of the document to which he's referring. I believe I handed that in as evidence. Unexpected visit at Concave Centre on such a date. I don't know ... I don't remember what that's about.

THE COURT:

QIt was D-14. If you might put D-14 in front of you. You're finding something funny, Mr. Fabrikant?

MR. FABRIKANT:

Well, there is no more in this letter than this phrase. I don't know how this letter can possibly help him.

AI remember getting the report that Dr. Fabrikant had been at the Concave Centre and he had a big portfolio and people were there scared because they didn't know what was in the portfolio, they

didn't know why he was there and he was walking around the building and he disappeared. And that's all that happened, My Lord.

QDid you see me there?

AI said this is a report, My Lord, that I received, that was given to me.

THE COURT:

QSo, the answer is no, isn't it?

A.No. Sorry, My Lord.

MR. FABRIKANT:

QSo, why you are the person to receive such a report? Were you a security guard, were you a

...

THE COURT:

You're cross-examining the witness. Disallowed.

MR. FABRIKANT:

Okay.

QWould you explain who gave you that report?

AI don't know the source of the information, My Lord.

QHow did you receive the report?

ASomeone told me.

QWho was that someone?

AI can't remember. I'd be speculating if I answered, My Lord. I would be just making a good guess.

QDid I enter the building?

THE COURT:

The witness said he didn't see you. Pass on to something else.

MR. FABRIKANT:

Well, I haven't finished ...

THE COURT:

The witness said he was not there. It's pure hearsay what he's talking about now. Pass on to something else.

MR. FABRIKANT:

This is not what I'm trying to make the point.

THE COURT:

Are you proposing to pass on to something else?

MR. FABRIKANT:

Well, I haven't finished with this letter yet.

THE COURT:

You're finished with this question, that's what you're finished with. The witness said he wasn't there and he didn't see you.

MR. FABRIKANT:

Gosh, are you nervous today again?

THE COURT:

Mr. Elton, thank you very much.

MR. FABRIKANT:

He is not Mr. Elton.

THE COURT:

Have you any questions for Mr. Elton?

THE CROWN:

Yes, My Lord.

MR. FABRIKANT:

He is not ...

THE COURT:

You have? Alright.

THE CROWN:

I would like ...

THE COURT:

Sit down.

MR. FABRIKANT:

He is not Mr. Elton.

THE COURT:

Mr. Haines, excuse me. Sit down.

CROSS-EXAMINED BY

THE CROWN:

I would like Mr. Haines to file his internal memorandum directed towards Maureen Habib, dated July thirtieth (30th), nineteen ninety-two (1992). THE COURT:

Memo from?

THE CROWN:

From Mr. Haines to ...

THE COURT:

I see, okay.

THE CROWN:

... Mrs. Maureen Habib. This was read.

THE COURT:

Yes.

THE CROWN:

It was rather a long memo.

THE COURT:

Yes.

THE CROWN:

It was more or less a summary of all the threats and all the incidents involving ...

THE COURT:

What date was it?

THE CROWN:

Pardon?

THE COURT:

What date was it?

THE CROWN:

July thirtieth (30th), nineteen ninety-two (1992).QYou have it, Mr. Haines?

AYes, I do, My Lord. It's three (3) pages, unstapled.

QI would like to file as P-89.

MR. FABRIKANT:

I think I filed it. I have already filed it.

THE CROWN:

I don't think so.

MR. FABRIKANT:

Well, if you accuse me of probably sleeping, I believe I did file it.

THE CROWN:

What I understand was filed was Mrs. Habib's letter with the quorum attached.

MR. FABRIKANT:

No.

THE COURT:

If there's a duplication, there is no harm done.

MR. FABRIKANT:

And (Inaudible) ...

THE COURT:

Would you sit down.

THE CROWN:

I looked at the exhibit and it was not part of

the exhibit.

MR. FABRIKANT:

What, it wasn't filed?

THE COURT:

QThank you, Mr. Haines.

AThank you, Your Honour.

AND THE WITNESS SAYS NO MORE.

THE COURT:

Next witness.

MR. FREEDMAN(?):

My Lord, as per our agreement of a couple of weeks ago, I have the next two (2) witnesses on standby, so Mrs. Wilson Wright could be here in half an hour.

THE COURT:

Okay. So, we'll adjourn for the moment.

SHORT RECESS

CAME AND APPEARED:

ANGELA WILSON WRIGHT

Assistant to the Vice Rector Academic, date of birth October 22, 1958.

WHO doth declare and say:

THE COURT:

QGood morning. Would you be more comfortable seated?

AYes, I'm fine.

QOkay, you're fine. Well, at any time you wish, just indicate, okay?

AThank you.

QUESTIONED BY

MR. FABRIKANT:

There was something wrong with the microphone. Mr. Haines for several hours on the tape, there was nothing to be heard. There was some kind of squeaks on the microphone. So, we probably need something, either microphone close to ...

THE COURT:

This one here?

MR. FABRIKANT:

Yes, except that it was squeaking. I don't know why. Maybe he pinched it. I don't know. But it was squeaking.

THE CROWN:

He had the cord in his hand all the time.

MR. FABRIKANT:

Oh. He probably pinched the cord. A couple of hours, it was impossible to hear anything. The record is spoiled completely. I ask ...

QCould you from the file which you brought, I believe it is the total file which is in the Vice Rector Academic office?

AThat's correct.

QWould it be difficult for you to separate from

there what is your personal notes, records, documents signed by you personally? Because effectively this is what I asked for.

AI didn't ... I wasn't subpoenaed for documents. I brought these documents at the suggestion of our legal counsel. Personal notes, if there are personal notes, they're throughout the file.

QAlright. Do you have any agenda with you which would make it simpler for you to address certain events at which you were present and where my name was in one way or the other discussed or related?

AAgenda? Daily Agenda?

QYes.

ANo, I don't have the daily agenda.

QI mean, you don't have it with you but you do have an agenda.

AI don't have a daily agenda, not for my job.

QAlright. You were present during Senate meeting on November first (1st), nineteen ninety-one (1991), weren't you?

AThat's correct.

QYou saw me entering the Senate Chamber?

AYes.

QOkay. Did I do any threatening gestures when I entered?

AI'd have to tell you I wasn't really noticing you. I saw you and that was all. I saw you carrying a portfolio.

QOkay. But could you not notice the immediate appearance of at least three (3) guards?

THE COURT:

Would you stop leading the witness?

MR. FABRIKANT:

Well, the leading is allowed when I ...

THE COURT:

Don't bother arguing and don't cite me MacWilliams and stop asking leading questions to the witness.

MR. FABRIKANT:

Well, it is written black on white that it is not only allowed but desirable when I'm trying to get to the point.

THE COURT:

You've got there. You're at the point.

MR. FABRIKANT:

No, I'm not.

QSo, did you notice the guards immediately after my arrival?

ANo, I'm afraid I didn't.

QDid you ever saw the guards?

AOn that particular day?

QYes.

AI saw them after the Senate had finished.

QYou do not recall that everyone sitting at the Senate were turning their heads at the guards and asking, "What is going on?" Do you recall that?

ANo.

QNo. Everyone in the Senate was turning his head

...

THE COURT:

Are you testifying now?

MR. FABRIKANT:

No, I'm ...

THE COURT:

Well, please stop.

MR. FABRIKANT:

... trying to refresh ...

THE COURT:

Oh, no, you're not trying to refresh the witness's memory. You're trying to testify.

That's what you're trying to do.

MR. FABRIKANT:

QSo, you didn't notice that.

ANo. Security is at Senate on a regular basis.

They come and go. Nothing to note.

QOn a regular basis? Did you ever see security sitting at the Senate meeting before? Before my arrival, did you ever see security people at the Senate meeting?

AI believe I've already answered that.

THE COURT:

QYou have.

MR. FABRIKANT:

QDid you see that every Senate meeting?

AAAs I said, I've already answered it.

THE COURT:

And you're cross-examining the witness and you won't stop.

MR. FABRIKANT:

QDid you ever receive body guards at the Senate meeting?

AExcuse me?

QDid you see body guards at the Senate meeting?

AI'm afraid I wouldn't know.

QDid you see Mr. Bujold at the Senate meeting?

APeriodically, the director of security is present at Senate meetings. I believe I've already answered this question.

QSo, you noticed Mr. Bujold but you didn't notice three (3) security guards which appeared nearby.

Is that correct?

AI believe I've already answered this question.

QWere you present at the time when Mr. Hielle(?) communicated with police?

THE CROWN:

This is leading, My Lord.

MR. FABRIKANT:

No, this is clarification of time and leading is allowed.

THE CROWN:

... whether ...

THE COURT:

She has to know whether Mr. Hielle communicated with the police. Objection is maintained.

THE CROWN:

She might not even know Mr. Hielle.

MR. FABRIKANT:

QDo you know Mr. Hielle?

AYes, I do.

QDo you recall seeing him on November first (1st)?

AI'm afraid I all ... as I've said, I've already

answered this, I did notice security after the Senate meeting.

QThis particular person.

AI'm afraid I couldn't tell you.

QNot at the Senate. Outside the Senate in the street.

AI've already answered this question.

QDid you see police?

THE COURT:

QHe wants to know actually if you saw Mr. Hielle himself outside?

AI couldn't be sure.

MR. FABRIKANT:

QDid you see police outside the Senate?

AYes, I did.

QWho was around this police car?

AI'm afraid I don't know.

QWas Mr. Hielle around there?

AI'm afraid I don't know.

QDid you know that police was called for me?

AI saw the police talking to you.

QYou saw the police talking ...

AOn my way into my office.

Q... to me? Okay. That's interesting. At least you saw something. So, where was that? Do you remember the place where they talked to me?

AOutside of the administration building on Loyola Campus of Concordia.

QOkay. What was the distance from the Senate chambers to the place where police talked to me?

AI'm not a very good measurer of distance.

QOkay. Was it five (5) metres, ten (10) metres, a hundred (100) metres?

AIt was on the property of Concordia University.

QOkay. Could you locate it from the point of view of the building itself? Was it about half of the building plan?

AI can't give you a measurement.

QOkay. Was it as close as you and the Judge?

ACould you please repeat your question?

QWell, you know very well where it happened.

You're just eluding questions.

THE COURT:

Would you please ...

MR. FABRIKANT:

QWhat was the ...

THE COURT:

Would you please spare people your comments?

MR. FABRIKANT:

QWhat was the distance between you and the police searching me, was it the same distance between you and the Judge?

AIt was from the entrance of the Senate chamber to where they were talking to you at the end of the administration building.

QSo, then administration building ... So, it was ... Administration building consists of several hundred metres probably. Anyway, it was much more than from you to Judge, right?

AYes.

QAlright. At the time and the place where they

were searching me, was any member of administration in any immediate danger of being shot?

THE CROWN:

That's not for her ...

THE COURT:

That calls for an opinion ...

THE CROWN:

... to answer that.

THE COURT:

Pardon?

THE CROWN:

That's not for her to ...

THE COURT:

That's not for her to say. It calls for an opinion.

MR. FABRIKANT:

QFrom the place where they searched me, was there any administration officials visible?

AI'm afraid I can't say that. I saw the police and I saw you. That's all.

QOkay. Did you see them searching me?

ANo, I didn't.

QSo, what did you see?

AI saw them speaking to you.

QThat's all?

AUm-hum.

QMaybe they never searched me.

THE COURT:

That question is disallowed. It's not a question anyway.

MR. FABRIKANT:

QWell, did you see me all the time the police talked to me?

ANo, I was on my way back to my offices after the Senate meeting.

QAre you aware of any disturbance which I created during Senate meeting?

ANo.

QDid I ever threaten you personally?

ANo.

QI understand that you recorded all the telephone calls which I made to you, correct?

ANo. I recorded some.

QHow did you decide which to record and which not to record?

AUsually when we have conversations, it was with respect to either relaying the information to the Vice Rector Academic or your asking for information from anything from committee memberships to the collective agreement, the Kiefer collective agreement, so I would write these notes down and usually return these phone calls to you once I had the information. I, by habit, keep that kind of information.

QAlright. Would it be correct to say that at least in nineteen ninety (1990), you kept a record of all my telephone calls?

AI would say not. But can I check? I have a list.

QYes.

ANineteen ninety (1990)?

QYes.

ANo, I didn't.

THE COURT:

QThe answer is what, that you didn't?

AI didn't keep a record of all the telephone calls.

QYou didn't keep a record of all the calls received from the Accused?

ANo.

MR. FABRIKANT:

QWell, how many phone calls you did not record?

AI'm afraid I couldn't tell you. It's nineteen ninety (1990).

QWell, would it be correct to assume that all my phone calls were related to some request for information or what you just mentioned?

ABy and large, yes.

QWere there any idle phone calls just to say hello?

ANever.

QNever. So, would it be then correct to assume that majority of them were recorded?

ANo.

QThere was some request for documents or for some information which you did not record?

AThat's correct. Or I was able to answer the questions without having to record them because I knew the information by heart.

QAlright. But that was not majority of cases, was it?

AI couldn't tell you. We talked an awful lot.

QOkay. Awful lot means what, a hundred (100) calls, a thousand (1,000) calls, twenty (20) calls?

AI'm sure that since my working in that office, we probably talked many times. Since nineteen ninety (1990), I talked to you on a fairly regular basis.

QWell, would it be correct to say that there were no calls before about May or June nineteen ninety (1990)?

AI joined the offices of Vice Rector Academic in May of nineteen ninety (1990), so I could not speak for the early part of May ... early part of nineteen ninety (1990).

QAlright. Would it be correct to assume also that there were almost no calls from at least August?

THE CROWN:

These are all leading questions, My Lord.

THE COURT:

Yes, they are.

MR. FABRIKANT:

I'm establishing times.

THE COURT:

Pardon?

MR. FABRIKANT:

I'm establishing times. Some established time, place, name, leading questions are allowed. Read MacWilliams.

THE COURT:

Go ahead.

MR. FABRIKANT:

Long live MacWilliams.

THE COURT:

What did you say?

MR. FABRIKANT:

I said, "Praise to MacWilliams." MacWilliams is a good book.

THE COURT:

Well, let's not canonize him, please.

MR. FABRIKANT:

Don't worry. I'm not religious.

QSo, would it be ...

THE COURT:

He's a professor of law.

MR. FABRIKANT:

QWould it be correct to say that from about August of nineteen ninety (1990) until the end of nineteen ninety (1990), I didn't call your office at all?

AWe did not keep telephone logs of every single telephone conversations we have with everybody who phones into our offices, so I really can't state.

QOkay. As far as I know, not only you did keep the phone logs, but they were produced to me when I asked for Access to Information file. So, they are in permanent storage like a historic document.

AI believe those were calls ...

QAre they there?

AThe document that you're referring to is a list of telephone calls made in nineteen ninety-one (1991).

QWould you please check your document for the phone calls of the year nineteen ninety (1990).

ANo, not for nineteen ninety (1990).

QYou gave it to me under Access to Information Act. It must be there.

THE COURT:

Then if she gave it to you under the Access for Information Act, look in your shopping bag there and show it to her.

MR. FABRIKANT:

I asked her to bring it. I don't have it. They did not return it to me.

THE COURT:

If you have seen the document ...

MR. FABRIKANT:

I don't ...

THE COURT:

... you must have the document. If you have the document, show it to the witness.

MR. FABRIKANT:

I don't have it.

THE COURT:

Well, that's your problem, not mine and not hers. She says that she doesn't have it.

MR. FABRIKANT:

Well, then, she has to look for it.

QMay I remind you there was a phone call from

which was confused as phone call from Rose Shannen and it was not Rose Shannen and my student took the call and I called back and asked for Rose Shannen ...

THE COURT:

Mr. Fabrikant, would you please ...

MR. FABRIKANT:

I'm trying to refresh ...

THE COURT:

You're not trying to refresh her memory at all. You're trying to argue. She says she's looked in the document she has. This represents the documents from her office and do I understand that you don't find anything that resembles a list of calls for the year nineteen ninety (1990)? Have I understood that properly?

AThat's correct.

QOkay.

MR. FABRIKANT:

This is just not correct. I asked her to bring those documents. This is subpoena. Subpoena should be fulfilled. That's all. I asked specifically Mr. Freedman what I'm interested in. I asked for the telephone calls, messages written by Mrs. Wright. I told him specifically, "I do not need any other documents signed by somebody else. Only documents written by her, signed by her. That's all." And it is not there.

THE COURT:

Well, now we're talking not about documents signed by her. We're talking about what you call a log and what Mrs. Wright has called a list of certain calls.

MR. FABRIKANT:

Not list. There were pieces of papers and those, you know, formal telephone messages, small yellow pieces of paper. I saw them with my own eyes. And it was written, "Fabrikant called on such and such date, such and such time." And they were carefully preserved from June ninety ('90). They were spying each my step. They were carefully preserved in my file.

THE COURT:

Listen. The witness says she has no list for the year nineteen ninety (1990). She has said that that box of documents represents whatever thing that relates to Fabrikant.

MR. FABRIKANT:

Well, allow me to remind her then.

QDo you recall in nineteen ninety (1990) a phone call to a student of mine who took the call and wrote message. She didn't understand who called. Then I called back and asked, "Who called, was it Shannen or was it somebody of you?" Do you remember that?

AI'm afraid not.

QOkay. Do you remember at least the phrase which you'd written, that Fabrikant started song and dance? This phrase you could not possibly forget, could you?
AI'm afraid I don't recall.

QDo you remember the case of promotion?

ANot specifically.

QDo you remember that I visited your office in nineteen ninety (1990) certain number of times inquiring about the promotion, about the opinion of the faculty, about when and what and how it will be done? Do you remember that?

AYour visits to our office in nineteen ninety (1990)? No, I'm afraid I don't.

QWell, the witness can fake her memory as much as she wishes but the document should be delivered as subpoenaed. Period. I do not have them and I believe that it was not a single case where I said that I don't have certain documents and I did have them. I do not have them. They're important for my defence. So, I suggest that we interrupt this testimony or I may continue whatever I can but after the break, all those documents has to be here.

THE COURT:

QAre there any documents from your office that are not here?

ANo.

QAre there ...

THE CROWN:

(Inaudible), My Lord.

THE COURT:

QAre there any documents from your office that any time between nineteen ninety (1990) when you arrived and to date relating to him which have been disposed of?

ANo.

QThere are not.

ANo.

QSo, there are no ... I'm not in for any surprises. What is in front of you is the total content of your office relating to Fabrikant.

AThat's correct.

MR. FABRIKANT:

QAlright. Let us make it somewhat different. Do you remember in nineteen ninety-one (1991), (Inaudible) I came to ask for Access to Information Act and to access to all the documents? Do you recall at least that much?

AYes, I do.

QYou do. Do you remember you gave me release of documents which office has? Do you remember that?

AIn nineteen ninety-one (1991)?

QYes.

AYes.

QOkay. May I see that list, please? The list which you gave me in nineteen ninety-one (1991). Thank you. Now, here it's written black on white, August seventeenth (17th), to the phone message from Fabrikant taken by ... I read: "Telephone message from Fabrikant taken by Habib. Telephone message from Fabrikant returned by Habib. Wilson Wright returned call of seventeenth (17th) of August. Telephone message from Marie. Again telephone message from Marie.

Wilson Wright returned two (2) phone calls." All this stuff is nineteen ninety (1990) and all this stuff was there. You see all those telephone calls. They were all in writing, they were all documents which I need here.

AI don't have anything further than that piece of paper.

QWell, here is the proof that those documents did exist.

THE COURT:

It's not proof of anything. What is this sheet of paper?

AIt's a list of ... When Dr. Fabrikant had asked for Access to Information, we provided him a list of information contained in his file that he was denied access to actually seeing them because they were handwritten notes. So, we gave him a list and they were basically telephone messages.

QAnd is that document that he has in his hand the handwritten notes typed up or what?

AYes.

MR. FABRIKANT:

This is just the list of the documents.

THE COURT:

QWhere are the handwritten notes?

AThey're not part of the file.

QWhat are they part of?

AThat ... they're not part of the file anymore.

MR. FABRIKANT:

They have been part of the file.

THE COURT:

QWhere have they gone?

AI couldn't say.

QWell, who has taken them out of the file?

AI don't know.

QBut you are now telling me that there are handwritten notes that have been removed from the file.

AThey were telephone messages.

QI don't care what they were.

AUm-hum.

QThere are handwritten notes which have been removed from the file. Is that what I'm now to understand?

AThere were telephone messages that were logged. They were typed after we had the request from Dr. Fabrikant for access to his file.

QOkay. And what happened to them?

AI presume they were destroyed. I don't know. I really don't know.

QWho knows?

AI don't think anybody really does.

QWell, somebody must.

THE CROWN:

No, they were given to Mr. Fabrikant.

THE COURT:

The handwritten notes were given to Mr. Fabrikant?

AWell, he got permission at the end to have access to all of our (Inaudible).

THE CROWN:

He's got all that, My Lord.

THE COURT:

That's fine but I'm trying to discover ... First I'm told that this represents everything in the office. I then asked, "Has anything been taken out of this file?" I was told no, that nothing was taken out of this file. Now I understand that there were handwritten notes that you presume were destroyed.

AThat's all I can presume, yes.

QYes, but who dealt with these handwritten notes?

AProbably several secretaries, in addition to the fact that the files themselves have gone to all over the University basically, gone to our legal office.

QAnd these handwritten notes were used to make what you then called a log.

ARight.

QAnd this log was given to Mr. Fabrikant.

AThat's correct.

QWere the handwritten notes given to Mr. Fabrikant?

AI couldn't say because we didn't do the actual access request. That was handled through the Secretary General's office. I can only presume that he did get them in the end because he got permission to all of the files.

QAnd you say this was handled through the Secretary General's office.

AThat's correct.

QAnd that's all you are able to say about it.

AI'm afraid so.

QOkay. Continue.

MR. FABRIKANT:

Well, these notes are important because this is evidence how far they spied on every step of mine and how they recorded every word which I ever said. So, it's extremely important for my defence to get them and to get them deposited.

THE COURT:

Well, if the witness doesn't have them and they're not in the witness's office, that's the end of it as far as this witness is concerned.

MR. FABRIKANT:

Well, they did have it. This is the proof.

THE COURT:

The witness says she hasn't got them. You heard what she said as well as I did. So, what would you like me to do, get down from here with a club?

MR. FABRIKANT:

No. You know very well what you should do. I shouldn't teach you what to do.

THE COURT:

The witness does not have the documents. It's not a question of I know very well what I should do. I don't need any lectures from you as to what I should do. The witness says she does not have them. The witness has handed you something for the year nineteen ninety-one (1991) which you were previously handled.

MR. FABRIKANT:

No.

THE COURT:

The witness has also said that you got access to all of these files and that that request was handled through another office in the University which wasn't the witness's office. So, would you continue to ask the witness whatever ...

MR. FABRIKANT:

But take a look, it is not ninety-one ('91), it is nineteen ninety (1990). Would you like to take a look at the document?

THE COURT:

You said nineteen ninety-one (1991). I didn't say nineteen ninety-one (1991). I said ninety-one ('91) because that's what you asked for. That's what you said.

MR. FABRIKANT:

No. I asked for nineteen ninety (1990). Witness said that she doesn't have anything for nineteen ninety (1990). She has for ninety-one ('91). Please correct your notes.

THE COURT:

Okay.

MR. FABRIKANT:

So, I asked for nineteen ninety (1990). This is the list of the telephone messages which I'm interested in to deposit. This is mainly why this witness is here.

THE COURT:

Well, if the witness doesn't ... What are you looking for from the witness? There is your list of the telephone messages. What are you looking for?

MR. FABRIKANT:

Well, for those messages.

THE COURT:

The handwritten messages.

MR. FABRIKANT:

Yes.

THE COURT:

The witness says she doesn't have them.

MR. FABRIKANT:

Well, she does. It look, well, it was in my ... it was part of my file. It was not somewhere else. They kept it in my file, whether it was called file confidential or other file, but they kept it secretly because it was a spying job for every word which I ever said. They just dreaming that any word might be said in such a way that it could be interpreted as a threat. So, they recorded every my word and this effectively is the total list of the phone calls I ever made regardless what witness says. This is the number of calls I made, each phone call is there.

THE COURT:

Well, if the witness ...

MR. FABRIKANT:

There is not a single ...

THE COURT:

... says she does not have the notes from which

that was made up, then there you are. She doesn't have the notes from ...

MR. FABRIKANT:

Well, she should go ...

THE COURT:

... that was made up.

MR. FABRIKANT:

... back to the office and check well and find it. That's all.

THE COURT:

What is the point of her going back to the office when she says that that box represents everything she that she has in the office?

MR. FABRIKANT:

Well, it is not everything.

THE COURT:

Well, Mr. Fabrikant ...

MR. FABRIKANT:

I have seen those documents.

THE COURT:

Then they apparently are not in that particular box or in that department ...

MR. FABRIKANT:

Then they are in another box.

THE COURT:

... which they exist. I don't know where they are.

MR. FABRIKANT:

Well, subpoena should be respected.

THE COURT:

So, would you please go ahead.

MR. FABRIKANT:

Well, after the break, I need these documents.

THE COURT:

I am not a magician.

MR. FABRIKANT:

You don't have to be magician. Just make a court order.

THE COURT:

Oh, make an order. Make an order. Make an order and then the sun will shine for the rest of the summer. Make an order and this will be over in two (2) days. You know, make an order. Make an order.

MR. FABRIKANT:

This will not be over ...

THE COURT:

I don't know where you get the line "make an order".

MR. FABRIKANT:

I need the documents. The documents are subpoenaed.

THE COURT:

The witness says she does not have the documents, okay?

MR. FABRIKANT:

Well, it is not okay.

THE COURT:

Well, if it's not okay with you, that's too bad. Now, ask your next question to the witness.

MR. FABRIKANT:

How much more lawless you can be? When is it ...

THE COURT:

What did you say?

MR. FABRIKANT:

I said, "How much lawless you can be."

THE COURT:

Okay. Can you show me one good reason why you shouldn't be out in contempt for that last comment?

MR. FABRIKANT:

Because it is lawless. You are hankering my defence in so many ways. You're using my ignorance in law in such a way that, for example, when I'm denied certain admissibility of evidence, you always send jury out so that they couldn't see how you abuse the process here. And just by accident, I learned the following, that jury should not be sent out only if it is necessary if this may be fairly done without prejudice to the accused. So, jury is sent out only in the case where presence of jury is prejudice to the Accused.

Second thing, the jury should not be asked to leave except at the request for the consent of the Defence. You never ask my consent that the jury leaves. I always was in favour the jury stays and see what kind of things you are doing here. And you never asked me ... I haven't finished. You asked me to justify why it is not contempt of court. So, let me justify it why it is not contempt of court. So, this is one thing which I have been abused all the time and I have here friend of court who is supposed to take care when some abuse of process of law takes place, he's supposed to stand up and say, "I know Mr. Fabrikant doesn't know the law but I do and this is contrary to the law." He never did it. Yesterday I spoke to him, "Why didn't you do it?" I asked him, "Did you know this?" He said, "Yes." I asked him, "Why didn't you stand up and then say that Fabrikant is being abused?" He said, "It is not my job." Now, I asked him this morning to convey to you that you come here and we discuss what is and isn't his job. And you refused to discuss it.

Besides that, there is another thing there which I discovered. Admissibility of evidence need not be determined by testimony given in advance and in absence of the jury. This has taken place at least twice during fitness hearing if you recall. Jury was sent out when I called one from detention who was tortured at Pinel. You didn't want the jury to hear what he has to say and you wanted me to make him here testify, God forbid he says something which jury shouldn't hear. And this is again contrary to what is written here. And there was second case, the same that you did not allow the jury to hear what transpired here, what evidence was excluded. And this is again

contrary to the ... or at least to what authorities say.

Your best abuse of the process is which you constantly do not allow me to question witness in a normal way. This leads to the following: First, leading questions. As far as the leading question is concerned, it is said authority here that this rule about leading question, it is relative, it is not absolute and it is not a strict rule. And besides that, there are a certain number of exceptions where leading questions are allowed. Leading questions are allowed on introductory matters like name, address, occupation, time and place. Just ...

THE COURT:

Read on. Read on. Read on.

MR. FABRIKANT:

I'm getting these ...

THE COURT:

Read on. Read the next sentence or the next paragraph.

MR. FABRIKANT:

The next sentence says, "Matter not in dispute."

THE COURT:

Yes.

MR. FABRIKANT:

Let me give the example first. Just today when I asked just about the place where she saw me yell at certain place with police and you said it was leading question and disallowed it. The next is matter not in dispute. This is separate thing and again, it is not ... I don't have yet example of that. "Rule against leading question is properly applicable only to such question as relate to the matter at issue. The judge will encourage you in the practice to lead the witness directly up to the point at issue. It saves time and clears the case." So, quite opposite as to judge should encourage leading questions because it is faster when you go to the point. My point in questioning was not whether she saw or didn't see me yell at certain place. My point there was how I was abused there, that I was arrested with no valid reason whatsoever. I didn't get to that point.

Now, the second example of abuse of process of yours is when I tried to mention to one witness testimony by another. You said, "No way, it cannot be done." Now, reading page 365:

"Contradiction of an assertion. When a witness is called to contradict the previous witness, he may be asked if A said so and so or whether that is so." So, I can mention to one witness testimony of another witness. This is what it says here. And you stopped me on many occasions with that. You just didn't allow me to mention to one witness what another witness said.

Next thing where I was abused in terms of my legal rights and in terms of this process being unfair trial: "Counsel should not object to

question as leading merely because it is such but only when it appears to you to be likely to have an affect injurious to your case. Only in this case one should object to leading question." I don't think that the question was I was asking was so detrimental to Crown or to your case, I don't know, you don't have any case here, so it must be Crown's case, that you should have stopped me and not allowed leading question. This is what authority says, that leading questions should (Inaudible) that it is, more objections are more frivolous than those which are made to questions as leading ones. So, objection to question as leading are called frivolous objections here in this authority. And you constantly do not allow me that.

Now, the next thing which is important that denial of matter of justice, one of demonstration of denial of matter of justice is ...

THE COURT:

Oh, that's a current buzz word, yes. Let's hear about that.

MR. FABRIKANT:

It is refusal to permit examination of a witness. On several occasions, I was just refused, even to subpoena witness, not just to examine. There was also refusal when I was refused to examine witness but there were refusals that just I cannot even subpoena witness. Why? Because one witness was member of Parliament and other witness was member of Parliament. God forbid, how can you dare to call a member of Parliament to testify. There is nothing in the law which says that I cannot subpoena member of Parliament to testify.

THE COURT:

That is true.

MR. FABRIKANT:

My friend ... I know it is true. Friend of court refused to subpoena them. He didn't have legal grounds whatsoever. He just said that I cannot make those people waiting in the corridor. Some people are more equal than others. Member of Parliament, God forbid he will wait for an hour or so. You can always arrange in such a way that his waiting would be minimal. But he refused to do so. God forbid. And you supported him. I also wanted to subpoena "Gold" but in this case, that was the only case that you overruled him. But otherwise, the so-called friend of court didn't want to subpoena Gold either. God forbid, he was Chief Justice of Qu,bec once.

THE COURT:

He never was Chief Justice of Qu,bec.

MR. FABRIKANT:

Well, he was Chief Justice of Superior Court.

THE COURT:

Ah, there you are. Now you've got it right.

MR. FABRIKANT:

Yes. And God forbid to subpoena him. The law shouldn't possibly do that. It is the same as to make an attempt against communist party in the Soviet Union. God forbid. Now, as far as process of refreshing of memory. I've been always talked that this is cross-examination. And it is written here black on white that process of refreshing memory of witness may border on the process of cross-examining as to previous and consistent statement. So, not only it isn't forbidden, it is explicitly allowed. And you did not allow me.

Secondly, hostile witness often hides behind forgetful memory. We had so rampant example here when Mr. Haines, he remembered how late somebody was and how much time it took. He just didn't remember what he said. At one occasion he said that he didn't remember what McKenzie told him when he reported to her that I wanted to shoot (Inaudible). But he did remember what McKenzie told him when I told him that I want to shoot rector. When I asked him later on, so what was the reaction of McKenzie, he said, "I don't remember." After that, I asked him, okay, I said I have a gun. What happened after that? Blank. He does not remember anything after that.

All those November meetings, I have evidence from Mrs. Torbit, clearly he was present at all those meetings, including November fourteenth (14th). He pretend, assures that he doesn't remember anything from November first (1st). He slightly remembers that he was present November seventh (7th) but he didn't remember even presence November eighth (8th), twelfth (12th), fourteenth (14th). He couldn't possibly remember presence at the restaurant they're having lunch at. It's clearly faking memory and you're just supporting him. On the one hand, he writes a memo that he knows that at eleven thirty (11:30) October thirtieth (30th), something happened in the department. November fifth (5th), I visited Concave. KGB couldn't know better my whereabouts than Mr. Haines. And on the other hand, when we asked, okay, what happened on November first (1st). He only remembers that it was a heated debate. From other witnesses, we know what was there because members of department were demanding that they are scared. They're demanding protection from the University. They demanded that I be fired under the emergency measures and effectively all the quarrel was about ... they wanted to get rid of me but each want the other side to do it. That what was the quarrel about. They were quarrelling. Nobody asked them why (Inaudible), why do you want to fire him. Nobody asked that. But they're quarrelling who was supposed to do the dirty job. That was what they were arguing about and he couldn't remember any of those. And each time when it was so obvious and so outrageous that he

was faking memory and it is clear that this is what hostile witness is all about, he fakes his memory, you refused my submission.

Now, second thing, Counsel may refresh memory of his witness by questions which are to a certain extent leading. So, refreshment of memory could look like both, cross-examination and leading and it is allowed. You didn't allow me that. This witness and McKenzie were the most important witnesses to me. You just used an excuse to terminate the testimony of both of them and I asked Mr. Belleau to find anything in jurisprudence which would justify your action. He didn't find any. So, I only can assume that those actions are also illegal because Charter of Rights still stipulates that I have the right for full defence.

As far as my behaviour here is concerned, if you don't like it, you have a recourse, the one which you mentioned right now, contempt of court. There is jail for that. That's your recourse. That is the only legal recourse you have. You cannot terminate examination of a witness by using some kind of excuse that I was not so respectful towards you. Well, I'm not respectful. What can I do? I cannot respect someone who abuses the law constantly. I just cannot.

Now, the next, when I tried to deposit memorandum. The memorandum which were harmful to me, or at least you thought were, were deposited without any problem. Witness was reading his memos as long as you thought they were injurious to me. No problem. When I asked Mrs. Torbit, and it was very disturbing memos of hers, very disturbing and you understood it very well that it was disturbing, the text which says don't know what happened, panic, and so on and so forth. It was clear, I believe it was August, she just again faked her memory, but it was most probably message from August ninety-two ('92) when they played these dirty games with me, actually pushing me into crime which they finally succeeded and this memo you didn't allow to be introduced. Now, if you'll go to the authority, same thing, it is submitted that were the witness's no independent recollection, and that was the case, she didn't have independent recollection from what is written there, memorandum should be entered as an exhibit. Certainly if the jury have the right to see them, they should be entered as exhibit and as substance evidence whatever is said to contrary. You didn't allow neither to demonstrate it to the jury nor to be entered in the record.

So, I also demonstrated to you that even in opposite case when witness does recognize memo and can verify the memo is correct and everything

is fine, even in this case, it is admissible as evidence because it said ... I'm talking about record of past recollection: "The record verified and adopted becomes the present evidentiary statement of the witness, and as such it may be handed or shown to the jury by the party offering it." I wanted to show to the jury several of them, including the article of mine which was handwritten under the names of the author as well, were written by (Inaudible). And this is the best proof that I was used at the university as what I call scientific prostitute. I did the job and the pimps at the University, should I call them scientific pimps there, used it to boost their prestige and get more money from the government so they could hire more scientists to do the so-called research by using somebody else. And you ruled that this is irrelevant. How could it possibly be irrelevant because that was at the root of the tragedy at Concordia that I was used for twelve (12) years this way and you ruled it irrelevant.

So, you demonstrated yourself so biased in every respect that any judge after all this list of abuse of process would have the decency to say I (Inaudible) myself. Probably not you. I'm not talking now about just elementary things which ... those are just abuses of the process which recent but in general, the position in which you put me as far as my defence is concerned, you know very well that I have to get up at six (6:00) a.m. and I'm here in the solitary cell until about seven (7:00) p.m. when I return back to Parthenais and in this position, you give me to play tapes with walkie talkie which is very slow. And at eleven o'clock (11:00), everything is finished. And if you take that just as a normal human being, I need to take supper, to take a shower and maybe just ... I'm so tired when I come there that very difficult to do anything. At eleven o'clock (11:00), there is no light anywhere. And I'm supposed to present my defence in such a complicated case and you call it fair trial. You could do very easily, instead of six (6:00) a.m., you could provide with at least Bill Germer had. He was also accused of first degree murder. He was transported to and from Parthenais by police force. He had separate ... how to call it ... bungalow where he was put. He got bail because he didn't have a lawyer. He has at least some kind of decent conditions in which person can present his defence. Now, I need ... I'm not talking about this, what Bill Germer had. I asked you of elementary things like just to keep the cell open so that when I get out of the cell and God forbid I forget certain documents, I have to wait an hour until the door opens so I could get this document back. And even this was too difficult for you to order. Or to have this tape player so

that I could listen to micro-cassettes. Even this minor thing you could not do.

As far as access to jurisprudence is concerned, I'm totally at mercy of Mr. Belleau. And in your response, I would like you to address, because you refused to do it this morning, I would like you to address this particular part: Is it or isn't it part of Mr. Belleau's duty when he sees that kind of abuse of the process which is being done, because there were at least several cases in which even you had to reverse himself and say, "Okay, question is permitted." So, it means that I was right. So, at least there were positions where I was right even from your point of view. Did you ever see Mr. Belleau to stand up and say, "Fabrikant is right. His question is correct." Never. Did you ever see him standing up and saying at least one single word as far as the process is concerned that he could say that no, Fabrikant is right and this is why he's right. And what is his duty? To pass the documents from here to there, from there to here for one sixty dollars (160\$) per hour?

Also, I need notes from examination. I will need to prepare my pleading. I don't have anything. I have mountain of tapes. There is no way one person can swallow this mountain of tapes even if you give me ten (10) days to prepare my pleading. So, I need someone who can temporarily, right now would help me at least at the end of the day report kind of aide m,moire as to what certain witnesses said. And I asked you to allow Professor Enducot(?) to sit here with me and to make some kind of notes to help me. It is allowed that. I asked Mr. Belleau whether his notes would be available. He said, "No, I'm not giving you my notes."

Now, I believe I can talk until tomorrow if I just would count all the abuses of the process which took place but I believe what I said is more than enough to justify what I said, that you are abusing the process. You're lawless. That's what I said. You have no respect for the due process, for the law. You are the one who made mockery of this trial. Not me. Because you saw obviously biased towards witnesses from Concordia that there is no way ... as soon as witness is in a difficult position, you just cut me off with my questions and I think it is obvious to everyone what you're doing and I would wish this to stop. Thank you.

THE COURT:

Have you anything that you would like to say?

THE CROWN:

Yes. You are the authority in this court, My Lord. Every time you render a decision, the Accused argues with you, insults you and he's being sarcastic with you. That's not the way to

behave. I mean, he deserves to be ... to "repugn" you. He is contempt of court, definitively.

THE COURT:

I really don't think there is any point in again going through step by step what I've already said. I will hit the highlights though. In the part that you didn't read in MacWilliams reads as follows: "Counsel calling the witness is well advised to avoid leading questions even though the opposing side does not object once he gets to the point in issue. By avoiding leading questions, he will make clear that the witness has expressly directed his mind to the issue and will avoid criticism if the answer is of little weight."

MR. FABRIKANT:

Well, if it doesn't contribute to ...

THE COURT:

Did I interrupt you?

MR. FABRIKANT:

Yes, you did.

THE COURT:

Then you be quiet. Don't interrupt me. You spoke for the last half hour. Since the beginning of this trial and at the beginning of this trial, the Crown interposed a number of objections that your questions, Fabrikant, were leading and illegal. The very passages you cited, I quoted the Crown counsel and extended to you every opportunity, thinking, I suppose naively, that since you had elected, and I underline the word elected, to present your own defence that you were nevertheless untutored in the rules of court. You obviously are untutored in the rules of court and I therefore felt that perhaps if the rule, which is a discretionary rule, were relaxed that we would get through this trial in a more expeditious manner with less cost to society and less inconvenience to everybody involved. Of course, I turned out to be overly optimistic because it became very clear that if any latitude at all was accorded to you in permitting you to ask a leading question on a sensitive evidentiary point, you would immediately go further than that and use the leading question to carry you straight into cross-examination. That observation has nothing to do with refreshing witness's memory. You have been allowed extensively to refresh witnesses' memories with no objection from me or no objection from the Crown.

Overriding all of that, you seem to forget one very basic rule. This is not an inquiry into the goings-on at Concordia University. This is a trial where you're accused of the murder of four (4) people. That's what it is. You can talk ... you could probably discourse on anything. I would presume that you could discourse for twenty-four (24) hours on the question of how

many angels might dance on the head of a pin if you are asked to do so. That wouldn't surprise me at all.

You can discourse forever on the question of a full and complete defence. It's something we hear a lot about these days. It's a buzz word that's been running around since the Charter came into force in nineteen eighty-two (1982). I know what it means, the Crown Prosecutor knows what it means, Mr. Belleau knows what it means but you don't. You seem to think that while the law gives you, and I said this from the beginning, the sole right to be the architect of your defence, that you are permitted by extension to be the architect of every piece of evidence that finds its way onto that desk under the guise of being a full and complete defence. That is not the rule at all. A complete and full defence remains subject to one overriding rule of relevancy and it is I, not you, who will determine what is relevant. It is I, not you, who have the duty to determine what is relevant and it is I, not you, who have the duty to decide whether a witness may testify on a certain subject or may not. In that context, the truth or otherwise, the conclusions to be drawn or otherwise from documents that you handed to Routen(?) relating to Osmand(?) and Sincar(?) are in no way pertinent to this trial and we are not in any sense going to get into an indepth consideration of these issues. That's what you want but that's not what you're going to get whether you like it or not.

You have shown in your last dissertation that you can read the book of Professor MacWilliams and with great ability take just about every point right out of context. For years in this country, efforts have been made to allow counsel the latitude of discussing the pertinence of a point with the judge outside the presence of the jury. Indeed, I have made a practice for eight (8) years now of hearing certain pieces of evidence outside the hearing of the jury in order to determine whether that evidence is admissible, on the basis of the fact that what the jury is entitled to hear is everything which it is entitled to hear but, if possible, nothing which it ought not to hear in order to make up its mind. That, I suppose, comes from observations of a number of appeal courts which have put forward the principle that if a jury hears evidence that it ought not to hear, that it might somehow or other be unable to put that out of its mind. That, of course, is a principle that you alluded to on a number of occasions in presenting various arguments before me. I've never believed that and generally, the learned justices of appeal who have advocated that position have never sat here or never sat here for very long. I've always thought that a jury properly

instructed could certainly disregard what they had heard within certain limits. Yes, if there is something so prejudicial that it cannot be disregarded and that that stands to be the point on which should turn, then surely it preferable that the jury not hear it. But insofar as in this country the legislature has decided to conserve the idea of trial by jury and indeed enshrine it in the constitution, I have always thought that the jury was every bit as smart as me and every bit as smart as you. So, you have complained that I sent the jury out, that by and large, you simply demonstrate your (Inaudible) of knowledge of how criminal trials are run because the jury has been a part of this trial far, far more than is usually the case when questions of law required to be discussed and questions of evidence required to be settled. So, I have no reproach to make to myself concerning when I invite the jury to go out and when I invite it not to go out.

What, of course, is more troublesome and what is at the root of the comment you made that I was lawless is that that in your warped way of looking at things, warped way of looking at things is how you see it. Now, it may be that something has happened to me. I don't know. But in the eight (8) years of sitting in this division, I've never had to face that sort of accusation from anyone and it has never been suggested and I really, and I've told you this before, don't see why I should be obliged to take that sort of treatment, I won't call it abuse, but that sort of treatment day in and day out.

You are the one who wills abuse. You will abuse, gurn and sniffle, simply because you are not prepared to play by the rules. The rules are not something that were set up by some judicial hegemony in order to complicate your life. The rules have been developed over the years so as best to put the evidence before the jury so that they may properly appreciate it. That is the reason for the rules. And all of these rights that you allude to, devolve from one overriding rule and that is that you respect the process. And unfortunately for you, respecting the process means abiding by the decisions I make. If they are wrong, there's a Qu,bec Court of Appeal and if the Qu,bec Court of Appeal is wrong, there's the Supreme Court of Canada. But you here are obliged to abide by it. And (Inaudible) means that no matter how much you dislike me, no matter how much you disrespect me, or whatever other sentiment you may have, that you adhere to these rulings and that you do what you're told so that the matter can proceed expeditiously. Since January the thirteenth (13th) when the motion started in this matter right up to this day, you have consistently refused to do that.

And we really have come to the point where this trial has to go ahead. It is wrong to accuse witnesses of being liars. It is wrong to accuse witnesses of faking. It is wrong to usurp the responsibility that I have to decide whether a witness is evading a question or whether a witness is not. That, of course, does not seem to bother you. I haven't kept count of the number of witnesses you have accused of faking, you have accused of toying with the truth, if not outright lying, that you have accused of having convenient memories. And I don't really propose to make that count. But you take Professor MacWilliams out of context when you cite as an enviable rule that the witness who has difficulty with his memory necessarily has to be declared hostile, permitting thereby cross-examination at large. The rules have been applied as I see fit to apply them. You, nevertheless, accuse me of bias.

I suppose in a certain sense it is useless to continue finding you in contempt for your behaviour and that leads me to the last point. You say that that is the only instrument I have. You are wrong. Whether you like it or not, the right to a full and complete defence is not a principle that knows no bounds. The community at large is not obliged to support a circus continuing day in and day out on the basis of the principle that you or anyone else is entitled to a full and complete defence. You have got a duty to prepare the ground work that you wish to cover with the witness and cover it as expeditiously as possible. That you consistently refuse to do. You have a duty to ask these questions and to get them asked as quickly as you possibly can. You also are obliged to ask these questions within the framework of the rules and the principle one is that on questions of relevance or form, I am the one who has the right to decide, not you. And you are obliged to respect that decision and move on even if you don't like it. So, in the event where you choose not to do that, I consider ... I consider that the trial judge has the duty, has the obligation to put an end to the abuse of examination. I am not the first to decide that. I won't be the last. And if you wish to take that to the highest court in the land, take it and let them face that question.

I think that responds to most of the points you've made. Now, I intend that this trial go ahead. It's going to go ahead and anything I can do to expedite it, I'm going to do. So, if you have a further question to put to the witness, you put it but as far as I'm concerned, I find you in contempt for your last remark of calling me lawless. You have not justified that and I sentence you to sixty (60) days in prison for

that to be served concurrently with the last sixty (60) day sentence which you received.

MR. FABRIKANT:

Well, you didn't address the question whether I can mention to the witness testimony of somebody else. It's important question.

THE COURT:

You may not mention to the witness the testimony of someone else. You may not mention that to the witness.

MR. FABRIKANT:

Well, would you like to address it in more detail?

THE COURT:

Would you refer me to that section again.

MR. FABRIKANT:

You also didn't address question of what is the duty of the friend of court. Is he here ...

THE CROWN:

It has been ruled this question.

MR. FABRIKANT:

Is he here just to get his salary for transmitting papers from one place to another or he's supposed to defend me when ...

THE COURT:

Mr. Fabrikant, you are the last person who ought to be making allusions to anyone's salary.

MR. FABRIKANT:

What does that mean? I never got to his salary ...

THE COURT:

Now, where was the portion that you were referring to?

MR. FABRIKANT:

My first salary was seven thousand (7,000) a year.

THE COURT:

Where was the portion you were referring to?

MR. FABRIKANT:

I can't find it.

THE COURT:

You know precisely what I mean.

MR. FABRIKANT:

No, I'm not. But still, what is his duty?

THE COURT:

His duties have been clearly defined. He has been at your disposal if you have wished any guidance from him. You are the one who elected to dispose of the services of the lawyers which you had. The friend of court, which is an exceptional situation, was put in place by me in order to ensure that someone was there to address any legal and technical questions which you might have. Well, that is what he has done. He is not there to compile notes for you. He is not your legal assistant. And if you wish Antipa(?) to take notes, I couldn't care less if Antipa(?) takes notes but he isn't going to take them sitting on your knee in the prisoner's box.

MR. FABRIKANT:

Not on the knee. Here. Near me so that he could

advise, he could ... Why do you think I'm asking question? Another thing, the person listening to something and he might notice something which escapes me because I'm the one who asks questions.

THE COURT:

He is not your counsel. Where is the paragraph

...

MR. FABRIKANT:

Well, (Inaudible)

THE COURT:

... that you were referring to?

MR. FABRIKANT:

(Inaudible) and you didn't answer also whether

...

THE COURT:

Let's stick with the first one. Where is the ...

MR. FABRIKANT:

365, I told you. 365. Page 365.

THE COURT:

Yes.

MR. FABRIKANT:

Well, look at the top, D: "Contradiction of an Assertion: Where witness is called to contradict a previous witness, he may be asked if A said so and so or whether that is so." So, it means ...

THE COURT:

Well, that's if the witness had a conversation with another witness, for Heaven's sake. Did Mr. so and so tell you this. He may not be told what the witness who testified five minutes before when the witnesses were excluded so that he wouldn't hear it, repeated on the witness box before he gives his testimony, otherwise you're defeating the very purpose of excluding the witness. Again, you've misapprehended what MacWilliams says.

MR. FABRIKANT:

Well, I don't know, it's written here black on white that previous witness may be asked if A said so and so.

THE COURT:

To him.

MR. FABRIKANT:

It doesn't say to him ...

THE COURT:

Of course it doesn't ...

MR. FABRIKANT:

... or whether that is so.

THE COURT:

Of course it doesn't say to him but the author presumes that you'll read it that way.

MR. FABRIKANT:

I don't know. I asked Mr. Belleau also to interpret and he agreed with me that interpretation was correct.

THE COURT:

That may be.

THE CROWN:

That is not correct at all, My Lord. I can give you some authorities as well if you wish so but I

believe you ruled on that yesterday.

THE COURT:

I ruled on that yesterday and I've said the same thing today.

MR. FABRIKANT:

Well, you ruled ... either/ or. Either Mr. Belleau is totally unqualified because I discussed it with him yesterday.

THE COURT:

You may not ...

MR. FABRIKANT:

Then ...

THE COURT:

You may not say to the witness ...

MR. FABRIKANT:

Then he's not supposed to be ...

THE COURT:

You may not say to the witness, "Yesterday Haines said white. Now, what have you to say to that?" You may not do that.

MR. FABRIKANT:

Well, the other thing is the previous statement again, I didn't mention it here, but again it's written here that in a common law, it doesn't say previous statement made at another time. It just previous statement and witness can be cross-examined on previous statement.

THE COURT:

You take it, and I ruled on that yesterday, that it is previous statement made at another time. The logic is pristine. The jury heard the first statement and the jury heard the second statement and there is nobody in a better position than the jury to decide whether the witness is now contradicting himself or not.

MR. FABRIKANT:

Well, jury, first of all, not necessarily might remember because one statement was yesterday and the next was two (2) days later. Even if they do ...

THE COURT:

I am satisfied the jury is every bit as bright as you.

MR. FABRIKANT:

No, this is not the point. I also didn't remember it until I heard the tape myself. During Saturday and Sunday, I heard the tapes.

THE COURT:

Now, we've discoursed long enough. Would you put whatever questions you have ...

MR. FABRIKANT:

Well, you didn't answer the question: Is Mr. Belleau here to watch in any way because I don't know even know what question to ask. If I didn't get this and I didn't read this, I wouldn't even know how my rights are abused. So, I don't even know what question to ask.

THE COURT:

Listen ...

MR. FABRIKANT:

Is he here when he hears something as abuse of

process, is he supposed to stand up and say it?
This is my question. Could you just answer this?
Abstract question ...

THE COURT:
Anytime Mr. Belleau has made an intervention, I
have never refused to hear him.

MR. FABRIKANT:
But is it his duty? Is it his duty ... Let us
talk abstract. You are perfect judge ...

THE COURT:
It is Mr. Belleau's duty to consult with you.
You are the one who has decided to be the
architect of your defence. He cannot be half
your lawyer or not half your lawyer.

MR. FABRIKANT:
This is not my question.

THE COURT:
And he is not your lawyer.

MR. FABRIKANT:
I know ...

THE COURT:
</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">So, it is not his duty to stand up and say, "Just a minute." If

you ask his counsel, he is there to provide you with his counsel.

MR. FABRIKANT:

But at some points, I don't even aware that I need the counsel.

This is the (Inaudible) ...

THE COURT:

Mr. Fabrikant, you are the one who elected to face your trial without counsel.

MR. FABRIKANT:

I didn't elect anything. You know very well that there is no lawyer there who is prepared to defend me except on insanity.

THE COURT:

Well, Mr. Fabrikant ...

MR. FABRIKANT:

They just don't want to ...

THE COURT:

You know ...

MR. FABRIKANT:

This is the only thing ...

THE COURT:

It's not for me to speculate on why you find yourself in that situation.

MR. FABRIKANT:

This is not the point. I'm asking you since I'm not trained in law: Is it his duty, when I even do not know that I need to ask his counsel, is it his duty to stand up and to say ...

THE COURT:

He is there if you wish to ask his counsel. That is why he's there.

MR. FABRIKANT:

So, it is not his duty when he sees something ...

THE COURT:

I've said ...

MR. FABRIKANT:

... abuse ...

THE COURT:

I have said what I had to say on the subject. You use the word abuse. I do not use the word abuse.

MR. FABRIKANT:

Well, now you elude question. Question was clear. Abstract question: If Mr. Belleau notice abuse of process which is detrimental to me, is it or isn't it his duty to stand up and say about it? Just answer yes or no.

THE COURT:

It is not.

MR. FABRIKANT:

Okay. It is not. Fine. I hope that after break, this list of documents will be brought here.

THE COURT:

It will not be brought here by this witness because the witness has told you these are the documents which she has and that is that. So, she is not going to go and search again. She has searched. She's told you she searched, so there you are.

MR. FABRIKANT:

Well, at least one of documents definitely is written by her.

Twenty-first (21st) August, it is document written by her.

THE COURT:

It may well be but she told you she does not ... you don't have that note.

MR. FABRIKANT:

Well, they destroyed it. They didn't have the right to do that.

THE COURT:

Mr. Fabrikant, I have no idea what happened to it. She says she doesn't have it. Now, would you ...

MR. FABRIKANT:

Okay. When I get the document, let's say, from (Inaudible) Gaudette(?), Secretary General, because she handled the case of Access to Information. She might have a copy. Would you allow me then to call her again and ...

THE COURT:

No, I will not allow you ...

MR. FABRIKANT:

... deposit it?

THE COURT:

... to call the witness again. Put ...

MR. FABRIKANT:

But I need to deposit this document.

THE COURT:

Put your questions to the witness.

MR. FABRIKANT:

Again, you put me in a position ... Okay. Fine. I need to consult Mr. Belleau.

THE COURT:

Fine. We'll adjourn.

MR. FABRIKANT:

No, there is no need to adjourn.

THE COURT:

Mr. Belleau is not consulting you with everybody sitting here.

We'll adjourn for five (5) minutes.

SHORT RECESS

MR. FABRIKANT:

Well, from this consultation, I understand that there are several options. One option is to make a court order to, if they insist that they don't have it, to send the bailiff and to search the office and to find it because they did have it and there is no way they could possibly not have it because they know very well why they didn't bring it here because this is the proof how they spied on me on each step, whatever I did. Minute phone call was recorded completely, whatever I said ever and they just don't want to present it here in court. Another option what Mr. Belleau suggests, to call each and every secretary in the office and ask what happened to those documents and at least one theoretically has to respond where they are. We can go this way, too. But I believe that we are trying, at least I am trying to accommodate their witnesses as much as I can and I think University could reciprocate in a similar fashion. If, for example, (Inaudible) Gaudette for some reason has the originals, it might happen, why don't University make a benevolent gesture and contact (Inaudible) Gaudette. If those documents are there, deliver it here. That's it. It's a simple thing. At least I'm cooperating as much as I can.

THE COURT:

Have you something to say, Me Freedman?

MR. FREEDMAN:

Yes. I will undertake to check in the Secretary General's office whether these files exist. I'm virtually certain that they're not there but I will undertake and report back to the court.

THE COURT:

Okay.

MR. FREEDMAN:

As I've mentioned before, every witness comes with every document they have. No documents have ever been removed. This witness was only subpoenaed with documents but in order to save time and (Inaudible) new subpoena, I agreed that she would bring her full documents. I will verify.

THE COURT:

You will verify.

MR. FABRIKANT:

Well, this is exactly the point. We cannot even ask to cite for contempt of court because it was a gentleman like agreement. She was originally subpoenaed to give out document. I was assured that those documents be here and now I am in a very stupid situation because legally I cannot demand anything. She can say I was subpoenaed without them.

THE COURT:

Why don't you put your questions to the witness and try to establish what you're trying to establish, whatever it is.

MR. FABRIKANT:

Well, she claims she doesn't remember anything. This is the problem. The second problem, if you recall, she doesn't remember seeing me, she doesn't remember any of this documents, she doesn't remember.

THE COURT:

I have no idea what you're trying to establish through the witness.

MR. FABRIKANT:

Well, I told you ...

THE COURT:

So, would you go ahead and put questions to the witness.

MR. FABRIKANT:

First of all, that they recorded all my phone conversation. That is the full list of it. There was no other and they claimed that I harassed their office.

THE COURT:

But she says ...

MR. FABRIKANT:

This is my ...

THE COURT:

... certain conversations were recorded, certain others weren't. She said, "As far as nineteen ninety (1990) is concerned, I only started in the office in May of nineteen ninety (1990), so I can't speak about what happened before that."

MR. FABRIKANT:

Alright.

THE COURT:

Put your questions to the witness.

MR. FABRIKANT:

I'll try to do my best then.

QSo, you have no knowledge of where this phone messages are at this moment of the year nineteen ninety (1990), correct?

A No, I don't.

QBut you know that they existed.

AThey did at one time.

QAnd they were part of my file.

AYes, they were contained in your file.

QAlright. You mentioned that you have something from year nineteen ninety-one (1991) as far as phone messages is concerned?

AIt was just the list that I gave you.

QNo, this is nineteen ninety (1990). You mentioned nineteen ninety-one (1991).

AWell, I'll look at my list. Hang on. For nineteen ninety-one (1991)?

QWell, something beyond that, yes.

AI have no further listing for nineteen ninety-one (1991).

QAlright. At the time of my arrest in nineteen ninety-one (1991), November first (1st), what was your personal knowledge of the threats which I allegedly made to whoever?

AI'm afraid I had no personal knowledge.

QSo, you didn't hear anything at all that I threatened this or that person? Nothing at all.

THE COURT:

The witness said she had no personal knowledge of your threats.

Now, you didn't ask her about rumours or whatever. But she said, "I have no personal knowledge of your threats," which I interpret as meaning, "I never heard you threaten anybody."

MR. FABRIKANT:

Ah, okay. That's my fault. It's tough in English. Yes. Okay. I rephrase it.

QDid you hear any rumours that I threatened somebody, somewhere, somehow?

AI don't recall hearing any rumours in nineteen ninety-one (1991) of your threats.

QOkay. When did you first learn that I threatened somebody, somewhere, somehow?

AI don't believe I heard from anybody anything to do with threats from you.

QSo, what was your reaction when you learned that I was arrested?

THE CROWN:

What's the point, My Lord?

THE COURT:

Yes, what is the point? What does the reaction when she heard you were ... It hasn't even been established that she did hear you were arrested. She said she saw you talking to some police officers as she was going to her office.

MR. FABRIKANT:

Well ...

THE COURT:

There's where we are.

MR. FABRIKANT:

Okay. That is interesting idea. I bet you now she'll tell us that she never heard that I was arrested.

QDo you have personal knowledge that I was arrested on November first (1st)?

AI understood that the police were questioning you but I don't know what was the result.

QSo, you never learned that I was in fact arrested and searched?

AAfter the fact, I did find that out, yes.

QOkay. When was that, on November first (1st)?

ANo, it was probably a few days later.

QFew days later. Do you recall that after police were searching me, I returned back to the police car and you were still there with Dr. McKenzie? Do you recall that, you were still there?

ANo, I'm afraid ... It was probably close to five o'clock (5:00). I could have been leaving the building at that point in time.

QTry to recall. You were there talking to Dr. McKenzie near police car.

AI don't believe so.

QOkay. And when you heard that I was arrested, did you ask the person the reasons for such arrest?

AI believe that when I heard that you were arrested or you were talking to the police, I'm not ever sure you were arrested, but

that it was on the basis carrying a portfolio into the senate chamber. That's all I know.

QWell, is portfolio outlawed at Concordia?

THE COURT:

No, you may not ask that question.

MR. FABRIKANT:

QAre you aware of any university rules which does not allow carrying of large portfolios?

ANo.

QSo, did you try to then clarify more why the portfolio was sufficient reason for arrest of somebody?

THE COURT:

Look, where are we going? It hasn't been ...

MR. FABRIKANT:

We are going at a very ...

THE COURT:

... the witness had any duty to inquire into why, what or whatever. If the witness had no duty to inquire into that, how can it possibly be relevant what she asked of anybody? We're just wasting time.

MR. FABRIKANT:

Would you allow me to explain? May I explain.

THE COURT:

You may explain.

MR. FABRIKANT:

Because for every grown up people, it is abundantly clear first of all for people who saw testimony of Miss Torbit who said that everyone in the University knew about all those threats. Second, assume for a second that she did know, arrest of professor and searching for weapons is such an outrageous event that definitely every normal person who never heard about threats would ask, "What the hell is going on? Why was he arrested? He must have done something." This absolutely ...

THE COURT:

Where will this lead us? This will lead us precisely nowhere.

MR. FABRIKANT:

Well, it will lead us to the conclusion that the witness is faking her answer.

THE COURT:

Oh, for Heaven's sake.

MR. FABRIKANT:

That's all.

THE COURT:

Let's adjourn at this point.

RECESS FOR LUNCH

MR. FABRIKANT:

Okay. Have the telephone messages been found?

MR. FREEDMAN:

I have nothing to report on the (Inaudible).

THE COURT:

You've nothing to report. Okay, fine.

MR. FABRIKANT:

Then maybe we file this list of documents at least.

THE COURT:

What list of documents?

MR. FABRIKANT:

Well, list which lists all those phone messages as a proof that they did exist.

THE COURT:

Go ahead and put your questions.

MR. FABRIKANT:

Well, I don't know what question I can put to confirm that at least those telephone messages did exist.

THE COURT:

QHave you got the sheet that Mr. Fabrikant has in his hand?

A No, I'm afraid that's the only one.

QThat's the only one. Okay.

MR. FABRIKANT:

QWell, do you ... can you confirm that at least the messages listed in this list did exist and they were in my file?

A These messages were in the file, yes, as of the fourth (4th) of November, nineteen ninety-one (1991).

QWell?

THE COURT:

Perhaps you would just pass the list to the lawyer sitting on your right. Well, this pertains, Mr. Fabrikant, to more than telephone calls. This is a list of documents contained in your file.

MR. FABRIKANT:

Yes. Well, more is not less. It is not detrimental.

THE COURT:

No, but there are things here which ... I mean, I don't know if there's any objection to the production of this sheet of paper.

THE CROWN:

I don't see the point but ...

THE COURT:

But I see here, for example, fifteenth (15th) of August to Rose Shannen for legal counsel, written opinion. That's in no way ...

MR. FABRIKANT:

Well, it is also important ...

THE COURT:

Pertinent to?

MR. FABRIKANT:

It is very pertinent. I will use when we examine Vice Rector Shannen, I will use (Inaudible) to extract this legal opinion because it was legal opinion about me at the time when she tried to have me fired. So, it is very relevant and very important for defence.

THE COURT:

I just want it very clearly understood that if this document is filed, and I see no objection if there is none to the filing of this document, that I am not in any sense endorsing the principle that anything mentioned on here, and in particular these legal opinions, will be susceptible to be produced. I tell you that right now.

MR. FABRIKANT:

Yes. I can just remind you that even when you make a decision, you can always change it. Do you remember you promised me first that I will be able to question Osmand on documents and when I call him again, and then you reversed your own decision, so ...

THE COURT:

I said in principle. I did not reverse my own decision.

MR. FABRIKANT:

You did.

THE COURT:

I did not reverse my own decision.

MR. FABRIKANT:

So, I can call Osmand just ...

THE COURT:

No, you can't. What I said was this: In principle, I have no objection to Osmand producing documents, provided of course, and

always provided, everything is provided that these documents are relevant. It turned out when the subpoena was looked at and this was done outside the presence of the jury, yes, it turned out when the subpoena was looked at and I had submissions from the Crown that these documents did not, were not relevant. That is why they were not produced.

MR. FABRIKANT:

You are mixing up. You are mixing Sincar. Sincar's documents you looked up, not Osmand.

THE COURT:

That's right. Osmand you didn't call.

MR. FABRIKANT:

Yes, but you ... because you reversed your decision.

THE COURT:

Anyway, we're talking about this. I'm saying, don't take it that ... I did not reverse my decision. Sincar was called or you intended to call Sincar. These documents were not pertinent. But what I'm saying is the legal opinions referred to there and a number of other things referred there, please don't tell, "Oh, well, you admitted that list, so therefore you admitted these." Because they're not being admitted necessarily. Nothing on that list is being admitted necessarily.

MR. FABRIKANT:

Well, you're not very concerned what I am saying.

THE COURT:

I just don't wish to be misquoted. That's all. And that is an art at which you have great facility.

MR. FABRIKANT:

Well, if I bring a tape where you made your decision about Osmand, you will not allow me to play (Inaudible), would you?

THE COURT:

Would you please put your questions to the witness.

MR. FABRIKANT:

Okay.

QWere you aware in nineteen ninety (1990) that Vice Rector Shannen wanted to terminate my employment at Concordia?

AI was aware that you were a research professor on staff and that part of the contract was as part of the "action structurante" program. If my recall serves me well, I believe that it was at the same time the "action structurante" positions were being converted to permanent positions as faculty positions. And that's how I'm aware of your involvement because you'd phoned our office to find out if in fact you would be the first and if you would fill the permanent positions that had been converted or would be converted from "action structurante" program.

QWell, I would like to respectfully submit that that was not my question. My question was: Were you aware that Vice Rector Shannen wanted to terminate my employment? That was the question.

Were you aware of that?

AI believe your contract was up for renewal.

QAnd this is not the answer. Were you aware that Dr. Shannen wanted to terminate my employment?

THE CROWN:

This fact is not in evidence, My Lord.

THE COURT:

He's asking the witness if she's aware. The witness can answer surely whether she's aware or whether she's not. Maybe she is, maybe she's not.

AAll I'm aware is Dr. Fabrikant's contract was coming to an end and that he was hoping to have the permanent position that was being converted from the "action structurante" program to a permanent

position.

MR. FABRIKANT:

Well, witness evading question.

THE COURT:

No, she's not. She says, "All I'm aware of is ..." That means all I'm aware of is.

MR. FABRIKANT:

QSo, you are not aware of Vice Rector's position. Is my understanding correct?

AI'm not aware that the Vice Rector was terminating your contract.

QWas intending to terminate it.

AI'm not aware of the Vice Rector intending to terminate your contract.

QYou're not aware of that.

A

QAlright. Were you present at the meeting somewhere I believe in April ninety-two ('92), (Inaudible) Vice Rector and I believe Me Freedman and representatives of pupils ...

A

Q... and myself?

AI was present.

QOkay. Do you recall I tried to show some documents to Vice Rector Shannen?

AI believe you had documents in your possession that you wished to ... well, you brought them to the attention of the meeting, I mean, everybody gathered and it was advised that you could either leave the documents but you had said that they were original documents and we said fine, then please provide copies after the meeting.

QWhat was ... Did you see that the Vice Rector effectively closed her eyes and turned her head not to see the documents?

AI'm afraid not. I was taking notes. She was across the table. She was sitting right beside you.

QYou didn't notice.

AI didn't notice it, no.

QWhen I tried to play tape to her, did you see her doing like this, just shutting her hears not to hear?

AI wouldn't have been aware of it, no. I don't recall.

QYou didn't notice that ...

AI do know that she said that she didn't want to listen to the tapes.

QYes, but in addition, just doing like this.

AThe body language or the body movement, I don't recall.

THE COURT:

You're again cross-examining. I warn you.

MR. FABRIKANT:

QDo you have letter in your file, October eighteenth (18th) ...

A

Q... addressed to me, nineteen ninety (1990)?

AOctober eighteenth (18th), nineteen ninety (1990)? With respect to what subject?

QWell, some kind of warning harassment, accusing me of harassment of Vice Rector.

AWell, it should be here.

MR. FREEDMAN:

My Lord, if I may, this is the same file that Dr. Shannen brought in when she testified. I wonder if perhaps the document was deposited during his fitness hearing. I don't know if it's possible.

MR. FABRIKANT:

Nothing was deposited during fitness hearing.

AIt must be in here.

THE COURT:

Well, would you look in the Valery Fabrikant confidential file.

MR. FABRIKANT:

By the way, do we have the file Fabrikant confidential?

THE COURT:

That's what I just asked her to look at.

MR. FABRIKANT:

It's good you reminded me about it. By the way, Mr. Freedman, is next witness around because I won't be longer here. You think that I will be long, no? The fact that I was long with Haines doesn't mean that I will be long with this one. I don't know.

AUnfortunately, it looks like we're going through this file right now and we're separating it and putting titles on it, so we might have removed ... because that particular letter ...

THE COURT:

QYou're aware of that particular letter?

AThat was the letter that the Vice Rector had written to the Rector. It was a memo actually.

MR. FABRIKANT:

QNo. You're talking about confidential, alright?

AThat's right. But that's not the letter that you're looking for, I know that. You're looking for the letter of warning.

QOkay. Let me to save time. Do you have the file confidential here?

ANo, because we're taking ... You see, what is happening is that we're putting all in chronological order now.

QSo, it is no longer separate and confidential.

AIt's not called confidential, no. It's under ... what year was that? Was that in nineteen ninety (1990)?

THE COURT:

QOctober the eighteenth (18th), nineteen ninety (1990).

AOctober the eighteenth (18th), nineteen ninety (1990) was a letter of warning from the Vice Rector to Dr. Fabrikant.

QThat's what he wants.

AThat I can't seem to locate in here. The only letter I have here dated October eighteenth (18th) is the response from Dr. Shannen to Dr. Fabrikant with respect to the collective agreement.

QThat's not what he's looking for.

ANo.

MR. FABRIKANT:

QThey wrote a letter the same day.

THE CROWN:

This letter was used here.

THE COURT:

Yes, I know, that's why I'm trying to think.

MR. FABRIKANT:

Maybe this letter is deposited.

THE COURT:

I think it may be filed.

MR. FABRIKANT:

In one of already deposited. Maybe we can use it from there. It must be there, too, if it is there. It must be either in the file which Freedman brought here.

AWe have copies of that in here, too.

QIt might be there.

THE COURT:

Rather than sit here, I think we'll adjourn for five (5) minutes while this is found and when it's found, we'll resume.

SHORT RECESS

MR. FABRIKANT:

QHave you found the document?

AYes, I have.

QOkay. May I take it for a second? Okay. You took this letter not separately but just apart of the internal memorandum of Vice Rector to the Rector, correct? You don't have it separately.

AYou asked for the October eighteenth (18th) letter from Dr. Shannen to you.

QAlright. Were you the one who typed it?

AI believe so. The typist's initials are on the bottom.

QOkay. Did you see here that the letter implies that I made some threats?

ACould you read the passage?

QOkay. "The veiled threats conveyed through my staff and through Mr. Grendan Haines."

THE COURT:

Mr. Fabrikant, the witness isn't the author of the letter. She typed it. Now, you can't ask the witness to interpret the letter.

MR. FABRIKANT:

I didn't ask yet question. You're already interrupting me. What is it? I didn't yet ask the question.

THE COURT:

You did. You asked the question.

MR. FABRIKANT:

No, I didn't.

THE COURT:

You asked the question if it contained something to do with threats. If she interpreted it as pertaining to threats. You asked that question.

MR. FABRIKANT:

No, I just brought to her attention certain passage and after that goes question.

THE COURT:

The witness is the person who typed it. I ...

MR. FABRIKANT:

Just let me ask the questions. You're constantly interrupting me.

QSo, you typed it and you are aware there is passage here which says, "Veiled threats conveyed through my staff and through Mr. Grendan Haines must stop immediately." Now, did you convey to Vice Rector Shannen any threats of mine?

AI can't be sure.

QIt means that you might have conveyed?

AIf I do recall, as in the list of documents contained in your file, we had four (4) telephone calls logged on the twenty-first (21st) of August. We spoke an awful lot. I mean ... Now, there are a couple of occasions that you said that you wanted to record our telephone conversations at which I had said I'm afraid that's ... I could not permit it and I hung up. But apart from that, I can't really say.

QWell, is this a threat? Do you consider that to be a threat?

AIf I'm permitted, I can say that I found you obnoxious and "harassic", to tell you the truth.

QWell, this is not the answer to my question. Is saying that I want to record a conversation, is it a threat?

ANo, it's a form of harassment.

QAre you aware that the person harassed was I rather than ...

THE COURT:

Listen. You're arguing with the witness. You're cross-examining the witness and you can't do that.

MR. FABRIKANT:

Alright. I return back to my question.

QFirst of all, at the beginning, do you recall that you testified that I never made any threats? Do you recall at the beginning of your testimony?

ATo me?

QYes.

AThat's correct.

QWell, to who did I make those threats then?

AI'm afraid I don't know.

QSo, were you the one, I'm returning then back, were you the one who conveyed threats to Vice Rector Shannen?

AAAs I had just mentioned, just stated, you did not convey threats to me, not to my recollection.

QOkay. But you conveyed some to her.

AThat's not what I said.

QYou said that I didn't convey to you. She claims that some of the staff conveyed threats to her. Were you one of those who conveyed those threats?

ANo.

QAlright. Now, how to reconcile your statement that you are not aware of any rumours of threats while you typed this letter and it is mentioned here that Grendan Haines conveyed some threats to Vice Rector? So, definitely you were aware, were you? Can you reconcile that?

AAAs a typist, you do not read the words that you type. You type the words, you type the letters. That's all I can say. I had no more knowledge than the words actually are there and I don't have any reason ... I was not the author of the letter, so I do not know what the background is ...

THE COURT:

And the question is in the nature of cross-examination in any event. It's disallowed.

MR. FABRIKANT:

QWould you believe you type a letter, you don't know what it is about?

THE COURT:

Your question is disallowed.

MR. FABRIKANT:

Alright.

THE COURT:

Not being a typist, I wouldn't believe anything. I wouldn't know.

MR. FABRIKANT:

Did you ever type anything in your life? I typed three (3) books. I know what I was typing.

THE COURT:

Well, that's not the witness said.

MR. FABRIKANT:

And anyone who types knows precisely that he knows what she's typing. There is no way unconsciously. Anyway.

QYou also testified here that you had no knowledge that Vice Rector Shannen wanted to terminate my employment. On the other hand, this internal memorandum dated November sixteenth (16th) were typed by you. Correct?

AIf my typist initials are on there, then I did type it.

QSo, and it is, I bring to your attention ...

THE COURT:

QAre you initials on it first of all?

AI don't know.

MR. FABRIKANT:

Yes. A.W.W.

QBut besides your initials, you totally have no recollection that you typed it?

AIt was in nineteen ninety (1990). I've moved on since ... I've had a promotion since that position.

QThe text of the memo I think is so remarkable that it's very difficult not to remember it but still ... "It is my gut feeling telling me that he should not be taken onto the full-time faculty of Concordia." So, how do you reconcile your statement that you had no knowledge that Vice Rector wanted to terminate with you typing this letter and definitely.

MR. FREEDMAN:

This is cross-examination.

THE COURT:

This is cross-examination. The witness is not here to reconcile one thing with another and the question is disallowed.

MR. FABRIKANT:

Alright. I will ask different than that.

THE COURT:

Well, we'll see if it's any different and we'll see if it's admissible. You're wasting everyone's time.

MR. FABRIKANT:

Is it?

THE COURT:

Yes.

MR. FABRIKANT:

Well, then, Counsel, you have that authority and say the witness is excused, that's all, if you feel that way.

THE COURT:

I will when I have to.

MR. FABRIKANT:

But now I can continue?

THE COURT:

Put another question.

MR. FABRIKANT:

Because your remarks.

THE COURT:

Your last question ... your last question was illegal and the whole line of questioning is wasting everyone's time in the context of what we're here for. If you don't like that last remark, that's unfortunate but there it is.

MR. FABRIKANT:

And after that, you will say that when I say you are biased ... You're in front of a jury undermining my defence. You have no idea what this defence is, why I am asking this question. Nevertheless, you are telling in front of jury that I am wasting time.

THE COURT:

I'm telling you ...

MR. FABRIKANT:

Can you find this ...

THE COURT:

I'm telling you you're wasting time, yes. At this point, you're wasting time.

MR. FABRIKANT:

Well, that's alright.

THE COURT:

What your defence is and the status of it is quite another question, but at the moment, you're wasting time. I've got a right to say that.

MR. FABRIKANT:

You repeated that at least five (5) times. If you want, you can repeat it six (6).

QNow, if you ... maybe this phrase bring back some of your recollection and you will recall that you were indeed aware in

nineteen ninety (1990) that Vice Rector indeed wanted to terminate my employment. And to boost your recollection, I read to you this phrase: "My gut feeling tells me that he should not be taken on as full-time faculty at Concordia." Does this bring to your memory something, that you were aware of that?

AThe letter was typed in the fall of nineteen ninety (1990). I was fairly new to the office. What the ... I was the Vice Rector's secretary at the time. I'm not privy to Vice Rector's reasoning or her correspondence as to the why she writes what she writes. All I do know is that you were part of an "action structurante" program that was coming to an end and hence, you were trying to get onto the full-time faculty. That's what I gather from that particular paragraph.

QAnd that was the most obnoxious part of me, was it? Now ...

THE COURT:

That is very out of place.

MR. FABRIKANT:

Well, when she said I was obnoxious, it was in place. Witness was ...

THE COURT:

It was in place. You asked the question, you got the answer.

MR. FABRIKANT:

So, I asked whether this was the obnoxious part of me.

THE COURT:

You're simply ...

MR. FABRIKANT:

What's wrong with that?

THE COURT:

You're simply being sarcastic and you're cross-examining the witness and you're not going to cross-examine the witness. Now, have you anything else to ask this witness?

MR. FABRIKANT:

QDo you recall security guards in the Vice Rector's office?

AWe had security in our offices but during what period of time, I couldn't tell you.

QOkay. Would this refresh your memory if I tell you that it was November nineteen ninety-one (1991)?

ANovember of nineteen ninety-one (1991)?

QNovember, December.

AEntirely possible.

QDo you recall typing of letter to me offering me one (1) year extension of my contract?

AContracts, letters with respect to employment are carried out by the faculty personnel office for the signature of the Vice Rector Academic. That is not carried in our office.

QWell, maybe you did some preparatory work for that letter?

ANo.

QAnyway, was it out cold at that time?

AI'm sorry?

QOutside, was it cold at the time the security guard was in Vice Rector's office?

AI haven't got a clue what the weather was like.

THE COURT:

QHe means was it winter. Does it suggest to you that when you think about it, do you recall it being winter?

AIn the fall of nineteen ninety-one (1991) November, December, I would presume there was probably cold temperatures.

QNo, but he's asking you the question to see whether or not ...

AI could recall the weather.

Q... associating it with the ... associating the security guard with the seasons let's you be more precise as to when the guard was

there.

AOh.

QThat's what he wants to know.

ASorry. I didn't see that at all. No, it would not help me.

MR. FABRIKANT:

QOkay. Where was this security guard located? Where was he sitting?

AI believe, if I'm not wrong, security either sat in our reception area or the ante room outside of the Vice Rector's office.

QOkay. Was this person in Concordia uniform or he was in plain civil clothes?

AGee ... Probably part ... sometimes it was a uniform person, sometimes it was non-uniform person.

QOkay. How this was presented to you, this presence of security right in the Vice Rector's office?

ATo me as a staff member?

QYes.

AI can't rightly recall. It was probably as per any other instance that we have to take security measures. It's not an unusual happening in our office. It certainly goes with the territory.

QWhat do you mean not unusual?

AIt's not unusual for us to have security presence in our offices.

QWell, weren't you explained that it was against me?

AIn what period of time?

QIn any period of time, whenever security guard was there.

AI can only recall of one instance where when the Vice Rector was having a coffee night and you had registered and security was called by virtue of the fact of your presence.

QBut it was in nineteen ninety (1990), wasn't it?

AThat's just it, though. I mean, like I recall a particular instance when it was because of your presence in our office that we had security there.

QSo, but at other times ... So, at that time, it was clear to you that it was because of me, right?

AThat's correct.

QAnd just recently you testified that you had no knowledge whatsoever of threats made by me.

AThat's correct.

QWell, if you call security guard, isn't it natural ...

THE CROWN:

This is arguing, My Lord.

MR. FABRIKANT:

Okay.

THE COURT:

Objection maintained.

MR. FABRIKANT:

QHow was it explained to you the presence of security guard in nineteen ninety (1990)?

AAAs I've said already, I've already answered, I think, that we have a security presence, security comes in and checks on our offices on a fairly regular basis. It's not part of their beat but they do come in and we're just down the hall from the main desk and so, therefore, it's not an unusual display, if you will.

QShe's not answering my question.

AWould you like to repeat it?

THE COURT:

QHe wants to whether or not there was any briefing given in your office in relation to him insofar as it related to the presence of either regular security or beefed up security. That's what he wants to know.

ANo, not to my recollection. It was ... The explanation, and I can

only hazard an opinion there again, is that the Vice Rector wished to have security presence, I believe that in actual fact, if I do recall, when you had indicated that you would be coming to our offices that we would alert security. So, it was sort of like an internal order to have a security presence.

MR. FABRIKANT:

QIsn't it clear indication of some kind of a threat, is it?

ANo.

QIt is not.

ANo.

THE COURT:

And that is cross-examination.

MR. FABRIKANT:

QSo, in nineteen ninety (1990), you were aware that whenever I come, security is called, correct?

AIn nineteen ninety (1990)? Probably late nineteen ninety (1990).

QYes. You already were aware that security comes, security is called whenever I come and despite that, you never asked the reason for calling security whenever I come.

AIt was my supervisor's order. We don't question their orders.

QWell, this is what they do in Nazi countries. The same thing is here.

THE COURT:

Would you please spare us a lecture in political science. We have other things to do today.

MR. FABRIKANT:

Yes.

QIt has never crossed your mind just to find out what is going on?

No? You never questioned that?

AI believe I've answered that by saying that if the Vice Rector asked for security, the Vice Rector gets security. That's ...

QNo, I'm asking about you, not about Vice Rector.

AWe don't question what the rationale is for particular orders.

QIf she orders you, for example, to do something dishonest and dishonourable, you would still do it without questioning?

THE CROWN:

(Inaudible).

THE COURT:

Yes, it's hypothetical. Question is disallowed.

MR. FABRIKANT:

Okay. Can I ask it differently?

QHow far would you be prepared to go ...

THE COURT:

No, you can't ask ...

MR. FABRIKANT:

I'm questioning reasons for ...

THE COURT:

No, you can't ask ...

MR. FABRIKANT:

... superiors.

THE COURT:

You can't ask it differently. That's disallowed to.

MR. FABRIKANT:

QDid presence of security guard make you more nervous or maybe even afraid, just mere presence of security guard?

AMyself, personally, no.

QSo, you were never afraid of me.

ANever afraid of what though?

THE COURT:

QI think he said, "So, you were never afraid of me." Is that correct?

MR. FABRIKANT:

Yes.

AOh. Sorry, I didn't hear. No.

QWhy did you have to think for so long to answer such a simple question?

AWell, I was just running through my mind what afraid is and what the definition of afraid is.

QOh, well, if you need to go that long to find what definition of being afraid is ... Okay. Have you ever thought that if you treat someone like a criminal, one day he will become one?

THE COURT:

Question disallowed.

THE CROWN:

(Inaudible), arguing and ...

THE COURT:

And whatever else but the question is disallowed.

MR. FABRIKANT:

QThank you.

THE CROWN:

I have no questions.

THE COURT:

QThank you very much.

MR. FABRIKANT:

I don't if it's possible. Could you give Me Belleau the list of the secretaries of Vice Rector's office if he have no other way to find out what ...

THE COURT:

The what?

MR. FABRIKANT:

I am asking the witness to give to Mr. Belleau the names of secretaries at Vice Rector's office so that we could find out what happened to those messages if we have no other way.

THE COURT:

Yes.

AI thought Me Freedman would ...

THE COURT:

Yes. Have you ...

MR. FREEDMAN:

I haven't managed to know ... I went actually to verify the files myself when I went back to the office this afternoon.

THE COURT:

Okay. If necessary, would you undertake to find out and make available to Mr. Fabrikant the names of the secretaries who would have worked on these files if the question of the notes and what happened to them can't be clarified.

MR. FREEDMAN:

We're talking about the message ...

THE COURT:

The messages from which that ...

MR. FREEDMAN:

Telephone messages.

THE COURT:

Telephone messages.

MR. FREEDMAN:

Little green sheets.

THE COURT:

The little green sheets. The little post-its.

MR. FREEDMAN:

That's right. I will.

THE COURT:

QThank you Mrs. Wright.

AThank you.

AND THE WITNESS SAYS NO MORE.

MR. FABRIKANT:

Who is the next witness? Mrs. Habib?

CAME AND APPEARED:

MAUREEN HABIB

Executive Assistant to the Rector and Vice Chancellor at Concordia University, date of birth March 15, 1952.

WHO doth declare and say:

QUESTIONED BY

MR. VALERY FABRIKANT:

QAt the time we met first, what was your position at Concordia?

AAAt that time, I would have been Assistant to the Vice Rector Academic.

QOkay. Do you recall some phone conversation in nineteen nineties (1900s) with me?

AI would expect that I have spoken with you on the telephone anytime since the mid nineteen eighties (1980s) possibly or we would have probably spoken quite a few times on the phone in nineteen ninety (1990).

QYou mean we spoke in nineteen eighties (1980s), too?

APossibly if you would have called the office of the Vice Rector Academic.

QWell, I don't recall any calls, do you?

AI can't be sure.

QIt looks like action started somewhere in the second part of nineteen ninety (1990) with your office, correct?

ACertainly I recall your file being discussed in the fall of nineteen eighty-nine (1989) and through nineteen ninety (1990).

QOkay. Do you have any agenda with you or any documents or any recollection as to what was discussed, with who was discussed? How do you recall the beginning of the whole thing, let's say in eighty-nine (1989)?

AThe documents that I have with me pertain to my current position, not to my former one. However, I certainly can recall that you would have been eligible for contract renewal that year possibly, so we would have talked in that context.

QWhy would we talk about contract renewal with you? Do you recall any content of this ...

AIn response to any telephone conversations or any inquiries you would have.

QWell, what year was my contract renewal you think?

AI cannot recall that from year to year.

QOkay. So, let's move to eighty-nine ('89) when there was no contract renewals. Do you recall giving some file to Mr. Haines?

A

QMaybe this would refresh your memory?

AI regret, My Lord, that I did not remember. That I have reviewed the file of my current position, not of my former one and it has been a fair amount of time ago. This is very much my handwriting and a note from me.

QSo, does this bring to your memory certain events of that time?

ACould you be more precise?

QAlright. This note is about what? This note is addressed from you to ...

A

QYes. And you submitted to him some documents, correct?

AMr. Haines at that point, if I remember correctly, was doing some work with you.

QUm-hum.

ATherefore, I must have been instructed to provide him with the current file that was in our office.Q Okay. Do you remember who instructed you to do so?

AI cannot.

QOkay. From then on, did you have any contact with Mr. Haines, with Dr. McKenzie concerning me in any way?

AI remember Mr. Haines coming to see the then Vice Rector Academic and I believe that they met to discuss your case but I was not present at that meeting.

QDo you remember when it was?

AI would say ... this note is dated the twenty-sixth (26th) of January, nineteen eighty-nine (1989), so it must have been in February or March of that year.

QThe Vice Rector who?

AThe Vice Rector at that time was Dr. Rose Shannen.

QIn February eighty-nine ('89), she wasn't there, was she?

AOh, I'm sorry. I'm getting confused. I'm sorry. Dr. Shannen was appointed on the first (1st) of September, nineteen eighty-nine (1989). At the time, the acting Vice Rector Academic was Dr. Patrick Kenniff.

QSo, if you go back to your memory to the year nineteen eighty-nine (1989) still, do you recall any meetings between you and McKenzie or between you and Haines to which my name was mentioned?

ANo, I was not present at those meetings.

QBut you are aware that those meetings took place?

AYes. The reason that I'm aware that the meetings took place is that the correspondence is held in the office of the Rector's files and those files I have reviewed prior to coming today.

QWere you aware in nineteen eighty-nine (1989) of any threats made by me or rumour of threats or anything?

ANo.

QOkay. When have you become aware of that?

AIn the fall of nineteen ninety-one (1991).

QIn the fall of nineteen ninety-one (1991). Do you recall a meeting between you, Shannen and Haines in January of nineteen ninety (1990)?

AI'm sorry, I do not.

QWhen you mentioned about the meeting and when you said that you were confused, probably this is exactly meeting you had in mind. Could that be?

APossibly, but I was not at that meeting.

QWell, maybe this will refresh your memory.

AI regret I have no memory of this meeting. There have been many meetings on this dossier but I do not remember this one.

QOkay. If you read further than memo maybe this will refresh something of what was discussed there.

AI regret if it is recollection of (Inaudible) that I was there, it's entirely possible. As I say, I have discussed this case many, many times over the last several years, particularly the last year and a half, and I do not have a particular recollection of this meeting.

QWell ... Okay. May I have it back? I will try to remind some topics. Maybe this will ring some bells.

THE CROWN:

There seems to be her handwriting on this piece of paper. I don't know what it is. We don't know what it is, so I guess it's of no use.

MR. FABRIKANT:

I don't understand the objection.

THE COURT:

I'm not sure I do either. What are you saying?

THE CROWN:

What is this paper? What are we talking about?

MR. FABRIKANT:

So, what? What are you objecting at?

THE CROWN:

I'm just asking what ...

MR. FABRIKANT:

Whatever this paper is ...

THE CROWN:

... what is going on?

MR. FABRIKANT:

What are you objecting to?

THE COURT:

What Mr. Fabrikant proposes to do is refer to a number of sub-headings on that paper and see whether it will jog the witness's memory.

THE CROWN:

She already read it and it doesn't ring a bell.

THE COURT:

He may have some other information that he wishes to factor into his question that might jog her memory. The witness's memory seems to be chronically poor, so I'm prepared to permit him to do that.

THE CROWN:

Alright.

MR. FABRIKANT:

QNow, try to imagine the meeting between you and Shannen and Haines and this meeting concerned me. And recently there was shooting at l'Universit, de Montr,al ...

THE CROWN:

Is there even a date suggested or ...

MR. FABRIKANT:

You saw the document. There is a date on that document. What is Crown always interrupting? Crown saw the document. The date is here.

THE CROWN:

Suggested anyway.

MR. FABRIKANT:

What suggested?

THE COURT:

Go ahead.

MR. FABRIKANT:

QSo, do you recall any discussion at that time just soon after shooting at l'Universit, de Montr,al, some kind of discussion that maybe Fabrikant is another L,pine who will come and shoot a lot of people?

ANot at that time.

QOkay. Then there was this kind of discussion at another time?

AOpinions were rendered to me over a period of time that were unsubstantiated of people who were afraid of you.

QWell, continue please. Who, when, what?

AThis is a period over a significant period of time. I believe Dr. McKenzie gave that opinion to me. Some members ... rumours were repeated and were not substantiated. When one asked individuals for facts, they did not come.

QOkay. Did Dr. McKenzie ... Okay, first of all, Dr. McKenzie, could you locate it in time?

AI'm sorry?

QInformation from Dr. McKenzie, could you locate it in time? When was it?

ACertainly when you attempted to have the permission to carry a gun permit signed at the University which would have been last summer.

QWell, not before that?

AIn the fall of nineteen ninety-one (1991) ...

QAnd before that?

A... when you were being considered for re-appointment.

QAnd before that?

AIn the fall of nineteen ninety (1990), into that summer of nineteen ninety (1990) when you were being considered for tenure (Inaudible) position.

QAlright. So, can you locate information received from Dr. McKenzie in time? Was it what, nineteen eighty-nine (1989)?

AI would say nineteen ninety (1990).

QNineteen ninety (1990). Okay. Do you recall what exactly she told you or if not exactly, at least the meaning?

ACertainly that she felt uncomfortable with you and threatened by you.

QDid she quote any specific threats of mine to you?

AShe would have at that point told me of a conversation she would have had with you in nineteen eighty-nine (1989) in which a reference to doing things the American way was referred to.

QCould you be more elaborate about doing things American way? What exactly was that?

AI cannot say what it was exactly but certainly the intonation of that kind of phrase would be the American way, including done with violence.

QCould it be that she told you the following: In order to get what you want in North America, you have to go in and shoot a lot of people and that is what Fabrikant intended to do. Does this phrase ring any bell?

AI does. However, I must say I can't put it in exact context of time.

QWell, how about the authorship from who you heard that?

AI may have been Dr. McKenzie.

QWell, what, you are not sure?

A.No.

QWell, the phrase is not sufficiently shocking for you to at least be sure where you heard this from?

THE CROWN:

He's arguing.

AI has been repeated to me several times.

MR. FABRIKANT:

QWell, but when you heard it first time, wasn't it sufficiently shocking to remember who told you and when?

AYes.

QSo, who told you and when?

AI believe it was Dr. McKenzie.

QWell, when was that?

ANineteen ninety (1990).

QDo you remember the circumstances of that?

AI do not.

QWell, the phrase was not sufficiently shocking for you to remember when and how and at what circumstances it happened?

THE CROWN:

This is cross-examination, My Lord.

THE COURT:

Yes.

MR. FABRIKANT:

Alright.

THE COURT:

You're given all sorts of latitude because the witness has difficulty remembering all sorts of latitude and you always push it one step too far.

MR. FABRIKANT:

QSo, when in nineteen ninety (1990) have you heard that?

AIn the summer towards the fall, when the whole question of your ongoing appointment to the faculty was being discussed.

QUm-hum. In eighty ... Okay. What were the other rumours? So, this one you have the author, you have the source, you have who, everything. Any other rumours which you also could locate in time and attribute to certain person?

ANot specific ones.

QOkay. Just what were the other rumours without attribution?

AIt was often said to me that the (Inaudible) was standoffish, was unfriendly, was argumentative, was persistent to the point of harassment, was intimidating by a manner of ...

QWell, this is not my question. I'm asking for threats. I'm not asking you how I was described. I'm asking you about threats I allegedly ...

THE COURT:

I think it was your fault there because you asked about rumours.

MR. FABRIKANT:

Well, about rumours about threats.

THE COURT:

You know that and I know that but Mrs. Habib doesn't know that.

MR. FABRIKANT:

Well, my question was clear. I asked rumours about threats.

AThe one that I remember particularly was that there was the rumour that you had said to a fellow faculty member, "I know where your children are, I know what school they go to." I cannot recall immediately who said that to me. It was probably said to me several times.

QWell, in different versions or in this particular version all the time?

AThis is the version that I recall.

QBut was it told to you in different versions, too, like ...

ABut that is the language that I recall.

QSo, did I tell it in person? Did I tell it on the phone to someone?

AThat was not made clear to me.

QDid you ever ask who that person was?

AYes.

QYes? And who did I tell that to?

AThat could never be ascertained.

QAt least you remember who told you that?

ADr. McKenzie may have told me. Dr. Osmand may also have told me this.

QBut both ... did both ... Dr. McKenzie told you. Did you ask Dr. McKenzie who told her?

AYes, I believe I did and I believe she answered Grendan Haines.

QAnd from Mr. Haines, did the chain go further from Mr. Haines?

ANo.

QOkay. You're sure about it that Dr. McKenzie told you that it was Mr. Haines who told her.

AThat is my recollection.

QOkay. Do you recall when it happened?

AAgain, I would say the summer of nineteen ninety (1990).

QUm-hum. Our personal relationship at that time, you, as far as I know, recorded several telephone conversations with me, correct?

AI do not record telephone conversations. I assume what is meant by

record is tape recorded.

QNo, no, no. I mean record, just make memo about content of the conversation.

ANotes on telephone conversations, certainly I often do that.

QWell, you know also that those notes were kept in my file.

AI doubt very much my handwritten notes would have been. That is not my normal practice.

QOkay. Can we show witness the latest exhibit?

THE COURT:

D-16. After you have your answer to this question, we'll stop for ten (10) minutes.

MR. FABRIKANT:

Just the one which we filed recently.

THE CROWN:

It was not filed.

MR. FREEDMAN:

There was a whole discussion about the filing but it was never actually filed.

THE CROWN:

It was not filed.

MR. FABRIKANT:

But it is D-17.

THE COURT:

You don't have a D-16?

THE CROWN:

It was not filed.

THE COURT:

It wasn't filed finally.

THE CROWN:

No.

MR. FABRIKANT:

Well, anyway, this is it. Could you please give it to Mrs. Habib?

THE CROWN:

If this is to be filed, we may as well file it.

THE COURT:

We may as well file it. There's no objection, I'm sure, to that being filed.

MR. FREEDMAN:

No. If we could photocopy it. I took some notes on the back for (Inaudible).

THE COURT:

Oh, oh. Okay. I'll tell you what. We'll ... You want your answer now?

MR. FABRIKANT:

Well, no ...

THE COURT:

Get your answer now and then it will be withdrawn, photocopied and filed.

MR. FABRIKANT:

QDid you note some of ...

AYes. This was compiled after I would have left the office and it does not that some of my notes which must have been in the file must have been left in the file.

QWell, is it usual thing to leave just ordinary telephone conversation in somebody's file?

ADepending on the nature of the conversation. If the caller is requesting something particular and if there is no written follow-up afterwards, then it would not be unusual to leave it. Normal telephone messages where question is answered and it's (Inaudible) straightforward, obviously not all telephone messages are kept. However, in some cases when one is relaying information and one

wants to note to the file that that information has been relayed, it's very possible that the telephone message is kept.

THE COURT:

Okay. We'll adjourn for ten (10) minutes.

SHORT RECESS

MR. FABRIKANT:

Before we start with next ...

THE COURT:

Mr. Fabrikant, just a second, before you go on. You want to produce that as D-16.

MR. FABRIKANT:

Yes.

THE COURT:

Okay.

MR. FABRIKANT:

Well, before we start with next question, I got from Mr. Belleau jurisprudence which I believe is very interesting in one sense because when I read the first part, I thought that I have no choice but to come and apologize, that I was wrong about my right to remind one witness about testimony of the other. And here how it reads: "Generally speaking, this line of cross-examination inviting the witness to comment on the veracity of another witness is objectionable. The opinion of one witness about veracity of another is irrelevant and persistence in demanding answers to irrelevant questions is unfair."

THE COURT:

Sorry. Would you read me that bit again?

MR. FABRIKANT:

"The opinion of one witness about veracity of another is irrelevant and persistence in demanding answers to irrelevant questions is unfair." So, when I read all this, I thought, "My gosh, I have to come and to apologize."

THE COURT:

Now, where is the clincher?

MR. FABRIKANT:

I just read the next sentence. And next sentence says the following: "However ..." And this is what jurisprudence is all about. You have to read however. "While the witness's opinion as to veracity of another witness is irrelevant, the fact that his evidence conflicts with that of another witness may be highly relevant to the process of determining credibility and it is a fact that trial judge would have to consider." Now, if we apply this to my case ...

THE COURT:

Where is that from?

MR. FABRIKANT:

Okay. This Regina versus Brown and Murphy.

THE COURT:

Where?

MR. FABRIKANT:

Alberta Court of Appeal, October four (4), nineteen eighty-two (1982).

THE COURT:

Okay.

MR. FABRIKANT:

So, what it says here on the one hand, it is not forbidden, it is objectionable. But if it is important to establish credibility and you know that I am paranoid all about witnesses lying, so to me it is important establish credibility, therefore, for me, it was both

important and permissible to remind one witness about testimony of another.

THE COURT:

I'll give it right back to you but would you mind passing that case that you have in your hand to Mr. Belleau and over to me, just for a second while I check one thing in there. Okay. Could you look at it?

THE CROWN:

(Inaudible).

THE COURT:

Certainly. You know, yes, jurisprudences sometime lead us astray, doesn't it? But that was a case where two (2) accused were being tried by a judge alone and the judge alone was told that he ought to take into account the difference in versions because from the point of view of credibility, that was a factor which he should consider. But here, the jury has heard both versions. I may have a direction to give to the jury with regard to variations between the versions of one witness and another. That is true. But that doesn't mean that you are able to put, particularly to a witness who you are not even entitled to cross-examine, a question which relates the testimony of a previous witness and effectively asks the witness to rally to it. You are not allowed to do that. So, I'm sorry. I was correct in my ruling.

THE CROWN:

Can I address the court?

THE COURT:

Surely. Maybe it's about time for a little scenery of restrictions and cross-examinations. I offered you an authority this morning. It's taken from "Basic Problems in Examination and Cross-Examination" by Ed Ratushni from the Canadian Bar Review, Volume 3, "Basic Problems in Examination and Cross-Examination", nineteen seventy-four (1974).

THE COURT:

Professor Ratushni.

THE CROWN:

Okay?

THE COURT:

Um-hum.

THE CROWN:

In the examination in chief, what are the general restrictions? Mr. Fabrikant is having the witnesses in examination in chief. If you allow me two (2) or three (3) minutes. "Apart from problems related to the hearsay rule which is not dealt with in this article, two of the most commonly encountered restrictions upon the manner of (Inaudible) questions to one's own witnesses are the rules relating to opinion evidence and leading questions. The rule with respect to opinion evidence is basically that the witness must testify only as to facts. He is not to draw inferences, opinions or beliefs from those facts. That is the function of the (Inaudible) facts." In this case, the jury. "To use the modern version of (Inaudible) an example, a witness who merely saw a car with a back fender surrounded by particle of paints of a different colour would not be allowed to testify that he had seen a car that had been in a collision with another car. He must depose only as to what he actually saw, that is the state of the vehicle leaving the jury or judge to draw the conclusion that it had been in a collision with another vehicle. As with hearsay, the rule with respect to opinion evidence is an exclusionary rule rendering the testimony inadmissible. A common transgression of this rule occurs where counsel might say, 'Now you have heard the evidence of Mr. X. What do you think of it?' or 'Are you suggesting that the previous

witness was lying?' In R versus Marcadonis, the Supreme Court of Canada specifically disapproved as being improper questions to an accused about his opinion of the veracity of Crown witnesses. In that case, the questions occurred during cross-examination of an accused. However, it is submitted that the decision should be equally applicable to examination in chief..." which is our case, "... and to witnesses other than an accused. In each case, the questions would be improper as attempting to elicit an opinion. The major exception to this rule relates to expert witnesses. In other words, persons who are qualified by some special skill, training or experience can be asked their opinion upon a matter in issue. The law with respect to expert evidence is another subject in itself." And I do not propose to deal with it. But you dealt with it before. And moreover, to assert the credibility of one witness is the realm of the jury. They are the only one that have to decide whether a witness is lying or anything like that. It's not Fabrikant or the next witness who has to give an opinion on what is the content of the testimony of a previous witness.

THE COURT:

Thank you very much.

MR. FABRIKANT:

Well ...

THE COURT:

Listen. Let us get on.

MR. FABRIKANT:

Well, I never objected to any of those and I always adhere to them. The point there is that when I asked another witness that another witness testified something else, I didn't ask that witness opinion on another witness. I just wanted to somehow reconcile it. That's all.

THE CROWN:

Even worse, Fabrikant implies that he tells the witness he's lying because someone else said ... It's even worse than what is stated in the case.

THE COURT:

It's even worse.

MR. FABRIKANT:

Well, it's not at all.

THE COURT:

Listen.

MR. FABRIKANT:

Well, if witness ...

THE COURT:

Listen.

MR. FABRIKANT:

Just one second. If witness says, "You are obnoxious." And judge, even that even in this case, do not consider the witness is hostile, what can I do? Another contempt of court? What more proof do one need for hostility of witness? And still I was not allowed to cross-examine even then.

THE COURT:

You weren't. I guess that's one rule you'll never understand. But anyway, let us press on. But you will note that you've had thus relatively wide latitude with the present witness.

MR. FABRIKANT:

I do not complain about present witness.

THE COURT:

Fine.

MR. FABRIKANT:

I'm complaining about previous.

THE COURT:

Okay.

MR. FABRIKANT:

I do not complain when it is more or less fair.

QI believe we ended at the threats which originated from Mr. Haines concerning somebody's children.

THE COURT:

No, you didn't. You ended at the point where she said that normally her notes would not have found their way into your file and you showed her that document, that Exhibit D-16, and she said, "Oh, some of my notes must have found their way into the file." And she said that, well, in some cases they do and some cases they don't. That was where you were.

MR. FABRIKANT:

Okay.

QNow, I understand that in some of those messages, I requested certain information, correct?

AI have spoken to the "questioner" on the telephone no less than a hundred times. I would certainly need to see the telephone messages.

QWell ...

THE COURT:

QThe telephone what?

AThe telephone messages.

MR. FABRIKANT:

QHow many days altogether it was that I called your office? Let us say in January, how many calls were there?

AIt would depend of what year.

QWell, nineteen ninety (1990).

AMy recollection is that the telephone messages and the correspondence would have increased to a very steady pace at around that time and that would have been as a result ... My recollection is that the "questioner" was up for renewal of appointment in the fall of nineteen eighty-nine (1989). And as a result of that, an increase in correspondence back and forth between him and the Vice Rector Academic, as well as phone calls to the office increased at that time. I cannot say the number of calls that it would have been.

QWell, I wish you would be able at least to tell correctly the subject of those calls there in eighty-nine ('89).

THE COURT:

Now you're arguing with the witness.

MR. FABRIKANT:

Okay.

THE COURT:

If you say the subject was something else, that may be. The witness has told you what she believed the subject to be.

MR. FABRIKANT:

QWell, are you aware of "action structurante" the program?

AYes.

QOkay. When did it start? Do you remember the year?

AFor a particular ... "Action structurante" is a type of program offered by the Quebec government. Concordia University won several of them over the years.

QOkay. To make it faster, was it eighty-five ('85)?

AFor the Concave Centre, I believe it was nineteen eighty-five (1985).

QSo, the continuation of the contract is how many years after that?

AFive (5) years, I believe.

QNo. The first extension is what?

AThe program itself comes in for five (5) years.

QYes, and the first extension of the contract?

AAnd to create appointments to the program of faculty members, technicians, etcetera, can vary ... the contracts can vary within that five (5) years.

QWell, do you recall that it was three (3) year of contracting usually?

AI cannot recollect whether or not your first contract was for two (2) years or three (3) years. I would have thought two (2) years.

QWell, two (2) years it doesn't count to eighty-nine ('89), does it, for renewal? If it is three (3) years, then it is eighty-eight ('88), right?

ABut the way that the university works is that if you would have been hired from first (1st) of June eighty-five ('85) to thirty-first (31st) of May eighty-seven ('87) and then from one (1) June eighty-seven ('87) to thirty-one (31) May eighty-nine ('89), then it would have been the fall of nineteen eighty-eight (1988) that you would have been looked at. I'm sorry, I'm in error.

QOkay. To make shorter and simpler ...

THE COURT:

QExcuse me. You said you retract that or what?

AI would be in error then if the contracts were for two (2) years and began in nineteen eighty-five (1985).

QI see.

MR. FABRIKANT:

QWell, may I ask leading question? Probably it was promotion, was it?

APromotion to research professor, yes.

QOkay. Now we ...

AIn the spring of nineteen ninety (1990).

QNow we are at the point. No, it was eighty-nine ('89). The problem in eighty-nine ('89) was promotion to research professor.

AI see.

QPromotion in nineteen ninety (1990) was also to research professor and this is why you might be confused but both are about promotion, both were about research professor. Alright. So, you heard about from Dr. McKenzie both threats, some were in nineteen ninety (1990). What about threat to kill rector?

AI was not aware of that until much later. I was not told that at the time.

QWhen were you told about it?

AI knew for a fact when Mr. Haines wrote back to me after I requested his knowledge of your dossier in the summer of nineteen ninety-two (1992).

QYou are Executive Assistant to the Rector, correct?

ACurrently.

QWell, since when?

AAAs of the first of January nineteen ninety-one (1991).

QSince nineteen ninety-one (1991). And when you were Executive Assistant to the Vice Rector and Kenniff was that Vice Rector, I believe you communicated with him too, didn't you?

AYes.

QThe threat was allegedly made in what year?

A I believe that was in winter, January, February, March of nineteen eighty-nine (1989).

QOkay. And the Rector himself has never mentioned to you that there was threat on his life?

A No.

QDid he ever mention my name?

A Not at that ... Well, did he ever mention your name ... I require a more specific question.

QWell, did he?

A When?

QWell, I believe many times. Would that be correct to answer?

AYes.

QAnd at no time when my name came up, at no time he mentioned that I threatened to kill him?

ANo.

QOkay. Now comes my application for gun permit. Do I understand correct that he asked you to write to Grendan Haines for his information, right?

AIt was not the Rector who asked me to write to Grendan Haines.

QWho was that?

ASubsequent to your appearing with the form to be signed and after discussions with legal counsel, it was decided to form an objection to the request for the permit. When they had ordered to do so, it was decided that I would attempt to compile as much hard information as I possibly could to provide the Services des permis which grants the permits in order for us to be able to lodge an objection to the granting of the permit. When they ordered to do so, myself as well as the Assistant to the Vice Rector Academic as well as the then Associate Vice Rector Services undertook to ask colleagues at the university if they had any reason that we could provide to the Services des permis in support of our objection. Therefore, I wrote to Mr. Haines to formally ask him this question and that he would formally respond in writing.

QWell, in your response, it was decided, it was ... Could you be more specific? Who decided what and when instead of it was decided? What kind of meeting was it, who was present, when it was who decided?

AYou appeared in "McAggle" Engineering Department, I understand, on the twenty-second (22nd) of June of last year with the form to be signed. On that day, the members of the office of the Rector which includes the Rector, the Vice Rectors, the Secretary General and myself, were off-campus at a planning meeting. When I returned that afternoon, I was informed by the legal counsel of the university that you had appeared in the department of "McAggle" Engineering requesting this. The secretaries in the department were distressed and asked for guidance.

QOne second. Secretaries told you that, that they were distressed?

AYes.

QWho exactly? What secretary told you? They were ... they came to you together to say that they were distressed?

AMy understanding that Elizabeth Horwood called the legal counsel of the university ...

QAh, okay, so ...

A... as I said, in our absence during the day.

QIt was Elizabeth Horwood who was distressed, right? Did you hear from any other secretary that she was distressed?

AI recollect Elizabeth Horwood bringing this to our attention ...

QHorwood was distressed, so ...

A(Inaudible) legal counsel.

Q... would you please inform jury precisely who was distressed.

THE COURT:

Listen, listen. That's twice now you've cut the witness off in mid-sentence.

MR. FABRIKANT:

Alright.

THE COURT:

QNow, would you back up. You returned from your planning meeting. What happened?

AThe whole issue of the "questioner" appearing in the department of "McAggle" Engineering with the request to sign this form was brought to my attention. The legal counsel and I discussed it. It

was brought to the attention subsequently, I believe, the next day to the attention of the Vice Rector Services, the Associate Vice Rector Services, the Assistant to the Vice Rector Academic. It was decided that we would by this group ...

MR. FABRIKANT:

QI don't know if I can interrupt. When it was decided, would you kindly instead, it was decided, who decided what and when?

ABy this group. This group decided on that day.

QThe group of what?

AThe Vice Rector Services, the Associate Vice Rector Services, the Assistant to the Vice Rector Academic, myself and the legal counsel.

QOkay. So, now it is clear who was there and what date ...

THE COURT:

QSorry. The Vice Rector of Services, the Associate Vice Rectors. I mean, you have so many of these algebraic Vice Rectors that ... Vice Rector of Services, Associate Vice Rector of Services, who else?

AThe Assistant to the Vice Rector Academic.

QAnd?

AThe legal counsel and myself.

MR. FABRIKANT:

QYes. And this meeting was held on June twenty-fourth (24th), twenty-third (23rd)?

ATwenty-third (23rd).

QTwenty-third (23rd), yes. And the decision of that meeting was what?

ATo lodge a complaint or an objection with the Services des permis, to ensure that the gun permit was not granted to you.

QOkay. And who told you to write to Mr. Haines?

AIt was a collective decision of that group that we would collectively attempt to determine whether any of our colleagues at the university could specifically give us evidence that we could provide to the Services des permis in order to strengthen our objection.

QOkay. So, you send letter not just to Mr. Haines, to everyone in the university?

AYes. I sent a letter simply to Mr. Haines. As I said, it was a collective decision and ...

QWell, someone ... I'm sorry. Someone should have pronounced the name. You didn't pronounce it all together. Who pronounced the name Haines?

AHaines?

QSomeone should have pronounced, "Write to Haines." You couldn't have said it all together simultaneously, did you?

AProbably not. However, I cannot recall who would have suggested Mr. Haines' name in particular.

QWell, were you aware that Mr. Haines is the right person to contact?

ACertainly there was a collective knowledge of that group that Mr. Haines had been involved in a case, albeit quite a long time before, last summer.

QOkay. Did the Rector at this occasion at least told you that you don't have to go far, "He threatened to kill me, so I'm prepared to write myself." Did he tell you something like that?

THE CROWN:

This is cross-examination, My Lord.

MR. FABRIKANT:

No ...

THE COURT:

Yes, it is. It really is.

MR. FABRIKANT:

Okay.

THE COURT:

I'm not sure that the Rector was even at that meeting, was he?

MR. FABRIKANT:

No, he was not at that meeting but she is Executive Assistant to the Rector. Rector was threatened to be killed. I came there for a gun permit. They are looking for evidence to launch a protest. So, my question is: Didn't you have just to ... not to go that far ...

THE CROWN:

This is cross-examination.

MR. FABRIKANT:

Alright.

THE COURT:

Objection maintained.

MR. FABRIKANT:

Well, the situation is so ridiculous.

THE COURT:

It's not ridiculous. There's a way for you to ask your questions.

MR. FABRIKANT:

Alright. I will find my way. Since Crown wants to object, I really do not understand why Crown would object. I'm trying to elicit evidence that I threatened to kill Rector, and Crown supposed to be just happy about it and it objects every my attempt to elicit evidence ...

THE CROWN:

(Inaudible), My Lord. Now we're wasting time.

MR. FABRIKANT:

I think that ...

THE CROWN:

(Inaudible) what the point ...

MR. FABRIKANT:

I think that that's a kind of ridiculous situation never occurred in any trial. Accused tried to elicit evidence that he threatened to kill Rector and Crown intensely objects to each my attempt to elicit ...

THE COURT:

That's not I don't think what you're trying to do at all. What you are trying to do is cross-examine the witness and you know why you're trying to cross-examine the witness.

MR. FABRIKANT:

No ...

THE COURT:

In any event, it's the adjournment hour ...

MR. FABRIKANT:

Okay. I'll ...

THE COURT:

... and we will adjourn and I'll see you tomorrow morning at nine thirty (9:30).

AND THE WITNESS SAYS NO MORE.

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

PROVINCE OF QUEBEC

DISTRICT: MONTREAL CITY: MONTREAL

CASE NO: 500-01-017372-928

TRIAL

PRESENT: HONOURABLE MR. JUSTICE J. FRASER MARTIN, J.S.C.
(AND AN ENGLISH JURY)

THE QUEEN

vs

VALERY FABRIKANT

APPEARANCES: Me JEAN LECOIRS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: June 16th, 1993

GS: 1391 FILE: 2885

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CONTINUATION JUNE 17TH, 1993

(THE JUDGE TAKES THE BENCH)
 (THE JURY TAKES THE BENCH)
 (DISPENSE WITH THE CALLING OF THE JURY)
 BY THE COURT:

Yes, Mr. Freedman.

BY Me FREEDMAN:

My Lord, I would like to address the issue of the missing telephone messages. I made some inquiries when I went back to the University last night. I can inform you as follows. The file in the Vice-Rector, Academics, office that Miss Wilson Wright came with and Dr. Sheinin came with previously were compiled in that format, in the summer of ninety-two ('92), pursuant to several grievances and events going on with Dr. Fabrikant. The Vice-Rector, Academics, office thought that that was the time to get her file in order. Previously they had four

large folders with things thrown in in no particular order.

The file itself has been copied and recopied several times pursuant to Dr. Fabrikant's request for access to information. Certain documents were copied. Certain were sent to the Secretary-General's office for examination. Certain were submitted to the Access to Information Commission for examination. All this to say that there's been a bit of action with the file over the past couple of years.

I checked with the Secretary-General's office. They do not have the telephone messages. I spoke with the secretaries in the Vice-Rector, Academics, office, who recall at a certain point there being messages in the file. They don't know where they are now. My educated guess, having a bit of knowledge how things work in the University is that at one of the times when the files were copied, or were being changed into a new filing system, the messages were likely destroyed, or lost, or thought unimportant, or something of that nature. The gist of it is we don't have phone messages.

BY THE COURT:

Okay. Thank you very much, Mr. Freedman.

BY Me FREEDMAN:

Thank you.

MAUREEN HABIB

Executive Asst. to Rector, Vice-Chancellor

March 15th, 1952

DULY SWORN

EXAMINATION BY THE ACCUSED (CONT'D)

REPRESENTING HIMSELF:

- Q. Was it the Rector who directed you to attend the meetings which you mentioned yesterday at the end of examination?
- A. The meeting I referred to yesterday was a meeting that was a result of your having appeared in the Mechanical Engineering Department with a form to sign regarding permission to carry a gun. The meeting was not called by the Rector.
- Q. Well, just give more information. Mrs. Horwood called you, correct?
- A. No. As I said yesterday, on the Monday, the members of the office of the Rector were off campus at a planning session. It was only at the end of the day when I called in for telephone messages that I discovered that this was occurring and, therefore, we dealt with it on the Tuesday morning when we returned to the office.
- Q. Okay. Anyway, it was Mrs. Horwood who informed, not you personally, but your office, about me requesting gun permit?
- A. My recollection is that Mrs. Horwood informed the legal counsel.
- Q. And legal counsel informed your office about it?
- A. Yes.
- Q. All right. On Tuesday, Rector became aware of my request. Is that correct?
- A. Yes.
- Q. Okay. And what was his reaction?
- A. He agreed that a group of us would meet to discuss what action we would take.
- Q. Well, when you say he agreed, it means that someone proposed it to him, or it was he who proposed to get a

group and to do something?

A. He did not propose it. I have no recollection of exactly who...

Q. So how was it he agreed then? You proposed it to him?

A. Probably.

Q. Well, could you be more specific? There were two of you in the cabinet when he was informed or there was somebody else?

A. I can't remember exactly when I informed him. I probably informed him when I came back from receiving the telephone message on the Monday evening.

Q. Okay. And what was his reaction? Did he by that time tell you: He threatened to kill me. We need to stop him?

A. No.

Q. He didn't mention by that time that I threatened his life?

A. No.

Q. Okay. What was his reaction? What did he say?

A. I don't recall the actual conversation. I would have told him...

BY THE COURT:

Don't assume. Just say what you know from your own knowledge. I don't want you to speculate at all.

A. Would you repeat the question.

BY THE ACCUSED:

Q. Yes. So you informed the Rector that I applied for gun permit. What was his reaction to that?

A. I don't remember a specific reaction.

Q. Well, nothing specific. I don't ask you for transcript. What was his reaction? Like, for example, did he tell you: Get in contact with the Vice-Rector, Services. Get together and discuss what can be done. One option. Another option: Get somebody into my cabinet, let's discuss. I don't know. You were there. What was his reaction?

BY THE CROWN:

She already answered, My Lord. She said he agreed with the formation of a group to object to this request.

BY THE ACCUSED:

Well, he agreed is not the answer.

BY THE CROWN:

(Inaudible).

BY THE COURT:

That's fine. Yes. You're right. You have your answer.

BY THE ACCUSED:

This is not the answer he agreed.

BY THE COURT:

You have your answer.

BY THE ACCUSED:

When she answered he agreed, I asked...

BY THE COURT:

You have your answer. Continue.

BY THE ACCUSED:

Q. So how did it come to meeting in Vice-Rector, Services?

A. The people who we thought were most appropriate were called to be together.

Q. Well, I would appreciate if you'd stop using passive voice. People were called by who? You are in Court.

A. I believe...

Q. You need to present facts here.
BY THE COURT:
Well, I would... I would prefer that you stop cross-examining the witness.
BY THE ACCUSED:
I'm not cross-examining.
BY THE COURT:
Put direct questions to the witness as unleading as possible.
BY THE ACCUSED:
This is what I am doing. And witness is evading. It was decided. It was called. This is not the answer. This is evading...
BY THE COURT:
You may not like the answer, but that's the words the witness chooses to adopt. There you are.

BY THE ACCUSED:

Q. Well, I am asking when it was called, would you please be specific who called who.
A. I think Dr. McKenzie called the meeting.
Q. Okay. So it means that Dr. McKenzie was present?
A. Yes, as I said yesterday.
Q. So we have to go back then. It is you, Dr. McKenzie and Rector Kenniff.
A. Who was not present.

BY THE COURT:

You see, I don't think the witness is clear any more about who was present at what. She's not sure of what you're talking about. On one hand, you were questioning about a meeting she had with Dr. Kenniff. And she told you she didn't remember Dr. Kenniff's exact words. She also told you that she probably informed Dr. Kenniff on Monday evening, on the night on Monday, in any event, at the end of the day on Monday, after you...
Now, then you jump to a question of a meeting, or the witness assumes that you've jumped to the question of a meeting, and who was present. That's where the confusion is creeping.

BY THE ACCUSED:

Q. So in the afternoon on Monday you informed the Rector about my request, correct?
A. That is my recollection.
Q. Okay. You absolutely have no recollection what he responded, whether he suggested any actions, whether he had suggested anything at all?
A. I certainly have no recollection of his exact words.
Q. No, I'm not talking exact words. I am asking, did he make any suggestion as to how to react?
A. I don't remember.
Q. So, you came next morning to the University and what, Dr. McKenzie was waiting for you there? No?
A. No.
Q. You called her?
A. I don't remember. There was a meeting that afternoon to discuss this.
Q. Well, the meeting somehow has to be initiated and called upon?
A. I must have spoken with Dr. McKenzie that morning. We would have agreed to gather this group of people to discuss this as quickly as possible. And certainly we

did so.

Q. Did you inform Rector at that time that you are going to a meeting at Vice-Rector, Services, to discuss what to do?

A. I must have.

Q. Okay. And at this point he agreed. So now we are at the point when we said he agreed, correct?

A. Correct agreed is... agreed is correct, but had knowledge of is perhaps more correct.

Q. Okay. And he did not say anything in terms of what he proposed to do?

A. No.

Q. Effectively, he didn't pay much attention to the fact itself?

A. No, I didn't say that.

Q. Would that be correct conclusion?

A. No, I did not say that.

BY THE CROWN:

It's cross-examination, My Lord.

BY THE COURT:

Yes, it is. Objection maintained.

BY THE ACCUSED:

Q. So you informed the Rector that you are going to the meeting, and to the meeting you went. The meeting took place where?

A. Our conference room in Bishop Court.

Q. Okay. Who were present there?

A. The Vice-Rector, Services, the Associate Vice-Rector, Services.

Q. Okay. Could you give just names, it was Bertrand?

A. Dr. Charles Bertrand, Dr. Catherine McKenzie, Angela Wilson Wright, Me Bram Freedman, and myself.

Q. And it was June twenty-first (21st)?

A. Twenty-third (23rd).

Q. Okay. And at that meeting it was decided what?

A. It was decided that certainly no one has to sign any kind of recommendation for a gun permit if they did not want to, that anyone who did not want to would simply indicate that back to you, that we would make ourselves knowledgeable of what the rules and regulations for gun permits were. We were not experts in this, and that we would attempt to lodge with the Service des permis who gave permits an objection on behalf of the University to any such permit being offered or granted, and that in preparation of doing that, in order to formulate the letter that would go to the Service des permis that the group in the meeting agreed that they would check back with their colleagues to double-check, triple-check for the I don't know how many time that was there any evidence that we could present to the Services des permis in support of our case.

Q. Okay. Did Dr. McKenzie at that meeting, say something: I have direct proof, he told to me that he threatened to kill a lot of people. Did she say something like that?

A. I don't recall that.

Q. Well, but you knew that she knew about it, did you at that time?

BY THE COURT:

You're cross-examining. That last question is disallowed.

BY THE ACCUSED:

Q. What was your knowledge at that time about specific threats made by me?

A. The difficulty has always been the question of specific threats. I had knowledge of many rumours of threats, none of which we seemed to be able to substantiate.

Q. Well, didn't you yesterday testify that as far as... as early as ninety-one ('91), you knew the origine of at least two of those rumours, one originating from McKenzie and the other one from Haines?

A. Yes, rumours.

Q. You recall you testified to that end?

A. Yes, rumours.

Q. And... well, one was... you couldn't call it... the first one be called rumours if McKenzie told you, because it was something which I told her.

BY THE CROWN:
It's arguing with the witness, My Lord.

BY THE COURT:
Yes, it is. Objection maintained.

BY THE ACCUSED:

Q. Okay. Was it... was the first rumour something which I told McKenzie directly?

A. Could you repeat that, please?

BY THE COURT:
It comes to the same thing. You're arguing with the witness, and you're niggling over what the staff... what the rumour is. The witness has given her your answer. She said the problem has always been establishing that specific threats were made. There's her answer. Now, let's go ahead from there.

BY THE ACCUSED:
Well, you're constantly interrupting me. That was a normal question, and constant interruption is denial on natural justice.

BY THE COURT:
I see. This is this morning's. Well, if that, if that is the case, I will constantly interrupt you if you continue to ask constantly illegal questions.

BY THE ACCUSED:
Well, that question was normal.

Q. So you recall..

BY THE COURT:
I told you the question is disallowed. So don't ask it again.

BY THE ACCUSED:
Well, this question was not disallowed.

Q. You recall as early in ninety-one ('91) Dr. McKenzie telling you that I told her that in order to get what you want in North America you have to go in and kill a lot of people, and that was something that I intended to do. Do you recall your testimony?

A. Do I recall my testimony?

Q. Yesterday, yes.

A. I'm sorry. Can you repeat again? This is getting confusing.

Q. In your previous testimony, as early as ninety-one ('91), you stated that Dr. McKenzie told you that I told her the following, in order to get what you want in North America you have to go in and shoot a lot of people. And that is what I was intended to do. Do you recall the testimony

of yours?

A. I remember Dr. McKenzie talking about...

Q. Is it a fact if you recall your testimony, if...

BY THE COURT:

Stop cross-examining the witness.

BY THE ACCUSED:

I'm not cross-examining.

BY THE COURT:

Yes, you are. You were the one who supplied the words.

BY THE ACCUSED:

Yes...

BY THE COURT:

The witness did not supply the words. The witness...

BY THE ACCUSED:

Yes. But she agreed...

BY THE COURT:

The witness substantially said the following, Catherine McKenzie felt uncomfortable and threatened by him in the fall of ninety ('90). She told her of a conversation in nineteen eighty-nine (1989) where reference was made to doing things the American way, including a gun or violence. The phrase, shoot a lot of people, rings a bell, but she could not say in what exact context it was used. That, according to, at least my recollection was her testimony yesterday. I'm not a stenographer of facts.

BY THE ACCUSED:

And after that I formulated the phrase and I asked her to confirm that that was what McKenzie transferred to her. And she agreed, yes, that was the text.

BY THE COURT:

I have no note of that.

BY THE ACCUSED:

Well, that's too bad. You are very selective in what you write and what you don't. If you wish we can play it. It's not long time ago. It was at the end of the day.

BY THE COURT:

Yes. Perhaps that would be a good idea. When did Mrs. Habib's testimony start?

BY THE GREFFIER:

Nine thirty-three (9:33).

BY THE COURT:

Pardon?

BY THE GREFFIER:

Yesterday?

BY THE COURT:

Yesterday, yes.

BY THE GREFFIER:

Fifteen-thirteen (15:13).

BY THE COURT:

Sixteen-thirteen (16:13)?

BY THE GREFFIER:

Fifteen (15).

BY THE COURT:

I got it. Okay.

I would suggest to you we'll adjourn, and I would suggest you look in the area of fifteen-twenty (15:20), fifteen twenty-five (15:25). And I think that should bring us very close to the point that we're looking for. So we'll adjourn for a few minutes, ladies and gentlemen.

(THE JUDGE LEAVES THE BENCH)

(THE JURY LEAVES THE COURTROOM)

SHORT RECESS

OUT OF THE PRESENCE OF THE JURY

(THE JUDGE TAKES THE BENCH)

(THE TAPE IS PLAYED BACK IN THE COURTROOM)

BY THE COURT:

Okay.

BY THE ACCUSED:

Well, everything is confirmed. She said, yes, to...

BY THE COURT:

She didn't. She said, it does, but I can't put it in the exact context of time. That's what she said.

BY THE ACCUSED:

Well, but then after several questions when I asked her wasn't it sufficiently shocking, she said, yes, that she heard it from Dr. McKenzie and yes, after that, she stated that it was summer of nineteen ninety (1990).

BY THE COURT:

She said Dr. McKenzie, I'm not... the summer of nineteen ninety (1990), I'm not... she said, I'm not sure. It's been repeated several times.

BY THE ACCUSED:

Yes, but after that. After that I asked her. So...

BY THE COURT:

She said, I believe it was McKenzie in nineteen ninety (1990). I believe it was McKenzie in nineteen ninety (1990). That's what she said.

BY THE ACCUSED:

Well, isn't that enough?

BY THE CROWN:

I submit to you, My Lord, there is absolutely no inconsistency...

BY THE COURT:

No inconsistency whatever.

BY THE CROWN:

The only thing it shows is the accused is unfair with the witness.

BY THE COURT:

Absolutely.

BY THE CROWN:

I think...

BY THE ACCUSED:

Well, one second. I do not understand what we are doing now.

BY THE CROWN:

We're...

BY THE ACCUSED:

Why are we sitting without jury? Why are we listening to the tape without the jury?

BY THE COURT:

Because I am not... I am not going to have the jury sit and listen to the tape from fifteen twenty-one (15:21), when the relevant portion that we have to hear commences at fifteen thirty-one (15:31). So bring the jury in, and you will be quiet. We will play the tape to the jury, if you like.

BY THE CROWN:

I understand, My Lord, you're following Milgaard. There is a step without jury. But if we find there is no inconsistency, why should we play that to the jury?

BY THE COURT:

There is no reason to play it to the jury. There's really no reason to pay it to the jury.

BY THE CROWN:

That should be the end of it then.

BY THE COURT:

I agree. I agree it should be the end.

BY THE ACCUSED:

I do not understand at all what is going on here.

BY THE COURT:

The tape was played and there's no inconsistency in Mrs. Habib's testimony between what she said yesterday and what she said today.

BY THE ACCUSED:

Well, I just asked...

BY THE COURT:

However, Mr. Lecours, I'm going to play the tape...

BY THE CROWN:

Well, I know you have discretion, My Lord.

BY THE ACCUSED:

... from fifteen thirty-one (15:31) to the jury and then I will say, there is the answer. I find no inconsistency there. Now go on.

BY THE CROWN:

But she said really is what your notes reveal, what you read from your notes. After that he really pushed to her throat and finally to get the (inaudible) and to end up this... it was actually cross-examination.

BY THE COURT:

Of course, it was cross-examination.

BY THE CROWN:

She said it rings a bell. She never said, I heard this, and this, and this, and that.

BY THE COURT:

That's right. I'd like the jury to hear it. I'd like the jury...

BY THE CROWN:

It's really unfair.

BY THE COURT:

I'll like the jury to hear it, because I think it becomes perfectly obvious what he's doing, and it's been clear all along.

BY THE CROWN:

Well, that's an example of...

BY THE COURT:

It's an excellent example. It's an excellent example. Would you ask them to go back to fifteen thirty-one (15:31), please, and we'll play from fifteen thirty-one (15:31) to fifteen thirty-four (15:34). Yes, fifteen thirty-four (15:34)... thirty-five (35).

(MEMBERS OF THE JURY TAKE THE BENCH)

(DISPENSE WITH THE CALLING OF THE WITNESSES)

(THE TAPE IS PLAYED BACK IN THE COURTROOM)

BY THE COURT:

I called you in, ladies and gentlemen, after listening to that, because the observation was made again why were you not here. I listened to that, and I determined, which it's my role to do, that there was no substantial contradiction between what Mrs. Habib said yesterday, or what she said today. I extended the rule. That would have been the end of it normally. I would have called you back in and we would have continued. I extended the

rule and I had you come in to listen to the tape. We'll now go on with the examination.

BY THE ACCUSED:

Well, do I understand that you acted according to Section 9 of Canada Evidence Act? What happened before? What was it? Because I don't understand what was it.

BY THE COURT:

You said, let us play the tape. You made no application under Section 9 of anything. You said, let us play the tape. The normal thing to do then is to play the tape either with the jury or without the jury.

BY THE ACCUSED:

Yes.

BY THE COURT:

I excluded the jury because I presume they could better spend half an hour in the jury room than twiddling their thumbs here waiting for the tape to be set up, and waiting for the exact moment to be found upon it. I came back in, as I always do, in order to hear it myself, and then I called the jury in and I played to the jury the appropriate part.

Now, it is very clear to me and it's very clear, I think, to everybody else, I can't speak for anybody else, about what the witness said yesterday. Would you please continue with your examination, and please desist from cross-examination.

BY THE ACCUSED:

Well, first of all on the tape we heard...

BY THE COURT:

Don't argue with me about the tape. I've told you it's up to me to decide whether there's any substantial contradiction. You've heard the tape. I don't find there to be any substantial contradiction. Now continue with your examination.

BY THE ACCUSED:

I never used the word "contradiction". This is what I am trying to say. I'm just reminding the witness her testimony yesterday. And the tape...

BY THE COURT:

I'm not going to argue with you about what you reminded her or what you said. Okay? But it strikes me that what you said was not what the tape reflected.

BY THE ACCUSED:

Well, the tape reflects quite clearly that when I pronounced those words...

BY THE COURT:

Now would you please... would you please continue and stop you continual bickering.

BY THE ACCUSED:

All right.

WITNESS: MAUREEN HABIB -- UNDER THE SAME OATH

EXAMINATION BY THE ACCUSED (CONT'D):

Q. So you recall now that after I reminded you the words and after several, how to say it, prodding, you finally said that, yes, you heard those words. Yes, it was probably Dr. McKenzie, and yes, it was summer of nineteen ninety (1990).

BY THE CROWN:

She did not say she heard the words. She said it might... Fabrikant said, could it ring a bell and she

answered...

BY THE COURT:

Does it ring a bell...

BY THE CROWN:

... yes (inaudible) to end the matter.

BY THE COURT:

... and her words were... her words were, and there was an inflection, it does but.

BY THE ACCUSED:

Q. Well, let us then clear it now, were those words the ones which you have heard in summer of nineteen ninety (1990)?

A. I cannot say those were the exact words.

Q. Exact or no exact, was the meaning there that I intend to go and shoot a lot of people?

A. I cannot say that that was what was said.

Q. Okay. Return to ninety-two ('92). You were sitting there, Dr. McKenzie never said that Fabrikant told me in order to get what you want in North America you have to go and shoot a lot of people. She didn't say it during that meeting?

A. This is the meeting on June twenty-third (23rd), nineteen ninety-two (1992)?

Q. Yes.

A. I do not recall that.

Q. Did she recall any threats made to her by me?

A. The purpose of the meeting, My Lord, was...

BY THE COURT:

We know what the purpose of the meeting was. Try to stick to the question, okay?

A. Would you repeat, please?

Q. Did she mention any threats, Dr. McKenzie?

A. We discussed threats in the context of any special hearsay threats or rumours that we had heard, that we needed to follow up formally on those to try and get them substantiated.

BY THE ACCUSED:

You are not answering my question.

Q. Did she say at any time during meeting she... Fabrikant said such-and-such threats to me, so we don't need to substantiate it. It is substantiated.

A. I do not recall that.

Q. Does it mean that she didn't say it?

BY THE COURT:

You're cross-examining again. She told you, I do not recall that. Move along.

BY THE ACCUSED:

Q. Well, if she did, would you recall it?

BY THE COURT:

Cross-examining again. The question is disallowed.

BY THE ACCUSED:

Q. Who... okay. So at that meeting nobody seemed to know any threats which would be attributed and substantiated by certain specific people, correct?

A. Repeat again, please?

Q. At that meeting you didn't find a single threat which would be attributed to any particular person who could substantiate, yes, it was said to me?

A. No one in that room.

Q. Nobody in that room. Now, after that was there any suggestion as to who should be addressed to have those threats substantiated?

A. It was decided that all of us who were in the meeting would contact various colleagues at the University to try to determine if we had any hard evidence to bring to the (inaudible).

Q. Okay. So who exactly was to be contacted?

A. I'm not sure I can remember the entire list, but certainly among them were Grendon Haines.

Q. Okay. Continue please.

A. The ombuds person.

Q. And?

A. The members of the University Intervention Team, individuals in Engineering.

BY THE COURT:

Q. Who? Say it again.

A. Individuals in Engineering, for example, the Dean, the Chairman of Mechanical.

BY THE ACCUSED:

Q. Okay. And each was sent a particular letter to this regard?

A. Not necessarily. I was not responsible for following up with all of the individuals. I followed up with Mr. Haines. I chose to write to him.

Q. Who was following the other individuals?

A. I cannot recall this but there would... it would have been between Dr. McKenzie and Angela Wilson Wright.

Q. Did anyone suggest to contact Dr. McKenzie herself?

A. Dr. McKenzie was present in the meeting.

Q. This is the funniest part of it. Sorry.

BY THE CROWN:

That's a comment, My Lord. This is not a question.

BY THE COURT:

It certainly is. That comment is out of place.

BY THE ACCUSED:

Q. But since she didn't volunteer, and you knew from her that I allegedly made threats to her, didn't you propose that Dr. McKenzie herself write something? Did you propose that?

A. No.

Q. Did anybody else propose that Dr. McKenzie write her own knowledge on the subject?

A. I don't think so.

Q. Who was taking the minutes of that meeting?

A. I don't recall that there were any formal minutes of the meeting.

Q. Could you produce whatever you have, documents related to this particular meeting?

A. There are no documents relating to this particular meeting that I recall.

Q. Okay. Let me rephrase it. Would you produce documents which were a follow-up of that meeting?

A. Certainly. I can produce to the Court the letter of the fourteenth (14th) of July signed by the Vice-Rector, Services, to the Services des permis in which Concordia University lodged its objection.

Q. Could you produce something else?

A. I don't believe so, not in that context...

Q. Well...

A. ... in terms of the objection.

Q. It was at that meeting where the question was raised, are we going towards repetition of Universit, de Montr,al?

A. I do not recall discussing the University of Montreal at that meeting.

Q. But early yesterday when I asked you whether possibility of repetition of Universit, de Montr,al shooting was discussed in January of nineteen ninety (1990), and you remember you responded, "not at that meeting, but later on." And after that you moved to nineteen ninety-two (1992). So I thought that that was the time when this was discussed. So at what time possibility of repetition of Universit, de Montr,al shooting was discussed?

A. I cannot specifically say. Anyone who works in the University, as you can well imagine, has always held what happened at the University of Montreal very close to them. It changed the Univeristy significantly.

Q. Well, you are not...

A. So it is not odd for it to enter into conversation.

Q. So when was it discussed with respect to me?

A. I cannot remember.

Q. But it was discussed?

A. I cannot say. I certainly have not been present at every meeting at which your dossier was discussed.

Q. No, I'm asking your personal knowledge.

BY THE COURT:
She said to you she cannot say.

BY THE ACCUSED:
Well, would you believe that such a thing...

BY THE ACCUSED:
She has added...

BY THE ACCUSED:
... was deleted from her memory.

BY THE COURT:
She had added that it's not deleted from her memory. Quite, quite to the contrary, she said the opposite. It is engrained in the mind of everybody in the University milieu and, therefore, she cannot...

BY THE ACCUSED:
Fantastic.

BY THE COURT:
... she said it's not surprising that it arises, therefore I can't tell specifically when it was discussed and in the context of you. She says, I don't know, I can't say.

BY THE ACCUSED:
Well...

BY THE COURT:
That's her answer.

BY THE ACCUSED:
This is the part which is very, very doubtful. If it is so much engrained in the...

BY THE COURT:
Please don't argue with me. I'm telling you...

BY THE ACCUSED:
I'm not arguing with you.

BY THE COURT:
... that's her answer.

BY THE ACCUSED:
And there is no need to spend time repeating me her answer. I understand English perfectly well.

BY THE ACCUSED:
I don't need any lecture from you about wastage of time.

BY THE ACCUSED:

Q. Okay. You mentioned another document. You said that you contacted Mr. Haines by letter. So I think that you can produce that thing, can you?

A. Certainly.

Q. So maybe you will recall something else. So you see there are now two documents to be produced. Could you look into your file maybe there is something else there.

BY THE COURT:

It's not a question. If you're looking for a particular document, ask for the particular document that you're looking for.

BY THE ACCUSED:

Well, I'm not aware of what has been done there. They didn't send me a copy, and I never received any documents.

BY THE COURT:

Then you'll have to establish by questions that there were other documents that the witness has sent.

BY THE ACCUSED:

Well, may I take a look at the file?

BY THE CROWN:

No, this is a fishing expedition, My Lord.

BY THE COURT:

This is nothing other than a fishing expedition. You're perfectly right.

BY THE ACCUSED:

Well, why I was allowed to see Grendon Haines' file, McKenzie's file, why I was allowed to see...

BY THE COURT:

Because there was no objection... there was no objection lodged to your looking in Grendon Haines' file.

BY THE ACCUSED:

Uh, huh. And now there is...

BY THE COURT:

Have you a document you want? If you've a document you want, ask for it. There's a way.

BY THE ACCUSED:

Well, I would like to take a look. You see, witness' memory is clearly not good. She mentioned only one document which was sent by Bertrand. And luckily at this particular juncture I knew about another because Grendon Haines brought it. But otherwise I wouldn't have known about it. And I think it makes sense for me to take a look at the file so that I could formulate my questions in a better manner. Can I?

BY THE COURT:

I don't even know if there exists a file on that meeting. The witness has told you that she has no minutes of that meeting, or anything else.

BY THE ACCUSED:

I'm not talking about...

BY THE COURT:

And if you're asking to go through the witness' briefcase, the answer is no.

BY THE ACCUSED:

Well, may I ask why it was allowed with McKenzie and Haines and it's not allowed here?

BY THE COURT:

Haines had a particular file which dealt specifically

with his meetings with you.

BY THE ACCUSED:

Well, I understand this briefcase...

BY THE COURT:

These were personal notes of Haines that Haines decided to give to you. And that was that.

BY THE ACCUSED:

Well, I understand this briefcase contains also documents relating to me.

BY THE COURT:

You are not going through that briefcase. Okay?

BY THE ACCUSED:

(Inaudible).

BY THE COURT:

Have you got that clear? You are not going to audit that briefcase.

BY THE ACCUSED:

Except that I didn't get (inaudible).

BY THE COURT:

Listen, if you have a particular document you are looking for, ask your questions. If you haven't got the ability to ask your questions, sit down.

BY THE ACCUSED:

Q. Okay. Would you please produce those two documents that you mentioned. And if you're looking in your briefcase, maybe you'll find more.

BY THE COURT:

We are talking in the context of documents relating to the meeting of June the twenty-third (23rd), and it's immediate aftermath.

BY THE ACCUSED:

Well, I would appreciate if you don't limit yourself to that, and get all the documents signed by you, at least.

BY THE COURT:

I said to the witness in the context of the meeting of June the twenty-third (23rd), and I don't wish to be contradicted by you. You might check and see if you have anything else that relates to that meeting or the work that you did.

A. I have the box of Mr. Haines.

BY THE CROWN:

(Inaudible) Mr. Haines' responses are already filed.

BY THE COURT:

I know that.

BY THE ACCUSED:

By the way, about filing, I still insist that I filed not just the letter, but response of Mr. Haines, too. So whatever the Crown wants in my filing, there should be a copy of the response, too. I filed both of them.

A. The last question. This is all to do with the objection that was lodged, is that correct?

BY THE COURT:

That's right. The spin-off, if you want it, from the meeting of June twenty-third (23rd), in all its dimensions.

BY THE ACCUSED:

And as you see it is not briefcase. It's almost empty briefcase. There's not that many documents there.

BY THE COURT:

Would you put your questions.

BY THE ACCUSED:

All right.

BY THE CROWN:

Can I have a look, first?

BY THE COURT:

Certainly.

BY THE CROWN:

Well, it's signed by Mr. Charles Bertrand, but I certainly have absolutely no objection to the filing of the document.

BY THE COURT:

To the filing of the document. Fine.

EXHIBIT D-17: memo dated July 7,
'92, letter dated July 14th, '92,
memo dated July 30th, '92, en
liasse

BY THE COURT:

Would you make a note, madame Desrosiers, please, that Mrs. Trainer should be asked to provide a translation of this letter of July the fourteenth (14th).

BY THE ACCUSED:

Maybe I could enjoy the same courtesy?

BY THE COURT:

Certainly. I suspect you already have in virtue of the Access to Information Act.

BY THE ACCUSED:

So we are filing all of them, I understand.

BY THE COURT:

I'm filing nothing. You're the one who is doing the filing.

BY THE ACCUSED:

Okay. So we file all of them.

BY THE CROWN:

En liasse or under different numbers?

BY THE ACCUSED:

No, I think they should have the same number.

BY THE COURT:

En liasse.

BY THE CROWN:

Okay.

BY THE COURT:

D-17.

BY THE CROWN:

This includes the answer of Mr. Haines, right?

BY THE ACCUSED:

Yes. So this time I will have it, at least, in my filing.

BY THE CROWN:

Certainly.

BY THE ACCUSED:

Q. By the time of the meeting, was your understanding that I already have gun in my possession, or was it your understanding that I do not have yet gun in my possession?

A. I believe on the twenty-third (23rd) that I was not aware that you had it.

Q. Has it ever been inquired what request for gun permit really means?

A. I'm not sure I understand the question.

BY THE COURT:

I'm not sure I understand it either.

BY THE ACCUSED:

All right. Then I have to use then legal question.

Q. Do your recall that I explained to you that gun permit is only for the purpose to allow me to bring the gun from my home to the shooting club. Nothing else. Do you remember that explanation?

A. I remember that subsequent to the twenty-second (22nd), twenty-third (23rd), probably the next week you appeared in our office with a similar request to sign off the permission to have the gun permit request of the Rector, Dr. Kenniff. And at that time I wrote to you asking you why you wanted this.

Q. Okay. Can you produce this letter?

A. Yes.

Q. Could you, please.

BY THE COURT:

Would you show it to the Crown Prosecutor, please.

BY THE ACCUSED:

Maybe together with my response. It will kind of save time.

A. The response is included on the note.

Q. Well, I think it would be good that you read your letter and explain how you understood my response.

BY THE COURT:

It's not for the witness to explain how she understood your response. Furthermore, there's no need to read the letter into the record. The letter is there. The letter is produced. If you wish to file it in the record it will be D-18. Do you wish to produce it?

BY THE ACCUSED:

Yes.

BY THE COURT:

Yes, fine. D-18.

EXHIBIT D-18: letter dated June
29th, 1992

BY THE ACCUSED:

Q. So after you received the letter... after you received my response marked on the letter, what was your understanding as to the purpose of this request for gun permit?

A. In my opinion, you did not answer my question.

Q. Okay. Which particular question wasn't answered?

A. May I read from the letter?

BY THE COURT:

Read from the letter. It's so patently obvious that... take the exhibit, read your letter and read the answer, rather than circulate it. It will be faster.

A. "The Rector's secretary has brought to my attention your request that Dr. Kenniff sign on your behalf a form entitled: Recommandation pour l'obtention d'un permis de port d'arme, autorisation restreinte sur le tir ... la cible.

The Rector is currently absent from the University and in the interest of moving your dossier forward, I wish to acknowledge receipt of this form on his behalf and request some further information from you.

Would you please provide in writing the reasons you wish to receive

such authorization, that is the purpose you wish to achieve as well as given that there are other options why you wish the employer to sign. I shall bring the original request as well as your response to these questions to Dr. Kenniff's attention upon his return."

BY THE ACCUSED:

Okay.

BY THE CROWN:

Could we suggest, My Lord, as well, that Mrs. Trainer translate this letter?

BY THE ACCUSED:

Well, this is English.

BY THE COURT:

It's in English.

A. English.

BY THE CROWN:

There was a...

BY THE ACCUSED:

Well, one phrase.

BY THE COURT:

Oh, there's a phrase there.

BY THE CROWN:

Yes, there was a phrase.

BY THE COURT:

Surely if you wish Mrs. Trainer to translate that phrase, I think it might be a good idea. And do you wish your response read, too, that's written on the letter, or whatever...

BY THE ACCUSED:

First of all there is arrows indicating the answer to one of your questions. Did you see the word "reason" underlined and arrow moving to the phrase...

BY THE COURT:

You have Mrs. Habib's testimony. She considers you did not answer your question. If you don't wish the written answer read, I couldn't care less. The letter is in the file. The jury will read it.

BY THE ACCUSED:

Well, still...

BY THE COURT:

And at this point, I think we'll adjourn for fifteen (15) minutes.

(THE JUDGE LEAVES THE BENCH)

(THE JURY LEAVES THE COURTROOM)

SHORT RECESS

(THE JUDGE TAKES THE BENCH)

(THE JURY TAKES THE BENCH)

WITNESS: MAUREEN HABIB -- UNDER THE SAME OATH

EXAMINATION BY THE ACCUSED (CONT):

Q. So you... we were asking...

BY THE CROWN:

I think Mrs. Habib wants to address the Court, My Lord.

A. My Lord, I have not kept copies of the documents that I have submitted this morning.

BY THE COURT:

Okay. That's D-18, the four... D-17 and D-18.

A. Yes.

Q. These are your only copies?
A. I believe they are. Just in case.
Q. Okay. Mr. Serra, would you be kind enough to make copies of those, please.
A. Thank you.
BY THE ACCUSED:
Q. Do you recall what were your questions in this letter, or you need your letter to be in front of you to answer this question?
A. I read the letter.
Q. Yeah. Okay. You had two questions there, correct? Yes?
A. What was the reason for the request and why the employer to sign.
Q. Yes.
A. I believe those were the two questions.
Q. So to the first question, do you recall on the letter the word "reason" was underlined and arrows were indicating target shooting in French. That was not clear answer to you, the purpose was target shooting. You did not understand that from this, what was drawn on the letter, correct?
A. The letter was returned to me with boxes around certain wording in the letter, and what appeared to be black felt pen, and with a handwritten note on the bottom which I can't exactly recall what it said, from you. You chose to circle parts of the letter and return it to me that way.
Q. Well, you didn't answer my question. The circled word "purpose" and arrow to the French equivalent of target shooting was not clear to you as an answer, correct?
A. I would have expected that a clearer answer would have been provided.
Q. Anyway, the way it was done, it was not clear to you? Just answer the question.
A. That's right.
Q. Okay. For the second question, why do I need an employer, what is written there was that I need five recommendations, one of them was employer, and it cannot be substituted by a neighbour.
A. That is what you wrote.
Q. Yes. So this is not clear why employer is needed?
A. That is what you wrote.
Q. It is still not clear answer why employer needed.
A. That is what you wrote.
Q. I know. But it is still not clear to you as an answer to your question.
A. My understanding was employer was not needed.
Q. Okay. Did you call the police to verify whether employer is obligatory or not?
A. No.
Q. Why didn't you?
BY THE CROWN:
Cross-examining.
BY THE COURT:
You're cross-examining.
BY THE ACCUSED:
Ha, ha, ha.
BY THE COURT:
This is ridiculous.
BY THE ACCUSED:
We have two Crowns. This is ridiculous.

BY THE COURT:

This is ridiculous.

BY THE ACCUSED:

In unison...

BY THE COURT:

That should...

BY THE ACCUSED:

You should be different.

BY THE COURT:

That should tell you something. That should really tell you something.

BY THE ACCUSED:

It does tell me.

BY THE COURT:

Yes, well, that's not the... that's not the message...

BY THE ACCUSED:

It's exactly what I said. Two Crowns and no Judge.

BY THE COURT:

... it's meant to communicate, my friend.

BY THE ACCUSED:

I just wish I knew why in one place I can ask questions, why did you, or didn't you do something. In another case it is cross-examination, but I believe it is something too complicated to understand. Is it? Is it possible to explain why in one case I have...

BY THE COURT:

Would you please ask your next question, if you have one.

BY THE ACCUSED:

All right.

Q. Do you know if anyone else contacted police and asked those questions whether employer's signature is obligatory?

A. My recollection is that the legal counsel dealt with Les Service des permis.

Q. Okay. And do you have personal knowledge whether legal counsel asked this specific question?

A. I cannot recall that?

Q. Okay. Do you remember that after that we had a personal meeting and you handed me a response from the Rector?

A. That's correct.

Q. Can you produce it, too?

A. Yes.

Q. Okay. Do you remember my reaction to it?

A. Yes.

Q. What was it?

A. You laughed.

BY THE COURT:

Mrs. Habib...

BY THE ACCUSED:

Q. Did I explain why I was laughing?

A. I don't remember that part.

Q. Okay. Let me try to boost your memory. First of all, I think you should show to the jury the big, big no on the letter.

BY THE CROWN:

I have absolutely no objection to the production, and no objection to showing the big no, My Lord.

BY THE COURT:

No objection. D-19.

BY THE CROWN:

Maybe we could even circulate it.

BY THE COURT:

Oh, I'll circulate it, yes, I don't think it will take anybody very long to read.

BY THE ACCUSED:

Well, I didn't ask to circulate it. I just asked to show big no.

BY THE COURT:

I couldn't care less what you ask, Mr. Fabrikant.

BY THE ACCUSED:

So please don't tell me that I am wasting the Court's time.

BY THE COURT:

The Crown happens to have some rights, too. The Crown Prosecutor suggested that I circulate the letter.

BY THE ACCUSED:

Well, I have no objection. I am filing it. I am the one who is filing it. I am the one who called the witness. Crown was supposed to do this job. I'm doing it for him.

BY THE CROWN:

Thank you, Mr. Fabrikant.

BY THE ACCUSED:

Well, so better start appreciating and don't interrupt me.

May I continue?

BY THE COURT:

Yes.

BY THE ACCUSED:

Q. So, do you recall that when you asked me why I was laughing I told you that the only difficulty you create is not... you remember the text of the letter says that you are against proliferation of firearms. And I explained to you that you are not doing any objection to proliferation. The only difficulty which you create for me is that I cannot be allowed to me bring the gun to the shooting club. And that was all. Do you remember that?

A. I would point out, My Lord, that it is not my signature on the bottom of that letter.

Q. Well, nobody said it was your signature. I'm just recalling you our meeting. You handed me this letter and I started laughing. And you asked why I am laughing. And that was my explanation, was it?

A. I do not recall.

Q. But you recall that I explained why I was laughing?

A. No, I remember that you laughed.

Q. You have a very selective memory. Anyway...

BY THE COURT:

Please spare us your comments.

BY THE ACCUSED:

What is the date on that letter?

BY THE GREFFIER:

July fourteenth (14th), ninety-two ('92).

BY THE ACCUSED:

July fourteenth (14th).

Q. Do you recall when you sent your letter to Mr. Haines?

A. I sent the letter to Mr. Haines on the day that it would be dated, or certainly the next day at the latest.

Q. Well, let's put it July seventh (7th).

A. Uh, huh, that is the date of the letter.

Q. Now, could you explain why it took you so long from the meeting, June twenty-third (23rd), to July seventh (7th) to write a letter to Mr. Haines?

A. We were preparing the dossier. The legal counsel was in communication with Les Services des permits. We were trying to do so in the most effective manner that we could.

Q. Well, legal counsel is legal counsel. I'm asking you what you were busy with concerning my dossier? Were you doing something about my dossier, too?

A. I don't understand the question.

Q. Okay. Between June twenty-third (23rd) and July the seventh (7th), did you do anything concerning my dossier, any jobs?

A. I must have had a number of discussions with the legal counsel, and to bring the dossier... to move the dossier along. Yes.

Q. Well, so all what you had during that time is a number of discussions. Right?

A. We were preparing the objections.

Q. Well, when... to prepare objections you needed facts, correct?

A. Correct.

Q. Why didn't you contact Mr. Haines on June twenty-fourth (24th)?

BY THE COURT:
This is in the nature of cross-examination again.
Question disallowed.

BY THE ACCUSED:
Okay.

Q. Were there any specific difficulties why you couldn't write to Mr. Haines earlier than July seventh (7th)?

A. I don't remember. I don't think so.

Q. Okay. Would it speed up the procedure if you just pick up the phone and ask: Grendon, we are preparing letter of objection, could you please write your recollection of Fabrikant's threats, and it is urgent. Did you do something like this?

A. No, I did not.

Q. Could you explain why?

A. Because there were entirely too many rumours and unsubstantiated claims in this dossier and I wanted it written down.

Q. Well, that's exactly what I am saying. Why didn't you call him and ask him to write it down? You (inaudible) my question.

A. I wrote to him formally.

BY THE COURT:
You're in cross-examination again. Would you get out of the cross-examination. The last question is disallowed.

BY THE ACCUSED:
All right.

Q. Was the University, or let's say you personally, or other University administration worried by the fact that I'm asking for a gun permit?

A. I can only speak for myself.

Q. All right. Were you worried?

A. I was concerned that you were doing so and felt that it was all part of the continuing harassment that you had been engaged in for some time before.

Q. Well, how much some time before?

A. My recollection of when you began to be very insistent about your dossier would have been in nineteen ninety (1990) when the question of your promotion and the question of the integration into a tenure-track position. That was when the telephones calls increased. The correspondence increased. And it continued to increase right through to the twenty-fourth (24th) of August, nineteen ninety-two (1992).

Q. So there was no decrease whatsoever from nineteen ninety (1990), it was only increasing, right?

A. In my opinion.

Q. Do you have anything to substantiate this opinion?

BY THE COURT:

You are cross-examining the witness again. You may not.

BY THE ACCUSED:

Well, I just asked for clarification.

BY THE COURT:

No, you didn't. You were cross-examining the witness.

You may not.

BY THE ACCUSED:

How come each time the witness is clearly at the point where she has to admit that she is mistaken in Court, immediately Judge stops and says that this is cross-examination. Is it just coincidence, or what?

BY THE COURT:

I suppose it must be.

BY THE ACCUSED:

It must be. Okay. Let's consider it a coincidence.

BY THE COURT:

I suppose it must be.

BY THE ACCUSED:

Q. Okay. Let's go back to where we were. At the meetings which you were present, did other people also express their concern about me and the gun?

A. Certainly. We had never had such a request before.

Q. There is not a single person at the University who possesses a gun?

A. I cannot say that. I do not know that.

Q. Well, but one cannot possess a gun without signature of employer. So if someone has, he must have asked for employer's signature?

A. Not in my ...

Q. There is no other way.

BY THE COURT:

You are arguing with the witness.

BY THE ACCUSED:

All right.

BY THE COURT:

You're cross-examining the witness.

BY THE ACCUSED:

All right.

Q. Did anyone express opinion that my purchasing a gun was not just harassment but clear indication that I was going to use it at the University people?

A. I can't remember anyone saying those words.

Q. Well, not in these particular words but in general, did any one express opinion that this is not just harassment but dangerous action?

A. I think it's fair to say that most of my colleagues would share my opinion of guns.

Q. You are not answering my question.

A. To say that I can recount individual conversations about this, I could not do so with any great exactitude.

BY THE COURT:

Fine. That's your answer.

BY THE ACCUSED:

Q. Did you think that my request for gun was an indication that I intend to use it?

A. No, I did not.

Q. Then if there was no opinion expressed that gun might be used to shoot somebody at the University, why would the University object for me having the gun?

BY THE CROWN:

It's cross-examination, My Lord.

BY THE COURT:

Yes, it is. Objection maintained.

BY THE ACCUSED:

Okay. I'll make it simpler then.

Q. What was the reason for the University to object private citizen having a gun at his home and using it at the shooting club?

BY THE CROWN:

It's the same thing, My Lord.

BY THE ACCUSED:

No, it's not the same thing.

BY THE CROWN:

She already said that there was concern.

BY THE COURT:

The question has been answered. Yes. The objection is maintained.

BY THE ACCUSED:

I wish that friend of Court had the decency to stand up and to say that I am right. How about it, Mr. Belleau, you're getting a hundred and sixty dollars (\$160.00) per hour sitting there.

BY THE COURT:

Furthermore, the relevance of this whole line of questioning is shaky indeed, to say the least.

BY THE ACCUSED:

All right. Ask me to explain it. Would you like it? The line of questioning wants to demonstrate to the jury that University was playing a dirty, dirty comedy, because either they were concerned with me buying a gun, then they should do urgently... McKenzie was sitting there. She testified that I told her directly that I am going to shoot a lot of people. She knew from Grendon Haines.

Again, it's difficult to say because both testimony are contradictory, but Haines at least said that he told her that I am going to shoot the Rector. The Rector himself was perfectly aware according to Haines that I threatened to kill him. And they are sitting and playing comedy. Let us find out who he ever threatened. Let us try and look for. Don't go and look. Here is the Rector. Let him go to the police and shout, he threatened to kill me. Isn't it a dirty comedy, or what is it?

BY THE COURT:

It doesn't make your last question any more relevant. The objection is maintained.

BY THE ACCUSED:

Oh, yes. I hope the jury thinks different. Very well.

Four people are dead.

BY THE CROWN:

No, I said it has already been answered.

BY THE COURT:

And the question was answered in any event.

BY THE CROWN:

Yes.

BY THE COURT:

The whole line of questioning.

BY THE ACCUSED:

Oh, yes. Whatever I told you still doesn't make you feel that it's a very relevant line of questioning. This is what hands of justice require, this line of questioning.

BY THE COURT:

Beyond what I've said, I have no answer to give you at this point in time.

BY THE ACCUSED:

I believe it's time to (inaudible) all the answers, sooner or later. Maybe I won't be alive at that time, but the answers will be given.

Q. So you wrote to Mr. Haines and asked him to respond to you. Did you feel that the matter was more or less urgent at the time?

A. We intended to make an objection regardless of what hard evidence came forward. It was important that the objection was going to be made anyway, whether we had hard evidence or not.

Q. You didn't answer my question.

A. It was important.

Q. Would you kindly speak to the question I asked you.

A. Would you repeat...

Q. Did you feel by that time that the matter was urgent?

A. Yes.

Q. Then why didn't you contact Mr. Haines on the telephone? Wouldn't that be faster?

BY THE CROWN:

She already answered that, My Lord...

BY THE COURT:

She did.

BY THE CROWN:

... in any event.

BY THE ACCUSED:

All right.

Q. You wrote to him on July seventh (7th), you are not getting answers from him. Did this bother you?

A. Yes.

Q. Did you phone him to remind that you don't get answers?

A. I don't recall. One has to remember that one was asking one's colleagues to volunteer information. If answers did not come, it was because there wasn't information to give. Over, and over, and over again, when people were asked to substantiate rumours that they had heard, they could not do so.

I wrote to Mr. Haines formally in order to ask him that question in a formal context, rather than in conversation, and on the telephone, in a meeting. I was waiting for his formal answer.

Q. Well, did you ask Dr. McKenzie for the same formal answer?

A. Dr. McKenzie (inaudible), like many of us, was told many rumours and allegations, as well.

Q. You are not answering my question. Did you ask Dr. McKenzie to substantiate the threats?

A. Dr. McKenzie was present at the meeting where we decided to do so.

Q. You are not answering my question.

A. She would have done so at that moment, if she could have.

Q. But you decided that she just doesn't have the information, correct?

BY THE CROWN:
That's not what she said, My Lord..

A. No.

BY THE COURT:
No. It is not what she said.

BY THE ACCUSED:
Well, then my answer still stands... my question still stands.

Q. Did you contact Dr. McKenzie to substantiate allegations?

A. I have answered that question.

BY THE COURT:
You have.

BY THE ACCUSED:
No, she didn't.

BY THE COURT:
Pass on to your next question.

BY THE ACCUSED:
What was this answer? The answer was that Dr. McKenzie was in the room. That was not my question. Dr. McKenzie was in the room. So what? I asked her whether she contacted Dr. McKenzie in writing to ask her to substantiate.

A. No.

Q. And she never answered that she...

BY THE COURT:
She answered you. She said no.

BY THE ACCUSED:
Well, now she answers, but before, no, she didn't answer. And I wonder why you support even clearly not answering question. You still support.

Q. Okay. But you recall that in ninety-one ('91), it was Dr. McKenzie who told you that I uttered threats in her presence, do you recall that?

A. Dr. McKenzie and I often discussed that she was uncomfortable with your behaviour.

Q. You're not answering my question. Do you or don't you recall that the lady who testified in here, Dr. McKenzie, told you that I uttered threats directly to her, not to somebody else? Do you recall that?

A. It was never said that way.

Q. Do you recall or you don't recall that?

A. I do not.

Q. All right. When the Rector wrote his big, big, big no on the letter, did he mention that Fabrikant has threatened to kill me?

A. No.

Q. All right. So you wrote it on July seventh (7th), time is passing, a letter has to be sent. You seem not to get any substantiated facts, correct?

A. That's correct.

Q. And you still didn't call Mr. Haines to ask him whether he has something to contribute or not, did you?

A. That's correct.

Q. Okay. And the letter was sent with no substantiation whatsoever, correct?

BY THE CROWN:
The letter speaks for itself, My Lord.

BY THE ACCUSED:
Well, the letter...

BY THE COURT:
The letter of...

A. The fourteenth (14th) of July, My Lord.

Q. ... the fourteenth (14th) of July.

A. Yes. If I remember correctly, the last paragraph of the letter talked in general terms about the University's discomfort with this particular member.

BY THE ACCUSED:

Q. But any specific threats of mine were mentioned in that letter?

A. I do not believe so.

Q. Would you like to consult letter so that you could answer clearer?

BY THE COURT:
The witness has answered the question and you're cross-examining the witness.

BY THE ACCUSED:
I'm not cross-examining. The letter was produced...

BY THE COURT:
The letter speaks for itself. The witness' opinion on the letter is not pertinent.

BY THE ACCUSED:
The jury didn't read it.

BY THE COURT:
Move on.

BY THE ACCUSED:
The jury didn't...

BY THE COURT:
The question is disallowed.

BY THE ACCUSED:
I would like to refresh witness' memory.

BY THE COURT:
Question disallowed.

BY THE ACCUSED:
I would like...

BY THE COURT:
If you wish to do something else, do it.

BY THE ACCUSED:
Yes. Would you kindly demonstrate the letter to the witness.

A. It's the letter of the fourteenth (14th) of July.

BY THE COURT:
D-17.
(REMARKS OFF THE RECORD CONCERNING THE EXHIBIT)

A. Yes, I have read the letter.

BY THE ACCUSED:

Q. Okay. Now your memory is refreshed sufficiently that you could answer the question?

A. Yes.

Q. Was in letter any mentioning that I threatened to kill a lot of people?

A. No.

Q. Was there in the letter mentioning that I threatened to kidnap and kill Rector?

A. No.

Q. Was there in the letter mentioning that I called someone or mentioned to someone about his children how they are dressed?

BY THE CROWN:

The letter speaks for itself, My Lord.

BY THE COURT:

This, you know... this, ladies and gentlemen, I instruct you to disregard. This is a pure waste of time. The University sent the letter that it sent. It says what it says. It's there for you to read. And what is being elicited now isn't the witness' opinion on the content of the letter.

BY THE ACCUSED:

Right.

BY THE COURT:

It's not going to damage anything, it's just pointless.

BY THE ACCUSED:

Well, you just... it is just...

BY THE COURT:

It is pointless, and this line of questioning will stop. Move on to something else.

BY THE ACCUSED:

Okay. I believe I am allowed to explain line of questioning.

BY THE COURT:

I don't wish to hear your explanation with regard to the last question. It is patently obvious that what the letter says speaks for itself.

BY THE ACCUSED:

Well still, normal...

BY THE COURT:

If you have any other questions... no, not still. If you have any other questions to put to the witness, put them.

BY THE ACCUSED:

Well, usually counsel is allowed to explain. You don't allow me even to explain, to substantiate...

BY THE COURT:

Mr. Fabrikant, it is patently obvious that what you are trying to do is illegal. The witness' opinion as to the contents of the letter...

BY THE ACCUSED:

I'm not asking opinion.

BY THE COURT:

The witness'...

BY THE ACCUSED:

I'm asking about the contents of the letter.

BY THE COURT:

The letter you... I'm sorry. You have filed the letter. The letter is there. The letter speaks for itself. That is the rule.

BY THE ACCUSED:

Still, I have the right to ask questions concerning the letter.

Q. All right. Now, time is passing, the letter is sent, none of the threats is mentioned there. Were you aware that in order for objection to be successful, specific facts and threats should be mentioned to the police. Were you aware of that?

A. Yes.

Q. So, specific facts and threats were imperative. Without

that police would not do anything. That was your understanding of the situation?

A. No. What was my understanding was that in order for an objection to be successful, that specific threats, specific incidents would need to be cited. However, we felt sufficiently strongly that we wanted to lodge the objection anyway on the hope that it would somehow red flag the file somehow, or that if any further action was taken on the file, that we would be informed of that.

Q. Well... did you think that the way the letter was sent, the only purpose of such letter could be damaging of my reputation, and nothing else?

A. That did not occur to me.

Q. Okay. So after that... what happened after that with Mr. Haines, if you recall?

A. Yes, Mr. Haines answered my letter.

Q. He answered. Do you remember when?

A. I could check the date on the letter.

Q. Okay. Let me put it July thirtieth (30th), would it be, to save the time?

A. Yes.

Q. And when you received the letter, didn't you jump and run to the police?

A. No.

Q. Could you explain why?

BY THE CROWN:

It's cross-examination, My Lord.

BY THE ACCUSED:

This is not cross-examination. This is a normal question.

BY THE COURT:

The manner in which you put the question is cross-examination.

BY THE ACCUSED:

Okay.

BY THE COURT:

You may ask these questions, but you'll have to rephrase your questions, and you'll have to put them in a different manner and in a different tone.

BY THE ACCUSED:

Beautiful, now we have opportunity to get Mr. Belleau to justify his salary. He will just let me know how to rephrase the question.

(REMARKS OFF THE RECORD TO Me BELLEAU)

BY THE COURT:

Q. What was your reaction, Mrs. Habib, when you received Haines' letter?

BY THE ACCUSED:

No, that was not the question. My question was, why she didn't run to the police.

BY THE CROWN:

The question was, why she did not jump.

BY THE ACCUSED:

No. The question was, why she didn't run to the police.

BY THE COURT:

Well, ask her what she did. Ask her what she did when she received Haines' letter.

BY THE ACCUSED:

All my question was, why she didn't run to the police.

BY THE COURT:

Well, that... in any event, that question will not be allowed. You will have to put your question in an another manner.

BY THE ACCUSED:

Well, so I want Mr. Belleau to help me, how to ask the witness why she didn't address the police reading that kind of letter, that I threatened with life of the Rector (inaudible)...

BY THE COURT:

Would you... would you direct Mr. Fabrikant as to how he might ask these questions, Mr. Belleau.

BY Me BELLEAU:

Sure. Do you want me to do this in the presence of the jury?

BY THE COURT:

No, I don't think so.

BY THE ACCUSED:

Well, there is no...

BY THE COURT:

I think we'll withdraw and you may...

BY THE ACCUSED:

Well, there is no reason...

BY THE COURT:

These rules I'm making...

BY THE ACCUSED:

I want this done in presence of jury. It is my decision...

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

(OUT OF THE PRESENCE OF THE JURY)

BY THE COURT:

You had better check that point with Mr. Belleau, too. Because it is my decision whether the jury will withdraw or not, and quite frankly your input on the subject is of very, very little help to me at all.

BY THE ACCUSED:

Well...

BY THE COURT:

Now, Mr. Belleau expressed the preference the other day for not dispensing advice within the hearing of the jury. I fully understand that.

BY THE ACCUSED:

It's not Mr. Belleau who decides that. It is I who decides that...

BY THE CROWN:

No.

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

... how his advice is being dispensed.

BY THE COURT:

Mr. Fabrikant, I am not going to sit here, for one, nor are the jury, while you receive your advice.

BY THE ACCUSED:

I feel it is my decision, not Mr. Belleau.

BY THE COURT:

It not your decision.

BY THE ACCUSED:

He is much bigger.

(THE JUDGE LEAVES THE BENCH)

SHORT RECESS

(THE JUDGE TAKES THE BENCH)

(THE JURY TAKE THE BENCH)

WITNESS: MAUREEN HABIB -- UNDER THE SAME OATH
BY THE ACCUSED:

Well, I must say that I didn't get any useful advice as to how to ask why she didn't go to the police, neither I get an explanation why this question is cross-examination. Still there is... there seems to be a substitution, which is long, long, so bear with me.

EXAMINATION BY THE ACCUSED (CONT'D):

Q. When you received the letter, did you read it?

A. Yes.

Q. Did you find in this letter any specific threat made by me?

A. I found in this letter a recounting by Mr. Haines of conversations he had with you.

Q. This is not answer to my question.

BY THE COURT:

That is your answer. That is your answer.

BY THE ACCUSED:

Q. Did you get any specific threats mentioned in this letter?

A. In the letter, Mr. Haines writes:

"On February second (2nd), nineteen
eighty-nine (1989)..."

Q. Just answer yes, or no. She's evading question.

BY THE COURT:

The witness is not evading the question at all.

BY THE ACCUSED:

So why doesn't she answer, yes, there were threats. No, there weren't threats.

BY THE CROWN:

She's here to state facts...

BY THE COURT:

That's right.

BY THE CROWN:

... not to give her interpretation of the document. The jury will decide by themselves.

BY THE ACCUSED:

Well, I'm asking her knowledge and her understanding of the document she received.

BY THE COURT:

Ask her what she did when she received the document.

BY THE ACCUSED:

Well, first of all, I would like to ask how she understood the content of the letter.

Q. You asked Mr. Haines to supply you with specific threats made by me. Did Mr. Haines supply you with the information you were seeking?

A. Yes, Mr. Haines provided me with his understanding of the dossier right from nineteen eighty-nine (1989).

Q. So were there the information you were seeking?

A. I'm sorry?

Q. Were in this letter information you were seeking about specific threats made by me?

A. They were threats that were made, or they were statements that were made to Mr Haines, he recounts those in this letter.

"There are two particular ones
where a peaceful one, and finding
a solution outside (inaudible)

resolution of the problems that were occurring in February, nineteen eighty-nine (1989), as well as... "

He mentioned his frustration of getting any solutions to this problem. Again, this is in late March, nineteen eighty-nine (1989)"

"... and that he knew of one way to get fast results, and that was by taking hostages and shooting the Rector. He also told me that he had the means to do so. Quote, "I know the layout of Bishop Court and I have a gun." Unquote.

Q. Okay. When you read that, what was your reaction?

A. That it was a terrible thing to say to anyone, if you had indeed said that.

Q. That's all?

A. That it was an awful thing to say.

Q. That's all?

A. Yes.

Q. I want to ask, why didn't you go to the police?

A. Later on in this letter it also states:

"That on September third (3rd), nineteen ninety (1990) he told me the following, one, that he was sorry for all the troubles he was causing. Two, he had made mistakes because he was stressed. Three, he regretted what took place. Four, he got upset and did and said things that were self-defeating. Five, because of the above he was now seeking help so that this would not happen again. And six, he was prepared to meet with Dr. Sheinin and explain the background and the reasons for his behaviour."

This is in September, nineteen ninety (1990). I received this letter on August third (3rd), nineteen ninety-two (1992).

Q. So, this is the answer to my question, why you didn't go to the police.

A. I did something else.

Q. Would you still answer the question why you didn't go to the police?

BY THE COURT:

No. If you wish to answer the question differently you're perfectly free to answer the question if you wish. You said I did something. Go ahead.

BY THE ACCUSED:

There is no way to get a direct answer to direct question.

A. I immediately informed legal counsel. I gave him a copy of the letter. And my understanding is that he proceeded to immediately call Les Services des permis.

Q. Okay. And he informed them about that specific threat?

A. He attempted to do so.

Q. Did he or didn't he inform?

BY THE COURT:

Well, I don't know if the witness was there. I have no

idea.

BY THE ACCUSED:

Q. To the best of your knowledge, did he or didn't he inform them?

A. To the best of my knowledge, the person in charge of his dossier was not there, and the legal counsel was informed of that, and that the dossier was in abeyance until September.

Q. The dossier was in what?

A. In abeyance.

Q. I don't understand the last word.

BY THE COURT:

In suspense.

BY THE ACCUSED:

Q. So what, what does that mean to you? What does this mean to you that it was in suspense?

A. It meant...

Q. That everything was fine, that was your conclusion?

A. No.

Q. So why then if responsible person wasn't there, cannot somebody else be informed of all that?

A. I have to assume that the legal counsel attempted to do so. I am not the legal counsel.

Q. Well, but to the best of your knowledge...

BY THE COURT:

Listen, she has told you what she did and that is the end of it. She informed legal counsel, and that is that. You persist in driving ahead and trying to put into the record ream upon ream of hearsay, and it's counter-productive.

BY THE ACCUSED:

It's not ream of hearsay. It's the comedy that they played. That's what I'm trying to find out. And I think everyone sees it. And, of course, I cannot say exactly, or I can. Can I? No.

BY THE COURT:

You said it.

BY THE ACCUSED:

No, I didn't say it.

BY THE COURT:

Yes, you said it.

BY THE ACCUSED:

I don't know. One day you consider it is normal, another day you consider it contempt of Court.

BY THE COURT:

It's not normal. It's pure contempt of Court. It's pure contempt of court, left, right and center.

BY THE ACCUSED:

Well, I would want respectfully to submit that Court is not just you. Court is you and jury. So if it is contempt, then it is partial contempt of Court.

BY THE COURT:

It's no partial contempt.

BY THE ACCUSED:

I have full respect of jury. You have no doubt about it.

BY THE COURT:

There is no partial contempt.

BY THE ACCUSED:

All right.

Q. Did you attempt to write another letter to the police now including those facts?

A. I did not.

Q. Did you bring it to attention of, say the Vice-Rector, Services, who wrote first letter in order for him to be able to write the second one?

A. I do not recall personally doing so.

Q. Okay. Did you contact Vice-Rector, Services, with this information, too?

A. I believe I just answered that question.

Q. No. Did...

BY THE COURT:
No.

A. I'm sorry.

Q. The question had to do with did you write...

BY THE ACCUSED:

Q. Did Vice-Rector, Services, I mean (inaudible), did he know all these facts? Was he made aware of all these facts as soon as you received that letter?

A. There may have been, I do not recall.

Q. Well, did you or didn't you inform him officially of that?

A. I do not recall. It was summer. It was in the first week of August. And I do not recall who was on campus and who was not at that particular moment in time.

Q. Did you think it was appropriate to send a second letter, including those facts?

A. As I have said, the matter was in the hands of my legal counsel.

Q. All right. How many documents do you have there? Maybe we could speed up the procedure. Could you take those documents out of the box so that it would be visible how many documents you have there?

BY THE COURT:
If you have a document you're looking for, you ask your question. But you are not doing an audit of the witness' briefcase.

BY THE ACCUSED:
Before I was allowed. Not only I was allowed...

BY THE COURT:
You are not doing an audit. Don't bring it up again.

BY THE ACCUSED:

Q. All right. Are those documents in chronological order in your briefcase?

A. Partially.

Q. Okay. Could you get the document which is the earliest one and state what it is?

BY THE COURT:
You are not going to do indirectly what I have said you cannot do directly. Question disallowed.

BY THE ACCUSED:
Effectively, you don't allow me even to find out what kind of documents are there.

BY THE COURT:
Question disallowed. If you have a specific thing in mind, that's one thing. You ask your question. We'll see whether it's pertinent.

BY THE ACCUSED:
Well, I asked my question, what is the first document...

BY THE COURT:
No. What you are trying to do is say what is the first document, then what is the second document, then what is the third document. That is the same as doing an audit

of the briefcase.

BY THE ACCUSED:

Well, what is wrong with that?

BY THE COURT:

You may not do it. I've said you may not do it, and that is that.

BY THE ACCUSED:

Okay.

Q. Do you recall in eighty-nine ('89) writing to Mr. Haines that you submit to him my file and you want to have a word with him about this file?

A. I do now. You reminded me about this yesterday.

Q. All right. Did you have a word with him?

A. I assume I did.

Q. Okay. Do you recall what this word was about?

A. Frankly, no.

Q. And do you have in your dossier any documents related to your communications with Mr. Haines, other than this handwritten note?

A. The documents that I carried, My Lord, are the documents from the office of the Rector. In nineteen eighty-nine (1989), at that part of the year, I was working in the Vice-Rector, Academics, office. I do not have those with me.

Q. Okay. If someone would wish to have access, a question, concerning those documents...

BY THE ACCUSED :

Well, this is kind of, I believe, legal limbo, because those documents were written and signed by Miss Habib. And she was subpoenaed with all documents with my name there. Now, somebody else cannot bring and deposit those documents, therefore, I would like to clarify that subpoena should be read that her previous position documents are included, because she is the proper witness to introduce them.

BY THE COURT:

Well, you're the one that's making the subpoenas, not I.

BY THE ACCUSED:

Well..

BY THE COURT:

I'm not here to advise you how to make subpoenas.

BY THE ACCUSED:

The subpoena was written correct. At least I trusted Mr. Belleau in this case... at least in this case.

BY THE COURT:

The witness has told you she does not have these documents with her.

BY THE ACCUSED:

Well, if you recall, McKenzie also didn't have. But she got to her previous office and got it. And I think this witness was supposed to do the same thing.

BY THE COURT:

Well, would you please tell the witness what you want. What you want are any documents that might exist.

BY THE ACCUSED:

Well, subpoena reads very simply, all the documents related to me. It's that simple.

BY THE COURT:

That are in the witness' possession.

BY THE ACCUSED:

Well...

BY THE COURT:

She has what's in her possession at the moment.

BY THE ACCUSED:

No, no, no. It means all the documents in the subpoena was... went to the University.

BY THE COURT:

I told you, you are not bringing the archives of Concordia University down here.

Can I impose on you, Mr. Freedman, that... I'm going to adjourn now. Can I impose upon you to see whether, in the manner which you have adopted before, you can find out which particular documents that he wishes. And they would relate to the period when Dr. Kenniff was acting as Vice-Rector, Academic, and Miss Habib was his executive assistant, and within that context would relate more particularly to the word with Grendon Haines that was referred to and whether... that was the question... whether there was anything written in relation to that.

BY THE ACCUSED:

No, no...

BY THE COURT:

We'll adjourn here, ladies and gentlemen, until two-thirty (14:30).

BY THE ACCUSED:

Not only that...

(THE JURY LEAVES THE COURTROOM)

(OUT OF THE PRESENCE OF THE JURY)

BY Me FREEDMAN:

Could I ask for a bit more direction, My Lord?

BY THE COURT:

Sure, sure.

BY Me FREEDMAN:

The difficulty is, of course, we're faced with a situation where we have individuals who were in various different positions. My understanding has always been that the subpoena refers to the documents presently under their control. What... what am I looking for in the Vice-Rector, Academics...

BY THE COURT:

Well, for the particular moment, you are looking for documents, if they exist, that Miss Habib may have had in her possession when she was working for the Vice-Rector, Academics.

BY Me FREEDMAN:

Okay.

BY THE COURT:

I suppose that means the file of the Vice-Rector, Academics, office...

BY Me FREEDMAN:

That's right.

BY THE COURT:

... which Dr. Sheinin had at one point.

BY Me FREEDMAN:

That's it. Miss Wilson Wright had with her yesterday.

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BY THE COURT:

Which Miss Wilson Wright had yesterday. That's the file you're looking for.

BY THE ACCUSED:

But she is not the right witness. Therefore every document there is signature of Mrs. Habib, and...

BY Me FREEDMAN:

It's difficult for people to file large files by people's signatures.

BY THE COURT:

Of course they're not. Of course they're not.

BY THE CROWN:

May I suggest, My Lord, that we are still dealing with a fishing expedition. It's too easy to say, carry... it looks like coming back with the archives, as you said. Carry any document bearing my name, or concerning me, it looks like...

BY THE COURT:

He is simply trying to provoke me into putting an end to the examination. That is all he's trying to do. It's perfectly obvious. And...

BY THE ACCUSED:

Why would I be interested in that?

BY THE COURT:

And eventually that may well be what happens. This is... but for the minute...

BY THE CROWN:

He'll get the message that I... my feeling is whatever your ruling is, the accused, by sideways, is doing the same thing. It's still a fishing expedition. We still end up with the archives of Concordia.

BY THE COURT:

Concordia University.

BY THE CROWN:

The witnesses are coming with boxes of documents. And we've been through the process four days, five days, and if you did not end up the... potentially a witness could end up in the box for a month, you know.

BY THE COURT:

Yes.

BY THE CROWN:

If we... if there was an examination on every word...

BY THE ACCUSED:

For a year.

BY THE CROWN:

.. and every...

BY THE ACCUSED:

For five years.

BY THE COURT:

If you might obtain, nevertheless, that file...

BY Me FREEDMAN:

What... oh, my suggestion, My Lord, is I'm going to bring the whole file...

BY THE COURT:

That's fine.

BY Me FREEDMAN:

...that Mrs. Wilson Wright brought in yesterday, and we'll drop it on the desk and we'll go from there.

BY THE COURT:

That's fine. And...

Would you be quiet.

Would you do that, please, so that that file will be here.

BY Me FREEDMAN:

I shall.

BY THE COURT:

And depending on the questions that are asked, the witness at least will have access to that file so that she can... so that she can draw out what she requires.

BY Me FREEDMAN:

Absolutely.

(THE JUDGE LEAVES THE BENCH)

LUNCH ADJOURNMENT

AFTER THE LUNCH ADJOURNMENT

(THE JUDGE TAKES THE BENCH)

(THE JURY TAKES THE BENCH)

WITNESS: MAUREEN HABIB -- UNDER THE SAME OATH

EXAMINATION BY THE ACCUSED (CONT'D):

So any document has arrived from previous? Okay.

Q. Could you locate any related to the subject of nineteen eighty-nine (1989) meetings or any other dealings between you and Mr. Haines?

A. These are the files for nineteen eighty-nine (1989) as I view them here. They appear to be in chronological order, beginning in nineteen seventy-nine (1979) to nineteen ninety-two (1992). In nineteen eighty-nine (1989)...

BY THE COURT:

You heard what Mr. Fabrikant asked for?

A. Uh, huh.

Q. You just look and see if you...

A. No.

BY THE ACCUSED:

Q. Okay. Anything related to the promotion?

BY THE COURT:

Well, just a second now. What do you mean, anything relating to promotion?

BY THE ACCUSED:

Well, it was a scandalous thing, too.

BY THE COURT:

Well, I don't... you may have your opinion on what it was.

But when you say anything relating to promotion, that's far, far too wide to expect the witness to be able to tell whether that whole box of documents contains anything that's pertinent. I don't know.

BY THE CROWN:

It's the witness who is fishing.

BY THE ACCUSED:

It's not box. It's not box. It's a very small folder, as you see. If you are looking for excuse not to let me see the documents, you can do whatever thing you want.

BY THE COURT:

No. If you have a specific question on a specific subject at a specific time, you put it.

BY THE ACCUSED:

It is very...

BY THE COURT:

I also understand that you have received most of these documents. Am I correct, Mr. Freedman?

BY Me FREEDMAN:

Most of them, My Lord.

BY THE COURT:

Yes.

BY THE ACCUSED:

Well, he tells you this already several times without receiving me these documents. So the simplest way...

BY THE COURT:

So you have received... not the simplest way. You have received these, so you will refer the witness specifically to what you want. And if you refer the witness specifically to what you want, the witness will look and see. The witness will not, as the Crown Prosecutor put it, fish for you.

BY THE ACCUSED:

Well, just let me see the folder then, it would be must simpler and I will...

BY THE COURT:

No.

BY THE ACCUSED:

... ask specific questions.

BY THE COURT:

No.

BY THE ACCUSED:

Why it was yes and now it is no?

BY THE COURT:

It's no. You ask... if you have a question on a specific document, you ask it. This is in the interest of having this thing move along at an expeditious pace. That is what it is in the interest of.

BY THE ACCUSED:

The most expeditious is if you would not interrupt me. That would be the best expeditious way.

Q. So do you have in this nineteen eighty-nine (1989) any reference to then Vice-Rector Kenniff being threatened? Any report from Haines directed to Vice-Rector Kenniff in this folder?

A. No.

Q. Did you get any response from Mr. Haines concerning his work with me in eighty-nine ('89), any feedback of any kind?

A. Are we still pertaining to files here?

BY THE COURT:

I'm not sure, the question is rather large. So you ostensibly wrote a memo to Haines. I wouldn't even dare to say that the question falls even within the limits of that, but it certainly includes that.

A. I did not find a copy of the memorandum in the nineteen eighty-nine (1989) file. However, the memorandum was shown to me, and it certainly is in my hands yesterday, and it was referring a dossier to Mr. Haines.

BY THE ACCUSED:

Q. Well, after this referral of this, yes, there should be some response, or anything back to your office. Was it?

A. There is none contained in this file.

Q. I fail to understand this kind of a game. Instead of showing me what is in the file.

BY THE COURT:

You are not at liberty to go on an expedition through this file at the expense of whatever time it will take to do so under the guise of hoping somehow or other that you're going to pull something out of there that you wish to put in evidence.

If you wish to put something in evidence, first of all, it has to be pertinent. That's the first rule. Secondly, you have

received all of this documentation which you obtained under the Access to Information Act. If you didn't take the trouble to go through it and bring along the various letters and prepare your examination of this witness... it's a witness that you called. As a consequence of that, that's your fault, not mine.

BY THE ACCUSED:

First of all I have not received, many things were hidden from me, and I can give you numerous examples, like the whole Barnab, file was never shown to me. I have no suspicion that this exists, and in this situation, I couldn't even have asked for this file...

BY THE COURT:

Listen...

BY THE ACCUSED:

... unless it is shown to me. And the same thing operates here. There is nothing wrong if I take a look. If they are honest people, they have nothing to hide. Why wouldn't they show it to me?

BY THE COURT:

You are in the process of going through your trial. It started on the eighth (8th) of March.

BY THE ACCUSED:

Uh, huh.

BY THE COURT:

We are now into the month of June. We're now at the sixteenth (16th) of June.

BY THE ACCUSED:

Yes.

BY THE COURT:

This witness has been in the box for a day.

BY THE ACCUSED:

Yes.

BY THE COURT:

You called this witness. I would presume, therefore, that you planned out for yourself what grounds, what points you wish to cover with this witness. She has her files relating to her present capacity, which is the Executive Assistant to the Rector. She also has from Dr. Sheinin's office the files that relate to you emanating from that office. She has that because some years ago, or a couple of years ago, Dr. Kenniff happened to be acting as Vice-Rector, Academic, and as I understand it, Mrs. Habib was then his Executive Assistant. She has these files there.

You are required to put questions. If one of your questions requires a document, you'll ask if the document is there, and she'll check and see and she'll give you the document. If not, then you're not going to audit these files one by one, starting at the beginning and ending at the end, simply while the rest of us sit and twiddle our thumbs.

So ask your questions if you have any questions. If you don't have any questions, let me know that you don't have any questions, and we'll put an end to this.

BY THE ACCUSED:

I do have, but I would like to remind you that a month and a half were spent on the so-called fitness, which it was not I who called for it. So I am in my defense, so that much you managed to spend month and a half discussing my fitness when nobody ever doubted whatsoever...

BY THE COURT:

I'm not going to argue... I'm not going to argue with you

about your fitness.

BY THE ACCUSED:

No, no...

BY THE COURT:

What I'm telling you...

BY THE ACCUSED:

... we are arguing about time.

BY THE COURT:

What I'm telling you to do now is put your questions to the witness.

BY THE ACCUSED:

You deprive me from...

BY THE COURT:

I'm not depriving you of anything, Mr. Fabrikant.

BY THE ACCUSED:

They hidden a lot of documents from me.

BY THE COURT:

Oh, put... put your questions to the witness. You know what you're looking for.

BY THE ACCUSED:

But there is no way for me to know whether she answered truth or not.

BY THE COURT:

Put your...

I want to see the file...

BY THE COURT:

Put your questions...

BY THE ACCUSED:

... then I will be able to put proper questions.

BY THE COURT:

Put your questions to the witness.

BY THE ACCUSED:

Q. Well, what is the first document there in the file?

BY THE CROWN:

The accused tried that this morning, My Lord.

BY THE COURT:

Yes, he did. And that was disallowed. We're not going through the file document by document. You know what proof you want to make. Make it.

BY THE ACCUSED:

I know. But I need the document...

BY THE COURT:

Well, you ask the question, and the documentation may well come out if it's there.

BY THE ACCUSED:

I asked the question, what is the first document?

BY THE COURT:

No, that won't do, because what you're trying to do is go through the file document by document.

BY THE ACCUSED:

You're depriving me from seeing my own documents.

BY THE COURT:

Oh, Mr. Fabrikant...

BY THE ACCUSED:

Those are documents which I am entitled to by Access to Information Act.

BY THE COURT:

You've got them.

BY THE ACCUSED:

No.

BY THE COURT:

You've got them. If you left them sitting in your apartment, that's just too bad. You had months when you could have brought these down.

BY THE ACCUSED:

No. Barnab, file... Barnab, file I never got, and I applied for it to Access to Information Act. They never gave it to me. And I believe there is a lot of things there they didn't give it to me.

BY THE COURT:

We are not discussing the Barnab, file or anything else. And I have no idea what you asked for in relation to the Access to Information Act.

BY THE ACCUSED:

You just don't want to listen to what I am saying. That's fine.

Q. Do you have there documents related to, from or to Mr. Barnab,, addressed to Mr. Barnab,, or received from Mr. Barnab,?

A. What year?

Q. Eighty-nine ('89). I'm still in eighty-nine ('89).

A. No.

BY THE COURT:

And you might remember that if the witness had any dealings with Mr. Barnab,, or directed any documents to or from Mr. Barnab,, then the witness, having the files there has access to them, but your questions must be keyed to what the witness can depose to. The witness isn't simply an instrument which can throw any communication you like into the record because she happens to be standing in the witness box.

BY THE ACCUSED:

The last stuff I didn't understand.

BY THE COURT:

Well, no doubt you'll listen to the tape tonight.

BY THE ACCUSED:

I don't have time for that either. You managed to make it in such a way that I don't arrive at Parthenais before seven p.m. (19:00).

Q. Do you have in the file of eighty-nine ('89) anything related to harassment which you mentioned here, which I did to your office?

A. No.

Q. Did I personally threaten you at any time?

A. No.

Q. Did you ever feel scared of me?

A. No.

Q. Did you transfer to Vice-Rector, Academic, any threats emanating from the... direct or veiled threats, or anything which might be interpreted as a threat?

A. No, I do not repeat that kind of statement, or make any interpretation of it.

Q. I didn't get the answer.

A. I said no.

Q. I don't believe this was the answer to my question.

A. No.

BY THE CROWN:

The question was answered.

BY THE COURT:

Your question was, did... your question was, did Mrs. Habib transmit any threats or rumours of threats to Kenniff. Was

that your question?

BY THE ACCUSED:

Well, to both because she worked with Kenniff first then with Sheinin, so question relates to both of them...

BY THE COURT:

There you have the question clarified, Mrs. Habib.

BY THE CROWN:

She answered. She said she doesn't spread rumours.

BY THE COURT:

Uh, huh.

BY THE CROWN:

That was the answer.

BY THE ACCUSED:

Q. But you received those rumours even in eighty-nine ('89), some of the rumours you heard in eighty-nine ('89)?

A. What rumours in nineteen eighty-nine (1989)?

Q. Well, we are talking about threats.

A. What threats?

BY THE ACCUSED:

The witness is pretending not to understand what I'm talking about.

BY THE COURT:

She's not at all. She told you she was...

BY THE ACCUSED:

She clearly does not understand what I'm talking about.

BY THE COURT:

Her answer was yesterday, no, I'm not aware of any threats or rumours of threats in nineteen eighty-nine (1989). What you're trying to do is confuse the witness again, and you're trying to cross-examine the witness and you may not do that. Question disallowed.

BY THE ACCUSED:

Q. Is there anything in the nineteen eighty-nine (1989) file which would testify as to anything negative in my behaviour?

A. No.

Q. Could you check if there is any document in March of nineteen eighty-nine (1989) related to security arrangements for surveillance of me or somebody else's house?

A. No.

Q. Is there any document related to the meeting between Kenniff, Swamy, McKenzie and Haines?

A. No.

Q. How much faster it would be if I just browse through the file.

BY THE COURT:

Well, you won't browse through the file.

BY THE ACCUSED:

Well, then there is something to hide.

BY THE COURT:

So would you please stop trying.

BY THE ACCUSED:

Then definitely there is something to hide.

BY THE COURT:

No, there's not, there's not. You are... you are fishing.

You're not even examining your witness. You're simply dipping here and dipping there and hoping that it's a trout you come up with, rather than a shark. That's all you're doing.

BY THE ACCUSED:

Well, freelance sarcasm. Regretfully I'm not allowed to respond in similar manner. I think fair judge would allow me, at least, to respond the same way.

BY THE COURT:

You have been responding...

BY THE ACCUSED:

Well...

BY THE COURT:

... in a manner that doesn't even bear description, for the past four months, or five months.

BY THE ACCUSED:

And you are using it to deprive me from my witness.

BY THE COURT:

Not at all. Not at all.

BY THE ACCUSED:

Not at all.

BY THE COURT:

You are not going fishing in the files.

BY THE ACCUSED:

This file must be very precious, because previous file I was allowed. All right.

Q. Is there in this file the document written to merit award?

A. No.

Q. Check again, basically it should be there.

BY THE COURT:

Q. Are you... have you looked through the file?

A. There are two pieces of paper, My Lord, in the file for nineteen eighty-nine (1989).

Q. That is the only thing for nineteen ninety-nine (1989)?

A. This is all I have.

BY THE ACCUSED:

Well, it must be there. There is no way this document is not there. So if this document is not there, it means that the file is either incomplete or witness is not answering the truth. Because this document I know about, and I know that it is there.

BY THE COURT:

Then if you know about the document, show the document to the witness, and then assist the witness. That's the way to do it, you know.

BY THE ACCUSED:

Yes. I didn't expect witness to testify something which is not true.

BY THE COURT:

Show the document to the witness, if you know of the existence of the document. That's the fair way to do it.

BY THE ACCUSED:

Well, this document I can call my wife and ask her to bring it. It is there. I know it is there.

BY THE COURT:

You should have these documents here.

BY THE ACCUSED:

I cannot have all the documents in jail. My cell is not big enough. When you put bed and the toilet, and that much space left. That's all what it is there. Why don't you just once come over and look at my cell and then tell me which document I might have...

BY THE COURT:

I am not...

BY THE ACCUSED:

... to bring and not...

BY THE COURT:

I am not interested in looking at your cell or anything else.

BY THE ACCUSED:
You are interested...

BY THE COURT:
I am interested in you putting questions to the witness.

BY THE ACCUSED:
You should be interested in me having fair trial. This is your duty.

BY THE COURT:
You are having a fair trial, Mr. Fabrikant, regardless of whether you perceive that or not.

BY THE ACCUSED:
And you disregard this duty.

BY THE COURT:
Have you any further questions to put to the witness?

BY THE ACCUSED:
Well, I made the question. It must be there.

BY THE COURT:
The witness told you it's not there.

BY THE ACCUSED:
I just asked you to look better.

BY THE COURT:
You have the witness' answer. She said it's not there. There are two documents in the file for nineteen-eighty-nine (1989), and this series of files is for nineteen eighty-nine (1989).

BY THE ACCUSED:
Well, maybe we can then save time and maybe she can name those two documents, if just two documents are there, because I don't believe that during eighty-nine ('89) only two documents appeared.

Q. Could you name those documents?

A. There is a letter dated the fifteenth (15th) of December, nineteen eighty-nine (1989), a letter of appointment from the Vice-Rector, Academic, to inform you:

"Upon recommendation of your Dean I hereby offer you an appointment as Research Associate Professor of Mechanical Engineering for the period of one (1), June, nineteen ninety (1990) to thirty-one (31) May, nineteen ninety-two (1992), under the Actions Structurantes program. The conditions of employment are the same as those contained in the Vice-Rector's letter to you dated eighteen (18), May, eighty-eight ('88). Would you kindly inform me by twenty-six (26), January, whether you accept this offer of appointment."

On December twenty-first (21st), the response:

"From the question or two, Dr. Sheinin, thank you for your letter of fifteen (15) December, nineteen eighty-nine (1989). I should be grateful if you would kindly clarify several points related to the offer. According to the Vice-Rector's letter dated eighteen (18) May, nineteen eighty-eight (1988), my position is to be converted (provided that certain conditions are met) to a regular one, from one (1) of June, nineteen ninety (1990). I understand that the University

does not know yet whether these conditions are met, but I would like to get a description of the procedure of conversion and the relevant dates. Two, your letter states that the conditions of employment are the same as previously I had only half of the regular teaching load. It is my understanding that it will no longer be the case. Is it so, I should also be grateful for a clarification of my eligibility for a sabbatical leave. Thank you in advance."

BY THE COURT:

Okay. It was only necessary for you to mention what they dealt with, since there were two of them. But in any event, there's no problem.

BY THE ACCUSED:

This is total absurd.

BY THE COURT:

It isn't totally absurd.

BY THE ACCUSED:

In eighty-nine ('89) there were many, many more documents than that.

BY THE COURT:

Well, if you have the documents, show them to the witness.

It's very simple.

BY THE ACCUSED:

Yes.

BY THE COURT:

And you have the documents.

BY THE ACCUSED:

This one I do have. Yes. But it never crossed my mind that it would not be here.

BY THE COURT:

Well, that's your problem, not mine.

BY THE ACCUSED:

Okay. Let's go to nineteen ninety (1990).

BY THE COURT:

Now you wait for the question, please.

A. Uh, huh.

BY THE ACCUSED:

Q. Okay. You have several folders there. Is it because they're related to different topics?

A. I would assume, yes.

Q. Okay. Could you describe those topics?

BY THE CROWN:

The same thing, My Lord.

BY THE COURT:

It is the same thing.

BY THE CROWN:

Another way.

BY THE COURT:

The witness... you have been told again and again that if you have a specific question to put on a document, or on a subject, you will put it to the witness. You have had all of these documents handed to you under the Access to Information Act.

BY THE ACCUSED:

Okay. So let me check what Mr. Belleau is getting paid for. I would like to consult with him.

BY THE COURT:

Fine. We'll adjourn for ten minutes.

(THE JUDGE LEAVES THE BENCH)

(THE JURY LEAVES THE COURTROOM)

SHORT RECESS

(THE JUDGE TAKES THE BENCH)

(MEMBERS OF THE JURY TAKE THE BENCH)

WITNESS: MAUREEN HABIB -- UNDER THE SAME OATH

BY THE ACCUSED:

Well, here are the results which I got. I asked Mr. Belleau to explain to me where is it written that fishing expedition is forbidden. He said McWilliams. I asked him, could you please show me in McWilliams where it is written. He said, look it up. This is the thickest book which you have there. Is it fair answer of a person who gets one hundred and sixty dollars (\$160.00) per hour?

BY THE COURT:

Well, I've given you...

BY THE ACCUSED:

Address with a book more than thousand (1,000) pages?

BY THE COURT:

I've given you the answer.

BY THE ACCUSED:

Well, could you kindly show me in McWilliams where it is written that fishing expedition...

BY THE COURT:

I'm not going to show...

BY THE ACCUSED:

... is forbidden.

BY THE COURT:

It won't... it won't say fishing expeditions are forbidden.

BY THE ACCUSED:

Okay.

BY THE COURT:

What it will say is the only evidence submissible is evidence is evidence that is relevant.

BY THE ACCUSED:

Sure.

BY THE COURT:

And if you wish... if you wish to present evidence then present it.

BY THE ACCUSED:

Well...

BY THE COURT:

But you're not going to say maybe this is relevant, maybe that is relevant, maybe something else is relevant, and to through the file while everybody sits here and twiddles their thumbs.

BY THE ACCUSED:

Not at all.

BY THE COURT:

Now, I'm not...

BY THE ACCUSED:

I was prepared...

BY THE COURT:

Listen, listen...

BY THE ACCUSED:

I was prepared to do it during the break.

BY THE COURT:

I am not going to argue with you. You are not going through these files one by one. That amounts to going through the

whole archives of the University. You have occasionally been allowed a file because the file has been a relatively small file. It has dealt with one particular witness, or one particular thing. That is a whole raft of correspondence that deals with how many subjects, I don't know.

BY THE ACCUSED:

Well, the majority of them I do not need.

BY THE COURT:

Well, if you know that the majority you do not need, it follows, using your process of deductive logic that the others that you do need, you also know about.

BY THE ACCUSED:

No, not at all.

BY THE COURT:

So you put to the question to the witness and show the witness the documents. That follows. That's logic, isn't it?

BY THE ACCUSED:

No, majority of them I never even suspected. I had no idea I was on twenty-four (24) hour surveillance. I couldn't possibly put questions about it unless this file was brought here and I looked at it.

BY THE COURT:

Listen, we are a long way from the subject of this trial, so pose your questions. If you have no questions to pose, then sit down.

BY THE ACCUSED:

All right.

Q. So, nineteen ninety (1990), do you have the file related to my promotion?

BY THE CROWN:

Why doesn't he ask just questions about his promotion.

BY THE COURT:

That's right. I'm just waiting till I get the answer to the...

BY THE ACCUSED:

Well, what is the point to ask question if she again says, I don't have that file?

BY THE COURT:

Well, that's the end of the question, if she doesn't have the file.

BY THE ACCUSED:

Exactly. Exactly. This is why...

BY THE COURT:

If she doesn't have the file, someone else may have it. I don't know.

BY THE ACCUSED:

So I asked the right question, if you have the file, first.

BY THE COURT:

I didn't say you didn't ask the right question. I'm waiting for a specific question.

BY THE ACCUSED:

Well, Crown objected. Crown has...

BY THE COURT:

Q. You have what Mrs. Habib?

A. I have before me, My Lord, a note from Grendon Haines, Secretary of the University Appeals Board, to (inaudible) President of CUFA and Harold Proppe, the Associate Vice-Rector, Institutional Relations and Finance, indicating...

Q. Well, just a moment now. Before...

BY THE CROWN:

That does not concern this witness, My Lord. There should be

a witness that knows whether he got or did not get the promotion. That's what I mean when I make my comment.

BY THE COURT:

Yes. Well, I said earlier, and I repeat, that you said you didn't understand, and I said, listen to the tape, that this witness is not going to stand there because she happens to be there, be the instrument of pulling out and producing all sorts of letters which she had nothing to do with. This witness is here to be questioned on her knowledge of the facts. That's all.

BY THE ACCUSED:

That's exactly what I'm doing. If you won't interrupt me...

BY THE COURT:

Well, put... no, no, that's not what you're doing.

BY THE ACCUSED:

... this is exactly what I am doing.

BY THE COURT:

That's not what you're doing.

BY THE ACCUSED:

You don't let me even do what I am doing. You each second... if you look at the tape, each tape contains ninety percent (90%) either Crown objections or your interruption.

BY THE COURT:

Well, then I told you...

BY THE ACCUSED:

And ten percent of me asking questions.

BY THE COURT:

I told you, I will not...

BY THE ACCUSED:

And you seem to like it that way.

BY THE COURT:

I will not interrupt if you ask legitimate questions. Okay? And that you know very well. So put a question to this witness, or don't put a question to the witness. Do one or the other.

BY THE ACCUSED:

The question was legitimate, do you have the file related to my promotion. Was it legitimate question? Just answer, please, once.

BY THE COURT:

I am not here to answer questions from you.

BY THE ACCUSED:

Well, we spend five minutes and I still don't...

BY THE COURT:

Q. Do you have that file...

BY THE ACCUSED:

... and I still don't get the answer. And after that you say that I'm wasting Court time.

BY THE COURT:

... relating to his promotion?

A. This note relates to an indication that the questioner has filed a notice of intent to appeal the decision to deny him promotion.

Q. I see.

A. It's dated the fourth (4th) of July. I did not see anything prior.

BY THE ACCUSED:

Q. And there is no other documents related to the promotion. It's total absurd. They didn't bring the file. They brought some kind of nonsense. I'm trying to demonstrate to you that

they didn't bring deliberately any of the documents.

BY THE CROWN:

That's not the purpose of this trial, My Lord.

BY THE COURT:

It certainly isn't.

BY THE CROWN:

It's not the trial of the archivist.

BY THE ACCUSED:

It not trial of the archivist. It is remark that they do not comply with subpoenas, that's all. I suggest that the witness go back and get all the necessary documents and we proceed with Mr. Yelle in the meantime. And I also have...

BY THE COURT:

The witness is here to answer questions concerning the witness' knowledge of the facts insofar as they relate to this case.

BY THE ACCUSED:

Exactly.

BY THE COURT:

Fine. Then...

BY THE ACCUSED:

The documents are not there.

BY THE COURT:

You haven't even put your question.

BY THE ACCUSED:

Q. Well, do you have in this file recommendation of DPC? No.

A. No.

Q. Do you have in this file the recommendation of FPC? No.

A. Not on promotions that I can see.

Q. Would you be able to explain why you don't have all those documents?

A. No.

BY THE COURT:

Q. Where are those documents?

BY THE ACCUSED:

Can (inaudible) with that?

A. I'm sorry, My Lord, I was not responsible for putting these documents together any longer. I no longer work in that office.

BY THE COURT:

A little louder.

A. I was not responsible for putting these documents together for the office of the Vice-Rector, Academics. There may... I mean, I don't know.

BY THE CROWN:

Mr. Fabrikant has all these documents we saw.

BY THE COURT:

I know he has all these documents, and I would presume that the Vice-Rector, Academic, is the one who could probably answer his questions. There you are. You get yourself the right witness and you can ask your questions, providing they're pertinent.

BY THE ACCUSED:

I have the right witness for my right question, because each witness, believe me, I know what questions to ask.

BY THE COURT:

Then ask them.

BY THE ACCUSED:

But there are no documents there.

BY THE CROWN:

Mr. Fabrikant has these documents.

BY THE COURT:

I have said to Mr. Fabrikant...

BY THE CROWN:

The members of the DPC, when they came in another hearing, they were cross-examined with these...

BY THE COURT:

I know that.

BY THE CROWN:

... cross-examined with these documents.

BY THE COURT:

I know that. I know that, Mr. Lecours and...

BY THE ACCUSED:

So what?

BY THE CROWN:

What about all these allegations of bringing and not bringing. We know these... she did not write these documents. She is not on the DPC, nor on the FPC.

BY THE ACCUSED:

This is not...

BY THE CROWN:

Why all this fuss?

BY THE ACCUSED:

This is not the point of my question. You don't know what questions I wish to ask her because she dealt with these documents, too. And I asked...

BY THE COURT:

Well, you better establish that she dealt with the document.

BY THE ACCUSED:

Well...

BY THE CROWN:

I understand there is about twenty thousand people (20,000) in this University, including the students. So if she did not get one document, it does not mean that the Dean, or the Chairman, or anybody else doesn't have it.

BY THE ACCUSED:

Isn't Mr. Lecours brilliant? Now he will say that I will demand all twenty thousand (20,000) to be brought here and testify. Right? That's what you wanted to say?

BY THE CROWN:

I never said so.

BY THE COURT:

Now, have you...

BY THE ACCUSED:

Let us stop this absurd. Documents have to be here.

BY THE COURT:

This is not absurdity. Would you please put the question you wish the witness to answer. She'll answer it if she can.

BY THE ACCUSED:

Well, there are no documents here. How can I produce them?

BY THE COURT:

This is a trial of facts, not a trial of documents. Would you put your...

BY THE ACCUSED:

Documents are also factual evidence.

BY THE COURT:

Would you put... they may be if they are pertinent. Now, would you put your...

BY THE ACCUSED:

They are pertinent.

BY THE COURT:

Would you put your question to the witness.

BY THE ACCUSED:

I cannot...

BY THE COURT:

You say you know what question you wish to put, put it.

BY THE ACCUSED:

Okay. All right.

Q. When this document has been received by your office?

BY THE CROWN:

Which document?

A. Which document?

BY THE ACCUSED:

Well, promotion. I am talking about promotion. She cannot answer unless she has the document in front of her. It's absurd.

A. Promotion dossiers are forwarded every year to the office of the Vice-Rector, Academic, in around the month of March. Prior to arriving at the Vice-Rector, Academic's office they have already been considered by the Departmental Personnel Committee, the Faculty Personnel Committee and the Dean.

BY THE CROWN:

It was already explained, My Lord, that the files are sent back. You don't...

BY THE ACCUSED:

Well, the answer is wrong.

BY THE COURT:

I realize that.

BY THE ACCUSED:

The answer is wrong. It arrived April fourth (4th).

BY THE COURT:

Mr. Fabrikant, if you...

BY THE ACCUSED:

I'm just demonstrating to you this absurdity.

BY THE COURT:

You're demonstrating nothing to me. If you wish to refer the witness to a document, and if it's a document you have, show the document to the witness, otherwise...

BY THE ACCUSED:

I don't have any documents in jail. I don't have place for them.

BY THE COURT:

Well, that is... that is unfortunate.

BY THE ACCUSED:

That is unfortunate.

BY THE COURT:

That's your problem. You have had months to take whatever steps you've had to take to have at your hand what you needed for each step of the way.

BY THE ACCUSED:

Yes. To enlarge my cell. Right? To build...

BY THE COURT:

Not to enlarge your cell at all.

BY THE ACCUSED:

To build an addition to my cell?

BY THE COURT:

You have been given the assistance of Carapatian, or whoever he is, in order to...

BY THE ACCUSED:

Yes. When, yesterday?

BY THE COURT:

I seem to recall that it was asked for last week and it was dealt with last week.

BY THE ACCUSED:

Yes, yes.

BY THE COURT:

It was dealt with right after it was asked. You have been given all of that. So don't tell me that you haven't had a chance to prepare your case.

Have you any questions, any more useful questions to put to Mrs. Habib, because time is passing?

BY THE ACCUSED:

Well, you don't seem to allow me any.

BY THE COURT:

I'm waiting.

BY THE ACCUSED:

Q. Right. Do you recall somewhere in the mid nineteen ninety (1990), me calling you concerning this promotion?

A. As I have mentioned to you before, My Lord, the questioner has called me at least one hundred times (100). If he could be more specific.

Q. Well, one cannot be more specific. Did I call you about promotion?

A. You may have.

Q. Okay. What did I ask?

A. I do not remember.

Q. Well, you recorded all those phone calls. Since January nineteen ninety (1990), all my phone calls were recorded. Would you demonstrate to the witness, all of them.

A. I doubt that.

Q. It's much less than one hundred (100). They are all recorded. Could you demonstrate...

BY THE CROWN:

That was not said, My Lord. It was never said all the phone calls. The contrary was said.

BY THE COURT:

The contrary was said.

BY THE CROWN:

She said...

BY THE COURT:

She never recorded any.

BY THE ACCUSED:

I know... I know...

BY THE COURT:

She made notes on occasion of some conversations. That was what the witness said.

BY THE ACCUSED:

So maybe you could... okay, demonstrate to the witness this exhibit, what it was, D-16, the list of the phone calls.

BY THE CROWN:

Were they phone calls to Mrs. Habib, all of them?

BY THE ACCUSED:

No.

BY THE COURT:

Not all of them.

BY THE ACCUSED:

It was only one hundred (100) of them to Miss Habib. And plus ten thousand (10,000) to others.

BY THE CROWN:

Let's take a look because I realize...

BY THE COURT:

That's nineteen eighty-nine (1989), yes.

BY THE CROWN:

I realize most of the time the questioner is not fair with the witness.

BY THE COURT:

No, he's not.

BY THE COURT:

That's nineteen eighty-nine (1989), isn't it?

BY THE ACCUSED:

Of course, everyone was fair with me, and just I was unfair with everybody else.

BY THE CROWN:

I don't see Mrs. Habib there.

BY THE COURT:

May I see it, please.

BY THE CROWN:

It doesn't contradict the fact that he phoned her one hundred (100) times. That's why it's not bad to check what he's doing with the witnesses.

BY THE COURT:

Yes, that has no bearing whatever on Mrs. Habib. Thank you.

BY THE ACCUSED:

Q. Did you or didn't you receive a direction to record the phone calls with me?

A. No.

Q. Did you know about activity of Dr. ... what was his name, Steiner?

A. No.

Q. You never heard the name?

A. Yes.

Q. You did hear the name?

A. Yes.

Q. Okay. In respect to what?

A. In a letter dated the sixteenth (16th) of November, nineteen ninety (1990), from Dr. Sheinin to Dr. Kenniff.

Q. Okay. What did it say?

A. May I?

Q. Maybe you could just use your memory for that.

BY THE COURT:

This witness was not the author of that letter. It was a letter from Dr. Sheinin to Dr. Kenniff. This witness is not the appropriate witness to depose as to that letter.

BY THE ACCUSED:

Q. Right. So that's the only moment you heard the name?

A. I have heard it since then.

Q. Okay. Since then you heard it. Okay. On what occasion and with respect to what?

A. Throughout this trial.

Q. No, I mean...

A. Through last year.

Q. ... before trial.

A. I remember that in particular, because his name was referred to in that note. Otherwise (inaudible) to remember specific incidences. I can't think of them off the top of my head.

Q. All right. Do you recall how it came in summer of nineteen ninety (1990) conversation between you and Dr. McKenzie about me threatening someone. In what respect? How did it come about? Why the whole thing appeared? What is your recollection?

BY THE COURT:

We have been through this question of threats yesterday

afternoon. We've been through this question of threats this morning. You are now drifting into cross-examination of the witness, and I'm not going to permit that.

BY THE ACCUSED:

All right.

Q. Did you... are you aware of the letter written in October by Vice-Rector to me accusing me of harassment of her and her staff?

A. October of what year?

Q. Nineteen ninety (1990). We are in nineteen ninety (1990).

A. When would this letter have been written?

Q. October eighteenth (18th).

A. October eighteenth (18th).

BY THE CROWN:

Well, this is not the file of Vice-Rector, Academics, My Lord.

A. This one is, yes.

BY THE COURT:

Yes, it is.

A. This is. That's why it's taking me a little longer. I haven't seen this. Ah! Ah!

BY THE ACCUSED:

Okay. If I say Crown is sleeping, it would be an insult or what?

BY THE CROWN:

It would be, yes.

BY THE ACCUSED:

So I take it back.

A. October eighteenth (18th).

Q. I didn't say it.

BY THE COURT:

Yes. Just look at the letter and wait for the question.

BY THE ACCUSED:

I just wonder, would it be possible, unless Crown feels that each case is in jeopardy, that Crown would not intervene.

Would it be possible?

BY THE COURT:

Not at all.

BY THE ACCUSED:

No?

BY THE COURT:

Not at all. Not at all.

BY THE ACCUSED:

Well, I'm just making a suggestion.

BY THE COURT:

You're not. You're parroting McWilliams. That's what you're doing.

BY THE ACCUSED:

I'm using the little judicial knowledge I have. What can I do. I have highly paid lawyer who is not helping me in any way.

BY THE COURT:

What you can do is spare me the comments.

BY THE ACCUSED:

Q. Well, maybe without searching for the letter, you could just answer. Can you?

A. I have the letter of October eighteenth (18th) before me. What is the question?

Q. All right. Do you see there phrase, veiled threats conveyed to me by my staff. Do you see that phrase there?

A. Not in October eighteenth (18th), nineteen ninety (1990).

Q. Well, there were two letters of October eighteenth (18th), both dated the same day.

BY Me FREEDMAN:
If I may, My Lord. That's the same document we were looking for yesterday that was attached to the November sixteenth (16th), nineteen ninety (1990)...

BY THE ACCUSED:
Well, if a copy was attached, the letter should be still there, and its original, too.

BY Me FREEDMAN:
I think that was filed yesterday.

BY THE COURT:
Yes, it was. Thank you, Mr. Freedman.

BY THE ACCUSED:

Q. Anyway, if you recall this phrase without looking into the letter, that would be the shortest way.

A. What was the question?

Q. Well, the question is, were you one of the staff who Vice-Rector referring to?

BY THE COURT:
You would have to, I think, direct that question to the Vice-Rector.

BY THE ACCUSED:
Well, no.

BY THE COURT:
At least the way you put the question.

BY THE ACCUSED:
No, it is the right witness to ask. Did you...

BY THE COURT:
Ah, did you complain, yes. Perhaps you can put the question that way.

BY THE ACCUSED:
Well, this is...

BY THE COURT:
But not with reference to the letter.

BY THE CROWN:
She already testified that she was harassed by the accused. So...

BY THE ACCUSED:

Q. Were you... did you convey to the Vice-Rector Sheinin any veiled threats made by me?

A. No.

Q. Okay. Were you aware that Vice-Rector Sheinin was trying to terminate my employment in nineteen ninety (1990)?

A. To terminate your employment perhaps is not the language that I would choose. Certainly she questioned the feasibility of continuing it.

Q. Well, feasibility of continuing is... it is the same solution of Jewish question. Not extermination of Jews, just solution of Jewish people.

BY THE COURT:
Now you're harassing the witness.

BY THE ACCUSED:
Harassing witness?

BY THE COURT:
Yes, you are.

BY THE ACCUSED:
Well, I'm sorry. I thought I just was making a comparison.

BY THE COURT:
It's not a comparison that is very appropriate.

BY THE ACCUSED:

All right.

BY THE COURT:

And you well know that.

BY THE ACCUSED:

Well, I think that she is using inappropriate language.

That's what all was I trying to point out.

BY THE COURT:

And she is not subject to cross-examination by you nor is her testimony subject to editorials by you.

BY THE ACCUSED:

Q. So you're aware of her desire not to continue my employment at Concordia. Were you aware of the reasons for such desire?

A. Yes.

Q. Okay. What were they?

A. I believe they included that I would not limit that to your behaviour.

Q. Yes. Could you be more specific?

A. I think the Vice-Rector was quite specific in her letter to you of October eighteenth (18th).

Q. Well, she mentioned veiled threats and we see that she was lying. So far nobody transmitted to her any veiled threats. So let us not refer to the letter. Let us refer to the facts. You are here to testify about facts, aren't you? Could you testify as to facts?

A. What was the question?

BY THE COURT:

The question was, are you aware of Dr. Sheinin's reasons. And you started off by saying Fabrikant's behaviour.

BY THE ACCUSED:

Yes. And I asked for the facts.

A. It included harassing behaviour, constant telephone calls, entering into written discourse that she felt was inappropriate in tone, and approach, and language, the number of times he would telephone, the impatience with which he awaited any response to any letter he might have sent, or any question he may have asked.

Q. That's all? Nothing about threats? Not at all? It was totally unrelated to threats, it's only what you said?

A. I cannot answer that.

Q. Well, I'm asking for your knowledge. I'm not asking you to...

BY THE COURT:

Well, then you ask that it's totally... you see, you're going further. She has told you what her knowledge is.

BY THE ACCUSED:

Yes. I'm asking...

BY THE COURT:

Don't... don't make... don't try by slipping in a question sideways to make her testimony that of Sheinin. You'll have to put these questions to Sheinin. This is unfair this sort of examination.

BY THE ACCUSED:

Why is it unfair? I don't understand the word "unfair".

What? The witness will suffer more...

BY THE COURT:

I am not going to argue with you. If you have questions to put, put them, otherwise we're finishing.

BY THE ACCUSED:

Well, I put question. You allowed the question. She didn't answer.

BY THE COURT:

What I pointed out was your editorializing had better stop.

BY THE ACCUSED:

I'm not editorializing...

BY THE COURT:

She has given you the reasons and that is that. What you tried to do... what you tried to do by a question was have her agree that these were all of Sheinin's reasons and none had anything to do with threats, and she told you before, I will tell you what I know. I don't want to limit it. And I...

BY THE ACCUSED:

What was wrong with my question? I asked, to the best of your knowledge...

BY THE COURT:

Your question... now you're amending your question. Your question as it was put was unfair.

BY THE ACCUSED:

Now it is fair?

BY THE COURT:

I haven't heard it yet.

BY THE ACCUSED:

Q. To the best of your knowledge, was that the only reasons or you have knowledge of some other reasons?

A. There was always the question of rumour, allegations that were unsubstantiated, that were floating around. I cannot say how much that influenced or what percentage it played in the Vice-Rector's decision.

Q. Do you recall again in summer nineteen ninety (1990) at least one very substantiated threats which you heard from McKenzie?

A. A substantiated threat that I heard from Dr. McKenzie in nineteen ninety (1990)?

BY THE CROWN:

Are we on the same subject again, My Lord?

BY THE COURT:

We have been through this question of threats with Mrs. Habib over and over again. Would you please pass from the question of threats to something else. We have heard enough with regard to threats. You are foreclosed on this subject.

BY THE ACCUSED:

Fantastic.

Q. Were you aware of the meeting at Montreal Athletic Association in end of October, nineteen ninety (1990)?

A. Yes.

Q. Were you present there?

A. No.

Q. How do you know about the meeting?

A. The meeting is reported in Dr. Sheinin's letter to Dr. Kenniff dated sixteen (16), November, nineteen ninety (1990).

Q. That is totally your knowledge about the meeting?

A. Yes. As I said, I was not there.

Q. Okay. In nineteen ninety-one (1991) when my name came to your attention?

A. That's the question?

Q. Yes.

A. When did your name come to my attention in nineteen ninety-one (1991)?

Q. Yes.

A. I am afraid, My Lord, I am one human being. His name had come to my attention through...

BY THE COURT:

Perhaps you might ask the witness in what...

A. I don't understand...
Q. ... or explain to the witness in what context you're talking about.

BY THE ACCUSED:

Well, I can never satisfy you. When I ask very general questions, bad. When I ask specific questions, you object that it is leading.

BY THE COURT:

When the witness has been unable to place your question, you've been allowed to clarify your question. Don't try that.

BY THE ACCUSED:

All right. All right. Let's go into...

BY THE COURT:

That you know very well.

BY THE ACCUSED:

Let us go to the fall of nineteen ninety-one (1991).

Q. When you become aware that something wrong is going in Department of Mechanical Engineering, and something is related to me?

A. By the fall of nineteen ninety-one (1991), My Lord, I was gone from the office of the Vice-Rector, Academic, and was then working as Executive Assistant to the Rector. In the fall of nineteen ninety-one (1991), I would have to refer back to the file. The questioner would have been reviewed for reappointment of his contract in the fall of nineteen ninety-one (1991), since the contract would have come to an end in May of nineteen ninety-two (1992). And certainly the dossier would have come back to my attention at that time.

Q. Yes. And in what regard? Who brought it to your attention and what was the purpose?

A. In November of nineteen ninety-one (1991), the members of the Departmental Personnel Committee of the Department of Mechanical Engineering wrote to the Secretary General of the University, copying the Rector, the Vice-Rector, Academic, the Dean and Mr. Grendon Haines in which they expressed concerns involving the questioner.

Q. Well, what kind of concerns were they? It was November what?

A. Seventh (7th).

Q. November seventh (7th). So what kind of concerns were they?

A. "Concerns about safety measures undertaken by the University, especially in view of the fact that a copy of the DPC's recommendation to the Faculty Personnel Committee regarding his appointment will soon be received by him. The DPC has alarmed that security measures taken so far by the University do not guarantee full security to the members of the DPC, as well as certain members of the Department."

Q. What did they demand?

A. "They requested that the University invoke Article 2907 of the Collective Agreement which states: the Rector may suspend a member with or without salary because the member poses an immediate and continuing threat to the University. If the University, due to legal or other limitations is unable to invoke Article 2907 immediately, the DPC requested that his office be moved immediately outside of the offices of the Department of Mechanical Engineering, including CONCAVE and the Annex."

Q. Okay. So this document came to... so the DPC wanted, first of all, to suspend me as posing immediate and continuous danger to the University. And second, they wanted... ah, if not, then my office to be moved outside. Well, outside everything. Did Rector read this letter?

A. Yes.

Q. Okay. What was his reaction?

A. He wrote to the members of the DPC...

Q. No. I am asking when you showed it to him, what was his reaction?

A. I do not recollect.

Q. Did anyone try to contact members DPC and ask what reasons they had to think that I was danger? Did anyone try to do that at that time?

A. I myself met with the Chairman of Mechanical Engineering to discuss that.

Q. Okay. Describe this meeting, please. Do we have any record of that meeting, any notes?

A. I have my handwritten notes from that meeting.

Q. Okay. May I take a look at it?

BY THE COURT:

Q. Have you read these notes?

A. Yes, sir.

Q. Yes, you may.

If you want to sit down while you're waiting for the question, go ahead.

BY THE ACCUSED:

Q. Do you have extra copy for me of that letter?

A. No.

BY THE COURT:

Now, would you hand the notes back to the witness. You've taken cognizance of them.

BY THE ACCUSED:

I couldn't read everything there in handwriting.

BY THE COURT:

Now would you put whatever questions you have.

BY THE ACCUSED:

Well, first of all, it would be great, I would appreciate if she could just read the notes themselves.

BY THE COURT:

No. You will put your questions. She has...

BY THE ACCUSED:

Well, I couldn't read everything there. It's handwritten and not everything was readable to me.

BY THE COURT:

Well, then, I'll have the jury go out and we'll do what we did before. The witness will read to you the notes if you couldn't decipher them.

BY THE ACCUSED:

I insist the jury stay here.

BY THE COURT:

Ladies and gentlemen, it's break time in any event, so you may escape for a few minutes, and I'll see you in ten minutes.

(THE MEMBERS OF THE JURY LEAVE THE COURTROOM)

(OUT OF THE PRESENCE OF THE JURY)

BY THE COURT:

Now we'll do one thing before we adjourn, and just one thing. Mrs. Habib, would you read these notes so that...

A. Yes.

BY THE ACCUSED:

Well, slowly, if possible. It was December...

BY THE COURT:

You're not required to read them as if someone were taking dictation. Just read your notes and...

A. Nine (9) December.

BY THE ACCUSED:

Q. One second, it was December?

A. Ninth (9th.)

Q. December ninth (9th), nineteen ninety-one (1991).

BY THE COURT:

Mr. Fabrikant, I am not going to sit here while you go through that routine.

Mrs. Habib, would you please read your notes.

BY THE ACCUSED:

Well, I would not remember. I need to...

BY THE COURT:

Oh, Mr. Fabrikant, my goodness where has that great memory of yours gone?

BY THE ACCUSED:

Well...

BY THE COURT:

Come on.

BY THE ACCUSED:

... leave your sarcasm for some other occasion.

BY THE COURT:

You have it.

BY THE ACCUSED:

Do not... remember I want...

BY THE COURT:

You know...

BY THE ACCUSED:

Slowly.

BY THE COURT:

Would you read your notes, please. And if there's any interruption at all, just keep reading.

A. Okay.

"I assured him I knew the dossier.

Offered assistance."

BY THE ACCUSED:

I can't hear you.

A.

"Discussed academic process out of our hands. Could the Department accept his return if we appointed. Assured yes. Why fear? Complaints two years old. Fear seems to be based on societal scares (physicist in Iowa, the postie who was murdered by the boss). Wanted assurance that if recommendations for non-renewal were pursued we would protect the Department. Assured him we would do so to the best of our ability. Offered counselling assistance for the members of the Department who felt this was not necessary. Discussed the need to follow process in terms of Code of Conduct charges if laid. Seemed extremely calm. Reassured me that he was not afraid."

BY THE COURT:

Okay. Now would you hand that note back to Mr. Belleau for Mr. Fabrikant to look at now that you've said what it comprises, and we will adjourn for ten minutes.

(THE JUDGE LEAVES THE BENCH)

SHORT RECESS

(THE JUDGE TAKES THE BENCH)

(THE JURY TAKES THE BENCH)

WITNESS: MAUREEN HABIB -- UNDER THE SAME OATH

BY THE ACCUSED:

Well, I think we should relieve Mr. Yelle, if he is still there, or you did already? No?

BY Me FREEDMAN:

(Inaudible).

BY THE ACCUSED:

I'm sorry I kept him. I'm sorry.

EXAMINATION BY THE ACCUSED (CONT'D):

Q. So would you please describe the meeting with Osman?

A. I'm sorry, I didn't hear you.

Q. Would you please describe the meeting with Osman?

A. Yes. I met with him on the request of the Rector to discuss further with him what had been written in the letter that I referred to earlier of seven (7) November. I offered to meet with him and the other members of the Departmental Personal Committee. He indicated that meeting with him as Chair would be sufficient. So I did so.

Q. Do I understand correct that you discussed their request that I be suspended as danger to the University?

A. Yes, we would have discussed in general their letter, and you saw my notes from that meeting.

Q. Yes. Was he surprised that it took more than month to react to the letter which signalled danger?

A. No.

Q. Well, were you surprised that it took Rector the whole month to react to a letter which suggested danger to the University?

A. It did not.

Q. It did not suggest or...

A. It did not take a month.

Q. Sorry?

A. It did not take a month.

Q. Well, the letter is dated when?

A. The seventh (7th) of November.

Q. Your meeting was when?

A. The ninth (9th) of December.

Q. So it is more than month, is it?

A. Between the letter and the meeting.

Q. That's what I am saying. So it took more than a month to react to the signal of danger?

A. You are precluding that nothing else happened in the meantime.

Q. Ah, well, tell us about it. So something happened between?

A. Yes.

Q. Okay. Share with us your knowledge. What happened in between?

A. In between I would have spoken with Dr. Osman, myself, on the telephone, and as well, Dr. Kenniff would have written to Dr. Osman.

Q. Okay. So something... do you recall when you spoken to Osman?

A. Not precisely.

Q. Well, with the accuracy of one week? Was it November twelve (12) something?

A. Not precisely.

Q. Approximately, within what...

BY THE COURT:

The witness said she doesn't remember precisely.

BY THE ACCUSED:

I understand English.

BY THE COURT:

Then leave the thing alone. She doesn't remember.

BY THE ACCUSED:

Q. And do you have any record of that telephone conversation?

A. No.

Q. What was the content of the conversation?

A. I am sure I would have talked to him about having received the note of November seventh (7th) to say that Dr. Kenniff was concerned, and I would have had a preliminary conversation with him. I would have also spoken with Dean Swamy, again a preliminary conversation to try and ascertain what was, in fact, happening in the department, I would have reported this to Dr. Kenniff, then I would have received my instruction from him. He would have also written to the members of the DPC, which he did.

Q. Okay. During conversation with Osman, did you ask him why they were afraid?

A. I certainly did during my luncheon meeting with him.

Q. No. I am asking about telephone conversation yet?

A. I do not recall.

Q. Well, if you received a letter saying they are so afraid they want my office out, they want me to be suspended as danger to University, and you do not remember whether you asked him what they are afraid of?

A. I did ask him at the luncheon.

Q. Well, the luncheon was December ninth (9th). By that time everyone could be dead.

BY THE CROWN:

This is all cross-examination.

BY THE COURT:

This is cross-examination and argument. Disallowed.

BY THE ACCUSED:

All right.

Q. What else do you recall from the conversation with Osman?

A. You have my notes from my luncheon with Dr. Osman.

BY THE COURT:

Ask a specific question.

BY THE ACCUSED:

Q. I'm talking about phone conversation, not the luncheon.

A. I cannot recall.

Q. Okay. Before that did you talk to Mr. Relton...

A. On this issue?

Q. ... in November? Yes.

A. On this issue?

Q. Yes. On issue of what is going on in the Department.

A. No.

Q. Were you aware that Mr. Relton, Mr. Haines, McKenzie are doing something?

A. I was as a result of the seventh (7th) of November note from the DPC, because the DPC noted that they had met with the University intervention team.

Q. Before that you knew absolutely nothing?

A. About what?

Q. About what is going on in the Department.

A. Well, that's when it was certainly officially brought to our attention.

Q. This is not my question.

A. What is your question?

Q. Did you know what was going on in the Department before that?

A. About what?

Q. Did you know before November seventh (7th) that Departmental

Personnel Committee intends not to renew my contract?

A. I may have, but I do not recall precisely. But certainly reappointment occurs in the fall. I may have been told by someone else that there was a possibility, that the Department was thinking of going in this way. But this is when I was officially informed.

Q. Did you know that I was November first (1st) arrested and searched by police?

A. Yes, I was informed of this afterwards.

Q. Do you remember when and by whom?

A. No, because I was returning from a vacation overseas at that time, and so I would have heard of it upon my return from vacation.

Q. Do you remember that we met soon after that in person?

A. We may have. You may have come to my office. You came several times.

Q. I wouldn't say several. I think it was the only one I came to your office, anyway.

BY THE COURT:

Would you stop arguing with the witness.

BY THE ACCUSED:

Q. Do you recall that I came to your office about that time, somewhere in November?

A. November, nineteen ninety-one (1991). Yes. Yes, you came to my office in November, nineteen ninety-one (1991), because of the access request you had made to our file.

Q. Exactly. Exactly. And do you remember that by that time I asked you whether you know about my arrest? You remember that?

A. No.

Q. No. Maybe you don't remember that because you told me that you had no idea about my arrest?

A. Well, I was not present in the country at the time when this occurred.

Q. Well, you returned already several days, and just now you testify that upon the return you were informed about it.

A. I was told about it, certainly. It wasn't a big secret.

Q. Yes. But to me you pretended knowing nothing. Now you recall the conversation?

A. No.

Q. No. All right. Do you recall also that by that time I told you that this kind of abuse should stop?

A. What kind of abuse?

Q. Well, I was talking about arrest and other harassment.

A. You may well have told me that.

Q. But you are not sure?

A. I don't recall a great deal of the conversation at that meeting. I do remember that you came around that time, because that was when you had begun your requests to just about every department in the University for access to any file held in that department that had to do with you. So I was one of many you would have gone to see, I assume, because I knew that you had requested this access of most of the departments that dealt with you.

Q. Oh, yes. And to those who didn't, too. You forgot?

A. That I don't know.

Q. No. So only those who dealt with me?

A. Certainly I was aware that you had asked for our office, and the Rector's office, the Vice-Rector, Academic's office, Secretary General.

Q. But wasn't it my right to do so?

A. Certainly it was.
BY THE COURT:
You're arguing with the witness.

A. And it was granted to you.
BY THE ACCUSED:
I'm not arguing. I'm just asking.

Q. Was it my right or I did something excessive?

A. As I said, it certainly was your right, and it was granted to you.

Q. Exactly. Now, by approximately the same time, did you have any conversation with Mr. Relton concerning the same thing, non-renewal of my contract?

A. I can't think of why I would have discussed that issue with Mr. Relton.

Q. This is not my question. My question, whether you did or didn't.

A. I do not recall.

Q. Why? I can give you many whys. Because he was deeply involved in all that. Are you aware of that?

BY THE COURT:
You have the witness' answer. She said, I do not recall.

BY THE ACCUSED:
Okay.

Q. Do you recall telling Mr. Relton that the reasons of Departmental Personnel Committee not to renew my contract "didn't make sense", quote, unquote?

A. I have no recollection of why I was discussing this with Mr. Relton.

Q. I'm not asking you why. Do you recall that by that time you told Mr. Relton that reasons of Departmental Personal Committee not to renew my contract "didn't make sense", quote, unquote?

A. I don't recall using those words.

Q. Did you tell it to Mr. Relton? Sorry?

A. I do not recall using those words to Mr. Relton.

Q. Was that at least corresponding to your own opinion on the reasons of Departmental Personnel Committee, this kind of phrase?

A. Would you repeat the question, please? Are you asking me my opinion?

Q. No. I am asking whether this phrase, which I quoted to you, were in agreement with your personal opinion on the reasoning of the Departmental Personnel Committee not to renew my contract?

BY THE COURT:
In effect, he's asking you your personal opinion.

A. Yes. Do I have to give it?

Q. Sure. Go ahead.

A. My personal opinion was that the reasons given by the DPC not to renew your contract were not in keeping with the normal reasons one usually gave to not renew the faculty member's contract.

BY THE ACCUSED:
What a smart answer it is. I just couldn't understand what she said. Did she agree, or she didn't agree with me.

BY THE COURT:
You know something...

BY THE ACCUSED:
It looked like she agreed on the one hand.

BY THE COURT:

You know something... you know something, this is approaching the limit of your interventions and your wisecracks and your remarks when a witness gives an answer.

BY THE ACCUSED:

Well, I'm sorry...

BY THE COURT:

And would you please desist from that. You understood very well what the witness said. As you like to say, your English is pretty good.

BY THE ACCUSED:

My English is good, but that was so fantastic that... the first impression was that she agreed with me. But I'm not sure. So this time I ask you to interpret. She agreed with me?

BY THE COURT:

I'm not going to interpret the witness' answer. I'm not here to interpret the witness' answer for you. The witness' answer was perfectly clear.

BY THE ACCUSED:

Q. Would you please answer in simple terms.

BY THE ACCUSED:

The witness' answer...

BY THE CROWN:

He got his answer, My Lord.

BY THE COURT:

He got his answer.

BY THE ACCUSED:

Well, if you want just to repeat it, then no point.

Q. Could you put it in more simple terms?

BY THE COURT:

The answer is there. You do not need to put it in more simple terms, Mrs. Habib.

BY THE ACCUSED:

Q. Did you express this opinion to members of DPC at that time?

A. No.

Q. Was this opinion of yours shared by the Rector at that time, to the best of your knowledge?

A. I do not know.

Q. Did you ever discuss with the Rector the reasons why Departmental Personnel Committee wants to terminate my contract?

A. I have no recollection...

Q. Okay.

A. ... of doing that, no.

Q. So, did you at any time clear with Osman or any other members of the Departmental Personnel Committee the reasons why at that time they wanted me to be declared danger to the University?

A. Would you please repeat that question?

Q. Did you try to find out from Osman or other members of Departmental Personnel Committee the reasons for their fear and their desire that I be declared danger to the University?

A. Yes.

Q. When was it?

A. At the meeting with Dr. Osman on the ninth (9th) of December.

Q. Not before that?

A. I may have broached the subject on the telephone, but certainly formally to sit down in a face-to-face situation with notes taken afterwards, it's clear, clearly on the ninth (9th) of December.

Q. Okay. So what... okay, let's now to that meeting and in as

much detail as possible, would you please describe the conversation?

A. You have my notes resulting from the meeting. And that was Dr. Osman. He... the areas that we discussed are delineated there, if I remember.

BY THE CROWN:

She's the one, My Lord, that should have the notes in front of her.

A. Yes, if I could have them in front of me.

BY THE COURT:

Would you pass the notes back to the witness. Now, I don't want you to read from your notes. I want you to refresh your memory from your notes and speak to what transpired between you and Osman.

A. I told him, first of all, that I was aware of the dossier, that I knew the dossier well from when I had been assistant to the Vice-Rector, Academic, that I was there on the Rector's behalf to offer assistance, and therefore did so. We discussed what I note here is the academic process. Academic process being at that particular time the questioner was being considered for renewal of contract. You no doubt have heard already how that works at the University. It's done first at the departmental level, then at the faculty level, the Dean, and then to the Vice-Rector. The Department was concerned because the Department had recommended against rehiring him.

I talked to him, that is Dr. Osman, that the academic process was not in our hands, that the Department had made its recommendation in normal ways of doing so, and had forwarded that recommendation to the Faculty. I asked him if the Department could accept the return of the questioner if he was, in fact, reappointed, that is that if the Faculty did not accept the recommendation of the Department. He assured me that, yes.

I asked him why people were afraid of him. He talked again about complaints that were two years old. He referred to someone who had been told that I know where your children are, and what school they go to, and where they play. When I asked him who that was, he could not identify that person for me. When I asked him on what was the fear based, he then did talk about fear from societal scares that had occurred very close to this time.

I remember particularly the question of the physicist in Iowa at the University of Iowa, if I understand correctly, is a graduate student who didn't win a medal, turned on either his advisor or colleague. I remember this particularly because as I had said earlier I was travelling back from overseas in early November, and I remember my father bringing this up to me when I came home. We were driving home from the airport. As you can appreciate always the stories of universities were always of interest.

Also, there was a question of a postman who murdered their superior. I do not remember that story particularly, but Dr. Osman did cite it to me.

He wanted assurance that if the recommendation for non-renewal were pursued, we would protect the Department. I, of course, asked him what he meant by protect the Department, and assured him that we would do what was in our power, and what was to the best of our ability.

I offered counselling and assistance to the members of the Department. We have, as you can imagine, many services at the

University. And I said, do you feel that your staff... your colleagues, need any kind of assistance from Health Services or any kind of counselling service. He felt and indicated to me that this was not necessary.

We discussed also the need to follow process in terms of Code of Conduct charges if they would be laid. This was no doubt in reference in fact to the incident that came to our attention of... I can't remember... October thirtieth (30th), perhaps, between the questioner and the DPC, which later, in fact, the questioner did lay Code of Conduct charges against the Department. The hearings... the Code complaint was heard. The complaints were judged much later in nineteen ninety-two (1992). He seemed extremely calm. He reassured me that he was not personally afraid.

BY THE ACCUSED:

Q. Okay. Could you clarify a little bit the statement... what was the question... could the Department accept me if I'm reappointed? What did you mean by acceptance?

A. Could they accept the decision? Was this a decision that, you know, that they could come to terms with?

Q. Well, could you clarify what does it mean not accept. What, they lock the door and not let me in the Department? What does it mean to accept?

BY THE COURT:

What she means is could they live with the decision if the Dean, or the Vice-Rector, Academic, overruled the DPC and said keep him.

A. Uh, huh. Yeah.

Q. That's what you said. And he said, yes, according to the witness.

BY THE ACCUSED:

No. This is not my question.

Q. My question is, first of all, were you aware by that time that Departmental Personnel Committee by that time already overruled this decision? Were you aware of that?

A. I'd have to go back. Had the Faculty Personnel Committee, in fact, met by then?

Q. Well, of course, December ninth (9th), isn't it? How could the Faculty Personnel Committee meets in November? You probably know that. Do you?

A. They usually... from my...

BY THE COURT:

Listen, listen, the chit-chat with the witness has to stop. Either the witness knows or the witness doesn't know whether they had met, or whether they hadn't met. She told you what her discussion with Osman was. That's what you asked. She said what it was.

BY THE ACCUSED:

Q. All right. So were you aware at the time of discussion the Departmental Personnel Committee already overruled the Faculty?

A. I don't remember.

Q. The Faculty Personnel Committee already overruled Departmental Personnel Committee?

A. I don't remember.

Q. But in terms of acceptance still, what this question meant? What if they don't accept what, for example, did you think they can do? Suppose they don't accept, what would that mean?

BY THE CROWN:

Hypothetical.

BY THE COURT:

Well, this is hypothetical, purely speculative.

BY THE ACCUSED:

No, it's not purely... I am clarifying the question.

BY THE COURT:

Of course it is. You're not clarifying anything.

BY THE ACCUSED:

I'm clarifying the term "accept".

BY THE COURT:

The question is disallowed.

BY THE ACCUSED:

So I cannot clarify what the...

BY THE COURT:

No, it's perfectly clear what the witness said.

BY THE ACCUSED:

All right.

Q. As far as fear is concerned, the only thing which Osman said was about children? Was anything else said by Osman?

A. That's the one that I remember the most vividly. I don't really remember others.

Q. But there were others?

A. I don't remember.

Q. The question of physicist in Iowa and postie who killed his boss, was it raised by you or by Osman?

A. Osman.

Q. Did you ask him if he assured you that he was not afraid why he signed the demand that I be declared danger to the University?

A. I did not ask in that way. I remember pressing Dr. Osman.

Q. Pressing what?

A. Asking him over and over, are you sure that you are not afraid, and if you are afraid what is it based on?

Q. Yes.

A. He kept assuring me that he was not.

Q. So why then... then did you ask him if his letter of November seventh (7th) was written in bad faith?

A. No, I did not.

Q. That he faked his fear then?

A. No, I did not.

Q. You didn't ask. Did you ask him whether on November seventh (7th), when he signed this letter he was afraid, and on November ninth (9th), he was no longer afraid?

BY THE CROWN:

This is cross-examination, My Lord.

BY THE COURT:

Cross-examination, yes. Objection maintained.

BY THE ACCUSED:

Well, I'm just asking different questions.

BY THE COURT:

Objection maintained.

BY THE ACCUSED:

Q. Did you know by that time that my complaint concerning incident in Department was filed November third (3rd) with Code of Conduct?

A. I don't remember the exact date, but I'm not surprised it was filed at around that time.

Q. So did you discuss then proceeding under the Code, not if charges are laid but charges were laid. Could that be?

A. My note says if laid.

Q. I know the notes say, but if you try to recollect better, maybe you discussed this particular part, how to proceed

rather than if charges are laid?

A. No.

Q. No. Did you discuss maybe Department launching complaint against me under Code of Conduct? After all, it was I who was harassing them. Did you discuss that possibility?

A. I have no recollection of discussing that at all.

Q. Did you find it maybe natural since I was harassing them that they complained about me?

BY THE CROWN:

This is opinion, and arguing, and cross-examination.

BY THE COURT:

Yes. Objection maintained.

BY THE ACCUSED:

Q. Now, assurance which you wanted if non-renewal pursued, could you elaborate what that meant, that Department next year would try again to fire me or something else? What exactly was meant by that, if non-renewal pursued?

A. What that would mean is that if the Department's recommendation was, in fact, endorsed by the Faculty, and the Dean, and the Vice-Rector, that is if it was upheld and everyone agreed that the individual not be rehired.

Q. Well, by that time Department already... Faculty already ruled on that. So probably did you discuss the possibility that Vice-Rector would accept Faculty position... departmental position rather than Faculty position? Was that discussed?

A. There is no note to that effect.

Q. I'm asking your recollection not about note.

A. I do not recall discussing that.

Q. So you cannot really clarify what non-renewal pursued means. Maybe...

A. I just said what it meant.

Q. It was not discussed in terms of, say, next year they will try it again?

A. No.

Q. No. Did you try to reconcile the so-called Department needed protection, and at the same time he assured you he was not afraid. Did this sound to you contradictory?

A. Not necessarily contradictory. Protection or assistance could also... has been looked at, not so much from a violence point of view, but from a harass point of view.

Q. What was discussed, harassment, or me coming and shooting?

A. I did not discuss the possibility of you ever shooting anyone. I asked whether or not there was any reason that Dr. Osman knew of that there were any threats that were substantiated, that there were any facts that he could give me.

Q. Did you remind him the words which I told you during our meeting in November, that abuse and harassment should stop?

A. It is a matter of opinion as to who was abused and who was harassed.

Q. That was not my question.

BY THE COURT:

Well, there's your answer.

BY THE ACCUSED:

Q. Did you tell him these words?

A. I've answered the question.

Q. Well, did you or didn't you?

A. What was the question?

Q. Did you tell him that you met with me and that I told you that to arrest person, without any grounds whatsoever, in full view of the University, is an outrageous abuse?

A. No, we did not discuss that.

Q. But you recall that I told you that?
A. No, frankly, I do not recall much of that meeting except that you came to get access to the file.
Q. Do you think that if you told him that decisions to fire someone which doesn't make sense is invitation of violence?
BY THE CROWN:
It's a hypothetical question.
BY THE COURT:
Yes, it is.

BY THE ACCUSED:
No, it is not.
BY THE COURT:
But mind you, he asked... it's not in the sense that he said, did you discuss this or did you tell him that.
BY THE ACCUSED:
It's a normal question.
BY THE COURT:
Anyway, it's a question. It's permitted.
BY THE ACCUSED:
Well what, I should repeat?
BY THE COURT:
The witness asked you to repeat the question.
BY THE ACCUSED:
Q. Did you tell Mr. Osman that decisions to fire someone for reasons which doesn't make sense is invitation of violence?
A. No.
Q. Do you think if you told him that we would not be here today?
BY THE COURT:
That is not allowed.
BY THE ACCUSED:
It should be allowed.
BY THE COURT:
Well, it isn't.
BY THE ACCUSED:
Too bad. Should I continue? It will be...
BY THE COURT:
No, you might as well stop. How long do you propose to be with this witness? We're now at a day and a half.
BY THE ACCUSED:
Maybe maximum for half an hour, if I'm not interrupted tomorrow.
BY THE COURT:
Well, it's up to you whether you're interrupted or not.
(REMARKS OFF THE RECORD RE CONTINUATION)
BY THE COURT:
Thank you, ladies and gentlemen, tomorrow morning, nine-thirty (9:30).
(THE JUDGE LEAVES THE BENCH)
(THE JURY LEAVES THE COURTROOM)
ADJOURNMENT

I, the undersigned, MICHEL DAIGNEAULT, Official Court Reporter, hereby certify the foregoing is a true and faithful transcript of the evidence in the above-mentioned case as taken by mechanical recording, to the best of the quality of said recording.

And I have signed.

MICHEL DAIGNEAULT,
Official Court Reporter
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PROVINCE OF QUEBEC

DISTRICT OF MONTREAL

STAGE: TRIAL

CASE NO. 01-017372-928

PRESIDING: THE HONORABLE JUDGE FRASER MARTIN, J.S.C.

NAMES OF ATTORNEYS: HER MAJESTY THE QUEEN
Complainant

-vs-

VALERY FABRIKANT
Accused

NAMES OF ATTORNEYS: MAITRE JEAN LECOIRS
ATTORNEY FOR THE CROWN

MR. VALERY FABRIKANT
REPRESENTING HIMSELF

MAITRE LOUIS BELLEAU
AMICUS CURIAE

DATE OF THE HEARING: JUNE 17th 1993

OFFICIAL COURT REPORTER: MS. MAUREEN ROWE

CLERK OF THE COURT: MS. ROXANNE DESROSIERS

FICHER NO.: 3412

TRIAL

CASE NO. 01-017372-928

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TRIAL TO CONTINUE ON JUNE 18th 1993

BY THE HONORABLE JUDGE FRASER MARTIN, J.S.C.:

Yes Mr. Freedman?

BY ME FREEDMAN:

Yes My Lord, I want to address you ... discuss with you the issues of subpoenas. When I returned to my office yesterday, I was faced with about twelve (12) new subpoenas sitting on my desk with respect to this case. The difficulty is in the duces tecum aspect of some of them. It seems to me that some of the issues, that some of the documents that are requested, you have ruled are not relevant to this case and in other cases, I don't understand what the duces tecum means. I don't know how you want to proceed. I can go through them or ...

BY THE COURT:

OK, let's go through them to give me an overview. I may ... I may need copies of these or ...

BY ME FREEDMAN:

OK.

BY THE COURT:

... or whatever.

BY ME FREEDMAN:

Five (5) or six (6) of them are fine, the ones that don't ask for documents are clear enough.

BY THE COURT:

OK, put the five or six that you're not worried about,

put them aside for the minute and let's ... let's deal with the ones that you consider problematical.

BY ME FREEDMAN:

Well for instance, the first one I find problematic is to Angela Mancuso who is the secretary of the director of security, Mr. Bujold, who has already appeared here.

BY THE COURT:

Just a second. Yes?

BY ME FREEDMAN:

And what it says is: all documents in your possession or in possession of security department and in particular...

BY THE COURT:

Just a second, I ...

BY ME FREEDMAN:

Sorry.

BY THE COURT:

All documents in your possession.

BY ME FREEDMAN:

Right, or in possession of security department and in particular security logs and reports of March, April 1989.

BY THE COURT:

Yes.

BY ME FREEDMAN:

The difficulty with that is twofold. Firstly, Mr. Bujold who is the director of security has already testified. It seems to me he would be the appropriate person to speak to these documents.

Secondly in terms of volume, after having consulted with Mr. Bujold last night, it looks like a fishing expedition to me, My Lord. We're talking, you know, every day there's a security log and several intimate

reports.

BY THE COURT:

Yes.

BY ME FREEDMAN:

That's that subpoena. Another subpoena has been issued to Mr. Antonio Costanzo (sic).

BY THE COURT:

Who is?

BY ME FREEDMAN:

And .. who is the former president of CUFA, the faculty association.

BY THE COURT:

Oh yes, OK.

BY ME FREEDMAN:

And what it says is: all documents from CUFA where Valery Fabrikant's name is mentioned. My understanding is that the attorney for CUFA has already handed over the complete files of CUFA with respect to Mr. Fabrikant several weeks ago and certainly Mr. Costanzo does not have custody of these files now. He hasn't been president in several years.

BY THE COURT:

Have you confirmed that with the ... with the attorney representing CUFA?

BY ME FREEDMAN:

I tried calling him this morning. I haven't ...

BY THE COURT:

It's?

BY ME FREEDMAN:

Mr. Lehrer. (sic)

BY THE COURT:

Mr. Lehrer.

BY ME FREEDMAN:

Yes, I will try again.

BY THE COURT:

I wonder if you would try and ... and contact MaEtre Lehrer and see if you can get his confirmation.

BY ME FREEDMAN:

OK, I remember standing there when the ...

BY THE COURT:

I remember being here at part of it and I of course have no idea of what was handed to who but ...

BY ME FREEDMAN:

And how do we deal with the difficulty of the fact that

Mr. Costanzo is no longer in a position with the association and doesn't have ... I mean, they're not his ... he doesn't have access to these documents.

BY THE COURT:

They're not his, no. Well we'll deal with that if we have to.

BY ME FREEDMAN:

OK.

BY THE COURT:

Sorry, OK.

BY ME FREEDMAN:

Then we have a series of three (3) that have the same duces tecum on them: the names are T.S. Sankar, S.V. Hoa, H-o-a and J.D. Xistris, that's X-i-s-t-r-i-s and what the duces tecum says for those three: simply all material proving your contributions to Fabrikant's publications. Firstly, I don't know what that means and secondly, I believe you have already ruled that this whole issue is not pertinent to this trial, the whole issue of fraud and authorship and so on.

BY THE COURT:

Let's go on.

BY ME FREEDMAN:

We then have two (2) more left, one for S. Sankar.

BY THE COURT:

The other one was also to ... Oh the other was to T. Sankar.

BY ME FREEDMAN:

That's right.

BY THE COURT:

OK, this is Seshadri.

BY ME FREEDMAN:

S. Sankar, that's right.

BY THE COURT:

Yes.

BY ME FREEDMAN:

Several difficulties with this one. I'll read it out: all DPC files mentioning Fabrikant's name, DPC evaluations of all department members in 1991, 1989.

BY THE COURT:

1991?

BY ME FREEDMAN:

Comma, 1989.

BY THE COURT:

1989.

BY ME FREEDMAN:

Right.

BY THE COURT:

OK.

BY ME FREEDMAN:

Then Concave reports to MESS.

BY THE COURT:

To?

BY ME FREEDMAN:

That's the ministry of ... MinistŠre de l'enseignement sup,rieur et de la science, I think, in 1988 and 1990. Then Ph, I guess this should be PhD, PhD dissertation of Rang Anathan which I assume is a person.

BY THE COURT:

How do you spell his name?

BY ME FREEDMAN:

R-a-n-g A-n-a-t-h-a-n. Then report on liquid tanker stability and finally for this subpoena: all contracts ever signed by you for your private companies.

BY THE COURT:

Yes.

BY ME FREEDMAN:

Again with these, there are two issues. I suppose the first issue is that S. Sankar certainly doesn't have custody of DPC files. That would be the chair of the department who would have custody of those, so I think that's the wrong person to ask for DPC files.

Secondly, especially with respect to the contracts ever signed by you for your private companies, I also believe that you've ruled on that issue as being irrelevant to this trial and the last one.

BY THE COURT:

Yes.

BY ME FREEDMAN:

Dr. Osman, all contracts ever signed by you for your private companies.

BY MR. VALERY FABRIKANT - ACCUSED
REPRESENTING HIMSELF:

No.

BY THE COURT:

You're reading from the subpoena?

BY ME FREEDMAN:

I'm reading from the subpoena. Next: list of ...

BY THE COURT:

Just a second.

BY ME FREEDMAN:

Sorry.

BY THE COURT:

Signed by you.

BY ME FREEDMAN:

Right, for your private companies. Next: list of department members who received university merit award in 1989. Then you FCAR, that's a government granting agency, grant applications, open brackets, (1980-1990).

BY THE COURT:

Does that read 1980 to 1990?

BY ME FREEDMAN:

Yes, that's my understanding. Next: your latest regular course evaluations, in brackets (three years) and lastly all proof that Fabrikant gave high marks.

BY THE COURT:

Yes.

BY ME FREEDMAN:

That's all.

BY THE COURT:

That's all.

BY ME FREEDMAN:

So I mean I suppose I'm applying to you under 698 to rule on the relevance and the material, you know, whether this material is relevant to the trial. I'm ... I'm asking for guidance.

As I said, part of it is a question of relevance and the other part of it is a question of understanding what the request is, especially with respect to all proof, the wording is: all material proving your contributions to

Fabrikant's publications, I don't know what that means.

BY THE COURT:

Thank you very much. Mr. Fabrikant, have you anything to say.

BY THE ACCUSED:

First of all, if we are discussing ...

BY THE COURT:

You have heard the ... the application.

BY THE ACCUSED:

If we are discussing relevance and admissibility, I would like jury to be here.

BY THE COURT:

The jury won't be here for the moment. We'll discuss relevance and admissibility in front of me. I'm the guy who decides on relevance and admissibility.

BY THE ACCUSED:

Well you are deciding but the jury should not be excluded to ...

BY MAITRE JEAN LECOURE

ATTORNEY FOR THE CROWN:

No, relevance and admissibility, it's a question of law, My Lord.

BY THE COURT:

I know that, Mr. Lecours, thank you anyway.

BY THE ACCUSED:

It is question of law. Let us ... let us read McWilliams.

BY THE COURT:

Let us not read McWilliams. I'm asking you to address yourself to ... to the application that Mr. Freedman just made.

BY THE ACCUSED:

Well I just want to make it to the record. (sic) McWilliams says that:

"It is necessary only if this may be fairly done without prejudice to the accused. The jury should not be asked to leave, except at the request or with consent of the defence."

Next: admissibility of evidence.

"Admissibility of evidence: need not be determined by testimony given in advance and in the absence of jury."

BY THE COURT:

We're not going to hear any testimony, I don't think.

BY THE ACCUSED:

I know, but those are three things which you already abused.

BY THE COURT:

I'm sorry but McWilliams is ... is a very sound authority a very well-known authority but McWilliams is in no sense the gospel and while it's perfectly true the authorities that you quote, I have discretion to make these determinations without the jury sitting here or as I wish and at the moment, I have an application in law.

So you address yourself to what Mr. Freedman said.

BY THE ACCUSED:

Well in what order? What is first in your list?

BY THE COURT:

Well he started with Angela Mancuso.

BY THE ACCUSED:

Well Angela Mancuso is, you remember, the ... Bujold testified that she is the one who has access to the files along with him. Therefore my request for those files is the same, justified as for her. (sic)

Second, she is called because if you remember again, I asked question of Bujold: who added the material to Barnaby file after 1989. He said that it was not him. You recall this testimony?

BY THE COURT:

I'm listening to you.

BY THE ACCUSED:

Yes. Then I asked him: who else except you has access? His secretary. I asked: anybody else, he said no, so I want the secretary first of all to confirm that she was the one who had typed those documents, what was the significance, who gave her directions to attach, why certain documents are there, anyway clarification of the post-1989 Barnaby file.

As far as the rest goes, again you remember that Mr. Haines testified that on 28th March, I threatened rec- tor and he informed the security about it. In the se- curity files which we get, there was no mentioning of March 28th threat or anything.

So either they didn't bring the complete file. Then this is what request is all about or if they brought complete file, then it means that Mr. Haines didn't tell the truth here.

So it is very relevant and it's not a fishing expedition at all. I don't ask any mountain of logs here. It was obviously clear that the logs I want, only those which mention my name and I don't think ... if ... if Mr. Bujold said that he brought everything, then there is nothing to bring. It's not just a mountain, it's ... he has to come and say: no, we don't have it, that's all. So the counsel is just perverting the truth. I don't know what the purpose of all that is. He could have perfectly addressed me during the adjournment and it could have been settled. He finds it necessary to spend the court time for that, I don't know why.

So as far as the first subpoena is concerned, is every- thing clear now or any additional explanations are needed?

BY ME FREEDMAN:

That's all that the subpoena says, My Lord. I had a dis- cussion with Mr. Fabrikant yesterday. He said he wanted Angela Mancuso to answer the questions about the custody of the file and what was added to it. Then I get back to the office yesterday and I ...

BY THE COURT:

This is the Barnaby file?

BY ME FREEDMAN:

The Barnaby file and then I got back to the office yes- terday and I see a subpoena for the person and it says

...

BY THE COURT:

All documents in your possession or in possession of security department and in particular logs and reports of March and April 1989.

BY ME FREEDMAN:

That's right. It doesn't say anything about mentioning of V. Fabrikant's name or anything.

BY THE ACCUSED:

Well anyway, it could be clarified with me very easily.

This ...

BY ME FREEDMAN:

I prefer to have it clarified by the court.

BY THE ACCUSED:

Well that's your business.

BY THE CROWN:

And moreover, My Lord, I think we're falling in a trap. The rules are designed, you know, there are some restrictions in examining your own witnesses. There are some restrictions about collateral evidence.

What is going on in this case is every witness generates one or two or three other witnesses because the accused doesn't like or thinks what he says is not precise enough, so each witness brings another witness, either to bring precisions or to ... to get contradicted.

That's not the process, that's not the normal way of a trial. We've been going on now and we're not even ... these twelve subpoenas, you know, Mr. Fabrikant announced his defence you know and we expect some people like Mr. Kenniff and Sheinin and so on and so forth. These are all witnesses generated by the previous witnesses.

It looks like a never-ending story and moreover I want to tell the Court, I totally and entirely agree with my colleague, Ma&tre Freedman, about the relevance of all that.

BY ME FREEDMAN:

I just want to say one more thing, My Lord. My fear is, as I said, Mr. Bujold has testified, Mr. Francisco has testified. These are the two top people in charge of security. Mr. Fabrikant wasn't happy with something, so he's then called the secretary to bring the documents. I'm afraid this will become a pattern and then secretaries will be subpoenaed to testify on the same issues that their supervisors were.

BY THE CROWN:

And can I tell you, My Lord, also at the preliminary hearing, a lot of these witnesses were blocked on 698 including Mr. Kenniff, Mrs. Sheinin, Mr. Osman, the Sankars and everything. We're dealing with a shooting, a murder, four people that have been shot on August 24th 1992.

BY THE ACCUSED:

And may I respond to all that?

BY THE COURT:

Yes.

BY THE ACCUSED:

It is absolutely not my fault that people come and do not bring evidence complete. At least one letter signed by Mr. Francisco has been brought by McKenzie if you recall. It was supposed to be there. If people did their job properly, this would not have happened.

It is not my fault that witnesses contradict each other. I do not force them to contradict each other and when this happens, it is right and obligation of defence to clear the situation and to understand what the real state of things is.

As far as the secretary is concerned, it is more than ten minutes testimony and I don't know why do we have to

spend fifteen minutes of court time discussing it. It's not more than ten minutes' testimony. I just want to ask her whether she was the person who added those documents, how they were received, why they were in this file. For example, my sick leave, if you remember, is in the security file. Isn't it strange and in any case, I don't think that I'm obliged to disclose all the details of my defence. Why this or that particular person is called, I think, when person comes here and testifies, you have all the ways and you usually do with much more than that, to stop questioning. So there is no problem whatsoever and I also remind you from Ciboyer (sic) which also says that evidence should not be blocked, that evidence ...

"The rule of evidence which prevents the triar of facts from getting at the truth by excluding relevant evidence in the absence of clear ground of policy or law to justify the exclusion ran afoul of the fundamental conception of justice and fair trial."

And this is what crown is ... attempts to do.

BY THE CROWN:

May I refer you, My Lord, to the chapter 1-9100, motion to quash subpoena in Huaschuck. (sic) The whole ...

BY THE COURT:

Just a second, 9?

BY THE CROWN:

Page 1-32 and 33, motion to quash subpoena. The whole rationale behind that is to ...

BY THE COURT:

No, I'm sorry, let me find your reference first because ...

BY THE CROWN:

Page 1-32, 1-32, chapter 1.

BY THE COURT:

Oh, chapter 1, OK, fine.

BY THE ACCUSED:

Well maybe someone will be kind enough to give me copy of all that.

BY THE COURT:

I'm sure Mr. Justice Huaschuck will be happy to sell you one. 1-33?

BY THE CROWN:

Yes and the paragraph number is 1-9100. The whole rationale behind that is to avoid an abuse of the judicial process. If there is no limit, one can ... especially if somebody is of ... is of bad faith, one could subpoena the whole planet and there is ... there would be no way to stop the person.

So when the court, in his discretion, feels that there is abuse of the process of the judicial system, you have entirely the power and the discretion to stop this abuse by quashing the subpoenas on the basis that they are not relevant and more or less, this covered as well the fishing expedition.

The example was that the crown attorney was asked but:

"when an accused attempts to call the crown

counsel as a witness, the accused bears the onus of establishing that it is likely that the crown counsel can give material evidence and that the accused is not merely conducting a fishing expedition."

I just cite that for the concept of fishing expedition because anybody can jam or fool the system, you know. If nobody ... if nobody stops nobody, why can't we subpoena the Prime Minister and the politicians and the judges and all the people at Concordia and you know, everything is relevant to the state of mind, everything is relevant to everything.

This word has been said by a few witnesses up to now but we have to set limits. The limits have to be in relation with the four first-degree murders, people seeing a guy shooting people on the 9th on August 24th 1992. We're far far far when we're talking about bringing this liquid tanker thesis.

BY THE COURT:

We'll come to that, we'll come to that eventually. It strikes me a number of comments are in order.

The first comment is really one of law. Put at its best, the subpoena to Mancuso is aimed at a collateral issue where the accused proposes to attack the credibility of his own witnesses or witnesses that he called himself.

The proper and the appropriate people to respond to questions relating to the security department were Bujold, Francisco and I suppose Barnaby on one hand.

If on the other hand, Mancuso has been the person who mechanically added certain documents to the Barnaby file, I would not be inclined to block that particular evidence inasmuch as the Barnaby file as been the subject of some discussion thus far, so that with that reserve, I ... I certainly incline toward quashing the duces tecum.

Now the duces tecum itself of course is so wide that it can't stand as it is framed: all documents in your possession or in possession of security department, all documents. That is the archives of the security department and in particular, security logs and reports of March, April 1989.

The first part of the subpoena is so wide, as I've said, as to constitute the whole archives of the security department and that can't stand.

Any questions relating to the logs of March and April of 1989 should and could have been dealt with when Bujold testified, when Francisco testified and indeed the logs were referred to in the course of that testimony and I'm not inclined to reopen it.

Secondly or thirdly, it is easy, it's been the stock of Mr. Fabrikant's argument to refer to full and complete defence in the course of this trial to which he appends the complaint that he ought not to be required to reveal what he proposes to establish.

I have said on a number of occasions that that rule is not without limits. Certainly the defence has a right to remain mute during the presentation of the crown's case but when comes the time for the defence to present its case, particularly when we're facing the sort of problems that we're facing in this particular case, where the accused defending himself attempts to deduce ... to

adduce, adduce a whole raft of evidence of doubtful pertinence to the question in issue, it is right and proper that he indicate what the nature of his defence is and what the purpose of that evidence is and there is no principle that I'm aware of that insulates him from that obligation.

The subpoena to Angela Mancuso as an individual stands. The duces tecum is cancelled. I would be prepared to sanction that she testify with regard to the Barnaby file and that she have in her possession the Barnaby file insofar as she may have worked with that file and made additions or deletions to it.

I think my direction is clear enough that you understand, Mr. Freedman, what is required.

BY ME FREEDMAN:

And do I understand the Barnaby file has been deposited here so it can be ...

BY THE COURT:

Yes, it has.

BY THE CROWN:

Under I.

BY THE COURT:

Under I.

BY ME FREEDMAN:

So she can come and refer to that, that's fine, My Lord.

BY THE ACCUSED:

May I see the subpoena itself to ...

BY THE COURT:

No, I'm finished with that subpoena. Now we're going to pass to the others.

BY THE ACCUSED:

No, what you quoted is not what I've written.

BY MAITRE LOUIS BELLEAU

AMICUS CURIAE:

I must say for Professor Fabrikant, I've been looking at it.

BY THE ACCUSED:

It's not what I've written.

BY ME BELLEAU:

She didn't send ... the secretary at my office made a mistake as to the first part of the subpoena. There were a few words that were forgotten.

BY THE ACCUSED:

So why do you make me look like an idiot who is trying secretary to bring (sic) the whole truckload of documents.

BY THE COURT:

It would be ...

BY THE ACCUSED:

I didn't ask her to bring that. A certain part was omitted from ... from the text.

BY THE COURT:

What do you ... what do ...

BY THE ACCUSED:

What the hell is going on!

BY THE COURT:

What are you suggesting?

BY ME BELLEAU:

The missing words were "related to Fabrikant", all documents in your possession and in possession of Concordia security department related to Fabrikant.

BY ME FREEDMAN:

And in particular.

BY ME BELLEAU:

And in particular.

BY ME FREEDMAN:

Security logs.

BY ME BELLEAU:

Security logs and reports of March and April.

BY THE ACCUSED:

The omission of these words made the whole thing look like idiotic and I think we can just clarify the whole thing. Nobody asked to bring anyone too much of anything.

BY THE COURT:

Listen, all right. If these words had been in, it would obviously have narrowed the duces tecum. It would not have caused me to express any different point of view as far as the admissibility is concerned because I would have said that all of this should have been directed to Bujold and/or Francisco and the only reserve I've made is the one I made when I ruled, that Angela Mancuso may be questioned with regard to the Barnaby file and any additions which she may have made to that file.

So the ruling remains, although thank you, thank you Mr. Belleau, for pointing out the error in the ... in the duces tecum, but I think it should be noted that Mr. Freedman reported exactly what was written on the subpoena itself.

BY ME BELLEAU:

On the subpoena, yes, I just realize it now. Thank you.

BY THE COURT:

Yes. Thank you but it would have made no difference.

BY ME BELLEAU:

I apologize to Mr. Fabrikant for this mistake.

BY THE COURT:

OK.

BY THE ACCUSED:

Well still I would like to know, I need this material. They didn't bring it.

BY THE COURT:

I've ...

BY THE ACCUSED:

They were on the subpoena and they didn't bring it.

BY THE COURT:

I have ruled.

BY THE ACCUSED:

So I should call then again Bujold?

BY THE COURT:

No, I've ruled. You're not going to call Bujold again.

BY THE ACCUSED:

Well ...

BY THE COURT:

If you don't understand the ruling, Mr. Belleau will explain the ruling to you. Now ...

BY THE ACCUSED:

Well there was a letter by Francisco which I want to be deposited. He didn't bring it.

BY THE COURT:

Why do you persist in arguing with me when I have finished a ruling. Sit down.

BY ME FREEDMAN:

My Lord, I just think that one general comment that

stands for all the files that are being brought: as it's probably becomes clear, we do not have the most sophisticated of filing systems at the university. What I can say is and I've said it before, every witness comes with everything they have. We do our best to gather all the documents, that's all.

BY THE ACCUSED:

Well still, this letter was not there and I need it to be brought and deposited. So I need to call them second time then.

BY THE COURT:

Costanzo. I don't know whether the ... what have you to say with regard to Costanzo?

BY THE ACCUSED:

Well there is nothing to say. He was ...

BY THE COURT:

Well

BY THE ACCUSED:

He was ... I see no problem there. He was president, he's no longer president. He written (sic) certain documents which I want to be deposited. So he is the right person to deposit them.

As far as the document is concerned, yes, I have received files, they're incomplete.

BY THE COURT:

Well as far as Costanzo is concerned, Costanzo is not the person who presently has the custody of any documents at all.

BY THE CROWN:

That's correct, My Lord.

BY THE COURT:

So in view of that, the duces tecum to Costanzo is cancelled.

BY THE ACCUSED:

OK but how then ... what is then the possibility? He's no longer, but the document is signed by him. What in this case ...

BY THE COURT:

I have no idea whether a document signed by him will prove to be admissible or not but the document will have to be brought and if you have it in your possession, then you have it in your possession if you have the file.

BY THE ACCUSED:

No, some I do, some I don't.

BY THE COURT:

Well I usually hear that from you and I have no way ...

BY THE ACCUSED:

Well I keep telling you that documents, they didn't supply to me.

BY THE COURT:

Well then you will ... then you will have to bring whoever is, the custodian of the documents. There may be an expeditious way to do it. If you point out to MaEtre Freedman what the document is, I suppose he may manage to speak to MaEtre Lehrer and see if the document can be found that you're looking for.

BY ME FREEDMAN:

Certainly.

BY THE COURT:

Costanzo, personally may ... may respond to the subpoena

and if he's the one who was president at the time and if the document is relevant and if the questions are relevant, you will put the questions to Costanzo and whoever is the custodian of the documents will make them available, either by way of a subpoena or by way of ... by way of consent.

BY THE ACCUSED:

So, I do not understand still, I have to subpoena two people?

BY THE COURT:

Mr. Belleau will explain to you what the nature of the ruling is. It's not complicated and Madame Freedman, I think, has undertaken to speak to Madame Lehrer.

BY ME FREEDMAN:

Yes, I shall.

BY THE COURT:

Now, so you have that, Madame Desrosiers, the duces tecum is cancelled for Costanzo.

The three subpoenas, Sankar, T.S. Sankar, Hoa and Xistris. What have you to say to that, Mr. Fabrikant? First of all, all material pertaining ...

BY ME FREEDMAN:

Proving your contributions.

BY THE COURT:

... proving your contributions to Fabrikant's publications.

BY THE ACCUSED:

Well first of all, I do not understand why Mr. Freedman said that he doesn't understand what it means. He doesn't have to understand. Subpoena is not to him. Subpoena is to Sankar, Hoa and Xistris. Do they understand what it means? Did you ask them?

Mr. Freedman doesn't have to understand what it means. It's the person who is subpoenaed who has to understand. If he doesn't, then let him come here and say that he doesn't understand what it means.

BY THE COURT:

What have you to say to the pertinence of this duces tecum? That may require you to talk to what you mean by it but what have you to say to that?

BY THE ACCUSED:

The pertinence of all this and not only this, if you remember, we discussed that if person is abused, that this accumulates and is pertinent to defence of provocation. Now this is proof of abuse and this is how it is relevant.

BY THE CROWN:

You've already ruled, My Lord, that it is much too remote when some people came with their grant applications and so on and so forth.

BY THE ACCUSED:

This is not grant application. You either pretend to be not understanding what it is or if you really don't understand, maybe you should change place with another prosecutor who does understand very simple things. Grant applications is one thing.

BY THE CROWN:

Nobody wants to change place with me, My Lord.

BY THE ACCUSED:

Well then try to educate yourself. What can I say?

BY THE COURT:

You're suggesting you were elected, you did not volunteer.

BY THE ACCUSED:

Try to educate yourself as much as you can.

BY THE COURT:

Mr. Fabrikant, listen, I've told you before. This is a murder trial.

Your state of mind may be relevant and the only person who can speak to your state of mind - and I say this in the absence of the jury, because I may not say it in the presence of the jury - is you.

BY THE ACCUSED:

It's not state of mind. It is provocation and abuse, this is what I'm talking about. Now ...

BY THE COURT:

Well you have your particular position but...

BY THE ACCUSED:

Don't change my words.

BY THE COURT:

... as far as I'm concerned, even if it exists, even if it's identifiable which does not appear to me to be clear from the duces tecum, I have already said that all of this is so remote from the question which we're dealing with which is the question of homicide, that on that ground alone, I could safely rule that the duces tecum must be cancelled.

I add that putting witnesses who you propose to call to the proof that they made contributions to your publications carries us into an area so remote as to be of little use to this jury in deciding what they have to decide.

So for these reasons, the duces tecum attached to the subpoenas to T.S. Sankar, S.V. Hoa and J.D. Xistris is cancelled.

BY THE ACCUSED:

Well you didn't have to cancel it. They don't have any documents. This is the point. They didn't make any contributions.

BY THE COURT:

Well you know ...

BY THE ACCUSED:

So they have nothing to bring.

BY THE COURT:

I'm dealing ... I'm dealing with the duces tecum.

BY THE ACCUSED:

Your cancellation is ridiculous.

BY THE COURT:

Wonderful! Then the ... then for once, you and I agree but I am... I am correct that the subpoena should be cancelled so we don't ... we don't appear to be ...

BY THE ACCUSED:

No, subpoena should not be cancelled. They should come and say "we don't have any".

BY THE COURT:

We don't ... we don't appear to be in any ... any problem, any disagreement.

BY THE ACCUSED:

Well maybe they are irrelevant because I'm calling them

to prove that they did not contribute anything to my work, that I was exploited by them. Then cancel the whole subpoena, how about that?

BY THE COURT:

What I have cancelled ...

BY THE CROWN:

I would agree with that, My Lord. Why don't you cancel the whole subpoena.

BY THE ACCUSED:

Who said ... who said A should say B, (sic) because this is what I'm calling them for.

BY THE COURT:

I'm not going to go as far at this time as cancelling the whole subpoena. I ...

BY THE ACCUSED:

Look ...

BY THE COURT:

... I don't know what questions he proposes to direct ...

BY THE ACCUSED:

He wants to do that.

BY THE COURT:

... to these people.

BY THE CROWN:

Well we know. I think ...

BY THE ACCUSED:

These people ...

BY THE CROWN:

... in the long run, the whole thing will be irrelevant.

BY THE ACCUSED:

These people are being called to show that I was abused by them to such an extreme extent that normal person in my position, after such abuse, would do what I did.

BY THE COURT:

Well I'm not ... I'm not prepared to come to the conclusion that ...

BY THE ACCUSED:

Now if you feel that this abuse is irrelevant, then cancel whole subpoenas, don't do that kind of tricks.

BY THE COURT:

I'm not prepared to go that far but I'm prepared to go...

BY THE ACCUSED:

Well if you ... look ...

BY THE COURT:

... as far as saying that the question of going into contributions is irrelevant. It may be

BY THE ACCUSED:

Well this is what they will be called for.

BY THE COURT:

It may be ...

BY THE ACCUSED:

That will be the question they will be asked. If you feel that those questions are irrelevant, cancel subpoenas.

BY THE COURT:

What I said to you was that I'm not going to go into a question or open a debate into questions of who contributed to which publications. You have your view. I suppose they have their view.

I ... I don't think that there's any ... there's any question of saying to you that at the moment anyway, I haven't heard what questions you propose to put to them

so I would ...

BY THE ACCUSED:

Well I'm telling what questions I'm proposing to put to them. I'm proposing to ask them whether they used me, as a scientific prostitute, without understanding a word in my works. This is the purpose of calling them and cancel subpoena related to that question is total absurd.

(sic)

BY THE COURT:

I have cancelled the duces tecum. That's the ...

BY THE ACCUSED:

Well it's absurd because to ... either those questions are relevant, then duces tecum is relevant. If the questions are irrelevant, then there is no use to call them.

BY THE COURT:

You've ... you've told me that the duces tecum was pointless.

BY THE ACCUSED:

No, this is not the point. I want them to come here and to say "Yes, we received duces tecum."

BY THE COURT:

Well we'll see.

BY THE ACCUSED:

"We don't have any documents".

BY THE COURT:

We'll see what they ... we'll see what questions are put to them when they come. I'll go no further than that.

BY THE ACCUSED:

You're just doing tricks, that's all.

BY THE COURT:

I'm not doing tricks at all.

BY THE ACCUSED:

Well then cancel both. There is no point. This is the question I'm going ... I'm advising you.

BY THE COURT:

Then it may well be that you'll find that you won't be permitted to ask that question, I don't know, we'll see.

BY THE ACCUSED:

I'm telling you in advance what those questions will be so you may cancel it.

BY THE COURT:

Mr. Fabrikant, I have heard these names in other contexts in relation to this trial and I'm not prepared to go as far as to say I'm cancelling the subpoenas simply on that basis, much and all as you might wish me at this point to do so.

Seshardri Sankar: all DPC files mentioning Fabrikant's name, DPC evaluation of all department members in 1991 and 1989, Concave reports to MESS in 1988 and 1990, PhD dissertation of Rang Anathan, report on liquid tanker stability, all contracts ever signed by you for your companies. What have you to say to that?

BY THE ACCUSED:

Well what ... what is in doubt there? I do not understand, what seems to be in doubt. It's not clearly a subpoena or what?

BY THE COURT:

Well the first ... the first point that Mr. Freedman raised was the DPC files mentioning your name are not in Sankar's possession.

BY THE ACCUSED:

Well to this, I can answer very simply.

BY THE COURT:

Nor are the DPC evaluations of department members in 1991 and 1989, quite apart from their ... their relevance.

BY THE ACCUSED:

Well the first question, I answer very simple. Mr. Freedman should know better his own university because it is the Sankar who is chair of DPC, not Osman. Osman is chair of the department. Sankar is chair of the DPC and he is in the possession of those files.

BY ME FREEDMAN:

I may have been in error, I will verify that.

BY THE ACCUSED:

So if you are aware of that, so why are you misleading Court then?

BY THE COURT:

What could be the possible relevance of the DPC evaluations of department members?

BY THE ACCUSED:

Well very simple. I want to compare. They ... I need to prove that they had absolutely no grounds whatsoever to evaluate me negatively in 1991. Therefore the best way to do it is by comparison.

BY THE CROWN:

This is too remote, My Lord and moreover ...

BY THE ACCUSED:

Of course it is remote.

BY THE CROWN:

... once Fabrikant spoke about his own evaluation, there is a comparative measure in his own evaluation.

BY THE ACCUSED:

Of course it is.

BY THE CROWN:

It has a percentage, we'll ... we'll sidetrack with this. We're always sidetracking, anything there is a point, we have to cover the whole thing all the time. I don't see any any relevance in that, even less than in the other points.

BY THE ACCUSED:

Well why don't we stop trial? I shoot four people, I admit it. Let's put full stop here and let's dispose of me. I admit, yes, I did it. Let's stop trial, if there is nothing to talk about.

BY THE COURT:

Concave reports to MESS in 1988 and 1990, what could be the possible relevance of that?

BY THE ACCUSED:

The same thing, I was the one who was evaluated in those reports.

BY THE COURT:

PhD dissertation of Rang Anathan?

BY THE ACCUSED:

Well it is not separate thing. It is PhD dissertation and report together. They're relevant. I wouldn't call it if it wasn't relevant.

BY THE COURT:

PhD, OK. Report on liquid tanker stability?

BY THE ACCUSED:

Yes, that's what I mean, PhD and report on liquid tanker stability.

BY THE COURT:

All contracts ever signed by you for your private companies.

BY THE ACCUSED:

Yes. Now I may repeat once again, you want me to disclose the whole my defence (sic) since you put this as a precondition? Would you just trust me that it is relevant or

...

BY THE COURT:

Not at all.

BY THE ACCUSED:

All right.

BY THE COURT:

Not for one moment.

BY THE ACCUSED:

OK. So I have to disclose all defence then?

BY THE COURT:

Considering we're in the fourth month of the trial, it ... it begins to become my duty to ...

BY THE ACCUSED:

Maybe you start counting from the moment I started defence. When did I start defence? We're in the fourth month of trial. Nobody forced you to spend a month and a half on ... on my fitness hearing.

BY THE COURT:

We are ... we are discussing the questions of contracts.

BY THE ACCUSED:

When did I start defence?

BY THE COURT:

We are discussing the question of contracts.

BY THE ACCUSED:

Yes.

BY THE COURT:

What is the pertinence?

BY THE ACCUSED:

The pertinence is very simple. In order to demonstrate to the jury what happened in late August, I will have to give them proof, not only that Hogben in the name of administration, in fact gave me kind of ultimatum either to get three-year salary and get out of the university or they arrange with Gold that I be put in jail for one year and God knows what happened there.

BY THE COURT:

Fine. What has that got to do with contracts for private companies.

BY THE ACCUSED:

Let me ... let me clarify, because the jury would have very hard time believing that such an outrageous thing would have happened unless I give them motives, I give them proof that I was dealing with criminals who were squandering millions of dollars, then this stuff becomes believable, otherwise the jury would have very hard time to believe that Hogben could possibly or administration could possibly authorize him to do such a thing.

It is a criminal activity and unless I prove to the jury that criminal activity did exist, there is no way jury would believe all that.

BY ME FREEDMAN:

If I could just make a general comment, My Lord.

BY THE COURT:

Well please don't make it a general comment from the crown's point of view. Just make a general comment from the point of view of Concordia, that's all you're here for.

BY ME FREEDMAN:

That's right. All these issues that are related to the duces tecum have either all been raised or been dealt with in the university context as we've heard ... there's been all kinds of grievances and code of conduct cases, inquiries by the vice-rector academic who reported to the board of governors on Mr. Fabrikant's allegations, all kinds of internal mechanisms and appeals and so on have taken place.

I don't feel that this trial is the place for all these to be reappealed by Mr. Fabrikant.

BY THE ACCUSED:

He's talking from the position of crown.

BY ME FREEDMAN:

No.

BY THE CROWN:

From the explanation of the accused, it's even less relevant.

BY THE ACCUSED:

Even less relevant?

BY THE CROWN:

Now I have the certitude, I had the feeling before, now I have ... I have the certitude that this is not relevant.

BY THE ACCUSED:

You must be (inaudible).

BY THE COURT:

On that subpoena, presuming Sankar to be the president of the DPC, the only relevant question I can see are the DPC files relating to Fabrikant for the years 1989, 1990 and 1991. As far as the rest of it is concerned, the subpoena ... the duces tecum is cancelled.

BY ME FREEDMAN:

So the DPC files on Mr. Fabrikant.

BY THE COURT:

1989, 1990 and 1991. The last one, Osman: all contracts ever signed by you for your private companies.

BY THE ACCUSED:

Again secretarial error. She took from previous line.

BY ME BELLEAU:

It's not exactly an error by the secretary but the instructions that I received were not so clear so I included both. Sankar and Osman's subpoena instructions were in succession and this line appeared to apply to either or both of them.

BY THE COURT:

So it doesn't apply to Osman.

BY ME BELLEAU:

So I included it in both but it seems it doesn't apply to Mr. Osman.

BY THE COURT:

List of department members who received university merit award in 1989, what have you to say to that?

BY THE ACCUSED:

Well I ... I feel so much contempt of you, I really don't want to talk to you.

BY THE COURT:

All right, fine.

BY THE ACCUSED:

Do whatever you want, I couldn't care less.

BY THE COURT:

OK. Your FACR grant application, 1980 to 1990, you don't wish to talk to me on that and your regular course evaluations, three years, proof that Fabrikant gave high marks.

There has been some talk in this trial of the university merit award. If he wishes to make proof of the department members who received it insofar as some proof has been admitted in relation to it, that part of the subpoena shall stand. The rest of the subpoena is cancelled and I think I will break for ten minutes before I resume with the testimony of Mrs. Habib.

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ARE PRESENT

PROOF OF THE DEFENCE (cont'd

MAUREEN HABIB

Executive assistant to the Rector
and Vice-chancellor - Concordia Univ.
March 15th 1952

SWORN

DIRECT EXAMINATION BY

MR. VALERY FABRIKANT - ACCUSED

REPRESENTING HIMSELF:

QI refer to your conversation, December 9th 1991, with Osman. Could you recall who mentioned shooting in Iowa and shooting in Ontario of a postman?

AI answered that question yesterday, Dr. Osman mentioned it.

QOK. Did he mention it in terms of possibility that I do the same thing?

ANo, my recollection is he talked about it in terms of the nervousness of the people saying that, you know, things happen and there's more violence in society and using those as examples.

QBut on the other hand, he told you that he was not nervous and not afraid at all?

AAAt the end of the conversation, that is what he said.

QAnd at the beginning of conversation, he said that he was afraid?

AI did not say that.

QWhen he mentioned to you events at Iowa and in Ontario, did you think that similar thing is possible at Concordia too?

AIIt never occurred to me that one of the members of our university would ever try and hurt another member, much less murder them.

QWell why Concordia University is any better than Iowa?

BY THE CROWN:

This is ...

BY THE COURT:

Argumentative. Question disallowed.

BY THE ACCUSED:

QDid you think that Concordia University is totally different from University of Iowa?

BY THE COURT:

Cross-examination. Disallowed.

BY THE ACCUSED:

QIf it happened somewhere else, why cannot it happen (sic) at Concordia?

AIt did happen at Concordia.

QNo, I mean by that time?

AWould you repeat the question?

QI'm talking about your position in December. You knew that shooting took place at University of Iowa.

BY THE CROWN:

This is speculation, My Lord.

BY THE COURT:

Yes it is. Objection maintained.

BY THE ACCUSED:

I didn't even finish my question.

BY THE COURT:

Well the objection is maintained in any event because the form of the question makes it patently obvious the question is inadmissible from the beginning.

BY THE ACCUSED:

QAt the time of the meeting, when Osman mentioned shooting of Iowa, did you think that lessons of Iowa should be learned rather than ignored?

BY THE CROWN:

The question asked for an opinion, My Lord.

BY THE ACCUSED:

The question asked normal question: did you have such a thought.

BY THE COURT:

Objection maintained.

BY THE ACCUSED:

Well just yesterday, I asked the same question, objection was not maintained. Could you at least remember what you ruled. It was exactly the same question of opinion and you made it admissible.

BY THE CROWN:

And moreover it was leading, My Lord.

BY THE COURT:

The objection is maintained.

BY THE ACCUSED:

QShould we all learn lessons of events, otherwise those events will be repeated again and again?

BY THE COURT:

You're not required to answer that question.

BY THE ACCUSED:

QDo you think that person can be abused indefinitely and he will always tolerate it and bend?

BY THE CROWN:

All this line of questioning, My Lord, is all the same.

BY THE COURT:

The line of questioning is the same, the question is disallowed. Would you please change your line of questioning. It's all illegal.

BY THE ACCUSED:

But it is very good questions to answer.

BY THE COURT:

You have my ruling.

BY THE ACCUSED:

I abide by it.

QWhen Osman asked for protection in case department personnel committee will again make a decision against continuation my contract, protection against which action he demanded?

AI believe the protection he was seeking was against your continuing harassment of the members of the department of mechanical engineering, including himself, the faculty members and the staff.

QOK. Harassment what? Verbal harassment?

AVerbal harassment, constant questions, wishing immediate answers, flow and flow of correspondence and if you didn't get immediate answers, harassment by telephone as to why the answer hadn't come. Those are kinds of examples.

QOK, what kind of protection can you possibly provide against that? To put a bodyguard?

BY THE COURT:

You're cross-examining the witness and you're not permitted cross-examination, to cross-examine the witness so stop.

BY THE ACCUSED:

QOK. What protection is available against this kind of harassment?

AWe discovered at the university that there isn't much protection against your kind of harassment.

QAre you aware of bodyguards hired by the university by that time?

AI would ... I need a more specific question. Bodyguards for who? Body ... what kind of bodyguards? I remember there was a security guard posted outside of the dean of engineering's office at that time.

QWas it against harassment?

AI don't know.

QWas it against my telephone calls?

AI don't know.

QWas it against what?

AI don't know, I was not the person who made that decision.

QDid you ever question yourself what this bodyguard was there for?

ANo, I did not.

QDid you know that taxpayers' money would pay for that?

BY THE CROWN:

My Lord, this is argumentation. This is ...

BY THE COURT:

Yes it is. The objection is maintained to the last question. In fact, the whole like of questioning is leading us nowhere.

BY THE ACCUSED:

Oh yes.

QDid you have a bodyguard in the vice-rector's office?

ANo.

QTry to recall, at the time when I came for coffee in 1990, fall, was there a bodyguard there?

AI assume you are referring to something that the vice-

rector academic instituted when she came to the university which is a coffee night that she has once a month where she invites any members of the community to come and have coffee with her and talk about the university.

Is that correct?

QYes.

AI don't ... you must have come, I attended several of them. I don't see any reason why we would have. I have no recollection of that.

QWere you present at the time when I was at this so-called coffee party?

AFrankly I cannot recall. I went to several of them. All sorts of different people came and from the community, I don't recall any specifics.

QWell but do you recall a party at which I would be present?

AI remember that I attended all of the coffee nights with Dr. Sheinin.

QSo if you ...

ASo I must have been there.

QSo you must have been there.

AAll right.

QIf you attended all of them, then at any of them, was there a bodyguard?

ANot to my knowledge.

BY THE ACCUSED:

They didn't even take care to make their testimonies consistent.

BY THE COURT:

Would you please ... would you please leave your editorial comments out of it.

BY THE ACCUSED:

OK.

QAt any time during your tenure at the vice-rector's office, do you recall presence of bodyguard?

ANo.

QSecurity guards? Anyone from security in the vice-rector's office?

ANo.

QHow to reconcile ...

BY THE CROWN:

This is cross-examination, My Lord.

BY THE ACCUSED:

Well how to reconcile is not cross-examination.

BY THE CROWN:

This is the beginning of cross-examination.

BY THE COURT:

It may well be, we'll wait for the question.

BY THE ACCUSED:

QHow to reconcile the demand of DPC of November 7th when they claimed that I'm danger to the university and especially to them with December meeting in which Osman, according to your testimony, said that all he needed is protection from my harassment, verbal?

BY THE CROWN:

I don't think she's a member of the DPC, My Lord.

BY THE ACCUSED:

No, this is not what I'm asking. I'm asking if there is any contradiction in those two statements?

BY THE COURT:

Well it's not for the witness to give her opinion on the

testimony of herself on the request of the DPC or on the nature of the discussions between herself and Osman. Everybody can come to their own conclusions, if they ever have to, as to what the significance of all of these things were.

Objection maintained.

BY THE ACCUSED:

OK.

QWhat happened next, after December, did you have any meetings, discussions, anything related to me, do you recall?

AMore specifically, no. Your dossier was active from that point on until the 24th of August.

QOK, so if it was active, then probably there were some meetings, there were some documents sent or received signed by you which might be relevant to the case?

BY THE COURT:

If you have anything in mind specifically, would you refer the witness to it. If you wish to fish, please don't.

BY THE ACCUSED:

All right.

QWere you present at any meeting after that in which discussion took place as to how to deal with me?

AI would say I had many discussions on that subject.

QShare it with us.

AThey would have been with my immediate supervisor upon receipt of any kinds of documents from you, we would have to discuss them and decide how to handle them.

QSo could you refer to some specific document received from me?

BY THE COURT:

You're fishing again, ask a particular question. You may get an answer to the question.

BY THE ACCUSED:

I ask particular question.

BY THE COURT:

You are not particular. The question is far too general. Disallowed.

BY THE ACCUSED:

QWell your immediate supervisor, you mean Kenniff?

AYes.

QOK, so when did you receive the first document from me in 1992?

AOn January 10th 1992, I received a note from you informing me that you had filed two complaints with the office of the code administrator and that they had not been heard. You then asked me to undertake appropriate measures to correct the situation.

QHum, hum. Do you know according to the code of conduct, what is the normal time during which complaint should be heard?

AI do not have the code of conduct in front of me, My Lord.

QBut ...

AHowever, there is, if I remember correctly, a clause that actually delineates the number of days in which a code case is normally responded to.

QWell if I just try to make you recollect that it is two weeks?

AIt may well be.

QAnd my complaint was filed when?

AThis note does not say.

QBut I believe you did check? You did some work according to that note, did you?

AYes, I will just ...

QOK.

A... see where my response is. This is in chronological order.

QOK, to spare time, would it be correct to assume that I was referring to complaint filed November 3rd?

AYes.

QAnd January 1st... January 10th, I informed you that it is ... it still had not been even not just heard, it hasn't even been scheduled for hearing, correct?

AHum, hum.

QDoes it ...

AYes.

QDoes it indicate harassing, impatience and demanding immediate answers, what you're referring to here? Is this an illustration of my harassing attitude, demanding immediate answers? Is this one of those examples?

AOne single letter written by an individual certainly would not. However, I would refer you to these documents.

QJust answer this question. This particular document, is this an illustration of my harassing attitude, demanding immediate answers what you professed here? Is it or isn't it?

AIn my opinion, it was because it was within a particular context.

QWell explain more. My complaint was filed November 3rd.

BY THE CROWN:

He got his answer.

BY THE COURT:

He got his answer. This is cross-examination.

BY THE CROWN:

It's his own witness.

BY THE COURT:

This is cross-examination. Question disallowed.

BY THE ACCUSED:

As soon as witness is in difficult position, question is disallowed. Well all right.

QCould you ... could you give an example of situation where I indeed demanded immediate answer, what you said, in a harassing way?

AIt was in fact standard practice that whenever the questioner would write, the day after, the phone calls would begin as to when the answer would come.

QNow you are talking to the phone calls and of course, you recorded them, didn't you?

BY THE COURT:

You had that answered yesterday. The witness explained what she recorded, how she recorded if she recorded and it was on a piece of paper or on a note.

BY THE ACCUSED:

All right.

BY THE COURT:

You're cross-examining the witness. Stop.

BY THE ACCUSED:

Did I phone you ...

BY THE COURT:

And if you persist in cross-examining the witness, you

will be stopped.

BY THE ACCUSED:

I'm changing. What is it with you? I'm ... I'm asking different question.

BY THE COURT:

You know perfectly well what you are about. You know perfectly well what you're up to in these questions. They are ... they go every minute or every second minute into cross-examination. You know that and you know it's forbidden.

BY THE ACCUSED:

QDid I call on January 11th?

AI do not recall specifically.

QDid I call on January 12th?

AI do not recall specifically.

QDid I call on January 13th?

AI do not recall specifically.

QLet's go to the next document. What was the next document you received from me?

BY THE CROWN:

It looks like the fishing expedition or going through the whole file, document by document, My Lord.

BY THE COURT:

If you wish to refer the witness, if you wish to refer the witness to a particular document, Mr. Fabrikant, refer the witness to a particular document.

BY THE ACCUSED:

Well I'm trying to find out document which would support her contention that I was harassing.

BY THE COURT:

Fine. Then if you are looking ... now you've declared your ... now you've shown your colors. If you are attempting to find documents that would test out what she said when she said you were harassing, you're cross-examining the witness and the entire line of questioning is disallowed.

BY THE ACCUSED:

Well I can contradict witness if witness ...

BY THE COURT:

Your entire line of questioning is disallowed. Now would you please move ahead and ask the witness something pertinent, anything that might be pertinent and let us get on with it.

BY THE ACCUSED:

Sure, OK. Since I'm not allowed to bring up the situation with harassment, I think it would be very beneficial for crown to establish that I did harass indeed but since I'm not allowed, I'm going to something else.

QDo you recall the time when my electronic mail appeared?

AYes.

QThat was real harassment, wasn't it?

AIn my opinion, it was.

QOK and I asked the rector to investigate my allegations is that correct?

AYou wrote to all of the members of the board of governors on the 14th of February.

QYes.

A1992.

QYes.

AUpon receipt of that letter, the rector requested that these allegations be investigated by the vice-rector,

academic. The vice-rector did so and reported her findings to the meeting of the board of governors on the 18th of March 1992.

QHum, hum. Did she ... to the best of your knowledge, during her investigation, to the best of your knowledge, did she bother just to talk to me about my allegations? AI was not present nor took any part in the investigation. QOK, so I will ask her about it then. Did you see any documents personally from this so-called investigation made by vice-rector?

AI certainly saw the final report of the vice-rector.

QDid you see any documents supporting this final report?

BY THE COURT:

That calls for the witness to make a judgment and that question is not permitted.

BY THE ACCUSED:

No, OK, I put it differently.

QDid you see any documents accompanying this report?

AThere were no documents to my recollection attached to the report that was submitted to the board.

QThis is exactly the point, OK and were there any discussions as to how to stop Fabrikant?

AStop you from what?

AWell from distributing my electronic mail?

AIf I recollect correctly, did the vice-rector academic not write to you at one point telling you to do so.

BY THE COURT:

I wouldn't ask the witness a question or the ... the defendant, the accused a question.

BY THE ACCUSED:

QWell I'm ... I'm asking you not what vice-rector has written to me because you know very well that I totally disregarded all that. I'm asking you what were the discussions as to how to stop me, if any?

AI don't know to which discussions you refer.

QWell were you present at any meeting, agenda of which was we need to stop Fabrikant from distributing his electronic mail?

AI recall having discussions with the vice-rector academic prior to her writing the letter to which I just previously referred to in which she wrote in her capacity as vice-rector academic instructing the questioner to cease using the e-mail.

QThis is not my question. Was there any official meeting of administration devoted to this subject?

AI don't know.

QYou were not present there or you ... you know that there was meeting, you were not present or you don't even know if there was any meeting in this regard?

AWould you ask the question again please?

QOK, do you know if there was any meeting to this end even if you were not present at that meeting?

ANo, I don't know.

QOK. When you received a letter from Haines in July of 1992, did you show it to the rector?

AI have shown it to the rector but I don't know precisely when. I would have to check my agendas as to when the rector was on campus when I received it. I received it the 3rd or 4th of August so he ... I have shown it to him but precisely when, I cannot recall.

QWell you mean, it was ... it might be not 3rd but 5th,

that's what you mean?

AI cannot recall precisely when I did show it to him.

QYou mean that it could be that you showed it to him after the 24th?

BY THE COURT:

You're cross-examining the witness. The witness has told you that she cannot remember precisely when she showed it to the rector.

BY THE ACCUSED:

QWell was it at least within one week from your reception?

AI have answered the question.

QWas it at least within one week from your reception?

AI have answered the question.

BY THE COURT:

The witness has told you she doesn't recall when she showed it to the rector. That is it.

BY THE ACCUSED:

All right.

BY THE COURT:

Move on.

BY THE ACCUSED:

All right.

QYou didn't think that it was something urgent, rector should know about?

BY THE CROWN:

This is cross-examination.

BY THE COURT:

Cross-examination. Objection maintained.

BY THE ACCUSED:

QDid you ever ask rector to confirm that indeed his life was threatened?

A.No.

QIt was unimportant to you to clarify this part?

BY THE CROWN:

This is cross-examination, My Lord.

BY THE COURT:

Objection maintained.

BY THE ACCUSED:

QDid you feel it necessary to show this kind of material to the rector?

AI am the executive assistant to the rector. The rector is made aware of all important documents, letters, material that enters our office.

QThis is not an answer.

BY THE CROWN:

It is My Lord.

BY THE COURT:

Yes it is. It is an answer and because you say it is not an answer doesn't make it any less an answer.

BY THE ACCUSED:

You are playing spectacle to ...

BY THE COURT:

Spare me the comments. If you have anymore questions, ask them.

BY THE ACCUSED:

All right. By the way, I think ...

QWere you the one who advised vice-rector in 1990 ... is this your handwriting?

BY THE COURT:

QYou were asked if this was your handwriting?

A.Yes.

BY THE ACCUSED:

QDo you recall events related to this particular handwriting?

AThe note indicates to me that what it would have been is that I would have been in discussions with the vice-rector academic and I would have taken notes in order to prepare a draft of response for her signature.

QAnd what letter was that?

AAlthough I do not have the file in front of me, the benefit of having seen it yesterday, there was an offer of appointment made in December of 1989 which the questioner in response asked for clarification and perhaps different questions and in between that, had in fact even accepted the offer of appointment, because my notes indicate:

"Acknowledge receipt, accepted appointment under terms I've offered. Reference ... reference back to letter of January and don't appreciate being threatened."

In other words, the ... the distinct ... distinct instruction to me was to prepare a letter that indicated that the vice-rector was not pleased with the tone of the question.

QWas it the time when she decided to get rid of me, according to your recollection? She never mentioned to your ... in your presence?

ANot at that time.

QWell do you recall at which time she mentioned to you, this to you that she wants to get rid of me?

BY THE CROWN:

About recollecting these exact words, My Lord ...

BY THE COURT:

No, these are Mr. Fabrikant's words.

BY THE CROWN:

We've been talking of non renewal of contract. It's a little different than getting rid of.

BY THE ACCUSED:

Well she doesn't have to stick to my words. She can express the same action in many different words.

BY THE COURT:

Would you respond?

AThe vice-rector, My Lord, had just offered the questioner a two-year contract. I find it difficult to discuss non renewal in that context.

BY THE ACCUSED:

QNo, I'm asking you if it is ... was not at that time then, when it did happen?

AMy impression would be that end of the summer, late summer, fall of 1990 reflected by what the vice-rector wrote to the rector on the 16th of November 1990, that her, I feel incompetent to ... to discuss her feelings.

BY THE COURT:

You're not here to discuss the vice-rector's feelings or the vice-rector's decision and if you were not privy to that decision specifically, then you cannot discuss it.

AThank you.

BY THE ACCUSED:

Well it was late summer of 1990.

BY THE COURT:

There you go, testifying again.

BY THE ACCUSED:

No, I'm asking.

QSo is my understanding correct that it was summer of 1990?

AI think so.

QSo I'm not testifying. OK. Do you recall also doing something to control the damage if I can use these words, created by my electronic mail?

AI'm not sure I understand the question. To control the damage by?

QWell ...

BY THE COURT:

If you don't understand the question, just say so and the question will be formulated.

BY THE CROWN:

It presupposes something that the witness did not say, My Lord.

BY THE COURT:

Yes.

BY THE CROWN:

This question is illegal.

BY THE ACCUSED:

I don't have to say what witness has said so that my question be legal.

BY THE CROWN:

The question still has to be fair, My Lord.

BY THE COURT:

The witness has said she didn't understand the question.

BY THE ACCUSED:

That's all. I will rephrase it. Question was fair and legal. Well then, I don't know, I must ask just leading question then.

QDid you personally do anything, do you have in your possession any document signed by you with respect to any of my activities?

BY THE CROWN:

You've ruled on that, My Lord.

BY THE COURT:

Yes.

BY THE CROWN:

It looks like fishing.

BY THE ACCUSED:

It's not fishing.

BY THE COURT:

It is fishing. The question is disallowed. If you want to ask a specific question, we'll see what happens.

BY THE ACCUSED:

OK.

QWere you worried about me asking information, asking for information from Secretary General?

A

QOK. Did you feel that my asking of questions is harassing?

AI felt the number of questions you asked were harassment.

QOK, so did you do something to curb or control it?

AThere didn't seem to be much we could do to curb or control it.

QNo, you could ... you could make an arrangement at least that important ...

BY THE COURT:

Now, you're arguing with the witness. Please don't do that.

BY THE ACCUSED:

OK.

QDid you try to do something that damaging information would not fall in my hands?

A.No.

QNo, OK. Do you recall signing somewhere in February of 1992 a memo addressed to various people so that they inform you of whatever request I make?

AI certainly do.

QThere we are. I would like it to be deposited.

BY THE COURT:

Well you may have a number of questions to ask with regard to that memo, I don't know.

BY THE ACCUSED:

Well I think this one speaks for itself.

BY THE COURT:

Fine. Would you show that to the crown prosecutor.

BY THE CROWN:

I certainly have no objection, My Lord.

BY THE COURT:

We're at?

BY THE CLERK:

20.

BY THE COURT:

20, yes.

BY THE CROWN:

Which is the date please?

BY THE CLERK:

February 10th 1992.

BY THE COURT:

Pardon?

BY THE CLERK:

February 10th 1992.

BY THE ACCUSED:

QDid you get ... did you get a response to this memo?

AI did.

QOK. Could you demonstrate all those responses?

You are not interested, Mr. Belleau.

May I take a look at it?

BY THE COURT:

Absolutely.

BY THE ACCUSED:

I'd like this to be deposited.

BY THE CROWN:

Well they're not signed by the witness, My Lord, but I have absolutely no objection to their filing.

BY THE COURT:

Fine. What about the other one?

BY THE ACCUSED:

The other one has nothing to do with it.

BY THE CROWN:

Can I see it please.

BY THE ACCUSED:

The other one, we will discuss with Mr. Osman.

BY THE CROWN:

Can I see it please? Can I see the other one?

This is exactly the same thing.

BY THE ACCUSED:

It's not exactly the same thing.

BY THE CROWN:

Something coming in ... these are some comebacks from some people, either we file them all or we don't file them.

BY THE COURT:

She was asked for responses. These are the responses. You can file the responses if you like. You may not be selective about which ones you choose to file and which ones you choose not to file.

BY THE ACCUSED:

Well this refers to the whole bunch and bunch is not there, attached only one thing. (sic)

BY THE CROWN:

One is signed Ann Millchrist? (sic)

BY THE ACCUSED:

Yes and she refers to huge pile of correspondence and instead of huge pile ...

BY THE COURT:

Look, you asked the witness if there were responses. There are the responses. Either they go in as a whole or they don't go in as a whole. I really couldn't care less what you do.

BY THE ACCUSED:

Well ...

BY THE CROWN:

That would be the viewpoint of the crown, My Lord.

BY THE ACCUSED:

The third is not response. The third was part of attachment to this response. Response is first and second. The third is not response.

BY THE COURT:

Show me then again. Thank you. By the penultimate paragraph or the P.S., excuse me, it was made part of the report so it goes in with the others.

BY THE ACCUSED:

No, no, read attentively.

BY THE COURT:

It goes in with the others.

BY THE ACCUSED:

Read attentively. Let me read it. May I have it please?

BY THE COURT:

It's going in with the others.

BY THE ACCUSED:

It does not go in.

BY THE COURT:

It is going in with the others or you may withdraw them all. Withdraw them all, it's up to you.

BY THE ACCUSED:

Let me read it please. You want to attach something which doesn't belong here. The enclosed binder prepared by Osman, binder, the whole binder was here. You see how many staples here? There was a binder here. Out of this binder only one thing has remained which is falsification. If you want to deposit the whole binder, I don't mind that but the whole binder, look what is written here.

"Enclosed binder was prepared by Osman, chair of mechanical engineering regarding incidents involving Fabrikant and departmental level."

BY THE COURT:

Do you have the binder?

BY THE ACCUSED:

Binder.

BY THE COURT:

You don't have the binder?

BY THE ACCUSED:

This is the crooked thing they usually do.

BY THE COURT:

Is there ...

BY THE ACCUSED:

This is exactly what that whole thing is about.

BY THE COURT:

QIs there any reason why this is separated from the other enclosure?

A My memory ...

BY THE ACCUSED:

I can explain everything.

BY THE COURT:

I'm not asking you for the minute, I'm asking the witness. You're not the witness.

BY THE ACCUSED:

All right, ask me after that.

A My memory is that that would have been in a copy of what was in this binder and because it's pertinent to my note.

BY THE COURT:

Q Because it was pertinent, I see.

A Yes.

Q The letter was pertinent to your note.

A That's right.

Q So the letter was detached from the binder and put with your note, constituting the reply.

A Yes.

BY THE ACCUSED:

Well binder gives full information, namely what exactly I've written to who, when, about what. Instead giving factual information, there is just a liable note (sic) which says that I'm such and such and such without any proof, without any supporting anything. Supporting is deleted and the liable is enclosed and why? Very simple. Because the documents, real documents, do not support that liable. This is why it is deleted. Very simple. This is what is being done all over.

When I'm deprived of evidence, jury is out of here. The whole morning today, I was deprived for huge bunch of evidence, absolutely necessary for my defence and I demanded from you that jury be here and listen what you were doing here this morning and you denied this to me.

BY THE COURT:

Would you hand these documents back to Mrs. Habib please.

BY THE ACCUSED:

Well I want this deposited. If she wants to deposit the whole thing, it's fine with me but not just this part.

BY THE CROWN:

Well the crown's position is that replies go in together or they don't go at all. They are not filed by ...

BY THE ACCUSED:

OK let's ... let's file the first reply then. It is independent.

BY THE COURT:

She has said she has three replies.

BY THE ACCUSED:

Well I see two. This is not three.

BY THE COURT:

With an annex which was attached to the other one and there's reference to a binder.

BY THE ACCUSED:

And there's ..

BY THE COURT:

There is also a covering letter that I ... I don't know.

QWas that covering letter with the binder?

AYes.

QIt was.

AI think so.

BY THE ACCUSED:

OK, let us file the first one, because it is self-contained. The first response is self-contained. Let's file it. There's no objection to that I hope.

BY THE CROWN:

Well that's not the proper witness. The proper witness would be the person who signed that. She has no personal knowledge.

BY THE ACCUSED:

Well ...

BY THE COURT:

I don't object ...

BY THE COURT:

As ... as such?

BY THE CROWN:

... to the condition that we file all the report, all the replies.

BY THE ACCUSED:

Well first reply can be ... the first reply is self-contained.

BY THE COURT:

The crown's position ...

BY THE CROWN:

It's not of personal knowledge.

BY THE COURT:

The crown's position is very simple. The crown's position is: I have no objection on the condition that the three (3) are filed. If you're not going to file the three, you better file them by the appropriate witnesses.

BY THE ACCUSED:

Ah OK.

BY THE COURT:

That's what the crown suggests.

BY THE ACCUSED:

And then crown will have a chance to say that Fabrikant is calling unnecessary witnesses.

BY THE COURT:

I don't know what the crown will say.

BY THE ACCUSED:

OK, let me get ...

BY THE CROWN:

We'll see then if it's pertinent.

BY THE ACCUSED:

The name of the witness and we'll ... we'll subpoena and crown will jump and say Fabrikant is going exponentially he's calling just everyone in the university. This is part of the game so who ... who is the ...

BY THE COURT:

Well you're probably right on one thing. If the binder forms part of the ... forms part of the letter, I wonder where the binder is. I would presume that ...

QAre you in a position to tell us where the binder is?

A I'm trying to ... to remember. Certainly Dr. Osman no doubt must ... must have kept a copy. What could have occurred is the binder may have been ... just the documents simply refiled, but not all in one place because

...

BY THE COURT:

OK, well we'll pull this in abeyance for the minute.

Would you ... would you attempt, Mr. Freedman to see what has happened to this binder.

BY THE ACCUSED:

What happened is very simple thing.

BY THE COURT:

But the crown ... the crown is perfectly right. If ...

BY THE CROWN:

We have to follow the rules.

BY THE COURT:

You follow the rules and ...

BY THE ACCUSED:

OK, who is ... who is the author of the first response?

The first response was written by who?

A The first response was a telephone message.

Q Yes.

A Taken by ... by my secretary from the assistant to the vice-rector services.

Q Yes.

A The second is from the vice-rector, institutional relations and finance.

Q OK, those are two contained responses and I believe crown has no objection to filing them at this time, right?

BY THE CROWN:

Under a cote I, I would say.

BY THE COURT:

The crown has an objection. The crown said ...

BY THE ACCUSED:

Oh yes, OK.

BY THE COURT:

... says you've got a choice. You can put them all in with the crown's consent or you can put them in the right way.

BY THE ACCUSED:

I couldn't care less what crown says. We'll call then witnesses. May I have it for a second. I will just write the names. Could you give it to me please.

BY THE COURT:

Well you're not ... you don't need the court exhibit. You need a piece of paper on which to write the names.

BY THE ACCUSED:

Yes, well I want the names.

BY THE COURT:

Well no, don't write on that ... on that exhibit.

BY THE ACCUSED:

Give me a little bit more credit, all right.

BY THE COURT:

Fine, well write on your notepad.

BY THE ACCUSED:

Of course. Why would I write on that.
So OK, you have two (2) more witnesses to come.
QDid you get ...
BY THE COURT:
Would you mark these as I, for the moment, Madame Des-rosiers.
BY THE CLERK:
I-10.
BY THE COURT:
And I think you do the same with the third one.
BY THE CROWN:
I would ...
BY THE ACCUSED:
The third one ...
BY THE CLERK:
En liasse, I-10.
BY THE COURT:
Yes, en liasse as I-10. They can be ... they can be separated.
BY THE ACCUSED:
The third one goes back at this time, the third one I do not ask to be filed by I or any other.
BY THE COURT:
You may not but I do.
BY THE ACCUSED:
Ah you want. Fine.
BY THE COURT:
That doesn't mean it becomes an exhibit at the moment. It means that it's retained.
BY THE ACCUSED:
Well, but it should not be together with this one.
BY THE COURT:
Well all right, if you want to give it another I number, that's fine with me.
BY THE ACCUSED:
Yes.
BY THE CROWN:
Well you're the boss, My Lord.
BY THE COURT:
Well I'm ... I couldn't care less. It can have another I number, the third one.
BY THE CLERK:
The third one?

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<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">BY THE COURT:

Yes.

BY THE CLERK:

I-11.

BY THE COURT:

If the others are I-10 en liasse, that's I-11, yes.

BY THE ACCUSED:

QThat's all the answers what you had to your memo?

AYes.

QDid those answers convince you that I'm not that harassing after all if you have only three answers?

ANo.

QNo. You distributed your memo to how many people?

AIf I may have it back, I will count them. No, that would be ...

BY THE COURT:

D-20.

AYes, thank you very much. Ten (10).

BY THE ACCUSED:

QTen and out of ten, you got only three answers and the memo, maybe it makes sense to read the memo because memo is fantastic. Could you read it please.

AFrom myself to a list of people.

BY THE COURT:

QAnd you might name the people that it's addressed to.

AAll right. Dr. Charles Bertrand, Dr. Morris Cohen, Maître B, rang 5re Gaudet, Dr. Patrick Kenniff, Mr. John Relton, Dr. Rose Sheinin, Dean Swamy, Mrs. Nancy Torbit Mr. Ken Worthingham, Miss Audrey Williams.

"It has become increasingly clear that a number of individuals are beginning to feel harassed by the number of enquiries, requests and telephone calls being addressed to them by the questioner.

As a first step to addressing this issue and in order to assess the avenues of response opened to us, I would appreciate your noting the enquiries, both written and verbal, requested of the members of your office, both in nature and number and your informing me of them.

Secondly I would welcome your reaction to a proposal that we meet to discuss our collective responsibility to respond to these enquiries. You may wish to delegate one individual to do so who, in turn, could report back to the entire staff in your department.

I shall await your response to this proposal. Your prompt attention to my first request would be greatly appreciated."

QYou sent it to ten people and you received only three responses and how you justify your such a great concern (sic) for me requesting information?

ABecause everyone was so busy answering your letters and telephone calls, they couldn't answer mine.

QWell it doesn't look like everyone was so busy.

BY THE COURT:

This is ... this is argument and it's cross-examination.

It's pointless.

BY THE ACCUSED:

Another judge would say: witness is hostile, you know.

BY THE COURT:

Sorry?

BY THE ACCUSED:

The witness seems to be hostile, no? Witness demeanor seems to be hostile, is it?

BY THE COURT:

No.

BY THE ACCUSED:

No, of course.

BY THE CROWN:

The witness gave the proper answer.

BY THE COURT:

Absolutely.

BY THE ACCUSED:

Of course, no.

QBut still they answer to you only three of them? The remaining, what, it was fourteen? Eleven were so busy with my requests, they didn't answer to you? That's your contention?

AYes.

BY THE ACCUSED:

Oh, we'll call them to testify then. OK, thanks.

BY THE COURT:

Have you any questions?

BY THE CROWN:

I have no questions My Lord.

BY THE COURT:

Thank you very much Mrs. Habib.

END OF THE TESTIMONY OF THIS WITNESS

BY THE COURT:

Call your next witness.

BY THE ACCUSED:

Well I would like to play a tape of my conversation with Mr. Haines as original evidence.

BY THE COURT:

If you wish to play yourself a tape, you can do so during the adjournment but ...

BY THE ACCUSED:

No, I want to ...

BY THE COURT:

... you're not going to play a tape as original evidence during ... during the trial.

BY THE ACCUSED:

I want to play it to the jury.

BY THE COURT:

If I'm going to have to deal with the question of whether you may introduce a tape as original evidence, then I will excuse the jury and let them go to lunch and we will decide whether or not you're going to be able to do this or not.

BY THE ACCUSED:

Well admissibility of evidence should be done in presence of jury.

BY THE COURT:

Shoot it. Well in this instance, the admissibility of evidence won't be done in the presence of the jury. So it looks as if I'm going to be tied up at least between now and twelve thirty which is the normal breaktime so I'll excuse you at this point.

I'm sorry that it was not possible to accede to your ... your request. It came a bit late. They prefer to know as far as lunch is concerned what ... what it is earlier in the morning. So if ... if there's anything like that, any request like that, don't be shy but if you can me let me know the day before, I'll do what I can. OK, thank you.

THE MEMBERS OF THE JURY WITHDRAW

BY THE CROWN:

I'm sorry My Lord, was there a specific request by the jury?

BY THE COURT:

Yes, there was a specific request by the jury which had to do with lunch today, that was all.

BY THE CROWN:

I see.

BY THE COURT:

It was not a written request. It was a request that one of the guards conveyed to me.

BY THE ACCUSED:

I didn't ... I didn't get. What request was about?

BY THE COURT:

Lunch.

BY THE ACCUSED:

Lunch? Yes, lunch, everyone has lunch. I don't get, what request was about?

BY THE COURT:

The request was whether the jury could order in pizza. I said in principle yes, but let me know earlier because the administration makes arrangements to feed everybody and it's good to know that ahead of time so that they won't have arranged to make lunch for eleven people and then have it go to waste. That is all.

BY THE CROWN:

On the other subject, My Lord, I think ...

BY THE COURT:

Now.

BY THE CROWN:

... you've already ruled.

BY THE COURT:

Well let us hear what Mr. Fabrikant has to say on the other subject first.

BY THE CROWN:

I don't even see why we should be hearing him. We have the experience with the phone, with the conditions of detention. I think the only way to deal, by now after four months and as far as I'm concerned, it's nine or ten months, is once a certain point is ruled, we should not reopen the debate.

BY THE COURT:

It's not a question of reopening the debate. I don't think we've talked previously about the tape of Relton and I prefer to hear what he has to say.

BY THE CROWN:

We're talking about Haines, I think.

BY THE COURT:

Haines, excuse me.

BY THE CROWN:

So?

BY THE COURT:

It's a conversation between Haines and Relton at ...

BY THE ACCUSED:

No.

BY THE COURT:

No? What is it then in any event?

BY THE ACCUSED:

Between Haines and me.

BY THE COURT:

Between Haines and you, OK. You want to play as original evidence what?

BY THE ACCUSED:

Well this conversation.

BY THE COURT:

As what? What do you want to prove, do with it?

BY THE ACCUSED:

Well ...

BY THE COURT:

As far as I know, Haines is alive. As far as I know, you're alive.

BY THE ACCUSED:

Yes, but I cannot present the tone of conversation, I cannot present the atmosphere in which it has been done, I cannot present the manner in which words were spoken and this is extremely important ...

BY THE COURT:

To your defence, yes. In what manner?

BY THE ACCUSED:

Well, just ...

BY THE COURT:

What is the nature of the conversation?

BY THE ACCUSED:

From ... from the tape itself, it will be obvious two (2) things: first that ... how tortured I was at the time.

BY THE COURT:

You can talk to that, I suppose.

BY THE ACCUSED:

I cannot talk to that.

BY THE COURT:

You can testify to that.

BY THE ACCUSED:

It has to be heard. There is no way, I'm not an actor. Is it possible that guards keep their emotion to themselves? Is it too much to ask for?

BY THE COURT:

No.

BY THE ACCUSED:

No? That would be nice in the future.

BY THE COURT:

Go ahead.

BY THE ACCUSED:

Well this is why I want to have them play it. According to what I have, where was that, about tapes ...

BY THE COURT:

Did you question Haines on this particular tape when he was on at the stand?

BY THE ACCUSED:

Sorry? Well I tried yes, to make some questions but at that time, I didn't have the tape and you said that since I didn't have the tape, actually I asked him about this conversation and he denied. First of all, he denies the spectacle which he made with me, about me being sorry and self-defeating and so on and so forth, that I did that, that I did that, that I'd never do it again.

I think it would be very important for the jury to see that it was he who effectively did all this. It was he who then presented it to the jury as if it was coming from me and he made a spectacle then, calling secretary of vice-rector and telling her that Fabrikant is here and Fabrikant told me that he's sorry, that he'll never do it, that he's such and such and he will seek help and well, all that stuff and it was quite obvious that he was playing spec- tacle at that time.

I wasn't yet sure at that time what was the purpose of that spectacle but spectacle was played, no doubt about it and there is no way, even through cross-examination or any examination to present to the jury the whole outrageousness and as it says here:

"As original evidence, it may surpass testimony of a party to a conversation or an eavesdropper as to what was actually said. It may also give the added dimension of the phrasing, tone, inflection, volume, etc. of the speaker which cannot be adequately described by most witnesses."

This is the part which there is no way it could be described. They played their torturous game with me at that time and then continued this torturous game later on, which resulted in heart attack in 1991.

BY THE COURT:

That's your ... that's your particular view of events.

BY THE CROWN:

There's absolutely no new argument, My Lord.

BY THE COURT:

There's no new argument there at all.

BY THE CROWN:

I'm sure ... well he's not obliged to testify but if he ever testifies, he will ...

BY THE COURT:

He's not obliged to testify but ...

BY THE CROWN:

... certainly tell the members of the jury the way he was tortured all over the years.

BY THE COURT:

Yes.

BY THE ACCUSED:

OK, can we ...

BY THE COURT:

It's patently obvious that the purpose is not at all ... has anything to do with tone and inflection, but what you're trying to do is contradict Haines and there was a way, I suppose, to contradict Haines at the time when the tape wasn't there.

BY THE ACCUSED:

I... I need those ...

BY THE COURT:

So the request is ...

BY THE ACCUSED:

One second, I need two court orders.

BY THE COURT:

The request is dismissed.

BY THE ACCUSED:

OK, I need two court orders for professors. Now Prof. Kachanov couldn't come last weekend. His father had a heart attack. I'm not sure but he might come this weekend and yet another professor, from York University, is definitely coming this weekend to testify on Monday, so I need court order ...

BY THE COURT:

You ... you provide the names and you'll get your court order for ...

BY THE ACCUSED:

Well I'm prepared to provide the names.

BY THE COURT:

Fine, provide the names.

BY THE COURT:

Kachanov, K-a-c ... K-a-c-h-a-n-o-v, v like Victor, Mark, M-a-r-k I believe, Prof. Yorgason, Y-o-r-g-a-s-o-n, Yorgason and Prof. Antippa, as before, Saturday and Sunday for all three and I would like to have a copy of this order because last time, we had a problem. They couldn't find the order downstairs, they couldn't find it on 13th floor so if possible, I would like to get a copy of this order to have it in my hands so that we will for sure have no problems with that.

BY THE COURT:

No, no, could you ... could you between now and tomorrow draft that order and could you please make an extra copy.

BY THE CLERK:

Same hours, same hours?

BY THE COURT:

Same hours.

BY THE COURT:

OK, so we'll adjourn until two fifteen.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ARE PRESENT

JOHN YELLE
Security officer
22/07/39

SWORN

BY THE ACCUSED:

Before we start, it's extremely cold in the cells. It's more cold than it is in winter. You, as a judge, can do

something about it? We may be criminals, we're still humans.

BY THE COURT:

If you have questions to put to Mr. Yelle, would you please put it.

BY THE ACCUSED:

I put a question, would you like to answer it?

BY THE COURT:

No.

DIRECT EXAMINATION BY
MR. VALERY FABRIKANT - ACCUSED
REPRESENTING HIMSELF:

No, all right.

QMr. Yelle, are you also LP-11?

AYes, I'm an operator on LP-11.

QCould you explain all this LP-11 stuff so that it would be clear what it is?

AYes, it's a vehicle.

QIt's ... it's the car you're driving?

AYes, that's right.

QWhy would another guard refer to you as a person and calling you an LP-11?

ABecause that's the ... that's the code that we use, LP-11, that's the vehicle, that's the one I'm driving and that's what I answer ... I answer on to the dispatcher.

QThen there is no way ... what if you're at another vehicle, then what happens?

AThe same code.

QBut the vehicle is not longer a LP-11 then?

AIt sure is.

QIt is written on the ... on your vehicle?

ASometimes they do, sometimes it's not.

QSo there is nobody else who could answer the same call LP-11 at Concordia, right?

AIt depends, if I'm not there, somebody else will.

QOK. So why I'm asking those questions is because I want to be sure that a person who was talking to a bodyguard from Securité, canadienne, was it you or it might be somebody else too?

AIt could have been me, it could be somebody else. It depends, I don't know, it could be ... it could be me, it could be somebody else.

QOK, could you name somebody else who also could be on ...

AWell you had to refer ... you have to refer to the director for that, that had the names of all those people.

QSo LP ... LP-11, it's not just you and somebody else, it might be more than two?

AYes, that's right.

QLet's talk then about incident which took place November 1st 1991 at the senate, but before that, how long have you been with Concordia?

ATwenty-four (24) years.

QWhat is your official status at Concordia?

A Security officer.

QWere you involved in 1989 with Mr. Barnaby in arranging surveillance of me?

A I don't know, you should ask him, sir, not me.

QNo, I ask if you were involved in there?

A No sir.

QOK. Since when you were aware that I'm a dangerous person?

A Pardon me?

QSince when were you aware that I was a dangerous person?

A I never said, sir, you were a dangerous person at the time I was doing the surveillance.

QOK. What time are you referring to now?

BY THE COURT:

Well it's not for the witness to be referring to time, it's for you to be referring to time.

BY THE ACCUSED:

No, he said at the time you were at surveillance.

A Oh, you mean, the time at the senate meeting.

Q Say it again?

A That one, at the time of the senate meeting? That's the one you're talking about?

Q No, before that?

A Oh, I don't ... don't recall, I don't remember the time.

QOK, when have you heard my name first?

A Oh I've been ... I heard your name mentioned before but just through rumors, through the department, you know.

QOK, what were those rumors and when have you heard them?

A I don't remember exactly the date and the time because I was not ... I was not assigned to that ... to that duty at that time.

Q Well ...

A Somebody else, I guess, was assigned, but I don't recall who.

Q Nobody asked you exact. Was it 1989 when you heard first the rumors?

A I couldn't pin it exactly.

Q I don't get it. Was it 1989?

A I couldn't pin it exactly, Your Honor.

BY THE COURT:

He says "I can pin it down exactly", he said pin it, he means pin it down exactly, I can't tell you when exactly.

BY THE ACCUSED;

All right.

Q But it was before November 1st 1991?

A Yes, I would say so.

QOK. What ... what kind of rumors have you heard before November 1st 1991?

A Oh there was ... I heard quite a few but I didn't ... like I said, I didn't ... I wasn't assigned to those assignments.

Q No but you ...

A So I didn't pay much attention because I was assigned to something else.

Q Nobody asked you if you were assigned to that. Just would you kindly repeat the rumors you had heard?

A There was all kinds of rumors, but like I said, I didn't pay it much attention at that time.

Q Still, would you kindly repeat them to the best of your recollection?

ALike I just said, I mean, I ... I didn't pay attention to the ... pay attention, I don't remember exactly the date and time of the problem that was going on at that time. QI'm asking you content of the rumors, not date, not time. AI couldn't answer on that, I don't know.

BY THE ACCUSED:

The witness is evading question.

BY THE COURT:

THE witness says he can't remember the content of the rumors, he recalls hearing rumors, can't ... can't tell you what the content of them was.

BY THE ACCUSED:

QOK, was it rape of somebody?

ACan you repeat that ... that question please?

QWell did you hear that I raped somebody?

AYou did what? Can you repeat that question please sir?

QDo you remember if it was a rape? Did I rape somebody?

No. Did I steal money?

A

QDid I threaten to kill somebody?

A

QYou're a security officer, aren't you?

A

QIf someone reports rumors of criminal activity, aren't you suppose to remember them?

AWell sir, we've got quite a few people working the same job I'm doing, same assignment I was carrying on, there was a lot of people, so I couldn't give you ... I couldn't give you exactly, pin the time and the date.

QSo you were hoping somebody will remember those rumors?

AWell it could be somebody else, I mean, the time and day I don't have it at the present time.

QWell English is your first language, is it?

A

QEnglish is your first language, is it?

A

QDid I ask you about day and time?

A

QDid I ask you about day and time or I ask you about content of the rumors?

AWell the content of the rumors, I could not ... like I said before, I don't know, I just told you that.

QAll right. By November 1st, 1991, you were still in the position that you heard some rumors but had no idea what they were, correct?

A

QAll right. So November comes first ... comes, the 1st comes and would you describe events of that day?

AWell November 1st, 1991, at fifteen forty-five (15 h 45) I received a call to proceed to the senate chambers where a person was suspicious, carrying a large attach,-case.

QThat call was coming from who?

A

QFrom what vice-rector?

A

QDid ... did she call you on the telephone?

A

and the dispatcher replayed ... transmitted the message to me on the air.

QShe called dispatcher on the telephone?

AThat's right or she sent somebody to ... she sent somebody to pass the information because she couldn't leave at that time. I received ... I received the call by communication system.

QWhere were you at that time?

AAAt that time? I was in the office and ... but I was just ready to go home when I got the call.

QIn the office where? You mean in ... at Loyola Campus?

AThat's right.

QAt security office?

AThat's right, Loyola Campus.

QWell if you were at Loyola at security, why should it be on the air, you were just there, weren't you?

ANo, because we use a radio communication.

QBut what was the distance between you and the operator who received the call?

AI respond to the call with the vehicle because another call can come in frequently right after and I need my vehicle to ... to get to the scene.

QYou're not answering my question. What was the distance between you and the operator at the time call was received?

AI would say about a half a mile.

QHalf a mile? Where is your office located?

AThe physical plan, toward Terrebonne Street.

QWhat street?

ATerrebonne.

QAnd what did you do? You ... you got in your vehicle and started driving towards senate chambers?

AExactly.

QHow did you manage then to appear there about fifteen minutes (15) after I arrived, fifteen (15) seconds after I arrived.

AProbably because we had ... we got some ways to get there much faster than other people because we know the area and when you've been working twenty-four years at one place, you know the area more than somebody who's been ... had only a few days or a few weeks.

QWell doesn't it take fifteen seconds just to ... to transmit a call, it takes maybe more than fifteen seconds?

AOh no, I didn't tell ... I didn't tell you the time, sir.

QWell you arrived fifteen seconds after me. You appeared out of nowhere. Would you recall better? Maybe it was not the way you described it?

ASir, when I got the call, the call was given to the police department at the same time. When I arrived there you were ... you were in the senate chamber and I was right behind you at that time.

QThat's what I mean, you came fifteen seconds after me.

AWell...

BY THE CROWN:

The witness could not know, My Lord.

BY THE COURT:

No, he couldn't. All he can say is what he did.

BY THE ACCUSED:

All right.

QSo you came there and what was in the message, what was

content of the message? There is someone with big portfolio?

AThat's right, the person was a suspect, a person looks suspicious and when I arrived there, the ... Dr. McKenzie pointed to me toward you. So at time, I took closer range from you at that time there.

QAll right, OK, what happened next?

AWhat happened next, you were ... you were there approximately seventeen (17) minutes. You observed, you observed the VIP's at the front ... front row. What I mean by VIP's, all the rector and vice-rectors and so on.

QI observed them?

AThat's right.

QOK, continue. And decided not to shoot?

AAAt seventeen ... after seventeen (17) minutes, you left the ... the chambers, you went outside. It's at that time that the police arrived and the message was transmitted to the police authority about your personality and also the content you were carrying and from there, the police took over the investigation.

QOne second. I was inside for seventeen minutes. Something else happened, some other guards appeared from nowhere. You were the first one to arrive and some guards appeared from nowhere. Could you explain their appearance?

ANo, the ... the guards who arrived after, that was after you were finished ... you were finished being questioned by the police department. There was a guard posted at the front parking for circulation.

QYou don't listening (sic) to my question. Would you kindly be more attentive. At the senate meeting, together with you, two other security guards arrived at the senate chamber. One was standing on one side and another on another side and everyone was turning their head and asking question: what is going on?

BY THE COURT:

Are you ... are you testifying now?

BY THE ACCUSED:

QDo you recall that?

BY THE COURT:

Are you testifying or what are you doing?

BY THE ACCUSED:

No, I'm trying to recall his memory. I'm trying to trigger his memory better than it is now, that's all.

AI think so, My Lord. At the time that I responded to that call, a few minutes, when I arrived at the chambers and at the time the police arrived, the police was asking where the chamber was and the two guards I guess took the constable toward that location, but Mr. Fabrikant happened to be leaving the premises at that time.

QWell let us ... before leaving, almost simultaneously with you, do you recall that, almost simultaneously with you, two other guards entered senate chamber?

ANo.

QDo you remember that?

ANo.

QYou remember exactly that I was there seventeen minutes and you do not remember that there were two more security guards in the senate chamber, you don't remember that?

ANo, I remember, like I just told you, Your ... Your Lordship, there was two guards who arrived, just before the

police arrived, both the police, almost instantly to direct the police toward the senate chamber but Mr. Fabrikant was leaving the senate chamber at that time. I think Mr. Fabrikant's got the wrong interpretation there.

BY THE COURT:

No, just you answer the questions and that's ... that's fine.

BY THE ACCUSED:

QWell wrong interpretation ...

BY THE COURT:

Stop arguing with the witness. You have the witness's answer and there it is.

BY THE ACCUSED:

All right.

QSo you were the only one security guard at the senate chambers when I was there?

AWhen you were present, yes sir.

QThere was ... there were no other security guards there?

ANot at that time you were there.

QOK, now who and when called the police?

AWho called the police?

QYes.

Well security, when Dr. McKenzie requests our service and the police authority, the two calls were made in the same instantly (sic). We ... we respond to the call and also the call was given to the police department, 911.

QOK, it was simultaneously, you were called and police was called, correct?

ACorrect.

QAll right. Now you arrived at the senate chambers, you were watching me. Did I do anything suspicious?

AWell my job was exactly ... you were pointed to ... you were pointed, so exactly at that time, I recognized you and I took ... I took the surveillance. I was right behind you sir, at that time.

QI know. Did I do anything suspicious?

ALike I just said, he just observed the ... the panel who was there in the front of you, with the ... the rector, vice-rector and so on, all the VIP's from the university.

QDid everybody else also observe them?

AWell not the way you were doing the observation sir.

QAh OK, so I was doing it differently?

AThat's right, sir.

QCould you describe what was the difference?

ABecause you were pacing back ... you were pacing back on the floor, on the floor and when you were pacing, you were always observing. He didn't ... he didn't take a seat, sir.

QI didn't take a seat?

ANo, sir.

QOh, that is interesting. So everyone was sitting in the senate chamber and I wasn't sitting there. I was just pacing with my bag, forth and back, that's how it was?

AThat's right and also you went to the kitchen area and you grabbed ... you took a coffee, you remember that.

BY THE COURT:

Don't ask questions. Just simply answer the ones that are put to you and it will be fine.

BY THE ACCUSED:

QSo everyone was sitting, there was meeting of the senate, everyone sits and definitely watches these VIP's, what

they're saying, what they're doing and I, instead of sitting quietly, just paced the senate chamber one direction and another, one direction and another, that's how it was?

AExactly right.

QJust a second ago, you said that I was sitting there and you were just behind me, so I was sitting. No, I wasn't sitting anymore, I was pacing? That's what it was?

AI said you were standing up and after that, you started pacing, you started walking the floor at that area.

QNot just to take a coffee and return back and sit down, but just pacing?

AYou drank your coffee standing up, sir.

QStanding up or pacing?

AWell what you want to call it.

QNo, it is different. If you drink coffee like this, this is one thing. If you drink coffee like this, this is different. Can you ... can you distinguish those two, can you?

AWell you were drinking your coffee in one area and you were going toward another area, then after you were coming back, so it was exactly what you were doing, so you were walking from one end to the chamber (sic) to the other chamber and during that time, you were still observing the ... the VIP's, all the rector's.

QWell out of seventeen minutes, how long was I standing and how long was I sitting?

AWell standing sir, you were there for approximately ... I didn't figure it exactly from time to time, (sic) but you spent some time like I just described.

QWell on the one hand, you're so accurate, you know that I was there seventeen minutes.

BY THE COURT:

Would you stop arguing with the witness. Ask your questions.

BY THE ACCUSED:

I'm not arguing.

QI'm asking you, could you explain why you remembered well that it was seventeen minutes altogether and you cannot split those seventeen minutes in the time I was allegedly pacing and the time I was sitting or I was pacing all the seventeen minutes there?

BY THE CROWN:

This is cross-examination.

BY THE COURT:

Yes, it is. Objection maintained.

BY THE ACCUSED;

QWhat part of the time you observed me I was standing and what part I was sitting?

AYou mind to repeat that question please?

BY THE COURT:

He wants to know, during the seventeen minutes, for how long he was standing?

AWell I would say ...

Q... or pacing and for how long he was sitting down.

AOK. About ...

QIf you can tell him.

AI would say maybe about eight (8) minutes walking back and forth, maybe ten (10) minutes walking back and forth approximately and he went down ... he went down to get a

coffee in between, in between that, brought his coffee with him. It's hard to figure exactly right to the end of the time.

BY THE ACCUSED:

QOK. During that time, what ... what you were doing during that time, when I was pacing? Were you ... were you pacing after me?

AI was right behind you sir.

QSo you were pacing also?

ARight, just ... just around the corner sir.

QSo I go this way, you go after me, I go this way, you go after me, this is how it was?

AVery close sir.

QSo after that, everything is finished, the senate meeting is finished, I go out, you go out with me, right?

AExactly right.

QOK, now what ... what happened after that? I go downstairs?

AWhat do you mean downstairs?

QWell you ... you probably recall that senate chambers are kind of on the second floor.

AHum, hum.

QTo go to the ground, you have to go some steps, don't you?

ARight sir.

QAll right, so I went down those steps and you were behind me all the way, right?

AExactly.

QNow after that, there is police car staying just at the entrance at the senate chambers, say, we'll put it this way, right?

A No, no, sir, not .. not the way you describe them.

QOK, so I'm going downstairs, you're behind me. Where police car?

AThe police car are in front of the administration building.

QWell fifteen (15) meters from that place, right?

AApproximately.

QSo I'm going, passing this police car unsuspecting that this police car is for me, right?

AWell ...

QWhat ... what happened after that?

AOK, the police was arrived and when they arrived, we transmitted the message to the constable and exactly ...

QWho ... who transferred the message?

AI did.

QOh OK.

AThen the police took ...

QOK, hold it, hold it at this point. What kind of message have you transferred to the police?

AThe same, the way I received the call.

QOK, what way you received the call?

AA suspect person and also carrying a suspect briefcase.

QThat's all what you told the police?

AThat's right and I also mentioned that you had been having problems with the university.

QOh Oh, this is interesting now. You mentioned that I'm having problems with the university, yes and what else did you tell them?

AThat's about it as far as I'm concerned, that I recall.

QTry ... try better your recollection, what else did you

tell them?

AAAt the time, I presume that I told them that I don't see the ...

QOK, I'm going to try to refresh your memory.

AI don't recall, Your Honor.

QDid you tell them that administration is on its way to have me fired first, did you tell that?

ANo, I told them you had problems with the ... that you had a problem with the university and that's all I can tell you at that time.

QOK, but you didn't tell them that administration is on its way to have me fired?

ANo, I don't recall that.

QOK.

AI don't ...

QCan we get ...

AI cannot think about that.

QCan we get the police report? I believe it is somewhere in ...

BY THE COURT:

You will continue to ask your questions. You're not cross-examining the witness.

BY THE ACCUSED:

I'm not cross-examining.

BY THE COURT:

Or you ought not to be cross-examining the witness.

BY THE ACCUSED:

I'm just trying to refresh my own memory. Can we get it?

BY THE COURT:

The police report is there. It's an I number, Madame Desrosiers.

BY THE CROWN:

I guess it's I-3.

BY THE COURT:

I-3, est-ce que vous l'avez?

BY THE ACCUSED:

Would you pass it to me, Mr. Belleau please? You don't need it.

QYou ... you understand French, don't you?

AOui, Monsieur.

QOK.

BY THE COURT:

You were taking that to refresh your memory. It's not a question of reading the police report to the witness. You go ahead and refresh ...

BY THE ACCUSED:

No, I'm not reading report to the witness.

BY THE COURT:

Fine. Don't.

BY THE ACCUSED:

I'm just asking him:

QDid you tell them the English equivalent of the phrase: direction administrative du collège serait en train de prendre des procédures pour le congédier which effectively means that administration is taking measures to have him fired, did you tell the police that?

ALike I told you, the constable, that you were having trouble (sic) with the ... with the university at that time, so that could be elaborate (sic) the different way, the expressed ... it depends the way you express that.

BY THE COURT:

The question is what you said to the police.

AYes.

BY THE ACCUSED:

QDid you tell them any equivalent of that or you didn't?

A I could ... I could have told them that, I don't recall at the present time.

QWell if you told them that I am being fired by administration, would you explain where you got this information from?

AIt was just ... it was just a rumor that we heard.

QWell you just recently said that you cannot specify any of the rumors. Now all of a sudden you can?

AWell it was just a rumor that ... Your Lordship, that we heard and I just transmitted that to the authority.

BY THE ACCUSED:

But he just recently testified that he cannot pinpoint any rumors. Maybe he's adverse witness?

BY THE COURT:

Continue for the moment.

BY THE ACCUSED:

QSo this is the rumor you now can identify. Can you identify any other rumors? This triggered maybe your memory and you can identify some other rumors? No, not at all?

A No.

QAll right. Did you tell them equivalent that two and a half years ago, that I allegedly threatened to shoot the whole world, namely the senate?

A No.

QDid you tell them that?

A No, I never said that.

QShould I assume that policeman just invented the whole thing?

A No, because he never saw the ... there were also other people giving an interview to the constable at that time.

QWell they refer to you sir.

A I never said that.

QAnd the information was received from you and the ... what you told them ...

BY THE COURT:

Just a second. You're reading from your report. You ask him ... you can ask him what he told them.

BY THE ACCUSED:

Yes.

BY THE COURT:

But you cannot read the police report into the record.

BY THE ACCUSED:

No, I'm not reading police report.

BY THE COURT:

No, well you can't make affirmations as to ... as to what, who told who what. You can ask this witness what he told the police.

BY THE ACCUSED:

Yes.

BY THE COURT:

That's for sure.

BY THE ACCUSED:

QYes, so you absolutely deny that you told policeman that two and a half years ago, I threatened to shoot everybody and namely the whole senate?

A No, I never said that.

QOK. How on earth policeman ... OK.

BY THE COURT:

No point in asking him that question.

BY THE ACCUSED:

Yes. Well I think at this point, it is obvious policeman couldn't possibly invent such a thing including ...

BY THE COURT:

That's ... that's argument.

BY THE ACCUSED:

Including the date.

BY THE COURT:

That's argument.

BY THE ACCUSED:

That's argument that the witness is not telling the truth.

BY THE COURT:

No, that's argument. How do I know that the police ... what the police wrote down or whether the police are right or wrong when they ... when they attribute a source. You may be right, you may have other witnesses to call but all you can do is put questions to this witness as to what he told the police. You can't, through this witness, put in evidence what's in a police report. A policeman signed that report.

BY THE ACCUSED:

Yes.

QSo you never told the policeman that I threatened anyone?

ANot as far as I'm concerned.

QSo if you had no information that I ever threatened anyone and just the only fact that university was going to fire me is for you, as security officer, sufficient reason to demand that the person be arrested?

AWell I didn't ask for ... to be arrested. I did transmit the message to the constable and

QWell what was that message?

AI just told you, that you have ... you looked suspicious and there was a ... the briefcase was suspicious, according to the information that I received and I also observed you at the senate meeting.

QWell wasn't it ordinary artistic portfolio?

ABoss, it looked ... it looked suspicious at that time, sir.

QSo everyone who would be walking with artistic portfolio would look suspicious to you?

AWell if they had a good ... there is a reason why that we were asking the police department to verify because we have a complaint.

QWas this complaint effectively specifying some kind of threat?

AWell the complainer asked us ... the police was called at the same time like I respond to the call and it was due to the ... the suspicious (sic) of the suitcase and not the way it was ... it was ... you were there and Dr. McKenzie requested our service.

QWell Dr. McKenzie didn't address the police. You addressed the police.

ANo, the police was requested by Dr. McKenzie at the same time that I ... when I ... when I got the call, the police also got this passed at the same time that I was.

QYes and you didn't tell them anything at all. All you

told them: that university was trying ... you didn't even tell them that university was trying to fire me, did you? AI don't recall telling that sir.

QSo all you told them, that what, I had some problem with the university and that's enough to have a person arrested?

AWell there was also another person there too so ... we have a good reason, sir, to ask the authority to ... to speak to you. What I mean by the authority, I mean the constable.

QWell you had good reason. Then describe your good reasons?

AI just described, I just told you.

QSo your good reason was that I just was carrying artistic portfolio, that was the good reason to arrest someone?

AWell the way you ... you bizarre character also, the way you carrying on in the university, so that's why really. When Dr. McKenzie saw you there, she requested our service and also the police department and that was it.

QWhat do you call bizarre? What was bizarre in me?

AWell your comportment, I mean the way you carrying on, you know.

QWell ...

ANot only there, but there are other ... other place also, you know.

QWhat do you mean, other place?

AWell sir, you know, you ... when you were sent to different department, I mean, you went toward the other department, you ...

QI don't understand the last part, what?

AWhen you were ... when you were going to different department, you know, you tried to always to show your authority, you know.

QOh, when I'm going to different department, I'm trying to show my authority?

AYes, that what I ... that's what I heard.

QHa ha, you have new rumors and this is now ...

No, this is enough to declare witness adverse? Now we see that he has ... he has new rumors which he couldn't identify.

BY THE COURT:

Listen, you've been ... you've been permitted to cross-examine the witness for about the past fifteen minutes and there's been no objection from the crown nor any intervention from me.

BY THE ACCUSED:

QSo now you have another rumor: that I entered certain departments and what? Authority way? (sic) Try, try your memory, maybe you will ... you will remember something else. So now you're saying that you knew that I entered certain departments, the departments in authority way. This is also enough to arrest somebody?

ANo, sir. I just told you sir, the reason we called the police, because we got a complaint and we have ... automatically the call was made to the police department and our department to go to the scene. When I arrived there first, like I just mentioned before, and the police got ... got the information.

QWell OK, so now you mentioned two reasons to have me arrested. One was that ...

ASir, I didn't get you arrested.

QWho, I'm sorry, told the policeman that I'm suspicious and I need to be searched? Who did that?

ASir, Your Lordship, I didn't ask the police department to arrest Mr. Fabrikant at that time but the police department was asked to investigate that person. There's a big difference.

QYou believe that police can arrest somebody just because he enters department in authoritative way?

ANo, you're going to have to ask the ... the police department why they arrest you, not me. I'm only a .. I'm only a safety officer, I'm not a special constable, I'm not a constable.

BY THE ACCUSED:

And after that, crown will say OK, so he's calling another witness. All right.

QDid you ... did you realize how insulting it is to have a professor arrested?

BY THE CROWN:

This is argumentation, My Lord.

BY THE COURT:

Yes it is. Objection maintained.

BY THE ACCUSED:

It is what?

BY THE COURT:

It is argument that you're making.

BY THE ACCUSED:

It's not argument.

BY THE COURT:

Yes, it is.

BY THE ACCUSED:

I'm asking his understanding of the situation.

BY THE COURT:

He's here to testify as to facts and that's what he's going to do. His conclusions are not ... are not going to help us very much.

BY THE ACCUSED:

QAll right. Did it ever cross your mind that if you had any suspicions, you could just ask me what is in my briefcase? Did this thought enter your mind?

AI couldn't have done it, but not ... not at the time you were, sir, in the ... in the senate chambers. It's not the proper place to ask you that.

QWell when I exited and you were right behind me.

AHum, Hum.

QAt that time, why didn't you ask me?

ABecause the police ... the police was right on the ... approximately I would say about a couple of hundred feet away from us.

QWell, so you were quite safe to ask me to do so?

ASo I left that, I left that to the police department at that time.

QYou didn't understand that it is infringement of personal rights what you chose to do?

BY THE CROWN:

It's argumentation again, My Lord.

BY THE COURT:

Yes, it is. Objection maintained.

BY THE ACCUSED;

QAnyway, you didn't bother to ... to ask me personally what is in my bag if you had any suspicions?

ANo.

QSo what exactly you told the policeman, that ... could you repeat once again what you told him?

AI just told you before.

BY THE COURT:

Yes, we've been through that. He's told you what he told the police.

BY THE ACCUSED:

QWhat happened after that?

AWell after that, I guess, the police questioned you and after that, I left the scene because the police department were conducting their investigation and I left the scene to speak to Dr. McKenzie, toward the senate chamber and Dr. McKenzie after was in presence with the constable. She gave her exactly ... her ... exactly her statement to the constable.

QShe gave her statement to constable?

AThat's right.

QIn writing?

AI don't know, you're going to have to ask the constable for that, I don't know, I was not present in the police car.

QOK. So it looks like we have report which is incomplete. There is no statement here. All right, what happened after that in terms of security and your involvement in surveilling or following me or whatever? What was your part in any measures which followed? After November 1st, was there any involvement of you as far as security and myself was concerned?

ANo, to follow you, no sir.

QOK, in what way, were you involved in ...

AI never ...

Q... security which was in some way related to me?

ANo, I never followed you after that day, sir.

QWould you please just listen to the question. I'm not asking you if you followed me. I asked you: were you in any way, after November 1st, involved in any security measures, any against me?

ANo, the only thing I suggest, I was ... we got our premises on St. James St., it's called Concave and there was a private investigator working at that ... at that location.

QWould it be more correct to say it was a bodyguard?

APardon?

QIt was a bodyguard rather than private investigator?

AWell I call ... I call them, he was an investigator.

QWhat was that person investigating? He was standing at one place, wasn't he?

AWell you call it a bodyguard, but I call it investigator.

QWell what was he investigating then?

AYou'd have to ask him that.

QWell it was secret from you?

AIt's not secret from me but he has some other duty also beside the regular duties.

QOK, so what was his investigative duty?

AWell he was just doing his normal duties. If there was ... he received some instructions I guess from the director or what have you and that was it.

QWell do you understand that the word investigator im-

plies that person investigates something?

A Not really all the time. It depends exactly the case.

(sic)

Q Well if person is standing at one place from nine a.m. until five p.m., he's still investigator?

A Well that's what his ... his role is. He could ... he's there to ... if a car comes, he's there to verify the automobile, get some information and so on and ask the people, ask questions and that's what he's there for.

Q He was there to ask some questions?

A Yes, sure, he's at the door. At that time, the one I saw, he was at the door. He could be working in the lab, he could be ... he could be different places and he was in the building.

Q And what was his investigative role according to your knowledge?

A No idea. I believe he was put up there by the administration.

Q Well weren't you some kind of liaison for him?

A I'm not some kind of liaison. I could ... because he was not assigned by me, he was assigned by the director of security.

Q Still what was your relationship between you and him?

A To pass some information for him he couldn't ... he could help, to help him because just in case there is a problem with the security matter, because we always say we're there to protect the ... the faculty, staff and students.

Q What kind of problem did you expect?

A You never know what we can expect.

Q Still of course you never know, but what kind of problem did you expect?

A Any kind of problem.

Q OK, did you expect me coming with a gun?

A I don't know.

Q Well were you or weren't you?

A Well ...

Q You were not expecting that?

A I didn't receive any instruction toward that.

Q Well didn't you search me for weapon?

A That was before sir.

Q Yes.

A I didn't search you, sir.

Q No, I mean did you arrange searching me for weapon?

OK.

A No.

Q I'll put it differently. Wasn't I searched for weapon?

A You'd have to ask the constable that, I don't know what ... what story you told the constable and what's ... what's the communication between you and the constable, I don't know.

Q OK, when you said that my bag was suspicious, in what way it was suspicious to you? Did you think that I have some narcotics there or weapon? What did you think suspicious was there? (sic)

A I'll ... I'll put this way, sir. I have a good reason to ask the constable to verify the content of the suitcase.

Q I'm not asking you if you had a good reason. I'm asking you what did you suspect in my bag? Was it weapon or something else?

A Well if you're saying that, I don't know.

Q Would you kindly answer this question?

AIt could be, it could have been anything.

QWhat did you ...

AI mean we've got to be very serious when we work in that kind of job, especially when we have a call of that nature.

QWell I'm asking you very seriously, what did you expect to find in my bag if it was suspicious to you?

ALike I said, Your Seigneurie, Your Lordship, I did not search the individual. It was the police who conduct their investigation.

QYou found it suspicious. In what way was it suspicious? It was suspicious that something is in there?

AThere could have been something in there, yes.

QSo what did you have in mind, this something?

AWell it could have been ...

QWas it weapon or something else?

AIt could have been a weapon, it could have been something else, it could have been ... it could have been anything.

QWell anything is none of your business, isn't it?

AAh it depends, it depends what kind of things in there.

QWell so ...

ASomething that is in there, it might be my business.

QSo specify please what it was in your mind?

AWell it's a firearm, what have you, it's my business to take care of me.

QFirearm, OK so it was firearms what you ...

ANo.

BY THE COURT:

That's not what he said.

AYou said it's firearm.

BY THE ACCUSED:

No, I'm asking you ...

BY THE COURT:

He said if it's a firearm ...

BY THE ACCUSED:

He's evading answering question.

BY THE COURT:

He said if it was a firearm, it was his business. He didn't say it was a firearm.

BY THE ACCUSED:

OK, he avoiding (sic) answering the question: what did he suspect me to have.

BY THE COURT:

He's told you, he's not avoiding answering the question. He says "I don't know what was in there" but he says "I ... I was suspicious".

BY THE ACCUSED:

Look, every grown-up person if he suspects something, he knows what he suspects.

BY THE COURT:

Don't tell me "look", Mr. Fabrikant. Don't look me.

BY THE ACCUSED:

Don't look what?

BY THE COURT:

Don't tell me "Look, every grown-up person".

BY THE ACCUSED:

Yes?

BY THE COURT:

Don't speak to me like that.

BY THE ACCUSED:

What? Not ...

BY THE COURT:

Now ...

BY THE ACCUSED:

Not every grown-up person knows that if someone suspects something, that it is ...

BY THE COURT:

It was not that I was objecting to, it was your tone.

BY THE ACCUSED:

You never watch your tone when you're talking to me.

BY THE COURT:

Mr. Fabrikant, ladies and gentlemen, would you please?

THE MEMBERS OF THE JURY WITHDRAW

BY THE COURT:

Sit down Mr. Yelle, please.

Since the beginning of this trial, I've had nothing but argument, disrespect and rudeness from you. It's coming to an end. If there is one more incident, one more incident, this trial will end. You will go straight out through that door. This trial will end. The jury will begin their instructions and that is that.

You will follow the directions of this court, word for word closely. If you don't like what they are, you can go and complain to the Court of Appeal but I'm not putting up with the kind of treatment I've been subjected to by you for any longer.

Now you go through that door now and go and think about this for fifteen minutes and when that fifteen minutes is up, we will resume.

BY THE ACCUSED:

There is nothing to think. You have ...

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

JOHN YELLE

(Under the same oath)

BY THE COURT:

Stand up, Mr. Yelle please.

(DISCUSSION RE COURT ORDERS FOR VISITORS)

BY THE ACCUSED:

QOK, did you at any time tell the so-called investigator at Concave that I didn't get firearms permit and I might use my wife to get one?

AYes.

QWhere did you get this information?

AIt's some information that we received, that we ... we have in the university department.

QWell could you refer more precisely what was it?

AYou mean like a rumor or information that we received and that was at my ... to pass the information who was posted at that area.

QI don't get. You get information or it was rumor information?

AWell put it that way, it was an information that ... that had to be taken or anyway... any ... but we took it and we ... to my knowledge, it was my job to transmit that information to that investigator working at that location.

QWhy was it important to transmit it to that person, information about my wife?

AIt'd be ... I don't know, there was a good reason, because if your permit was rejected, another person could maybe pick up ... pick up a firearm and give it to you, I don't know.

QWell, but to that particular person, why was it important to transmit that information?

ABecause there was ... there's a lot of people working in that department and it's your faculty, so ... and also there was lots of students, so to ... to protect the area, also the people working in that location, it was my duty to inform that ... that investigator if it's that ... that information was true or false.

QWell so effectively you prepared this person that I might come with firearms there, right?

AI didn't prepare him, I just passed the information.

QWell what ... what is the logical inference from this information?

BY THE COURT:

The jury can draw the inference from the information. The witness has testified as to the fact.

BY THE ACCUSED:

QWas ... was this person armed himself?

ANot as far as I'm concerned, no.

QDid you think then that you are putting him at mortal danger if the information you had was correct?

BY THE CROWN:

This is asking for an opinion and this is cross-examination.

BY THE COURT:

Yes, it is. Objection maintained.

BY THE ACCUSED:

Well I'm asking him if ...

BY THE COURT:

Please don't argue. The objection was maintained.

BY THE ACCUSED:

OK.

QWho gave you that information?

AIt was just circulation (sic) that we heard in ... in the university and also in our department, that we heard, so that's why I took it very ... I took it seriously because sometimes you get some information that could be false or could be true, so to play on the safety side, I think so, it was my ... my duty to inform that fellow or that investigator who was posted at that area.

QWho told you personally about it?

AWell I don't ... I don't recall who told me at the present time, but I just heard... I just heard it in the whole university, you know, in the ...

Q Aren't you a security officer and such kind of rumors, you are not supposed to remember who told you and when?

BY THE CROWN:

This is cross-examination, My Lord.

BY THE COURT:

Yes it is.

BY THE ACCUSED:

QWell isn't it part of the duty officer, security officer to remember any information about danger well?

BY THE CROWN:

It's the same, My Lord.

BY THE ACCUSED:

It's not the same. I'm asking about ...

BY THE COURT:

I'll let that question go.

AYou mind to repeat your question please.

BY THE ACCUSED:

QWell isn't it one of your duties as security officer to take any information about potential danger seriously and record it?

AIt's exactly I did, (sic) I took that ... that information seriously and I did ... I transmit that message to the investigator.

QNo, seriously I mean record it, when have you heard and from who?

AWell it was ... I heard it from a different source of people, I mean, that's why it was ... it was vague at that time, so I really ... it's why ... that's why, as I just told you, that when I ... I pass the information to that investigator to protect the people working in that ... in that location. If any problem occur, they get in contact with 911 and also security.

QWell after person come with gun and shoots, it's kind of a little bit late to call 911, isn't it?

BY THE COURT:

Now you're arguing, you're arguing with the witness or you're arguing your case, I don't know which, but that is ... that remark is out of place.

BY THE ACCUSED:

OK.

QThen how 911 can be helpful in case of person coming with firearms, could you explain the logic?

BY THE COURT:

It's the same thing, it's not for the witness to explain the logic. The question is disallowed.

BY THE ACCUSED:

All right.

QYou told him that if I come with firearms, he should call 911?

AExactly and he can call security immediately.

QOK. If person comes with firearms and shoots, how 911 will help?

BY THE COURT:

You're again asking the witness to speculate. You're not permitted to do that.

BY THE ACCUSED:

How 911 can help?

BY THE COURT:

Same thing. Not permitted.

BY THE ACCUSED:

QWell could you explain your instructions in case of firearms?

AWell there ... there is an instruction to follow. Imme-

diately the person came in with a firearm, we get in contact with the ...

BY THE COURT:

Excuse me, the question was your instruction that you gave concerning a firearm, that's what you were asked to explain?

AMY instruction was to get in contact with us and the police department immediately.

BY THE ACCUSED:

QWell the person comes with firearms, he doesn't come to play with it, he comes for shooting, right?

BY THE COURT:

You're not arguing with the witness. You've established ... you've asked him what the instructions were, he's told you what the instructions were. Whether the instructions were good, bad or indifferent is not the question. Whether the instructions were effective is not the question, whether the instructions could have been effective is not the question.

BY THE ACCUSED:

QOK, still returning back, as security officer, why didn't you write down who told you about refusal of firearm permit for me and possibility of using my wife to get firearms? Who told you that?

Alike I said, it's an information that they ... we heard in the ... in the department and ...

QWell why, as security officer, you didn't record the source of information?

AWell maybe somebody did but at that time, when I heard the information, I just took for myself and my crew and transmit to the person who were working in that special location.

QYou don't answer my question.

BY THE COURT:

Listen, it will do no use battering the witness any further. He said I did not record it, OK, there you are. He said "Maybe somebody did, I didn't". Move on.

BY THE ACCUSED:

QWho else was present during the time when you heard that?

AI don't recall, I cannot ... I don't remember who was present at that time. It could be a few other people but I don't recall exactly. There were so many people there.

QAren't you security officer and you are supposed to remember this kind of stuff?

AProbably you can ask my director maybe, I don't know. Maybe he could give you some more information on that.

QSo who is your director, you mean?

AHis name ...

QMr. Bujold?

AThat's right.

QSo Mr. Bujold was present during ...

AOh yes, a lot of people was present. To me, there was ... there was only a few people present at ... we heard that through the, like we say an expression, like through the grapevine and we took it very ... very seriously and that's why I transmit the message. That's all, I mean, that's exactly what ... exactly what happened.

QWell and of course ...

AI didn't ... I didn't exactly ...

QAnd of course it was rumor that I told somebody that I'm

going to use my wife for that. Who was the source of information?

A I don't know. As I just told you, I don't know.

Q You never asked where information came from?

BY THE COURT:

The question is disallowed. The witness has answered the question.

BY THE ACCUSED:

Q Well did you ask ...

BY THE COURT:

The witness has answered the question. He said he doesn't know what the source of the rumor was and he didn't record the source and he didn't record anything. Pass on to something else.

BY THE ACCUSED:

Q Well as security officer, didn't you ...

BY THE COURT:

Not well as security officer, pass on to something else.

BY THE ACCUSED:

You just don't let me to show that he's lying.

BY THE COURT:

Pass on to something else.

BY THE ACCUSED:

There is no point. You just don't let me.

BY THE COURT:

Fine. Have you any...

BY THE CROWN:

I have no questions, My Lord.

BY THE COURT:

No questions for Mr. Yelle. Thank you Mr. Yelle.

A Thank you Your Honor.

END OF THE TESTIMONY OF THIS WITNESS

ANGELA MANCUSO
Office Manager
February 28th 1941

SWORN

DIRECT EXAMINATION BY

MR. VALERY FABRIKANT - ACCUSED

REPRESENTING HIMSELF:

Q What is your position at Concordia University?

A Office Manager, security department.

Q OK. How long have you been with this university?

A Since 1975.

Q OK. Are you one of the persons who have access to Barnaby file?

A No, I have access to certain files but not to all these files.

Q OK. Can we show the witness this particular file?

BY THE COURT:

Q Sorry, your last answer was "I had access to certain files"?

A Certain files, but not to ... not all these files.

Q Not all these files?

A No.

QOK.
BY THE CLERK:
D-5.
BY THE COURT:
It is I-5, I-5?
AI have never seen this.
QWould you look through the whole file and ...
AThis first thing ...
QPlease.
AThis kind of file, I never had ...
QWell look through the file, Mrs. Mancuso, before you answer the question. Now you've looked at the whole file. Put your question.
BY THE ACCUSED:
QSo did you ever see this file?
ANever.
QLook at the pages at the bottom of the file, where my sick leave paper is for example? Could you find it there?
I think it is last page of the file, is it?
AI never saw this either.
QBut it is sick leave, no? What is the last page there?
BY THE COURT:
The last page appears to be a handwritten page from what I can see.
AIt's a handwritten ...
BY THE ACCUSED:
Oh.
BY THE COURT:
So would you hand the file to Mr. Belleau please.
BY THE ACCUSED:
QNow OK, this, this for example?
AI'm afraid I've never seen this.
QWho else except Mr. Bujold and you have access to these files?
AMr. Bujold had ... possibly had access to Mr. Barnaby's file and Mr. Victor Francisco.
QOh, he also has access?
AHe has access to certain files, yes, but I've never seen this.
BY THE COURT:
You might wish to locate your question in terms of who had access when.
BY THE ACCUSED:
QWell in 1990 for example?
AAt that time, it was Mr. Barnaby only and myself with certain files.
QOK, Mr. Barnaby, when he departed from the university?
AOh, I'd say about three (3) years ago.
QWould you be more precise?
AI couldn't tell you for sure but I think about August of two (2) or three (3) years ago.
QBut you cannot be more precise than that?
ANo, the exact date, I don't have.
QDo you ... do you recall anything specific in March of 1989 in terms of somebody being put on twenty-four (24) hour surveillance?
ANot at all.
QDo you have any information about me being dangerous, threatening, anything?
ANo, the first time I heard of you was on the 1st of November 1991.

QOK. What was that?

AThat was the senate.

QOK. How was it transmitted to you? In what ...

AI just received the report and I processed the report and I gave it to Mr. Bujold.

QReport? What was the ...

AThe report the guard took at the time.

QWell this report has never been presented to court. They didn't respect subpoena.

AI'm sorry.

BY THE ACCUSED:

No, I'm not talking to you. Well I think it is time to ask Mr. Bujold to stand in the box and answer some questions.

BY THE COURT:

Would you put any further questions you have to this witness.

BY THE ACCUSED:

OK.

QSo you received security report about incident in the senate?

AThat's right.

QOK. Did you receive any ... do you recall receiving any security reports in March concerning some danger or something?

AMarch?

QWith my name there, no?

AMarch of?

Q1989.

AI don't recall.

QOK, after November 1st, when you received that report, any other information you had about me?

ANo, the report was given to Mr. Bujold and Mr. Bujold probably processed it or left it in the file, but the file, I've never seen.

QOK. And after that, you didn't hear anything at all about me?

ANever did.

QNo rumors? Nothing about me being refused firearm and me using my wife to get one?

ANothing at all.

BY THE ACCUSED:

They are on two different planets.

No more questions. I would like to talk to Mr. Bujold.

BY THE CROWN:

No questions, My Lord.

BY THE COURT:

Thank you very much, Mrs. Mancuso.

END OF THE TESTIMONY OF THIS WITNESS

BY THE ACCUSED:

I would like to talk to Mr. Bujold. Definitely they didn't comply with subpoena. We have several documents which were not presented and we have clearly no answer to question who put those documents there.

BY THE CROWN:

Mr. Bujold already testified, My Lord.

BY THE COURT:

Mr. Bujold testified.

BY THE CROWN:

And about the report, he said it was the police report.

BY THE ACCUSED:

No. She mentioned security report about incident in the senate and also I need to see, as I mentioned to you, if you recall, Haines testified that on March 28th, he made a complaint to security. If he's testifying the truth, then there must be record of that and it was not presented either and I need Mr. Bujold either to confirm that there is such report, March 28th or deny it.

BY THE COURT:

I'll adjourn for five minutes. Mr. Freedman, would you ... would you see if you can look into this question of a security report for that date please. Thank you. We'll adjourn for five minutes.

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ARE PRESENT

BY MR. FREEDMAN:

My Lord, I've verified the two ... the question surrounding the two documents that Mr. Fabrikant raised. Both have already been filed under the I category. Mr. Yelle's, reportedly you have right in front of you.

BY THE COURT:

Yes I do.

BY ME FREEDMAN:

That's the document that Miss Mancuso was referring to. The other document referring to the report of Grendon Haines to security back in 1989 has also been filed. That was in Mr. Barnaby's file. That's under the I-7?

BY THE CLERK:

5.

BY THE COURT:

I-5.

BY THE CROWN:

I-5.

BY THE COURT:

For my part, I excuse myself. My memory failed me. I didn't recall that these two documents had been filed. Of course, the accused should have noted that these documents were filed at his request for examination, so rather than be missing, the documents are there. Thank you Mr. Freedman.

BY THE ACCUSED:

Which ... which documents are you talking about?

BY THE COURT:

The report of Mr. ... the security report of the senate incident for one and the second report that Mr. Freeman has referred to is the security report made following the report of Grendon Haines.

BY ME FREEDMAN:

In March of 1989.

BY THE COURT:

It is in the Barnaby file, you say.

BY THE ACCUSED:

Which one? Could he show it to me which ...

BY THE COURT:

You will see it in a moment. The one here is from Mr. Yelle and I gather ... is Mr. Yelle still here?

BY THE CROWN:

I think he left, My Lord but I have no objection.

BY THE COURT:

You have no objection to ... to it being filed.

BY THE CROWN:

For the filing.

BY THE COURT:

Would you show that to Mr. Fabrikant please. It was marked as I-7 because you had intended to ...

BY THE ACCUSED:

Yes, yes.

BY THE COURT:

... to question Yelle.

BY THE ACCUSED:

Now I recall it, yes. Well ...

BY THE COURT:

It's up to you whether you wish to file it or not.

BY THE ACCUSED:

I wish to file it but here, it's ... I could have cross-examined on this.

BY THE COURT:

Well Mr. Fabrikant, you're the one who should have recalled. You're the one who asked that it be marked. You're the one who asked that you be given the opportunity to have that document there so that you could examine him. You couldn't have cross-examined on it but you could certainly have examined him on it. You didn't do it. You ... you announced that there were documents and ... and a great fuss and there's no document missing at all. There was the document, sitting in the court file, waiting for you. I'm not conducting your defence for you. The crown prosecutor says that he consents to it being filed if you wish to file it. He's not ... no one is forcing you to file it.

BY THE ACCUSED:

Well I could have examined him on that file because here is ...

BY THE COURT:

Well don't blame me, that's your fault.

BY THE ACCUSED:

Here it's written black on white, because of threats he made in the past and here, he testified he knew nothing about threats.

BY THE COURT:

Mr. Fabrikant, that's not my fault.

BY THE ACCUSED:

That's not your fault, of course it is not your fault. You just put me in a position where I physically not capable (sic) of doing so many things.

BY THE COURT:

Are you ... are you intending to file that or are you not?

BY THE ACCUSED:

I'm intending to file it.

BY THE COURT:

Then file it.

BY THE CLERK:

21.
BY THE CROWN:
D-21?
BY THE COURT:
D-21, report of John Yelle re November 1st, 1991.
BY THE ACCUSED:
Now where is the report?
BY THE COURT:
The report from Grendon ... of Grendon Haines or from ...
the report of the call from Grendon Haines is in the
Barnaby file.
BY THE ACCUSED:
Well I would like to see that. It was allegedly made
March 28th.
BY THE COURT:
I think you'll find that it's dated March 21st.
BY THE ACCUSED:
No, this is not ... this is not his report. This just
says ... this is from Broderick and this says that:
we confirm the security guard, bla bla bla.
BY ME BELLEAU:
I think there's another page.
BY THE ACCUSED:
Well this is bill for ten thousand and a hundred dollars,
(10,100 \$) this is another bill for four thousand dollars
(4,000 \$) yet another for five thousand dollars, (5,000
\$) yet another for fifteen hundred dollars (1,500 \$).
BY THE COURT:
Mr. Fabrikant, would you please stop this play acting and
look what you're looking for.
BY THE ACCUSED:
Now this, this is the one?
BY THE COURT:
I have no idea, Mr. Fabrikant. You're the one who ...
BY THE CROWN:
This is the one, My Lord.
BY THE ACCUSED:
This is the one? It's March 21st.
BY THE CROWN:
It might be inconsistent as to the date but ...
BY THE COURT:
That's what I said to you a moment ago.
BY THE ACCUSED:
One second, this one, I knew very well.
BY THE CROWN:
This is material for arguing, period.
BY THE COURT:
This is obviously material for arguing, you're absolu-
tely right.
BY THE ACCUSED:
No, no, one second, this, I knew very well. This is the
one which I showed to Haines.
BY THE COURT:
You showed to Haines and you said "Look at the date".
BY THE ACCUSED:
Yes.
BY THE COURT:
And Haines looked at the date.
BY THE ACCUSED:
Yes.
BY THE COURT:

And Haines had said something about March 28th. There's a week's discrepancy, yes this is true.

BY THE CROWN:

And ... so he'll argue about that.

BY THE COURT:

So where we are?

BY THE COURT:

And when ... when you argue, you will put whatever spinning on that that you wish.

BY THE ACCUSED:

Not only that, no, one second. He said that he does recognize this report but this report relates to the time when I allegedly called his secretary.

BY THE COURT:

That's ... that's right.

BY THE ACCUSED:

And I told her that I'm going to see the rector.

BY THE COURT:

That's right, that's his explanation.

BY THE ACCUSED:

And no ... it's absurd.

BY THE COURT:

That's his answer.

BY THE CROWN:

Maybe Mr. Haines made a mistake.

BY THE COURT:

You may ... you may argue that it's absurd.

BY THE ACCUSED:

No, but this is not the point. After that, Mr. Haines proceeded that this was one thing and this is one event and this is fine. So I consider that this is no more Mr. Haines's report so I'm looking now for report of March 28th but it is not there. Now I'm asking Mr. Bujold to come over and to say: was there anything on March 28th?

BY THE COURT:

Have you anything in the file in front of you for March 28th?

BY THE ACCUSED:

No there is nothing. There is something on March 28th?

BY THE CROWN:

No, you ... you asked Mr. Freedman to enquire. This is the report. It's ...

BY THE COURT:

The only report there is.

BY THE CROWN:

Someone could argue later that Mr. Haines made a mistake period.

BY THE COURT:

Sure.

BY THE CROWN:

That's the end of it.

BY THE COURT:

That's the end of it.

BY THE ACCUSED:

So it is ... it is March 21st then?

BY THE COURT:

That's the only there apparently is.

BY THE ACCUSED:

Well then somebody was lying then.

BY THE CROWN:

Well somebody made a mistake.

BY THE COURT:

Well that's ...

BY THE ACCUSED:

Well that's all I wanted to ... as far as I ...

BY THE COURT:

Do you ... do you wish to file that report?

BY THE ACCUSED:

Well of course, I want to file the whole file.

BY THE COURT:

Fine, then ... then is there ...

BY THE CROWN:

Well My Lord, the report, no problem.

BY THE COURT:

The report, no problem.

BY THE ACCUSED:

No, I want to ... tomorrow there will be Barnaby here and I think we can file the whole file.

BY THE CROWN:

So tomorrow let's file the whole file with Mr. Barnaby.

BY THE COURT:

File it tomorrow then.

BY THE ACCUSED:

Yes, but what I want to make sure, that no report of March 28th exists. This is what is important to me.

BY THE COURT:

This is what Mr. Freedman was asked to check and Mr. Freedman has checked. Is that correct, Mr. Freedman?

BY ME FREEDMAN:

Yes, this ... as I said, all files are brought in their ...

BY THE CROWN:

This point was made ... was made with Mr. Bujold, period.

BY THE COURT:

Pardon?

BY THE CROWN:

This point was made with Mr. Bujold.

BY THE COURT:

Was made by Mr. Bujold, yes.

BY THE ACCUSED:

So there is no ... nothing dated March 28th?

BY ME FREEDMAN:

That's it, that's all.

BY THE ACCUSED:

Well that's what I wanted to make sure about because this, this I knew very well because I showed it to Haines myself so here, I'm not at fault at all.

Now there is something else, question to still be asked as to how those documents from December 1990 got there.

BY THE COURT:

Look, I have no idea how they got there. If you're talking about the Barnaby file, I don't know whether Barnaby can provide you with answers. I have no idea, but there's ... it's utterly useless asking me.

BY THE ACCUSED:

I'm not asking you, I'm just asking you that I need to question Mr. Bujold further.

BY THE COURT:

You ... you have questioned Mr. Bujold and you are not

recalling Mr. Bujold, now would you please call your next witness.

BY THE ACCUSED:

And there is also one document of Mr. Francisco which was not submitted of October 31st. It was not brought here. I found it in McKenzie's file so again, they did not comply with subpoena and I'm discovering it, you know, some kind of ...

BY THE COURT:

Have you another witness that you wish to call?

BY THE ACCUSED:

Well what ... what we're going to do with this document. I want it filed.

BY THE COURT:

You said that you propose to file that document that you have in your hand.

BY THE ACCUSED:

This is one thing.

BY THE COURT:

All right.

BY THE ACCUSED:

There is letter of October 31st 1991 signed by Francisco. He didn't bring it though he was supposed to.

BY THE COURT:

That you found in Dr. McKenzie's file. Was that ... that was marked what?

BY THE CROWN:

If Mr. Fabrikant has this letter ...

BY THE ACCUSED:

I don't have it.

BY THE CROWN:

... I would be ready to file it.

BY THE ACCUSED:

I don't have it.

BY THE COURT:

It may ... it may have been produced when Dr. McKenzie testified, I don't know.

BY THE ACCUSED:

I don't have it.

BY THE CROWN:

Because we have a whole ... two whole files in bulk concerning the accused. There might be some documents there.

BY THE COURT:

There are two files that are early on that probably wouldn't be of assistance that relate to contracts.

BY THE ACCUSED:

They will be of assistance, I will argue on that.

BY THE COURT:

They won't be of any assistance with regard to what you're referring to in McKenzie's files.

BY THE ACCUSED:

Ah no, no, no.

BY THE COURT:

About October 31st, that's all I said.

BY THE ACCUSED:

No, absolutely not.

BY THE COURT:

Perhaps you would ... perhaps you would look tomorrow morning if you ... to see if you can put your hand on that ... if there is anything in the I file signed by

Francisco.

BY THE ACCUSED:

Well I think I remember well that this was one of the ...

BY THE COURT:

Well you should remember well, because you're the one that asked for it to be produced and I have to presume that you will note it when you ask for something.

BY THE ACCUSED:

Of course, I noted it but you discontinued my examination of McKenzie. Therefore I couldn't neither produce nor do anything about it.

BY THE COURT:

I see, so it was not produced.

BY THE ACCUSED:

No.

BY THE COURT:

Is that the situation?

BY THE ACCUSED:

Yes.

BY THE COURT:

Well if that's the situation, that's the situation, Mr. Fabrikant. You ... you were told that you would have to live within the rules and if you weren't going to live within the rules, McKenzie's examination would be terminated and it was.

BY THE ACCUSED:

One second, this letter has nothing to do with McKenzie.

BY THE COURT:

It ... I don't care who it's got to do with. If McKenzie was here and apparently had the letter according to you, her examination has been terminated.

BY THE ACCUSED:

But this letter could not be filed by McKenzie anyway.

What I'm talking about ...

BY THE COURT:

It could have been reserved and you could have filed it through Francisco.

BY THE ACCUSED:

Well we still can.

BY THE COURT:

In any event, I ...

BY THE ACCUSED:

We can do it.

BY THE COURT:

If Mr. ... if Mr. Freedman can put his hands on that ...

on that letter, have you got a note of that? October

31st. The crown prosecutor will take a look at it and

we'll see whether there's any objection.

BY THE ACCUSED:

Well I believe there is not single letter. I believe there is a lot of material there which was not presented.

BY THE COURT:

Listen.

BY THE ACCUSED:

This is not ...

BY THE COURT:

We are talking, I'm addressing what you mentioned.

BY THE ACCUSED:

Yes.

BY THE COURT:

I'm not going to get into a dissertation as to whether there's a lot of material or whether there is not. You mentioned a letter of October the 31st.

Now have you another witness?

BY THE ACCUSED:

Yes, is there ... Mr. Smith is here?

BY ME FREEDMAN:

No, there's nobody there, My Lord.

BY THE COURT:

There's no one else.

BY ME FREEDMAN:

There's plenty ... plenty more to come, but nobody is here right now.

BY THE COURT:

OK, tomorrow morning, you have the witnesses?

BY ME FREEDMAN:

Not yet, but I ... I hope to (inaudible).

BY THE ACCUSED:

Well I think in the morning it is Barnaby, is it, Mr. Belleau?

BY ME BELLEAU:

Well, Mr. Barnaby was served with a subpoena and I suppose he'll be here at nine thirty.

BY ME FREEDMAN:

Yes, he'll be here tomorrow.

BY THE ACCUSED:

He will be here tomorrow morning.

BY ME FREEDMAN:

If you tell me, he'll be here.

BY THE COURT:

OK, ladies and gentlemen.

BY THE ACCUSED:

I want tomorrow morning ...

BY THE COURT:

Excuse me. Tomorrow morning at nine thirty (9 h 30).

ADJOURNMENT

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

(Chambre criminelle et p,nale)

PROVINCE DE QUBEC

DISTRICT : MONTRAL

DOSSIER NO : 500-01-017372-928

TAPE : PROCES

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

NOM DES PARTIES :

LA REINE,
 plaignante

c.

VALERY FABRIKANT
 accus,

COMPARUTION :

Me JEAN LECOURS,
procureur de la Couronne;

DATE D'AUDITION : 18 JUIN 1993.

FICHER : 3444

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***** IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE

(1993), on
this eighteenth (18th) day of June, PERSONALLY CAME AND
APPEARED :

MARINA SURBANOVIC, official interpreter;

WHOM, after having been duly sworn, doth repeat and
translate the following :

L'AN MIL NEUF CENT QUATRE-VINGT-TREIZE (1993), le dix-
huitiŠme (18e) jour du mois de juin, a comparu :

ROLAND BARNAB, retrait,, n, en date du dix-huitiŠme
(18e) jour du mois de juillet mil neuf cent trente
(1930);

LEQUEL, aprŠs avoir pr^t, serment sur les Saints
vangiles, d,pose et dit ce qui suit :

INTERROG PAR M. VALERY FABRIKANT :

- Q. What is your position prior to retiring?
-Q Quelle ,tait votre position avant de partir ... votre
retraite?
R. Directeur de la s,curit, Universit, Concordia.
-R Director for the security at University of Concordia.
Q. When did you retire from this position?
-Q A quel moment est-ce que vous avez pris votre retraite
de cet emploi?
R. Premier (1er) septembre mil neuf cent quatre-vingt-dix
(1990).
-R September first (1st) nineteen ninety (1990).
Q. Did you have any dealings at Concordia after that?
-Q Est-ce que vous avez eu affaire avec Concordia par la
suite?
R. Aucun.
-R None.
Q. Did you have access to any Concordia files after
September first (1st) nineteen ninety (1990)?

-Q Est-ce que vous avez eu accès ... des dossiers de Concordia après le premier (1er) septembre mil neuf cent quatre-vingt-dix (1990)?

R. Non.

-R No.

Q. Okay. When have you heard my name first if you can recall?

-Q Quand est-ce que vous avez entendu mon nom pour la première fois, si vous pouvez vous rappeler?

R. Vers le vingt et un (21) mars mil neuf cent quatre-vingt-neuf (1989).

-R Around March twenty-first (21st) nineteen eighty-nine (1989).

Q. Okay. Could you give the details what happened at that day?

-Q Pourriez-vous donner les détails, qu'est-ce qui s'est passé, cette journée-là?

R. J'ai été appelé, par le vice-recteur associé, ... McKenzie???

-R I was called by advised director associated at Concordia.

THE COURT :
Vice-rector.

THE INTERPRETER :
Vice-rector, pardon. Associated vice-rector.

R. Qui m'a informé, qu'il y a des menaces qui avaient été portées contre le recteur...

-R Who informed me that there were threats brought against the rector...

R. ... et le doyen du génie.

-R ... and the dean of engineering department.

MR. VALERY FABRIKANT :

Q. Now we have two persons threatened on the same day?

-Q Donc il y avait deux personnes menacées la même journée?

R. C'est ça qu'on m'a dit.

-R This is what we told me.

Q. Okay. What was the nature of the threats?

-Q Quelle était la nature des menaces?

R. C'était des menaces de mort.

-R Those were death threats.

Q. Okay. Made by whom?

-Q Professeur par qui?

R. Par monsieur Fabrikant.

-R By Mr. Fabrikant.

Q. The same day March twenty-first (21st)?

-Q La même journée le vingt et un (21) mars?

R. Je ne sais pas quand les menaces ont été faites mais c'est ça qu'on m'a raconté.

-R I don't know when the threats were authored, but this is what it was told.

Q. You didn't ask when the threats were authored?

-Q Vous n'avez pas demandé, quand est-ce que les menaces ont été faites, professeur?

R. Non.

-R No.

Q. Isn't it your duty as director of security to ask some details.

-Q N'est-il pas votre devoir en tant que directeur de sécurité, de demander les détails?

R. Je me souviens pas tout de cette conversation.

-R I don't recall the whole conversation.

R. Mais j'ai pas d'autres d,etails des menaces qui ont ,t, faites, o- et quand?

-R But I don't have other details of the threats or where they were made and when.

THE COURT :

Q. You weren't asked other details, Mr. Barnab,, you were asked whether it wasn't your duty to ask further, when these threats were made?

-Q Donc on vous a demand, si ce n'est pas dans votre devoir de demander s'il y a d'autres menaces.

Q. That was the question you were asked.

-Q C',tait la question qu'on vous demandait.

R. C',tait un officier de l'universit, qui m'informe...

-R It's an official of the university that informed me...

R. ... et sans doute si le cours a ,t, suivi diff,remment que la question de exactement le jour que c'est arriv, et o- je l'aurais su.

-R ... and had the events developped differently, I would have known the day it happened and when.

MR. VALERY FABRIKANT :

Q. Is it or isn't it your duty as security director to ask when the threats were made?

-Q Est-il ou n'est-il pas de votre devoir en tant que directeur de s,curit, de vous renseigner quand est-ce et o- les menaces ont ,t, faites?

R. C'est une bonne question mais je peux pas la r,pondre, je sais pas si c'est le d,tail...

-R It's a good question I could not answer, I don't know the details.

Q. I'm asking you about your duties, do you know your duties?

-Q Je vous demande vos devoirs, est-ce que vous connaissez vos devoirs?

R. Mon devoir c',tait un mandat de conseiller les d,partements de l'universit, en matiŠre de s,curit,.

-R My duty was a mandate who gave council to the department of the university and with respect to security.

Q. Was it or wasn't it one of your duties to find out when the threats were made.

-Q Donc, est-ce que oui ou non řa faisait partie de vos devoirs de trouver, de vous renseigner ... quel moment les menaces ont ,t, faites?

R. C',tait un devoir peut-^tre mais au cours et long?? de l'affaire je l'aurais su.

-R It was within my duties maybe but I would have find out eventually during the of the events.

Q. Did you or didn't you find it out in the course of the events as to when the threats were made?

-Q Est-ce que oui ou non vous avez d,couvert ou vous avez trouv, si durant le cours des ,v,nements, les menaces o- et ... quel moment les menaces ont ,t, faites?

R. Non.

-R No.

Q. If it is one of your duties, why didn't you find it out?

-Q Si řa fait partie de vos devoirs, pour quelle raison est-ce que vous n'avez pas trouv,?

THE COURT :

Listen, you are cross-examining the witness now virtually the whole way through. I'll let you go to a certain point, but...

MR. VALERY FABRIKANT :

Witness already answered the question.

THE COURT :

The witness has told you he didn't, that he would have found out if events had developed otherwise, that's the witness' answer. Now you may not cross-examine the witness.

MR. VALERY FABRIKANT :

Q. What else did doctor McKenzie told you about details of the threat?

-Q Qu'est-ce que le docteur McKenzie vous a dit au sujet des d,etails de la menace?

R. C'est tout ce qui a ,t, dit, c'est qu'il y a des menaces de mort qui avaient ,t, prof,r,es.

-R It's all it was said, is that death threats were authored.

Q. By who to who?

-Q Par qui et envers qui?

R. Par monsieur Fabrikant contre, envers le recteur et le doyen...

-R By Mr. Fabrikant, again, well about for the rector and the dean, Mr.....

THE COURT :

To, in relation to.

THE INTERPRETER :

-R Towards the rector and the dean, Mr...

MR. VALERY FABRIKANT :

Q. But to who those threats were made?

-Q A qui est-ce que ces menaces ont ,t, prof,r,es?

R. Je n'ai aucune id,e.

Q. Who, who...

R. On m'a dit que c',tait peut-^tre une r,union.

-R I have no idea, they told me that it was maybe a meeting.

Q. What meeting?

-Q Quelle r,union?

R. Je me souviens pas, #a a ,t, mentionn, il y a quatre ans et puis..

-R I don't recall, it was mentioned four years ago...

R. ... il y a bien des d,etails que j'ignore, que j'ai oubli,s.

-R ... and there are many details that I ignore, that I forgot.

Q. You remember that it was March twenty-first (21st)...

-Q Vous vous rappelez que #a a ,t, fait le vingt et un (21) mars...

Q. ... detail you do remember, you don't remember to who the threats were made.

THE COURT :

Mr. Fabrikant, you are not to be permitted to cross-examine the witness, okay? Now, you're not, don't start.

MR. VALERY FABRIKANT :

Q. Could you explain why do you remember the date and do not remember to whom those threats were authored?

-Q Pouvez-vous expliquer pourquoi est-ce que vous vous rappelez de la date et vous ne vous rappelez pas envers qui est-ce que ces menaces ont ,t, faites?

R. C'est parce que pour commencer j'ai demand, la date ... quelqu'un, ... peu pr's la date.

-R It's because to start off with, I had asked about, I had asked a date, I had asked someone about the date about,

around, about the date.
R. Je suis pas exactement s-r, c'est pour ça que je vous ai dit le vingt et un (21) mars, autour peut-être le vingt et un (21) mars.
-R But I'm not absolutely certain, that's why I said on the twenty-first (21st) of March or around the twenty-first (21st) of March.

THE COURT :

Q. Well am I understanding you to say that your testimony you're giving today you've discussed with somebody before you came here?

-Q Est-ce que je dois comprendre que...

R. Non, j'ai demandé, seulement une date...

-Q ... que vous donnez ce matin est, vous avez parlé, vous savez discuté, de ce témoignage avec quelqu'un?

R. J'ai pas discuté, avec personne, j'ai juste demandé, une date ... peu près, la date que l'incident aurait eu lieu.

-R I did not discuss it with anybody, I had only (inaudible) about the date when the event would have occurred, but I didn't ask anything else.

MR. VALERY FABRIKANT :

Q. Well, who did you inquire about the date?

-Q A qui est-ce que vous avez demandé, la date?

R. J'ai demandé, ... monsieur Bujold ... peu près quelle date, parce qu'il y a plus de dossier.

-R I asked Mr. Bujold around which date, because he doesn't have a file anymore.

Q. Wasn't it your duty as security director, to inquire about details when to who, how the threats were made?

-Q N'est-il pas dans votre devoir en tant que directeur de sécurité, de demander envers qui, quand et comment est-ce que les menaces ont été faites?

Me JEAN LECOURE :

I think this line was covered already, My Lord.

THE COURT :

Yes, it was, it has been covered.

MR. VALERY FABRIKANT :

Now just asked him whether it was his duty to ask...

R. J'ai pas...

-Q J'avais seulement demandé, si c'était...

THE COURT :

You wait until I rule on the objection before you answer.

-Q ... si ça faisait partie de votre devoir.

MR. VALERY FABRIKANT :

I ask him furthest whether he had, whether it was his duty to ask the date when the threats were made. Now, I am asking him whether it is his duty, it was his duty, to ask of details of the threat, to who they were authored, so who can testify the threats that threats were already made, this is a different question.

Me JEAN LECOURE :

You already said what he knew, My Lord. The accused can come with any topics and say : Isn't it your duty to ask for this that you didn't ask and why", it will go on for the whole day.

THE COURT :

Yes, the objection is maintained.

MR. VALERY FABRIKANT :

I cannot ask him about his duties?

THE COURT :

No. You can ask him about the fact, you can ask him what he did, that's what you can ask.

MR. VALERY FABRIKANT :

Fantastic.

THE COURT :

But you cannot cross-examine the witness.

MR. VALERY FABRIKANT :

I'm not cross-examining, I ask him about what is his duty.

THE COURT :

I obtained the objection.

MR. VALERY FABRIKANT :

That's fine.

Q. Okay. So is my understanding correct that you have no idea to who the threats were made...

-Q Si je comprends bien, donc, vous n'avez aucune idée envers qui ou ... qui est-ce que les menaces ont été, professeur...

R. Non.

Q. ... when...

-Q ... quand...

Q. ... it was made...

-Q ... elles ont été, professeur?

R. Non.

-R No, no.

Q. And you never inquired about it?

-Q Et vous ne vous êtes jamais renseigné, ... ce sujet?

R. Je m'en souviens pas.

-R I do not recall.

Q. Did you contact police about it?

-Q Est-ce que vous avez contacté, la police ... ce sujet?

R. Oui.

-R Yes.

Q. Okay. Who did you contact in the police department?

-Q Qui avez-vous contacté, au département de police?

R. Le poste 15.

-R Police station 15.

R. Et j'ai fait un rapport d'information

-R And I made an information statement.

Q. Okay, did the police they asked you...

-Q Est-ce que la police vous a demandé,...

R. Non.

-R No.

Q. No, I didn't finish the question.

THE COURT :

Q. Wait for the question.

-Q Attendez la question.

MR. VALERY FABRIKANT :

How could you answer.

THE COURT :

Q. Wait for the question, he hasn't finished his question.

-Q La question n'avait pas été posée complètement.

MR. VALERY FABRIKANT :

Q. Did the police ask you the date the threat was made?

-Q Est-ce que la police vous a demandé, la date ... laquelle les menaces ont été faites?

R. Je m'en souviens pas mais ça doit.

-R I do not recall but they must have.

Q. So, if they did, what did you respond?

-Q Si oui, qu'est-ce que vous leur avez répondu?

R. Sans doute que... aujourd'hui je peux pas vous le dire

exactement mais...

-R Probably...

R. ... sans doute que si je le savais pas, je l'ai pas dit.

-R Today I can't really tell you exactly but probably if I didn't know then, I did not say.

Q. But did you or didn't you know at that time?

-Q A ce moment-l... est-ce que vous le saviez ou vous ne le saviez pas?

R. Je m'en souviens pas.

-R I do not recall.

Q. Okay. Maybe we can refresh witness' memory, let's give him the whole file, let him browse the file, maybe he will be more helpful.

-Q Nous pouvons peut-^tre rafra^chir la m,moire du t,moin, donnez-lui le dossier au complet et laissez-le regarder.

Q. So part? of his testimonial looks...

THE COURT :

Would you please stop the comments on the... I've warned you and warned you and warned you and now it's got to stop, otherwise this stops, I told you that.

MR. VALERY FABRIKANT :

I'm just explaining why...

THE COURT :

I don't need the explanation and it's not your function to explain that at this point. Now remain quiet until he has taken cognizance of the file and put your questions.

MR. VALERY FABRIKANT :

Q. Do you recognize that this is your file?

-Q Reconnaissez-vous que cela constitue votre dossier?

R. Cela constitue mon dossier mais j'ai quitt,, moi, le premier (1er) septembre...

-R This is my file but I left on September first (1st)...

R. ... quatre-vingt-neuf (89)...

-R ... eighty-nine ('89)...

R. ... quatre-vingt-dix (90), excusez.

-R ... I'm sorry, nineteen ninety (1990).

R. Il y a des documents qui ont ,t, plac,s dans le dossier depuis.

-R There were some documents that were put in the file afterward or ever since.

Q. Okay, could you name those documents that were put there after your departure?

-Q Pouvez-vous nommer ou montrer les documents qui ont ,t, ajout,s par la suite apr's votre d,part?

R. La premiŠre lettre ici, l.....

-R The first letter here...

R. ... les directives aux agents de s,curit, affect,s ... l'Universit, Concordia.

-R ... instructions to the security agents working for the University of Concordia.

THE COURT :

Q. To be more precise, can you give the date, if there is a date on the document?

-Q Pour ^tre plus pr,cis, pourriez-vous donner la date, s'il y a une date sur le document?

R. Le vingt-neuf (29) du, de mars quatre-vingt-neuf (89).

-R March twenty-nine (29) nineteen eighty-nine (1989).

MR. VALERY FABRIKANT :

Q. What, this document was not in the file?

-Q Donc ce document n',tait pas, ne faisait pas partie du

dossier?

R. Je me souviens pas l'avoir vu.

-R I do not recall seeing it.

Q. But can you give any explanation as to what this document is after you saw it?

-Q Mais est-ce que vous pouvez nous donner quelque renseignement que ce soit sur qu'est-ce que ça repr,sente ce document apršs l'avoir vu?

R. C'est un document ,mis par la compagnie de gardiennage aux agents.

-R This document issued by the company for the... by the company.

LA COUR :

Il a dit la compagnie de gardiennage.

L'INTERPRETE :

Gardiennage, merci, c'est ce que je voulais savoir.

R. C'est ça.

LA COUR :

Q. C'est ça que vous avez dit?

R. Oui, c'est ça que j'ai dit.

Q. Bon, gardiennage.

L'INTERPRETE :

Merci.

-R So the guard company they issued...

MR. VALERY FABRIKANT :

Q. Security company.

-R ... issued from the security company for the security agents of the University of Concordia.

MR. VALERY FABRIKANT :

No, security agents are not of the University of Concordia.

THE COURT :

Would you please be quiet? You are not paid to translate. Mrs. Surbanovic is...

MR. VALERY FABRIKANT :

Well you know the translation is incorrect, we should note it. If I don't note, you don't note, Mr.

(inaudible) is not doing his job here.

THE COURT :

Would you please be quiet? This is the second time I'm asking this morning.

MR. VALERY FABRIKANT :

Q. So what is this document?

-Q Donc qu'est-ce que ce document repr,sente?

R. C'est une directive interne de la compagnie aux agents.

-R Internal instructions of the company to the agents.

Q. What company to which agent.

-Q Quelle compagnie et ... quels agents?

R. D'apršs les factures, c',tait la compagnie Broderic.

-R According to the bills, it was the company Broderic.

Q. And instructions were to the agents of company Broderic?

-Q Et donc ces instructions ,taient ,mises pour les agents de la compagnie Broderic?

R. C'est ça.

-R That's right.

Q. Was it you who contacted that company?

-Q Est-ce que c',tait vous qui aviez contact, cette compagnie?

R. Oui.

-R Yes.

Q. And do you know the person who signed this document?

-Q Est-ce que vous connaissez la personne qui a signé, ce document?

R. No.

-R Non.

Q. They didn't send you any document of any kind except those bills?

-Q Ils ne vous ont pas envoyé, d'autres documents, quel que soit ... part de ces factures?

R. Cette lettre-là... je me souviens pas de l'avoir vue, peut-être qu'elle était là... mais...

-R This letter, I don't recall having seen it, maybe it was there but...

R. ... sinon il y a seulement les factures.

-R ... if not there are only bills.

Q. Who established the, set the instructions for the agents?

-Q Qui a établi les renseignements pour les agents?

R. Je ne comprends pas la nature de sa question, établir les renseignements?

-R I don't understand the nature of his question.

Q. Okay, let it drop it for a second. Let's get back to the police. You reported the threat to the police.

-Q Vous avez rapporté, les menaces ... la police?

R. Oui.

-R Yes.

Q. Do you remember what person took your complaint?

-Q Est-ce que vous vous rappelez quelle personne a pris votre plainte?

R. Premièrement, ce n'était pas une plainte.

-R First of all, it was not a complaint.

Q. What was it?

-Q Qu'est-ce que c'était?

R. C'est une information.

-R It was an information.

Q. Alright. Who took this information at the police?

-Q Qui a pris ces renseignements ou cette information?

R. C'est un agent qui...

-R It was an agent or an officer...

R. ... si je me souviens c'était le 15 mais ici il y a une carte d'un agent du 25.

-R ... if I recall correctly it was the 15 but here there is a card of an agent of the 25.

Q. I didn't understand the answer.

-Q Je ne comprends pas la réponse.

Q. What 15, what 25, what...

-Q Qu'est-ce que vous voulez dire par 15, 25...

R. Postes de la communauté, urbaine, police de la communauté, urbaine.

-R The police... the MUC police station 15.

R. Et puis qu'est-ce qu'il s'agit ici c'est le poste de la communauté, urbaine, poste 25.

-R And here we have a card of the MUC police of station 25.

THE COURT :

Q. When you say the fifteenth (15th) and the twenty-fifth (25th), what are you talking about? The fifteenth (15th) or the twenty-fifth (25th) of January nineteen zero two or when?

-Q Quand vous dites 15, 25, est-ce que vous parlez du quinze (15) janvier mil neuf cent deux (1902)?

R. Monsieur le juge, c'est le poste de police 15 puis c'est le poste de police 25.

-R It's police station number 15 and police station number 25.

Q. I see, okay

-Q TrŠs bien.

MR. VALERY FABRIKANT :

Q. So which police station did you contact?

-Q Lequel poste de police avez-vous contact,?

R. Si je me souviens c',tait au 15 que je suis all, mais que le...

-R If I recall correctly, I went to the 15...

R. ... mais que le 15 avait communiqu, avec le 25.

-R ... but that the 15 had communicated with the 25.

Q. Did you..

R. A cause des deux campus.

-R Because of the two campus.

Q. Did you make any report log entry...

-Q Est-ce que vous avez fait quelque rapport que ce soit, une entr,e de donn,es ou une...

Q. ... log entry?

-Q ... une entr,e de renseignements, de dates?

R. J'en ai fait aucune.

-R I did not.

R. Sauf mes notes personnelles dans le dossier.

-R Except some of my personal notes in the file.

Q. What events do you usually include in your log?

-Q Quels ,v,nements est-ce que vous incluez normalement dans votre agenda?

R. Des vols?

-R Thefts.

R. Autres incidents, batailles.

-R Other incidents which is...

THE COURT :

Fights.

THE INTERPRETER :

-R ... fights -- thank you --.

MR. VALERY FABRIKANT :

Q. Is death threat one of those events which would be included in your log?

-Q Est-ce que les menaces de mort font partie de ces ,v,nements qui devraient ^tre inclus dans votre agenda?

R. Puisqu'il y a des notes dans le dossier, il n'y a pas un rapport formel de fait except, que le dossier contient des notes personnelles sur cet incident.

-R Since there are notes in the file...

THE INTERPRETER :

Sorry. Pouvez-vous r,p,ter? Can you repeat please?

R. Il n'y a pas un rapport formel de fait.

-R There is no formal report made as such.

R. Mais que les d,tails sont contenus dans le dossier faisant allusion...

-R But all the details contained in the file alluding to...

R. ... l'incident.

-R ... the incident.

Q. Well, there is a problem here because I'm not talking about his agenda. Log is certain documents which they put in security, time it would happen, who did it, just one line.

THE COURT :

He said he didn't make any loge entries, all he made were his personal notes.

MR. VALERY FABRIKANT :

No, but the translation goes to him like agenda and I believe he understands it as an agenda, this is not my question. So there is a need, somehow, to translate it in such a way that he would understand what I'm talking about. I'm not talking about his personal agenda. Each security guard has general agenda for the dates and they put line by line, let's say elevate and stop at certain time and they make entry. There was discovered...

THE COURT :

The log, the log you wish to say is a daily record.

MR. VALERY FABRIKANT :

Exactly.

THE COURT :

Yes.

Q. Do you understand, Mr. Barnab,, what Mr. Fabrikant is talking about when he talks about the log?

-Q Lorsque monsieur Fabrikant parle du "log", est-ce que vous comprenez de quoi il parle ce que je traduis par agenda?

R. Tršs bien. Il y a sur le dossier un rapport d'un gardien...

-R Very well. Within the file there is a report of a guard...

R. ... qui fait allusion

-R ... that talks about...

R. ... ici...

-R ... here...

R. ... le rapport du vingt et un (21) mars par monsieur...

-R ... the report of March twenty-first (21st) by Mr...

R. ... Malais je crois que c',tait.

-R ... Malais I believe it was.

R. Et toute information reue par les gardiens...

-R And all information received by the guards...

R. ... sont document,es de cette faon.

-R ... are entered in this manner.

THE COURT :

Q. Okay, now the question was in your log entries, the question was would you not log, if you log thefts, if you log fights, would you not log death threats, that was the question?

-Q Donc dans votre dossier personnel ou le...

LA COUR :

Ce n'est pas un dossier personnel, c'est un dossier ou c'est un record qui r,sume les incidents qui sont report,s dans le courant d'une journ,e. Je crois que c'est #a, le mot "log", si tout le monde comprend le mot "log", vous pouvez vous en servir.

L'INTERPRETE :

Merci.

-Q Donc, n'y a-t-il pas eu, n'est-il pas dans votre "log", donc, est-ce qu'on ne rapporte pas autres que les incidents de vol, de bagarre, est-ce qu'un incident tel les menaces de mort ne serait pas rentr,?

R. Vu la d,licatesse de cet incident...

-R Because of the delicate, delicate...

THE COURT :

Delicate nature.

-R ... nature, the delicate nature of the incident...

R. ... j'ai pas fait, j'ai pas... il y avait le rapport du gardien en place...

-R ... there was the report of the guard that was there...

R. ... cet incident...

-R ... this incident...

Me JEAN LECOURE :
My Lord, this is the log. I think this is the log of the incident, we're misled about the words now.

MR. VALERY FABRIKANT :
No, this is not the log.

THE COURT :
I think that's a report.

MR. VALERY FABRIKANT :
This is a report and you, if you kind of try to...

Me JEAN LECOURE :
I'm not talking to you.

MR. VALERY FABRIKANT :
... try your memory...

THE COURT :
A second, he is talking to me, so just wait a minute.

MR. VALERY FABRIKANT :
Alright.

THE COURT :
That I understand as a report. The log is a daily record and Mr. Barnab, appears to agree.

Me JEAN LECOURE :
Okay.

THE COURT :
Okay?

Me JEAN LECOURE :
Because it was not clear to me, My Lord.

THE COURT :
Okay, it's fine.

MR. VALERY FABRIKANT :
It is a special form which has one line date, what happened, when, who entered this line. And...

THE COURT :
He gave you... I don't know if you cut his answer, he gave you his answer, he said at one point, a minute ago, because of the delicate nature of the incident, there was a pause and then he said, I interpreted that, he said because of the delicate nature of the incident, now he didn't finish the phrase, he then went on with another phrase.

MR. VALERY FABRIKANT :
Well, so we didn't get the answer. We'll let him answer again.

THE COURT :
Fine, okay, well that's what I'm telling you.

MR. VALERY FABRIKANT :
Okay.

Q. So would you please answer this question?

-Q Voulez-vous r,pondre s'il vous plaEt ... cette question?

R. Je vais r,pondre encore pour ,claircir.

-R To clarify, yes, I will answer.

R. Quand vous parlez d'un "log", c'est tous les incidents de la journ,e?

-R When you talk about the log, it's all incidents of the day, daily incidents?

R. Quand il s'agit d'un rapport c'est le d,tail de cet incident-l...

-R When you talk about the report, it's the detail of that incident.

R. Maintenant dans...

Q. Yes, this is exactly what I'm talking about. So, was there log entry on that, corresponding log entry?

-Q Oui, c'est exactement ça de quoi je parle. Donc, est-ce qu'il y a eu une entr,e, est-ce qu'il y a eu un, est-ce qu'il y a eu quelque chose d',crit l...-dessus?

R. Bon, l'entr,e de monsieur Malais qui est gardien, l'information qu'elle contient...

-R The entry of Mr. Malais that was the guard and the information that it contains...

R. ... c'est ça l'entr,e.

-R ... this is the entry.

Q. Did you or didn't you make a special log entry?

-Q Est-ce que vous avez oui ou non fait une entr,e, une entr,e sp,ciale dans ce journal quotidien, dans le "log"?

R. Non.

-R No.

Q. Did you enter in your log your call to the police, which is also an event to be recorded, did you?

-Q Est-ce que vous avez fait une entr,e dans votre "log" l'appel que vous avez fait ... la police puisque ça aussi c'est un ,v,nement qui aurait d- ^tre enregistr,?

R. La nature d,licate de cette information...

-R The delicate nature of this information...

R. ... j'ai cru bon de pas plus que ce rapport-l..., sans doute, de l'indiquer.

-R ... I thought it was good not to indicate it more than what we had in this report.

Q. Could you explain why this report does not disturb delicacy and log entry would disturb the delicacy of the situation?

-Q Voulez-vous expliquer pourquoi sur ce rapport ne pourrait pas, ne d,rangerait pas la d,licatesse de la situation...

Me JEAN LECOURE :

This is cross-examination, My Lord.

-Q ... et pourquoi est-ce qu'une entr,e dans le "log" serait, d,rangerait la d,licatesse de la situation?

THE COURT :

You have the witness's answer. Now, there is a way for you to go further, but not the route you're going. You're cross-examining the witness now and you are arguing with him. You may not do that.

MR. VALERY FABRIKANT :

I'm afraid I need Mr. Belleau again because I thought my question is absolutely normal. I need his talent to help me how to ask.

THE COURT :

Fine, we'll adjourn for five minutes.

MR. VALERY FABRIKANT :

Why one thing is...

THE COURT :

We'll adjourn for five minutes while you speak to Mr...

MR. VALERY FABRIKANT :

Because another thing is...

THE COURT :

Mr. Belleau, would you be kind enough to try to answer the questions if you can?

MR. BELLEAU :

I'll try.

LE JURY QUITTE LA SALLE

REPRISE

LE JURY REVIENT DANS LA SALLE

Le t,moin, ROLAND BARNAB, d,pose sous le m^me serment
que d,j... pr^t, :

MR. VALERY FABRIKANT :

Q. Who was talking to McKenzie, was it you or was it the
agent who filed the report?

-Q Qui a parl, ... McKenzied, est-ce que c'est vous ou
l'agent qui a ,crit le rapport?

R. J'ai parl, ... McKenzie sur son appel.

-R I spoke to McKenzie upon her call.

Q. What about this agent, did he speak too?

-Q En ce qui concerne l'agent, est-ce que lui aussi a
parl,?

R. Sans doute d'apr's son rapport qui dit...

-R Probably according to his reporting which says...

R. ... de madame McKenzie et de Grendon Haines.

THE COURT :

Excuse me, sans doute is not probably.

THE INTERPRETER :

Without a doubt.

THE COURT :

Okay.

THE INTERPRETER :

Sorry, thank you.

MR. VALERY FABRIKANT :

Q. So, this agent also spoke to McKenzie?

-Q Donc, cet agent-l... a aussi parl, ... McKenzie?

R. L'agent est au bureau, il peut pas se d,placer.

-R The agent is at the office and he cannot leave.

R. Il doit avoir re#u un appel de McKenzie.

L'INTERPRETE :

Pardon?

R. Il doit avoir re#u un appel t,l,phonique de McKenzie.

L'INTERPRETE :

Je n'ai pas compris.

THE COURT :

He must have received a report.

L'INTERPRETE :

Ah, il doit avoir.

R. Il doit avoir re#u un appel de McKenzie.

-R He must have received a phone call from McKenzie.

R. Suite ... son rapport, il a donn, suite ... ce rapport ici.

-R That followed with this report.

MR. VALERY FABRIKANT :

Q. And after that McKenzie spoke to you...

-Q Et apr's que McKenzie ait parl, avec vous...

R. Cette journ,e-l..., je comprends pas tout ... fait le sens
qu'est-ce que c'est qui...

-R That day, I don't understand, quite understand the sense
of the question.

Q. Just right after the conversation with your agent...

-Q Donc, tout de suite apr's votre conversation avec
l'agent...

Q. ... McKenzie proceeded with talking to you, is it?

-Q ... McKenzie a donc parl, avec vous, n'est-ce pas?

R. Oui, c'est #a.

-R Yes.

R. J'ai re#u un appel de McKenzie direct pour aller la

voir.

-R That's right, I received a phone call directly from McKenzie to go and see her.

Q. You received a call to go and see her or you received all information on the telephone?

-Q Vous avez re u l'appel pour aller la voir ou est-ce qu'on vous a donn , les renseignements au t l,phone?

R. Non, on m'a pas donn , de renseignement au t l,phone elle m'a dit seulement que...

-R I did not receive any information over the phone, she only told me that...

R. ... qu'elle voulait me voir.

-R ... she wanted to see me.

MR. VALERY FABRIKANT :

I think the beginning of his testimony is different, at the beginning he testified that he spoke with her on the telephone.

THE COURT :

Yes, if you wish to clarify that, go ahead.

MR. VALERY FABRIKANT :

Q. Well, could you, could you please reconcile your earliest testimony that...

-Q Pourriez-vous s'il vous pla t r concilier votre t moignage pr c dent...

Q. ... McKenzie has told you about threats on the telephone, your testimony now is she didn't tell you.

-Q savoir que McKenzie vous a parl , des menaces au t l,phone...

Q. ... give your testimony now...

-Q ... et ... votre t moignage que vous venez de dire...

Q. ... that she didn't tell you anything on the telephone...

-Q ... qu'elle ne vous a rien dit au t l,phone...

Q. ... but rather invited you to meet her in person.

-Q ... mais qu'elle vous aurait plut t invit , ... la rencontrer en personne.

R. Sur le t l,phone elle m'a invit , de la rencontrer en personne.

-R On the phone, she invited me to meet her in person.

MR. VALERY FABRIKANT :

Isn't it a contradiction?

THE COURT :

It depends how you put your question the first time and it depends what his answer was and I don't take his answers verbatim. If it's a contradiction, it's not then end of the world.

MR. VALERY FABRIKANT :

Q. So what was your action after you received the invitation to meet McKenzie?

-Q Quelle  tait votre action apr s avoir re u l'invitation de rencontrer McKenzie?

R. Je suis all , ... son bureau.

-R I went to her office.

Q. Where were you at the time when she called you?

-Q O ,  tiez-vous au moment o  elle vous a appel ,?

R. Je m'en souviens pas.

-R I do not recall.

Q. At least in what campus?

-Q Au moins pouvez-vous dire dans quel campus?

R. Non plus.

-R No.

Q. Did you walk to her office?
-Q Est-ce que vous avez marché, ... son bureau?
R. Oui.
-R Yes.
Q. Well, does this trigger your memory...
-Q Est-ce que cela déclenche votre mémoire...
Q. ... where you were?
-Q ... au sujet d'où vous étiez?
R. Il est fort probable que, il est fort probable que j'étais ... Sir George.
-R It's most probable that I was at Sir George.
Q. Okay. So you came to her office and what happened after that?
-Q Bon, bien. Vous êtes allés, ... son bureau et qu'est-ce qui s'est passé, ensuite?
R. Bon, je suis arrivé, ... son bureau puis elle m'a expliqué, la situation que je vous ai racontée.
-R I arrived at her office and she explained to me the situation that I had told you.
R. Et puis nous avons discuté, des mesures ou des choses qu'on devrait faire ou qu'on peut faire.
-R Then we discussed about measures, about things we should do, that we could do.
Q. Okay, could you go in the details. What were the measures you discussed, what you could and should do?
-Q Pouvez-vous rentrer dans les détails et expliquer quelles étaient les mesures que vous avez discutées au sujet de ce que vous pourriez faire et ce que vous deviez faire?
R. Nous sommes arrivés ... la conclusion qu'il ne faut pas bruyé l'affaire et puis empirer la chose.
-R We arrived to the conclusion in order not to make the whole thing, the whole scenario worst...
R. Nous avons conclu que le gardiennage que vous voyez dans le document soit ajouté, au cas...
-R ... we concluded that the guardianship that you see in the document would be added just in case...
R. ... des menaces seraient mises ... exécution.
-R ... just in case the threats would come to execution.
Q. What do you mean threats come to execution, that I shoot somebody?
-Q Et qu'est-ce que vous voulez dire par menaces, exécution, vous voulez dire, si je tue quelqu'un?
R. Qu'il mette ses menaces ... l'exécution d'une façon quelconque.
-R That his threats be executed...
THE COURT :
Would be carried out.
THE INTERPRETER :
-R ... would be carried out -- thank you -- in a manner whatsoever.
MR. VALERY FABRIKANT :
Q. Okay. And what were there measures taken?
-Q Et quelles étaient les mesures?
R. Protection contre, pour le recteur.
-R Protection of the rector.
R. Protection pour le doyen Swamy, je me souviens bien.
-R Protection for the dean Swamy, if I recall correctly.
R. Je me souviens pas autre chose pour l'instant.
-R I don't recall anything else for the moment.
Q. Look at the complete file, maybe it will trigger your

memory what exactly has been done.

-Q Regardez le dossier au complet, peut-être que cela pourrait rafraîchir votre mémoire, ... savoir ce qui aurait pu être fait.

R. Il y a un document ici sur la page jaune...

-R There is a document here on the yellow page...

R. ... en date du vingt et un (21) mars quatre-vingt-neuf (89)...

-R ... in the date of March twenty-first (21st) nineteen eighty-nine (1989).

R. ... dans lequel il fait allusion ... un nombre de, un nombre de mesures ... prendre.

-R ... that alludes to a number of measures to be taken.

R. Maintenant, ce n'est pas écrit par moi mais...

-R It is not drafted by myself...

R. ... j'ai pris connaissance.

-R ... but I took knowledge of it.

Q. Who wrote this page?

-Q Qui a écrit cette page?

R. Je me souviens pas qui a écrit ça mais je suppose... c'est possible que ce soit madame McKenzie.

-R I do not recall who wrote it but it's possible that it's Mrs. McKenzie.

Q. Yes, and could you elaborate on what measures were taken?

-Q Oui, est-ce que vous pourriez élaborer sur quelles mesures, quelles sont les mesures qui ont été prises?

R. Bon, il y en a l...-dedans, il y a une mesure ici gendarmerie, RCMP...

-R There is a measure here RCMP...

R. ... il y a rien qui a été fait l...

-R ... there is nothing that was done at that level.

R. C'est sans doute au sujet du port, permis de possession d'arme.

-R It's probably with respect to the permit of firearm possession.

R. Et avec mes conversations avec la police, écoutez ce sujet-l... a certainement été vérifié, un rapport de police.

-R And about my conversations with the police, that was probably verified, say police report.

R. Comme vous voyez, "arrangements for meeting with chair dean Haines"...

-R As you can see arrangements for meeting with chair dean, Mr. Haines...

R. ... je me souviens pas que ça a été fait ça.

-R ... I do not recall that that was carried out.

R. Et puis un système d'avertissement pour monsieur Haines...

-R And there was a warning system for Mr. Haines...

R. ... que ça a été fait.

-R ... that was done.

Q. And all this yellow sheet of paper was discussed when?

-Q Et en ce qui concerne ce qu'on retrouve sur la pièce jaune, ça a été discuté, quand?

R. La journée que j'ai rencontrée, madame McKenzie.

-R The day I met Mrs. McKenzie.

Q. So it was March twenty-first (21st)?

-Q Donc, c'était le vingt et un (21) mars?

R. J'ai indiqué, ici au bas vingt et un (21) mars.

-R I indicated here at the bottom of the page March twenty-

first (21st).

Q. O.K. What did she tell you about weapon? Do I have a weapon, do I intend to buy one?

-Q Qu'est-ce qu'elle vous a dit au sujet d'une arme, est-ce que j'en ai une, est-ce que j'avais l'intention d'en acheter une?

R. Aucune discussion de ce c"t,-l...

-R No discussion with respect to that.

Q. And you received death threats and you do not discuss firearms at all?

-Q Vous recevez des menaces de mort et vous ne discutez pas des armes ... feu du tout?

R. On en discute mais ça pas ,t, discut, de cette façon-l..., ça pourrait...

-R We've talked about it but it was not discussed in that manner.

Q. Okay.

R. M[^]me si l'enregistrement a ,t, fait pour des pistolets, ça peut [^]tre une autre arme ... feu qui est pas enregistr,e, ça peut [^]tre n'importe quoi.

-R Even if there was, even if there is a license for a gun or registrations were made for a gun...

THE COURT :

For a hand gun.

THE INTERPRETER :

-R ... for a hand gun, it does not mean that...

LA COUR :

Continuez.

R. ... ça aurait pu [^]tre une arme blanche, un couteau si vous voulez, et puis ça peut [^]tre une carabine.

-R ... it could have been a knife, if you wish, a shutgun...

THE COURT :

A riffle.

THE INTERPRETER :

-R ... a riffle.

R. Donc, l'enregistrement d'une arme ... feu n'est pas concluant comme tel en ce qui me concerne.

-R So a registration of firearm is not concluding as such.

MR. VALERY FABRIKANT :

He is not answering my question.

THE COURT :

Well, he did answer your question.

MR. VALERY FABRIKANT :

He did, fine.

THE COURT :

He said it wasn't discussed in the sense that you're implying.

MR. VALERY FABRIKANT :

Well, alright.

THE COURT :

But he said it was discussed, he told you in what sense it was discussed, he told you why a registration, the existence or non-existence of a registration isn't conclusive, he said all that, he answered your question.

MR. VALERY FABRIKANT :

Well it was not my question.

Q. Did you discuss with doctor McKenzie details of the threat?

-Q Est-ce que vous avez discut, avec docteur McKenzie les d,tails des menaces?

Q. Did I threaten to kill with firearms?
-Q Est-ce que j'ai fait, est-ce que j'ai menacé, de tuer avec des armes ... feu?
R. Tout ce qu'elle m'a dit, je me rappelle, c'est que c'était des menaces de mort qui ont été, proférées contre le recteur et le doyen.
-R All she told me, and I repeat, is that there were death threats authored to the dean and the rector.
Q. And you didn't ask anything about how those death threats were intended to be executed?
-Q Et vous n'avez rien demandé, au sujet, ... savoir de quelle façon est-ce que ces menaces pourraient être faites?
R. Non.
-R Non.
R. Non, puis je ne sais pas si elle le savait elle-même.
-R No, and I don't even know if she knew, if she knew herself.
THE COURT :
We've been through all this. We've been through all this.
MR. VALERY FABRIKANT :
Q. She didn't mention to you anything about me having gun or buying gun?
-Q Donc, elle n'a rien mentionné, au sujet de, ... savoir si j'avais acheté, un revolver ou un fusil, si j'en avais un?
R. Non, elle n'a pas mentionné, ça.
-R No, she did not mention that.
Q. Okay. What measures were taken in terms of protection of rector and the dean?
-Q Quelles sont les mesures qui ont été, prises pour la protection du recteur et du doyen?
R. Comme vous voyez les factures...
-R As you can see the bills...
R. ... les gardiens vingt-quatre (24) heures par jour pendant un nombre de jours ici jusqu'... environ...
-R ... a twenty-four (24) hours guard service...
R. ... jusqu'... environ au dix (10), je crois...
-R ... until about tenth (10th) of April...
R. ... dix (10) avril suivant.
-R ... following tenth (10th) of April.
R. Si je me souviens, ça coïncidait avec votre réunion...
-R And if I recall correctly, it coincided with your reunion...
R. ... avec monsieur Grendon Haines.
-R ... with Mr. Grendon Haines.
Q. Twenty-four (24) hours guard for who?
-Q Une garde pendant vingt-quatre (24) heures pour qui?
R. Pour le recteur...
-R For the rector...
R. ... pour le doyen...
-R ... for the dean...
R. ... et puis il y a eu une couverture faite sur vous...
-R ... and there was also a surveillance made on you...
R. ... pour s'assurer que vous ne preniez pas la direction de l'une des deux personnes.
-R ... to make sure that you would not go or take the direction of one of the two persons.
R. Suite ... votre réunion, je crois, si je me souviens, l'...
-R Following your meeting, if I recall correctly...

R. ... avec Grendon Haines, tout a ,t, lfch, .
-R ... following your meeting with Grendon Haines, if I recall correctly, everything was dropped.
Q. Were you present at that meeting?
-Q Est-ce que vous avez ,t, pr,sent ... cette r,union?
R. Non, j',tais pas pr,sent, j',tais ... la porte.
-R No, I was not present, I was at the door.
Q. You were at the door when I met with Haines?
-Q Vous ,tiez ... la porte lorsque j'ai rencontr, Haines?
R. J',tais au bureau de gardiennage ... Loyola et puis on tenait un coup d'oeil sur le bureau de Haines.
-R I was at the guard office in Loyola and we were watching Haines' office.
Q. What do you mean...
R. Keeping surveillance.
Q. ... by checking?
-Q Qu'est-ce que vous voulez dire par jeter un coup d'oeil?
R. Jeter un coup d'oeil, pour voir que tout se passait normalement.
-R We would keep an eye on it to, in order to see if everything was normal.
Q. Do I understand that there was a microphone in Haines' office and you were listening to what was going on there, correct?
-Q Dois-je comprendre qu'il y avait un microphone ... l'int,rieur du bureau de Haines et vous ,coutiez ce qui se passait ... l'int,rieur, est-ce que c'est bien #a?
R. Non.
-R No.
Q. Then explain how did you keep an eye on what was going on in the office?
-Q Alors, expliquez comment est-ce que vous aviez, comment vous jetiez un coup d'oeil pour savoir ce qui se passait?
R. On regardait la porte...
-R We were looking at the door...
R. ... et puis monsieur Haines avait un systŠme d'alarme s'il avait des problŠmes.
-R ... and Mr. Haines had an alarm system if he had problems.
Q. What was this alarm system, could you...
-Q Qu'est-ce que c',tait ce systŠme d'alarme?
R. C',tait un bouton seulement bien simple qui monsieur Haines aurait appuy, s'il ,tait en difficult,?
-R It was a simple buzzer that Mr. Haines would have pressed if he were in difficulty.
Q. Well, how this buzz would help if I come with a gun and shoot him dead?
-Q De quelle fa#on est-ce que ce bouton aurait pu l'aider si j',tais arriv, avec un fusil et je l'aurais fusill,?
Me JEAN LECOURE :
This is argument.
THE COURT :
This is argument, this is pointless and this is waisting time. The question is disallowed.
MR. VALERY FABRIKANT :
Q. When was this meeting between me and Haines which you allegedly watched?
-Q Quand est-ce que cette r,union entre moi et Haines a eu lieu, cetter,union que vous avez, que vous all,guiez, que vous auriez pr,tendument surveill,e?

R. Vous avez quelque chose ici, l... Les conseils que j'avais donn,s ... monsieur Haines...

-R Probably here it's...

THE COURT :

Q. Just stick with the question, Mr. Barnab,.

-Q R,pondez ... la question, monsieur Barnab,.

R. Pouvez-vous la r,p,ter?

-R Would you repeat, please?

Q. When was the meeting with Mr. Haines...

-Q Quand la rencontre avec monsieur Haines...

Q. ... that you were, when you were watching the door?P

-Q ... lorsque vous surveilliez la porte?

Q. That was the question.

-Q C',tait la question.

R. Le ou aux alentours du dix (10) avril.

-R On or around April tenth (10th).

MR. VALERY FABRIKANT :

Q. And what happened during that meeting?

-Q Et qu'est-ce qui s'est pass, durant cette r,union?

R. Je n',tais pas pr,sent.

-R I wasn't present.

Q. So, why did you leave the surveillance after that meeting?

-Q Alors pourquoi est-ce que vous avez laiss, tomber la surveillance apršs cette r,union?

R. C'est sur l'avis de monsieur Haines qui m'a dit que...

-R It's on the notice of Mr. Haines that had told me that...

R. ... tout semblait ^tre rentr, dans l'ordre.

-R ... everything seemed to be in order, to be back in order.

Q. Did he write to you, did he tell you this, what?

-Q Ceci il vous l'a dit ou est-ce qu'il vous l'a ,crit?

R. Verbal.

-R It was verbal.

Q. So what did he tell you verbally?

-Q Qu'est-ce qu'il vous a dit verbalement?

R. Tout ,tait rentr, dans l'ordre?

-R That everything was back in order or went back to normal.

Q. Did you ask at least for some detail how come everything was so in disorder and all of a sudden everything is in order?

-Q Est-ce que vous avez demand, pour des d,tails ... savoir comment #a se fait que tout ,tait dans un tel d,sordre et que maintenant c',tait rentr, dans l'ordre?

R. C'est parce que monsieur Haines ,tait un officier de l'universit,...

-R Because Mr. Haines was an official from the university...

R. ... dont la cr,dibilit, j'ai jamais dout,,.

-R ... whose credibility I never doubt it.

R. Donc s'il me dit que tout est rentr, dans l'ordre, je vais pas rentrer dans les d,tails personnels.

-R So, if he tells me that everything was back in order, I will not go into personal details.

R. Et j'ai laiss,, j'ai enlev, toute surveillance.

-R And I lifted all surveillance.

Q. Could you look at the page last or one before last.

-Q Pouvez-vous regarder la derniŠre page ou l'avant-derniŠre page.

Q. Now, is there any handwritten notes.
-Q Il y a des notes ,crites ... la main, manuscrites.
R. C'est celle-l...?
-R This one?
Q. No, no, this one.
-Q Celle-ci.
Q. Whose handwriting is this?
-Q C'est l',criture de qui?
R. La mienne.
-R My own.
Q. Yes. Read it please.
-Q Oui, lisez-l... s'il vous plaEt.
R. "Last meeting cancelled at his request, your request, Mr. Fabrikant with Grendon Haines, discussed his conduct, advised from why to discontinue his way, his arguments were made. Discuss that he had not made threats and Grendon Haines indicated that he had in front of McKenzie and such threats had been reported to authorities as in shoot killing or shooting, instructions to all involved if Fabrikant argues in this way, discontinue the meeting".
Q. I didn't get... could you... in a more distinct way, to begin...
Me JEAN LECOURE :
It was distinct, My Lord.
THE COURT :
It was distinct. Would you pass the, would you pass the file over Mr. Fabrikant and let him read it, and then he'll pass it back.
MR. VALERY FABRIKANT :
Q. Well, I cannot read it.
-Q Je peux pas le lire.
Q. Last meeting cancelled at his... first of all it is note of December, of April tenth (10th), right? It's exactly...
-Q Donc c'est une note du dix (10) avril, c'est bien #a?
Q. It is exactly the date where you claim "I had a meeting with him".
-Q C'est exactement la date ... laquelle vous pr,tendez que j'ai eu une r,union avec ui.
Q. And the note says quite opposite that I cancelled my meeting with him.
-Q La note dit le contraire, c'est que j'ai annul, ma r,union avec lui.
Q. How do you explain this contradiction? And you say that you personally watched the door?
-Q Comment expliquez-vous cette contradiction et vous dites que vous avez personnellement surveill, la porte?
R. Bien vous ,tiez l...
-R Well, you were there.
Q. Then, your writing here is not true...
-Q Donc, votre ,criture ici n'est pas vraie...
Q. ... that I cancelled the meeting?
-Q ... que j'ai annul, la r,union?
R. Si je me souviens bien, apparemment il a ,t, question que vous les cancelliez.
-R If I recall correctly the question that you wanted to cancel...
R. ... mais que vous seriez revenu par la suite.
-R ... but that you a little later came back.
Q. Well...

R. Je dois admettre que j'ai rien inventé, peut-être que c'est mal interprété, mais j'ai rien inventé.

-R I must admit that I did not invent anything, maybe it's misinterpreted.

Q. Okay, let me try to trigger your memory.

-Q Laissez-moi essayer de revivre votre mémoire.

Q. Could it be that Haines said...

-Q Est-ce que ça serait possible que Haines ait dit quelque chose...

Q. ... something about a telephone conversation...

-Q ... quelque chose au sujet d'une conversation téléphonique...

Q. ... rather than a meeting?

-Q ... plutôt qu'une réunion?

R. C'est possible...

-R It's possible...

R. ... qu'il m'ait dit ça parce que j'ai pas questionné, les renseignements qu'il y a là, là...

-R ... it's possible that he told me that because he did not question the information that...

R. ... j'ai dit que les renseignements qui sont là, là, même si j'ai pas questionné, monsieur Haines...

-R ... the informations that are there did not question Mr. Haines.

Q. Well, then, you watched the door behind which I wasn't there.

-Q Donc, vous avez surveillé, la porte derrière laquelle je n'y étais pas.

R. coutez, ce n'est pas une confusion, peut-être que j'ai parlé, avec monsieur Haines qui m'avait dit que vous aviez peut-être annulé, votre réunion mais que la réunion a eu lieu pareil?

-R Listen, it's not a confusion, I had spoken to Mr. Haines who had told me maybe that you had cancelled your meeting, but the meeting took place anyhow.

Q. Well, if the meeting took place anyhow, then why didn't you write here that there was a meeting?

-Q Donc, si la réunion a eu lieu quand même, pourquoi vous n'avez pas écrit ici qu'il y a eu, que la réunion a eu lieu?

R. Bien, coutez, les notes que j'ai là, là, je ne peux pas les nier, elles sont là.

-R Listen, the notes that I have there, I cannot...

R. Il était là dans le bureau.

-R ... dismiss them, they were there... pardon, il...

R. Il était dans le bureau cet après-midi là, je pense c'était l'après-midi.

-R He was in the office that afternoon, if I recall correctly it was an afternoon.

Q. Well, the note says that I was not there.

-Q La note dit que je n'étais pas là.

Me JEAN LECOURE :
No, it doesn't so.

MR. VALERY FABRIKANT :
Doesn't it?

THE COURT :
No.

MR. VALERY FABRIKANT :
Well, last meeting cancelled.

-Q Dernière réunion annulée.

Q. Can you say more clear than this?

Me JEAN LECOURES :

The rest could well be the report of the meeting, My Lord.

THE COURT :

Certainly.

MR. VALERY FABRIKANT :

What?

THE COURT :

The crown prosecutor said that last meeting cancelled, the rest could well be the report of a meeting, I wasn't there, I don't know.

MR. VALERY FABRIKANT :

Last meeting cancelled.

-Q Derniřre...

MR. VALERY FABRIKANT :

If there was not a...

THE COURT :

Let's not argue about it.

MR. VALERY FABRIKANT :

... meeting then this was not...

THE COURT :

The only person who wrote the memo was the witness and he is giving you his explanation.

MR. VALERY FABRIKANT :

Okay.

Q. And after that, what...

-Q Bien, par la suite...

Q. ... discussed his conduct?

-Q ... nous avons discut, de son comportement.

Q. Advise from wife to discontinue his way.

-Q Avis, sa femme de discontinuer ses maniřres.

Q. His arguments with me, discussed...

-Q Ses arguments avec moi, discuter...

Q. This is where I cannot understand.

-Q Je ne peux pas comprendre.

R. Non, ces notes-l... ont ,t, prises...

Q. Did you write this note being on the telephone with Haines? How this note was written?

-Q Est-ce que vous avez ,crit ces notes lorsque vous ,tiez au t,l,phone avec Haines? De quelle fařon est-ce que ces notes ont ,t, ,crites?

R. Il y a rien qui a ,t, discut, dans cette affaire-l..., si je me souviens bien, j'ai ,t, assez prudent pour... que c'est pas une chose que je parlerais tellement sur le t,l,phone.

-R Nothing was discussed about this matter over the phone, I was prudent enough, I would not have discussed such a matter over the phone.

R. Ca c'est pour la protection de monsieur Fabrikant puis pour ne pas empirer la situation

-R This is for the protection of Mr. Fabrikant and not to get the situation, not to get the situation worst.

Q. Oh yes, you protected me so well that everyone...

THE COURT :

Stop it, stop it right now.

MR. VALERY FABRIKANT :

I put it as a question.

THE COURT :

No, it's not a question.

MR. VALERY FABRIKANT :

No, I will put it as a question.

THE COURT :

Don't think to put that as a question.

MR. VALERY FABRIKANT :

I'll try.

Q. Did you know that your protection resulted in the fact that everyone at the university knew it?

-Q Est-ce que vous saviez que votre protection r,sultait du fait que tout le monde ... l'universit, le savait?

R. Ca je l'ignore.

-R I do not know that.

R. Ca s'est su peut-^tre par la suite.

-R Maybe it was found out later on.

Q. Well could you guess how?

-Q Est-ce que vous pouvez deviner de quelle fa#on?

R. Non.

-R No.

Q. You didn't distribute this information, did you?

-Q Vous n'avez pas distribu, cette information, n'est-ce pas?

R. Non.

-R No.

Q. And Mr. Haines is so credible that he couldn't do it either, correct?

-Q Et monsieur Haines est tellement cr,dible qu'il n'a pas pu le faire lui non plus, n'est-ce pas?

R. J'en sais rien, je peux pas r,pondre.

THE COURT :

First of all, the witness can't speak for Mr. Haines and I see...

MR. VALERY FABRIKANT :

I'm just asking his opinion.

THE COURT :

No, you're not allowed to ask his opinion, you will not ask his opinion and the last question is disallowed.

MR. VALERY FABRIKANT :

Q. Discussed that he had not made threats...

-Q Nous avons discut, du fait qu'il n'ait pas fait de menaces...

Me JEAN LECOURES :

There is no "we", My Lord.

MR. VALERY FABRIKANT :

Q. Grendon Haines indicated he had... what is this Sir, he had...

THE COURT :

Q. Have you have another copy of this...

-Q Est-ce que vous avez une autre copie de ceci...

Q. ... or do you require a copy of this?

-Q ... ou aimeriez-vous avoir une copie, en avez-vous besoin?

R. Bien j'ai pris connaissance de #a, l..., j'en ai pas de besoin, moi.

Q. Okay, fine.

-R I took cognizance of this but I do not need it now.

Q. Good.

MR. VALERY FABRIKANT :

Q. So you have there, okay.

-Q Donc vous l'avez.

Q. So, discussed...

-Q Discuter...

Q. ... that, this is the word, that...

-Q ... que, que...

Q. ... discussed that he had not made threats.
-Q ... il n'a pas fait de menaces.
R. Oui mais que lui-même aurait dit ... monsieur Haynes qu'il n'en a pas fait de menaces.
-R Yes, that he himself would have said to Mr. Haines that he did not make threats.
Q. Last, this is a plus?
-Q Est-ce que c'est un plus?
R. Et.
-R And.
Q. And, yes. Grendon Haines indicated...
-Q Grendon Haines a indiqué, ...
Q. ... he had in front of McKenzie and...
-Q ... qu'il avait devant McKenzie et...
Q. ... what is this word?
-Q ... quel est le mot après?
R. "Such threats..."
-R "Such threats..."
R. "... had been reported to authority".
Q. Namely killing and shooting?
-Q Notamment tuer et tirer?
Q. I don't get the phrase. "Discussed that he hadn't made threats and Grendon Haines indicated he had in front of Catherine McKenzie..."
-Q "Discuter qu'il n'a pas fait de menaces et Grendon Haines a indiqué, qu'il avait..."
Q. "... and such threats had been reported to authorities..."
-Q "... et que ces menaces ont été rapportées aux autorités..."
Q. "... namely killing and shooting".
-Q "... c'est-à-dire tuer et tirer".
Q. Then it's incorrect of what you have written here means that Haines...
-Q Dois-je comprendre que ce que vous avez dit ici veut dire que Haines...
Q. ... indicated to me...
-Q ... m'a indiqué, ... moi...
Q. ... that I have made threats in front of him and McKenzie...
-Q ... que j'avais fait des menaces devant lui et McKenzie...
Q. ... and he told me...
-Q ... et qui il m'a dit...
Q. ... that those threats have been reported to authorities.
-Q ... que ces menaces ont été rapportées aux autorités.
Q. Is my understanding correct of what you have written?
-Q Est-ce que je comprends bien ce que vous avez écrit?
R. L..., c'est des notes personnelles...
-R These are personal notes...
R. ... discuter, d'après ce que je comprends ici, l...
-R ... from what I understand here...
R. ... que vous auriez dit ... monsieur Haines que vous n'avez pas fait de menaces...
-R ... discussed that you, discussed that you would have said to Mr. Haines that you did not make threats...
R. ... et que Grendon Haines...
-R ... and that Grendon Haines...
R. ... me dit qu'il n'aurait fait devant madame McKenzie pas lui-même...

-R ... told me that...
THE INTERPRETER :
My Lord, can we ask the witness to repeat please?
THE COURT :
Yes.

R. Et que Grendon Haines dit qu'il aurait fait des menaces devant McKenzie.

-R And Grendon Haines says that he would have made threats in front of McKenzie.

MR. VALERY FABRIKANT :

Q. And him?

-Q Et lui-m[^]me?

R. Je peux pas indiquer, je le comprends pas comme ça moi.

-R It's not marked in such a way, I don't understand this.

Q. Okay, so in front of McKenzie...

-Q Donc, devant McKenzie...

Q. ... and Haines told me that those threats were reported to authorities.

-Q ... et Haines m'a dit que ces menaces ont ,t, rapport,es aux autorit,s.

R. Maintenant les autorit,s ici il peut s'agir des autorit,s de l'universit, ou...

-R The authorities here would mean...

R. ... peut-[^]tre la police, je le sais pas.

-R ... it may be the authority of the university or the police, I do not know.

Q. Okay. And after that goes what...

-Q Et apr[^]s ça, qu'est-ce qui est ,crit?

R. "Instructions to all involved if Fabrikant argues in this way, discontinue meeting." Ça, tout ce que je peux dire l...-dessus c'est que c'est peut-[^]tre les instructions ... Haines.

-R All I can say on that...
L'INTERPRETE :
Pardon?

R. Tout ce que je peux dire pour le dernier paragraphe, l... "instructions to all involved, if Fabrikant argues in this way, discontinue meeting". In other words, if he became violent, you discontinue the meeting.

-R That's all I can say about this last paragraph.

MR. VALERY FABRIKANT :

Q. You made instructions to who exactly?

-Q Vous avez donn, des instructions ... qui exactement?

R. Bien d'apr[^]s ceci j'ai donn, ça ... Haines...

-R According to this, I gave them to Haines...

R. ... parce qu'il avait peur...

-R ... because he was afraid...

R. ... et puis que si la tournure de la discussion s'av,rait dangereuse ou...

-R ... and if the discussion or the meeting would become dangerous...

R. ... il discontinue sa r,union tout de suite.

-R ... he should discontinue his meeting right away.

Q. So where is the indication that everything is fine?

-Q Donc, o- est l'indication que tout va bien?

R. Bien, c'est tr[^]s simple.

-R It's very simple.

R. Ça c'est suite ... ce que Grendon m'a racont,.

-R This is following now...

R. C'est l... que j'ai d, cid, que normalement avait de l'air...

-R ... following what Grendon had told me and I had decided that...
L'INTERPRETE :
Pardon?

R. Que la situation ,tait devenue normale et puis que j'ai discontinu,.

-R Decided that the situation became normal and that I discontinued.

R. Il y a peut-^tre autre chose qui a ,t, dit en m^me temps, mais ¢a c'est mes notes personnelles, j'ai griffon, ¢a comme ¢a, ¢a finit l....

-R Maybe other things were said at the same time, but these are my personal notes that I just drafted like this.

Q. Okay. From this personal note, could you indicate which part of this note indicates that everything is fine?

-Q Mais de ces notes personnelles...
THE COURT :
The witness has told you... no, I'm sorry. The witness has answered the question, so, that is cross-examination and that's this about.
MR. VALERY FABRIKANT :
Witness totally contradicts...
THE COURT :
Please don't argue with me, please don't argue with me.
MR. VALERY FABRIKANT :
Alright.

Q. And what goes after that?

-Q Qu'est-ce qui est ,crit aprřs?

Q. Some, what is it? R.B. are your initials, right?

-Q R.B. repr,sente vos initiales, n'est-ce pas?

R. Oui.

-R Yes.

Q. After that surveillance, repeat it, "rpt", what is it, repeat it?

-Q Qu'est-ce que ¢a veut dire "rpt", est-ce que c'est r,p,ter?

R. Report.

Q. Surveillance report, yes, Fabrikant, five (5:00) to eight a.m. (8:00).

-Q Donc, rapport de surveillance, Fabrikant, cinq heures (5 h) ... huit heures a.m. (8 h).

Q. Plus weekends.

-Q Plus week-ends.

R. Vingt-quatre (24) heures, "discontinue".

-R Twenty-four (24) hours, discontinued.

Q. Okay, so from then on, I was on the surveillance only from, what, five (5:00) to eight a.m. (8:00)?

-Q Donc, ... partir de ce moment-l..., j',tais sous surveillance seulement entre cinq heures (5 h) et huit heures a.m. (8 h)?

R. Fort probable.

-R Most probable.

Q. And weekends, what, twenty-four (24) hours.

-Q Et les week-ends vingt-quatre (24) heures?

R. C'est possible mais quatre ans aprřs, l..., je peux pas toujours...

-R It's possible, but four years later I cannot always...

R. ... vous dire si c'est exact ou...

-R ... tell you if it's in fact right.

Q. Well, it is your notes, isn't it?

-Q Ce sont vos notes, n'est-ce pas?

R. Oui, c'est des notes griffonnées, mais c'est pas un rapport formel, c'est pas rien de ça, c'est des notes que... pourquoi j'ai pris cette décision-là?

-R These are notes that I drafted like this, it was not a formal report, why I took this decision.

Q. So, surveillance first of all still continued though not twenty-four (24) hours, correct?

-Q Donc, une surveillance, tait quand même continue, mais pas sur vingt-quatre (24) heures, n'est-ce pas?

R. D'après les factures, il n'y a plus de surveillance après le dix (10).

-R According to the bills, there is no more surveillance after the tenth (10th).

Q. Yes, but this does not correspond to your recommendation, does it?

-Q Mais cela ne correspond pas ... vos recommandations, n'est-ce pas?

R. Excusez-moi, là, j'ai une facture...

-R I'm sorry but I have a bill here...

R. ... du dix-huit (18).

-R ... of the eighteenth (18th).

Q. Okay.

R. Du dix-huit (18), dix-sept (17).

Q. So, how to reconcile all this story that on the tenth (10th) you got a message everything is fine and you discontinued everything.

-Q Donc, comment concilier toute cette histoire que le dix (10) que vous avez reçu le message que tout, tait correct et que vous avez discontinué, le tout?

R. J'ai pas de facture.

-R Without a bill or...

R. Excusez-moi, je regardais la date de la facture.

-R Alright, I'm sorry, I was looking at the date of the bill.

R. Surveillance du trente et un (31) mars au dix (10) avril, point.

-R Surveillance to the thirty-first (31st) of March to the tenth (10th) of April, period.

R. Vingt-huit (28) mars au dix (10) avril.

-R Twenty-eighth (28th) of March to April tenth (10th).

R. Ce sont les factures, c'est pour ça que suite ... cette réunion-là avec Grendon Haines...

-R These were the bills, this is way after the following, the reunion with Grendon Haines or the meeting...

R. ... puis c'est les notes que j'ai esquissées qui justifiaient un peu ma décision de discontinuer la surveillance.

-R ... and these notes that are drafted, that were justifying a bit the decision to discontinue surveillance.

Q. Well, your notes do not discontinue surveillance, correct?

-Q Vos notes ne discontinuent pas la surveillance, n'est-ce pas?

R. Bien oui, toutes les factures c'est du vingt-huit (28) au trente et un (31) mars au dix (10) avril.

-R Yes, all the bills are from the twenty-eighth (28th) to the thirty-first (31st) of March to the tenth (10th) of April.

R. Les dates qu'on indique ... la gauche en haut c'est la date où ça a été facturé.

-R The dates that are indicated on the left top portion are the dates when they were sent or billed?

R. Billed.

-R Billed.

Q. Could it be that some bills are not just here?

-Q Est-ce que ça se pourrait qu'il y ait des factures qui ne sont simplement pas l...?

R. C'est possible?

-R It's possible.

Q. So you are not sure at all that it was discontinued on the tenth (10th) of April?

-Q Donc, vous n'êtes pas sûr du tout si ça a été, discontinu, après le dix (10) avril?

Q. So how...

R. Non, je me souviens que la décision... tout ce qui indique ici, l....

-R No, I recall that this decision... that all it's indicated here...

R. ... le trente et un (31) mars, dix (10) avril...

-R ... the thirty-first (31st) of March, the tenth (10th) of April...

R. ... et suite ... la réunion, c'est pour ça mes notes ici qui me...

-R ... and following the meeting, this is why my notes here justify.

R. Même si elles peuvent paraître déconnectées...

-R Even if they seem untied...

R. ... c'est que j'ai décidé, ... ce point-là d'enlever toute surveillance parce que tout me semblait être rentré dans l'ordre.

-R ... is that I had decided at this point to lift all surveillance because everything seemed to me to be back in order.

R. La deuxième raison c'est le coût du gardiennage qui m'a fait arrêter tout ça.

-R And the second reason is the cost of the surveillance that made me stop this.

Q. There is another question.

-Q Il y a une autre question.

Q. Did you have any right to use taxpayer's money...

THE COURT :
No, that won't be allowed...

MR. VALERY FABRIKANT :
I haven't finished my question.

THE COURT :
It's not even pertinent, don't ask it.

MR. VALERY FABRIKANT :

Q. So you have projects 1, project 2 and project 3.

-Q Donc vous avez projet 1, projet 2 et projet 3.

Q. Okay, could you describe what project 1 was?

-Q Pouvez-vous décrire ce que le projet 1 représentait?

R. C'est la compagnie qui indique ça, moi j'ai jamais parlé de projets, c'est la couverture sur le recteur...

-R It's the company that indicates those, I never spoke about the project...

R. ... le douanier.

-R ... it's the surveillance on the dean, the rector.

R. Et monsieur Fabrikant.

-R And Mr. Fabrikant.

Q. Okay. So while this project 1, another projet 2 and the third project 3.

-Q Donc l'un repr, sente le projet num,ro 1, l'autre projet num,ro 2 et le troisišme projet num,ro 3.
R. C'est řa que la compagnie indique, moi j'ai...
-R That's what the company indicates. I ...
R. Trois personnes.
-R Three people.
Q. Okay.

THE COURT :

Okay, we'll adjourn here for ten minutes.

SUSPENSION

REPRISE

Le t,moin, ROLAND BARNAB, d,pose sous le m^me serment que d,j... pr^t, :

MR. VALERY FABRIKANT :

Q. How many years have you been working at Concordia?
-Q Vous avez travaill, ... Concordia pendant combien de temps, combien d'ann,es?
R. Dix-huit (18) ans.
-R Eighteen (18) years.
Q. And all eighteen (18) years in English, correct?
-Q Et pendant toutes ces dix-huit (18) ann,es en anglais, n'est-ce pas?
R. En g,n,ral, oui, puis en franřais dans d'autres cas.
-R In general, yes, and in French in other cases.
Q. And you (inaudible) perfectly well in English, don't you?
-Q Et vous vous d,brouillez parfaitement bien en anglais, n'est-ce pas?
R. Je me d,brouille.
-R Yes, I can (inaudible).
Q. So maybe we can speed the procedure and not translate the questions?
THE COURT :
No, no.
MR. VALERY FABRIKANT :
Let him answer.
THE COURT :
I'm telling you, if the witness has elected to testify in French, he testifies in French and that's it.
MR. VALERY FABRIKANT :</pre></body></html>

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

But you do understand questions when I ask them in English, do you?

-Q Mais vous comprenez les questions lorsque je les pose en anglais, n'est-ce pas?

R. En g,n,ral, oui.

-R In general, yes.

Q. Do you know of any security coverage for Mr. Haines' house?

-Q Est-ce que vous ^tes au courant d'une surveillance sur la maison de monsieur Haines?

R. Non.

-R No.

Q. Could it be that surveillance over his house was arranged by somebody else?

-Q Est-ce que #a se pourrait que la surveillance sur sa maison aurait ,t, arrang,e par quelqu'un d'autre?

R. Je l'ignore.

-R I do not know it.

Q. Well if it would be done from Concordia university, it must be done from you, correct?

-Q Mais si #a avait ,t, fait par l'universit, Concordia, #a d- passer par vous, n'est-ce pas?

R. Oui, puis les factures que vous avez l..., c'est tout ce que j'ai.

-R Yes, and the bills that you have there, that's all I have.

Q. The twenty-four (24) hours surveillance with the rector, was it done by a bodyguard?

-Q La surveillance de vingt-quatre (24) heures pour le recteur, est-ce que #a a ,t, effectu, avec un garde du corps?

R. Non.

-R No.

Q. Who was that?

-Q Qui ,tait-ce?

R. C'est une surveillance g,n,rale...

-R It was a general surveillance...

R. ... de son habitation, c'est tout.

-R ... of his home, that's all.

Q. So it was not a person of rector which was surveyed, it was his house?

-Q Donc ce n',tait pas la personne du recteur qui a ,t, surveill,, c',tait sa maison?

R. C',tait sa maison.

-R His house.

Q. And the rector himself was not protected in any way?

-Q Et le recteur lui-m^me n',tait pas prot,g, de quelque fa#on que ce soit.

R. J'ai fait la suggestion, si je me souviens, except, que...

-R I had made the suggestion, if I recall, however...

R. ... la r,ponse est arriv,e, bon, c'est pas n,cessaire ou quelque chose comme #a.

-R ... the answer was that it was not necessary, something to that effect.

Q. What about Swamy, was it his house or his person which was protected?

-Q En ce qui concerne Swamy, est-ce que c',tait sa maison ou sa personne qui ,tait...

R. Sa maison.

Q. ... protected.

-Q ... prot,g,?

-R His house.

Q. Is my understanding correct that there was also guard who was following me twenty-four (24) hours?

-Q Est-ce que ma compréhension est bonne au sujet d'un gardien qui me suivait pendant vingt-quatre (24) heures, qu'il y avait un gardien qui me suivait pendant vingt-quatre (24) heures?

R. Sa propriété, était surveillée pendant vingt-quatre (24) heures.

-R His property was surveilled for about, for twenty-four (24) hours.

R. Comme je vous l'ai dit tantôt, c'est au cas que vous preniez la direction de Swamy, de l'habitation Swamy ou du recteur.

-R Like I said before, it's just in case you take the direction of the Swamy's home or the director's home.

Q. That was not my question.

-Q Ce n'était pas ma question.

Q. I was under surveillance twenty-four (24) hours, correct?

-Q Moi j'étais sous surveillance vingt-quatre (24) heures sur vingt-quatre (24), n'est-ce pas?

R. Son habitation, était, pas sa personne comme telle, s'il sortait, oui.

-R His home, not his person as such but should he leave, yes.

R. Il prenait la direction de monsieur Swamy ou de monsieur Kenneth.

-R To make sure he takes the direction of Mr. Swamy or Mr. Kenneth.

Q. How is he, as an agent, he is suppose to know if I go from Cote St-Luc...

-Q De quelle façon est-ce que votre agent pourrait savoir si je pars de Cote St-Luc...

Q. ... and go to the left?

-Q ... et que je tourne ... gauche?

Q. Do I go to Swamy, do I go to Kenneth, do I go shopping?

-Q Est-ce que je m'en vais chez Swamy, est-ce que je m'en vais chez Kenneth ou je m'en vais magasiner?

R. Il vous aurait suivi.

-R He would have followed you.

Q. Okay. So he follows me regardless where I go, correct?

-Q Donc, il me suit ne prenant pas, n'importe où...

R. C'est exact.

Q. ... n'importe où je vais finalement?

R. C'est exact.

-R That's right.

Q. So would you kindly do not mislead the court. I was followed regardless where I go.

-Q Donc, j'étais, j'étais suivi n'importe où où j'allais?

R. Oui.

-R Yes.

Q. Now, is my understanding correct that when I entered the university...

-Q Donc, est-ce que ma compréhension est bonne, lorsque je rentrais ... l'université,...

Q. ... the agent does not follow me?

-Q ... que l'agent ne me suit pas?

R. Non.

-R No.

Q. So my understanding is correct?

-Q Donc, ma compréhension est bonne?

R. Oui.

-R Yes.

Q. Okay. How would the rector be protected...

-Q De quelle façon est-ce que le recteur serait protégé,...

Q. ... if I go to the university...

-Q ... si je vais ... l'universit,...

Q. ... enter his office and shoot him dead?

-Q ... je rentre dans son bureau et je le tue?

THE COURT :

The question is hypothetical, Mr. Fabrikant.

MR. VALERY FABRIKANT :

No, it's not hypothetical, I'm asking him whether he planned any protection for the rector, for this eventuality, because he protected his house, he made surveillance on me but not inside the university. So inside the university I could move whatever I wished and the rector inside the university was not protected.

Q. Now, was there any protection for the rector in this particular eventuality?

-Q Est-ce qu'il y avait une protection quelconque pour le recteur dans cette ,ventualit,-l...?

R. Pas ... l'int,rieur de l'universit,.

-R Not inside the university.

Q. Would you explain why?

-Q Pouvez-vous expliquer pourquoi?

R. Parce que si je me souviens des discussions..

-R Because I remember the discussions...

R. ... c'est qu'on ne voulait pas que je place la s,curit, ... l'int,rieur.

-R ... they didn't want me to put security inside.

R. De plus, il y avait des gardiens r,guliers qui ,taient dans la place.

-R And furthermore, there were regular guards that were there on the premises.

Q. So how these guards would be supportive against an armed person?

-Q De quelle fa#on est-ce que ces gardiens pourraient ^tre, pourraient ^tre prot,g,s pour venir en aide aux gens si une personne arm,e entrait?

R. Il y avait aucune protection parce qu'ils n',taient pas arm,s.

-R There was no protection because they were not armed.

Q. But my understanding was that you were concerned with me..

-Q D'apr#s ce que je comprends, vous ,tiez concern, par moi...

Q. ... taking firearms...

-Q ... ou par l'action de prendre, si je prenais une arme ... feu...

Q. ... and killing someone, correct?

-Q ... si je tuais quelqu'un, n'est-ce pas?

R. La possibilit, m'a pass, par l'esprit.

-R The possibility did cross my mind.

R. Mais j'aurais jamais cru qu'en plein jour...

-R But I would have never thought that in broad day light...

R. ... qu'en plein jour on aurait attent, ... la vie de ces personnes-l....

-R ... somebody would attempt to the life of these people.

Q. So, when did you expect this to happen...

-Q Donc, quand est-ce que vous attendiez que cela pourrait arriver...

Q. ... during night?

-Q ... durant la nuit?

R. C',tait pour la protection de ces deux endroits-l... la nuit puis les fins de semaine.

-R It was for the protection of those two places during night time and also on weekends.

Q. Why weekend is so special, could you explain about weekends?
-Q Pourquoi est-ce que les fins de semaine avaient quelque chose de special? Pouvez-vous expliquer les fins de semaine?
R. Si on la mettait la nuit, ça avait été discuté, que pour la protection du recteur et du doyen que...
-R If we would put surveillance at night, it was discussed for the protection of the rector and the dean...
R. ...et que les fins de semaine pendant un certain temps on ne savait pas ... quelle date, comme s'est avéré, le dix (10) avril.
-R ... and also on the weekends we didn't know when as it came out to be the tenth (10th) of April.
R. Qu'on a discuté, qu'on a discontinué, toute cette surveillance.
-R That we lifted all surveillance.
Q. This is not my question.
-Q Ce n'est pas ma question.
R. Répétez.
-R Please repeat.
Q. What was special on weekends in terms of threats?
-Q En ce qui concerne les menaces, qu'est-ce qu'il y a de particulier pour les fins de semaine?
R. Comme vous l'avez dit vous-même, ça pourrait arriver n'importe quel temps mais on n'a pas mis la protection vingt-quatre (24) heures.
-R As you said it yourself, it could happen any time. But we did not put the protection twenty-four (24) hours.
R. Excusez-moi, on va corriger la situation.
-R I'm sorry, we'll correct a situation.
R. Ça se situe, cette protection c'était vingt-quatre (24) heures par jour par...
-R This protection was twenty-four (24) hours a day... pardon?
R. Vingt-quatre (24) heures par jour jusqu'au dix (10) avril.
-R It was a twenty-four (24) hours a day protection until the tenth (10th) of April.
Q. Okay. If there was twenty-four (24) hours surveillance on me..
-Q Donc, il y avait une surveillance de vingt-quatre (24) heures sur moi...
Q. ... what was the purpose of additional twenty-four (24) hours surveillance of two houses?
-Q ... quel était le but d'une surveillance supplémentaire de vingt-quatre (24) heures sur les maisons?
R. C'est ça qu'on avait discuté, comme la protection de la famille...
-R This was what was discussed...
R. ... de la personne aussi.
-R ... as per protection of the family and of the person as well.
Q. You're not answering my question.
-Q Vous ne répondez pas ... ma question.
Q. If person follows me twenty-four (24) hours..
-Q Si une personne me suit pendant vingt-quatre (24) heures...
Q. ... then definitely he would know that I went to the rector's house, wouldn't he?
-Q ... alors ... ce moment-là définitivement il saurait que je suis allé, ... la maison du recteur, n'est-ce pas?
R. Oui.
-R Yes.
R. Il l'apprendrait en cours de route.
-R He would find out during the course of the road.
Q. Yes, so what was the need for additional person sitting in front of the rector's house?
-Q Donc, quelle était la nécessité, d'une personne supplémentaire

assise devant la maison du recteur?

R. C'est comme ça qu'on a décidé, on a donné, la protection pareil.

-R This is what we decided to give protection anyhow.

Q. Any (inaudible) behind that.

THE INTERPRETER :

Pardon me?

MR. VALERY FABRIKANT :

Q. Well, any reasoning behind that?

-Q Y a-t-il un raisonnement derrière tout ça?

R. Le seul raisonnement c'était ... cause de ses menaces, quand et où, s'il est allé, ... l'exécution.

-R The only reasoning was because of the threats, when and where and if they would be carried, they are to be carried out.

Q. Isn't much easier to shoot someone where you know for sure...

Me JEAN LECOURS :

This is argumentation, My Lord.

THE COURT :

It is, objection maintained.

MR. VALERY FABRIKANT :

Okay.

Q. Was it one of your considerations that...

-Q Est-ce que ça faisait partie de vos considérations...

Q. ... that if one wants to kill, say, the rector...

-Q ... que si je voulais le tuer, par exemple, le recteur...

THE COURT :

This is the same thing, Mr. Fabrikant.

MR. VALERY FABRIKANT :

No, I'm asking about his way of thinking...

THE COURT :

I couldn't care less about his way of thinking things through, he told you what he did.

MR. VALERY FABRIKANT :

Okay, I'm asking about he arranged the security.

THE COURT :

You're not asking, he has told you how he arranged the security, now you're getting into the question of what his security arrangements were or were not or as to the chance of being efficient, and that's simply causing us to spend time that we did not to spend.

MR. VALERY FABRIKANT :

Q. Had you known, you left necessary surveillance during weekends, was there any special meaning to that, weekends are more danger than the regular days for attempted murder?

-Q Vous dites qu'il y avait une surveillance spéciale pour les fins de semaine. Quelle est la signification de cela? Est-ce que les fins de semaine, est-ce que pendant les fins de semaine les menaces sont plus dangereuses?

R. coutez, c'est hypothétique.

-R It's hypothetical.

R. Ça pourrait arriver n'importe quel temps.

-R It could happen any time.

R. J'admets que s'il y avait pas de gardien de corps pour le recteur, que c'était possible.

-R I do admit that if there wasn't a body, a bodyguard for the rector, it would have been possible, it is possible.

R. Et puis si le recteur me dit ou du moins ... travers ses officiers il me dit que c'est pas nécessaire...

-R And if the rector tells me or he lets me know through his office, that it is not necessary.

R. Il n'y en a pas eu, il y a pas eu de "bodyguard" comme

monsieur appelle.

-R Then there was no bodyguard as the gentleman calls them.

Q. How to make him answer my question?

-Q Comment le faire r,pondre ... ma question?

R. Il peut r,p,ter sa question.

-R Repeat his question.

Q. In your note of the tenth (10th) of April...

-Q Dans votre note du dix (10) avril...

Q. ... you discontinued twenty-four (24) hours surveillance...

-Q ... vous avez arr^t, la surveillance de vingt-quatre (24) heures...

Q. ... but left one from (5:00) to eight (8:00) a.m. and on weekends.

-Q ... mais vous en avez laiss, une de cinq heures (5 h) ... huit heures a.m. (8 h) et les fins de semaine.

R. C'est mal interpr,t, parce que toute surveillance a arr^t, le dix (10) avril.

-R It's misinterpreted because all surveillance was stopped on April tenth (10th).

Q. Well, it could, could be that just not all bills are here, you admitted it yourself.

-Q Il pourrait arriver que toutes les factures ne soient pas ici, vous l'avez admis vous-m^me?

R. Une des raisons c'est que, je l'ai r,p,t, tant"t, c'est que suite ... #a...

-R One of the reasons, I have repeated it before...

R. ... on croyait que c',tait plus n,cessaire.

-R ... that following this we found that it was not necessary.

R. S'il manque des factures, #a je l'ignore, j',tais pas l...

-R If some of the bills are missing, that I do not know, but they are not here.

Q. But you suggested...

THE COURT :

Listen, the witness, the witness... excuse me. The witness said after consulting the file : "No, I'm satisfied that the surveillance was taken off on the tenth (10th) of April", now that's the end of it.

MR. VALERY FABRIKANT :

He said also...

THE COURT :

That is the end of it, Mr. Fabrikant. We're finished with that. Now, would you move on to something else, please?

MR. VALERY FABRIKANT :

Q. Was the purpose of this surveillance in reality...

-Q Est-ce que le but de la surveillance en r,alit,...

Q. ... not protection of anyone...

-Q ... non pas la protection de quelqu'un...

Q. ... but rather to find some material...

-Q ... ou plut"t pour trouver du mat,riel...

Q. ... which would be compromising for me.

-Q ... qui pourrait ^tre compromettant pour moi.

R. Non, c',tait pas pour trouver compromettant parce que..

-R No, it was not to find compromising because...

R. ... tout a ,t, fait assez discrřtement autant que possible...

-R ... everything was done quite discretely as much as possible...

R. ... pour vous prot,ger.

-R ... in order to protect you.

R. Votre r,putation.

-R The reputation.

Q. I didn't know this guard was...

THE COURT :

I think that outburst was quite out of place.

MR. VALERY FABRIKANT :

Well, I apologize.

THE COURT :

It was nothing, it was nothing but court...

MR. VALERY FABRIKANT :

I didn't expect him to say that it was to protect me.

THE COURT :

It was nothing but courtroom history on (inaudible), it was nothing but courtroom history on (inaudible), it's all it was.

MR. VALERY FABRIKANT :

Well even though it surprised that he said that they were protecting me?

THE COURT :

I don't propose to argue this with you.

MR. VALERY FABRIKANT :

Fine.

THE COURT :

I'm just telling you the outburst is out of order, that's yet another...

MR. VALERY FABRIKANT :

Alright.

THE COURT :

... infringement on what we said yesterday.

MR. VALERY FABRIKANT :

Okay.

Q. Isn't it easier...

-Q N'est-il pas plus facile...

Q. ... to find that, for example, someone goes to visit not his wife on weekends...

-Q ... de trouver quel quelqu'un...

Q. ... rather than on week days and that is the reason for weekend surveillance?

THE INTERPRETER :

I'm sorry, could you please ask... the question?

MR. VALERY FABRIKANT :

Okay.

Q. Isn't it easier...

-Q N'est-il pas plus facile...

Q. ... to find...

-Q ... de trouver...

Q. ... that someone visits...

-Q ... que quelqu'un visite...

Q. ... somebody who is not his wife...

-Q ... quelqu'un qui n'est pas sa femme..

Q. ... on weekends...

-Q ... les fins de semaine...

Q. ... rather than on week days?

-Q ... plut"t que durant le jour de la semaine?

Q. And this is the reason..

-Q Et que ça c',tait la raison...

Q. ... for surveillance on weekends?

-Q ... pour la surveillance durant la fin de semaine?

R. C'est possible mais hypoth,tique.

-R It's possible but hypothetical.

Q. But of course it was not your reason, was it?

-Q Bien s-r ce n',tait pas votre raison, n'est-ce pas?

R. Pas du tout.

-R Not at all.

Q. But you cannot give any other justification for surveillance

on weekend, can you?

-Q Mais vous ne pouvez pas trouver d'autres justifications pour la surveillance la fin de semaine, pouvez-vous?

R. Non, mais souvent la surveillance c'est ... cause d'une peur.

-R No, but very often a surveillance is because of "fright".

Q. Because of what?

THE COURT :

Fear.

THE INTERPRETER :

-R Fear.

MR. VALERY FABRIKANT :

Okay.

THE COURT :

I hope you know, that the last three questions are totally out of order.

MR. VALERY FABRIKANT :

They are so in out of order, one cannot imagine how more in order they could be. I believe everyone in this courtroom understands the real reason for surveillance. Let me ask a couple of more questions, it will even be more clear.

Q. The death threat was made March twenty-first (21st), correct?

-Q La menace de mort a ,t, faite le vingt et un (31) mars, n'est-cepas?

R. Je pense qu'il se trompe parce que...

-R I think he is mistaken because...

R. ... j'ai le rapport moi ... peu prřs le vingt et un (21) mars.

-R ... I have a report of about, around the twenty-first (21st) of March.

THE COURT :

The witness never said the threat was made, he said that he was made aware of it on the twenty-first (21st) of March.

MR. VALERY FABRIKANT :

Okay.

THE COURT :

There is a difference.

MR. VALERY FABRIKANT :

Okay.

Q. It made, then let's make it differently. The threat was made on twenty-first (21st) or before twenth-first (21st)?

-Q Donc, d'une autre part, la menace a ,t, faite le vingt et un (21) ou autour du vingt et un (21)?

Q. No ou avant.

-Q Ou avant.

R. C'est possible.

-R It's possible.

Q. Is it possible or there is no other...

THE COURT :

Listen, listen, you are turning in circles.

MR. VALERY FABRIKANT :

I am not turning in circles.

THE COURT :

Yes you are...

MR. VALERY FABRIKANT :

Let me just complete it.

THE COURT :

... you are cross-examining the witness first of all, that's illegal. You know, we have gone through this again and again and again, it's got to stop...

MR. VALERY FABRIKANT :

I agree.

THE COURT :

... you are finished. It is there, you have covered, it appears to me everything you need to cover with this witness if we are back at this again, if you could (inaudible) apart from those death threats.

MR. VALERY FABRIKANT :

I'm going to argue...

THE COURT :

And apart from the surveillance...

MR. VALERY FABRIKANT :

I am going to other...

THE COURT :

... would you please go to it?

MR. VALERY FABRIKANT :

I'm going, just rule on the question and I will question.

THE COURT :

Well, get's get to it now.

MR. VALERY FABRIKANT :

It will be much more faster. I don't argue with you anymore, I don't object anymore. Rule and I'll continue.

THE COURT :

Fine. We're finished with this subject, would you go on to the next subject?

MR. VALERY FABRIKANT :

So, could you explain why it took eight days...

Q. Pourriez-vous expliquer pourquoi est-ce que ça pris huit jours at least...

-Q Au moins huit jours?

Q. ... from the moment the threat was made...

-Q Du moment où la menace a été faite...

Q. ... to the moment...

-Q ... jusqu'au moment...

Q. ... you decided to be scared enough...

-Q .. où vous avez décidé, d'avoir assez peur, d'être assez effrayé,...

Me JEAN LECOURES :

That's not what the witness said, My Lord.

MR. VALERY FABRIKANT :

Q. ... to introduce twenty-four (24) hour surveillance.

-Q ... pour introduire une surveillance de vingt-quatre (24) heures.

R. Je ne peux pas répondre ... cette question-là, je l'ignore, qu'est-ce que...

-R I cannot answer this question, I ignore it, I do not know it.

R. Il y a d'autres questions qui se sont passées entre temps, comme investiguer...

-R Other things happened in between, in the mean time, such as investigating...

R. ... et puis il y avait une question qu'on voulait pas, comme j'ai répondu, tantôt...

-R ... and there was also a question as I said before...

R. ... de pas, de pas envenimer la situation.

-R ... not to make the situation, not to render it even worst...

R. ... et c'est fort probable, ça peut être suite ... des conversations que vous avez eues avec Grendon Haines...

-R ... it may be following conversations that you had with Grendon Haines...

R. ... qui amplifiait peut-être la situation mais c'est pour ça que ça a été placé, plus tard.

-R ... that would amplify the situation, this is why it was put later on.

Q. Now, what conversation you are referring to now?

-Q A quelle conversation vous r,f,rez-vous maintenant?
R. Monsieur Fabrikant a eu des r,unions, je sais pas lesquelles, mais avec monsieur Haines.
-R Mr. Fabrikant had meetings, I don't know which, but he had meetings with Mr. Haines.
Q. Yes, and what?
R. C'est peut-^tre suite ... #a.
-R It may be following those meetings.
Q. Well, do you have any information about specific meeting about specific conversation...
-Q Est-ce que vous avez quelque renseignement que ce soit sur des r,unions sp,cifiques...
THE COURT :
I'm going to intervene and I'm not going to permit this line of questioning. The line of questioning if a fishing expedition, that's being conducted under the guides of cross-examination, it's not keyed to any particular subject at all. So it is... the last question is disallowed.
MR. VALERY FABRIKANT :
Okay.
Q. If you took the life threat seriously...
-Q Si vous avez pris la menace...
Q. ... why didn't you react immediately?
-Q ... s,rieusement, pourquoi est-ce que vous n'avez pas r,agi imm,diatement?
R. Je l'ai prise s,rieusement.
-R I took it seriously.
R. Mais il existait un petit doute pour votre protection parce que..
-R But there was a (inaudible) for your protection because...
R. ... peut-^tre c',tait une r,cup,ration durant les affaires de colšre...
-R ... maybe it was just things that came out during an outburst of anger.
R. C'est pour #a que j'ai ,vit, de d,poser une plainte ... la police comme tel...
-R This is why I avoided to deposit a complaint to the police as such...
R. ... qui aurait suivi leur enqu^te.
-R ... that would have, that would have followed within their investigation.
R. On a pris l'autre route.
-R We took the other route.
Q. This is not the answer to my question.
-Q Ce n'est pas la r,p,ponse de ma question.
THE COURT :
Well it's the answer that the witness is giving you.
MR. VALERY FABRIKANT :
Fine.
THE COURT :
You may not like it, but this is the answer the witness is giving you.
MR. VALERY FABRIKANT :
Q. So, one week which passed between, at least one week...
-Q Donc, une semaine s'est ,coul,e entre, ou au moins une semaine...
Q. ... between the alleged threat...
-Q ... entre la menace all,gu,e...
Q. ... and introduction of twenty-four (24) hours surveillance...
-Q ... et l'introduction de surveillance de vingt-quatre (24) heures...

Q. ... is explained by protection of me.
-Q ... c'est expliqu, par la protection de moi-même.
Q. Correct?
-Q N'est-ce pas?
R. Le mot protection est trop fort, l...
-R The word protection is too strong here, it's not...
R. C'est pas dans ce sens-l...
-R ... it's not in that mean.
R. C'est parce qu'une personne de votre stature laissait des doutes.
-R Because a person of your statute was leaving doubts.
R. Puis par la suite de discussions avec des personnes soit McKenzie ou soit Grendon Haines...
-R And following discussions with people such as McKenzie or Grendon Haines...
R. ... que la surveillance a ,t, mise en place?
-R ... that surveillance was up put.
Q. Do you know anything about any discussions which...
-Q Est-ce que vous savez quelque chose de quelque discussion...
Q. ... made things so bad...
-Q ... que ce soit, qui aurait pu rendre les choses ou envenimer les choses...
Q. ... that you needed to put surveillance?
-Q ... de telle façon que vous auriez eu la n,cessit, de mettre une surveillance?
R. C'est en cours des, ... partir du vingt et un (21)...
-R It's again after the twenty-first (21st)...
R. ... des conversations je m'en souviens pas mais il m'a fait prendre la mesure que j'ai prise.
-R ... I do not recall the conversations but they made me take the measures that I took.
Q. Could you elaborate a little bit on that?
-Q Pourriez-vous ,laborer un peu l...-dessus?
Q. On the twenty-first (21st) you received their...
THE COURT :
Mr. Fabrikant, I'm sorry. This is a line of cross-examination, nothing else. It is disallowed.
MR. VALERY FABRIKANT :
Okay.
THE COURT :
You have gone on all morning with the witness, we're not, we've surely covered what you wish to cover.
MR. VALERY FABRIKANT :
You covered, I didn't.
THE COURT :
Pardon?
MR. VALERY FABRIKANT :
You covered, I didn't. Because my point is to show beyond reasonable doubt that it was a dirty spectacle???
THE COURT :
Well, you make your argument later...
MR. VALERY FABRIKANT :
... that I am doing something wrong...
THE COURT :
... you've established, you've established the facts, you...
MR. VALERY FABRIKANT :
So that they would have something against me, that's the only thing what it was.
THE COURT :
You're doing, you're doing something wrong, you're cross-examining the witness and you're being very, very repetitive.

We've been through this over and over again.

MR. VALERY FABRIKANT :

Okay.

THE COURT :

And it's got to stop.

MR. VALERY FABRIKANT :

Q. I'm returning to the security report.

-Q Je reviens au rapport de s,curit,.

Q. It mentions threats only against the rector.

-Q Il mentionne seulement les menaces envers le recteur.

Q. Correct?

-Q N'est-ce pas?

R. A quel rapport fait-il allusion?

-R To which report is he alluding?

Q. March twenty-first (21st) nineteen eighty-nine (1989).

-Q Le vingt et un (21) mars mil neuf cent quatre-vingt-neuf (1989).

R. C'est exact.

-R That's right.

Q. So, where does threats against Swamy appears from?

-Q Donc, o- apparaEt la menace envers Swamy?

R. Ceci est le rapport que le gardien a re#u?

-R This is the report that the guard received.

R. Moi avec ma conversation avec McKenzie...

-R Me with my conversation with McKenzie...

R. ... c'est l... que le nom de Swamy...

-R ... this is where Swamy's name...

R. ... si vous regardez la liste qui m'a ,t, soumise par...

-R ... if you look at the list that was submitted to me by...

R. ... ce qui semble ^tre madame McKenzie encore...

-R ... what seems to be Mrs. McKenzie again...

R. ... il y a Osmond, Swamy, Sankar, Sankar, Hoa, Haines...

-R ... there is Osmond, Swamy, Sankar, Sankar, Hoa, Haines...

R. ... McKenzie puis Kenneth.

-R ... McKenzie and Kenneth.

Q. So, you have a long list, why didn't you protect all those people?

-Q Donc, vous avez une longue liste, pourquoi est-ce que vous n'avez pas prot,g, tous ces gens-l...?

R. C'est parce que le choix a ,t, fait, il y a des conversations qui ont eu lieu et puis on a monsieur le recteur et monsieur le doyen.

-R Because a choice was made, the choice in the conversation was made and the choice that we...

R. C',tait les deux personnes plus probables...

-R ... put surveillance on the dean and the rector because they were the two people that were the most probable to be...

R. ... cibl,es.

-R ... targetted.

Q. But my understanding is that they surveilled not the persons but rather their houses, correct?

-Q Mais ma compr,hension est qu'on a surveill, plut"t les maisons et non pas les personnes elles-m^mes, n'est-ce pas?

R. C'est exact.

-R That's right.

Q. Did I threaten their families too?

-Q Est-ce que j'ai menac, leur famille aussi?

R. Dans ces cas-l..., tout est possible.

-R In these cases, everything is possible.

Q. I'm asking you, did I make threat against their families...

-Q Je vous demande, est-ce que...

Q. ... that you have heard of?

-Q ... j'ai prof,r, des menaces envers leur famille?
R. On m'a pas inform, de #a.
-R I was not informed of that.
Q. What was your information concerning other names, Osmond to Sancars, Hoa...
-Q Quels ,taient vos renseignements concernant les autres noms tels que Osmond, Sancar...
Q. ... have I threatened them too?
-Q ... est-ce que je les avais menac,s eux aussi?
R. Il semblerait, d'aprřs madame McKenzie, que...
-R It seemed, according to Mrs. McKenzie, that...
R. ... ces personnes-l... ,taient des cibles possibles.
-R ... that these people were possible targets.
Q. Well, did she tell you any specifics in terms of threats?
-Q Est-ce qu'elle vous a donn, des sp,cifications ou quelque chose de sp,cifique en ce qui concerne les menaces?
R. Je l'ai dit tant"t tout ce qu'elle m'a dit, qu'on a menac, la vie du recteur puis du doyen?
-R As I said before, it is that the life of the dean and the rector that was threatened.
Q. What about the rest, what was threatened about the rest?
-Q Et en ce qui concerne les autres, qu'est-ce qui a ,t, menac,?
R. Il faudrait demander #a ... madame McKenzie, je le sais pas.
-R You'll have to ask Mrs. McKenzie, I don't know.
Q. But you were present there, weren't you?
-Q Mais vous ,tiez pr,sent, n'est-ce pas?
THE COURT :
The witness has said he doesn't know...
R. Ca pas ,t, le sujet de la discussion.
THE COURT :
Excuse me, excuse me. The witness has said he doesn't know, that's your answer, going any further is drifting into cross-examination yet again.
MR. VALERY FABRIKANT :
Okay.
Q. Did you go to RCMP?
-Q Est-ce que vous ^tes all, ... la GRC?
R. Non.
-R No.
Q. Would you explain why?
-Q Pouvez-vous expliquer pourquoi?
R. Because when I gave the information, le bureau de la police de Montr,al...
Q. He speaks good English.
THE COURT :
Whether he speaks good English or not, is not the point.
MR. VALERY FABRIKANT :
Well, it could speed up.
R. C'est plus simple pour moi.
-R It's much simpler for me.
R. Quand je suis all, ... la police...
-R When I went to the police station...
R. ... c',tait pour, comme j'ai mentionn, tant"t, je me r,přte, c',tait pour la v,rification des armes ... feu...
-R ... it's for the... I mentioned it previously, it's for the verification of firearms...
R. ... et puis s'il avait un record de police.
-R ... whether he had a police record.
R. Maintenant, vu que c'est un rapport d'information mais pas une plainte ... la police...
-R Now, since it was an information report and not a complaint to

the police...

R. Ca c'est au cas que vous auriez mis ... ex, cution les menaces,
la police , tait inform, e.

-R It was just in case that you carry out the threats.

L'INTERPRETE :

Pardon, la derniŠre... la police quoi?

R. Que la police, s'il avait un casier, ta je le sais pas,
j'ignore si...

-R Whether he had a record with the police, that I do not know.

MR. VALERY FABRIKANT :

Q. I didn't understand the answer. I asked a very simple
question

-Q Je n'ai pas compris la r, ponse, j'ai demand, une question trŠs
simple.

Q. Why didn't you go to RCMP?

-Q Pourquoi n'ˆtes-vous pas all, ... la GRC?

R. J'ai vu aucune utilit, .

-R I did not see any utility or use.

Q. Well you said yourself, you needed to check whether I have a
permit.

THE COURT :

Now you are arguing with the witness.

MR. VALERY FABRIKANT :

Okay.

THE COURT :

Look, if you are not going to stop cross-examining the
witness...

MR. VALERY FABRIKANT :

I will change, I will change the question.

THE COURT :

... I will terminate the examination.

MR. VALERY FABRIKANT :

I am not doing it intentionally, I repeat once again.

THE COURT :

We have been on this since the beginning of the morning.

MR. VALERY FABRIKANT :

I am asking different questions.

THE COURT :

We are far, far, far, far from the subject for what we're
here.

MR. VALERY FABRIKANT :

That's what you think.

THE COURT :

No, it's not what I think, it's what I know and that's what
I'm deciding.

MR. VALERY FABRIKANT :

Then terminate it if you feel that way, terminate it.

THE COURT :

Would you please get off the question of threats and move on
to something else, if you have anything else? We have covered
that area, we have covered this whole thing all day. Now,
eventually, sooner or later, there has to be a limit.

MR. VALERY FABRIKANT :

Q. Did you check whether I have a gun permit at that time?

-Q Est-ce que vous avez v, rifi, si j'avais un permis pour avoir
un fusil ou une arme ... feu?

R. Non.

-R No.

Q. Why didn't you?

-Q Pourquoi pas?

R. Parce que avec l'information premiŠrement ... la police...

-R Because with the information first of all to the police...
R. ... j'ai cru qu'ils l'auraient fait parce qu'ils doivent le faire ... travers la S-ret, du Qu,bec.
-R ... I thought that they would have done it because they have to do it through the S-ret, du Qu,bec.
R. Et deuxièmement, c'est comme j'ai dit tantôt, que ce soit, que vous en ayez un d'enregistré, ou pas, ça changeait rien pour moi.
-R In the second place, whether you had a registration for me, whether you had one register or not, it wouldn't change anything for me.
R. C'est pour ça, suite ... ça, c'était pas une plainte...
-R That's why, following this, it was not a complaint...
R. ... puis ... mon avis, n'était pas une plainte, si ça avait été, une plainte telle quelle...
-R ... and in my mind, if it was not a complaint as such, he would have been investigated....
R. ... par la police elle-même qui aurait tout eu ces informations-là...
-R ... by the police itself that would have had all these informations.
R. Parce qu'... ma connaissance, menaces de mort c'est une offense sur le Code Criminel.
-R Because to my knowledge, death threat is an offence to the Civil Code.
Q. To mine too, I am asking.
-Q Pour moi aussi.
Q. This is why I'm asking the question...
-Q C'est pour ça que je vous demande la question...
Q. ... why you didn't do any checking?
-Q ... pourquoi est-ce que vous n'avez pas fait aucune vérification?
Q. And you're responding something else all the time.
-Q Vous répondez quelque chose d'autre tout le temps.
R. C'est parce que je l'ai pas cru utile.
-R Because I did not find it useful.
Q. So you thought that it is not a real threat?
-Q Donc vous croyez que ce n'était pas une vraie menace?
R. Possible que l'idée m'ait parcouru l'esprit mais..
-R It's possible that the idea crossed my mind, however...
R. ... et quand ça venait des officiers de l'université, qui ont cette crédibilité, je devais agir d'une façon quelconque.
-R ... since it was coming from the officials of the university that has this credibility, I had to act in a given manner.
THE COURT :
I acted in the manner that I thought appropriate.
THE INTERPRETER :
Thank you.
R. Right.
-R I acted in the manner that I thought appropriate.
MR. VALERY FABRIKANT :
Q. Could you just answer the question, did you consider their threat real threat or not a real threat?
-Q Pourriez-vous seulement répondre ... la question, est-ce que vous avez considéré, la menace de mort comme étant vraie ou non?
R. C'était sérieux, oui.
-R It was serious, yes.
R. Vu votre position dans l'université, ...
-R But because of your position in the university...
R. ... mais qui aurait peut-être toujours existé, un petit doute

que ça a ,t, suite ... une crise...

-R ... but there was always a doubt existing that perhaps it was following a crisis...

R. ... il y a une parole d,plac,e...

-R ... that a misplaced word...

R. ... il y avait toujours cette possibilit,-l... mais la chose s'est av,r,e que ça traEnait...

-R ... there was always this possibility but then it turned out to be that it was still driving on...

R. ... puis tous les gens semblaient avoir peur.

-R ... and everybody seemed to be frightened.

R. D'o- on a opt, pour la s,curit, de la surveillance.

-R And this is why we decided to, we opted for the security and the surveillance.

Q. Now, how to reconcile all this with your earlier testimony..

-Q Comment r,concilier le tout avec votre t,moignage...

THE COURT :

Mr. Fabrikant, the witness has nothing to reconcile with anything. He is testifying in reply to your questions, his answers are there, the whole thing has been covered. You are not going to have him reconcile anything with anything, answers are there, the jury has heard the questions and heard the answers.

MR. VALERY FABRIKANT :

Well this is my right, if he presents contradictory statements, I would like to ask clarification, this is my right.

THE COURT :

Where is the contradiction?

MR. VALERY FABRIKANT :

So here it goes and do not stop me, please.

THE COURT :

No, I'll stop you if I have to, you tell me where the contradiction is.

MR. VALERY FABRIKANT :

You already stopped me.

THE COURT :

Tell me where is the contradiction.

MR. VALERY FABRIKANT :

That's what I was going to do when you stoppedme.

THE COURT :

You tell me what the contradiction is before going any further.

MR. VALERY FABRIKANT :

Just at the beginning, he testified on my questions, whether he knows when exactly threats were made, to whom it was made, under what circumstances. He testified if he didn't ask any of those questions. And I tried to get from him how could it be possible for the rector of security didn't bother to ask this question. Now he tells me that probably it was something said in anger, something said (inaudible) that, which implies that he did inquire about certain circumstances.

THE COURT :

That's not what the witness said at all.

MR. VALERY FABRIKANT :

Just recently he said that he thought that it might be serious but it might be some words which were said in anger.

THE COURT :

There is no contradiction there at all. What the witness said was, if you put it altogether, was that I decided to act. I felt I had to act because people were afraid, but I acted

with as much caution as I possibly could because I couldn't dismiss from my mind the possibility that this happening in the context in which it happened, was as a result of a misplaced word which slipped out in the course of an angry discussion. There is no contradiction there at all between what you said, what the witness said at the beginning ...

MR. VALERY FABRIKANT :

This is why...

THE COURT :

... and what you say, what you wish to say now, it doesn't imply anything. So, no, you may not contradict the witness or you may not attempt to contradict the witness.

MR. VALERY FABRIKANT :

Isn't obvious that witness was lying at the very beginning, that he didn't ask to who I made these threats, under what circumstances, it's total absurd, nobody acts in that way.

THE COURT :

Not at all. There is no contradiction there.

MR. VALERY FABRIKANT :

The rector of security said that...

THE COURT :

There is no contradiction there, Mr. Fabrikant, and you are not permitted to cross-examine the witness on that, you are not permitted to cross-examine the witness at all.

MR. VALERY FABRIKANT :

Alright.

Q. Do you recall meeting Mr. Goyette from district 25?

-Q Vous rappelez-vous avoir rencontr, monsieur Goyette du district 25?

R. Non.

-R No.

Q. Did you, who did you meet there?

-Q Qui avez-vous rencontr, l...-bas?

R. Ce que j'ai dit au tout d, but, c'est que j'ai rencontr, un officier du poste 25.

-R As I said at the very beginning, I met a police officer from police station number 15.

R. Le nom m', chappe.

-R The name I cannot recall.

Q. Did you get to the police or you called the police to come to your place?

-Q Est-ce que vous vous ^tes rendu ... la police ou est-ce que vous avez demand, ... la police de venir vous rencontrer chez vous?

R. Je me suis rendu au poste.

-R I went to the police station.

Q. Okay, and describe what happened there?

-Q D,crivez ce qui s'est pass, l...-bas?

R. Que nous avons des menaces de mort contre le recteur et monsieur Swamy.

-R That we had death threats against the rector and Mr. Swamy.

R. Mais tant que ce n', tait pas une plainte, c', tait une discussion quoi faire, ce que j'avais l'intention de faire et...

-R But it was not a complaint anymore, discussion of what to do, what I had the intention to do...

R. ... et puis je me souviens pas d'autre chose qui a , t, discut, mais je tenais que...

-R ... and I don't recall of other things that were discussed, but I wanted to...

R. ... que la police soit au courant des menaces de mort qui avaient , t, faites.

-R ... I wanted the police to be aware of the death threats that were authored.

Q. Okay. And what did they ask you? Did they ask you when it happened?

-Q Et qu'est-ce qu'ils vous ont demandé,? Est-ce qu'ils vous ont demandé, quand c'est arrivé,?

R. Je le sais pas, je suppose qu'ils m'ont demandé,...

THE COURT :
You have already asked that question, you have already been through this, unless my memory is in default...

MR. VALERY FABRIKANT :
No, your memory is not in default, except that sure he testified that he phoned them. Now he testified that he came himself.

THE COURT :
Okay.

MR. VALERY FABRIKANT :
Q. Yes, of course, he asked, you remember testifying that you phoned them?

-Q Il a d'abord t,moigné, qu'il leur a t,éléphoné, et maintenant il t,moigné, qu'il est allé, lui-même, vous vous rappelez d'avoir t,moigné,, de les avoir appelés?

Q. And you also testified that you phoned station 13 rather than 25?

-Q Vous avez aussi t,moigné, que vous aviez appelé, la station numéro 13...

Q. You remember that?

-Q ... plutôt que la station 25?

R. Que 15, parce que si je me souviens...

-R ... station 15.

Q. Now it is a different story, and he also testified that he couldn't understand why it came to 25.

-Q Non, c'est une histoire complètement différente maintenant. Au début il avait t,moigné, que...

Q. Now all of a sudden that he remembers not only how it came there...

-Q ... il ne se rappelle pas comment ça s'est rendu ... la station 25...

Q. ... now he remembers that he went there himself in person.

-Q ... là... il se rappelle qu'il est même allé, directement là... en personne.

Q. He is constantly changing his story.

-Q Il change son histoire constamment.

THE COURT :
He is not changing his story, he told you before that station 25, he believes, became involved because the university has the campus downtown, he told you that and he told you about the card and he talked about a difficulty in reconciling 15 with 25 because the card indicated to him that he did a meeting at 25. That's what he said before, that's not inconsistent with what he is saying now.

MR. VALERY FABRIKANT :
He said that he telephoned then.

THE COURT :
Listen, you are trying again to cross-examine the witness and there is no basis for cross-examining the witness. The last question was disallowed.

MR. VALERY FABRIKANT :
Q. Did you, did you contact station 13 or 15?

-Q Est-ce que vous avez contacté, le poste 15 ou 13?

R. Pas 15 ou 13, 13 n'a rien ... à faire, c'était le 15 qui, était ...

c"t, du Loyola.

-R Not 13 or 15, 13 has nothing to do with it, it was 15 that was in the area of Loyola.

Q. Alright. So did you contact station 15?

-Q Bon, est-ce que vous avez contact, le poste 15?

R. C'est possible que j'aie t,l,phon, pour la raison que, m'assurer que quelqu'un qui...

-R It's possible that I phoned in order to make sure that there was somebody...

R. ... qu'il y avait quelqu'un qui pouvait m'entendre...

-R ... that somebody could hear me...

R. ... ,tant que ce n'est pas une charge, c',tait une information pour aller discuter l'affaire avec lui, #a c'est possible.

-R ... because there was not really an accusation, it was just an information in order to go and discuss with him, that's possible.

R. Mais je suis par la suite all, au poste discuter mon affaire parce que j'ai toujours tenu...

-R Then afterwards I went to the station to discuss with that because I always wanted...

R. ... j'ai toujours tenu d'avoir une certaine discr,tion dans l'affaire, je voulais pas ,bruitez rien de l'affaire.

-R ... I always wanted to be discrete, to maintain a certain discretion in the matter.

R. Pas au t,l,phone.

-R I did not want to discuss it over the phone, I did not want anybody to know about it.

Q. Okay. Did the policeman who you spoke to make any record of your visit?

-Q Est-ce que le policier ... qui vous avez parl,, a ,crit ou a rentr, ... quelque part votre visite?

R. Je l'ignore, je sais pas ce que, s'il a pris des notes, je m'en souviens pas.

-R I don't know, I don't recall if he took note.

Q. How the card of Mr. Goyette came here if it was not the person you met?

-Q De quelle fa#on est-ce que la carte de Goyette se retrouve ici?

THE INTERPRETER :

I'm sorry, the end of...

THE COURT :

Q. If it was not the person you met?

-Q Si ce n'est pas la personne que vous avez rencontr,e?

R. Il est possible que cette carte-l... ait ,t, plac,e apr#s mon d,part.

-R It's possible that this card...

R. Je n'ai pas de m,moire...

-R ... was placed after my departure, I don't know.

R. Je me souviens pas du nom, c'est #a que je veux dire, je me souviens pas du nom du d,tective.

-R I don't recall the name, this is what I want to say.

Q. Do you remember attaching any card to this yellow sheet of paper?

-Q Est-ce que vous vous rappelez d'avoir attach, quelque carte que ce soit sur le papier jaune?

R. C'est possible.

-R It's possible.

R. Je l'ignore parce que je me souviens pas du nom des deux policiers.

-R But I don't know because I don't recall the name of the detective at all.

Q. Did you contact police after August twenty-four (24) shooting at Concordia?

-Q Est-ce que vous avez contact, la police aprřs l'incident du quinze (15) ao-t ... Concordia?

THE COURT :
Twenty-fourth (24th).

L'INTERPRETE :
-Q Le vingt-quatre (24) ao-t ... Concordia?

R. En quelle ann,e?

L'INTERPRETE :
Quatre-vingt-douze (92).

-R In which year?

MR. VALERY FABRIKANT :
Q. I hope you know which year it happened.

R. J',tais pas l...

-R I was not there.

R. J',tais ... la retraite.

-R I was retired.

Q. You didn't read newspapers?

-Q Vous n'aviez pas lu les journaux?

R. Une fois par semaine.

-R Once a week.

Q. Do you know why we are here for?

-Q Est-ce que vous ^tes au courant pourquoi est-ce qu'on est ici?

R. Certainement.

-R Certainly.

Q. So, I repeat my question then.

-Q Donc, je vais r,p,ter ma question.

Q. Did you contact police after August twenty-four (24) nineteen ninety-two (1992)?

-Q Avez-vous contact, la police aprřs le vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze (1992)?

R. Non.

-R No.

THE COURT :
Okay, we'll adjourn at this point until two fifteen (14:15).

LE JURY QUITTE LA SALLE
SUSPENSION

REPRISE

THE COURT :

Mr. Belleau, you asked me to come in without the jury.

Mr. BELLEAU :

I asked you to come in a little earlier without the jury because I have a request to make to the court on behalf of Mr. Fabrikant. He has asked that Peter Morand from (inaudible) be subpoenaed. Obviously this is a person who is working in Ottawa and I need a signature of a judge of a Superior Court in order that this subpoena would have any force and effect over there, so I will submit it to you.

THE COURT :

The (inaudible) is the same agency in Ottawa, is it not, as Mrs. Harmer is from?

MR. BELLEAU :

I believe so, yes.

Me JEAN LECOURS :

I would like to suggest to you, My Lord, that this would not be relevant like Mrs. Harmer.

THE COURT :

Does anyone... do you have a subpoena for Mrs. Harmer, the

duces tecum in particular, please?

MR. BELLEAU :

Yes.

THE COURT :

If you would just read me the duces tecum, that would do fine.

MR. BELLEAU :

"All documents were in name of Valery Fabrikant is mentioned".

THE COURT :

It's exactly the same... Mr. Fabrikant, what do you propose to establish through this witness, who you wish to bring from out of town?

MR. VALERY FABRIKANT :

I'm prepared to answer all those questions or relevance in presence of the jury only.

THE COURT :

Well, you're not going to answer this one in the presence of the jury because the jury isn't here, see, so you can answer it now.

MR. VALERY FABRIKANT :

Well, first of all, Mr. Morand is not a judge, he is not a minister, I see no grounds why Mr. Belleau submitted this particular subpoena to you, he could submit it to a justice of peace as he did with Mrs. Harmer and...

THE COURT :

Not at all, I seem to recall signing the one from Mrs. Harmer.

MR. BELLEAU :

That's correct.

MR. VALERY FABRIKANT :

Well if you signed one for Harmer, then sign this one too.

THE COURT :

No, but now I'm listening...

MR. VALERY FABRIKANT :

You signed that one without any questions, this one you need some questions to ask.

THE COURT :

That's right, because some more water has gone under the bridge in the last little while and I would like to know what Mr. Morand is going to be testifying on too, because I've made a number of ruling yesterday morning on a number of things, which I deemed were not pertinent.

MR. VALERY FABRIKANT :

Well if you are sure that they are not pertinent, let jury hear it.

THE COURT :

Your tone is on the border line.

MR. VALERY FABRIKANT :

I repeat once again, only answers will be given in presence of the jury, jury is excluded illegally.

THE COURT :

Mr. Fabrikant, what do you propose to establish by this witness? This is the second time I'm asking.

MR. VALERY FABRIKANT :

Second time I answer exactly the same thing, I am prepared to give full explanation in presence of jury, jury is excluded illegally.

THE COURT :

Mr. Fabrikant, what is the purpose of this subpoena to Mr. Morand, this is the third time I'm asking? We sound as if we're publishing bands of marriage, I know we are not.

MR. VALERY FABRIKANT :

Is it necessary to repeat for the third time the same thing?

THE COURT :

Is your answer the same?

MR. VALERY FABRIKANT :

Yes.

THE COURT :

Fine. Then, I will not sign this subpoena given that the accused, that the prisoner refuses to testify what the purpose of the subpoena is.

MR. FREEDMAN :

My Lord, if I may, on the issue of subpoenas again, I've informed that either this afternoon or Monday morning, more subpoenas will be served on the university, the difficulty I'm facing is I'm now up to, by my account, twenty-two (22) people under subpoena, some going back ten to fourteen (14) days. I'm doing my best to manage them, just to deal with Mr. Fabrikant as best as I can to let them know, their calling me what their vacation, when, I can't tell them when they are going to be called or if it would be possible for Mr. Fabrikant to provide a list, I'm going to try to get it, the day in advance, and sometimes it works, sometimes it doesn't, I have people lined up for today and then I was told that Barnab, was coming in today, so I had to call everybody back and told them... so that's my difficulty that I'm face with.

THE COURT :

I can only offer you my sympathy, really.

MR. VALERY FABRIKANT :

Well, I can offer a little bit more than that. I would like to offer him to tell the truth for a change. I told him yesterday, first of all that...

THE COURT :

Mr. Fabrikant, you are at it again. Tell the truth for a change, this is highly insulting to the lawyer, the lawyer has done nothing. He has...

MR. VALERY FABRIKANT :

Let me explain first.

THE COURT :

I attempted to expedite, at least as far as I can see, but calling subpoenas for you is something that he, under no obligation to do but he has attempted to do it anyway, in order to, to get these people here with the least of inconvenience. You could surely be just a little bit appreciative of that, do you know?

MR. VALERY FABRIKANT :

Well, why don't you hear the other side, then you will see whether I was justified of what I said. Would you like to hear the other side?

THE COURT :

What is the other side?

MR. VALERY FABRIKANT :

Here is the other side. Yesterday, I told him very clearly that I'm calling in the morning Mr. Barnab,, that for sure it will be at least half a day and maybe a little bit even more and after that I told him I will be trying to accommodate Mr. Smith. So I told him everything, I didn't inconvenience anyone and he is standing and nodding his head. So what did I do wrong yesterday?

THE COURT :

Because he says he has got a back log of subpoenas for the last fifteen (15) days?

MR. VALERY FABRIKANT :

So what, there is back log, I'm prepared to accommodate, this

is why I'm doing it in advance, I asked him, asked everybody, who, where, when going and I will try to accommodate everyone, this is why I gave him such a long list, in order to accommodate rather than, in order to make any discount for it, quite opposite, I gave him in advance full list and I told him : "Give me list of all those people whoever they want to go, I will try to accommodate everyone". So what else could I do?

Now, am I justified or am I not justified saying that he should tell the truth for example?

THE COURT :

Okay, it's not a question of whether one is justified or not.

MR. VALERY FABRIKANT :

So, I did not inconvenience anyone, I'm doing my best. And he has no reason in here...

MR. FREEDMAN :

I don't wish to enter into a debate with Mr. Fabrikant.

THE COURT :

Don't, don't believe me.

MR. FREEDMAN :

Then I won't, then I won't. That's all, I'll keep them with us.

THE COURT :

So if you would keep doing your best and let me know if there are any pressing problems as far as people are concerned. Let me know if there are any pressing problems about people going overseas before, before it has reached the critical stage, if you can.

MR. FREEDMAN :

Yes, of course I will. I'm trying to get, my secretary (inaudible) updates on all the witnesses..... thank you.

MR. VALERY FABRIKANT :

So, after all I was right, there are no problems at this moment, are there?

THE COURT :

Aren't you always right, Mr. Fabrikant?

MR. VALERY FABRIKANT :

Not always but in ninety-nine point nine nine nine nine percent cases, yes. Since we are here on several... one thing is pressing really is transcripts. I understand from Mr. Belleau, that nothing is being done about transcript. In a due time, I will want to prepare my pleading and transcripts will be absolutely crucial, and my understanding is that nothing is being done. I have found one person, stenographer, who is prepared to do a quick job, but she told me that legal aid refuses to pay her for reasons which are not known to me.

So could we settle this issue?

THE COURT :

As far as I'm concerned, I have absolutely nothing to settle. You are receiving the tapes of the proceedings on a daily basis and you have all of these... as far... I don't know whether the proof is being transcribed, I would doubt it very much. If we're talking about transcripts of the trial..

MR. VALERY FABRIKANT :

Yes.

THE COURT :

... there are no transcripts of the trial.

MR. VALERY FABRIKANT :

What do you mean there are no...

THE COURT :

There are no transcripts of the trial, they are never are

Me JEAN LECOURES :

If there is an appeal, My Lord, we'll have to wait until the end of the trial.

MR. VALERY FABRIKANT :

How come preliminary inquiry was transcribed and trial is not?

THE COURT :

Well the trial isn't.

MR. VALERY FABRIKANT :

Well what is the logic in it?

THE COURT :

What? There is no logic in it, instead of, instead of having a stenographer here taking things down everyday and typing all night on one of these machines...

MR. VALERY FABRIKANT :

I'm sorry, maybe you misunderstood what I'm saying. What I am saying is not that I need transcript the next day, this is not what I'm saying.

THE COURT :

The trial is not, the evidence is not being transcribed, the evidence is taken by the authorized method, which is by...

MR. VALERY FABRIKANT :

That's fine, but after that it needs to be transcribed.

THE COURT :

You're just going to have to use the alternative method, as everybody else does, as I do when I have something to listen to, and as counsel do when they have something to listen to. And they listen to the tapes if they wish to go over them and take their notes from the tapes. And we've been doing that for something in the vicinity of twenty (20) years and since this building opened.

MR. VALERY FABRIKANT :

So (inaudible) you are refusing that I have the transcription at least of specific testimonies?

THE COURT :

These are your words, these are your words, but I haven't order the transcription of testimonies and I am not ordering transcription of testimonies, particularly when you have the arrangement that you have, whereby you are provided with the tapes on a daily basis at the end of the day.

MR. VALERY FABRIKANT :

Well tapes, it's a mountain of tapes, I...

THE COURT :

Well that's...

MR. VALERY FABRIKANT :

By the end, by the end of the trial, I will be burried in these tapes.

THE COURT :

Well ask fewer questions and you won't have so many tapes.

MR. VALERY FABRIKANT :

Yes, this is an interesting suggestion.

THE COURT :

It is, it is, because you go round and round.

MR. VALERY FABRIKANT :

I'm not going to...

THE COURT :

You know, if anybody is responsible for the length of this thing, you are, so don't complain to me.

MR. VALERY FABRIKANT :

Well this is not the point I'm trying to raise. The point that I'm trying to raise is I need those transcripts.

THE COURT :

Did you hear what I said?

MR. VALERY FABRIKANT :

Let me finish.

THE COURT :

No transcripts.

MR. VALERY FABRIKANT :

Yes, no transcripts, alright.

THE COURT :

You can work with the tapes.

MR. VALERY FABRIKANT :

I also asked Mr. Belleau to provide certain experts in the months passing, he is not doing anything, I still didn't get any of those which I requested. For example, I needed blood stain expert and he found Mr. Julien.

THE COURT :

Uh, huh.

MR. VALERY FABRIKANT :

That's fine, but need to talk to Mr. Julien before I put him on the stand because he is my witness and I need to know what he is going to say.

THE COURT :

Well, have you spoken to Mr. Julien?

MR. VALERY FABRIKANT :

Never, this is the problem.

THE COURT :

I would suggest that you speak to Mr. Julien.

MR. VALERY FABRIKANT :

Well the problem is that Mtre. Belleau tells me that Mr. Julien doesn't want to talk to me.

THE COURT :

Well, then Mr... I would suppose the logical conclusion from that would be that Mr. Julien perhaps doesn't wish to be your expert.

MR. VALERY FABRIKANT :

Fine. Then I believe in Montreal there are number of other people who could do the same job.

THE COURT :

I haven't the foggiest?? idea.

MR. VALERY FABRIKANT :

Well, so would you kindly direct Mr. Belleau to find another one who would agree to talk to me? So while this business is going on for over a month right now, I still don't have any.

THE COURT :

Listen, if you wish an expert in blood patterns, you are going to find one yourself. I'm not going to find you one and I'm not going to order Mr. Belleau to find you one. The name of Mr. Julien was given to you. I have no idea whether Mr. Julien refuses to speak to you or not, why he would...

MR. VALERY FABRIKANT :

You could order him to do to speak to me, he is from police.

THE COURT :

He is not from the police.

MR. VALERY FABRIKANT :

He is from the police.

THE COURT :

He is not from the police.

MR. VALERY FABRIKANT :

Well, it is the same thing, it is in...

THE COURT :

Well, in your opinion it's the same thing, but it's not the

same thing.

MR. VALERY FABRIKANT :

Okay, let me put it differently. He is from institution which follows orders only from the police who works from the police only. It doesn't work even for particular lawyers. So if this institution takes any expertise, it is either when it is requested by police or when it is requested by court, otherwise they just don't do it. And this is why he refuses to talk to me. So, unless you make it the court request or expertise, he is not going to talk to me, that's, it's not that he wants to demonstrate how he dislikes me, maybe he does, but this is irrelevant in this particular case, he doesn't want to talk because of the nature of their institution. Their institution performs only duty for the police or for the court, period.

THE COURT :

Mr. Fabrikant, I am not about to be recruited to your defence team. If you wish to find an expert in blood pattern for whatever that is worth to you, you find an expert in blood pattern, I'm not finding one for you.

MR. VALERY FABRIKANT :

Well, you are recruited to the prosecution team.

THE COURT :

You are coming again very close to the line.

MR. VALERY FABRIKANT :

Well, you know that this is my opinion.

THE COURT :

Mr. Fabrikant...

MR. VALERY FABRIKANT :

Whether it is a lie or no lie...

THE COURT :

... there is the question of what is your opinion.

MR. VALERY FABRIKANT :

Yes.

THE COURT :

I told you yesterday that I don't wish to hear your opinions anymore, they are contemptable, I don't wish them to have directed to me and I'm not going to put up with listening to them. Don't give me your opinions of me. I am not going to name you an expert, I am not going to issue any order.

MR. VALERY FABRIKANT :

Okay.

THE COURT :

If you wish to find an expert, you have at your disposal all the means. You've been given the means of communication, you've been given the tapes, you've been given the names...

MR. VALERY FABRIKANT :

By the way...

THE COURT :

... you will have to arrange matters yourself.

MR. VALERY FABRIKANT :

... since you've mentioned communications, I am no longer provided with a telephone.

THE COURT :

Well...

MR. VALERY FABRIKANT :

How about that?

THE COURT :

... how about nothing.

MR. VALERY FABRIKANT :

It's alright with you?

THE COURT :

Pardon?

MR. VALERY FABRIKANT :

I am no longer provided with a telephone.

THE COURT :

I am not mixing further into your personal problems with the administration.

MR. VALERY FABRIKANT :

Okay, one second.

THE COURT :

(inaudible). No not one second, sit down, I'm finished with you. Mr. Barnab,, we'll resume with you.

LE JURY REVIENT DANS LA SALLE

Le t,moin, ROLAND BARNAB, d,pose sous le m^me serment que d,j... pr^t, :

MR. VALERY FABRIKANT :

Q. While Mr. Barnab, is still here...

-Q Pendant que monsieur Barnab, est encore ici...

Q. ... I would like to officially file the whole document.

-Q ... j'aimerais coter tout le dossier officiellement.

THE COURT :

No objection from ...

Me JEAN LECOURES :

No, My Lord.

MR. VALERY FABRIKANT :

Q. So the question I was asking you when we adjourned was did you go...

-Q La question que je vous ai pos,e lorsque nous avons ajourn, ,tait...

Q. ... did you go to the police after August twenty-fourth (24th)...

-Q ... est-ce que vous ^tes all, ... la police apr's le vingt-quatre (24) ao-t...

Q. ... and your response was no.

-Q ... et votre r,ponse ,tait non.

Q. Correct?

-Q N'est-ce pas?

R. Pas durant l'ann,e quatre-vingt-dix (90).

-R No, not during the year nineteen ninety (1990).

Q. No, no, no, it's August...

THE COURT :

Q. He is talking about the year nineteen ninety-two (1992).

-Q Il parle de l'ann,e mil neuf cent quatre-vingt-douze (1992).

MR. VALERY FABRIKANT :

Q. August twenty-four (24)...

R. Non plus.

-R No, neither.

Q. Yes. Could you explain why?

R. J'ai pris ma retraite en septembre quatre-vingt-dix (90).

-Q Pouvez-vous expliquer pourquoi?

-R I retired in September nineteen ninety (1990).

Q. Don't you feel that as a citizen you had valuable information to offer to the police?

-Q Ne pensiez-vous pas qu'en tant que citoyen vous aviez des renseignements valables ... offrir ... la police?

R. Je n'avais plus de renseignements ... donner ... la police, apr's quatre-vingt-dix (90).

-R I did not have any information to give to the police after nineteen ninety (1990).

Q. Don't you think that previous information is relevant?

-Q Ne croyez-vous pas que l'information qui avait pr,c,d, ,tait

pertinente?

Me JEAN LECOURS :

It has been cross-examination for a while, My Lord.

THE COURT :

It has been cross-examination certainly since before the adjournment for lunch and he is still in it, the objection is maintained.

MR. VALERY FABRIKANT :

I am a total loss. This is just normal question. Okay.

Q. Are you a citizen of Canada?

-Q Etes-vous citoyen du Canada?

R. Oui.

-R Yes.

Q. As a citizen of Canada, who knows something about crime committed...

-Q En tant que citoyen du Canada sachant quelque chose d'un crime qui aurait ,t, commis...

Q. ... do you have, do you feel obligated to provide this information to the police?

-Q ... est-ce que vous vous sentez oblig, de donner ces renseignements ... la police?

R. En tant que citoyen pour que la justice soit faite.

-R As far as a citizen so that justice is carried out.

Q. Is my understanding correct that you possess information that I threatened to kill rector and the dean?

-Q Est-ce que ma compr,hension est bonne ... l'effet que vous ayez eu des renseignements en ce qui a trait ... ma menace de tuer le recteur et le doyen?

R. Cela a ,t, transmis en mil neuf cent quatre-vingt-neuf (1989).

-R That was given to me in nineteen eighty-nine (1989).

Q. And?

-Q Et?

Q. Shouldn't you have bring it to the attention of the police after the shooting at Concordia?

-Q N'auriez-vous pas d- le mentionner ou le faire savoir ... la police apr's la tuerie ... Concordia?

R. Apr's mon rapport d'informations, ils avaient tout ce que je poss,dais.

-R After my information report, they had all I possessed.

Q. Are you saying that police already had something from you in writing?

-Q Est-ce que vous ^tes en train de dire que la police avait d,j... quelque chose de votre part, quelque chose d',crit de la part de vous?

R. Pas du tout.

-R No, not at all.

Q. Then it looks like they didn't have any information from you.

THE COURT :

Are you arguing with the witness?

MR. VALERY FABRIKANT :

Okay.

THE COURT :

Furthermore, you've been in cross-examination for the last five questions. Quite frankly, Mr. Fabrikant, if you have something new to add, something else, something additional which you wish to Mr. Barnab, to testify to, I would suggest you ask him and I would suggest you ask him now.

MR. VALERY FABRIKANT :

I am asking, those are new questions.

THE COURT :

Because this examination is not advancing us at all.

MR. VALERY FABRIKANT :

Well, let me ask this question, then the point will be clear.

Q. You didn't go to the police because you knew that all this information is false, is that correct?

-Q Donc, vous n'êtes pas allé, ... la police parce que vous saviez que tous ces renseignements, étaient faux, est-ce bien ça?

R. Je me demande quels renseignements, auxquels il se réfère.

-R I wonder which information is he is referring to.

Q. I rephrase my question. You didn't go to the police with information that I allegedly threatened the rector and the dean...

-Q Donc, vous n'êtes pas allé, ... la police avec l'information que j'ai supposé, menacé, de tuer le recteur et le doyen...

Q. ... because you knew that this is just a dirty game...

-Q ... parce que vous saviez que ce n'était qu'un jeu sale...

Q. ... which was played in nineteen eighty-nine (1989)...

-Q ... qui avait été joué, en mil neuf cent quatre-vingt-neuf (1989)...

Q. ... for the sole purpose...

-Q ... pour le seul but...

Q. ... to damage my reputation.

-Q ... pour endommager ma réputation.

Q. To find some recrimination through twenty-four (24) hours surveillance...

-Q Pour trouver quelque chose de récrimatoire de me faire surveiller vingt-quatre (24) heures sur vingt-quatre (24)...

Q. ... and that was the only reason you didn't go to the police, correct?

-Q ... et c'est la seule raison pour laquelle vous ne vous êtes pas rendu ... la police, n'est-ce pas?

R. Non, c'est pas pour cette raison-là... du tout, c'est la raison..

-R No, it's not for that reason at all.

R. En mil neuf cent quatre-vingt-neuf (1989) que j'avais donné, les renseignements ... la police.

-R In nineteen eighty-nine (1989) I had given the information to the police.

R. Maintenant sans doute que si la police a interrogé, pour les incidents de quatre-vingt-neuf (89)...

-R Now, undoubtedly, if the police interrogated for the incident in nineteen ninety (1990)...

R. ... vous avez eu plusieurs témoins qui étaient au courant de la situation.

-R ... you had many witnesses who were aware of the situation.

Q. Are you talking in nineteen ninety (1990) or eighty-nine ('89)?

-Q Parlez-vous de mil neuf cent quatre-vingt-dix (1990) ou de quatre-vingt-neuf (89)?

R. On a commencé, par discuter de mil neuf cent quatre-vingt-douze (1992), l'incident de quatre-vingt-douze (92)...

-R We started by discussing the incident in nineteen ninety-two (1992)...

R. ... maintenant on est venu en quatre-vingt-neuf (89).

-R ... now we're going back to nineteen eighty-nine (1989).

Q. Well, when police was informed, you say, in?

-Q La police a été informée, vous dites, en?

R. Mil neuf cent quatre-vingt-neuf (1989).

-R Nineteen eighty-nine (1989).

Q. But you also said that there is nothing in writing there.

-Q Mais vous avez aussi dit qu'il n'y avait rien de donné, par écrit.

R. J'ignore si la police a gardé, des notes mais tout qu'est-ce

que j'avais en quatre-vingt-neuf (89) lui a été transmis.

-R I don't know if the police kept notes, but all I had in nineteen eighty-nine (1989) was transmitted to them.

Q. So shouldn't you check if they still have memory of that?

-Q Donc, ne devriez-vous pas, n'auriez-vous pas devrifier s'ils ont toujours...

Me JEAN LECOURES :

This is cross-examination, My Lord.

-Q ... mémoire de ça?

THE COURT :

This is cross-examination, it's out of order.

MR. VALERY FABRIKANT :

I wish I knew when it is normal.

THE COURT :

And what it was, what it was, was a string of statements from the "doc" where you attempted to recruit the witness to agree with him, the whole line of questioning is illegal.

MR. VALERY FABRIKANT :

Q. Did you get... okay, could you identify anyone from the police...

-Q Pourriez-vous identifier quelqu'un de la police...

Q. ... which could come here and testify as to the information you provided to them in nineteen eighty-nine (1989)?

-Q ... qui pourrait venir et témoigner ici ... l'effet, au sujet des renseignements que vous leur avez donnés en mil neuf cent quatre-vingt-neuf (1989)?

R. Je regrette, je me souviens plus des noms, j'ai rencontré...

-R I'm sorry but I do not recall names, in my...

R. ... dans mon métier on rencontre des nouveaux policiers ... tous les jours, on en a rencontré...

-R ... in my field we meet new policemen every day...

L'INTERPRETE :

Pardon, après?

R. On rencontre des nouveaux policiers ... chaque fois. Il y a des mutations qui se font dans les postes et puis..

-R We meet new police officers every day and there are mutations that are done every day that are done in police stations.

MR. VALERY FABRIKANT :

Q. But this event was kind of unusual, wasn't it?

-Q Mais cet événement était un petit peu inhabituel, n'est-ce pas?

R. Pour quatre-vingt-neuf (89), il a peut-être raison

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">except, que la police a gard, ces renseignements.

-R He may be right for nineteen eighty-nine (1989) but it's up to the police to keep this information.

Q. Well, why didn't you keep at least the name of policemen you spoke to?

-Q Pourquoi n'avez-vous pas au moins garder le nom des policiers ... qui vous avez, auxquels vous avez...

THE COURT :

You have no, you have no business to approach the witness for whatever he did or for whatever he didn't do, he has told you what his recollection of the facts is, he has told you not just now, he told you this morning, he didn't know the identity of anybody. This line of questioning is close, if you have anything new to put to the witness, would you please put it.

MR. VALERY FABRIKANT :

Q. Is it one of your duties, when you talk to a police officer...

-Q Est-ce que ça fait partie de vos tfches, lorsque vous parlez ... un policier...

Q. ... about death threats...

-Q ... au sujet de menaces de mort...

Q. ... that you should remark at least who you're talking to, is it one of your duties?

-Q ... que vous devriez remarquer au moins ... qui vous parlez, est-ce que ça fait partie de vos devoirs?

R. Pas par ,crit, ça c'est une question de logique.

-R Not in writing, it's a question of logic.

R. Si je m'en souviens pas quand j',tais il y a quatre ans, peut-être si vous m'aviez pos, la question je vous dirais le nom, mais, l..., je m'en souviens plus.

-R I don't recall, maybe, I don't recall, maybe four years ago if you would have asked him the question, I would have perhaps had known, but now I don't remember.

Q. This is not my question.

-Q Ce n'est pas ma question.

THE COURT :

What does it matter whether it's one of his duties or not?

The fact is he can't tell you who he spoke to.

MR. VALERY FABRIKANT :

It does matter. It does matter. Would you like me to explain?

THE COURT :

Well I suppose it is related to what you have said before, but...

MR. VALERY FABRIKANT :

Yes, it's related to what I've said before.

THE COURT :

You have made your point but the witness cannot tell you who it is, so let's stop waisting time.

MR. VALERY FABRIKANT :

It's not a waist of time.

THE COURT :

Yes, it is. Have you have another subject you wish to discuss with the witness?

MR. VALERY FABRIKANT :

Q. Okay. Have you received a report from Rodrigue?

-Q Avez-vous re#u un rapport de Rodrigue?

R. No.

-R Non.

Q. Could you explain me why?
-Q Pouvez-vous expliquer pourquoi?
R. Parce qu'il y a rien d'anormal qui s'est pass,?
-R There was nothing unusual that happened.
Q. When company does for you ten thousand dollars (\$10,000) work...
-Q Quand une compagnie effectue, exécute pour vous un travail de dix mille dollars (10 000 \$)...
Q. ... you do not request any report whatsoever?
-Q ... vous ne demandez aucun rapport quelque que ce soit?
R. Non, tout le gardiennage qui se passe ... l'université,, il y a jamais de rapport sauf les rapports locaux.
-R There are never any reports that are done on all the surveillance or the guardianship that is happening with the university except for the local reports.
Q. Was it you who decided about instruction to the detective who was..
-Q Est-ce que c',tait vous qui aviez décidé, de donner des instructions aux détectives...
Q. ... who was spying on me...
-Q ... qui me surveillait...
Q. ... or it was McKenzie...
-Q ... ou c',tait McKenzie...
Q. ... who designed those conditions?
-Q ... qui a planifié, ces conditions?
R. Les conditions ont été, placées par moi.
-R The conditions were placed or designed by myself.
Q. Okay. When you arrived here...
-Q Quand vous êtes arrivés, ici...
Q. ... by the way, it has to be translated, I remember there was a request to be translated, was it?
THE COURT :
What are you talking about, Mr. Fabrikant?
MR. VALERY FABRIKANT :
I remember that when this stuff appeared, you said that...
THE COURT :
I don't know, this stuff, what have you got there?
MR. VALERY FABRIKANT :
Well, this document, the first page is in French and if you recall, you said : "We need Mrs. Strainor to translate it", you remember that?
THE COURT :
Quite possibly, I don't remember particularly but it's quite possible.
MR. VALERY FABRIKANT :
So I (inaudible), is it translated yet or not?
THE COURT :
I doubt it very much. I can't know to what document you are referring to, I don't know what you have there.
MR. VALERY FABRIKANT :
Well the first page, the first page of this document, instruction to the...
THE COURT :
Is that part of the Barnab, file?
MR. VALERY FABRIKANT :
Yes.
THE COURT :
Fine. You've produced the Barnab, file about three minutes ago.
MR. VALERY FABRIKANT :
Well it was there before and you mentioned it would need a

translation several days ago, if you recall.

THE COURT :

It could not have been that document I was talking about if that hadn't been produced. Certainly there was a document where I asked Mrs. Trainor to provide a translation, that is so. But it could not have been that document, because that document wasn't produced and I certainly wouldn't have asked Mrs. Trainor to translate a document that wasn't file in the record.

MR. VALERY FABRIKANT :

Q. Okay. It is written here that university wants to know what this suspect...

-Q C'est ,crit ici que l'universit, veut savoir qu'est-ce que le suspect...

Q. ... what suspect do...

-Q ... fait...

Q. ... what suspect does and where he goes.

-Q ... et o- il va.

Q. Did you specify any particulars as to what I do and where I go or...

-Q Est-ce que vous avez donn, des sp,cifications particulišres ... savoir o- je vais, qu'est-ce que je...

Q. ... or what I do or it was just general or whatever I do and wherever I go should be noted.

-Q ... donc o- je vais, qu'est-ce que je fais ou est-ce que c',tait quel que soit, quel que soit, quoi que je fasse et o- que je vais, est-ce que ta devrait ^tre not,?

R. Non, je voulais pas de rapport de tous les mouvements de monsieur...

-R No, I did not want a report of all the comings and goings of Mr. Fabrikant.

R. Sauf que si vous voyez sur cette instruction-l... que si vous ^tes dans les parrages...

-R Except if you see on the instructions that if you are in the neighborhood...

R. ... de la r,sidence...

-R ... or in the vicinity of the residence...

R. Outremont du recteur Kenneth...

-R ... in Outremont of rector Kenneth...

R. ... c'est de m'aviser imm,diatement.

-R ... is to advise me immediately.

R. La m^me chose s'appliquait pour monsieur Swamy.

-R And the same thing was for Mr. Swamy.

Q. Well...

R. C'est les seules instructions qu'ils ont.

-R Those are the only instructions that they have.

R. Donc, par ce document-ci, il y avait pas de surveillance ... conna@tre toutes vos all,es et venues, c'est pas ta, ta nous int,ressait pas.

-R So, if we take in account this document, there was no surveillance in all the comings and goings, that was not in our interest.

Q. So the list of addresses contains only two names?

-Q Donc la liste des adresses ne contenait que deux noms?

R. C'est ta.

-R That's right.

Q. Well I don't know how to deal in this situation because if you recall this list, it was first of all drawn from the file and the list contained more than two names and I would like to ask the witness why was it so and the document is not here, what to do in this situation.

Me JEAN LECOURE :

The document is produced, My Lord.

THE COURT :

The document is...

MR. VALERY FABRIKANT :

Well the document is not... you remember, there was one more page.

THE COURT :

You're referring to a list of names of various people at the university with addresses and home phone numbers.

MR. VALERY FABRIKANT :

And it was not just...

L'INTERPRETE :

On r, fšre ... une liste parlant de diff, rents noms de l'universit,, de leur adresse.

MR. VALERY FABRIKANT :

He has a complete file...

Me JEAN LECOURE :

You have it.

MR. VALERY FABRIKANT :

Okay, so he has a complete file probably.

Q. Then could you explain why the number of names is much more than two then?

-Q Pouvez-vous expliquer pourquoi le nombre des noms est plus que deux?

R. Comment l'expliquer, premiřrement cette liste-l... a ,t, r,dig,e par ce que je vous ai dit, c'est possible que #a soit madame McKenzie, c'est pas mon ,criture #a.

-R How to explain, first of all this list was drafted by, as I said, probably Mrs. McKenzie, this is not my handwriting.

R. Il a ,t, convenu que les deux cibles principales peut ^tre le doyen Swamy...

-R And we had agreed upon that the two targets, the two principle targets were maybe dean Swamy...

R. ... et puis monsieur Kenneth.

-R ... and Mr. Kenneth.

Q. But the list contains more than two names, how do you explain that?

-Q Mais la liste comporte plus que deux noms, comment pouvez-vous expliquer #a?

R. J'y peut rien, c'est pas moi qui ai r,dig, la liste, on m'a dit que c',tait, toutes ces personnes-l... ,taient vis,es mais...

-R There is nothing I can do about it, I drafted a list, they told me that all these people were advised but...

Me JEAN LECOURE :

Non, vis,es.

L'INTERPRETE :

Vis,es.

-R That all these people were targeted.

R. Et que les deux... c'est pour #a qu'il y a eu de la surveillance sur le recteur et puis le doyen seulement.

-R And that's why there was a surveillance made for the dean and the rector only.

MR. VALERY FABRIKANT :

He is not answering my question.

THE COURT :

He answered your question this morning, Mr. Fabrikant, we've been through this. This is the third time around on this.

Pass on to something else.

MR. VALERY FABRIKANT :

No, this is a different question.

THE COURT :

This is not a different question, pass on to something else.

MR. VALERY FABRIKANT :

Well, I would like to be explained whether he saw this list before or he didn't.

THE COURT :

Mr. Fabrikant this examination is now bordering on the abusive from the point of view of time. We're getting nowhere. If you have any new subject, come off this, if you have any new subject to...

MR. VALERY FABRIKANT :

It is a new subject.

THE COURT :

It is not a new subject, you've covered...

MR. VALERY FABRIKANT :

I never addressed the number of...

THE COURT :

You've addressed the number of people this morning and you said : "Why was it that the rector and Swamy were singled out? Why didn't you put surveillance on all the others?" And the witness told you why. And that was said this morning, that was gone into this morning?

MR. VALERY FABRIKANT :

Yes, and now, now we have a total contradiction.

THE COURT :

You have no total contradiction at all. So, I'm telling you, move on to something else because this examination is becoming abusive and if you're not going to move on to something else, then we shall simply have to end it.

MR. VALERY FABRIKANT :

Q. Well, did you see this list before or you see it for the first time in your life?

-Q Avez-vous vu cette liste auparavant ou est-ce que vous la voyez pour la première fois de votre vie?

R. Je l'avais vue auparavant parce que ces notes-l... ici, puis mon nom, et puis la date, c'est mon ,criture mais le reste ne l'est pas.

-R I without a doubt?? seen it before because this list here, this is my handwriting and the date is also my handwriting...

L'INTERPRETE :

Pardon, qu'est-ce que vous dites?

R. Non, c'est tout.

THE COURT :

The list in the circumstances under which the witness believes that he received the list we're gone into this morning. Now, I told you a moment ago, move on to something else, you ignore what I say and you continue to question on the list. I order you to move on to something else right now.

MR. VALERY FABRIKANT :

I would like to raise a contradiction between this response that only he was to be advised and the guards to be looked at me moving only to the rector and to the dean's residence. Now, we have totally different answer that the guards were to be looking at me, moving to at least six or seven addresses. This is the contradiction.

THE COURT :

Mr. Barnab, never said that and you are imagining that if you say that he said that.

MR. VALERY FABRIKANT :

Okay, so let us, let's make it clear.

THE COURT :

Mr. Barnab, told you a moment ago that there were two instructions or there was one instruction to the guards and one instruction alone that if you headed towards Kenneth's house or if you headed towards Swamy's house, then the guards were to note it, otherwise your comings and goings were not of any interest.

MR. VALERY FABRIKANT :

Q. Okay. So if I go to the house of Sankar, was it to be noted or not?

-Q Donc, si par exemple, je...

THE COURT :

Fine, if you want to put that question, put that question.

-Q Donc, si je me rendais, par exemple, ... la maison de Sankar, est-ce que ça devrait être, est-ce que ça aurait dû être remarqué, ça aussi ou non?

R. Non.

-R No.

R. Pour la simple raison que les gardiens n'avaient pas, les surveillances n'avaient pas d'autres noms que le recteur et puis le doyen.

-R For the very simple reason that the surveillance did not bear any other name than the ones of the rector and the dean.

THE COURT :

Did not have in there or were not given any other names.

THE INTERPRETER :

-R Were not given any other names than the dean and the rector.

MR. VALERY FABRIKANT :

Q. Let us read once again the instructions. If the suspect goes to Outremont to this address...

-Q Lisons les instructions encore une fois. Si le suspect se rend ... cette adresse ... Outremont...

Q. ... or to other addresses...

-Q ... ou aux autres adresses, au pluriel...

Q. ... according to the list...

-Q ... qui se trouveraient sur la liste...

Q. ... immediately...

-Q ... il faudrait immédiatement...

Q. ... contact...

-Q ... contacter...

Q. ... Mr. Barnab,...

-Q ... M. Barnab,...

Q. ... at the telephone...

-Q ... au numéro...

Q. ... 848-3701...

-Q ... 848-3701...

Q. ... or 430-0223.

-Q ... ou 430-0223.

Q. So instruction is clear that...

-Q Donc, l'instruction est claire...

Q. ... wherever I go...

-Q ... où que j'aille...

Q. ... to any of the addresses on the list...

-Q n'importe quelle adresse sur la liste...

Q. ... you should be advised, correct?

-Q ... vous devriez être, vous auriez dû être avisé, n'est-ce pas?

R. Oui mais, écoutez, l'....

-R Yes, but listen...

R. ... cette liste-là... m'a pas été donnée ... la compagnie.

-R ... that list was not given to the company.

R. L'interprétation d'autres adresses...
-R The interpretation of other addresses...
R. ... ils avaient seulement Swamy et puis le recteur.
-R ... they only had Swamy and the rector.
Q. The list which you have in this file, is different from the list which was given to the company?
-Q Donc la liste que vous avez ici dans ce dossier, est différente de celle qui avait été donnée ... la compagnie?
R. Premièrement il y a jamais eu de liste de soumise...
-R First of all, there was never a list given...
R. ... deux noms et deux adresses, point.
-R ... two names and two addresses, period.
R. Il y a rien par écrit.
-R Nothing by writing, in writing.
Q. You have here the list of addresses, how many addresses on this list?
-Q Vous avez ici la liste des adresses, combien d'adresses avez-vous?
R. J'avais l'adresse du recteur puis j'avais l'adresse de Swamy puis c'est tout
-R I had the address of the rector and the address of Swamy, that's all, the rest it's only names.
Q. I direct to your attention the list which was right after the first one.
-Q J'aimerais attirer votre attention sur la liste qui se trouve juste avant la dernière.
Q.
-Q Après la première.
Q. No, no, this, the list... well what list refers to... look please at the first page.
-Q Voulez-vous regarder, s'il vous plaît, ... la première page?
Q. At the very first page.
-Q Donc, ... la toute première page.
Q. It says the following : "If suspect goes to Outremont..."...
-Q "Si le suspect se rend ... Outremont..."
Q. "... St-Germain 605..."...
-Q "... rue St-Germain 605..."...
Q. "... or other..."...
-Q "... ou ... d'autres..."...
Q. "... addresses..."...
-Q "... adresses..."...
Q. Pluriel.
-Q Pluriel.
Q. "... according to the list..."...
-Q "... selon la liste..."...
Q. "... it is necessary to conduct immediately..."...
-Q "... il est nécessaire de contact immédiatement..."...
Q. "... Mr. Barnab,".
-Q "... M. Barnab,."Q. Now, where is this list?
-Q Maintenant, où est cette liste?
R. Il y en a pas.
-R There is none.
R. Les deux noms qui ont été fournis ... la compagnie de gardiennage...
-R The two names give to the surveillance company...
Me JEAN LECOURS :
This paper is not signed by Mr. Barnab,.
R. Non, c'est pas moi qui ai signé ça.
-R No, I did not sign.
R. C'est la compagnie aux gardiens.

-R It's the company to the guards.
MR. VALERY FABRIKANT :

Q. May I take cognizance of your copy, please, for a second?
-Q Pourrais-je consulter votre copie pour un instant, s'il vous
plaEt?
Q. It is the same as I have. You remember, and everyone
remembers, there was another page here which was taken by
Bujold,

THE COURT :
Sir, which wasn't shown to you because it had telephone
numbers of those people.

MR. VALERY FABRIKANT :
All those phone numbers are in white pages, you just wanted to
undermind me my reputation in front of jury, it's ridiculous.
Kenneth, if you just look at the white pages, his phone number
is there, his address is there, what is the point not to show
it to me? Besides, I'm in jail. The only reason not to show
me...

THE COURT :
Would you please stop reading me lectures from there???

MR. VALERY FABRIKANT :
Fine.

THE COURT :
Fine.

MR. VALERY FABRIKANT :
I need to ask him questions about this.

THE COURT :
He says there was no list, he says...

MR. VALERY FABRIKANT :
But we both know there was list.

THE COURT :
I don't know when that list was made, I don't know for what
purpose it was made, I have no idea for what use it was, it
was destined. I haven't the foggiest idea, neither have you.
The witness says, and the witness' testimony is there were two
names furnished to Broderec, that's what he says. Now, what
do you want to... you called the witness, you presented the
witness with his file and now you persist against (inaudible)
warnings, cross-examine the witness, the witness has given you
his answer, he said there was no list, I told Broderec there
were two addresses, that's his testimony.

MR. VALERY FABRIKANT :
But we know much better than that, don't we?

THE COURT :
I know nothing, Mr. Fabrikant.

MR. VALERY FABRIKANT :
We know also that this file is definitely incomplete if you
just recall that Haines testified that his house was also
under surveillance.

THE COURT :
Listen...

MR. VALERY FABRIKANT :
Now, there is no deal here for Grendon Haines' house. Now, is
it clear that university (inaudible) the court when present
this document?

THE COURT :
It's not clear at all, when anybody (inaudible) anybody, Mr.
Fabrikant. What is in that file is in that file, the witness
told you and maybe there is a bill that isn't in there. He
also told you that Grendon Haines' house was not under
surveillance. Now, there you are, what do you want more from

the witness? You have Grendon Haines who said what he said, you've got a witness who says what he said. I told you, since the beginning of the trial, that very, very rarely does the evidence all (inaudible), this doesn't come out as a jigg saw puzzle, never does.

MR. VALERY FABRIKANT :

Well if one wants to get to the truth, there is always a way to do so, unless someone wants just to cover it out.

THE COURT :

Well, Mr. Fabrikant, you've got, you've got his testimony and his testimony is there that he furnished two names to Broderec.

MR. VALERY FABRIKANT :

Alright.

THE COURT :

And he was the one who dealt with Broderec.

MR. VALERY FABRIKANT :

Alright.

Q. Now, do I understand correctly that we have here bill...

-Q Est-ce que je comprends bien que nous avons ici une facture...

Q. ... well page number 1, for example...

-Q ... page num,ro 1...

Q. ... we have project number 1...

-Q ... projet num,ro 1...

Q. ... and security guard...

-Q ... agent de s,curit,...

Q. ... for March twenty-eighth (28th)...

-Q ... pour le vingt-huit (28) mars...

Q. ... correct?

-Q ... c'est bien #a?

Q. Is my understanding of this page correct?

-Q Est-ce que ma compr,hension de cette premiŠre page est correcte?

R. Jusque-l..., oui, #a va.

-R Until here, yes, it's fine.

Q. Alright. Go to the next page, please.

-Q Allez ... la seconde page, s'il vous plaEt.

Q. And here we have bill, well we have here confirmation...

-Q Nous avons ici une facture qui est une confirmtion...

Q. ... from March thirty-first (31st)...

-Q ... du trente et un (31) mars...

Q. ... to first (1st) of April.

-Q ... jusqu'au premier (1er) avril.

Q. Correct?

-Q C'est exact?

R. Oui #a va #a.

-R Yes, that's fine.

Q. Of project number 2.

-Q Bon, du projet num,ro 2.

Q. After that we have from April first (1st)...

-Q AprŠs #a, nous avons du premier (1er) avril...

Q. ... to April fifth (5th)...

-Q ... jusqu'au cinq (5) avril...

Q. ... the same project number 2.

-Q ... pour le m^me projet num,ro 2.

Q. Go further, we have April first (1st)...

-Q AprŠs nous avons le premier (1er) avril...

Q. ... to April fifth (5th)...

-Q ... jusqu'au cinq (5) avril...

Q. ... project number 3.

-Q ... projet num,ro 3.

Q. After that we go and we have from..
-Q Apr's cela on se retrouve et nous avons...
Q. ... from April third (3rd)...
-Q ... du trois (3) avril...
Q. ... to God knows what date.
-Q ... jusqu'... Dieu sait quelle date.
Q. Project number 1.
-Q Projet num,ro 1.
Q. And if you look at the previous...
-Q Et si vous regardez ... la pr,c,dente...
Q. ... the page number 1 we had...
-Q ... la page num,ro 1...
Q. ... March twenty-eighth (28th)...
-Q ... nous avions le vingt-huit (28) mars...
Q. ... of project number 1.
-Q ... du projet num,ro 1.
Q. We do not have...
-Q Nous n'avons pas...
Q. ... March twenty-nine (29)...
-Q ... le vingt-neuf (29) mars...
Q. ... thirty (30)...
-Q ... le trente (30)...
Q. ... thirty-one (31).
-Q ... le trente et un (31)...
Q. ... and so on.
-Q ... et ainsi de suite.
Q. Where are those confirmations?
-Q O- sont ces confirmations?
R. Je le sais pas, elles sont pas dans ce dossier-l.....
-R I don't know, they are not in this file...
R. ... qu'est-ce qui est arriv,..
-R ... what happened.
Q. Does it look like file is very, very incomplete?
-Q Est-ce que ça n'a pas l'air d'un dossier qui est tr'ss, tr'ss incomplet?
R. C'est une question d'opinion.
-R It's a question of opinion.
R. Qu'est-ce qu'un dossier doit contenir, qu'est-ce qu'il ne doit pas contenir.
-R What a file should contain and not contain, I don't see...
R. Ce que vous appelez un dossier c',tait mes notes personnelles.
-R What you call a file is my personal notes.
R. Et puis qu'il soit complet ou pas, ce sont les factures qui sont arriv,es en temps qui ont ,t, pay,es...
-R Whether it is complete or not, these are bills that arrived in time, they were in due time, they were paid.
R. Il est possible, vous savez, de la p,riode de quatre ans, s'il en manque quelques-unes, je l'ignore o- est-ce qu'elles ont pass,..
-R It is possible that over a period of four years, you know, if there is one missing or if there is some missing, I have no idea where they went.
Q. But is it obvious that some are missing?
-Q Mais est-ce que c'est ,vident qu'il y en a qui manquent?
R. Bien si vous regardez les dates, qu'est-ce qui s'est produit, est-ce qu'on l'a arr^t,...
-R If you look at the dates...
R. ... ou que la compagnie n'a pas...
-R ... what happened, what date...
R. ... prot,g,, ils ne nous ont pas charg,.
-R ... was it stopped or did the company not protect, they didn't

charge us.

Q. Well, if you go to page, I don't know how to call it this...

-Q Si vous tournez la page, je ne sais pas comment on pourrait l'appeler celle-ci...

Q. ... the one where the bill is...

-Q ... o- la facture se trouve...

Q. ... bill for three thousand nine hundred and eighty-three dollars (\$3,983)...

-Q ... la facture au montant de trois mille neuf cent quatre-vingt-trois dollars (3 983 \$)...

Q. ... as you see here, every single day is charged, right?

-Q ... comme vous voyez ici, chaque jour est charg,, c'est-...-dire chaque journ,e est factur,e?

R. C'est #a.

Q. There must be, then, confirmations too?

-Q Donc, il doit y avoir des confirmations aussi?

R. Ca c'est un recueil du travail que la compagnie a fait.

-R It's just a gathering of the work that the company did.

R. Six (6), trente et un (31) mars, premier (1er), deuxiŠme (2e), troisiŠme (3e), quatriŠme (4e)...

-R Six (6), thirty-first (31st) of March, first (1st), second (2nd), three (3), four (4)...

R. ... sur le projet num,ro 2...

-R ... on project number 2...

R. ... jusqu'au dix (10)...

-R ... until the tenth (10th)...

R. ... #a pour le num,ro 2 #a co-t, trois mille neuf cent dollars (3 900 \$).

-R ... for number 2 it cost three thousand and nine hundred dollars (\$3,900).

Q. And for project number 3?

-Q Et pour le projet num,ro 3?

R. Projet num,ro 3...

-R Project number 3...

R. ... un (1), deux (2), trois (3), quatre (4), cinq (5) #a co-t,...

-R ... one (1), two (2), three (3), four (4), five (5) it cost...

R. ... quinze cent quatre-vingt-sept et soixante-quinze (1 587,75 \$).

-R ... five hundred... one thousand five hundred eighty-seven and seventy-five cents (\$1,587.75).

Q. Total over ten thousand dollars (\$10,000)?

-Q Donc totalisant plus de dix mille dollars (10 000 \$)?

R. Aux environs de.

-R Approximately.

Q. Could it be that some other projects are missing still, like surveillance of Haines' house?

-Q Est-ce qu'il se pourrait qu'il y aurait d'autres projets qui manqueraient, comme par exemple la surveillance sur la maison de Haines?

R. Non.

-R No.

R. Parce que vous voyez, je me souviens assez clairement que #a co-t, ... peu prŠs dix mille dollars (10 000 \$) en tout et partout.

-R No because you see, I recall quite clearly that the cost was about ten thousand (\$10,000) all and all, ten thousand eight hundred (\$10,800).

R. Si vous regardez ce document-ci, l',tat de compte...

-R If you look at this document, the statement...

R. ... des trois factures que vous avez mentionn,es...

-R ... of the three bills that you've mentioned...
R. ... sont totalis,es ici ... dix mille huit cent quatre-vingt-onze et trente-cinq (10 891,35 \$)...
-R ... totalling the amount of ten thousand eight hundred ninety-one and thirty-five cent (\$10,891.35)...
R. ... il y a pas d'autre chose.
-R ... there is nothing else.
R. Il peut peut-être manquer l...-dedans une feuille que vous avez, ... laquelle vous faites allusion.
-R So there may be missing perhaps one page inside to which you are alluding.
R. Mais ça c'est l',tat de compte.
-R But this is the statement.
R. Je me souviens très bien que c'est ... peu près ça le montant qu'on a pay,..
-R And I recall very well that this was approximately the amount that we paid.
R. Parce que si vous regardez dans ce dossier-l... par la suite...
-R Because if you look at this file afterwards...
R. ... il y a eu, il y a eu des discussions...
-R ... there were discussions...
R. ... de quel budget que ce montant-l... serait pris.
-R ... as to from which budget these amounts would be taken.
Q. And do you remember from which accounts this amount was paid after all?
-Q Est-ce que vous vous rappelez de quels comptes ce montant-l... a ,t, pay, finalement, après tout?
R. Ça a ,t, pay, de mon compte, de mon compte budget de l'universit,..
-R It was paid from my budget account from the university.
Q. Are you aware of the note of McKenzie here...
-Q Etes-vous au courant de la note sur McKenzie...
Q. ... who advises...
THE COURT :
La note de...
L'INTERPRETE :
La note de McKenzie.
THE COURT :
... de McKenzie.
L'INTERPRETE :
De McKenzie.
MR. VALERY FABRIKANT :
Q. ... to pay this account from somewhere else?
-Q l'effet de payer ce compte de quelque part d'autre source?
R. Si vous regardez la copie de la petite note ici du onze (11) mai sign,e par Shirley...
-R If you look at the copy of the little note dated May eighteenth (18th) or signed by Shirley... May eleventh (11th)...
Q. It disappeared. Where is the note of McKenzie?
-Q O— est la note de McKenzie?
Q. It disappeared.
R. Shirley Maines.
Q. No, no, there was another note here of McKenzie who said : "This outrageous bill...", what is going on? There was another note here. No, sorry, it's here, sorry it's here. Can this outrageous bill for our unpleasant situation as discussed earlier beat down on to some services account, (inaudible)?
-Q Est-ce que cette facture exorbitante pour notre...

R. Ca c'est une note entre...
-Q ... situation d,sagr,able comme vous nous l'avez mentionn,
plus t"t, pourrait ^tre amortie d'autres comptes?
Q. So it is there?
-Q Donc, elle est l...?
R. Oui, si vous regardez ... qui la note a ,t, adress,e, ... mon
avis...
-R If you look at to, to whom the note was addressed to my
mind...
Q. Yes.
R. ... Shirley.
-R ... it was to Shirley.
Q. Yes.
R. Puis Shirley elle m',crit une note...
-R And Shirley wrote me a note...
R. ... ils sont d'accord que ces d,penses-l... soient prises de mon
budget.
-R ... saying that they agree that those expenses would be taken
from my budget.
Q. So in fact they increased your budget so that you would be
able to pay?
-Q Donc effectivement ils vous ont augment, votre budget pour que
vous puissiez les payer?
R. Non.
-R No.
R. On a jamais augment, mon budget.
-R My budget was never raised.

THE COURT :

Mr. Fabrikant, this is thrilling but, you know, it's hardly
got anything to do with the subject.

MR. VALERY FABRIKANT :

Well...

THE COURT :

So would you please having lighten the afternoon slightly pass
on to something else?

MR. VALERY FABRIKANT :

Yes.

Q. Now, Mark Stoss do you know that person?

-Q Vous connaissez Mark Stoss?

R. Je vous l'ai dit tant"t, non.

-R As I said previously, no.

Q. Do you recall who you can talk at Broderec?

-Q Est-ce que vous vous rappelez qui vous avez contact, chez
Broderec?

R. John Broderec lui-m^me.

-R John Broderec himself.

Q. Okay. Thank you.

Me JEAN LECOURES :

I have no questions for this witness, My Lord.

THE COURT :

Thank you very much, Mr. Barnab,.

AND FURTHER DEPONENT SAITH NOT.

THE COURT :

I think we'll stop for fifteen (15) minutes here.

SUSPENSION

REPRISE

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), on this
eighteenth (18th) day of June, PERSONALLY CAME AND APPEARED :

RONALD SMITH, professor, born on the third (3rd) of October
nineteen hundred and forty-five (1945);

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

EXAMINED BY MR. VALERY FABRIKANT :

Q. Have you brought what was in the subpoena?

A. Yes, I have.

Q. May I take a look at it?

THE COURT :

Just one second. May I see the subpoena, please.

Me JEAN LECOURES :

Could I see it?

THE COURT :

Yes.

Me JEAN LECOURES :

Well, My Lord, (inaudible) that it's irrelevant. It's the
course? evaluation of all members of the department and the
course evaluation of all instructors. Mr. Fabrikant's own
evaluation include a measure of comparison and the person???
scales, so I don't see the point wasting time with bringing
all evaluations of everybody and I'm not sure also these are
not confidential documents, I don't know. I don't mind,
but...

THE COURT :

What is the relevance of this evidence? Sit down, professor
Smith, please.

MR. VALERY FABRIKANT :

The relevance is very simple, I want to remind you once again
that what I'm trying to establish, that I was persecuted at
the university and (inaudible) and this is one of the piece of
evidence which would prove it that is conclusively, at
least in one regard.

THE COURT :

I'm sorry, I don't follow you. How would this piece of
evidence prove conclusively that you were persecuted at the
university?

MR. VALERY FABRIKANT :

Well, if you recall, the testimony, the testimony was that I
was a bad teacher.

Me JEAN LECOURES :

No, this is not an evidence in front of the jury.

THE COURT :

Certainly not an evidence at the moment.

MR. VALERY FABRIKANT :

Well...

THE COURT :

It's not an evidence, it involved, it was said by Osmond in
the course of the special issue, which does not, does not form
part of the evidence for the jury as far as the murder trial
is concerned.

MR. VALERY FABRIKANT :

First of all, it is part of the evidence, if you look into
this big file, you'll find that this is part of evidence, it
is there, that I'm a bad teacher. More than that, I'm a bad
educator.

THE COURT :

If you wish to place in evidence your course evaluation, your
own coarse evaluation, that's one thing. Course evaluation of
the department are totally irrelevant to this case.

MR. VALERY FABRIKANT :

Well, unless you see a comparison, there is no way you can estimate really who is good and how much good.

THE COURT :

There are other ways to make that proof and you may make that proof through all sorts of other witnesses who can testify as to...

MR. VALERY FABRIKANT :

Well, I hope, I hope it is my choice of the way I'm presenting the proof. I see no reason for objection. I think this is one of the ways and since I've chosen it, that's why I see no reason why I should be forbidden.

THE COURT :

Well, you're being forbidden to a certain point. If you wish to make evidence of your own course evaluations, you put the questions to professor Smith, he'll answer them and you ask him them for the appropriate documents and he'll find them if he has them. But, as I said before, you are not going to do an audit of these files. You've summoned professor Smith with these things, presumably you wanted certain things, fine, I pointed out to you that the course evaluations of the other members of the department are not relevant to this case. Your course evaluations may possibly be and you may make evidence of that, not other members of the department.

MR. VALERY FABRIKANT :

Well, if, for example, the people who decided that I'm a bad teacher, they are bad teachers themselves, would that be a good and relevant evidence?

THE COURT :

That would be the sort of bad biting struggle that you like to indulge and that it won't advance this case one bit, so I'm not going to permit these questions.

MR. VALERY FABRIKANT :

Well, that is your opinion.

THE COURT :

That's right, and my opinion is, my opinion goes as far as what is relevant is concerned, so you have my decision.

MR. VALERY FABRIKANT :

As far as the course...

THE COURT :

Listen, listen, would you stop arguing with me? You have my decision. Now where it is? If you have any questions on your...

MR. VALERY FABRIKANT :

I'm talking about another part of subpoena. You forbid me to talk about that too?

THE COURT :

What is the other part of the subpoena?

MR. VALERY FABRIKANT :

The subpoena, if you notice, consists of two parts, one is other members of the department, which I said...

THE COURT :

Madame Desrosiers, puis-je avoir le document?

MR. VALERY FABRIKANT :

... which I said it is important because only in comparison one can see how good or how not very good someone is.

THE COURT :

I said, and I say the same thing as I said before, you may put in evidence your course evaluations and you may put questions bearing on your course evaluations, period.

MR. VALERY FABRIKANT :

So, course evaluation of anybody else, I cannot ask questions?

THE COURT :

No.

MR. VALERY FABRIKANT :

I see no point.

THE COURT :

Well, if you see no point, then let's, let's have professor Smith go home and call the next witness.

MR. VALERY FABRIKANT :

Well, at least the jury at this time what you're doing.

THE COURT :

Listen, I have my job to do...

MR. VALERY FABRIKANT :

It's alright.

THE COURT :

... you have your's and the jury has his.

MR. VALERY FABRIKANT :

Yes. Let us every time you refuse me some kind of evidence, let the jury see it, alright?

THE COURT :

Mr. Fabrikant, I will decide when the jury will be in the room and when it will not. I've said to the jury that there is nothing at all that will be hidden from them, that they are entitled to hear, okay? That's my decision. Do I understand you have no questions to put to professor Smith?

MR. VALERY FABRIKANT :

You don't let me.

THE COURT :

Fine.

Me JEAN LECOURS :

And I certainly don't have any.

THE COURT :

And you certainly don't have. Professor Smith, thank you very much and I wish you a good weekend.

AND FURTHER DEPONENT SAITH NOT.

A VOICE :

My Lord, I spoke to the next witness about twenty (20) minutes ago, I'm just going to verify with her if...

MR. VALERY FABRIKANT :

Well, there is no next witness, maybe we could file this document in the meantime?

THE COURT :

What is this document that you wish to file?

MR. VALERY FABRIKANT :

Well, this is a letter from Mr. Francesco, to all duty officers, October thirty-first (31st)...

THE COURT :

Would you show it to the crown prosecutor before you go any further? Perhaps he has no objection.

MR. VALERY FABRIKANT :

The crown saw it.

Me JEAN LECOURS :

Is it something we forgot or something new?

THE COURT :

There is really no point looking at me.

Me JEAN LECOURS :

I'm sorry.

THE COURT :

I haven't got a clue.

Me JEAN LECOURS :

You're right, definitely. Can we just adjourn a few minutes,
I might make inquiries about that?

THE COURT :

Surely. Well, it's hurry?? up and wait again.

SUSPENSION

REPRISE

Me JEAN LECOURES :

I understand, My Lord, this is a memorandum originating from
Mr. Victor Francesco that was not in his own file but that was
in doctor McKenzie's file and I have no objection to the
filing of this document.

THE COURT :

Fine.

Me JEAN LECOURES :

As part of the defense.

THE COURT :

So it will become D-23.

Me JEAN LECOURES :

You would like to have a look first?

THE COURT :

Yes.

Me JEAN LECOURES :

D-23?

LA GREFFIERE :

Oui. IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), on this
eighteenth (18th) day of June, PERSONALLY CAME AND APPEARED :

ENN RAUDSEPP, associate professor of journalism, born on the
twenty-second (22nd) day of March nineteen hundred and forty-
four (1944);

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

MR. VALERY FABRIKANT :

Well may I have this document for a second before I start?

THE COURT :

D-23, I doubt that you wish to produce it.

MR. VALERY FABRIKANT :

Yes, I want to produce it. I also want to read it to the
jury, can I?

THE COURT :

There is absolutely no need to read it to the jury.

MR. VALERY FABRIKANT :

Well there is, it is...

THE COURT :

There is no need to read it to the jury.

MR. VALERY FABRIKANT :

You don't allow me to read it.

THE COURT :

The jury will see it when they...

MR. VALERY FABRIKANT :

Okay, can at least show... this is the criminal, (inaudible)
of the criminal distributed October thirty-first (31st)?

THE COURT :

Would you please stop testifying and put the document back in
there, it's pretty clear, it speaks for itself.

MR. VALERY FABRIKANT :

I want the jury to see it.

THE COURT :

The jury will see it, the jury will see all of the exhibits.
EXAMINED BY MR. VALERY FABRIKANT :

Q. Did you bring what is in the subpoena?

A. I was told that I should bring the collective agreements, the current one and the former one, I have them here.

Q. Alright. Do you recall our meeting in nineteen ninety (1990)?

A. I do.

Q. Okay. Do you recall what concerns I had at that time with respect to a new collective agreement as compared to the old one?

A. I've had to try to think through it because this was a number of years ago, but I imagine, you had been involved in so many different disputes and agreements with the university, but in particular, as I recollected it, the old collective agreement made no provision for a research appointment. And this was an anomaly in the collective agreement which we had tried to correct by negotiating a new collective agreement which came into effect finally on, in June first (1st) nineteen eighty-nine (1989). So that I believe the discussion really revolved around your status and your eligibility to (inaudible) various things according to the collective agreement.

Q. Absolutely not. Try to... well can we first maybe deposit those two while still he is here?

A. Here.

Me JEAN LECOURE :

I should declare, My Lord, that though, that no witness should be ask to interpret or to give its opinion on that. Sooner, if it's part of Mr. Fabrikant's defense, I don't mind, but you already ruled that we're not here to examine.

MR. VALERY FABRIKANT :

Don't you worry, I will not ask for that.

Me JEAN LECOURE :

That's fine.

THE COURT :

Just say you...

MR. VALERY FABRIKANT :

You always have an objection to raise, so, you'll have your opportunity.

Me JEAN LECOURE :

Since I expect some witnesses to refer to these documents, I don't mind, My Lord.

THE COURT :

Fine, okay. So these will be produced as D-24 en liasse.

MR. VALERY FABRIKANT :

Q. Why three, one is in French or?

A. One of the old contract is in French, English and French, the current one I have only in English.

Q. Alright.

THE COURT :

So what could we say they are? The old ones are what, cover what period?

A. They cover up to...

Q. The old one I should say, covers what period, that's the one you have in English and French?

A. The period up until May thirty-first (31st) nineteen eighty-nine (1989), the three years prior to that date.

Q. Three years prior to that May...

A. Thirty-first (31st) nineteen eighty-nine (1989). And the current collective agreement was to have been in effect until May thirty-first (31st) nineteen ninety-two (1992), but because we are in the professor negotiating a new collective agreement, it is still in effect, being extended.

Q. Okay, thank you.
MR. VALERY FABRIKANT :
Now, I think I need the new one for a second, so that I could refer the witness to this subject, this subject.
THE COURT :
It's the first one, the first one, madam Desrosiers, the dark?? one, I think correct, that's the new one?
MR. VALERY FABRIKANT :
Yes, the new one, yes.

Q. Do you recall that one of the articles of new collective agreement says that total duration of research appointment will not normally exceed five years, you remember that?
A. Yes, collective agreement does state that.
Q. Yes. The new collective agreement states that?
A. Yes.
Q. Now, do you recall also that collective agreement according to canadian laws supersedes any individual contract?
A. I'm not a lawyer by training, I couldn't advance that question.
Q. No, but this was the subject of our conversation, do you recall that?
THE COURT :
You heard a moment ago the crown prosecutor clearly put his objection, these things to become questions of interpretation and if they are to be produced as part of your defense, okay, they are produced as part of your defense but you're certainly not going to... the witness answered the question perfectly, he is not lawyer. You're not going to ask him questions of a legal nature, okay? So the last question...
MR. VALERY FABRIKANT :
You interrupted me again when...
THE COURT :
The last question...
MR. VALERY FABRIKANT :
... I am trying just to remind him the topic of our conversation.
THE COURT :
I couldn't care less about the topic of your conversation, you put a question to him that related to the status of the contract in the law, the witness can't answer that question.
MR. VALERY FABRIKANT :
Well fine, just...
THE COURT :
So don't ask it again.
MR. VALERY FABRIKANT :
Just (inaudible). Don't spend time on...
THE COURT :
Listen, I told you, don't you hector me or lecture me, otherwise out that door you go, is that very clear?
MR. VALERY FABRIKANT :
I'm trying to do my best.
THE COURT :
Then, you...
MR. VALERY FABRIKANT :
(inaudible) today...
THE COURT :
Then you put your questions. I don't wish lectures from you about what I say, about whether the evidence is relevant or not.
MR. VALERY FABRIKANT :

That was not my subject, anyway.

Q. Could you please try to remember the conversation was my concern that a new collective agreement was kind of back stabbing manoeuvre of a union against people who were not unionized? And one of those was, what you put here, which sounds very innocent and in fact could result maybe in fire, do you recall it now?

A. Not precisely, no.

Q. Alright. Let me refresh you a little bit more. You remember that in the fall of nineteen ninety (1990), (inaudible) program was coming to an end, people on the research appointments, like myself, who already spent five years on the research appointment, you did not take into ten year track? position, they would lose their job, do you recall now?

A. I recollect that being a concern of yours, yes.

Q. Okay. And that concern was based on this phrase which sounded very, very innocent. I repeat : "The total duration with such appointments will not normally exceed five years" and if you recall I came to you and I said : "I already have been five years and if I'm not taken into ten year track and this agreement is signed, then administration would have an excuse to terminate my employment", do you recall that concern which I've expressed to you?

A. You did express that concern.

Q. And do you recall that you agreed that concern was valid?

A. I agree that your concern about not being renewed was valid, I did not agree that that particular clause should not be negotiated or signed.

Q. Did you agree with me that the way the things were at that time, if this is signed before I got ten year track appointment, administration would have legal power to terminate my employment? You remember that part?

A. Yes, they had that power anyway.

Q. So, if you recall again, do you recall I told you that I have had already contract a research contract until ninety-two ('92), do you recall that part?

A. I don't remember the dates.

Q. No, but the point was that ninety-two ('92) would make it seven years, not five, you remember that?

A. Not that particular detail. I think that I should explain that you met me on that one occasion and you presented quite port-folio documents which we looked at rather curiously ? and discussed for a brief period and I then agreed that this would be looked into by my successor. Since I was just finishing my term of office and would be unable to look into the matter personally. So I did not pursue the matter in order that I pay much attention to the particular details of it after the occasion of that meeting.

Q. Do you recall again that I didn't bring any port-folio but rather I just brought you a letter of mine, describing my concern, that was it?

A. You had some documents which you showed.

Q. Just a letter addressed to you...

Me JEAN LECOURE :

This is his witness, My Lord.

MR. VALERY FABRIKANT :

Well, all weaknesses I'm (inaudible), what can I do about it?

Me JEAN LECOURE :

Too far in refreshing memory. If he is not happy, he'll have the occasion maybe to testify about that meeting.

MR. VALERY FABRIKANT :

Q. So you do not recall at least that I have given you in your hands a letter addressed directly to you and addressing my concerns?

A. You might very well have shown it to me but I believe you probably took it back.

Q. No, the letter was addressed to you.

A. I have no recollection of it being kept or filed.

Q. You negotiated this particular, did you negotiate this particular part... okay, let me remind you something else, maybe this would sharpen your memory. There was a question of the limited time appointment people, you remember that...

A. Yes.

Q. ... problem with them, the problem with them was similar.

A. Yes.

Q. Right? That now there was limitation on to the time they can be employed and some of them also were concerned with losing their job because of this new collective agreement, you remember that?

A. Yes.

Q. And to save those people, you have negotiated with administration, do you recall, a list of names, do you recall that...

A. Yes.

Q. ... who will be exempted from this new collective agreement, because otherwise they might also lose their job just because you signed a new collective agreement, do you recall that now?

A. They wouldn't be exempted from the collective agreement, they would be exempted from a particular provision of the collective agreement...

Q. Yes.

A. ... but would fall under the rest of the collective agreement.

Q. Yes, yes, yes, yes, they would be exempted from provision which was threatening their employment.

A. Yes.

Q. And I asked you to negotiate similar things for me in particular, you remember it now? Because if this collective agreement may come into effect and it was not taken in a ten year stream, I would be in the same position as these people, because new collective agreement would give administration the right to have me fired, despite the fact that I had contract until ninety-two ('92), do you remember that now?

A. I think what I responded was that I don't negotiate collective agreements for individuals but they cover the whole bargaining unit and that we could not begin to negotiate a contract specifically for you.

Q. Well, do you recall that you cannot negotiate a contract which would result in termination of somebody else's job?

A. I think if you, if you look at the collective agreement more carefully, you will see that the category of research appointments which states yes that the appointment would normally be for five years, also leaves at open end as to whether someone in that situation could be given a probationary or ten year track appointment. It does not automatically preclude anyone, including yourself, from that kind of appointment. What it states is that you have to go through the regular channels, you have to go through a hiring committee of the department, you have to be approved by your colleagues and then, and only then could you be hired. That is the only thing that we can negotiate, which we did do.

Q. Now, you are now, you are now drifting to something else. Let us first finish through this article which does not exceed

five years. I just want to establish one thing. Do you recall that this particular innocently looking phrase could be used to terminate my job in nineteen ninety (1990) though I had a contract until ninety-two ('92), do you recall that?

THE COURT :

But you're asking, you're asking for a legal opinion from him.

MR. VALERY FABRIKANT :

No, no, no, I just ask him whether this was subject of our conversation, that's all.

THE COURT :

If you're asking, if you're asking if the clause was a subject of your conversation?

MR. VALERY FABRIKANT :

Yes.

THE COURT :

Fine.

MR. VALERY FABRIKANT :

And this was the particular concern which I've expressed to him, that's all.

A. It mostly likely was the subject.

Q. Okay.

A. As I say, it's a long time ago...

Q. Yes.

A. ... and the particulars of the conversation, I...

Q. Okay. The second question which I raised was related to what you try to point out just recently, so that was one part of my concern of the new collective agreement. And the second part which I was concerned with, if you recall I showed you that my contract stipulated that after five years I would be integrated into ten year stream position, rather than go through regular hiring procedure, do you recall I showed you my contract?

A. Yes, and my comment was that, that was not, as far as the faculty association was concerned, a normal contract. And if the administration had signed the contract with you, which was outside of the perview? of the collective agreement, we were in no position to do anything about it.

Q. Yes, so effectively you had needed the new collective agreement invalidating my contract, correct?

A. No, I'm saying that your initial contract was always outside the perview of the collective agreement. The faculty association was not a party to the kind of appointment that you received, it was not part of the collective agreement, it was not considered to be the kind of appointment that would lead to membership within the faculty association. It was something that the university did, I suppose, as part of their administrative privilege.

Q. Well, you're not answering my question. Would you please just stick to the question. Was it my concern that this particular part of new collective agreement invalidated the conditions of my contract which guaranteed me, upon positive evaluation, integration, into ten year stream position?

A. It may well have been your concern, it was not a concern I shared.

Q. Well, it means that you just couldn't give a damn about it, that's what you mean?

A. No, no.

Q. No?

A. No, I think that the situation is that there was an anomaly in the system. A certain kind of contract which you held was not part of the collective agreement. We tried to correct that

anomaly. We were trying to improve the collective agreement, to improve the overall conditions of employment or all the members. I think that what you failed to recognize was that this was not anything that you should take personally, it was part of the system.

Q. You're alluding to my question.

THE COURT :

Listen, this is your witness, the witness is answering your question, he is alluding absolutely nothing. Now, would you stop telling him he is alluding the question. The witness answered your question.

MR. VALERY FABRIKANT :

I just said it for the first time.

THE COURT :

I don't care whether you said it for the first time or the fifty-second time.

MR. VALERY FABRIKANT :

Stop telling, it means that I have told it several times.

This is the first time I said it.

THE COURT :

The witness is not alluding your question and that question was the third one in a row which was cross-examination of this witness who is your own witness.

MR. VALERY FABRIKANT :

Then I know my witnesses in this university.

Q. So, do you or don't you agree that this particular part no longer, if it is enacted, no longer made the provision of my contract which stated that I am guaranteed the ten year track upon...

Me JEAN LECOURE :

He is asking for an opinion, My Lord.

THE COURT :

Yes, he is, objection maintained.

MR. VALERY FABRIKANT :

What did he say?

THE COURT :

He said you were seeking an opinion and you were. Objection maintained.

MR. VALERY FABRIKANT :

Alright. I will rephrase it then.

Q. Did I tell you that I feel that union is doing the back stabbing job to me in particular while...

A. Yes.

Q. ... while not improving the position of anybody else?

A. Yes, you did say that. I also said you never could recognize your friends.

Q. Alright. So could you please tell then the jury whose position would be improved by this particular part of collective agreement, that my position would be totally quashed, you agree with that, but you say you cared for everybody else?

Me JEAN LECOURE :

He is arguing with the witness, My Lord.

THE COURT :

You are arguing with the witness. You're asking the witness again to provide an opinion, the objection is maintained.

MR. VALERY FABRIKANT :

Not an opinion, I'm asking about our conversation.

THE COURT :

No, you're not.

MR. VALERY FABRIKANT :

Well, I'll rephrase it.

THE COURT :

Your last question didn't bare on your conversation.

Me JEAN LECOURE :

It's much more than that, My Lord, it's cross-examination at large.

MR. VALERY FABRIKANT :

I will rephrase it.

Q. So, you...

THE COURT :

Rephrasing it may not say that... you may well get another objection.

MR. VALERY FABRIKANT :

Then I'll rephrase it again. I'm very cooperative.

Q. So, do you recall that you told me that you are caring for all the members of the union and since I was not a member, you don't have to care about me, you recall that?

A. I recollect saying that it was a collective agreement, a contract for the collective, not for any individual.

Q. Alright. So whose position would be improved by enactment of this particular part of the collective agreement?

Me JEAN LECOURE :

That's another form of opinion, the same question as before, My Lord?

THE COURT :

Exactly the same question, I maintained the objection before, the objection is maintained again.

Me JEAN LECOURE :

Well, he mentioned that he...

THE COURT :

Stop arguing, the objection is maintained.

MR. VALERY FABRIKANT :

Alright.

Q. Let me put it different, then. Did you envision by introduction of this part of collective agreement that research people would now have to apply, together with anyone from outside to get the ten year track job?

A. Yes.

Q. Which in fact invalidated the promise which was given to them by the university five years ago when they were hired, correct?

A. I have no knowledge of what promises the university made to any of the people who were hired.

Q. And you couldn't care less, correct?

A. No, that's not...

Me JEAN LECOURE :

This is not a question, My Lord.

THE COURT :

That is not a question, it's an observation...

Me JEAN LECOURE :

It's a comment.

THE COURT :

... it's a comment and the jury obviously will disregard it.

MR. VALERY FABRIKANT :

Q. Do you also recall that we had a discussion of this particular part and you said that department has the right to choose the best rather than those who were already there, do you remember that part?

A. Yes, that is the way the hiring process is always being done at Concordia.

Q. Yes, and to which I told you that this refers to a vacancy in

the department, it's correct?

A. Yes.

Q. Do you remember I pointed out to you that this research positions which were to be integrated will not, the vacancies, they were positions given by the Ministry to the particular department because this particular people did a good job recognized by government and this is why those additional positions were given to the department, do you recall that part of the conversation?

A. My understanding was that the action (inaudible) positions were temporary by nature, there was no guarantee that anyone who had such a position would automatically be integrated into a faculty position.

Q. Where did you get this information from?

A. That was my interpretation of what the action (inaudible) program stated.

Q. Did you read any document of action (inaudible)?

A. Yes.

Q. Okay. Could you refer to any particular...

THE COURT :

Would you please stop cross-examining the witness? You've asked your question, the witness gave you his answer.

MR. VALERY FABRIKANT :

Well when do I start cross-examination? I wish I...

THE COURT :

A question and a half ago.

MR. VALERY FABRIKANT :

Well, I wish I understood this magic word. I bet nobody in this courtroom, except you, understand which question is question and which question is cross-examination.

THE COURT :

When you launch into questioning, the veracity of what the witness has said to you, you are cross-examining the witness and that's what you're doing now.

MR. VALERY FABRIKANT :

Well, there is many ways to question veracity of the witness and nevertheless not to be in cross-examination?

THE COURT :

Well you just happen to have chosen the wrong one for the last two questions.

MR. VALERY FABRIKANT :

Well, this is your opinion.

THE COURT :

Well, I'm the one that gets to have that opinion.

MR. VALERY FABRIKANT :

That's too bad, that's what I'm saying. Alright.

Q. Do you remember the end of our conversation?

A. Not specifically.

Q. Okay, let me try to remind you. When I told you that the money for the new positions are not the money currently in the budget of the university, but rather new money which were coming from the government, for the particular people already were engaged in action (inaudible) and therefore the regular process should not apply to them, do you remember that logic?

A. I remember you stating something to that effect, I have no way of knowing whether what you stated was correct or not.

Q. Yes.

A. It's your opinion.

Q. Yes.

A. Your interpretation.

Q. And you promised me to investigate this particular part and

get back to me, right?

A. I said my successor would do that, because my (inaudible) of office was over within a matter of couple of weeks.

Q. Well, would be (inaudible) to learn that neither you are the predecessor that get back to me?

THE COURT :

What is this...

Me JEAN LECOURES :

This is not a question, My Lord?

THE COURT :

What is this? It's not a question? What is this in all into the establishment?

MR. VALERY FABRIKANT :

Well, the whole thing?

THE COURT :

Yes.

MR. VALERY FABRIKANT :

It wasn't clear to you? What union at that time was inclusion with administration to introduce a new collective agreement to such, those articles we'll not need at all, nobody followed those articles, never ever. Those articles were introduced just to twist me.

THE COURT :

Just to what?

MR. VALERY FABRIKANT :

Just to twist me.

THE COURT :

To twist you personally, and that's what you are in the process of trying to establish with this witness?

MR. VALERY FABRIKANT :

Yes. It was not clear, no.

THE COURT :

Not for me it wasn't, no.

MR. VALERY FABRIKANT :

Too bad.

THE COURT :

I'm sure everybody else got it but...

MR. VALERY FABRIKANT :

I'm sure. Okay, thank you.

Me JEAN LECOURES :

I have no questions, My Lord.

AND FURTHER DEPONENT SAITH NOT.

THE COURT :

Okay, so it's that hour. So what, may I wish you all a good weekend and see you on Monday morning.

LE JURY QUITTE LA SALLE.

THE COURT :

Mr. Belleau, ... propos to one of the subjects that was raised before, I have something in my memory, I could be wrong, that tells me that Julien is president of some association, that professors, if I might use that word to be, to be experts in blood projection, would you... if my memory is right, I don't know whether it is or not, would you mind calling Julien and asking for several names of members of his club and convey these names to Mr. Fabrikant?

MR. BELLEAU :

Well I have...

THE COURT :

That occurred to me when I went up to my office...

MR. BELLEAU :

As far as the province of Quebec is concerned, he is the only member...

THE COURT :

Julien is the only member in the province of Quebec.

MR. BELLEAU:

I've asked him that, and there is one person is in the process of being instructed in this particular trade...

THE COURT :

But hasn't reached the, hasn't reached the state...

MR. BELLEAU :

... apparently the level of qualification that Mr. Julien has reached.

MR. VALERY FABRIKANT :

May I add something for that?

THE COURT :

No, just a moment. Would you... Mr. Fabrikant says that Julien apparently does not wish to talk to him, is that correct?

MR. BELLEAU :

Absolutely.

THE COURT :

Absolutely. Am I to take that Julien does not wish to become involved in testifying in that matter?

MR. BELLEAU :

Mr. Julien's position has been clear from the (inaudible) told me that he will be happy to come to court under court's order and testify, give his opinion as to whatever subject he is competent to give his opinion, but he will do that under oath, he is not required and not willing to discuss the testimony or his expert evidence before with Mr. Fabrikant.

THE COURT :

But of course that...

MR. BELLEAU :

But he is available and...

THE COURT :

...that doesn't help Mr. Fabrikant very much because...

MR. BELLEAU :

It doesn't help him much, I agree because he should at least...

THE COURT :

Because he is not, he is surely not oblige to put in evidence, evidence that... but he doesn't...

MR. BELLEAU :

That wouldn't help his case.

THE COURT :

That wouldn't help his case or that potentially wouldn't help his case or that he might not... I wonder if you would be kind enough to ask Julien if he would be prepared to reconsider his position.

MR. BELLEAU :

I'll be in touch with him.

THE COURT :

And if he would be, if he would be prepared to reconsider his position and if he would be prepared to meet with or to speak to the accused, with regard to the evidence that he wishes to lead on that point.

MR. BELLEAU :

I'll do that.

THE COURT :

I say that because if Julien is the only member in the

province of Quebec, then that makes it a bit more difficult to provide any other names. I don't wish to mix myself nor you to mix yourself any further than that into the question of expert witnesses.

MR. VALERY FABRIKANT :

Well I have (inaudible) questions, no more. I spoke to Mtre. Sherman about the time when she requested other lawyers who wanted to be friend of court and she told me that she gave you a complete list of those lawyers who are interested. And taking into consideration that I repeat once again that Mtre. Belleau is not that eager to do his job, maybe you could provide me with this list so that I could contact people who at least express their interest and maybe I could find someone who (inaudible) interest in the case, may I have that list?

THE COURT :

No, you may not. That list was a list that was provided to me and I was the one that threw that list, named Mr. Belleau as a friend of the court and Mr. Belleau will remain this friend.

MR. VALERY FABRIKANT :

Well, I want to find a lawyer, not a friend of court.

THE COURT :

I don't care what you want to find. It was in reply to a specific request that I made because I foresaw certain difficulties in running this trial notably, that it would be impossible for me to give to someone like you any sort of counsel and would be virtually impossible for me to give in any event counsel to an accused under going a murder trial. In that context, I ask for, I ask for those names and in that context I was furnished with those names and I am under no... I certainly, I certainly was given them under that condition and I have no authority to distribute the names on that list to you or anybody else.

MR. VALERY FABRIKANT :

Well, I want to find a lawyer, you refuse to give me the name of lawyers who are interested, that's fine, that's all I wanted to know.

THE COURT :

I have done nothing impeding?? you finding a lawyer, as far as finding a lawyer is concerned, you've had four and each time you shut yourself in the foot??, so there is nothing I can do.

MR. VALERY FABRIKANT :

Well, you have a list of those people who are interested.

Je soussign,, MICHEL DAIGNEAULT, st,nographe officiel
bilingue, certifie que les feuilles qui pr,cđdent sont et con-
tiennent 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 OF QUEBEC

DISTRICT: MONTREAL CITY: MONTREAL

CASE NO: 500-017372-928

TRIAL

PRESENT: HONOURABLE MR. JUSTICE FRASER MARTIN, J.C.S.
(AND AN ENGLISH JURY)

THE QUEEN

vs

VALERY FABRIKANT

APPEARANCES: Me JEAN LECOIRS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: June 21st, 1993

GS: 1355 FILE: 2430

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CONTINUATION JUNE 22ND, 1993

(THE JUDGE AND JURY TAKE THE BENCH)
(DISPENSE WITH THE CALLING OF THE JURY)
(ALL ARE PRESENT)
(SYLVIE NADEAU, SECURITY AGENT FOR THE JURY SWORN IN)
BY THE COURT:
Good morning, ladies and gentlemen, I should tell you in
advance that we will be adjourning very close to ten

o'clock (10:00) for a short time to permit Mr. Belleau to appear before the Court of Appeal.

Mr. Belleau, I'll count on you to draw to the attention of whoever is presiding that I have stopped, and would they...

BY Me BELLEAU:

I expect to be very short, My Lord.

BY THE COURT:

Would they be kind enough to give you precedence.

BY Me BELLEAU:

I'll try.

BY THE COURT:

And I don't expect you should have any difficulty with the Court of Appeal on that point.

BY Me BELLEAU:

Thank you.

BY THE ACCUSED:

Well, frankly speaking, there is no need to adjourn. He is absolutely useless here, so we don't need him at all.

BY THE COURT:

Thank you, Mr. Fabrikant.

VERNON WAYNE JORGESEN

June 27th, 1939

Associate Professor Economics and Statistics

Atkinson College, York University

DULY SWORN

BY THE COURT:

Q. Excuse me, Atkinson College, whereabouts is that?

A. Yes. It's part of York University.

Q. York University, I thought so.

A. It's located in... yes.

Q. Thank you.

EXAMINATION BY THE ACCUSED

REPRESENTING HIMSELF:

Q. Professor Jorgesen, did you come here to testify on your own?

A. I called you and volunteered, yes.

Q. Are you being paid for this testimony in any way?

A. No.

Q. Any of your expenses are being reimbursed?

A. I am here at my own expense.

Q. Okay. What have driven you to come here and to testify....

BY THE COURT:

Professor Jorgesen, I wonder if you would face the jury, please.

A. To honour a promise I made some years ago to my dead son.

BY THE ACCUSED:

Q. Could you elaborate on this? What happened to your son?

A. I... my son was a semi-invalid suffering from a disease called acute hypo gamma globulin anaemia. It's rather like AIDS, similar, but not quite the same thing. He was a student at York University for a period of time and was used by the administration of York University to harass me. As a result, he died. In the process I became disabled. I am a disabled person.

BY THE CROWN:

Well, My Lord, I think this is not relevant.

BY THE COURT:

I can't...

BY THE CROWN:

What does it have to do with the four murder cases...

BY THE COURT:

I can't see what it has to do with the case. Can you tell me how this could possibly be relevant, Mr. Fabrikant?

BY THE ACCUSED:

Yes. Maybe you just listen to further testimony.

BY THE COURT:

No. You will tell me, please, how this could possibly be relevant. Would you sit down, Mr. Jorgesen, please.

BY THE ACCUSED:

It is public perception if twenty (20) years ago someone would say that priests at say orphanage abused children, not just physically, but abused sexually, that person would be considered just crazy, because public perception of Holy Fathers was that Holy Fathers cannot possibly be engaged in that kind of activity.

Universities until now benefitted from the same public misconception. You could read in many newspapers that Fabrikant has introduced squalid morals of crackdown into the universities where people are engaged in search for truth and nothing else. Well, it is about time to open eyes of public, and jury especially, that squalid morals of crackdowns has always existed in the universities, that administration at the universities commit murder every day, commit it very professionally, very legally, very highly organized, very systematically.

Professor Jorgesen not only was personally touched by the events which took place at York University, but he is here as expert to testify, because he studied the matter very extensively. He studied how university administration works, what the interpersonal relationships are. He studied the matter as a scientist and a statistician. He studied the matter in terms of interrelationships between various events. He studied the matter in terms of influence of... first of all, he studied how harassment exactly is organized by the administration.

If you will read some of the documents which Professor Jorgesen brought himself, you will see the tactics of administration of York University was exactly the same as it was at Concordia. For example, one of the documents which he will present to the Court says that... if you just erase the word Jorgesen and put the name Fabrikant, you would think that the document came from Concordia University, because the document says that Professor Jorgesen has harassed absolutely everybody at York University, he made a total disruption in every possible office at York University, that he threatened absolutely everyone in the community, that absolutely everyone of York University is scared of him, and he his danger to the university and something has to be done about it.

Now, if you change the name and put the name of Fabrikant, you would think that this document came from Concordia University. And Professor Jorgesen never threatened anyone. He never damaged anyone. The only damage has been done to his own health. And he will testify that this is genuine tactics of every

administration.

When they cannot fight a person on honest grounds, they try to falsify things. They try to use certain words said in anger to completely twist the sense of those words. For example, if Professor Jorgesen says that those who have murdered his son has to be brought to justice, it is interpreted that he is threatening them. If, for example, they cannot get to him the way they are trying to get to me, he's tenured. So there is no way they can fire him. Still, they can harass him by... the main thing, they used the most lowest possible approach to him, through his disabled son, because that was the most vulnerable point of him, and they harassed his son to such an extent that they effectively murdered him. And it was extremely difficult on Professor Jorgesen and his health was damaged irreparably.

He also studied... well, the same tricks was used on him to accuse him of putting higher grades to the students. So if you remember testimony of Osman, who testified that I tried to get higher grades for the students to be popular. This same accusation was brought against Professor Jorgesen, the same, absolutely unfounded. He has documents here, again, establishing that he was excellent teacher. He studied... he taught at various universities.

He also is prepared to testify in terms of how university administration works, in general, whether it is possible for a person abused to get justice even in a reasonable time frame. And he studied in this, and how administration reacts on decisions of lower levels of administration. He studied what Union, the Faculty Association it is called, does for a person, or better to say how the Faculty Association tried to sabotage any grievance, and the "main, meaning their use", is delayed. They cannot deny because the grievance is well-founded. So what they do, they just delay, delay it to such an extent that person alive never gets his grievance heard. And if you are unhappy with your Union you cannot go to Court, because Canadian law, for some reason assumes that Unions are protecting you so well that you don't need Court protection. So the only way for a university employee who is being abused by administration, then is being abused by his Union, is to go to the so-called Labour Board, or in Quebec it is Commissioner for Labour. And exactly the same thing happens there. They usually try to cover up for the Union. And he studied the subject extensively, too.

He also studied the influence of this artificially induced stress on human beings. He found an interesting work, statistical work on influence on workers of one plant, how the health and the deaths and suicides statistically-related indicates of closing of plants. And there was significant correlation found that if plant is closing then the number of deaths and illnesses increases dramatically.

What is interesting in this study that this is the case where though it is stressful, it is not so stressful, because when plant is closing, everyone is affected. So persons psychologically do not feel himself that much abused as compared when a person is singled out, when he is a good teacher, when he is a good researcher, and he's

just being harassed. In this case, effect on his health is much more dramatic.

BY THE COURT:

Okay. I'll stop you at this point, because I see that it's almost ten o'clock (10:00), and I don't want to cut you off. So we'll adjourn at this point, Mr. Belleau, while you straighten out your problems on the seventeenth (17th)...

BY Me BELLEAU:

Thank you.

BY THE COURT:

... and we'll resume.

BY THE ACCUSED:

So you don't accept that we don't need him here?

BY THE COURT:

Of course, I don't accept that I don't need him here.

BY THE ACCUSED:

I don't need him here.

BY THE COURT:

We'll adjourn for a short time. It shouldn't be terribly long, ladies and gentlemen.

(THE JUDGE LEAVES THE BENCH)

(THE JURY LEAVES THE COURTROOM)

SHORT RECESS

(THE JUDGE TAKES THE BENCH)

(MEMBERS OF THE JURY TAKE THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

BY THE COURT:

Have you anything else you'd...

BY THE ACCUSED:

Well, if it is possible, I would like to get this document from Professor Jorgesen and read it, because the relevance from this document is so striking. Is it possible to get the document from Professor Jorgesen, and I want it.

BY THE COURT:

You may continue your argument for the moment.

BY THE ACCUSED:

Well, this is part of my argument.

BY THE COURT:

You may continue your argument for the moment. Have you anything else you wish to add?

BY THE ACCUSED:

Yes. But I would like, because it would be out of context if I do it later. Can I get this...

BY THE COURT:

Well, I'm not sure it will be out of context if you do it later. You were making a number of points. I'd like you to go on making these points.

BY THE ACCUSED:

Well, this...

BY THE COURT:

If you have any further points to make.

BY THE ACCUSED:

Yes, I do. But this is the time when I want to quote, at least, the document. It wouldn't take time at all.

BY THE COURT:

Well, I don't think you need to quote from the document to make your argument.

BY THE ACCUSED:

Well, I do need, because document is so striking that exact wording of the document is extremely important.

BY THE COURT:

Well, you'll have to make your argument without citing from the document for the moment.

BY THE ACCUSED:

Okay. Since I was interrupted I will summarize what I said before very shortly, because it's important that it is not lost the thought which I was trying to make.

What I was saying is that Professor Jorgesen, because of his personal circumstances, as being a scientist, a scientist, when he sees that something is wrong, he starts to study it scientifically to find out what is wrong, why is wrong, what are the roots of it and how it could be corrected, if any. And what I was saying before was that the university administration, since they cannot get to him, he had tenure, they actually aimed at his most vulnerable point, his disabled son, and they harassed him.

When he will tell you the story about the harassment, as exactly what it was, it is such a minor thing which it is mind-boggling why on earth and how cruel a person might be to create years and years of harassment which ultimately resulted in death of his son, when to settle the matter it wouldn't even take, take second to settle. So it was so malicious, so deliberate, aimed at father and anything goes. Any way is all right. There is not moral inhibitors with the people at the university whatsoever. There is no such thing that they would say, no, this is too low for us. We are not going for that. Even harassing of handicapped person is not too low for them, as long as they can get their aim. And in this case it was Professor Jorgesen.

And, again, they used exactly the same tactics. Well, first of all, you need to make a person angry. When a person is angry, sometimes he uses expression which may be twisted, may be interpreted. And if any phrase could be misinterpreted and twisted, so here we go, the person is dangerous.

And as I say, I do need to quote it. When he showed me this document yesterday, when we met, I was flabbergasted. The wording is so like twins. Like if Kenniff got together with people at York and they just sat together and wrote it together. So I ask you, once again, let me read it just part of it.

BY THE COURT:

No.

BY THE ACCUSED:

No. Well, I hope jury believes me that the document, whether I will or will not be allowed ever to read it, it's incredible. Whatever you heard here, even the choice of words is the same.

BY THE COURT:

Would you stop arguing the case in front of the jury...

BY THE ACCUSED:

I'm not arguing the case. I'm arguing...

BY THE COURT:

I left the jury here because you were very insistent that the jury be here.

BY THE ACCUSED:

Oh, yes, jury should hear this. Definitely.

BY THE COURT:

Uh, huh.

BY THE ACCUSED:

Yes. I'm arguing relevance. This is what I'm arguing. I'm not arguing the case. I'm arguing how relevant it is. Because it is necessary to point out that crime of murder is being committed at the university every day. Crime, unreported. Crime, silent. Crime, which has no redress in any instance whatsoever. Professor Jorgesen has studied whether a person has any recourse, and he studied what the recourses are stage by stage. First you can try to use the higher administration, and the higher administration just say, we are not going to intervene. And if you remember testimony of Kenniff here, this is exactly what he told you at least on a hundred (100) occasions. "I am Rector. I am not intervening. It is the other person who is supposed to make the decision". So there is no way to get justice there.

Then he tried the Union, who is supposed to defend him. He pays the money to the Union. And there he discovers the same thing I discovered, that when you pay money to a bandit, protection money, this bandit defends you. When you pay money to the Union at the university, this Union just stabs you in the back. So they are worse than bandits, if they (inaudible). They just delay. They know you are right, and they cannot deny it, so how to do about it, delay.

If you try to say, why are you delaying, they always will tell you, well, we have many other cases. You are not the only one. Now, try to ask them, show me the other cases. They won't show it to you. They will say it is confidential. And this is what happened to me and Professor Jorgesen will testify to you about his experience. They don't even show you your file. The note about which I was talking that he is dangerous and society should be protected from him, that he harasses everybody, he found it by using clause in collective agreement which gives him access to his own file. He had no idea this document was in his file. It is just because he wanted to see his file, and he saw it there.

So the circumstances are so identical, they are so outrageous, and when your Union betrays you and stabs you in the back, and you try now to get some justice outside the Union, and you go to the so-called, what is called Labour Board there, and it is the same called Labour Court here, and you find out that you do not have very much protection there either.

And when you try to get lawyers, it also means that the case when the lawyer tried to milk you for money and is not doing very much job for you, because university can always pay him more than you are paying him. No matter how much you are paying him, they can always pay him more, and there is no protection there.

And he also stated personal costs, in terms of how all this harassment affects human health, how it affects relationship in the family, and how it affects children who are innocent victims in all that. He also found an interesting thing in his study. That if person, God forbid for some reason is labelled a troublemaker, or

whatever word you use, he is outcast, no matter how good he is as a scientist, no matter how good he is as a teacher, there's no way for him to get a job anywhere. So he is stuck.

Now, taking into consideration... so I brought him here to testify as an expert in the field of university administration. He is... also inter-personal relationships in the university. He studied it extensively. He has extreme personal experience which is of, again, a great value for the jury to understand really what happened at Concordia, what was the tactics of administration, how they performed what they did, and the weapon they used, namely, to label someone dangerous, effectively, this label makes the person defenseless. Because there is nothing there. He is not accused of anything. It is just rumours.

You cannot fight rumour. You cannot come to every member of the university and say, look, did you hear that I have threatened to kill Rector? Well, I didn't do it. Well, if you come to someone, he will think, what, is he crazy or what? And you cannot come to every member to say it. And even if you come to say it, he will think, well, if he's going to tell me that, probably something did happen, otherwise why is he coming to me to say it?

So rumours are so powerful, because there is no way to fight it. This is why, on the one hand, I was glad that I was arrested on November first (1st), because I could at least put something before the hearing board, and I could demand some answers. I could defend myself. This is totally helpless situation in which person is being put by the using those rumours.

Now, I didn't ask Professor Jorgesen, and I'm afraid to ask this question, and I will not ask this question. But I really wanted to ask him question: What if he were threatened, not just what happened, but threatened to be put in jail, though he did nothing wrong. Would he in this case try to take justice in his own hands? I don't know.

But this is the question which I will ask the jury as to how much a person can be abused until (inaudible) is over, and when a person sees no legal way out. He tries all the ways. He tries his superiors. He tries the Union. He tries the lawyer. He tries the Court, to find only that the Court is as corrupt as everything else. And then his life is threatened. Well, I think this is the position where every normal person will try to get justice in his own hands, because there is no other way. And if a person's life is in danger, he's entitled to defend himself.

Now, in this particular case, I believe that testimony of Professor Jorgesen is so relevant in every aspect, as an expert who, on the one hand has extensive experience in teaching in several universities, besides he has extensive experience with administration. He was administrator in civil service himself.

He also has experience with unions which are normal unions, because there are unions who do defend their members. And he will explain to the jury the difference between normal unions and unions which exist at the universities. He will explain the reason why the

university unions are company unions. He will explain to the jury all the reasons and all the whys and hows the things are done at the university.

He will explain to the jury that public perception of the university as being place where people are striving to get ultimate truth is just a myth. It is the same myth as thinking that Holy Fathers have anything holy in them, except their name. But again, it took many, many years to get the truth out.

I hope that in this case we'll be able to get the truth out earlier than that. But this effectively will depend whether Professor Jorgesen is allowed to testify or not. And I still would like to read from the document, because the document is... it's incredible. Just substitute the name and you will see that this is paper from Concordia University about Fabrikant. Can I read it?

BY THE COURT:

No.

BY THE ACCUSED:

No.

BY THE COURT:

For the third time.

BY THE ACCUSED:

Sorry?

BY THE COURT:

For the third time.

BY THE ACCUSED:

I think you said later on.

BY THE COURT:

I said for the third time. Are you finished?

BY THE ACCUSED:

No. So Professor Jorgesen's testimony is relevant in every aspect. It is relevant in terms of to show to the jury the nature of the university administration, to show to the jury how administration tried to destroy everyone... even for minor things. He didn't threaten to blow whistle. He didn't really give much things. You can be destroyed for very, very minor things. He didn't do one thing of what I did. And you will still see that administration decided to destroy him.

He was... well, he's my age. He was football player in excellent health. In just several years they managed to make him permanently disabled. This has to be declared a crime. We have crime of assault, but we have crime on the physical assault. We do not have crime of mental battery, we have only crime of physical battery. We do not have a crime of attempted murder, when person's health is deteriorated to such an extent that he has a heart attack, and this should be considered attempted murder. And it is not. And we need to have changes in our Criminal Code, because it is time to understand that mental battery is every bit as painful and as dangerous and as reprehensible as physical battery.

An attempt deliberately to destroy someone's health, should be treated the same as a crime as grievous assault tries to destroys someone's health. And if person is driven to total disability, or even to death, it should be labelled exactly as it is, grievous assault leading to disability. If it is there, it should be called murder of first degree, because these people know very well what they are doing. It is not done by accident, by

ignorance. Those people know very, very well what they are doing. And this is what Professor Jorgesen is here for, to affirm that this is very difficult, not just for Concordia, for every university.

And it is important for the jury to know that, because if we do not learn the lesson of what happened at Concordia, it doesn't look like we have any desire to, it will be repeated again, and again we will be testifying as Habib did here, if you remember, and she knew very well what happened at University of Pennsylvania or... I forgot.. the University of Iowa. And when she was asked, why did she think that Concordia is any different, if it happened at the University of Iowa, it could happen in Concordia. And she probably said there is no way in Concordia one member of the university could come and murder another. Well, it depends. If you press this person for twelve (12) years, and finally he makes his position that his life is in danger, many things might happen. You just don't do this deliberate thing. And hoping that this is Concordia. This is not University of Iowa. And this is not the postal service.

Well, it's about time we learned that every person has certain limit until his dignity can be trampled and his health could be endangered, and not only health, but his life, too. And I believe that Professor Jorgesen has extremely useful information to offer in this regard.

BY THE COURT:

Mr. Lecours, have you anything you want to add?

BY THE CROWN:

Well, My Lord, his testimony looked like a total waste of time, as far as I'm concerned after hearing the explanations.

BY THE COURT:

You've been given full rein to put forward your explanations as to why you believe that this testimony is in any way pertinent to your case. I thought that insofar as it may relate to your state of mind goings on, or certain goings on at Concordia University would relevant to this case. How possibly Professor Jorgesen's view of what happened at York University could in any way be pertinent to the case in which we're involved, I do not know.

It would appear from what you say that the story Professor Jorgesen wishes to tell is a sad and unfortunate story. I don't know. But I am the one who has to decide whether or not it has any pertinence to the defense of Valery Fabrikant, who stands accused of having committed murder at Concordia University. That is what I have to decide.

It would be very, very dangerous, indeed, to attempt to draw a parallel between one person's view of a situation obtaining at York University through the eyes of that person who, from your own words, happens to be the father of someone who ostensibly lost his life.

Quite apart from the question of relevance which is the underlying consideration that I have to take into account, how this man could ever be objective in his assessment, scientific in his assessment, or anything else is totally beyond me, because one cannot be objective when one is wound up so intimately in a set of facts.

Furthermore, this is not a Royal Commission into the goings on at Canadian universities, which is what you have clearly, and are clearly attempting to make it. And as far as I'm concerned, no dimension of the testimony you propose to lead from Professor Jorgesen is in any sense relevant under our rules, therefore, Professor Jorgesen will not be heard.

BY THE ACCUSED:

May I respond?

BY THE COURT:

No, you may not. That's my decision.

A. May I make a comment?

Q. No, you may not.

A. Thank you. I'm excused?

Q. Yes, you are, sir.

AND FURTHER DEPONENT SAITH NOT

BY THE COURT:

Next witness.

BY THE ACCUSED:

Well, there is no next witness, because I believe you received the letter from Mr. Julien. This letter... have you received it?

BY THE COURT:

Yes.

BY THE ACCUSED:

This letter is not true in one regard. There was no confusion...

BY THE COURT:

I'm not worried about the letter from Mr. Julien or anything else. I wish to hear your next witness. And I wish to hear your next witness now.

BY THE ACCUSED:

Well, let me explain you what happened. Now, yesterday, Mr. Karapetian has attempted to bring me the necessary tapes and documents which I needed to hear to prepare examination of the witnesses today. They did have order of yours concerning this. They just disregard...

decided to disregard this order. They told me point blank that they are not going to allow me to see him in private. I said there is a Court order. You are going to be in contempt of Court. They say, here is jail. We make decision here, not the Judge. And if you wish you can tell it to the Judge in person, which I am doing.

The person who told me so, he proudly pronounced his name. It was Mr. Moran. And he said that he is under order of another person, and this is how it is. He couldn't care less what the Court order is. Therefore, I need... well, I just cannot examine those witnesses. I was not given any opportunity.

And as far as Professor Jorgesen is concerned, I would like to bring to your attention that he was there Saturday. They didn't allow him in. They said there is no Court order. If you remember, I asked for a copy, and luckily for me I had a copy, so I was able to see him on Sunday, because Sunday they also didn't want to let him in, but I said I have a copy of order, and I showed the copy of order and finally Professor Jorgesen was let in. But everybody else... well, it doesn't look like they have any respect for a ruling of this Court. So the only thing I can ask today is make an adjournment and make

another order, with copy to me. I will phone Mr. Karapetian that he could come today and eventually I probably will be able to continue tomorrow.

BY THE COURT:

Mr. Fortier informs me in a letter that there was an administrative error and that the appropriate arrangements have been taken to correct that error. Now, that is fine.

BY THE ACCUSED:

Well, if it is fine with you, well, then it is fine. If it is...

BY THE COURT:

But you have had all of these materials in your possession, or you have been able to bring them for now a matter of some weeks. You must have known what witness you proposed to hear today apart from...

BY THE ACCUSED:

Yes.

BY THE COURT:

...the professor, and you must surely have at least anticipated the possibility that the professor's testimony wouldn't be heard.

BY THE ACCUSED:

Well, heard or no heard. I...

BY THE COURT:

Who is your next witness?

BY THE ACCUSED:

Next witness was supposed to be Hoa, but I cannot examine him. I do not have neither documents, nor tapes, which I would need in case he contradicts all this stuff, and I will need to contradict him. So there is no way I can...

BY THE COURT:

Well, I would suggest that you start with Professor Hoa, and we'll see where we go.

BY THE ACCUSED:

No, I cannot start, and I will not start because there is nothing to start. I don't have anything with me. Those documents were to be transmitted to me yesterday. Were they not? The documents and tapes. And I needed to listen to those tapes, and I needed to read the documents, and I'm just not prepared. And it is not my fault. They don't respect your orders, and what Fortier writes is one thing. You may believe me or not what I've been told. Quite openly they told me they couldn't care less of what your orders are, quote, unquote. You may call Mr. Moran here and ask him to testify whether he told me that.

BY THE COURT:

Mr. Lecours, what's your position?

BY THE CROWN:

Well, Mr. Karapetian was not allowed for months and he could work. Since there seems to be an administrative error, I wouldn't propose to terminate the whole thing because of that, definitely.

BY THE COURT:

No, I'm not.

BY THE CROWN:

I saw Mr. Hoa here. Mr. Fabrikant has been redundant many times, so...

BY THE ACCUSED:

Well, there is no way I'm going to start his testimony without all the necessary documents and tapes.

Absolutely not. Do we have anyone outside Concordia today to testify, Mr. Belleau? Do we have anyone?

BY Me BELLEAU:

I don't think so.

BY THE ACCUSED:

I will be prepared to...

BY THE CROWN:

We know that there are about twenty (20) subpoenas outstanding for people of Concordia. So...

BY Me BELLEAU:

Maybe Mr. Hoa.

BY THE COURT:

Okay. In view of the fact that there was a difficulty over the weekend, I'll accede to your request, and I will continue the matter until tomorrow morning, that you'll be prepared to question Professor Hoa tomorrow morning.

BY THE ACCUSED:

Well, if...

BY THE COURT:

No ifs, ands, or buts. The letter is formal in the sense that the appropriate arrangements have now been made, or the situation is corrected. So we will adjourn until tomorrow morning, nine-thirty (9:30) and...

BY THE ACCUSED:

Well, there are several things which I needed. First I need to be brought to Parthenais immediately. I need to contact...

BY THE COURT:

I am not your jailer.

BY THE ACCUSED:

Well...

BY THE COURT:

Ladies and gentlemen, tomorrow morning, nine-thirty (9:30).

BY THE ACCUSED:

Well, if I'm not being able the same thing... the same thing will happen tomorrow.

(THE JUDGE LEAVES THE BENCH)

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

ADJOURNMENT

I, the undersigned, MICHEL DAIGNEAULT, Official Court Reporter, hereby certify the foregoing is a true and faithful transcript of the evidence in the above-mentioned case as taken by mechanical recording, to the best of the quality of said recording.

And I have signed.

MICHEL DAIGNEAULT,
Official Court Reporter</pre></body></html>

PROVINCE OF QUEBEC

DISTRICT: MONTREAL CITY: MONTREAL

CASE NO: 500-01-017372-928

TRIAL

PRESENT: HONOURABLE MR. JUSTICE J. FRASER MARTIN, S.C.J.
(AND AN ENGLISH JURY)

THE QUEEN

vs

VALERY FABRIKANT

APPEARANCES: Me JEAN LECOIRS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: June 23rd, 1993

GS: 1417 FILE: 3191

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CONTINUATION JUNE 28TH, 1993

OUT OF THE PRESENCE OF THE JURY

(THE JUDGE TAKES THE BENCH)

(THE LAWYERS AND THE ACCUSED ARE PRESENT)

BY THE COURT:

Mr. Freedman.

BY Me FREEDMAN:

Good morning, My Lord. I'm sorry to keep troubling you with these... with these issues.

BY THE COURT:

Mr. Freedman, you are not troubling me at all, believe me.

BY Me FREEDMAN:

Once again, I'm running into some difficulties with the subpoenas, especially in terms of vacations for people at the University. There are several issues, but I'll deal with the two most pressing. Dr. Sheinin, who has been subpoenaed is due to leave for a month, leave the province for a month on June thirtieth (30th), which is coming up very shortly. Now, she has indicated to me

that she can postpone that for one week, but obviously if she has to be here, she'll be here, but she would... it is feasible for her to postpone it for one week. And then she's gone from... as of now she's gone from June thirtieth (30th) until August second (2nd).

The other pressing issue is Dr. Swamy who is presently on administrative leave from the University and is due to leave the country on July ninth (9th), and given the days off and so on, July ninth (9th) is not very far away in terms of Court dates. I mean, he's gone for anywhere from four to six months, India, China, he has various visiting lectureships and so on.

Again, Seshadri Sankar is due to leave the country from July tenth (10th) to August seventeenth (17th).

The other ones I don't think present much of a difficulty. I've given a list to Mr. Fabrikant. They're sort of gone for a week here and there and it probably can be worked out. But as for Dr. Sheinin and Dr. Swamy, those are more serious issues.

There is also one other issue I'd like to raise. With respect to Professor Castanza who was subpoenaed, you may recall that we discussed the duces tecum, and you... the duces tecum part of it was struck down, due to the former president of the faculty association... I'm having some difficulties negotiating with Mr. Fabrikant, who claims that he requires some documents from Mr. Castanza. I indicated that Mr. Castanza no longer has those documents, but they are CUFA documents. I've been informed by the president of the faculty association that all of their files contained in their office related to Mr. Fabrikant have already been furnished to Mr. Fabrikant. Mr. Fabrikant has indicated to me that until we sort out this document problem, he's not going to call Professor Castanza. So that's the difficulty. There is... there are no documents forthcoming.

BY THE COURT:

Well, what you tell me is serious, because there are three days next week.

BY Me FREEDMAN:

That's right.

BY THE COURT:

There's one day today.

BY Me FREEDMAN:

That's right.

BY THE COURT:

There are three days next week, and then we fall to the fifth (5th), which is... on the fifth (5th) we will not be able to sit in the morning, because there is a juror who has a medical question. So we have then the afternoon of the fifth (5th), the sixth (6th), the seventh (7th), and the eighth (8th). And you tell me that Swamy and Sankar are gone...

BY Me FREEDMAN:

That's right.

BY THE COURT:

... as of the weekend of the ninth (9th), tenth (10th).

BY Me FREEDMAN:

That's right. And I anticipate that those testimonies will be rather lengthy I would imagine.

BY THE COURT:

Where will Dr. Sheinin be in the States? That's the...

BY Me FREEDMAN:

She is probably the most accessible.

BY THE COURT:

... possibly the less, less serious difficulty.

BY Me FREEDMAN:

Exactly. Yeah. I believe she will be somewhere in, north of Ontario, and I suppose she could be present.

BY THE COURT:

Well, if Dr. Sheinin has to be inconvenienced, that's perhaps the one that's going to have to be... the person that's going to have to be inconvenienced.

BY Me FREEDMAN:

I agree with you, My Lord.

BY THE COURT:

I am presuming that Swamy and Sankar have tickets and are...

BY Me FREEDMAN:

Absolutely. Yes, I agree with you.

BY THE COURT:

Well, all I can suggest, Mr. Fabrikant, is that you finish with the present witness and that you commence with either Swamy or Sankar, and we get cracking, and get through these witnesses.

BY THE ACCUSED:

I cannot call him at this time.

BY THE COURT:

You cannot call who? You cannot call who at this time?

BY THE ACCUSED:

Swamy.

BY THE COURT:

Okay.

BY THE ACCUSED:

Neither Swamy nor Sheinin.

BY THE COURT:

The two urgent ones appear to be Swamy and Seshadri Sankar.

BY THE ACCUSED:

Well, him, too.

BY THE COURT:

You can't call him at this time. Well, then that's going to be your problem, because I am not going to destroy the holiday plans that these persons have made.

BY THE ACCUSED:

Well, nobody is destroying anything. I understand that Sankar is going, not on a holiday, he is going on a business trip. He is not paying for it. And, for example, if he is in England, he is not doing heart surgery there which cannot be interrupted. He's not paying a penny for his trips. When he is needed, he can come here and testify and then continue with his trip to India. This is not holidays. This is governmental paid trips. So there is absolutely no problem whatsoever taking into consideration that the flight from England to here takes about six hours.

BY THE COURT:

At what expense?

BY THE ACCUSED:

What...

BY THE COURT:

At what expense, Mr. Fabrikant?

BY THE ACCUSED:

At what expense? At expense of about seven hundred dollars (\$700.00), which he is paying from the grants provided to him by the government. If you are so concerned with the money, you can save just one day Mr. Belleau here, and here we have a trip for someone...

BY THE COURT:

I rather thought you would be citing me that example.

BY THE ACCUSED:

Well, I can give you other examples, too.

BY THE COURT:

I'm sure you can. Mr. Fabrikant, my first reaction is the reaction I'm going to follow through. I am not going to prevent either Swamy or Sankar leaving respectively on the ninth (9th) or tenth (10th) of July. What that means is that if Swamy and Sankar are subpoenaed for any date after the ninth (9th) or the tenth (10th) of July, I will cancel those subpoenas, because I am prepared to put at your disposition today, put at your disposition the three days next week, and put at your disposition the afternoon of the following week. I'm even prepared to see whether the juror can recycle his medical examination, although it might be difficult, and put at your disposition the five days of the following week, which will be nine days to take care of Swamy and Sankar, and if it can't be done in nine days, it can't be done at all. So that is the way we will handle this particular problem. If... I'm not twisting your arm, if you don't wish to do that, then please don't complain to me that these people aren't available. It will involve possibly an inconvenience for Dr. Sheinin.

BY Me FREEDMAN:

Yes, I understand.

BY THE COURT:

And if Dr. Sheinin would be kind enough to let you know where she may be reached, then it causes the least inconvenience for Dr. Sheinin to come back, and it isn't an inconvenience in any event.

BY Me FREEDMAN:

Yes.

BY THE COURT:

There's no doubt about it. But as far as these two are concerned, that is the route we are going to take.

BY THE ACCUSED:

Why don't we call them to testify as to what they are going to do, and we'll find out...

BY THE COURT:

I am not going to...

BY THE ACCUSED:

... there is no problem whatsoever for them to...

BY THE COURT:

I'm perfectly prepared to take it on Mr. Freedman's word, as an advocate, that they have tickets and they are leaving the country respectively on the ninth (9th) and tenth (10th) of July. And I am saying that they should be accommodated and they... I'm perfectly prepared to do what I can to accommodate them, and we are talking nine, ten days, just about, if you count today.

BY THE ACCUSED:

What is the problem for them to return for several days to give their testimony, and continue with their...

BY THE COURT:

I'm not going to... Mr. Fabrikant, you would engage me in a discussion over anything, in an argument over anything. The problem is they're leaving the country. They have plans...

BY THE ACCUSED:

I'm not ... not for nothing. I have my plan of defense.

BY THE COURT:

Well...

BY THE ACCUSED:

I need to have additional information from other witnesses.

BY THE COURT:

Well, you're going to... you've had plenty of time to prepare your defense, and you're just simply going to have to modify your plan of defense.

BY THE ACCUSED:

It's not a question of modifying it. It's a question of many witnesses are still not heard. And I want to put to Mr. Swamy questions which will be resolved of interrogation of other witnesses. You pretend not to understand it. And it is very simple.

BY THE COURT:

I don't pretend anything. I agree with you in the best of every world...

BY THE ACCUSED:

So, you can understand very well that I cannot put to Swamy certain questions unless I question already certain witnesses before him.

BY THE COURT:

Not at all. Not at all.

BY THE ACCUSED:

What do you mean not at all?

BY THE COURT:

Not at all. You can put a number of questions to him. You perhaps can't cross-examine him. I don't know.

BY THE ACCUSED:

It's not a question of cross-examining.

BY THE COURT:

These are witnesses that you propose to call.

BY THE ACCUSED:

It's a question of many things which will depend on testimony of other witnesses, and unless, until I heard those other witnesses, I cannot call Swamy.

BY THE COURT:

You have...

BY THE ACCUSED:

Because I will not have all the right questions to ask him.

BY THE COURT:

I'm sorry, you have at your disposition the time I have said you have at your disposition. If that's not acceptable to you, that's your problem, not mine.

BY THE ACCUSED:

Well...

BY THE COURT:

I'm prepared to see this witness completed as quickly as possible...

BY THE ACCUSED:

... if you think that this is my problem, you are wrong.

BY THE COURT:

... and you might...

BY Me FREEDMAN:

I'll...

BY THE COURT:

I will adjourn for a few minutes, and you might discuss with him who he proposes to call of these two, and let us get them heard, and let it be made perfectly clear that you've had all the time in the world to call these witnesses.

BY THE ACCUSED:

Well, don't play with Swamy, because there is nothing to discuss. Call the jury and continue.

(THE JUDGE LEAVES THE BENCH)

SHORT RECESS

(THE JUDGE TAKES THE BENCH)

(MEMBERS OF THE JURY TAKE THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

JAROSLAV SVOBODA

August 11th, 1943, Associate Professor

Concordia University

DULY SWORN

EXAMINATION BY THE ACCUSED

REPRESENTING HIMSELF:

Q. Do you recall Motion 1 saying that:

"Fabrikant memo, October fourteen
(14), nineteen ninety-one (1991),
the charges related to Dr. T.S.
Sankar should be referred to the
University Code Administrator."

A. I recall that.

Q. Okay. Do you remember what the memo was about?

A. No, I don't.

Q. Why it should be referred to the Code Administrator?

A. I do not remember what was the content of the memo.

Q. When you were signing this, did you know at least what you were signing?

A. I believed the signature referred to the resolution of the Minutes.

Q. Well, check to what the signature refers. This is the resolution. What I read to you is Motion 1.

A. Is it possible to have it in front of me, the document, so...

BY THE COURT:

If it helps trigger your memory.

A. It would help.

Q. Yes, surely.

A. As I said, it's a long time ago, I don't really recall.

Q. Well, if you don't recall, you don't recall. Don't try to guess.

A. Okay.

Q. That's the one thing you mustn't do. If it refreshes your memory, and if it triggers your memory, that's fine.

A. Yes.

BY THE ACCUSED:

Q. You signed something in ninety-one ('91) and you have no idea what you signed then?

BY Me JEAN LECOURS:

The witness did not say that, My Lord.

BY THE COURT:

You're perfectly correct. The witness didn't say that.

BY THE ACCUSED:

Q. Okay. It refers to what, on February fourteenth (14th).

Do you want to refresh your memory? There is it.

Refresh your memory. Did you see this memo before?

A. Yes, I have seen it during that meeting.

Q. Did you read it then?

A. Yes. It was read, if I correctly remember.

Q. Okay. And...

A. And what?

Q. Well, I am asking what was in that memo that needed to be submitted to the Code Administrator?

A. I think there were certain incorrect statements in the memo. Now, again, I don't recall exactly what it was.

Q. Well, it is in front of you, and you still manage not to recall exactly what it was. How long this witness is going to fake his memory? The memo is in front of him. He still cannot recall exactly what it was.

BY THE COURT:

He may not be able to recall the discussion that took place...

BY THE ACCUSED:

(Inaudible) discussion.

BY THE COURT:

... nor the nuances to the discussion. It may well be. There's no law that says the memo is bound to refresh his memory. It may. It may not. If it doesn't, that's unfortunate.

BY THE ACCUSED:

Well, let us read this memo, if he cannot refresh his memory.

BY THE COURT:

No, let us not read the memo. You have shown the memo to him, and you've asked him if his memory is refreshed, and it isn't.

BY THE ACCUSED:

Ha, ha, ha.

A. So if I may qualify that.

Q. The jury needs to know what's in the memo so the jury would see that he is faking. There is no other way...

ha, ha, ha... to show that he is faking his memory...

BY THE COURT:

Have you a question to put to him? Have you question to put to him?

BY THE ACCUSED:

Yes.

BY THE COURT:

You're not going to read the memo. Okay? Is that clear? Now, if you insist, we'll stop.

BY THE ACCUSED:

I'm dead scared. You cannot imagine how scared I am.

BY THE COURT:

You're also in contempt.

BY THE ACCUSED:

In contempt of what?

BY THE COURT:

The Court.

BY THE ACCUSED:

No, in contempt of you. The Court is judge and jury.

BY THE COURT:

Ten-0-six (10:06). Why should you not be held in contempt of that last statement?

BY THE ACCUSED:

Well, not only I should, I am in contempt of you.

BY THE COURT:

Fine.

BY THE ACCUSED:

You are not the Court.

BY THE COURT:

And I find you guilty of contempt of Court with regard to this instance and sentence you to sixty (60) days in prison which will be served consecutively to the sentence of sixty (60) days that you are presently serving.

BY THE ACCUSED:

You cannot imagine how scared I am. Such an absurdity to send someone to jail for sixty (60) days who has been in jail for a year.

BY THE COURT:

You have underlined... you have underlined, you see, that any question of contempt is, of course, in your case useless as a constraint or as a remedy. You've underlined that again, and I want that to appear perfectly clear from the record, that whatever I do as far as citations for contempt are concerned, they serve not one bit to either make you respect the rules of Court, which I have the duty to apply, or pay any attention to them. You asked yesterday why your interrogation of witness was cut short, there, sir, is your answer.

BY THE ACCUSED:

No, this is not the answer. They are cut short because you see that the witness is in a difficult position and you try to save the witness.

BY THE COURT:

Now, have you any further questions to put to this witness?

BY THE ACCUSED:

Yes.

BY THE COURT:

If you have, put them.

BY THE ACCUSED:

Q. Well, I asked him, would you kindly explain the Motion #1. You have it in front of you now. The Motion refers to my memo. There is nothing else there. It's only referring to the memo. The memo is in front of you. You signed it. So could you please justify your signature, or explain, at least?

A. As I said, originally I didn't... I didn't recall what was in the memo. I have it in front of me. I know now what you said in the memo. However, I cannot recall what exactly was discussed, what were the parts of the memo which made us, or the department, the members of the department to recommend to refer you to the Code Administrator. That's what I don't recall. We have, to my recollection...

Q. It was something outside the memo which made the recommendation then?

A. To my recollection, I do not think so.

Q. Then you have all the information in front of you. The memo is here. The motion referring to the memo is here,

too. There is no additional information whatsoever on this planet. Could you explain your signature recommending that due to this memo the matter should be...

A. Yes, there is something on this planet, that's the Code of Conduct of the faculty at Concordia, it's the regulations about (inaudible) guns, and so on and so forth, which were available to us during that meeting.

Q. I do not understand. What regulations of (inaudible) and regulation of Code of Conduct could possibly add to the motion and the memo?

A. ...

Q. All right. Let's go to Motion #2. I understand that you made a motion due to my memo. The memo is in front of you. You still cannot explain why the motion was accepted. Go to the second motion.

BY THE CROWN:

Is it a question?

BY THE ACCUSED:

No, I'm just... well, all right, you may consider it a question.

Q. Is my understanding of the situation correct?

A. Well, it's more. In order to be able to evaluate your memo, we had, during the meeting, available various documents. And I cited two examples of these documents.

Q. Now, how this document on earth could change anything?

A. It wouldn't change. It just gives the codes.

Q. Okay.

A. The various regulations, which I do not carry around in my memory to be able to make the evaluation of your memo.

Q. Okay. If I give you the Code of the Conduct, they you will be able to do it?

A. Given time.

BY THE COURT:

Your answer is your answer. You are not required to undergo an examination.

BY THE ACCUSED:

Q. All right. Go to the second motion, please. The second motion condemned me for circulating confidential documents anonymously.

A. Hum-hum.

Q. Do you remember that my signature was on that so-called anonymous document?

A. It doesn't state on the document, the motion.

Q. Okay. May I have it back. It doesn't state. May I have this document back, please. Now, it states:

"Senior faculty members of the
Department of Mechanical
Engineering deplore that a
confidential letter was circulated
without indication as to who
circulated it."

Well, it is the same as anonymous, isn't it, or my English is that bad? Is it the same?

A. Not necessarily.

Q. All right. Was my signature on that document?

A. Yes.

Q. Isn't this the best indication that I was the one who circulated it?

A. It's possible that you have circulated it, yeah.

Q. So what then to deplore?

A. Is that a question?

Q. Yeah. What did you deplore?

A. Again, to my recollection, the objection which, during the meeting we had, was in respect to the fact that the letter was confidential.

Q. Well...

A. You had circulated it publicly.

Q. Well, confidential, addressed to me. Right?

A. So...

Q. Well, if I chose to make public a document which is confidential addressed to me...

BY THE CROWN:
All this line, My Lord, is arguing with the witness and cross-examination.

BY THE COURT:
You are correct. Objection maintained.

BY THE ACCUSED:
Okay.

Q. Does one have a right to circulate documents which belongs to him, whether it is confidential or not?

BY THE CROWN:
It's still the same, My Lord. It's still arguing with the witness.

BY THE ACCUSED:
I'm not arguing.

BY THE COURT:
Objection...

BY THE CROWN:
(Inaudible)

BY THE COURT:
The objection is maintained.

BY THE ACCUSED:

Q. Was there any rule presented at the meeting stating that one cannot circulate a confidential document which belongs to him?

A. No.

Q. No. So I am returning back to my question, what did you deplore?

A. Circulating of a confidential document.

Q. But you admitted yourself that there is nothing wrong. You didn't see any document saying that this is wrong?

BY THE CROWN:
It's his own witness, My Lord. This is cross-examination.

BY THE COURT:
You're correct. Objection maintained.

BY THE ACCUSED:
And after that you say, when one difficult question is there, it's always cross-examination. Okay. Go to the third motion then.

Q. Would it be possible for you to explain the nature of the third motion?

A. Again, I do not have the letter in question in front of me. But I recall a few things.

Q. Okay. Let me help you.

A. I recall a few things.

Q. You recall. You don't need the letter? Do you need the letter?

A. Sure, if you give it to me, I take it, sure.

Q. No, if you need it. If you remember without it, please.

A. It will be better probably.

Q. Okay. What letter are you referring to, dated when?

A. October fourteen (14).

Q. Well, October fourteen (14) is in front of you.

A. This is October fifteen (15). Oh, I'm sorry. You are right. Okay. Again, unless I go line by line, let me go by memory. There is following issues. One was referring to the fact that... one was the fact that you were assuming that you were eligible for tenure without being actually long enough, or not at all on tenure (inaudible). Flowing from that was that you made requests which... for which not being a tenured professor, you were not eligible, which I think referred to that teaching and so on and some curricular (inaudible). This is, I think are the main issues.

Q. If I knew or understood anything it would be fantastic. It was just, regretfully just a group of words meaning absolutely nothing. The witness is evading to answer the question.

BY THE COURT:
That's your opinion.

BY THE ACCUSED:
You understood what he said?

BY THE COURT:
If you were to show him the letter that you want him to address, it may well be that he would be able to be a little more specific.

BY THE ACCUSED:
He admitted that he has the letter in front of you. Just please follow. He admitted it. This is the letter. He has it in front of him.

BY THE COURT:
Excuse me, you're right.

BY THE ACCUSED:
He has everything, except the desire to testify. Everything is there.

A. May I read it more carefully then?

BY THE COURT:
Well, read it to yourself.

A. Again, I repeat that the two main issues were, one, related to the leave that you requested, and non-tenured professors... again I only recall, because I do not have the regulations in front of me, are not eligible for a sabbatical leave and the other issue which is already said too, or stated, too, maybe not as clearly, it was related to the release of teaching duties which there is no, again, as you have already said in your letter, it's at the discretion of the Dean and/or Chairman.. These were the points which were... the main points which were the subject of the Motion under three.

Q. Okay. Let me refresh the witness' memory a little bit more. May I have this Collective Agreement for a second.

BY Me BELLEAU:
Which one?

BY THE ACCUSED:
Well, the new one, or old one...

Q. Could you read Article 2616, maybe it will refresh your memory.

A. Yes.

Q. So non-tenured members are eligible for a sabbatical or not?

A. I think that the ten years of service referred to in this

booklet means ten years of a tenured track.

Q. Ha, ha, ha. Did any one ever serve...

BY THE CROWN:

It looks like we are arguing the collectivity of it, My Lord.

BY THE COURT:

We are arguing the Collective Agreement. The whole line of questioning is... escapes me. The pertinence of this whole line of questioning escapes me.

BY THE CROWN:

The same for me, My Lord. And it looks like this witness has been brought here just to be questioned and discredited and...

BY THE COURT:

What do you hope to establish by this?

BY THE ACCUSED:

What I hope to establish by this? A very simple thing. That there was in my fair group of bandits in Mechanical Engineering, and this group of bandits got together... and in Italy maybe they get with machine guns, here they get with paper and pen... and in Italy they decide, okay, we'll kill him. There, they decide the same thing, but by different means. This is what I'm trying to...

BY THE COURT:

This is what you're trying to establish?

BY THE ACCUSED:

Yes.

BY THE COURT:

This whole line of questioning is irrelevant and is disallowed.

BY THE ACCUSED:

Ha, ha, ha.

BY THE COURT:

There you are. So move on to something else.

BY THE ACCUSED:

Well, maybe you ask me why it is relevant?

BY THE COURT:

You've just told me.

BY THE ACCUSED:

No. I just told you what I'm trying to establish. Then ask me why it is relevant?

BY THE COURT:

I asked you why it was relevant. You purported to tell me. If you're anything to add, go ahead and add it.

BY THE ACCUSED:

Well... and since, according to, even the Canadian system of law, when someone's life is in danger, and someone's life is in danger, not only when a pistol is put into his head, someone's life is in danger when someone undermines somebody's else health to such an extent, and at this point this is exactly what it was. They knew very well that I had one serious heart attack in the spring of ninety-one ('91), and they were sure that one day, when they show me this document prepared in secret, I will have just another one.

BY THE COURT:

This is what you're proposing to establish?

BY THE ACCUSED:

No. It is not finished yet. And this continuation of all this stuff, they escalated to the situation when my life was really in danger, and I want to show to the jury

the steps which they did, without any justification, any foundation, any reason, I want to show that this particular person, the maximum what we had with him, was hi and bye.

BY THE COURT:

Was what?

BY THE ACCUSED:

Well, the maximum relationship we had with him was hi, bye, hi, bye, no more than that. And he claims there that my action is so detrimental to his work that unless I am kicked out of the Department, he cannot continue successfully his work. And I've never done anything wrong to that person. And I'm just wonder how cruel one be could sign that kind of false document, which later on was used as a main exhibit for the University administration to terminate my employment. And he pretends here he had no idea, no recollection, nothing. And he's asked to explain why he signed it. Why was this motion justified in his mind? He cannot explain why this motion was justified. He cannot explain. And if you feel that this all is irrelevant, too bad. Because human beings cannot be trampled with infinity. If this is what you think is justified, well, you will have another Concordia. That's all.

BY THE COURT:

Are you finished now?

BY THE ACCUSED:

Yes.

BY THE COURT:

Mr. Lecours?

BY THE CROWN:

Nothing to add, My Lord.

BY THE COURT:

This whole line of questioning on this document, on the manner in which you're doing it, facing the witness with the Collective Agreement, is totally irrelevant. If you wish to establish the effect on your mind of that particular meeting, and of those particular memos, that is one thing that may be relevant. But who is right and who is wrong in all of this, is of no moment in the matter which we have under consideration.

BY THE CROWN:

I think the proper way if ever we could see some remote relevance is to file these things and later on, someone, the accused or somebody else, would say this is unjust and I was abused and this is the proof.

BY THE COURT:

That is true.

BY THE CROWN:

With... not arguing with the witness...

BY THE COURT:

That is true. But this arguing, continual...

BY THE CROWN:

... and going through the Collective Agreement and asking...

BY THE COURT:

... arguing with the witness is getting us nowhere.

BY THE CROWN:

He's asking the jury to sit as a labour tribunal, and we're going nowhere.

BY THE COURT:

The jury is in no sense required to decide who is right and who is wrong in your continual disputes with the administration of either the Faculty, the Department, or anywhere else. If you wish to establish the fact, and if you wish to come along and say what they did was a) not... not justified, what they did was unfair, and it wasn't based on fact, fine. But to argue with the witness interminably over minutiae that was discussed at a meeting of which he has very little recollection is wasting everybody's time.

BY THE CROWN:

And what he is doing is the very essence of cross-examination.

BY THE COURT:

And he's doing it by way of cross-examination, and you can't do it by way of cross-examination.

BY THE CROWN:

You've told him a hundred (100) times.

BY THE COURT:

You're perfectly right.

BY THE CROWN:

He cannot cross-examine his own witness.

BY THE COURT:

It becomes very frustrating to have to set down these rules again and again, and simply see them applied.

BY THE ACCUSED:

Now, you really do not understand the difference me telling to the jury that this stuff was unjustified, or if this particular witness admits to the jury that this was unjustified, is there a difference? I think a big difference.

BY THE COURT:

Listen, the witness has told you what he has told you. He said he has no... he doesn't have very much of a recollection of what transpired at that meeting, and you're asking him to interpret questions of Collective Agreements and all the rest. I'm sorry, then we're going too far with that.

BY THE ACCUSED:

All right.

BY THE COURT:

You can design your questions for the witness, put your questions to the witness. You started off by putting questions to the witness concerning his relationship with you. You may not like the witness' answer. You may not agree with the witness' answer. You can put the questions to the witness, and leave it to others to appreciate whether they attach much credibility to what the witness is saying or not. But there is no way you can demonstrate with the witness a whole raft of moral questions which you seem to want to demonstrate with them, and that leads us nowhere because everybody else has their own particular interpretation of the moral ramifications of anything.

BY THE ACCUSED:

Well, let us see if I can do it.

BY THE COURT:

I'm telling you this line of questioning, the manner in which you are going at it is absolutely useless, pointless and it's leading us nowhere. It's just wasting time.

BY THE ACCUSED:

That's your opinion. May I continue?

BY THE COURT:

You better change your attack, and you better change your approach, and you better set about to attempt to establish what you said you propose to... because you saying it doesn't make proof of it.

BY THE ACCUSED:

Exactly.

BY THE COURT:

Yes. Well...

BY THE ACCUSED:

But you asked me what I...

BY THE COURT:

At least not from there, not in the form of a question. What you say when you testify is something else, if you do. That's all.

BY THE ACCUSED:

Yeah. But so far I think... I love his answers because I think they demonstrate clearly that he is just faking his memory. That's all.

BY THE COURT:

If you want to make that argument later on, you make it.

BY THE ACCUSED:

Yes.

BY THE COURT:

I don't wish anybody to confuse any decision I make with regard to whether one is hostile, or whether one is not, with whether one should believe... be believed, or whether one should not. These are two different things.

BY THE ACCUSED:

Absolutely. Absolutely. But you are afraid that it will be confusing, and this is why you are not doing it.

BY THE COURT:

Why do you always go to that extent? What have I possibly to be afraid of? I couldn't care less.

BY THE ACCUSED:

Well, that Concordia will be exposed. That's all what you're afraid of.

BY THE COURT:

I see. I see.

BY THE ACCUSED:

Ha, ha, ha.

BY THE COURT:

You see, this is where... when we got on to this, your defense, Mr. Fabrikant, somewhere along the way has to have to it an air of reality, and when it does not have an air of reality, when it becomes simply, when things become simply a figment of your mind, then there are objections. There are objections to pertinence, and then I have to intervene, and then I will intervene.

BY THE ACCUSED:

Are you implying that Concordia is irrelevant here?

BY THE COURT:

I am not going to engage in a discussion with you as to the relevance of Concordia within the context of what you're proposing. No. But what I'm telling is you better change your line of questions to this witness, because it's not going to be permitted to continue.

BY THE ACCUSED:

All right. Okay. May I have it all back then. Thank

you.

Q. Now, do you recall who proposed those motions?

A. No, I don't.

Q. Now, could you explain how our personal relations could be affected by any of my amendments?

A. Can you repeat the question, and speak louder, please?

Q. All right. You signed here the following:

"We perceive Fabrikant's attitude as expressed in his above-mentioned letter to be detrimental to the above-mentioned..."

Everything is above-mentioned.

"... spirit of a harmonious relationship between department members."

Now, hi and bye isn't a sufficiently harmonious relationship?

BY THE CROWN:

This is cross-examination, again, My Lord.

BY THE ACCUSED:

This is not cross-examination. This is a normal question.

BY THE COURT:

It doesn't sound like a normal question to me.

BY THE ACCUSED:

What is wrong in this question? I am asking him, hi and bye relationship which we had with him all my life, was it harmonious or was it not harmonious?

BY THE COURT:

Ask him if he was speaking in a... if he signed that in the context of his personal relations with you, or whether it was signed within the context of their discussion within the faculty generally.

BY THE ACCUSED:

One signs his personal opinion. He cannot sign something else.

BY THE COURT:

It depends what he means, Mr. Fabrikant.

BY THE ACCUSED:

What he signs is just for himself.

BY THE COURT:

It depends what he means. It depends what he means. He may... he may, on one hand, find that while your behaviour or whatever it was didn't personally affect him, he may certainly hold the opinion that it was detrimental to the department as a whole.

BY THE CROWN:

Well, My Lord, he signed it, and that should be the end of it. That's what is examination-in-chief.

BY THE ACCUSED:

Ha, ha, ha. May...

BY THE COURT:

And why he signed it. He signed it, and...

BY THE ACCUSED:

May I note here that what you said, if the witness is just listening, it was effectively advice to the witness...

BY THE COURT:

It's not advice to the witness. You persist in arguing with the jury present. You're the one that asked me not to exclude the jury. You're the one who said that the

interchanges between you and me, you wish to have heard.

BY THE ACCUSED:

Yes. But this...

BY THE COURT:

There you are.

BY THE ACCUSED:

... should not be...

BY THE COURT:

There you are.

BY THE ACCUSED:

... as an advice to a witness.

BY THE COURT:

I'm not giving the witness advice.

BY THE ACCUSED:

Okay. Let me repeat what you just said.

BY THE COURT:

Just ask the witness your next question.

BY THE ACCUSED:

No. Can I repeat it?

BY THE COURT:

No, you can't repeat it. Go ahead and ask...

BY THE ACCUSED:

All right.

BY THE COURT:

... the witness the next question.

BY THE ACCUSED:

Because this was just exactly advice how to avoid the question. All right.

Q. When did you learn that this particular Minutes were used as an exhibit in the recommendation of the Department Personnel Committee not to reappoint me? When did you learn about it?

A. Straight from you.

Q. The Chairman never asked... informed you how this particular document was used?

A. No.

Q. Did you know at least that the Department Personnel Committee made such a decision in November of ninety-one ('91)?

A. No, I do not remember.

Q. Ha, ha, ha. You didn't know that?

A. I do not remember if I knew it, really, if I did know it. Let me correct it, again.

Q. Ha, ha, ha.

A. I do not remember that I was informed about that... about the meeting, that is, not about that document... let's not confuse it.

Q. Okay. Say it again. What you were not informed about?

A. Pardon?

BY THE CROWN:

Well, My Lord, what he is not informed about could fill libraries.

BY THE COURT:

Well, yes, I know. But the witness chose to use these words.

Q. Would you repeat your answer again as clearly as you can?

A. I do not remember that I knew or was informed about a meeting, about your ... which was specific to your appointment, reappointment, whatever. However, I... definite, I remember that I didn't know that this document will be used during that meeting. That I

clearly did not know.

BY THE ACCUSED:

Q. Doesn't it say that we urge the Department and the University to stand up to such practices and take appropriate action?

A. It states that.

Q. Yeah. So when you signed it, what action did you think was necessary?

BY THE CROWN:

This was covered yesterday, My Lord.

BY THE COURT:

Yes, it was. Objection maintained.

BY THE ACCUSED:

He didn't answer then. I did ask this question and he said that he thought the Chairman would have a talk with me. And I asked about the University...

BY THE COURT:

Yes, that's right.

BY THE ACCUSED:

You said the University is also Chairman.

BY THE ACCUSED:

Yes, that's right. It was covered yesterday. So the objection is maintained.

BY THE ACCUSED:

This is not an answer.

Q. So you never intended that this letter be used as a main argument to have me fired. Is that correct?

A. That is not correct.

Q. No. So you intended to use this letter that I be fired?

A. That is not correct, either.

Q. You just didn't care what you are signing. Is that correct?

A. That is not correct either.

BY THE COURT:

And this whole line of questioning is cross-examination, again.

BY THE ACCUSED:

q. So what is correct?

A. I answered the question yesterday already what was my understanding of the purpose of the document.

Q. Okay. Were you ever afraid of me personally?

A. No.

Q. Oh, by the way, the threat about children, did you hear anything about it?

A. About what?

Q. About somebody's children?

A. Whose children? I heard about many children.

Q. Have I threatened somebody else's children?

A. I didn't hear anything of that, no.

Q. Did you discuss my request for a firearm permit in the Department?

A. In what period?

Q. Well, at the time it was made.

A. During the... when the request was pending?

Q. When I requested...

A. Uh, huh.

Q. ... a signature for a gun permit in the department, was it discussed in the department?

A. Not to my knowledge.

Q. Did you know that I made such a request?

A. No, I didn't. I knew about it only well, well after, not

when the request has been made.

Q. Well, well after, you mean long after August twenty-fourth (24th)?

A. After the tragic events of the twenty-fourth (24th)...

Q. Do you think that if you would have, and people like you, would care to pay attention to what was going on in the Department we would not be here today?

BY THE COURT:

The question is disallowed.

BY THE CROWN:

A question to end the testimony, My Lord.

BY THE COURT:

The question is disallowed.

BY THE ACCUSED:

Oh, yes.

BY THE COURT:

Any questions?

BY THE CROWN:

No questions, My Lord.

BY THE COURT:

Thank you, Professor Svoboda.

AND FURTHER DEPONENT SAITH NOT

JOHN BRODERICK

October 21st, 1950, Administrator

J. Broderick Services

DULY SWORN

EXAMINATION BY THE ACCUSED

REPRESENTING HIMSELF:

Q. Did you find additional documents, Mr. Broderick?

A. I did.

Q. Let me take a look at them.

BY THE CROWN:

Firstly, you should ask what are they.

BY THE COURT:

What Mr. Broderick was asked to looked for was a number of handwritten reports from a number of his employees.

BY THE ACCUSED:

May I take a look?

When someone writes normal, in quotation marks...

BY THE CROWN:

Before the accused examines, I would like to have a look, My Lord.

BY THE COURT:

Certainly.

BY THE ACCUSED:

All right.

BY THE COURT:

Okay. We'll... I think what we'll do is we'll adjourn at this point rather than keep everybody sitting here while these things are read. We'll take our break now, ladies and gentlemen.

(THE JUDGE LEAVES THE COURTROOM)

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

SHORT RECESS

(THE JUDGE TAKES THE BENCH)

(MEMBERS OF THE JURY TAKE THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)
(ALL ARE PRESENT)

JOHN BRODERICK
UNDER THE SAME OATH

EXAMINATION BY THE ACCUSED: (CONT)

Q. Could you tell...

BY THE CROWN:

Well, My Lord, Mr. Fabrikant brought the papers with him out. I still would like to have one minute to inspect them.

BY THE COURT:

Certainly.

BY THE ACCUSED:

Q. First of all, it doesn't look like complete. I see here nine (9), April, and there is nothing after that. You did surveillance until April tenth (10th). Correct?

A. That's correct.

Q. Well, where is the rest?

A. That's all we have. That's all I could find.

Q. Wasn't it supposed to be together with this document?

A. It's separate. It's separate.

Q. Reports are on separate files?

A. That's right.

Q. What is it the abbreviation, RAS?

A. Rien ... signaler.

Q. All right.

BY THE CROWN:

Maybe we should translate that.

BY THE ACCUSED:

Well...

BY THE CROWN:

There's no...

BY THE ACCUSED:

Nothing to signal about.

BY THE COURT:

There's no interpreter.

BY THE ACCUSED:

Nothing to signal about.

BY THE CROWN:

It looks like it's not necessary, My Lord.

BY THE COURT:

I don't...

BY THE ACCUSED:

All right. Maybe I didn't understand something here. Did he see me drunk, or... I didn't understand.

Q. Could you read this piece?

BY THE CROWN:

Well, My Lord, this is not the proper witness. But I'm ready to concede that we use that, if it avoids bringing eight or ten other witnesses.

BY THE COURT:

Fine.

BY THE ACCUSED:

Well, it would be nice if you just said and do nothing, if you do not object.

BY THE CROWN:

Well...

BY THE ACCUSED:

Why is it necessary to signal that you do not object.

BY THE CROWN:

No, that's not the point. You have to admit not to bring eight or ten witnesses, if I admit that. That's the point.

BY THE ACCUSED:

Well, what kind of point is that?

BY THE CROWN:

These documents refer to several witnesses.

BY THE ACCUSED:

All right. I will call witnesses.

BY THE CROWN:

The proper way... let me finish. The proper way would be to ask the questions to the persons.

BY THE ACCUSED:

All right. I will ask...

BY THE CROWN:

That's not the proper way, but I'm ready to admit that we work with these documents if it's a way to avoid bringing eight or ten more witnesses. That's my point, My Lord.

BY THE ACCUSED:

It's not eight or ten. It's about four witnesses.

BY THE COURT:

Well, is it a way to avoid then, working with the document this way?

BY THE ACCUSED:

No.

BY THE COURT:

It's not the ideal way, but it's...

BY THE ACCUSED:

No, it's not the way to avoid it.

BY THE COURT:

Then...

BY THE CROWN:

Then, My Lord, we will have to ask the proper questions to the proper witnesses.

BY THE COURT:

To the proper witnesses. All right.

BY THE ACCUSED:

All right. Just to read the handwriting, I cannot...

BY THE COURT:

No.

BY THE ACCUSED:

All right. So let us put it under I.

BY THE COURT:

Fine.

You might count these, please. And I think you were at I-21, or something like that. And they would be en liasse. Surveillance reports, would that be a fair description of these.

BY THE CROWN:

Surveillance reports.

A. It's called security service reports.

BY THE COURT:

That's sounds better.

BY THE GREFFIER:

I-21.

BY THE COURT:

I-21, en liasse.

BY THE ACCUSED:

No matter how you call it. It was what it was.

BY THE CROWN:

I... which number?

BY THE GREFFIER:

21.

BY THE COURT:

Vingt et un (21), twenty-one (21).

BY THE CROWN:

That far?

BY THE ACCUSED:

Q. First of all, as a witness, not as an expert...

BY THE CROWN:

The last I...

BY Me BELLEAU:

I have I-12 as the last one.

BY THE COURT:

You have I-12 as the last one you have.

Just a second. You should have a list of the I's.

BY THE GREFFIER:

Yes, My Lord. It's I-13.

BY THE COURT:

I-13, okay. Thank you. I think I was the one that set everybody off on the wrong number, anyway. I thought we were about 20. And would you just indicate how many of these reports there are, madam, so that we know. Go ahead.

EXHIBIT I-13: 39 security service
reports, en liasse

BY THE ACCUSED:

Q. Now, I'm asking you as a witness, not as an expert... I will be switching from one to another in my questioning. I see here one request made by March thirty-first (31st), another request made by, I believe this piece is also a request. Is it? She just didn't have proper paper. Why is it written on some kind of piece of computer paper, rather than your usual form?

A. We were taking notes.

Q. But this is actually the request form, is it?

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No, it's a draft, a brouillon.

Q. All right. What I am asking you... this is a request form. Right?

A. Yes.

Q. Okay. And this is a request made on March thirty-first (31st). What the numbers here mean, 2145-8? Do they have meaning?

A. It could be the purchase order number.

Q. Okay.

A. It could refer to a number of one of those yellow sheets you have stapled with...

Q. And at the bottom is 20426 ... something. This is your numbering of something?

A. They're references, yes.

Q. If it has any meaning?

A. I'd have to... I'd have to take a look. This is one of our confirmation numbers.

Q. Okay. Now, do you recall why was it necessary to have several requests? One was allegedly made on March twenty-eighth (28th). And my understanding is that the only written trace of this March 28th request is this sheet of paper. Is that correct?

A. On the worksheet, no, also.

Q. Well, there is no... would you like to check, there is no worksheet at all for March twenty-eighth (28th), any explanation for that?

A. Don't you have another sheet?

Q. Okay. Would you like to take the whole file and take a look? That's all I have here.

BY THE CROWN:

This sheet was filed before.

BY THE ACCUSED:

Yes, yes, yes.

BY THE COURT:

There was a sheet filed as I... excuse me, D-25, which was the message taken by the dispatcher. It was the message taken by the dispatcher, D-25.

BY THE ACCUSED:

Okay. So this is what was taken on March twenty-eighth (28th).

A. Correct.

Q. All right. Now, after that, this was only one request for special project #1. Correct?

A. Right.

Q. Okay. Then you had another call on what day for the special project #2?

A. According to the papers I have here, on the thirty-first (31st) of March.

Q. Okay. Do you recall... was it directly with you, or again, with just a dispatcher?

A. I don't recall.

Q. All right. Is there any reason given why there is a need for a special project #2, while I was under twenty-four (24) hour surveillance?

A. Yes. According to the instructions that we had, it is written here:

"Instructions. Surveillance of project #2 and 3 are preventative measures for these two people who are possible

targets."

Q. Okay. Now I'm asking you, as an expert, would you please explain to the jury what might be the necessity for this additional so-called protection when suspect is under twenty-four (24) hour surveillance?

BY THE CROWN:

That was covered yesterday, My Lord.

BY THE COURT:

First of all, it was covered yesterday. Secondly, the question won't be permitted because it is inviting the witness to speculate as to the purpose. And if the client had a purpose, the client knows what the purpose was, and the client is capable of saying what the purpose was. Similarly, if the witness is aware of what the client's purpose was, the witness is capable of saying what the client's purpose was. It will accomplish absolutely nothing for the witness to speculate on what might have been the purpose. So that question is ruled out.

BY THE ACCUSED:

Maybe you ask for my explanation first, before ruling it out.

BY THE COURT:

Because it was discussed yesterday, and the matter was canvassed yesterday, and I gave the same decision yesterday.

BY THE ACCUSED:

Well, yesterday he did answer. Not only he did answer.

BY THE COURT:

He did not answer that question.

BY THE ACCUSED:

He did. Let me recall you that he said that there might be different reasons. And if you recall, again, I said could it be that the reason was that the suspect is so dangerous and the car is far behind, and he drives fast to certain residences, and throw a bomb, and in this case it is necessary to have somebody there who could intercept the suspect. Do you remember that?

BY THE COURT:

You put a question at one point yesterday...

BY THE ACCUSED:

Yes.

BY THE COURT:

... which had factored into it, all of these things. In any event, I'm not going to argue about yesterday. You are not asking the question you just asked for the reasons I just gave.

BY THE ACCUSED:

But this is not...

BY THE COURT:

I'm not... don't argue with me. That last question is ruled out.

BY THE ACCUSED:

A. I am asking you as a expert, not as a witness. I do not ask you to speculate on anything related to Concordia or to me personally. We are discussing totally a hypothetic situation of surveillance. And with respect to this totally hypothetic situation of surveillance, I'm asking you the following question. Could you please state all possible reasons for addition protection for alleged targets when the suspect is under twenty-four (24) hour surveillance. One such example I gave yesterday. Could you give some additional examples?

BY THE CROWN:

That...

BY THE COURT:

Don't answer the question, Mr. Broderick. Sorry, Mr. Lecours.

BY THE CROWN:

That's fine, My Lord.

BY THE COURT:

Okay. I told you the question was ruled out. You seem to think that under the guise of having the witness testify as an expert on the basis of his experience in the investigative field, that you can make that question fly. You cannot. Because that question is so intimately related to what the instructions from the client were, that it will simply serve to mislead and invite speculation. And whether he is wearing his expert's hat, or whether he is wearing his witness' hat, that question is not going to be permitted.

BY THE ACCUSED:

Well, even the same thing in psychiatry. When a psychiatrist is asked a hypothetical question...

BY THE COURT:

Did you hear me? Did you hear what I said. That question will not be permitted. Move on to something else.

BY THE ACCUSED:

I'm not talking about the question. Would you allow me at least to say something...

BY THE COURT:

I have ruled on that question.

BY THE ACCUSED:

I'm not talking now about the question. I have another thing which I would like to bring to your attention. Because, for example...

BY THE COURT:

I don't wish to hear what you have to bring to my attention. I have decided that that question will not be permitted. Now, would you move on to another question.

BY THE ACCUSED:

All right.

Q. As an expert, would you find protection sufficient when someone's residence is at twenty-four (24) hour surveillance, the suspect is at twenty-four (24) hour surveillance, at the same time, when suspect enters a certain building, he is not being followed, and the alleged victim works in the same building and he is unprotected? Now, do you find this kind of security arrangement sufficient for protection of alleged victim? Is my question clear?

A. No.

Q. All right.

A. No.

Q. We have a suspect, and we have a victim target. The suspect is under twenty-four (24) hour surveillance, but the agent is under instruction not to enter a certain building when the suspect is inside. This part is clear?

A. The customer says.

Q. Forget about the customer. You are an expert. There is no Concordia...

A. We had instructions not to go in. Is that what you're telling me?

Q. Yes. But it is not about Concordia. It's not about me. It is an abstract question, hypothetical. So client instructed you, yes, not to enter the building. Inside the building there is alleged target victim who is not protected in any way, and if the suspect enters the building, the agent is not following him. Is the victim in danger?

A. I can't answer you. I can't answer.

Q. Okay. Explain why you cannot answer.

BY THE COURT:

Don't explain why you cannot answer. It's patently obvious that the witness can't answer the question, and it's patently obvious that what you are trying to do is solicit the witness' comments upon the instruction he received from Concordia University, or from Barnab,, or whoever. And that you may not do. If you wish to ask him about what instructions he received, if you wish to ask him about why these instructions were given, if he knows, if it was discussed, that's one thing. But he will testify on facts. But you will not, I repeat, through the guise of having him testify as an expert, attempt to have the witness either criticize, speculate or pass judgment upon the instructions he received.

BY THE ACCUSED:

Q. Is it... I am asking you again as an expert, is it possible for a suspect under the conditions which I described to you, enter the building with a firearm and shoot the alleged target, victim, under the condition of surveillance which I described...

BY THE CROWN:

This is speculation, as well, My Lord.

BY THE COURT:

Pure speculation.

BY THE ACCUSED:

It is not speculation. It is an expert opinion...

BY THE COURT:

It's not expert opinion. It's pure speculation...

BY THE ACCUSED:

... and the Crown should know better.

BY THE COURT:

It's pure speculation.

BY THE ACCUSED:

I have the right to ask this kind of question.

BY THE COURT:

You do not have the right to ask that question. That question is pure speculation.

BY THE ACCUSED:

Not at all. Every expert's testimony is opinion. Every opinion is speculation.

BY THE COURT:

That...

BY THE ACCUSED:

This is what experts are all about.

BY THE COURT:

That may be your opinion. That's not my opinion. So that last question is... the objection is maintained.

BY THE ACCUSED:

All right.

BY THE COURT:

Now, don't try it again. Pass on to something else.

BY THE ACCUSED:

I'm asking...

BY THE COURT:

You're wasting time.

BY THE ACCUSED:

Now, maybe you would like to give me an example. He is an expert. You qualified him as an expert. Right?

BY THE COURT:

I am not giving you any...

BY THE ACCUSED:

Then...

BY THE COURT:

I am not giving you any examples.

BY THE ACCUSED:

... I need to question him... I need to question him as an expert. And you, just do your part. I ask questions. You do not allow it. I accept that.

BY THE COURT:

Please don't waste our time by coming back to the same thing. Go on to something else.

BY THE ACCUSED:

No, it will be a different question. The question will be different.

Q. When a client asks to surveil somebody for not twenty-four (24) hours, but from five p.m. (17:00) till eight a.m. (8:00), is it the main purpose to find some compromising material on a client? Is the question clear?

A. The question is clear. But I don't question my customers when they request a service.

Q. You're mixing the point, sir. With all due respect, I'm not asking you as Mr. Broderick, head of the company and his relationship with clients. I'm asking Mr. Broderick who has certain experience in surveillance, and asking you an absolutely abstract question. That's all. I'm not asking you how you react with your clients, what your relationship with your clients are. It's absolutely irrelevant. I'm asking you an abstract question. Did you understand the question?

A. Uh, huh.

Q. Okay. Could you answer it?

A. Not necessarily.

Q. Okay. But this is one of the purposes. Correct?

A. Depending on the case, it could be.

Q. Yes. Could you give other alternatives, reasons, for a client to request this particular type of surveillance?

A. Somebody's lifestyle. Depending on the lifestyle or...

Q. Elaborate, please, about lifestyle. If someone has a night lifestyle, that's what you mean?

A. Uh, huh. Or a work pattern.

Q. That someone is active during the night and sleeps during the day?

A. In one way, sure.

Q. Yeah. A good example?

A. Uh, huh.

Q. Something else?

A. If the person works during the day, and has to... during the night we don't... we don't know what they're up to?

Q. Well, that was my first suggestion that, to find something compromising or... what you mean, that he is busy during the day, and if he wants to do something wrong, he will be doing... for example, if he has a nine to five job...

A. Not necessarily something wrong.

Q. I understand.

A. It depends on the case.

Q. Yeah.

A. Everything is different.

Q. Okay. So one has a nine to five job where he cannot get away from it, therefore, there is no point to surveil him during that time?

A. And if he's moonlighting for somebody else, and he has a contract with his employer that he cannot work elsewhere, that

would be a good example.

Q. All right. Good. Thank you. Now, when initially a client wants to surveil the suspect only, and then gives an addition at a later date to surveil houses, for example, does this mean that the initial surveillance has brought some very troubling results, or there might be some other reasons? Could you state what might be the reasons for that?

BY THE COURT:

You're back at the same thing. If you want to establish why the instructions were changed, then that is something... I don't know if Mr. Broderick knows why the instructions were changed. If he does, he does. If he doesn't, he doesn't.

BY THE ACCUSED:

Well...

BY THE COURT:

But you're not going to get at why the University modified the instructions, or Barnab, modified the instructions, or whoever gave the instructions, modified them, by asking him to speculate on why they might be modified. That, you're not going to do. We're back at the same thing. We were there.

BY THE ACCUSED:

What is the difference between this particular question and my previous question which was allowed, because the previous question could be forbidden by the same grounds, because Barnab, has changed at one point my twenty-four (24) hour surveillance to surveillance from five (17:00) till eight a.m. (8:00). So you could say the same thing that I want him to speculate on Concordia's reasons. So if you allowed that question...

BY THE COURT:

No. You put the last question as to what...

BY THE ACCUSED:

It was exactly the same thing.

BY THE COURT:

... as to what might be... what might an investigator be looking for in carrying out surveillance, what might an investigator be looking for in carrying out surveillance during the night hours. Marginal, but you got away with it. On this one, what you are trying to do, clearly, is have the witness speculate upon why the instructions were changed.

BY THE ACCUSED:

Well, this is what experts are about. When you invite psychiatrist and you put to him a question...

BY THE COURT:

Well, no, because the best proof of this...

BY THE ACCUSED:

Let me finish, please.

BY THE COURT:

The best proof of this is why the instructions were changed, in fact.

BY THE ACCUSED:

Well, we don't know that.

BY THE COURT:

No, well... if we don't know, we don't know. But we're not going to substitute speculation for what we don't know.

BY THE ACCUSED:

Well, isn't it the same thing in psychiatry? When a psychiatrist wasn't present during a trial, and we ask him to taking into consideration that Fabrikant was blah, blah, blah... taking into consideration that he looked very calm, that he walked very slowly which is not his usual thing,

probably he was insane during the time of the crime. But you cannot ask this question. The question will be asked in an abstract form. That, assume that a person with such-and-such qualities and behaves in such-and-such a way, what is the probability that the person at the time of committing of the crime was insane? And this question was not only permitted, this question is the most essential question...

BY THE COURT:

Has the Crown got any objection to the last question?

BY THE CROWN:

I wonder what we're talking about, My Lord.

BY THE ACCUSED:

What I am saying is, why are we allowing...why it is allowed, in fact, for a psychiatrist who was not on the scene of the crime, who had absolutely no idea what, when, and how it happened, we do allow a psychiatrist to testify as to what the state of mind of the accused was, though he has absolutely not the slightest idea what really happened. And it is all right. We allow him to speculate. Everything is fine. And as soon as it comes to Concordia and their motives, another expert, God forbid, cannot testify. I'm not talking about Concordia. I'm asking abstract questions.

BY THE COURT:

No, you're not.

BY THE ACCUSED:

The questions are legal.

BY THE COURT:

First of all, you're not asking abstract questions.

BY THE ACCUSED:

I am.

BY THE COURT:

Secondly, the example you give is fallacious, because the psychiatrist is asked for his opinion, first of all, on the basis of certain things that were observed. And secondly, as a result of an examination. What you're trying to do is slip into the record some sort of speculation for why instructions were changed, because you're unable to establish why they were changed. Now, the best evidence is simply and solely why they were changed, if that can be established, for whatever the heck it's worth.

BY THE ACCUSED:

Well...

BY THE COURT:

But, you know, and I underline that because, because really the pertinence of all of this is more than highly questionable.

BY THE ACCUSED:

Isn't it the... isn't it the same thing with psychiatrists, because the thing would be...

BY THE COURT:

No. No, it's not. It's not, Mr. Fabrikant.

BY THE ACCUSED:

Let me finish. The best thing would be for a psychiatrist to be exactly at the scene of the crime and immediately examine, maybe before even the crime, to know whether the person was insane. But we have no way of doing that...

BY THE COURT:

The short answer, Mr. Fabrikant...

BY THE ACCUSED:

... and the same thing is here.

BY THE COURT:

... is, no. And the last question is disallowed.

BY THE ACCUSED:

Disallowed. Okay. All right.

Q. Now, assuming that surveillance of a suspect during a certain time produces practically no results whatsoever, the suspect is mainly at home, and almost doesn't go anywhere, what is the point to continue surveillance, if any?

BY THE CROWN:

It's more argumentation than opinion, My Lord.

BY THE COURT:

It is opinion. I'm asking him of possible reasons to continue surveillance under certain circumstances.

BY THE COURT:

It's another of those marginal ones. If the line of questioning is... answer the question, Mr. Broderick. Answer that one.

A. Repeat that question...

Q. If the suspect stays home and doesn't go anywhere, what's the point of maintaining surveillance, or continuing surveillance?

A. Obviously, we're a service company and, again, if our client requests that we keep... that we watch somebody, and if it's for two days, or two weeks, or one day, or... this is my mandate as a service company. I go ahead with it.

BY THE ACCUSED:

Q. Well, you're again mixing yourself up, with all due respect, sir. You are not asked as administrator of a company. You are asked as a specialist in surveillance. So what you are asked is, the client, if he has any reason to continue surveillance, and if yes, what they might be. So you are, in effect, some kind of advisor to a client. This is what you are right now, an expert, not a witness. So what would be the reason still to continue the surveillance?

A. Probability.

Q. Well, probability of what?

A. When you are watching somebody, you're trying to gather information. And if the surveillance is non-conclusive, but there's a probability that we could get information, then we would continue.

Q. Oh, yes. Yes, I agree with you. But if the information is, suppose that he goes to sleep at twenty-two hours twenty-one minutes (22:21), that at seventeen hours (17:00) he would watch preparing supper with his wife, and nothing more than that. Then what might be the reason to continue the surveillance?

A. ...

Q. The question is not clear?

A. The question is clear. But I don't... I don't know how you want me to answer that.

Q. I don't want you to answer in any way. I want you to answer the way you feel as an expert. If you can't find a logical reason to still continue, state it. If you feel that in this situation there is no point to continue, state it this way. I don't invite you to say anything, just I ask for your professional opinion.

A. Then I won't say anything because the question to me is... I can't answer that question.

Q. Well, you can't answer means that you cannot find a good reason to continue?

A. I explained to you, if we're seeking to get information, on the first, or the second, or the third night, we didn't... we didn't succeed in getting it, not on our fault, then we go

back to the customer and say, do you carry on, or do you want to drop it for a week, and we'll start over. Every... every... every file that we have worked at the office is tailor-made to the customer.

Q. Well, I understand. But you are now moving into a different area. All you are trying to say is that whatever the client tells you, you do it. Well, definitely, I understand it. There is no doubt about it. What I am asking you is whether it was a reasonable thing to do?

BY THE COURT:

Listen, he's answered the question. Would you move on to something else. We've exhausted this. We've exhausted this completely. Now, move on to something else.

BY THE ACCUSED:

Yes. Okay. May I get the file.

Q. Now you will be testifying as a witness as to the facts. The first request which was made on March twenty-eighth (28th), did it have the ending of surveillance?

A. I beg your pardon?

Q. The first request which was made on March twenty-eighth (28th), did it stipulate when surveillance was supposed to be ended?

A. Not to my knowledge.

Q. Okay. Now here you have a list of surveillance done, and this ends April first (1st). Do you have an additional list which would be a continuation of this one?

A. This is a working sheet.

Q. Yes. Where is the continuation?

A. The schedules are computer generated by the yellow forms that you have there.

Q. I understand that. But shouldn't this stuff be continued beyond April first (1st)?

A. This was the initial order. The dispatcher does not have access to the computer so they fill in the schedule for the first few days by hand, so that the operators at the office can put it in the computer.

Q. Okay. But after that, what happened? You did not continue this?

A. The schedules are computer generated, and they continue, yes.

Q. But there is no more paperwork at all?

A. Working paper, no.

Q. Okay. This Mark Stass is he still employed by your company?

A. No.

Q. Do you know of his whereabouts?

A. I have no idea.

Q. All right. This is how the list of instructions was given to the agent. These three sheets of paper, instructions, my picture, and the list of addresses. This is what the agent had in his hands.

A. I wouldn't know. I don't recall.

Q. Well, so only Mark Stass could answer this question, or one of the agents?

A. Possibly, yes.

Q. All right.

A. I would think that they were given to the people who are affected here.

Q. What was the instruction given to the people who were surveilling houses? Was there any separate instruction, or it was the same thing? Because they were not supposed to follow me. They were supposed to be at the residence of Kenniff and at the residence of Haines. Did they have any special

instructions there?

A. I'd have to look at the file. But probably just to call Mr. Barnab,. The same instructions that are on that sheet.

Q. Did they have any instructions, for example, if I come with a bomb and start, let us say, banging the door, or blast the door, what they are supposed to do?

A. They would have acted accordingly.

Q. Okay. What is the according action?

A. Call the police, and call Mr. Barnab,.

Q. Well, wouldn't it be too late?

A. Oh, they would be defenseless. I mean, if somebody was to burst in...

Q. What for they have a gun then?

A. They didn't have a gun.

Q. Just yesterday you testified that they did have a gun?

A. The first day.

Q. That is something different. Why did they have a gun the first day and didn't have a gun after that?

A. At the customer's request.

Q. So at the first day the customer requested them to be with a gun. And the second day the customer said, no more guns?

A. Uh, huh.

Q. Do you have any written confirmation of that?

A. Maybe on the yellow sheets. I dont' know.

Q. Well, could you find it anywhere, because what I see here, agent arm,, and if you can find anything which would be stating otherwise, I would love to see that document.

A. The only note that I have here on the working sheet:

"Effective tonight at twenty hundred hours (20:00), the agents will not be armed."

Q. Okay. Then what kind of protection then would that be?

A. A deterrent.

Q. Now, in one of your instructions it says that you should be discreet so that the occupants would not notice you. Do you remember that?

A. ...

Q. Were your people discreet? Were they not noticed by the occupants, or they were noticed by the occupants?

BY THE COURT:

How can the witness possibly speak for the occupants?

BY THE ACCUSED:

No. I'm asking about his knowledge whether he's aware about the circumstances, was his... were his agents noticed by the occupants, or were his agents not noticed by the occupants?

BY THE COURT:

You're asking him if it was reported to him that...

BY THE ACCUSED:

Yes.

BY THE COURT:

Okay.

BY THE ACCUSED:

Yes.

Q. So, to the best of your knowledge, were your noticed by the occupants there, and the police was called to verify them, or they did their job so discreetly that nobody noticed them?

A. You're talking about Project number...

Q. Number any.

A. Any.

Q. Yeah.

A. The discreet part is for Project #2 and 3.

Q. Uh, huh. Okay. And in Project #3, for example, was the police called to check your agent, or not?

A. Not to my knowledge.

Q. Not to your knowledge. And in Project 1, it doesn't have to be discreet?

A. Maybe it was more obvious. I don't know. But these things happen.

Q. So in Project #1 to the best of your knowledge, was the police called to check on your agent what he was doing then?

A. That's right.

Q. He was?

A. He was.

Q. All right. Now, in your bill here, in Project #1, you specified seventeen hundred (1,700) kilometres, while in Project #2 and 3, you don't specify any kilometres. Could you explain this?

A. Project 1 was a mobile surveillance. Project 2 and 3 were stationary.

Q. Okay. What do you mean by mobile surveillance? What is it?

A. You were being followed.

Q. Ah, okay. So you don't charge, let us say, for the car coming from your office to the place of surveillance? These kilometres do not count? The kilometres which we do count is kilometres of surveillance?

Q. Travel. Travel from the office, also.

A. Travel from the office, also?

A. Yes.

Q. Then why there is no kilometres on 2 and 3?

A. There's a different rate. A different...

Q. No, I mean there is no kilometres. The rate is the same, but kilometres are not there.

A. It's our way of billing, you know.

BY THE COURT:
I would suggest that you recall that this is a criminal trial. It's not an action on account.

BY THE ACCUSED:
Yeah, I know.

BY THE COURT:
The last series of questions are a total waste of time.

BY THE ACCUSED:
I know what I am asking.

BY THE COURT:
The last series of questions are a total waste of time.

BY THE ACCUSED:
Just one more question. Maybe there will be no more questions on this subject. All right.

BY THE COURT:
We'll see.

BY THE ACCUSED:
Now, in my case you billed about eighteen hundred (1,800) kilometres while according to your agents, I had practically stayed all the time home. How on earth did you get this seventeen hundred (1,700) kilometres to bill?

BY THE CROWN:
How can he answer that, My Lord?

BY THE COURT:
Well, I don't know if he can answer, of course. If he can answer it, he will. If he can't...

BY THE ACCUSED:
Q. Would you like to take a look at that? Do you remember that?
A I understand. I understand your question. It was the

tabulation of the kilometres that our agents executed.

Q. Executed doing what? If according to, I repeat, a report I stayed home, how could they execute seventeen... about eighteen hundred (1,800) kilometres?

A. Well, you weren't always home. You weren't always home.

Q. Well, what is written there amounts to a maximum of about a hundred (100) kilometres to the best... to the University and back, to the store and back. That's all. If it amounts to a hundred (100), two hundred (200) kilometres, well, where did you get seventeen hundred (1,700) kilometres?

A. That was the tabulation we had from our people.

Q. You don't have any better explanation than that?

BY THE COURT:

That's your answer.

BY THE ACCUSED:

All right. It's a good answer.

Q. Was it two separate calls when you got... one, Project #2 started March thirty-first (31st), and Project #3 started April first (1st).

A. I don't recall.

Q. Did you have two separate calls for that, or it was in one request because I don't see here.

A. I don't recall.

Q. Okay. Do you recall how it came that on this working sheet you have only one address to protect. Then you have a list of addresses to protect. How did it come this change? Do you recall that?

A. Probably at the customer's request.

Q. So at first you said just director, then he decided that any of those addresses? This is how it was?

A. Yeah.

Q. Do you have any notes concerning surveillance of me, which is twenty-four (24) hours until April second (2nd)? Then it goes fifteen (15) hours from April third (3rd) to seventh (7th). Then it jumps again to twenty-four (24) hours on the eighth (8th) and ninth (9th). Could you find any directions to that end in your file?

A. Why the change in hours, or...

Q. Yes.

A. Well, again, the customer gave us the hours of coverage, and that's what we...

Q. Well, maybe you could direct me to the particular paperwork indicating this change of hours.

A. I'm going to have to get it.

Q. There is nothing there? But it was done...

A. Confirming the change in hours?

Q. Yes.

A. No.

Q. But you are sure it was done by the explicit request of the customer?

A. Oh, it wouldn't be done then. I wouldn't do it any other way.

Q. All right. Okay. I would like to file all this stuff here, and this gets translated into English, the instructions to the agent.

BY THE COURT:

Mrs. Trainer, there's one document in there which are the instructions to the agents within the file. I wonder if you could...

BY THE CROWN:

Can I see it first? I think it was already filed, My Lord.

BY THE ACCUSED:

Well, it was filed in the Barnab, file, but it is here again,
so...

BY THE CROWN:

Which file is this one?

BY THE COURT:

He wishes to produce that file which is Mr. Broderick's file.

BY THE ACCUSED:

Yes.

BY THE CROWN:

But I understood yesterday that we filed it.

BY THE ACCUSED:

We filed just one piece of it.

BY THE COURT:

The file... no, no...

BY THE CROWN:

No, no...

BY THE COURT:

... we filed...

BY THE CROWN:

... we filed the whole thing.

BY THE COURT:

The whole thing was file as the second exhibit. First of all,
one page, which was the...

BY THE ACCUSED:

Oh, okay. If it was filed, then it was filed.

BY THE CROWN:

No, I just want to make sure.

BY THE COURT:

It was filed as D-26.

BY THE ACCUSED:

All right. So if it was filed, then everything is fine except
that we need a translation and I would like the instructions
also to be translated.

BY Me BELLEAU:

I think the witness would like to have a copy of his file, My
Lord...

BY THE COURT:

I'm just... does that file itself... because that was what Mr.
Broderick had this morning. Is that right?

A. No.

Q. That's the one from yesterday? Okay.

A. From yesterday.

BY THE CROWN:

It looks like that.

BY THE GREFFIER:

The last exhibit entered D-25.

BY Me BELLEAU:

I'm not sure that all this was filed, My Lord.

BY THE CROWN:

Okay. We discussed the case then.

BY THE COURT:

It was...

A. It was discussed but...

Q. Just a second, I had put...

BY THE ACCUSED:

My recollection is that it was not filed.

BY THE COURT:

I had put D-26 for the Broderick file, which may have been a
number that I wrote in anticipation. I know I have D-25,
message taken by dispatcher.

BY THE ACCUSED:

Maybe we could unite them, can we?

BY THE ACCUSED:

There's been nothing else produced since. There's no reason why not.

BY THE ACCUSED:

Can we unite them and call them both D-25?

BY THE COURT:

Yeah. Because I think D-25 is the last exhibit. Is that right?

BY THE ACCUSED:

Yes.

BY THE GREFFIER:

D-25...

BY THE COURT:

So the file D-25 could be put together in the file of J. Broderick.

EXHIBIT D-25: additional documents added
(file of J. Broderick)

Now, Mr. Broderick you want a copy of your file obviously?

A. Please.

(REMARKS OFF THE RECORD RE EXHIBIT)

BY THE ACCUSED:

May I continue a couple small questions?

BY THE COURT:

Certainly. Certainly.

BY THE ACCUSED:

Q. In nineteen ninety (1990), I have discovered that my car was open, the driver's licence was taken from my glove compartment, and it was done like this, and the driver's licence was on my seat. Nothing was taken from the car. Do you recall receiving any assignment of that kind from Concordia University?

A. No.

Q. In nineteen ninety (1990), fall... in the fall of nineteen innety (1990)?

A. No.

Q. You're sure you don't have any other files of Fabrikant?

A. No.

Q. If someone asks an agency like yours to open somebody's car, do you have specialists to do it?

A. No. I won't do it.

Q. Well, I understand you personally wouldn't do it.

A. Our company neither.

Q. I understand. But are there a company who might do such a thing?

A. I have no idea.

Q. But your company did not receive any request of that nature?

A. Absolutely not.

Q. In ninety-two (;92), summer, I had another car. And a similar thing was done. Even the door was left open to make it clear that someone was in it, not that I forgot to close it. Did you get any request from Concordia University in ninety-two ('92)?

A. No.

Q. In one of the reports, your agent reported he went downstairs and checked my car in the garage. Was this part of his duty?

A. I believe in that report he was trying to establish that you were there or not.

Q. And you feel this is a legal thing to do?

A. No crime was committed.

Q. Well, when the driver's licence is put like this, is put on the seat, I don't think any crime is committed either.

Nothing has disappeared from the car. Not a single solitary thing was taken. Is this a crime?

A. I don't know of the circumstances, and we're not involved in that at all.

Q. Well, your company did not receive any request of that kind?

A. I already answered you, no.

Q. Thank you.

BY THE CROWN:

No questions.

BY THE COURT:

No questions.

AND FURTHER DEPONENT SAITH NOT

BY THE COURT:

I'll adjourn now in order to give you, madam, a chance to make that copy for Mr. Broderick of his file, so that he's not required to wait around here until two-thirty (14:30) this afternoon, or two-fifteen (14:15). And thank you very much. So we'll adjourn until two-fifteen (14:15).

(THE JUDGE LEAVES THE BENCH)

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

LUNCH ADJOURNMENT

AFTER THE LUNCH ADJOURNMENT

(THE JUDGE TAKES THE BENCH)

(MEMBERS OF THE JURY TAKE THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

SHIRLEY MAYNES

March 15th, 1942, Assistant

Vice-Rector, Concordia

DULY SWORN

BY THE ACCUSED:

First of all, we need to file one of the documents which the witness signed, so maybe we could demonstrate this document to the witness.

BY THE COURT:

Well, you better give the Clerk the number of the document.

It must be...

BY THE CROWN:

I think it's in the Barnab, file, a small, very small...

BY THE ACCUSED:

No, no, this is another thing. The Barnab, file is one thing. It is during the testimony of Habib. This is one of the responses. Well, part of it... I believe... yes, yes, it was filed under "I", yes, because since the witness wasn't here, then definitely it was filed under "I". Maybe someone would give me just their pile "I", and I will just give it right away. The problem is that I cannot reiterate once again that... Mr. Martin, you have a list of lawyers who in due time expressed their interest in my case. Why don't you give me this list of lawyers? I will call each and every one of them. I do need a lawyer to assist me in my defense, and you just refuse to give me the list.

BY THE COURT:

I don't refuse to give you a thing, Mr. Fabrikant. I'm telling you that a list that I was given pertained to two

people who I might ask to be Friends of the Court. And you're not going to get any list from me. Now if you aren't going to note down what documents you wish to refer to, that's your problem, not mine.

BY THE ACCUSED:

Well, I need a lawyer. And you know very well, it is very...

BY THE COURT:

Listen, let's not start this argument again. You're the one who elected to defend yourself.

BY THE ACCUSED:

I didn't elect. I'm interested to have a lawyer, and I called Mrs. Sherman...

BY THE COURT:

Listen, I am not going through this discussion with you this afternoon. Have you got the document you're looking for? Put your questions to the witness if you have it.

BY THE ACCUSED:

Okay.

BY Me BELLEAU:

I-10.

BY THE COURT:

I-10. So it wasn't...

BY THE ACCUSED:

It's a mixture of several of them, and one of them... one of them is that of the witness. So I would suggest that we detach it, and file it.

BY Me BELLEAU:

I think it was filed on June seventeenth (17th), My Lord, under I-10.

BY THE COURT:

I'm looking for it.

BY THE ACCUSED:

Well, so what are we going to do now, to detach this particular document?

BY THE COURT:

I-10 was two documents, yes. An "I" document is not filed. It is simply retained under the "I" number. If you wish to file a document, then it will have to be detached, and you'll file it as...

BY Me BELLEAU:

D-26.

BY THE COURT:

P-26, I guess.

BY THE CROWN:

For the purpose of comprehension, can we split I-10 in I-10-A, and I-10-B, or something like that?

BY THE COURT:

Sure. Sure.

BY THE CROWN:

I-10-A would be filed as whatever, and the next is I-10-B.

BY THE COURT:

Well, "I is for identification. Okay. So just put... there we go.

BY THE ACCUSED:

Well, this is no longer I since it is...

BY THE CROWN:

It is changed...

BY THE COURT:

It will become an exhibit in a minute, if you file it.

BY THE CROWN:

So D-26. It becomes D-26.

BY THE COURT:

I-10-A was the identification number for it.

BY THE CROWN:

You keep the identification number, but it becomes D-26.

And the next memorandum is I-10-B. It still remains identification.

EXHIBIT D-26: two memos, (I-10-A, I-10-

B), en liasse

BY THE ACCUSED:

Right now there is, frankly speaking, the third document which I understand the Crown retained for some reason. You don't remember. All right. So I would like the witness to take cognizance of this document.

EXAMINATION BY THE ACCUSED

REPRESENTING HIMSELF:

Q. Do you recall signing this document?

A. I did not sign this document. I believe this is a telephone, a translation of a telephone message that I called into the Rector's office, to the secretary in the Rector's office.

BY THE COURT:

Q. A translation or a transcription?

A. It's just I made a phone call. The secretary in the office has put this down as a telephone message from Shirley Maynes, being myself.

Q. I see.

BY THE ACCUSED:

Q. Okay. So you made a phone call and it was transcribed, and the initial there, it's not yours but rather the person who transcribed your message?

A. Took my message. Right.

Q. The secretary. Okay. At least the text of the message is what you conveyed to her?

A. Absolutely.

Q. Yes. So this is the correct text, what you conveyed to her?

A. Yes.

Q. All right. Since the text is correct, I think we do not have to call the secretary who took the call?

BY THE CROWN:

I would agree with that.

BY THE ACCUSED:

Q. Okay. So, do you recall the circumstances under which you made this call? It was a response to something?

A. Yes. I believe our office received a memo from the Rector's office requesting a write-up of any incidents involved with Dr. Valery Fabrikant, any contact that our office had, or your appearance at our office, or anything, and I'm assuming because there was so little, the only involvement our office had had at this particular point was the problem that we had at the Senate meeting at Loyola. Other than that we had had no contact with you.

Q. All right. Concerning the Senate meeting at Loyola, did you have any meeting or whatever... did I call your office concerning this incident at Loyola?

A. No, you did not.

Q. So why did you consider the incident at the Senate as a kind of encounter with your office?

A. I guess I could explain. Dr. MacKenzie was the Associate Vice-Rector, Services, and I understand that the incident at Loyola involved Dr. MacKenzie as well as our Security Department. The Security Department reports directly to

Associate Vice-Rector, Dr. MacKenzie at this time, and this was the only knowledge, when they asked if there had been any other problems in our office.

Q. Okay. So, effectively the only reason you put it there was because MacKenzie, who called the police, belonged to the office of the Vice-Rector, Services?

A. That's it.

Q. Correct. Okay. But it was not any calls of mine to your office concerning the Senate incident, or any other calls?

A. It clearly says our office had no contact with Dr. Fabrikant.

Q. All right. Now, were you... what was your reaction when you received a memo signed by Miss Habib saying that it is necessary to monitor Fabrikant in this particular way? What was your reaction to that?

A. I don't believe that the memo... this is strictly from memory, said necessary to monitor Fabrikant. I think the memo was a request to senior administrators offices to say had you had any incidents in your office with Dr. Fabrikant?

Q. Okay. What was your reaction to my telephone call to some office, or my appearance at some office, to be called as incident?

A. Well, since you didn't appear in our office, and you didn't phone our office, I can't comment on that.

Q. Well, but still the question is, okay, if I can rephrase...

BY THE CROWN:

It's really... he is really asking for comments instead of facts, My Lord.

BY THE COURT:

Yes. The witness isn't here to give you her impression of the use of the word, incident. Whoever used the word, incident, is the person who was the author of that word, and you can ask them. But the witness isn't here to give you her opinion or her reaction to the use of the word, incident. Objection maintained.

BY THE ACCUSED:

All right.

Q. What was your information at the time of receiving the memo about the Senate meeting? How were you informed about it? What happened there?

BY THE CROWN:

If she was not there, My Lord, I think this line of questioning is not relevant.

BY THE ACCUSED:

Well, I want to ask just about her personal knowledge at that time of receiving this memo.

BY THE COURT:

Well, then ask about her personal knowledge at that time. But not her impression of what she heard about the Senate incident, which couldn't matter at all.

BY THE ACCUSED:

No, that was my question. What was...

BY THE COURT:

It wasn't your question, Mr. Fabrikant. You have a very, very clever way of changing your question every time there's an objection. Put your question the way you want to put it, and we'll see whether there's another objection.

BY THE ACCUSED:

I have already put it.

Q. What was your personal knowledge at the time of receiving the memo from Mrs. Habib about the incident in the Senate.

BY THE COURT:

Q. Your personal knowledge of the incident at the Senate. That's what you know yourself. Not what you heard from anyone else.

A. Including a written security report, I mean, my only knowledge was because we... our office receives all, and they're termed "incident reports" from Security. They come to our office. Part of my job is to read incident reports, to keep abreast of what's happening. And so that was my knowledge of this particular incident. I was not at the Senate.

BY THE ACCUSED:

Q. But did you have any information from anybody else concerning the same incident?

A. What do you mean by information? I mean, I can't...

Q. Well, did you discuss it, let's say, with Dr. MacKenzie? She might have given you additional information. Was there any discussion?

A. I would imagine that Dr. MacKenzie came back to the office... we are a very small office. We are a group of six. It's the type of office where everything has to be pretty well open, because we're so small in number that we're aware, I could not possibly tell you what Dr. MacKenzie said exactly, but she obviously had something to say about the incident. It wasn't, I think, an incident taken lightly. So certainly there was some discussion about the incident.

Q. Well, we weren't asking you exactly what was said. Could you convey the meaning of what was said?

BY THE COURT:

Is there any objection to that, Mr. Lecours?

BY THE CROWN:

Well, My Lord, the reports are already filed, and she said she read the reports. So I don't think we... there's any point to go further.

BY THE COURT:

And this is... this is my reaction.

BY THE ACCUSED:

Well, it is the first time the Judge invites...

BY THE COURT:

That's right.

BY THE ACCUSED:

... the Crown...

BY THE COURT:

Because we're wasting time, Mr. Fabrikant.

BY THE ACCUSED:

... please give me an objection.

BY THE COURT:

Because we're wasting time. We're wasting time.

BY THE ACCUSED:

Well, you have your own power. Why do you do it in such an indirect way...

BY THE COURT:

It may...

BY THE ACCUSED:

... to invite the Crown, please give me an objection.

BY THE COURT:

It may be that I am missing a point. That's all.

BY THE ACCUSED:

You're missing the point, definitely.

BY THE COURT:

Uh, huh. Anyway...

BY THE ACCUSED:

If you want to object, object. But use the Crown for this.

BY THE COURT:

You are not going to go into that with the witness. The witness has told you what she knows about the incident. She's told you that she received the reports. She is not going to relate to you what Dr. MacKenzie might have said.

BY THE ACCUSED:

Okay.

- Q. Do you recall any meeting concerning the firearm permit in nineteen ninety-two (1992), starting June?
- A. I was not party to any meetings concerning the firearm permit.
- Q. Are you aware about such meetings, if such meetings took place?
- A. I understand there was a question of a firearm permit, that you were looking for signatures. Again, this is totally outside of our office. In my position as assistant, I'm obviously aware of.. we have thirty (30) units reporting to us in the Services' sector. My job is to be aware of what's happening in those units, but I'm not necessarily a party to what taking place. If a meeting is being held, I'm not necessarily at that meeting. So obviously I'm aware that there was a professor who was looking for a signature on a firearm permit. My awareness is all I have. That's it.
- Q. Well, that was not my question. I asked you whether you were aware about meetings. That meetings, certain meetings took place, that's all I'm asking.
- A. I was aware that meetings took place.
- Q. Okay. Could you name certain particular meetings and maybe approximate dates?
- A. I could not. Sorry.
- Q. Okay. How many meetings, at least, you were aware of?
- A. Maybe two, perhaps. Because I'm not really aware. The system in the office... the Vice-Rector, Associate Vice-Rector agendas are kept by secretaries. They also write in their own agendas where there's meetings happening. The agenda is a one line item so it may say, a meeting at such a place, and it may name the participants. It doesn't always actually name the subject, because the agendas are pretty well open on a reception desk, so they're very curt lines in the agenda.
- Q. Well, you're answering everything except the answer to my question. All right. Did Dr. MacKenzie at any time quoted to you that she heard from me the following, that in order to get what you want in North America, you have to go in and shoot a lot of people and that's what I intend to do? I mean, I, Fabrikant. Did you heard from Dr. MacKenzie, this phrase at any time?
- A. It's very difficult at this stage, since we're talking a couple years ago, to say whether I actually heard that originally from Dr. MacKenzie, or whether did I hear it because a lot of people had heard it. I can't say it for certain.
- Q. Okay.
- A. Okay.
- Q. But you can say then that a lot of people had knowledge of that? Would that a correct statement?
- A. I'm not sure how many people had knowledge of it.
- Q. Well, all right, let's say five, six. Would that be a correct statement?
- A. It could be.
- Q. Yes. Would it be possible to ask you when you have heard it the first time? It might sound shocking, and you might remember that due to the impact of the statement maybe you could recall when you heard it the first time?

Q. I can't specifically recall when I heard it the first time, but I do recall upon hearing it that it was shocking.

Q. All right. But you cannot recall neither when nor who told you?

A. Not without any absolute... it isn't something that I went and wrote down the date and wrote down the sentence.

Q. Okay. Since you are related to Security, it might be natural to ask you why didn't you?

A. That was not my role. That was Dr. MacKenzie's role. Security reported directly to Dr. MacKenzie. They did not report to me.

Q. Did you hear from again her or anybody else that I alleged either phoned or said to someone that I know where the children are, or how they are dressed?

A. I never heard that sentence.

Q. Okay. That I threatened to kill a Rector?

A. I think as far as that went, I think what I heard was, it was, get the Rector.

Q. Do you remember from who did you hear that?

A. I can only assume more than likely it was Dr. MacKenzie, because she's in our office, and as I said we worked closely together. So...

Q. As far as I have a gun, or I'm going to buy a gun, anything in this sense?

A. I believe that that's another one that I did hear, either have or get a gun.

Q. And again, which one?

A. I'm not sure if it was have, or get. I can't say for certain.

Q. So when you heard that I requested the firearm permit, did you make any steps to convey this information to the police?

A. That was not my role.

Q. Well, I'm not saying that this was something for which you were paid. What I am saying is just as a citizen did you feel that you need to contact the police to convey this information to them?

A. I believe the people who had that information, be it Dr. Catherine MacKenzie or the Director of Security, they had a role and I would assume they would have filled their roles.

Q. But you didn't think that...

BY THE CROWN:
He got his answer, My Lord.

BY THE COURT:
Yes, he did. Objection maintained.

BY THE ACCUSED:
You didn't even hear my question.
Okay. Thank you for coming here.

BY THE CROWN:
Thank you very much.

AND FURTHER DEPONENT SAITH NOT

BY THE ACCUSED:
It's Mr. Cohen.

BY THE COURT:
Pardon?

BY THE ACCUSED:
I think that Mr. Cohen is somewhere there.

BY THE COURT:
Do you propose to produce that, or is it produced?

BY THE ACCUSED:
Yes, yes, it is produced.

Do you have that marked as D-26?

BY THE ACCUSED:

Maybe we could attach the second document to this one, and also call it D-26, because I understand the author of the second document is coming.

BY THE COURT:

As part of D-26, you want the second document? Have you any objection to that?

BY THE CROWN:

We'll see. I don't think I will have any objection, but..

BY THE COURT:

Okay.

MAURICE COHEN

December 29th, 1942, Vice-Rector

Institutional Relations in Finance, Concordia

SOLEMN DECLARATION

EXAMINATION BY THE ACCUSED

REPRESENTING HIMSELF:

Well, first of all, again, let us produce this document to the witness, and it has to be detached from the rest.

BY THE CROWN:

I-10-B.

BY THE ACCUSED:

This here. No, no, don't staple it. Those are two different documents.

BY THE CROWN:

One is from R. Milliquist.

BY THE ACCUSED:

Q. Do you recognize this document?

A. Yes, it's a letter I signed.

Q. Okay. It is your signature there?

A. Yes.

Q. Do you recall the circumstances under which you prepared the document?

A. Yes. There was a memo written to me by Maureen Habib, and reading the answer, and requesting whether our office had any dealing with Professor Fabrikant.

Q. What was your understanding of the ultimate purpose of gathering such information?

A. Well, if I could have a copy of the memo that was written </pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">to me to which this was an answer, it would be a lot easier to recall.

Q. There is no way you can use just your memory?

BY THE CROWN:

Again, those ideas... of the purpose, My Lord, Miss Habib was there, and she was asked the question. So anybody can speculate about the ideas behind the memo, but he did not write the memo.

A. I recognize it.

BY THE ACCUSED:

No, that was not my question.

BY THE CROWN:

He wrote the answer.

BY THE COURT:

He wrote the answer.

BY THE ACCUSED:

I asked him how he understood the purpose of the memo.

BY THE CROWN:

I think we can ask him how he understood the memo. But how he understood the purpose of the memo, I don't think we care much about that.

BY THE ACCUSED:

Well, I see no difference in this.

BY THE COURT:

Well, there is a difference.

BY THE ACCUSED:

Well, one additional word.

A. My recollection is the memo was trying to gather information from many offices in the University as to what dealings they had with Professor Fabrikant. And this is my answer.

Q. Okay.

A. So the purpose was to gather this information and I provided the information.

Q. All right. Have you in your entire life received a similar memo concerning anybody else at the University?

A. I received a lot of memos asking for information.

Q. Yeah. But for information... okay. Maybe we'll need to produce this document to the witness so that he would be more precise in his answer.

BY THE COURT:

Well, refer.. ask the Clerk for the document.

BY THE ACCUSED:

Refer, well, I need a lawyer for that.

BY THE COURT:

Well, if you can't refer the Clerk to the document, we're not going to sit here and get through on this.

BY THE ACCUSED:

Well, I cannot do several jobs.

BY THE COURT:

Well, you're just going to have to.

BY THE ACCUSED:

Well, I'm gonna have to do what I can. I'm getting up at six a.m. (6:00), and I am back at seven-thirty p.m. (19:30) at Parthenais. And I have to prepare something for the next day. Can I suggest, once again, that I am very interested to get a lawyer would assist me in my defense. If you give me the list of lawyers which you have, I would be happy to phone each and every one of them. Because Me Shurman refused to give me that list. She told me that she gave it to you. She doesn't have

a copy. Okay. Ha, ha, ha. He has a good sense of humour. He asked me if I still need a lawyer. I think it was fantastic.

A. Yes.

Q. Okay. Now, so have you in your entire life received any similar request where another name would be typed?

A. No.

Q. No. So this is in a way a unique request which may be called a unique request. Right?

A. In the sense that I have not received a similar request, you say, in my life, in my life as an administrator at the University, interpret... I cannot conclude that it's not, you know, it would be unique. But it was unique in my case.

Q. All right. Now and for the future I'm asking you only your personal knowledge, only your personal knowledge of facts. So if I ask you whether it was unique, it means your personal feelings that it was unique. Now, how did you understand the purpose of this memo?

BY THE CROWN:

He already answered, My Lord.

BY THE ACCUSED:

No, he didn't. He said that he needs this memo to...

BY THE CROWN:

He said it was... the purpose was to gather information.

BY THE ACCUSED:

No. What was the purpose to gather information?

BY THE CROWN:

Ah, that was the basis of my objection. He said it was the same thing.

BY THE COURT:

What is the distinction in your mind?

BY THE ACCUSED:

Well, because information is not being gathered for the purpose of gathering information. Information is being gathered for the purpose of being used somehow. So my question is, what was the ultimate purpose of that?

A. I don't know.

Q. Fantastic.

BY THE CROWN:

And the proper witness to answer was Mrs. Habib.

BY THE COURT:

Absolutely.

BY THE ACCUSED:

Yes. And if you recall I couldn't entertain my examination of her to the end. All right.

BY THE COURT:

That was entirely as a result of your own conduct.

BY THE ACCUSED:

There is nothing in the law which says whatever conduct is, the witness is there, and until I have pertinent questions, I have the right to put them.

BY THE COURT:

I'm not going to argue with you, Mr. Fabrikant.

BY THE ACCUSED:

All right.

Q. Does this memo look to you as a kind of a spying memo?

A. I'm sorry?

Q. Does this memo look to you as a kind of a spying memo, a memo made for...

BY THE CROWN:

This question asks for an opinion, My Lord.

BY THE COURT:

Objection maintained.

BY THE ACCUSED:

All right.

Q. Is there anything objectionable when a person calls or writes to different offices for information?

BY THE COURT:

It seeks an opinion from the witness. That's not aimed at eliciting facts.

BY THE ACCUSED:

All right, I'll put it differently.

BY THE COURT:

That question won't be allowed.

BY THE ACCUSED:

Q. Are you aware of any University regulation which consider it improper or forbidden to call for information, or to write for information?

A. No.

Q. Is there any limit put anywhere in terms of, for example, five inquiries is allowed, but ten is not allowed? Are you aware of any regulations of this kind?

A. No.

Q. When you had written in your response that you are prepared to delegate Mr. Proppe to discuss the matter, did you delegate Mr. Proppe?

A. Yes, I actually sent a copy to him to make sure he understood that.

Q. Okay. Did he, to the best of your knowledge meet with Mrs. Habib on this regard?

A. I don't know.

Q. But you said that I'm sending Mr. Proppe, it means that you kind of made... did I understand correct that you requested Mr. Proppe that he meet with Miss Habib about it?

A. Yes.

Q. So if you requested that, then it is logical to assume that he followed your request, isn't it?

A. I can assume that he followed the request.

Q. Did you get any feedback from him?

A. No.

Q. Did you ask him for that?

A. No.

Q. Why did you feel that it was necessary someone to go to Miss Habib and to discuss it?

A. I believe, if I may look at the request again, the request asks for an indentification of an individual in the office, which is what I did.

Q. Do you always do what you're asked for, or you question (inaudible) behind the request?

A. It depends.

Q. Okay. In this particular case, did you ask yourself whether there is any need for any meeting or discussion?

A. I assumed that the request came because a lot of offices had informed Mrs. Habib that, in fact, they were being... the word used in the memo is "harassed", and I assumed that Miss Habib would use her judgment in meeting with these people to decide whether something had to be done about it or not.

Q. Okay. Was your office harassed?

A. I don't think so. I wouldn't say that one visit and three times by phone is harassment. No.

Q. Then since your office was not harassed, what was the point to send a delegate?

A. The point of sending a delegate is to have some input should other offices have been harassed, and try to provide advice or help.

Q. Well, if your office was not harassed, how this help or input could be...

BY THE CROWN:
Well, he got his answer, My Lord.

BY THE COURT:
Yes.

BY THE CROWN:
This is cross-examination.

BY THE COURT:
He's now cross-examining the witness. The objection is maintained.

BY THE ACCUSED:
All right.

Q. The newspapers reported that you had a meeting of senior administration on August the twentieth (20th) and August twenty-fourth (24th) of nineteen ninety-two (1992). Were you present at those two meetings?

A. I was certainly not present on August twentieth (20th). I was in California. And on August twenty-fourth (24th), I'm certain I was not at a meeting. It was my first day back at work from vacation.

Q. Are you aware of those meetings?

A. No.

Q. Have you been present at any meeting in June concerning my request for a firearm permit?

A. No.

Q. Were you aware of... okay. Have you been present on November first (1st), nineteen ninety-one (1991) at the Senate meeting?

A. I'd say probably. It was my first day back at work after two months of illness. So I was probably at that Senate meeting.

Yes.

Q. Do you recall when several guards appeared in the Senate chamber?

A. No.

Q. You didn't see any guards whatsoever?

A. Not to my recollection.

Q. And you, of course never heard that I was arrested after that meeting?

A. I heard about sometime in August, nineteen ninety-two (1992).

Q. But before that?

A. No.

Q. Did you know anything at all for a request for a firearm permit?

A. Not until the evening of August twenty-fourth (24th), nineteen ninety-two (1992).

Q. This is remarkable. Thank you.

BY THE CROWN:
Thank you.

AND FURTHER DEPONENT SAITH NOT

BY Me FREEDMAN:

My Lord, I called the next witness at the University when Dr. Cohen started. I don't believe she's arrived yet. But she should be here, I would imagine within ten or fifteen (15) minutes.

BY THE COURT:

Okay. So we'll adjourn for fifteen minutes.

(THE JUDGE LEAVES THE BENCH)

(THE JURY LEAVES THE COURTROOM)
SHORT RECESS

(THE JUDGE TAKES THE BENCH)
(MEMBERS OF THE JURY TAKE THE BENCH)
(DISPENSE WITH THE CALLING OF THE JURY)
(ALL ARE PRESENT)

BERENGERE GAUDET
April 5th, 1938, Secretary General
Concordia
SOLEMN DECLARATION

EXAMINATION BY THE ACCUSED
REPRESENTING HIMSELF:

- Q. Would it be correct to state that your office was the most harassed office by me?
- A. I wouldn't say that. I was one of the offices who was harassed.
- Q. But the most harassed?
- A. I don't know. I don't know to what extent the other offices were harassed.
- Q. Okay. You never discussed it with other offices?
- A. Sometimes, yes.
- Q. Okay. Did you compare how you were harassed as compared with others?
- A. No, not really, sometimes we would just exchange information, but that's all. We would not engage in that certain...
- Q. Okay. Would it be correct to state that your office did nothing but respond to my requests?
- A. It's partly correct, yes. In my capacity as being responsible for ACCESS for Concordia University, I did respond to your request, and I did also respond to correspondence from other people in the University, but I mainly responded to your request.
- Q. Well, you didn't answer my question. My question was, would it be correct to state that your office couldn't do any other job except answering my requests?
- A. Yes, that's correct.
- Q. Okay. So when... I wasn't there. Did you fire everybody, or everybody is idle now?

BY THE CROWN:

This is sarcastic, My Lord.

BY THE COURT:

Of course, it is. Listen, don't start. We've had enough. So would you put the questions to the witness with a view to eliciting the facts, and that's all.

BY THE CROWN:

And I think he already started, My Lord. All this line was cross-examination. They are very, very much leading.

BY THE ACCUSED:

This is fact. If she says that all her office did was to answers to my questions, then isn't it logical to ask, I'm not there, what they're doing now.

BY THE CROWN:

It's not relevant, My Lord.

BY THE ACCUSED:

What is wrong with that?

BY THE COURT:

It's not relevant, and the objection was to the manner in

which the question was put. You owe the witness at least a modicum of politeness. Now, as your questions...

BY THE ACCUSED:

I cannot pretend that those are friendly witnesses.

BY THE COURT:

You may think not.

BY THE ACCUSED:

They are not.

BY THE COURT:

You may think. But that doesn't give you the right to be rude to a witness, and that doesn't give you the right to cross-examine a witness, and that doesn't give you the right to demean a witness.

BY THE ACCUSED:

Well, one second. First of all...

BY THE COURT:

No one second. I'm telling you.

BY THE ACCUSED:

The witness was...

BY THE COURT:

I'm not discoursing with you at the moment. I'm telling you.

Now, you put your questions

BY THE ACCUSED:

All right.

BY THE COURT:

... and keep them in a civilized fashion.

BY THE ACCUSED:

Well, I feel that the witness was rude to me, saying what she said.

BY THE COURT:

Put your questions in a civilized fashion. I don't think the witness at all was rude to you.

BY THE ACCUSED:

Well, when she said that her office did nothing but respond to my requests...

BY THE COURT:

Do you... is there anything you don't argue about, Fabrikant?

Put the questions to the witness.

BY THE ACCUSED:

Well...

Q. Okay. Let us then demonstrate the harassment. Why don't you produce all those documents and let's file them.

A. What do you mean by, by all those documents, all your requests for ACCESS, all my files on your requests for ACCESS, is that what you mean?

Q. Well...

BY THE CROWN:

I think this is not relevant, My Lord.

BY THE COURT:

We are certainly not going to burden the court record with a whole series of files of his requests for ACCESS. That is for sure.

BY THE ACCUSED:

Well, first of all, those requests, there are not that many.

And I think it should be demonstrated how many they are.

BY THE COURT:

Your requests for ACCESS are of no pertinence at all to what the jury eventually has to decide. If you wish to have the witness testify as to her relations with you when you called her office, et cetera, that is one thing. But you are not going to throw into the Court record, willy-nilly, a whole

series of University documents that will simply encumber the record and will lead us nowhere.

BY THE ACCUSED:

Well, if...

BY THE COURT:

So if you wish to produce a document, you identify the document and demonstrate to me the pertinence of that document, and we'll see.

BY THE ACCUSED:

The pertinence is not of each particular document I wish to submit. The pertinence of the whole group of documents, because the point I'm trying to make is not that I requested this, or I requested that. The point I am trying to make that the portrait which the administration is trying to portray of me as a person who did nothing but harass everybody else, the only way to prove that this is not true is to produce what really happened. So the documents, as such... I mean the content of a document, I agree with you, is not pertinent. But the number of documents is.

BY THE COURT:

The administration, as far as I know, in this litigation is not a party. The administration, you would say, is there as a phantom. The administration has not played any significant role in the Crown case. You are the one who is setting up these straw men to immediately attempt to shoot them down. The documents are not pertinent. If you wish to deal with the question in terms of question and answer as facts, you go right ahead and deal with them as facts, but you're not going to encumber the Court record with a series of documents. And that is the last word on the subject.

BY THE ACCUSED:

Well, if those documents are not relevant, you put me in a very difficult position because this is part of my defense, and you just deny it to me.

BY THE COURT:

You've just told the documents are not relevant. Now, you put...

BY THE ACCUSED:

No, the number of documents.

BY THE COURT:

Then you put the questions with a view to bringing out what you wish to bring out.

BY THE ACCUSED:

Well, she will tell that there is thousands of documents.

BY THE COURT:

I have no idea what the witness will say.

BY THE ACCUSED:

I need to show that it is not true, then I need to produce them. It is not thousands.

BY THE COURT:

Listen, you have a fixation with documents. Put questions to the witness and have the witness testify to facts.

BY THE ACCUSED:

Okay.

Q. Do you recall when I contacted your office for the first time?

A. Yes, I do. It was at the end of September or early October, nineteen ninety-one (1991).

Q. Okay. What did I request then?

A. You requested to have access to your complete files in four different offices. The way it came to my office was that you first requested... you first wrote to Dean Swamy to have

access to your files, and he wrote back to you saying a person responsible to ACCESS is madam Gaudet, please address your request to her. And you wrote to me, and your first request was dated the third (3rd) of October... I think the third (3rd) of October, nineteen ninety-one (1991). And it took me quite a long time and many efforts to see all the documents that you were entitled to see, because there was many different copies of all these documents in the respective files, so... and I sent you copies of all these documents. There were ninety-six (96) documents to be precise. You wrote back saying you were not satisfied, because what you wanted was not the copies, but just to see your files. That's it.

Q. Okay. This was not yet harassment, or it was already harassment?

A. It was your first request, and there were many others afterwards. I'm not talking about harassment when there's only one. But you can see just by the number of things you were asking for is long.

Q. Okay. Let's go, what was the next request?

A. The next request was in the same month, on the twenty-sixth (26th) of October. And then you were asking to see more files. There were multiple requests included in the same request. You wanted to see your files in four more offices... no, two more offices. There were six of them in total. And then you were requesting access to more documents in addition to those I had shown you.

Q. Could you specify what documents I asked to see?

A. I would have to refer to the file.

Q. Well, then refer to the file.

A. May I?

BY THE COURT:

Certainly.

A. Okay.

"Twenty-six (26) October. Request for access to my complete files held in the following offices, Rector, Vice-Rector, Academic; Dean, Faculty of Engineering; Chairman, Department of Mechanical Engineering; Director, CONCAVE Research Centre; Department of Human Resources. In addition, I would like to have access to the following documents, the Dean's memo of July twenty-four (24), nineteen ninety (1990); the workload of the members of the Department of Mechanical Engineering for the past three years; Minutes, Faculty of Engineering, Council meeting, October eighteen (18), nineteen ninety-one (1991), all the proposals and reports of CONCAVE Research Center, from nineteen eighty-five (1985) to nineteen ninety-one (1991)."

Q. Okay. And do you recall what you responded to me, and what you gave to me? Did you have a copy of that?

A. Uh, huh.

Q. All right.

A. You were given access to the files for the two additional departments, or units, which you hadn't seen the first time. And you were given copies of... no, you were not given a copy of the memo to which we're referring to, because there was no such memo on the date you mentioned.

I have... my response to you is dated, fourteen (14) November, and I explained to you that I have contacted all the persons in the units you were mentioning, and they were supposed to contact you to make appointments for you to see the file. And then I respond to your accusations that there were several deviations from the rules under the Act respecting ACCESS.

Q. Okay. Maybe you first say what those accusations were, then it will make sense how you responded to that.

A. My Lord, is this relevant? Do I have to answer that?

Q. Ha, ha, ha. She wants protection.

BY THE CROWN:

That's a very good question from the witness, My Lord.

BY THE COURT:

It's a very good question from the witness.

BY THE ACCUSED:

I don't think the witness has the right to ask this kind of question.

A. We don't have to go into all the details of all my correspondence with him. There will be no end to it. There are fourteen (14) files.

Q. Let us just start. There will be an end, don't you worry. And I think we don't think we need an additional Crown here. There is a Crown who has, is entitled to protest. There is a Judge who can protest. There is the Friend of Court who sometimes helps to protest, not very often though. But if the witness takes the same role, I think this is too much for one little Fabrikant, isn't it?

BY THE COURT:

Mrs. Gaudet, if... generally speaking, you are able to address, in general terms, the nature of his complaints, I think you eluded to them before, they were to the effect that they were documents which you hadn't included in the ninety-six (96), for example.

A. Uh, huh.

Q. If that was the nature of the complaint, it will simple do to refer to that as being the nature of the complaint. If there is something else, speak generally, but...

A. Okay.

Q. ... the longer you read from letters, the more problems we're likely to get into as far as these details are concerned.

A. Well, after writing to me to request these additional documents, you wrote again on the eleventh (11th) of November, complaining that the deadline was approaching, and you hadn't seen your documents yet. And you also mentioned that you had contacted the Commission, La Commission d'Accès à l'Information, and you were complaining about three or four things that they had mentioned to you. You argued about the handwritten notes which I had withdrawn and you maintained, you argued that they were accessible. Secondly, you said you should be informed about the subject of the (inaudible) opinions in your file. The (inaudible) are confidential and I didn't give them.

"Documents containing nominated information should be shown to be me, but nominated information excluded. Four, I have to be provided with a complete list of the documents in the file called Fabrikant, confidential. Five, there should be given reference to the particular Article of the law for each document to which access was denied."

And that's what I did in my response of the fourteen (14) November, and there are two and a half pages of argument so I won't go into this.

BY THE ACCUSED:

Q. Well, to make it short, could you inform the jury that you were wrong on all of them after the hearing at Commission d'Accŕs ... l'Information, that you were forced to provide all that?

A. I will certainly not so inform the jury because you are mistaken about the documents, about the appeal to the Commission. It isn't there on this particular file, I don't think.

Q. Okay. One of the complaints...

BY THE CROWN:

My Lord, it's the same as the Collective Agreement. I understand there is still a lot of grievances in front of the Board in, at the Accŕs ... l'Information.

BY THE COURT:

It may be. The last question was what caused the problem. The last question was what caused the problem. We had up until that time been dealing with what were the nature of his objections, not what happened to them, nor what forum they were taken to, to be arbitrated upon. So the last question was what caused the difficulty, and the witness said, no, I won't agree with that proposition. And that's where we are now.

BY THE CROWN:

What we know is there is a disagreement and one day someone will...

BY THE COURT:

And we are not certainly getting into what the merits are on one side or the other of what that disagreement is here. It's of no interest to anything.

BY THE ACCUSED:

I'm not going into merits. I just want to inform the jury that there was a hearing. I want to inform the jury of the facts. And the facts are there was a hearing at Commission d'Acc...s d'Information...

BY THE COURT:

The facts are not relevant to this case. That fact is not relevant to this case.

BY THE ACCUSED:

Well, why is it relevant that I... if I requested information, it is relevant. That Commission de l'Accŕs d'Information rendered a decision that I was right, is not relevant. You said, a) that...

BY THE COURT:

It's not relevant at all. I'll tell you why.

BY THE ACCUSED:

... you have to say b).

BY THE COURT:

I'll tell you why. You are claiming that you were victimized by the administration. You are claiming that you were falsely accused of all manner of evil. You are claiming that you were falsely accused of harassing people, and you've brought this witness to demonstrate, I don't know what, but the witness had said so far, yes, we got such a platter of requests from you that eventually it became harassment. Now, how this factors into whether you were harassed or what in your mind you thought was happening, all of that, whichever way it falls may, may have some bearing upon your defense.

What has no bearing upon your defense is what piece of paper you asked for, what answer you were given, why you were given that answer, who was right, and who was wrong. You know, that, that is what has no bearing at all on this hearing.

BY THE ACCUSED:

Well, it depends on the mind. My mind was affected when I was right, and I was wronged by somebody else.

BY THE COURT:

Oh, no, you are... you are simply...

BY THE ACCUSED:

This is, affects my mind most of all.

BY THE COURT:

Not at all.

BY THE ACCUSED:

And this is what I need to present to the jury...

BY THE COURT:

No, you don't. No.

BY THE ACCUSED:

... that I was right, and I was wronged by the University.

BY THE COURT:

Well, that is not what you're going to present to the jury.

That is not what you're going to present to the jury.

BY THE ACCUSED:

This is what I want to present.

BY THE COURT:

What you are going to present to the jury are facts as to what happened. We are not going into who was right, and who was wrong, and whether the commission decided this request that way, or another request another way. That is of no pertinence at all. And if you don't understand that...

BY THE ACCUSED:

It escapes me.

BY THE COURT:

... that's too bad.

BY THE ACCUSED:

It escapes me.

BY THE COURT:

Well, you escape me much, much of the day, Mr. Fabrikant.

BY THE ACCUSED:

If I want to present to the jury that I was wrong, and there is the decision of the Commission that I was right, and if I claim that the thing which most affects my mind is when I'm right, and I'm being wrong, and I think every normal person is usually affected by that...

BY THE COURT:

Mr. Fabrikant, the way to do that...

BY THE ACCUSED:

... and I'm not allowed to present exactly...

BY THE COURT:

The way to do that is present the facts as to, in terms of words, not in terms of realms of documents, in terms of words what you got and what you didn't get, in terms of words, in terms of a general description.

BY THE ACCUSED:

This is exactly what I was doing.

BY THE COURT:

No, it's not what you were doing. What you were trying to do was get into the question of realms of documents and then you brought up the question of the Commission. It may be a fact...

BY THE ACCUSED:

It is a fact.

BY THE COURT:

... it may be a fact that the Commission ruled...

BY THE ACCUSED:

Yes.

BY THE COURT:

... that you were right in certain instances. If that's so, there is I suppose a decision of the Commission.

BY THE ACCUSED:

Yes.

BY THE COURT:

Very simple. You simply have the witness tell you what you didn't get, and then you'll produce the decision of the Commission, if there is such a decision of the Commission saying you're entitled to this and this. Then, I suppose, at some point you will argue that this affected your mind, if indeed this affected your mind. But you are not going to engage the witness in an endless debate over whose position was right in virtue of what provision of the Access to Information Act or anything else. That you're not going to do.

BY THE ACCUSED:

Well, as far as my understanding is, if I try to present here the decision of Commission d'Accès ... l'Information, you will say that the decision of another commission is none of our business. It is not relevant.

BY THE ACCUSED:

It depends. It depends for what reason you wish to produce it, Mr. Fabrikant.

BY THE ACCUSED:

Well, for what reason, for the same reason.

BY THE COURT:

If you wish to say that the Commission said that I was correct in my pretensions, then that's fine. For whatever that is worth, for whatever that might have affected your mind, that would be admissible whether it's admitted by way of an admission, or whether it's admitted by way of a decision from the Commission if there is one. I don't know. But it's only there to illustrate the point you're trying to make, the effect in your mind. That's the only relevance that any of this could possibly have to this case.

BY THE ACCUSED:

Of course. And this is what I'm trying to show.

BY THE COURT:

Well, you have to find a more direct manner of doing it than in the circuitous fashion that you've currently adopted.

That's for sure.

BY THE ACCUSED:

Well, I'm doing... if you didn't interrupt me, by now I would have finished at least...

BY THE COURT:

Hardly, Mr. Fabrikant.

BY THE ACCUSED:

Just try me. You will see how quick I am if I am not interrupted.

BY THE COURT:

Mr. Fabrikant, we have been here for four months now. You have never demonstrated celerity to me. Believe me.

BY THE ACCUSED:

Well, I made...

BY THE COURT:

Quite to the contrary.

BY THE ACCUSED:

Well, in one of the transcripts I computed the number of pages of interruption and the number of pages of my interrogation.

Do you know what percentage it is?

BY THE COURT:

Oh, you'll find authority for that proposition.

BY THE ACCUSED:

Seventy percent (70%) it is of your interruption.

BY THE COURT:

You'll find authority for that proposition. If that's what you wish to go to a Court of Appeal with, go right ahead.

You'll find it all there. There are realms of authorities about judges interrupting. It's not my habit to interrupt. I can tell you that. I've had to do it here because of the nature of this case, and because of the nature of you.

BY THE ACCUSED:

And because of the nature of your relationship with Concordia University, I may add.

BY THE ACCUSED:

Well, you would say that. Yes, I suppose you would say that.

BY THE ACCUSED:

Yeah. All right.

BY THE COURT:

Now, you ask the witness questions.

BY THE ACCUSED:

Q. Well, I'm asking about facts. Would you confirm that exactly those points were discussed at Commission d'Accès à l'Information, and you were proven wrong?

BY THE CROWN:

I still maintain it's not relevant, My Lord...

BY THE ACCUSED:

It is right.

BY THE CROWN:

... who's right, who's wrong.

BY THE ACCUSED:

This is a question of facts.

BY THE COURT:

It may... it may have some bearings on what he... the position he takes.

BY THE CROWN:

And even the Access to Information, what the hell are we doing with that?

BY THE ACCUSED:

Well, if you cannot understand, that's too bad. We will be dealing with many things, not just with access to information.

BY THE COURT:

The only... the only relevance...

BY THE CROWN:

Because up-to-now he's been doing access to information to every organization...

BY THE COURT:

The only relevance it could be was that he would say, I had to go there to obtain the green light to have access to something that they purposely hid from me, and they purposely hid it from because. That's... you know.

BY THE CROWN:

Well, what's the link with the four murders on August the twenty-fourth (24th)? He did that with every public organization he dealt with.

BY THE COURT:

Listen, if your argument is that it's pretty tenuous, that's an argument you'll make in due course. But for the minute we're dealing only with the question of whether it could be marginally... marginally pertinent. And where I feel that it could be even marginally pertinent, I've gone... I've gone head over heels to try to let him make the proof that he wants to make.

BY THE CROWN:

Well...

BY THE COURT:

So your question was, were you... what was it? Were you...

BY THE ACCUSED:

Well, the question was, I asked the witness to confirm that these particular questions which I raised, which she denied to me were ruled by La Commission d'Accès ... l'Information that I was right in demanding what I demanded.

Q. Would you confirm it?

A. In part, that's partly correct. But among the points I had mentioned a while ago, there were only two of these that were argued before the Commission. And you must remember that the purpose of your request for revision of my decision did not bear only on the documents that you were asking in October. There were additional things that were not included there. There were things that you claimed you didn't get from me the first time, and there were also some of the research grants involving Dr. Sankar, and the CONCAVE Research Center. Okay. There was a decision by the Commission. The matter was settled. I don't feel I've been told I was wrong. It was... I gave my interpretation objectively, honestly. That's the way I interpret the law, and the Commissioner looked at the facts and the evidence, and the Commissioner forced me to give you access to some of the documents, provided I remove reference to names of people, because that was not nominative information. That's all.

Q. Well, effectively exactly what I was saying there, that nominative information could be deleted. The rest should be released to me. Correct?

BY THE COURT:

The witness answered the question. You're not here to answer the question. You have your answer. You put your question. You have your answer.

BY THE ACCUSED:

I am asking for a little bit more precision. That's all.

BY THE COURT:

You have sufficient precision to that question. Move on to something else.

BY THE ACCUSED:

Okay.

Q. Since you don't allow me to go into the documents, then...

BY THE COURT:

No, I'm not allowing you to go into the documents. You know very well I'm not allowing to go into the documents.

BY THE ACCUSED:

All right. Then I will try to make it simpler.

Q. Do you recall that I explained to you... no, let's make it different. First of all, are you aware that a all those requests for access to my own files, according to the Collective Agreement, I should be given without even resorting to you?

BY THE COURT:

Now you're arguing... now you're arguing with the witness, and

it makes absolutely no difference whether you should be or not.

BY THE ACCUSED:

Well, let me first then explain the pertinence of the question. May I? The pertinence of the question is the following. When they want to make you a harasser, a person who harassed somebody else, when in effect they harass you, they do the following. You asked for a simple thing, like part of your file to see it.

In the Collective Agreement there is a special Article which says that every member has the right to see his file upon request. Not even written. Just phone and say, I want to see my file. And they have to show it to you. Period. Now, what do they do to make you a harasser? They tell you they have a special person for that. And this is Me Gaudet, and write to her. And unless you put it in writing to her, we are not going to show you anything. So I have no choice but to write to her.

And she, on certain occasions, pretends not to understand the law, not to understand what I request, and she writes to me back. And I write to her again, correcting this, and she writes to me back, and I write to her again. And when you get ten or fifteen (15) letters like this, just clarifying what exactly I want that she pretends that she doesn't understand what I want, after that she can go and say, ha, fifteen (15) letters from Fabrikant in, just on one thing. Isn't he a harasser?

And in, effectively, the whole thing was I wanted to see my file. And instead of telling me, please come over on a certain date, here is your file. Look at it. And everything would be simple. But this way, I would not be a harasser.

BY THE COURT:

It seems to me from the answers I've heard that you wanted to see considerably more than your file in that context and I'm not going to get into a debate with you as to what your files comprise...

BY THE ACCUSED:

One second.

BY THE COURT:

... and the Collective Agreement...

BY THE ACCUSED:

One second. This is what I wanted to...

BY THE COURT:

... in the Collective Agreement, or anything else. I am not losing track of the fact of why we're here. And when it comes down to all of this material, it has absolutely no pertinence.

BY THE ACCUSED:

So you don't allow me. You don't allow me.

BY THE COURT:

I don't allow you to get into that, no.

BY THE ACCUSED:

Fine. All right.

Q. Do you recall our personal meeting somewhere in late November in your office, when you called me to show me a couple of the files? Do you recall that meeting?

A. Yes, I do.

Q. Yes. Do you recall also that we talked on what was going on in the Department of Mechanical Engineering?

A. I recall that you complained against your colleagues.

Q. Well...

A. You spent two hours in my office looking at the files that

were provided by Dr. Osman and Dr. Sankar. And you looked at them page by page, and document by document, during two hours. Yes, I remember.

Q. I am asking you whether you remember the conversation we had. Now, you remember each page I turned. That's fine. But still would you please answer the question.

BY THE COURT:

The witness answered the question. She said, yes, I recall you formulating a number of complaints about your colleagues. The witness answered your question.

BY THE ACCUSED:

No. She started the conversation. She said that she was aware...

BY THE COURT:

But listen...

BY THE ACCUSED:

Okay.

BY THE COURT:

... there's no point you testifying.

BY THE ACCUSED:

Okay. Okay. Okay. Okay. I'll reformulate it.

A. I can't remember the conversation...

Q. Do you recall that you...

BY THE COURT:

Well, just relax and take the questions one by one.

BY THE ACCUSED:

... that you told me that you are aware of what my colleagues did, and you feel very sorry about it.

A. I'm sorry. I never said such a thing. I disagree with what you just said.

Q. Yeah.

A. I can't remember the conversation in detail. That was a year and a half ago. And I certainly don't record conversations, so I have no precise way of remembering. You... from what I do remember, you were complaining that there were documents missing. Some of them I told you... well, if these are letters that you yourself wrote, you must have copies of them. Why do you insist on seeing them again? So that was part of it. And you said the whole thing is that they're hiding something from me, not in these terms possibly. But that's what you said.

And then you accused them of not being cooperative, and you accused me of not doing my duty, because I should have forced them to give me your documents. Essentially I think that was it.

Q. Well...

A. And you asked me to denounce them to the Rector, which I did not do.

Q. Okay. So when... is it or isn't it your duty if certain documents are not provided to...

BY THE CROWN:

Well, I think every witness has been asked about his or her duty. This line is cross-examination.

BY THE COURT:

Yes, it is.

BY THE CROWN:

The facts are the facts. He doesn't agree with the facts all the time, and then he wants to cross-examine, and look into the duty and take at fault the witness all the time. We're wasting our time with that.

BY THE ACCUSED:

What do you think I'm doing? I'm asking...

BY THE CROWN:

As you said, My Lord, none of that stuff was raised in the Crown's case. He brings it and he wants to destroy it afterwards. A total waste of time.

BY THE ACCUSED:

May I answer now? What is wrong to ask the witness about his or her duties? This is an absolutely normal and natural question.

BY THE COURT:

In the manner in which it was asked, it is not a normal and natural question. The manner in which the question was phrased is cross-examination, and the objection is maintained.

BY THE ACCUSED:

Well, I need a lawyer how to ask a question what are you duties, so it would not be that it means to cross-examination. I asked about duties as the Crown correctly noted for about fifteen (15) maybe times. Maybe even twenty (20) times. And all the time it was a normal question, not a cross-examination. Because the first time when I ask a person about his or her duties, it becomes a cross-examination.

BY THE COURT:

Because the manner in which the question was asked follows from the previous answer, you see. A question isn't in this instance simply taken by itself. It's taken within the context in which you put the question which followed on the witness' previous answer.

BY THE ACCUSED:

Yes.

BY THE COURT:

That's what prompted the Crown Prosecutor to object.

BY THE ACCUSED:

Yes. And how, how it should be formulated that a previous question should be somewhat different that this question be allowed... may I ask?

BY THE COURT:

Well, I'm not going to counsel you. I'm not going to counsel.

BY THE ACCUSED:

Well, you have a lawyer, a brilliant lawyer. Why don't you ask his help.

BY THE COURT:

You put your next question.

BY THE ACCUSED:

No, I need this one.

BY THE COURT:

I maintain the objection. I maintain the objection.

BY THE ACCUSED:

Well, this question was correct.

BY THE COURT:

I maintained the objection. Do I need to say it four times?

BY THE ACCUSED:

No.

BY THE COURT:

Fine.

BY THE ACCUSED:

I need to communicate with Mr. Belleau because those questions were asked before normally. Then I believe there is a way of asking it now.

BY THE COURT:

Then for the number of months you've been standing there, you must have surely picked it up. You assured me once you were

fast learner. So...

BY THE ACCUSED:

I was wrong. Or maybe I'm just getting old. I don't know.
But...

BY THE COURT:

Put...

BY THE ACCUSED:

... I'm not intentionally...

BY THE COURT:

Have you a question to put to the witness?

BY THE ACCUSED:

Yes, but I want to finish with this one first, and I want to know how to do it correctly. I need Me Belleau.

BY THE COURT:

Well, I think you're going to have to find another way to put your question.

BY THE ACCUSED:

Well, this is what Me Belleau is here for.

BY THE COURT:

Me Belleau, can you assist him with the question?

BY THE ACCUSED:

Well, maybe you formulate the question for a change. Me Belleau, how about that?

BY Me BELLEAU:

I'll write it down for you.

BY THE COURT:

You're only there to counsel him as to how to put the question, Mr. Belleau, not to put the question.

BY THE ACCUSED:

I don't know how I will get to where I am going to, but it will be even longer than that. So the advice of Mr. Belleau is, would you please explain...

BY THE COURT:

There's no point telling me what the advice of Mr. Belleau is. You asked for the advice of Mr. Belleau.

BY THE ACCUSED:

Yes, yes.

BY THE COURT:

You've got it. Let's not...

BY THE ACCUSED:

Q. Would you please explain...

BY THE COURT:

... let's not announce it from the highest hill.

BY THE ACCUSED:

It's from the dock, with chains on my legs. That would sound better?

Q. Would you please explain to the Court what your duties are?

A. My duties as the person responsible for ACCESS at Concordia, I had the same duties as for any other person responsible for ACCESS. They are outlined in the Act respecting ACCESS. I must acknowledge receipt of the requests, and must process them according to the law. I must study each of them at their merit, to make sure if I... to determine whether I must give access or I may give access.

Some cases are very straightforward and I can send the documents, because it's a simple case and there are no aacceptions or restrictions. Some cases are more complex. And there are cases where, when it contains nominated information that should be protected, I have to deny access, and then I have to rely on specific provisions of the law which I must quote in my answer. And this is what I've been

doing.

Now, I have explained to you several times on the phone and in my letters that this is the extent of my duties. I am there to act as an intermediary between the person requesting and my colleagues at the University who hold these files that I do not physically hold in my office. I have to rely on their cooperation. I have to take their word when they say these are all the files I have in my office. I have no search warrant to go and look into their offices for these files. That's what I explained to you. And I was not obliged to go beyond my duty to look for what you are looking for.

Q. Okay. If a person provides to you proof that certain documents do exist, and on the other hand, according to access to information, they were not provided, then is it your duty to enforce the access to information law?

A. I can't answer that, because I don't accept the premises of your question. You are implying bad faith on the part of people who I have to cooperate with.

Q. Yeah. I'm now talking abstract about your duties. Yes. I'm implying bad faith. So for the sake of argument, in this case, was it your duty...

BY THE CROWN:

It's hypothetical, My Lord. Nobody proved bad faith here.

BY THE ACCUSED:

No. I am asking about duties right now. So it may be hypothetical.

BY THE COURT:

What he's asking you is that if it comes to your attention that you have not been given all of what exists, what do you then do?

A. Well, I have... if there is sufficient proof given to me that there are indeed documents existing which have not been given to me, then I have to go back to my colleagues and ask them for these documents.

BY THE ACCUSED:

Q. Now, didn't I provide you with such proof at that time?

A. I don't know to which...

BY THE CROWN:

My Lord...

A. ... I don't know to which documents you're referring. I can't tell you.

BY THE COURT:

You see, now you're arguing with the... now you're cross-examining the witness. That's what you're doing.

BY THE ACCUSED:

No. I just asked, did I or didn't I provide her with such...

BY THE CROWN:

My Lord, it looks like everybody's trial, but the trial of the accused.

BY THE ACCUSED:

Well, it is not my fault...

BY THE CROWN:

His line is always to try to get some fault in somebody all the time, but himself.

BY THE ACCUSED:

That's too bad.

BY THE CROWN:

That's not what we are here for.

BY THE COURT:

No, I know.

BY THE ACCUSED:

Of course. Of course. We are here...

BY THE CROWN:

It could be the trial of Concordia...

BY THE ACCUSED:

Concordia is only the best. Of course.

BY THE CROWN:

... the trial of the police, the Judge's trial, the Crown's trial.

BY THE ACCUSED:

Too bad.

BY THE CROWN:

All that is not relevant.

BY THE ACCUSED:

Of course. This is too bad. Ha, ha, ha. It is the Judge's trial. It is the Crown's trial. Ha, ha, ha. Well, behave differently. You won't be on trial then.

BY THE COURT:

Now...

BY THE ACCUSED:

It's that simple.

BY THE CROWN:

I'm not talking to the accused, My Lord.

BY THE ACCUSED:

No, I'm not talking to you either.

BY THE COURT:

That was an objection. Reformulate it.

BY THE ACCUSED:

It's that simple.

BY THE COURT:

Yeah. The objection to the last question is maintained.

BY THE CROWN:

Maybe it will be about time to object to the proposed defense, and to rule that the proposed defense is irrelevant. Sooner or later we will have to address that question, My Lord, I think.

BY THE ACCUSED:

So let's not waste time. Let's address it now and stop my defense and...

BY THE COURT:

Mr. Fabrikant, Mr. Fabrikant...

BY THE ACCUSED:

... that's it, it will save everybody's time.

BY THE COURT:

If you have another question to put to the witness...

BY THE ACCUSED:

I do have.

BY THE COURT:

Well, fine. Your last question was ruled out of order.

BY THE ACCUSED:

Okay.

Q. Do you recall I asked for all the bills which the University has concerning hiring of bodyguards, security people? Do you remember that kind of request?

A. Yes, I do. It was your last one. One week before the shootings.

Q. All right. No, it was before that.

A. It was the seventeenth (17th) of August.

Q. It was before that.

BY THE COURT:

Mr. Fabrikant, would you stop arguing with the witness.

BY THE ACCUSED:

All right.

A. I should know, Mr. Fabrikant, I have all your files. You did ask, if my memory serves me correctly, before that there was another request, but which was much more specific. It related to one security guard in particular. And we exchanged correspondence on that one. And it's only in the last one that you asked for something much more general.

Q. All right. Do you recall receiving a letter from Department Personnel Committee on November seventh (7th) that I be suspended as a danger to the University?

A. Possibly, yes. Not that you may be suspended from the University, but I received a letter signed by the four members of the DPC.

Q. What did this letter request?

A. It just stated that you were harassing them, and that you made life difficult for the whole Department, and you were asking, I believe, the administrators to do... they were asking the administrators to do something about it.

Q. They didn't specify what exactly to do?

A. No.

Q. No. Could you please get the letter. She remembers perfectly...

A. I don't.

Q. ... all my requests. And this one, no memory whatsoever.

BY THE CROWN:

Is that a question, My Lord?

BY THE COURT:

No, that's one of Mr. Fabrikant's illegal observations.

BY THE ACCUSED:

No, this is not illegal observation. This is part of my application on the general Common Law to declare a witness adverse. This is what it is. The witness demonstrated tremendous memory in terms of days, what requests. You aren't looking anywhere. Now, I asked her a question of a letter which I believe never been received by this University requesting that somebody be suspended as a danger to the University. And she just does is remember that. Isn't it obvious that the witness is faking her memory, that she has a fantastic memory?

BY THE COURT:

Look, I am not the one that's going to decide whether the witness is being truthful or not, but I'll tell you one thing, the witness is certainly... the jury is going to decide that in due course, not I. But from where I sit, I'm the one that has to decide as to whether the witness is being forthright in attempting to answer your questions. And as far as I'm concerned, I have seen nothing that suggests to me that the witness isn't being as forthright as she could possibly be in trying to cater to your every whim in finding answers to what you're asking her.

BY THE ACCUSED:

Okay.

BY THE COURT:

All of which... all of which, quite frankly, is of very, very, very questionable relevance.

BY THE ACCUSED:

You didn't respond to the main thing. She remembered perfectly beautiful everything without even looking anywhere, dates, requests, everything.

BY THE COURT:

Well, I think you don't understand what a hostile witness is, Mr. Fabrikant.

BY THE ACCUSED:

Of course.

BY THE COURT:

It's as simple as that. You just don't understand it.

BY THE ACCUSED:

You believe that she seriously did not remember this particular letter.

BY THE COURT:

Look, all you're trying to do this afternoon is spin this thing out until we get to four-thirty (16:30) and then stop for the weekend. That's all you're trying to do. You're wasting everybody's time.

BY THE ACCUSED:

Well, I would appreciate you either refraining from these marks, or if you feel that I am wasting time, let's stop it.

BY THE COURT:

I have been stopping you for the last half hour, Mr. Fabrikant, in asking you to go ahead with something else if you have anything else pertinent to ask the witness.

BY THE ACCUSED:

Well, you just release the witness and that's all, because this is what I'm going to ask her. If you feel this is a waste of time, then release the witness.

BY THE COURT:

I will deal with that on a question-by-question basis. Now, have you another question to put to the witness?

BY THE ACCUSED:

Yeah. I want...

BY THE COURT:

I have never released a witness when you have obeyed whatever the rules were that were put in place. Never.

BY THE ACCUSED:

Oh, yes.

Q. Would you please refresh your memory now from the documents.

A. Yes, I have now found the document, and I'm sorry I was mistaken. It's just that there are so many of them. I have more than twenty (20) files of documentation here, and I can't remember the content of every single letter that was addressed to me. And so...

Q. Yeah. Could you please read this document.

A. In it's entirety.

Q. Yes.

BY THE CROWN:

For yourself.

BY THE ACCUSED:

It is so remarkable...

BY THE COURT:

Just read it to yourself, and then...

BY THE ACCUSED:

No, I mean aloud. So the jury could see whether such a kind of document could be not remembered.

BY THE COURT:

Read the document for yourself and then wait for the questions.

BY THE ACCUSED:

Q. Now, is it true that this document demanded that I be suspended as danger to the University?

A. The word dangerous is not mentioned.

Q. Okay.

A. They invoked the threat pattern of your behaviour and recent incidents mentioned in the letter, and they mentioned...

Q. What exactly incidents are mentioned in the letter?

A. The incidents aren't listed.

BY THE CROWN:
Could I see it?

BY THE COURT:
There is no...

BY THE CROWN:
Is this addressed to you?

BY THE COURT:
It's addressed to the witness, but it doesn't emanate from the witness, I don't think. Maybe addressed to the witness.

BY THE ACCUSED:
Well, it was already circulated.

BY THE COURT:
I suppose so.

A. So it says that the DPC has decided to ask the University to invoke Article 29.07 of the Collective Agreement which states that:

"The Rector may suspend a member with or without salary, because the member poses an immediate and continuing threat to the University."

And also it says:

"If due to legal or other limitations, the University is unable to invoke that provision of the Collective Agreement, then they are requesting that Dr. Fabrikant's office be moved immediately outside the offices of the Department, including CONCAVE Center and the Annex."

BY THE ACCUSED:

Q. Now, what were the facts presented to support those...

BY THE COURT:
What does this got to do with this witness?

BY THE ACCUSED:
Because she was there to receive all this letter. This is what it has to do with this witness.

A. I did not deal with the letter, because the facts seemed to me sufficiently serious that I didn't think I was the person to deal with it. I referred it to the Rector and the Rector answered the...

BY THE COURT:

Q. You referred that letter to the Rector?

A. To the Rector.

Q. Fine.

A. And the Rector answered Dr. Osman.

BY THE CROWN:
The person who could testify about the facts are the members of the DPC.

BY THE COURT:
The members of the DPC and the Rector, depending on what he did with it.

BY THE ACCUSED:
Well, she didn't receive all these letters. And I asked a simple question, what was the...

BY THE COURT:
I'm not going to argue with you. We're going no further. The witness has told you that that document was sent to the Rector. So there you are.

BY THE ACCUSED:
So I cannot ask any questions about this document?

BY THE COURT:

No, you may not.

BY THE ACCUSED:

Can I file it at least?

BY THE COURT:

Q. The letter is addressed to you, is it?

A. Yes.

Q. Certainly.

BY THE CROWN:

D-27.

EXHIBIT D-27: photocopy of letter dated
November 7, 1991, addressed to Berengere
Gaudet

Could the witness keep the original, My Lord?

BY THE ACCUSED:

Well, I have no objections if the Crown accepts... Court
accepts it.

BY THE COURT:

Certainly.

BY THE ACCUSED:

May I continue?

BY THE COURT:

Uh, huh.

BY THE ACCUSED:

Q. In your entire life, how many letters of this kind have you
received?

A. Do I have to answer this question?

BY THE COURT:

If you can.

A. It's the only one of that kind that I received since I'm at
Concordia but what does it prove?

BY THE ACCUSED:

This is beyond the point. And again, I draw your attention
that the witness instead of answering, asks you whether she
has to answer it. Isn't it...

BY THE COURT:

You don't need to draw my attention to that fact. It's on the
record. Everything we say is recorded.

BY THE ACCUSED:

I know that. But isn't it an exact demonstration that the
witness wants protection from you, because the question is an
unpleasant one? All right.

Q. So could you explain if it was the only letter ever you
received in your life of that kind, how come you didn't
remember its content?

A. I...

BY THE COURT:

You're cross-examining the witness, you're cross-examining
the witness and the witness gave you her explanation. She
said, look, she said I got such a pile of letters that I'm
sorry I can't remember that. Now, she said that a minute ago.

BY THE ACCUSED:

Yeah. But this particular letter, she never received that
kind of letter.

BY THE COURT:

That question... that question is ruled out of line.

BY THE ACCUSED:

Of course. All right.

Q. Did you receive any other letters from the DPC in which my
name was mentioned?

A. I think I have, but I don't know how many, maybe one or two.

Q. Okay. Could you check in your files and produce them?
BY THE CROWN:
We'll start a fishing expedition, My Lord. The accused should know by now.
BY THE COURT:
The accused should know, yes.
BY THE ACCUSED:
It should have...
BY THE COURT:
If you wish to refer to Me Gaudet to some letter or other, go right ahead. But...
BY THE ACCUSED:
Q. Now, how...
BY THE COURT:
But she is not going to go through... go on a general fishing expedition through her files to put her hands on those letters.
BY THE ACCUSED:
But we are talking about just several documents. What seems to be the problem? How on earth do you expect me to address her to a particular letter if I came across this letter just by chance? This letter...
BY THE COURT:
Because you didn't come across the letter just by chance. You were given, according to the information that I was given, cases upon cases of letters...
BY THE ACCUSED:
Yeah.
BY THE COURT:
... under the Access to Information Act, and you've got them all.
BY THE ACCUSED:
Okay.
BY THE COURT:
That's why.
BY THE ACCUSED:
Good.
Q. Me Gaudet, was this document copied to me in any way?
A. No, I don't think so.
Q. You see? This is the point, that there is a huge number of documents which were hidden from me, and telling me that I am going on a fishing expedition, I think, to say the least is cruel and lawless. Because I'm here standing accused of four first degree murders. Why is it such a great favour to allow me what you call a fishing expedition, because I was not honestly given all the necessary documents. And if there is any document there which can help me in my defense, I believe this is what the Charter of Rights is all about...
BY THE COURT:
It's not what...
BY THE ACCUSED:
... that I should be allowed to have access to these documents.
BY THE COURT:
You hit the nail on the head a moment ago, when you said necessary. It's up to you to phrase your question in such a way that what you are trying to bring out is something that is necessary to your defense.
BY THE ACCUSED:
Yes.
BY THE COURT:

But it is not. What you're not going to do is stand there and have her go through documents that might possibly have some bearing depending on how you look at this particular facet of your defense, or that particular facet of your defense. If you did not get the document under the Access to Information Act, I obviously withdraw what I said.

BY THE ACCUSED:

Well, of course. So let us... let's put it differently.

Q. Do you have any documents from DPC which I do not have a copy?

BY THE CROWN:

This is a fishing expedition, My Lord.

BY THE COURT:

It is, because...

BY THE CROWN:

The expression used by the jurisprudence.

BY THE COURT:

Because the thing you'll have to do is demonstrate that these documents are pertinent to what you're doing here.

BY THE ACCUSED:

Exactly.

BY THE COURT:

Well, your question will have to demonstrate that. Do you have any documents relating to...

BY THE ACCUSED:

Relating to.

BY THE COURT:

Well, not just relating to you, relating to whatever you wish...

BY THE ACCUSED:

Well, I don't think that your witness should pass a judgment on my defense, what is or isn't pertinent to my defense.

BY THE COURT:

I'm not asking... that's not what I'm saying. You have to identify the subject that these letters treat.

BY THE ACCUSED:

I identified the subject, which letters. I said, letters from the DPC concerning me. I think this is more than enough, and I really do not understand why...

BY THE COURT:

Okay. Okay.

BY THE ACCUSED:

For twenty-three (23) minutes...

BY THE COURT:

You're right. On your last question, yes.

A. Okay. I can answer that. Sorry.

Q. Fine.

A. I have copies of letters of... or memos from the DPC, but not addressed to me, and concerning Mr. Fabrikant's employment status with the University. Reports from the DPC to the Dean.

Q. These are not letters that are addressed to you?

A. No.

Q. Fine.

BY THE ACCUSED:

Q. So, what are they? Could you identify what is it that you have?

BY THE COURT:

No. Now, you see... now, you see, you're not going to do that.

A. I gave a general answer.

BY THE COURT:

The letters are not addressed to the witness, so there you are.

BY THE ACCUSED:

Q. Well, but they are copied to you, or what? There is at the bottom, copy, Secretary-General, correct?

A. The subpoena said to bring all documents that I had in my office concerning you or having your name somewhere, and I happen to have two files concerning, Appointment. Another one was called Promotion and Sabbatical, and that's where these letters were.

Q. Maybe we make it much simpler and time-saving, just let me see what it is, maybe I already know these documents, and it will be over in ten seconds. Why do we create a problem out of nothing?

A. You already have copies.

Q. Just show me those.

A. I don't have to show them. You already have copies of all these, because they were sent to you in October, nineteen ninety-one (1991) after your first request. They were part of the ninety-six (96) documents that I sent you at the time.

Q. But just recently I said whether I have a copy of that, and you said, no.

A. Oh, that was the most recent one. That was the seventh (7th) of November, nineteen ninety-one (1991). That was after your request.

Q. Okay. But the rest...

A. You didn't ask for that one.

Q. All right. But do you...

BY THE COURT:

Q. So, am I right that he has had copies of all of this material?

A. Everything that here...

Q. I mean, I'm flying blind here. I'm not looking at this.

BY THE CROWN:

The point, My Lord, is what he did not get is because it was after his request. That's the information.

BY THE ACCUSED:

Otherwise I would have gotten it.

BY THE CROWN:

He implies bad faith all the time. But that's not the case.

BY THE ACCUSED:

Well, on this letter it's written, strictly confidential, or even most strictly... what is the grief in this letter? May I take a look?

BY THE COURT:

Has Mr. Fabrikant seen this letter that you have a copy of?

A. This one?

Q. No, no. The ones you're referring to in the file.

BY THE CROWN:

Obviously he's seen it. He had the date. He had the content. He had the names. If he did not see it, he would be... I don't know... divine? What's the word?

BY THE ACCUSED:

Well, why is it that complicated just to give it to me, take a look, and I say, ah, yes, I have seen it, and that would be the end of it. Why are we complicating things?

BY THE COURT:

Because I understand that you've been provided with these letters.

BY THE ACCUSED:

Well, just let me see it that I have been provided.

A. Not this one.

BY THE COURT:

Not that one.

BY THE ACCUSED:

I will confirm, yes, I was provided.

BY THE COURT:

Fine. The one he wasn't provided with, show him the one he wasn't provided with. Pass it to Mr. Belleau and he'll put it across.

BY THE ACCUSED:

Well, how about the rest of... it's extremely confidential, extremely confidential, this grief. Do you really believe that I would ever be provided...

BY THE COURT:

Listen, would you... you've asked to see it. There you have it. Now, see it and do whatever you wish to do with it.

BY THE ACCUSED:

No, this I already seen. I asked for the remaining what she has, just to show me that, yes, I seen it. Fine. Why are we playing this cache cache game kind of?

BY THE COURT:

Q. Are there other letters from the DPC that he has not got?

A. I will show you the two files that I referred to a moment ago, documents related to appointments, documents related to promotion and sabbatical, which are things that I am sure Mr. Fabrikant has already seen because they were related to his grievances, and obviously he needed all these documents for the Court grievances.

Q. If you are in a position to tell me as Secretary-General, that he has received copies of these letters, then that was the purpose of my question a short time ago?

A. To the best of my knowledge, he already has copies of that, because they are...

Q. To the best of your knowledge, he has copies.

A. They are letters either addressed to him, or from him.

Q. Fine. Okay.

BY THE ACCUSED:

Q. Well, is there any document there which I was not provided either because it was too late for me to file the request, as you mentioned it here, or just for some reason they were not provided to me before?

A. I don't understand your question.

Q. All right. Do you have in your briefcase, in your fourteen (14) files here, any documents which I didn't see before?
Or...

A. Yes, there may be in a file called... in one of my files.

Q. Okay. In the file called what?

A. Miscellaneous correspondence.

Q. All right. So maybe you take a look at this file and identify something which might be relevant to the subject why we are here?

BY THE COURT:

No.

BY THE CROWN:

It's a fishing expedition.

BY THE COURT:

That's a fishing expedition, and that's won't do. You're not... I told you, you're not going to go through an audit of all these files. If you have something in mind, you ask a specific question, and well see.

BY THE ACCUSED:

Well, how on earth could I ask for this letter of November seventh (7th)? It never crossed my mind that those people in the Department demanded November seventh (7th), after

assaulting me and having me arrested, they had the nerve after all this assault and injury to add to this they want me to be declared a threat to the University.

BY THE COURT:

Well, that's an argument you can make, I suppose.

BY THE ACCUSED:

No, no, no, no, no. This is not what I am saying. How on earth if this was not produced in somebody else's file, a witness who came here, and by accident I saw it, how on earth... suppose those witnesses were not here, how on earth I can formulate even such a question? It never crossed my mind that they went that low. It never crossed my mind. And right now I am in the same position. Unless I know what transpired there, I just cannot formulate the question, and I see no grounds whatsoever why Mr. Broderick comes here and he just gives me what he has. When someone comes from Concordia University, it's all taboo. Why Concordia is so preferred...

BY THE COURT:

It's not... it's not a question of it's all taboo. It's not a question of it's all taboo. It's a question...

BY THE ACCUSED:

So what seems to be the problem?

BY THE COURT:

It's the question of the sheer weight of the documentation and the fact that you seem to wish to go through every one of these things, page by page by page by page, while everybody sits here.

BY THE ACCUSED:

Yes. And what's wrong with that?

BY THE COURT:

You're not going to be permitted to do that?

BY THE ACCUSED:

Why?

BY THE COURT:

Beause we are here dealing with four murders, as you so aptly point out.

BY THE ACCUSED:

Yes.

BY THE COURT:

And this information is so marginally pertinent.

BY THE ACCUSED:

So why are you so concerned? Let me see it. If it not pertinent, you would not allow it to be filed. That's it. It's simple. We have, for example, a long weekend, okay, why cannot I get this file for the weekend? I'll take a look. I come back and I say, well, fine, there is nothing there, and the matter is closed, and everyone's time is saved.

BY THE COURT:

Mr. Fabrikant... Mr. Fabrikant, you may put whatever question you like, and if your question... if your question is keyed to bringing out a document that you haven't seen, and you demonstrate that that document is pertinent, fine. But you're not going on a general audit of the Secretary-General's files over the weekend, so don't even ask.

BY THE ACCUSED:

Well, those are files which are pertinent to me, and those are files to which I have the right to access, according to the Access to Information Act.

BY THE COURT:

That is a very arguable proposition.

BY THE ACCUSED:

Well...

BY THE COURT:

Either way.

BY THE ACCUSED:

Yes.

BY THE COURT:

And you may... there may be things there that I don't know whether you have a right to or not.

BY THE ACCUSED:

Ha, ha, ha. Okay. Let me...

BY THE COURT:

Anyway, you are not going to go through the files.

BY THE ACCUSED:

... let me... okay.

BY THE COURT:

You're not going through the files...

BY THE ACCUSED:

Let me ask this particular question.

BY THE COURT:

It's as clear as that.

BY THE ACCUSED:

Q. Is there anything in your box here, any single document to which I would not have a right of access according the Access to Information Act?

A. I cannot answer that question, My Lord, because it's worded in a too general way. It's like a hypothetical... I can only answer in regard to the Act with respect to the particular document that is being requested from me, not (inaudible).

BY THE COURT:

Fine.

BY THE ACCUSED:

Well, I'm asking if you take all the documents which are there, is there one single document to which I have no right of access according to the Access to Information Act? Can it be more specific than that?

BY THE COURT:

Listen if you have a question to ask about a document, ask it. Otherwise...

BY THE ACCUSED:

I asked.

BY THE COURT:

Well, you're not auditing the documents en bloc. Okay?

BY THE ACCUSED:

Ha, ha, ha.

BY THE COURT:

You can laugh all you like, you can giggle all you like...

BY THE ACCUSED:

It is funny. It is funny, because as soon as Concordia...

BY THE COURT:

You are not auditing these documents en bloc.

BY THE ACCUSED:

Everybody else's I can examine. Concordia, no way.

BY THE COURT:

You have... you have, by and large, had to demonstrate the pertinence of the documents that you've had access to.

BY THE ACCUSED:

I cannot demonstrate before I see it, and you understand it very well.

BY THE COURT:

Well, then you are not going through the documents en bloc. And if I am wrong there, then I am wrong.

BY THE ACCUSED:

Well, you understand very well that you are wrong. If I have, according to Access to Information Act, the right to see those documents, then taking into consideration that I need to defend myself against four first degree murders, I think I'm entitled...

BY THE CROWN:

I think, My Lord, we're losing track of the proper use of documents. The proper use of documents is when there is a specific question, the witness...

BY THE COURT:

Absolutely.

BY THE CROWN:

... is entitled to refresh her memory. Period.

BY THE COURT:

I have, you know... again and again, that point has been made. We'll adjourn until next Monday morning, but you are not having these documents, and don't expect next week to make an audit of these documents, because that's not going to happen. So I wish you all a pleasant two days... or four days, I should say, and I'll see you all on Monday morning.

AND FURTHER DEPONENT SAITH NOT
(MEMBERS OF THE JURY LEAVE THE COURTROOM)

OUT OF THE PRESENCE OF THE JURY

BY THE CROWN:

I was just wondering, My Lord, we had a hard week, and a hard month, and everybody looks... especially the jury looks very dedicated, very responsible, but did you consider the question of giving the participants, including the jury, and the Crown, and the staff some vacation, a week during the summer, or some Fridays, or some Friday afternoon, or things like that?

BY THE COURT:

Well, I... you raised the question of the Fridays a little earlier and the jury, I gather, voted.

BY THE CROWN:

I was very impressed by this.

BY THE COURT:

I gather voted, and the jury elected to press on. And I have rightly or wrongly, and I can put the question next week, if you like... rightly or wrongly, interpreted the jury's position as being, let us get ahead with this.

BY THE CROWN:

What I perceived was... they wanted...

BY THE COURT:

And that was the manner in which I see...

BY THE CROWN:

... at that time, I think they wanted to save their summer, and they said, let's go five days a week, but by now, unless there is, God knows, an abrupt ending of this case...

BY THE COURT:

Well, you never know.

BY THE CROWN:

... and it looks like we're going to go into fall because Mr. Freedman already has a long list of very important witnesses, and each day the accused discovers potential witnesses that for sure he said he will subpoena. So I'm here to work. We are all here to work, but sometimes we're less efficient when we're very tired... I'm just wondering whether you considered

that.

BY THE COURT:

I thought about it... I thought about it, Mr. Lecours, and quite frankly I didn't think that there was a practicable or workable solution along these lines. I was of the view that surely I would accede to the request that I got, and stop, not only for tomorrow, but for Friday, and the same thing next week. But I was of a view, and am of a view that this thing should be pushed on.

BY THE CROWN:

Okay. Then I think you're right. But I just wanted to raise the point.

BY THE COURT:

And I don't... I realize it's difficult, but I don't think that I can say to myself, Martin, you're entitled to go off for a week while we're in the middle of this, and I'm afraid nobody else probably can either.

BY THE CROWN:

I understand quite perfectly your view.

BY THE COURT:

I'm aware, you know, I'm aware of the difficulty that it poses for all sorts of people. And I appreciate very, very much the work that's being done by a number of people to try to make this go as smoothly as possible as far as the witnesses are concerned and inconvenience them as least as it is necessary to do so. But it's beyond my control. I mean, the control is elsewhere, as far as the time it takes with the witnesses, and the manner of the questioning. You saw an example this afternoon, which perhaps qualifies as one of the most irksome afternoons I have spent in ten years here.

BY THE ACCUSED:

May I say something?

BY THE COURT:

Oh, you never miss a chance, do you? You never miss a chance.

BY THE ACCUSED:

Such a great opportunity to say that the Crown is not really tired. It is I who is doing all the job for the last, at least, well, several weeks. So the Crown complaining that... if the Crown is tired just sitting there and doing nothing, isn't it a little bit too much?

BY THE COURT:

You know, I fail to see how you manage to find this whole thing and the situation in which you're in funny.

BY THE ACCUSED:

Because you made it a circus. It's not I. This is why it is funny.

(THE JUDGE LEAVES THE BENCH)

ADJOURNMENT

I, the undersigned, MICHEL DAIG</pre></body></html>

PROVINCE OF QUEBEC

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 LECOIRS
ATTORNEY FOR THE CROWN

MR. VALERY FABRIKANT
REPRESENTING HIMSELF

MAITRE LOUIS BELLEAU
AMICUS CURIAE

DATE OF THE HEARING: JUNE 28th 1993

OFFICIAL COURT REPORTER: MS. MAUREEN ROWE

CLERK OF THE COURT: MS. ROXANNE DESROSIERS

FICHER NO.: 3032

TRIAL

CASE NO. 01-017372-928

I N D E X

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PROOF OF THE DEFENCE (Cont'd)

BERANGERE GAUDET

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Direct examination 154

TRIAL TO CONTINUE ON JUNE 29th 1993

THE COURT TAKES THE BENCH

THE MEMBERS OF THE JURY ARE PRESENT

BY MR. VALERY FABRIKANT -
REPRESENTING HIMSELF:

There is a representative from the Ministry of Trans-
port from Ottawa. Maybe we interrupt testimony?

BY THE HONORABLE JUDGE FRASER MARTIN, J.S.C.:

No, we continue with this testimony.

BY THE ACCUSED:

Well I will ... I try to convenience (sic) the witness
from out of town.

PROOF OF THE DEFENCE (Cont'd)

BERANGERE GAUDET
Secretary General - Concordia University
April 5th 1939

SWORN

DIRECT EXAMINATION BY
MR. VALERY FABRIKANT
REPRESENTATING HIMSELF:

QNow my request for information dated May 1st, you res-
ponded on the 22nd of May saying that certain grants
cannot be found. Do you recall that?

AYes.

QAnd the name of the grant was Cado (sic) Snowmobile
Suspension, right?

AHum, hum, that's correct.

QNow would you be surprised to know that it is well and
alive at Concordia University? Would you like to take
cognizance of that document?

BY MAITRE JEAN LECOURES

ATTORNEY FOR THE CROWN:

What is this line of questioning, My Lord?

AIf you ... if you already saw that document, why were you asking, requesting access to it?

BY THE ACCUSED:

QNo, I didn't see. I received it later on and it proves that you deceived me.

BY THE COURT:

Excuse me, did you have an objection?

BY THE CROWN:

Well this, what is the point? It is the ... we're side-tracking again.

BY THE COURT:

There is absolutely ... there is absolutely no point to this line of questioning. Change your line of questioning.

BY THE ACCUSED:

Well ...

BY THE COURT:

I'm finished.

BY THE ACCUSED:

... maybe you ask me for point. (sic)

BY THE COURT:

Change your line of questioning. It is obvious there is no point to this line of questioning.

BY THE ACCUSED:

Well I would appreciate you hear my explanation first.

BY THE COURT:

Change your line of questioning.

BY THE ACCUSED:

QDid you refuse this information to me because it was obvious that from three hundred and eighty-two thousand dollars (382,000 \$), two hundred and seventy-three thousand (273,000 \$) were paid ...

BY THE CROWN:

This is leading and cross-examination, My Lord.

BY THE ACCUSED:

... outside of the university?

BY THE COURT:

This is, as you say, leading. This is cross-examination.

BY THE CROWN:

And moreover irrelevant.

BY THE COURT:

And this is a continuation on the line of questioning that I ... I just stated was irrelevant.

BY THE ACCUSED:

You didn't ask me why it is relevant.

BY THE COURT:

It is totally irrelevant, patently on its face.

BY THE COURT:

Just ask me what the reason is.

BY THE COURT:

I have no need to ask you what the reason is. It is patently irrelevant on its face.

BY THE ACCUSED:

You couldn't possibly know that unless you know all details of my defence.

BY THE COURT:

Fine, OK, let's talk about your defence. I wonder, ladies

and gentlemen if you'd withdraw.

BY THE ACCUSED:

No, no, no, in presence of jury.

BY THE COURT:

I wonder if you'd withdraw for ...

BY THE ACCUSED:

I'm not going to talk about my defence without presence of jury.

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

BY THE COURT:

Sit down, Mrs. Gaudet. OK, the time has come. You will please outline for me what defence you are raising in this case, what defences you are raising in this case in a complete and succinct manner in order that I might appreciate what you are attempting to do with the testimony of the various witnesses who you propose to adduce.

You will do that outside the presence of the jury because it gives not only me an opportunity to put questions to you which perhaps ought not to be put in the presence of the jury but it allows you a certain latitude to speak in the absence of the jury and it ... it afford the crown prosecutor the same latitude.

Now what ... what are the defences that you are raising in this case? Let us have that one by one.

BY THE ACCUSED:

Well I told you and I can only repeat once again. I'm not going to discuss my defence in absence of jury, period. I'm not obliged to do so.

BY THE COURT:

I'm sorry, at this stage in the proceedings, you are obliged to do so.

BY THE ACCUSED:

I'm not obliged to do so.

BY THE COURT:

At this stage in the proceedings ...

BY THE ACCUSED:

What is ... what is so remarkable about today, that I'm obliged to do it today and was not obliged to do it yesterday?

BY THE COURT:

What is ... there's nothing so remarkable about today. It is simply that with the passage of time, as we've gone along, it has become patently obvious that all of the evidence that you are adducing could only be marginally relevant to a defence, but standing by itself certainly wouldn't aid a defence very much.

After over a month, I think I have the duty to say: where are you going? I'm perfectly prepared to listen to where you're going but if you're not prepared to tell me where you're going, then I can only view this sort of questioning as completely irrelevant to the defence you're putting forward.

I'm not obliged to sit here and wait until you decide to put it all into focus. You are obliged to tell me because this thing goes on and on at the expense which it incurs to everybody, everybody involved.

BY THE ACCUSED:

Well as far as expense is concerned, you can save at least thousands dollars a day ...

BY THE COURT:

I understand what you're going to say.

BY THE ACCUSED:

... on Mr. Belleau. A thousand dollar per day saved. How about that?

BY THE COURT:

You are making fun of the whole process.

BY THE ACCUSED:

Well I'm not ...

BY THE COURT:

Now you go into that ... you go into your cell and you think for fifteen minutes because if you ...

BY THE ACCUSED:

There's nothing to think.

BY THE COURT:

Fine, then you are going to find that you are fore-closed. That's what you're going to find.

BY THE ACCUSED:

That's up to you.

BY THE COURT:

If you ... if you're not prepared to tell me where you are going, I have nothing I can do but to rule on the objections as they come along and ... and that's that.

BY THE ACCUSED:

Unless you show me jurisprudence which says that after a month, defence is obliged to say anything to the judge, I'm not going to tell you but if you provide to me jurisprudence saying that, I will explain to you everything.

BY THE COURT:

I'm not providing to you any jurisprudence saying that where do you ...

BY THE ACCUSED:

Well there is Mr. Belleau here. Ask him.

BY THE COURT:

Where do you propose to go with this witness? What are you proposing to do with this witness?

BY THE ACCUSED:

I'm responding to you once again: first of all, relevance of evidence should be discussed in presence of jury.

BY THE COURT:

No.

BY THE ACCUSED:

We don't agree with that.

BY THE COURT:

Now would you tell me now ...

BY THE ACCUSED:

McWilliams is on my side.

BY THE COURT:

Will you tell me now what you ... what you propose to accomplish by the questions you are putting?

BY THE ACCUSED:

In absence of jury, I will not discuss with you now or in the future any question of relevance of evidence.

BY THE COURT:

Has the crown any submissions to make at this point?

BY THE CROWN:

Well My Lord, I totally agree with you. I think we're wasting our time for one month. You have the right, the

absolute power in this court if you force the accused to disclose his defence, he's obliged to answer you. You have total discretion and it's the standard way as well to ... to explain or to discuss relevance without the jury in order to avoid that they ... they're exposed to something which they're not supposed to ...

BY THE COURT:

Of course.

BY THE CROWN:

That's very standard.

BY THE COURT:

It's absolutely standard. It's been done for years.

BY THE CROWN:

Twenty (20) years.

BY THE COURT:

And in fact, courts have been criticized for not doing it.

BY THE CROWN:

That's correct, My Lord so ...

BY THE COURT:

Roundly criticized for not doing it.

BY THE CROWN:

I totally agree.

BY THE ACCUSED:

May I make a little submission?

BY THE COURT:

Yes.

BY THE ACCUSED:

OK, as far as what courts are doing all the time, my experience is that whoever inmate I talk to, what the courts are doing all the time is abusing mandatory part of criminal code. Not a single person at Parthenais was addressed by court, neither with respect to article 536, nor 541. All of them or almost all of them, article 549 was invoked by their lawyers without their consent. So this stuff is all mandatory parts of the criminal code and every single judge abuses it. Not a single person was addressed as to what kind of trial he prefers.

BY THE COURT:

That has nothing to do with what we're talking about today.

BY THE ACCUSED:

Well let me ... let me show you if you see nothing to do. (sic).

Crown has advanced argument that ... that courts were doing it for centuries. What I'm telling, courts are doing for centuries is abuse of criminal code. (sic) This is what they're doing. I seems (sic) to be the only person in my wing who was addressed by the judge, according to criminal code. I'm the only person ...

BY THE COURT:

You've told me that before, we've been through this before.

BY THE ACCUSED:

OK, so ...

BY THE COURT:

And it's of absolutely no pertinence to what we're doing here.

BY THE ACCUSED:

So the conclusion is the fact that courts are doing some-

thing doesn't necessarily mean that courts are doing legal things.

BY THE COURT:

Well that ... that may be your conclusion.

BY THE ACCUSED:

This is ... this is the point I'm trying to make.

BY THE COURT:

That may be your conclusion. Now I'm asking you again: where are you proposing to go with these questions?

BY THE ACCUSED:

Well I'm... I'm just presenting to you the facts. Facts.

BY THE COURT:

Well I'm not interested in your facts. I'm interested in knowing ...

BY THE ACCUSED:

Now as far ...

BY THE COURT:

... where you are proposing to go?

BY THE ACCUSED:

As far as your question is concerned, I'm much more respectful to the authorities and to jurisprudence than you are. When I show you jurisprudence, you just ignore it. I'm much more respectful. If you order Mr. Belleau to provide me with jurisprudence which says that after one third of time allocated for defence, judge demands ...

BY THE COURT:

There is no time allocated for the defence.

BY THE ACCUSED:

Well this is what I allocated for defence.

BY THE COURT:

You don't allocate for defence.

BY THE ACCUSED:

It's up to you.

BY THE COURT:

You're not in the allocating business.

BY THE ACCUSED:

Well I'm in the business of conducting my defence. I know its volume and I know how long approximately it will take.

BY THE COURT:

Yes, you ...

BY THE ACCUSED:

So my estimation is that I'm in one third.

BY THE COURT:

You ... you may estimate what you wish but I'm the one that has to decide whether the defence you're presenting is relevant.

Now I can't see the relevance of the questions you're putting to this witness and I'm perfectly within my rights to try to determine outside the presence of the jury where you're going.

BY THE ACCUSED:

Do you remember, I asked questions concerning kilometers I charged to Concordia University and you ruled them totally irrelevant, totally inadmissible. You remember that?

BY THE COURT:

Yes, I remember that.

BY THE ACCUSED:

Well when I will be arguing, watch me how I will be using exactly this information.

BY THE COURT:

Well listen, you ... you have ...

BY THE ACCUSED:

And you decided it is irrelevant, because it is kilometers.

BY THE COURT:

You have your way of seeing things but I'm afraid, I'm afraid I don't see them in the same focus as you.

BY THE ACCUSED:

Well you didn't see the same things in the same focus ...

BY THE COURT:

And I'm ... I'm not obliged to take you on trust. I'm really not.

BY THE ACCUSED:

Well then read Ciboyer (sic) once again.

BY THE COURT:

No, I don't need to read Ciboyer once again. I'm perfectly aware of what Ciboyer says and I'm perfectly aware of what Ciboyer was addressing and it wasn't addressing what you think it was addressing.

BY THE ACCUSED:

Well it was addressing very simple thing: that if there is no evidence, that the evidence is irrelevant, it should be allowed, period.

BY THE COURT:

There is no indication that the evidence you're trying to make with this witness has any relevance at all.

BY THE COURT:

Bring up the jury and I will explain.

BY THE COURT:

No. Now this is where we're going to have to come to ...

BY THE ACCUSED:

Let me ... let me ...

BY THE COURT:

This is where we're going to have to come to grips with the problem.

BY THE ACCUSED:

Well ...

BY THE COURT:

I'm aware of what you're reading.

BY THE ACCUSED:

So why do you abuse authority which says that relevance of each evidence should be discussed in presence of the jury unless defence, defence, underline that, defence demands that jury be excluded.

BY THE COURT:

That is ...

BY THE ACCUSED:

And if defence does not demand, jury should hear that.

BY THE COURT:

That is the opinion of Prof. McWilliams.

BY THE ACCUSED:

Yes.

BY THE COURT:

Expressed on the strength of a number of cases which go back into the last century.

BY THE ACCUSED:

Well ...

BY THE COURT:

However, a number of appeal courts from that time on have taken the view that when questions of law are discussed, they ought to be discussed outside the presence of the jury, particularly if they require one or other of the parties to relate facts which they hope to prove and which may not be in the judge's opinion relevant to the case.

BY THE ACCUSED:

OK.

BY THE COURT:

That is my understanding of that.

BY THE ACCUSED:

If all the ...

BY THE COURT:

And no one is ... no one is hiding a thing from the jury. The jury has heard ... I basically have not excluded the jury very often in this ... in this case.

BY THE ACCUSED:

You excluded always. The only case the jury was not excluded, when professor from York University came here, that was the only case the jury saw what you did and I'm glad this happened.

BY THE COURT:

Well that's fine, Mr. Fabrikant but ...

BY THE ACCUSED:

But all other times, the jury was ...

BY THE COURT:

But you are not going to tell me how I am better ... how I should run the court. You're not going to dictate that to me.

BY THE ACCUSED:

I'm not dictating.

BY THE COURT:

Yes, you are.

BY THE ACCUSED:

No, I just express my opinion.

BY THE COURT:

And I'm telling you, I'm telling you that that is a question of discretion which I have. Now I'm going to ask you for the last time and if you're not going to tell me where you are going with Mrs. Gaudet, I'm going to terminate her testimony. Now I'm sorry, but there you are.

BY THE ACCUSED:

Well you ...

BY THE COURT:

Now you have an opportunity to tell me where you propose to go ...

BY THE ACCUSED:

Look ...

BY THE COURT:

... in your questions to Mrs. Gaudet. Otherwise I have no choice.

BY THE ACCUSED:

Once you had you know excuse to terminate someone's testimony, because I was impolite or something. Now today I'm polite, today I'm correct, I'm not abusing anything. Now you want another excuse to not let me question the

witness because I'm not telling where I'm going. I will tell you where I'm going if you bring the jury.

BY THE COURT:

Mr. Fabrikant ...

BY THE ACCUSED:

If you are not bringing in the jury ...

BY THE COURT:

I'm not negotiating with you.

BY THE ACCUSED:

All right, then you have perfect right to forbid every question of mine you feel irrelevant. You forbid, I obey and I'm going on.

BY THE COURT:

All right, we'll do it on a question by question basis but I'm not ... I'm not going to listen to this question of the ... of the relevance of the witness's testimony in the presence of the jury because that's the way you wish to do it.

If you have other questions to put, you'll put them and if there are objections, the ...

BY THE CROWN:

Well My Lord, I object. What we are ... I think what we are discussing right now is the relevance of the whole ... of the whole testimony and of the whole defence.

BY THE ACCUSED:

Well I ...

BY THE CROWN:

We're at this point. If he doesn't agree to tell you, you have to take the proper measures. I don't think it's time to backtrack and go question by question.

BY THE COURT:

Yes, you're probably right, you're probably right. It has to be faced sooner or later.

BY THE CROWN:

I think so.

BY THE COURT:

It has been ... it has been put off and put off and put off until ... until this particular point in time.

BY THE CROWN:

I remember at the preliminary enquiry, we all had the feeling we were wasting our time and one morning, Mr. Justice Cadieux said to Fabrikant, you have to explain to me what you want to do and what the witnesses will say in accordance with 698 and Mr. Fabrikant did not want to say it and Mr. Justice Cadieux said the preliminary hearing is over.

BY THE ACCUSED:

Well may I make correction?

BY THE COURT:

There's no need to make a correction.

BY THE ACCUSED:

No, because he's misleading again. With Cadieux, it was absolutely different. There was no witnesses called. It was not that witness was there, I started asking questions and he decided witness was irrelevant. He didn't allow me to call any witnesses and this was abuse.

BY THE COURT:

Listen, listen ...

BY THE ACCUSED:

This is what happened then.

BY THE COURT:

The questions of grant documents, the question of documents you requested, the question of documents you got or didn't get are in no way relevant to what we're here for.

BY THE ACCUSED:

Why you're so afraid that I will explain it in front of jury.

BY THE COURT:

I'm not afraid of a single thing of what you'll explain in front of the jury.

BY THE ACCUSED:

OK.

BY THE COURT:

I'm just telling you, you're not going to dictate to me how to ...

BY THE ACCUSED:

I'm not dictating.

BY THE COURT:

... how to run the courtroom.

BY THE ACCUSED:

Well I'm not dictating ...

BY THE COURT:

That's all I'm saying.

BY THE ACCUSED:

I'm not dictating anything. What I'm amazed at is that when I'm trying to correct let's say what was in the newspapers and what was transmitted to the jury, you say: jury is here not to decide on the newspapers.

BY THE COURT:

That's right.

BY THE ACCUSED:

Jury is told to forget everything about newspapers. Now if you can tell the jury to forget everything about newspapers and you're sure they exactly do what you said, why then you should be so much concerned that the jury would hear here something which you again can tell them: forget about it and they will forget it.

BY THE COURT:

You ... you may be right, you may be right.

BY THE ACCUSED:

So ...

BY THE COURT:

It's simply that there are often things said or there often have been things said that have led to mistrials because the jury has been present, I think probably because some over-sensitive judges who ... who are sitting in appeal and are not sitting here have possibly fallen into the trap of thinking that the jury is perhaps not able to put that out of their mind, I don't know but ...

BY THE ACCUSED:

OK.

BY THE COURT:

But I know, I know that is it ... it's a practice that I've followed and that has been followed consistently of excluding the jury when a question of law is being discussed in order to give the parties absolutely free rein to discuss with the judge what they have to discuss with the judge.

BY THE ACCUSED:

Well may I ... may I submit in this regard that all those mistrials were because crown said something injurious to

the defendant. This is why mistrial happened. It couldn't possibly happen that I say something which jury would hear which might lead to mistrial because I am the one who is talking.

BY THE COURT:

That's not true, that's not the way it's worked out.

BY THE ACCUSED:

So ...

BY THE COURT:

That's not so. It's worked that way in both instances.

BY THE ACCUSED:

Well may I have the jurisprudence where ...

BY THE COURT:

I don't carry that around in my head, not at this time.

BY THE ACCUSED:

Well not around, not around but I'm very respectful of law and if Mr. Belleau provides me with a) jurisprudence telling me that in one third of my defence, I'm obliged to tell something to the judge and if I don't tell, he has the right to foreclose my defence, I will be in a hurry hurry (sic) to tell you, because I don't want my defence to be foreclosed.

Second, if he finds anything at all saying contrary to what McWilliams says, that ... that defence has no right to demand the jury be present when relevance of evidence is discussed, again I will surrender. I'm very very respectful of every rule in regulation. When I am objecting and sometimes very vigorously which leads to contempt of court, I'm objecting to lawlessness rather than sustaining a rule. I'm always for the rule of law.

BY THE CROWN:

I think the exclusion of jury is already decided My Lord and ...

BY THE ACCUSED:

Well that ...

BY THE CROWN:

... we should not argue about that anymore. Let's go to the next step.

BY THE ACCUSED:

Well let's see ... let's see then if this is supported by the latest existing evidence because we are not just discussing question of law as such.

BY THE COURT:

Well ...

BY THE ACCUSED:

We're discussing particular question, namely relevance of evidence.

BY THE COURT:

Right, now I'm asking you again, what is the relevance of the last question that you put to the witness?

BY THE ACCUSED:

Well again I respectfully submit that I do not change. I'm prepared to answer this question in presence of jury. Outside presence of jury, you can take whatever discretionary measures you feel you had, you are the judge here. How about that?

BY THE CROWN:

My Lord, I think the question is what is the relevance of his whole defence and he should answer you. If he doesn't answer you, you're ... you're the master of this court.

BY THE ACCUSED:

Well Mr. Belleau can be assigned to give me jurisprudence to this end, because this time I just see ... I just saw the authority which says totally opposite. Therefore, I do not submit to that.

If Mr. Belleau brings me say in half an hour something convincing which would say what you are telling ...

BY THE COURT:

You are ... obviously you have no intention of obeying what I asked you to do which is to tell me first of all what is the relevance of your line of questioning with this witness and where are you going in this defence? I want to know now and ...

BY THE ACCUSED:

I'm obeying the law.

BY THE COURT:

OK.

BY THE ACCUSED:

And if I feel that you abuse it, then I have no choice. If this is the law, I would like to be demonstrated it. (sic) I'm normal and very logical person.

BY THE COURT:

I'm not ... I don't know whether that could be demonstrated to you to your satisfaction but ... but I'm certainly ... I'm certainly clear enough on what authority I have to determine what is relevant to this case and to put questions to you asking you where you're going, particularly when we're seeing questions put to the witness concerning information that you requested relating to grant documents and what not which have absolutely no relevance to this trial, as far as I can see.

BY THE ACCUSED:

Just... just yesterday, I mean before, not yesterday, before the break, she was testifying on my access to information request and there was nothing wrong with that.

BY THE COURT:

Well there might have been, there might have been.

BY THE ACCUSED:

Well there was no objection.

BY THE COURT:

But as it goes on, I mean you had ... there was a whole series of objections.

BY THE ACCUSED:

Well not to the ...

BY THE COURT:

The crown ... the crown objected straight through as I recall.

BY THE CROWN:

And My Lord, I must say to you that from the beginning, before Fabrikant started his defence, I told you from his opening statement that I considered the whole thing totally irrelevant. That was my basic position.

BY THE ACCUSED:

Well if it was totally irrelevant, why have you decided to submit some of the documents which witness has brought?

BY THE COURT:

Listen...

BY THE ACCUSED:

You found them relevant.

BY THE COURT:

Listen that's ... that's not an argument. That's just not an argument.

BY THE ACCUSED:

What do you mean? It is argument.

BY THE COURT:

It isn't an argument because I told you before that when in the slightest doubt as to whether something is relevant, it's been resolved or I've resolved it in your favor in the sense that I've adopted a way-and-see attitude rather than take a rigid attitude that your defence had no basis at all, but the further we go into the question of surveillance, into the question of guards, into the question of what guards were asked to do, into the question of surveillance reports, affirmations that you weren't prepared to accept the filing of the surveillance reports, rather you insisted on bringing each one of the people who was involved in the surveillance, this ... this takes us so far away from where you ought to be going, if you're going where I once thought you were going, that I have to wonder and I have the right now to say to you: listen, this is ... this is getting ridiculous. It's time you came to the point, it's time you made the points that you wished to make.

I'm asking you this morning: what are the points you wish to make? What is the defence you're trying to make so that I can at least comprehend where you're going and you say I'm not going to tell you. If you, you know ...

BY THE ACCUSED:

Well for example, let me give you another example.

BY THE COURT:

No, I don't need .. I don't wish an example. It's an answer I ...

BY THE ACCUSED:

No, no, OK, it's not example.

BY THE COURT:

It's an answer I want.

BY THE ACCUSED:

It is not example. I requested my car rental agreement from Budget. When this person comes here and brings this car rental agreement, again crown will jump and say: what the hell car rental agreement has to do with murder at Concordia and again I will have to explain that yes, it does, bla bla bla.

BY THE COURT:

That's right, you will.

BY THE ACCUSED:

Well it does. Bring the jury, I will explain how it is relevant.

BY THE COURT:

No, I want to know why it's relevant and why all of it is relevant beforehand.

BY THE CROWN:

And My Lord, I don't feel like standing up at every question either.

BY THE COURT:

No.

BY THE ACCUSED:

There is ... there is nothing wrong. I'm not hiding anything.

BY THE COURT:

It's not a question of whether you're hiding anything.

BY THE ACCUSED:

But jury has to hear it.

BY THE COURT:

It's a question of I, I have a right to know where you are going and I have a right to know ... the right to know where you are going without the jury being present.

Now that is part of the discretion I have.

BY THE ACCUSED:

Well ...

BY THE COURT:

If you want ... if you want fifteen (15) minutes to discuss with Mr. Belleau the question of the judge's discretion, I'm prepared to give it to you.

BY THE ACCUSED:

No, discuss not, (sic), I have no trust in him whatsoever. Not only I have no trust in him, you remember I told you that he brought to me even false jurisprudence claiming that tapes are hearsay and I was prepared to apologize to him, you remember that and all of a sudden he brings me Ciboyer which tells totally opposite thing and he brings me also authority which says that tape is not hearsay. It is special type of document and it can be used as original evidence and I didn't know any of those and I ... I'm just wondering how much I still don't know. I do need a lawyer.

You have a list of people who were interested. You do not agree to provide me with list of people. At least I could talk to, to have a normal legal advice I could trust and right now, I have the authority which says opposite to what you are saying.

I do not have anything which supports what you are saying, I believe that I've proven myself to be quite logical. There was not a single solitary witness for question which would not be in my final argument. So I really cannot understand. The only thing which normally is done and again you ruled my questions irrelevant without even asking me about relevancy, this is totally incomprehensible.

BY THE COURT:

It's not totally incomprehensible, Mr. Fabrikant because when you're asking questions in a murder trial relating to information which you received through the access to information act, relating to grant documents in the possession of the university, that, it seems to me, can have no bearing upon your state of mind on the 24th of August last year. Now ...

BY THE ACCUSED:

All right, why don't you ask me.

BY THE COURT:

That ...

BY THE ACCUSED:

That I explain the relevance. You refuse even to ask me to explain the relevance and rule after that. This is elementary politeness.

BY THE COURT:

Listen I've ...

BY THE ACCUSED:

And you deny elementary politeness and after that, you complain that I call you lawless.

BY THE COURT:

Listen.

BY THE ACCUSED:

It is ... it is mutual stuff. When you abuse the law, you should not be surprised that you are called lawless.

BY THE COURT:

That ... that question, on its face, has no bearing.

BY THE ACCUSED:

That's your opinion.

BY THE COURT:

Now, just a second.

BY THE ACCUSED:

Ask me and let me look stupid.

BY THE COURT:

No, because you attempt, you see, your technique, your technique is very obvious. You ask your questions and you wait for the objections to come, question by question and then you say: let me argue in front of the jury each and every one of these objections, using in this instance the ... the dock as your pulpit for putting forward your particular point of view and that's not the way the trial is supposed to unfold.

The trial is supposed to unfold at this stage by your adducing the evidence that is relevant to your defence and then when comes the time to argue at the end, at the end, you'll refer to what in the defence you wish to refer to support the particular theory of defence that you're putting forward, but we can't have a situation where you're explaining every two or three minutes to the jury why you're asking a question or why in your particular view of the world, a question is relevant.

BY THE ACCUSED:

Well ...

BY THE COURT:

Your view of the world may certainly not be my view of the world and it may ... and what you consider to be relevant may not be relevant at all and I'm the one that gets to decide, not you.

BY THE ACCUSED:

Well I agree with you one hundred percent except that I agree with you that my argument should be after witness testify, not during witness testimony but I must submit that it is you who forced me to explain everything instead of just trusting me that yes.

BY THE COURT:

I don't trust you at all.

BY THE ACCUSED:

Well then ... then bear it with me (sic) and I have then to explain every two and three minutes to the jury why I'm doing that. (sic)

BY THE COURT:

That's why I'm saying ...

BY THE ACCUSED:

Let me finish please. If I were really totally irrelevant and really out of this land and my questions are totally stupid and have nothing to do with the murder, Gosh, why is there so much concern? Jury are smart people. They will understand that I'm just a crazy paranoid whatever narcissic and something else and you won your case so ...

BY THE COURT:

I have no case to win, Mr. Fabrikant.

BY THE ACCUSED:

Well regretfully ...

BY THE COURT:

But I do ... I do have a case to get heard.

BY THE ACCUSED:

Regretfully I must submit once again that I had two (2) crowns here and no judge. This is the worst problem here.

BY THE COURT:

You see, this is... this is your particular view of the situation.

BY THE ACCUSED:

Well do you ... do you recall that you were inviting crown to object. This is what judge is not supposed to do.

BY THE COURT:

The judge surely is ... is within his rights to say to the crown: do you consider this relevant? It might be he does, but I certainly didn't think it was.

BY THE ACCUSED:

This is what it means, you are doing crown's job.

BY THE COURT:

I certainly didn't think it was.

BY THE ACCUSED:

Well second, when the witness so accustomed that when witness is in difficult position, witness ask you: should I respond? She's a lawyer, she knows very well that if there is no objection, she should respond.

Nevertheless, she waits and explicitly asks you and this is ...

BY THE COURT:

Listen Mr. Fabrikant ...

BY THE ACCUSED:

Let me finish please. And this is already some kind of tradition from witnesses of Concordia. They are so accustomed that you protect them from every difficult question that they even go to such an extreme as whenever difficulty is, they ask you: should I respond? This is an outrage.

BY THE COURT:

Well you say difficult questions. I'm forced to conclude that ... and you know, you asked me why I exclude the jury. It's because of what I'm about to say at the moment.

You have an exaggerated idea of ... of the importance of the questions you're asking. Time and again, you've said I intervene when the witness is in difficulty. To me, I couldn't care less whether a witness is in difficulty or not, but what I do care about is how far afield we're getting from where we're supposed to be going and I told you.

I don't take you on faith, that anything is relevant because you said it is, because quite frankly, the experience I've been through since ... since the 13th of January last and more particularly since the trial began has persuaded me to the contrary. So ...

BY THE ACCUSED:

Well I don't know, why should you persuaded to the contrary if the trial on fitness you lost after all, so I was not that bad, taking into consideration that I was the one who introduced the psychiatrist who testified

that I'm not fit which looked totally crazy to you.

BY THE COURT:

I'm not ... I'm not going to argue the question of ... of fitness with you, I'm not going to argue that with you so ...

BY THE ACCUSED:

Why don't you trust me that I'm doing right thing?

BY THE COURT:

Because ... because I'm afraid I can't.

BY THE ACCUSED:

Well was it right thing to introduce Morrissette or was it wrong thing to do?

BY THE COURT:

I have no idea, Mr. Fabrikant. You're the one who's elected to do so.

BY THE ACCUSED:

Well judging from the result, it was the right thing to do, was it?

BY THE COURT:

I'm not ... I'm not even going to get involved in that argument with you and I'm going to come right back to where we were.

BY THE ACCUSED:

Anyway I did not displayed (sic) myself that bad, so you are ...

BY THE COURT:

You ... you are going to have to tell me first of all the relevance of this witness's testimony and what you propose to establish through her and you're going to have to tell me now what you propose to establish by way of defence.

BY THE ACCUSED:

Well I have to establish quite a number of topics because she said she had fourteen (14) different files, so definitely you can imagine that this is just one of the topics is grants (sic). It's one fourteenth of what I intend to ask her.

BY THE COURT:

How can the grants possibly be relevant to your defence?

BY THE ACCUSED:

Well bring in the jury, I'll explain it.

BY THE COURT:

No, I'm asking you to tell me now. If you ...

BY THE ACCUSED:

Well unless I'm shown the jurisprudence which says opposite to McWilliams, I just respectfully disagree.

BY THE COURT:

All right, then if you respect ...

BY THE ACCUSED:

So far, there are two of us, me and McWilliams against you and the crown.

BY THE COURT:

If you respectfully disagree, then all questions relating to the grants are ruled irrelevant and you will not ask questions relating to the grants.

Now going beyond that, what ... what is the defence that you propose to put up?

BY THE ACCUSED:

Well again, unless and until I see any authority which says that I'm obliged to answer this question, I respect-

fully decline. I don't have any lawyer and I'm not a lawyer myself. So far as I know the stuff, I'm not obliged to tell anything, neither to the judge nor to the crown until I close my case.

BY THE CROWN:

The judge is the authority, My Lord.

BY THE ACCUSED:

Well why don't you show me a single case where judge demanded a defence disclosed.

BY THE COURT:

I have nothing I have to prove to you.

BY THE ACCUSED:

And defence refused.

BY THE COURT:

I have nothing I have to prove to you, I have nothing at all I have to prove to you.

BY THE ACCUSED:

Well I believe it did happen before, this is not the ...

BY THE COURT:

So if you think you're right, then you'll go to where you have to go but if ...

BY THE ACCUSED:

That's exactly what I'm doing.

BY THE COURT:

If that's ... if that's the case, then if you are not prepared to tell me where you're going, I ... I can conclude that there's no point this .. that this whole thing continues.

BY THE ACCUSED:

Well why don't you try another subject and you'll see.

BY THE COURT:

I'm not trying subjects one by one. I'm asking you to tell me where you propose to go in this defence?

BY THE ACCUSED:

Well witness brought fourteen different files.

BY THE COURT:

You're not understanding what I'm saying.

BY THE ACCUSED:

And at least one of them will be relevant, even from your point of view.

BY THE COURT:

You're not understanding what I'm saying.

BY THE ACCUSED:

Yes.

BY THE COURT:

I'm saying first of all with regard to this witness, the question of the grants is irrelevant.

I then asked you a far far more comprehensive question: what is the defence that you propose to put forward, what is the defence you're making? You have declined to tell me.

Now if you're not going to tell me that, I can't see why we should continue.

BY THE ACCUSED:

Well why don't you show me any jurisprudence which says that you have the right to ask me that question.

BY THE COURT:

I told you, I'm not in the business of proving anything to you.

BY THE ACCUSED:

Well there is ... there is friend of court, according to your definition. He's exactly for that purpose there.

BY THE COURT:

Fine, if you wish to talk to him, I'm prepared to adjourn while you talk to him.

BY THE ACCUSED:

Well talk to him doesn't make any sense because I told you I have no trust in him whatsoever.

BY THE COURT:

Well then if you have no trust in him whatsoever, then you've got a decision you have to make, don't you?

BY THE ACCUSED:

Well I do ...

BY THE COURT:

You either tell me.

BY THE ACCUSED:

I do trust ...

BY THE COURT:

You either tell me or ...

BY THE ACCUSED:

But I do trust the thick books which you have, so if he opens this book and shows to me that somewhere it is written that at any stage, judge has the right, the discretion to demand defence to disclose the nature of their defence and unless defence complies, judge has the authority to foreclose the defence, as soon as he shows this to me, I will be just running, not just going, to disclose you all the details of my defence.

You see how agreeable I am.

BY THE COURT:

Mr. Belleau, if you ... would you be kind enough to spend half an hour with Mr. Fabrikant on this ... on the question of the judge's right to ... to ask where we're going, having regard for where we are in these proceedings and if you ... if you see fit to tell me where you're going, Mr. Fabrikant, that's fine but if you do not, then you'll leave me with no choice.

BY THE ACCUSED:

All right.

BY THE COURT:

So we'll adjourn for half an hour.

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

BY THE COURT:

Yes, Mr. Freeman?

BY MAITRE FREEDMAN:

Yes, sorry to interrupt, My Lord. I've just been informed by my office that I have received a subpoena to testify in this trial. I wanted to just notify the court of that, especially with respect to the exclusion of witnesses. I don't know if Mr. Fabrikant has difficulty with me remaining in the courtroom.

BY THE ACCUSED:

No, I have no difficulty.

BY MAITRE FREEDMAN:

Then that's fine.

BY THE COURT:

Thank you.

BY THE ACCUSED:

Well may I report?

BY THE COURT:

Well report ...

BY THE ACCUSED:

What have been ... what I have been provided so far.

On the question of presence of the jury, I've been provided with another authority which says at the beginning exactly the same thing.

"If the presiding judge thinks that an argument as to admissibility of certain evidence may unfairly prejudice the defendant if heard in presence of jury, the proper course is to direct them to retire to another room and then to hear argument."

So the main concern of judge is whether something heard may damage the defendant, so this is the underlying doctrine principle. It stays the same. Read further and always there is:

"However it is today for the judge to decide whether or not a submission made during the trial is to be made in the absence of jury."

And I never questioned that. Of course it is for the judge to decide this question and after that, there is:

"No doubt the judge will listen to any view expressed by defence."

And this doesn't happen.

So what I was given as I read it, effectively confirmation (sic) of the same thing, that the main preoccupation of presiding judge in terms of exclusion of jury is potential prejudice to the defendant, period and if this is still valid and I do not deny that it is judge who is making that decision, whether potential damage to the defendant can result from what the jury might hear and I believe then you exclude the jury because you think that something potentially dangerous to my defence might be heard by them.

BY THE COURT:

I put it to you a different way. The way I've put it to you was that I preferred to do it to give both you and the prosecutor and myself more scope to express what we had to say.

BY THE ACCUSED:

Well this is not here, I'm sorry.

BY THE COURT:

I don't care whether it's there or not.

BY THE ACCUSED:

More scope ...

BY THE COURT:

What is there is ... is the question of discretion.

BY THE ACCUSED:

Well more scope ...

BY THE COURT:

And the discretion is mine.

BY THE ACCUSED:

More scope is really not what should be governing the judge. The judge should be governed by one simple thing: not to prejudice the defence.

The second thing I asked Mr. Belleau, whether he knows a single solitary case where appeal was allowed because jury have heard something from the defence. He doesn't know a single case of that, but he knows a lot of case where mistrial was declared because crown said something in presence of the jury.

Well crown should be sufficiently qualified not to say it, that's all.

Now the second thing what he gave me:

"It is the duty of the judge to ensure that only properly admissible evidence is admitted."

God forbid, did I ever question that? Of course.

BY THE COURT:

Well you've questioned it on a daily basis, Mr. Fabrikant.

BY THE ACCUSED:

No.

BY THE COURT:

You certainly question the decisions on a daily basis.

BY THE ACCUSED:

The general statement ... the general statement: the duty of the judge, that admissible evidence is admitted, I never question that. What I questioned was that you tried to exclude evidence which any way may help me in my defence. This is my claim. So we just disagree on that.

Now:

"Counsel should state grounds of admissibility."

Beautiful! This is exactly what I asked this morning, to let me to explain why the question was admissible.

BY THE COURT:

I've asked you a number of times.

BY THE ACCUSED:

You disallowed me. This morning ...

BY THE COURT:

I've ... I've asked you again and again.

BY THE ACCUSED:

One second, you, this morning, disallowed me to explain the admissibility of my question. You said "On the face, it looks inadmissible" and this is wrong.

Counsel should state grounds of admissibility. You disallowed me, so you are abusing the procedure. Now:

"Judge has the right to know the purpose for which evidence is being tendered."

Fantastic! So we have no disagreement with that.

BY THE COURT:

Well I'm glad we have no disagreement with that because there's obviously been a disagreement for a long time.

BY THE ACCUSED:

This morning.

BY THE COURT:

You've ...

BY THE ACCUSED:

No, this morning, this is exactly what I attempted to do, to explain admissibility of my questions.

BY THE COURT:

You've ... you've got an amazing facility for adjusting your ... your position to ... to meet what happens to be the law that you have in your hand.

I have absolutely no problem if you're telling me that I was hasty in ... in refusing to let you explain. The question certainly seemed to me to be irrelevant. It appeared to me that it was an issue that we had dealt with before, the question of grants and I could not ... I could not and cannot see the relevance of it. I've invited you since to tell me what is the relevance of the question.

BY THE ACCUSED:

Well I told you, I was even asking you to let me to explain. You didn't let me.

BY THE COURT:

Explain it to me now then?

BY THE ACCUSED:

No, I told you, this is according to this stuff, I repeat once again that:

"Presiding judge should take into consideration only one thing: that unfair prejudice to the defendant if something is heard by the jury."

This is the only criteria and this is the criteria you should use and you should also listen to the view expressed by the defence.

BY THE COURT:

This is not the only criteria at all. This is what you say is the only criteria. It certainly is not the only criteria.

BY THE ACCUSED:

No, this is what Archibald (sic) says, not I.

BY THE COURT:

I'm not... I'm not disagreeing with Archibald. I'm simply saying it is not the only criteria.

BY THE ACCUSED:

So we have ... OK, so we have two (2) effectively now authorities: McWilliams which says that only if it is prejudicial to the defence, the jury should be excluded, otherwise no and now we have second authority, Archibald which says it is the same.

BY THE COURT:

It may well be prejudicial to the defence, quite frankly.

BY THE ACCUSED:

OK, then explain ...

BY THE COURT:

It might well be prejudicial to the defence.

BY THE ACCUSED:

Then explain it to me, maybe I do not understand what is my good. (sic)

BY THE COURT:

Well I have no idea what you're going to say, but I've

...

BY THE ACCUSED:

So?

BY THE COURT:

I've heard enough of the things that you have said that certainly can't be helpful to you.

BY THE ACCUSED:

Well you for example consider that car rental agreement is irrelevant to my defence.

BY THE COURT:

On the face of it, I can't see how it would be relevant.

BY THE ACCUSED:

Exactly and this is one of my strongest arguments in my defence. How about that!

BY THE COURT:

Well if it is, you'll have to tell me why because ...

BY THE ACCUSED:

Well I will be happy to tell you why in presence of the jury, because when you refuse certain evidence, I want the jury to hear because the jury should know that I'm not having a fair trial. This is why I insist the jury to hear each time you refuse certain evidence.

BY THE COURT:

You know, your ... your general rules are all very well but unfortunately in a case like yours, I have often no choice but to exclude the jury in order for me to make the determination that I have to make.

I'm sorry, now if you don't like that, that unfortunate.

BY THE ACCUSED:

It's not I don't like that, it is that you do not explain it in any reasonable way, because I cannot imagine how my explanation can damage my case, because after all my explanation is something which I will be arguing later on.

BY THE COURT:

Yes, but if you're making an explanation with regard to evidence that is not allowed to be admitted, an evidence which is held to be inadmissible, then that is material that should not go before ... before the jury in any event.

BY THE ACCUSED:

Well ...

BY THE COURT:

Whether they can distinguish or not between it doesn't make any difference. At least if I ...

BY THE ACCUSED:

Again if it ... if it damages my case.

BY THE COURT:

At least if I do ... at least if I do my best to make sure they ... they hear what is relevant and not what is irrelevant, I'm doing what I'm supposed to be doing.

BY THE ACCUSED:

Well if they hear it, it will damage my case?

BY THE COURT:

It may.

BY THE ACCUSED:

OK, how can it damage my case if they hear that Sankar is a crook? How on earth can it damage my case? At worse, it wouldn't help it, but damage, no.

BY THE COURT:

Well at worse, it wouldn't help it. You said it yourself.

BY THE ACCUSED:

No, one second, this is ... this is my argument to you that there is no need to exclude the jury, that's all. Now for the second question, I didn't get any authority

because second question was, you remember you demanded for me to tell you precisely what my defence is and I asked you to ...

BY THE COURT:

Well I asked you where you were going, what ...

BY THE ACCUSED:

... and I asked, yes and I asked Mr. Belleau in your presence to give me any authority which would say that judge at any stage can demand defence to reveal completely the defence and if it doesn't comply, the defence is foreclosed, because this is effectively what you threatened.

BY THE COURT:

Hum, hum.

BY THE ACCUSED:

And I didn't see any authority about that. So unless he shows it to me ...

BY THE COURT:

You may not find the authority for that proposition because I'm not sure that the problem has arisen, but I will tell you this.

BY THE ACCUSED:

Well this is what you said, that unless I tell you, you're going to foreclose my defence.

BY THE COURT:

I will tell you this, that I'm perfectly entitled to ask you what you propose to establish with a witness and how that witness's testimony relates to your defence.

BY THE ACCUSED:

Sure.

BY THE COURT:

That's for sure.

BY THE ACCUSED:

I have no objection to that and I'm prepared to reveal it in presence of the jury.

BY THE COURT:

Now that ...

BY THE ACCUSED:

My explanation is that I'm being constantly prejudiced because my explanation as logical as it is, to you seems to be totally illogical and irrelevant and you deny me certain witnesses.

I repeat once again: I want the jury to see it because I believe that the trial is very unfair and it is extremely important the jury knows that, otherwise jury might have impression that everything is fine, because they also read newspapers which shows that just Fabrikant is abusing the process, that Fabrikant is using process just to humiliate system and so on and so forth and they are not present here. They do not hear my explanations as to the relevance of certain evidence and they might have impression which yellow press creating in them and this is again prejudicial to me and this cannot be repaired in any way, unless they are here and can see for themselves what is going on.

BY THE COURT:

The jury is supposed to hear facts. The jury is supposed to decide on facts, that's all.

BY THE ACCUSED:

Yes, this is one of the facts. If ...

BY THE COURT:

The jury is not there to second-guess the judge in questions of admissibility of evidence.

BY THE ACCUSED:

No, this is not the point.

BY THE COURT:

Well it is the point.

BY THE ACCUSED:

When abuse is ...

BY THE CROWN:

I think this point is decided, My Lord.

BY THE ACCUSED:

When abuse ...

BY THE CROWN:

The jury is excluded. I don't think we should argue about that and we should go to the main subject.

BY THE ACCUSED:

I haven't finished yet. When abuse is so blatant that ...

BY THE CROWN:

My Lord, you ruled. I don't ... he questions your ruling right now.

BY THE COURT:

Hum, hum.

BY THE CROWN:

If he's not happy, he could go to the Court of Appeal.

BY THE ACCUSED:

Well may I continue or it will be interrupted like this? Crown cannot wait until I finish?

BY THE CROWN:

I think we're wasting our time. You ruled on ... on the presence or the absence of the jury.

BY THE ACCUSED:

Who has the floor?

BY THE COURT:

You have the floor for the moment.

BY THE ACCUSED:

So maybe crown then will keep quiet for a while until I finish.

So I believe that abuse is so obvious that even people with no legal education can see it. For example, the case of Prof. Orgensen is a clear example of that because since I do not have at least at the moment a psychiatrist who could come and testify how person in certain circumstances feel and how this person acts, I think that Prof. Yorgessen would be a perfect substitution to tell the jury how another person, obviously normal, feels in certain circumstances.

This, to the jury, because the jury has not been at the university, jury doesn't know atmosphere there and this person from his own experience could testify how exactly he felt. He would testify about facts and your judgment that he cannot possibly be objective is irrelevant because he was to testify about facts of his own experience.

BY THE COURT:

Facts of his own ... look, I'm not going into that again.

BY THE ACCUSED:

Well anyway ...

BY THE COURT:

The question of Prof. Orgensen is decided and that's that.

BY THE ACCUSED:

Anyway, I'm explaining why I feel Prof. Orgensen was very relevant because he would be substituting opinion of a psychiatrist for the jury so the jury would know how a person feels in certain circumstances.

You ruled it inadmissible. Now I believe for every person without any education, it is clear that this was wrong and I'm glad it happened in front of the jury and all the rest of stuff, when I make subpoenas with documents which are necessary and I explain to you very clearly why they were necessary to me and you ruled that those are irrelevant and jury knows nothing about it.

BY THE COURT:

That's right.

BY THE ACCUSED:

And this is wrong because this prejudice my defence. If jury knew that, then you think that what? It would prejudice my defence? If jury would know that I wanted Sankar to bring here the dissertation and his report which is copy of the dissertation and jury would know that he got about three hundred thousand dollars (300,000 \$) for his graduate student work and he didn't do anything and he pocketed himself over one hundred thousand dollars (100,000 \$) personally, how on earth can it damage my defence?

BY THE COURT:

Just ... it's totally irrelevant to your defence. You are looking to throw the blame here and there and everywhere as far as you're concerned in order to demonstrate that you were abused or that your mind cracked or whatever, I don't know what you're saying but this, all of this, the whole question of Sankar's grants and what Sankar did with money and how much money Sankar got, I'm not here to decide that.

I couldn't care less in relation to this trial about that at all. It is of no concern of mine and it's of no concern to the prosecution for the ... for the murders that took place.

BY THE ACCUSED:

Well that's fine. Why ... why not the jury to hear (sic) all this?

BY THE COURT:

Because the jury ...

BY THE ACCUSED:

Why don't you make me look stupid in front of the jury?

BY THE COURT:

The ... I have no interest in making you look stupid or anything else but I do have an interest in running this thing in an orderly fashion and I'm the one who in my discretion can decide whether a point will be argued in front of the jury or whether the jury will be excluded. By and large, on questions of evidence or questions of objections, if you'll think about it, the jury has remained here simply because I don't wish to send the jury out every five (5) minutes.

It becomes very unworkable if that's done and by and large, they heard far far more in this trial than a jury normally hears in relation to arguments, because counsel follow generally very strict rules with regard to argument which you don't adhere to.

Now I'm sorry, this is final. I'm going to continue to exercise my discretion as to whether points of law are argued in front of the jury or whether they are not. I'm going to do that.

If you don't agree, then you can complain to the Court of Appeal subsequently if you ... if you need to. That is of no concern to me, none whatever.

BY THE ACCUSED:

That's fine. Still what I suggest is to call the jury back, I will ask my question. The crown will object and I will be allowed to explain the pertinence.

BY THE COURT:

No, I'm going ... I'm not ... I'm not going to do that.

BY THE ACCUSED:

Well ...

BY THE COURT:

I'm going to ask you ... I'm going to ask you to tell me ...

BY THE ACCUSED:

This is what I ...

BY THE COURT:

I'm going to ask you to tell me what is the pertinence of Maëtre Gaudet's testimony and how does it relate to your defence? I'm asking you that question now and you will tell me that. You will answer that question now or you won't but I'm asking you that question now, here and now?

BY THE ACCUSED:

Well Maëtre Gaudet is to testify on different subjects. This is ... the grants is just one of those subjects. She's testifying on many subjects, she's testifying, I believe her office handled the firearms permit question and all those questions were ruled admissible and many other things. She had fourteen files and again the only thing what you could reasonably do ...

BY THE COURT:

You've talked about grants and firearms permit?

BY THE ACCUSED:

No, it's more than that.

BY THE COURT:

And how does this relate to ... Oh it's more than that? How is it more than that? I'm entitled to ask that.

BY THE ACCUSED:

Well each question will be asked and if there is an objection, you will ask me to explain. I'll be happy to explain, you will rule it inadmissible and we go on. That's how it should go.

BY THE COURT:

No, it's not how it should go because ...

BY THE ACCUSED:

It has never happened, why is ...

BY THE COURT:

Because that lets you ... that lets you present an argument each step of the way and that's not what it's all about.

I want to know generally what you wish to ... what the point is you wish to make with Maëtre Gaudet, not ... I want to talk about grants or she handled the firearms permit. I want to know what you want to establish with Maëtre Gaudet first of all and I want to know how that relates to your defence?

BY THE ACCUSED:

Well bring up the jury, I will tell you.

BY THE COURT:

No, I'm asking you now.

BY THE ACCUSED:

Well it doesn't say anything that which supports (sic) what you're saying.

BY THE COURT:

I told you. In the exercise of my discretion, I'm asking you that and I'm asking you to tell me that now. If you're not going to tell me that, we will release Ma@tre Gaudet and go on to the next witness.

BY THE ACCUSED:

Well you never ... you never asked me this question of any other witness. I was allowed to question, the questions were ruled something and if this kind of stuff is permitted, it is in principle wrong because suppose I have some surprises from Ma@tre Gaudet and I have to tell you what they are?

BY THE COURT:

You don't have to tell me what surprises you have for anybody.

BY THE ACCUSED:

Well ...

BY THE COURT:

But you should recall that Ma@tre Gaudet is a witness that you're calling. Generally ...

BY THE ACCUSED:

Yes. She handled all the ...

BY THE COURT:

Generally you have to tell me, generally you have to tell me if I ask you what you propose to establish by that witness and it does ... it will do no good to resort to your favorite technique of saying: because I was allowed to do this yesterday, why can't I do it today or because I was allowed to do it last week, why are you changing the rules?

I'm not changing the rules at all. I've had great difficulty from the very beginning of your defence in seeing any relevance to very very much of the evidence that was made. We've gone through... Ma@tre Gaudet is by my count the forty-ninth witness who has been heard.

Now if the trial judge doesn't have a right after forty-nine (49) witnesses to wonder where we are going, I don't know when he does. I'm perfectly happy with that. If you think I don't, then you'll have to go and complain elsewhere.

BY THE ACCUSED:

But if you have the right to foreclose my defence, foreclose my defence.

BY THE COURT:

Mr. Fabrikant, if I have the right to exclude you from the courtroom for continually refusing to conform to rulings and respect rulings, inasmuch as you're presenting your defence, it obviously follows that with you goes the defence.

Now it's your choice. You can make your defence, subject to it being relevant on a witness by witness basis as long as you conform to the rulings. You don't have to like them, you don't have to respect them but you have to conform to them and you have to accept them quietly. Now I asked you globally what do you propose to establish

with Ma@tre Gaudet and how does it relate to your defence? That's not an unreasonable request. You refuse to tell me. Unless you tell me, the witness won't be heard. That's all, it's that simple.

BY THE ACCUSED:

Well it's the same with every other witness.

BY THE COURT:

Ah, that's probably how we're going to operate from now on.

BY THE ACCUSED:

Well lawlessness, abuse.

BY THE COURT:

You may ... you may call it what you like.

BY THE ACCUSED:

This is what I'm trying to establish with this witness: lawlessness of this university, tremendous abuse which I suffered at this university.

BY THE COURT:

And how does that relate to your defence?

BY THE ACCUSED:

How does that relate to my defence? If person is abused, this accumulates, you know very well and at a certain point, it might lead to defence of provocation just as an example. I'm not saying that this is my defence because I'm not obliged to tell you but assuming that for example this is one of my defences.

The second thing, assume for a second that I want to prove that I couldn't possibly planned (sic) to kill people which were killed which again reduces first-degree murder to something else, then again it is relevant.

If I elect, again for example, to use defence of non-insane automatism, with say psychological blow as triggered, then I have to establish that there were certain circumstances which accumulated and amounted at a certain point to a psychological blow. Is all that enough?

But I repeat once again, this does not mean that this is my defence, because I'm not obliged at any stage to reveal it. I'm just saying that it is relevant because this is ... might be one of my defences.

BY THE COURT:

Have you anything to add?

BY THE CROWN:

Well My Lord, I don't see what the fourteen files of Ma@tre Gaudet could do in this case?

BY THE ACCUSED:

Why don't you wait and see.

BY THE CROWN:

I really can't, My Lord.

BY THE ACCUSED:

Well this is not my problem if you can't.

BY THE COURT:

Well we'll proceed and we will see. You will make your objections if you feel they're appropriate and I'll rule if ... I'll rule if I feel that you're correct. The jury.

BY THE ACCUSED:

So finally we are to the stage where we were at the beginning and there was no point to waste one hour and a half.

BY THE COURT:

I don't need your comments, but I would suggest that you

key your questions very closely to the defence you propose to make and that it be patently obvious what it is because otherwise, we're not going to waste much time on these ... on these excursions into things like grants.

BY THE ACCUSED:

Well I believe that this is one of demonstrations of lawlessness.

BY THE COURT:

Well you may but I don't.

BY THE ACCUSED:

Fine, I ask question, you allow me to explain its pertinence, you rule. That's the ...

THE MEMBERS OF THE JURY ENTER THE COURTROOM

BY THE ACCUSED:

QDo you have with you a copy of the decision of Commission d'accès ... l'information?

AI do.

QOK. May I take a look at it because it mysteriously disappeared from my office.

BY THE CROWN:

I still don't see the point, My Lord.

BY THE COURT:

No, we'll wait, we'll wait until the question comes on the basis of the decision and then we'll see.

AHum, hum, I have it here.

BY THE ACCUSED:

May I take a look. OK, I would like this decision to be deposited?

BY THE COURT:

On what basis, Mr. Fabrikant, do you want this decision deposited?

BY THE ACCUSED:

It is relevant because it describes clearly that the university had no respect for elementary things in the law and this proves just one more my contention (sic) that university, in every regard and every respect behaved with total lawlessness and total disregard for what the law says.

So this is one illustration of that.

BY THE COURT:

How could that possibly be pertinent?

BY THE ACCUSED:

It is pertinent because when I claim that I was abused, mainly abuse was total disregard of the law, the rules, the regulations. I was never, in any objection, if I was treated (sic) in accordance to certain rules. The main thing which affects mind, not just mine but every normal person when he is being mistreated not just mistreatment itself but when it is a mistreatment in total contradiction, in total disregard of what is written black on white in certain documents and this definitely affects human mind.

BY THE COURT:

Has the crown anything to say about this?

BY THE CROWN:

I don't see any relevance in that document, My Lord.

BY THE COURT:

May I see the document please.

The document has no relevance to the present proceedings and it will not be admitted.

BY THE ACCUSED:

QWould you at least confirm to the jury that the decision was in my favor?

AYes, the decision was ... was in your favor.

QAnd ...

AFor most parts of it, but the commissioner did also order in her decision that some parts of the documents be omitted, that they should be concealed because there was not any of the information that I was trying to protect so it wasn't entirely in your favor.

QWell ...

AAnd besides, I don't think it means anything because there are hundreds of appeals every year before the Commission d'accès and people who win decisions don't ... don't draw the same conclusions as you did.

QWell wasn't it in this particular case patently obvious that I should have been given access to those documents in the first place?

AIt doesn't necessarily mean that. I explained that last week in my testimony, last Wednesday. The ... as I tried to explain to you many many times during the arguments that we've had, you have certain rights under the Act respecting access but these rights are not unlimited, contrary to what you may believe. The act, the principle of this act, yes, the citizens have a right to access but there are exceptions and restrictions in the act and these are the exceptions that I've ... under the act, I invoke some of these exceptions.

I may have been wrong, but I did it in good faith and I was entitled to do this. It's part of my job, it's part of my duties and the ... when there are disagreements, if the ... the applicant is not satisfied with the decision the applicant is entitled to ask for revision and that's exactly what you did. That's all.

QWell did you invoke any exception in the case of file "Confidential"?

AWell that's a different thing.

QJust answer the question. Did you or didn't you invoke any exception with respect to this file?

AThat's a document that I was trying to protect because the author of the memorandum to the rector felt very strongly that this document should be kept confidential because it was a part of communication between herself and the rector and the reason it was labelled "confidential" was that I ... I kept it in that file, knowing that you would appeal the decision and that it was left for the Commission d'accès to decide.

It was not my decision. It's because Dr. Sheinin felt that it should be kept confidential and I tried to ... I tried to protect it because she didn't want it to be released.

QShould you respect the law or you should respect Dr. Sheinin's opinion?

BY THE COURT:

That question is argumentative and it's disallowed.

BY THE ACCUSED:

QOK, isn't one of your duties to see that the law is upheld?

BY THE COURT:

The question is disallowed, Mr. Fabrikant. You've ... the witness has given you her answer as to what she did with that document and why.

BY THE ACCUSED:

Well I'm asking ...

BY THE COURT:

Those are the facts.

BY THE ACCUSED:

I'm asking different question: is ...

BY THE COURT:

You're not permitted to ask these last two questions.

BY THE ACCUSED:

I cannot ask what is the duty?

BY THE COURT:

No.

BY THE ACCUSED:

QOK, but you didn't answer. You did or you didn't invoke anything from the law?

AYes, I invoked article 37 of the act respecting access and it was perfectly legitimate. I don't challenge the ... the commissioner's decision. She said it didn't apply but there was a provision that was ... that was relevant to ... to that case. It's an opinion or a recommendation from a member of the administration of a public body and it's ... the public ... the person responsible for access may refuse access to that kind of opinion or recommendation within ten (10) years after it was made. I invoked that provision, I was wrong, that's all.

QSo you didn't know that there was a decision of Quebec government saying that all recommendations are open and not only open but ...

BY THE COURT:

Listen you're not going to argue the law with the witness. The witness made her decision, you went before the commission. The point you want to make is ... is the one you explained. So there you are. You can't argue from ... from the facts as you present them.

BY THE ACCUSED:

I ask for witness's personal knowledge, whether she knows about this regulation?

BY THE COURT:

No, we're getting far too far afield. Stay on the facts.

BY THE ACCUSED:

Well this is the fact.

BY THE COURT:

No.

BY THE ACCUSED:

She knows or she doesn't know this regulation. What is wrong with that question?

BY THE COURT:

It's not permitted.

BY THE ACCUSED:

QDid Osman enquire you (sic) about legality of my request for tenure?

AI don't think so but I would have to ... to review the files but I don't think so.

QWell look at the January 1992 letter from Osman.

AI see letters from ... from Dr. Osman to you but not to me.

QIs there ...

AReplies from yourself to Dr. Osman.

QMay I take a look at this file?

BY THE COURT:

No, you may not. If you know ...

BY THE ACCUSED:

I know I saw that.

BY THE COURT:

Well you're not going through the file. I told you that on Friday and that's that.

BY THE ACCUSED:

Well this document, I know, exists.

BY THE COURT:

Well if you know that document exists, show the witness your copy.

BY THE ACCUSED:

Well this is what they did.

AI can't find that copy.

BY THE COURT:

Show the witness your copy.

BY THE ACCUSED:

I don't have it.

BY THE COURT:

Well if you don't have it, that's ...

BY THE ACCUSED:

But I've seen it.

BY THE COURT:

That's not my problem.

BY THE ACCUSED:

If they eliminated certain documents from my office, it's not my ...

A Tenure consideration. These are the only documents concerning your tenure request that I have in my file.

Letter from Dr. Osman to Fabrikant, response from Fabrikant to Osman, another response from Fabrikant. Ah yes, I have it here. It was in the other file. It's in the one concerning the grievance.

BY THE ACCUSED:

Would it not be much easier if I'm allowed to see it?

BY THE COURT:

No, it would not be much easier. You have been furnished with these documents and you ...

BY THE ACCUSED:

No, this document was never furnished to me. This particular, I just know about its existence and I have seen it but it never furnished to me. (sic)

QI believe there is a grief (sic) confidential there, is it?

AYes the document is marked "confidential" but I did not respond personally to ... to Dr. Osman. I referred this, his request, to our legal counsel at the time, Ma@tre Mich@le Gamache and she ... she herself replied to Dr. Osman and I don't have a copy of her reply. Possibly she did it by phone.

QMay ... may I take a look at that letter?

BY THE COURT:

Yes, you may.

BY THE ACCUSED:

I would like this to be deposited.

BY THE COURT:

Would you show that to the crown prosecutor please.

A Just a second.

BY THE CROWN:

Mr. Osman would be the proper witness, My Lord but to save time, I won't object.

BY THE COURT:

Fine.

BY THE CLERK:

D-28.

PAR LA COURONNE:

D?

PAR LA COUR:

D-28?

PAR LA GREFFIERE:

Oui.

BY THE ACCUSED:

And if I may ask, why is this document is being (sic) deposited with no objections whatsoever while the decision of the Commission which says explicitly that university was wrong was inadmissible and this letter doesn't say anything. It's indifferent letter so far and it is admissible.

BY THE COURT:

Because the witness explained to you that she made certain decisions relating to your requests for information and you appealed to the Commission. The Commission decided what they decided and in some instances or in most instances, you were granted access. It is ... the decision of the Commission and the reasons of the Commission for giving you access is in no way pertinent.

On the other hand, you claim that you were mistreated. It may be that a letter from Dr. Osman relating to your contract negotiations is relevant to your case. I ... I don't know but when, when in doubt, if it could ... if there's a chance that it's marginally relevant, I'd rather admit the letter than not, that's all.

BY THE ACCUSED:

Well if ...

BY THE COURT:

Why there was no objection, I couldn't tell you but why it's being admitted, there you are.

BY THE ACCUSED:

Well the previous, even more than relevant (sic) because when you see ...

BY THE COURT:

Are you looking for a reason to have an argument or ...

BY THE ACCUSED:

No.

BY THE COURT:

Fine, then just ask your next question.

BY THE ACCUSED:

All right.

Q You must have somewhere in your files the response of Maëtre Gamache. May I see it?

A I just told you five minutes ago that I don't have a copy of the response by Maëtre Gamache because often times, when she asked for an opinion on the collective agreement and the person needed an urgent response, she communicated by phone. She probably phoned Dr. Osman but I don't have a copy of her answer.

Q You didn't follow up at all on that?

BY THE COURT:

You're cross-examining now. Disallowed.

BY THE ACCUSED:

Q Well you have a pretty thick file concerning tenure.

A No, it's not thick at all.

Q So if you have just two documents, how come it took you so long and so difficult to find whether there was such letter or there wasn't a letter?

BY THE COURT:

No, that question won't be allowed either. The witness is here, the jury saw the witness testify and it's a point-less question.

BY THE ACCUSED:

OK, witness was not aware that I knew that document existed and tried to conceal it.

BY THE COURT:

And please spare the comments.

BY THE ACCUSED:

No, I'm explaining why I asked the question.

BY THE COURT:

I don't wish you to explain why you asked it.

BY THE ACCUSED:

You should listen to my explanation why question is pertinent.

Q Promotion, do you have any queries from Osman on this subject?

A Yes, I have a file here called "Documents related to promotion and sabbatical". I have correspondence related to your grievance concerning promotion. They were sent to me for my information because I ... I had not been involved at all in all this. It's not under my jurisdiction.

Q Well who sent you those?

A I happen to have them in the file. There were ... maybe they were sent to either Michèle Gamache or ... or Maître Brent Freedman as legal counsel. They were the ones who handled it. I was given this file. I ... it's ... I was kept informed because of my role as Secretary General and that's all.

Q But you ... you were given this file probably in order that you read it and determine certain points there, did you?

A No, I was not asked for an opinion on ... on promotion. As I mentioned earlier, it's not part of my jurisdiction. It's a strictly academic matter and it's under the collective agreement and I don't administer the collective agreement.

Q There is absolutely no queries to you in this particular file, no request for opinion?

A No.

Q Did the rector ever consult you on the subject of my grievances when it was stage 3, on any of my grievances?

A No, he did not.

Q Are you aware if rector consulted any of lawyers in your office on this subject?

A He may have but I'm not the ... the witness to tell you if he has or not, I'm not sure.

Q No, I'm asking if you ...

A I don't have any personal knowledge about it.

Q OK. What is the usual procedure if rector wants one of your lawyers to express certain opinions, does he call them directly or he goes through you? What is the usual

procedure?

AThe usual procedure in the past few months was that the rector called our legal counsel directly. So I'm not aware of ... of the communications between them.

QWell does it mean that it is new practice? Was the same in 1992?

ABack when?

QWas this practice the same in 1992?

AWell we had legal counsel at the time, yes.

QNo what ...

AWe had MichŠle Gamache and then we had Brent Freedman, we had two of them in 1992.

QYes and he called them directly, without you being involved when he needed certain opinions in 1992?

AYes, I believe so. In most instances he did.

QDo you have any queries concerning the so-called my PhD diploma (sic), my professorship position in the Soviet Union?

AYes, yes I have. I have correspondence from Dr. Osman.

QSo what was your response to him concerning my PhD diploma and my professorship in the Soviet Union?

AWell I'm aware that Dr. Osman, acting on behalf of the ... the DPC, requested that you provide proof of your professorial positions in the Soviet Union, proof of your PhD degrees from Moscow University, full proof of any other academic credentials from the Soviet Union and in a letter from you dated 17th of December, you refused to ... to provide that and Dr. Osman wrote to me on the 15th of January 1992, seeking my advice on how to proceed in view of your refusal.

QWhat exactly he meant, how to proceed? What ... what did he ask you, in terms of ...

AExactly that, if I ... if ...

QCould you be more precise?

AIf I may read the last paragraph?

QJust ... just tell what ...

A

"Dr. Fabrikant's refusal to submit documents as per his letter December 17th 1991 attached is not acceptable. I'm therefore seeking your legal counsel as to how to proceed in view of Dr. Fabrikant's refusal to provide the above mentioned documents."

QHe specified exactly what he intended to do? You remembered so well last Wednesday everything. Now you seem to ...

AI don't understand your question. I just answer your first question, then you say what did he intend to do.

QOK, then I will have to ask leading questions. Did he ask you permission to write to the Soviet Union and ask them for confirmation?

AHe was asking for my advice as to how to govern himself in view of your... your refusal. I understood as asking me: was I right in ... in insisting that Dr. Fabrikant provide these documents.

BY THE ACCUSED:

May ... May I take a look at the document please?

BY THE COURT:

Yes, you may.

AThat's a copy.

BY THE ACCUSED:

QNow there is another document. There is another document where he asks you whether he can write to the Soviet Union for ... you seemed to have received not one but several from him?

AYes, but I didn't get there yet. There was another one in the meantime. You asked what was my response and I didn't get a chance to give it to you.

QAll right. You did give him the response? What was it?

AYes, on the 23rd of January, I wrote back to Dr. Osman. It would be a bit long for me to read the whole letter but generally speaking, my ... my response was that because of the time the mechanical ... people in the mechanical engineering had not asked the proof of his PhD degrees and so on, it was a bit late, thirteen (13) years later to ask for it and I outlined the principles in the ... under the ... both under the collective agreement and labour law generally and I said: so under labour law principles, it would be part of a normal hiring practice but if a PhD or any other degree is required to apply for a certain position, then the candidate will be expected to show proof that he or she indeed holds a PhD degree. So that kind of requirement under normal circumstances could be seen as perfectly legitimate. However we are not dealing with normal or ordinary circumstances and I went on to say:

"In light of the fact that Dr. Fabrikant was hired thirteen years ago and that at the time the university did not insist on Dr. Fabrikant providing proof of this ... of his academic credentials, it appears to me unreasonable to demand this from him now."

And then, I went on to say:

"After careful consideration of this matter, it is my opinion that ... that to request this from Dr. Fabrikant thirteen years after he was hired can be seen as inappropriate and unreasonable."

And I was... I advised him to refrain from ... to stop requesting these documents.

QAnd he wrote to you again on this subject?

AYes, sometime after. He wrote to you again in February after that and then I have two or three letters from you in the file and then he wrote to me on the 19th of March 1992 and he says that he has good academic reasons for asking for these credentials, that it's on the insistence of the DPC that he is writing to me again. He said he wrote back to you and insisted on getting these documents and that he ... and that you refused again, so this time he was seeking official written approval to engage into correspondence requests from the Soviet Union and it involved contacting the Russian consulate in Montreal for assistance on confirmation of your academic credentials.

QCould you explain why he couldn't just write to the Soviet Union? Why on earth did he need your approval to that?

AI don't know, you would have to ask Dr. Osman himself.

QNo, I mean is there any rule or regulation which forbids normal person to write to anyone he wants?

AI don't think that is illegal but ...

QNo, I'm asking for the rules at the university.

BY THE COURT:

I don't know whether ... at the university.

AThere is no such rule. I can only assume that Dr. Osman wanted some kind of authorization to ... to cover himself for the future, I don't know. Why would he write to me if not for that? He says he was seeking official written permission.

BY THE ACCUSED:

QBut there is ...

AThat's all I can say.

QBut there is no rule which would require him to have a written permission to address any institution in the Soviet Union if he desires, right?

ANo, I don't think there is.

QAll right. Did you respond anything to him?

AYes, on the 26th of March, I have another response to Dr. Osman.

QOK. Well what did you tell him?

AI told him that I can't give him any clear instructions as he was requesting, that ... I said:

"I fail to see why you are requiring from me an official authorization on behalf on the university since you're dealing strictly with an academic matter."

It would have been far more logical for him to seek permission from the dean of engineering, Dr. ... Dr. Swamy or from the vice-rector, academic, from Dr. Sheinin so and I referred to my letter dating back to January 1992. I said I had not changed my mind since and the arguments on which I base my response are still valid today.

I ... I'm talking about the ... your various disagreements over the years and I ... I'm telling him: surely there must be other ways to try and resolve this problem than that of engaging into a lengthy bureaucratic battle which will unavoidably be costly in terms of time, energy and money and in my last paragraph, I say:

"That being said, however it is quite possible that the DPC members and yourself may have legitimate academic reasons for wanting to assert in Dr. Fabrikant's credentials as indicated in your memorandum of March 19th. If that is indeed the case, then you and your colleagues should feel confident in the belief that you ... that your undertaking is justified by sound academic reasons and should feel free to pursue the matter further without any authorization from me or from anyone else."

Because I didn't want to ... to give that kind of ... I'm not in a position to give that kind of authorization for him, to him. He doesn't report to me and it's not under my jurisdiction so that's the way I resolved the matter. QWell first of all, he doesn't need any authorization. He

can write to anyone he wants.

AHum, hum.

QOK, so I would like to file this letter, a second letter of Osman and both responses.

AThe second letter of Osman, the one of March 1992?

QYes and two responses of yours.

AI have to give you my first response. This is ...

BY THE CROWN:

En liasse? In bulk?

BY THE ACCUSED:

This is ... this is the letter.

BY THE COURT:

Mr. Belleau?

(DISCUSSION IN LOW VOICE)

BY THE COURT:

I think ...

BY THE ACCUSED:

Well let me ... let me see the whole file, what exactly is being filed.

BY THE COURT:

Take a look at the full documents and see what ... if you want to file them all, file them all.

AIt's the two requests and the two responses.

BY THE ACCUSED:

I would like to file them ... maybe just append to what was already filed.

BY THE COURT:

Well I think you might want to file these together as D-29 en liasse.

BY THE ACCUSED:

Yes, because probably we will file something else, in addition to what is already filed.

QDo you have any personal knowledge as to did or didn't Osman write to the Soviet Union for confirmation?

ANo, I don't have any personal knowledge of that. He did not notify me about doing so if he did.

QWould it be correct to assume that if he did and he found certain discrepancies, he would definitely inform you about those?

AI don't know, I can't make that assumption.

QAny other queries from Osman or the DPC concerning me?

AYes, but not concerning this matter.

QYes, another matter, yes. What ... what is this?

AThe ... to my knowledge, the only other request I got from ... from the DPC or rather members of the DPC personally was a request to cover their ... their legal costs, because they wanted to hire legal counsel in the case of the ... of your complaint against them under the code of conduct.

QYes and what was your response?

AThe response was that ... that I denied it, that the university could not cover that kind of legal costs.

QOK. Can I see this request?

AThat's in another file.

QHow is this file is called? (sic)

A"Complaints under the Code of Conduct". No it might be under the appeals. It's not in this file. Ah, OK, it's a request dated July 27th 1992 from Dr. Osman, Sankar and Lin (sic) enclosing the ... a copy of the decision from

the hearing board and saying that they would like to appeal the ... the decision and it says:

"As you can see from the attached, this case has now developed into a serious situation in which the DPC's credibility is questioned due to a serious breach of natural justice on the part of the hearing board, as explained in the application for appeal.

To protect our integrity and that of the university, we therefore request that legal counsel immediately be appointed to help us overcome our concern and bring about an appeal taking into consideration all of the evidence in order that justice be served."

QOK, may ... may I take a look at this document and what was your response to that?

AAs I said a moment earlier, I denied their request. It's a ... it's a memorandum from me dated the 31st of July 1992 first of all acknowledging receipt of their request for permission to appeal and then:

"I regret to inform you that I cannot accede to your request that external legal counsel be appointed. You had made a similar request in ... in a letter dated 24th of April 1992 and my reasons for refusing are exactly the same as those mentioned in my memo to you dated 7th of May 1992.

I still feel it would be unjustified to use the university's resources to provide you with the services of a legal counsel, first because they are not necessary, secondly because I cannot accept your argument that you are acting in your official functions as members of the DPC when the incident of the 30th of October 1991 occurred."

And I go on to mention that I have already explained this to Dr. Sankar in a conversation of 27th of July and since you have nevertheless retained the services of a lawyer, I suggest that the three (3) of you share in for his fees.

QOK, may I take a look at this second document please. May I ask you what was requested in the letter dated 24th April? Did they also ask for a counsel?

AYes I believe that was in the first instance when the case first went to the ... to the hearing board and my response is similar and then they applied again in the case of preparing their appeal.

QDid they have this memo of 24th April?

AI don't think I have it in this file here but I... I summarized to you the content of that memo. Obviously, since I referred to it in my letter, it's because this happened in April and ... but I don't have it in front of me here.

QWell it should be there, shouldn't it?

ANot necessarily.

QWell this is what was in your subpoena.

AI already have twenty-two (22) files here.

QWell it should be in the file called "Code of Conduct"

and yesterday you said that you had fourteen files.

AWe were not here yesterday.

QLast Wednesday. Now you have twenty-two files?

AI have fourteen files concerning access and I have other files as well. I never said it was limited to fourteen.

BY THE COURT:

Let's not get into an argument over what files you have or haven't got. Just if you find the letter of the 14th, then ...

BY THE CROWN:

I think My Lord we're far from our main topic.

AThis is ...

The legal fees, whenever we got into the merits of a grievance or ... it looks like there are dozens of them. That's not the role of the jury and of this court to determine the merit.

BY THE COURT:

I think you're perfectly right.

BY THE CROWN:

Maybe at a certain point, it's good to know that there is a grievance and that there is a decision, but I don't think we should ... we should be the Court of Appeal for all the grievances.

BY THE COURT:

We're certainly not and I really don't ... the answer is there. The witness testified as to ... as to the request in April and that the request in April was dealt with in the same manner. She hasn't got the letter. If she hasn't got ... got the letter or can't put her hand on it, then </pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">that's the end of it.

BY THE ACCUSED:

All right, then I append this stuff to D-29?

BY THE COURT:

Well I think you might ... yes, I think you might file that as D-30. It deals with another subject.

BY THE ACCUSED:

QWell did you have any queries concerning my teaching workload in 1992?

AI've had queries from you concerning the teaching workload of all the other members of the mechanical engineering department but I didn't have any queries concerning your workload.

QWell concerning my grievance about assignment of ...

AAh you mean ...

Q... teaching of courses which were outside of my field of expertise?

AI have ... I have copies of correspondence, yes. I thought you meant queries from people to me ...

QNo, no.

Q... asking about your workload. You challenged ... you wanted to be exempted from some courses, I don't remember but yes, there are copies of ... of these letters or memos.

QAre those anything which would ask you your opinion or...

ANo.

QWhy were they copied to you if you were not in any way to get engaged?

AThey're part of the legal procedures I think.

QWho exactly sent all this stuff to you?

AI don't know and I don't think it's relevant. I ... I can't answer that.

QIt is relevant. When you receive certain documents, I believe it is written there who sent it to you.

AI have things concerning your reappointment, I have things, tenure consideration, reasons for promotion, reappointment, something concerning sabbatical.

QSince you are in sabbatical, were you asked any questions concerning sabbatical?

ANot for my legal opinion on ... on your right to a sabbatical. We have legal counsels at the university and these people were probably contacted directly for an opinion on the interpretation of the collective agreement.

QWell those counsels are people who work in your office, aren't they?

AYes, they report to me.

QIf they need some kind of written legal opinion, shouldn't they provide you with copy of such opinion?

ANot necessarily, they don't do it all the time. Sometimes they inform me of a ... of a request they get, if it happens to be something that I'm already aware of, but in this case, I hadn't been informed at every stage, not necessarily. There were too many of them. You had four (4) grievances going on at the same time at one point.

QYes, four (4) grievances. Of course it is too many to be able to have a track of them, I agree with you. Still who sent you the rest of your documents?

AWhen I received the subpoena and the ... the duces tecum

that is written on it states: all ... where is it? All documents bearing the name Fabrikant, well it's (inaudible) general but I can only interpret this as being all the files I had in my office concerning you and our legal counsel.

QYou do not understand my questions. I asked you who sent you those documents and now you're responding why you brought it there.

AYou ... you put another question in the meantime. I'm responding to your second question. I already told you I can't answer the first one.

QWell ...

AYou're asking about the documents and ...

BY THE ACCUSED:

May I take a look at those documents?

BY THE COURT:

No. If you want a document in particular, you ask the question and it brings out the document in particular.

BY THE ACCUSED:

Well I want document in particular.

BY THE COURT:

Well the witness ...

AYou ...

The copies of the memos, if you have the copies of the ... is that what you were asking about?

BY THE ACCUSED:

I'm asking about the file we were talking about now, my grievance on assignment of courses which were outside of my field of expertise. So I believe ...

BY THE COURT:

And then you asked if there were copies of memos and the witness, I'm not sure what the witness's answer is with regards to these memos.

AOK, well he asked how did I get in possession of these documents.

QYes?

AHow did they happen to be in my office. All I can tell you is that I had seen part of these before but they were given to me by our legal counsel, Ma@tre Freedman when I received this subpoena and we had to gather all the files together for the purpose of bringing them to court and these two were ... were among them and I can only assume that they were part of his own files concerning the grievances because he was the one who handled them.

QThey are not memos that you otherwise received?

ANo.

QOK.

AThat's it.

BY THE ACCUSED:

QWell now still, which office sent it to your office?

AI don't know.

QOK. This is why I'm asking: may I take a look and maybe we'll discover it.

BY THE COURT:

No, you may not take a look. We've gone far enough on the question of those memos.

BY THE ACCUSED:

OK.

BY THE COURT:

You're simply being sidetracked.

BY THE ACCUSED:

Could you ... could you open them and I'll look at the first document there and I believe there must be stamp there of a certain office.

QWhat is the first one? Is my ... my grievance?

AThe first one dates back to 1989.

QNo, no, no.

AAnd it's something from the DPC.

QNo, this is not what I'm asking you to do. I'm talking about the same grievance of ...

BY THE COURT:

What is this ... what is this going to advance? What is this going to do?

BY THE ACCUSED:

Well ...

BY THE COURT:

How can it possibly ...

BY THE COURT:

Would you just bear with me. I want to discover which office sent this.

BY THE COURT:

No, no, I will not ... no, I will not just bear with you. I want to know how these documents can possibly be relevant.

BY THE ACCUSED:

How the documents or how the question who sent to her is relevant? Because right now I'm investigating only one thing. Who sent her all the ...

BY THE COURT:

She told you that she received these, she told you she received these. She didn't previously have them. She received them from Mr. Freedman when she was putting together the file to bring to court. That's what she said to you.

BY THE ACCUSED:

That's fine.

BY THE COURT:

That she didn't previously have them.

BY THE ACCUSED:

I asked who sent it to her office and it is easy to find because she received copy of the documents. Suppose it was Dean who sent it to her, then on the first document, there is stamp "Received - Office of the Dean" and so on and so forth.

It's so easy to discover who sent it to her.

BY THE COURT:

QHave you got these documents?

AYes.

QOK.

AIn the first file here called "Documents Related to Appointment and Reappointment", the... they're sent from the vice-rector academic's office.

BY THE ACCUSED:

So now we know who sent it to her. It's ... it's that easy, you see.

AIt didn't appear on the first page. I had to look somewhere else in the file and I found it.

QOh Gosh, if it is not on the first page, then it is very difficult.

AIt is.

QI agree with you. Is it the same with all other files,

that you received it from vice-rector, academic?
A No, some of them are stamped from the department of mechanical engineering. They come from Dr. Osman obviously because they were sent from him to you ... from ... from you to him.

Q No, this is not my question. Look at particular grievance about assigning me of teaching courses? (sic) This document you received by your office from vice-rector academic?

A No, I don't have it in this file.

BY THE COURT:

OK, we'll adjourn at this point until two fifteen (14 h 15).

BY THE ACCUSED:

Now after, after the break, I still have problem of person from Ottawa. Maybe we'll hear that person?

BY THE COURT:

We're going on with this witness for the moment. I'm not interrupting any further.

BY THE ACCUSED:

Well I'm trying just to accommodate person from another city.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

BERANGERE GAUDET

(Under the same oath)

BY THE COURT:

I came in without the jury for a moment because I received another communication in my office this morning comprising a number of annexes and a handwritten tract to which are attached a number of other documents. It's called a double warning. I have not studied it or read it in detail but I'm going to produce it as ... as a court exhibit. If you wish to take cognizance of it, you're welcome Mr. Fabrikant. I would like the crown to as well and I would like the crown to look into whether or not anything should be done about this.

BY THE ACCUSED:

What ...

BY THE COURT:

Everybody in this world is entitled to their opinions but I ought not to be subjected to them.

BY THE ACCUSED:

What is it about?

BY THE COURT:

It's about your trial obviously which is why I brought it down here and I haven't studied it. I have looked very very quickly through it in view of what ... of what the title said.

BY THE ACCUSED:

I would like to look too.

BY THE COURT:

The jury please. That is filed as?

BY THE CLERK:

C-14.

BY THE COURT:
C-14, OK.

THE MEMBERS OF THE JURY ARE PRESENT

BY THE ACCUSED:

QIs my understanding correct that you get those copies from vice-rector academic, not just to store it but to study and to give your opinion?

A No, not at all. I never received any such requests from the vice-rector academic. These copies were just stamped as being received from the vice-rector academic so I can only assume that they come from her office but there were no... no request for opinion or anything.

QIs or isn't administration of the university obliged, as soon as grievance comes, to ask legal opinion, whether griever is right or wrong?

A I can't say yes or no to that. I don't know of any provision in the collective agreement that says that. I don't think so but as a matter of prudence, if the university is cautious about its rights, it's only natural that the university consults legal counsel just ... just like the union does.

QThat was not my question. I'm not asking about collective agreement. I asked you whether it is the rule for the administration, when grievance comes along, to ask legal opinion whether the griever is right or wrong. Does administration do it or it doesn't do it?

A I already answered this question. I said that to my knowledge there is no written provision that said the university has to do that, but as a matter of practice, the university does do it.

QDoes do it?

A Out of caution.

QAs a matter of practice?

A Because it's ... because it's important.

QYes, OK, but in my case, it has never been asked whether I was right or wrong in my grievances, correct?

A That is not up to the administration to determine that. It's under the provisions of the ... of the collective agreement, that there is a procedure to be followed and it's ... there is a committee that hears it, there's different committees depending at what level it is and if ... if there is an appeal, if ... sometimes it goes to arbitration and it's up to the arbitrator to decide. Certainly not to the administration to decide whether you're right or wrong.

QWould you please answer my question.

A I just did.

QWas it only in my case that administration didn't ask for legal opinion? You just before said that usually administration do ask for legal opinion because it's ...

BY THE COURT:

The witness said as a matter of practice, the university does ask for a legal opinion.

BY THE ACCUSED:

So my second question was: was it just in my case that administration did not follow what was a matter of practice?

A I never said that the university didn't follow what was a matter of practice. That's not what you asked me. I

didn't say that we ... we didn't consult anyone. I ... I was not consulted personally. It doesn't mean that the university didn't seek any legal advice and I can't say for all the other cases. I don't know of all the other cases.

QAt least you have requested your legal associates to provide you with their files and in those files, you cannot find any legal opinion concerning any of my grievances, correct?

A No, I didn't say that. The ... if there are legal opinions, they have been withdrawn from the file because they are not subject to access. They are protected as confidential.

Q Well first of all, you have to inform are they withdrawn or they've never been there?

A You are already aware of ... of I think two legal opinions which you were not given access to because it's very clear in the act that it's protected. There is another one that has been withdrawn. It's a legal opinion from MaÉtre Brent Freedman and I have it here but it's ... it's not to be ... it's confidential.

Q OK, so what is withdrawn, only one legal opinion, correct?

A The question was ...

Q Was is withdrawn right now is two legal opinions before ... well two legal opinions of the year 1990.

BY THE CROWN:

Who cares about the legal opinions that were ...

BY THE COURT:

I can't ... I can't see the pertinence of this.

BY THE ACCUSED:

Well just ask me, I'll explain.

BY THE COURT:

What is the pertinence of the legal opinion?

BY THE ACCUSED:

Very simple. The pertinence is the following. As I mentioned before I'm trying to show that administration of this university was grossly negligent and overtly lawless in their dealings with me and as far as my grievances is (sic) concerned too.

I also would like to point out that the legal opinion is important to be disclosed here because what I believe, that university administration acted so wrecklessly that it was contrary to the legal opinion given if any was given.

So therefore I ask for court order to order this above-mentioned opinion of MaÉtre Freedman to be disclosed and we'll see that legal advice was most probably correct but administration of this university acted contrary to it in total and wreckless disregard of the law. This is part of my defence.

BY THE COURT:

Well it's a part of your defence that you're going to have to do without. You are not going to have access to the legal opinions that have been mentioned by the witness. The legal opinions are a private matter between the university and the ... the legal counsel who gave them. You have not been communicated with these and there is no possible manner in which these legal opinions could in any way have affected your state of mind, since you had

no knowledge of them.

BY THE ACCUSED:

Well...

BY THE COURT:

And there is absolutely nothing to justify, absolutely nothing at all to justify bringing ... making these relevant to this case so ...

BY THE ACCUSED:

No, it is.

BY THE COURT:

Well I'm sorry, your request is refused.

BY THE ACCUSED:

All right. I would like just to bring to your attention that in Ciboyer, it is written black on white that legal opinions also can be ... you know that?

BY THE COURT:

They may be but they are not in this instance. They are not relevant in this instance. They could not in any way have affected your state of mind.

BY THE ACCUSED:

OK, well I'm not saying that they affected state of mind, since I didn't know about them.

BY THE COURT:

And if they didn't affect your state of mind, they... they're certainly not relevant to the defence.

BY THE ACCUSED:

But it is relevant to defence in terms of provocation because if I can show that ... because I knew that administration was in wreckless disregard of law but it was my personal opinion and definitely my defence will be much strengthened if I can show to the jury that my personal opinion was in agreement with lawyers of the university. So this is definitely relevant.

BY THE COURT:

Did you hear me? Continue.

BY THE ACCUSED:

And I believe I should at least know the subject of the legal opinion. This is not confidential.

BY THE COURT:

Continue.

BY THE ACCUSED:

Well could you reveal subjects of legal opinions?

BY THE COURT:

You're not required to answer that, any questions concerning these legal opinions. Move on.

BY THE ACCUSED:

QO Could you give me the dates of the legal opinion which was withdrawn?

BY THE COURT:

Same decision.

BY THE ACCUSED:

Well the date was revealed to me even ...

BY THE COURT:

Same decision.

BY THE ACCUSED:

... even by access to information act. I was given the date.

BY THE COURT:

Same decision. It's not pertinent to these proceedings.

BY THE ACCUSED:

QOK. Have you fulfilled the decision of the Commission of

access to information completely?

AYes I have. All the documents were sent to you.

QDo you keep copies of those documents which were sent to me?

AThe ... I have the file about the appeal and the decision, it's thick like that and I have copies of the ... the grant requests and the research contracts and all that and of correspondence with you complaining that you're never satisfied and you didn't get everything, I have it yes.

QSo you keep copy of what you sent to me. So in this particular file, you definitely have the handwritten notes which you allegedly revealed to me. Could you check if they are there?

BY THE CROWN:

What is the point, My Lord?

BY THE COURT:

I'm not sure, Mr. Lecours, what the point is. Where will this take us, Mr. Fabrikant?

BY THE ACCUSED:

OK, if you recall, the handwritten notes were subject of testimony of another witness and we were having difficulties then and it was deemed to be pertinent at that time. So I think it didn't change since then. We discussed it already and it was deemed to be pertinent at that time.

BY THE COURT:

It might have appeared to be pertinent at that time. I can't see what the pertinence is now after the number of witnesses we've heard and where we appear to be going.

BY THE ACCUSED:

All right.

QCould you please check if they are there still?

BY THE CROWN:

I still don't see the point, My Lord.

BY THE COURT:

Well we'll see first of all if they are there.

BY THE CROWN:

It looks like another hearing in front of the Commission d'accès ... l'information.

BY THE COURT:

Generally, what are the nature of these handwritten memos?

ATo the best of my recollection, I saw them only briefly. They are notes summarizing telephone conversations between Fabrikant and the assistant to the vice-rector, academic. They were from the vice-rector academic's office.

QAnd they were copied to you, is that ...

AThey were given to the commissioner during the hearing and apparently I ... it's likely that I didn't keep copies of it because I can't find them in the file. I have a list of ... of the documents contained in the file and ... which were given to the commissioner doing the ...

BY THE CROWN:

Mr. Fabrikant claimed that Concordia destroyed these notes. He must have been there during the hearing when they gave them to the commissioner.

AIt's a telephone message.

BY THE COURT:

In any event, I can't see the pertinence of these notes. Move on to something else, move on to something else.

BY THE ACCUSED:

Well let me explain first of all pertinence.

BY THE COURT:

Well you did explain the pertinence. I asked you a moment ago what was the pertinence and you said "Well this was pertinent before when it was discussed previously".

BY THE ACCUSED:

Well if you forgot what was the pertinence, then I can explain.

BY THE COURT:

And I said to you "it may have appeared pertinent at the time, I don't know, but I have great difficulty seeing the pertinence now" and you said nothing. I asked a number of questions. Now you wish to add something? Add it.

BY THE ACCUSED:

All right. Pertinence is that it will illustrate how administration were hunting to record every minute telephone conversation of mine hoping to find something which might be interpreted as a threat and they recorded every single conversation of mine and definitely it is pertinent to show to ... to the jury how malicious the administration was, how desperate they were to find just a trace of something, because the conversation, the text of conversation is so... speaks for itself and it is extremely important to have that.

BY THE COURT:

QDo you have these memos there?

A No, I don't find them in the file.

QYou don't.

AI have copies of all the big documents that were given, the FCAR fund request for funding and I have copies of research contracts and things like that, all this is ... copies of what was given.

QBut you don't ... you don't have these memos?

A But I don't have the handwritten notes about the telephone conversations. I have a list of ... of the dates that were given to the commissioner and it says that:

"The two covering copies reside in the file kept in the faculty personnel office."

So that's where they could be ... they could be held, but I don't have them in the file.

QIn any event you don't have them.

BY THE ACCUSED:

Well isn't it funny and strange that this particular stuff, everything is there except those notes.

BY THE COURT:

The witness doesn't have them. Move on to something else.

BY THE ACCUSED:

Maybe witness didn't look good. Can I see the file?

BY THE COURT:

No, you may not. Move on to something else.

BY THE ACCUSED:

QAll right. Did you provide me with Dean's memo of July 24th 1990?

A No, I didn't because there is no such memo dated July 24th 1990.

QWell this, I showed to you that this memo is mentioned in another document. Do you recall that?

A It may have been mentioned in another document. It may have been a typo, people make mistakes. Even you make

mistakes in your memos about dates.

QWell ...

ASo, but there is no such memo. I asked Dean Swamy and he said there is nothing dated 24th of July.

QWell there is a quotation there in the document from the memo, so it could be found, maybe the date is wrong but the memo could be found still?

BY THE COURT:

QDo I understand that you've searched the files that you have and that you don't find a memo for July 24th 1990?

ADean Swamy to whom I asked if ... to find the document said he didn't have such a memo.

QIn your ... in your files, you have no such memo?

ANo, no, I don't.

BY THE COURT:

End of question.

BY THE ACCUSED:

QBut you didn't try to find from the context? Maybe there was memo with different date?

BY THE COURT:

I said end of question. Move on to something else.

BY THE ACCUSED:

All right.

QDo you recall how I explained to you why I needed copies of grants?

BY THE CROWN:

I think you ruled on the grants, you ruled on the grants.

BY THE COURT:

I ruled on the grants this morning. I said the whole question of grants was irrelevant.

BY THE ACCUSED:

OK, I hope this time I'm allowed to explain why it is relevant?

BY THE COURT:

If I've ruled on the subject and I gave you an opportunity this morning to reopen the question and tell me why it was relevant and you chose not to. I ruled that the question of grants is irrelevant. It was irrelevant this morning and it's irrelevant now.

BY THE ACCUSED:

Well I refused to explain because you asked me to do it without jury. I told you that I'm prepared to explain but with jury present.

BY THE COURT:

I told you this morning. It is my privilege at my discretion to ask you to explain your position with regard to the pertinence of evidence, either with the jury present or without the jury present.

It turned out this morning the jury was not present when that discussion took place. You declined to provide me with any enlightenment at all when I asked you. The ruling remains the same.

BY THE ACCUSED:

Well I just wonder, one ... one question could be explained in front of the jury and that question ...

BY THE COURT:

The ruling remains the same.

BY THE ACCUSED:

QDid I at any time explain to you that Seshadri Sankar used about a million dollar (1,000,000 \$) to pay someone outside the university from governmental grants and this

should be investigated as to who was paid, how much and for what?

BY THE CROWN:

This is irrelevant, My Lord.

BY THE ACCUSED:

QDo you recall that?

BY THE COURT:

I cannot see how this could possibly be relevant to the defence, Mr. Fabrikant? How could it possibly be relevant?

BY THE ACCUSED:

Let me explain it to you how it can be possibly relevant. Assuming that I'm right in my suggestion and I have evidence here that from one grant for example, which was total to three hundred and eighty-two (382,000 \$) dollars two hundred and seventy-three (273,000 \$) was paid outside the university. God knows to who, God knows for what which is seventy-five ... one and ...

BY THE CROWN:

It's not the first time we hear these stories, My Lord.

BY THE ACCUSED:

Let ... let ... I haven't finished my explanation.

BY THE CROWN:

You already ruled on these stories.

BY THE ACCUSED:

If you see from another grant, then you have one hundred and forty-four thousand (144,000 \$) and all of them, one hundred and nine thousand (109,000 \$) which is seventy-five percent (75%) paid to somebody else.

BY THE COURT:

The pertinence is what I asked you. I didn't ... I asked you to expound upon the details of these.

BY THE ACCUSED:

It is ... it is pertinent which I'm saying. (sic)

BY THE COURT:

You're not ... no, no, you can't read into evidence indirectly what you can't lead directly.

BY THE ACCUSED:

Let me ... let me ...

BY THE COURT:

It's obvious. Now what you ...

BY THE ACCUSED:

Well I'm not doing anything.

BY THE COURT:

What is the pertinence of all this?

BY THE ACCUSED:

Let me explain you. Now we have the pearl: ninety percent (90%) of the grant namely two hundred and eight thousand (208,000 \$) out of two hundred and thirty thousand (230,000 \$) were spent outside of the university. Now if you look at regular grants, even people like Osman and Swamy, you will see that even they do not spend more than thirty or forty percent (40%). Usual rate spending outside university is much much less than that.

BY THE COURT:

Mr. ... Mr. Fabrikant ...

BY THE ACCUSED:

Let me ... let me explain, let me explain, I haven't finished my explanation.

Now if you combine this information with information that governmental grants at Canadian university, researcher

cannot pay to himself but he can pay to anybody else, anyone he chooses and as much as he wants. There is no control with that and if you combine all this with the fact that person requested certain amount of money to carry on research work in the university, not outside the university and he spends ninety percent somewhere outside the university and if you combine this fact with the fact that he got for his private company just in two governmental contracts about eight hundred thousand (800,000 \$) dollars of taxpayers' money for his private one-person company, it is not difficult to come to the conclusion that he used this money to bribe government officials and then they in return, because this money he couldn't pay to himself and in return these government officials gave him governmental contracts for his private company. This is the money he can pocket.

Now how all this is pertinent to my defence? Very simple. Because I want to show to the jury that I was dealing with group of organized crime with very very big money involved and this is the main reason why I was mistreated the way I was mistreated and this is the main reason of their wreckless behavior in August when Hogben, because otherwise, it is very difficult to understand how Hogben could possibly give me such an ultimatum as he did, that either I'll go to jail for contempt of court or I have to accept this three-year settlement and shut up and unless I prove all that to the jury, jury would have very difficult time to buy that this really happened because person doesn't do that kind of ultimatum unless some huge huge somebody's interest (sic) are at stake and unless I can show that this is what was at stake and this is just the tip of an iceberg, what I know about. I'm pretty sure it's multimillion scam stuff. It's just what I know about but in reality it's much much more than that, definitely. My defence will have great difficulty.

BY THE COURT:

Well I guess your defence is going to have to have great difficulty because the question of the grants, the question of all this speculation - and I invite you ladies and gentlemen to ignore what you heard by way of argument, speculation as to the acts posed by people may well be the stuff of a proper inquiry dealing with that matter, I don't know, but it is certainly not the text of a trial for homicide over which I'm presiding here and I do not propose to permit you to embark on the question of speculation, on the question of anything else concerning first of all the character of the people who you dealt with at Concordia University, nor do I propose to let you embark on any wide ranging investigation into contracts, private companies, public companies or anything else.

It is far too remote in my view to be part of a defence. I underlined before that your defence, whatever it is, must have, must have an air of reality to it. This does not constitute proof and it doesn't have an air of reality to it in the context of a defence to four (4) murder charges.

So you may not ask that question and you may not embark on an expedition to put into proof the question of these contracts. I will not permit it. I'm prepared to be found to be in error by ... by another court. If that happens,

well... as far as I'm concerned, you may not embark on that proof.

BY THE ACCUSED:

Well, all right. I just want to submit that this is not speculation. This is documents. I have ...

BY THE COURT:

I ... as far as I'm concerned, from half a foot you said, from half a foot you said, there was speculation involved but that's not ... that's not the principal reason. The principal reason is it is not pertinent.

BY THE ACCUSED:

Well speculation can very easily be found as soon as we get from the university who was paid and how much.

BY THE COURT:

I've ruled, I've ruled on the question.

BY THE ACCUSED:

And it's no longer speculation.

BY THE COURT:

I've ruled on the question and it's not going in. This is not an enquiry into Concordia University.

BY THE ACCUSED:

All right.

QSo we have now how many outstanding cases between Concordia University and myself pending at Commission d'accès ... l'information?

AThere are two (2).

QTwo cases.

ATwo requests for revision of my decision and the most recent case is last year.

QYes, all right. Could you specify what those were?

AYes, one ... one of them was about your request of May 1st and my answer of 22nd of May about the set of documents that were found missing from the archives, I think that you questioned me about this morning.

The appeal was to be heard on the 30th of October 1992.

It was postponed on a couple of occasions and it is still being postponed because ... until the trial is over and then there is ... there is a second appeal for a revision which was filed on 10th of August 1992 and it relates to one of your requests of the 25th of July 1992. A date was set for the hearing on the 5th of March and it was postponed too.

QWhat was in my second request? What was there? Some ...

AThere were two requests of you on the same day.

QYes. One you responded and one you didn't.

AYes, I responded to both. You... it may have been an answer that you didn't like but I did answer.

QI just don't have it for some reason.

QThe first ... your first request on the 5th ... the 25th of July was first for a bill (inaud.) a security guard and the second was teaching, you wanted to have the teaching loads of all the faculty members in the mechanical engineering department. Access was given you to both on the 10th of August 1992.

Now on your second request of the same date, you asked for more information about your request dated the 23rd of June, so it's ... it's an extension of your ... of your request of the 23rd of June. You wanted the cheque requisition forms and the computer charges relating to contracts dating back to 1984.

This request from the 23rd of June was partly granted and

partly denied. I gave you access to most of what you were requesting but you were insisting on having all the ... the financial data, the cheque requisition forms. I had to ... when things date back and many of your requests dated back ten (10) years and twelve (12) years ago. Now you have to understand that documents from that far back are not kept in the department or the units. They are sent to archives as semi-active or unactive documents. Now it requires a lengthy research and it involved people from both the archives and the treasury department.

I asked the person responsible for the special accounts involving money from grants whose is Mr. Cameron Tilson (sic) to give an estimate, an assessment of how long it would take to gather the information and his response was that it would take four (4) months.

So I responded to Mr. Fabrikant that I'm sorry but I have to deny your request. We can't. There is a provision in the ... in the act respecting access that says that the public body may refuse access to information when it would require computation and organization of information and in this case, it would indeed require a lot of computations because it's not computerized. They'd have to go through it manually, one by one and there are thousands of these files in archives and so, I think I have a paragraph in my letter that says: over the phone, Fabrikant told me "Well I can do it myself" and we can't let him do that because he would have had access to nominated information on other people in the university, their salaries and everything.

So I didn't let it do it ... let him do it himself and if people from our staff were supposed to do it, it would have taken four months and to me, this is on his part an abuse of the system because an institution like ours cannot devote that many resources in time and effort just to answer one request.

QDo you recall that I asked you not salary and not money received inside the university. I asked you for the money received outside university, do you remember that?

AI don't remember the ... the exact terms of our conversation but it doesn't matter in this case because whether or not they were for internal or external purposes, the research involved was the same.

QWell isn't outside payment made not by two-weekly (sic) staff but made by ... rather by cheque requisition forms, is it?

AI don't know. You would have to ask people from treasury who are ... who are involved in that kind of matter.

QWell cheque requisition form ...

AIIt's a technical matter.

Q... is a separate document. Therefore no computations are involved.

BY THE CROWN:

What is the relevancy of this line of questioning My Lord? I can't see it.

BY THE COURT:

I can't see it either. What is this, what is the relevance here about this?

BY THE ACCUSED:

OK, the relevancy is very simple. Because they understood very well that what I'm digging at, it was not ten (10)

years, it was 1984 so it was eight (8) years ago and what I was asking was cheque requisition forms and if you have say two hundred thousand dollars (200,00 \$) spent, maximum what is there maybe ten (10) requisition forms because these guys did not take thousand dollars, they take twenty thousand dollars (20,000 \$) at once and all what was needed is ten sheets of paper to be found and to say that for that purpose, you need four months is total absurd.

So that was what I was asking for and clearly university administration understood that they have on hand very huge crime scandal and they tried to cover it up but cover-up in this case did not end with the university. What was interested (sic), that in this case, not only university but Commission d'accès ... l'information was in total conspiracy with the university because the hearing was scheduled at the fall of 1992. Then all of a sudden it was postponed to March 5th, then it was postponed again and now it is without date at all.

Now if you ask just very simple question: how come? The complaint was there and it has to be heard no matter what and I would like this witness to produce the letter which they sent to Commission d'accès ... l'information. They didn't even bother to explain why they don't want the hearing to be held. They just said "We don't want to have this hearing" and president of the Comit, d'accès ... l'information said "All right" and then the second time came, again university sent a letter "We don't want to go to the hearing" and again Commission said "All right". Can one go more lawless than that and I would like this document to be produced to show that it is not just the university this time involved, but it is really something very very dirty.

Now can you produce a copy of your letter to the Commission from the fall of 1992?

BY THE COURT:

I have an objection in front of me at the moment.

BY THE ACCUSED:

Sorry?

BY THE COURT:

I have an objection in front of me at the moment. You were responding to that.

BY THE ACCUSED:

Well this is pertinence.

BY THE COURT:

This whole line of questioning is irrelevant.

BY THE ACCUSED:

It's irrelevant.

BY THE COURT:

It is ruled out.

BY THE ACCUSED:

So I cannot produce a copy of that?

BY THE COURT:

That's right.

BY THE ACCUSED:

Well the Commission is safe, all right.

QDo you have any documents related to investigation of my allegations against Sankar and Swamy?

BY THE CROWN:

This subject was also ruled out My Lord.

BY THE COURT:

The whole question ...

BY THE CROWN:

It's not the trial of Concordia, it's not the trial of anybody else but ...

BY THE COURT:

It's not the trial of Concordia or Sankar and Swamy. The whole question of Sankar and Swamy, I though, had been ruled out.

BY THE ACCUSED:

How could it be ruled out ...

BY THE CROWN:

It's only Fabrikant's trial, My Lord.

BY THE ACCUSED:

... if this is the question how I have been used by these people. How on earth it can be ruled out? Because authorship of my papers to which they were included as co-authors, if you rule it out, my gosh, what is left. You cannot possibly rule that stuff out.

BY THE CROWN:

Sure, sure. There is a civil litigation between these people and a civil court judge will rule on this.

BY THE ACCUSED:

So what? Civil judge will rule on authorship. Here, we are to decide whether I was abused and provoked and put into such mental state that violence was just invited. This here, we are discussing different question and in this context, it is very very relevant.

BY THE CROWN:

Sorry, but this defence ... this defence doesn't exist in our law, My Lord.

BY THE ACCUSED:

What?

BY THE CROWN:

Provocation is very clear in the code.

BY THE COURT:

Provocation is extremely ...

BY THE CROWN:

The abused person syndrome is not a defence in our system.

BY THE COURT:

No.

BY THE ACCUSED:

What? If someone is abused, it's not part of provocation?

BY THE COURT:

It's not part of what?

BY THE ACCUSED:

Is not part of provocation? If someone is being abused, it's not part of provocation? It is. I wonder why crown pretends not to know elementary things which even I know.

BY THE COURT:

What evidence do you propose to lead in this regard and where do you propose to go?

BY THE ACCUSED:

Evidence is very simple, that I was used.

BY THE COURT:

No, that's a conclusion.

BY THE ACCUSED:

Yes.

BY THE COURT:

The question of the evidence you wish to lead, that's

what I want to know.

BY THE ACCUSED:

Well I just asking what ... what she had there, because I provided with the proof I had that I was used and my question is how the university reacted to that.

BY THE COURT:

If you wish to ask how the university reacted to complaints which you filed in relation to Sankar and Swamy, I'll permit you to ask that question, but we are not getting into a whole treatment of memos and files relating to complaints you might have made against Sankar and Swamy.

If the witness is in a position to answer your question, that's fine. There are surely other witnesses who are far more competent to answer that question than Maître Gaudet.

BY THE ACCUSED:

OK.

BY THE COURT:

But you're asking about the university's handling of your complaints against Sankar and Swamy. On that narrow, narrow question, I'll let you put the ... I'll let you ask your question.

BY THE ACCUSED:

QOK, so do you have any documents related to my allegations against Sankar and Swamy?

A No, I don't have any documents addressed to me in that respect. The only knowledge I have is that you filed a lawsuit against both of them and it's still pending and that's all I know.

Q Do you have their requests for the university to cover their legal expenses?

A No I didn't have any such request in that case.

Q Could you please take a better look.

A I just told you, I don't have any file on the subject.

I ... I am informed of it, I'm aware of it just like a lot of people in the university because you've mentioned it on the e-mail, you wrote pages and pages, thirty (30) and forty (40) pages of messages on the e-mail, accusing your colleagues and that was part of it so that's why I was aware of it but it wasn't sent to me personally.

Q Are you aware that university paid their legal fees with respect to this lawsuit?

A No, I don't know.

BY THE ACCUSED:

I know she did receive such a request.

BY THE CROWN:

Well the answer is she got ... he got the answer, My Lord.

BY THE COURT:

You got the answer, you got the answer.

BY THE ACCUSED:

You don't let me see her files, this is the problem.

Q You mentioned electronic mail. Did you read it all?

A I certainly received copies of it. I don't receive electronic mail at my office but I ... I received copies of it and it was deposited as exhibits in ... in your code of conduct hearings and it was sent to me as ... as an exhibit to ... with ... with requests from the DPC because at the time, you had already started sending

messages on e-mail. That's how I got aware of it. I didn't read it through the forty pages because it got too boring and too ... too repetitive.

QWell what request of DPC you have in mind right now?

AThe one that we discussed during my testimony, the one dated 7th of August 1991.

QAugust 1991? 1991?

AOr 1990? The one that I ... that we discussed and you asked for a copy to be ... to be kept with the court.

Q1992?

ANo, no, no, it's not as recent as 1992, it was before that.

QWell my electronic mail started in February of 1992. They foreseen it before? In August 1991, they already knew that I'm going to do electronic mail?

AWell I ...

BY THE CROWN:

Nobody ... nobody said so, My Lord.

BY THE ACCUSED:

I'm asking.

AI may be confused about the dates because there were so many. I'm just telling you that I've seen copies of it, attached to documents that people were sending to me in which you were making accusations against your colleagues.

QSo any investigation was made to the best of your knowledge of those accusations?

AI don't know. I wasn't the person responsible for it, so I don't have a personal knowledge of it.

QSo vice-rector did not give you any assignment whatsoever with respect to my accusations, allegations, whatever you call it?

AYou ... yes, there was an investigation made by ... by the vice-rector academic. I have a copy of her report to the board of governors but that wasn't what you're talking about. It was something more... much more specific relating to Seshadri Sankar, I believe.

QNo, no, what I'm asking, do you have any supporting documents with this report?

AThe report from the vice-rector academic?

QYes?

ANo I don't. I just have a memo from her forwarding the report to me and a copy of the report that she read to the board of governors.

QOK. Did you wonder if there exists any document to support her conclusion that all my allegations are unfounded?

AWhat's the question? Did I wonder?

QOK.

AWhy should I? No, I received the report and I kept it on the record.

QWhy should I? All right. For example, if you see one of my allegations saying that Seshadri Sankar got about eight hundred thousand dollars (800,000 \$) for his private company and I presented copies of the contracts and I presented the dissertation and I presented the report which was given to justify those expenses and report and dissertation are the same, so it looks like graduate students did the whole job and professor took all the money and after that, you say ...

BY THE COURT:

Mr. Fabrikant, all you're doing is attempting to testify under the guise of asking a question and you're not allowed to do that and this whole question is in any ... is in any event out ... out of line.

BY THE ACCUSED:

Fine.

BY THE COURT:

All you're trying to do is testify.

BY THE ACCUSED:

QDo you have the documents which I submitted to the board of governors to this effect?

AI will have to look in my files, I'm not sure. No, no, I don't. I have a copy of Dr. Sheinin's report dated 17th of March 1992.

QI'm not asking you about this. I'm asking you about documents which I submitted to the board of governors?

AThat's what I'm saying. All I have is this report.

QCould you explain what are your duties at the board of governors?

AWhat are the?

BY THE COURT:

Your duties.

BY THE ACCUSED:

At the board.

BY THE COURT:

At the board of governors.

AI'm Secretary of the board of governors.

BY THE ACCUSED:

QSo are you the person who effectively receives all the documents which are sent to the board of governors?

AYes and your ... your documents were sent to the governors and the matter was ... wasn't discussed by them directly because how could they have any personal knowledge about the facts that you were alleging. They asked the vice-rector academic to investigate the matter and she did and she reported back, back to them.

QThis is not my question. My question is since you are Secretary of the board of governors and you have subpoena to bring all the documents, why didn't you bring those?

AI ... well ...

QMy logic isn't so difficult, is it?

AIIt's because it's ... it was in another file, the ... the copies of your ... your request to the board or your complaint to the board or whatever, it was kept in a board file and I just forgot about it. I forgot to include it here but obviously you certainly have a copy of it since you wrote it yourself.

QDo you have any documents of the board related to my complaint?

AI just answered that question.

QNo, I mean ...

AIIt's in the board file.

QYes and it is supposed to be here.

BY THE COURT:

Not on the subpoena, not on the basis of the duces tecum that I've read.

BY THE ACCUSED:

Well why not? She's Secretary of the board of governors. She's the one who's in charge of those documents, she's supposed to bring them.

BY THE COURT:

Listen you have established that you submitted certain documents, you have them. They emanated from you to the board of governors. The content of those documents don't interest us. That you submitted documents to the board of governors, you've established, that the witness said the matter was brought to the attention of the board of governors and that the board of governors asked the vice-rector academic to investigate has been established, that the vice-rector academic investigated and reports has been established. Now move on to something else.

BY THE ACCUSED:

Well after that, I've sent more details.

BY THE COURT:

You were only allowed to get into this question with a view to establishing what the university did or didn't do. The merits of the question of your complaints against Seshadri Sankar and Swamy are in no way relevant to this hearing.

BY THE ACCUSED:

I have different opinion, you know.

BY THE COURT:

You may but I have made that ruling.

BY THE ACCUSED:

Yes.

BY THE COURT:

So there you are. You'll have to live by that ruling.

BY THE ACCUSED:

QOK, so do you recall that after that, I sent detailed letter to the board of governors, with documents, with supporting evidence, do you recall that? After the so-called investigation by the vice-rector?

AI know you were not satisfied with this report. Yes, I ... I may have received this ... these documents from you. I'm not sure I did send them to the board after that because I had to discuss this with the ... the chairman of the board. You can't just send things like that to the board and ask them to act as an arbitrator. It's not part of their mandate. They were not supposed to be asked to take sides in your ... decide in your favor so the ... there was ... it was, to my recollection, it was not discussed at a further board meeting after that.

QWell was it complaint this time against Sankar and Swamy or was it complaint against the rector? Was I alleging there that rector is engaged in cover up together with vice-rector, did I?

AYou accused so many people over such a long period of time that I cannot be expected to ... to remember every single one of your accusations.

QWell ...

ABut I don't have the document in front of me.

BY THE ACCUSED:

So maybe we'll adjourn and let the witness to get the documents and in the meantime, we discuss another witness.

BY THE COURT:

You continue with this witness for the minute.

QDo you have any recollection of that?

AI ... I remember Fabrikant sending me a document but I think that to the ... to the best of my recollection, it's ... it's exactly as I stated a minute ago. The chairman of the board ruled that it was ... we will not

bother the governors with that kind of thing because it's not part of their role to intervene in a private matter. I have requests like this from other faculty members who wanted to come in front of the board and tell their story and it's not part of the board's mandate.

QYou were asked specifically you know if you remember?

AYes, that's it.

QWhether that document bore upon Sankar and Swamy again or whether it bore upon Kenniff?

AI ... I can't tell for sure. It may have been all ... all of them together but I don't ... it's some time ago and I don't have it in ... in my file now.

BY THE ACCUSED:

No.

BY THE COURT:

QThese ... these are in the board file?

AIn the board file.

BY THE ACCUSED:

Well this is extremely important because it was not private matter. It was complaint on rector and vice-rector who are members of the board of governors and I asked board of governors to discuss appropriateness of the behavior of their own members, namely top administration of the university. So it was not as she described some private matter of person who wants just to come in person before the board and talk about his business.

I was waiting ...

BY THE COURT:

I understood her answer ... I understood her answer to be that the question of your complaints against whoever they might have been were not further discussed by the board.

QIs that ... it that what ...

AThat's correct.

There you are.

BY THE ACCUSED:

Well, but it is important to establish for the jury that it was complaint on the rector and the vice-rector and the board of governors was supposed to discuss it.

BY THE COURT:

Well you are now making two statements.

BY THE ACCUSED:

Two statements, yes.

BY THE COURT:

You may have made ... if you made a complaint ...

BY THE ACCUSED:

Well we need this document.

BY THE COURT:

Show the witness your copy of the document. You surely have it.

BY THE ACCUSED:

I don't have it, this is the point, I don't have all my documents.

BY THE COURT:

Well whose fault is that, Mr. Fabrikant?

BY THE ACCUSED:

Mainly ... whose fault? University administration. They did not provide ... a lot of documents are missing. I told you about that.

BY THE COURT:

Mr. Fabrikant, the university is not the organism that is supposed to provide you with copies of the complaints

that you yourself made to the board of governors.

BY THE ACCUSED:

Well those documents are ...

BY THE COURT:

Those are in your own archives surely, those documents.

BY THE ACCUSED:

Those documents were in my office. They took away a lot of documents. A lot of documents were not returned. This is the point.

BY THE COURT:

We've been through this.

BY THE ACCUSED:

If I ... if I planned the whole thing, I probably would have provided me with all documents.

BY THE COURT:

We've been through this again and again.

BY THE ACCUSED:

And all ...

BY THE COURT:

Listen, there is of course no difficulty I suppose in asking this witness to go back and bring the board file and confirm to you whether or not the complaint of whenever it was bore on Kenniff rather than on ... on Sankar and Swamy but where does this lead us in the end? What ... how is this in any sense pertinent?

BY THE ACCUSED:

Very simple.

BY THE COURT:

It's always very simple for you but it's ...

BY THE ACCUSED:

All right. Let me explain it to you. It will be simple for you too.

Because when I tried first of all to bring to attention of university administration the abuse and crime and extortion which was going on at the university, they covered up. Sheinin never talked to me before this. She filed her report without even bother to call me and say: show what you have, what evidence do you have to support all what you said? She never discussed anything with me. This is not how investigations are done and she filed it with the board of governors saying that it is not substantiated.

Then she didn't ask me to provide evidence, I provided it myself to the board of governors so that they could see themselves that vice-rector deceived them and this was just ignored.

BY THE COURT:

Well the witness has certainly said to you that the matter was not further discussed.

BY THE ACCUSED:

And how it is written that it affects someone's mind, does it affect someone's perception of what is going on? I think yes.

BY THE COURT:

Well only ... the witness certainly can't tell us that.

BY THE ACCUSED:

Well witness didn't bring those documents. So OK, I think that we could say with Yves Gervais when he comes to testify.

BY THE COURT:

Pardon? If we could what?

BY THE ACCUSED:

Well I called Gervais to testify.

BY THE COURT:

Who is Gervais?

BY THE ACCUSED:

Well he was ... he was or is chair of the board of ...

AHe's the former chair of the board.

BY THE COURT:

I see.

BY THE ACCUSED:

But I believe that we will have problem there because he's no longer chair and he will not be able to bring the documents so I suggest ...

BY THE COURT:

Would you make sure the board of governors' file is available, Mr. Freedman please.

BY THE ACCUSED:

To him. All right.

QNow did your office handle the question of my firearm permit?

AIt depends on what definition you give to my office. It wasn't me personally, but it was our legal counsel who reports to me, yes. He's part of my office.

QDo you have any files with you concerning my firearm permit?

AI have no files whatsoever in my own possession. They would be in Maëtre Freedman's office. He was the one who handled them.

QOK. Were you present at November 1st 1991 senate meeting?

AYes I was.

QDid you see me there?

AYes I did.

QDid you see the guards coming immediately after I entered?

AYes.

QHow many guards were there?

AMaybe two. (2)

QGuess again.

AI'm not sure.

QMaybe three? (3)

ANo, not more than two I think.

QOK.

AYou were sitting in the rear of the room and I was sitting in the front.

QYes. Did I do anything threatening?

AYou just sat there.

QExactly. Was I sitting with ... with what? My face was threatening?

AIt's something that you carried that led a person to believe that the ... that that could have been threatening. Now you heard all that in ... I believe in one other witness's testimony and I'm not ... I'm not going over that.

QNo, I'm asking what you saw? What other witness ...

AI saw that you were carrying a big big portfolio, that's all.

QI asked you: was my face threatening?

ANo more than it is in usual times.

QOK.

ANothing special.

QOK, now do you ... did the artistic portfolio look threatening to you?

AWell I noticed there was a bulge in it. I couldn't ...
couldn't know what was in there.

QAll right.

ABut I guess other people noticed that too.

QYes. Do you recall when guards appeared, everyone was
turning their head and asking what is going on? Do you
recall that detail?

AI don't recall that everyone. Those who were really en-
gaged in the discussion ...

QOK, not everyone but a number of people turned their head
and asked.

BY THE CROWN:

All this line is very leading, My Lord.

BY THE ACCUSED:

Well I'm trying to trigger the memory of the witness.

BY THE COURT:

Well the witness's memory has been very ... hasn't been
faulty so far.

BY THE ACCUSED:

All right. You want me to rephrase the question? I fail
to understand ...

BY THE CROWN:

A non-leading question would be ...

BY THE ACCUSED:

I fail to understand ...

BY THE CROWN:

... would be: what did you notice.

BY THE ACCUSED:

I fail to understand the objection. I may repeat once
again from McWilliams:

"Leading questions should be objected only when
it threatens somebody's case."

Does my question threaten your case, Mr. Lecours? Come
on!

BY THE CROWN:

I'm not talking to you.

BY THE ACCUSED:

Well I'm talking to the Court. I believe my question
doesn't threaten crown's case.

BY THE COURT:

As ... as your last question was put, I'm perfectly pre-
pared to permit it.

BY THE ACCUSED:

All right.

BY THE COURT:

If ... if it will get us on a bit.

BY THE ACCUSED:

I think it's just fast way.

BY THE COURT:

Mr. Lecours is technically perfectly clear.

BY THE ACCUSED:

It is fast way.

BY THE CROWN:

Well it's because he's testifying himself.

BY THE COURT:

Yes, well this is the problem with it. He testifies in
the course of the question, that's ... that's of course
the difficulty.

BY THE ACCUSED:

Well I think this is just fast way to get the answer.

BY THE COURT:

In any event the senate meeting, here we go again on the senate meeting.

AI'm sure it's not first time you've heard about it.

BY THE ACCUSED:

QSo ...

ASo what was your question? Did I notice that some people not everyone but some people ...

QYes?

A... noticed when guards came in?

QYes, they turned their head and asking what is going on?

AHum, hum.

QYou noticed?

AQuite possibly.

QAll right. Did you know before November 1st anything at all that I threatened somebody or anything at all in respect to all that?

ANo.

QYou had absolutely no knowledge?

ANo personal knowledge. This came out later on at the code of conduct.

QWhen did you start working at the university?

AFive and a half years ago (5 1/2), at the beginning of 1988.

QOK. Did you hear on November 1st that I was arrested and searched by the police?

AI wasn't present there as a witness when it happened. I was told about it afterwards. I ... I remained inside the ... the meeting room while this happened. I was talking to people who had questions to ask or documents to ask of me and I stayed in the ... in the senate chambers for about twenty (20) minutes after the meeting had ended. So I had no personal knowlege of how all this happened. It was related to me afterwards.

QBut it was related to you? This is my question.

AI wasn't present. Hum, hum.

QOK. When you heard about it, what was your reaction?

BY THE COURT:

Well I think the witness isn't here to testify as to her reaction. If you want to ask her what ... if she did anything, ask her if she did anything.

BY THE ACCUSED:

Well reaction is also did something. (Sic)

BY THE COURT:

No, it's not because the witness ... the witness is not here to ... to bring any judgments to bear on what happened at that senate meeting or anywhere else.

BY THE ACCUSED:

I don't ask for her judgment.

BY THE COURT:

Well that's the best you'll have.

BY THE ACCUSED:

I'm just ... OK, when you ...

BY THE COURT:

If you ask her her reaction, that's ... you're getting dangerously close to that.

BY THE ACCUSED:

Well I don't understand the word dangerously in this con-

text.

BY THE COURT:

So that last question is disallowed.

BY THE ACCUSED:

All right.

QDid you ask for reasons for the arrest from the person who told you that?

A I don't remember. I remember being surprised and I probably asked how it happened and I know that the person responsible for ... for security at the time at the university was Dr. Catherine McKenzie and knowing her well I ... I could only assume that she must have had very good reasons for doing that.

QYes, OK, but you didn't see me pacing from corner to corner there in the ... in the ...

AIn the senate chambers?

QYes?

AYou ... you went in the rear of the room where we ordinarily get coffee and the guard followed you there and that's all I recall. You .. I mean you got up a couple of times and the rest of the time, you ... you sat there.

QYes.

AThat's all I can recall.

QAll right. Were you shocked when you heard that professor has been arrested and searched for weapons?

A I'm here to ... to testify to facts, not to give my reactions.

BY THE COURT:

It's the same question, it's the same question asked another way. You may not.

BY THE ACCUSED:

QOK. Were you told that I threatened to kill rector at that time?

A No, not at the time.

QWhen did you hear about that?

A I only read in the newspapers like everyone else that the rector's house was under surveillance because of threats that you had made, but I wasn't aware of that when the decision was made to ... to have the house protected. I only read about it like everyone else.

QYou mean what? Several days ago?

AIn the newspapers. I wasn't aware of it before.

QOK. How it was explained to you the reasons for my arrest?

AThe people involved didn't have any reasons to give to me. They didn't report to me. Why should I have asked them questions.

QSo you learned that ...

BY THE CROWN:

I think we have enough on this subject with the people that were involved and that were present. If we ask everybody else in Montreal or in the world what they know about it ...

BY THE COURT:

I think you're right. The question has been exhausted.

BY THE ACCUSED:

Well ...

BY THE COURT:

Move on to something else.

BY THE ACCUSED:

This is question, not for the sake of the question. This

is question to characterize the witness.

BY THE COURT:

The objection is maintained.

BY THE ACCUSED:

QSo after I was arrested on November 1st, nobody told you anything about any threats which I allegedly made?

BY THE COURT:

Sorry, you said?

AI ... this is the same line of questioning. Am I ... am I obliged to answer that, My Lord?

QAfter the arrest, yes.

AAfter the arrest, no, not immediately after.

BY THE ACCUSED:

QOK, how much after?

ASeveral months after. Only when I read the ... the decision from the hearing board in the complaint that you had filed against the university.

QSo professor of the university got arrested, you learned about it, you never asked any questions as to why he was arrested?

BY THE COURT:

Now you're cross-examining the witness, Mr. Fabrikant. You may not do that.

BY THE ACCUSED:

QWhen did you learn that I asked for a firearm permit first?

BY THE CROWN:

Did she ... did she say she learned it?

BY THE ACCUSED:

Well witness is capable to answer "I never learned it". How about that? Witness is a lawyer.

BY THE CROWN:

There was an assumption in this question, My Lord.

BY THE COURT:

The questions bore previously on the question of the permit and to her, having a file and whether she participated in relation to it, the question now is slightly different. It's permitted.

AI learned about it several months after that but I don't recall if it was before the shootings or after them.

BY THE ACCUSED:

QSo MaEtre Freedman was involved in the file and never informed you as to what he was doing?

AI knew he was dealing with the police on that matter but he ... of course, he's ... he's a professional and he's autonomous. He certainly didn't report to me on every single phone call or letter that ... that he wrote, but I knew he was dealing with ... with the police.

QSo it means that you knew about my firearm permit at the time when it was made?

AAAt the time the request was made. Ah, at the time you made a request to have someone from the university sign to ...

QYes?

A... to vouch for you or something like that?

QYes?

AYes, I ... I am aware of that.

QOK and at that time, also nobody told you anything about my alleged threats?

AI don't recall having been informed about it. Officially I'm not the person who was asked to sign for you so the

rector was asked and the ... the matter was handled between the rector and Ma@tre Freedman.

QWere you present at a meeting with Bertrand concerning university objections to me obtaining such a permit?

A No, I was not present.

BY THE ACCUSED:

OK, thank you.

BY THE CROWN:

I have no questions, My Lord.

BY THE COURT:

Thank you very much, Ma@tre Gaudet.

END OF THE TESTIMONY OF THIS WITNESS

BY THE COURT:

We'll adjourn for ten (10) minutes.

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

BY THE CROWN:

My Lord, following the discussion we had this morning, I want to suggest something to you. I think by this time we all have the feeling that we're sidetracked and we're wasting time and you raised the point yourself. I think we ... we're justified or you're justified to ask at this point what is the relevancy of the coming witnesses and without jury and you make a decision whether you excuse or not the witness.

You have the right to do so in accordance with section 698 of the criminal code. I've ... I've been told by Ma@tre Belleau there is a file that thick, a lot, dozens of witnesses are subpoenaed with duces tecum, every document bearing the name of Valery Fabrikant.

We had the experience, one of the first witnesses from Concordia, Mr. ... I think it was Mr. Haines, he has a file about that thick and Fabrikant went through that file word by word and ten questions on each sentence and everything. The ... the next people coming are ... are going to come with boxes of documents. I think it's about time to set limits.

BY THE ACCUSED:

Of course, it is absolutely terrifying if witness comes with box of documents, it is absolutely unheard of in jurisprudence and of course, it should be forbidden and Fabrikant has ... how the hell Mr. whatever is his name, could tell to you how many witnesses I call.

BY THE CROWN:

No, when there is a return of fifty-nine ...

BY THE ACCUSED:

What the hell is going on?

BY THE CROWN:

When there is a return.

BY THE ACCUSED:

I do not understand at all. No more professional.

BY THE CROWN:

It's part of the court file, when it's ... when there is a return, My Lord.

BY THE ACCUSED:

What the hell is going on?

BY THE COURT:

He told you. When there is a return of a subpoena, it's a public document. It's been served.

BY THE CROWN:

Well then count how many of them are ...

BY THE COURT:

In any event, what ... you asked me to come in without the jury.

BY THE ACCUSED:

Well he's ... he's liar. How many did you count?

BY THE COURT:

Had you a particular reason to ask me to come in without the jury?

BY THE CROWN:

To make this suggestion, My Lord, following what we ...

BY THE COURT:

In relation to the witness who ...

BY THE CROWN:

No, this witness, I've been told he's from I guess Transport Canada. What ... what does he have to do with four murders on August 24th 1992? I think it's about time to start screening what's going on.

BY THE COURT:

Well I made the suggestion this morning myself.

BY THE CROWN:

Yes so I ... I just ... I just suggest that we continue on this.

BY THE COURT:

I really have no ... I really have no problem with whether we do it with the jury present or the jury not present. I really have no problem with the ...

BY THE CROWN:

Well I see no problem either.

BY THE COURT:

With the ...

BY THE ACCUSED:

If you have no problem, call the jury.

BY THE CROWN:

OK. I see no problem either. This morning, you decided this question. You ... you are the boss. If the accused doesn't respect your ... your discretion, we have a problem.

BY THE COURT:

Look, I pointed out that I have the discretion to decide whether or not I'm going to do with the jury in or out and ...

BY THE CROWN:

I don't mind the jury ... if you ask my opinion, my ...

BY THE COURT:

If it makes ... if it makes him happier that it be done with the jury in in this instance, then ... then that's fine with me. I nevertheless reserve the right to do it with the jury out.

BY THE CROWN:

Yes.

BY THE COURT:

If I ... if I happen to deem that it has to be done that way in order to preserve the integrity of the trial.

BY THE CROWN:

Yes, my first rule is to respect the judge and the judge's rulings but if you ask my opinion about the jury,

I don't mind.

BY THE ACCUSED:

Let's call the jury.

BY THE COURT:

Because whether the jury is here or whether the jury is not here will make not one whit of difference in my decision, that's for sure.

BY THE CROWN:

I agree, I agree.

BY THE ACCUSED:

So why to exclude then? Jury should be here all the time.

BY THE COURT:

No, it shouldn't. I've gone through that with you and I'm not going through it again, but no it should not.

BY THE CROWN:

The jury is here to hear evidence, not arguments or not points in law.

BY THE ACCUSED:

Arguments about admissibility too.

THE MEMBERS OF THE JURY ARE PRESENT

AUGUST ELMER POKOTYLO

Public servant

August 17th 1941

SWORN

DIRECT EXAMINATION BY

MR. VALERY FABRIKANT

REPRESENTING HIMSELF:

QWell what is your position in Ministry of Transport?

A I'm the Director general of Research and Development in Transport Canada.

QOK. Were you the one who investigated my complaint to the minister?

A No, I was not.

QOK. Who was the person who investigated it?

AAAs I recall, the investigation was given to the assistant deputy minister of review and that office ...

BY THE CROWN:

My Lord, excuse me, I think you have the power to enquire about the relevance of this witness, My Lord.

BY THE COURT:

I think that's surely what has to be done at this point. In your introductory questions, you have talked about an investigation.

BY THE ACCUSED:

Yes.

BY THE COURT:

You've talked about a complaint you made to the minister.

BY THE ACCUSED:

Yes.

BY THE COURT:

What could possibly be the relevance of that as far as this trial is concerned? Would you sit down please for a minute sir.

BY THE ACCUSED:

Well relevance is the same as before. When I saw that the rector, the vice-rector is covering up, when I saw that the board of governors just ignored all my information,

I thought that Ministry of Transport should be interested to know that Seshadri Sankar got from that particular ministry, as I mentioned before, the amount close to eight hundred thousand dollars (800,000 \$) for his one-person company.

Now one person cannot possibly do the job which is allegedly worth eight hundred thousand dollars. That person either is misrepresenting the job or he is going to do just what Sankar did. He used university resources, he used the university people to do the job and pocket the money and people who gave them those contracts definitely understood very well that one person company cannot possibly do the job.

Therefore and since I had evidence, at least in one case, that the officer who gave the contract has received in exchange authorship also of several scientific papers to which his contribution was zero, I think it was important to let the ministry know that this was going on and to ask them to investigate.

Now by the time it was clear to me that ministry is covering up exactly the same as it was with the rector, with the vice-rector, with the board of governors and this particular witness is to come here and to testify that indeed this was the case, that my perception that criminals are very well protected at every level was correct. This is what witness is here for, to show that my state of mind which assumed at that time that all those criminals are very well protected in every sphere, in courts, in the ministries, in board of governors, that my perception was not paranoia but rather correct perception.

BY THE COURT:

There are some things that occurred at Concordia University that may have a certain relevance to this trial, in particular the question of your relationship with a number of your colleagues may have some pertinence to this trial and may have some pertinence to your state of mind if that ever is in issue, but the government treatment of a complaint, report or whatever you want to call it that you made concerning Swamy, Sankar or whoever can surely not in any sense be pertinent to the crime of which you stand accused, not to any defence which you may care to raise.

I have heard you when you've said that the government or the government agency involved was also an active instrument in a cover-up.

In all of the evidence that I've heard apart from allegations that you've made from the dock along these lines, I haven't a whit of anything that would even tend to substantiate that particular position and in the end, how the government treated your complaint is really of no pertinence at all.

BY THE ACCUSED:

It doesn't affect my mind?

BY THE COURT:

It doesn't. I don't know whether it affected your mind or not.

BY THE ACCUSED:

Well what is the difference, colleagues or the ministry?

I see no difference.

BY THE COURT:

I'm sorry, it is ...

BY THE ACCUSED:

If my relationship with colleagues can affect my mind, my relationship ...

BY THE COURT:

It is ... it may be closer in relation to your colleagues and your contract, but certainly ...

BY THE ACCUSED:

It's the same thing.

BY THE COURT:

Certainly, certainly whatever happened to a report you made to the ministry and I hasten to advise the jury that the statements that you made just now from the dock to the effect that the government was a willing instrument in any cover-up, in a cover-up that was orchestrated by Concordia university and others is not something that the jury can take into account as ... as being valid proof in this case.

You're making your statement simply under the guise of testifying with regard to the objection. That's all you're doing.

I can't see the pertinence of this ... of this testimony at all and if that's what you propose to put to the witness, I'm going to rule that the witness's testimony is not pertinent to these proceedings and release him.

BY THE ACCUSED:

Well in this particular case, first of all, you say you haven't heard a single whit of evidence. I wish to remind you you didn't allow me to present the evidence. When I tried to present the evidence, all the documents, contracts and grants, I have all this, you disallowed me to ask questions.

BY THE COURT:

Of course, I told you, I told you and in any event it's not pertinent.

BY THE ACCUSED:

So well I didn't ...

BY THE COURT:

It's simply not pertinent.

BY THE ACCUSED:

Let me finish please. So you would not hear a whit of evidence unless you allow this evidence to be presented and this evidence, I have it. You just don't allow it to be presented.

BY THE COURT:

This evidence ...

BY THE ACCUSED:

Let me finish please.

BY THE COURT:

This evidence, Mr. Fabrikant, is far too remote.

BY THE ACCUSED:

Let me finish please, but please do not reproach to me that you haven't heard a whit of evidence of what I'm saying. I have all the evidence, just allow me to present it.

As far as the ministry is concerned, it's quite obvious that normal person doesn't take justice in his own hands if he thinks that there is at least one instance where he can get justice done without taking justice in his own hands. So ministry is even more pertinent than colleagues

at the university because the main thing there is ...

BY THE COURT:

I advise you right now that any statement you make from the dock is a statement that the jury may take into account in arriving at their eventual decision.

BY THE ACCUSED:

Well sure.

BY THE COURT:

You're the one who wanted these objections argued in front of the jury, you're the one who insisted upon it, you're the one who asked me to call in the jury this afternoon.

BY THE ACCUSED:

Sure.

BY THE COURT:

And twice you've used the expression.

BY THE COURT:

Well what? Take justice in my own hands?

BY THE COURT:

Yes, yes sir.

BY THE ACCUSED:

It doesn't mean that I planned to kill anyone. Take justice in own hands means only that I took those revolvers and I tried to scare Hogben, nothing else.

BY THE COURT:

Mr. Fabrikant, the evidence that this witness is going to give is not ...

BY THE ACCUSED:

So please do not ...

BY THE COURT:

... is not going to be permitted.

BY THE ACCUSED:

No, no, let me finish please. Please do not imply that I'm here admitting anything in terms of premeditation of the murders.

BY THE COURT:

I said to you that your words ...

BY THE ACCUSED:

And I ... let me finish.

BY THE COURT:

... are your words.

BY THE ACCUSED:

Let me finish please.

BY THE COURT:

And that's why these things should be argued ...

BY THE ACCUSED:

Let me finish please. Because what you are doing, it is you who are trying to put in mind of the jurors something which I didn't say. I said: take justice in your own hands doesn't mean to go and to shoot someone.

BY THE COURT:

Mr. Fabrikant, quite to the contrary, I gave you an opportunity to qualify what you had just said.

BY THE ACCUSED:

Yes.

BY THE COURT:

That's what I did.

BY THE ACCUSED:

Well there was no need for that. I will go and testify and there is absolutely no need for that, to me qualify

anything.

BY THE COURT:

Fine.

BY THE ACCUSED:

I'm saying ...

BY THE COURT:

Well as far as I'm concerned, you're not going to make the evidence you propose to make with Mr. Pokotylo.

BY THE ACCUSED:

So you don't think that the fact that higher and higher officials ignore your complaints affect human's mind less than just relationship with colleagues, this is ...

BY THE COURT:

I'm ruling, I'm ruling that Mr. Pokotylo's evidence is not pertinent to your defence.

BY THE ACCUSED:

Well can he at least deposit the documents which I gave him?

BY THE COURT:

No, if ... if his evidence is not relevant, the documents are not relevant. If you wish to establish that you made a complaint to the ministry, then ... then fine, but that is as far as I'm prepared to permit you to go.

BY THE CROWN:

He will testify on that, he said so. This witness is not relevant, My Lord. If we start ...

BY THE COURT:

He may surely .. he may surely testify on that. If he says he'll testify, that's what I just heard him say at the moment but I ...

BY THE CROWN:

It's already in evidence through the second question, My Lord.

BY THE COURT:

It was already in evidence in any event through another witness.

BY THE ACCUSED:

What? For which witness was it? I think that I have perfect right to establish here that I did make a complaint.

BY THE COURT:

I'll let him... I'll let you establish that you made a complaint.

BY THE ACCUSED:

Well then how the ...

BY THE COURT:

I'm not ... I'm not going into the question that you enumerated that you wish to get into with this witness.

BY THE ACCUSED:

Well ...

BY THE COURT:

So you have ...

BY THE ACCUSED:

We agreed before, each question, there is a crown.

BY THE COURT:

We didn't agree ...

BY THE ACCUSED:

There is a crown, objection.

BY THE COURT:

We did not ... Mr. Fabrikant, I'm not the crown.

BY THE ACCUSED:

Yes, yes, sure, yes.

BY THE COURT:

You simply wish to belittle the whole thing.

BY THE ACCUSED:

Well with all due respect, I mentioned ...

BY THE COURT:

If you wish to put in evidence, if you wish to put in evidence that you made a complaint, you go right ahead and put in evidence that you made a complaint.

BY THE ACCUSED:

I mention once again that it looks like each time I'm trying to show something useful for my defence, I hear objections even more from you than from the crown.

BY THE COURT:

All that I'm concerned about is the relevance of what you wish to establish. If you wish to establish you made a complaint to the government, go ahead, I'm prepared to let you go that far.

BY THE ACCUSED:

Let us see how far I can go.

BY THE COURT:

Well don't ... don't test me. I'm telling you how far you can go.

BY THE ACCUSED:

All right but ...

BY THE COURT:

Would you stand up sir.

BY THE ACCUSED:

I'm not sure that they sent the right person in the first place because I asked for the person ...

BY THE COURT:

Well you put ... if your view, if your purpose is to establish that you made a complaint, but the question to the witness and we'll see whether he's in a position to answer.

BY THE ACCUSED:

QYes. First of all, did you bring all the relevant documents related to my complaint to the ministry?

AI have documents, yes.

QWell ...

AI'm not ...

QAll the relevant documents?

AI have documents that bear the name Valery Fabrikant on them. Copies ...

QAll right.

AI have copies of those documents.

QAll right.

AFrom the Ottawa office and I have some ... I have some originals from the Montreal office.

QAll right, OK, now could you ... could you state to the jury when you received my complaint and what it was about?

AI cannot recall the exact date of the complaint but the ministry of transport ...

QYou have the file. Why don't you consult the file and I believe the date is there.

AI't will take some ... I wasn't aware of what sort of line we pursued, Your Honor, so it takes some time to trace.

BY THE COURT:

QWell all I'm interested in knowing is if he made a complaint and if so, when?

AHe made a complaint. I'll see if I can find it. It appears the complaint was made in a letter dated July 5th 1992.

BY THE ACCUSED:

QOK, may I ask you, do you have personal knowledge of the file in front of you?

AI do not have detailed knowledge of the file.

QDid you ... did you read the file?

AI have glanced through the files, yes.

QWhy were you sent instead of the person who was in charge of the file?

AI was subpoenaed.

QWell was there your name explicitly given?

AMY ... my name was explicitly on the subpoena.

BY THE ACCUSED:

Well this is what Mr. Belleau does. I asked him to find the person who was involved in the complaint and subpoena this particular person.

BY THE COURT:

There's no point arguing with the witness. The witness has confirmed that your complaint was received.

BY THE ACCUSED:

Well yes. Minister of transport or designated by him, person (sic), yes. So what is not clear there? Yes this is what I've written there.

BY THE COURT:

Are you finished with this witness?

BY THE ACCUSED:

No, but I'm ... I'm not that sure that the witness is the right witness. This is the problem. Anyway let's try to continue, that's it.

QSo what .. what happened? What was complained about?

Could you describe shortly what the whole thing was about?

AI think ...

BY THE CROWN:

If you ruled the whole thing as irrelevant, if he asks questions whether there is a complaint or what is the complaint about, who took the result and everything, where ...

BY THE COURT:

There's no point in getting into the nature of the complaint. He's already in fact in the course of this argument indicated that the nature of the complaint had to do with contracts to ...

BY THE CROWN:

The witness is irrelevant, period.

BY THE COURT:

... to Mr. Sankar. Do you have anything to say?

BY THE ACCUSED:

Well I said already it is important for me to show that ministry didn't do any investigation, that they just ignored the complaint and this definitely affected my mind.

BY THE CROWN:

Everything affects his mind, My Lord.

BY THE ACCUSED:

Yes.

BY THE CROWN:

His first kiss, everything, you know.

BY THE ACCUSED:

Yes.

BY THE COURT:

The complaint was received on July 5th 1992.

BY THE ACCUSED:

Yes, yes, yes and they ignored it. One month and a half, more than one month and a half before the shooting.

BY THE COURT:

Ask... ask what was done with regard to the ... to the complaint if the witness knows.

BY THE ACCUSED:

This is exactly what I'm intending to do.

BY THE COURT:

I permit you to do that.

BY THE ACCUSED:

But before I asked what they did with the complaint. I believe it is important to ... to state what was complained about. What seems to be the problem? Why crown should be so much concerned. We are spending that much time in discussing what complaint was about, can I or cannot I ask the question. In the meantime, the witness could respond: the complaint was about ...

BY THE COURT:

QAre you aware of what the complaint was about? Are you able to state succinctly what the complaint was about?

BY THE CROWN:

If he's going to say what Fabrikant says from the dock, that you ruled irrelevant, what's the point of having this witness.

BY THE COURT:

Only two things: that the complaint was made and he says nothing was done about it. I don't know. That's all.

BY THE CROWN:

And the subpoena was to the minister, you know.

BY THE COURT:

That's all. The ...

BY THE CROWN:

If you open the door, you're going to get the rest, My Lord.

BY THE COURT:

I'm not going to get the rest. I've limited it to these two things.

BY THE ACCUSED:

Well what seems to be such troublesome? Is your case in jeopardy?

BY THE COURT:

Mr. Fabrikant, put your question.

BY THE ACCUSED:

All right. I put already the question.

QCould you describe what complaint was about?

BY THE COURT:

QGenerally the nature of the complaint.

AYes, there were allegations, Your Honor, of contracting irregularities.

BY THE ACCUSED:

QOK, what ... what exactly kind of an irregularity was that?

AI'm not personally... I was not personally involved in the contracting process so I ... I can't easily respond to that question.

BY THE ACCUSED:

Well he's definitely the wrong person.

BY THE COURT:

Well I ... I wouldn't have been prepared to permit that in any event. I would have been prepared to permit you to establish whether something was done or whether something wasn't done.

BY THE ACCUSED:

Well because this is the main point, what affected my mind and nothing was done, so I need to establish it that nothing was done and the matter was totally outrageous. The matter was obviously outrageous, I need to establish it. It is important and that the ministry just covered up. It is important.

BY THE COURT:

I said I'm not going into that. If you wish to ask whether the ministry did anything with your letter, ask that.

BY THE ACCUSED:

QAll right. So could you describe what proof was presented with my complaint to the ministry?

BY THE COURT:

No, no, no. You said the ministry did nothing with your letter. I don't know whether that's so or whether that's not.

BY THE ACCUSED:

No, I said it, I said it. Maybe I'm wrong, maybe they did.

BY THE COURT:

Well fine. Then that's all you have to establish.

BY THE ACCUSED:

But let's find out, but before that ...

BY THE COURT:

But we're not getting into the question of what proof you submitted to the ministry in relation to whoever you submitted it to. That, we're not getting into.

BY THE ACCUSED:

This is the main thing.

BY THE COURT:

I told you, that is not relevant.

BY THE ACCUSED:

That is not relevant. How can we then decide whether ministry ignored the complaint or it was just a submission of a crazy maniac paranoid and narcissic ...

BY THE COURT:

Well I would suppose the first step would be ...

BY THE ACCUSED:

This is the question to be asked right now.

BY THE COURT:

... asking what was done in relation to your complaint.

BY THE ACCUSED:

But before, then we need to know what was submitted and what the whole thing was about because we cannot ask what was done unless and until we know what the whole thing was about and again, we are just ... we are just spending time. The witness can answer.

BY THE COURT:

We are not just spending time. If your ... if you're not going to follow up on whether anything was done between July 5th and August with regard to your complaint, then

let's stop this witness but we're not going to go into the details of the nature of your complaint and what documents you submitted.

BY THE ACCUSED:

All right.

QSo you received my complaint. What happened to it? Was it given to somebody else for investigation? What happened to it?

AAAs I mentioned earlier, as I understand, the matter was turned over to the assistant deputy minister of review who conducted an internal investigation.

QYes, could you describe ... first of all, maybe you take the microphone on your neck because I have great difficulty ...

BY THE COURT:

The witness is doing fine.

BY THE ACCUSED:

I must tell you I have great difficulty listening to tapes. I hear you perfectly well, I hear myself but I hear ...

BY THE COURT:

QIt was turned over to the assistant deputy minister for?

AReview.

QFor review.

AAssistant deputy minister of review for review.

BY THE ACCUSED:

QWhat is the name of that person?

AMr. David Bell.

QDavid Bell. Could you explain why Mr. David Bell wasn't sent here if you have personal knowledge of that?

AI cannot. I was away on business when the subpoena arrived and I'm not sure who negotiated that I should be here.

BY THE ACCUSED:

This is what sabotage is all about.

AI'm, Your Honor, responsible for certain government programs. I think there was a connection.

BY THE ACCUSED:

This is how sabotage is being done. It was the wrong person.

QAll right. So it was submitted to Mr. Bell. What did Mr. Bell do if you know because we, instead of hearing Mr. Bell, what we are doing, we're hearing some kind of hearsay about what Mr. Bell did or didn't do. It's absurd.

BY THE CROWN:

Anyway what Mr. Bell did is not relevant.

BY THE COURT:

What Mr. Bell did and what Mr. Bell received is ... is not relevant.

BY THE ACCUSED:

Well you just recently said that I may ask what ... what the ministry did with my complaint.

BY THE COURT:

You did. You've established ... it's been established that it was turned over to Mr. Bell for review.

BY THE ACCUSED:

Yes and I need to ask Mr. Bell what he did with it. You said yourself this is ... this is permissible.

So I think that the best think to do right now is to say that we need to hear Mr. Bell and ...

BY THE COURT:

Mr. Fabrikant, the matter was turned over to Mr. Bell and it was received on July 5th 1992.

BY THE ACCUSED:

Yes, now I need to ask what he did with it.

BY THE COURT:

If you think that the ... that the government somehow or other was going to manage to conduct an investigation into whatever the nature of your complaint was and furnish you with the results of that investigation before August 24th, you are I would think dreaming.

BY THE ACCUSED:

Not at all, because first of all, I haven't received even acknowledgement that they have received it, so it was not a naive thinking. I have not even received an acknowledgement before I called him several times: "What happened to my complaint, did you receive it" and so on and so forth so I suggest, I believe we have a reporter there who will take just couple of minutes to ask and I think we should excuse this witness and call Mr. Bell instead of hearing the hearsay as to what Mr. Bell did or didn't do.

BY THE COURT:

I have no idea what Mr. Bell did and unless the ... and I don't think the witness is the appropriate person to talk about.

BY THE ACCUSED:

Exactly, so I think we should excuse him and I think that Mr. Belleau should ... well I don't know if he's capable of being ashamed but ...

BY THE COURT:

Thank you very much sir.

END OF THE TESTIMONY OF THIS WITNESS

BY THE ACCUSED:

This is not the way things should be done and we have just reporter there which I need just to establish the whereabouts of one witness so it will take not more than a couple of minutes.

BY MAITRE LOUIS BELLEAU

AMICUS CURIAE

The reporter is not here.

BY THE COURT:

Pardon?

BY MAITRE BELLEAU

I said the other witness was excused this morning. He told me that he could be available in fifteen minutes' notice so I told him that it was pointless to wait outside all day.

BY THE COURT:

Who is the other ...

BY MAITRE BELLEAU

It's a journalist from the Gazette so he's at the office fifteen minutes from here but I mean at this hour

...

BY THE COURT:

He's supposed to ...

BY THE ACCUSED:

Well isn't he supposed to ask me?

BY THE COURT:

A journalist from the Gazette who is supposed to?

BY THE ACCUSED:

Well I found in the Gazette a name of a very important witness and we cannot trace him.

BY THE COURT:

You appear to be talking about something quite apart from what we've discussing for the past half an hour.

BY THE ACCUSED:

Not at all. This witness allegedly saw me.

BY THE COURT:

Listen Mr. Fabrikant. What you wish to put in evidence through this witness, I've ruled irrelevant. If you want to make proof as you have that you made a complaint to Ottawa, fine, that's in evidence. The date of the complaint is in evidence. The action taken at the ministry is in evidence.

BY THE ACCUSED:

No, action is not in evidence. Mr. Bell is not here and this particular witness could not possibly testify as to what Mr. Bell did and didn't do.

BY THE COURT:

Well if you're going to bring Mr. Bell, of course that's a decision that you'll have to make.

BY THE ACCUSED:

All right.

BY THE CROWN:

Well I suggest right now that Mr. Bell is not relevant. Let's not bother him.

BY THE ACCUSED:

Mr. Bell is relevant.

BY THE CROWN:

Because I will ... I will submit to you that this testimony is not relevant, even the two questions you allowed in my mind ...

BY THE COURT:

Are not relevant.

BY THE CROWN:

Well I don't want to discuss your rulings but ...

BY THE COURT:

That's OK, I've developed a very thick skin since.

BY THE CROWN:

Well I make my motion for Mr. Bell. I think we should not bother him.

BY THE COURT:

I can't ... I can't see the pertinence of it. I'm not going to authorize any subpoena to bring Mr. Bell here. So we'll adjourn until tomorrow morning, nine thirty (9 h 30).

PAR LA GREFFIERE:

Monsieur Fabrikant, est-ce qu'il peut garder les documents.

PAR LA COUR:

Non, non, non.

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

PROVINCE DE QUBEC

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 29 JUIN 1993

FICHER: 2630

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WITHOUT JURY

VALERY FABRIKANT :

Before anything starts, I would like to, again, remind that if it is question of witnesses admissibility evidence, I would like the jury to be here.

THE COURT :

I will tell you again, I will treat that as a matter of discretion, and I will decide that, Mr. Fabrikant, you will not.

VALERY FABRIKANT :

I'm not saying I'm deciding, I'm just saying that this is my opinion, and you can do whatever you want.

THE COURT :

It may be your position, I will do what I deem appropriate in the circumstances.

VALERY FABRIKANT :

This is what I'm saying.

THE COURT :

Mr. Freedman.

Me BRAM FREEDMAN :

Yes, My Lord. I would like to raise the issue of two subpoenas with you this morning. The first subpoena was sent to Miss Pina Greco, who is a secretary in the Rector's office. What the duces tecum says is e-mail printout during August, September nineteen ninety-two (1992) concerning Fabrikant. Now I should indicate that when Mr. Fabrikant was sending out his e-mail in the summer of ninety-two ('92), and asking people to address their objections about his treatment, the e-mail address that he gave for the Rector's office was Miss Greco's. What I did was I have retrieved the printouts, the messages that were received through Miss Greco's

terminal, I think there were... and I gave those directly to Mr. Fabrikant, I think there are about four or five messages that had been received on her terminal. I've given those to Mr. Fabrikant. Miss Greco has not pertinence to this case personally, I imagine she was subpoenaed as a messenger of these documents. The documents have been given to Mr. Fabrikant, Miss Greco is due to leave for Italy for a family wedding next Monday, from July fifth (5th) to July twenty-first (21st), so I would ask that her subpoena be cancelled, the documents that Mr. Fabrikant requested have been given to him by myself.

THE COURT :

Uh, huh.

Me BRAM FREEDMAN :

The second issue is a subpoena addressed to Director of Computer Center, and what it says on the duces...

THE COURT :

Who is the Director of the Computer Center?

Me BRAM FREEDMAN :

The person's name happens to be Jack Fearnley, the person who's in charge of our internal computing services.

THE COURT :

Jack Fearnley?

Me BRAM FREEDMAN :

That's right, F-e-a-r-n-l-e-y. Now, what the duces tecum says is "complete printout of account", and then there's a name, D. Elbaz...

THE COURT :

Just a second. D. El...

Me BRAM FREEDMAN :

Elbaz, E-l-b-a-z, it's a person's name, -vax, it says "z" here but it's supposed to be a 2.

THE COURT :

Vax 2?

Me BRAM FREEDMAN :

Yes, that's the name of a computer account. When the subpoena was received it wasn't clear exactly what Mr. Fabrikant was asking. He since told me this morning that what he was actually asking for is... this is someone's personal account at the university, this is a student's computer account. What we understood it to be was anything kept in Mr. Fabrikant's account that had to do with D. Elbaz, which is what I provided him with this morning, when in fact what Mr. Fabrikant indicated is he wanted a printout of somebody else's, a student's account.

THE COURT :

He wanted a printout of Elbaz's account?

Me BRAM FREEDMAN :

Correct, which would comprize I don't know what, letters, e-mails, program, school projects, I really have no idea, I'd certainly like some clarification from the Court on that. Every user of the computer system signs an agreement with the university, these are individual accounts, and certainly they are not normally accessible to anybody else, they're private. So those are the two issues, My Lord.

THE COURT :

How many subpoenas have you got in hand that are outstanding at the moment?

Me BRAM FREEDMAN :

Twenty-two (22), My Lord.

THE COURT :

Twenty-two (22).

Me JEAN LECOURES :

Could you name them as well?

THE COURT :

Yes, I'm coming to that. I'd like to know who they're addressed to.

Me BRAM FREEDMAN :

Okay. Susan Belson, who's the ombuds person at the university.

THE COURT :

Okay.

BRAM FREEDMAN :

Professor Hoa, professor Rakheja.

THE COURT :

How do you spell that?

BRAM FREEDMAN :

R-a-k-h-e-j-a. Professor Ahmed, A-h-m-e-d. Professor T.S. Sankar. Professor S. Sankar. Professor Xistris, X-i-s-t-r-i-s. Me Andr, Gervais. Me Alan Gold.

Professor Osman. Dr. Kenniff. Dr. "Shanon". Dr. Swamy. Professor McQueen. Dr. Bertrand. Dr. Bhat, B-h-a-t. Dr. Lin. Dr. Vatistas. Professor Kostenzo.

And the two I mentioned today, Pina Greco, Miss Greco, Mr. Fearnley, and myself.

THE COURT :

And there's yourself?

Me BRAM FREEDMAN :

Yes.

THE COURT :

Okay. Thank you, Mr. Freedman. Mr. Fabrikant, with regard to the secretary in the Rector's office, I gather from what Mr. Freedman said that he's given you the e-mail this morning and... is that so? You're satisfied with that?

VALERY FABRIKANT :

Well, I believe that e-mail is incomplete, it ends by August twenty-fourth (24th). And I'm pretty sure that due to events of August twenty-fourth (24th) there was much more mail there, I have no doubts about it.

THE COURT :

Were there any limits set in the duces tecum?

Me BRAM FREEDMAN :

Yes, it says August, September nineteen ninety-two (1992), the secretary went through her files...

THE COURT :

For August, September nineteen ninety-two (1992)?

Me BRAM FREEDMAN :

That's right, and the documents ended... the last e-mail she received was in August, I didn't have... that was the twenty-fourth (24th), but she told me she had none for September whatsoever.

THE COURT :

She had none for September whatsoever?

Me BRAM FREEDMAN :

That's right.

VALERY FABRIKANT :

And I repeat once again, I would like jury to hear all this.

THE COURT :

No, the jury doesn't need to hear all this.

VALERY FABRIKANT :

Jury does need to hear all this.

THE COURT :

Please don't argue with me, my decision is the jury does not have to hear all this. So you have handed him all of the e-mail?

Me BRAM FREEDMAN :

I have handed him whatever we have. Now Miss Greco can come here today or tomorrow and say: "Yes, that's all I have", but that's all she can say.

THE COURT :

Has the Crown seen this e-mail?

Me JEAN LECOURE :

Yes, My Lord, I...

THE COURT :

I mean, I have no idea whether the e-mail...

Me JEAN LECOURE :

I don't know if what I've got is complete or not, you remember very well that I gave copies of that I got to Mr. Fabrikant. He pretended it was not complete but I gave him what I got. And I also gave the list of all the senders from around the world that sent copies of e-mail to the police.

Me BRAM FREEDMAN :

I mean, what we're talking about here, My Lord, is about four, five messages in response to Mr. Fabrikant's request to write to the Rector and demand an investigation, there are four, five requests from various people saying: "I've received a letter from Mr. Fabrikant, could you please investigate? Could you please give me further information?" That's basically what they are.

THE COURT :

Have you got additional copies of these things?

Me BRAM FREEDMAN :

No, I don't.

THE COURT :

No, you haven't.

Me BRAM FREEDMAN :

I gave the copies to Mr. Fabrikant yesterday morning.

THE COURT :

Well, I wouldn't see why that subpoena requires to remain in force if you have these.

VALERY FABRIKANT :

Well, I repeat once again, they are definitely incomplete, they do not end on August twenty-fourth (24th), it's total absurd.

THE COURT :

Okay. Since you did not search these out yourself, you're unable to assure me under your oath of office that they are complete since you didn't search them yourself?

Me BRAM FREEDMAN :

That's right. All I can say is that the secretary verified and gave me, came down and said: "This is what

I have".

THE COURT :

Then I wonder if it would not be an idea that Miss Greco come here and...

Me BRAM FREEDMAN :

Okay.

THE COURT :

...in view of the fact that she's going to be absent from July the fifth (5th), she will definitely be heard today...

Me BRAM FREEDMAN :

Okay.

THE COURT :

...on the question of the e-mail for... on the simple question of the e-mail. And I'm not ruling that this e-mail is relevant to the case or anything else, I'm not ruling that it's susceptible to be produced. If I do anything with it, I will simply put... give the e-mail an identification number for the minute. I'm not ruling that it be produced, all I'm ruling is that I will have her come and confirm that that is all, and take note of the fact that it's been made accessible to you.

VALERY FABRIKANT :

Well, this is not... I'm not calling her today, she will come back July twenty-first (21st)...

THE COURT :

She will not come back July twenty-first (21st).

VALERY FABRIKANT :

Because I have other questions to ask.

THE COURT :

I couldn't care less whether you have other questions, you are not going to inconvenience people during the holiday season.

VALERY FABRIKANT :

I'm not inconveniencing her, she goes whenever she...

Me BRAM FREEDMAN :

That's when she's due back. She's due back on the twenty...

THE COURT :

I have no idea whether this trial is going to be going on on July twenty-first (21st) or not, it may well have ended long before July twenty-first (21st).

VALERY FABRIKANT :

Then I'm taking chances, why should you be troubled? If it ends before July...

THE COURT :

Fine. Then you're taking the chance. Then you're taking the chance.

VALERY FABRIKANT :

Yes, but I'm informing you officially, if you want to bring her here just for that purpose, you may do so, but I will have other questions and I'm not prepared to question her today.

THE COURT :

Then if you're not prepared to question her just now, you take your chances, but the subpoena itself is annulled. So if, in the eventuality that the trial is not terminated before the twenty-first (21st) of July, and in the eventuality that you wish to call her, you will have to subpoena her again after she returns. Unless you're able to make some arrangement with Mr.

Freedman, as you have in the case of a number of witnesses to make the person available. But you will understand fully that if this trial finishes between now and the twenty-first (21st) of July, then the opportunity that you had to have the witness heard today will be lost to you, you will appreciate that.

VALERY FABRIKANT :

I am not appreciating that, I'm not just ready to question her today.

THE COURT :

I don't care whether you like it or not, but you will appreciate it.

VALERY FABRIKANT :

Well, whatever you call it.

THE COURT :

Now, what have you to say with regard to the complete printout of the account of Elbaz?

VALERY FABRIKANT :

First of all I have not authorized them to enter my account, if they did so this is a breach. First my subpoena said quite clearly, read it again, it does not mention my account at all. If they entered the account, they might have lost... first of all I haven't authorized them to do so.

THE COURT :

Would you please address the question of the printout account of Elbaz-vax 2, that's the name of it?

VALERY FABRIKANT :

Second, one extremely important thing, did they print it from my account or did they print it from back-up tapes?

THE COURT :

What are we talking about? Are we talking about...

VALERY FABRIKANT :

Well, there's one important thing which I wanted to present to Court, the time of my last entry in my account, it was one p.m. (1:00) something, and it was conserved there unless someone entered the account.

THE COURT :

Mr. Fabrikant, I'm not talking for the moment about your account, if you're...

VALERY FABRIKANT :

And if they entered the account...

THE COURT :

If you are pointing out that they entered the account as a result of the subpoena that you sent, then that's not an issue we're dealing with today.

VALERY FABRIKANT :

It is an issue because this is one of my proofs.

THE COURT :

Well, I don't propose to deal with that issue today. If that is one of your proofs, we'll cross that bridge when we come to it, that expression that I use so frequently. For the moment, I understand that you have provided certain clarifications to Mr. Freedman, that what you wish to have is a complete printout of student Elbaz's account to be...

VALERY FABRIKANT :

No. Not complete, it is written there black on white.

THE COURT :

Would you read it again, Mr. Freedman?

Me BRAM FREEDMAN :

"Complete printout of account D. Elbaz-vax 2". My understanding, I'm no expert in this with the computing...

VALERY FABRIKANT :

Where is my original?

Me BRAM FREEDMAN :

...Center Director told me was that that is the name of a full account with who knows what inside it. It never occurred to me that we were being subpoenaed to open someone's account, we thought it may have been an error so we opened up Mr. Fabrikant's account and looked to see if there were any files called Elbaz, which there were, there was a mail file named Elbaz, that's what we printed out and brought to Mr. Fabrikant.

THE COURT :

What is your position with regard to that duces tecum?

Is your position that...

Me BRAM FREEDMAN :

My position is, and certainly that of my Computer Director, is that unless there's an order from the Court, he will not produce somebody's computer account.

VALERY FABRIKANT :

No, it's not computer account what I was interested in, it was mainly his e-mail and his address file.

THE COURT :

Well, your duces tecum says one thing, and now you are saying something else. But it comes down to the same thing, you are asking access to one Elbaz's computer account.

VALERY FABRIKANT :

Yes.

THE COURT :

And how could that possibly be relevant to these proceedings?

VALERY FABRIKANT :

Well, bring the jury I will tell you how it is relevant.

THE COURT :

You'll tell me now. No, you'll tell me now how it's relevant.

VALERY FABRIKANT :

I repeat once again, I need the jury to...

THE COURT :

Cancel the subpoena. Subpoena cancelled. Your other problems, Mr. Freedman, involve Professor Seshadri Sankar...

Me BRAM FREEDMAN :

That's right.

THE COURT :

...and Professor Swamy?

Me BRAM FREEDMAN :

Yes. There's a slight change with respect to Dr. Swamy, I have entered negotiations with Mr. Fabrikant, so we'll see where that leads. Dr. Swamy I will know later today his exact schedule, his departure date of July ninth (9th) has been changed, it's now August when he leaves for his lecture tour of Russia and so on.

THE COURT :

So he is here through the month of July?

Me BRAM FREEDMAN :

Well, he would like to take a ten to fourteen (14) day vacation before he leaves.

THE COURT :

Well, he might like to but he's available during the month of July?

Me BRAM FREEDMAN :

He is available during the month of July, as of August...

THE COURT :

There are quite a number of people who would love to take vacations this summer, that's for sure.

Me BRAM FREEDMAN :

Yes, My Lord, I'm aware. That's for sure.

VALERY FABRIKANT :

Well, you want to take vacation, take vacation, I have no objection.

THE COURT :

I'm not speaking of me.

Me BRAM FREEDMAN :

So the problem with Dr. Swamy is now moved to August, August second (2nd).

THE COURT :

Okay. August second (2nd).

Me BRAM FREEDMAN :

Yes.

THE COURT :

So there remains the problem of...

Me BRAM FREEDMAN :

Seshadri Sankar.

THE COURT :

...Seshadri Sankar.

Me BRAM FREEDMAN :

He is off and gone July tenth (10th).

THE COURT :

And as far as you know, there are none of the other names that pose an immediate problem?

Me BRAM FREEDMAN :

The last four, five I gave you were just received yesterday, and now my secretary is now checking their vacation plans.

THE COURT :

That is from Bhat on down?

Me BRAM FREEDMAN :

Bhat, Lin, Vatistas and Bertrand. Those four.

THE COURT :

Bertrand down. Okay.

Me BRAM FREEDMAN :

Yes. Immediate issues, I mean I do have some vacations in August but I'm not going to raise those now. And I have given the vacations that I'm aware of to Mr. Fabrikant.

THE COURT :

Okay. Madame Desrosiers, I did set aside that subpoena to Pina Greco, did I? Fine. Jury please.

MEMBERS OF THE JURY ARE PRESENT

SANDRA TRAINER - INTERPRETER

DULY SWORN

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twenty-ninth (29th) day of the month of June, personally came and appeared:

PAUL LEFEBVRE, born on January fourth (4th), nineteen

hundred and thirty (1930), security officer,
confidential address;

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

EXAMINED BY VALERY FABRIKANT :

I would like the interpreter to use the microphone, it's
very difficult to use the tapes after that.

Q. Are you still employed at Broderick?

-Q. Est-ce que vous êtes toujours ... l'emploi de Broderick?

A. Oui.

-A. Yes.

Q. What is your position there?

-Q. Quel est votre poste ... cette firme?

A. Agent de s,curit,.

-A. Security officer.

Q. Were you also security officer there in eighty-nine
('89)?

-Q. Est-ce que vous étiez agent de s,curit, en mil neuf cent
quatre-vingt-neuf (1989) ... cet endroit?

A. Oui.

-A. Yes.

Q. Were you the one who surveyed me?

-Q. Est-ce que vous étiez celui qui était assigné, ... me
surveiller?

A. Oui.

-A. Yes.

VALERY FABRIKANT :

May I show the witness the reports which are being
conserved under I?

Me LOUIS BELLEAU :

I-13.

THE COURT :

Certainly.

VALERY FABRIKANT :

Okay.

Q. Could you take cognizance of those reports and take
those which were signed by you?

-Q. Pouvez-vous lire ces rapports, et en particulier ceux
qui ont été signés de votre main?

A. Il y en a un ici...

-A. There's one here...

A. ...le vingt-neuf (29) mars, de huit heures (8 h) ... vingt
heures (20 h).

-A. ...March twenty-ninth (29th), from eight o'clock a.m.
(8:00) to twenty hundred hours (20:00).

Q. Okay.

A. La surveillance générale au...

-A. General surveillance at the...

A. ...5525, rue Trent, pour la filature...

-A. ...5525 Trent Street for surveillance...

A. ...et rien ... signaler.

-A. ...nothing to report.

A. Ici il y en a un du trente (30) mars...

-A. Another one here dated March thirtieth (30th)...

A. ...c'est marqué : "Surveillance de l'auto 820M626".

-A. ...surveillance of vehicle 820M626.

THE COURT :

Q. Excuse me, just a second...

-Q. Un moment, je vous prie...

Q. ...the first one you referred to...

-Q. ...le premier...

Q. ...the first one you referred to, what was the date of that?

-Q. ...quelle ,tait la date du premier auquel vous vous ^tes r,f,r,?

VALERY FABRIKANT :

Q. And time please.

-Q. Et l'heure je vous prie.

A. Vingt-neuf (29) mars.

-A. March twenty-ninth (29th).

Q. And what was the time?

THE COURT :

Q. Of nineteen eighty-nine (1989)?

-Q. De mil neuf cent quatre-vingt-neuf (1989)?

A. Yes.

-A. Oui.

VALERY FABRIKANT :

Q. What was the time then?

-Q. Quelle ,tait l'heure ... ce moment-l...?

A. De huit heures (8 h) ... vingt heures (20 h).

-A. From eight (8:00) to twenty hundred hours (20:00).

A. Le trente (30) mars quatre-vingt-neuf (89)...

-A. March thirtieth (30th), nineteen eighty-nine (1989)...

A. ...c'est de huit heures (8 h) ... quinze heures (15 h).

-A. ...from eight o'clock (8:00) to fifteen hundred hours (15:00).

A. Ça c'est surveillance de l'auto 820M626...

-A. And surveillance of vehicle 820M626...

A. ...d,part du 5525, Trent ... neuf heures quinze (9 h 15)...

-A. ...leaving 5525 Trent at nine fifteen (9:15)...

A. ...circul, sur C"te Saint-Luc vers l'est, mais ... une lumišre rouge...

-A. ...drove on C"te St. Luc eastbound, but at a red traffic light...

A. ...je l'ai perdu de vue, l'auto de retour au 5525, Trent.

-A. ...I lost sight of it and vehicle returned to 5525 Trent at fourteen thirty-three (14:33), quatorze heures trente-trois (14 h33).

A. Le trente et un (31) mars quatre-vingt-neuf (89)...

-A. March thirty-first (31st), nineteen eighty-nine (1989)...

A. ...de sept heures (7 h) le matin ... quinze heures (15 h)...

-A. ...from seven (7:00) in the morning to fifteen hundred hours (15:00)...

A. neuf heures (9 h) d,part du 5525, Trent...

-A. ...at nine (9:00) in the morning leaving 5525 Trent...

A. ...l'individu est all, reconduire un enfant d'environ cinq ans ... l',cole...

-A. ...the individual went to drop off about a five year old child to school...

A. ...ensuite il s'est rendu avenue des Pins et McGregor o- il a stationn,...

-A. ...then he went to Pine and McGregor where he parked the vehicle...

A. ...pour ensuite se rendre ... l'Universit, Concordia ... pied.

-A. ...to then go to Concordia on foot.

A. Quand mon quart de travail a ,t, termin, il n',tait pas

encore revenu ... son auto.

-A. When my work shift was over he had not returned to his vehicle yet.

A. C'est tout.

-A. That's all.

Q. Okay. The first surveillance, when you write "nothing to signal"...

-Q. La premiŠre surveillance, lorsque vous avez inscrit "rien ... signaler"...

Q. ...does it mean that I just stayed home?

-Q. ...est-ce que řa signifie que je suis simplement rest, ... la maison?

A. Oui, si j'aurais pas suivi, c'est parce que... si j'avais pas marqu, qu'on a suivi, il n'est pas sorti.

-A. Yes, if we didn't write that we followed him that's because he didn't go out.

A. Ou il est peut ětre sorti avant, j',tais pas arriv,.

-A. Or he could have gotten out before when I wasn't there.

Q. Did the previous surveillant tell you that I was out or I was in? The previous surveillant, did he give you any information to this end?

-Q. Est-ce que l'agent de s,curit, avant vous vous a signal, quoi que ce soit, si j',tais sorti ou j',tais ... la maison ou quoi?

A. Non.

-A. No.

Q. When you start your shift, you don't ask any questions of previous persons?

-Q. Lorsque vous d,butez votre quart de travail, vous ne posez pas des questions aux personnes de qui vous prenez la relŠve?

A. Oui, il peut m'avoir dit qu'il n'y avait rien eu, mais l..., řa fait quatre ans de řa, l..., je me souviens pas.

-A. Yes, he could have told me that there was nothing to report, but that was four years ago and I do not recall.

Q. Still, when you write "nothing to report"...

-Q. Mais quand m^me, lorsque vous ,crivez qu'il n'y a rien ... signaler...

Q. ...and your previous surveillant was there...

-Q. ...et que le collŠgue travaillant avant vous qui ,tait l.....

Q. ...could it still be that I was out and he didn't follow me?

-Q. ...est-ce que ce serait possible que j'aurais ,t, sorti mais qu'il ne m'aurait pas suivi?

A. Je le sais pas.

-A. I do not know.

Q. Was it one of your duties to follow me whenever I'm going out?

-Q. Est-ce que řa faisait partie de vos fonctions de me suivre lorsque je sortais?

A. Oui.

-A. Yes.

Q. So if he didn't follow...

THE COURT :

You're asking the witness to speculate on what somebody else might or might not have done, that question is disallowed.

VALERY FABRIKANT :

No, I just ask what his duty was.

THE COURT :

The question that you put is disallowed.

VALERY FABRIKANT :

Which one?

THE COURT :

The last one.

VALERY FABRIKANT :

What is the duty?

THE COURT :

No, no, the last question that you started to phrase, "does that mean that..."

VALERY FABRIKANT :

You don't even know what the question is.

THE COURT :

Of course I heard the question. The last question is disallowed.

VALERY FABRIKANT :

Q. When you come in for the shift...

-Q. Lorsque vous débutez votre quart de travail...

Q. ...are you supposed to know where I am?

-Q. ...êtes-vous censé, savoir où je me trouve?

A. Moi quand j'arrivais là, il était supposé, d'être chez lui.

-A. Upon my arrival he was supposed to be at home.

Q. But just a second ago you said you had no idea whether I was home or I wasn't home.

-Q. Mais il y a un moment vous avez indiqué, que vous ne saviez pas si oui ou non, j'étais ... la maison...

Q. ...could you reconcile it?

-Q. ...est-ce que vous pouvez concilier les deux?

A. C'est ça que je vous dis tout ... l'heure, là, c'est... s'il y a eu quelque chose d'arrivé, peut-être que le type, bon, que je remplaçais, l'autre agent que je remplaçais, il me l'a peut-être dit mais je me souviens pas, ça fait quatre ans de ça, là...

-A. As I stated, if something had taken place, maybe the security officer that was working before me, maybe he would have reported to me, but I do not recall, that was four years ago.

VALERY FABRIKANT :

This is not answer to my question.

THE COURT :

What are we doing with this? Where are you going with all of this nonsense?

VALERY FABRIKANT :

It is not nonsense at all.

THE COURT :

It surely is. How the agents followed you, or where they followed you to during the ten days of surveillance cannot possibly have any bearing on this case.

VALERY FABRIKANT :

Yes. Do you want me to explain what bearing it has?

THE COURT :

Would you please explain? Yes, please enlighten me, because...

VALERY FABRIKANT :

Sure. I want to explain, I want to lead evidence so convincing and so obvious that university, together with Broderick, just played dishonorable game, there was nothing else there. The testimony of this particular guard when he says that when he came there, and he doesn't know whether I was in or out, now assume that

he's telling the truth, it means that they understood that there was nothing to survey, they couldn't care less where I was, what I was doing, this is one way to go. Now, when I asked him: "Weren't you supposed to survey me twenty-four (24) hours?" And then he comes to his work and previous guard is there, and he was supposed to watch me, isn't it obvious that if he does his job, then definitely I'm in, because if I wasn't in the agent would be following me and he would be somewhere else.

THE COURT :

The witness has told you: "I don't remember what the previous guy, I don't remember what he said".

VALERY FABRIKANT :

This is not the point, he cannot possibly not remember that, because this is condition of his job.

THE COURT :

Well, I'm sorry, you are going to attempt to establish facts through this witness.

VALERY FABRIKANT :

Yes.

THE COURT :

What the witness remembers he will talk about, what he doesn't remember he won't talk about, but you cannot then through this witness make inferences. You can make inferences in your argument if you like, there's no rule against that, but you can't make inferences through the mouth of the witness, with a view to...

VALERY FABRIKANT :

It is not what I'm talking about.

THE COURT :

Pardon?

VALERY FABRIKANT :

You asked me to explain to you pertinence of this witness, I'm not now arguing anything, I'm just explaining pertinence.

THE COURT :

Fine.

VALERY FABRIKANT :

I am not attacking witness, I'm not doing anything, I'm explaining to you pertinence, so please...

THE COURT :

Well, I don't know what you mean when you say "played a dishonorable game", I don't know whether you are suggesting that these things are all manufactured or what.

VALERY FABRIKANT :

Well, what I mean is the following, they knew very well I didn't threaten anyone, that there was no danger there, and they played dishonest game of this surveillance. They spread this rumor that Fabrikant was under twenty-four (24) hour surveillance through the university to morally isolate me, to present me some kind of a crazy person. And all this evidence here indicates, and their behavior indicates that they clearly knew that the whole thing was just a scam, and the only thing what they were looking probably for, that God forbid I'm doing something which they can hang on me if I try to blow whistle.

THE COURT :

Listen, all the witness can tell you...

VALERY FABRIKANT :

This is the purpose of my calling witnesses.

THE COURT :

Fine. Then if that's your purpose of calling the witness, would you put the questions to the witness that are designed to bring out what you wish to rely on in your argument.

VALERY FABRIKANT :

This is exactly what I'm doing.

THE COURT :

But standing there and cross-examining the witness as to his duties, and implying that he didn't do them, is not going to accomplish anything because you're not permitted to cross-examine the witness and you're not going to be permitted to cross-examine the witness.

So...

VALERY FABRIKANT :

Now you are talking about something else.

THE COURT :

I'm not talking about anything else, I'm talking about generally how you may have this witness testify.

VALERY FABRIKANT :

Have we finished with the question of pertinence?

THE COURT :

Yes, we finished with the question of pertinence.

VALERY FABRIKANT :

We're finished, now we're discussing something else, whether I'm allowed or not allowed to ask some questions...

THE COURT :

Yes, you're allowed to.

VALERY FABRIKANT :

...we already came to this agreement. You are Judge there, as soon as you do not like my question you forbid it and I go from there, I'm asking another question.

THE COURT :

Ask your questions. You're allowed to ask your questions.

VALERY FABRIKANT :

So everything is fine now?

THE COURT :

Everything...

VALERY FABRIKANT :

Except that we lost six minutes.

THE COURT :

Ask your questions.

VALERY FABRIKANT :

For nothing. You lost six minutes.

THE COURT :

Ask your questions, but your last question was cross-examination and it was disallowed.

VALERY FABRIKANT :

You didn't hear the last question.

THE COURT :

One more word... Now, if you've got a question to put to the witness, you put the question to the witness or through that door you go.

VALERY FABRIKANT :

Q. Could you describe what was your instructions as far as the surveillance was concerned?

-Q. Pouvez-vous d,crire vos directives touchant cette

observation, cette surveillance?

A. J'avais comme consigne de suivre l'auto, l...,
l'automobile que j'ai... le num,ro que j'ai ,num,r, tout
... l'heure.

-A. I had the instruction to follow the vehicle whose plate
number I called out a little earlier on.

A. Et puis noter ses all,es et venues.

-A. And to observe the comings and goings of the suspect, or
the subject rather.

Q. Okay. For example, if you followed me until Pine
Avenue...

-Q. Alors donc, par exemple, si vous m'aviez suivi jusqu'...
l'avenue des Pins...

Q. ...what happened? I went on foot to the university and
you followed me on foot?

-Q. ...que se serait-il pass,? Je me serais rendu jusqu'...
l'universit, ... pied et vous m'auriez suivi ... pied?

A. Oui, je l'ai suivi ... pied.

-A. Yes, I followed him on foot.

Q. Okay.

-Q. D'accord.

Q. Until what? Until I entered the university?

-Q. Jusqu'... quel point? Jusqu'au moment o- je suis entr, ...
l'universit,?

A. Oui.

-A. Yes.

Q. Okay. Did you enter university, too?

-Q. Etes-vous entr, ... l'universit, ,gatement?

A. Non.

-A. No.

Q. So what did you do after I entered the university?

-Q. Qu'avez-vous fait suite ... mon entr,e ... l'universit,?

A. Je suis revenu ... mon auto.

-A. I went back to my vehicle.

Q. So you were staying at Pine Avenue all the time?

-Q. Alors vous ,tiez toujours ... l'avenue des Pins, c'est #a?

A. C'est #a.

-A. Correct.

Q. So effectively, I could shoot everyone at the university
in the meantime and you would not intervene?

-Q. Alors en fait, j'aurais pu tirer tout le monde ...

l'universit, et dans l'entre-temps, ou dans
l'intervalle, et vous n'auriez pas intervenu?

Me JEAN LECOURE :

This is argument, My Lord.

THE COURT :

The question is argument, the question is disallowed.

- Non, ne r,pondez pas.

VALERY FABRIKANT :

You never bothered to ask me to justify my question.

THE COURT :

The question is disallowed.

VALERY FABRIKANT :

All right.

Q. Did you have any instruction in terms of when I go, say
to certain store...

-Q. Avez-vous re#u des consignes, des directives, concernant
mes all,es et venues vers diff,rents magasins ou un
magasin en particulier?

A. Non.

-A. No.
Q. Okay. What do you do if I go to certain store? Do you follow me?
-Q. Alors que deviez-vous faire si j'allais aller au magasin, ou un magasin en particulier, est-ce que vous deviez me suivre?
A. Je le suivais, il sortait de chez lui avec son auto, je le suivais pour voir o- il allait.
-A. If he left his place and used his car, I would follow him to see where he was going.
Q. You're not answering my question.
-Q. Vous ne r,pondez pas ... ma question.
Q. If you see me entering a store...
-Q. Si vous m'aviez vu entrer dans un magasin...
Q. ...are you following me?
-Q. ...est-ce que vous m'auriez suivi?
A. Non.
-A. No.
Q. So you stay outside?
-Q. Alors vous seriez demeur, ... l'ext,rieur?
A. Je serais rest, dans mon auto.
-A. I would have remained in my vehicle.
Q. So you would not know what I was doing in the store then?
-Q. Alors vous n'auriez pas ,t, en mesure de savoir ce que je faisais ... l'int,rieur du magasin?
A. Non.
-A. No.
Q. That was your instruction not to follow me in any building?
-Q. Est-ce que ta faisait partie de vos consignes de ne pas me suivre ... l'int,rieur d'un immeuble quelconque?
A. J'avais la consigne de partir de chez lui, voir o- il allait.
-A. I had the instruction to follow him when he left home to see where he was headed.
Q. You're again not answering my question.
-Q. Encore une fois vous ne r,pondez pas ... ma question.
A. Je vais me choquer moi, l...
THE COURT :
I missed your last question. Would you repeat your last question, please?
VALERY FABRIKANT :
Okay.
Q. What was your instruction? Was it not to enter any building which I entered?
-Q. Quelles ,taient vos consignes? Est-ce que c',tait de ne pas entrer dans les immeubles o- j'entrais?
A. Notre consigne ,tait de le suivre ... partir de chez lui, voir o- il allait.
-A. Our instructions was to observe him from his home to see where he was headed, or where he would go.
VALERY FABRIKANT :
Again he doesn't answer my question.
THE COURT :
Q. Were you given any particular instructions with regard to buildings?
-Q. Est-ce qu'on vous a donn, des consignes pr,cises concernant les immeubles?
A. Non.
-A. No.

VALERY FABRIKANT :

Again, this is not my question and not the answer. My question was, was he given instructions not to enter any building I entered?

-Q. Ma question ,tait, est-ce qu'on lui a donn, des consignes de ne pas entrer ou p,n,trer les immeubles que j'entraiss ou pas?

A. S'il ,tait all, d'ner, je pouvais aller d'ner avec lui.

-A. Well, if he had gone out of lunch I wouldn't have certainly joined him for lunch.

Q. Well, it's remarkable humour but I still would like to get an answer.

-Q. Le sens de l'humour est remarquable mais j'aimerais quand m^me obtenir une r,ponse.

A. Notre consigne ,tait de partir de chez lui, quand il partait de chez lui, puis de savoir o- il allait, de le suivre o- il allait.

-A. Our instructions comprised in following him from his home, if he left home, to see where he was headed.

VALERY FABRIKANT :

I repeat once again, he doesn't answer question, I would like the Court to direct the witness to answer the question, it's alluding question.

THE COURT :

The question you want answered at this juncture is what?

VALERY FABRIKANT :

Did he have any instructions concerning following or not following me when I'm entering some buildings, period.

THE COURT :

Some buildings?

VALERY FABRIKANT :

Any building. Question is very clear and he avoiding answer.

Q. Lorsque j'entraiss dans des immeubles, est-ce que vous aviez des consignes de me suivre ou de ne pas me suivre ... l'int,rieur de ces immeubles?

A. Ils ne nous ont pas donn, de consignes de le suivre ou de rentrer ou de ne pas rentrer quand il rentrait dans un immeuble.

-A. They didn't give us any instructions to go in or not go in to any building that he would go into.

VALERY FABRIKANT :

Okay. Maybe demonstrate to the witness his instructions. It is in Broderick file. No, not this, the instructions in Broderick file. Let me take it, I will address him to the proper page.

THE COURT :

D-26. It might have been changed to D...

Me JEAN LECOURE :

We filed as D-25, My Lord.

THE COURT :

D-25, yes, it was changed to D-25.

VALERY FABRIKANT :

Q. Would you please take cognizance of this document?

-Q. Est-ce que vous pouvez, s'il vous plaEt, lire ce document?

A. C'est #a que j'ai dit, on n'allait pas dans les ,difices.

-A. That's what I told him, we wouldn't go into buildings.

Q. No, you told me that you were not given any instructions.

-Q. Non, vous m'avez dit qu'on ne vous avait pas donn , de consigne d'entrer dans les immeubles.

A. C'est bien entendu, tout ... l'heure j'ai dit les consignes qu'on avait c',tait de le suivre, de pas rentrer dans les immeubles. S'il est sourd c'est pas de ma faute  a moi.

-A. He heard correctly earlier, the instructions that we received was to follow him and not to go into the buildings. And if he's deaf it's not my fault.

VALERY FABRIKANT :

Just second ago he said he didn't receive any instructions.

THE COURT :

My note from the translation was, and I know what I heard: "We had no instructions with regard to going in or not going into any building", that was the answer that I had.

- La consigne, ... partir de la traduction, et j'ai bien compris, je sais ce que j'ai compris, ,tait que nous n'avions pas re tu consigne d'entrer ou de ne pas entrer dans les immeubles, est-ce exact?

A. Ah, bien, c'est pas ce que je voulais dire, parce que je voulais dire que quand on avait eu la consigne de le suivre, l..., jusqu'aux immeubles...

-A. That's not what I meant, because when we received the instructions to follow him, up to the buildings....

A. ...de prendre  a en note puis c'est tout.

-A. ...and to note it down, that's all.

A. On n'avait pas eu d'ordre de rentrer puis d'aller d ner avec.

-A. We hadn't received orders to go in the building and go have lunch with him.

VALERY FABRIKANT :

Q. Would you please look at the second page...

-Q. Pouvez-vous, s'il vous pla t, prendre la deuxi me page...

Q. ...which goes after that one.

-Q. ...la page suivante.

Q. Were you given that picture?

-Q. Est-ce qu'on vous avait soumis cette photo?

A. Si j'ai soumis cette photo? Recommencez  a.

-Q. Est-ce qu'on vous avait soumis cette photo?

A. Oui, oui, je l'ai eue.

-A. Yes, I received it.

Q. Okay. Could you recall, in terms of following me...

-Q. Vous rappelez-vous lorsque...

THE COURT :

Q. Would you just put the document down and listen to the question.

-Q. Veuillez d,poser le document et ,couter la question.

VALERY FABRIKANT :

Q. Would you please tell the jury, did you have any special assignment in terms of where I go, some specific places to pay attention to?

-Q. Est-ce qu'on vous avait assign, de fa on particuli re, c'est-...-dire de me suivre ... un endroit en particulier o- j'allais me diriger, ou j'aurais pu me diriger?

A. Non.

-A. No.

Q. So, no matter where I go you just recorded and that's it?

-Q. Alors, peu importe o- je me dirigeais, vous le preniez en note et c'est tout?

A. Bien, on avait eu des adresses pour savoir s'il allait l..., l... d'aviser.

-A. We were given addresses, and if he did go to these addresses, to inform or report it.

Q. Okay. Do you remember how many addresses were there?

-Q. Vous rappelez-vous combien d'adresses on vous a soumises?

A. Non.

-A. No.

Q. Okay. If you turn to another page...

-Q. Si vous passez ... la page suivante...

Q. ...are these the addresses?

-Q. ...est-ce qu'il s'agit des adresses qu'on vous a soumises?

A. C'est ça.

-A. Correct.

Q. Okay. Were you armed at that time?

-Q. Est-ce que vous étiez armé, ... ce moment-l...?

A. Oui.

-A. Yes.

Q. What was your weapon with you?

-Q. Quel genre d'arme portiez-vous?

A. Je sais pas, mais quelle qu'il avait lui quand il a tir,?

-A. I don't know, what kind did he have when he fired?

A. J'avais un 38 sp,cial.

-A. I had a 38 special.

A. Smith and Wesson.

-A. Smith and Wesson.

THE COURT :

Q. Your function here is to reply to the questions that are put to you, that's all.

-Q. Votre tâche ici est de répondre aux questions qu'on vous pose, c'est tout.

Q. And if you limit your answers to the questions, we'll get through this a lot quicker.

-Q. Et si vous restreignez vos questions et réponses uniquement, ça pourrait accélérer le processus.

VALERY FABRIKANT :

Q. Okay. Were you instructed to use this arm at a certain moment in time?

-Q. Est-ce qu'on vous a conseillé, d'utiliser cette arme ... un certain moment donné,?

A. Non.

-A. No.

Q. But you had this firearm with you on each surveillance?

-Q. Mais vous aviez cette arme ... feu avec vous au cours de chaque surveillance?

A. Oui.

-A. Yes.

Q. Because this is how you were instructed?

-Q. Parce que ça faisait partie de vos fonctions?

A. Oui, c'est ça.

-A. That's correct.

Q. Did they tell you that you might be in danger and this is why you need firearm?

-Q. Est-ce qu'on vous a indiqué, que vous auriez pu être en danger et c'est la raison pour laquelle vous aviez besoin d'une arme ... feu?

A. Non, mais moi, j'avais mon permis de port d'arme puis je travaillais souvent armé.

-A. No, but I had my permit to carry a weapon and I often worked armed, with a weapon.

Q. Well, this time I understand you were armed at request of the client, correct?

-Q. Cette fois-ci je comprends bien que vous étiez armé, ... la demande du client, c'est exact?

A. C'est ça.

-A. Correct.

Q. Did client tell you that you might be in danger in any way?

-Q. Est-ce que le client vous a indiqué, que vous auriez pu être en danger d'une façon ou d'une autre?

A. Non.

-A. No.

Q. Was any indication to you given as to why you need to be armed?

-Q. Est-ce qu'on vous a indiqué, la raison pour laquelle vous deviez être armé,?

A. Non, ils m'ont dit... c'est un ouvrage armé, puis ils m'ont pas dit qu'il y avait du danger ou il y a rien là...

-A. No, they told me that it was an armed duty, and they didn't tell me there was any danger, nothing in that respect.

Q. Uh, huh. According to your working obligations...

-Q. Concernant vos obligations de travail...

Q. ...in which case you are allowed or even obliged to use firearms?

-Q. ...dans quelles circonstances êtes-vous permis ou obligé, d'utiliser une arme ... feu?

A. On était... comment est-ce que vous dites ça, là, vous, là?

-A. How did you say that?

Q. In which particular cases...

-Q. Dans quelles circonstances particulières...

Q. ...related to your job...

-Q. ...touchant votre travail...

Q. ...you are allowed or even obliged to use the firearm?

-Q. ...êtes-vous permis ou même obligé, d'utiliser une arme ... feu?

A. La loi a changé, là, c'est seulement ceux qui travaillent dans les banques qui peuvent avoir un permis de port d'arme.

THE COURT :

You use the verb "use firearms", do you mean use or do you mean carry?

VALERY FABRIKANT :

No, I mean use, shoot.

THE COURT :

Then I don't think you were getting the answer to the question you asked, you see the interpreter didn't...

VALERY FABRIKANT :

Of course I'm not getting the answer. Of course I'm not getting the answer, but it is not because he didn't understand the question, it's because he's alluding question again, that's all.

THE COURT :

Would you repeat your question?

Q. Listen to the question.

-Q. écoutez la question.

VALERY FABRIKANT :

Q. According to the rules of your job...

-Q. Selon les r̄gles de votre travail...

Q. ...in which circumstances...

-Q. ...dans quelles circonstances...

Q. ...you are allowed...

-Q. ...^tes-vous permis...

Q. ...and even obliged...

-Q. ...et m^me oblig,...

Q. ...to use your firearms in terms of shooting?

-Q. ...d'utiliser...

Q. Or at least pointing.

-Q. utiliser votre arme ... feu en matiŠre de tir ou m^me de pointer?

A. ¶a, l.... le moins souvent possible.

-A. Well... as little as possible.

Q. This is not an answer.

THE COURT :

You're correct.

Q. Did you understand the question?

-Q. Vous comprenez la question?

A. Oui, oui.

Q. Fine. Would you...

A. J'ai jamais point, une arme...

Q. Would you answer the question then?

-Q. Voulez-vous, s'il vous plaEt, r,pondre ... la question alors donc.

A. C'est ¶a, l..., j'ai jamais point, une arme, l..., sur quelqu'un, j'ai jamais tir, sur quelqu'un non plus.

-A. I never pointed a weapon at anyone, nor did I ever fire at anyone.

VALERY FABRIKANT :

Again, this was not the question.

THE COURT :

Q. You were asked in what circumstances, according to your instructions...

-Q. On vous a demand, dans quelles circonstances, selon vos consignes...

Q. ...are you authorized to use...

-Q. ...^tes-vous autoris,

A. Ces consignes-l... vous parlez?

-A. You're talking about these instructions?

VALERY FABRIKANT :

Q. No, job, your job.

THE COURT :

Q. I think he's talking about generally the instructions you have from Broderick, not this particular assignment.

-Q. Pas n,cessairement cette tfche en particulier mais plut"t les consignes g,n,rales de la part de Broderick.

A. Ah, si on travaille sur un... .. quelque part, puis on travaille dans une banque, puis il y a un hold-up, on va peut-^tre... on va ^tre oblig, de s'en servir.

-A. If we're assigned on a case and where we work in a bank and there's a hold-up, we'll probably have to use our weapon.

VALERY FABRIKANT :

Q. So one case is if there is hold-up in the bank...

-Q. Alors dans un cas ce serait lorsqu'il y aurait un hold-up ou un vol de banque...

Q. ...and in this case what your instructions? You just shoot, you point and say something, and then shoot?

Could you elaborate? What is the procedure for use of firearm?

-Q. ...et dans ce cas-ci quelles seraient vos consignes? Vous seriez en mesure de pointer et de tirer, ou simplement tirer, ensuite dire quelque... quelles seraient vos consignes? De quelle façon vous prendriez-vous?

A. Dans quel cas?

-A. In what case?

Q. In the case which you just mentioned.

-Q. Dans le cas que vous venez juste de mentionner.

A. Un vol de banque?

-A. You mean a bank robbery?

Q. Yes.

-Q. Oui.

A. Bien, ça dépend, c'est des circonstances, on peut pas savoir comment ça arrive.

-A. Well, it depends on the circumstances, we can't tell how it's going to occur.

Q. All right. In the case of this specific surveillance...

-Q. Dans le cas de cette surveillance en particulier...

Q. ...of myself...

-Q. ...c'est-...-dire de moi-même...

Q. ...in what circumstances you would be allowed or obliged to use your gun?

-Q. ...dans quelles circonstances seriez-vous permis ou obligé, d'utiliser votre arme ... feu?

A. Je l'aurais pas us,. J'aurais pas us, de mon arme ... feu.

-A. I wouldn't have used my firearm.

Q. So in no circumstances you would use your firearm?

-Q. Alors dans aucune circonstance vous n'auriez utilis, votre arme ... feu?

A. Non.

-A. No.

Q. What was then the point to have it?

-Q. Alors, quelle ,tait l'utilit, de la porter alors?

A. J',tais pay, pour ça, c'est tout.

-A. I was paid for that purpose, that's all.

Q. If you see me going to certain address and...

-Q. Si vous me voyez me diriger ... une adresse en particulier...

Q. ...and waving a bomb...

-Q. ...et vascillant une bombe...

Q. ...ready to be thrown into a window...

-Q. ...pr[^]te ... [^]tre lanc,e ou tir,e dans une fen[^]tre...

Q. ...would you use your gun then?

-Q. ...auriez-vous donc utilis, votre arme ... feu?

A. J'aurais appel, la police.

-A. I would have called the police.

Q. So you would allow the bomb to be thrown into the window?

-Q. Alors vous auriez permis cette bombe ... [^]tre lanc,e dans la fen[^]tre?

A. Il faut parler intelligemment, l...

-A. One must speak intelligently.

VALERY FABRIKANT :

This is not an answer.

THE COURT :

Well, you've drifted into hypothesis and we're not getting anywhere.

VALERY FABRIKANT :

Well, it's not hypothesis, I'm asking about his instructions in terms...

THE COURT :

Well, if you're asking about his instructions, ask about his instructions.

VALERY FABRIKANT :

Yes, this is what I'm asking, what he would do...

THE COURT :

No, you've moved away from the question of instructions, ask him about his instructions and you might get an answer.

VALERY FABRIKANT :

Yes.

Q. So, what would be your instructions in this particular case?

-Q. Quelles auraient ,t, vos consignes dans ce cas trřs particulier?

Q. Are you to allow the bomb to be thrown into the window?

-Q. Est-ce qu'on vous permet de laisser cette bombe ^tre lanc,e dans la fen^tre?

Me JEAN LECOURE :

This is sarcasm, My Lord.

VALERY FABRIKANT :

It's no sarcasm at all, I'm dead serious with this question.

A. J'aurais appel, la police, c'est bien simple.

-A. It's very simple, I would have called the police.

Q. You're not answering my question.

-Q. Vous ne r,pondez pas ... ma question.

Q. You would allow the bomb to be thrown?

THE COURT :

You're... supposedly, what you said you wished to ask him was, did he have any instructions in your case, in the case of your surveillance, with regard to the use of his firearm, ask him the question. That's what you want to know.

VALERY FABRIKANT :

Yes, that's what I asked him, if suppose I come to certain...

THE COURT :

No, not if supposed, did he have any instructions.

VALERY FABRIKANT :

Yes, that's what I'm asking, did you have any instructions...

THE COURT :

It's not if supposed, it's "did you have any intructions regarding the use of your firearm in this case?"

VALERY FABRIKANT :

Well... I believe I can specify certain circumstances and what his instructions would be in this case.

THE COURT :

If he had any instructions, surely, but first establish that he had instructions.

VALERY FABRIKANT :

Well, my understanding is that he had. If he didn't have he would (inaudible).

Q. So what were your instructions in this particular case?

-Q. Alors quelles ,taient vos consignes dans ce cas trřs pr,cis,ment?

A. J'avais comme consignes, quand il se dirigeait vers une

- de ces adresses...
- A. My instructions were, whenever he would head for one of these addresses...
- A. ...d'avertir mon bureau ... moi...
- A. ...was to notify my office...
- A. ...puis eux autres appelaient la police.
- A. ...and they would call the police.
- Q. Okay. But if I'm doing some violent act, were your instructions to intervene?
- Q. Mais si je commettais des actes violents, est-ce que vos instructions ,taient d'intervenir?
- A. Pour commettre des actes violents il faut qu'il soit dans un bftiment, dans une bftisse, puis j'avais pas consigne de rentrer dans les bftisses.
- A. To commit violent acts he would have had to be inside a building, and I didn't have the instructions to go inside the buildings.
- Q. What if I commit violent act from outside the building, like I gave you example, throwing...
- Q. Mais qu'en serait-il si je commettais des actes de violence ... l'ext,rieur des immeubles...
- Q. ...throwing a bomb into a window...
- Q. ...c'est-...-dire lancer une bombe dans une fen^tre...
- Q. ...what were your instructions in this case?
- Q. ...quelles auraient ,t, vos consignes ... ce moment-l...?
- A. J'aurai appel, la police quand je l'aurais vu se diriger vers une de ces adresses.
- A. I would have called the police if I had seen him headed towards one of these addresses.

THE COURT :

- Q. Apart from your obligation to call the police, what he wishes to know...
- Q. A part votre obligation pour appeler la police, ce qu'il veut savoir...
- Q. ...was whether you received from your employers...
- Q. ...si oui ou non, votre employeur vous a donn,...
- Q. ...specific instructions...
- Q. ...des consignes trřs particuliřres...
- Q. ...concerning the use of a firearm or physical intervention...
- Q. ...concernant l'usage d'une arme ... feu ou une intervention physique...
- Q. ...in any eventuality...
- Q. ...dans toute ,ventualit,...
- Q. ...in relation to these particular addresses.
- Q. ...en ce qui touche ces adresses trřs particuliřrement.
- A. Non, on avait instruction de les appeler, d'appeler le bureau aussit"t qu'il s'en allait en direction d'une de ces adresses.
- A. No, we had the instructions to call the office as soon as he would head towards anyone of these addresses.
- VALERY FABRIKANT :
- Q. But you would not intervene in any case, is this understanding correct?
- Q. Mais vous ne seriez pas intervenu d'aucune fa#on, est-ce que je comprends bien?
- A. J'aurais pas eu le temps, la police serait arriv,e avant moi.
- A. I wouldn't have had the time, the police would have gotten there before me.
- Q. Was one of your instructions to call the police?

-Q. Est-ce qu'une de vos consignes ,tait d'appeler la police?

A. S'il se dirigeait vers une de ces maisons.

-A. If he had headed towards one of these homes.

Q. You would call the police?

-Q. Vous auriez t,l,phon, ... la police?

A. J'aurais t,l,phon, ... mon bureau, eux autres appelaient la police.

-A. I would have called my office and they would have called the police.

Q. When would you know, suppose I'm going C"te Ste-Catherine...

-Q. Supposons que je me serais dirig, vers C"te Sainte-Catherine, comment seriez-vous en mesure de savoir...

Q. ...when would you know that I'm to get to St-Germain?

-Q. ...seriez-vous en mesure de savoir quand je serais arriv, ... la rue Saint-Germain?

A. Les rues, ils sont marqu,s les noms des rues.

-A. The street names are indicated here.

Q. Do you know Montreal well?

-Q. Est-ce que vous connaissez tršs bien la ville de Montr,al?

A. Oui, pas pire.

-A. Yes, pretty well.

Q. Do you know where St-Germain Street is?

-Q. Vous savez o- est situ,e la rue Saint-Germain?

A. A Outremont.

-A. Outremont.

Q. Okay. Is C"te Ste-Catherine nearby street?

-Q. Alors donc, est-ce que la rue C"te Sainte-Catherine est tout pršs?

A. Oui, c'est pas loin.

-A. Yes, it's not far away.

Q. So if I'm going C"te Ste-Catherine, would you call police at this stage?

-Q. Alors si j'empruntais la C"te Sainte-Catherine, est-ce que vous appelleriez la police ... ce moment-l...?

A. Pas n,cessairement.

-A. Not necessarily.

Q. Okay. Then from C"te Ste-Catherine to St-Germain...

-Q. Alors ... partir de C"te Sainte-Catherine jusqu'... Saint-Germain...

Q. ...is St-Germain one of the streets which crosses C"te Ste-Catherine?

-Q. ...est-ce que la rue Saint-Germain est une des rues qui croise la C"te Sainte-Catherine?

A. Je peux pas vous dire, l... je le dis, je le sais pas.

-A. I cannot say, I really don't know.

Q. Well, assuming that it does...

-Q. Supposons que oui...

Q. ...then would you have any time at all to call anyone until I would arrive at the address in question?

-Q. ...auriez-vous le temps de t,l,phoner quelqu'un dans l'intervalle o- je me serais rendu ... cette adresse?

A. J'aurais appel, ... mon bureau, ils auraient appel, la police, 911, c'est vite fait.

-A. I would have called my office, they would have called 911, the police, and that's done very quickly.

Q. Well, how long does it take to throw a bomb?

-Q. Bien, combien de temps #a peut prendre lancer une bombe?

A. Je le sais pas.

-A. I don't know.
THE COURT :
Mr. Fabrikant, he's told you what his instructions were, he's told you what he did, you've been cross-examining him for the last five minutes, would you please move on to something else?
VALERY FABRIKANT :
All right.

Q. I refer you to your report when you lost me at the red light.

-Q. Je vous r, fšre ... votre rapport o- vous m'avez perdu de vue au feu de circulation rouge.

Q. What did you do, you returned to 5525 Trent?

-Q. Qu'avez-vous fait, vous ^tes retourn, au 5525, rue Trent?

A. Oui.

-A. Yes.

Q. So... and I was free to do any terrorist act possible?

-Q. Et j',tais libre d'effectuer tout acte de terrorisme possible?
THE COURT :
The question is sarcastic, it calls for a conclusion on the part of the witness. Everybody who's here is perfectly able to draw whatever conclusion that they are capable to draw...
VALERY FABRIKANT :
Q. When you lose me, what do you do? Do you signal office that you lost me?
-Q. Lorsque vous m'avez perdu de vue, qu'avez-vous fait? Est-ce que vous avez rapport, cela au bureau?
A. Je suis retourn, sur la rue Trent.
-A. I went back on Trent Street.
Q. But you did not inform the office that you lost me?
-Q. Mais vous n'avez pas inform, le bureau que vous m'aviez perdu de vue?
A. Oui.
-A. Yes.
Q. What yes?
-Q. Quoi oui?
Q. You did not inform?
-Q. Vous n'avez pas inform, le bureau?
A. Oui, j'ai inform, le bureau.
-A. Yes, I informed the office
Q. Okay. What in this case, do they send another car urgently to search for me?
-Q. Et ensuite est-ce qu'ils ont envoy, "urgemment" une autre voiture pour me trouver?
A. Il est malade lui. Bien non.
-A. No.
A. J'ai retourn, sur la rue... moi, j'ai fait ma lumišre rouge, puis lui a pass, sur la jaune, #a fait que...
-A. I stopped at the red stop light, he went on on the yellow light...
A. ...j'ai attendu qu'il revienne.
-A. ...and I waited for him to return.
Q. Could you take a piece of paper...
-Q. Pouvez-vous prendre un bout de papier...
Q. ...and make a drawing of the building and adjacent streets and where you were at the time of surveillance?
-Q. ...pour dessiner les immeubles et les rues adjacentes o- vous vous trouviez au moment de la surveillance?

THE COURT :

What is this for?

VALERY FABRIKANT :

Well, why don't you trust me that it is important.

THE COURT :

I don't trust you at all, Mr. Fabrikant.

VALERY FABRIKANT :

Somehow I feel this feeling is mutual.

THE COURT :

Yes. We will dispense with the making of sketches, this has gone far enough. If you have anything else to ask Mr. Lefebvre, ask Mr. Lefebvre.

VALERY FABRIKANT :

Okay. Why don't we make it simpler. I will draw the sketch and he will just put his car where he was.

THE COURT :

If you have anything else to ask Mr. Lefebvre, ask him.

VALERY FABRIKANT :

Well, it is important.

THE COURT :

No, it's not important.

VALERY FABRIKANT :

Okay.

Q. Did you investigate how many exists the building had?

-Q. Est-ce que vous avez enqu[^]t, sur le nombre de sorties que comprenait l'immeuble?

A. Non, je surveillais l'entr^e du garage, c'est tout.

-A. No, I was observing the garage entrance, that's all.

Q. So if I go on foot somewhere...

-Q. Si je me dirigeais ... pied quelque part...

Q. ...and take a taxi, you would never notice that I disappeared?

-Q. ...pour ensuite prendre un taxi, vous n'auriez jamais remarqu^e, que j'avais disparu?

A. J'aurais dit "salut", "goodbye".

-A. I would have said "goodbye", "chow".

Q. So you were not concerned with that at all?

-Q. Alors ⁺a ne vous pr^occupait pas du tout?

A. Non, ⁺a me pr^occupait pas "pantoute".

-A. No, it didn't concern me at all.

Q. So that effectively were your instructions, right?

-Q. Alors donc, cela comprenait vos instructions?

Me JEAN LECOURES :

I think, My Lord, that this whole line has deteriorated.

THE COURT :

This whole line has deteriorated to the point where there's nothing that can usefully be asked to the witness.

VALERY FABRIKANT :

Well, that's too bad that you feel that way.

THE COURT :

I do. I do.

VALERY FABRIKANT :

Well, too bad.

THE COURT :

And I have no choice but to intervene. So this examination is finished. Have you any questions to put in cross-examination?

Me JEAN LECOURES :

No, My Lord.

THE COURT :

Fine.

Me JEAN LECOURES :

I totally agree with your decision.

THE COURT :

Thank you very much, Mr. Lefebvre.

- Merci beaucoup, monsieur Lefebvre. Vous avez termin,.

AND FURTHER DEPONENT SAITH NOT

THE COURT :

So we'll adjourn here before we go on with the next witness.

VALERY FABRIKANT :

We didn't deposit even documents he is here, why did you release him? I had questions, and he was here to deposit documents.

MEMBERS OF THE JURY LEAVE THE COURTROOM

VALERY FABRIKANT :

Well, this is nonsense.

THE COURT :

Mr. Fabrikant, you had every opportunity to deposit these, I'm sure the Crown prosecutor has no objection to your reports being deposited.

VALERY FABRIKANT :

But I had more questions.

THE COURT :

Well then, Mr. Fabrikant, I told you a while ago to go on with your questions, as the Crown prosecutor said, the line of questioning had deteriorated to the point where it had become ridiculous.

VALERY FABRIKANT :

Well, I could change question, you could not release the witness. This is lawless.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

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MEMBERS OF THE JURY ARE PRESENT

MARIE-LOUISE ZERVOS - INTERPRETER

DULY SWORN

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twenty-ninth (29th) day of the month of June, personally came and appeared:

NELSON GAGN, born on March fifteenth (15th), nineteen hundred and fifty-one (1951), security officer, confidential address;

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

EXAMINED BY VALERY FABRIKANT :

I again would like if interpreter puts a microphone, could you please?

Q. Were you employed by Broderick in nineteen eighty-nine (1989)?

-Q. Est-ce que vous ,tiez employ, par Broderick en mil neuf cent quatre-vingt-neuf (1989)?

A. Oui.

-A. Yes.

Q. Are you still employed by that company?

-Q. Etes-vous toujours employ, par cette compagnie?

A. Oui.

-A. Yes.

Q. Do you have any special education as far as surveillance is concerned?

-Q. Est-ce que vous avez reu une formation sp,ciale pour la surveillance?

A. Non.

-A. No.

Q. So how did you learn your trade?

-Q. Comment vous avez appris le m,tier d'abord?

A. Bien, on fait application, puis si on n'a pas de casier judiciaire on est accept,, si on est vierge, si on n'a pas de casier on est agent de s,curit,.

-A. If we do not have a criminal record we are accepted as security officers, and we can work as security agents.

Q. So you're not required to have any special education of any kind?

-Q. On ne vous demande pas aucune formation sp,ciale, ,ducation sp,ciale?

A. Non, maintenant a s'en vient de m^me par exemple.

-A. No, but now they're starting to enforce that.

Q. Okay. Are you one of the persons who participated in surveillance of me?

-Q. Est-ce que vous ^tes une des personnes qui a particip, ... la surveillance de ma personne?

A. Oui.

-A. Yes.

Q. Could you identify from the reports which are yours?

-Q. Est-ce que vous pouvez identifier de ces rapports lequel est le v"tre?

A. Celui-ci.

-A. This one here.

Q. What is the date of this report?

-Q. Quelle est la date sur ce rapport?

Q. Date and time.

-Q. La date et l'heure.

A. Premier (1er) avril, de dix-neuf heures (19 h) ... sept heures (7 h) le matin.

-A. The first (1st) of April, at seven o'clock (7:00) in the morning.

Q. Until?

-Q. Jusqu'... quelle heure?

A. Jusqu'... sept heures (7 h) le lendemain matin.

-A. Until seven o'clock (7:00) the following morning.

Q. You were there twenty-four (24) hours?

-Q. Vous ,tiez l... vingt-quatre (24) heures?

A. Non, de dix-neuf heures (19 h) ... sept heures (7 h) le matin.

-A. From nineteen hundred hours (19:00) to seven o'clock (7:00) in the morning.

Q. Oh, okay. Did you notice anything?

-Q. Est-ce que vous avez remarqué, quoi que ce soit?

A. Non.

-A. No.

A. Il n'a pas sorti "pantoute".

-A. No, he did not go out at all.

Q. So... That is the only report which you made?

-Q. Est-ce que c'est le seul rapport que vous avez r,dig,?

A. Oui.

-A. Yes.

Q. So effectively, you've never seen me in person during the surveillance?

-Q. Alors en effet, vous ne m'avez jamais vu pendant votre surveillance, vous ne m'avez jamais vu personnellement?

A. Non.

-A. No.

Q. Did you see me in windows, in the kitchen?

-Q. Est-ce que vous m'avez vu par la fen^tre, soit dans la cuisine?

A. Je sais que j'ai vu un ombrage, on m'avait dit quelle fen^tre puis vous avez pass, dans la fen^tre.

-A. I had seen a shadow and I was pointed out a window, and I had looked there and that's where I saw you.

Q. Okay. What was your official instruction in terms of if I go somewhere, what you were supposed to do?

-Q. Quelles ,taient vos instructions officielles, si j'irais dans un endroit ou quoi que ce soit de ce genre?

A. C',tait de le suivre.

-A. It was to follow you.

Q. Okay. Were you to enter the building if I entered some building?

-Q. Est-ce que vous ,tiez cens, de rentrer dans un ,difice si moi je rentrais dans cet ,difice?

A. Oui.

-A. Yes.

Q. If I go to the university, are you to follow me inside the university?

-Q. Si je vais ... l'universit,, est-ce que vous devez me suivre dans l'universit, m^me?

A. Oh, je m'en souviens pas, l...

-A. No, I don't remember now.

Q. But you do remember that any other building you have to follow me inside the building?

-Q. Mais vous vous souvenez que dans n'importe quel autre ,difice vous deviez me suivre dedans?

A. Oui, (inaudible).

-A. Yes, I was told that I had to follow you.

Q. All right. Were there any limits set as to how far you can follow me?

- Q. Est-ce que vous aviez des limites jusqu'... quel point vous pouviez me suivre?
- A. Non.
- A. No.
- Q. For example, if I go into a toilet room, you are following me, right?
- Q. Alors, comme exemple, si je rentre dans une toilette, vous me suivez, c'est ça?
- A. Non.
- A. No.
- Q. So what then the limits? Suppose if I go to certain store to buy something, you follow me?
- Q. Alors quelles sont les limites? Admettons que je rentre dans un magasin acheter quelque chose...
- A. Bien l..., je le suis dans un magasin, mais une toilette c'est privé,, l..., j'irai pas voir qu'est-ce qu'il fait dans les toilettes.
- A. Well, in a store I'll follow him, if I have to go in a store to follow him if he's going to buy something, but a toilet is private, I don't follow him in a toilet.
- Q. Well, I didn't mean exactly in the cabin.
- Q. Je ne voulais pas dire uniquement dans le cabinet.
- Q. I meant for example, a toilet sometimes it's a big room.
- Q. Je voulais dire dans la salle des toilettes.
- A. Une toilette c'est juste une toilette habituellement, il y en a pas trois, quatre.
- A. Well usually a toilet, there's only one, there's not three or four.
- Q. Well, in big buildings usually it is a big room...
- THE COURT :
- Let's leave the washrooms alone.
- VALERY FABRIKANT :
- All right.
- Q. Anyway, if I'm in the store you are to see what I am buying, you had to follow me, right?
- Q. Alors si je suis dans un magasin vous devez voir ce que j'achète et vous devez me suivre?
- A. Oui.
- A. Yes.
- Q. Are you supposed to write down what I'm buying?
- Q. Est-ce que vous êtes obligé, d',crire ce que j'achète?
- A. Ah, non, l... Non, il me semble... pour moi, non.
- A. No. No, it seems to me, no. No.
- Q. Were you instructed to see maybe some particular things which I might be buying? Any instruction to this regard?
- Q. Est-ce que vous avez reçu des instructions pour certains items que je pourrais acheter peut-être?
- A. Non, mais moi c'était un samedi soir puis un dimanche soir, dimanche matin tout est fermé,, la plupart des magasins sont fermés.
- A. Well this was a Saturday night and a Sunday morning, so all the stores are closed.
- Q. No, that was not my question, my question was what were your instructions rather than practical implementation.
- Q. Ce n'était pas ma question, ma question, c'était plutôt quelles étaient vos instructions.
- A. C'était de le surveiller, puis ce qu'il achète, je faisais pas de rapport l...-dessus.
- THE COURT :
- Q. He meant instructions in the context of things he might have bought, that's what he meant.

-Q. Instructions, c'est---dire un rapport avec ce que monsieur aurait pu acheter.

A. Non, je crois pas.

-A. No, I don't think so.

VALERY FABRIKANT :

Q. Okay. Were you armed during this surveillance?

-Q. tiez-vous arm, pendant la surveillance?

A. Non.

-A. No.

Q. Are you usually armed during surveillance?

-Q. Etes-vous d'habitude arm, pendant que vous faites une surveillance?

A. Non.

-A. No.

Q. You don't have the permit to carry a gun? Do you have the permit to carry a gun?

-Q. Est-ce que vous avez un permis pour porter une arme?

A. Non.

-A. No.

Q. Did you investigate the exits from the building, how many exists were from the building?

-Q. Est-ce que vous avez v,rifi, les sorties des ,difices?

A. Non, j'ai juste v,rifi, la porte d'entr,e en avant puis l'entr,e du garage, la porte du garage qui donne en avant.

-A. No, I only verified the front entrance, the garage door, and the front only.

Q. So were you watching both of them or just one of them?

-Q. Est-ce que vous surveilliez les deux ou seulement un?

A. Bien, de la maniŠre que j',tais plac, je pouvais surveiller les deux.

-A. The way I was placed I could keep an eye on both.

Q. Okay. Did you know how I looked?

-Q. Est-ce que vous saviez de quoi j'avais l'air?

A. Oui, on m'avait donn, un genre de photo sur photocopieuse.

-A. I had been given a picture that had been run on a photocopy machine.

Q. If I go... so if I appear on the main entrance and go on foot somewhere, are you to follow me?

-Q. Si je sors par une entr,e principale et je commence ... aller ... pied, est-ce que vous devez me suivre ... pied aussi?

A. Oui.

-A. Yes.

Q. And as far as buying... I do not recall, I think you didn't answer the question. As far as buying some specific things, did you have any instructions to this regard?

-Q. Je ne me souviens pas si vous avez r,pondu ... la question, mais la question est est-ce que vous avez re#u des instructions formelles sur les items que je pourrais acheter dans un magasin...

A. Non.

-Q. ...soit sur l'item que j'achŠterais?

A. Non.

-A. No. No.

Q. When you go on surveillance, are you given instructions in writing or you are given oral instructions, or you are given both?

-Q. Quand vous allez ... la surveillance, est-ce qu'ils vous donnent des instructions verbales ou les instructions sont par ,crit?

A. Verbales.

-A. Verbal.

Q. You didn't... you weren't given any written instructions at all?

-Q. On ne vous a pas remis des instructions par ,crit?
A. No.
-A. Non.
VALERY FABRIKANT :
May we show the witness these written instructions? I think it's... probably this is it. Is it?
THE COURT :
D-25, is it? Well, what do you want to ask the witness?
VALERY FABRIKANT :
Let me take a look if it is the proper page.
Me JEAN LECOURE :
Yes, that is.
VALERY FABRIKANT :
Yes, this is the proper page.
Q. Did you ever see this document?
-Q. Est-ce que vous avez jamais vu ce document, monsieur?
A. C'est une photo comme ça qu'on m'avait donné,e.
-A. It's a picture like this that I was given.
Q. That's all, nothing else?
-Q. Seulement ça, rien d'autre?
A. Avec ça ici.
-A. Yes, and this also. This also.
Q. So you were given this?
-Q. Alors on vous a remis ceci?
A. Oui, mais moi j'ai ,t, faire cette surveillance-l..., on m'a appelé, ... la dernière minute.
-A. When I was to do this surveillance I was called for it just at the very last minute.
Q. So effectively, you did not get any oral instructions?
-Q. Alors vous n'avez pas reçu des instructions orales?
A. Bien, c'est par l'autre, l..., j'ai remplacé, un autre.
-A. It's from the other one that I replaced.
Q. Okay. So from the other one, when you came to the place, the other guard gave you this instruction in writing? It was the other guard who gave you this?
-Q. Alors quand vous vous êtes rendu sur les lieux, c'est l'autre agent qui vous a remis ce document?
A. Oui.
-A. Yes.
Q. Okay. And he also instructed you orally?
-Q. Est-ce qu'il vous a donné, des instructions orales aussi?
A. Il m'a dit de...s'il sortait, de le suivre.
-A. He told me that if he would come out, to follow him.
Q. Yes. What else did he tell you?
-Q. Quoi d'autre vous a-t-il dit?
A. L..., ,coute, ça fait depuis quatre-vingt-neuf (89), l..., ça fait au moins quatre, cinq ans, l..., l'affaire quatre, cinq ans, on se souvient pas tout de ça.
-A. Well, this was in eighty-nine ('89), you know, it's been four, five years, I don't remember all that.
Q. Okay. But was it at least long detailed instructions or it was just ten seconds, something like: "You just follow this guy" and that's all?
-Q. Est-ce que c',tait des longues instructions détaillées ou bien c',tait seulement comme : "Tu suis ce gars-l..." puis c'est tout?
A. Je pense que c'est pas mal détaillé, parce qu'il disait que... même je m',tais trompé, de place même ce soir-l...
-A. It was to follow... it was also, I remember that I had even mistaken the place on that evening.
Q. In what way did you mistake the place?

-Q. Comment vous n'avez pas trouv, la place?
A. Il y avait un autre agent qui surveillait... une autre place, moi je suis all, ... l'autre place, ... la mauvaise place, l... .. ce moment-l... il m'a dit : "C'est pas l... que tu t'en vas, c'est ... l'autre".

-A. So I met the agent at one place, and he was going from that place to this place, and he said: "It's not this place, it's the other place", so I had to go to that place.

Q. Do you remember the name of the agent who you replaced?
-Q. Est-ce que vous vous souvenez du nom de l'agent que vous avez remplac,?
A. Non.
-A. No.
Q. Okay. If you look at the previous report, would this remind you who you replaced?
-Q. Si vous regardez le rapport d'avant, est-ce que peut-^tre #a pourrait rafra^chir votre m,moire?
A. Non, je sais m^me pas c'est qui qui m'a remplac, le lendemain matin.
-A. No, I wouldn't even know who replaced me the following day in the morning.
Q. No, I mean who you replaced.
-Q. Qui vous vous avez remplac,.
A. Non.
-A. No.
Q. You mean you never saw that person before?
-Q. Alors, #a veut dire que vous n'avez jamais vu cette personne auparavant?
A. Non, c',tait la premišre fois que je le voyais.
-A. It was the first time that I was seeing him.
Q. How did you find him?
-Q. Comment vous l'avez trouv,?
Q. How did you find the person who you were supposed to replace?
A. C'est parce qu'il avait son "suit" de Broderick sur le dos, il avait un "suit" de Broderick.
-A. Because he was wearing his thing with patrol on the back, on his back.
Q. His car you mean?
-Q. Vous voulez dire son auto?
A. Son auto, puis il avait un mobile, un walkie-talkie autrement dit.
-A. Well yes, his car, and he had a walkie-talkie strapped on in the back.
Q. And you approached him and he gave you these instructions, and he...
-Q. Alors, vous l'avez approach, et il vous a donn, ses instructions?
A. Oui.
-A. Yes.
Q. Was he at the right place when you found him or he was at the wrong place?
-Q. Est-ce qu'il ,tait au bon endroit quand vous l'avez trouv, ou...
A. Oui.
-Q. ...au mauvais endroit?
A. Au bon endroit.
-A. He was in the right place.
Q. Well then, how could you be in the wrong place? Weren't you supposed just to stay at the same place where he was?
-Q. Comment #a se fait que vous ,tiez, vous, au mauvais endroit? N',tiez-vous pas cens, de rester au m^me endroit qu'il ,tait?

A. Non, c'est parce que j'avais ,t, ... la mauvais adresse...

-A. I had been to the wrong address...

A. ...et c',tait une mauvais adresse, il a dit : "C'est pas moi que tu viens remplacer, c'est l'autre un petit peu plus loin, l'autre ... l'autre adresse".

-A. ...I went to the wrong address and he told me that: "It's not me you're supposed to be replacing, it's the other one at the other address".

Q. Oh. There was some other surveillance nearby?

-Q. Alors, vous effectuiez de la surveillance tout prŠs?

A. Bien non, il ,tait dans un autre quartier.

-A. No, it was in another district.

Q. Well, how far away was the other district from this one?

-Q. Le quartier ,tait ... quelle distance de celui-ci?

A. Ah, bien l..., l.... une bonne distance en tout cas.

-A. Well, it was a pretty good distance in any case.

Q. Do you remember on what street was that?

-Q. Est-ce que vous vous rappelez sur quelle rue c',tait?

A. Non.

-A. No.

Q. In general you recognize who is supposed to replace who? Do you know the name of the person you are supposed to replace?

-Q. En g,n,ral vous reconnaissez les personnes que vous devez remplacer comment? Est-ce que vous avez les noms des personnes que vous devez remplacer?

A. Oui, le bureau nous donne les noms.

-A. Yes, the office gives us a name.

Q. Okay. So you approach that person and the name was wrong, so you understood that you are replacing the wrong person, that's how it was?

-Q. Alors, vous avez approach, cette personne et puis vous avez dit le nom, que c',tait pas le bon nom, alors vous vous ^tes rendu compte que c',tait pas au bon endroit?

A. Oui.

-A. Yes.

Q. So you are using vehicle which has Broderick marked on it?

-Q. Est-ce que vous utilisez un v,hicule avec le nom Broderick indiqu,?

A. Non, on utilisait nos v,hicules personnels.

-A. No, we were using personal vehicles.

Q. Well then, how do you then recognize that this is Broderick person then?

-Q. Alors, comment pouvez-vous reconna@tre que celle-ci c'est une personne qui appartient avec la compagnie Broderick?

A. Parce qu'on nous donne la description de la voiture puis son num,ro d'immatriculation.

-A. Because they give us a description of the car and also the licence plate number.

Q. Well, if they give you the licence plate number, then how did it happen that you approached wrong vehicle? Could you explain? It has the same licence plate as the right one?

-Q. Alors comment, puisqu'on vous a donn, la description du v,hicule, comment #a se fait que vous vous ^tes approach, du mauvais v,hicule? Est-ce qu'il y a deux v,hicules qui sont pareils, qui ont les m^mes plaques?

A. Non, c'est parce que moi, je m',tais tromp, d'adresse.

-A. No, it's because I had made a mistake in the address.

Q. Yes, but when you approached the car, did it have the licence plate you were looking for?

-Q. Mais quand vous vous ^tes approach, de l'auto, est-ce que #a portait les num,ros de plaque que vous cherchiez?

A. Non, c'est parce que c'est la personne qui ,tait dans la premiŠre voiture que j'ai approch,e, je la connaissais.

-A. No, because the person in the first car that I came up to I knew that person.

Q. All right. Did you read all the instructions which you were given, or you just put it beside you?

-Q. Est-ce que vous avez lu toutes les instructions qu'on vous a remises...

A. Oui.

-Q. ...ou bien vous les avez plac,es de c"t, simplement?

A. Je les ai lues.

-A. No, I read them.

Q. Uh, huh. Okay. Do you remember how many pages were in these instructions?

-Q. Est-ce que vous souvenez combien de pages il y avait dans ces instructions?

A. Non.

-A. No.

Q. Okay. Was there any specific, in these instructions, to the best of your recollection, in terms of where I go, was it any place or there were some specific places which were more important than others?

-Q. Au meilleur de votre souvenance, est-ce que vous avez re#u dans ces instructions des endroits sp,cifiques, me suivre dans des endroits sp,cifiques, des adresses sp,cifiques qui seraient plus importantes que d'autres endroits?

A. Oui.

-A. Yes.

Q. Okay. What were those addresses and how they were described to you?

-Q. Quelles ,taient les adresses et comment on vous a d,crit ces adresses?

A. Bien justement, c'est avec ces fameuses adresses-l... que je m',tais tromp,.

-A. Well, it's with these addresses in question that I had made a mistake.

Q. So you went to one of those addresses?

-Q. Alors, vous vous ^tes dirig, ... une de ces adresses-l...?

A. Oui.

-A. Yes.

Q. Were you given this address? You couldn't arrive at this address by hasard could you?

-Q. Est-ce qu'on vous a donn, cette adresse? Vous n'auriez pas pu arriver ... cette adresse comme #a au hasard?

A. Non, on me l'avait donn,e, j'avais ,t, au bureau avant, j'avais arr^t, au bureau.

-A. I had been to the office before and I had gotten it from the office, I was given that address from the office.

Q. So they told you to go to that address and replace someone there?

-Q. Alors, c'est eux qui vous ont dit de vous diriger ... cet endroit et de remplacer quelqu'un ... cet endroit-l...?

A. Oui.

-A. Yes.

Q. So then why did you decide that you had the wrong place if at the office they told you to go to that particular address and to replace person there?

-Q. Alors, comment vous avez d,cid, que vous ,tiez au mauvais endroit puisqu'on vous avait dirig, ... cette adresse de votre bureau?

A. C'est simple, c'est moi j'avais mal... quand il m'a donn,

l'adresse j'avais mal... pris la mauvaise direction.

-A. Because when I had taken the address I had taken the wrong directions, it's as simple as that.

Q. But you arrived at the address which you were given, right?

-Q. Mais vous vous ^tes rendu ... l'adresse qu'on vous a donn,e, non?

A. Oui, mais c'est parce que...

-A. Yes, but...

A. ...bien parce qu'... la fin j'ai eu de la misŠre ... trouver son adresse ... lui aussi.

-A. ...because I had trouble finding his address also.

Q. This is not answer to my question.

-Q. Ça, ta ne r,pond pas ... ma question.

A. Quand tu vas dans un quartier que tu ne connais pas les rues, c'est normal que tu peux te tromper.

-A. Well, when you're in a district that you don't know the streets, it's normal that you're going to make mistakes.

Q. But you were... okay, turn the two pages, could you indicate among those addresses the one which you were given to go?

-Q. Est-ce que vous pouvez indiquer sur cette page ... quelle adresse vous avez ,t, indiqu, de vous diriger?

A. Son nom y est pas.

-A. His name isn't here.

Q. No, you are looking for name of a guard?

-Q. Est-ce que vous cherchez le nom d'un gardien?

A. Non, non.

-A. No.

A. Son adresse.

-A. It's his.

Q. Just address, check the address. Is there address one of those to which you went?

-Q. V,rifiez l'adresse, si l'adresse est une de celles ... laquelle vous vous ^tes dirig,.

A. Bien l..., l..., non, c'est pas mentionn,.

-A. Non.

A. J'ai pas une m,moire impeccable.

-A. No, I'm sorry, my memory isn't perfect.

Q. Still, you got from the office certain address, did you go to that address first?

-Q. Alors, vous avez reçu une certaine adresse de votre bureau, est-ce que vous vous ^tes dirig, ... cette adresse?

A. Oui, mais c'est l... que je me suis tromp,, l..., j'ai pris la mauvaise adresse.

-A. Yes, that's where I made the mistake, I took the wrong address.

Q. You were given at the office just one address, correct?

-Q. Au bureau on vous a remis seulement une adresse, c'est exact?

A. Non, non, on m'a donn, plusieurs adresses.

-A. No, they gave me several addresses.

Q. Did they give you this particular sheet of paper?

-Q. Est-ce qu'on vous a remis cette feuille en particulier?

A. Ah, bien l..., l..., on m'a donn, des adresses mais l..., l..., la feuille, l....

-A. Well, I just remember them being addresses, now if this is the same one...

Q. So they gave you several addresses and they told you to go to all of them?

-Q. Alors, ils vous ont remis une feuille avec des adresses et puis ils vous ont dit de vous diriger ... toutes ces adresses-l...?

A. Non, non, une adresse en particulier.

- A. No, no, one address in particular.
- Q. So why did they need to give you several more addresses if you had to go to just one address?
- Q. Pourquoi ont-ils eu besoin de vous donner plusieurs adresses puisque vous deviez vous diriger seulement ... une adresse?
- A. Je le sais pas.
- A. I don't know.
- Q. Is it usually that you are given several addresses so that you could make as many mistakes as possible?
- Q. Est-ce que c'est habituel de vous remettre autant d'adresses que possible pour que vous puissiez faire autant d'erreurs?
- Me JEAN LECOURS :
- I think, My Lord, it's also deteriorated.

THE COURT :

We'll let it go for the moment. The last question however is pure sarcasm, and it's ruled out of order.

VALERY FABRIKANT :

Okay, I will rephrase it.

- Q. Do they usually give you several addresses when you have to go to one?
- Q. Est-ce que c'est habituel qu'ils vont vous remettre plusieurs adresses quand vous devez aller seulement ... une de ces adresses?
- A. Bien, je pense qu'il y a des adresses qu'il fallait pas qu'il aille, des places qu'il fallait pas qu'il aille, qu'il se présente.
- A. I think they were places that he didn't have to go to, that he was not allowed to present himself at.
- Q. So effectively, you were given list of addresses to which I was not supposed to go, correct?
- Q. Alors, on vous a remis une liste d'adresses auxquelles moi, je n'avais pas le droit d'aller, c'est ça?
- A. Oui.
- A. Yes.
- Q. Now look at this list, is this the list which you were given?
- Q. Regardez cette liste, est-ce que c'est la liste qu'on vous a remise?
- A. Je m'en souviens pas.
- A. I do not remember.
- Q. You were given just list of addresses or instructions too maybe?
- Q. Est-ce qu'on vous a remis seulement une liste d'adresses ou peut-être qu'on vous a remis aussi les instructions?
- A. Je m'en souviens pas.
- A. I do not remember.

Me JEAN LECOURS :

My Lord, the instructions and the list has already been filed, the whole point to this line of questioning is nailing down the witnesses one after the other. I don't see where we're going with that. Obviously these people don't have a good memory, and it's normal in the circumstances. The only point... the only problem, the only point... what we're doing is belittling the witnesses one after the other.

VALERY FABRIKANT :

The witness is not belittled in any way.

Me JEAN LECOURS :

The instructions and the list is there, My Lord.

VALERY FABRIKANT :

I didn't ask a single question which would belittle...

THE COURT :

The Crown prosecutor has generally allowed you to speak when you've stood up to speak, you might allow him the same courtesy. Have you anything else you wish to add?

Me JEAN LECOURES :

No, My Lord.

THE COURT :

Have you any answer that you wish to give?

VALERY FABRIKANT :

Yes, I think that my examination is absolutely normal, when he protested one question which could be interpreted as sarcasm, I readily changed it, all other questions did not even imply any sarcasm. As far as testimony of this witness goes, I must submit that definitely there is some strange, strange answers, because on the one hand witness testified that he, just at the last minute, was told to go somewhere with no instructions whatsoever, and that he got all this from his predecessor. Now he's telling totally different story, that he was given all those addresses in advance at the office, which doesn't match absolutely to his previous testimony. So I believe I'm doing my best to illicit what really happened, that's the only purpose of my questioning.

THE COURT :

And what is the purpose of your question insofar as it relates to what you wish to establish?

VALERY FABRIKANT :

Well, I already explained the purpose of all the guards, if you wish me to repeat it, I can do it, but I think we can save time because you accepted my explanation once.

THE COURT :

Ah yes, the university played a dishonorable game in concert with Broderick, that was what you said.

VALERY FABRIKANT :

Yes. And it seems...

THE COURT :

Well listen, you have got to the point now...

VALERY FABRIKANT :

...very interesting...

THE COURT :

You may find it very interesting, but I mean I find it very long. You have got to the point with this witness where you have now drifted into cross-examination and you've been in cross-examination of this witness virtually for the last ten minutes. He is testifying as to events singularly uneventful which occurred some four years ago, you're asking him questions about instructions that he got, the list of names appeared, from my point of view, to trigger his memory as to one of the addresses that he went to by mistake, he said based on information that he received at the office, because he said he was at the office previously. I don't know, I mean, if you see something devious in all of that, then that's your way of looking at things. If you have anymore questions to put to the witness along this line I'll let you put them for the minute, but I would suggest that you have virtually exhausted this line of questioning, so I don't think you're advancing us very much. You may go on for the moment, but...

VALERY FABRIKANT :

Q. So, would you please reconcile your statement that you got...

THE COURT :

The witness doesn't have to reconcile his statement, he's made a statement.

Me JEAN LECOURES :

My Lord, the witness doesn't remember anything, he's speculating, he's invited to speculate on the questions of the accused.

THE COURT :

That's why I don't wish him to reconcile anything, that's the position I've taken. So he has not to reconcile anything, change your question.

VALERY FABRIKANT :

Well, witness remembers very well, he remembers even such details that he went, four years ago, to the wrong address, it's remarkable memory.

THE COURT :

Would you please put another question?

VALERY FABRIKANT :

Well, I started putting another question, Crown interrupted me.

THE COURT :

And I told you that question won't be allowed, he is not required to reconcile anything, his testimony is there, the jury can appreciate it.

VALERY FABRIKANT :

Okay.

Q. Isn't it one of the requirements of any security agency that the person who is hired had a gun permit?

-Q. Est-ce que c'est une des prescriptions que chaque personne qui est employe par une agence de securit, doit posseder un permis de porter une arme ... feu?

A. Non.

-A. No.

VALERY FABRIKANT :

Okay. Let us deposit his...

THE COURT :

Report?

VALERY FABRIKANT :

Yes, and I would like to get hold of the remaining guards to deposit the rest.

THE COURT :

Pardon?

VALERY FABRIKANT :

Mr. Belleau didn't find the remaining guards.

THE COURT :

For the minute you wish to deposit this witness' report?

VALERY FABRIKANT :

Yes. I don't think we need to separate it, just...

THE COURT :

Well, we'll see whether we separate it in a moment. What's the Crown's position?

Me JEAN LECOURES :

Well, I have explained my position before, My Lord.

THE COURT :

I realize you explained your position before.

Me JEAN LECOURES :

You know. I offered in time and he refused.

THE COURT :

So your position is... Your position has not changed?

Me JEAN LECOURES :

Well, there's one of the small reports that will be filed.

THE COURT :

Fine.

VALERY FABRIKANT :

Well, plus the reports of previous which I was not allowed to finish my questioning.

THE COURT :

Have you any objection to the filing of the three reports that Lefebvre alluded to?

Me JEAN LECOURE :

I don't want that to be considered as a precedent though, I might not have any objections but in this specific case.

THE COURT :

In this specific case. Okay. So you have, madame, 29389, 3389 and 31389 signed by Lefebvre, and you have 1489 from nineteen hundred hours (19:00) to zero seven hundred hours (07:00) on the second signed by Mr. Gagn,, and these will comprise the exhibit. It would be D-30 I think, would it? Oh, I'm sorry, excuse me. D-31. Yes.

VALERY FABRIKANT :

Q. Could you indicate where you were stationed so that you could see both garage and the main entrance?

-Q. Est-ce que vous pouvez indiquer o- vous ,tiez stationn,, ... quelle position vous ,tiez pour vous permettre de voir la porte d'entr,e ainsi que la porte de garage?

A. J',tais stationn, en avant dans ma voiture, de la maniŠre que j',tais plac, je pouvais voir la porte d'entr,e puis le garage.

-A. I was parked with my car, in front of my car, and I could see both the entrance as well as the garage.

Q. Well, on what street were you?

-Q. Sur quelle rue ,tiez-vous?

A. En avant de la bftisse.

-A. Well, right in front of the building.

Q. So you were in front of building?

-Q. Alors vous ,tiez devant la bftisse?

A. Oui.

-A. Yes.

Q. And you could see the garage from that place?

-Q. Et puis vous pouviez voir le garage de cet endroit-l...?

A. Oui, parce qu'il y a l'entr,e de m^me, puis je m',tais mis en avant.

-A. Because the entrance is like this, and I was just in front, like this.

Q. So you were on Trent Avenue?

-Q. Vous ,tiez sur la rue Trent?

A. Ah, bien l..., je le sais pas dans quelle rue.

-A. I don't know now, I don't remember.

Q. Well, the building is on Trent, right?

THE COURT :

You're now arguing with the witness and cross-examining him, he says...

VALERY FABRIKANT :

I'm not cross-examining...

THE COURT :

Well, he says from the position where he was he could see the door and he could see the garage, that's your question, that's the end of it. You're not permitted to cross-examine the witness.

VALERY FABRIKANT :

I'm not cross-examining.

THE COURT :

Yes, you are.

VALERY FABRIKANT :

I am asking additional questions.

THE COURT :

No, you're not asking additional questions you're cross-examining the witness. That last question is disallowed.

VALERY FABRIKANT :

I would like to draw a small sketch, and I would like him to show where he was, because he seems to remember pretty well everything. Can I have a piece of paper?

THE COURT :

No, you may not. You have covered what you have to cover with this witness, if you have anything else to cover, any other subject, please go ahead and cover.

VALERY FABRIKANT :

Okay. Let me explain why I'm asking this question, and then you decide whether you allow or don't allow. There is absolutely no spot there where you could be and see at the same time the main entrance and the garage.

THE COURT :

Well then...

VALERY FABRIKANT :

There is just no such spot.

THE COURT :

...then I suppose you may lead evidence to that effect, but you may not cross-examine this witness with regard to what he said.

VALERY FABRIKANT :

I'm not cross-examining. Anyway, you disallow?

THE COURT :

I disallow it. Okay? How is that?

VALERY FABRIKANT :

We made an agreement.

THE COURT :

I make no agreements with you, Mr. Fabrikant.

VALERY FABRIKANT :

You go as lawless as you want.

THE COURT :

None whatever.

VALERY FABRIKANT :

It's fine with me.

Q. Thank you.

THE COURT :

Have you any questions?

Me JEAN LECOURS :

I have no questions, My Lord.

THE COURT :

No questions.

Merci beaucoup, monsieur Gagn, .

AND FURTHER DEPONENT SAITH NOT

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twenty-ninth (29th) day of the month of June, personally came and appeared:

SUSAN BELSON, born on March twentieth (20th), nineteen hundred and forty-four (1944), university ombuds person, confidential address;

WHOM, after having solemnly declared, doth depose and say as follows:

EXAMINED BY VALERY FABRIKANT :

Q. How long have you been employed by the university?

A. Since nineteen seventy-eight (1978).

Q. Okay. Did I ever met with you personally?

A. Yes.

Q. Was it somewhere in the beginning of eighties?

A. Yes.

Q. Do you remember what it was?

A. As far as I remember, it was concerning a course you were taking in continuing education, and it was a question of a tuition waiver.

Q. Do you have those documents with you?

A. I do not.

Q. Why, you disposed of them?

A. Yes.

Q. You don't keep the documents which are subject of a complaint or something?

A. We keep our files for usually three years.

Q. And after that you don't send it to archive, you just destroy them?

A. That's right.

Q. Okay. So what was about tuition waiver, I was complaining about something?

Me JEAN LECOURE :

Can we ask about the relevance of this testimony, My Lord?

THE COURT :

I can ask, I think I know the answer.

Me JEAN LECOURE :

We're dealing with four murders on August the twenty-fourth (24th), now we're in tuition rates.

THE COURT :

The beginning of the eighties. Question of a meeting with Mrs. Belson regarding a tuition waiver for a course you were taking in continuing education, where does that fit?

VALERY FABRIKANT :

I'll give you absolutely complete answer to that. First of all, it was not tuition waiver. Second, it was complained on the fact that I was taking this course, and contrary to all university regulations, I was taking French course there, contrary to all regulations the teacher smoked in the classroom, right near the sign "smoking is forbidden, decision of the senate". And I dared to make the remark to her, that she was not supposed to smoke in the classroom, and I'm allergic to smoke, and when I told her this, she just continued smoking. She was the teacher there and I was a student, how dare I to tell her that?

THE COURT :

What has this got to do with your defense?

VALERY FABRIKANT :

If I may continue you will see what it has to do with my defense. It looks like I'm right. Well, think again. Not only was I wrong, I was kicked out of the course because this teacher happened to be friend of director or assistant director of continuing education center. And if you know me well enough by now, of course I couldn't leave it like this, I was seek, justice seeker, so I tried to get some justice there. So first, normally, as any normal person, I go to ombudsman, and ombudsman tells me that she was so busy that effectively she doesn't even know when she was going to do something about it. So it was clear to me that it is, you

know, national trait, not to refuse, just delay, sooner or later either this person dies, or ombudsman will be fired, or... you know, or the lady who kicked me out, something happens.

THE COURT :

These events, I understand from what Mrs. Belson has said, are in the beginning of the eighties, is that right?

VALERY FABRIKANT :

That's not the end of it, so I understood she is not going to do anything so I went to director. I went to director and that was different director, he at least talked to people. I spoke with him, he assured me that definitely he will go to the bottom of it and he will get some justice done. Month is passing, two months are passing, he's busy, then this lady cannot be reached, then the director of continuing education cannot be reached. Well, I think this may sufficiently affect person's mind in terms of if there is any way to get any justice in this university. So that was my first experience as to when you are absolutely and totally right, you are wrong still, there is no way you can get any justice in this university. Now, is it relevant?

THE COURT :

Have you finished?

VALERY FABRIKANT :

Yes.

THE COURT :

I don't think I have to hear from you, Mr. Lecours. This is not relevant to this trial at all, and you may not put these questions to this witness.

VALERY FABRIKANT :

All right. So let's go to ninety-one ('91) then.

Me JEAN LECOURE :

I think we should ask the relevance of the subject in ninety-one ('91).

THE COURT :

Well, let's see what the question is with regard to ninety-one ('91) first of all. If you feel it's not relevant, you'll, I suppose, make an objection.

Me JEAN LECOURE :

I don't see the point right now, My Lord.

THE COURT :

No, no, we'll see what the question is in relation to ninety-one ('91).

Me JEAN LECOURE :

Why can't we ask?

THE COURT :

I would prefer to wait for the question with regard to ninety-one ('91).

VALERY FABRIKANT :

Well, maybe it will shorten the whole thing, just ask and you will rule that the witness is irrelevant and we'll release her. How about that, we'll speed up the process so quickly... fantastic.

THE COURT :

Fine, if you wish to tell me what subject you propose to cover with the witness in nineteen ninety-one (1991) we'll see.

Me JEAN LECOURE :

Three of us agree then.

THE COURT :

Three of us agree.

VALERY FABRIKANT :

Well, she was participant, to the best of my understanding, of all those meetings.

THE COURT :

Ah!

VALERY FABRIKANT :

She's member of intervention team, and she participated to all of them, and probably she knows something before that, too.

THE COURT :

Then in that case I'm certainly prepared to hear the witness on those questions.

VALERY FABRIKANT :

Well... and I thought that Mr. Lecours by now know that at least. He's sitting there, and at least appearance is that he's listening.

Me JEAN LECOURE :

I don't dare to answer that, My Lord.

VALERY FABRIKANT :

Well, it doesn't require any answer, it wasn't even sarcastic, it was just an observation.

THE COURT :

Fine. Now would you go ahead?

VALERY FABRIKANT :

Yes.

Q. Did anything happen before nineteen ninety (1990)? Did you have any complaint about me before nineteen ninety (1990)?

A. Yes.

Q. Yes. Okay. Could you specify who complained and on what?

A. In nineteen eighty-two (1982) I heard from a student who claimed that you had raped her.

Q. Fantastic. In eighty-two ('82), you see I raped now two ladies, one in ninety-two ('92), one in eighty-two ('82). All right. In eighty-two ('82) I raped a student.

THE COURT :

That's not what the witness said, the witness said: "I had a complaint from a student who claimed..."

VALERY FABRIKANT :

Q. Why didn't you call the police?

A. Because after considerable discussion the student decided not to pursue the complaint.

Q. When did the rape occur?

A. In the fall of nineteen eighty-one (1981), as far as I remember, I can't be precise as to the date but that's the best I can remember.

Q. All right. Why did she come to you? And she came to you, what, in eighty-two ('82) what?

A. I think in the spring of eighty-two ('82).

Q. Okay. Did you ask her why did it take her so long to realize that she was raped after all?

A. I don't think that it took her so long to realize that she was raped, she was coming to me because she was concerned about starting a new year at the university and had been ill, and was concerned that her record may have reflected poor grades that were a result of her illness.

THE COURT :

Listen, I should say for the purposes of the record, you're asking these questions but these would be questions that, as far as I'm concerned, have no pertinence to this case, and on which I will now, and will later instruct the jury that obviously they should draw no inference in relation to the

conclusion that they'll be addressing concerning what you're presently accused of.

VALERY FABRIKANT :

Don't you worry, I enjoy every moment of that.

THE COURT :

Well that's fine, if you enjoy every moment of it, that doesn't make it any the more relevant.

VALERY FABRIKANT :

Do we have any papers...

THE COURT :

Now, are you able to tell me how these complaints are relevant to these proceedings?

VALERY FABRIKANT :

Okay, sure. Just ask me. If you recall, this is... I'm bringing all the details because I'm going to call... you remember another lady, I believe Miss Torbit, told the jury that I raped somebody in ninety-two ('92).

THE COURT :

I remember you using the word, I do not remember Mrs. Torbit using the word.

VALERY FABRIKANT :

Well, anyway, she...

THE COURT :

Well, it's not anyway, Mrs. Torbit did not say that.

VALERY FABRIKANT :

Yes. Well, it doesn't matter. Let me just explain the relevance of all these questions.

THE COURT :

Yes, what is the relevance of all of that?

VALERY FABRIKANT :

And please do not interrupt me, because the relevance will take couple of minutes to explain, it won't be long though. You recall also that another witness here testified that he was told by Yelle, and Yelle confirmed it, that I was refused gun permit, and I'm going to use my wife to get those guns. So we have so far at least three very interesting testimonies which I have no doubt didn't come here by accident, they were definitely orchestrated by Prosecution. All of them...

THE COURT :

I think they were witnesses you called.

VALERY FABRIKANT :

Sure, this is the problem. This is exactly the problem I am facing because all the witnesses I am calling, regretfully, are not really my witnesses in the sense that I know what they're going to say. They're not my witnesses in the sense that they are on my side. They're not my witnesses in the sense even that they have any positive disposition towards me. I would be not wrong if I say that all those witnesses, almost all, are totally negative towards me. So legally they are my witnesses, but in fact they are all adverse. It is, the problem is that I'm having such a Judge who does not see it that way that I see it, but this is the situation at this trial, that majority of witnesses are adverse in the sense that their interest, and they way they are instructed, because they definitely are instructed by at least their lawyer, and I wouldn't be surprised if they were instructed by Crown, too. So we have... they are trying to convince me, do not dare... you see it is kind of length of experience. I would like to respectfully remind when I called for example Morrissette to testify here, that he effectively threatened me. Me Richard

told me in advance: "If you dare to call him he will come here and testify that you are not fit, so have it in mind, don't you even think about calling him". And if you recall we made a dry run here and indeed this is what he said, and they just don't know me, that I would get scared that someone comes here and lies. I enjoy every moment of that. Now here we have at least three incidences clearly coached testimony. Yelle could not possibly in October of nineteen ninety-one (1991) know a) that I was refused, because I was not refused. I had my gun permit at that time. He could not possibly know well in advance that somewhere next year my wife will decide to apply for firearm permit of her own. How could he possibly know in nineteen ninety-one (1991) that I was not refused, and he could not possibly know what happened in ninety-one ('91). And believe me, even if I had such plans in ninety-one ('91), I wouldn't tell about it, neither to Yelle nor to anybody else. So it's clearly, you know, machination, nothing else there, and this machination is being done, you know, in this cowardly way: "Ah, ah, you call this witness, we'll show you what this witness will tell you". Well, I couldn't care less. I believe the more they do tricks like this, the more jury will understand how low these people are, that's it. Because nobody, in his right mind would believe that the university having in ninety-two ('92) such an excellent weapon that I abused trust of a student, gosh, they would use it to fire me right away. They never mentioned it anywhere. Isn't it obvious that it was a lie? The same thing goes here. So I enjoy every moment of that, let her tell her story as much as she wants. I think that everyone would see what kind of tricks Crown is playing with the witnesses who are definitely friendly to Crown, not to me. So, if you allow me to continue this, I'm continuing, and please do not try to defend me, I have nothing to defend from.

THE COURT :

I'm simply trying to determine what is relevant to the murder trial that I'm trying to preside over. And...

VALERY FABRIKANT :

Anyway to every normal person...

THE COURT :

... the question of what happened in nineteen eighty-two (1982) involving you, and whatever accusation someone might have had against you in nineteen eighty-two (1982) are not, in my view, relevant to your murder charge.

VALERY FABRIKANT :

Well, you see... anyway, can I continue?

THE COURT :

No, you can't continue, you haven't satisfied me that this is in any way relevant to your defense, beyond your saying that it is, but yet another example of the machinations of Concordia University with regard to you. And I don't think that that, if I balance that against the potential of allowing into the record all sorts of testimonies involving the question of rape advances us one bit, so you may not continue this line of questioning with the witness.

VALERY FABRIKANT :

All right. But I would like for the record that I protest most strongly because I want this...

THE COURT :

Wonderful. Tell it from the mountain, tell it from the mountain.

VALERY FABRIKANT :

All right.

THE COURT :

So you will have to move on to something else with Mrs. Belson.

VALERY FABRIKANT :

Well, I think it is unfair, since she said it, I believe I have the right to show to the jury that it was a lie.

THE COURT :

Mr. Fabrikant, I have ruled on the question...

VALERY FABRIKANT :

Okay.

THE COURT :

...and I have said that it is not pertinent. Now move on to something else.

VALERY FABRIKANT :

All right.

THE COURT :

Q. Would you stand up please, Mrs. Belson?

VALERY FABRIKANT :

All right.

Q. So what was the next complaint?

VALERY FABRIKANT :

But can I at least ask her if she has any documents of that, from the...

THE COURT :

I said it was not relevant, and if it's not relevant, neither are the documents.

VALERY FABRIKANT :

Yes. I think it is unfair.

THE COURT :

All right. That's fine.

VALERY FABRIKANT :

Q. So after that, what was the next complaint?

A. There were no other complaints.

VALERY FABRIKANT :

May I at least ask if she informed me about that complaint?

THE COURT :

Mr. Fabrikant, I have ruled that that complaint is not relevant, now move on to something else.

VALERY FABRIKANT :

All right.

Q. Okay. So when did you hear first that I threatened somebody or something of that nature? If you can recall.

A. I can recall that in nineteen eighty-nine (1989) I heard that there were problems in the Department of Mechanical Engineering. I can't remember where I heard these things, it could have been from a number of people and I have absolutely no memory. I do remember that John Saber, who was killed on the twenty-fourth (24th) of August, came to me in nineteen eighty-nine (1989) and told me that you had asked him, because you were the only two Jewish people in the Department of Mechanical Engineering, whether what was happening to you could be possibly because of anti-semitism in the department. And he said to me that he was concerned that you were treated fairly and that if there was anything that I could do to ensure that you were treated fairly that I should do it. And I had at the time no involvement in your situation and I told him so.

Q. What was the timing you said?

A. I think it was nineteen eighty-nine (1989).
Q. Nineteen eighty-nine (1989)?
A. As far as I recall. It was certainly a couple of years before nineteen ninety-one (1991), which was the next time I had any involvement.
Q. Could it be nineteen eighty-eight (1988)?
A. I suppose it could have been, I have no way to lock it into any particular time.
Q. Did he mention anything in terms of my allegation that I had to include several people as co-authors in my scientific work?
A. I don't remember that.
Q. What was the unfairness he alleged about?
A. I can't... I'm not quite sure that I remember, but I think it was something about a renewal of a contract, but I'm not sure.
Q. Okay. Well, whatever it was, did you try to tell him that he, personally, could help me much more than you since he was a member of the department? Did you try to tell him that?
A. I talked to him about that in nineteen ninety-one (1991).
Q. No, no, at that time.
A. At that time, no.
Q. No. It never crossed your mind that he, as tenured member of the department, has much more influence, if he desires, to exercise this influence than any ombudsman?
A. I did not say that to him.
Q. But you were aware of that?
A. No, I'm not sure I was aware of that.
Q. You didn't tell him that: "You don't need any help from me, you can do it all yourself if you feel that there is injustice in the department"?
A. I did not say that to him.
Q. Yes. Just say it, it's so easy. All right. And you started talking about what, nineteen ninety (1990)?
A. Nineteen ninety-one (1991).
Q. Well, I believe some events were in nineteen ninety (1990), aren't you missing them?
A. I was not in any way involved in nineteen ninety (1990) events.
Q. Okay. You brought some file with you, I believe it is not that big, is it possible for me to take a look at it?
THE COURT :
No, it is not, the bigness of the file or the littleness of the file is not the criteria by which is measured that you go through it. If you have a question to ask which causes Mrs. Belson to refer to the file, you'll ask it.
VALERY FABRIKANT :
Q. Well, what kind of documents do you have in your file? Are they from ombuds office, are they from intervention team or from any other...
Me JEAN LECOURS :
This is fishing expedition, My Lord, it's the same thing.
THE COURT :
Yes. If you have a specific question to ask in relation to documents, you'll ask it, if the witness has the documents, she'll respond.
VALERY FABRIKANT :
Well I asked, and this question is normal.
THE COURT :
That question isn't normal, that question is fishing.
VALERY FABRIKANT :
All right.
Q. Do you have any documents here related to me as ombudsman?

A. No, I do not.

Q. Do you have any documents related to me as a member of intervention team?

A. Yes.

Q. Okay. Are any documents dated nineteen ninety (1990)?

A. No.

Q. Have you been present on October thirty-first (31st) at the meeting at Montreal Athletic Association?

A. No, I was not.

Q. You were not member of intervention team at that time?

A. I may have been but I was not at that meeting.

Q. But you know about this meeting anything at all? What is your personal knowledge about this meeting?

Me JEAN LECOURE :

She was not there, My Lord, I think it's hearsay and a waste of time.

VALERY FABRIKANT :

I know, I'm asking for personal knowledge.

THE COURT :

Absolutely, objection maintained.

VALERY FABRIKANT :

Well, I'm asking for personal knowledge.

THE COURT :

First she said she was not at the meeting...

VALERY FABRIKANT :

I know.

THE COURT :

...so how can she testified as to what transpired at the meeting?

VALERY FABRIKANT :

No, I'm asking about her personal knowledge about the meeting because what was discussed at the meeting, if she had knowledge, would definitely affect her actions in ninety-one ('91). So it is important to point out what was her personal knowledge prior to ninety-one ('91).

Me JEAN LECOURE :

I think you already ruled.

THE COURT :

I already ruled, if the witness was not present at the meeting you cannot ask her what her personal knowledge of that meeting was.

VALERY FABRIKANT :

I said it is important because...

THE COURT :

I said I ruled.

VALERY FABRIKANT :

You ruled before you hear my objection, objection was reasonable. All right.

Q. So when was your first involvement with any event connected with my name?

A. In nineteen ninety-one (1991)?

Q. It was in nineteen ninety-one (1991). Do you remember...

A. No, I'm asking you, do you mean in nineteen ninety-one (1991)?

Q. No, if it was before ninety-one ('91), then please name it.

A. We've already talked about nineteen eighty-two (1982).

Q. Well okay. Yes. Nineteen eighty-two (1982), yes, if I can ask you questions about it I would be happy.

THE COURT :

You cannot.

VALERY FABRIKANT :

You see, I understand, she's eager to tell the story and I am eager to ask her, because she was sent here to tell the story how I raped somebody, and I would just enjoy her telling that story.

THE COURT :

Would you move on, she said that in nineteen ninety (1990) she was not involved with you.

VALERY FABRIKANT :

All right.

Q. So when was the first event after nineteen ninety (1990)?

A. After nineteen ninety (1990), it was in nineteen ninety-one (1991).

Q. Okay.

A. In November.

Q. Do you remember the date?

A. I believe it was November first (1st).

Q. Okay. What happened on that date?

A. On that date I was invited with the other members of the intervention team to a meeting called by Grendon Haines with the members of the departmental personnel committee.

Q. Okay. Were you invited by who? By Mr. Haines personally?

A. As far as I recall, yes.

Q. Did he explain you on the phone the purpose of that meeting?

A. Not that I remember, the purpose was not clear. It was a meeting with the departmental personnel committee.

Q. Did you make any personal notes at that meeting?

A. No, I did not.

Q. Do you have any documents related to that meeting in your possession?

A. No, I don't.

Q. What do you recall from that meeting? When did it start? Do you recall the time of the meeting?

A. I think it was late in the morning but I'm not sure exactly what time. I think it was late in the morning.

Q. About noon (12:00)?

A. Perhaps.

Q. Do you remember how long did it last?

A. Maybe an hour.

Q. Did anyone leave the meeting before it was finished?

A. I think Catherine McKenzie left the meeting before it was finished, yes.

Q. How long did she stay at the meeting? Was it just before the meeting finished or it was...

A. I can't remember.

Q. ...half of the meeting?

A. I don't know.

Q. Okay. What was discussed at the meeting?

A. The members of the personnel committee reported an incident that had happened the previous evening when they had been meeting to decide on your contract renewal.

Q. Uh, huh.

A. And they talked about coming out of the meeting about eleven o'clock (23:00) at night to find you in the hallway. And they were very disturbed by this because they thought that you had been listening to the meeting, and they called security. And they were particularly concerned... I think it was discussed at that meeting that they were tending not to renew your contract. And given what had happened the previous evening, they were very fearful of your response to hearing the contract would not be renewed.

Q. You mean fearful for their lives, that's how it sounded?

- A. That's how it sounded.
- Q. Okay. Did they give any explanation why would they fear for their lives?
- A. They discussed threats that it was alleged you made, and the threats about doing things the American way, the gesture, shooting sort of gesture. They said that you had threatened, I believe, professor Sankar, and there was also a story about your having telephoned somebody to say that you knew what their children were wearing and when their children were at school.
- Q. Okay. Did they specify as to who any of those threats were allegedly made? For example to Sankar, did I threaten him directly or did I say it to somebody else?
- A. I was not clear to me.
- Q. Well, did anyone at the meeting try to clarify this detail?
- A. I don't remember whether anybody tried to clarify it at the meeting. I do know that for me it was very important from that meeting on to try to get to the bottom of the stories about threats, to whom the threats were made, when they were made, what was the content, what was the context. I don't remember whether it came up in that meeting.
- Q. So if you felt that it is important to get to the bottom, were you the one who asked those questions at that meeting? Did you?
- A. I don't remember. I don't remember.
- Q. Well, you don't remember whether you asked those questions or you didn't ask those questions?
- A. I can't say absolutely that I didn't ask them, but I don't remember asking them.

THE COURT :

Okay. So we'll adjourn at this point until two fifteen (2:15).

VALERY FABRIKANT :

I would like to have this file during the break so that I would be able to ask proper questions faster.

THE COURT :

You may not have the witness' file.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITNESS: SUSAN BELSON -- UNDER THE SAME SOLEMN DECLARATION

VALERY FABRIKANT :

Since I'm not allowed to ask questions about rape, I suggest that the Crown investigate and bring new charges, during the same trial we can deal with charges of rape as well. Is it all right? Can we do that?

THE COURT :

Have you other questions to put to the witness?

VALERY FABRIKANT :

Well, this is my question right now, I want an additional charge, rape in nineteen eighty-one (1981).

THE COURT :

Why don't you continue your questions to the witness.

VALERY FABRIKANT :

Well, I think Crown should consider, after all rape is a crime, isn't it?

VALERY FABRIKANT :

- Q. Okay. So you were talking about meeting of November first (1st), and at that meeting you were telling that you decided that you had to get to the bottom of it and to find all the sources and threats, whether they were or weren't made, do you

recall your testimony to this end?

A. Yes, I do.

Q. Okay. Did you decide to write sitting at that meeting?

A. I think it was more a process than a bolt of lightning at that meeting. And I guess my role on the intervention team was always a kind of extension of my role in the ombuds office, which was to listen to both sides, and to be as concerned about the person who was disruptive as about the people or the person who was disrupted.

Q. Uh, huh. Okay. And did you ever come talk to the other side?

A. No, I did not.

Q. But you just said that it is your duty to listen to both sides, how come since November ninety-one ('91) you never bothered to hear the other side?

A. I didn't say it was my duty, I said that was the way I saw my role.

Q. Yes. So why didn't you fulfil your role?

A. That was not the purpose of the meeting.

Q. No, I'm not saying that that was purpose of the meeting.

A. It was not for me to do that.

Q. I'm saying, why didn't you fulfil your role the way you saw it?

Me JEAN LECOURE :

(Inaudible).

THE COURT :

It certainly is. You may not cross-examine the witness, what she did, or why she did it, or why she didn't do it.

VALERY FABRIKANT :

If I say again that the witness is in difficult position I am stopped and I will be in contempt of Court again, eh? All right.

Q. So please continue. You said it was a process and your role was to see that the stories... Okay. What else do you recall from that meeting?

A. I don't recall much more during that meeting, what I recall is speaking to John Relton and Nancy Torbit, the other members of the intervention team after that meeting, and we decided that I would speak to John Saber, who, as you recall, I mentioned came to me years previous, to see if Dr. Saber could talk to you. Because it seemed to me that if there were anybody in the department who could talk to you, perhaps it was him. And we were concerned that the way you were acting was not in your interest or in anybody else's interest.

Q. All right. And... Okay. Still returning back to the meeting, what did the members of department personnel committee demand at that meeting?

A. If I remember, their primary concern was security for themselves, and I think that what they asked for was to have security on you and security for themselves.

Q. Okay. What kind of security on me?

A. I don't think it was clear. I don't remember it being more specific than that.

Q. What did they say? "We want security on him", that's what they said, or they said: "We want twenty-four (24) hour surveillance of him", or...

A. I don't remember.

Q. ..."We want him to be fired. We want him to be declared dangerous", any of those?

A. I don't remember specifically.

Q. You don't remember whether this was said or it wasn't said?

A. That's right, I don't remember whether it was or whether it

wasn't.

Q. It might have been said but you just don't remember?

A. It might have been said and I don't remember, it might not have been said and I don't remember.

Q. Yes. Okay. Did they say what kind of security they want on them?

A. I don't think that was specific either.

Q. Did anyone ask them whether they were personally threatened?

A. I don't know if anybody asked. I remember it being a question in my mind, not so much were they personally threatened but who was threatened.

Q. Okay. And did they ask who was threatened?

A. I don't remember whether the question actually came up in that way.

Q. Do you remember anything at all from what happened during the meeting?

A. I don't remember very much of that meeting.

VALERY FABRIKANT :

Yes. Now, I would like to invoke Common Law and to argue in the following manner. This particular witness remembered perfectly well what happened allegedly in nineteen eighty-two (1982), we are now in eighty-three ('83). She remembered that the lady came to her saying that I raped her, and she remembered very well that it was spring of eighty-two ('82), and she remembered very well that rape occurred in the fall of eighty-one ('81). And I have no doubt why the dates are there, because she knows that in eighty-one ('81) I wasn't married yet, so definite I should have raped somebody then. Now... And she remembered very well even what the lady explained to her, no matter how ridiculous it was, but she still remembers that the student explained to her why she didn't complain in the fall of eighty-one ('81) because she was concerned with her grades, such minute details are all there. Of course, nobody knows how complaint on the rape would help her in her grades, but still, this is not the point here, the point is that witness remembers perfectly well right now, because I don't think that anybody prepared her to that testimony, of course not, she remembers very well in ninety-three ('93) what happened in eighty-two ('82), eleven (11) years ago. Now, we are talking at a meeting where four senior professors, which happened not eleven (11) years ago, which happened two and a half years ago, and four senior members of Department of Mechanical Engineering came, not with rape, but I think something maybe even more disturbing. They want to fire someone and they are afraid, all four, for their personal safety, and she does not remember that minute detail, were they asked specifically what they're afraid of or not? She does not remember whether they wanted me on twenty-four (24) hour surveillance or not. She does not remember whether those people wanted to declare me threat to the university and have me suspended, she does not remember that. But again, by miracle, such a selective memory, she does not remember anything that happened at the meeting, but by miracle, she remembers what happened after meeting. After meeting, again, she remembers in particular perfect details that she talked to Dr. Saber, that she decided that he probably would be the best person to talk to me. Well, why is it like this that invention... well, to demonstrate, how come Dr. Saber was always on my side and he was the one killed. Isn't Fabrikant a monster? Now, how long is it possible to tolerate this kind of behavior of the witness with such a selective memory with

selectiveness so easily explainable. Now...

A. I think I can perhaps explain it.

THE COURT :

Q. Just a minute.

A. I'm sorry.

VALERY FABRIKANT :

Well, I believe the witness has demonstrated herself quite adverse.

THE COURT :

The application is dismissed.

VALERY FABRIKANT :

Any reasoning for dismissal? No. All right.

Q. So as far as the meeting goes, there is absolutely nothing which you can remember, or maybe this, what I said, triggered something in your memory at that meeting? Do you maybe recall something now from that meeting?

A. No.

Q. No. Fantastic. But you do recall that you talked to Dr. Saber, right?

A. I do recall.

Q. Was it because... what, you were told that I'm on non-speaking terms with everybody else?

A. No, I think it was more that he had come to me and expressed the concern about you, and that was my experience, no one else in your department had done that, and it made sense to me to go back to him.

Q. All right. Did you?

A. Yes, I did.

Q. Uh, huh. Yes. And what was the result? Did he talk to me?

A. No, he didn't, what he told me was that although you and he had talked in previous years, and although... I guess he didn't (inaudible) the relationship as friendly but he did say your children occasionally played together on Saturday mornings. He said that had stopped, and he really hadn't spoken to you in the two years before nineteen ninety-one (1991) and he didn't feel that you would be open to talking to him at that time.

Q. He told you that I didn't speak to him for two years, from eighty-nine ('89)?

A. That's what he told me.

Q. What, I didn't even say hello to him?

A. I don't know if he meant that you didn't say hello to him, I guess he meant maybe that you didn't have conversation.

Q. But he didn't say that I displayed any hostility towards him, did he?

A. He said there was no relationship.

Q. Well... but you may have...you have many persons "hi, bye" relationship.

THE COURT :

Would you please not argue with the witness?

VALERY FABRIKANT :

All right.

Q. Okay. What else then? So you didn't find anyone to talk to me, did you think about talking to me yourself?

A. No, I didn't.

Q. Well, didn't you just mention recently that it was your role, the way you understood it, to talk to both sides?

A. I said I saw my role on the intervention team as a kind of extension of my role in the ombuds office, but it was not my role on the intervention team to, of my own initiative, go to anyone and ask them what they had to say about the situation,

we did this by consensus on the intervention team. And if...
one of us would probably not have talked to you, if there had
been any question about talking to you it would have been the
three of us who would talk to you, not just me.

Q. Well, why didn't you do that? It might have been very </pre></body></html>

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

Me JEAN LECOURS :

It's cross-examination, My Lord, for quite a while.

THE COURT :

Yes, it is. Objection maintained.

VALERY FABRIKANT :

Okay. All right.

Q. Did Mrs. Horwood express her fears on November first (1st) meeting?

A. I don't remember that she expressed any fears particularly, I don't remember what she said, it didn't stand out for me.

Q. Okay. Did anyone ask the members of D.P.C. what were their reasons for recommending termination of my contract?

A. I don't think that was the business of the meeting.

Q. Well, what was the business of the meeting? How did you understand the purpose of the meeting then?

A. The intervention team worked with people who felt that they were victims of disruptive behavior and abusive behavior. And we acted as a support to those people, and tried to help them deal with whatever situation they brought to us. This meeting, as I understood it, was to hear what the members of the departmental personnel committee had to say about their fears if your contract was not renewed.

Q. Okay. And you were trying to help them, didn't you?

A. I would say that we were trying to help them, yes. We were trying to work out how the situation would be handled.

Q. Okay. Would it be helpful to suggest to them: "Just don't fire him" and you would have nothing to fear?

A. That would hardly have been appropriate, it's certainly not up to the intervention team to determine which academic contract is renewed and which isn't.

Q. All right. Did it... during the meeting, did it cross your mind that they are afraid just because they're trying to do something totally unjustified?

A. No, that didn't cross my mind.

Q. It didn't cross your mind. Did you talk about the reasons for recommending non-extension of my contract with Mr. Relton?

A. At that meeting?

Q. No, after the meeting, or before the meeting, it doesn't matter. At any time, did you talk to Mr. Relton about the reasons or about whether those reasons are justified for the department personnel committee to terminate my employment?

A. That was probably discussed.

Q. Okay. And do you recall what was Mr. Relton's opinion?

A. No. No, I recall some discussion that your course evaluations were at least adequate.

Q. Not more than that, just adequate?

A. I say at least adequate.

Q. But you don't recall... they might be excellent, no?

A. They might be, I've not seen them.

Q. But you of course don't recall it, do you?

A. I don't recall that, no.

Q. Good. Yes, and?

A. I don't think I ever had any intimate knowledge of the reasons the contract was not going to be renewed, but certainly... I think there was general agreement that there was a problem with your behavior. There was a real concern about your collegiality or lack of collegiality, but these are not things in which I generally become involved. The one thing that I

cannot deal with as an ombuds person is anything to do with the collective agreement, and renewal of contracts is everything to do with the collective agreement.

Q. I just asked you a simple question, what was Relton's opinion?

A. I don't remember.

Q. At least in terms, whether it was opinion that, yes, D.P.C. is justified or was it opinion that the reasons of D.P.C. are totally... how to say it, didn't make any sense, if I recall correct. Did he mention to you anything like that, that the reasons of D.P.C. doesn't make any sense for termination of my contract?

A. I don't remember him saying that, no. I have a vague memory of some discussion about reasons, but I don't remember the details of it.

VALERY FABRIKANT :

I guess it will be waste of time again to apply that witness is obviously faking her memory, it would be waste of time?

THE COURT :

If you're applying for permission to cross-examine at large, it would be a waste of time, both to make the application and...

VALERY FABRIKANT :

Okay.

THE COURT :

...probably to do it.

VALERY FABRIKANT :

All right.

Q. Now, was there any decision taken at that meeting concerning security of members concerning security measures and me?

A. I don't recall any decisions being made at that meeting.

Q. Is one of duties of intervention team to hear the other side?

A. In some cases, but certainly not in all cases, and every case was an individual case.

Q. Okay. In this particular case, the option of hearing the other side, was it at least discussed at the intervention team level?

A. I don't believe so.

Q. Okay. Is it... was there any reasons for not even discussing the opportunity?

A. No, I think it just was never... it was never a case in which we were really involved, I felt very much on the periphery of all this.

Q. Well, it was a meeting between intervention team effectively and the members of D.P.C., was it?

A. Effectively.

Q. Could you elaborate then why you felt yourself on periphery then?

A. There were people dealing with aspects of the case, there were processes to follow. We were... I never felt we were very much involved in the case.

Q. Well, you're not answering my question, it was meeting between you and D.P.C., D.P.C. requested the meeting.

A. I'm not sure D.P.C. requested the meeting, Mr. Haines invited us, the D.P.C. may have asked him to do that but I don't know.

Q. Well anyway, there was nobody else there, D.P.C. and intervention team. You heard one side, after that it is natural to hear the other side, is it?

Me JEAN LECOURE :

It's been cross-examination for quite a while, My Lord.

THE COURT :

Yes, it has. Objection maintained.

VALERY FABRIKANT :

As soon as question is difficult. All right.

Q. Did you, at that time, think it would be very helpful for the intervention team to invite me and talk with me?

A. No.

Q. Could you elaborate on that?

Me JEAN LECOIRS :

This is still cross-examination, My Lord.

THE COURT :

Yes, it is.

VALERY FABRIKANT :

It's not... I'm just asking what her actions were at that time, that's all. I'm not doing anything which would be different from any other...

THE COURT :

Would you rephrase your question.

VALERY FABRIKANT :

Well, I think my question is...

THE COURT :

Well, repeat your question.

VALERY FABRIKANT :

Question... I cannot repeat it exactly but the question was...

Q. Did you think at that time that it might be useful to talk to the other side?

Me JEAN LECOIRS :

The question has already been asked four, five times.

THE COURT :

Has been asked and answered, yes.

VALERY FABRIKANT :

Well then, I asked...

Q. Were there any special reasons for you not to talk... for the intervention team not to talk to me?

Me JEAN LECOIRS :

She answered defense.

THE COURT :

Q. No, you can answer that question I think, Mrs. Belson.

A. There were no specific reasons, it just wasn't that kind of a case.

VALERY FABRIKANT :

Q. Well, could you elaborate on to why this case was so separate than just normal talk with me would be...

Me JEAN LECOIRS :

That's cross-examination, My Lord.

THE COURT :

No.

A. It's not that it was so separate or so special, there was not a formula, and it never really arose that we should meet with you.

VALERY FABRIKANT :

Q. Well, this is not the answer, I am asking what were the reasons for that.

A. I can't answer your question.

Q. Well, I don't think this is satisfactory.

Me JEAN LECOIRS :

It is, My Lord, he's asking for reasons for everything, to every witness, try and give reasons, and give reasons.

VALERY FABRIKANT :

Yes, this is intolerable.

Me JEAN LECOIRS :

Everybody has to justify every single bit of his or her behavior when he examines them, especially in chief.

THE COURT :

The answer was they didn't meet with you and that's that. She has offered you the reason that it just wasn't that kind of case that suited itself to meeting with you.

VALERY FABRIKANT :

Well, this is not an answer.

THE COURT :

Well, there you are, you may not be satisfied with it but there you are.

VALERY FABRIKANT :

Anyway, you are not going to make an order for the witness to answer the question.

THE COURT :

You know, I'm not going to make an order for the witness to answer and I'm not going to make an order for you to cross-examine the witness at large if that's what you're after for the third time this afternoon.

VALERY FABRIKANT :

All right.

Q. What was the next meeting in which you participated and which was relevant to the same issue?

A. There was a meeting with the secretarial staff and with Dr. Cheng.

Q. Okay. Who initiated the meeting and what was purpose of that meeting?

A. I'm not quite sure who initiated it. The purpose of it was to discuss with the secretarial staff any concerns that they had about what was going on. It had been our experience that often secretarial staff get overlooked, and they have many questions, and their questions are not always answered. Whether we initiated that meeting or whether Elizabeth Horwood or Dr. Cheng may have asked for it, I really can't remember.

Q. Okay. In terms of what was going on, what was going on?

A. I think that there was some security around that was not normally around, if I remember correctly, and when people are afraid, it's kind of catching. And people talk and people hear things, and if they aren't kept informed, there's nothing to set their fears to rest, and we found it helpful.

Q. Who exactly was afraid?

A. Some of the secretaries who were at the meeting were concerned about their own security.

Q. Well, did you know that before the meeting?

A. I guess we had probably been told before the meeting.

Q. That some secretaries are concerned for their security?

A. Uh, huh. Yes.

Q. And when they came to the meeting they said: "We are afraid of Fabrikant"?

A. No, I can't recall anybody specifically saying they were afraid of you. In fact, some of the people at the meeting didn't know you at all, but they had heard of you, and they had heard rumors of threats, and they knew that there were people in Mechanical Engineering and in the Dean's office who were afraid.

Q. Okay. So now we come to the situation that those secretaries were not afraid at all, so your information was wrong?

A. I didn't say that they weren't afraid at all, they were afraid of what they were hearing, and they were unclear.

Q. But they were not afraid of me?

A. In the abstract I guess they were afraid of you, yes.

Q. Okay. Who exactly said that he or she was afraid of me?

A. I don't know, most of the women who were there. I knew certainly Elizabeth Horwood, and I knew maybe two others to see. And so to tell you who is impossible, but I think the atmosphere of the meeting was more that it was... it was an abstract fear, because they did not know you, and some people who were there had never seen you. Others had seen you but didn't know you.

Q. Well, I understand Horwood expressed that she was afraid, now did Altimas say that she was afraid?

A. I don't remember if Horwood said she was afraid.

Q. Okay. So even Horwood was not afraid?

A. No, I didn't say that, I said I don't remember.

Q. Okay. Now we are in the same game again. So you don't remember what Horwood said, do you remember what Altimas said? Was she afraid?

A. No, I don't remember.

Q. Do you remember what Miss Pearson said?

A. I think that she was there representing Grendon Haines.

Q. Yes, and?

A. And she may have said that their office was available to anybody who wanted to discuss this further, but I cannot remember specifically what she said.

Q. You don't hear my question. Was she afraid? My question was.

A. I don't know.

Q. Was Sheila afraid?

A. I don't know Sheila.

Q. You were at that meeting, could you remember that, at least that much, did anyone say: "I'm afraid of Fabrikant"?

A. There was an atmosphere of fear, but who...

Q. Was this atmosphere created by you and Mrs. Torbit rather than by secretaries?

A. I don't think so.

Q. Then who of the secretaries said that they were afraid of me?

A. As I said, I cannot remember specifically who said.

Q. Did anyone say at all?

A. Again, I say there was an atmosphere of fear.

Q. Atmosphere is... is atmosphere created by words or atmosphere is something which you cannot even touch? What do you mean by atmosphere?

A. I mean that when people don't have a good sense of what's going on, but they have the impression that there is some reason to be frightened, they are not quite sure what's going to happen, or what the person looks like who might be a threat, or when something might happen, but they know that people have been talking about being afraid, and people have been talking about security, and people have been talking about "take care of yourself", and people have been talking "watch out", there will be an atmosphere of fear.

Q. Well, if you are the people who were talking that, yes, I think I can only agree with you, who were those people talking that? Was it you? Was it Mr. Cheng? Who were the people talking all that?

A. Dr. Cheng spoke about arranging for graduate students who worked in the basement of the... I'm not even sure which building it was, but it was an annex, separate from the main building of the university, he was talking about graduate students being on call should you turn up.

Q. Could you elaborate on that? What does it mean being on call?

A. That if the secretaries were afraid, they should contact the graduate students who worked downstairs.

Q. How exactly they are supposed to contact them? There was a panic button downstairs?

A. I don't believe there was a panic button, there may have been just a telephone.

Q. Well, did any of the secretaries of Annex B say that they were afraid of me?

A. There was fear expressed at the meeting but I do not remember precisely who said what.

VALERY FABRIKANT :

Now, how long this shameful stuff will continue? Isn't it obvious the witness is faking her memory? She cannot remember a single solitary thing from that meeting, she continues repeating that there was atmosphere of fear, and that atmosphere of fear, she cannot support by any secretary saying anything about me. Now, isn't it time to declare the witness adverse?

THE COURT :

No, it is not.

VALERY FABRIKANT :

Well, at least I'm glad that you turned red.

THE COURT :

I don't see the witness evading your questions, I don't see the witness making any attempt not to answer your questions.

VALERY FABRIKANT :

She's not faking her memory, no?

THE COURT :

I'm not going to decide that she's faking her memory.

VALERY FABRIKANT :

She was at that meeting, she cannot recall anyone...

THE COURT :

I don't suppose it is possible for you to even conceive that other people's memories don't operate perhaps as well as yours does, or as well as you think yours does.

VALERY FABRIKANT :

No, this particular witness demonstrated tremendous good memory about year nineteen eighty-two (1982), don't forget that.

THE COURT :

Well, I don't think that the circumstances of what she was about to speak about in nineteen eighty-two (1982) are those that one easily forgets, maybe I'm naive but...

VALERY FABRIKANT :

Well, you didn't allow me to ask her...

THE COURT :

Of course I didn't, it has nothing to do with the case.

VALERY FABRIKANT :

...why she didn't contact me if someone has complained about rape.

THE COURT :

Q. The thing that strikes me, Mrs. Belson, and... The thing that strikes me is, we are here because there were four deaths. And in a period of a couple of years before that there was a run-up which involved the person that you're talking about, namely the accused, I find it curious in the light of all of that that you would not have a clearer memory of who called that meeting. And what I'm driving at here is simply this, and I don't know whether it's what he's driving at or not, but where the intervention team or the intervenants being over zealous in the sense that they were looking for something to counsel people about, or were you dealing with real claims of fear. And if you were dealing with real claims of fear, in short, if it was those who were afraid who initiated these

meetings, what he wants to know is, what were they saying to you? Now, that's what he wants you to try and recall, and I wonder if you would try.

A. I understand that, but I cannot recall, and there is not a lot that I can do to make myself recall, and I remember very well things that were said to me one to one. I have a lot more difficulty remembering what went on at these meetings.

VALERY FABRIKANT :

Q. Then, would you be kind enough then to relate to us some conversations which you had one to one?

THE COURT :

I don't think you can ask that kind of question and expect to be answered.

VALERY FABRIKANT :

All right.

THE COURT :

You will have to broach the subject that you want to treat.

VALERY FABRIKANT :

Yes. All right.

Q. Maybe you had one to one conversation either with Mr. Haines, or with Mr. Relton, or Miss Torbit, or whoever, concerning security, concerning fear, concerning security arrangement which you could convey to us.

Me JEAN LECOURE :

I think it's still too vague, My Lord.

VALERY FABRIKANT :

It's not too vague at all.

THE COURT :

I think it is far too vague, you're right.

VALERY FABRIKANT :

Q. Well, during the time, say November first (1st) until November fifth (5th), which is time between the first meeting and the second meeting, did you have any one to one conversation with any of those people, and if yes, what was the content of this conversation?

Me JEAN LECOURE :

What's the purpose of this question, My Lord? What is the relevancy?

VALERY FABRIKANT :

Relevancy...

THE COURT :

Well, the relevancy of it is that the witness... the purpose of the question, I suppose, is the witness said: "Look, there are one to one conversations I had with people, some of which I can recall quite clearly, but don't ask me to be specific with you about who said what at a particular meeting because that I'm far less clear about", that was what the witness said. So then we got onto this because he said: "Fine, give me a few examples of one to ones", and I said no, that's too...

Me JEAN LECOURE :

Memory test is not...

THE COURT :

No, no, I agree. I agree.

VALERY FABRIKANT :

It's not memory test at all, because if she recalls conversations one to one with certain people which were present at that meeting, that might trigger her memory as to what happened at the meeting itself.

THE COURT :

Well, if you want to ask in relation to that meeting who informed her about that meeting and what reasons were given to her, see if you get anywhere.

VALERY FABRIKANT :

No, I ask not that question. I ask the question...

Q. Did you discuss the result of those meetings, before or after, in one to one conversation with someone, and what it was.

A. I'm afraid I will have to say I do not remember.

Q. So you're not very good with one to one conversations either, you're only good for the year eighty-two ('82) where I raped somebody.

VALERY FABRIKANT :

And I again challenge Crown to investigate and bring this charge in addition to what I have. I would be very great to respond.

THE COURT :

Would you please get back to the subject?

VALERY FABRIKANT :

Well, this will be the subject if it is brought as a charge.

THE COURT :

This won't be the subject. This will not be the subject.

VALERY FABRIKANT :

How do you know? Maybe Crown will add one more charge.

THE COURT :

I know perfectly well.

VALERY FABRIKANT :

You know that I didn't rape anyone?

THE COURT :

I know perfectly well that the indictment will not be amended.

VALERY FABRIKANT :

Well, I have no objection...

THE COURT :

You may not, but I know perfectly well that it will not.

VALERY FABRIKANT :

Okay. It may state a separate indictment, how about that?

Right after this trial...

THE COURT :

If you have any further questions to put to Mrs. Belson, I suggest you put them, otherwise I'll be left with no other conclusion than that you've lost interest in this examination.

VALERY FABRIKANT :

No, I am very interested in this examination. Okay.

Q. You mentioned some security arrangements as reason for calling meeting of the secretaries, what were those security arrangements?

A. I believe there was a security guard around Dean Swamy's office.

Q. You mean bodyguard?

Me JEAN LECOURES :

He got his answer, My Lord.

THE COURT :

The answer was security guard, yes.

VALERY FABRIKANT :

Okay.

Q. Well, how do you know about that? Did you see him yourself?

A. No.

Q. Do you remember who told you about security guard?

A. Probably it was mentioned at the meeting, certainly I knew about it.

Q. Did you know the reason for that security guard to be there?

A. Because they were afraid of you.

Q. Who they?

A. The dean.

Q. Dean is not they, dean is he. Did Swamy tell you that he was afraid?

A. Not that I remember.

Q. Did he mention it at any of the meetings that he was afraid?

A. I imagine he did, yes, I think he did, but I don't remember at which meeting, it was something that I knew, he was afraid.

Q. In which words did he say it? He was frightened what? For his life, for that I spit in his face, for that I shout at him, what?

A. I can't remember the words, my interpretation was that he was not afraid you were going to spit in his face, he was more afraid for his life.

Q. All right. Then, did you ask him how unarmed security guard would help him in this case?

A. No, I didn't ask him that.

Q. Did this thought cross your mind at all?

A. No, I don't think it crossed my mind. I was much more interested in finding out why people were so afraid.

Q. All right. So what did you do to find it out?

A. Ultimately, the intervention team decided that someone should have been appointed to act as a kind of coordinator, because the situation was very fragmented. There were lots of different tentacles, there were lots of questions, and it was our experience that it's often useful, even in less complex cases, to try and pull everything together and have one person who acts as a coordinator, and to whom everyone else kind of feeds in. And we thought that that was particular important in this case.

Q. Yes, and?

A. We made that recommendation.

Q. Yes. Who was that person?

A. We didn't recommend any specific person, we recommended that someone be appointed to do this, and the person who ended up doing it was Maureen Habib.

Q. So, you made recommendations to who?

A. To Maureen Habib.

Q. Why to her?

A. Because she was the executive assistant to the Rector, and that seemed the appropriate place to make the recommendation.

Q. Okay. So she has become the person to whom all the tentacles were moving?

A. That was the recommendation.

Q. Okay. How many tentacles were there?

A. There was the question about your complaints concerning your research. There was the question of your renewal. There was a question about these threats. There was a question about your academic credentials. That was probably about it.

Q. All right. What about my academic credentials, this is something you never mentioned before. Could you elaborate on that?

A. I heard somewhere, perhaps at one of the meetings with the D.P.C., probably there, that there was a question about the validity of your degree, but there wasn't much more said than that.

Q. And why was that question? To publish books and sixty (60) papers around the world is not sufficient?

This is argument, My Lord.

VALERY FABRIKANT :

Okay, I will rephrase it.

Q. Okay. Are you aware of what Miss Habib did do with respect to all this?

A. It was very, very shortly after that that the intervention team ceased to have anything to do with the situation. I'm aware that Miss Habib had a meeting with dean Swamy, I believe a meeting with Dr. Osman, but following that I at least had no more involvement in the case.

Q. Do you know when those meetings took place?

A. Towards the end of November ninety-one ('91) I would think.

THE COURT :

Q. Excuse me, who had these meetings, the intervention team or Mrs. Habib?

A. No, Mrs. Habib.

VALERY FABRIKANT :

Q. Okay. But before that many things still happened with intervention team, didn't they?

A. Before that, there were a couple of meetings in Dean Swamy's offices and there was a meeting of the intervention team with Michel Bujold.

Q. When was that?

A. That was the twentieth (20th) of November.

Q. Okay. Who was present at this meeting the twentieth (20th) of November?

A. Nancy Torbit, John Relton, Michel Bujold and me.

Q. Okay. But before that you said there were meetings in Swamy's office, are you referring to meetings of November seventh (7th) and eighth (8th)?

A. Uh, huh.

Q. Okay. Do you recall who was present there?

A. Dean Swamy and Catherine McKenzie, Grendon Haines, John Relton, Nancy Torbit and me.

Q. Uh, huh. Okay. And what was discussed at that meeting?

A. The major point of the meetings was to decide how the decision of the D.P.C. would be delivered to you, and I believe John Relton and Catherine McKenzie were going to meet with you. I believe there was to be another meeting with you and Swamy and John Relton, but I don't remember the sequence of those meetings, or the precise purposes of those meetings.

Q. So, effectively you were sitting at all those meetings and it is equivalent if you were not there, right? Because practically nothing except who was present you could recall, is that correct?

A. I can recall very broad strokes but I can't recall details.

Q. Well, do you have any documents related to those meetings?

A. I have an agenda for the eighth (8th).

Q. Okay. May I take a look at that?

A. I've made copies, do I...

THE COURT :

Q. No, just keep one in front of you and give the agenda to... pass it to Mr... Okay.

VALERY FABRIKANT :

Q. Okay. Would it be possible for you to read your handwritten remarks here? At the left corner it's written what?

A. "Grendon's agenda for Friday".

Q. All right. And on the right it is "two sittings"?

A. "Two meetings, two locations..."

Q. Uh, huh.

A. "...John Relton, Swamy to set up".

Q. Okay. To set up what?
A. The meetings.
Q. Okay. What meetings were meant here? Two meetings in two locations, what meetings you were talking about?
A. If I remember... well, the meeting with Swamy was to give you the decision of the D.P.C.
Q. Uh, huh.
A. The meeting with John Relton, if I recall, was to discuss your behavior.
Q. Did meeting take place to discuss my behavior?
A. I believe it took place. Yes, it took place.
Q. Yes, it took place. Who told you that, that it took place?
VALERY FABRIKANT :
All of a sudden she remembers.

THE COURT :

Would you please keep your remarks to yourself.

VALERY FABRIKANT :

It's not a remark, it's again...

THE COURT :

No, it's a remark, keep your remarks to yourself.

VALERY FABRIKANT :

Q. So who told you that meeting took place?
A. As I recall, it took place on the thirteenth (13th) in the morning, and I think that... well, I knew that the meeting was to take place...
Q. Uh, huh.
A. ...and there was a meeting at a restaurant after John Relton met with you.
Q. Uh, huh. At the restaurant what, Aldo's?
A. Uh, huh.
Q. Okay. You were present there?
A. I was.
Q. Okay. What was the subject of the meeting at Aldo's?
A. It was... I have a very hazy memory of this, but it was for John Relton to report on how the meeting had gone with you.
Q. Okay. Was the meeting with you about what, about my behavior was that meeting?
A. As I recall.
Q. Yes. What exactly did he report to you about my behavior? He told me that I threatened Rector, that I did this, I did that, I phoned someone about children? That's what he reported to you?
A. I don't remember what he reported.
Q. Oh, isn't it fantastic. Everything you remember except important parts. So what did he report? You remember nothing of his report, do you?
A. No.

VALERY FABRIKANT :

Now, I apply once again, this is a shameful exercise and witness should be declared adverse because witness displays total fake of memory, not a single person in his right mind might believe that kind of remark about lack, and on the other hand clear memory. She remembers even date of the meeting, it was thirteenth (13th) November. Two and a half...

THE COURT :

First of all...

VALERY FABRIKANT :

Let me finish. Two and a half years after she still remembers the date, and she cannot recall at all whether Relton told me that I threatened to kill Rector, such a minute, minute thing,

she just cannot recollect.

THE COURT :

If she can't recollect, then she can't recollect it. Now, you carry on what step further and you say that the witness is faking, and I'm not about to come to that conclusion. I'm sorry, but I'm not about to come to that conclusion, the witness has told you what she recalls, and has told you what she doesn't recall. We don't come down from the bench and push witnesses around because they can't remember things.

VALERY FABRIKANT :

Nobody is asking to push witness around.

THE COURT :

Well, the witness says she can't remember that that's that, I'm satisfied that the witness is trying her best to answer your questions. Furthermore, you've been cross-examining the witness for the last ten minutes, I don't know what leads you to believe your forensic ability is so great that given the permission to cross-examine, somehow or other, bring these matters out, that I find more amusing than anything else.

VALERY FABRIKANT :

Well at least it would be more clear than how much the fake is.

THE COURT :

Hardly, and anyway, if it's an application, it's denied.

Me JEAN LECOURE :

There is nothing unusual in that, My Lord.

THE COURT :

I didn't say there was anything unusual.

Me JEAN LECOURE :

I know, but everytime the witness doesn't recall something there is an application, this doesn't make sense.

VALERY FABRIKANT :

It's not everytime, when it is so outrageous...

Me JEAN LECOURE :

And for the accused it's always outrageous. If he was in a courtroom for the last few years he should know that it's the case all the time for most of the witnesses.

VALERY FABRIKANT :

Oh yes?

THE COURT :

You're perfectly correct.

VALERY FABRIKANT :

Am I allowed to do some investigation as to what is going in other courtrooms and play something here? Am I allowed to do that?

THE COURT :

No.

VALERY FABRIKANT :

No?

THE COURT :

No.

VALERY FABRIKANT :

Well then, I believe that then in this case, Crown should take back those words that this is what is going on in other courtrooms, because that kind of shameful trial has never occurred in this country, I think, maybe Marshall's case was similar, but I don't think there were that many.

THE COURT :

If you have questions to put to the witness, put them, because at the moment you haven't got the foggiest idea of what you're talking about.

VALERY FABRIKANT :

Who doesn't have foggiest?

THE COURT :

You.

VALERY FABRIKANT :

Well, didn't you read in the newspapers about Marshall's case?

THE COURT :

I'm not here to discuss any other case with you, I unfortunately have sufficient on my hands with Fabrikant's case.

VALERY FABRIKANT :

Well then, I would appreciate that you don't say that I haven't foggiest idea what I'm talking about.

THE COURT :

You have not, given the last statement you made. So would you put whatever questions you have to the witness?

VALERY FABRIKANT :

Should I understand that there were much more shameful cases than this one?

THE COURT :

We'll adjourn, ladies and gentlemen. Would you take him out please.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

VALERY FABRIKANT :

The guard has assaulted me.

THE COURT :

Have you any questions to put to the witness?

VALERY FABRIKANT :

I have questions.

THE COURT :

Good. Then let me suggest...

VALERY FABRIKANT :

Something has to be done about this guard.

THE COURT :

I would suggest you put the questions to the witness.

VALERY FABRIKANT :

Well, I would suggest you do something about this guard first, because it is the third time this guard is abusing me.

THE COURT :

Are you going to put your questions to the witness or are you not?

VALERY FABRIKANT :

Third time I do not resist, I always go on my own, and they push me each time, this is an assault.

THE COURT :

Mr. Fabrikant...

VALERY FABRIKANT :

It should not be tolerated.

THE COURT :

...have you got any further questions to put to Mrs. Belson?

VALERY FABRIKANT :

You ignore what I said?

THE COURT :

Yes.

VALERY FABRIKANT :

And they've also broken my watch.

THE COURT :

It's all right, there's a clock here and I have mine, so put your watch in your pocket.

VALERY FABRIKANT :

Fantastic sense of humour, isn't it. Fantastic sense of humour.

WITNESS: SUSAN BELSON -- UNDER THE SAME SOLEMN DECLARATION EXAMINATION BY VALERY FABRIKANT (CONT'D):

Q. All right. Let me try to refresh your memory. Could it be that the meeting with Relton you were referring to was not about my behavior but rather about the rest of the senate, does this trigger your memory?

A. That's possible, yes, it does trigger a little.

Q. Were you aware that I was arrested and searched for weapons on November first (1st)?

A. I was aware.

Q. Okay. Did you... were you informed about the reasons for that?

Me JEAN LECOURS :

Was she there, My Lord? If she was not I think it's hearsay and it's a waste of time.

THE COURT :

Have you anything to say?

VALERY FABRIKANT :

Well, I can repeat on the two thousand one hundred and thirty-seventh time that I am not proving the fact that she was at the meeting, I'm establishing her level of knowledge at the time which I am discussing, namely lunch at Aldo's.

THE COURT :

So what is the purpose of the question, you're discussing lunch at Aldo's?

VALERY FABRIKANT :

Well, I want to know her previous information.

THE COURT :

Okay. Well, if you're remaining on the question of the previous information, or the information she may have received with a view to refreshing her memory as to the lunch at Aldo's, all right, go ahead.

VALERY FABRIKANT :

And Crown knows that, and it's only...

THE COURT :

No, the Crown cannot read your mind. The Crown cannot know whether you are attempting to ask a question with a view to proving hearsay, or whether you're not.

VALERY FABRIKANT :

Can I, to help the situation, tell Crown that two thousand one hundred and thirty-eighth time, please do not interrupt me, each time I'm asking for hearsay, I know that this is hearsay, and the reason I'm asking this is because I want to clarify the personal knowledge of the witness. How about that?

THE COURT :

I would imagine that the Crown will make the objections that the Crown sees fit.

VALERY FABRIKANT :

All right.

Q. So what was your personal knowledge about specifics of this arrest?

A. I was told that Catherine McKenzie saw you with your enormous briefcase and became concerned there was a weapon in it, and called security and ultimately the police were called.

Q. Okay. Did anyone explain to you what was the reason to suspect that there was weapon there?

A. Again, given the atmosphere of fear, and given that Dr. McKenzie had just left the meeting with the D.P.C., and with

the intervention team, I suspect that she was prompted by fear. It's not usual that people other than artists walk around with such portfolios or architects, or people who have large drawings.

Q. And if it is not artist, then it must be a weapon?

A. Not necessarily.

Q. But in my case it must be?

THE COURT :

No, you may not do that with the witness. The witness wasn't there, the witness was simply relating what had been told to her, now you're attempting to have her comment upon that and you may not do it.

VALERY FABRIKANT :

Q. Were you shocked to learn that I was arrested?

A. I didn't understand that you were arrested.

Q. Okay. How was it transmitted to you, that I was what?

A. That there was no weapon in the briefcase, and that the police left.

Q. All right. How did they find out that there was no weapon in the briefcase?

Me JEAN LECOURE :

She was not there, My Lord.

THE COURT :

Mr. Fabrikant, the witness wasn't there, this is...

VALERY FABRIKANT :

I'm asking about her personal knowledge.

THE COURT :

No, you're not. I'm sorry, at this point I see where the line of questioning is going, and it's not going where you promised me it was, so you're right out of line.

VALERY FABRIKANT :

I do believe that I was going to clarify her personal knowledge, nothing else.

THE COURT :

Well, that last question was not clarifying her personal knowledge, that's for sure.

Me JEAN LECOURE :

She has no personal knowledge.

THE COURT :

She has no personal knowledge.

Me JEAN LECOURE :

It's hearsay, she was not there.

VALERY FABRIKANT :

Well, her personal knowledge from somebody else.

THE COURT :

No, he was planning on going back to the meeting at Aldo's.

VALERY FABRIKANT :

All right.

Q. So maybe this triggers your memory about meeting at Aldo's that previously Relton and McKenzie met with me to explain why I was arrested, and he was to report to you results of that meeting, was that the case?

A. That seems reasonable to say, yes.

Q. But you're not sure?

A. I'm not sure.

Q. Would it be correct to say that the only thing during your testimony you're sure about was that I raped somebody in the fall of eighty-one ('81)?

THE COURT :

You are now cross-examining the witness and you may not do that.

VALERY FABRIKANT :

All right.

Q. Can you say anything at all about lunch at Aldo's?

A. No more than I have said, no.

Q. Do you know where this restaurant is?

A. It's on Mountain Street.

Q. Mountain and what?

A. Below St. Catherine.

Q. All right. Do you remember what was served for food?

A. Not at that lunch.

Me JEAN LECOURE :

What is the point, My Lord.

THE COURT :

There is no point to this.

VALERY FABRIKANT :

There is a point.

THE COURT :

There is no point.

VALERY FABRIKANT :

Just bear with me for a second.

THE COURT :

No, I won't. Your last question is disallowed.

VALERY FABRIKANT :

It's disallowed because if she...

THE COURT :

Your last question... don't bother arguing any further, the last question is disallowed.

VALERY FABRIKANT :

Maybe this will trigger her memory, when she remembers the food she'll remember what was said. How about that?

THE COURT :

No. We are not negotiating.

VALERY FABRIKANT :

All right. I thought sometimes...

THE COURT :

Mr. Fabrikant, just ask your questions.

VALERY FABRIKANT :

All right.

Q. What was at the meeting of November thirteenth (13th)?

A. That was a follow-up meeting with the D.P.C.

Q. Yes. Who was present there?

A. Dean Swamy, D.P.C., John Relton, Nancy Torbit, myself.

Q. McKenzie too?

A. Not that I remember.

Q. Okay. And what was discussed then?

A. I have notes on that meeting.

Q. Oh, that's nice.

THE COURT :

Q. Would you then look at your notes and see if they refresh your memory. Did you take these notes in the course of the meeting or shortly thereafter?

A. In the course of the meeting.

Q. In the course of the meeting. Fine. Would you quietly look at your notes, see if they refresh your memory, and then see what questions you're asked.

VALERY FABRIKANT :

Q. Well, since you have detailed notes, maybe you could this time tell us in detail what transpired at this meeting?

A. The meeting was essentially to update the people present with what had been happening to discuss security and to put on the table what people were concerned about at that time.

Q. Could you go into more details than that?

A. About any aspect in particular or...

Q. Well, you have full sheet of paper written, so definitely it is more than what you're telling, at least...

THE COURT :

The witness is not obliged to simply rattle off what's in her notes, she uses her notes to refresh her memory, she's done that, and she said substantially three things were the topics of discussion, updating those concerned as to the development of events, discuss the question of security, and table the concerns of those persons involved, that's what she said.

VALERY FABRIKANT :

Maybe it will be more productive if I take a look at those...

THE COURT :

You can look at the notes, she consulted the notes, you're permitted to look at the notes.

VALERY FABRIKANT :

Q. Do you have similar agenda for the meetings at Aldo's, say November eighth (8th)?

A. No.

Q. So only this particular meeting for summaries and you have all this plus the notes.

A. Uh, huh.

Q. Any specific reasons why this meeting, you recorded something but all previous you didn't?

A. Not that I can recall, no.

Q. Was this meeting more important in some way?

A. I don't think so.

Q. Do you recall what prompted you to write the notes?

A. No.

Q. All right. The problem is that I cannot read this, would it be... do you have a copy in front of you?

A. Uh, huh.

Q. All right. Then maybe you could help me: "Security measures outside..." what?

A. "Outside firm, one at CONCAVE".

Q. Outside what?

A. Outside firm.

Q. Firm?

A. Firm, company.

Q. Yes.

A. "One at CONCAVE, day, one in Dean's office".

Q. Outside firm, yes, one...

A. At CONCAVE, day...

Q. Okay.

A. ...one in Dean's office.

Q. All right. Okay. So that was update on security measures. Now, after that below goes one... I can't read a single word here, what is this?

A. "U.I.T."

Q. V.T.?

A. U.I.T., university intervention team.

Q. Uh, huh.

A. "Swamy, Grendon, Catherine, had two meetings." This was not under the present concerns, this was the update.

Q. Okay. So they effectively refer to the meetings of when?

A. I think probably the meetings in Swamy's office.

Q. Okay. Now after that goes "J.R..."

A. "...met with Fabrikant, re senate".

Q. Uh, huh. Yes.

A. "Incident after D.P.C."

Q. Yes. What about that, what was discussed here? After that goes what, discussion of threats?

A. "Harassment".

Q. Harassment.

A. "J.R. can't deal with academic issues".

Q. Yes.

A. "Next step to meet with Swamy, Fabrikant, John, (inaudible)".

Q. Yes.

A. "Has discussed procedures for academic decision with B, langer".

Q. Who had discussed?

A. I'm assuming John Relton, this is what he reported.

Q. And after that?

A. "Warned Fabrikant about perception not to increase tension".

Q. Could you elaborate on that? "Warned Fabrikant about perception..."

A. "...not to increase tension". I imagine that that is the meeting that John Relton had with you about your behavior.

Q. I think that we clarified it was not meeting about my behavior, it was meeting about reasons for arrest, was it?

A. I believe that John Relton also spoke to you about your behavior. My understanding was that he had spoken to you.

Q. For some reasons, could you explain why do you remember what never happened and you cannot remember what really happened?

THE COURT :

Mr. Fabrikant, that sort of observation will carry us nowhere.

VALERY FABRIKANT :

Okay.

Q. Still, how do you relay that "Fabrikant... warned Fabrikant about perception", perception of what?

A. Your behavior.

Q. What exactly it meant? What did I do at that time? Got arrested? It was assumed to be my fault? What does it mean my behavior?

A. I think there was a perception that you were intentionally frightening people in subtle ways.

Q. Elaborate on that please.

A. Such as walking around with that very large briefcase when you were fully aware that people were very fearful of you.

Q. How on earth I was... could you explain me what made you think that I was fully aware if none of you ever talked to me about that?

A. I say that there was a perception, I don't know that you were in fact.

Q. Okay. But could you base your perception that...

THE COURT :

She didn't, that's not what she said, she said that she believes the note means that Relton spoke to you about the manner in which you were perceived by others, that's all she said and that's all she could say. She didn't speak to you about your perception and she wasn't present at the senate meeting.

VALERY FABRIKANT :

Q. And what after that?

A. "Swamy said..."

Q. No, no, after: "Warned Fabrikant about perception..." and...

A. "...not to increase tension".

Q. And this what... what the whole thing means? That someone should talk to me about perception and that I should stop walking with this big portfolio, otherwise tension will be increased, that's the meaning?

A. That things that you were doing were certainly creating fear in an atmosphere where fear was already rife, and...

Q. So after all it was I who was at fault of everything, right?

THE COURT :

Q. You are, I thought, relating what Relton said, is that correct?

A. And also what my understanding of the situation was.

Q. And what your understanding of the situation is.

VALERY FABRIKANT :

Q. So your understanding is that it was I who increased the tension, right?

A. That you could have done things to lessen the tension.

Q. Like what? Stop going with my briefcase?

THE COURT :

This is resulting in simply argument with the witness.

VALERY FABRIKANT :

No, no, no, okay.

THE COURT :

These are not questions.

VALERY FABRIKANT :

Okay. I will make it like questions.

Q. So what could I do to reduce tension at that time?

THE COURT :

Look, that won't work either. You're not cross-examining the witness.

VALERY FABRIKANT :

(Inaudible) cross-examination.

THE COURT :

Fine. Now would you simply ask the witness about whatever you want to ask the witness about insofar as it relates to that meeting, you'll get her answers, and that's that.

VALERY FABRIKANT :

Well, I'm asking...

THE COURT :

You're not asking.

VALERY FABRIKANT :

...I believe this is normal question.

THE COURT :

This isn't a normal question.

VALERY FABRIKANT :

All right. I believe I do deserve someone gives me the definition of what cross-examination is, then everyone would know whether it is again lawlessness or it is a cross-examination, it will save my time too.

THE COURT :

I told you the last question is not permitted, that's all you need to know.

VALERY FABRIKANT :

Well, I do need to know whether it was cross-examination or not.

THE COURT :

It was cross-examination in my view.

VALERY FABRIKANT :

And I need the definition of cross-examination.

THE COURT :

Mr. Fabrikant, put your next question.

VALERY FABRIKANT :

I don't think this is fair. All right.

Q. Were there any suggestions at the meeting as to what I could do to reduce the tension?

A. Nothing that I can recall specifically.

Q. So how do you interpret this, "not to increase the tension" then?

A. I'm not interpreting it.

Q. All right. Anyway, the meaning was very simple, it was all my fault, I increased the tension, and I should stop doing that. Very good. Number 3) "Swamy, Osman..."

A. "Osman said to Swamy that Fabrikant made a gesture spraying the room last year directly to Osman."

Q. Last year spraying the room...

A. Uh, huh.

Q. ...directly to Osman. Yes. And what told Rakheja?

A. Last year, that he'd get Sankar.

Q. Which Sankar do I get?

A. I don't know which Sankar.

Q. You didn't clarify at that time which Sankar I was supposed to get?

A. It might have been clear to me at the time, it's not clear to me now.

Q. All right. What did it mean get? To get the (inaudible) criminal or to kill him?

A. To kill him.

Q. Oh. That you are sure?

A. Uh, huh.

VALERY FABRIKANT :

It's interesting memory again. She does not remember which Sankar but she does remember that. All right.

Q. And I told it to Rakheja, right?

A. That's what Swamy said.

Q. This is Swamy said?

A. Uh, huh.

Q. Okay. So Osman I did the spraying gesture.

THE COURT :

Q. So that I'm very clear, excuse me, that is not what Swamy said to you but rather this is what...

A. What Swamy announced in the meeting.

Q. I see, Swamy announced that at the meeting?

A. At the meeting.

Q. Okay.

VALERY FABRIKANT :

Q. All right. Was this stuff mentioned before? Swamy was present before at least at one, two, three meetings, did he mention all this before?

A. I don't have notes for those meetings, I have notes for this one.

Q. Okay. You don't have notes, but now, since you have those notes, you have these specific threats, maybe this triggers your memory whether Swamy mentioned it before.

A. No, it doesn't.

Q. It doesn't. But if he said that, would you remember that?

A. Not necessarily.

Q. Well, I would like to remind you that you testified today that the following threats were mentioned about children, you remember the testimony?

A. Uh, huh.

Q. About something American?

A. Uh, huh.

Q. And that's about it, or there was something else?

A. No, that's about it.

Q. All right. Now, spraying gesture, is it something new or it is the same as American?

A. It's the same as American.

Q. Ah, so it is not a new thing. Okay. So the only thing which is new is that I told Rakheja that I'm going to get Sankar?

A. Uh, huh.

Q. So if this was said before, then probably you would remember that since you remembered all those?

A. Uh, huh. Probably.

Q. So Swamy didn't bother to mention this before if "get" means "kill"?

Me JEAN LECOURE :
How can she answer that, My Lord?

VALERY FABRIKANT :
I'm just asking her, being there, whether she heard Swamy saying that.

Me JEAN LECOURE :
She already said she didn't recall.

THE COURT :
She said that. That's what she said, I asked the question to clarify and that's...

VALERY FABRIKANT :
No, I mean before that.

THE COURT :
...precisely what she said, and she said: "I can't tell you if he said that before". Now you're not satisfied with that and you decided... not satisfied with that, you decide to cross-examine in your usual fashion, where you press a way to say: "Therefore you would probably have remembered it if it was said before, therefore it couldn't have been said before", that's cross-examination.

VALERY FABRIKANT :
And it should not be allowed.

THE COURT :
And this isn't allowed.

VALERY FABRIKANT :
Absolutely.

Q. "Gazette...", what?

A. "...called to ask Swamy if he'd been threatened.

Q. Oh, this is interesting. What Gazette called?

A. As I recall, Swamy had received a phone call from a reporter at the Gazette, asking if you had threatened Swamy.

Q. Yes. Yes, this is interesting, this is also something new. And...

THE COURT :
Would you please save the editorials for later? We couldn't care less if you think something is interesting, just ask your questions and take the answers as you get them.

VALERY FABRIKANT :
Yes.

Q. And what did Swamy say, was he? Do you know that?

A. I don't believe he answered the question.

Q. Sorry?

A. I don't believe he answered the question.

Q. What, he refused to answer?

THE COURT :
You've got the witness' answer, she said: "I don't believe he answered the question".

VALERY FABRIKANT :
It means what, that he refused to answer, that's the meaning?

THE COURT :
It means precisely what the witness says, that it's her recollection that she doesn't believe that he had answered the

question when he related the story.

VALERY FABRIKANT :

Q. I don't understand. He did not answer to reporter, that's what you're saying?

A. I'm not sure even that he spoke to the reporter, or whether he simply had the question and said: "I can't answer that" or "I'll call you back" or... I have no idea.

Q. All right. What goes after that? Could you read five?

A. "Elizabeth received a call from Herman, Professor Herman..."

Q. Uh, huh.

A. "...heard that security had removed him...", that's you "...from the campus".

Q. Yes. What is it, security removed me from campus what?

A. Uh, huh.

Q. Who said all that? I understand...

A. Elizabeth.

Q. Who?

A. Elizabeth Horwood.

Q. She was present?

A. Uh, huh. I guess.

Q. Well, was she or wasn't she?

A. If I've got this note here, the odds are that she was present.

Q. Because you didn't mention her presence?

A. That's true, I didn't.

Q. So she was present there. In what capacity was she present?

Why is it ordinary secretary present on such an executive meeting? What was her capacity there?

A. I don't think it was an executive meeting, and I don't think that she's an ordinary secretary, she was the secretary of Professor Osman.

Q. Oh yes, she was extraordinary, I agree with you. Why was she present there?

A. Because she was very much concerned, and she was on the front line in the department.

Q. She was on the front line, what do you call a front line?

A. She was at the secretarial desk, she had to act as... she had to greet people who came in, she had to deal with callers on Dr. Osman's behalf.

Q. Yes. Was she threatened in any way?

A. She hasn't said that here.

Q. Okay. So why was she there?

A. Because she was Dr. Osman's secretary, she was also, I think, responsible for typing the decision of the D.P.C. and she had an important role in the department.

Q. Well, every secretary has to type something.

THE COURT :

Would you please not argue with the witness, you asked the question, the witness told you why she was there in her view.

VALERY FABRIKANT :

Q. Can you give more definite reason as to why a secretary is there?

THE COURT :

She has given you her answer.

VALERY FABRIKANT :

All right.

Q. Could you tell me, Swamy's secretary, was she present?

A. No.

Q. No. Is she also on front line?

A. Uh, huh.

Q. Is she also supposed to type everything?

A. Uh, huh.

Q. Is she also greeting everybody on behalf of the Dean?
A. Uh, huh.
Q. Wasn't security guard put at the Dean's office rather than at Osman's office?
A. That was not the purpose of this meeting.
Q. No, I'm just asking question, was the security guard put at Swamy's office rather than at Osman's office? Was it?
Me JEAN LECOURE :
One was there, one was not there.
THE COURT :
That's right, that's what it comes down to. One secretary was there, one was not. If you wish to ask her why she wasn't there, you might ask her, if she knows, I don't know. But you may not put the witness through cross-examination in order to suggest all sorts of reasons why someone might have been there or might not have been there, thereby putting into the record testimony that's coming from you and not from the witness.
VALERY FABRIKANT :
I just asked, was the security guard put at Swamy's office rather than Osman's office.
THE COURT :
The objection is...
VALERY FABRIKANT :
What it has to do?
THE COURT :
The objection was to the whole series of questions you asked.
VALERY FABRIKANT :
Yes. And what is the objection? I cannot understand. I just asked simple, maybe even not connected questions, so what was wrong in that?
THE COURT :
The objection was to a series of questions...
VALERY FABRIKANT :
Yes.
THE COURT :
...which were of the nature of cross-examination which you were using as a trampoline in order to place your interpretation before the jury as if it was out of the words of the witness. That is what you were doing, and that is why there was an objection, and that is why it is maintained.
VALERY FABRIKANT :
I would like to respectfully submit that witness has the right to respond any way she chooses, so there is no way I can put anything...

THE COURT :
I would like you to take note of the fact that I maintained the objection...
VALERY FABRIKANT :
All right.
THE COURT :
...and would you please go on to something else?
VALERY FABRIKANT :
All right.
Q. So, say it again? Herman called Horwood to ask what, whether it is true that I was removed from campus?
A. I don't know if he asked whether it was true...
Q. So what did he ask?
A. ...what I have here is that he had heard that you had been removed from campus.
Q. He had heard that I am to be removed from campus?

A. That you had been.
Q. That I had been removed from campus?
A. Uh, huh.
Q. Could you elaborate on that removed word?
A. All I've done here is taken notes of what people were saying.
Q. Yes. All right. But for example "get", you remember that it was to kill, to remove means what?
A. To take away I assume.
Q. Well, to take away what?
THE COURT :
Look, there is no point arguing about notes if the witness cannot, through the use of the notes...
VALERY FABRIKANT :
All right.
THE COURT :
...faithfully reproduce what she heard.
VALERY FABRIKANT :
Okay.
Q. Maybe I will try to trigger your memory. Maybe by remove meant that I was declared threat to the university, and suspended, and this what means removed, so not allowed to appear at the university because I am threat to the university. Could that be the meaning of that call? Does this trigger anything in your memory?
A. It triggers nothing.
VALERY FABRIKANT :
Well... I'm afraid we have to call Herman to testify. All right.
Q. So there is nothing you could clarify as far as the Herman's call?
A. No.
Q. All right. 6.
A. "Osman said yesterday the phone rang in his office three times during the D.P.C. meeting, hang ups".
Q. Yesterday it was November what, thirteenth (13th)?
A. Uh, huh.
Q. During D.P.C. meeting?
A. Uh, huh.
Q. It means that there was D.P.C. meeting?
A. It means that Dr. Osman said that yesterday, during a D.P.C. meeting in his office, the phone had rung three times and someone had hung up.
Q. On November thirteenth (13th) was D.P.C. meeting. All right. And Osman wasn't present there, was he?
A. Present where?
Q. On November thirteenth (13th).
A. Yes.
Q. Ah... Okay. All right. Yes, and he implied that it was I, that's how it should be understood?
A. That's how it registered.
Q. Yes. All right. Was I, at the time, in my office or what?
A. I have no idea.
Q. Well, do you recall any details of that?
A. None. It didn't seem terribly important to me.
Q. Well if you wrote it down, then...
THE COURT :
Don't argue with the witness, Mr. Fabrikant.
VALERY FABRIKANT :
Okay.
Q. When you write something down, does it mean that this is of some importance to you?

A. Not necessarily.

Q. You just write down whatever is said?

A. At this meeting it would seem that's what I did.

Q. Okay. All right. 7.

A. "Catherine, hard to determine security needs".

Q. Catherine what?

A. "...hard to determine security needs".

Q. Hard?

A. Hard.

Q. Hard to determine security needs. Okay. Could you elaborate on that? What was so hard to determine? Whether to call a battalion maybe?

THE COURT :

You're now being sarcastic.

VALERY FABRIKANT :

Okay. Sorry, I am being sarcastic. Yes. This time you're right.

A. Whether any security is needed, to call, if there was some security, of what sort? Where? Who needed security? Did anybody need security? It was just very difficult to figure out what to do.

Q. Okay. So is my understanding correct that from November first (1st), when you met first, then you met November seventh (7th), then you met November eighth (8th), then you met November twelfth (12th), then you met November thirteenth (13th), and all those meetings it still wasn't clear what kind of security you need?

A. That's right.

Q. And who needs the security. Did anyone ask questions? Maybe nobody needs any security, just start being honest people, and behave honestly, how about that?

A. Well, that was certainly one of the options.

Q. Did anyone try to say something like that? "Let us for a change be honest people, we won't need any security". Nobody said that?

A. I just said one of the options was that there was no need for security.

Q. Well, that's what I'm saying, maybe... did anyone say: "Let us start behaving as civilized and honest people, we won't need any security", did anyone say something like that?

A. No one said that.

Q. Nobody... it didn't cross mind of anyone that they were creating all this...

THE COURT :

You've got the witness' answer, the witness said nobody said that, how she would know whether it crossed anybody's mind apart probably from her own, I wouldn't really know, would you?

VALERY FABRIKANT :

Q. Did it ever cross your mind that there would be no need for security if it was not for a total lawlessness?

A. No, it crossed my mind that I really wanted to know what was going on here.

Q. So, during fourteen (14) days you intensely want to know what was going on, and during fourteen (14) days it still wasn't clear to you what was going on, is that correct statement?

A. That's a correct statement.

Q. Okay. What did you do to clear up what was going on then?

A. As I said before, ultimately the recommendation was made that somebody act as coordinator to find out what was going on.

Q. Nobody knows what's going on. Okay. Let's call somebody else

to find out what's going on. I'm asking you what did you do to find out what is going on?

A. I did nothing to find out what was going on, it was not anything that I could have even begun to address, I had already an enormous caseload and a very full time job, and it seemed to me that it would have been impossible for anybody who was already very busy to start looking at the situation.

Q. So you consider that you were so busy at that time that there was absolutely nothing you could do? Is that correct?

A. What I did was make the recommendation that somebody coordinate and inquire into the basis of all these issues that were floating around, that's what I did.

Q. Somebody but not you?

A. That's right.

THE COURT :

Okay. We'll adjourn at that point until tomorrow morning.

AND FURTHER DEPONENT SAITH NOT

THE JURY LEAVES THE COURTROOM

WITHOUT JURY

VALERY FABRIKANT :

I would like to get the file to take a look at it.

THE COURT :

You won't get the file to take a look at it. Tomorrow morning, nine thirty (9:30).

TRIAL CONTINUED TO JUNE 30TH, 1993

Je soussign,, Michel Daigneault, st,nographe officiel bilingue, certifie que les feuilles qui pr,cědent 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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C A N A D A

PROVINCE OF QUEBEC

QUEBEC COURT
(Criminal Division)

DISTRICT OF MONTREAL

NO: 500-01-017372-928

BEFORE THE HONOURABLE JUDGE MARTIN FRASER, Q.C.J.

HER MAJESTY THE QUEEN,

plaintiff

-vs-

VALERY FABRIKANT,

accused

APPEARANCES:

Me JEAN LECOURS,
Attorney for the plaintiff

JUNE 30TH 1993

Jocelyne DeMontigny,
Official Court Reporter.

500-01-017372-928

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IN THE YEAR OF OUR LORD
NINETEEN NINETY-THREE (1993), on the thirtieth (30th) day
of the month of June.

IN PRESENCE OF THE JURY
EXCLUSION OF WITNESSES IS MAINTAINED

MR. FABRIKANT:
Not to forget for this week-end I need additional order so
if professor K... comes and professor Antiba for whole

four days.

THE COURT:

For whole four days?

MR. FABRIKANT:

Yes, because I just don't know which day they will come.

APPEARED:

SUZAN BELSON,
University Ombuds Person,
born: March 20-1944

WHO, having been solemnly
affirmed, doth, depose and say as follows:

EXAMINED BY MR. FABRIKANT,
for the defence:

Q. May I have back these notes of yours. We finished, I believe, at 8, where -- no, it wasn't 8; as it 7 when we finished? Could you read me 7 once again?

A. "Kathryn, hard to determine security needs".

Q. Okay. So, what was discussed that day? What was done, so far, is insufficient or is this sufficient or what? What exactly was discussed on this subject?

A. These were not lengthy discussions as I remember. They were simply people making statements and I just noted them.

Q. Well, if someone makes a statement that is difficult to define security needs, one has to clarify something on this aspect. What exactly was it?

A. I don't remember what exactly it was. All I have here is that it's hard to determine security needs and we may have discussed options, but I don't remember.

Q. I am in the same game, I do not remember, okay. Eight?

A. Eight is:

"Osmond would have said that in the past all activity was because Fabrikant thought he wouldn't be renewed and this time he will not, in fact."

Q. Clarify it, please.

A. All I can say is that Osmond was trying to put across that your behaviour in the past that caused people to be afraid and caused people to feel abused and harassed was only because you've thought you were not going to be renewed, but this time you were, in fact, not going to be renewed and I suppose the implication was that the behaviour might be worth.

Q. What did he say in terms of behaviour and behaviours in what way?

A. I don't remember that he specified what the behaviour was.

Q. Could you, at least, in one of your notes go just a little bit beyond what is written there? Is it possible to do?

Me JEAN LECOURS,
for the Crown:

He is getting the answers, my Lord.

THE COURT:

You're getting answers, first of all, Mr. Fabrikant and, secondly, if the note does not trigger the witness' memory, the note doesn't trigger the witness' memory.

MR. FABRIKANT:

Why don't you let the witness say so; how about that for

a change.

THE CROWN:

That was not a fair question, my Lord.

MR. FABRIKANT:

It was absolutely a fair question and witness could respond, regret, I just don't remember more --

THE COURT:

You know perfectly well --

MR. FABRIKANT:

-- why does she need two defendants.

THE COURT:

-- that the notes are for the purpose of refreshing the witness' memory, we have been doing it since the beginning of this trial. If they do, they do; if they don't, they don't.

MR. FABRIKANT:

I understand all that, except witness does need two defendants. Witness could respond by herself, regretfully, I know only what is written there.

THE COURT:

She told you. She's told you twice this morning.

MR. FABRIKANT:

Why does it need an interruption of two defendants for the witness? This is what I cannot understand, unless --

THE COURT:

I'm sorry. I am interrupting in response to an objection that was made and I'm interrupting because I am the one that has the job of controlling the proceedings.

MR. FABRIKANT:

This is not --

THE COURT:

And if you don't like that, that's unfortunate, but I propose to continue to do precisely what I've been doing.

MR. FABRIKANT:

This is not what I am saying. What I am saying is when Crown interrupts in an appropriate moment, judge should say that witness should respond by herself instead of continuing defending the witness who is shaking her memory. That's what I'm saying.

THE COURT:

That's your thesis.

MR. FABRIKANT:

All right.

Q. So, it was Osmond and you that -- what -- that S... has assured him that he will also support his decision. Could that be interpreted in anyway like this?

THE COURT:

The witness didn't say that, Mr. Fabrikant.

MR. FABRIKANT:

I know witness didn't say this. This is why I'm asking this question.

THE CROWN:

It's examination in chief, my Lord; it's not cross-examination.

THE COURT:

I realize it's not cross-examination.

MR. FABRIKANT:

It is not cross-examination, just my next question.

THE COURT:

Well, that question is of the nature of cross-examination.

MR. FABRIKANT:

Fine, I'll change it.

Q. Did S.... say anything in terms of his intention to support Osmond's non-renewal recommendation?

A. Not that I remember.

Q. But he might; it's just you don't remember?

THE CROWN:

It's speculation, my Lord.

THE COURT:

The witness said she doesn't remember, that's her answer.

MR. FABRIKANT:

Let us, for a change, let witness respond.

Q. Nine?

A. "S..., that would have been S. S..., said that you were a chest player, that you employed strategy, that you were manipulative, that you will go to any length to get what you want and that you're a bully".

Q. And, of course, you don't remember if you supported it, in effect?

A. I don't remember.

Q. You don't. At least, do you remember that you supported, but you don't remember the word or you don't remember if he supported these words?

A. I wouldn't imagine that he would have supported it. It seems to me the kind of statement that one might just make and it's just an opinion.

Q. Okay. What exactly did I want at that stage? Was it specified?

A. The issue was around the renewal of your contract.

Q. So, what I wanted at that stage as to continue good work, which I did before and, of course, this is criminal. This is clear indication of

--

THE COURT:

Would you, please stop. Would you please stop making these statements.

MR. FABRIKANT:

I'm not making statements; I'm asking question.

Q. Is it criminal, is it illustration of being bully?

THE COURT:

The witness isn't going to answer what is criminal or what isn't.

MR. FABRIKANT:

Q. Did you, at that time, try to tell S... that Fabrikant just wants what he deserves and this is not indication of being bully or being just blear and it is too bad --

THE CROWN:

This is leading, my Lord.

MR. FABRIKANT:

-- it is too bad if Fabrikant needs any strategy or anything at all --

THE CROWN:

Question should be -- did you say anything to S... period.

MR. FABRIKANT:

-- to get appreciated -- I finish the question first -- so

--

THE COURT:

Don't answer the question once you hear. Put your

question.

MR. FABRIKANT:

Why don't you make remark to the Crown that he would stop interrupting me during question?

THE COURT:

Because he did something that is perfectly normal. The form of the question made it perfectly obvious that it was -- it wasn't only a leading question. It was a statement on your part where you're soliciting --

MR. FABRIKANT:

Okay, a leading question.

THE COURT:

-- where you're soliciting the witness' approbation or disapprobation.

MR. FABRIKANT:

Leading question, I will read it to you once again it should be.

THE COURT:

Don't bother reading it to me once again.

MR. FABRIKANT:

Okay. I will raise it from memory to make it fast.

THE COURT:

Please, don't bother.

MR. FABRIKANT:

You don't know what I --

THE COURT:

I've told you, would you, please, repeat your question.

I ask Mrs. Belson not to answer your question for the moment and we'll see what the Crown has to say.

MR. FABRIKANT:

And ask Crown to keep quiet until I finish too.

Q.

So, did you, at that point, ask Mr. S... whether it is being bully just (inaudible) person to continue his work which he, himself, approved as being very good just several months before?

THE CROWN:

This is leading, my Lord.

MR. FABRIKANT:

And is it he --

THE CROWN:

And it's a way to testify without being in the box, my Lord.

MR. FABRIKANT:

-- he is again interrupting me.

THE COURT:

Yes, because it's perfectly obvious that it is leading.

So, the question --

MR. FABRIKANT:

I am about to ask a leading question.

THE COURT:

-- the question is disallowed.

MR. FABRIKANT:

You listen to my explanation first.

THE COURT:

The question is obviously leading, you are obviously testifying from the box under the guise of asking the witness a question. The question is disallowed.

MR. FABRIKANT:

First, you have to listen to my explanation.

THE COURT:

I don't have to listen to your explanation because it's patently obvious from the form of the question that it is illegal.

MR. FABRIKANT:

A leading question is legal. There is --

THE COURT:

I am ruling that that question is illegal, okay.

MR. FABRIKANT:

Q. Okay; let's go to 10.

A. Ten is:

"Should the university find him somewhere else".

Now, that was a suggestion put by professor Hoa with the comment:

"That it would help get you away from focusing on the loss of your job."

Q. Explain this. Could the university find what?

A. I think that it was a suggestion that maybe if the university helped you find another job, you wouldn't be so stressed about the job -- at the loss of your job at Concordia.

Q. Oh! That is a beautiful suggestion. I think we wouldn't all be here if the suggestion -- so, was this suggestion discussed?

THE COURT:

Would you, please -- would you, please, save us an editorial comment.

MR. FABRIKANT:

Q. Was this suggestion discussed in any way?

A. I don't believe so.

Q. Do you know it wasn't discussed?

A. No.

Q. Did you participate in any way in what was going on?

A. Probably in a peripheral sort of way.

Q. Well, could you be a little bit more clear about peripheral sort of way?

A. I was at the meeting, obviously I took notes. I don't remember much more than that.

Q. Did you intervene personally in the discussion of any of those?

A. Any of those that we've discussed already?

Q. Yes.

A. I shouldn't think so.

Q. Is it because you just couldn't care less?

A. No; it's because these were statements that people were making. These were updates that people were giving. There was -- there was nothing for me to say. I was not directly involved in any of these things and there was no action for me to take on them.

Q. Why were you invited there in the first place if you had nothing to do with all of this?

A. I was invited because as a member of the intervention team, we were asked primarily to help with deciding how you would be given the news that you would not be renewed. I had no further tasks subsequent to this meeting.

Q. Isn't one of duties of intervention team to do their best that troublesome situation wouldn't end up in an explosion? Is this one of the duties?

A. There were no duties specified for the intervention team, there was no job description and we did different things

in different cases. In this situation we were merely consulting for a brief period of time.

Q. You didn't answer my question.

THE CROWN:

he got his answer, my Lord.

MR. FABRIKANT:

Q. Isn't one of the duties of intervention team as you understand your duty, in general? So, is it or isn't it one of the duties of intervention --

THE CROWN:

That should be the end of it, my Lord. (inaudible) cross-examining.

THE COURT:

You have -- you have the answer, you asked that question and you got the answer. You're now reasking the question and this question is disallowed.

MR. FABRIKANT:

She didn't answer it.

THE COURT:

She did. Your last question is --

MR. FABRIKANT:

So, what did she answer? Is it -- (inaudible)

THE COURT:

You were here, you heard the answer.

MR. FABRIKANT:

I heard; it was not an answer.

THE COURT:

It was an answer. I'm satisfied that it was an answer.

MR. FABRIKANT:

You're satisfied, fine.

Q. So, 11, go on.

A. "How to predict violent behaviour."

Q. Fantastic; what's that question?

A. I have no idea. It might just have been a general discussion.

Q. Would it be a good answer just push person as much as you can and you're guaranteed violent behaviour?

THE CROWN:

This is obviously illegal, my Lord.

THE COURT:

Yes, it is; disallowed.

MR. FABRIKANT:

Q. Is there a limit to human hypocrisy?

THE COURT:

Disallowed.

MR. FABRIKANT:

Disallowed because of what?

THE COURT:

Disallowed.

MR. FABRIKANT:

Is it irrelevant, what?

THE COURT:

Disallowed.

MR. FABRIKANT:

Well, at what category?

THE COURT:

It's disallowed.

MR. FABRIKANT:

I heard that.

THE COURT:

Good; that's all you need to hear. Move onto to the next question.

MR. FABRIKANT:

All right.

Q. Do you recall -- do you recall any discussion on this subject?

A. I don't recall specifically, but the standard -- the standard response to questions about predicting violence is that all the literature and everyone's experience says that there is no full proof way to predict violence.

Q. How many books did you read on this subject?

R. I've read articles. I have discussed with people.

Q. And is in any books such this is found by you like the more allowless you are towards --

THE CROWN:

I think this whole line is irrelevant, my Lord.

THE COURT:

The whole line is illegal, the whole line is of a nature of cross-examination.

MR. FABRIKANT:

I haven't finished my question.

Q. So, did you or didn't you see the following passage in any of the books, like the more -

THE CROWN:

It should not continue, my Lord. Obviously, this is illegal, it's a waste of time.

MR. FABRIKANT:

You're again interrupting me. Should there be any order in the court-room?

THE CROWN:

This is to testify without being in the box, my Lord.

MR. FABRIKANT:

I am not testifying. I have the right to finish my question.

THE COURT:

Formulate your question.

MR. FABRIKANT:

Q. So, I would like you to warn the Crown to stop interrupting me.

THE COURT:

Formulate your question.

MR. FABRIKANT:

May I ask why when Crown makes an objection diverting his objection sustained, when I am right, it is never said objection overruled. It's always said, question is permitted. It is just slip of a tongue or it is --

THE COURT:

Have you a question to put?

MR. FABRIKANT:

This is I am putting a question.

THE COURT:

Please don't put questions to me, I'm not here to answer your questions. You were in the process of formulating a question to the witness.

MR. FABRIKANT:

That question is really important. It shows a biased attitude.

THE COURT:

If you wish that in the record, you've said it, that's fine.

MR. FABRIKANT:

All right.

Q. Did you or didn't you see in any of those books the following passage that the (inaudible), the more I would (inaudible) person is treated, the greater is the probability of this person becoming violent in any of the books?

A. No.

Q. So, none of the books had stated that simple thing; you're sure?

A. No.

Q. Well, you may become and discover in psychology if you're interested, are you.

THE COURT:

We are not going into psychology with the witness.

MR. FABRIKANT:

Well, a ombudsman has to be a psychologist.

THE COURT:

You're not going into psychology with the witness.

MR. FABRIKANT:

All right.

Q. Now, letter 3?

A. Letter 3 options. The three options are listed below.

Q. What letter you are talking about?

A. This was a letter that -- I'm not sure whether it was only doctor Osmond or whether it was the whole membership of the D.P.C sent to the rector and I also cannot remember whether the letter was brought out at the meeting or whether it was simply summarized. The point of the letter were the three options, that the rector invoke clause 2907 of the collective agreement which would have suspended you. The second option was --

Q. Suspended as?

A. Suspended as being a danger.

Q. Make it clear the reason of suspension is may be threat to the university, okay.

A. Number 2, if not, to remove your office from the department and number 3 is that the D.P.C. holds the university responsible for any physical or mental harm to the Faculty, the staff of mechanical engineering and they expected full security and they have had consultations with legal experts and others.

Q. And?

A. And the statement was made and where the letter was shown and there may have been some discussion around it, but I don't remember what was the discussion.

Q. Of course, you don't. It would be too nice to think that you do.

THE COURT:

Are you going to continue like this all day or are you going through that door again. You are here to ask questions, not to insult the witness or to make snide comments as you did just now. Now, would you, please, stop it.

MR. FABRIKANT:

You find it natural that she does not remember.

THE COURT:

I am not going to engage you in a discussion as to why or

what she remembers. I'm certainly not going to engage you in that discussion. You will put your questions and you receive your answers, that is all you are permitted to do.

MR. FABRIKANT:

Q. How many times in your life you read a letter demanding for professor to be declared danger to the university with no supporting facts whatsoever presented.

A. I'm not sure that there were no supporting facts.

Q. All right, then state those facts?

A. As I recall. As I recall, the report that the D.P.C. was to be appended to the letter although I did not see it and those would have been the supporting facts.

Q. What was in the report of D.P.C. which made me --

A. I didn't see it.

Q. Okay. Let us show it to the witness.

THE CROWN:

She did not write it, my Lord. Surely, the D.P.C. member would have the occasion to read the report.

MR. FABRIKANT:

Well, I think witness should know the report.

THE COURT:

If she did not see it, if she did not write it, what is the point of showing her the report of the D.P.C.?

MR. FABRIKANT:

Well, maybe it will trigger her memory because I believe this report was mentioned and it was pursued by her as a threat. I believe she needs to read those reports and to see --

THE COURT:

You better establish that the report of the D.P.C. was tabled at that meeting.

MR. FABRIKANT:

No.

THE CROWN:

She said, my Lord, she did not read it. It cannot trigger her memory.

MR. FABRIKANT:

It was not tabled but probably since there was mentioning of this report, I believe there was some mention as to what is in there since her perception is that it was a threat.

THE COURT:

Well, if the witness does not recall what was said, the witness simply doesn't recall what was said. You're not going to show her the report of the D.P.C.

MR. FABRIKANT:

But if she looks at the report, she might recall what was said.

THE CROWN:

That's a waste of time, my Lord.

THE COURT:

The objection is maintained.

MR. FABRIKANT:

Q. So, you cannot specify why the D.P.C. report contained something threatening?

A. Why the D.P.C. contained something threatening?

Q. Well, some information that I was a threat; let's put it this way?

A. No, I can't.

Q. What else was there, which could be interpreted as a

threat then?

A. Whether or not there were threats in the D.P.C. report, the people on the D.P.C. felt that you were a threat and it was clear. Although I don't remember who said what and when, it was clear that they perceived you as a threat.

Q. Well, if you'll rape neighbour's daughter and wouldn't you consider neighbour to be a threat to you?

THE CROWN:

That whole stuff, my Lord, is illegal.

MR. FABRIKANT:

Q. Would you?

THE COURT:

The question is argumentative and it's disallowed.

MR. FABRIKANT:

Q. Does it happen in your practice that person does some very wrong things to somebody else and because of that feels that somebody else might know that and retaliate and this is why this person feels threatened.

THE COURT:

The question is hypothetical and it seeks an opinion on the part of the witness and it's disallowed.

MR. FABRIKANT:

No. I'm asking her about her experience as ombudsman?

THE COURT:

It is disallowed.

MR. FABRIKANT:

It is disallowed. Not to forget, can we get a russian interpreter, maybe not now but later on. I have difficulties in one point, I need an interpreter on just a little point.

THE COURT:

You better make it very clear to me why you want a russian interpreter for.

MR. FABRIKANT:

Well, there is one proverb which I cannot translate, it is very important and I would like some interpreter to help me.

THE COURT:

During the adjournment, you try to work it out.

THE CROWN:

Mr. Fabrikant speaks English, my Lord.

MR. FABRIKANT:

He speaks English perfectly well.

THE CROWN:

He can put his proverb -- and I don't think we need any proverb here, my Lord.

MR. FABRIKANT:

Well, you don't need; I do need it. It's extremely important proverb, I need English equivalent not translation. I can't translate it.

THE COURT:

Would you go on with your questions to Mrs. Belson, please.

MR. FABRIKANT:

All right.

Q. So, my question was: were there any facts, you answered that they felt threatened. This is not facts. Facts supporting their feeling of being threatened?

THE CROWN:

She already answered, my Lord.

MR. FABRIKANT:

She didn't.

THE COURT:

The witness has already answered that question, we have been through this again and again and the objection is maintained.

MR. FABRIKANT:

She said there was feeling of --

THE COURT:

The objection is maintained.

MR. FABRIKANT:

Q. All right. Were you personally aware from, say, October (inaudible) incident till November 14th of that meeting, did I do anything at all to, as you said here, escalate tension or did I, during that time, anything which even can be interpreted as threatening, to the best of your knowledge?

A. The portfolio incident at the senate was interpreted as threatening.

Q. And?

A. I believe you were also seeking appointments and -- seeking appointments with S... and making phone calls to S... and I believe other people, but I cannot remember who and these were interpreted perhaps not as threatening, but as harassing and as abusive.

Q. Who exactly I called at that time?

A. I said I can't remember.

Q. This is another rape story. Did I -- did I, what, at least which office I called at that time?

A. I can't remember.

Q. What did I demand in those calls?

THE CROWN:

If she did not receive the calls, my Lord, it's hearsay.

THE COURT:

She can't possibly say; it is absolute hearsay.

MR. FABRIKANT:

It's not hearsay.

THE COURT:

Yes, it is.

MR. FABRIKANT:

It is not absolute hearsay; it's absolute lie. I didn't call anyone.

THE COURT:

You see, now you are using your dock to testify.

MR. FABRIKANT:

No; I'm just --

THE COURT:

The objection is maintained.

MR. FABRIKANT:

That's all nothing else and that is sufficient to declare someone is a threat to the university from your point of view?

THE COURT:

That requires an opinion on the part of the witness and she is not here to give an opinion. She is here to relate facts.

MR. FABRIKANT:

Okay. When you heard that D.P.C. wanted me to declare a threat to the university, didn't you jump and say, guys, you are playing russian roulette, you are inviting

violence; did you say so?

THE CROWN:

This is illegal cross-examination, my Lord.

THE COURT:

Yes, it is; objection maintained.

MR. FABRIKANT:

It can be leading, but it cannot be cross-examination.

THE COURT:

Objection is maintained.

MR. FABRIKANT:

Q. Did you react in any way when you learned about this letter?

A. I didn't -- I don't think I reacted, no. I discussed it with the other members of the intervention team.

Q. You mean separately discussed or during that meeting?

A. I think separately.

Q. Okay. When was this separate discussion?

A. I have no idea.

Q. Was it after the meeting?

A. Obviously.

Q. Do you remember how did the discussion go?

A. I remember generally that we were concerned that we didn't have enough information to support invoking clause 2907 that again we were not sure where this fear that these people were obviously feeling was coming from and we were concerned about their stress level and concerned about why they were so terribly worried, but it was very hard to get to the bottom of it. That would be the content of the discussion.

Q. Well, did you ask those stressed people why they were so stressed?

A. No, we didn't.

Q. Wouldn't it be a good solution just to ask them why were you stressed guys?

A. It had been discussed in previous meetings, but the answers were never very specific.

Q. So, now you're changing your answers. You did ask that or you didn't ask? What did you answer?

A. I understood you were asking about that meeting.

Q. That meeting was a meeting of intervention team and the D.P.C. wasn't present, you couldn't ask them at that meeting. I asked before: did you or didn't you ask them why they were so stressed?

A. I'm not sure of which meeting you were referring to.

Q. At any meeting. I understand they were stressed at all of them, were they?

A. That's true.

Q. So, it would be natural since this meeting ended without your understanding why they were stressed, then it is natural to ask him why are you stressed, guys?

A. I don't -- I don't remember anybody ever saying would you tell me specifically why you are stressed. I think that there were some questions about what the -- what the origin of the threats were, to whom they were made. As I've said yesterday, there was some discussion around those issues, but I cannot remember who said what and when and to whom. It's broad strokes.

Q. You, yourself, mentioned yesterday that it was extremely important to get to the bottom and to find out who, when,

what kind of threats were made; do you recall your testimony?

A. Yes, I did.

Q. So, why during so many meetings you never bothered to write it down and make it clear at least for yourself who made, when, threats to who?

A. Because our feeling was that there needed to be coordination, there needed to be an inquiry, it was very complex. It would be extremely time consuming. There needed to be a certain amount of expertise on the part of the investigator, inquirer, coordinator and that we were not able to do that sort of a job. It needed one person who could devote considerable time to it.

Q. What if -- did you try to do the following, to take your watch in front of you --

THE CROWN:

This subject has been covered yesterday, my Lord.

THE COURT:

Yes, it has.

MR. FABRIKANT:

I am asking different questions now. Just listen to the question, then you will rule it.

Q. Did you try to take your watch, to put it in front of you and to ask, Mr. Osmond, could you, please, state clearly -

-

THE CROWN:

This is leading and, moreover, it looks nasty, my Lord.

MR. FABRIKANT:

It's again interrupting me. How about letting me finish the question.

THE COURT:

Go ahead with your question.

MR. FABRIKANT:

Would you be kind to tell the Crown just for a change to stop interrupting me?

THE COURT:

He knows very well now to let you finish your question.

I said, finish your question.

MR. FABRIKANT:

I know that, but next time Crown again interrupts me. This is unfair because it breaks the logic of questioning and there are several Supreme Court decisions that these tactics amount to unfair trial and you know that.

THE COURT:

I am perfectly aware of those decisions.

MR. FABRIKANT:

I would like you to try to --

THE COURT:

They were surely not dealing with situations similar to this.

THE CROWN:

I am entitled to interrupt when the question is obviously illegal.

THE COURT:

I did not say you were not.

MR. FABRIKANT:

Of course, you're right, mister.

Q. So, did you ever try to take a watch, put it in front of you and say, Mr. Osmond, could you clarify the reasons for your fear and take a look at the watch, it took four seconds. Then, to take your watch again and say, Mr.

S... would you kindly clarify what the reasons for your fear? It is yet another four seconds. And then, you take your watch again and ask, dear Mr. L... could you, please clarify your fears and it is again another four seconds and I believe Mr. Hoa would take not more than four seconds and after that you just listen to their answers and that's all expertise in all time which you need on this planet. Was this appropriate solution from your point of view?

THE CROWN:

It is finished? I make my objection, my Lord. This is just nasty argumentation of the witness.

THE COURT:

The witness has already said what she did and what her role was. The objection is maintained.

MR. FABRIKANT:

Q. Now, could you still do some clarification as to your statements of increasing of tension. Was your impression that during time from 1st to 14th November pressure somehow -- tension somehow, increased?

THE CROWN:

It was covered yesterday, my Lord. Each time there is a new day, the same area of questions comes again, my Lord.

MR. FABRIKANT:

This particular question was not asked yesterday though tension as such mentioned, is discussed, but this particular question was not asked.

THE COURT:

Your question is permitted.

MR. FABRIKANT:

How about saying "objection overruled".

THE COURT:

I'll choose the words, thank you very much, that I propose to use.

MR. FABRIKANT:

Yes.

Q. So, would you, please, answer?

A. Was tension increased?

Q. Yes?

A. I think the tension was pretty high for those two weeks, whether it increased, how to measure increase, I'm not sure.

Q. You wrote increased, it means that you had the feeling that it increased; is that correct?

A. No; that was a report from John R... where he had said in a meeting that he had suggested to you not to increase the tension.

Q. I have transcript of that conversation; would you like to take a look at the transcript?

THE COURT:

Your observation is right out of order. The witness told you what the basis of the note was and that is that.

MR. FABRIKANT:

Q. Okay. When you discussed with the intervention team, this letter demanding me suspended as threat for the university, did Mr. R. at any time explain to you that the only reason for fear of D.P.C. was that their recommendation to terminate my employment didn't make any sense and what they were really afraid of was my blow

whisling. Did he --

THE CROWN:

Mr. ... already gave his opinion in front of this Court, my Lord.

THE COURT:

Mr. ... did. The question was whether Mr. ... discussed it with the witness.

MR. FABRIKANT:

This is exactly why I am asking this question and Crown should know better that I have tried to ask it exactly.

THE COURT:

Did you understand the question?

THE WITNESS:

No; I'd like it repeated.

MR. FABRIKANT:

Q. Did Mr. R... during this discussion mention the following: that he understands the reason for fear of member of department personnel meeting and it is that they understood very well, that their recommendation to terminate my employment didn't have any basis, didn't make any sense and what they were really afraid of was that I might blow a whistle on their illegal criminal activity?

A. No.

Q. He never mentioned anything like that?

A. No, not like that.

Q. Well, just not exactly like that, but similar thing. At least, the idea that what they were fearing, in fact, was not the violence they were referring to, but rather my blow whistling; in that simple term?

A. No, I would say no. They were certainly afraid of your violence, whether or not they might have been also afraid of whistle blowing. We may or may not have discussed that. I suspect it was at some point a hypothesis, but they were very afraid of your violence for whichever reason.

Q. So, you didn't answer; did or didn't R... express this fear?

THE COURT:

She said, no, he didn't.

MR. FABRIKANT:

She changed it after that, that we discussed it and --

THE COURT:

She answered, but she said she started off by answering your question.

MR. FABRIKANT:

-- someone said it, so --

THE COURT:

She started by answering your question.

MR. FABRIKANT:

Yes, she started by answering, but then, she changed and now, we don't know who was that, who forwarded the hypothesis.

THE COURT:

I don't know what you know or what you don't know, but as far as I am concerned, the answer to your question was perfectly adequate.

MR. FABRIKANT:

I cannot clarify it whether it was R...?

THE COURT:

If you've got another question, put it.

MR. FABRIKANT:

That's what I put and you interrupted me; was it R... who said it?

THE COURT:

Said what? All of what you've said because the witness disavoids all of what you've said.

MR. FABRIKANT:

No.

THE COURT:

You see, that's -- this is the problem. As soon as you ask a question which is leading, you drift into cross-examination and you (inaudible) into the question a whole lot of things that some of which may be in evidence, some of which may not. There is a reason for the rule, you know.

MR. FABRIKANT:

In my question, there was obviously what I meant because her last words were that there was some discussion and some people expressed the opinion that D.P.C. is afraid of blow whistling. So, my question is: was it R... who advanced that hypothesis?

THE CROWN:

She said D.P.C. is afraid of violence, my Lord. He is putting words in the mouth of the witness.

THE COURT:

He certainly is. All the witness said was that the question --

MR. FABRIKANT:

She said both.

THE COURT:

-- the question of whistle blowing may have been discussed at one point as an hypothesis. That was what the witness said.

MR. FABRIKANT:

And my question is: was it R... who advanced this hypothesis, period.

THE COURT:

All right, fine.

MR. FABRIKANT:

What is wrong?

THE COURT:

Fine; your question didn't come out as clearly as that.

MR. FABRIKANT:

Well, it is clear. Let us play it as clear, it is the Crown who wants to interrupt constantly.

THE COURT:

Now, it is clear; then, it was not.

MR. FABRIKANT:

Let us play it and see.

THE COURT:

Was it R... who advanced that hypothesis?

THE WITNESS:

It might have been R... it might have been me, it might have been Nancy T...; I can't remember.

MR. FABRIKANT:

Q. Well, if it were you, then you never expressed your views that you felt that something was wrong in the department

of mechanical engineering. Did you have any feeling that something was really wrong in the department?

A. No, I had no feeling that something was really wrong. I had questions that were raised by your concerns over the research.

Q. Did I express my concern over my research to you?

A. No, but I received your (inaudible)

Q. On November 14th?

A. Not on November the 14th.

Q. So, would you please stick to the date and answer what I'm asking you.

A. Had you expressed your concerns to me? No.

Q. No. So, how did you know about it

A. I just heard.

Q. And, of course, you don't remember from who and when?

A. It was probably a subject of discussion at some of those meetings, but I cannot remember specifically.

Q. Neither who nor when; correct?

A. Correct.

Q. So, what was the conclusion of that meeting of intervention team as far as the letter was concerned?

A. There was no conclusion. The letter was addressed to the rector, we assumed the rector would deal with it.

Q. Did you know that the letter was directly addressed to secretary J... rather than the rector?

A. No; my impression was that it was to the rector.

Q. Did you see the letter itself?

A. I don't recall seeing the letter.

Q. Do you have any notes concerning any other meeting?

A. No.

Q. Do you have any memos from anyone concerning me?

A. No.

Q. Do you have any notes concerning telephone conversation in respect to all that?

A. No.

Q. So, what do you have there? You have still several sheets of paper there; could you see what you have there?

THE COURT:

The witness is not obliged to go through the file and tell you what she has in her file.

MR. FABRIKANT:

I do believe that this is my right.

THE COURT:

I do believe that it is not.

MR. FABRIKANT:

Q. What was the next meeting?

A. The next meeting was the meeting I mentioned yesterday on the 20th of November.

Q. What was the purpose of that meeting?

A. It was -- it was not arranged beforehand. It just happened that the members of the intervention team and Michel Bujold were at an event one evening and following the event, we went to John R... office.

Q. Do you recall what this event was?

A. Yes. It was a meeting for resident students on sexual assault.

Q. Who was present at that meeting?

A. There were many people present.

Q. No, no; I mean after this sexual assault?

R. John R..., Nancy T..., Michel Bujold and myself.

Q. And what was discussed there?

A. What I remember more than the discussion was the conclusion that the case needed coordinating and that we would contact M... and make that suggestion to her.

Q. Does it look like everyone tried to wash their hands off that?

A. It looks more like it was very fragmented and many people were trying to do many things, but there was no overall coordination.

Q. Did at any of these meetings anyone mention that I happened to kill and kidnap the rector?

A. I have heard that, but I am not sure that I heard it at those meetings.

Q. Isn't it shocking enough to remember when you heard that?

A. No, not in the context of this whole thing, it's not shocking enough to remember when or where or who.

Q. You mean that you didn't hear about it until '91?

A. Probably I didn't hear about it till '91.

Q. But you are not sure?

A. I am not sure.

Q. You could be hearing this before '91; could that be?

A. It might be, but I have absolutely no memory of when I heard it.

Q. Could you explain why wasn't it shocking for you?

THE CROWN:
We have been in cross-examination for quite a while, my Lord.

THE COURT:
Yes, we have. Yes, we have, the objection is maintained.

MR. FABRIKANT:
All right. Were you involved in any othe meetings after November 20th?

A. No.

Q. Do you have any notes from (inaudible) to any of those meetings?

A. No.

Q. Were you involved on the level of discussion of my gun permit?

A. I wasn't involved in any discussion, no.

Q. Were you aware about my request for the gun permit?

A. Yes.

Q. Do you recall who told you that?

A. Abraham Friedman.

Q. Was it just ordinary chat or it was a business call?

A. It was a call asking whether I felt the student who claimed to have been raped in 1982 would be willing to make some comment on the request for the gun permit.

Q. So, you called him or he called you?

A. He called me.

Q. So, he knew about this student which I allegedly raped?

A. Yes, he knew.

Q. Why didn't I know about it?

A. The student had called the vice-rector's office in 1992, I believe.

Q. The same student?

A. The same student.

Q. I again raped her?

A. No. I believe that after reading an article in The Gazette in 1992.

Q. She recalled that I raped her in 1981. That's what it was?

A. She contacted the vice-rector's office in 1992.

Q. Okay. So, it was the same student?
A. Yes.
Q. But it was not a new rape; it was an old one?
A. Yes.
Q. Why didn't you use it? Rape is a crime.
THE COURT:
You are not required to answer that question.
MR. FABRIKANT:
Well, she mentioned that she discussed with Mr. Friedman.
THE COURT:
That question is argument. That question is argument.
Yes, she discussed with Mr. Friedman.
MR. FABRIKANT:
So, did you discussed -- she mentioned that she discussed
the possibility of using it.
THE COURT:
If you must ask a question, ask her what she did, if
anything.
MR. FABRIKANT:
Q. Yes. So, did you discuss the way it can be used to file
a criminal suit against me, right?
A. No.
Q. What --
THE CROWN:
She never said that, my Lord.
THE COURT:
No, she didn't.
MR. FABRIKANT:
Q. So, why not; rape is a crime.
THE COURT:
That question is -- in what context was it discussed --
this is the question you want to ask if you must.
MR. FABRIKANT:
Q. Well, you've got the quesetion. In what context did you
discuss it?
A. I had not discussed the case with Abraham Friedman
previously. What I suggested to him at the time was that
the vice-rector had the student's name and the student's
address and the student's telephone number and it would be
more appropriate for the vice-rector's office to contact
the student if anybody was to contact her.
Q. Yes. Was the student contacted?
A. I didn't contact her.
Q. Are you aware if the student was contacted?
A. I didn't contact her.
Q. Did you ever contact me about it?
A. No.
Q. Why not?
A. There was no reason to contact you.
Q. A student comes to you claiming that professor has raped
her and you find it unnecessary to inform professor about
that kind of complaint?
A. When someone comes to the Ombuds Office and after
discussion decides not to pursue whatever complaint they
may have, whether it's a great appeal or whether it's
something like this, the Ombuds Office does not pursue the
complaint and our terms of reference specify that our
cases are confidential and that we are obliged to maintain
the confidentiality of the complainant. So, I don't
pursue cases unless the complainant agrees that that
should be done.

Q. But complainant came to your office, it made a complaint there?

THE CROWN:

She has given the answer, my Lord. He is cross-examining for quite a while.

THE COURT:

The witness told you that --

MR. FABRIKANT:

As soon as witness is in difficult position.

THE COURT:

The witness isn't in difficulty at all.

MR. FABRIKANT:

So, let me continue.

THE COURT:

What is the point of continuing on this line of questioning? What is the point?

MR. FABRIKANT:

This is a good question. Now, let me respond what is the point.

THE COURT:

Fine, respond. What is the point?

MR. FABRIKANT:

Very good, I will respond to the point because university looked for every possible thing to put me in dirt. There was nothing trouble. Whatever was possible to dig up, they tried to dig up. This is my point and there was nothing to dig up there and this is the reason why she didn't pursue with the complaint, if there was a complaint. I am not sure about that at all because if you allow me, I would like her to present the documents from it which she has. I don't believe she destroyed it.

Q. Do you have the document?

THE COURT:

I ruled yesterday that the question was irrelevant to your defence. You have now detailed what you're interest is, that this was -- that they dredged up as you've put it, everything. You added as an after thought, I don't even know if there was a complaint. There is the witness' testimony that there was, in answer to a question of yours yesterday and as soon as I heard the subject that we were on, I ruled it irrelevant to these proceedings.

MR. FABRIKANT:

So, I'm explaining why.

THE COURT:

Now, you have brought in, you have brought in the question of a phone call being made in 1992 at a point in time that related to the application for the gun permit. That gives to the incidents of 1992 a certain relevance and in that context, if you wish to pursue with the witness what she did and she's told you what she did, she did not call the student and she made the recommendation that the more appropriate thing to do would be to have the vice-rector's office make the call and she said, I did not call. That, it seems to me, is as far as you can go.

MR. FABRIKANT:

Well, you didn't let me finish. As far as I want to go is to establish that university and she, in particular, didn't make a call to the student because they understood very well that either student never existed or there was absolutely no credibility to the whole story. It is not

because they were trying to protect my reputation. They're trying to get as much dirt as they possibly could, but there was nothing to hang on me. This is the point I am trying to make to the jury.

THE COURT:

You may.

MR. FABRIKANT:

Let me finish, please.

THE COURT:

You may wish to make that point.

MR. FABRIKANT:

And it is important point that all the activity of the university. It is not an isolated incident. I wish to remind you that the previous witness who came here, I mean T... and testified that I allegedly -- she didn't use the work "rape", I used it, but she testified that I allegedly had sexual conduct with a student in 1992 and I couldn't get any further into that. I know this is a lie, but you always do it like this.

The lie is passed to the jury, but for me to rebut it, no way, and this is called fair trial. Now, at least, because of this testimony, at least we know one thing.

THE COURT:

You're the one who is bringing --

MR. FABRIKANT:

Let me finish.

THE COURT:

You're the one who is bringing these things out first.

MR. FABRIKANT:

Let me, please, finish it. At least, now we know, due to my insistence, that there was no rape in '92. I know there was no rape in '81 either. There was never a rape and what I want to establish with this witness and other witnesses is --

THE COURT:

Nobody never established, nobody ever said that there was and I've put an end to the whole question of whether there was a rape and I warned the jury of the implications of even giving that any consideration right on the spot. The witness, yesterday, only spoke about a complaint.

MR. FABRIKANT:

I'm sorry, let me finish.

THE COURT:

The witness never said there was a rape.

MR. FABRIKANT:

Human being -- human being is not a machine which you could, like in computer, there is information, you raise it, there is no information and you know this very well and this is why so many mistrials are there when some inappropriate information is passed to the jury regardless and this jurisprudence understands that human being is not a computer when inappropriate information is passed, it is there and no matter what you say and this is what -- all those witnesses whom I have no choice but to call, it's not that I'm --

THE CROWN:

He had the choice to call them, my Lord.

MR. FABRIKANT:

I would appreciate not to be interrupted. I have no

choice to call and those witnesses definitely have collaboration with Crown pass onto the jury whatever dirt they can get anywhere.

I wish to submit that this is just part of the university tactics because the whole thing of threats, the whole thing of following me. The whole thing of the meetings, we've just mentioned just one which was yesterday, she testified that they got all the secretaries and those indecent use of secretaries were absolutely nothing to do and they were asked, are you afraid and nobody said they were afraid, but they are being told, if something happens, if there are graduate students they call them immediately.

Now, every normal person, if she never saw me and she is told there is something happens, call graduate students, she will become afraid and this was again another example of their trying to ruin my reputation with no foundation whatsoever and the same was arrest at the senate. It was not an honest mistake. It was all dirty, dirty, dirty, dirty tricks.

Those people who were afraid of me, those were people who insulted me on October 30th; they were not afraid like a gang of bandits to surround me and (inaudible) me to the garage, to the elevator, to the garage all the way.

THE COURT:

Would you -- you know, would you make the point you're trying to make, but would you please not testify --

MR. FABRIKANT:

The point I am trying --

THE COURT:

-- because that's all you're doing.

MR. FABRIKANT:

Well, don't you worry, I will testify. The point I am trying to make is that each time I am trying to show how dirty these people were and how just absolutely nothing on earth was too low for them to do, just to ruin my reputation, they did it and right now, she said that she didn't call and you didn't allow me to ask the question the only reason she didn't call if she knew that there is nothing there to hang on me. This is the reason why she didn't call and you just didn't allow me this question. Now, allow me this question why she didn't call.

THE COURT:

You were at the point you established a conversation between her and maëtre Friedman. She gave you an answer, she said that it was considered more appropriate that if any call were to be made, it were to be made through the vice-rector's office and I didn't make the call. Now, that was the witness' answer.

If you want to ask her why it was deemed more appropriate that the call be made by the vice-rector's office or through the vice-rector's office, go ahead and ask that question.

MR. FABRIKANT:

But I wanted also to ask why she didn't call because according to her story, she was the one who was contacted.

THE COURT:

She says that --

MR. FABRIKANT:

She was the one and I also wanted to question her why she never informed me about it.

THE COURT:

Well, take your points one by one.

MR. FABRIKANT:

That's what I did and you're interrupting me.

THE COURT:

You're not taking them one by one.

MR. FABRIKANT:

You didn't allow me any of those questions.

THE COURT:

You immediately -- you immediately drift into cross-examination of the witness before you've established even the facts on what you want to base yourself. Nobody is preventing you asking the questions, provided you ask them legally and provided you resist your natural urge to immediately put the witness in contradiction with something she said to ridicule her, demean her or trying to attempt to show that she is telling lies.

Ask your questions and -- you're the one that brought it up. You're the one that brought it up. You were the one yesterday who insisted on asking that question. You're the one that insisted in asking Nancy T... the question you asked.

MR. FABRIKANT:

I see nothing wrong to that.

THE COURT:

No, but --

MR. FABRIKANT:

I see nothing wrong with that because I know this is all lies and if I'm allowed to put proper questions jury would know.

THE COURT:

You've said that. You've looked at the jury and said, you see, this is all lies, this is all lies. I suppose that's one way of looking at it.

MR. FABRIKANT:

Yes.

THE COURT:

So, if you follow the logic a little further on, what you do and what your technique is and what your technique may well be is exactly that; to use the facts that certain things were held in confidence and were not banded about and you pool them out and then, you say, you see if that had happened, surely I would have been prosecuted and since I wasn't prosecuted, the whole damn thing is invention. That's just trickery.

MR. FABRIKANT:

No; this is elementary (inaudible)

THE COURT:

And that's where I'm sitting as logical an explanation of what you're doing is what you say.

MR. FABRIKANT:

No.

THE COURT:

You see, so you can reason it either way you like.

MR. FABRIKANT:

What you've said doesn't make the sense. I'm just trying to point out the facts, all right.

THE COURT:

Well, you, if you're trying and point out the facts, that's the most sensible thing you've said so far,

establish facts with the witness and then, we will see.

MR. FABRIKANT:

Q. All right. So, we now at least established that no rape was made in '92, to the best of your knowledge, correct?

A. Correct.

Q. So, the question was of alleged rape of '81; right?

A. Correct.

Q. Now, how did Mr. Friedman know about it?

A. Because the student called the vice-rector's office in April of 1992 after reading an article about you in The Gazette and I assumed that Mr. Friedman knew from the vice-rector's office that she had called because he did not know from me.

Q. So, how on earth did you know, that you know that?

A. Because when the student called the vice-rector's office, the vice-rector's office called me and asked whether I had a file and whether I would discuss the case and I said that I would not discuss any cases without the permission of the complainant and I subsequently contacted the complainant and had a meeting with her.

Q. In '92?

A. In '92.

Q. Yes.

A. And her concern in '92 was two fold: to let the vice-rector's office know that she had something to say about a history of violence, but what was most important to her was that her record was clear at the university and so that nothing would hinder her from returning to the university should she so wish and what I confirmed with her was that her record was in fact clear and that there was nothing to impede her return to the university.

Q. Beautiful. So, why didn't you proceed?

A. With what?

Q. Student agreed to proceed with her complaint?

A. No.

THE COURT:

That's not what the witness said.

MR. FABRIKANT:

I didn't get that. First of all, student was student in '81, student was still student in '92?

A. No. Student had not attended for many years, but she had not completed her degree.

Q. She never completed her degree, but in '92 she was not a student?

A. No.

Q. All right. So, what was the purpose of her complaint to the vice-rector? She said that she knows me as a violent person; right?

A. That was my understanding.

Q. Beautiful. Now, could you explain why not to proceed with complaint?

A. There was never, I think, any intention to proceed with a complaint ten years after the fact.

Q. You met with her; right?

A. Yes.

Q. What was the purpose of the meeting if you cannot proceed with complaint after ten years?

THE COURT:

She told you the purpose of the meeting was that she would not discuss the case with the administration with ma@tre Friedman without the permission of the student.

THE WITNESS:

With the vice-rector's office.

THE COURT:

With the vice-rector's office; excuse me. That's what she said.

MR. FABRIKANT:

Q. Well, this is already done -- this could be done on the phone. There is no need for personnel meeting for that; can it?

A. I often prefer to deal with people personally.

Q. All right. So, the only thing which you asked her was whether you can discuss the case with the vice-rector's office, nothing else?

A. No.

Q. Okay. So, you discussed with her whether she wishes to continue her complaint; right?

A. No. I discussed with her whether she could return to the university to take courses again, if there were anything on her academic record that would stop her from taking courses again. One of the issues was that she said you threatened that you would fix it so that she would never be able to go back to the university again.

Q. Fantastic; I've threatened her. Why didn't she use it? It's beautiful. You had a person who I personally threatened, why didn't you use it? Do you have this --

THE COURT:

No, this is not the way to proceed with the question. You will ask the witness what happened next.

MR. FABRIKANT:

You see how (inaudible) she is there and you're trying to save her.

THE COURT:

Not at all.

MR. FABRIKANT:

All right; so, let me continue.

THE COURT:

I refused to permit you into this fugue yesterday when it appeared that it had no pertinence at all. Now, when it's been related to the question of the gun permit you've been allowed to ask your questions. So, don't talk to me about trying to save a witness.

MR. FABRIKANT:

So, don't (inaudible).

THE COURT:

I am not in the business of saving witness, but ask your questions properly.

MR. FABRIKANT:

I ask properly.

THE COURT:

No, you didn't, the last one was not.

MR. FABRIKANT:

Q. Now, she told you that she can provide information on me being violent; correct?

A. She told the vice-rector's office that.

Q. Did she repeat it to you?

A. I had known the story for ten years.

Q. You are not answering; did she repeat it to you during your meeting in '92?

A. I don't remember.

Q. She remembers that she said --

THE COURT:

Please, don't go into this continuity of questions.

MR. FABRIKANT:

No; I am applying --

THE COURT:

She said she cannot recall whether it was discussed in '92, but she knew it and had known it for ten years.

That's what her answer is. Now, move on.

MR. FABRIKANT:

Now, would you believe that she remembers that she mentioned it --

THE COURT:

I am not here to discuss with you what I believe, all right.

MR. FABRIKANT:

Q. All right. Okay; so did you or didn't you discuss with her the option of going ahead with her complaint?

A. No.

Q. Why not?

A. Because it was ten years after the fact.

Q. So what, crime is punishable for years after that.

THE COURT:

Don't argue with the witness. She said, no, I didn't discuss it with her and she gave you the reason why. It was ten years after the fact; end. Next question.

MR. FABRIKANT:

Well, here I would like to get information why ten years ago that there was no proceeding then. It was not too late then, why it didn't proceed ten years ago.

THE COURT:

She answered that question yesterday.

MR. FABRIKANT:

She didn't.

THE COURT:

She answered that question yesterday.

MR. FABRIKANT:

She didn't. Let me change the question.

Q. Did the student who came to you in '82 wish her complaint to proceed?

A. Did she wish to proceed in '82?

Q. yes, with her complaint?

A. No.

Q. What was the point of coming to you if she came and doesn't want to complain? What was the point of coming to you then?

A. It's not easy to make such complaints. It's not easy to go through the processes that one has to go through following such a complaint. The student decided for whatever reason that she was not prepared to pursue the complaint.

Q. Then, what was the point for coming to you --THE COURT: Look, we've sidetracked, we're sidetracked.

MR. FABRIKANT:

We are not sidetracked.

THE COURT:

We are very clearly sidetracked.

MR. FABRIKANT:

Oh no. Again, witness is in difficult position.

THE COURT:

You are dealing with -- you are dealing with 1992.

MR. FABRIKANT:

Yes.

THE COURT:

The question was a call to the vice-rector's office.

MR. FABRIKANT:

Yes.

THE COURT:

As a result, there was a call from ma@tre Friedman to Mrs. Belson, all right. Now, in so far as this is related to your gun permit, you can put some questions to Mrs. Belson, but let us, please, not get into the merits of a choice that somebody made back in 1981 or '82 as to what they were going to do. Let us not get into that. That is not germane at all to what we are supposed to be looking at.

You are in here and you're in this particular area because of the manner in which it may relate to the question of the handling of the gun permit and you,ve said, you see, they dredged up all sorts of sludge, any sludge they could.

Well, okay, you've said that. That doesn't make it proof. Let's see whether they did anything in regard to that; I don't know. That's what you first have to establish and before you do, I think we will stop for 15 minutes.

THE JURY IS RETIRING

-- Suspension</pre></body></html>

-- Upon resuming

IN PRESENCE OF THE JURY

MR. FABRIKANT:

Mr. ... where are we with the (inaudible), did they call you?

MR.

No.

MR. FABRIKANT:

Did you call him?

SUZAN BELSON,

UNDER THE SAME OATH

MR. FABRIKANT:

Q. Did the student in question have a history of psychiatric illness?

THE COURT:

Just a second now. I am not going to permit you to go in that direction. The witness has said that in -- it's a witness you brought -- that in 1982 a report was made, that the student in 1982 elected not to initiate proceedings; end of question.

In 1992, spring, student in question contacts the vice-rector's office. You have heard the witness relate in what circumstances and what the questions were that were raised and as a result the witness was contacted by ma&Etre Friedman in relation to that visit by the student and in relation to -- tied to it in relation to the question of the gun permit.

Now, you've told me that what you propose to show was that the university did everything they could to besmirch your reputation. They dredged out everything they could dredge up.

What the university did in relation to the gun permit might be pertinent. The student's history, who the student is, the nature of the circumstances related by the student in 1981 have absolutely nothing to do with the question with which we're dealing with you.

You are going to be permitted only to go at the question from the point of view of what the university did. Did the university use this? Did the university pounce on this to use it to your disadvantage as you allege? But as for the witness' testimony, the complaint was made in 1981, the witness' testimony is there. As for the testimony, there was a call to the vice-rector's office in 1991, the witness' testimony is there.

So, we're not going to get into the circumstances, the student or anything else. That takes us far far out of our sphere of interest.

MR. FABRIKANT:

Let me explain you my question. So, I understand that you do not want to allow my question whether the student --

THE COURT:

That's right.

MR. FABRIKANT:

-- is still a psychiatric (inaudible)

THE COURT:

That's right.

MR. FABRIKANT:

Okay; let me explain pertinence then. I would like to remind

here the testimony of Ms T... who said probably inadvertently that the student who called vice-rector of was referred to see the psychiatrist. This is not a regular practice for a student who allegedly complained on rape. Now, since student was referred to psychiatrist, I infer from this that they knew perfectly well that they were dealing with a sick person and I mean really mentally sick person. And if I can establish that, that would give total explanation why they didn't use that person because they understood that one person has long history of psychiatric illness, person can imagine things which never happened.

So, my question is extremely pertinent because if we establish this fact, we establish automatically that university did their best to damage my reputation, but since they realized that the patient was just a sick person mentally ill, they understood that it is just a stupid proposition to use fantasia of such person to somehow damage me because that would only backfire and this is the reason for my question and the question is extremely important. I would like it to be answered.

THE COURT:

The question will not be permitted, I told you. You said that you propose to show that the university had used everything that they could possibly dredge up. If you want to show that the university used this in connection with your gun permit, that's fine. If you conceive that the university did not use this, then the university didn't use it and that's the end of the question. It's that simple.

MR. FABRIKANT:

It is not the end if university didn't use it because they decided that it is kind of dishonest or dishonourable, this is one thing, but if university didn't use it because they understood that they have no chance to use it; this is different story, it's totally different dimension.

THE COURT:

No, it's not. That's a machination of your way of seeing things, that is not a question of -- that is not a question of-- that is not the sort of question of evidence which can be the basis for the jury to come to any conclusion. So, I maintain what I say.

MR. FABRIKANT:

Q. Are you aware that this particular student was --

THE COURT:

I am not aware of anything. Oh, you are bringing a question?

MR. FABRIKANT:

I am not asking you now.

THE COURT:

Oh, I'm sorry. I thought you were --

MR. FABRIKANT:

No.

THE COURT:

Excuse me; my mistake.

MR. FABRIKANT:

All right.

Q. So, are you aware of the reasons why this student in question was referred to see a psychiatrist?

THE COURT:

Again, Mr. Fabrikant, whether the student was referred to see a psychiatrist or whatever is not germane to the issue here. The only thing that's germane to the issue is whether the

university used this or whether it did not. So, you will not go through.

MR. FABRIKANT:

Why it is not germane. Why they didn't use it?

THE COURT:

No.

MR. FABRIKANT:

It's extremely germane.

THE COURT:

Listen; I've told you you can't, I am not going to permit that line of questioning. So, okay, accept that; would you.

MR. FABRIKANT:

All right, because now everything is clear to me, you know. I was puzzled before, now everything is clear to me what happened and why it happened, but you just don't allow me to proceed with this question.

Q. We are back in '92 and you -- what were you discussing with that student? Did you discuss with that student possibility of proceeding with her complaint?

A. There was no need to discuss that. That was not an issue at that time.

Q. Did Mr. Friedman, in effect, call you and ask you whether he can use it to show history of violence on my part, so that they can use it to disallow me the firearm permit? Was that the purpose of questions?

A. Let me make it clear that I did not speak to Mr. Friedman; at the time I spoke to the student. It was months later that Mr. Friedman called me and asked me in connection with the gun permit whether I would contact the student. I had no contact of Mr. Friedman prior to that time on this question.

Q. Let us then establish some dates. Student called -- well I don't know why we call her a student, but student called vice-rector's office April 1st, the day when article in The Gazette appeared; correct?

A. I am not sure if it was April 1st; It was in April.

Q. Anyway, take it that it was April 1st. She called the day the article in The Gazette appeared; right?

A. That day or shortly after.

Q. All right. Do you know who she spoke to?

A. I think she spoke to Angela Wilson Wright.

THE COURT:

Look, this is speculation. You can't -- if the witness isn't there on something like this, the witness can't testify as to who she spoke to. The witness didn't receive the telephone call. You know that.

MR. FABRIKANT:

She might know who.

THE COURT:

You're now factoring in hearsay. She obviously had to be told by somebody.

MR. FABRIKANT:

I want to get to the bottom of this.

THE COURT:

Well, it's not a question. You go the legal way on this.

MR. FABRIKANT:

I am going legal way. So, it was Wilson Wright that called?

THE COURT:

If you know it was Wilson Wright. I don't know if you know it was Wilson Wright.

THE WITNESS:

It was Wilson Wright who called me.

THE COURT:

It was Wilson Wright who called you; fine.

MR. FABRIKANT:

Q. All right. At least you remember that much, that's beautiful. What did she tell you? That student in question wants to press charges or what? What exactly?

A. She told me that the vice-rector's office had received a call from the student about an alleged rape which occurred a decade earlier. She gave me some of the details of the story that the student had told the vice-rector's office and she asked me whether I could confirm those details and had I kept a file because the student had said that she had seen me ten years previous. And I said I had not kept a file and I said I would not discuss it without the permission of the student. Subsequently, I had a meeting with the student. The issue that the student and I discussed mainly was whether there was anything on her academic record that would prevent her returning to the university, should she wish to do that. And there was nothing on her record that would prevent her returning to the university and I reassured her that she could return and we discussed, given the length of her absence from the university that it would be useful for her to see an advisor and discuss which courses she should be taking and whether she should perhaps repeat some courses so that she could refresh her mind and I spoke to her department to the secretary to determine who the advisor was and when the advisor was available.

Q. Did you find out who the advisor was?

A. Yes, I found out who the advisor was.

Q. Who was the advisor?

A. I would prefer not to say.

THE COURT:

I don't think there is any need to get into that.

MR. FABRIKANT:

But you remember that?

THE COURT:

There is no need to get into the advisor.

MR. FABRIKANT:

Okay; I just want to --

THE COURT:

There is no need to get into that at all.

MR. FABRIKANT:

Q. Do you remember the name of the advisor?

THE COURT:

There is no need to get that.

MR. FABRIKANT:

Q. No; just not pronounce the name, but just do you remember the name of advisor?

A. Yes.

Q. Okay; continue. In what faculty at least? Was it engineering?

THE COURT:

It makes no difference, Mr. Fabrikant..

MR. FABRIKANT:

It makes a lot of difference.

THE COURT:

It makes none.

MR. FABRIKANT:

Let me explain you what difference does it make. Let me explain to you. Am I allowed to explain? The explanation is very simple. If that student is from engineering, if you recall, the witness testified that I allegedly threatened to fix something that I can do something if you record and so on and so forth. Now, if you find out that this student is from engineering as remotely as it is, you know, I am in engineering, probably -- well, it is still difficult for me to do anything against her unless she is my student, but if she is from totally different faculty, there is no way I can do anything to damage her. So, this is the reason for my question to ask what faculty was that.

THE COURT:

I could not.

MR. FABRIKANT:

If it is not engineering, then the threat could not possibly exist.

THE COURT:

I could not care less what transpired in 1981 and neither could the jury. The only reason you are being permitted to ask these questions is because you have said that the university conjured up every dirty trick they could. You are, therefore, I suppose, in the process of establishing that the university used this or the university didn't use this. The merits of what a student might have said are in no way relevant and Mrs. Belson, yesterday, when she testified, talked simply about a report that a student made to her. We are going no further into that incident than that.

MR. FABRIKANT:

May I say another thing then; that the university is using this stuff now just at this particular moment to transmit to the jury false information that I allegedly threatened the student and I have the right for rebuttal of this false information.

THE COURT:

Mr. Fabrikant, you have not.

MR. FABRIKANT:

I never threatened anyone in my life.

THE COURT:

What you have said is absolutely ridiculous. You are the one who made this evidence, not the university. You are the one who stands there and says completely unsubstantiated by anything that the Crown has primed the witnesses to slip into the record the details of this particular thing, you are the one who raised it. What you are doing is your creating s... for yourself to simply knock down. That's all you're doing, I maintain my decision, you are not going to have the name of the advisor nor the name of the faculty.

MR. FABRIKANT:

At least, was it engineering or not?

THE COURT:

No.

MR. FABRIKANT:

This isn't reasonable.

THE COURT:

Well, if you think --

MR. FABRIKANT:

Is it engineering or not?

THE COURT:

If you think it's unreasonable, you continue because you have asked her what she did. She said what she discussed with a student. Now, I presume we are going to go back to what happened at some point between Mrs. Belson and Mr. Friedman when Mr. Friedman made his call.

MR. FABRIKANT:

We are not there yet.

THE COURT:

No, we are not there yet.

MR. FABRIKANT:

And I again respectfully submit that --

THE COURT:

Dont, please, respectfully submit it again.

MR. FABRIKANT:

I had no idea whatsoever that when I asked this particular witness whether there were complaints on me, I have no idea that she would respond that I raped somebody. I thought what Ms T... said was enough. Now, they are creating (inaudible)

THE COURT:

Well, you're the one who has been tripping rape since several weeks, so --

MR. FABRIKANT:

I didn't force Mrs. T... and I didn't force this witness to say it.

THE COURT:

-- I didn't exactly fall off my chair when I heard the answer yesterday.

MR. FABRIKANT:

I have no power, you know, to twist somebody's tongue to say anything. What they are doing is --

THE COURT:

The witness -- you asked the question and the witness said -- that's what the witness said. Now, you're the one who called the witness. We come right back to basic principles. Now, you were asking -- you were asking Mrs. Belson what was discussed and she said three things basically were discussed. That it would be

-- was there anything on her record that would prevent her return to the university; useful for her to see an advisor and that she spoke to the department re: the advisor in question. Go on from there.

MR. FABRIKANT:

Q. Well, did you discuss with her authorization for you to reveal your file to the vice-rector?

A. Yes and we decided that there was no need for me to do that and I called the vice-rector's office and I said that I had met with the student and that her major concern was that the university had some information about this previous incident and that she wanted to be assured that she could return to the university, that I had confirmed that she could and that was that.

Q. Did you ask her at this point why she called vice-rector in the first place if she refuses you the right to discuss it with them? It was she who called vice-rector; was isn't it?

A. Yes.

Q. Well, did you ask her why she called vice-rector if she refuses to give you the permission to discuss it with them?

A. Because she wanted to let somebody know that there was what she perceived as a pattern of behaviour.

Q. Well, then, doesn't it make sense to allow you to discuss it?

A. There was no need to discuss it. The vice-rector's office could have done nothing with that information, given that there was never any formal complaint, there was never any hearing, there was never any finding, there was never any decision.

Q. Are you aware that vice-rector called -- vice-rector's office called Mrs. T... and referred this particular student to a psychiatrist? Are you aware of that?

A. No, I am not aware of that.

Q. Are you aware, still... okay, different. If student is claiming whatever she claimed and is referred to see a psychiatrist, is this an indication this student some -- had some mental problem?

THE COURT:

That is not a permissible question, that calls for a conclusion on the part of the witness. You may not ask that question and I reiterate that you are only allowed to question in this area with a view to establishing that the university used this information in relation to your gun permit or to damage your reputation. That's what you've said, that's what you said you were proposing to do.

MR. FABRIKANT:

Well, I want to establish why they didn't use it.

THE COURT:

No, you won't establish why they didn't use it. You'll neither establish why they did use it or that they didn't use it, Mr. Fabrikant.

MR. FABRIKANT:

Well, it is important to me establish why they didn't use it, if there is a name that --

THE COURT:

It may be important to you, but --

MR. FABRIKANT:

-- maybe the person in question is mentally ill. I think that would demonstrate how low these people are.

THE COURT:

That is a question of argument and you --

MR. FABRIKANT:

A question of argument, I need first of all to --

THE COURT:

What do you mean, how low these people -- I don't follow you.

MR. FABRIKANT:

To use (inaudible) that a sick person --

THE COURT:

You better first establish that they used the person.

MR. FABRIKANT:

They tried to. They even tried --

THE COURT:

I don't know, I have no idea. You haven't even established that. You might continue with the witness with regard to her conversation with Mr. Friedman.

MR. FABRIKANT:

Well, just allow me one single question. Is the person mentally ill?

THE COURT:

No, I will not, no.

MR. FABRIKANT:

This is totally unfair. This is a normal question; is that person -- we are not revealing any names -- is that person mentally ill?

THE COURT:

The question is not permitted. The witness is certainly not a witness who could answer that question and this is irrelevant.

MR. FABRIKANT:

It just resembles the anecdote, who do you like more, father or mother; I won't tell you, I don't want to offend father. That's a similar situation. The fact that she refused the permission to ask this question is an answer, she is mentally ill. Otherwise, you would allow me that question. Well, let us try, allow me this question.

THE COURT:

No, I will now allow you the question; now, would you move on.

MR. FABRIKANT:

Q. So, how did this lady explain to you not allowing you to discuss the matter of the vice-rector when she called her herself?

THE COURT:

The witness never said that she didn't allow her to discuss it with the vice-rector.

MR. FABRIKANT:

She did say it.

THE COURT:

What the witness told you -- she did not. What the witness told you was, we agreed there was no need for me to discuss the matter with the vice-rector's office. That's as I understood it what the witness' answer was.

MR. FABRIKANT:

Q. But she effectively did not disallow you to discuss it with the vice-rector; right?

A. She neither allowed me nor disallowed me. There was no need.

Q. But you just recently said that she didn't give you the permission and you phoned the vice-rector and you said that you are not going to talk to them about it.

A. Because there was no need.

Q. No; because she didn't allow you. Check your notes; am I right in that?

THE COURT:

You are wrong.

MR. FABRIKANT:

You are wrong.

THE COURT:

You are wrong.

MR. FABRIKANT:

All right. She never said that.

Q. What happened after that? So, did you get back to Mr. Friedman?

A. I hadn't spoken to Mr. Friedman.

Q. Okay. Mr. Friedman called you?

A. Several months later, many months later.

Q. Several months later?

A. Around the time of the gun permit.

Q. All right. You spoke with the lady when?

A. It would have been in April of '91. Was it April '91, '92, when the article came out.

Q. Ninety-two.

R. Ninety-two.

Q. All right. And after that several months later, Mr. Friedman called you and what did he ask you?

A. He told me that you had made an application for a gun permit and asked me whether I would contact this student and ask her whether she would make comment on the gun permit. I said, it seemed to me that it was more appropriate given that the vice-rector's office was made aware of the story by the student that the vice-rector's office contacted the student. That was the sum total of the conversation; it took maybe a minute.

Q. Why did you refuse to contact the student; could you explain? You were in contact with the student all along and you learned that I demanded firearm permit and it might be dangerous.

THE COURT:

Now, you're cross-examining the witness and you may not do that. The witness has told you what she said to ma@tre Friedman.

MR. FABRIKANT:

Q. could you explain why you refused to call for it?

THE COURT:

She's already told you that she considered, that she told Friedman that it would be more appropriate that the vice-rector's office contact the student.

MR. FABRIKANT:

Q. Now, in '82, when student came to you, I understand that she wanted to file a complaint; is my understanding correct?

THE COURT:

Mr. Fabrikant, the whole question of what transpired in 1982 is not pertinent. You have established through this witness - - you have established through this witness that the student came to her, complained of rape, there was a discussion and that the student decided not to press any charges. That, as I understand it, is what transpired and I ruled yesterday that anything pertaining to these events is not in any way pertinent to this trial and nothing has changed since.

MR. FABRIKANT:

Well, it is not pertinent if this is what transpired. If what transpired is something different that Mrs. Belson discovered that the patient was mentally ill and she understood that person is just imagining things and this is why she didn't proceed, then this would give the whole new dimension to the whole story.

THE COURT:

Not at all.

MR. FABRIKANT:

Wouldn't it?

THE COURT:

Not at all. So, I maintain that you may not get into these questions about 1981, I have already ruled that what transpired in 1981 is not pertinent.

MR. FABRIKANT:

You allow the damaging information to go through to the jury, but you don't allow me to show that this is (inaudible)

THE COURT:

I don't allow the damaging information to go through to the jury. I told you your technique is to throw the damaging information in front of jury, building up s... that you think that you can shoot down. That's what your technique is. Well -- sorry, you're not going to do that.

MR. FABRIKANT:

Well, how can you accuse me.

THE COURT:

I am not accusing you of anything. I'm just saying that that's --

MR. FABRIKANT:

You are implying. You are implying that it was I who thrown to the jury this allegation.

THE COURT:

You're the one that asked the question, Mr. Fabrikant, not I.

MR. FABRIKANT:

I didn't ask her if anyone accused me of rape. I had no idea of that.

THE COURT:

Let us -- I have ruled on the question of 1982 and I don't really need to hear your comment.

MR. FABRIKANT:

Well, but don't say that it was I who created some kind of str...; it is the witnesses who come each of them with some kind of --

THE COURT:

I didn't hear Mr. Lecours ask the question, I didn't hear Mr. Belleau ask the question, I didn't hear me ask the question. I didn't hear anyone but you ask the question.

MR. FABRIKANT:

Yes, I asked the question.

THE COURT:

Well, go on.

MR. FABRIKANT:

But it was not question whether there was a psychotic lady who accused me of rape.

THE COURT:

I told you --

MR. FABRIKANT:

I didn't ask that.

THE COURT:

-- the events of 1981-82 are not pertinent. Move on to something else.

MR. FABRIKANT:

Q. Now, were you personally concerned with my request for the gun permit?

A. No, I was not. Well, what's your sense of concern; do you mean, was I worried or do you mean was I involved?

Q. Were you concerned in the sense that you as a citizen felt that something needs to be done?

A. That's really difficult for me to answer because I was not at all involved in that decision and there were -- it's just not easy for me to answer that.

Q. Well, easy or not easy, weren't you concerned as a citizen, as a human being?

A. I had no more information at that point than I had a long time previous and so I suppose if I had to make the decision as to whether I would have agreed or not agreed that you should have a gun permit, I would have wanted a lot more information than I had, but it was not -- there was no need for me to make that decision. There were enough people around who thought that you should not have it.

Q. Well, didn't you feel yourself obligated in knowing --

THE CROWN:

this is cross-examination, my Lord.

THE COURT:

Yes, it is.

MR. FABRIKANT:

I didn't even ask the question.

THE COURT:

When you say "didn't you feel obligated", you drift into cross-examination.

MR. FABRIKANT:

How do you know. You don't know the question.

THE COURT:

I know very well from the nature of the question.

MR. FABRIKANT:

You don't even know what cross-examination is so far, nobody ever defined it to us and we are sitting here stupid we who don't know anything about Law and you all the time throw at us this cross-examination stuff and everything is justified.

THE COURT:

That's what it is. That is what it is. You're putting an issue.

MR. FABRIKANT:

Well, why don't you dare to define once and for all cross-examination is blablabla.

THE COURT:

All people have written -- people have written books on the subject. There is no way one can define it simply like that, but what you are doing is putting in question and raising a question and attempting to raise a question before the jury of the witness' credibility and that's what you are trying to do.

MR. FABRIKANT:

I am not raising anything. I am asking questions and if those answers, some kind of not self --

THE COURT:

Listen; the witness has told you, she said, look, I wasn't involved with regard to your gun permit. If I had been, I would have wanted to have an awful lot more information than I had. That's all.

MR. FABRIKANT:

Q. Okay. Didn't you have at that time information that I was a rapist; did you?

A. No. I had information that a student claimed that you had raped her ten years previous.

Q. Well, why didn't you ever ask me whether this happened or not?

THE CROWN:

She answered that yesterday, my Lord.

MR. FABRIKANT:

She didn't.

THE COURT:

And we are back into this question and the question is disallowed.

MR. FABRIKANT:

She never did. She never answered this question.

THE COURT:

The question is disallowed.

MR. FABRIKANT:

So, on this question it's difficult -- it's disallowed. Q.

Do you have any record of your meeting with that lady of '92?

A. No.

Q. Do you have any file pertaining to that meeting?

A. No.

Q. Do you have any documents relating to that meeting?

A. No.

Q. Did you read any of my electronic mail?

A. I think I may have read some of the earlier ones..

Q. How did this happen? I never sent you anything? Who gave it to you?

A. It came through my electronic mail.

Q. So, you were on the list?

A. Hum hum!

Q. And I guess that you despised my electronic mail; didn't you?

A. My secretary sure did.

Q. Why didn't she inform me that she didn't want to receive it? Wasn't the first word of my electronic mail, if you do not want to receive it, just let me know and I will cross you out; was it?

A. She was just learning how to work electronic mail, it might have been an exercise for her, I am not sure. We just put it in the file.

Q. Well, you didn't answer my question; was the first word of my electronic mail the following: "if you do not want to read it --

THE CROWN:

This is cross-examination, my Lord.

MR. FABRIKANT:

-- then, please, let me know and I will delete it, your name from my list; was it or wasn't it in my mail?

A. I don't remember. It may well have been.

Q. Okay. Then, if it was there --

THE COURT:

The witness said she does not remember. So, the next question would be a hypothesis.

MR. FABRIKANT:

Let's refresh -- let us refresh witness' memory. I believe you have some of my electronic mail. Do you have it with you, Mr. Lecours, say, letter 2?

THE CROWN:

Not with me, no. Not with me.

MR. FABRIKANT:

Q. And what you are saying that your secretary couldn't just send me message "please do not send it to me"?

THE COURT:

Mr. Fabrikant, we are wasting time here. If you have pertinent questions to ask about your electronic mail, ask them. That last question is not pertinent, it will help nobody.

MR. FABRIKANT:

Q. Did you read my electronic mail where allegations were against S... and Sw...

A. It was -- there was so much of it and so many pages that I can't remember what I read and what I did not read. Most of it I did not read.

Q. Okay. The first one, did you read it, the first one?

A. I don't remember.

Q. There again in the same story, I don't remember. Last time I

am applying, here is my argument. The witness remembered perfectly well again everything which concerned the alleged rape. She remembered everything from 12 years ago, she remembered perfectly what she spoke with the lady in question in '92, every detail, everything she remembered perfectly. Anything else, her memories immediately dim. Now, isn't it obvious that memory of the witness is perfect. She remembered the date without looking anywhere. November 1st, November 5th, November 7th, November 14th, November 20th, November 13th, everything she remembers by heart without looking anywhere. Witness has a fantastic memory and she remembers perfectly everything related to alleged rape because this is the agenda of this witness to convey to the jury; everything else she does not remember. Is this witness adverse in a --

THE COURT:

No.

MR. FABRIKANT:

Q. Have you received anything from Mr. Friedman in writing?

A. No.

Q. Do you have any other documents which might be pertinent to the case with you?

THE COURT:

Fishing; you better be specific.

MR. FABRIKANT:

This is not a hide-and-see game we are playing.

THE COURT:

No, but this is your witness and if you wish to refer to any specific document, refer to it.

MR. FABRIKANT:

Of course, it is the witness who 100 per cent on my side.

THE COURT:

You called the witness and you're not going on a fishing expedition to resurrect documents that aren't even detailed or aren't even described at all.

MR. FABRIKANT:

Why is it such a different say for T... I have seen her file completely, here I cannot see. Could you explain that?

THE COURT:

No.

MR. FABRIKANT:

She is the same member of intervention team.

THE COURT:

No.

MR. FABRIKANT:

No.

Q. Were you aware of the letter which was sent to the police from the University concerning this gun permit stuff?

A. Not until much later.

Q. How much later?

A. After August 24th.

Q. Mr. Friedman never contacted you on the subject of this lady?

A. Which lady?

Q. Well, lady student who claimed to be raped?

A. On the one occasion we've already discussed.

Q. Yes, but after that?

A. No.

Q. Did this student contact you on any occasion, say, after '82?

THE COURT:

How would that possibly relate to the area of examination that I permitted you in so far as it related to the events of '92?

MR. FABRIKANT:

I am just checking whether she has additional agenda to say that, yes, I contacted her in '85 and I threatened to kill her or anything like that.

THE COURT:

I think you're doing what I just told you you couldn't do, so the question is disallowed. And if you wonder why, it may be the fact that we are now in witness number 53 and going on and on and on and on.

MR. FABRIKANT:

Well, aren't we learning very interesting things?

THE COURT:

I don't know, I really don't know Mr. Fabrikant.

MR. FABRIKANT:

Well, I think we are. There are so many interesting things, I had no idea existed.

THE COURT:

Have you any further questions?

MR. FABRIKANT:

Even for that alone if this trial should (inaudible) make sense. What?

THE COURT:

Have you any further questions for the witness?

MR. FABRIKANT:

You just don't allow me time.

THE COURT:

Fine. Are you finished?

MR. FABRIKANT:

Yes.

THE COURT:

Good.

THE CROWN:

I have no questions.

THE COURT:

Thank you. Thank you, Mrs. Belson.

AND THE WITNESS SAYS NO MORE.

MR. FABRIKANT:

Mr. B... there are no external witnesses today?

THE COURT:

Have you -- this is an indication that there are no witnesses or what?

THE CROWN:

No, no, Mr. Friedman, I believe, is out. He was asking me whether there were some witnesses from outside the university.

APPEARED:

SUONG HOA,
Professor, Concordia University
born: March 20, 1948

WHO, having been solemnly
affirmed, doth, depose and say as follows:

EXAMINED BY MR. FABRIKANT:

Q. What is your position now in the university?

A. I'm a professor.

Q. You are a full professor since what year?

A. Since 1986.

Q. When have you started your work at Concordia?

A. In 1977.

Q. You started your work as what? What was your position then?

A. Assistant professor.

Q. When you got promoted to as associate professor?

A. In 1981.

Q. How long did it take you to get full professor?

A. From 1981 to 1986; five years.

Q. What is the usual time between associate and full professor?

A. It varies. I think that there are people that have five years, six years, seven years.

Q. I mean, according to collective agreement, the normal is what?

A. I think that you can apply to be a full professor after seven years.

Q. So, your promotion was early promotion?

A. Yes.

Q. Now, how many papers you have published allegedly (inaudible)

A. Two general papers.

Q. What was your scientific contribution to those papers?

THE COURT:

Excuse me; your answer was there are what?

THE WITNESS:

Two general papers, two.

THE COURT:

Two?

THE WITNESS:

Two general papers, yes. I'm sorry, your question again?

MR. FABRIKANT:

Q. What was your scientific contribution to those papers?

A. When you first came to Concordia at night in '79 you came to me and asked for a problem to look on. So I defined the problem for you in the area of composites. So, you worked on the problem, you came to discuss with me very often, once every other week. So, my contribution to the two papers is that I defined the problem for you to work on. I also had discussions with you regularly.

Q. Could you specify what was your contribution?

THE CROWN:

He got his answer, my Lord.

THE COURT:

He got his answer and I'm not sure I understand what the pertinence of all of this is in any event.

MR. FABRIKANT:

Okay; let me explain to you the pertinence. The pertinence is that, yes, the first problem at least holds the problem. He didn't know how to solve it but (inaudible).

Second paper, you never posed the problem, I never discussed it with him, he doesn't understand the verb there. Now, he used me as others did after these two articles, S... decided that I'm too valuable and decided if he will be the sole slave owner. So, Hoa was out from that moment on.

Now, the pertinence is that all their activity after that was coloured by their fear that I might get public with the fact that neither he is, nor S..., nor anybody else's contribution to this work ever existed and this effectively is the coroner's stone of all the behaviour after that. This is the rule of the whole thing.

A. When you first came in December --

THE COURT:

Just a moment, just a moment.

MR. FABRIKANT:

So, unless and until I am given the opportunity to show that, indeed, their contribution was zero, then it will be difficult

to conduct the whole defence.

THE COURT:

Mr. Lecours?

THE CROWN:

I think we can allow a few questions, but I don't think we should spend -- we know by now that Mr. Fabrikant published 63 articles or something like that and I don't think we should spend one month on each article, evaluating every equation and wondering whether the witnesses know about these equations and things like that or bringing other experts like professor Antipa or everybody else, I don't know, to decide this should come from this person and this might come from this other person.

I think it's fair to allow a few questions to the witness and, eventually, Fabrikant said he will testify. He will be allowed to explain it to make his point, but I don't think we should sit for months on this viewpoint, my Lord.

THE COURT:

I raise the question now to prevent -- from a preventive point of view.

THE CROWN:

No, but I understand that we easily could be sidetracked for a very, very long time.

MR. FABRIKANT:

May I respond to that?

THE COURT:

Yes.

MR. FABRIKANT:

If Mr. Lecours, at least, wants to look at my list of publications, he would have notice that out of 60, we have only about 16 prior articles plus I am not counting conference presentations and I am prepared not to go into them, but as far as a article is concerned, you could have noticed that the majority of them, it is my sole authorship. It's only my name there. So, if you manage to know that, Mr. Lecours, by now at least, you would have realized that what we are talking about is about 16 articles. It's not 63.

THE COURT:

Has Mr. Lecours been spending his evenings reading your articles?

MR. FABRIKANT:

No, but at least he might have seen my curriculum vitae and to say just a list of publications, I think that in a matter of this nature, prosecutor should be aware at least of the list of publications. Well, maybe I'm wrong.

THE COURT:

Anyway, continue for the minute, but I don't want this to degenerate into a slinging fest as to who authored what on what, in what year and who contributed what and who contributed 10 per cent or 15 per cent or three per cent or zero per cent. Let's see where we go for the minute.

MR. FABRIKANT:

All right. Now, I would like the witness to take a look at this article.

THE CROWN:

That's what I expected, my Lord, to go through every single article phrase by phrase, sentence by sentence, equation by equation. I think we should set limits right away.

MR. FABRIKANT:

(inaudible) all right.

THE COURT:

Well, I raised the question of pertinence because I thought I saw this coming.

MR. FABRIKANT:

Be patient. I am not going into equation. I understand that people here are not that proficient in equations, so give me a little bit credit.

Q. Would you, please, take a look at this article?

THE COURT:

All right; before you do, let us be very clear about one thing. I will let you ask you questions for the minute because I am effectively flying blind. I don't know where you're going for sure and I don't know what you plan to do. So, the latitude that I give you at the moment, please don't throw it back at me this afternoon or next week or whenever and say to me that, I was allowed to do it with Hoa on question 1, what's the logic in refusing to let me do it now, because we are not going to get into a lengthy debate over who authored what at Concordia or who was S... slave or who was whatever, as you chose to put it.

THE CROWN:

For instant, my Lord, I think what I had in mind, the last answer could easily be the end of it. He said, I did not write it, I define the matter and I had discussions with you. If we go into what was discussed in t his meeting and which date and what did you understand and everything, after that it looks like cross-examination beginning and challenging the witness and nailing down the witness and everything. It's his own witness, he brings the witness, he gets one answer, next subject. That's what I propose to you.

THE COURT:

That's what I would have hoped for, but of course, experience has taught me that that's not so.

MR. FABRIKANT:

Why is the Crown so scared that I establish that authorship of papers was mine. After all, may I submit that Crown's position has always been that who is the author is irrelevant. In the first place, four people are dead and no matter who is the author, this is what we are here to discuss. Wasn't it the position of the Crown, right?

THE CROWN:My position, my Lord, is whether or not there is fraud at Concordia, whether or not the accused believes there is fraud -- and I think he believes there is fraud -- it's totally irrelevant. That does not justify for murder. What i am concerned, my Lord, let's put it very clearly. The Crown always said it has nothing to hide in this case. In my mind, nothing can damage the case, but I'm very concerned with the waste of time for everybody involved. That's my viewpoint and when I object, it's not because I have something to hide; it's because I don't want us to sit here forever and waste our time and our taxpayers' money.

THE COURT:

That was exactly what prompted my own intervention a few moments ago.

MR. FABRIKANT:

May I ask the question or even two. If Crown is concerned with Court time, maybe if he would stop interrupting me when I am asking --

THE COURT:

We've heard that. We've heard that argument before.

MR. FABRIKANT:

-- and second -- and second, I am finished here, if Crown is

so concerned with taxpayers' money, we spend thousand dollars for mister -- what is his name -- every single day for passing me documents here and back, here and back.

THE COURT:

Have you had a raise, Mr. Beland?

MR. FABRIKANT:

If this is not an outrage of spending taxpayers' money, what is an outrage. At the same time, I cannot get Legal Aid to pay for the expert. By the way, I would like this to be discussed today because we need to -- well, three minutes I left, so maybe we allow --

THE COURT:

No, now is not the time.

MR. FABRIKANT:

Well, I want to discuss it in presence of jury, in any case, it's important.

THE COURT:

No; questions involving that sort of administration in so far as you wish to put them to me, I won't bother the jury with that.

MR. FABRIKANT:

Well, it is important.

THE COURT:

They have no need to hear it and --

MR. FABRIKANT:

Jury needs to hear that I cannot get expert to check the authenticity --

THE COURT:

You have a tremendous facility for jumping from one subject to another. We were on the question of pertinence, it's 27 minutes past 12, I am going to adjourn for lunch and we will resume at 2:15. I will let you go for a time along the lines that you propose, but I think that you should, during the luncheon adjournment, give some thought to how you can circumscribe your questions for professor Hoa and indeed for others, so as to without going into the menu tie of these various publications and reems of paper and batteries of differential equations or whatever the hell they are that you have in your hand, that you should at least try to reduce this to something short and comprehensible.

MR. FABRIKANT:

Don't you worry for that.

THE COURT:

We will adjourn, ladies and gentlemen.

JURY IS RETIRING

--- Suspension

--- Upon resuming

IN PRESENCE OF THE JURY

MR. FABRIKANT:

Now, if the person who I allegedly raped, I find her and get her to testify, if she doesn't exist, of course -- would I be allowed to ask her if she has history of mental illness because I want to go to bottom of this?

THE COURT:

I am not going to get into hypothetical discussions with you.

MR. FABRIKANT:

No, it's not a hypothetical at all.

THE COURT:

I cannot see -- I cannot see how the testimony of that person would, in any way, be pertinent.

MR. FABRIKANT:

Well, let me -- am I allowed to explain how it is pertinent?

THE COURT:

No, you are not. You will continue your examination of professor Hoa.

SUONG HOA

UNDER THE SAME OATH

MR. FABRIKANT:

Q. So, we finished at me showing professor Hoa the first article. Thank you.

THE CROWN:

Can I see it?

MR. FABRIKANT:

Oh yes, it is very important for you to see it. Do you understand at least title?

THE CROWN:

You might be surprised.

MR. FABRIKANT:

Surprise is not the right word. If you do, I will (inaudible) you.

THE COURT:

Listen; would you, please, cut out. This is not -- this is not a forum for chit chat back and forth.

MR. FABRIKANT:

Sorry. I just wish to assure that I will not go into anything if in detail.

Q. Do you recognize this article?

A. Yes.

Q. How do you justify you being co-author there?

A. I defined the problem for you. You came to discuss with me once every other week. I also went over the manuscript with you.

Q. Now, in terms of defining problem, wasn't this problem already defined in paper by S...?

A. But the problem be the application of the technique into the area composite. That was the area I was working on and you came and asked for the problem. I said I want to work in the area of composite. So, this case, you used the technique that L... had used to apply to this kind of problem.

Q. You didn't answer my question; was this particular problem defined in paper of Soviet author which was published many years ago and which you showed to me? Was it or wasn't it?

A. This case here, I had a problem concerning the area of composite. So, this case then, I want to have a solution. You came around, asked me for a problem to work on. I said, I have this problem at this case here and if you are interested to work on it, you can work on it. So, that was a problem that I propose I define for you.

Q. Was it the same problem which was already defined You are not answering my question. Was it or wasn't it?

A. In this case here, I was not aware. In this case, you claimed that you know the other solutions that are there, but I had a problem concerning the area of composite concerning the (inaudible).

Q. Could you, please, read the title? Just read the title of the paper?

A. On the approximate solution of singular (inaudible).

Q. Is there a word of composite in the title?

THE CROWN:

This is all cross-examination, my Lord.

MR. FABRIKANT:

A single word there?

THE COURT:

It is all cross-examination and it's advancing us not a whit.

MR. FABRIKANT:

It's advancing us tremendously. You see the witness is sinking. One doesn't have to be a scientist to understand that he is sinking. When person didn't contribute anything, it's very easy to show it, believe me, even to anyone who is not even a scientist because he doesn't understand the word in this paper.

THE COURT:

And what is the pertinence of that?

MR. FABRIKANT:

I have already explained the pertinence of that. The pertinence of that because this was the cornerstone, the route from where the whole thing grown up. This is the route of all that. This is, if you can see the (inaudible) at Concordia is fruit of a tree, this is its routes. This is where it started and sure thing where it ended. This is the beginning of the

whole thing.

THE COURT:

The objection was based on the fact that you were cross-examining the witness. Continue for the moment and, please, refrain from cross-examining the witness. Continue for the moment and, please, refrain from cross-examining the witness.

THE CROWN:

He just admitted that he brought the witness to nail him; that's not the purpose of brining a witness.

THE COURT:

Of course it's not; it's to establish certain facts.

MR. FABRIKANT:

I am not -- okay, let me establish one thing.

THE COURT:

I know.

MR. FABRIKANT:

I did not bring witness to nail him. I brought the witness in naive belief that witness will come and tell the truth and it is not my fault if witness doesn't. I bring every witness in firm assurance that he comes here as honest person to tell what really happened, that's all. When I do not hear that, well -- in this case I have to ask additional questions.

THE COURT:

Continue for the moment.

MR. FABRIKANT:

Should we believe him on his naiveness?

THE COURT:

Whether we do or whether we don't is neither here not there for the moment.

MR. FABRIKANT:

But that was good. Now, I appreciate when it is good, it is good.

Q. So, I still didn't get the question: was the problem as it is formulated in article of S... exactly the same? Was it or wasn't it?

A. In this case, you have to find the problem, in this case you mentioned that word "composite" many times in the article and that was there because, okay, in the area of mathematics you defined your extract thing, the mathematical problem, form of practical applications, okay. This case here, we are working in department of engineering and you are a mathematician. You come in, say this case, you come and ask me, we work together. It is a particular problem. You have a background of mathematics, I have a background of engineering. So in this case here, I took into the practical applications of that, you look into the mathematical aspect of that. So, that's where the contribution I come here is defined where the applications are.

Q. I repeat once again: was it or wasn't it in the article of S... all the definition of the problem? Just answer simply, yes it was, no it wasn't.

A. I don't know. In this case here, that is a mathematical problem, I did not know. I had a problem concerning the practical applications.

Q. Did you or didn't you see the paper by S... at that time?

A. No.

Q. I didn't show it to you?

A. No.

Q. So, did you or didn't you know when you posed the problem, as soon as you posed it, did you or didn't you know at that time how to solve it?

A. At that time, no, I did not know how to solve that.

Q. So, you just posed a problem which you didn't know how to solve, now. Do you admit that I was the one who solved it?

A. You did not solve the problem. You rephrased it differently to (inaudible) mathematical background. So, this case, even the reason that came out later exactly solved my problem yet, even though I was trying to address the problem.

Q. And you are not answering my question. The way you formulated the problem was I who solved it?

A. You were working out on some approximate -- some aspect of the solution but you did not solve that completely.

Q. Are you saying that what you formulated was different from that which S... formulated?

A. I'm sorry?

Q. The way you formulated problem, did I solve it or I didn't solve it?

A. You were trying to solve it, but you did not. You come with some aspect of that, but you did not complete the solution.

Q. Do you remember how you formulated the problem?

A. I have said before, I work in composite materials, you have a fiber inside the (inaudible). In this case here, (inaudible) distribution in the case for the fiber is being loaded, so that was a problem that I defined.

Q. But that was not the problem which you defined to me at that time; right?

THE CROWN:

This is cross-examination. If they don't agree, Fabrikant will testify and (inaudible).

THE COURT:

You're absolutely right.

MR. FABRIKANT:

Let me put it differently, now.

THE COURT:

Objection maintained.

MR. FABRIKANT:

Q. I'm going away from it, all right. What makes you think that my background is mathematical? Did you know that I was graduating as engineer rather than mathematician?

A. When you came, you mentioned to me that you have background in mathematical. I took your word for it.

Q. Well, did I tell you what university I -- and what's my (inaudible) graduate education? Did I tell you that?

A. No.

Q. No. You never asked me?

A. When you mentioned that you had background in mathematics, I would like to -- I didn't want to go further.

Q. And I never mentioned that I was engineer in the first place?

A. When we have this one here, the problem that I had needed to have somebody with some good mathematical background to solve it.

Q. Would you, please, just listen to my question and answer the question?

THE CROWN:
He got his answer, my Lord.

THE COURT:
Yes, he did.

MR. FABRIKANT:
Well, my question was: did he or didn't he know that I was engineer and instead he answered something else and you say that he did. Well, here we are. Should I consider that he did answer this question? It's fine with me.

THE CROWN:
He answered, you told me your background is in mathematics; that's the answer.

THE COURT:
This was his answer.

MR. FABRIKANT:
All right.

Q. Did you or didn't you personally have any publication of -- relevant to the title of this particular paper?

A. No.

Q. No. Did you or didn't you, after those two papers were published, publish anything at all in similar field?

A. In composite, yes.

Q. No, not in composite; look at the title, please, "approximate solution of singular integral equations"; do you have anything in this field?

A. This title here relates to the composite problem. The composite -- this one here is the only one part of the composite problem. It's a mathematical description of a phenomenon and in the phenomenon you have to do many things, one of that is mathematics.

Q. Isn't mathematics exactly the field which you know very little about?

A. No.

Q. No. Okay; did you or didn't you do anything on methods of solution of singular integral equations?

A. No.

Q. So, neither before nor after me you published anything in this particular field?

A. That's not correct. I said I --

Q. Name any field --

A. -- published in the area of composite.

Q. Name any papers of yours related to solution of singular integral equations?

A. I mentioned before that the area I work on is composite. In

that one, there are many aspects, one of that is in this case of the mathematical problem.

Q. Let me put it then more simple for you. Is it true that composites as such are mentioned in the article only in the introduction, just two lines, and in the rest of the article, they never mentioned; is that correct?

A. No, that's not correct. You have here in the example.

Q. Well, again, it is a drawing.

A. That's where the applications I mentioned.

Q. But in the main body of the paper?

THE COURT:

Listen; this is nothing but a cross-examination.

MR. FABRIKANT:

Oh yes; you just discovered it now.

THE COURT:

No, I didn't just discover it now.

MR. FABRIKANT:

Just give me your miracle gift to define this is cross-examination. If I knew that, believe me, I wouldn't go into there. Just, I am not that, you know, dumb; explain it to me where does a normal question finish and cross-examination starts and I will try to avoid it. How about that?

THE COURT:

You can ask direct questions without suggesting the answer to the witness and live with the answers. That is what you can do.

MR. FABRIKANT:

Suggesting answers means leading --

THE COURT:

That's right.

MR. FABRIKANT:

-- not cross-examination. Leading has nothing to do with cross-examination.

THE COURT:

Oh yes, it does, oh yes, it does.

MR. FABRIKANT:

Oh no, oh no; leading --

THE COURT:

The leading question is frequently the mother of cross-examination.

MR. FABRIKANT:

Maybe it might be mother plus father, brother, grand-father, but --

THE COURT:

Anyway, I am not going to argue with you about it. I am telling you that this whole line of questioning of doctor Hoa thus far has headed up to nothing more than cross-examination and you're not allowed to do that and I'm stopping you.

MR. FABRIKANT:

Q. Did you or didn't you -- now, look at the second paper. Do you recognize the second paper?

A. Yes, yes.

Q. Did you formulate problem there too?

A. The two papers are coming from the same work.

Q. Did you or didn't you?

A. Yes, I did.

Q. Try to trigger your memory. Weren't you surprised when I brought you a second paper and you were wondering what the whole thing is all about?

A. No.

Q. It was not like this; fine. Usually, at the end of the paper

there is a list of references; correct?

A. Yes.

Q. Could you explain to the jury what is this thing "list of references"?

A. What do you mean by this?

Q. Well, what is it, if people never publish scientific papers, they might not know what it is. So, would you kindly explain what is this list, what is the meaning of this, why it is there, what it is meaning and so on? What do you know about a list of references? I believe you do know what it is.

A. A piece of paper that you refer to. I mean, you look at them and if you extract a few things from them, you can do that.

Q. I don't think anyone understood anything. Could you explain it in a popular manner what a list of references is.

A. Like I've said, these are things that you look at when you do the work and you see whether something you can extrapolate and you use it.

Q. I need to ask a leading question. Would it be better to formulate that list of references is --

THE CROWN:

He got his answer, my Lord.

MR. FABRIKANT:

He didn't.

THE COURT:

You are correct, he did.

MR. FABRIKANT:

He answered in such a way that nobody could -- even I --

THE CROWN:

Maybe the questioner is not happy with it, but that's the questioner's problem.

THE COURT:

Even you didn't understand; I see and, of course, if you don't understand the answer none of us do. The objection is maintained.

MR. FABRIKANT:

But still, I didn't ask my question yet.

THE COURT:

The objection is maintained.

MR. FABRIKANT:

The objection to waht? I need to explain.

THE COURT:

To the leading question that you started to formulate when the Crown prosecutor objected.

MR. FABRIKANT:

Well, he didn't hear the question yet.

THE COURT:

The question has been answered.

THE CROWN:

It was already a leading question, my Lord.

THE COURT:

You will not -- yes, it was.

MR. FABRIKANT:

Well, leading question, I repeat once again, objection to leading question is frivolous and vexacious, look at McWilliams, please:

"Objection

to leading question is frivolous and vexacious and neither party should do that, unless their case is in jeopardy."

Did you read this in McWilliams?

THE COURT:

Yes, I read it and that's not at all what McWilliams has said.

MR. FABRIKANT:

Okay; let's read it again if this is not it.

THE COURT:

Would you -- we will continue with this; don't lecture me on McWilliams.

MR. FABRIKANT:

Well, it's too bad that I have.

Q. All right. Would it be -- okay -- at the end of the paper, the author usually puts the least of other scientific works which he used in creating this particular work; is that correct?

A. That's why you have the list of references.

Q. So, this is what effectively a list of references is. It is the list of other scientific works which we used in creating this particular new piece of work; correct?

A. Yes.

Q. And this list is an indication of how other work, work of other scientists influenced you as author of this particular work; is that correct?

A. Yes.

Q. All right. Now, is there, in the list of references any mentioning of any of your previous work?

A. No.

Q. No. Does this mean that this particular article has absolutely no relation to what you did before?

A. No.

Q. It is not an indication?

A. No.

Q. Well, why then, there is no mentioning of your previous work if it has influenced this particular work?

A. If you started something new when you don't have the background before that to refer to.

Q. Okay. So, you -- that's exactly the point I am trying to make. So, in your previous work, there was nothing to refer to when writing this article; correct?

A. Yes, in terms of reference, that was not referred to, that's right, yes.

Q. So, there was nothing to refer to. This is why there is none?

A. Not in the article -- not in the reference, but in the article, the definition of the problem or resolution of the problem is there.

Q. That's what I'm saying. So, there was nothing, so in your previous work there was absolutely nothing to refer to when writing this particular paper?

A. Not in the reference, but in the body of the work, it's (inaudible) there.

Q. I don't -- could you speak more distinctly and maybe use a microphone?

A. Like I have said before, it's not referred to in the references, but in the body of the work, this is formulated the way how the problem is defined.

Q. This is not my question. I'm asking in your previous work, in what you already published by the time this -- excuse me -- this work was to be written. Was there anything at all to which it can be referred to?

A. It is referred to in the formulation of the problem, not in the references but the way it is formulated.

Q. I put it differently. Could you name any of your previous

publications which should have been in reference then?

A. You're talking about these figures again. You have a figure on this paper. There is a figure showing the circle, you have a fiber inside the (inaudible) there. So, that's where the composite thing comes in all right.

Q. You don't even know in what article it is.

A. No, because there is two here altogether. So, this paper here is January 13th 1981. This one here is January 26th 1991, only within 13 days apart.

Q. Well, this is --

A. You came in December 1979, we worked together until 1980.

Q. (inaudible)

A. I put the paper in 1981.

Q. The date has nothing to do and you don't know what is in what article. Could you, please, find this picture?

A. (inaudible). This one here.

Q. All right. Can I circulate this figure?

THE CROWN:

Well, that's what I worried.

MR. FABRIKANT:

The figure is still fantastic --

THE COURT:

This is what I was worried would happen.

MR. FABRIKANT:

-- that it deserves to be circulated. It won't take time.

THE CROWN:

Moreover, all this is cross-examination and cross-examination is when a party challenges his own witness.

MR. FABRIKANT:

Party can challenge its own witness; read McWilliams, please. I would like to circulate it to the jury. It is just a circle, I want jury to see, it's just a circle, there is nothing there.

THE COURT:

Listen; there is no way anybody can put, unless they have particular technical training and appreciation on this sort of technical work and judge from that as to whether --

MR. FABRIKANT:

Just take a look at it.

THE COURT:

-- doctor Hoa made any contribution to what that circle comprises or what it means or what it has meant to depict.

This is -- this is helping no one.

MR. FABRIKANT:

Well, I ask this circle to be circulated, it is so elementary, it's so obviously nothing scientific that one doesn't have to be a scientist to understand that there is nothing there. So, can I circulate it?

THE COURT:

No.

MR. FABRIKANT:

No. Can I have it back, this article.

Q. Now, this is if you could see what it is. Circle inside another circle. This is scientific contribution of doctor Hoa.

THE COURT:

Are you making a -- are you testifying?

MR. FABRIKANT:

I am not testifying.

THE CROWN:

He should know by now he is not entitled to make comments and especially in --

THE COURT:

He has been told day in and day out and quite frankly if you do not correct your ways, you will find yourself again in contempt of Court.

MR. FABRIKANT:

- Q. All right. In the second article, could you describe in popular manner what is the difference between first and the second article?
- A. The two of them come from the same work. We did together in 1980 so they were put in two separate parts.
- Q. So, they are not different?
- A. They are different, but they are one half of the other, about the same work.
- Q. What is the difference between them?
- A. The difference is that you have the second one it's more applicable to my problem than the first one. The first one is with more mathematics, the second one is more direct.
- Q. Let me give you a hint. If title of the first one is approximate solution of singular integral equations, the second one, approximate solution of singular integral differential equation, maybe this gives you a hint what is the difference between them?

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Like I said, the difference is that the second one is more applicable. It is more direct of my work. The first one is the beginning to what the second one.

Q. Until now, you do not realize that this is just two different types of problems that traded one integral equation another, integra differential equation. Even in '92 you still don't know the difference?

A. That's not true.

Q. Okay; you do know?

A. Yes.

Q. So, this is the difference between those two articles?

A. I'm sorry, I don't understand your question.

THE COURT:

Listen, you were the subject of an objection moments ago where you were asked to stop cross-examining, i.e. putting in question the integrity of the witness in the box. You persist in doing it again. Now, either it stops and this examination proceeds according to the rules, step by step, or it will be stopped. This is your second warning.

MR. FABRIKANT:

Well, I do note --

THE COURT:

Three strikes, sir, and you are out.

MR. FABRIKANT:

I am not questioning integrity of anyone. It is not my fault that witness puts his integrity in question himself.

THE COURT:

That is a question of your interpretation of his answers. You have called the witness, you live with his answers. If you don't like his answers, you know perfectly well what the solution is.

MR. FABRIKANT:

I do live and I love his answers.

Q. Now, could you explain how it happened that the list of authors of the first paper is Fabrikant or S... The list of authors of the second paper is S... or Fabrikant. Was S... the main driving force behind this article?

A. You are the one that put the names on the paper. It was not me that put the names on that.

Q. So, it was not you who changed the order?

A. That's true.

THE COURT:

You will note the nuance. It has not been established that the order was changed. That is another example of testimony from the fire side done by way of a question and it's totally illegal.

MR. FABRIKANT:

I didn't say anything. I just asked the question.

THE COURT:

Oh no, you didn't. You are within an eighth of a millimeter of seeing this ended.

MR. FABRIKANT:

Q. What was, to the best of your knowledge, contribution of S... to these both two articles?

A. I do not know.

Q. Do you recall we had a conversation in 1988, spring?

A. If we had a conversation, I don't remember correctly what year.

Q. Do you remember, regardless the year, that I asked you a

question, what the contribution of S... was with those papers;
do you recall that?

A. Yes, you did ask the question, yes.

Q. What was your answer in 1988?

A. I don't know whether that's the year, but I don't know.

Q. Well, regardless the year, what was your answer?

A. I don't know what his contribution was.

Q. That's what you've said?

A. I don't remember.

Q. Okay. Would it trigger your memory if I read you your answer
saying that he didn't contribute except for he paid you; do
you recall that?

A. I think it is (inaudible) because I didn't pay you. I don't
think you (inaudible)

Q. Wasn't part of my salary coming from your grant at the time?

A. No.

Q. No; okay. Let me read it then more precisely the conversatin
and maybe that would refresh your memory.

THE CROWN:

There are a lot of steps to read, my Lord.

THE COURT:

Yes, sir.

MR. FABRIKANT:

Well, I am not invoking anything yet. I am just trying to
trigger his memory.

THE COURT:

You may trigger his memory without announcing that you're
triggering his memory from a conversation. Don't shake your
head like that, you know very, very well what I'm saying. We
have been through this before, we were through this with
doctor Mackenzie and we were through this with another
witness. You may ask him the question and you may put the
question, does this bring anything to mind, without making any
illegal reference to what that is.

MR. FABRIKANT:

I sincerely didn't know that I cannot mention this.

THE COURT:

You sincerely did know because it has been explained to you
before.

MR. FABRIKANT:

I am not a lawyer. Anyway, can I continue? Okay.

Q. I asked you:

"I wrote two papers to each, I hope you remember my
contribution was major, you wouldn't deny this; would
you?"

And your responded to this:

"Yes, yes."

And then, I asked you:

"Would you agree that K.S. (that was abbreviation for K.
S...) contribution was zero?"

You answered:

"I wouldn't say that, but --"

And after that, I asked you:

"Okay; could you specify what his contribution was?"

And your answer was:

"He paid you."

(inaudible) and I questioned you once again:

"He paid me?"

And you said:

"Yes."

And after that, I repeated once again, later on --

THE CROWN:

My Lord, we have been through this exercise before. It referred to tapes and when we listened to the tapes these transcripts were not accurate, my Lord.

THE COURT:

That is true. So, that is why I said that if he was in a position from a document in his hand, whatever it may be, to put a question to the witness that might trigger the witness' memory, he could do so.

MR. FABRIKANT:

This is what I do.

THE COURT:

He chose to take that as a green light to read from what purportedly is a transcript. I think what we might do is wait for doctor Hoa's answer.

MR. FABRIKANT:

Sure.

THE CROWN:

From our experience, this is -- we could trick witnesses.

THE COURT:

Well, it may be. We will wait for doctor Hoa's answer and see what he says. That does not reflect what doctor Hoa said; he is quite capable of saying so.

MR. FABRIKANT:

Yes. It sounds kind of prophetic, but when I was asked that question I really didn't mean that kind of Court at that time. I asked doctor Hoa at the timem --

THE COURT:

Listen; would you put a question and stop reading from a transcript because if you're going to read from a transcript, we're going to have to go through a voir dire to see whether that thing reflects what's on the tape.

MR. FABRIKANT:

This is just on --

THE COURT:

No; I'm telling you, stop it.

MR. FABRIKANT:

All right. So, as far as the first part is concerned, do you recall? Now, this triggers your memory better that your response was that he was just paying you?

A. I'm sorry, what is the question again?

Q. Well, the question is again that, do you recall that during that conversation you effectively told me that you know very well that K. S... contribution was zero except that he was paying my salary from the grant?

A. I don't remember what (inaudible) contribution was zero.

Q. All right. Do you recall that later on, I asked you that if you are called to testify and I put your question about papers I have written, what was the contribution of S. S... It sounds quite prophetic. When I was saying this, I never thought that this would really (inaudible) circumstances. And the answer was he did not contribute except for the fact that he paid you and (inaudible). Does this trigger your memory?

A. I think I know that he paid you because like I've said, I didn't pay you. So, that means he must have paid you for the work. Whether he contributed to the paper or not I don't know because I did not discuss with him.

Q. So, you never discussed with him this particular paper?

A. (inaudible)

Q. Okay. Why did you answer then "he did not contribute except for the fact that he paid you"?

A. I don't know whether he (inaudible) because I did not discuss with him. I have only discussed with you.

Q. When three people are allegedly working on an article, is it usually for them to discuss it all three of them?

A. You were to go -- I thought you were the one that goes in-between me and him, so I discussed with you the problem and, I mean, the working of that I felt that I did my part.

Q. If you admit yourself that the paper is mathematical. You are not a mathematician. What makes you feel that your contribution or whatever deserves to be an author?

THE CROWN:
He already answered that.

MR. FABRIKANT:

Q. Why do you feel that you can be put as author of the paper?

THE CROWN:
He already answered that.

THE COURT:
Yes, he did.

THE CROWN:
The proper question was: what was your contribution, why and when and what should it be. We are not concerned with that.

THE COURT:
The question in any event has been answered. He has stated what his contribution was and we did (inaudible) to the practical application.

MR. FABRIKANT:
All right, I think at this stage we need to hear the tape and to see what exactly he answered at that time because definitely there is a contradiction.

THE COURT:
I am not inclined to think we need to hear the tape because I am not inclined to think that any of this is going to be at all helpful.

MR. FABRIKANT:
Well, it is helpful, if you agree with me that it is relevant to establish that these people did not contribute anything to my work, then we have to listen to the conversation because in this type he unequivocally, on two occasions, states quite obviously and from the other text it is also obvious that he was well aware that S... contribution was zero and right now, he is saying something different; that's all.

THE COURT:
He is saying that he didn't discuss the matter with S... that he discussed the matter with you, that it's --

MR. FABRIKANT:
All right; that's a different answer. It's very, very different answer. It is a contradictory answer and we need to find out why.

THE COURT:
We need to find out why.

MR. FABRIKANT:
Well, in 1988 he stated it clearly.

THE COURT:
So what? So what? What will that change?

MR. FABRIKANT:
It will change, we will establish the fact that indeed he knew at that time in '88 and now he is just faking. He knew very well not only he knew that S... contribution was zero to my papers. He knew very well that (inaudible) contribution was here. He knew very well another thing, that he, himself, made such a quick career because he included S... in his papers,

because he -- the majority of his graduate students put S...
into court supervision.

THE COURT:

The whole question is so remote -- it is so remote that I am
not going to go into any listening of a tape. You go on with
your questions for doctor Hoa for the moment.

THE CROWN:

Even that, my Lord, I think you've said this morning that you
don't feel obliged to continue in the same way. By the
experience we got int he last couple of hours, I think the
whole exercise is a total waste of time.

MR. FABRIKANT:

Well, I invoke --

THE COURT:

I do not know whether he has questions to put to this witness
concerning events, I have no idea, concerning events that
occurred in 1989 or --

MR. FABRIKANT:

Of course, I have, but we didn't get to that.

THE COURT:

-- in 1990, 1991. I have heard this witness' name mentioned
as you have throughout the trial, I have no idea. But
certainly this --

THE CROWN:

Because yourself at the beginning of the trial you told the
members of the jury this trial is not the trial of the
university, mechanics of the university ethics or -- and I am
sure waht has to be established could be established through,
if it's pertinent to the state of mind, the state of mind
could be explained by the accused or he already stated he will
explain this.

THE COURT:

The state of mind can only be explained by the accused.

MR. FABRIKANT:

Well, facts leading to state of mind can be --

THE COURT:

We are not going into this. Move on to something else.

MR. FABRIKANT:

Well, I haven't finished. If that witness is in contradiction
(inaudible).

THE COURT:

We are not going into -- we are not going into this. Move on
to something else, it is totally irrelevant.

MR. FABRIKANT:

Who was the author of the papers is irrelevant?

THE COURT:

It is totally irrelevant.

MR. FABRIKANT:

So, from the very beginning, when I explained to you that I am
trying to establish that this is the route of the whole thing,
you agreed with me and now --

THE COURT:

You have new routes of the whole problem every second day, Mr.
Fabrikant.

MR. FABRIKANT:

(inaudible) extremely (inaudible) You have such an
appreciative way (inaudible)

THE COURT:

Now, would you -- if you have other questions to put to him,
would you put them? This is an absolutely fruitless exercise.

MR. FABRIKANT:

Well, I have a recording, I repeat once again, which contradicts the testimony of the witness and I invoke section 9 and I want to hear the tape and then, you rule.

THE COURT:

I'll have to ask you to withdraw at this point.

THE CROWN:

My Lord, I think you already ruled it's irrelevant.

THE COURT:

I'll ask you to withdraw.

THE JURY IS RETIRING

THE COURT:

Now, you bear in mind that even if you establish a contradictory statements (inaudible). A contradictory statement on this point, that does not open the door to cross-examination at large.

MR. FABRIKANT:

Well, at least, I would be able to examine this particular.

THE COURT:

That's the first thing. You may be able to examine on this particular thing. However, there is an overriding question of the pertinence of this to the whole trial. Now, doctor Hoa, if you will take a seat, you will have to come to the stand and establish your method of recording this particular thing and then, we will see. IN THE ABSENCE OF THE JURY

ON VOIR DIRE

VALERY FABRIKANT,

born: January 28, 1940

WHO, having been solemnly affirmed, doth, depose and say as follows:

MR. FABRIKANT:

The tape was recorded in 1988, spring, when the circumstances were that my contract was for renewal and then, director of Concave Centre, S. S... had two meetings with me. At the first meeting, about 40 minutes, he was talking to me how busy he is with his administrative work and just 40 minutes how busy he was with administrative work. And then, he asked me what -- if my contract is renewed, what would be my contribution to his centre. He considered the research centre his property.

I responded to him that I have published about 30 papers just in two years, which is a remarkable contribution and I will continue in the same way and he was clearly not satisfied with that and it's admitted we will have another conversation and from that moment on it was clear to me that it is attempt of extortion, that he wants to be included in papers too, which I never did.

And I decided that to protect myself I needed to record the conversation and next conversation with S. S... he told me that he has decided that he will give me one more year extension after which the position will be terminated, with no explanation as to why, what, nothing. While that was clear indication that unless I start including him in my scientific articles, I will lose my job.

So, I decided that I needed some help, so I start talking to other members of the department, the so-called senior members. I spoke to McQuinn at the time and all of them knew that I

always included his brother in many papers of mine, but nobody wanted to intervene in any way. I was telling them very simple thing, that I have included S... in (inaudible) publications. Some people don't do that much in their lifetime and I was telling them that that is enough. You cannot exploit somebody to infinity, that each person have the right to have his own life. They robbed me for a while and that's enough and I didn't get any support. McQuinn started staturing, he looked so frightened that it was clear to me I won't get any help from him.

Then, I went to L... who was a member of D.P.C. and I told him the story that as long as I was including S... in my papers, everything was fine and my contract was renewed. As soon as I stopped doing that, they want to have me fired. And L... again looks also scared and he also asked me, what does Chairman think about it. So, it was clear to me that he wouldn't be of any help either and in this situation, I had no choice but to engage in conversation with Hoa and to record it. Of course, I never thought that I would need this recording in these circumstances and during this recording I mentioned about my possibility to go in court in case they do not stop the harassment. Of course, I thought another court, but it came down that it becomes relevant in criminal court. That's about it.

THE COURT:

And the tape was recorded how? The same way as the last one or what?

MR. FABRIKANT:

Yes. It was recorded the same way as the last one.

THE COURT:

With a mini-cassette taped in your inside pocket and you turned it on and engaged Hoa's conversation?

MR. FABRIKANT:

Yes.

THE COURT:

And where is the tape being since?

MR. FABRIKANT:

In my apartment.

THE COURT:

The tape has been in your possession the whole time since 1988?

MR. FABRIKANT:

Yes.

THE COURT:

Has this ever been out of your possession?

MR. FABRIKANT:

No.

THE COURT:

Has the tape been transcribed?

MR. FABRIKANT:

Well, it was transcribed, but it was transcribed in such a way that some may be unnecessary words might (inaudible), some places which were inaudible, they were not definitely transcribed, but the phrases I referred to, it doesn't make tape inadmissible. The phrases which I refer to on tape are quite clear, they are audible, so this particular parts of the tape which I referred to, they can be heard with no doubt whatsoever and they are transcribed also correctly.

THE COURT:

Let's see the transcription and let's hear the tape.

MR. FABRIKANT:

My understanding is that this particular tape was also transferred to a big cassette; was it?

THE CROWN:

I don't know which one you refer to. If it's one that you kept in your possession all along, I certainly didn't have it; did I?

MR. FABRIKANT:

No; the one which was submitted to the Civil Court it contains also conversation with Hoa and you said that you transmitted it to a big tape as well.

THE CROWN:

I have one that I've (inaudible).

MR. FABRIKANT:

Well, it is there if it is -- I don't know if quality there is any --

THE COURT:

Look, if you were planning on using this tape, I presume you've got the tape; now explain.

MR. FABRIKANT:

Yes, I have the tape, but it is in micro-cassette, so whichever equipment is available, we can hear.

THE COURT:

I do not suppose the equipment is in the court-room at the moment; is it?

THE CROWN:

I don't think so, but I could get it in about five minutes, my Lord.

THE COURT:

We will adjourn until we've got the equipment in the court-room and if you have the transcript of this, if you would hand it to the Clerk, we can have copies made of the transcript for myself and for counsel and we will see.

THE CROWN:

And for doctor Hoa as well as he is probably the best person to decide whether it's --

THE COURT:

And for doctor Hoa so that he can follow it along.

--- Suspension

--- Upon resuming

THE CROWN:

When a tape is used as real evidence, the tape is the evidence and the transcript is a tool, but when it's used as a purpose for cross-examination, if it's more or less a declaration reduced to writing. So, this is the reduced to writing. If it's inaccurate, I am sorry, but we cannot work with that.

THE COURT:

Let's see.

THE CROWN:

And, second, my Lord, I don't know if I understood you well a few minutes ago. I was under the impression that you ruled that we won't waste our time with the tape.

THE COURT:

In the face of a formal application under the section and in the face of the fact that it may affect the question of credibility, I thought that I would hear it.

MR. FABRIKANT:

So, I would like just to respond that the part which is important is, correct it may be considered reduced to writing. I do not claim that every, you know, single small word is

there, but I do claim that the part which is important.

THE COURT:

Which is the part that is important; what page is it on?

MR. FABRIKANT:

The part which is important is the one on page 2 up at the top of the page.

THE COURT:

It starts at the top of the page.

MR. FABRIKANT:

Well, you may start at top or a little bit after that, when I say "would you agree that ... contribution was zero", from that place, for example and I would say: "I would not say that part. Okay, could you specify what his contribution was or how he paid you". "Frabrikant: he paid me for it, yes."

THE CROWN:

My Lord, if this is an accurate transcript, I see no contradiction.

MR. FABRIKANT:

Well, let us say --

THE CROWN:

He tried to put in the mouth of the witness that he's said the contribution was zero. Even in the transcript it didn't say so.

MR. FABRIKANT:

Okay; let us read the second part then.

THE COURT:

Is that part there, okay, that starts "do you remember when I came here"; are we on page 2 now, okay?

MR. FABRIKANT:

Yes.

THE COURT:

Right. I am putting on my copy an X there and that goes to -- down to the word "yes".

MR. FABRIKANT:

And on the third page somewhere in the upper part of the page, after "oh, sorry, what do you mean?"

THE COURT:

Yes.

MR. FABRIKANT:

And this is Fabrikant: "I mean if you are called to testify and I put you a question about the papers, everything, what was the contribution of this". "Hoa: he did not contribute". You couldn't say clearer than that.

THE CROWN:

Well, it's not fair. We accept for a fact that he paid you.

MR. FABRIKANT:

Well, yes.

THE CROWN:

and what he has said today is "I know he paid you."

MR. FABRIKANT:

But he said that he --

THE CROWN:

And I don't know --

THE COURT:

He said what was his contribution and he said today he didn't know and he went further. He said, he didn't know because he considered that Fabrikant was the intermediary and he dealt with Fabrikant and he presumed that Fabrikant had dealt with T.S. That was the teneur of his testimony this afternoon.

MR. FABRIKANT:

Yes, but that time he stated quite clear, he did not

contribute, except for the fact that he paid you. It means that scientific contribution, there was nothing there because payment of money is not a scientific contribution. Well, unless Crown would argue that it is.

THE COURT:

Okay; so, we go then from "sorry, what do you mean".

MR. FABRIKANT:

Well, sorry is not necessary.

THE COURT:

Pardon?

MR. FABRIKANT:

Sorry is not necessary, just "Fabrikant: I mean -- "

THE CROWN:

Fabrikant has nothing to do, my Lord. Fabrikant is registering a person and it's tricking some person.

THE COURT:

I know that, yes.

THE CROWN:

What he says has no bearing. We're only interested in what the witness said.

THE COURT:

It what Hoa says.

MR. FABRIKANT:

All right, but we need to know what was questioned to which Hoa responded. This is why I say "Fabrikant". I mean you --

THE CROWN:

To be fair, the two portions should be included. Page 2 is relevant, page 2 is consistent with what he said today.

THE COURT:

Page 2 is, yes. Well, it is and it isn't. Read down at the end.

MR. FABRIKANT:

Let's go to page 2.

THE COURT:

"This is exactly what I am saying, he paid me." Now, and here I know what you mean, but Hoa says yes, his contribution" that is all, and that was all his contribution, that is all."

"Hoa: yes."

THE CROWN:

Where is it?

THE COURT:

Page 2.

MR. FABRIKANT:

Well, right after that.

THE COURT:

Just a second.

THE CROWN:

Okay, okay, I see it.

THE COURT:

Anyway, let's see if the tape reflects that.

THE CROWN:

Fabrikant is very suggestive also when he is tricking people, you know.

THE COURT:

He can be as suggestive as he likes when he is tricking people, but what I'm looking at is what you've said, what did Hoa say and there is says -- so, the transcript says "Hoa said yes". So, we'll see.

MR. FABRIKANT:

May I remark to Mr. Lecours that at that time I was not in court, there was no judge to rule on my questions.

THE COURT:

Why don't you just say that. Now, shall we listen to this or can someone wind this to the proper place because I --

MR. FABRIKANT:

I wanted to do it before, but they didn't let me. It would have saved the time.

THE CROWN:

I wonder if we have -- if we should listen to the whole thing because if we have to start this every ten minutes, you know, then it will be

--

THE COURT:

Then, it will be?

THE CROWN:

We could work with the transcript and forget about the tape, if it's accurate.

THE COURT:

Well, if we're going to listen to the whole thing, I might as well send the jury away.

MR. FABRIKANT:

The meaning is accurate, the meaning.

THE CROWN:

I would be surprised to see --

MR. FABRIKANT:

It is -- let me put it this way, it is.

THE CROWN:

-- it would be interesting to see if it's accurate or not because the first one was not accurate.

THE COURT:

Would you play it from the beginning?

MR. FABRIKANT:

I think it is as accurate as (inaudible)

THE COURT:

Doctor Fabrikant, play it from the beginning.

MR. FABRIKANT:

We have two conversations so I have to find first where it is.

It would be nice if I could have --

ECOUTE DE BOBINE

THE CROWN:

Why don't we start from the beginning?

THE COURT:

That's what I'm waiting for.

THE CROWN:

Pardon?

THE COURT:

That's what I'm waiting for.

THE CROWN:

But he started instead of the --

MR. FABRIKANT:

I'm just searching. I didn't know that the incident had started at that place. You think I am so tricky that on a blind tape can find the proper place.

THE COURT:

Just go to the beginning if you can find it.

MR. FABRIKANT:

I'm just searching. My understanding is that there are two conversations on the same side, so -- and since I do not have in jail any equipment.

ECOUTE DE BOBINE

MR. FABRIKANT:

I am at this place; do you want (inaudible) with that?

THE COURT:

The Crown prosecutor asked for the beginning of the conversation.

MR. FABRIKANT:

The beginning?

ECOUTE DE BOBINE

THE COURT:

Sorry; Mr. Fabrikant, would you stop that and run it back? If you can just go back two lines.

ECOUTE DE BOBINE

THE CROWN:

Well, it's not perfectly accurate.

THE COURT:

But it's not bad.

THE CROWN:

It's not that bad.

MR. FABRIKANT:

The main stock is there and it is accurate.

THE COURT:

You're right, the main stuff is there.

THE CROWN:

Like when you said "would you agree that ... contribution was zero". I would not say that in the tape it's "no", I would not say that" and to his examination he said to the witness that he said that S... contribution was zero. The "no" is not there.

THE COURT:

The bit I had played over was on the next page. It's printed there "he did not contribute except for the fact that he paid you". I think what I heard when I asked you to replay came to the same thing. I thought I heard "I didn't", but I thought I heard "he didn't contribute except for the fact that he paid you". Because the first time I didn't hear the "not".

MR. FABRIKANT:

But even in this particular case, the previous denial of Hoa it is just he felt himself uneasy, so this is why he said that, but right after that he admitted that the only contribution was that he paid because I again (inaudible). This is exactly what I'm saying, he paid me and that's all what's his contribution, that's all, fini.

THE CROWN:

The most important word, the word "no" is not in the transcript.

MR. FABRIKANT:

Well --

THE CROWN:

Hoa -- in the transcript it's "I would not say that"; on the tape it's "no". I would -- would you agree that T.S... contribution was zero and the answer on the tape is "no, I would not say that" and on the transcript you don't have the word "no", you just have "I will not say that, but --" and the whole sentence, "I would not say that, but he paid you."

MR. FABRIKANT:

Well, what "no" means there, if you wish I can --

THE COURT:

Just a minute, let's not put --

MR. FABRIKANT:

I don't think that I could -- well, if there is "no" there or "not" it doesn't change the phrase because I would not say that, so, the meaning is (inaudible).

THE COURT:

Excuse me; where are you? Page 2?

MR. FABRIKANT:

Now, he is talking about page 2 and there is no there.

THE CROWN:

That was in ... examination.

THE COURT:

Just a second.

THE CROWN:

He said to the witness "didn't you agree before that S... contribution was zero" and on the tape it's written "no, I would not say that."

MR. FABRIKANT:

Well, what difference is it "no, I wouldn't say that" or just "I wouldn't say that"?

THE COURT:

Would you, please, stop arguing with him? I can't function if you're both talking at the same time. Now, what line are you on now?

THE CROWN:

Second page at the beginning.

THE COURT:

At the beginning, okay.

THE CROWN:

He tried to force the witness to admit that when he asked him the question "Would you agree that T. S... contribution was zero", he said "Didn't you admit to me that you said to me that T. S. contribution was zero. And what we read -- what we hear on the tape is exactly the contrary of what he wanted to put in his mouth. The answer to that question, at that time, was "No, I would not say that; he paid you". That's why from the beginning, I'm telling you there is no contribution.

MR. FABRIKANT:

Read just after that. "Of course, he felt uneasy to admit it immediately. There is no contradiction here at all.

ECOUTE DE BOBINE

THE CROWN:

What are you playing now?

MR. FABRIKANT:

I am trying to get this place, if it is important. Is it important whether it is "no, I wouldn't say that" or just "I wouldn't say that". In both cases, it is negative, nobody argues with that.

THE CROWN:

Because we're talking about a contradiction.

THE COURT:

Have you found it?

MR. FABRIKANT:

Well, I can find it, but is there any difference there?

THE COURT:

Yes.

MR. FABRIKANT:

I do not argue that this phrase --

THE COURT:

I would just like to hear it again.

THE CROWN:

Okay, but my point, my Lord --

ECOUTE DE BOBINE

THE CROWN:

It's not -- you can just leave it, it's coming two seconds after.

MR. FABRIKANT:

It's a little bit before that.

THE CROWN:

No; it's after.

MR. FABRIKANT:

No, no, it's before.

THE CROWN:

Suppose seven is the last line in --

MR. FABRIKANT:

It's before that.

ECOUTE DE BOBINE

MR. FABRIKANT:

It is not clear "Oh, I wouldn't say that" rather than "No, I wouldn't say that".

THE CROWN:

"Now", "now, I wouldn't say that". And my point, my Lord, we're talking about the contradiction.

MR. FABRIKANT:

The contradiction.

THE CROWN:

The contradiction we're talking about this afternoon.

THE COURT:

Let us, first of all, see whether or not doctor Hoa accepts this and then, if doctor Hoa accepts this, Mr. Fabrikant will put before the jury questions to doctor Hoa, but certainly -- certainly that's not the teneur of his testimony this afternoon as far as I am concerned. The teneur of his testimony this afternoon was, he doesn't know what S... contribution was but the underlying theme was Sankar contributed, but he didn't deal with S..., Fabrikant did. That was the way I interpreted this.

THE CROWN:

He, later, this afternoon said, "I know he paid you."

THE COURT:

Now, I find -- I find that there is a contradiction in that, so you may use it. I would suggest we use the -- I would suggest we use the reduced to writing it's simpler, Mr. Fabrikant.

MR. FABRIKANT:

Yes.

THE CROWN:

Let's use the reduced to writing.

THE COURT:

Use the reduced to writing.

MR. FABRIKANT:

Yes, because me, although it's part precise.

THE COURT:

Recover your tape for the minute and --

MR. FABRIKANT:

Are we going to play it to the jury?

THE COURT:

Let's use this.

MR. FABRIKANT:

All right. Then, let us provide jury with this.

THE COURT:

Well, we will have to make 12 copies and --

THE CROWN:

The written statement -- the statement that is used in cross-examination is not given to the jury.

THE COURT:

But you can --

THE CROWN:

This is not evidence.

THE COURT:

You see, the problem is, I don't want the whole thing to go on in front of the jury.

THE CROWN:

No, even this doesn't go in front of the jury, my Lord.

MR. FABRIKANT:

Why not?

THE COURT:

No, it doesn't; you're right, you're right.

MR. FABRIKANT:

Let me explain why it is important that the whole thing goes in front of jury because --

THE COURT:

It can't. You have to put your questions from the reduction to writing, the same as you would a police statement.

MR. FABRIKANT:

Because you see, my next point will be the following, that in this stressful situation, I didn't threatened he of anything but going to court. This is another point which I would want to make.

THE COURT:

No, you can't because whether you threatened him that day or what was said another -- you know that.

MR. FABRIKANT:

No, no; this is kind of indication of how I talk usually and jury should know that.

THE COURT:

No. You may use the declaration as far as his testimony is concerned today, that's all.

MR. FABRIKANT:

Well, maybe I expressed myself --

THE COURT:

No; I understand what you've said, but you may not argue that given the nature of the conversation I had with him, you ladies and gentlemen may infer from that that I am not a violent person and, therefore, made no threats and wouldn't be a person capable of making threats. No, that you may not do.

MR. FABRIKANT:

No, I would not infer anything. I just want this part of the conversation to be conveyed to the jury.

THE COURT:

No, it won't be, but you may use the -- you may use the statement to cross-examine doctor Hoa on what he previously said, unless he adopts it. He may say, I heard it, I've seen it, that's what I've said. I don't know.

MR. FABRIKANT:

All right. That's all right with me and in order to save time, what we can do is the following: maybe I will proceed with some questions on let us way further events and in the meantime copy will be made and when we return back I will resume with that.

THE CROWN:

My Lord, it's like a declaration.

THE COURT:

I've said it was like a police -- yes, it's like a police declaration, it's not filed. You may use it now. Ask him, do you remember a meeting we had, et caetera, et caetera.

MR. FABRIKANT:

Now, that's fine, but I want the jury to have a --

THE COURT:

They don't get it, the same as they don't get a police declaration.

MR. FABRIKANT:

What about playing the tape just as original evidence because it is important. This is another motion.

THE COURT:

There may be no need if Hoa -- you know.

MR. FABRIKANT:

Maybe he admits the whole conversation.

THE COURT:

I don't know.

THE CROWN:

You already ruled on the tape as --

THE COURT:

The whole conversation.

THE CROWN:

The only opening you gave was -- for if ever there was what would be considered a contradiction if this could be considered as a statement reduced to writing.

THE COURT:

That was as far as I went.

THE CROWN:

And you ruled, as far as I remember, three or four times on it.

THE COURT:

I left the door open on inflexions on voices.

MR. FABRIKANT:

Well, I hope doctor Hoa would not deny that this is his voice, let's hear from him.

THE COURT:

Doctor Hoa, we will do it without the jury, first of all, and then, with the jury, simply so that I know where we -- what I am going to face when the jury comes in, that's all. So, you will ask, put your questions to doctor Hoa now and let's see what happens.

SUONG HOA,

UNDER THE SAME OATH

EXAMINED BY MR. FABRIKANT:

Q. Do you recall all this conversation when you heard it?

A. Yes.

Q. You recognized your voice?

A. Yes.

Q. Does the major, what is in transcript, adequately present what you've said and what I've said?

A. Yes.

Q. Do you have any objections or reservations as to any part of the transcript in terms of the meaning of what was said?

A. (inaudible) after listening from the tape, I hear (inaudible).

Q. So, nothing major has been left out, which would change the meaning of anything?

A. Well, I think the Crown mentioned about the part that I said, "No, I wouldn't say that" I think it probably has to be included.

Q. Well, it doesn't change anything because what I have heard, it was "Oh, I wouldn't say that", but even if it is "No, I wouldn't say that" it is still the same negative statement.

THE COURT:

You are right. You are right, it is still the same negative statement, you're perfectly correct.

MR. FABRIKANT:

Let it be known.

THE COURT:

You're perfectly right.

MR. FABRIKANT:

It doesn't change anything, the statement is negative.

THE COURT:

When I bring the jury back, this or the bits, the pieces, we heard the whole thing because the Crown prosecutor expressed some reserve on the continuity, but you are using it to cross-examine him on only one thing, the question of the contribution of T. S. S... and it seems to me there are two pieces. There is the piece on the second page that starts at the top, then to the word "yes". And there is the piece on the third page, which starts "I hope you will not be committing a perjury" et caetera down to Hoa "but I mean there is no need to go through all this stuff".

The rest of the statement -- the rest of the statement doesn't relate to any contradiction in his testimony.

MR. FABRIKANT:

Yet.

THE COURT:

At least yet.

MR. FABRIKANT:

I agree, yes.

THE COURT:

Yet.

MR. FABRIKANT:

But I still would like this to be -- these parts to be played to the jury, a bit of this is my right.

THE COURT:

There is no need for that.

MR. FABRIKANT:

There is need for that.

THE COURT:

The jury -- there is no question of voice inflexions in these parts, I don't think. These parts you may stipulate truly reflect -- he will say it -- what is on the tape. He has already agreed that substantially what he said -- what he said is truly reproduced in writing.

MR. FABRIKANT:

Then, at least those parts should be in front of the jury.

THE COURT:

No, you may not put these parts. You may read the questions and the answers and he said that that represents what he said. Then, you simply leave it. You let the jury decide whether there has been a contradiction or whether there has not. If it strikes me on the fact of it that there was no contradiction, absolutely no contradiction, I wouldn't let you do it, okay. I'm not the one that decides the facts of this case, the jury does. When I look at it, I say to myself, yet, whether it's a serious contradiction or not, it looks to me as if there is a contradiction, I've said that. That allows me to give you the green light to put the previous statement to him, not by way of cross-examination, but do you remember our conversation, et caetera, et caetera, et caetera. Now, you testified today such and such, then comes your question, how do you reconcile what you've said then with what you said now and then, don't take a sledge hammer and hit the nail again; leave it for the jury to decide whether there is a contradiction or not.

MR. FABRIKANT:

But still I believe I can cross-examine him on the whole issue there.

THE COURT:

You may not cross-examine him on the whole issue. You may simply put what he said, the two parts of the statement of him, face him with those and establish what his version is. It may be that that has refreshed his memory, I don't know. He says that that represents what he said. Shall we hear it just now. Now, that's not yet been said in front of the jury. That remains to be done.

MR. FABRIKANT:

Well, still, if it is my right to play this part, I would like to play this part before I ask any questions and I would like to, at least, these parts to be in front of the jury so that they could --

THE COURT:

I don't think there is any need to play these parts in front of the jury and if you're going to play these parts in front of the jury, it's the same thing as showing the statement to the jury and if you're going to play the parts in front of the jury, the tape would have to be produced and that's the problem with it. So, you have to use the reduction to writing and the reduction to writing is here and it's substantially accurate. So, there you are. Jury, please.

I have been asked by a member of the jury that we not go beyond 4:30 this afternoon because of the fact that that person has an appointment. So, I will adjourn at 4:30.

We will not be sitting on Monday morning because of the fact that one of the jurors has a medical examination.

MR. FABRIKANT:

Okay. Then again, I didn't still get a copy of the order and I would like also a copy for Monday so that they wouldn't bring me here in the morning.

THE COURT:

It's done.

MR. FABRIKANT:

And I will get it because it is done is one thing. I need to have it in hand with Parthenais rules.

THE COURT:

There it is.

MR. FABRIKANT:

All right.

VOIR DIRE ENDED

IN PRESENCE OF JURY

THE COURT:

Before Mr. Fabrikant commences his questions, I think I can put it this way -- Mr. Fabrikant will correct me if I'm wrong -- that in your absence I have listened to a tape and I'm satisfied that that tape was made in the course of a meeting to which Mr. Fabrikant refers and a meeting to which Mr. Fabrikant has referred in his examination of Mr. Hoa. I'm satisfied that the recording is audible, that the tape has been properly conserved, that the voices are those of Fabrikant and Hoa and that the transcript of the conversation which Mr. Fabrikant has in his hand is substantially accurate and after hearing it, I have permitted him to use his transcription in putting questions to Mr. Hoa on the question

of the contribution of T. S. S... to the papers which we have been discussing, the two papers which we have been discussing. Now, if there is no objection from anybody on that, that will permit Mr. Fabrikant to, with some continuity, commence to put his questions to Mr. Hoa concerning their meeting.

MR. FABRIKANT:

I think just one clarification is in order, that this time it is cross-examination on this subject.

THE COURT:

It's not cross-examination yet because it may be that to your questions and your answers Mr. Hoa will agree, he may not. I don't know.

MR. FABRIKANT:

All right.

THE COURT:

If he adopts what he said, that's the end of the question, but you can put to him question and answer the sections that we talked about.

MR. FABRIKANT:

Q. Now, I again bring to your attention conversation which took place in the spring of '88 and I would like you to confirm or deny the content of the following part of conversation when I asked to you the following:

"I wrote two papers to which I hope you remember my contribution was major, you wouldn't deny this; would you?"

Hoa: Yes, yes."

Fabrikant: Would you agree that T. S. --"

T. S. means T. S. S...

" -- contribution was zero?"

Hoa: Oh, I wouldn't say that or, no, I wouldn't say that."

It was not clear on the tape, but in any case the statement is negative obviously.

THE COURT:

Look; just give him the answers. You don't have to treat everybody as five year old people near you.

MR. FABRIKANT:

No; I'm just explaining.

THE COURT:

Don't explain it; just --

MR. FABRIKANT:

"No, I wouldn't say that, but --

Fabrikant: Okay, could you specify what his contribution was?

Hoa: He paid you (laughing).

Fabrikant: He paid me?

Hoa: Yes, (and again laughing).

Fabrikant: Yes, this is exactly what I am saying, he paid me and that was all his contribution, that is all, fini.

Hoa: Yes."

Do you recall this part of conversation now?

A. Yes.

Q. Is it correct the way I presented it?

A. The conversation is like that, but what happens here is that I want to quantify in the saying that the -- like I've mentioned before, I did not discuss with S... concerning the two papers. (inaudible) aspect, I didn't know what his contribution was, except like I've said, I did not (inaudible) Fabrikant, so S... (inaudible).

THE COURT:

That's not what you were asked. You were asked whether the questions and answers reflected truly your conversation with

him that afternoon. You're not asked to go on and resolve anything.

THE WITNESS:

Yes, yes.

MR. FABRIKANT:

Q. Yes, okay. Then, the second part where I've said:
"I mean if you are called to testify and I put you a question about the papers I have written, what was the contribution of K.S.?"

HoA: He did not contribute except for the fact that he paid you (laughing again).

Fabrikant: Would you repeat this?

HoA: But I mean, there is no need to go through all this stuff.

Fabrikant: I hope so I would love not to, I am a very peaceful person and I would love not to go to court."

Is this part the way you listened it on the tape precise?

A. Yes.

Q. All right. Now, taking both parts which were quoted to you, how do you reconcile the statement where you said clearly that S... didn't make any contribution, except for the part that he paid me, to your statement today that you had no idea whatsoever if S... did or didn't contribute?

A. The reason I would say that he did not contribute before because I did not discuss with him and after that, when I saw your transcript when you published this on the (inaudible) then I've thought about it. But this case here, I did not discuss with S... so this case here, then I cannot say whether he contributed or not because you were working directly with him. I did not discuss with him.

Q. Did you or didn't you know that S... had no publications in composite materials, at least at that time? Your field is composite materials; right?

A. Yes.

Q. Did S..., to the best of your knowledge, have any publications in this field?

A. No.

Q. So, he cannot be considered specialist in the field?

A. Neither was I. I only started the composite only in 1979.

Q. All right. Did S... have any publications of mathematical nature like solution of integral or integra differential equations?

A. I don't know.

Q. You never discussed with him anything?

A. We discussed work on composite, but in terms of the mathematics, I did not discuss it.

Q. Now, did you or didn't you yourself include S... in significant number of publications, to which his contribution was the same, zero?

A. No.

Q. Did you or didn't you put S... as co-supervisor of majority of your students?

A. No.

Q. Let us name -- could you name your students graduated from, say, from 1980, say?

THE CROWN:

What is the relevancy of that, my lord?

MR. FABRIKANT:

The relevancy is that it was a system in the department of mechanical engineering that if someone wanted to get

promotion, higher salary or whatever, S... was at that time chairman of the department and unless the person willing to get those favours include him as co-author as well as co-supervisor of graduate students, he wouldn't get anything. This is why Mr. Hoa got his promotion that quickly.

THE COURT:

Look; you're testifying again, you asked --

MR. FABRIKANT:

Well, you asked me to explain, I am explaining.

THE COURT:

Well, no, I know, I know you're explaining it.

MR. FABRIKANT:

Don't ask me to explain, I will not be testifying.

THE COURT:

You are replying to an observation by the Crown prosecutor as to the question of relevance.

MR. FABRIKANT:

Yes.

THE COURT:

The question you've put to the witness was: did you not name S... as a co-supervisor of students and he's answered.

THE CROWN:

And the question was asked "give all the names of all your graduates" --

THE COURT:

Just a second; and the answer was "no". Then, you asked him to give the names of the graduate students; what for?

MR. FABRIKANT:

Well, very simply then each name I will ask: was S... a co-supervisor of that student.

THE COURT:

He has given you the answer "no".

MR. FABRIKANT:

Well, let us see whether --

THE COURT:

No, let us not see because then, you're cross-examining him, you are putting in questions what he says.

MR. FABRIKANT:

I am not cross-examining; I am just --

THE COURT:

You're off the question of the statement now. You're back in your regular examination.

MR. FABRIKANT:

No, I am not. First of all, I am not off of that because the witness here, effectively, didn't reconcile anything. He said that -- he repeated just again that he didn't know, he never talked to S... about these papers.

THE COURT:

But we are not talking about the papers any more. You are now talking about co-supervisors of students.

MR. FABRIKANT:

Yes.

THE COURT:

And he has given his answer. He said "no", that's the end of the question. Go on to something else.

MR. FABRIKANT:

Well, what --

THE COURT:

It's the only way to get through the examination of the witness. Go, move along to something else.

MR. FABRIKANT:

This is not something else because on the one hand, I want to show to the jury that he claims that he never discussed it with S... On the other hand, I want to demonstrate to the jury that he had, at least officially, a strategic ground, he and S..., he had numerous graduate students where S... was co-supervisor. He had published significant number of papers where S... was included as co-author and to compare this with his statement that he never discussed the matter with S... I think it would look quite obvious that he is not telling the truth.

THE COURT:

Now, what you're trying to do is cross-examine the witness, that's perfectly obvious and you will not do that.

MR. FABRIKANT:

Yes, because he did --

THE COURT:

You might prove by another witness that this is not so, but you may not cross-examine the witness.

MR. FABRIKANT:

Since we found contradiction, I understand that I can cross-examine him on this part because he did not reconcile in any satisfactory manner what he said then and what he said now.

THE COURT:

One short answer to that; we have been through that, the jury will decide whether they found there was any contradiction in what he said, okay, but we are finished with that now, you've moved on to something else. You cannot use that as a spring-board or a trampoline to go into a general cross-examination of this witness; that you may not do.

MR. FABRIKANT:

Well, this is not general. I am still there.

THE COURT:

You are not still there. You've passed on, you're talking about another subject now. You are talking about co-supervisor of students.

MR. FABRIKANT:

It's not another subject; this is what I am trying to say.

THE COURT:

It is another subject.

MR. FABRIKANT:

It is part of the same thing.

THE COURT:

It's not part of the same thing. In your mind perhaps it's part of the same thing, but not in mine.

MR. FABRIKANT:

All right.

Q. Do you know graduate student B...

A. Yes.

Q. Was it in co-supervision of S...?

A. Yes.

Q. Do you know graduate student N...

A. Yes.

Q. Was it in co-supervision with S...

A. Yes.

Q. Do you know a graduate student O...

A. Yes.

Q. Was it in co-supervision?

A. At the Master degree, but not for the PhD.

Q. Could you -- could you name -- okay -- could you name graduate students in terms of proportion, how many graduate students were in co-supervision and how many were not in co-supervision

with S...

A. I had four students with S... but the total I had over is more than 10.

Q. Well, I am talking about years. You are talking 10, what, till '92? What years are you talking about?

A. No. I think that in 1980, I mean over the years usually I have about 10 students.

Q. Okay; let's say from 1980 or, say, 1979 when I arrived, till '86 when you got your full professorship, how many graduate students did you have during that time?

A. It's difficult to remember, but I remember roughly about a year, at that time I had about seven students.

Q. And how many of them were in co-supervision?

A. There were three of them with S..., yes.

Q. Did S... do any supervision of these students?

A. Yes, we discussed about the composite problems.

Q. Could you explain to the jury how could it possibly do anything in composite materials if all his field -- if there is field of his -- at least that his -- okay, let me put it differently. Do you know what is the subject of his PhD degree?

A. I am not quite sure, but I think it was on vibration.

Q. Okay, this vibration, it's more than vibration, it is staccato vibrations; is it?

A. Yes.

Q. Staccato means random, it means not even deterministic problem; right?

A. Yes, but also, you see, I did not work on composite myself. I did not get a PhD degree in composite either. I started in the whole field in 1979.

Q. Yes. If the difference though that you were working in this field of S... was just getting benefits of that; would that be a correct statement?

A. No.

Q. It would not be a correct statement.

THE COURT:

Okay. We will leave it there until Monday.

I have noted that one of the jurors does have a medical appointment on Monday morning so we won't sit on Monday. We will resume at 2 o'clock on Monday, so I wish you all a very good week-end and see you next week.

AND THE WITNESS SAYS NO MORE.

THE JURY HAS RETIRED

THE COURT:

Madame Desrosiers, these are the two notes concerning this afternoon.

IN THE ABSENCE OF THE JURY

MR. FABRIKANT:

May I have a copy for me although it's court orders?

THE COURT:

Yes, these have been prepared for you.

MR. FABRIKANT:

Now, I also need to ask a couple of questions, if possible, they are very short.

THE COURT:

Doctor Hoa, you may sit down.

MR. FABRIKANT:

We cannot seem to find a way to examine the -- well, you remember there was question of Julian and it doesn't look like it is moving anywhere. All the expertise stuff is dead. Now, my understanding is that Legal Aid refuses to pay for the expertise of the document and police can do it free of charge, but for that, I understand there is a need for a court order recommendation, I don't know what.

THE COURT:

Well, your big problem at one point was you wanted the police nowhere near the document.

MR. FABRIKANT:

No. This time, this particular document is absolutely fine with me. The police --

THE COURT:

Which document are you talking about?

MR. FABRIKANT:

Now, I am talking about the letter of Habib and letter of Hainz which was very, very strange in view of their contents and the dates and the way they were kind of delayed.

THE COURT:

But who says they need a court order to proceed to an expertise on these documents?

THE CROWN:

I don't understand. Why is an expert needed for that? This is a document that is filed.

MR. FABRIKANT:

Documents are filed, but it is extremely important as to when they were typed because depending on when they were typed, there will be very different interpretation of their content. If they are typed, let us say, recently, just for the testimonies --

THE CROWN:

It's totally frivolous, my Lord.

MR. FABRIKANT:

Well, let us see that it is frivolous.

THE COURT:

I am not going to order any expertise on those documents, that's for sure.

MR. FABRIKANT:

Well, could you explain that?

THE COURT:

I'm just not.

MR. FABRIKANT:

What about Julian? What about Julian?

UNIDENTIFIED VOICE:

You asked me to contact Mr. Sainte-Marie, the director of the laboratoire. I called him three times: once on Friday, on Monday, yesterday, I have written to him this afternoon. The letter will be sent by Fax today, I hope I have some (inaudible) at some point. He just doesn't return my phone calls.

THE COURT:

Okay then; so, we will see if you've got a reply by Monday afternoon.

Now, you indicated, Mr. Lecours, that at one point you were going to move to reopen --

THE CROWN:

Yes.

THE COURT:

-- with regard to this 9-1-1 conversation.

THE CROWN:

i did the formal application before, my Lord.

THE COURT:

And?

THE CROWN:

And Mr. Fabrikant prefers to have it before his own testimony.
I quoted you right?

THE COURT:

Yes, but --

MR. FABRIKANT:

Well, I think it should be not only before my testimony, I think it should be, if be, immediately after this inconsistency was discovered. This is when it should be.

THE CROWN:

That's why I applied for right away. When you told me like that, I told you, myself, I don't understand.

MR. FABRIKANT:

I'm sorry, I didn't receive any copy of the motion at that time.

THE CROWN:

It's a verbal motion.

MR. FABRIKANT:

I didn't hear it either.

THE COURT:

Yes, the motion was made at the time, I recall the motion being made.

MR. FABRIKANT:

Okay; when was it? I would like to hear it on the tape.

THE CROWN:

The second we discovered it.

MR. FABRIKANT:

The second you discovered it, what did you say?

THE CROWN:

I said I want to -- if there was a mistake, I want to give the full conversation.

THE COURT:

There is no question that you made that motion. It was after the testimony of whoever was here from 9-1-1.

MR. FABRIKANT:

Well, it didn't look like a motion to me.

THE COURT:

Listen --

MR. FABRIKANT:

A motion is a motion. He has to formally announce it and then --

THE COURT:

He did formally announce it.

THE CROWN:

And I quoted the thing.

THE COURT:

He formally announced it. That was what I wanted from you as the case you quoted.

MR. FABRIKANT:

When was that?

THE COURT:

Have you got the reference, please?

THE CROWN:

I have it in my office and I have a copy for the Court in my office.

MR. FABRIKANT:

Well, when was that that --

THE COURT:

Mr., please.

THE CROWN:

I quote Robillard and you told me to look. I have five or four copies of it, but now my file is a bit big to put everything at the same time.

THE COURT:

Might I have that on --

THE CROWN:

You can have it in two minutes, if you wish.

THE COURT:

Fine. I'll wait downstairs after adjournment, you can give me that and I'll take a look at that and rule on your motion or at least I'll hear argument to your motion on Tuesday. I don't know if your motion is contested.

MR. FABRIKANT:

Well, shouldn't I get a copy of his motion and jurisprudence?

THE COURT:

No. His motion is there. He has a case that he is citing that he will give you a copy of.

THE CROWN:

I have a transcript for Mr. Fabrikant. I have the tape. I understand that Mr. Fabrikant himself said in Court he has the missing part when he got the whole conversation, the missing part was included. He quoted some passages from what was not included by mistake. So, I understand you have this part; do you?

MR. FABRIKANT:

Yes.

THE CROWN:

So, you have it.

MR. FABRIKANT:

But this is not my point. When I want to argue his motion, I want to hear what -- how he justifies it, so that I could give my arguments against it.

THE COURT:

All right. You will get your opportunity. I didn't rule on whether he could do it or not. I am simply preparing myself by saying, if you have that motion, I haven't forgotten about it, he made the motion, he cited the case of Robillard, I asked for the reference to Robillard and he says he will give me the case in a few moments. You will get a copy if he is giving me a copy. I presume he'll also give me a copy of the transcript.

THE CROWN:

Yes. If all of us want to wait two minutes, I'm back in two minutes.

THE COURT:

I will wait. I will adjourn, you don't have to leave for the minute, but I will adjourn and I'll wait for the copy of it.

THE CROWN:

Because I can provide the accused at the same time. I don't want the accused to be released either.

MR. FABRIKANT:

Well, shouldn't he --

THE CROWN:

I will give everything to everybody right now. It's just because, as I've said to you, I don't carry it.

THE COURT:

Keep Mr. Fabrikant on the floor until he has that.

THE CROWN:

It's just because I don't carry three boxes any more.

THE COURT:

I appreciate you don't carry three boxes in the morning. I am going through this at this stage so that I will be able to look at this, the Crown prosecutor will then present his motion. He has made his motion, he will then present his argument and you'll have a chance to say whatever you have to say that I will rule.

MR. FABRIKANT:

But I need his text of the motion before.

THE COURT:

It's no text of the motion and he is not required to file a written motion.

THE CROWN:

The motion is r,ouverture d'enqu[^]te because there was a mistake in the Robillard case, the Crown just forgot to identify the accused and the opening was -- it was honest mistake and just prima facie argument, what was filed at the beginning looked totally normal, everybody under oath said it's faithfully event, Mr.Fabrikant. Nobody was alerted because it followed very logically from one conversation to the other.

MR. FABRIKANT:

What do you mean "even Fabrikant"; Fabrikant the next day came and said that timing is wrong.

THE CROWN:

But Fabrikant was in the conversation and he did not say I missed this part.

THE COURT:

In any event.

MR. FABRIKANT:

Of course, do you really think that I could remember the conversation?

THE COURT:

I asked you this before; is there any little thing that you don't argue about? Good heavens, you were the one that was sitting over there and saying the thing should be complete. Now, look, you may -- you may have a valid reason to object to it. I don't know. I don't even know what it says. Must we get into a fight before there is even an issue to get into a fight over. I'm simply asking him to prepare to argue that motion which he has already announced. It's a verbal motion, it may be a verbal motion, that's the way it's done.

MR. FABRIKANT:

But it had to be done at the time he made the motion, you should have made the ruling. I am in the middle of my defence.

THE COURT:

That was precisely why.

MR. FABRIKANT:

This is totally inappropriate time for the jury to hear this.

THE COURT:

That was precisely why I did not, at the time, raise the question.

MR. FABRIKANT:

Well, now, it's even more inappropriate.

THE COURT:

It's not inappropriate. You were the one and it was in the defence that you made evidence that that was incomplete. It

was not made during the Crown's case. It was made in defence. If it had been made during the Crown's case, it would have been an entirely different question. The Crown made its motion immediately. I have the privilege of deciding whether we will blow the whistle, take a time out and hear the motion instanter or right on the spot or whether I will wait until a moment when it's more propitious. I decided to wait until it's more propitious. There is no more to it than that.

MR. FABRIKANT:

Well, you realize yourself that the later it is, the worse it is for defence.

THE COURT:

How can it possibly be worse for the defence?

MR. FABRIKANT:

Very simply because the tape will again -- he wants to play the whole tape again?

THE CROWN:

No.

MR. FABRIKANT:

Plus we (inaudible)

THE COURT:

I don't think so.

THE CROWN:

We can agree on that.

THE COURT:

I don't think he wants to play the tape again. I think he wants to play the missing part of the tape.

THE CROWN:

I'm ready to talk with the accused. What I would propose, as far as I remember, the accused wanted -- he said "I will show to the Crown --".

THE COURT:

That is my recollection too.

THE CROWN:

-- did not want to include this portion because it was detrimental for the Crown's case. So, now, I don't -- if there is admission, we could put one witness in the box, Mr. Sauvageau, he will explain the mistake, we will play it, eight minutes, in 20 minutes the whole thing is done. Otherwise, we can have a -- arguing a motion, jurisprudence, chain of possession, five or six witnesses, identification of voices and everything, you see. I was not too formal with Mr. Fabrikant and a lot of things, you know, I did not receive notice in accordance with Canada Evidence Act and anything. I did not, you know, I played quite correct, Mr. Fabrikant, but I played very tough rules for myself though, all the time, but if the accused agrees, we can have one witness who testifies two minutes and who plays the tape for eight minutes and that's the end of it. We can even do this during a break and the case won't be -- if we're ready not to take a break one morning, I don't see any problem there. What about that?

THE COURT:

What do you mean "we may even do this during a break"?

THE CROWN:

Well, if he doesn't want to lose.

THE COURT:

You can speak to him later but --

THE CROWN:

If he doesn't want to lose one second in his defence, if we do it during the break, there is not one second lost in his

defence.

MR. FABRIKANT:

This is not the point. The point is that playing of the tape will revive in the jury the whole triangle over again. This is the problem.

THE COURT:

Listen; you can take it as a given that the jury will have the tape which has been produced because it's a part of the unfolding of events. They will have a tape in their jury room.

MR. FABRIKANT:

So what; maybe they'll have it or don't have it, but --

THE COURT:

But I would presume if they do their job, they will play it in their jury room in any event. So, I wish you all a good week-end.

THE CROWN:

You'll wait for me.

THE COURT:

I'll wait for you, yes, until you get it.

THE CROWN:

And the accused is waiting for me.

THE COURT:

Yes.

Je, soussign,e, Jocelyne DeMontigny, st,nographe judiciaire, certifie sous mon serment d'office que les pages qui pr,cšdent contiennent la transcription des paroles recueillies au moyen de l'enregistrement m,canique dans la cause ci-haut mentionn,e, au meilleur de la qualit, de l'enregistrement.

Jocelyne DeMontigny,
St,nographe judiciaire

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