

PROVINCE OF QUEBEC

DISTRICT: MONTREAL CITY: MONTREAL

CASE NO: 500-017372-928

TRIAL

PRESENT: HONOURABLE MR. JUSTICE FRASER MARTIN, S.C.J.
(AND AN ENGLISH JURY)

THE QUEEN

vs

VALERY FABRIKANT

APPEARANCES: Me JEAN LECOURS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

Me GILLES RICHARD
COUNSEL FOR THE ACCUSED

DATE: July 5th, 1993

GS: 1357 FILE: 2431

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(THE JUDGE TAKES THE BENCH)
(THE ATTORNEYS, Me RICHARD & ACCUSED ARE PRESENT)

BY THE COURT:

Yes, Me Richard?

BY Me GILLES RICHARD:

Okay. The reason that I'm here this afternoon is the following. I was contacted by Mr. Fabrikant, I'd say about a week and a half, two weeks ago, by phone a couple of times, and I met him here in the courthouse, and I met

him again Saturday morning in the Parthenais Detention Centre. And so far Mr. Fabrikant expressed the intention that he wanted me to represent him.

But at the moment, or while I'm talking to you, I still don't have a confirmation from Legal Aid as to whether they'll accept to pay two attorneys, if they are already providing funds for Me Belleau. And that has to be clear before I can say, okay, I step into the file. Because if they refuse, obviously I'm not going to sit here for two, three months, or less, for nothing.

The other thing, the other problem I'm facing, and that Mr. Fabrikant is aware of that, is I didn't plan for a jury trial this summer. I had the last one in my book finished a week ago, and I was not supposed to have that for the summer.

So there are... they'll be definitely some, what I would call, logistical problems, because I've got other cases set with people detained also waiting for trial. That, Mr. Fabrikant said that there was no problem with him, even if like let's say one morning I was not here, he didn't mind, as long as (inaudible).

The biggest problems will be this week. Following that I can... or everything I have with people who are on bail, there is no problem. They can be postponed. It's only in cases where people are detained and are waiting their trial for six months, that I don't want to postpone them. So that is the second thing. Otherwise everything will be all right.

The other problem also is that stepping into a case after four months of trial where the only knowledge I have from this case is what I saw in the papers, on TV, and even that, I didn't follow it day-to-day, time-to-time, or you hear about it by other people, I'm definitely not ready, like this afternoon, to say... I don't even know with which witness you are right now, to say, okay, I'll continue examining the witness, or I'll continue arguing.

BY THE COURT:

You are on number fifty-three (53) in defense, or fifty-four (54).

BY Me RICHARD:

And I understand there were like forty (40) in the Crown's...

BY THE COURT:

Very short.

BY Me RICHARD:

So that is the situation. The first thing I have to definitely make sure is that Legal Aid will pay. And once I get that... I should have that this afternoon, if I can just go back and call there. If there is no problem, I can be here. But I understand that at least for the first couple of days I imagine that Mr. Fabrikant will want to continue examining his witnesses. I have to catch up with the case, where it is now. Otherwise, what I will have to do is to maybe request a postponement, if I don't have the time to get through everything that was done.

BY THE COURT:

We have been at this since the eighth (8th) of March.

BY Me RICHARD:

That's it. And I understand that there were... I guess there were no transcripts made. I imagine that...

BY THE COURT:

There were no transcripts made.

BY Me RICHARD:

Everything's on... everything's on tape. So to listen to...

BY THE COURT:

Everything's on tapes, and...

BY Me RICHARD:

March, April, May, June of tapes is... I don't think it's necessarily important to listen to all of it, but I know for a fact that Mr. Fabrikant has a list of witnesses, and I have to discuss it with him. Whether they are all relevant, if they are relevant, for which purpose, I know that some of them might be relevant, but if... that has not been discussed yet, as we are... I'm talking to you. The other thing I have to get, also, a confirmation from Legal Aid, if they'll provide funding for a psychiatrist. Because if I get into the file, I intend to have a psychiatrist... not on the matter if he's fit to stand trial, not on the fitness issue, but for a possible, what I will call, diminished responsibility defense. I understand that we're not facing Section 16, but it might be something else. Mr. Fabrikant agrees, agrees to that...

BY THE COURT:

I don't know what you're talking about, if you're not talking Section 16.

BY Me RICHARD:

Well, let's say Section 16 in the sense of Ray Hughes. the case of Ray Hughes, which says that without, even if... like that personality disorders might become admissible as a defense under Section 16. We're talking...

BY THE ACCUSED:

One second, I'm saying that it is too premature...

BY THE COURT:

I think you should sit down.

BY THE ACCUSED:

... to start speaking...

BY THE COURT:

I think you should sit down for a minute. I'm not going to speak to two people.

BY THE ACCUSED:

Well, because it went somewhere which it is too premature to go yet.

BY THE COURT:

Yes, well, I'm very happy that it did, because at least I...

BY THE ACCUSED:

Well, you are happy. Of course, you want to see me insane. But what makes you happy is not necessarily what is necessary. So maybe I could clarify here...

BY THE COURT:

Maybe you would kindly sit down for the minute, and if you require to clarify anything when we're finished, you will clarify anything when we are finished.

BY Me RICHARD:

What I'm talking about...

BY THE COURT:

Go ahead.

BY Me RICHARD:

... what we found in some cases, at least, is that without going to the point of having an acquittal for insanity, it might open... that's what I wish to open, the possibility of manslaughter, through that defense. I know in Britain they call it diminished responsibility. Everyone says it doesn't take this in Canada, but that's about the only way out I can foresee right now. And for that you need experts to testify, and that would take time to have the okay from Legal Aid and the time for them to examine Mr. Fabrikant, and then if the Crown wants to have him cross-examined by other experts, that will be another problem. We'll discuss it when it comes. But I want to, well, like we say, put my cards on the table.

BY THE COURT:

Yeah. Yeah. No, I appreciate that very much.

BY Me RICHARD:

That's it.

BY THE COURT:

And the very, very first thing that I would like to do is know, at least, at the moment at which we're speaking, what in particular your status is. Now, please don't quote me, because my memory may be faulty. But it was certainly my idea to name a friend of the Court. And it was my idea to have a friend of the Court given the particular circumstances of this case throughout.

In short, even if you come into the file as an attorney for the accused I will maintain Mr. Belleau's status in case it may occur that there is a problem. I have no idea whether it would or whether it wouldn't, but it has in the past. And in the middle of a jury trial, I wouldn't want to encourage that to happen again and cause me a particular difficulty.

Now, Me Richard, I appreciate the difficulty in coming into a case well on to the case, but that, of course, it would be the circumstances under which you have accepted to come in. And beyond offering you my sympathies, I don't think there's much else I could offer you.

Obviously if you are in the record, it is... I'm prepared to do what I can to be of assistance to you in permitting you to bring yourself up to speed as quickly as possible with what has transpired. Despite the fact that a number of weeks have gone by, it's not terribly complicated.

Now, I would need to know, too, what your status would be. I would need to know whether you were representing the accused, or whether you were there simply counselling the accused, because he has, in the course of this whole thing, expressed both thoughts, namely, the one of being represented, and secondly, the one, the thought of having somebody to counsel him.

You talked about logistical problems that you may have. Forgive me, but I don't think there's any way to be half pregnant in this thing. Either you're here as his attorney, in which case we go on in front of a jury and that's that, or you're not. It's very difficult to ask me in a jury trial to adjourn along the way while you look after other obligations.

BY Me RICHARD:

I understand.

BY THE COURT:

I'm sorry about that, but that's the way it will have to

be. But I would particularly like to know what your status is, and whether in particular you are the one who is going to be examining the witnesses, and whether you're not.

There will be a number of other things I'll need to know as we go along. But I agree with you, it would be well to have your status established now. Now, my thought, and I started along this line, was that when I asked that the friend of the Court be named, I never was under the impression... perhaps I'm wrong... I was never under the impression that this would in any sense be a barrier to the accused being represented by counsel if he ever found one. That was my impression. Now, I don't know whether you've run into a difficulty in that regard, or not. If there's anything I can do to expedite that difficulty, I'm prepare to try.

BY Me RICHARD:

The only thing at that point, I can only answer that by... in ten or fifteen (15) minutes, and I don't think there will be any problem.

BY THE COURT:

Yes. But I'm certainly prepared to adjourn for ten or fifteen (15) minutes while you get that sorted away. What your status with the accused is, is something else. I don't know whether you're going to be able to settle that in the ten or fifteen (15) minutes, either. Beyond that, of course, then we'll see where we go from there. It's the accused's defense, and he has, in any event, started examining the witness who is presently in the box, and in the ordinary course would continue to do so.

Have you anything you wish to say, Me Lecours?

BY THE CROWN:

For the moment I wouldn't have any comment besides the fact that I agree with your approach.

BY THE COURT:

You had asked me to come in without the jury. I think what I would rather do now in the light of what I've heard from Me Robert, is adjourn until he's had an opportunity to discuss with the authorities at the Legal Aid Corporation exactly what his status would be.

BY THE ACCUSED:

Why don't you ask me first?

BY THE COURT:

Because if we get his status clarified, then it will be a question of his consulting with Mr. Fabrikant to see what his status will be vis-a-vis him, and then at least I'll know what I'm dealing with.

Now, have you anything you wish to add?

BY THE ACCUSED:

Yes. First of all, I think that there is nothing to clarify. Legal Aid is not obliged for two lawyers, therefore, Mr. Belleau goes. It's as simple as that.

BY THE COURT:

Before you go any further on that...

BY THE ACCUSED:

Let me finish.

BY THE COURT:

... Mr. Belleau doesn't go. Mr. Belleau is here...

BY THE ACCUSED:

If he doesn't go, then you pay him.

BY THE COURT:

Mr. Belleau is here. He's my counsel.

BY THE ACCUSED:

I'm entitled to have a lawyer, and this lawyer...

BY THE COURT:

I'm not going to get in a fight with you over it. Mr. Belleau stays. He is my counsel.

BY THE ACCUSED:

And you pay him. There is nothing to discuss here.

There is nothing to clarify with Legal Aid.

BY THE COURT:

If you wish to put on a show for everyone, you go right ahead...

BY THE ACCUSED:

I'm not...

BY THE COURT:

... but Mr. Belleau stays as a friend of the Court.

BY THE ACCUSED:

Well...

BY THE COURT:

That question is now closed.

BY THE ACCUSED:

... if he's there, I couldn't care less.

BY THE COURT:

That question is now closed.

BY THE ACCUSED:

This is not the question at all. This is what I'm trying to say.

BY THE COURT:

What else would you like to add?

BY THE ACCUSED:

If he is sitting there and you want to pay him, I couldn't care less for that. As far as my entitlement to a lawyer, it is undisputable and there is nothing to discuss with Legal Aid. They have to pay...

BY THE COURT:

Mr. Robert appreciates on what basis he's going to clarify the situation with Legal Aid. I would imagine that a tempest is being made of a teacup, because I don't think there will be a problem.

BY THE ACCUSED:

Well, there is...

BY THE COURT:

Is there anything else you have to add?

BY THE ACCUSED:

Yes, there is. There is.

BY THE COURT:

Good.

BY THE ACCUSED:

There is something else I want to say. The second thing, I believe that I was sabotaged again, and this thing I would like to be discussed in the presence of the jury. So there is no need for any adjournment. The question of payment is not a question at all. Mr. Belleau has no business being here. If you want to pay him, pay him.

BY THE COURT:

You will not be the one that sets the conditions for Mr. Belleau being here.

BY THE ACCUSED:

Now, there is one more thing... I couldn't care less whether he is here or isn't here. It doesn't concern me

at all.

Now, there is one more thing. I have difficulty staying right now, those guards put the chains two times. I asked them several times. They are provoking confrontation. The chains should be checked. If you wish, call a doctor here. I cannot stand up...

BY THE COURT:

I will adjourn, Mr. Robert, to let you make your call you have to make.

BY THE ACCUSED:

There is no need for an adjournment.

BY THE COURT:

And you'll live with your chains.

(THE JUDGE LEAVES THE BENCH)

SHORT RECESS

(THE JUDGE TAKES THE BENCH)

BY Me RICHARD:

The state of the union is that I don't have any answer from Legal Aid. I should have it in about fifteen (15), twenty (20) minutes. It's Me Deslongchamps who has to take the decision, and she was out of her office. They told me at about ten minutes ago, ten or fifteen (15) minutes ago, that she will be back in about half an hour. And for what I could discuss with the person I spoke to, there shouldn't be any problems. It's just... I want it to official so that I don't get problems with that later on.

Regarding my status towards Mr. Fabrikant, what he expresses is to have... he wishes me to be there mostly as counsel in the way to argue some legal points that are... legal arguments to be made. But for the moment he wishes to continue examining his witnesses and all that. So it wouldn't be a status of representing him in the usual way...

BY THE COURT:

In the sense of the word, no. Okay.

BY Me RICHARD:

Yes.

BY THE COURT:

Okay.

BY Me RICHARD:

That's the situation right now.

BY THE CROWN:

Yes, My Lord. There was the question of the reopening of the Crown's case. When do you expect that I would be in a position?

BY THE COURT:

Well, I would think, since that involves a legal question, it might be wise to put that off until tomorrow morning, until the status of Me Robert...

BY Me RICHARD:

Richard.

BY THE COURT:

Richard, excuse me. Until the status of Me Richard is clarified, and we will simply continue with the examination of Dr. Hoa.

BY Me RICHARD:

And regarding the testimony of Dr. Hoa, I understand that there was a tape which was already used or played in order to contradict or where supposedly there was a contradiction with what he said now and what he said on that date, at that time. And on that I know Mr. Fabrikant wishes to make a KGB application so that that prior statement, over and above being used to contradict the witness, becomes part of the record. I know that. So I don't know if you want to discuss it now or later on before the testimony of Dr. Hoa is over.

BY THE COURT:

Well, I think we can probably discuss it later on.

BY Me RICHARD:

Fine.

BY THE COURT:

Let me make a note, however. We can discuss it later on, I think.

To bring you up-to-date on what happened last week, Me Richard, I found that there was, what I thought, for whatever it was worth, a contradiction between what Dr. Hoa had said here and what Dr. Hoa said in the course of the taped conversation.

Two pieces of the taped conversation I permitted to be put to Dr. Hoa, all of which bore on the same question, and the question on which it bore was the participation of Sankar in a certain publication. So that if contradiction there was it merely bore upon that. I don't know if you've had an opportunity to look at the taped conversation or not.

Inasmuch as the playing of the tape was problematical, because the tape becomes evidence, there were things on the tape that... Dr. Hoa is here. He can testify to, if asked. I decided to treat the transcript of the tape as reduced to writing and permitted Mr. Fabrikant to put to Dr. Hoa questions bearing on two parts, two different pages, and it's marked. That is as far as we have gone as far as that taped conversation is concerned.

I will deal with the KGB application when it comes. But thank you for advising me that you wish to make an application in that regard. I think what we may as well do is continue with the testimony of Dr. Hoa.

The jury, please.

BY Me RICHARD:

And regarding that, I don't know if you will allow me whether to sit beside Mr. Fabrikant or whether him to come and sit here.

BY THE COURT:

I would prefer you sit there, and you can move your chair back.

BY Me RICHARD:

So that will be...

BY THE COURT:

Yes.

BY Me RICHARD:

... easier than I go back and forth.

BY THE COURT:

I would not like to see you in the dock. I think you can move your chair back and forth, and you won't find that I'm difficult at all, as far as communicating with him is concerned.

BY Me RICHARD:

Fine.

BY THE COURT:

That's for sure.

BY THE ACCUSED:

Well, it would be better if he sits here.

BY THE COURT:

He will sit there, and he will talk to you there. We have our way of doing things, and I'm sticking by our way of doing things.

The jury, please.

(MEMBERS OF THE JURY TAKE THE BENCH)

(DISPENSE WITH THE CALLING OF THE WITNESS)

(ALL ARE PRESENT)

SUONG HOA

March 20th, 1948, Professor

(Address Confidential)

DULY SWORN

BY THE COURT:

Before you start, you will notice that there is another lawyer who is sitting beside Mr. Belleau. I am not able to clarify for you exactly his status at this particular point in time, but I hope I'll be in a position to do so by tomorrow morning. As matters stand at the moment Mr. Fabrikant, having commenced his examination of Dr. Hoa, will continue his examination.

BY THE ACCUSED:

Well, I can clarify things, if you wish.

BY THE COURT:

I would like you to go ahead with your examination.

BY THE ACCUSED:

Well, before I go ahead, I think it is important for the jury to know the following, that I mentioned on several occasions that I was sabotaged in terms of legal assistance to such an extent that I didn't even suspect to what extent I was sabotaged until I get certain jurisprudence.

Now, during the holidays, I got the jurisprudence on the so-called matter of KGB. It has nothing to do with Soviet KGB. It's just an abbreviation. And I have discovered that I had the right, during the voir-dire when we discussed the conversation with Mr. Hoa, to request that this evidence be put not just to challenge his credibility, but also to use it as evidence so that the jury...

BY THE COURT:

It would be well to wait. It would be well to wait before you discuss that application, until that application is made.

BY THE ACCUSED:

Well, there is nothing to discuss, because I firmly intend to make this application, and I would have made it, no doubt about it, should I have known about this jurisprudence. This is new jurisprudence from nineteen ninety-three (1993). I had no idea that this jurisprudence existed until I have read it. And the main principles, the Supreme Court overturned itself in this jurisprudence, because before what was said earlier could be used only to challenge the credibility of the witness.

Right now, as things stands, the previous statement can be used to be put to the jury for its true content. And this is...

BY THE COURT:

If it is admitted.

BY THE ACCUSED:

... something new which I didn't know about, and I believe there are very many things which I am just losing because I do not have the normal legal assistance, and I do hope that Me Richard will provide such honest assistance which I was deprived during all this time.

BY THE COURT:

Mr. Fabrikant, I asked you if you would kindly put your questions to Mr. Hoa. Now would you put your questions to Mr. Hoa.

BY THE ACCUSED:

Well, I would put my questions after I explain to the jury the reason for Me Richard being here, that I hope that he will provide honest and necessary legal assistance which I was deprived during all the previous time, and I believe there are still amy things which I don't even suspect that I am being abused.

I have mentioned on several occasions that this is a lawless trial and this latest discovery of the jurisprudence just proves the point that it is indeed a lawless trial, because this is just the tip of an iceberg what I do know, but I believe there are very many things that I don't know.

BY THE COURT:

Mr. Fabrikant, I am not going to sit here and listen to you go on all afternoon. You are going to put your questions to Mr. Hoa, or you'll be taken right out of that door, and the case will be adjourned until tomorrow until the status of Me Richard is clarified.

BY THE ACCUSED:

Well, so far I used three minutes.

BY THE COURT:

Now, are you prepared to put your questions now, and stop talking, or are you not?

BY THE ACCUSED:

Yes. Three minutes.

BY THE COURT:

Then put them.

BY THE ACCUSED:

Yes. I finished.

EXAMINATION BY THE ACCUSED (cont)

REPRESENTING HIMSELF:

Q. Okay. We finished on Wednesday when Dr. Hoa had admitted that, indeed, in eighty-eight ('88), he on two occasions during conversations with me confirmed that he knew at that time that T. S. Sankar's contributions to my article was zero. During testimony here, he said that he never spoke to Sankar...

BY THE COURT:

Would you kindly put questions to him.

BY THE ACCUSED:

I'm just...

BY THE COURT:

I don't wish you to sum up what he said. This is not the time when you sum up what he said.

BY THE ACCUSED:

Well, this is the question. I'm putting a question.

BY THE COURT:

This is not a question. Now, would you put your question or I'll stop...

BY THE ACCUSED:

It is a question.

Q. So would you confirm it, please, this is what happened on Wednesday?

BY THE COURT:

No, you will not answer that question. What happened on Wednesday is what happened on Wednesday. You will put your next question.

BY THE ACCUSED:

Q. Okay. And would you kindly explain why in eighty-eight ('88) you said that you knew that T. S. Sankar's contribution was zero?

A. I did not say that I knew that his contribution was zero.

Q. Okay. Let us read it again. I ask you: I mean, if you are called to testify, and you are testifying and I put you a question about the papers I have written: what was the contribution of T.S? And you responded: he did not contribute except for the fact that he paid you. And you were laughing. And I asked you: would you repeat this. Now, you admit that this is what you said then?

A. What I said then at that time was that I did not know. I did not say that. But I think what happened, or the reason I said that, because I did not know. I did not discuss the facts or the aspects with him...

Q. Well...

A. ... of these questions. So that's why I did not know.

Q. Is there a difference: I do not know what is his contribution, or he did not contribute except for the fact that he paid you. Is there any difference between those two statements?

A. The reason I thought he did not contribute is because I did not know. I did not discuss with him the facts or the aspects of the report.

Q. You are not answering my question. Is there any difference between the two statements? One is I did not know what his contribution was, and the second statement: he did not contribute except for the fact that he paid you. Is there any difference between those two statements?

A. There is a difference. But I also explained to you the reason why I said that, because I did not.

Q. Does this statement mean that you did know, and that the only contribution was payment?

A. I did not know. And the reason I did not conclude is because I did not discuss with him, so I did not know.

Q. Well, don't know is one thing. He did not contribute, phrase, means you did know that he did not contribute except for the fact that he paid me. This phrase can it mean that I don't know what his contribution is? That's what you're saying?

A. Like I explain it to you again. All right. What happened in the course of the working of these two papers, I worked directly with you, and you were the one (inaudible) a salary. I did not discuss with him the facts, or the aspects, or the problems. So that's why I said that he did not contribute, from the fact that I did not discuss with him.

Q. Well, why didn't you then say that I didn't discuss it with him, so I have no idea whether he contributed?

A. Well, the nature of the conversation at the time is that (inaudible)... what happened there, you were talking about a lot of different things.

Q. Okay. Let us see it again. It was on two occasion, so even if there was a slip of a tongue on one occasion, why did you make the same slip of a tongue on the second time? Let me remind you the conversation. Would you agree that T.S.'s contribution was zero? And you tried here to deny it. So you didn't really...

BY THE COURT:
Would you stop arguing with him. Put a question to him.

BY THE ACCUSED:
I'm not arguing. I'm cross-examining.

BY THE COURT:
Yes, you are. Put a question.

BY THE ACCUSED:
I'm in cross-examination.

BY THE COURT:
That's not cross-examination.

BY THE ACCUSED:
So now you cannot tell me.

BY THE COURT:
That is not cross-examination.

BY THE ACCUSED:
Okay. I will put it a question.

Q. Do you recall this kind of conversation? I asked you: would you agree that T.S.'s contribution was zero? You responded: I wouldn't say that. But I insisted. Okay. Could you specify what his contribution was? And you responded: he paid you. And again laughing. And I asked you: he paid me? You said: yeah. And again laughing. And I said: yeah, this is exactly what I am saying. He paid me. And that's all his contribution. That is all. Fini. And you confirmed: yes. Do you recall this part of the conversation?

A. I know something I know for sure.

Q. Just answer. Do you remember?

A. Because I did not pay you, and you never worked for free. So he must have paid you. That is the thing I think I know for sure. But the other one I did not know.

Q. This is not what I'm asking you. Do you remember this part of the conversation?

A. Yes.

Q. Yes. So on two occasions you clearly said, didn't you, that you were well aware that his contribution was zero, except for the payment of money? Didn't you?

A. No, I was not well aware.

Q. So why didn't you tell me then that I have no idea just now that he paid you. But I have no idea whether he contributed.

A. But I don't know what to reply to explain to you all of these things.

Q. What do you mean all of these things? Why didn't you tell me in nineteen eighty-eight (1988)?

A. Why should I tell you?

Q. Well, because you tried to deny it.

A. I did not try to deny it.

BY THE COURT:
This is degenerating into nothing more than an argument

between two people. You have made your point. Would you move on to your next point.

BY THE ACCUSED:

I didn't make my point.

BY THE COURT:

You have made your point. Move on to your next point.

BY THE ACCUSED:

I did not make my point.

BY THE COURT:

You have made your point. Move on.

BY THE ACCUSED:

I want him to answer.

BY THE COURT:

You have made your point. Move on. This is the last time I ask you.

BY THE ACCUSED:

Okay. I need Me Richard to be here so that I can...

BY THE COURT:

Me Richard will be there. He will not be in the dock.

BY THE ACCUSED:

Since we have a problem that I see that I'm doing cross-examination, you say differently. Therefore, for this particular topic, what was the contribution, Me Richard will put several questions, and I will continue...

BY THE COURT:

No, he will not.

BY THE ACCUSED:

... on the other issues.

BY THE COURT:

No, he will not.

BY THE ACCUSED:

Well, I need his help to...

BY THE COURT:

Well, if he's there to help you. You've started the examination, you'll finish the examination.

BY THE ACCUSED:

Well...

BY THE COURT:

That is that.

BY THE ACCUSED:

I want to...

BY THE COURT:

The rules are the same for you as they are for anybody else.

BY THE ACCUSED:

Well, he cannot ask several questions...

BY THE COURT:

No, he cannot ask several questions. I'm sure he's told you.

BY THE ACCUSED:

Okay.

Q. So when did you learn that you didn't know that Sankar, what was the Sankar's contribution. In ninety eighty-eight (1988), you said that you did know. When did you learn that, in fact, you don't know what his contribution was?

A. What happened is like when you publish an E-mail that way I discovered that (inaudible) there... when I read your E-mail, then I thought about it, what happened. Okay. I thought about what really happened during the course of the two papers. And what really happened during the

course of the two papers was that I did not discuss with Sankar ... aspects of it. So the reality is that I did not know.

Q. So when you read my E-mail you all of a sudden discovered that you told me that his contribution was zero and, in fact, you didn't know what his contribution was. That's right? Yes? That's how it was?

A. I'm sorry. What is the question again?

Q. So you didn't know until early ninety-two ('92) what was T.S. Sankar's contribution was or wasn't. Only then you asked yourself the question whether there was any contribution, and you answered to yourself, that you have no idea whether there was some. That's the situation?

A. Yes.

Q. Now, do you know if there was a contribution, if any, to say other publications between you and himself?

A. Yes.

Q. So this is the only publication. You have no idea what his contribution was?

A. Yes. The one that I haven't got ... yes.

Q. Ha, ha, ha. Now, explain how come my publication stands somewhat aside from any other of your publications with T.S. Sankar?

A. Because you came and worked with me directly, as if I just worked with you only.

Q. You're not answering my question. Why, for example, with graduate students, you didn't work in the same manner that you worked with your graduate students, then your graduate students go to T.S. Shankar and discuss something. Why it was different with me?

A. What happened is your paper... you came and you worked with me directly, like I said, and you were the go-between you and him. You were the one that came to my door in December, nineteen seventy-nine (1979), asking for a problem to work out. Okay. So in this case here, I defined the problem for you. We discussed it. You come to see me once every two weeks. Finally you wrote the first draft of the paper, I (inaudible) it, I worked with you, and then you put Sankar's name on it. In this case here, what happened? I mean, he must have paid you, because I didn't pay you, and in this case you put his name on it, and then you come back and ask me what is his contribution?

Q. You're not answering my question. My question was why with other ... okay. Let me ask you differently. Do you know a name Bargiora?

A. Yes.

Q. Okay. Did you work with him directly?

A. Yes.

Q. Okay. Do you know what T.S. Sankar's contribution was to the joint publication?

A. Yes.

Q. How come? What was the difference between Bargiora and me?

A. What happened is that Bargiora, he wrote to me beforehand, before he came to Concordia. He had corresponded with me and discussed with Shankar, and we accepted this person. We discussed at length, what his project will be, and so on. In this case when he came, that he worked on it. In your case it was different. You came to my door certainly one day. I was assistant

then. You came and you say, okay, you want to work out a problem. So I decided you work on it. And later you put Shankar's name on it, and you want to ask me what is his contribution.

Q. Why you are not answering my question? Why with Bargiora it was not the same?

BY THE CROWN:

My Lord, I think we're sidetracked with Bargiora.

BY THE COURT:

We are certainly sidetracked. And the question was answered. Would you move on to something else, please. Would you move on to something else, please.

BY THE ACCUSED:

I haven't finished with this subject yet.

BY THE COURT:

Yes, you have.

BY THE ACCUSED:

I have not.

BY THE COURT:

We are not going into the question of Bargiora. Now, would you get on with something else.

BY THE ACCUSED:

Okay.

Q. Do you know the name Berjinsky?

A. Yes.

BY THE CROWN:

Again, My Lord, I don't see the relevance.

BY THE ACCUSED:

Q. Is it the same thing?

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

Yes.

BY THE COURT:

... unless you leave this subject alone and move on to another subject, you are running the risk of having this examination terminated.

BY THE ACCUSED:

I am cross-examining the witness on his prior statement.

BY THE COURT:

You are no longer cross-examining the witness on the contradiction that you were talking about before.

BY THE ACCUSED:

I am, because I want to show that he is not lying in this particular case, but there were several similar cases and if he knew, in the case of Bargiora, or Berjinsky, who were in the same position as I was, then he definitely knew what was in my case. So it is related.

BY THE COURT:

We have stayed with your case and you have moved through your case and you've now moved on to something else that is no longer relevant and is no longer part of the cross-examination on the contradiction that was... or the apparent contradiction that was in his... between his testimony and the statement.

BY THE ACCUSED:

Well, I explained to you how...

BY THE COURT:

So I couldn't care less if you explain it to me. The Crown Prosecutor's objection is maintained. You'll move on to something else.

BY THE ACCUSED:

Okay.

Q. Who supervised those two people Berjinsky and Bargiora?

BY THE CROWN:

My Lord, it doesn't respect your ruling, My Lord.

BY THE COURT:

Is that another objection?

BY THE CROWN:

Sure.

BY THE COURT:

Maintained.

BY THE ACCUSED:

Ha, ha, ha, you're inviting an objection.

BY THE COURT:

I'm not inviting an objection.

BY THE ACCUSED:

All right.

BY THE COURT:

Would you get off Bargiora. Move on to another subject with Dr. Hoa. The whole question of whether there's a contradiction, or whether there has not, has been exhausted. We've finished with that. The jury has heard what they need to hear. They will decide what they have to decide in due course. Now, move on to another subject. We can't stay indefinitely on this subject.

BY THE ACCUSED:

We are not indefinitely.

BY THE COURT:

Yes, we are. I have decided we are. So move on to another subject.

BY THE ACCUSED:

All right.

Q. Do you recall, in the same conversation, I threatened you with a Court action? Do you recall that part?

A. No.

Q. Okay. Did I mention Court at all, a Court action?

A. No.

Q. No. I didn't. Okay.

A. I don't recall that.

Q. You don't recall that. All right. So let me try to trigger your memory.

First, I mentioned the Court action, I asked you: I hope you will not be committing a perjury if you are called to testify. Would you? Do you remember this question?

A. Yes. But I did not understand the word perjury.

Q. What perjury means? It's exactly what you are doing now. This is perjury.

A. That's not right.

BY THE COURT:

Mr. Fabrikant, you know better than that.

BY THE ACCUSED:

Your testimony today is a perjury. This is exact. He asked me what perjury is.

BY THE COURT:

That doesn't matter. You're not allowed to stand there and accuse the witness of being a liar. I mean, you've done it before, and you can do it, if you like, but...

BY THE ACCUSED:

I'm not really. I'm explaining to him what a perjury is.

BY THE COURT:

Yes, well, you don't need to do it in the fashion in

which you did.

BY THE ACCUSED:

Well, I don't know the better way to put him an example.

BY THE COURT:

No, no, no.

BY THE ACCUSED:

That's exactly what he's doing.

BY THE COURT:

No, no. What you are doing is jumping on any opportunity you could and the very first one you found to say in front of the jury that the man is a liar. That's your opinion. The jury has theirs. And I would suppose the jury couldn't care less about yours, or mine, for that matter, or anyone else's. They'll decide whether the man's telling the truth or whether he's not.

BY THE ACCUSED:

Q. Anyway, do you remember this question?

A. Yes, yes.

Q. Okay. Do you know what the word "perjury" means?

A. I know now, yes.

Q. But you didn't know in eighty-eight ('88) what it means?

A. I repeat, I was asking you the question at the time. I did not know that time.

Q. Well, you asked: sorry, what do you mean?

A. That's right, yes.

Q. And I told you, 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 T.S.? Now, did you understand this? Was your English good enough to understand this, testify, the word "testify"?

A. Yes.

Q. Do you know what "testify" means?

A. There is no need to explain, I do at this time, yes.

Q. Okay. Is it your understand that this is what you are doing now is testifying?

A. Yes.

Q. Did you know the meaning of this word in eighty-eight ('88), too?

A. Yes.

Q. Okay. So you understood when I was talking about testifying. It means in Court?

A. Yes.

Q. So you did understand it?

A. Yes.

Q. So you understood that I mean a Court action, or you thought that I will murder four people, and I invited you to testify in eighty-eight ('88)? Did you think that testimony?

A. Sorry. What is the question?

Q. Well, I am asking you, how did you understand the word "testify"? Did you understand your testimony today like this, or you understood it as a legal action in a civil lawsuit? How did you understand this word in eighty-eight ('88)?

A. Testify means to say something in front of the Court. That's what I thought.

Q. Okay. But what kind of Court? Did you understand it as a legal civil action?

A. I did not have any idea what kind of Court it is. Just testify meaning, you know, saying something in Court.

Q. Anyway, do you know that in Court you are supposed to

tell the truth. Right?

A. Yes.

Q. When you are testifying. You knew that in eighty-eight ('88), too?

A. Yes.

Q. Okay. So the question was if you are called to testify, and I put you a question: what was the contribution of T.S.? So the question was put precisely that if you were testifying, not something else, correct?

A. Sorry. What is the question?

Q. The question was put in the context that as if you were testifying, correct?

A. I am not that clear.

Q. Okay. Let me repeat it to you. Maybe it will be more clearer to you. The question was, I mean, if you are called to testify, and I put you a question about the papers I have written: what the contribution of T.S.? So is the question clearer to you?

A. Your question, what is the question now?

Q. Is this question clear to you? This is my question now. The question which I asked you in nineteen eighty-eight (1988), is it a clear question?

A. No, it was not clear, because you see, like I did not understand all of the Court terminology. Okay. To testify means sort of saying something in front of the Court.

Q. Yes.

A. Okay.

Q. So was it clear to you in eighty-eight ('88) what I am asking you?

A. I did not know exactly what you had in mind. What I understand to testify means saying something in front of the Court.

Q. Okay. But what could be the opportunity for you to be in Court and me asking you this question?

BY THE CROWN:

This is speculation, My Lord.

BY THE ACCUSED:

Q. Did you... okay, I will change it, speculation. So what was your understanding of this question? Was it that it is the possibility of a civil lawsuit, or it was a different understanding? How did you understand that question in eighty-eight ('88)?

A. Well, like I said, to testify means saying something in front of the Court.

Q. Okay.

A. Actually, that's all the idea that I had.

Q. So was it difficult then to come to the conclusion that I might start a legal action?

BY THE CROWN:

It's another way to speculate, My Lord.

BY THE ACCUSED:

Q. Okay. Did you understand it at that time that I mean legal action, a possible legal action? Did you understand it in eighty-eight ('88)?

A. No.

Q. You did not. All right. Let me then remind you one more of this conversation. Then probably you will recall that it was more clear.

BY THE CROWN:

This looks like cross-examination, My Lord.

BY THE COURT:

This is cross-examination.

BY THE CROWN:

Up to now there is no contradiction.

BY THE COURT:

This is cross-examination.

BY THE CROWN:

Cross-examination shouldn't be allowed.

BY THE COURT:

It's clear that it is cross-examination.

BY THE ACCUSED:

Well, I am trying to trigger his memory.

BY THE COURT:

Yes, but under the guise of triggering his memory, you may not proceed to cross-examine him up and down.

BY THE ACCUSED:

I'm not cross-examining. I'm triggering his memory.

BY THE COURT:

What you might have done was asked him to take cognizance of the part of the statement to which you are referring and ask him if that refreshed his memory. You might have done that.

BY THE ACCUSED:

Well, this is exactly what I am doing.

BY THE COURT:

That's not what you're doing. Don't tell me that's exactly what you are doing. It's not what you're doing.

BY THE ACCUSED:

I don't get it. I am...

BY THE COURT:

He had a copy of that. He had a copy.

BY THE ACCUSED:

He had a copy. So?

BY THE COURT:

Yes.

BY THE ACCUSED:

He probably forgot, so I'm trying to trigger his memory.

BY THE COURT:

I have no idea whether he forgot or not.

Q. Do you have your...

BY THE ACCUSED:

It looks like he did. Okay.

A. I have a copy, yes.

BY THE COURT:

You have a copy.

BY THE CROWN:

We've made a copy for him.

BY THE COURT:

Would you tell him what page you wish him to look at and refresh his memory from.

BY THE ACCUSED:

Well, it will be simpler just to...

BY THE COURT:

Don't tell me what will be simpler. Would you simply direct him to the page in question, and let him refresh his memory and then put your question. If you have to hand him yours for a moment, hand him yours for a moment.

BY THE ACCUSED:

You are so afraid the jury will hear the conversation.

BY THE COURT:

I've no fear at all about the jury hearing the

conversation.

BY THE ACCUSED:

Well, let them hear the conversation.

BY THE COURT:

I have no fear at all. Now, would you hand him the thing.

BY THE ACCUSED:

Well, he has his own copy.

BY THE COURT:

Q. Dr. Hoa, do you have your copy?

A. I don't know.

Q. You don't know if you have it with you.

BY THE ACCUSED:

Well, the Crown has a copy.

BY THE COURT:

What page would you like him to look at?

BY THE ACCUSED:

Page 3, on top.

BY THE COURT:

Page 3. Right. Read that quietly to yourself, and then wait for the question.

BY THE ACCUSED:

Well, there is no need to read the whole page.

A. Can I read it?

BY THE COURT:

Yes. Read it to yourself.

A. Okay.

Q. Okay. Go ahead, would you put your question.

BY THE ACCUSED:

Q. So is it clear from what you read that I did threaten with legal action if...

A. No, I don't think that was a threat.

Q. All right. So then we have no choice but to go into the specific text. Do you see the text where it says that:

"I have to support my children, so
I have to fight. There is no way.
And after that: so my back is
against the wall. Whenever I
can..."

BY THE CROWN:

He's just picking sentences, My Lord. This is unfair.

BY THE ACCUSED:

Well, this has nothing to do. If he wants to read it all. Fine.

BY THE COURT:

It doesn't matter. You will read... first of all...

BY THE ACCUSED:

Okay. Is it a protest?

BY THE COURT:

Yes, it is.

BY THE ACCUSED:

You're protesting?

BY THE COURT:

Yes, it is.

BY THE CROWN:

I think it's unfair.

BY THE CROWN:

When you read something you should read...

BY THE ACCUSED:

Okay. Fine. I will read it, all of that.

Q. "Anyway, is it possible at least

somehow, I don't know, whether it is convenient for you to talk to any of them at all. If it is, would it be possible to explain to every one of them that if I am out... if I am out, okay, and I have to support my children, so I have to fight. There is no way. I have applied at many places. I am glad to go. I am not needed anywhere so far at the moment, so my back is against the wall. Whenever I cannot to fight I will retreat. But if I have no option for retreat, in this case, what, I have to go to Court. And I have to call everyone who was involved to testify."

Could it be said clearer than that?

A. What is your question?

Q. Could it be said clearer than that?

A. What is that?

Q. That I threatened...

BY THE COURT:

I think that there's a breakdown in communication here. What he is asking you is the following. Is it not true that he told you in nineteen eighty-eight (1988) that unless his contractual situation was settled, that he would have no choice but to take legal action.

A. Yes, sir.

Q. That's what he's asking you. He said did I say that to you in nineteen eighty-eight (1988)?

A. Yes, yes, yes.

BY THE ACCUSED:

Well, he contradicts himself. Just several minutes ago he said, no, to this question. Now he says, yes. Well?

BY THE COURT:

Well, I don't know. It may be that that refreshed his memory. I've no idea.

BY THE ACCUSED:

Well, it didn't refresh his memory.

BY THE COURT:

He listened to the thing. He saw it.

BY THE ACCUSED:

He read the page, and he still answered, no.

BY THE COURT:

Listen. Listen. Listen. Listen. Listen. We are going to get nowhere with this sort of manner of proceeding.

I have no idea what you're attempting to show through this. I have no idea at all.

BY THE ACCUSED:

What I am... okay. You're asking me to...

BY THE COURT:

If you are attempting to show...

BY THE ACCUSED:

... explain what I'm attempting to show?

BY THE COURT:

... that you had a discussion with him. He either remembers that discussion, or he doesn't remember that discussion. You can try to refresh his memory with the copy of the conversation. If it refreshes his memory, all well and good. If it doesn't refresh his memory, it

doesn't refresh his memory.

BY THE ACCUSED:

But this is not the point what happened. He read all the stuff. It is absolutely clear. He still responds, no. He doesn't remember that. And all of a sudden he said, yes. Now, he...

BY THE COURT:

Well, the questions, with all respect, were not very clear.

BY THE ACCUSED:

Now he does.

BY THE COURT:

Your questions, with all respect, were not very clear.

BY THE ACCUSED:

How come you understood it? You understood the question. You rephrased it to him perfectly well. It means that you understood it.

BY THE COURT:

Well, I didn't get the impression listening to your questions and his answers that there was perfect communication between the two of you.

BY THE ACCUSED:

Well, how come you understood the question? I believe everyone understood what I was asking. And it looks like he was the only one who didn't understand what I was asking.

BY THE COURT:

Perhaps he didn't understand it. But it may have been clearer when I put it the way I put it.

BY THE ACCUSED:

Okay. Maybe we'll start with Section 9 and finally find that the witness is adverse and did.

BY THE COURT:

Have you another question to put to the witness?

BY THE ACCUSED:

Okay. I want to communicate again with Me Richard.

BY Me RICHARD:

Mr. Fabrikant tells me that he would like me to make an application under Section 9.1 of the Canada Evidence Act.

BY THE COURT:

Under 9.1?

BY Me RICHARD:

Yes.

BY THE COURT:

I think it's 9.2 you're talking about, isn't it? It might be 9.1. 9.1. In essence, it's been done, hasn't it? The question has been put to the witness, and the witness has given his answer, both in relation to the statement and in relation to the questions put.

BY Me RICHARD:

The way I understand it was Mr. Fabrikant is requesting his general declaration, which will open a cross-examination at large, ...

BY THE COURT:

Well, then...

BY Me RICHARD:

... not only on...

BY THE COURT:

Then what Mr. Fabrikant is after has nothing to do with 9.1 or 9.2. What Mr. Fabrikant is after is the permission to cross-examine at large according to the

principles of the Common Law, because the witness is adverse.

BY Me RICHARD:

Yes.

BY THE COURT:

And I'm not prepared to come to the conclusion that the witness is adverse. So his motion is dismissed.

BY THE ACCUSED:

Maybe Me Richard has some arguments to support this motion.

BY THE COURT:

Well, Me Richard didn't make any arguments when he announced what the motion was, did he?

BY THE ACCUSED:

Well, Me Richard, do you have any arguments?

BY THE COURT:

Mr. Fabrikant, I said the motion is dismissed. You're not running the Court. I am.

BY THE ACCUSED:

Well, you didn't hear the arguments yet.

BY THE COURT:

I presume when counsel didn't make any arguments, that there were no arguments that he wished to make. So your application is dismissed.

I think we'll stop here for fifteen (15) minutes.

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

(OUT OF THE PRESENCE OF THE JURY)

BY THE COURT:

I wonder, Me Richard, in the time that we adjourn, if you might possibly, if you are counselling Mr. Fabrikant this afternoon, try to attempt to determine where he's going with this examination, and where he hopes to get to, because it looks to me as if we're simply spinning our wheels. It's going to do no good at all to this case, or anything else, to go over interminently conversations that took place three years ago in the hope of rummaging up some sort of minor contradiction that when all the snow has settled, when all is said and done, will do no more than simply touch on the collateral issue of credibility of the witness. Because, after all, I don't make the rules.

The Evidence Act sets out what the rules are, and like it or not, this is a witness that Mr. Fabrikant chose to put on the stand. But this afternoon, since we started with Dr. Hoa, we've gone precisely nowhere.

(THE JUDGE LEAVES THE BENCH)

SHORT RECESS

(THE JUDGE TAKES THE BENCH)

(THE ATTORNEYS AND THE ACCUSED ARE PRESENT)

BY THE COURT:

Mr. Belleau, you asked me if I would come on to the bench without the jury, first of all.

BY Me BELLEAU:

Yes, My Lord, please. I would like to clarify something that was said by Mr. Fabrikant a little earlier, when he spoke about the fact that he had become aware of the KGB decision and that it was just another illustration of the extent of the sabotage that he had been a victim of. He forgot to mention the fact that I'm the one who sent it to him, and provided him with it, when on Wednesday it became a live issue. I figured without him ever raising the point with me, I thought that it would be interesting that he would be made aware of this case, and I sent it to him right away. I feel comfortable discussing this since it does not involve at all any disclosure of communication from him to me, at least, and I wanted it for the record to be made clear.

BY THE COURT:

Thank you very much, Mr. Belleau.

The jury, please.

BY Me RICHARD:

Just before the jury comes, Your Lordship. I spoke with Me Deslongchamps five minutes ago. She told me she had to discuss the thing with her superiors and that I should have an answer by the end of tomorrow morning or tomorrow afternoon at the earliest.

BY THE COURT:

Who is Me Deslongchamps' superior?

BY Me RICHARD:

I think it's Me Forest, or Laforest. I never spoke with him, but he's the head of...

BY THE ACCUSED:

Leforest is...

BY Me RICHARD:

Forest, he's the head of the Legal Aid. But she said that herself she didn't see any problem with it. But she couldn't take the decision by herself. So we should know by tomorrow.

Tomorrow morning, I would like to advise the Court I'll be here at ten-thirty (10:30). I've got something to finish in Longueuil, and as I'm still not still clear what order...

BY THE COURT:

What your status is?

BY Me RICHARD:

Yes.

BY THE COURT:

Okay.

BY Me RICHARD:

And in any way, what I understand right now is that I will act most likely just as an advisor for Mr. Fabrikant, so that...

BY THE COURT:

Well, as you know, if he elects to proceed in that manner, then I'm obliged to accept that manner of proceeding, as things stand at the moment. So if that's what it is, then that's what it will have to be. I would have thought that he would have been well advised to have, if you're coming into the record, serve as counsel, but I can't impose that on him, and I wouldn't try.

BY Me BELLEAU:

I understand, My Lord, that we start at nine-thirty (9:30) tomorrow.

BY THE COURT:

We start at nine-thirty (9:30) tomorrow.

(MEMBERS OF THE JURY TAKE THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENCE)

BY THE ACCUSED:

Well, I don't remember if I made it clear when I addressed the jury. I thought it was clear that I mentioned that it was Mr. Belleau who gave me the KGB case. If it wasn't clear, and it was important for Mr. Belleau, I would like it to be known to the jury that yes indeed, it was he who brought me the KGB case the same as it was he who brought me the Thibodeau case. So whatever I know about sabotage, the information about sabotage comes from Mr. Belleau himself, indeed. So whenever he tries to deceive me, for example, about tapes, that...

BY THE COURT:

Listen, would you please put...

BY THE ACCUSED:

Let me please finish.

BY THE COURT:

No, I will not let you finish. It is pointless to go on this route.

BY THE ACCUSED:

No, it is not pointless. It was Mr. Belleau who raised this question. So I think it would be nice to make it clear what really happened.

BY THE COURT:

Would you please put your questions to Dr. Hoa.

BY THE ACCUSED:

So you forbid this?

BY THE COURT:

Yes, I forbid you to make these speeches.

BY THE ACCUSED:

Well, too bad.

EXAMINATION BY THE ACCUSED: (CONT)

Q. So now you do recall that I threatened you with a Court action, do you?

A. I recall the statement here, but I don't think that was a threat.

Q. Okay. How do you understand the phrase, if I have to go to Court and I will call everyone involved to testify?

A. Well, you have a lot of (inaudible).

Q. All right. You...

BY THE COURT:

You missed the nuance. He said he didn't take it as a threat.

BY THE ACCUSED:

All right. We are not going into semantics.

Q. Let me put it this way. I promised you... would the word "promise" sound better to you than threat, or I warned you? Would this word be better?

BY THE CROWN:

This is cross-examination, My Lord.

BY THE COURT:

It is cross-examination. Why do you not leave the subject alone? It is absolutely immaterial.

BY THE ACCUSED:

Okay. Now, would you like me to explain why it is material? Why don't you ask me? I will explain.

BY THE COURT:

Mr. Fabrikant, I will not ask you.

BY THE ACCUSED:

Ha, ha, ha. You are afraid of my answer.

BY THE COURT:

I'm not afraid of your answer.

BY THE ACCUSED:

So ask me why it is material.

BY THE COURT:

Mr. Fabrikant, it isn't material.

BY THE ACCUSED:

Ask me.

BY THE COURT:

Now, move on to something else.

BY THE ACCUSED:

Ask me, please, why it is material.

BY THE COURT:

Mr. Fabrikant, you have used that dock as a springboard to testify since the beginning of this trial. Now, whether you threatened, or whether you promised, or whether you raised the possibility of Court action in nineteen seventy-eight (1978), leave it alone and move on to something of some significance.

BY THE ACCUSED:

All right.

Q. So did I, during this conversation, in any way threaten you with physical violence?

A. What was the last word, again?

BY THE COURT:

Physical violence.

A. Oh, physical violence. No.

BY THE ACCUSED:

Q. Okay. What was the reason, if you recall, for me to come to you in the first place? Do you recall that? Why did I come to talk to you eighty-eight ('88)?

BY THE COURT:

How could the witness tell you why you did anything?

BY THE ACCUSED:

Okay. Let me rephrase it then. You want to spend more time, I can rephrase it.

BY THE COURT:

Well, no, I just prefer you...

BY THE ACCUSED:

I think my question was very clear, but you insist I rephrase it.

BY THE COURT:

I think it's preferable when you ask a legal question.

BY THE ACCUSED:

Q. Did I explain to you what was my reason for coming to you in eighty-eight ('88)?

A. I don't recall clearly, no.

Q. Okay. So take this back again and would you kindly trigger your memory again. Read the first page, please, maybe this trigger your memory.

He listened to the tape on Wednesday. He read it all, and he still claims that he does not remember what was there. And Section 9 is denied.

A. I have finished reading the first page.

BY THE COURT:

Fine. Wait for the question. You've read the...

BY THE ACCUSED:

Q. Now, do you recall whether I explained to you the reason for coming to you?

A. No, it's not evident from this case, but it revolves around, and it says that the ... the reason is not clear.

Q. Okay. So you read the first page and you still say that the reason is not there. Okay. Now, let us see whether the reason was there or not. I am telling you:

"I have been told for some strange reasons without any explanation, for humanitarian reasons Seshadri Sankar is prepared to extend my contract for one more year, and after that I am kicked out.

Hoa: for what humanitarian reason?

For a humanitarian reason?

Fabrikant: I hope you understand that I am not a fighting person.

I didn't do anything wrong. I deserve to be explained that, what is going on.

Hoa: yes."

Now, does this trigger your memory as to the reason why I came to see you?

A. It's not too clear. You see...

Q. Not too clear. Fine. Let us read more then, then maybe it will be more clear. Read then from the very beginning. I thought that with your degree that would be enough, but it doesn't look like that. Read from the very beginning.

"Frabrikant: you are a member of the Personnel Committee of this department?

Hoa: yes.

Fabrikant: ... "

BY THE COURT:

Mr. Fabrikant, this is not the way you do this. You have asked him to read the statement, and see whether...

BY THE ACCUSED:

Well, he did.

BY THE COURT:

And he's read it. And he said, no, it's not clear to me why you came to see me.

BY THE ACCUSED:

Uh, huh.

BY THE COURT:

There you are. That's your answer.

BY THE ACCUSED:

No, that is not. I'm trying to trigger his memory more. He doesn't seem to be...

BY THE COURT:

You can't trigger his memory more by reading it out and reading into the record. It doesn't go into the record.

BY THE ACCUSED:

All right.

BY THE COURT:

Okay. Now, you've asked him...

BY THE ACCUSED:

If you recall, may I respectfully submit, that if you

recall when he read the other page about a Court action, he insisted again that he cannot understand that I threatened with a Court action.

BY THE COURT:

Because he doesn't accept your word "threat". That's all.

BY THE ACCUSED:

Oh, that was the problem. Okay. Now he has no excuse even of that kind. So that was the reason. You believe this?

BY THE COURT:

Listen, you have put this in front of him and if he persists in saying, no, I'm sorry I can't recall. It wasn't clear to me what the purpose of the meeting was, then that is it. But you're not going to read this question, answer, question, answer, into the record.

BY THE ACCUSED:

Well, I want to trigger his memory, because I thought...

BY THE COURT:

Well, ask him. You've asked him to read it.

BY THE ACCUSED:

Do you... well, I asked him to read it. He did. It looks like either his English is bad, or he is so adverse that he pretends to have his English bad. But he definitely is not that bad, therefore, he is adverse. You just don't see it, so I have no choice. He read it.

BY THE COURT:

Listen. We are not going to spend this whole trial dissecting statements...

BY THE ACCUSED:

Then ask him to start being serious then.

BY THE COURT:

... pieces of recordings or anything else in order to have you accomplish Lord knows what.

BY THE ACCUSED:

All right. Then make the witness aware that he is at a serious place and ask him to behave seriously.

BY THE COURT:

The jury is there to appreciate the witness' demeanour and what the witness says.

BY THE ACCUSED:

Well...

BY THE COURT:

You've put your question. He said, no, it wasn't clear to me.

BY THE ACCUSED:

Fine. So I continue. So...

BY THE COURT:

Listen. You are not going to continue reading this thing to him.

BY THE ACCUSED:

Well, what is the other way...

BY THE COURT:

I don't know. You have to put your question in another fashion. You technically are not supposed to ask leading questions. You've asked them since the beginning.

BY THE ACCUSED:

I'm not asking a leading question. I'm trying to trigger his memory.

BY THE COURT:

Well, ask him what you're concerned... if was he aware

of... if you said to him, if you stated to him your concerns when you went to see him and see what he says.

BY THE ACCUSED:

Ha, ha, ha. Now the question is whether... he does not understand when I said reasons to see him, he does not understand, but concerns, he would understand.

BY THE COURT:

Perhaps, I don't know.

BY THE ACCUSED:

Fantastic. Isn't it beautiful? Ha, ha. You are giving him a way out. I have no objection...

BY THE COURT:

I am not giving him a way out at all.

BY THE ACCUSED:

As long as one gets...

BY THE COURT:

I'm giving you another manner of phrasing your question so that he might understand it, because quite obviously you and he don't communicate.

BY THE ACCUSED:

Oh, no, we do communicate. He pretends not to understand. You understood me. You, each time, rephrased the question absolutely correctly.

BY THE COURT:

Well, I'm getting to the point where I've had lots of practice.

BY THE ACCUSED:

My God. My students gave me the best mark for clear expression...

BY THE COURT:

Mr. Fabrikant, let us not have...

BY THE ACCUSED:

... about that.

BY THE COURT:

... let us not have a discussion. I suggested to you how you might phrase your question.

BY THE ACCUSED:

Yeah. Okay. If it helps, I have no objection.

Q. What it was... did I make it clear to you my concerns when I came to see you? Like this? Objection. So, did I make it clear to you my concerns when I came to you in eighty-eight ('88)?

A. Not when you first came. I... maybe I can help a little bit. I think I understood probably that you have some worry about your contract renewal or something...

Q. That it was not clear.

A. ... something to what... the fact that you may be fired or something like this. I mean, I'm not quite sure at that point what the... something like this.

Q. So the wording was very unclear when I spoke with you. Right? Read the wording, is it clear there, or it is not clear?

A. Which wording? The wording of this page?

Q. Yes, yes.

A. What is clear, clear about which subject?

Q. About my concerns, what those concerns were.

A. Well, you said that Dr. Sankar may give you only one year. So that (inaudible).

Q. So that was the reason for me to come to you?

A. I think it would be something like that.

Q. So now you do understand that there was a reason and I

explained it to you that...

A. Yes, but not when you first came. When you first came you looked your sentencing, at the beginning you were around this part already...

Q. All right. Let us see how around is it.

BY THE CROWN:

What is the point, My Lord?

BY THE COURT:

There is... I'll ask him what the point is, but... what does this mean?

BY THE ACCUSED:

Fantastic. Ask me what the point is.

BY THE ACCUSED:

What does this mean to us?

BY THE ACCUSED:

What... first of all, what is the question. Why I am asking this witness for the reason for me to come to you... to him, or it is more general? What is the question now I should respond?

BY THE CROWN:

Every time he doesn't like a bit of an answer, he wants to contradict and to smash the witness.

BY THE ACCUSED:

Absolutely not.

BY THE CROWN:

It's a total waste of time.

BY THE ACCUSED:

Absolutely not. I could not possibly imagine when I asked my first question about whether I threatened with legal action, it never was in my wildest dream that the phrase that I have to go to Court, this witness would still answer, no. I didn't. So that's absolutely ludicrous for the Crown to imagine that I am trying to nail the witness, or to discredit the witness, or anything.

I thought that when I asked this question, he will answer, yes, and I could go further from that. And instead I had to spend about fifteen (15) minutes to finally make him a yes, to say, yes, that I did threaten with Court action. And then I had to ask...

BY THE CROWN:

He never did so.

BY THE COURT:

No.

BY THE COURT:

No.

BY THE CROWN:

He did not take it as a threat.

BY THE ACCUSED:

And I would like the Crown to keep quiet until I finish. And after that I asked him again whether he knew what was the reason for me to come, and the text is quite clear that I explained to him that... I can read it from the text...

BY THE COURT:

Oh, leave the text. You can...

BY THE ACCUSED:

Okay. So I will rephrase it in my own words, that if he reads the first page, from the first page it is quite clear that I came to him because he was a member of the Department Personnel Committee who was supposed to meet

in a couple of days, from the moment when I met with him, and I told him that before that I had a meeting with Seshadri Sankar, and he told me that my contract in one year will be terminated. And definitely I was concerned, and I wasn't given any explanation and I came to him to inform him about it first...

BY THE COURT:

Look...

BY THE ACCUSED:

... and ask for his support. Now, let me finish, please. Now, it never crossed again my mind that he will be playing stupid here, and answering to my question, did I explain to you the reason why I came, and he says, no, it is not clear. Well, it is. On the first page, it is absolutely clear what was the reason for me to come to him. Now, am I, who is trying to nail the witness, or the witness behaves in such a way that he pretends not to understand plain English?

BY THE COURT:

No.

BY THE ACCUSED:

Who is at fault here?

BY THE COURT:

These are your words, pretends not to understand plain English.

BY THE ACCUSED:

Well, he sincerely does not understand.

BY THE COURT:

But there's surely a series of questions you could put to the witness aiming at establishing what the purpose of the meeting was... of your visit was, if the witness recalls. If the witness can't recall, or if the witness can't even recall with the aid of the aide-memoire, then the witness can't recall. But in the end, what is it going to change?

BY THE ACCUSED:

What is it going to change?

BY THE COURT:

It's not going to affect very much.

BY THE ACCUSED:

Well, we'll see how it is going to affect.

BY THE COURT:

I'm telling you, it is not. It does not strike me as being...

BY THE ACCUSED:

It does not strike you. Okay.

BY THE COURT:

... a sort of overly important point.

BY THE ACCUSED:

Let me ask you... let me ask you another question. I believe there is somewhere here a contract from Budget. You would also say it is irrelevant?

BY THE COURT:

I have no idea.

BY THE ACCUSED:

Well, you better believe it is relevant, though, the Budget contract only says that I have rented a car on August nineteenth (19th), nineteen ninety-two (1992). So believe me when I ask questions it is relevant to my...

BY THE COURT:

Mr. Fabrikant, we are discussing a meeting in nineteen

eighty-eight (1988).

BY THE ACCUSED:

Yes.

BY THE COURT:

Okay. Now...

BY THE ACCUSED:

So it is relevant.

BY THE COURT:

I'm not so sure. Now would you get on with it.

BY THE ACCUSED:

Yes.

Q. So do you... could you read it maybe once again and...

A. I read it.

Q. Okay. So do you understand, more or less, clear what the concern was? What was my concern at that time?

A. Well, like I said, you were concerned about your contract renewal or something.

Q. Okay. What exactly was my concern?

A. Well, you said that Seshadri Shankar may give you one year.

Q. And after that what?

A. That you were afraid to lose your job, but that's a separate case.

Q. So now you do understand what was the reason for me to come to you. All right. Now, during that conversation was there any veiled threats of physical violence, if not open, veiled threats, any phrase which could be interpreted as a threat of physical violence?

A. No.

Q. No. Now, do you recall also that at the end of the conversation I advised to you... I advised you once again that there is no point to start fighting with me, that it is better to make everything peaceful. Do you recall that?

A. No, but I probably had a reason, again.

Q. Ha, ha, ha. Okay. Read the last page. How many times does a witness get to fake his memory until I can file an application under Section 9?

A. Okay, (inaudible)...

Q. So can you confirm that now?

A. Can you repeat the question.

Q. At the end of the conversation, did I or didn't I advise you and through you everybody else that it is better to do everything peacefully, that fighting is no good. There will be no winners. Everyone will be a loser, if you start a loud fight. Do you recall that?

A. I think you put a few things in there. You mentioned everybody will be a loser, but I don't think you advised that you would do that peacefully. You said that you are not willing to (inaudible) fight. Some aspects of that you said, but some aspects you didn't.

Q. Okay. So, but I said that there is... that fighting is no good. That everyone will be a loser. There will no winners in this fight. Do you recall that?

A. Yes.

Q. Did you discuss this statement of mine with anybody else at any time later?

A. No.

Q. Did you pay any attention to what I was saying then?

A. Yes.

Q. Do you think that it was an important statement that in

a loud fight everyone will be a loser?

A. Yes.

Q. So if you remember that then at the later stages, did you ever recall to anybody else what I told you in nineteen eighty-eight (1988)?

A. No.

Q. How many people have you supervised from nineteen eighty (1980)? I mean not graduate students, but scientific prostitutes, let us say.

BY THE CROWN:

What is the relevance of this question, My Lord? I suggest to you that it is not relevant. We're sidetracked again.

BY THE ACCUSED:

Would you like me to explain?

BY THE COURT:

Yes, surely.

BY THE ACCUSED:

All right. I want to show that these people at the university, who has no brain of their own, that they have money from the government, and they can hire somebody else to do the job. They do not do any supervision. They cannot do any supervision.

He admitted yesterday himself that when he posed the problem, he didn't know how to solve it. If a person doesn't know how to solve the problem, if there's no way he can supervise somebody else who does know how to solve the problem, well, my question relates to the future examination because several people which I mentioned...

I mentioned not by coincidence. Those are the same people who are claimed by T.S. Sankar, who will be testifying later on, and this is why I need testimony from this witness on this subject.

BY THE COURT:

These people who are what by T.S. Shankar?

BY THE ACCUSED:

Yeah. He is...

BY THE COURT:

No, I didn't understand your word. These people are something or other by T.S. Shankar, you said. I don't...

BY THE ACCUSED:

Well, he will claim that he supervised them, too, probably you missed the word "supervised". Anyway, that's what I wanted to say, that several people who T.S. Shankar in his future testimony will claim that he supervised, including myself, exactly the same people Mr. Hoa will claim that he supervised, too.

Now, in my case, he admitted himself that he didn't know how to solve the problem. I believe the jury would have no difficulty to understand that he couldn't possibly supervise me. As far as the other people goes, I will try to find them, and to bring here to testify, too, that they were not supervised in any way. They were just hired to do the job, not for these people, not to work with these people, but to work instead of them. And the government was, and the taxpayer was those who paid for this exercise.

Now, this kind of scientific prostitution, I think should be known, because this is one of the routes. And of course you can make, once again, your joke about me

finding many roots wherever I can of the violence which took place at Concordia later on. Scientific prostitution, this one of the roots. And the problem was that these people are so outrageous that they not only use other people's brains. If you wish, you can say they raped them, because it is not done voluntarily. And...

BY THE CROWN:

My Lord, you already ruled that this is too remote, on many occasions...

BY THE ACCUSED:

I wouldn't like...

BY THE CROWN:

... on the same subject.

BY THE ACCUSED:

I would like the Crown to keep quiet until I finish.

BY THE COURT:

He perhaps thought you had.

BY THE ACCUSED:

Well, he had no reason to think so. So the point I am trying to make is that these people are so outrageous that instead of at least having the decency, if they have no brains to say, thank you, to those people who do, instead they behave like bandits when someone refuses finally to prostitute himself, when someone refuses to put their names on the papers, they just try to get rid of that person. They never give an account that they got so much that they should just say, thank you, and stop this rape and extortion, and instead they feel no gratitude, no elementary human decency feelings. This is what I am trying to show to the jury. Now I'm finished.

BY THE COURT:

Now you're finished?

BY THE ACCUSED:

Yes.

BY THE COURT:

Then sit down.

BY THE CROWN:

Well, My Lord, you already ruled this is too remote. We'll be sidetracked forever on this. You said from the beginning, this is not an inquiry to a university's ethics. And about Fabrikant's state of mind, he said he will have the occasion to explain his state of mind.

BY THE COURT:

There is no question about it that this is not only far too remote but this bears no relationship at all to why we are here. We are here in relation to four homicides. Period. Full stop.

Questions of what went on at Concordia University are of no interest in this trial save and except as they may have affected the accused's mind. It is all too easy to repeat over and over again that the accused's particular view of the world and his particular view of what transpired at Concordia is all rooted in his state of mind.

Insofar as his direct relationship with persons is concerned and insofar as these relationships might relate to the events of August twenty-fourth (24th), I've attempted to be lenient. But as far as the question of scientific prostitution, as far as the question of supervision, all questions that may, I suppose, be interesting to someone, are not questions that are

susceptible of advancing this trial one bit.
I fully realize that there may be those who disagree with the manner in which the university itself and universities at large are administered, or who may be in disagreement with how grants are supervised and policed. But this is not food for the present trial, and the objection is maintained. And I'm getting a little fed up having to maintain the same objection over and over again. You absolutely refuse, you absolutely refuse to adhere to any directives that I might choose to give. It's now sixteen twenty-nine (16:29). I can tell you that from tomorrow morning on, it better be very clear where you're going and why you're going there, otherwise the questions will be systematically ruled out of order until this thing finally proceeds at the pace at which it should be proceeding. So we'll adjourn ladies and gentlemen, till tomorrow morning.

(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,

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PROVINCE DE QUEBEC
COUR SUPERIEURE
Chambre criminelle
DISTRICT DE MONTREAL
NO: 500-01-017372-928

DEVANT M. LE JUGE FRASER MARTIN, J.C.Q.

SA MAJESTE LA REINE,
plaignante

-C-

VALERY FABRIKANT,
accus,

PROCES

COMPARUTIONS:
Me JEAN LECOURS,
Procureur de la Couronne

LE 6 JUILLET 1993.
Jocelyne DeMontigny,
St,nographe judiciaire
500-01-017372-928

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IN THE YEAR OF OUR LORD
NINETEEN NINETY-THREE (1993), on the sixth
(6th) day of the month of July, personally came
and appeared:

THE JURY IS PRESENT
PREUVE DE LA DEFENSE (suite)

SUANG HOA,
Professor,

WHO, having been solemnly
affirmed, doth, depose and say as follows:

MR. FABRIKANT:

I would like you to reiterate the Court order
that I be not separated from documents. Each
time I'm going back they take my document, they
put it in front of the pass and God knows what
they do with them. Right now, I am missing
some important documents, they are not there.

THE COURT:

It would not be the first time you have been
missing documents and, usually, you find them
when you look through your documents. I'm not
issuing any orders about documents.

MR. FABRIKANT:

No. There was four there. I don't ask for new
order. There was order that search be made in
my presence and I'm not be separated from
documents; could you reiterate the order?

THE COURT:

The order is there.

MR. FABRIKANT:

Well, they don't follow it.

THE COURT:

Have you questions to put to doctor Hoa.

MR. FABRIKANT:

Yes, I have, but this is important stuff.

THE COURT:

Put your questions to doctor Hoa and let's hope
it's important.

MR. FABRIKANT:

When are you going to deal with this issue?

THE COURT:

I'm not going to deal with this issue. You put
your questions to doctor Hoa.

MR. FABRIKANT:

So, you don't care that they don't follow the
order.

THE COURT:

Put your questions to doctor Hoa.

MR. FABRIKANT:

Why do you ignore what I am saying? It's just impolite.

THE COURT:

Would you, please, put your questions to doctor Hoa.

MR. FABRIKANT:

I will put, but let us finish with this first.

THE COURT:

We're finished with it. We have finished with this.

MR. FABRIKANT:

You ignore it; fine.

EXAMINED BY MR. FABRIKANT:

Q. So, yesterday, in just two hours, we accomplished a great deal. We have discovered answered to two important questions in just two hours. First was that, yes, I indeed threatened with Court action and, no, I never threatened with violence. I hope today will be a little bit faster than we were yesterday with clarification of questions. So, at any time, from '79 on did I ever threaten you with violence?

A. No.

Q. Do you -- did you observe me threatening anybody else, at any time?

A. I never had close working with you at all, so I did not see that.

Q. Were you personally afraid of me at any time?

A. Well, of the observation of you walking around, looking, you know, I really wouldn't want to be close to you.

Q. Elaborate please; what exactly did you see me walking around and when and how?

A. While you walk around with the eyes fixed like this and look very -- it's not normal, I mean, not a friendly kind of a -- a friendly kind of a face. So, I didn't want to get close to you.

Q. Friendly kind of a face (laughing), after what you did to me, you expected me to look friendly.

THE COURT:

Would you, please, stop this.

MR. FABRIKANT:

Well, I'm asking question.

THE COURT:

No, you're not asking questions; you're being sarcastic. I have had enough. One more word of sarcasm, this examination ends and through that door you go.

MR. FABRIKANT:

All right; so, I'm asking serious questions.

THE COURT:

Good; ask serious questions.

MR. FABRIKANT:

Q. After what you've done to me, did you expect me to look very friendly?

THE COURT:

The question is argumentative and it's

disallowed.

MR. FABRIKANT:

Q. Did you expect me to look friendly?

THE COURT:

It is the same question and it's disallowed;
last warning. Get off that subject.

MR. FABRIKANT:

Okay.

Q. Then, could you describe in detail when exactly
you saw me looking like -- like that, as you've
showed it?

A. I did not know exactly when to begin, but it
lasted over a certain amount of time.

Q. So, give your best estimation.

A. Well, I would probably say around 6-1989 on,
that kind of date.

Q. So, from what?

A. Nineteen eighty-nine. I mean, I'm not quite
sure, but roughly around this order.

Q. Nineteen eighty-nine, what; 1989 spring, 1989
winter, 1989 -- what part of it?

A. I don't remember.

Q. Would it ring any bell -- how did I look in '88
when I was worried about my contract? Was I
very friendly at that time?

A. Well, not friendly but (inaudible) later on.

Q. And since '89, it was all the time the same
view which made you look scared?

A. Yes, whenever I saw you, I mean I didn't even
look at you.

Q. Okay; and could it be that coincided with the
time you as a member of D.P.C. recommended
against my promotion in winter of '89? Could
that be the case?

A. No. I did not know what made you look that
way.

Q. Do you recall winter of 1989 when you, as a
member of D.P.C., considered my promotion for
research professor?

A. We didn't consider your promotion for research
professor. I did not remember exactly what
year, but we did, yes.

Q. Okay; and it was in winter of '89. You recall
that?

A. I am not quite sure at what time.

Q. If you will refresh your memory or you will
just trust me that it was winter of '89,
January somewhere? Do you want to refresh your
memory?

A. Again, I don't remember exactly what time.

Q. Do you remember what was the reason for
denying?

A. We did not deny your promotion.

Q. Well, let me put it differently then. You
decided that it was premature; right?

A. I don't remember. I remember that what
happened at that time, we recommended your
promotion. I don't remember what year.

Q. Do you remember when you did not recommend?

A. No, I don't remember that, no.

Q. It'll take awful lot of time again to find the

document and to refresh his memory. It would be much nicer if the witness not pretended to have bad memory, but --

THE COURT:

These are your comments that he's pretending. Witness says he doesn't recall. Your last question, I don't know what you were driving at with your last question.

MR. FABRIKANT:

Well, I wanted to show.

Q. Do you remember the reasons at that time why?

THE COURT:

You better establish at what time.

MR. FABRIKANT:

Yes, all right. Let me get those documents and I will have to find it there and show it to him unless witness is willing to cooperate. I don't believe that he does not remember, but we have no choice and I will stick by it and I will be able to find it out.

THE COURT:

Now, try putting another question to him. Try even putting a suggestive question to him.

MR. FABRIKANT:

Okay; let me try a suggestive, then.

Q. Maybe it triggers your memory that your refusal, at that time, to consider my promotion was based on two subjects. First, you pretended that I didn't have enough teaching experience and, second, that I didn't have that many graduate students graduating. Now, this triggers your memory?

A. Maybe you can help me if you would say what is your position in 1989.

Q. Well, I was a research associate professor and question was a promotion to research professor.

A. So, at that time, how long were you in the (inaudible) structural program. You were in the (inaudible) structure of the (inaudible) people, right?

Q. Well, I was from '85 and you know that also very well; don't you?

A. So, you began in 1985, the program was for five years, right.

THE COURT:

Do you recall in 1989? If you remember of the committee for having say or don't you remember.

THE WITNESS:

No, I don't. I mean, I don't remember, no. I don't.

MR. FABRIKANT:

Q. And even when I told you those stories and you still do not remember?

A. As far as I am concerned, I remember that we recommended your promotion, okay, and I don't remember whether we did not recommend your promotion, so what happened, what year, I don't remember that.

Q. When you did not recommend, you do not remember.

A. That's right, yes.

Q. You do not remember. Then, even when I tell you the reasons for that, you still do not remember.

A. I think maybe a piece of paper might help me; I don't know.

Q. Oh, yes, a piece of paper will help you. We have no choice, we have to get this piece of paper. Well, I think this thick pile will surface.

THE COURT:

But what are you proposing to establish with the witness? There are a multitude of witnesses that you proposed to call, some that you have called who've established your positions at various times. Are we going to go through this with every single one and for what purpose?

MR. FABRIKANT:

Well, he was a member of D.P.C.

THE COURT:

So, what?

MR. FABRIKANT:

Okay, let me explain you the purpose then. Right before that, in '89 and '88, December, when I mentioned that it's about time to have me promoted since everybody including this Mr. Hoa got his promotion to professor on fifth year and I was on my fifth year as I've said, associate professor and my research was much superior to his, so I thought that it's about time that I get promoted too. So, I mentioned it to S... S... and he said right away, okay, let's talk about it and when he said, let's talk about it, it was clear to me what he wants to talk about because just before that he unsuccessfully extorted papers from me and I was right that he told me, all right, I spoke to Osmond, everything is fine, let us talk. Let us talk and his first question was, okay, I will recommend you for promotion, what would be your contribution to the c... to my group. This is how extortion is being made at the university. It doesn't say whether you would include me in your paper. What would be your contribution to my group? And I've told him once again, exactly what I've told him before, that I am not going to include him in my papers, period.

And then, I didn't get, of course, this promotion and excuse was that though I had my degree from '66 and in '89 I had over 20 years of teaching experience and supervision of students, these people had the nerve to write in their document that I don't have enough though I'm teaching at Concordia, not enough graduate students supervision, therefore they cannot recommend me, but in the future they will. So, what I am trying to establish that he participated in this campaign of extortion.

THE CROWN:

... the point, my Lord, and what I know from

the evidence, the accused always had a job, even on August the 24th. All these worries look more -- they are not documented by the decisions. He always got through and he always got his promotion and he always got a job and now he is interpreting words as extortion who could mean simply what they mean. I think we are sidetracked in the whole thing.

MR. FABRIKANT:

Well, first of all, I would like to respect what you submit that it is none of the Crown's business to interpret what happened; it is the jurors' privilege to interpret what happened, whether I was wrong in my estimation what happened or I was right. So, it is not --

THE COURT:

It has nothing to do whether you were wrong or right, it has nothing to do with it.

MR. FABRIKANT:

But this is the essence of Crown's objection, that I was always imagining and, in fact, everything was fine, I got my promotion, I had my job. He seems to be sleeping here. He doesn't hear what really transpired and, second, I repeat once again, it is none of the Crown's business to interpret whether I was right or wrong. Facts are for the jury to evaluate, not for the Crown.

THE CROWN:

It's not fair. He is telling that in '89 he did not get his promotion. As far as I know from the evidence up to now, he was a professor and he got his promotion. So, he is testifying from the dark that the witness is wrong, but the witness is here to testify and, period, that should be the end of it. If there is another light to give on the subject, Fabrikant could testify and give the whole picture. That would be evidence.

MR. FABRIKANT:

What is it; Crown can say that I'm totally dam head. One thing, when I am there and I am testifying and, definitely, I am an interested person. So, what I am testifying would be taken very differently from people who clearly not on my side and telling the same thing. So, I'm not that dumb stupid not to understand that my testimony is my testimony, but the main facts should come from somebody else, not from me. From me will come my perception of those facts.

THE COURT:

Whether Hoa remembers or not what took place at the meeting of the D.P.C. in 1989, whether Hoa remembers or not what happened to your request for promotion, what has that got to do with your defence? What possibly can that have to do with your defence?

MR. FABRIKANT:

I explained already because that was yet another instance of extortion, nothing else.

Just listen to my next question and you will understand how clear it is. So, I would like him to get knowledge of this document and then, from the questions which will follow it will be obvious that it was extortion and nothing else.

THE COURT:

You better tell him what document you want him to look at if you've got a further question to ask.

MR. FABRIKANT:

Well, I want to look at the document signed by Osmond which summarizes the results of their deliberations as D.P.C., Department Personnel Committee, and I believe in my personal file which contains all my documents, this document should be there.

THE COURT:

Now, you've seen that document, you have that document. If you want to show it to the witness, show it to the witness.

MR. FABRIKANT:

Okay; may I have this pile and I will try to find it.

THE COURT:

Well, is it produced this document? Is it an exhibit?

MR. FABRIKANT:

I believe so. I didn't -- you remember there was a long list of documents. I can tell it was January 23rd 1989. Besides from this particular promotion, if you recall, all my threats towards director started according to testimony of all other witnesses.

THE COURT:

We're dealing with this witness for now.

MR. FABRIKANT:

Yes, yes, yes. So --

THE COURT:

If you want to refer to him to a -- him to a document, then you're the one who has the job of keeping track of the document that you want to refer him to. If you produce that document, you must know what it is.

MR. FABRIKANT:

Yes, I know what it is.

MR. FABRIKANT:

Yes, I know what it is. It is memo from Osmond to me.

THE COURT:

I know, but why was it produced then?

MR. FABRIKANT:

Dated January 23rd 1989.

THE COURT:

It's certainly not a Crown exhibit, so it's a defence exhibit.

MR. FABRIKANT:

Of course it is not Crown exhibit.

THE COURT:

If it's an exhibit at all.

MR. FABRIKANT:

Well -- if you remember, they brought very,

very long list. I do not have in my head all the documents which were necessary. I just trusted them that they brought all.

THE COURT:

Trusted who, that they brought all?

MR. FABRIKANT:

Concordia.

THE COURT:

You are the one who had the document, you are the one that's making reference to the document. If you want to show it --

MR. FABRIKANT:

No; they brought it here.

THE COURT:

If you wish to show the document to the witness, you show the document to the witness and tell the Clerk what number it is. Certainly in something over 600 pages of notes, I haven't got -- I surely haven't got the obligation to keep track of your documents for you.

MR. FABRIKANT:

You have no obligations whatsoever. They brought everything. They brought letter where I, for example, cursed purchasing manager, but they didn't bring this one. They are very interesting people. Do you remember I said that electronic mail from G... was incomplete; would you be interested to learn that I was right, that it wasn't complete indeed. Concordia University regretfully destroyed the document, they destroyed the notes and I bet those notes are not destroyed; they are somewhere there.

THE COURT:

Mr. Fabrikant, this is not advancing your trial one bit and it's not advancing me one bit.

MR. FABRIKANT:

Well -- maybe you will start looking differently at Concordia University and their -- how I should say it -- decency in providing documents when they are requested.

THE COURT:

I'm satisfied that you were sent a whole raft of documents under the Access to information act and if you didn't take steps to have these inspected by yourself or by somebody on your behalf, it's a little late to blame anybody else for that.

MR. FABRIKANT:

Well -- you know very well that there are a number of documents which were never sent to me by the department before --

THE COURT:

What you were talking about are minutes of a D.P.C. meeting, that's what you're talking about. Now, if he doesn't have them, he doesn't have them. Move on to another question. There is surely nothing secret about what the D.P.C. decided in 1989, 1990 or 1991.

MR. FABRIKANT:

Well -- it was not that long ago.

THE COURT:

If the witness isn't the appropriate one, then surely there is another witness who will be the appropriate one to put the question to, but you don't have to put it to 20 people.

MR. FABRIKANT:

Let's try something else.

Q. Do you consider that you have supervised me during work on those two papers?

A. No. I thought they were together (inaudible)

Q. So, you did not supervise me?

A. No.

Q. Okay; you said that I came regularly to you for discussion. What kind of discussions were they? Did I ask you to help me in something?

A. When you came initially to ask for a problem to work on, I was starting the program on composites at the time, so I've mentioned to you that I am interested to work on a problem with composites. So, this case here, I'm starting working on that and after that you came and you showed me equations, tables and then, I remember that I insisted that you had to work on examples. You had to put examples to show the applications of your equations because, otherwise, I don't see any use for them. So, this case here, after a while you agreed to put in some examples.

Q. Okay; so, what was your part then? You didn't assist me in any way; did you?

THE CROWN:

My Lord, I think the subject was -- the subject was covered yesterday and the day before.

MR. FABRIKANT:

The subject was not covered.

Q. Did you or didn't you --

THE COURT:

What is the point of questions bearing on whether he supervised you or whether he did not/

MR. FABRIKANT:

What is the point?

THE COURT:

Yes?

MR. FABRIKANT:

Well - it is the same point I believe we already dealt with and I believe we dealt with it positively when I raised the question of my authorship of my paper and whether I was or wasn't used at Concordia. It was relevant because it constitutes abuse and accumulation of such abuse may be considered as cumulative provocation and we settled it, I believe.

THE COURT:

There is no such thing as cumulative provocation.

MR. FABRIKANT:

What? There is no such term?

THE CROWN:

You went for a trial, my Lord; you did not say I considered that relevant. You never said that. You said, I'm giving a chance, let's see.

MR. FABRIKANT:

Well -- I think it is obvious that abuse of somebody, if you wish I can show you in -- I believe Mike Quinlan has this (inaudible) cumulative provocation. Would you like to take a look?

THE COURT:

No.

MR. FABRIKANT:

No; so, just believe me that there is such (inaudible) provocation. One accumulates abusive --

THE COURT:

There is a question of cumulative acts that may, yes, all right.

MR. FABRIKANT:

So, it is relevant.

Q. Would you, please, look at this page with highlighted places, the places which are highlighted.

A. Yes.

Q. All right. Now, the three dissertations which are listed there --

THE CROWN:

What is this paper, my Lord?

THE COURT:

I have no idea; take a look at it.

MR. FABRIKANT:

There is this curriculum vitae of T. S. Sankar.

THE CROWN:

This has nothing to do with the witness. It's the curriculum vitae of T.S. Sankar.

THE COURT:

May I see that, please?

THE CROWN:

It looks like the trial of T.S. Sankar, my Lord.

MR. FABRIKANT:

Well -- I wish Crown has a little better a logical thinking. If I produce T.S. Sankar C.V., why is it trial?

THE CROWN:

Objection, my Lord. I have been insulted since the beginning of this morning, my Lord, it's totally inappropriate. You told Fabrikant that if he continues in the sarcasm you terminate the witness. I invite you to do so.

MR. FABRIKANT:

Well -- I apologize. Your mentality is beyond any reproach. It's -- I am apologizing. Now, producing of curriculum vitae of one of future people who are going to testify --

THE COURT:

The objection is maintained; this is not

relevant.

MR. FABRIKANT:

Objection of what.

THE COURT:

The objection to your last question referring him to that particular document. You hand that back.

MR. FABRIKANT:

I didn't even ask any questions.

THE COURT:

You asked questions on the highlighted parts of that document and I cannot see the relevance of that in any part of these proceedings.

MR. FABRIKANT:

But I didn't even ask --

THE COURT:

Would you stop arguing with me.

MR. FABRIKANT:

-- question about highlighted parts.

THE COURT:

Yes, you did. You draw his attention.

MR. FABRIKANT:

No; I just asked him to look at them.

THE COURT:

Yes, fine. I'm telling you --

MR. FABRIKANT:

But I didn't ask questions.

THE COURT:

-- I'm telling you that that whole thing is totally irrelevant.

MR. FABRIKANT:

You don't even know what kind of question I want to ask.

THE COURT:

It is irrelevant that whole C.V. of Sankar.

MR. FABRIKANT:

Well, Sankar will be testifying here and I will be producing this C.V. to him too.

THE COURT:

We will see what happens when Sankar is called to testify, but for the minute questions to Hoa about Sankar's C.V. are not going to help us at all.

MR. FABRIKANT:

Well -- you don't know what these questions are and I would appreciate to explain it.

THE COURT:

I don't wish to hear and would you move on to something else.

MR. FABRIKANT:

You are obliged to hear my explanation why it is relevant, then you rule. You cannot do that.

THE COURT:

The question of Sankar's C.V. in the hands of Hoa. If you have a question to put to Hoa concerning a paper, you have been putting these, but Sankar's C.V. to Hoa isn't going to help us.

MR. FABRIKANT:

Well -- just listen to explanation and we will

see. Those three students which are listed there and which Sankar claims as his in effect were supervised by Hoa. This is what I am trying to point out.

THE COURT:

How could that possibly be relevant to your case?

MR. FABRIKANT:

How could it possibly be relevant to my case, very simply I want the jury to know that Sankar was not just using me, that Sankar didn't do any job. He was a classical parasite and I want to show that all these three students who are listed here with the name of Hoa even not there, were supervised, in fact, by Hoa.

THE COURT:

All of this is irrelevant and I will not permit any questions in that regard to be put to this witness or anyone else. Let us remember we're in a murder trial and let us get to the point of your defence if ever we can.

MR. FABRIKANT:

Yes.

THE COURT:

You are not doing it that way, that is irrelevant.

MR. FABRIKANT:

That is irrelevant.

THE COURT:

Yes.

MR. FABRIKANT:

But if you said a, you have to say b. If you say that whether I was exploited or not is relevant, then it is relevant to point out that this is general technique at the university. How could it possibly be irrelevant?

THE COURT:

It is irrelevant and you are not going to attack Sankar through this particular witness.

MR. FABRIKANT:

I am not attacking Sankar. Maybe --

THE COURT:

I'm not going to argue with you; I'm ruling that it's irrelevant, move on to something else.

MR. FABRIKANT:

All right.

Q.

Did you or didn't you, in 1985 and '86 enlisted three doctoral students in doctoral program and you also enlisted T. S. Sankar as --

THE CROWN:

Same objection, my Lord. This is irrelevant.

MR. FABRIKANT:

-- co-supervisor -- I haven't finished my question.

THE COURT:

We'll wait. We'll wait till we heard the whole question and then, you may make your objection. In 1985?

MR. FABRIKANT:

Q.

So, in 1985-86, you have enlisted three

doctoral students in your program and you also enlisted T. S. Sankar as co-supervisor of them and exactly the same year, you got promotion to full professor. Now, is this just a coincidence or that was a typical way of doing things in department of mechanical engineer?

THE COURT:

That's the question?

MR. FABRIKANT:

Yes.

THE COURT:

Is there --

THE CROWN:

We're sidetracked, my Lord and, moreover, it is his own witness. It looks like cross-examination, my Lord.

MR. FABRIKANT:

Not at all. It is a normal question. I do not try to undermine anything because I expect him to say yes.

THE COURT:

It's a question which has absolutely no bearing on any defence that he could possibly make and the question is ruled out of order.

MR. FABRIKANT:

Okay; let me explain what bearing it has because people who did not do these things as Hoa did as inclusion of papers as including Chairman of department as co-supervisor of graduate students, those people didn't get promotion or might lose their jobs and this is extremely important point to make to the jury.

THE COURT:

Listen; how many times am I going to tell you that you are not going to be permitted to embark on a general investigation, a general inquiry into what the practices were at Concordia University. It is not relevant to this trial and you're not going to be permitted to do it. What you have been allowed to do is to show through such incidents as the Senate incident, such incidents as the surveillance incident, that certain things happened that you saw in a particular light and I presume somewhere down the way you will establish that that had an effect on you.

I don't know where that will lead you, but that's what I suppose you will establish. But we are not going to be sidetracked into who supervised who, what the practices were within the faculty, what the practices were within the department, who carried favour from Sankar, what happened to those that carried favour from Sankar as opposed to what happened to those who did not.

At the end of the day, it has absolutely nothing to do with any viable defence that you might present and the only defence that you're going to be allowed to put to the jury is a viable defence.

So, this whole line of questioning is ruled out

and I don't propose to argue any further with you about it.

MR. FABRIKANT:

Does my mind being affected by attitude and relationship of other people, what, I am just like this and seeing only what is being done to me; I do not see what is being done to other people and it doesn't affect my mind? This is totally illogical to think like this. What has been done to other people affected me much more than what has been done to me because when it is done to me only, I might think, okay, this is exception, maybe I am wrong somewhere, but when I see that this is done to everyone I know that it is a system that there is no way out, this really affects me because this is important.

THE COURT:

We are going to -- we are sticking to what happened to you, period.

MR. FABRIKANT:

But my mind was more affected by what I observed in relationship with other people than what had been done to me.

THE COURT:

I'm not -- I'm not prepared to accept that that is a relevant argument and I'm not prepared to accept that the evidence you want to present along these lines is admissible, so it will not be admitted.

MR. FABRIKANT:

Q. Now, did you see scientific papers in which author is grateful to somebody for advice and assistance?

A. Yes.

Q. Now, how do you discriminate in what case advice and assistance should be mentioned just at the end of the article and in what case advance and assistance should merit co-authorship.

A. That depends of the written content between the people that work on it.

Q. Could you, please, be more specific?

A. Like I've said, it depends when the way how people agreed between themselves.

Q. Could you -- could you formulate some objective criteria rather than how people agree between themselves?

A. Well -- when you work as a group together and then when you publish, that's up to them to decide.

Q. Well -- up to them to decide, isn't it usually that someone who would depend then on somebody else, he has no choice but include the other one as co-author; is this what you mean by how they decide?

A. Sometimes people are left out and they object. So, suppose they were consulted and people published something and they don't put your name on it, you object at that time.

Q. Well, if person is dependent --

THE CROWN:

This is cross-examination, my Lord.

MR. FABRIKANT:

How can he object; this is not cross-examination.

THE CROWN:

Moreover, it's not much more relevant than the rest.

MR. FABRIKANT:

Well -- it is relevant because he claimed that we discussed something. He did not produce anything in terms of viable discussion that he admitted that he didn't know himself how to solve the problem. He admitted himself that he didn't give me any advice. Now, I want to demonstrate to him several articles which at the end author show, author is gratefully acknowledges advice and assistance given by blablabla. I want to show to him --

THE CROWN:

This is what it is, my Lord, blablabla!

MR. FABRIKANT:

I want to show to him this particular article made by under-graduate student of mine.

THE COURT:

Just a second. Just a second, I have an objection in front of me at the moment.

MR. FABRIKANT:

Objection to what?

THE COURT:

Objection to this whole line of questioning.

THE CROWN:

This is irrelevant.

THE COURT:

The objection was based on two things. First of all, that it was cross-examination of the witness that you've produced and it is. The more important aspect of the objection, I suppose, that one do, was that it bears again on something which is susceptible and just sidetrack. It's totally irrelevant to this case and the objection is maintained.

MR. FABRIKANT:

I do not understand what is sidetrack. What?

THE COURT:

Tangential; you will recall that word. We're often at tangent and we are not advancing at all, so the objection has been maintained, period.

MR. FABRIKANT:

Well -- let me explain before you.

THE COURT:

No. I've listened to your explanation and I ruled. You gave me your explanation and that is that.

MR. FABRIKANT:

No, I didn't tell you what --

THE COURT:

Oh, yes, you did.

MR. FABRIKANT:

-- what I want to establish in this particular.

THE COURT:

If you say one more word, I'll terminate this examination, one more word of argument.

MR. FABRIKANT:

All right.

Q. I would like to take cognizance of this document on the last page.

THE CROWN:

Same objection, my Lord. The paper by Mr. Rice and there is an acknowledgement at the end and it's still on the same subject you just ruled on that. He doesn't respect your ruling at all, my Lord.

MR. FABRIKANT:

This is not what I want to establish.

THE COURT:

What do you want to establish?

MR. FABRIKANT:

I want to establish that standards of Harvard University and he knows who Rice is and the names there, Hutchinson, those are top people in the field and I want to pose to him questions. If Rice writes in his article that he is extremely grateful for valuable discussion, we have, at least, five talked people, none of them is listed as co-authors. Discussion is just a discussion. It doesn't make a person a co-author, even when discussion is of value.

Now, when discussion is of no value and he admitted himself that he didn't know how to solve problem in this case, even more obvious that he should not be listed as co-author.

This is what I want to establish.

THE COURT:

The whole line of question is irrelevant, of no value and disallowed.

MR. FABRIKANT:

All right.

THE COURT:

And I would really caution you to move on to another question because if you're going to persist in this line, we're simply -- we're simply not going to -- I'm simply not going to sit at this time.

MR. FABRIKANT:

No. This is another line.

Q. Did you read this article?

THE CROWN:

It's content of your decision my Lord. It's an article in McLean's.

THE COURT:

Pardon?

THE CROWN:

It's -- aware Mr. Fabrikant has photographed and most of his claims against Concordia University and Concordia publications are replied -- are printed, I mean. It shows that he doesn't respect your rulings at all. You just ruled on that.

MR. FABRIKANT:

No, he didn't rule on McLean article and you don't know what kind of question I want to ask on that.

THE COURT:

What is your -- what questions do you wish to ask on this?

MR. FABRIKANT:

There is mentioning of Hoa and his graduate student there. This is the part I want him to address.

THE COURT:

Well -- you're going to have to put questions to him, but you're not going to refer him to this article.

MR. FABRIKANT:

Why not?

THE COURT:

Because he is not the author of this article.

MR. FABRIKANT:

Well -- I just want him to confirm the facts which are stated there.

THE COURT:

You better ask him a question, but you're not referring him to this article and when I hear the question we'll see whether the question is relevant or not.

MR. FABRIKANT:

All right. I think it is much shorter to ask him if he confirms the facts which are written in McLean journal about Mr. K... if I pronounce it correctly and the way scientific articles where it started from him.

THE COURT:

I told you this whole question of extortion of scientific articles is not relevant, question is overruled.

MR. FABRIKANT:

Is this the document you, yourself, have written?

THE CROWN:

Still on the same topic, my Lord. It's irrelevant.

THE COURT:

How could this possibly be relevant?

MR. FABRIKANT:

All right. In this article, though he -- first of all, he establishes here that it was he who supervised Mr. K... in his dissertation and in curriculum vitae of T.S. Sankar, he claims to be the only supervisor of this particular student and since Mr. Sankar -- I repeat once again -- is going to testify and after his testimony I cannot recall Mr. Hoa to contradict

Q.

whatever he will be saying, therefore I need to ask these questions now about whether, first of all, what he describes here as interaction that he supervised students and he discussed with Sankar, but Sankar directly to students practically did not communicate. This is a very important part because if Sankar did not communicate with the student and he claimed to be a supervisor of that student, this is something very very wrong, isn't it?

THE COURT:

This is not relevant to your trial and you may not ask questions regarding that document to doctor Hoa.

THE CROWN:

And, moreover, my Lord, it's a content of your ruling.

THE COURT:

Exactly, absolutely.

THE CROWN:

You have been ruling on this subject for the last three quarters of an hour.

MR. FABRIKANT:

It is not the same subject.

THE CROWN:

It's like if he doesn't listen to you.

THE COURT:

The whole question is out of order. Would you move on to something else that is pertinent.

MR. FABRIKANT:

Well -- if I have no way to prove that --

THE COURT:

I'm not going to argue with you. You're not going to launch a preemptive strike on Sankar by anticipation. It is particularly on a subject that has no relevance at all to this matter, so you move on to other questions, if you have any.

MR. FABRIKANT:

Oh yes. All right.

Q. How long have you been a member of D.P.C.?

A. I am now no longer a member of the D.P.C. I was a member from 1987 until 1992.

Q. Why did you stop being there?

A. I have served for six years.

Q. Was there any conscientious considerations in terms of dishonourable behaviour of D.P.C. which prompted you to do so?

A. No.

Q. You thought that D.P.C. behaved honestly and honourably all the time?

A. Yes.

THE CROWN:

All this is cross-examination, my Lord.

THE COURT:

Yes, it is; maintained.

MR. FABRIKANT:

All right.

Q. When you look as a member of D.P.C. at the

student evaluation form and you say that, say, 58 students are listed and only 36 have responded. Is this a signal to you that teacher is bad, that students do not want to come to his lecture?

A. No. I think that 36 is not too bad. This is not good, but it's not too bad.

Q. Out of 58?

A. That depends; sometimes they do during the day, during (inaudible). You know, students can come sometimes and some other time may not come, that kind of thing. So, I think that these are the marking lines.

Q. Is it indication of anything as the number of students registered and the number of students who responded to evaluation form. Is this any indication at all?

A. When the number is too low, it is students, the number of the responding is too low, but I mean that somehow the students did not end the classes.

Q. If 60 per cent, is it too low?

A. Like I've said, you say that's about the margin of line.

Q. So, 60 per cent it is still all right?

A. Marginal, like I've said.

Q. Which courses, from your experience, are more difficult to teach from students' evaluation point of view; is it 200 courses more difficult to teach or it is 600 courses more difficult to teach?

A. I think it depends of the course and also the capacity of the professor.

Q. I'm asking you in general?

A. Difficult or not, it depends of you.

Q. I am asking you general?

A. I cannot be general because of the professor. If the topic you know well, then it's not difficult, but if you don't know well, it's difficult.

Q. For you, 200 course is more difficult to teach than advanced courses?

A. I don't think that you can put as a general form. I mean each course has its own particular characteristics. The under-graduate courses they have more students, so it takes more time and to make sure that you can explain things to the students well. The graduate course requires more input on it and what do, you have less number of students. So, you cannot say one is more difficult than the other. It faces his own characteristics.

Q. But from the point of view of material involved, which courses are better appreciated by students?

A. I think if everything goes well is always appreciated, it doesn't matter which course.

Q. This is obvious if you teach well, that it is always appreciated.

THE CROWN:

This is his answers, my Lord.

MR. FABRIKANT:

All right.

THE COURT:

Yes.

MR. FABRIKANT:

Let me make it different maybe because he doesn't answer either what I am asking him.

Q. If you take all the professors in the department who taught 200 course and make their average score which they get on student evaluations, then you get all the professors who taught 600 course and take average there, which score will be higher?

A. I don't know. I have never done that.

Q. Did you teach any 200 course yourself?

A. Yes.

Q. What was the student evaluation of your 200 course as compared with the evaluation --

THE COURT:

What has this got to do with what we're doing?

What has this got to do with your defence?

MR. FABRIKANT:

What it has to do with my defence?

THE COURT:

Yes.

MR. FABRIKANT:

Okay; if you recall one of issues of my defence is that I was an excellent teacher and these people one day called me, good, another day they call me that I have to be terminated and if you recall testimony of Osmond, then it is relevant here.

THE CROWN:

There is no testimony of Osmond in this case, my Lord.

THE COURT:

There is no testimony.

MR. FABRIKANT:

There will be testimony. So, I need to know opinion on this particular witness with respect to -- if you recall he said that 200 course is just for cegep, it's not even the university course; do you recall that?

THE COURT:

I recall what he said and that is not what he said.

THE CROWN:

And it's not in evidence, my Lord.

THE COURT:

And it's not in evidence.

MR. FABRIKANT:

Well, it will be because I think he will repeat the whole thing.

THE CROWN:

We'll see him there.

THE COURT:

The question of what courses Hoa taught and what courses he didn't teach are irrelevant.

The last question is disallowed.

MR. FABRIKANT:

Well -- let me continue relevance then. He was the one who decided that I'm a bad teacher. Now, I want to produce his own course evaluations which are much worse than mine. Now, he is the judge. First of all --

THE COURT:

I don't care who the judge is. His course evaluations are not relevant to your defence and you may not produce them.

MR. FABRIKANT:

Okay; at least general.

THE COURT:

Not at least anything; it is not relevant and you may not pursue this line of questioning.

MR. FABRIKANT:

What? I cannot prove that I was a good teacher?

THE COURT:

You are not going to prove that Hoa is a bad teacher, that or that Hoa falls somewhere on the scale. That's not what he is here for.

MR. FABRIKANT:

All right.

THE COURT:

Whether you were a good -- whether you were a good teacher or not is another question.

MR. FABRIKANT:

Well, isn't it?

THE COURT:

But what Hoa is is not our concern.

MR. FABRIKANT:

Yes. But when he is the one who judged how good I am and he has course evaluations which are terrible --

THE COURT:

Listen; how things are done at Concordia University I couldn't care less. That is not relevant to what we're dealing with here.

MR. FABRIKANT:

It is relevant because when you know that you are being judged by people who are inferior, I think it affects your mind much stronger than when you are judged by people superior; does it?

THE COURT:

You are not going to show him course evaluations with a view to establishing that.

MR. FABRIKANT:

Well --

THE COURT:

The only person that can talk about that is the person who wishes to make that particular point.

MR. FABRIKANT:

All right, I'll show him something else. Here is average score of 200 courses.

THE COURT:

Listen; I told you you will not show him that document. This is not relevant. Now, would

you get off these scores or these average scores or whatever.

MR. FABRIKANT:

What is going on? Why am I not allowed to show him --

THE COURT:

I am trying to keep this -- I am trying to get this trial as closely as I can to what the issues are that we have to face and Hoa's evaluations from one direction or another are not relevant.

MR. FABRIKANT:

They are relevant.

THE COURT:

I've told you they're not. So, you have to go and tell the story to the Court of Appeal.

MR. FABRIKANT:

But these are not course evaluations, average.

THE COURT:

But I've ruled and that's it. So, would you -- don't ask him any further questions, otherwise it will be treated as contempt and I'll stop this.

MR. FABRIKANT:

All right, but I'm asking about something else.

THE COURT:

Make sure it's about something else.

MR. FABRIKANT:

It is something else because I want to show that 200 courses are the most difficult to teach. According to --

THE CROWN:

It's irrelevant, my Lord.

MR. FABRIKANT:

-- statistics -- no, it is not irrelevant because I was teaching 200 courses.

THE COURT:

I don't care, Mr. Fabrikant, whether they're difficult to teach, middling difficult to teach or very easy to teach. The question of your capacity as a teacher may enter into the debate, but I couldn't care less whether 200 courses are hard to teach, easy to teach or not. The Crown prosecutor is perfectly correct. It's irrelevant.

MR. FABRIKANT:

But you don't seem to hear what I'm saying.

THE COURT:

I've heard what you've said. I told you.

MR. FABRIKANT:

If the main score, main score --

THE COURT:

I think we'll adjourn now.

You have crossed the line again. You persist in arguing when you're told to stop arguing. You've been told again and again and again. The examination of doctor Hoa is now terminated.

Does the Crown have -- will the Crown, when we

resume, have any cross-examination?

THE CROWN:

No, my Lord.

THE COURT:

Fine.

MR. FABRIKANT:

What the hell; I didn't ask him many questions.

THE CROWN:

My Lord, can I have one second, please?

THE COURT:

Sure.

THE CROWN:

I would be in a position to close my reopening of the Crown's case. I understood we could do that after Mr. Hoa or we still wait for ma&tre Richard?

THE COURT:

I thought I would wait until the question of ma&tre Richard was settled in case he had any representations to make in that regard.

THE CROWN:

Thank you.

AND THE WITNESS SAYS NO MORE.

--- Suspension.

--- Upon resuming.

IN THE ABSENCE OF THE JURY

ASSERMENTATION D'UN CONSTABLE SPECIAL EN GARDE
DU JURY - PIERRE JOBIN, Matricule 335.

THE COURT:

Would you take a seat for the moment, please?

Thank you. You announced yesterday the question of an application pursuant to the decision of the Supreme Court in The Queen versus K.G.B.

In this particular case, there had been, first of all, testimony from yourself in relation to the manner in which the statement was recorded and reduced to writing, we heard the tape played. Have you any other evidence that you wish to lead in relation to the K.G.B.

application that you want to make? If you do, then, I would permit doctor Hoa to be recalled for that purpose, if it's necessary, but I gather that recording was made with the tape recorder in your pocket unbeknown as to doctor Noa.

MR. FABRIKANT:

Definitely he didn't know about it.

THE COURT:

Pardon?

MR. FABRIKANT:

He didn't know about it.

THE COURT:

Definitely he didn't know about it.

MR. FABRIKANT:

Yes.

THE COURT:

The procedure that's outlined in K.G.B. is that on announcing the application that I hold a voir dire in order to see to the circumstances in which the recording was made, but I think that basically that has been fulfilled. As a result of your own testimony relating to the recording relating to the circumstances of the meeting and it has also been fulfilled in part from Hoa's testimony as far as that meeting was concerned. Unless you -- unless you feel that you have any other evidence to make?

MR. FABRIKANT:

Well -- I just want to say that it meets all the requirements which are established in this K.G.B. decision in terms of necessity and reliability and, therefore, it should be admitted for it through content.

THE COURT:

That's it?

MR. FABRIKANT:

Well -- I expected ma tre Richard to be here and argue.

THE COURT:

So did I, that's why I put it all, but --

MR. FABRIKANT:

Yes. Is anything else necessary here to produce, taking into consideration that I am not a lawyer. Is my understanding correct that all I have to show is that it is necessary and it is reliable; correct?

THE COURT:

You have to show -- you have to satisfy me on both of these -- on both of these factors.

MR. FABRIKANT:

Yes. So --

THE COURT:

My own reaction, this being relatively new, is that the evidence that you have made is probably sufficient to permit me to deal with it and i don't think that there is any other evidence that you could make that would enhance the situation. I think that you and the Crown would probably agree that Hoa had no idea the conversation was being recorded.

THE CROWN:

Yes.

THE COURT:

You'd be prepared to --

THE CROWN:

I'm prepared to admit that, my Lord.

THE COURT:

You're prepared to admit that.

THE CROWN:

It came from the context definitely.

THE COURT:

And it came from the context. Beyond that, I'm satisfied that the machine worked, that you preserved the tape and that the transcription

which you used or the reduction to writing of the conversation was faithful.

THE CROWN:

But in the case of Hoa, we don't even know the date though.

THE COURT:

I thought that Mr. Fabrikant had testified as to when that conversation took place. It was in 1988 as I understood.

THE CROWN:

Mr. Fabrikant said --

MR. FABRIKANT:

We can -- in terms of date, we can --

THE CROWN:

-- March '88.

THE COURT:

March '88.

MR. FABRIKANT:

We can pinpoint the accuracy of couple of days if we get the --

THE COURT:

Well -- in addition Hoa didn't deny the conversation took place. He acknowledged the conversation took place.

THE CROWN:

It was just a comment of mine. We don't know the date. The only reference we've got is March 1988.

MR. FABRIKANT:

I think it doesn't change anything if he puts specific date in terms of the --

THE COURT:

So that I'm only dealing with one thing; I'm not dealing with whether it's being admitted or not at the moment. I'm dealing solely with the question of the evidence that you would have to make in order to support an application and I think that it has substantially been made.

THE CROWN:

Yes. I don't wish us to be picking on that. I think we can have a working relationship.

THE COURT:

On that point.

THE CROWN:

We can release the rules.

THE COURT:

I don't know whether the Crown prosecutor shares your view with regard to (a) reliability and (b), necessity.

As I read K.G.B., reliability is a wider concept than just whether the tape recording is technically reliable. I don't think there is any doubt that the tape recording is technically reliable in that it reproduces faithfully the conversation which took place between you and Hoa.

I'm not sure from reading K.G.B. that that is what the word "reliability" means but rather, what the word --

MR. FABRIKANT:

Well -- I don't think there is anything else here.

THE COURT:

-- rather, what the word "reliability" means is whether the statement itself can be relied upon as being the truth.

MR. FABRIKANT:

Oh no; this is absolutely wrong interpretation with all due respect.

THE COURT:

Well -- I'm not sure.

MR. FABRIKANT:

It's written black and white. It's quite opposite.

THE COURT:

Because the Court --

MR. FABRIKANT:

It is for the jury to decide whether it is true or not.

THE COURT:

There is no doubt that it's for the jury to decide whether it's true or not.

MR. FABRIKANT:

So, we are not here to decide whether it is true; we are here only to decide whether this is reliable that this indeed happened, that this indeed was said and, therefore, it can be put to the jury to decide whether they believe what was said then or what is said now, that's all, and reliability implies only that.

THE COURT:

Well -- I'm not sure about that.

THE CROWN:

My Lord, I think we don't need -- we don't meet any of the criterias. First, I have been working with a French copy, but about reliability, it's also important to realize what was the situation in K.G.B. There were four juveniles.

THE COURT:

Very, very important to relate the situation.

THE CROWN:

And there was a videotape in presence of their parents and one in presence of his lawyer. They were warned of the importance of telling the truth and these people incriminated one of their colleagues, one of their friends, three youths incriminated the fourth one. When they came to trial, they denied everything and, obviously, the judge did not believe them at that time.

THE COURT:

And he said so.

THE CROWN:

And later, they pleaded guilty to perjury accusations saying, what we've told the police was right, okay. So -- and the Court is very clear. First, if we deal with reliability, it has to be -- the best is to be under oath the

first time or almost the equivalent very solemn circumstances, presence of parents, warning of the right to get a lawyer, warning of the consequences of not telling the truth and things like that.

Here, we have a totally different situation. It's two people who obviously don't trust each other and one of them -- one is tricking the other, using a concealed device. There is absolutely no guarantee that the person dealing with Fabrikant even wished to tell the truth. The context, the whole context is these people don't really -- don't seem to like each other and one is cross-examining and pressing with questions. You could get almost any answer from the witness. This is not the solemn context, I suggest to you, aimed or described in K.G.B. I guess the perfect example in K.G.B. would be a previous testimony in another trial under oath and --

THE COURT:

There is no doubt.

THE CROWN:

-- that's the first part. The second part, which is almost as important, is necessity. In K.G.B., the necessity was that these kids were there not wanting to tell any more that this guy was the author of the crime. The system has got a big problem there. If we don't bring as the proof of its content, the former declaration, the murderer would be acquitted. This is a good example of necessity. Here, Mr. Hoa came and most of the time there was not even any contradiction and when he was -- I think it's really the last last step of K.G.B. First, we see there is contradiction, after you decide whether the person -- you give the right to the questioner to cross-examine the person on the contradiction and sooner or later maybe the person can admit that he said this or had given explanation, like Mr. Hoa, at the end of the cross-examination when you spoke to Mr. Fabrikant, you told him you made your point. That was it, there was no need any more to K.G.B.

Mr. Hoa gave an explanation for the contradiction and with the explanation there was no contradiction any more that the jury would weigh that, Fabrikant could argue about that in his summation, but clearly the whole picture was in front of the jury. There was no witness here not wanting to answer questions, like it was the case in K.G.B.

So, I don't see even the necessity criteria in this case. So, I respectfully submit that both criterias, fiability and necessity, reliability and necessity are not fulfilled. It's totally, absolutely different and even, you know, even it was stretching the basic rules just to permit to cross-examine because we have to argue about reduced to writing and so on and so

forth, you know. It's his own witness, you know.

I don't want to come back on your ruling on that. You said that there is a contradiction and if it is relevant, cross-examination might be permitted.

But over the whole thing, one thing has not been decided completely yet, it's the relevance of all this exercise, you see. You've said yourself at the beginning of the trial, it might be a very interesting question and I've been told there wouldn't be some inquiries about that already ordered and there are some civil litigations about these things, but we cannot sit here forever looking into ethics and allegations and alleged fraud and everything, you know.

If Fabrikant -- the best person to say I was abused in my state of mind is Fabrikant himself, you see. But if we go to nail every witness and contradict every witness, every time he is not happy with one of his answers, that's why we're sitting here for so long. The basic rule, not allowing cross-examination of your own witness, is that when you're not happy or you expect not to be happy with answers to your question, you simply don't bring the witness in the box, period. And when he says to you, I naively expect them to say everything I want, he is not honest. He knows very well that these people will say what they say and then, the whole exercise you give the example of (inaudible) that you get up and then you shoot, you see.

The whole thing, the whole debate is sidetracked and everybody is getting tired of the length. As I've said to you, we have nothing to hide in this trial, but I have big concerns and more and more to read newspapers of people complaining in the editorial page about the time and the money this trial costs. That's my main point. So, in brief, my Lord, I suggest to you that we don't fill these criterias.

MR. FABRIKANT:

Since I see that Crown objects to both, then I would like to postpone the whole discussion until Maître Richard is here. I think it would be a very good chance for him to show how good he is a lawyer because, effectively, he is invited here to argue legal questions, so I would ask, at this point, to adjourn the argument because I thought that it is absolutely a minor thing, it matters absolutely obvious that reliability is there, that K.G.B. states quite opposite that all is not necessary, quite opposite, they say that people when they were not under oath they were telling the truth. When they came to Court and were under oath, they didn't. So, quite opposite is it argue in the Supreme Court decision oath

is not necessary at all.

As far as necessity goes, again it is --

THE COURT:

Listen; watch you don't fall into a trap because if -- I mean, I'm not going to trap you, I'm perfectly prepared to put this off, but I am not prepared to listen to everybody up and down the street. If you want matre Richard to argue the question, then matre Richard can argue the question, but I would suggest you stop arguing the question now and wait until he does. I wanted to satisfy myself, first of all, that the evidenciary requirements had been fulfilled.

MR. FABRIKANT:

Anyway, if it is not clear.

THE COURT:

They are.

MR. FABRIKANT:

If it is not clear to you, at this point, that both conditions are fulfilled, then let's wait for matre Richard.

THE COURT:

I'm perfectly prepared to wait till matre Richard arrives if he does.

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MR. FABRIKANT:

Now, I understand there is someone from B... who have just brought the document. There is somebody else from outside there.

THE CROWN:

There was a witness, my Lord, who was here yesterday all day and waited to be called, but I didn't expect Mr. Hoa's --

MR. FABRIKANT:

No; there is --

THE CROWN:

-- may I continue, please? Mr. Hoa's testimony to end so abruptly and it was my understanding that the witness was still here this morning, but he wasn't. I have his number where I can reach him. I haven't had a chance to do it during the adjournment, so he is here. I expect really in this case that his testimony wouldn't exceed five minutes. So, I'll ask for the Court's indulgence in permitting us to have him called, perhaps interrupting Mr. Sankar's testimony.

THE COURT:

Sure.

MR. FABRIKANT:

Well -- maybe we don't need his testimony of Crown, we'll just concede to file the documents without witness testifying. That would be even nicer.

THE COURT:

What are you proposing to prove with the documents.

MR. FABRIKANT:

It is my contract with Budget.

THE COURT:

That means nothing to me.

MR. FABRIKANT:

Well -- bring the jury and I'll explain.

THE COURT:

No; tell me now. Tell me without the jury.

MR. FABRIKANT:

Bring the jury, I will explain.

THE COURT:

Listen, listen; don't start this again. Don't start this again. Tell me. You've made a suggestion, we're having a discussion without the jury as we must within the context of this decision on another point. Now, there is raised the question of budget. Now, what is the relevance of that and what do you propose to prove by it. The Crown may well admit it, I don't know. The Crown procedure --

MR. FABRIKANT:

Since we are discussing admission of evidence, I believe jury has to be here.

THE CROWN:

But first, do you have in your possession this contract?

MR. FABRIKANT:

No, but when it arrives, it would be nice if Crown just agrees to deposit it.

THE CROWN:

I raise the point of relevance, my Lord, definitely.

THE COURT:

I'm asking him what the relevance of it is.

THE CROWN:

Sure.

THE COURT:

At this particular point in time and he's back on the usual thing, bring the jury and I'll tell you. I want to know now and I'm the one who decides whether we discuss these things outside the presence of the jury or not, not Fabrikant.

THE CROWN:

You bet.

THE COURT:

So, if he doesn't want to tell me, we'll go on with the next witness.

THE CROWN:

Sure, I totally agree with that, you're the boss.

THE COURT:

Maître Richard, good morning. The Crown argued on the K.G.B. application. What I did was in view of Mr. Fabrikant's continued refusal to obey orders of the Court during the examination of the witness, I terminated the testimony of doctor Hoa. I came back down and came on the bench alone, pointing -- because I was aware of the K.G.B. application -- there was one admission from the Crown, namely that the recording was made without Hoa's knowledge and I'm substantially satisfied and the Crown agrees that the procedural requirements of K.G.B. of voir dire pursuant to Section 9, et caetera, have been complied with and that the evidence is complete as far as the recording is concerned, as far as the transcription is concerned, as far as the circumstances is concerned and while the date was not nailed down, it was in the spring of 1988.

The Crown took the position and for your benefit at one point when -- of course, today I'll ask the Crown prosecutor to repeat what he said, but he essentially advanced the argument that the two criteria of reliability and necessity have not been met and he underlined that the question of necessity had not been met.

He drew a distinction between the particular circumstances of K.G.B. because the statement went to the route or may have gone to the route of the question of liability or responsibility in that instance for murder, rather than dealing purely with a collateral issue, which is the situation here and which strikes me that it may -- it may be one distinction.

Mr. Fabrikant has argued that the fact the statement was not under oath is neither here nor there and on that point he's probably right, I suggested that reliability was a wider criterion than simply is the tape accurate. I'm satisfied that the tape is accurate; nobody has to convince me in that regard. But I did suggest that reliability went more to what did Hoa believe when he was making these statements and can they be relied upon. Mr. Fabrikant jumped up and said it's not for me to decide the truth of the matter or even if it could reasonably be true -- I know it's not he's perfectly right

-- it's not for me to decide the truth of the matter, but it is for me to decide whether the criteria of reliability are there.

Now, at that point, I didn't -- I didn't rule. He requested that I postpone until you were here and if you like, we can do this this afternoon when you've had a chance to talk to him

about it, but I think that's about where we are. That summarizes the situation.

When you came in, there was the question of a witness from Budget and the production of a contract. The Crown prosecutor raises the question of relevance and that's where we are on that point. Mr. Fabrikant refuses to discuss the -- what the relevance could be in the absence of the jury, taking the position that one finds in an old English case that MacWilliams dredged up and writes about that these discussions -- discussions on the admissibility of evidence must take place in the presence of the jury. I'm not of that view. The Crown prosecutor, I don't believe, is of that view. I didn't ask Mr. Belleau whether he was of that view or not. Given the special

-- special -- given the length of this matter and given the unfortunate consequence of having to send the jury out every five minutes, I have tended to bend the rule and conducted certain discussions on admissibility of evidence in the presence of the jury, my theory being, rightly or wrongly, that you have to give a jury credit for as much intelligence as we all have and that they can edit out what you tell them to edit out.

So, where I felt I could, I haven't been fussy about sending the jury out, but I reserve the right to raise the point and to decide myself whether I'm going to hear it outside the presence of the jury or not and Mr. Fabrikant doesn't appear to understand that. So, you are up to date more or less. I haven't gone into what was covered with Hoa this morning. (M. Fabrikant s'entretient avec ma@tre Richard).

THE COURT:

I wouldn't go too far, Mr. Freedman.

MR. FABRIKANT:

What chapter is McWilliams is the jury?

THE COURT:

Here it is, here, I'm looking at it.

MR. FABRIKANT:

Now, what chapter?

THE COURT:

It's 36.10120 and it says the following:

"It has generally been considered safer to exclude the jury during arguments as to admissibility, R. versus Thompson, English case 1917 Criminal Appeal Reports."

MR. FABRIKANT:

What page you are reading?

THE COURT:

I'm reading 36 -- look at the top left hand corner, 36, 10000, I continue:

"Although it is necessary only if this may be fairly done without prejudice to the accused, R. versus Anderson, another vintage decision 1929, 21 Criminal Appeal Reports, followed by another vintage decision, R. versus Chadwick, 1934 --"

which is before I was born:

"The jury should not be asked to leave except at the request of or with the consent of the defence."

MR. FABRIKANT:

This is it.

THE COURT:

"Argument should take place in Court and not in the judge's chambers, obviously."

However, in R. versus Dietrick, 1970 1CCC, second Ontario Court of Appeal, Chief Justice Gail said:

"Apart from voir dire to determine the voluntariness of a confession, the admissibility of evidence need not be determined by the testimony given in advance and in the absence of a jury. To do so prolongs the trial unduly. The jury is absent too long and the continuity of the trial is unduly disturbed."

Proposition with which I can -- I can and try to live with. Of course, and what I've pointed out to Mr. Fabrikant from the beginning, is that the jury ought not as a matter of principle, whether they are capable of separating or not the relevant evidence from what is irrelevant, ought not to be burdened any more than it's necessary to burden them with evidence that is not to be admitted and I have also pointed out that again and again Courts of Appeal have taken the position that one or the other side of a case has been prejudiced by something being reviewed to a jury, which should have been discussed in the absence of the jury and I've pointed out that it has been our practice for years and years and years to discuss questions of law in the absence of the jury, assuring the jury that they will hear everything that is relevant for them to hear and that fits in with the direction given to the jury in the very beginning that they will decide the case upon and solely upon the evidence which is heard within these four walls and that is evidence that is deemed to be relevant and admissible.

I have pointed out to Mr. Fabrikant that the bottom line -- the bottom line is my choice, my discretion, not his. He doesn't see it the same way. That's the position I have taken and that's the position I propose to continue to take and I'm perfectly prepared to listen to what anybody has to say to me, but I don't think anything I have said will come as a surprise. That's where we are.

MR. FABRIKANT:

May I add something here and the something is the following. It is said here that it should not be done when it prejudiced (inaudible)

THE COURT:

I read that. I read that.

MR. FABRIKANT:

No, no, no; let me just a little bit, one minute, not more. What I stated on many occasions that I'm being denied absolutely relevant evidence, at least what I believe is relevant and do you not, and I believe that I am being prejudiced because jury has no idea that extremely relevant from my point of view evidence is being denied. Therefore, since absence of jury prejudices me, this is why I insist the jury be here and if you feel that you are denying me evidence legally and correctly, so there is no need for you to be afraid the jury hear that. That's all.

So, if you are doing the right thing, let the jury see it.

THE COURT:

I followed your discussion until the last -- till the last observation which is quite frankly announced equiter. I am the one who decides what evidence is admissible or not. It's as simple as that. You may feel that your position is being prejudiced if I ruled certain evidence inadmissible. That is why there is a Court of Appeal. They are busy beavers and they are very -- they are very happy to decide these questions. That's what they are there for.

And low and behold, if one isn't satisfied with the decision of the Court of Appeal, then there is another place and again, that's what they deal with. But the ground rule has to be that the trial judge decides what is relevant and what evidence is admissible and you're not required to like it, but you're required to accept it.

MR. FABRIKANT:

Well -- don't I accept what --

THE COURT:

And when you say -- when you say I, therefore, want to make the jury aware, what you are saying is, I want to argue the question of relevance to the jury in the hope that the jury will agree, but that leads to absolute confusion because whether the jury agree or not, the jury as a matter of law are obliged to ignore what I tell them. They are obliged to ignore. So, that simply -- up until you -- up until the end of your second last paragraph, you stated your position and you were completely -- you are completely wrong.

When you add your last paragraph, if I'm doing the right thing, what have I to be afraid of, that hasn't got the slightest thing to do with what we're discussing here.

MR. FABRIKANT:

In any case, as far as what you're saying, jury is obliged, I would like to respectfully remind you that in case of Morgentaler, jury was told one thing and they decided not to obey the judge and they decided that they have brain of their own, so --

THE COURT:

You are perfectly right and when the matter -- and when the matter arrived --

MR. FABRIKANT:

Let me finish, please.

THE COURT:

Let me finish; you're perfectly right and when the matter arrive before the Supreme Court of Canada, the Chief Justice of Canada criticize roundly counsel in question for putting the proposition to the jury in extremely strong words and he said, Mr. X should not have done that. And I can tell you that is the rule that will be applied here.

MR. FABRIKANT:

Well -- if the jury seeing abuse is being done here will at a certain point decide to use not what you are telling them, but what their conscience tells them to do and if after that the Supreme Court or Supreme Supreme of Supreme Court would say anything, I couldn't care less.

THE COURT:

Well -- Mr. Fabrikant, that simply shows that you quite beyond having no respect for me, have no respect for the system or the manner in which it operates. I'm here to make sure that the rules are followed. It ain't easy, but I'm going to do my best.

MR. FABRIKANT:

So far you are doing your best in having the witnesses denying evidence --

THE CROWN:

At this point, my Lord --

LA COUR:

Un instant.

THE CROWN:

Maître Richard is here, I wonder if he could --

THE COURT:

Tell us what his --

THE CROWN:

-- tell us what is the status.

Me RICHARD:

Okay; regarding that point, when I got out of here last night, I had a message from maître Deslongchamps, just that she called. I called back but she was gone. It was like almost a quarter past five when I got that message. This morning I tried to reach her like three or four times, she is never in her office. She is in the building there, I'll try again when we recess. I imagine that everything is all right.

THE COURT:

So, you're here in the same capacity as yesterday afternoon and --

Me RICHARD:

I imagine, okay.

THE CROWN:

My Lord, I would like just -- excuse me -- I expect the reopening of the case to be very short. My explanation lasts one minute, the tape lasts eight minutes, I will discuss with either Mr. Fabrikant or Mr. Richard about an admission of identification of voice. What I expect is to give -- first, to argue the reopening of the case, but to give the explanation and just to play the tapes, so the total would be 15 minutes. So I wonder if we can do that.

THE COURT:

We have to do it outside the presence of the jury at two o'clock.

MR. FABRIKANT:

Well -- first of all, I would --

THE COURT:

I'd be prepared to do that and I'll hear you and we'll decide whether or not your motion -- what happens to your motion. I suppose that, in addition you propose to have Mr. Sauvageau explain what happened?

THE CROWN:

Very shortly, yes.

THE COURT:

And that will have to be part of your motion which is heard outside the hearing of the jury initially and then, we will see what happens if your motion -- if your motion is granted then it will have to be repeated in front of the jury if your motion isn't granted, then that's the end of it.

MR. FABRIKANT:

I would like in this particular instance again to postpone the whole presentation. I would like that maître Richard goes to 911 and they show him at their place what exactly they did and what went wrong.

THE CROWN:

I have an explanation, it's not 911.

THE COURT:

The explanation certainly isn't 911.

MR. FABRIKANT:

Anyway, wherever -- wherever it happened.

THE COURT:

The witness is here that I suppose is going to explain it.

MR. FABRIKANT:

I would like to see exactly what was done and how it was done

rather than witness coming here and saying something. If you recall, witness came here and testified that everything was perfect and when I said that timing is wrong, he came again and he said that timing is right and again, he was -- the whole time he was wrong.

THE COURT:

At two o'clock we will hear the motion and we will see from there. Now, are you ready to call your next witness? Fine; jury, please.

MR. FABRIKANT:

Yes, one second. We didn't discuss the tape. I want to play the tape too of Hoa or will combine the case of K.G.B. discussion.

THE COURT:

You are not playing the tape as such.

MR. FABRIKANT:

Why not?

THE COURT:

I have already answered that question and I'm not answering it again.

MR. FABRIKANT:

I can't introduce it as original evidence.

THE COURT:

I am not going to permit you in this instance to introduce the tape as original evidence. It is not necessary for any inflictions or anything else.

MR. FABRIKANT:

It's very necessary.

THE COURT:

No, it is not.

IN PRESENCE OF THE JURY

THE COURT:

By way of explanation, after you left, I terminated the examination of doctor Hoa in view of Mr. Fabrikant's refusal to abide by the rulings that I made.

MR. FABRIKANT:

I think this has to be done in presence of the jury. I did not refuse. Jury might think that something happened in the absence. Nothing happened, you just sent jury away and in absence of jury discharged Hoa.

THE COURT:

That is perfectly correct.

MR. FABRIKANT:

And this is dishonest thing to do.

THE COURT:

Fine, you're entitled to your opinion. Now, let us proceed.

MR. FABRIKANT:

If you had to do it, you had to do it in front of the jury.

THE COURT:

The jury is now perfectly aware of what I did.

APPEARED:

SESHADRE SANKAR,
Professor Mechanic Engineering,
born: 09-04-1949,

WHO, having been solemnly
affirmed, doth, depose and say as follows:

EXAMINED BY MR. FABRIKANT,
for the defence:

Q. What was in your subpoena originally requested?

A. D.P.C. documents, 1989, 1991.

THE CROWN:

Can we have a look at this subpoena?

THE COURT:

That's the subpoena, is it, Mr. Sankar?

THE WITNESS:

Yes, sir.

THE COURT:

Thank you.

MR. FABRIKANT:

Q. So, what else was requested in original subpoena?

A. That is all.

THE CROWN:

There is a ruling, my Lord, on that. Fabrikant doesn't want -
- not respects your ruling again.

MR. FABRIKANT:

I asked him what else was in the original subpoena. There was
no ruling that that question cannot be asked.

THE COURT:

No; you can ask that question. That's fine. We will see
what the answer is.

THE WITNESS:

Here, hand-written note says "D.P.C. files of Mr. Fabrikant
from 1985 to 1991." The rest of them all is crossed out.

THE COURT:

I'm sorry, what is it?

THE WITNESS:

The rest of the material is crossed out here.

MR. FABRIKANT:

Q. What was there as to material; could you read it?

THE CROWN:

You washed the rest.

THE COURT:

I see, okay; hand me -- would you hand me the subpoena,
please? Yes. You may not ask doctor Sankar what else was in
the subpoena if it relates to these three lines because you
will recall that on an application I quashed that part of the
duces tecum because I stated that it was not relevant to the
case. Now, if I've decided it is not relevant to the case,
you're wasting everybody's time to put it before the jury and
you may not do so.

MR. FABRIKANT:

I just wanted the jury to know how much of important material
you quashed because you did it in absence of jury and jury
should be aware.

THE COURT:

Please, let us not ride this hobby horse again.

MR. FABRIKANT:

Well -- why are you afraid that the jury would know. What
exactly documents you can see they're irrelevant?

THE COURT:

It is quashed. I am not afraid of a thing. Would you like me
-- would you like me to put an end to this?

MR. FABRIKANT:

If you need an excuse for that.

THE COURT:

You have a witness here, now put your questions to the witness. You may not put that last question relating to the documents which I deemed to be irrelevant and that's that. You may not put an irrelevant question because enough of our time is taken up with relevant questions that we don't need irrelevant questions.

MR. FABRIKANT:

Now, in subpoena also I requested not from '89, I requested all the D.P.C. files about me. I never said '89, it's again sabotage by Mr. Belleau; is it? Do you have my original writing, Mr. Belleau? Yes. No; what I have written to you. What I have written to you. Well, it doesn't say '89. It's also correct. All D.P.C. files mentioning Fabrikant's name, period. There is no year mentioned here. Where did they get the year?

THE CROWN:

Pursuant to your ruling, my Lord.

THE COURT:

I think my ruling touched on the year, yes.

THE CROWN:

Exactly.

THE COURT:

My ruling touched on the year and I said, from 1989 to 1991.

MR. FABRIKANT:

Yes.

THE COURT:

Sure.

MR. FABRIKANT:

Well -- I needed in '88.

THE COURT:

Well - I've ruled, you see, that you get it from '89 to '91.

MR. FABRIKANT:

Extortion started in '88.

THE COURT:

I don't know what representations you made to me at that point. If there is a question of D.P.C. files for 1988, then --

MR. FABRIKANT:

You don't just listen to what I am saying to you. Extortion started in '88 and now it is irrelevant.

THE COURT:

At the time, on the basis of the representations that were made, it was irrelevant.

MR. FABRIKANT:

You just don't listen to what I've said.

THE COURT:

What does that note say, Mr. Belleau?

MR. FABRIKANT:

Well -- it didn't say any year, so --

THE COURT:

It doesn't say any year; does it?

MR. FABRIKANT:

I apologize.

THE CROWN:

Are you talking about the original subpoena?

THE COURT:

Yes.

THE CROWN:

No, it didn't mention any year.

THE COURT:

It didn't mention any year.

MR. FABRIKANT:

There was no mention of any year. It was all years.

THE CROWN:

You apologize for what?

MR. FABRIKANT:

For calling you saboteer, this time you didn't; I'm sorry.

You say it, it's nice for a change that you didn't sabotage me at this time.

THE COURT:

Mr. Fabrikant!

MR. FABRIKANT:

Well -- I'm really glad.

THE COURT:

You put your questions.

MR. FABRIKANT:

Well put; I don't have the document.

THE COURT:

Fine; you've got the documents from '89 and '91 -- '89 to '91 if you're satisfied on the basis and on the basis of what I've heard now, it may well be that in 1988 there is some relevance. I'm prepared to run that back from 1989 to 1988.

MR. FABRIKANT:

Gosh! you made a mistake, I couldn't believe it.

THE COURT:

It's not the first time I've admitted to that, Mr. Fabrikant.

MR. FABRIKANT:

Maybe it was, but it is such a rare occasion that I just couldn't check --

THE COURT:

Now, have you any questions to put to this witness?

MR. FABRIKANT:

Yes. All right.

Is it possible to see the file?

THE CROWN:

Fishing expedition, my Lord. He should put his questions.

THE COURT:

He will put his questions and if there is a relevant document I would presume, Mr. Sankar, that you are aware of what is in the file. If there is a relevant document that he asks for, you will produce that relevant document to him.

MR. FABRIKANT:

There are some documents maybe I'm not aware about and I would like to know about their existence.

THE COURT:

Put your questions.

MR. FABRIKANT:

All right.

THE COURT:

You're not going fishing through the file.

MR. FABRIKANT:

Q. How long have you been -- how long have you been the Chairman of Department Personnel Committee?

A. I recall I am Department Chairman Committee since 1986 or '87, I cannot recall exactly.

Q. When did you start working at Concordia?

A. Nineteen seventy-five.

Q. And what was your position then?

A. Nineteen seventy-five, I was hired as Assistant Professor in Department of Mechanical Engineer.

Q. Then your progression was -- when did you become associate?

A. I recall perhaps in 1979.

Q. When did you become full professor?

A. Again, I recall perhaps it is in 1983.

Q. So, it took you four years to become full professor. Were you outstanding scientist at that time as requirement is?

A. As far as promotions and (inaudible) as well as other contracting (inaudible) are carried out based on the Concordia University Faculty Association guidelines. There is a department Personnel Committee, elected member looks at the file of the individual, makes the recommendation and the file goes to the Faculty Personnel Committee. It's again elected members in the faculty made up from membership from various departments. They look at the file and they make an independent recommendation which could be otherwise of the Department Personnel Committee. These recommendations, along with the recommendation of the Dean goes forward to the Vice-Rector Academic and the Vice-Rector Academic could make a recommendation independent of these things. So, there is a set procedure in doing all these things. So, what all a professor has to do is to request for this, a particular given an application for a promotion or contract annual, due process takes place.

Q. That was the answer. Were you a remarkable scientist at that time? Would you believe that that was an answer to this question?

THE COURT:

Yes, I would believe that was an answer to the question.

MR. FABRIKANT:

And answer is good, of course.

THE COURT:

And the answer -- the answer as to how he was promoted was he said to you --

MR. FABRIKANT:

No, I didn't ask how he was promoted. I asked him if he was an outstanding scientist at that time.

THE COURT:

You related -- you related that to the four years and you took pains to mention as being the period between Associate Professor and full professor. Anyway, his answer is satisfactory as far as I'm concerned.

MR. FABRIKANT:

So, what is his answer? Was he a remarkable scientist at that time?

THE COURT:

I have no idea whether he was a remarkable scientist or not --

MR. FABRIKANT:

So, I repeat my question.

THE COURT:

-- but he explained to you why he --

MR. FABRIKANT:

Q. Were you outstanding scientist at that time?

A. Should I answer?

THE COURT:

No, you should not answer. Continue with your next question.

MR. FABRIKANT:

Q. Is it true that the normal time for promotion from associate

to full professor is seven years?

A. Faculty Association has guidelines drawn up every two or three years based on negotiation with administration. Things do change. I think in all faculty associations right now currently going through negotiations (inaudible) for the future few years. So, I cannot recall what is the exact guidelines at the time in 1979 or '83 and what about the guidelines that we have now has been amended over the number of years. So, I cannot really recall whether it is four years, seven years, I cannot recall that.

Q. Okay; why don't we take collective agreement and refresh his memory from the year '80 previous?

THE CROWN:

What is the point anyway, my Lord?

THE COURT:

That's the question. Why? What is the pertinence?

MR. FABRIKANT:

Okay; the pertinence is very simple. To show that in the year he was promoted to full professor, he was -- well, according to requirements of collective agreement everywhere, full professor is person who made outstanding research contribution and normally it is seven years. Now, if it is early promotion, it has to be so outstanding that it should be outstanding, outstanding. So, that someone would be promoted within four years from associate professor.

Now, at that time, his brother was Chairman of the department and I want to demonstrate to the jury that in '84 as it is now too, he didn't have anything to show of his remarkable researcher. So, his promotion was due only to the fact that chairman of department was his brother and Dean of Faculty was in the same family and this is why he got promoted. So, it is irrelevant, of course.

THE COURT:

It is irrelevant, totally.

MR. FABRIKANT:

This time I will not give you any excuse. So, it is irrelevant, (inaudible).

Q. Now, do you recall the conversation we had in '88 concerning renewal of my contract?

A. Yes. I had a conversation in 1988 but I cannot recall all the details. Yes, we had a discussion with regard to his contract renewal.

Q. Did you or didn't you, prior to that, make a phone call to your brother, T. S. Sankar, and told him the following: "contract of Fabrikant is coming to an end in June, what do you want me to do with him?"

A. I cannot recall exact words. You know, Mr. Fabrikant was hired in 1985.

THE COURT:

Stick to the question, please.

THE WITNESS:

I cannot recall.

THE COURT:

No, no, but you were -- the thrust of the question was: did you phone your brother and discuss or ask in some manner or other what he wanted to do about the contract; that was the question.

THE WITNESS:

My Lord, this is a contract, I am a principal applicant, but number of team member, it's a team grant, so in a team grant number of members are part and collectively we have to make a

decision with regard to whether a particular individual is performing well within a given contract. Doctor T. S. Sankar is one of the members of the team. Likewise, there are many other members and because doctor T. S. Sankar is one of the members and prior to doctor Fabrikant's hiring into that team, he was working with doctor T. S. Sankar and also during the period he is expected to work with him in research, so I had discussed with not only doctor T. S. Sankar, but also with many other people with regard to his research progress and his focus with regard to that given grant application.

MR. FABRIKANT:

Q. So, you called not only T. S. Sankar; you called every member of concave to ask what to do with Fabrikant; did you?

A. Again, I cannot recall; we discussed. It may not be a phone call, you know, in grants or when we do research. We have ongoing discussion on several weeks, several days and, you know, this is exchange of information, so the conversation has been there. So, I cannot recall whether I have phoned every member at all, you know, on a given particular time. However, one has to understand that whenever the grants are to be renewed, because the grant application is a major application. If that grant is not renewed the members who are being hired will not be a part of it, you know. Everybody has to be dismantled.

So, in order to make sure that this grant is continued, we want to know whether the individuals are working together because it is a team grant and we want to know whether everybody is working together how, what is the direction that we are going, whether in the future the direction will be the direction that we would like to maintain, so there are discussions and this is an ongoing discussion during the process.

Q. He doesn't answer the question. I asked question very simple and very short: did you or didn't you discussed the question of renewal of my contract with other member of concave; just answer, yes, I did, no, I didn't, period?

A. I answered. I gave the answer saying that, no, I cannot recall whether at that time I discussed with everybody, you know. During the process there has been discussion not necessarily with every individual about everybody, you know. There has been discussions with regard to the progress of the projects. So, I cannot recall whether I had because the team consists of nine professors, 30 researchers and about 50 students and we have discussions and in addition to that, you know, we have been working with (inaudible) industries and our mandate is not only just to do research. We are to work with industry in order to do technology transfer and we have to do collaborative research and we have, at any given time, industries that are visiting us. So, we wouldn't be able to think and say, well, we are discussing with this professor, that professor, in the discussion many things we discussed about. So, not only we have particular individuals, whether he is contributing or she is contributing, at the same time look at where the direction we are going. One of the mandates that we had is we have to graduate a large number of graduate students. So, we have discussions and we graduated in those periods about 50 PhD and Master students and I was hands full discussing. So, I cannot recall.

THE COURT:

Fine. Would you try to take the questions one by one and simply address yourself to answering the question. I don't

think, unless you're asked to expand upon it, you need to -- you need to go into the whole history of the operation of the concave research centre, nor do you go into the whole history of your staff, unless you're asked. Just answer the question and that would make things much easier.

MR. FABRIKANT:

Q. So, I start again. Do you or don't you recall conversation with T. S. Sankar concerning renewal of my contract?

A. I cannot recall whether I phoned him, but I had discussions with him and other members.

Q. So, you did have discussions with him. As far as other members, could you name other members with who you had discussions?

A. I had discussion with the chairman of the department, Doug Osmond, I had discussions with doctor Acadia, doctor Armouth, this I can recall. Maybe other members, I cannot recall I know in what context, but these are the things that I can remember right now.

Q. Doctor Acadia and doctor Armouth, to the best of my understanding, were at my level; were they?

A. They are part of the team.

Q. Yes, but they were not the members of concave what you call it; were they?

A. They are members of the concave themselves.

Q. Well -- in the sense that there are people who are called "founding members" should I call it and there are people who were just researchers there; correct?

A. There are applicants, there are people who are hired to --

THE COURT:
The question bears on the status over Acadia and O... in 1988 when you discussed, what were they. That's the question.

THE WITNESS:

They were -- they were research professors, research assistant professors.

MR. FABRIKANT:

Q. So, they were exactly in the same status as myself?

A. Yes.

Q. So, they're even not people who were making decisions about renewal or not renewal of contract?

A. In our operation, what we do is we try to cooperate and we try to discuss openly with every individual, so that's what we did because these people were participating and they were providing support to the research activities, so you know, they were discussed, the discussions were made along with them also.

Q. So, you discussed with me whether to renew or not to renew my contract; correct?

A. Not the renewal, (inaudible) such activities.

Q. Well -- did you or didn't you discuss the question of renewal of my contract with them?

A. No.

Q. But that was my question; with who you discussed that. You said you discussed with T. S. Sankar; who else did you discuss question of renewal of my contract?

A. When we talk about renewal of contract, when we have to -- you know, it's not black and white -- we have to look at the research progress, whether it is supporting something, so --

THE COURT:

Perhaps, but the question was simple.

MR. FABRIKANT:

Q. With who you discussed.

THE COURT:

The question bore on the renewal of this contract. It's not what you discussed with who or whether you phoned up Charlie and said, did Fabrikant do a good job last year. He asked you specifically with whom did you discuss the question of the renewal of his contract. That was his question.

THE WITNESS:

I recall that I discussed with doctor T. S. Sankar. I also discussed with the Chairman of the department.

MR. FABRIKANT:

Q. So, that's it, two people, not more; correct?

A. I think so. That's what I recall.

Q. All right. Now, what did T. S. Sankar tell you to do with me?

A. He did not tell me what to do with you. It is again my discussion was whether -- you know, it's not a question of whether I should renew. It's a question of how the progress is going on and what should be the direction and I made the decision with regard as the principal applicant so that this is one of the input. You know, the contract is not decided by any individual. It was done by the Department Personnel Committee. So, there was a recommendation that is needed from the team to the Department Personnel Committee and the Department Personnel Committee is the one which made the decision of the contract renewal.

Q. He again doesn't answer my question. What did T. S. Sankar tell you?

A. We discussed only about the research progress, nothing more.

Q. Okay; what did he tell you? Did he tell you it was satisfactory? Did he tell you it was brilliant? Did he tell you that this guy has stopped including me and my paper so we have to kick him out? What did he tell you?

A. He -- again, we discussed with regard to the individual papers. We talked about globally. We talked about whether the progressing -- because as far as I am concerned, we have to fulfil three mandates in that excellence structural program, special program. Not only that we have to have the research done, but we have to have the industrial collaboration and team grants and team contracts have to be fulfilled and we have to work with the industries and we also have to graduate x number of students because we have to fulfil all these three aspects, these are the three which we talked about.

So, we talked about, you know, whether this particular aspect with regard to the student, whether he is participating. He said, yes, he is supervising one student with him.

And as far as the publications are -- as far as the research is concerned, he is now doing some work in the line what he has been working along. That's all what my conversation was with him.

Q. So, what was the result of this conversation? Did I do a good job? Did I do that job? What?

A. I never asked him that, to give me a bad job or a good job. It is an input to me because I had a concern that the research focus was not fulfilling the mandate of the excellence structure. So, I wanted to make sure that the people who he has worked with the Chairman and T. S. Sankar would like to give me the input. As a matter of fact, they told me you should give enough time so that the person would be able to continue and may be able to fulfil and that's why in 1988 the contract, the Department Personnel Committee, my input was, yes, I will support the Department Personnel Committee.

Q. What was the result of your conversation with T. S. Sankar? Was it resolved that, yes, I'm doing an excellent job, I'm doing mediocre job, I'm doing something which is totally irrelevant to concave centre? Could you, please, just be specific, what was the result of this conversation?

A. Again, he doesn't seem to understand my point here is that we discussed, but we did not discuss -- but we did not discuss whether he is fulfilling. It is me who is looking at the documents. So, I wanted to have input so that am I making a right decision saying that, well, he is not fulfilling working with industries. He is not working in a team grant, whether we should allow to continue, whether this would change and his input is, yes, we should allow for some more time. That is the same thing what the chairman also suggested.

THE COURT:

But you're not answering his question. His question isn't terribly complicated. I don't presume that that day, when you picked up the phone and called doctor T. S. Sanker, you called him to discuss the weather. You've already answered his question in the sense that you code him up and according to the way I understand -- you'll correct me if I'm wrong -- in your testimony you said, I have the question of Fabrikant's contract renewal?

THE WITNESS:

Yes.

THE COURT:

Now, what he wants to know is what did you ask and what were you told in relation to his contrat renewal because you're the one who, as I understand it, are the one who has to make the final decision. You consult people you've said, but maybe I'm wrong, but I understood you to say that you're the one that has to make the final decision. Now, when you call up T. S. Sankar and say, Fabrikant's contract is coming up for renewal, I need some input, presumaly his input with regard to Fabrikant's work. It's certainly not input with regard to my work or somebody else's. That's what he wants to know.

THE WITNESS:

Your Honour, I was not the only one to make the decision as you know, it was not -- it's one of the input to the Department Personnel Committee that Department Personnel Committee made the decision. You know, I cannot recall exactly, you know, whether the way that he stated that my conversation. I had several discussions over so many years, you know, when you talk about that particular incident when I spoke to him.

THE COURT:

Just a second; come back to his two questions. It's a twin question. When you called up T. S. Sankar, what did you ask him about Fabrikant and what did he tell you about Fabrikant? Thats what he wants to know.

THE WITNESS:

My concern, when I asked him, was I have a concern that his participation in the team he is lacking of -- you know, what I should do with regard to that, you know. He said, yes, we should allow him to do more time, be flexible, give some more time. That's what he advised.

MR. FABRIKANT:

Q. That's the whole conversation. There was nothing else said?

A. There is nothing else. That's the way. You know, the rest of the -- with regard how the research was done and what we should do, you know, it's all centered around the whole

objective of the project.

Q. How many papers have I published by that time, just in two previous years; do you recall?

A. I don't recall that.

Q. Would 30 ring a bell?

A. Maybe, perhaps, yes. I don't know.

Q. Maybe. Surely, is it a huge amount? Some people don't do that in their lifetime; would it be a correct statement?

A. Your Honour, counting numbers in publication is not something. Some people may publish one paper which has a larger value, some people may publish small segments and (inaudible). You know, in some areas where lot of explanatory work to be done where you have to go to the field and collect detail and it takes a fine amount of time. Some experiments may not even be completed in two years or three years. So, if somebody is doing the work in just a narrow area working in computers, perhaps, you know, 30 papers is possible. So, I am not -- I cannot judge whether the 30 papers have the same value as five papers of somebody or one paper of somebody else. It is subject to the way people can make it.

Q. Is my understanding correct that effectively you say that you had no professional ability to judge value of my papers; is that correct?

A. Paper judgment is subjective. Papers are sent to journal and reviewers look at it. It is possible in one journal, it may be accepted. In another set of journals it may be rejected, so I cannot really --

THE COURT:

That wasn't his question. His question was: did you have the competence to assess his papers. That was his question.

THE WITNESS:

His area is in a very narrow area of solid mechanics and I'm not sure whether I may have a chance to look at it. I may say, yes, good, but it is not my main area of research.

That's not my main area of research.

MR. FABRIKANT:

Q. Did you or didn't you have the competence?

A. Again, I cannot say that -- that is not my main area of research. So, if I would have taken time to read it, maybe I would be able to judge it, but I didn't have, you know, a chance to review the whole thing.

Q. You never read a single paper of mine; correct?

A. No.

Q. And you were required to make a judgment whether to continue or not continue my contract?

A. That is why it works in a team. You asked the people who you work with closely to do an input and since he has worked with T. s. Sankar in the past ten years, he is the best person to make a judgment.

Q. Okay; so, do I understand correct that you believe that T. S. Sankar did read my papers and he was able to evaluate their value?

A. You should ask him.

Q. No, no, no; you asked him. Did you or didn't you? Did you believe that he is able at the time of conversation?

A. Yes, definitely. He has been working with him for the past so many years and he is a reputed researcher in that particular area.

Q. Oh yes. So, did you ask him to evaluate my work then since you are not capable yourself; did you?

A. That's what I answered. It's not my research area; it's a

part of the team, a person whom he is supposed to work with is the person who would give the input.

Q. Did you or didn't you ask him to evaluate my work?

A. That's why when I spoke to him it to build his input. So, that, you know, he would be the person who looks at his progress report and give me the input.

Q. So, should I understand that answer is positive, yes, you asked him to evaluate? How to get just answer to the question, yes, I asked him to evaluate your work or no, I didn't ask?

THE COURT:

He said he asked him for his input because he had worked with you.

MR. FABRIKANT:

All right. So, what was this --

THE COURT:

I don't know whether -- I don't know whether he discussed your papers with him one by one and said, by the way, T. S., what do you think of

-- what do you think of his paper on -- I don't know what you write papers on, but you know, if that's what you want to ask him, did you discuss any specific papers.

MR. FABRIKANT:

Q. Did you ask him if he read any of my papers?

A. I don't go around ask, you know, whether somebody reads or not.

Q. Did you or didn't you; just answer the question?

A. I never asked him whether he read the paper. I never asked him whether he read the paper. He is a researcher worker, you are supposed to be working with him. He has been working in the past and so, it is natural that somebody, you know, they are working in a given area. So, you don't even ask; it is insulting to go and ask whether you read the paper.

Q. So, you assumed that he did; correct?

A. Yes, yes.

Q. All right. Did you notice that all those 30 papers were published single author?

A. That doesn't mean anything. You know, in a given area, people have a judgment to make, you know, if you are in a such given area, very well you can make a judgment and some of us are -- he and I are in the top 20 of the mechanical engineering granting in the entire country. So, we are top researchers, so we know in our area what we are doing.

Q. Would it be more correct to say you are top receivers money rather than top researchers?

THE CROWN:

My Lord, this is not examination.

THE COURT:

This isn't examination.

MR. FABRIKANT:

All right.

THE CROWN:

This is cross-examination and, moreover, it's systematically insulting the witness.

MR. FABRIKANT:

All right, I --

THE CROWN:

You already ruled on that. You said you won't let him do that.

THE COURT:

I said why the thing -- the duces tecum was cancelled.

MR. FABRIKANT:

I didn't say anything insulting. I just correct his statement that he is one of top receivers of money because his argument was --

THE COURT:

Stop, please.

MR. FABRIKANT:

-- that we are getting top grants.

THE COURT:

The objection -- the objection is well taken.

MR. FABRIKANT:

Q. Anyway; so, you -- weren't you aware that those articles were single author? You've never answered the question.

THE COURT:

He said -- you're right. He said that doesn't matter, but the question was: were you aware that these articles were single author?

THE WITNESS:

Yes. He has submitted his progress report and we looked at it and, yes, there are some single author, there are some which are co-authored, so I didn't count what number he has got single author. Of course, now, there is a large number which is single author paper and that's where we felt that there is no team effort. He is lacking the cooperation.

THE COURT:

Are you finished with your answer?

THE WITNESS:

Yes.

AND THE WITNESS SAYS NO MORE.

THE COURT:

Fine; we will stop there and at 2:15, ladies and gentlemen.

THE JURY IS RETIRED

--- Suspension

--- Upon resuming

Me RICHARD:

Your Lordship, I don't know if it would be possible to have maybe like five or ten minutes as I would like to discuss with Mr. Fabrikant. I tried to meet him downstairs, I waited until about a quarter past one and they didn't bring him up to that point. After that I had to make some phone calls.

THE COURT:

Do you mean in connection with the Crown application?

Me RICHARD:

Yes.

THE COURT:

Sure.

MR. FABRIKANT:

If I may add, the intention they kept me on the floor, I told them that my lawyer is waiting for me downstairs. They told me, okay, write another complaint. How about that? Do you like it?

THE COURT:

We'll adjourn and give you -- will ten minutes do?

MR. FABRIKANT:

I don't think ten minutes will do.

THE COURT:

You don't think ten minutes will do.

MR. FABRIKANT:

We have to discuss two things and they are both quite very serious and unless you put some order in how those guards behave, I believe this will continue.

THE COURT:

Mr. Fabrikant --

MR. FABRIKANT:

They prevented us from meeting together.

THE COURT:

Mr. Fabrikant, there are rules by which the detention centre runs. You're treated no differently than anybody else.

MR. FABRIKANT:

Yes? Why don't you ask me, usually when it is finished here, they immediately bring me downstairs immediately. This time, they kept me --

THE COURT:

Listen; you want time to discuss with your lawyer.

MR. FABRIKANT:

You just don't want to hear. Each time that it's finished, they bring me downstairs immediately. This time, they kept me in detention on the floor.

THE COURT:

I am not running the prison, okay.

MR. FABRIKANT:

You don't have to run, but you have to run the trial efficiently, if something happens here.

THE COURT:

The trial is running. The trial is running, I think, as efficiently as I can run it.

MR. FABRIKANT:

Well -- we could have -- not have this adjournment today. If they had brought me downstairs right away, we could have met and we wouldn't have that adjournment.

THE COURT:

It's a question of the Crown application then.

Me RICHARD:

The question of the Crown application to reopen the case and the question of K.G.B. also. I worked on that during lunchtime.

THE COURT:

Okay, you can.

Me RICHARD:

I worked on that during lunchtime, your Lordship, and --

THE COURT:

Fine; K.G.B., if you want to wait till tomorrow, that's fine with me. I'm not pushing you on anything quite frankly and --

MR. FABRIKANT:

Well -- there is another option. Let us postpone the whole thing, let us just proceed with the jury and with the testimony and I hope one day we will meet with matre Richard and discuss all this stuff. That is another option.

THE COURT:

No; I know there is another option, but the Crown has taken the -- has gone as far as to bring the witness here. The witness has been here, I think, for a day and a half; is that so?

THE CROWN:

That is correct, my Lord.

THE COURT:

So, I think we may as well.

THE CROWN:

I expect this to be very short.

THE COURT:

I think we may as well get on with that.

MR. FABRIKANT:

You expect to be short. I would like to question the witness, what happens. So, don't even dream that it will be short. If you think that it will be short, just wake up.

THE CROWN:

Okay; what happens we don't know. We don't know. The explanation we've got is a simple one. The label was on the box instead of the cassette itself, there was a mix-up between C and D and when you finished with -- when you put A, B and D it looks like a perfect, total, complete conversation. That's the only explanation I have to --

THE COURT:

Except that there is eight minutes on C.

MR. FABRIKANT:

That's not there.

THE CROWN:

That's my point. I cannot --

MR. FABRIKANT:

Would you be --

THE CROWN:

Okay; let's assume Mr. Fabrikant does not believe it, that's the only thing I have to propose.

MR. FABRIKANT:

Well -- I will go into detail how it happened.

THE CROWN:

Whether you cross-examine until the end of the world.

THE COURT:

Of time, yes.

THE CROWN:

The only answer is a guess that when Mr. Sauvageau transcribed A, B and C, on the label of C, it was the E and the label of D was C and when you listen to the conversation it finishes at C, period. That's the only explanation. The rest is pure speculation. If Mr. Fabrikant wants to argue it's a conspiracy, he could argue that later in a sommation and if Mr. Fabrikant does not want this to be filed. Is there consent that we file this cassette or you don't consent? Do you wish this cassette filed or not?

MR. FABRIKANT:

You don't need it.

THE CROWN:

As far as I am concerned, it doesn't change anything, but I don't want to jury to feel --

THE COURT:

That was the next -- that was the next question I was going to ask you. Does this -- does this eight minutes add anything of substance?

THE CROWN:

No. The only thing it adds to me is I want to make sure the jury is sure that the Crown doesn't hide anything.

THE COURT:

And that's the sole reason the application has been made?

THE CROWN:

That's the point, period. It's a conversation between Mr. Grignon and Mr. Fabrikant, the same way as it was before and after, period.

THE COURT:

This, you see, is -- if this were a normal case and if Mr. Richard had been here before, I would have said, listen to the thing and let me know what your position is -- it's that simple. But, here we have mountains made out of m.... all the time.

THE CROWN:

And I have to tell you, my Lord, as well, that it's so obvious on the montage of all the 911 conversations Fabrikant has this missing part in his possession, okay. If he doesn't consent from the question you just gave me, do you insist; I don't insist, my Lord, and it will be the end of it, period.

THE COURT:

You don't insist?

THE CROWN:

No, I don't need that.

THE COURT:

Fine, fine, okay.

THE CROWN:

So?

THE COURT:

So, if the Crown will not be making an application.

THE CROWN:

As far as I'm asking the question, is there a consent or not from the defence that we've filed it.

THE COURT:

I'm going to withdraw while you settle the question of whether there is a consent.

THE CROWN:

And if not -- if not, that will be the end of it.

THE COURT:

And you let me know when you're ready for me to come back.

--- Suspension

--- Upon resuming

THE CROWN:

Since there is no consent from the accused and if I make my motion the accused expects to assign a lot of witnesses and to try to establish something that, in my mind, does not exist and since what I've said to you before that I don't need that conversation, besides the fact that I don't want the jury to have incomplete things, given the whole circumstances, I withdraw my motion, my Lord.

THE COURT:

Thank you.

MR. FABRIKANT:

But I would like for the record to say that I do not take back my words that it was not inadvertently, that it was not an honest mistake or anything like that, I do not take it back.

THE COURT:

You are entitled to your opinion.

MR. FABRIKANT:

Exact.

THE CROWN:

But I would like, since we are at this, the record to show that there is no consent from the accused to complete this 911 paper on the procès-verbal.

MR. FABRIKANT:

Not only no consent; I think it should be withdrawn since they didn't do their job properly, it should be withdrawn, no just not complete.

THE COURT:

The whole conversation will not be withdrawn. I've told you that before.

THE CROWN:

It's already ruled. There was a motion before.

Me RICHARD:

My Lord, the witness I mentioned this morning from the Budget rent-a-car is here. He would be called only to file documents if it was possible and right away, it would be most convenient. Mr. Fabrikant agrees with that, of course.

IN PRESENCE OF THE JURY

THE COURT:

Just a moment.

THE CROWN:

I understand, my Lord, you already put Mr. Fabrikant in the obligation to explain to you what is the relevance of this witness.

THE COURT:

Yes.

THE CROWN:

Without the presence of the jury.

THE COURT:

I had called for the jury at this point.

SANDRA TRAYNOR,
INTERPRETER FRENCH-ENGLISH
SWORN IN

THE COURT:

Just a second before you swear the witness.

No, Mr. Sankar hasn't disappeared; he will continue his testimony. It's simply that the witness who is presently in the box has been here for some time and I am assured that his testimony will be extremely short, I am assured. So, I wonder if I might ask your indulgence to interrupt again the testimony of Mr. Sankar which I suspect will be long and see if we can go through this.

THE CROWN:

My Lord, you already put Mr. Fabrikant under the obligation to explain the relevancy of this testimony.

MR. FABRIKANT:

It will be shorter just to ask him a couple of questions and it will be obvious what the relevance is. After he answers in just two minutes the question, if you will still have doubts as to the relevance, I will be happy to explain because it will be much faster just to ask him a couple of questions, that's all. It's one minute.

THE COURT:

Perhaps, but it's not a question of whether it's faster. I had decided this morning that you should -- when I was asked to interrupt the testimony or asked to hear this witness, if you could tell me what the significance of this witness' testimony.

MR. FABRIKANT:

All right. If you insist on that, I am prepared though I must

again say for the record that effectively what you are doing now is making me to divulge in advance the essence of my argument. Now --

THE COURT:

That might be, I may be doing that.

MR. FABRIKANT:

Well -- I don't think this is the right thing to do.

THE COURT:

Perhaps not.

MR. FABRIKANT:

But since you force me and I need these people.

THE COURT:

Perhaps not, but when I'm at witness number 55 in a defence, I find that I'm obliged to satisfy myself that this is relevant.

MR. FABRIKANT:

I don't think that if you have four murders' trial, 55 witnesses is too much.

THE COURT:

Mr. Fabrikant.

MR. FABRIKANT:

Too much is at stake.

THE COURT:

What do you propose to prove by this witness?

MR. FABRIKANT:

Okay; now, this witness is brought here with a contract, car rental contract which has been made on August 19th and (inaudible) and I am going to New York City and also contract is for one week. Nine plus -- 19 plus seven is 26 and I believe this will be one of component which I am going to produce to the jury as proof that I didn't plan any murder. When someone rents a car on August 19th to go out of country for a conference and to return on August 26th. At least on August 19th, this person doesn't plan murder on August 24th.

So, this is the relevance and I think the just elementary, you know, logic, would allow Crown to understand why I put it here or was it really difficult to understand the relevance? Now, after I explain it to you, tell me, is it really difficult to understand?

THE COURT:

Are you talking to me or are you complaining about the Crown or are you complaining about me?

MR. FABRIKANT:

Well -- both. Why --

THE COURT:

I'm sorry; you save your complaint. You save your complaint.

MR. FABRIKANT:

Why was it the necessity to make me now to tell all this stuff?

THE COURT:

Have you anything to say?

THE CROWN:

I would like to see the paper because it might not be that clear what he says.

THE COURT:

Fine. Would you go ahead and swear the witness. Just a second.

(Pour les besoins de cette cause, les questions et réponses de l'interprète seront précédées d'un tiret).

A COMPARU:

ROBERT PELLETIER,
Directeur, Services Risques et assurances,
né le: 22-08-1931,

LEQUEL, après avoir, t, d—ment
asserment, sur les Saints Evangiles, déposé et dit ce qui
suit:

INTERROGE PAR M. FABRIKANT,
pour la défense:

Q. Well -- did you bring with you the contract?

A. Yes, I did.

Q. What was the date the contract was made up?

A. This contract that I have before me is the opening contract
which was on August 19th 1992 at 16:11, which is 4:11 in the
afternoon.

Q. Is it marked approximately the time of return?

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

Time of return, your back date is 8-26-92.

Q. Any indication as to where I'm going?

A. Not on the contract.

Q. Usually you don't put it there. You usually don't put it there?

A. We never put the destination, no.

Q. You don't put it there; all right. Well, if it is important, maybe the clerk who made the contract would remember the destination, but at this time, I hope that this example will at least prove that I do not bring witnesses which are irrelevant.

THE COURT:

Listen; I deal with these things one by one. Are you proposing -- if you're proposing to file that --

MR. FABRIKANT:

Yes.

THE CROWN:

It's not even more relevant after the explanation. His apartment was rented until August the 30th, I guess, and it's not written on that he was going to New York. I don't see the big fuss about that, my Lord.

MR. FABRIKANT:

Well -- it is for the jury to decide how.

THE COURT:

I'll certainly permit it.

THE CROWN:

Maybe he bought some grocery that could last over August 24th during the week and --

THE COURT:

I will permit the production of the contract.

THE WITNESS:

This is what we call the opening contract. It has got a due date on it and then we have the second copy when the car came back.

THE COURT:

I see.

THE CROWN:

Oh, it came back.

THE WITNESS:

Yes.

MR. FABRIKANT:

What do you think? I stolen the car?

THE COURT:

Well -- Mr. Fabrikant, are you proposing to file the other part because it may --

MR. FABRIKANT:

No. The other part is irrelevant.

THE CROWN:

May I see the other part?

LE TEMOIN:

Ca donne la date du retour dessus.

THE COURT:

Just a second, please. Do not converse with the Crown prosecutor. Starting at the beginning, do you wish to produce that contract? Fine, we're at D-32.

-- EXHIBIT NO D-32:- Copie blanche contrat

107020792.

THE CROWN:

This is relevant for the Crown's case.

THE COURT:

Perhaps you'll have your chance to cross-examine, won't you?

MR. FABRIKANT:

Well -- how relevant is it; explain it. Just now, you said -

-

THE CROWN:

I did not put the witness in the box.

THE COURT:

Mr. Fabrikant, please keep your comments to yourself. Have you any further questions for the witness?

MR. FABRIKANT:

No.

THE CROWN:

Q. Can I see what is already filed or can I see what you have in front of you? Are you finished?

A. Yes.

Q. You also have the -- what you call "sortie et entr,e". When did the car come back?

A. According to the closing contract, it came back on the 22nd of August at 17:10.

Q. I would like you to file that.

MR. FABRIKANT:

Well, explain the relevance.

THE COURT:

You may file that, yes. On the 22nd of August, at 17:10.

THE CROWN:

As Crown's evidence P-90.

-- EXHIBIT NO P-90:- Copie rose, contrat
107020792.

MR. FABRIKANT:

Well, let us put it, then, as my evidence because.

THE COURT:

No. It's filed as the Crown's evidence. Merci beaucoup, monsieur Pelletier.

ET LE TEMOIN NE DIT RIEN DE PLUS.

T . S. SANKAR,

UNDER THE SAME OATH

EXAMINED BY MR. FABRIKANT,
for the defence:

Q. So, we ended at whether you discussed with T. S. Sankar, the value of my work and you said that it was not team work, therefore it was no good; is my recollection correct?

A. I'm not sure exactly what you said. I said that there was conversation with T. S. Sankar and after the conversation he said that we should give you more time to continue and that was what I've said.

Q. Wasn't or wasn't any evaluation done to my work?

A. I asked T. S. Sankar to do his input, which means to indirectly tell him to take an evaluation, you know.

Q. Yes; and what was that evaluation?

A. That's what he gave me, an input that gives him, continue to work, give him a chance to continue for the next two years.

Q. So, effectively, he told you that I am bad, but maybe in two years I will get better. That's what he told you?

A. No. I had concern, so I conveyed my concern that you were not focusing the research towards the object of the excellence structural program and what he said was, I have to give you enough time so that we will give more time to any individual so that the person can be given that time so that we can evaluate.

Q. You're not answering my question.

THE COURT:
Witness has answered your question.

MR. FABRIKANT:
No, he didn't. I asked him what the evaluation of T. S. Sankar was, he didn't answer. Now, I ask him what was his concern and he, again, just using some words, (inaudible) saying whether he had the concern or not and what was it the concern.

THE COURT:
Did T. S. Sankar give you an evaluation of Fabrikant's work on that occasion?

THE WITNESS:
On that occasion, he did not evaluate it. He was answering to my concern basically. I had the concern and I asked him that and he replied to my concern saying, give the person enough time. So, it was not an evaluation question I asked him.

THE COURT:
It would be correct to say then that neither did you ask for an evaluation nor did he offer an evaluation?

THE WITNESS:
Right.

MR. FABRIKANT:
Q. So, why didn't you? Aren't you supposed by '88 to make an evaluation and to submit it to the government?

A. The evaluation of the program was done by the government, not by us. We have to submit to the government the entire progress of the group which was done sometime in the beginning of 1998 -- 1988, and the government made the evaluation, not us.

Q. You're not answering my question again. You substitute one question by another. I ask him whether he was supposed to evaluate my work and decide whether to continue my contract or not and he, instead, says that it was government who was supposed to evaluate the program. Of course.

THE COURT:
Did you understand his question?

THE WITNESS:
Okay.

MR. FABRIKANT:
He pretends not to understand. He understands what I'm asking and I just wonder how long is he supposed to do so until it will be clear to everyone that the witness is adverse.

THE COURT:
Did you understand his question?

THE WITNESS:
Your honour.

THE COURT:
Try to focus on his questions and just answer his questions; never mind anything else.

THE WITNESS:
Your Honour, with regard to his evaluation I have to give an input to the Department Personnel Committee. That is the only thing that I have to do. In order for me to do that as an input, I asked T. S. Sankar on his input as I have explained

to you and I conveyed to him my concern and he gave me an advice along the same line the Chairman of the Department gave me the advice that we should give you enough time and based on that, I gave an input to the Department Personnel Committee recommending him to continue work the next two years.

THE COURT:

So, it would be correct to conclude that at that particular time there was no evaluation done of Fabrikant's work.

THE WITNESS:

No.

MR. FABRIKANT:

Q. Aren't you supposed to do the evaluation in order to make recommendation to Department Personnel Committee?

A. I think that is what I've answered, your Honour.

Q. No, you didn't. Are you or aren't you supposed to make evaluation?

A. Yes, I am supposed to make an evaluation.

Q. But you didn't do it?

A. I did. I got the input from T. S. Sankar, his advice and from the chairman and I gave an input to the Department Personnel Committee.

Q. Just a second ago, he said that he didn't make an evaluation.

THE COURT:

You gave an input of what? A recommendation that he get more time?

THE WITNESS:

The recommendation that he gets two more years.

THE COURT:

I see.

MR. FABRIKANT:

Q. Did you or didn't you make the evaluation?

A. I made the recommendation to the Department Personnel Committee that his contract be renewed for two years.

THE COURT:

What he had asked you at one point was whether you evaluated his work or had his work evaluated.

THE WITNESS:

I did evaluate and that's where I have my concern that he did not focus his research towards the objective of the program and that's why I didn't want to make a mistake. I want to ask people in order to give him the benefit of the doubt and I asked T. S. Sankar who was involved to give an opinion whatever the decision that I am making is not wrong and I also asked the chairman of the Department in order to get his opinion and based on that I thought that perhaps I also should yield and give him a chance of two more years and that is what was done.

MR. FABRIKANT:

Q. Well -- did you or didn't you get evaluation of my work from T. S. Sankar?

A. No; only oral discussions.

Q. Well -- how to reconcile this totally absurd situation. He didn't get evaluation from T. S. Sankar. He needed to evaluate. He didn't do the evaluation, then he did the evaluation. When this childish style will end?

THE COURT:

When you stop being childish about it. That's when it will end.

MR. FABRIKANT:

I am not childish about it.

THE COURT:

When you stop being childish about it, it'll end, but if you persist in being childish about it, it will go on until I finally have to put my food down and say, sorry, this is enough. He's told you --

MR. FABRIKANT:

Well -- he is avoiding to answer questions.

THE COURT:

He's told you what transpired in 1988. He said, I had my concerns, I didn't think your research was focused upon the objects of the program. I knew that your contract was expiring, I therefore asked for some input in making my decisions. That's what he said.

MR. FABRIKANT:

I know what he said.

THE COURT:

He said, on top of that, no, on that occasion -- and that was how I interpreted his answer on that occasion, T. S. did not evaluate your work, that he made the recommendation to this witness that you be given more time and in essence, he bent and his recommendation to the D. P. C. was that you be given a further two years. There you are.

MR. FABRIKANT:

Q. How come you didn't ask T. S. Sankar for evaluation? What was the point to give more time if you had doubts and there is no evidence that I'm any good?

A. Your Honour, I don't need to go and ask evaluation and I am the person that has to do an input to the Department Personnel Committee and the Department Personnel Committee is the one which is going to make a decision forwarding the Personnel Committee. So, in my thought, at that time, that's what I said was the one that was carried out.

Q. Did you understand anything what he said?

THE COURT:

Yes.

MR. FABRIKANT:

You did; fine.

Q. You are not specialist in my field, therefore you couldn't evaluate my work; correct?

A. I cannot evaluate specifically that research, but I know because I am the program director of the entire program and I know the objectives of the program and I could very well see the relevance of your work in relevance and objectives of the program and it has to match and that I can very well see.

Q. Okay; so, did it or didn't it match?

A. It did not match and that's where my concerns were.

Q. Okay; so, it did not match?

A. I think I answered that.

Q. All right. Now, could you explain how it happened that it did not match. Did T. S. Sankar tell you that, no, it matches? Did he tell you that I'm supposed to change direction in my research? What? What exactly transpired then, if my research at that time, from your point of view, didn't match your goals. Now, did you know all these three years what I was doing?

A. Excellence structural program has a mandate. The mandate is very clear to the members. It has got, as I've mentioned earlier, it has got specific objectives in order to carry out research in the general demand of people engineering. You have to carry out cooperative research and development work

with industries and to do technology transfer and to train researchers and graduate students for the human resource development of Quebec. And in this phase, you've got to have some amount of activity in all these three.

When I judged his research, I was not satisfied because he did not participate with regard to graduating students and the entire group at the end of 1985 to 1990 graduated, 50 students, it's almost an average of five students per professor. His output was one student.

As far as the technology transfer and as far as the cooperative team work, which is a very very important aspect because the entire grant was given because that we promised we do that. He did not have a participation in team grant or team contract. He failed in doing that. The rest of the team worked in collaborating with more than 40 industries. We had to build a unique test facility and that test facility took us three years to design, bring funds in order to build it. He did not even take an effort to participate. He had his research and we looked at it, yes, time would come he would participate. He did not, he did not and that's where this dissatisfaction and I had to discuss with people.

Q. That was the answer to my question. Did you know what I was doing?

A. When we hire people, we do in a general demand and allow the researchers to take the lead. We do not specify specific project to the professors out with the team. So, when we hired him, he had worked with the team members, so we anticipated that he would continue and make it so that it would be applicable to the industrial program.

THE COURT:

Fine, but he asked you in 1987 and 1988 if you knew what he was doing.

THE WITNESS:

Yes. In a general sense, yes, in an overall sense, yes.

THE COURT:

In a general sense, yes, in an overall sense.

MR. FABRIKANT:

It took now seven minutes to get an answer to the question.

Did you or didn't you know what I was doing? You find this is satisfactory? He was talking about anything, except just answering question did you or didn't you know what I was doing.

Q. Now, when you pay a person governmental money for three years and you know what person is doing and what the person is doing is not what he was supposed to do, how could you continue spending money for three years? Could you explain it?

A. When we hire people, there is a specific research program that the particular person is supposed to work. If you are a new person, you discuss all those things. If you have a person who has been working in a team and that particular team is a part of the whole group, you don't have to discuss all this because you anticipate the person continue to work on that. So, however, then you look at that objective, you have not only the research but also you have to apply when you look at the progress report it says, this may be applicable to (inaudible). This may be applicable, so you have a doubt when it will be applicable. So, in other words, you know, you have a sense of knowing where there is such directions but we don't look at and specify each area because, you know, we want the people to be a leader in generating the research and that's why we allow independent researchers to carry out the

research.

Q. Did you or didn't you know all these three years what I am doing was absolutely relevant to what the money government has given for? Did you or didn't you know that?

A. Yes.

Q. You did know. Now, did you or didn't you?

A. I have to answer.

THE COURT:

If you haven't answered you may certainly take the time and answer the question.

THE WITNESS:

Yes, to extent the research is in the general area, but that is not sufficient. That fulfils one of the three mandates of a research focus. It's not enough, just doing the research. Yes, that's why we wanted to have applied to the industry. Carry out the technology transfer. Have students, have researchers trained so that we would like to see all the three faces of a program is fulfilled. Of course, in one area that as such has been carried out and that's why we felt at the end of the third year, I also felt I should give more time.

Q. But it doesn't answer my question. I repeat once again. Why did you continue paying government money if you saw that my research is irrelevant to what you were doing?

A. Your Honour --

THE COURT:

He answered the question.

THE WITNESS:

-- he is fulfilling one fourth of that, so he is not fulfilling everything.

THE COURT:

He answered the question.

MR. FABRIKANT:

Q. Was or wasn't my research --

THE COURT:

It's not possible for him to give -- he has given an answer that is not an absolute black and white. He said in one facet, yes. In other facets, no.

MR. FABRIKANT:

Oh, oh, oh, one second.

THE COURT:

That's what he said.

MR. FABRIKANT:

You just missed the point because before that --

THE COURT:

Oh, I suppose I do miss the point from time to time, yes.

MR. FABRIKANT:

You do, you do. Just a second ago, he said that my research was in different area, which didn't match to his goals. Now, he says something totally different because you missed the point. Now, he says something different, that the research was in the area but he wanted something else like students, like participating in some facilities. Now, this is a contradiction. He contradicts to himself. So, now, I would like him to clarify. Was or wasn't my research in matching to the goals of your research or you call it research focus, whatever the word means because I still do not understand what this words means, but this is what he is using.

Was or wasn't my research within the research focus of the research centre?

THE CROWN:

I think we are wasting our time, my Lord.

MR. FABRIKANT:

We are not wasting time. I need to get the answers to this question.

THE COURT:

I'll take the answers to that question and then, we will see. My own feeling too is that we are getting far far away from where we should be because what in the end his opinion of Fabrikant's research, it's --

MR. FABRIKANT:

Well -- he just refuses to answer that.

THE COURT:

He doesn't refuse to answer, Mr. Fabrikant, come on now.

MR. FABRIKANT:

Well -- then, let is hear it out.

THE COURT:

He is trying to answer your questions. What -- what --

MR. FABRIKANT:

Let us hear the answer because before he said that my research didn't match his goals. Now, he says that the research did match, but he wanted something else.

THE COURT:

He said --

MR. FABRIKANT:

Either it did or didn't match.

THE COURT:

He said, globally. He said, globally that your research didn't match, didn't fit it. He gave you a chance, he said, because there was one facet of your research that met the goals. There were other aspects where it didn't fit into the program, so the recommendation was he gave you a longer period.

MR. FABRIKANT:

Which facet? Which facet?

THE COURT:

That's what he said.

MR. FABRIKANT:

Which facet?

THE COURT:

I don't know which facet.

MR. FABRIKANT:

Do you understand anything? It's absurd what he is saying.

THE COURT:

I don't know which facet and I don't think it matters which facet.

MR. FABRIKANT:

Well -- let us find out which facet because it's absurd. The research, it does fit or it doesn't fit. There is nothing in-between there.

Q. So, did my research fit the focus of research centre or it didn't fit?

A. The focus of the research centre, as I've mentioned to you, has got three distinct areas; (1) to carry up research in a general area of engineering. It could be fundamental, it could be applied. Yes, when we hired, we know that you are going to be doing in that area and that's why we even hired you. So, there is, yet a direction that we thought that you would continue to work and you would be able to carry out that research and you'd be useful to the second facet, which we are

talking about, technology transmit and applying it and that facet was never done. And then, the third facet is, we also would like to have graduate students supervision and training of researchers and that, again, we were not satisfied with.

Q. So, the research itself, was it or wasn't it satisfactory?

A. Again, your Honour, I am explaining that again, I have to explain it in an overall sense.

THE COURT:

Well, you've explained the overall sense. You've said --

MR. FABRIKANT:

Okay; let me put it different question, all right.

THE COURT:

You've said the focus had three aspects to it. Now, you've talked about two. He asked you in his last question, his research, whether into fundamental or applied vehicle research, in that facet was his work satisfactory; that's what he is asking.

THE WITNESS:

Anybody doing work in engineering have to do mathematics. So, anybody can say mathematical research will be applicable one day. So, one can argue about it, but to what extent, when? You see, this is the question. It is very difficult to answer. If somebody who will do in research. So, he is doing something in an area. We can always try to find out an application which could be ten years down the line. It's very difficult. So, I have to say, give him credit. Yes, this research is good, let us continue, but you have to know when this could be applied. So, it is a question that I cannot answer black and white, saying, yes, his research is totally focusing the area. Yes, to some extent, you know, you can continue that research. So, you know, his application, his fundamental research to start with, we said, yes, he could support that and at a later time, it has to be applied.

MR. FABRIKANT:

Q. Did you or didn't you, yourself, write in the report of the government that I was hired to do fundamental research, period?

R. Yes.

Q. Did you or didn't you write like this?

A. Yes, we wrote when the beginning of 1988, whatever he was asked to do, fundamental research he was doing. Now, we are looking at whether that research that he is doing, whether it will be applied, whether the other two research focuses will be fulfilled.

Q. Since you've written to the government that my hiring was for doing fundamental research and nothing else, could you explain it to the jury why you now are raising a question of something else which I never was asked to do?

A. We never told the government that we are hiring this particular person just to do fundamental research. When we reported what these people are doing, we said, this person is carrying out fundamental research, that's what he reported, to tell them that what each individual is doing. So that, you know, we can -- at the end, we have to finally provide output in technology transfer as well as graduate students which were not fulfilled. So, in the beginning, when we hire, we did not tell the government that this person exclusively is going to do just fundamental research. Of course, when we reported, we said, this is what he has been doing.

Q. All right. Let me get some reduced to writing and I will show him what he has written himself. May I have those documents,

please?

THE COURT:

May you have what?

MR. FABRIKANT:

The documents there.

THE COURT:

I don't know what document you're talking about.

MR. FABRIKANT:

Well, the whole pile, I will show him something.

THE COURT:

I have no idea of what you're talking about.

MR. FABRIKANT:

Well -- this pile of documents.

THE COURT:

The contracts?

MR. FABRIKANT:

Yes.

THE COURT:

I think so. Where are you headed with all of this? He has said that -- he has said that in 1988, his recommendation was that you receive two years and you did receive two years.

Now, why are we belabouring this?

MR. FABRIKANT:

Because he is lying.

THE COURT:

Because he is lying.

MR. FABRIKANT:

Yes.

THE COURT:

That's why we are belaboured.

MR. FABRIKANT:

Yes; how about that.

THE COURT:

Well -- I can't see the relevance of this line of questioning at all to your defence. So, unless you can -- unless you can convince me with this --

MR. FABRIKANT:

As soon as witness is in difficult position and I want to show that his statement contradicts something written, immediately question of relevance appears and I have to justify it. All the time, I was asking it was fine.

THE COURT:

It was not fine.

MR. FABRIKANT:

It was not fine, but as soon as I want to show the witness --

THE COURT:

The Crown prosecutor objected four questions ago.

MR. FABRIKANT:

-- as soon as I want to show the witness that he wrote something different, immediately question of relevance arrives. God forbid, the witness will be put in a difficult position when he contradicts his written statement. Are those documents numbered? If I need document 41, they are not numbered? Well, you submitted those documents. Are they in chronological order or what? This is why I told him to bring those documents to him and to cancel the subpoena. It would be much better off --

THE COURT:

Listen; I told you, this is -- you have said that he wrote something which contradicted what he just said.

MR. FABRIKANT:

Yes.

THE COURT:

You are looking for that document. I told you the whole line of questioning is irrelevant, the whole line of questioning, it's leading to nothing.

MR. FABRIKANT:

It's leading to extortion. This is where it's leading.

THE COURT:

Fine. If it's leading to extortion, then it's clearly irrelevant. That is why I cancelled the duces tecum on the subpoena. There is no relevance to any of this; move on to something else.

MR. FABRIKANT:

Okay; I would like matre Richard to argue this, if extortion is relevant. Matre Richard.

Me RICHARD:

You want me to do it before the jury or --

MR. FABRIKANT:

Yes, before the jury, yes.

THE COURT:

I would prefer that you do it with the jury

-- I would prefer that the jury go out. I wonder if you would withdraw, ladies and gentlemen.

MR. FABRIKANT:

Why? Why the relevancy should be discussed without jury?

THE JURY IS RETIRED

Me RICHARD:

Your Lordship, the way I can see the issue of relevance and relevancy in this case, so far as where I am and I'm not here for a very long time but it's the following: from the defence's point of view, what I would submit is that if we take -- they were -- these incidents happened August 24th 1992, that event is not a single event or it's not something like in a type of defence -- I'll make an analogy with the person who comes back to his or her place and find whether his wife or her husband with someone else, takes a shotgun and shoots both of them. That type of thing we've seen before, but that is an isolated event which might be totally independent for what happened in the life of these people before.

There, in that type of case, you are -- relevancy goes exactly with that issue. In the present case, the way I see relevance is that the events of August 24th are built up of facts and events which begun several years earlier and, therefore, these events also are the relationship between Mr. Fabrikant, between doctor Fabrikant and the university or his department or some people inside his department. I'll make an analogy with what's used now and called as the battered wife syndrome, you remember, like the case of F... where you have one event that happens, but all the prior relationship between the two persons involved might become relevant to explain the state of mind of the accused when it happens.

I believe that here every event or every time there was a confrontation between doctor Fabrikant and would it be Mr. Sankar or someone else, all of that can become relevant in order for the jury to assess what was going in Mr. Fabrikant's

mind or what was the state of mind on August 24th, when this happened. It's on that point that I've said the relationship might become relevant.

THE COURT:

Okay. In fairness to you, let me explain that contrary to the feelings of the Crown prosecutor, I felt on the basis of a series of three cases that you'll find in A.... 273100, I am referring to R. versus Krawchuck, an old decision; R. versus Conway, a more recent decision of the Ontario Court of Appeal and R. versus Deveault 1986 decision of the Ontario Court of Appeal that I was prepared to permit Mr. Fabrikant to make proof of acts of situations, which he considered to be an attack upon him or his character or his integrity at the hands of certain of his colleagues, certain officials of the university because of the argument that could be made that while provokation must be something upon which you act under the heat of certain provokation and before your passion is cooled, but nevertheless, while the act may not be sufficient standing alone to trigger that sort of action in the reasonable man, it might, if that same reasonable man had been subject to a series.

My problem was always, in this case, to know where to draw the line. Now, the Crown prosecutor wouldn't even have conceded as much as I did in the beginning and he took a stiffer view. I, nevertheless, permitted Fabrikant to make this proof and, of course, that is the only reason, only reason why we have got into such incidents as his arrest at the senate meeting. The question of threats or no threats which he insisted in putting in proof, but for whatever reason, I don't know, but the reaction of the university following these threats, and I permitted that, because he proposes to argue that the threats were never made for example, and that the reaction of the university wasn't even over-reaction, rather it was an over-act aimed at ruining his reputation and damaging him permitted it.

But, for me anyway who's been living with this thing since January the 13th, before the trial even started and since the trial has started, it has patently obvious that he has used this trial and is using this trial perhaps as a means of advancing a defence which I'm anticipating for the minute -- I haven't seen very much substance to this defence yet, but which I'm anticipating -- which I have been anticipating for a month and a half, but what is not admissible is that he is also using this trial as a soap box for himself and, I suppose, for the group that thinks along the same line as he does that in universities in Canada and, in general, and in Concordia in particular, when it comes to the way research is carried out that there is something rotten in Denmark and he proposes to route it out and expose it.

Now, I've said time and again that that might very well be the food for any number of inquiries, it might well be something a judge on the civil side has to address himself to, it might well be something that government investigators may have to address and if you take some of Fabrikant's more extreme accusations, it might be something which is the stuff of a criminal investigation; I don't know.

But it's not the food of a murder trial and the one he faces. I don't give a damn about all that stuff in so far as it is not admissible in order to show the state of mind in relation to provokation as I tried to articulate it a few minutes ago. So, I took the position and I propose to live by it that

fraudulent extortion that various people with whom he worked whereas he put it the mafia or a gang of crooks, all of that I have decided not to permit.

If it is a question of his relationship with and treatment act from an employment point of view, the hands of the present witness or at the hands of Sh... or at the hands of whoever, if it's a question of his personal treatment as far as his contract is concerned, I decided to let it in the minute in the same vein I allowed the actions of the administration as far as the firearm permit was concerned, et caetera... a number of five or six aspects that he's brought to my attention, but I've always drawn the line when it has come to the question of fraud, funding, government contracts and, in the case of the present witness, a question of a company which he may or may not own and the question of where research money went or whatever. I don't think -- I've ruled, but none of that is relevant and I'm not about to change my mind. I have given him -- I have given him if he would stay within the framework, all sorts of latitude, but you see from the very beginning, he considers me an extension of Concordia University who is here for some reason to protect Concordia University, he has never ceased to say that and he is, of course, unable to see me as any sort of impartial arbitrary when it comes to these questions of evidence on which I have to rule purely and simply from the point of view of relevance, in order that this thing can go ahead.

You may have had an opportunity, maitre Richard, to see now how we may be bugged down in questions of minuti and very very quickly disappear down alleyways into quarters where we've no business being, in order to explore one thing, and that's what we're on now. That is purely and simply what we're on now.

If he can relate his questions to his treatment at the hands of Mr. Sankar who was the director of the Concave Research Centre, if there is something in that treatment that he perceived as being inequitable, unfair, fine. That might fall into the framework that you've set out because you and I have said essentially the same thing as far as where it relates the provocation in our Law, but I have to draw the line somewhere, otherwise we end up -- we end up in what the Crown prosecutor has called an explanantial exercise that has no ending.

So, my answer is, thank you for the argument, we visited it before and the objection that the Crown made for questions back is now maintained because -- because we are going down, we are going down the route that this has to be cut off. It has to be cut off not because I've any concern about where it's going, I have none whatever. My concern is to get this trial over and try to keep the train on the tracks if we are talking about vehicles. That's all.

MR. FABRIKANT:

I think that --

THE COURT:

Would you sit down because you are not the one that was arguing it. I am not, you know --

MR. FABRIKANT:

You haven't finished?

THE COURT:

I have finished.

MR. FABRIKANT:

So, I want to communicate with Mr. Richard first.

THE COURT:

Fine; well, I'll adjourn.

MR. FABRIKANT:

No, no, there is no (inaudible)

THE COURT:

There is no reason for me to adjourn.

MR. FABRIKANT:

No reason.

(Mr. Fabrikant s'entretient avec Me Richard)

Me RICHARD:

Just to make sure that he understands your ruling clearly. If I understand well on the relevancy what you will permit, for example, let's take an hypothesis, that in the treatment of Mr. Fabrikant by Mr. Sankar, there was what could be called extortion of a paper from Mr. Fabrikant, you will allow him to question the witness on that. It was directly from Mr. Sankar to Mr. Fabrikant, not about someone else, other researchers or whatever, but on himself, in relationship between these two people, that's one being the director of the Personnel Committee and the other one being Mr. Fabrikant.

THE COURT:

Within certain limits, if he takes the view that part of the treatment that was meated out to him that was unjust was the extortion of a paper, okay, but the questions had better be sharp, precise and to the point and they better not stray into cross-examination. You know, the Crown prosecutor has -- I wouldn't want to use the word "roundly criticized" -- I don't mean I'm insulted, but the Crown prosecutor has taken the view that I have been far far too permissibile in permitting him to ask leading questions because the leading questions drift so easily into cross-examination which -- I mean, I understand he is not allowed to do, you understand he is not allowed to do, but he refuses to understand that he is not allowed to do. The result has been that very very often leading questions have been permitted simply because he has persisted in asking them and it's lead to a complete breakdown when he has been -- he has been not permitted to do so. Now, he makes -- he makes an argument to a point that where the question he is putting is not one that is susceptible to damage the Crown's case, let him ask a leading question. I don't like leading questions for two reasons. They tend to permit the person doing the questioning to do the testifying and the witness who is supposed to be doing the testifying to simply agree or disagree. And, secondly, they lead to the sort of cross-examination so easily that one is not allowed to do and then, I have to stop him on that basis and then, I'm told I'm either trying to protect the witness or protect Concordia or protect somebody else when I'm trying to protect nobody whatever; I'm simply trying to apply the rules.

There is a way to ask the questions he wants to ask and that's cold getting to the point. Now, he also fails to realize that if he doesn't get the answer he wants, then leave it and go on to something else rather than try to obtain illegally what he can't obtain legally.

You know as well as I do that is not every day of the week that a witness is declared hostile, yet I've been asked systematically to declare every witness hostile virtually who's passed at that -- in that witness box, who has been called to that witness box.

I don't know, I've been here ten years now and, yes, the occasion has arisen when a witness has been declared hostile or two or three, but that's about all I can recall. So, it's not a awfully common occurrence in the best of times, why

would this be different from anything else and he seems to confuse the question of whether he thinks a witness is telling the truth with a witness being hostile and the witness has his conception of truth and he has his.

So, the short answer to the question is, okay, if he will make the connection and make the connection quickly between the extortion of a paper and treatment that affected him, yes, in the narrow sense I'm prepared to permit the question, but I'm not sanctioning in saying that any more than the line of questioning I'm prepared to permit, I'm not sanctioning of full scale, full dress excursion into the question of extortion and my experience shows me in this case that's precisely where we'll go.

If you can impress on him, if you can advise him, if you can stress to him that if he wants to ask Sankar about the extortion of papers, that he ask him about the extortion of papers, but -- but if he's going to put the questions, he is going to have to live with the answers.

THE CROWN:

And the answer should be considered as collateral. He cannot bring other witnesses to contradict that.

THE COURT:

Yes.

MR. FABRIKANT:

The last part I didn't understand what. I cannot --

THE COURT:

He will explain it to you.

MR. FABRIKANT:

Read in the book. I can't contradict witness by other testimonies. It's absurd what he is saying. I have the right to contradict witness by testimony of other witnesses. This is --

THE COURT:

Would you listen to what's being explained to you, first of all.

(Me Richard s'entretient avec M. Fabrikant)

MR. FABRIKANT:

Of course, I can, it's absurd. Of course I can bring another witness and ask him the same question and he will contradict this one. It's absurd.

THE COURT:

You see where we drift? You see where we drift. I didn't add any words. I've said what I've said.

MR. FABRIKANT:

No. I'm talking now about the Crown's objection, it's absurd. What he said is absurd. I can contradict this one and we are now at the stage where this particular witness contradicts his written statement, prior written statement. So, since we are at --

THE COURT:

What do you mean, we're at the stage where this witness has contradicted a prior written statement. Are we on another tape?

MR. FABRIKANT:

(inaudible) we have written statement too. I would like to invoke this Section 9 --

THE COURT:

Look, let us -- we are not even at the point of invoking

Section 9. We are at the point of my ruling on an objection.

MR. FABRIKANT:

The ruling on objection --

THE COURT:

I ruled on the objection -- I ruled on the objection and now matre Richard said something else and now I'm talking to you. Now, I'm not going to talk to two people and I am not going to have -- matre Richard knows very well -- I am not going to have a tag team match going on here; say you do it this time, you do it that time.

MR. FABRIKANT:

Well -- I understand it is the question is permitted as far as extortion goes since it was extortion --

THE COURT:

The question of your relationship with him with regard to papers is permitted, yes, that is what is permitted. That I am prepared to permit for the moment.

MR. FABRIKANT:

Fine. Then I'm going to this direction because I asked him whether he wrote to government saying that I was hired to clear out fundamental research work and he said that he just wrote to government what I was doing, not what I was hired to do and ask him whether he has written anywhere where he wrote that I was hired to do fundamental work, period, he said, no. Now, I want to produce his written statement where he says exactly that and we are in Section 9.

THE COURT:

What has the Crown to say about that?

THE CROWN:

First, I would like to see the statement.

MR. FABRIKANT:

Sure, take a look. I'm wondering why regards do they -- (inaudible) dangerous today.

THE COURT:

What is this, matre Richard?

MR. FABRIKANT:

(inaudible) the first two sentences.

THE CROWN:

This is not a letter to the government, my Lord.

MR. FABRIKANT:

This is exactly what I mean.

THE CROWN:

It is a recommendation.

MR. FABRIKANT:

Exactly. This is exactly my point. Not even in '88 but even in --

THE COURT:

Listen; who is arguing this? Has matre Richard finished arguing? Are you now arguing again? I told you, you were the one who said he was -- you wished matre Richard to argue this question of objection.

MR. FABRIKANT:

This is now not objection; this is now Section 9 I believe the objection is finished. I am permitted to ask questions and this is Section 9 because we concluded it.

THE COURT:

I see. So, you're now -- you're now --

MR. FABRIKANT:

He contradicts his prior written statement.

THE COURT:

I'm not sure I see any contradiction at all in this in any event.

MR. FABRIKANT:

Well -- did he say or didn't he say that he had never written that I was hired for doing fundamental research, that's all. Here, he said --

THE COURT:

No. It was in the context of a report he made to the government. That was how you asked the question.

MR. FABRIKANT:

No, no. After that, I asked him whether he not to the government because he said it was to the government and it was to the government not what I was hired for, but rather what I was doing. Do you remember that?

THE COURT:

I don't remember that.

MR. FABRIKANT:

Let us play it.

THE COURT:

I don't remember him ever making that. No, we won't play unless you can tell me the minute and the hour.

MR. FABRIKANT:

Well -- of course, I can. It was just before we make the break.

THE COURT:

I'm not -- I'm not at all satisfied that there is any contradiction there.

MR. FABRIKANT:

Well -- and after that --

THE COURT:

Between a written statement made by the witness and his testimony today.

MR. FABRIKANT:

No; and after that --

THE COURT:

I mean, what you're indulging in is simply trickery.

MR. FABRIKANT:

No, not at all.

THE COURT:

Oh yes, it is, a pure trickery. That's all it is.

MR. FABRIKANT:

He just after that -- he said that he wrote to the government, not what I was hired for, but what I was doing. Do you remember that? Let's say, do you remember?

THE COURT:

Do you remember when I spoke a few minutes ago, I talked about running down alleyways and getting lost. We are just running down another alleyway and we are just getting lost.

MR. FABRIKANT:

Let us just be specific. I'm talking -- I'm talking now --

THE COURT:

Would you stand still in the one position for one minute. I'm speaking figuratively.

MR. FABRIKANT:

Yes; instead of figurate, just --

THE COURT:

I'm speaking figuratively. Would you please do that because what I was asked after I ruled on the objection and maintained it was whether I would permit questions dealing with papers, you used the word "extortion". I don't know what you mean by

that, but you used that word and I said, yes, in so far as these may relate to the relationship between you and the witness and in so far as this maybe something that affected you, yes, if you came to the point. And now, we go off into it on a tangent into a Section 9 application, but let's deal with the Section 9 application right away. The Section 9 application is dismissed. You can ask your questions as far as the -- as far as the paper is concerned as soon as the jury comes back.

MR. FABRIKANT:

No. Let us listen to the tape then.

THE COURT:

I'm not going to listen to the tape. I spent my whole day listening to tapes like that.

Me RICHARD:

Before you bring back the jury, I wonder if we could have like maybe five minutes, so I could try to call again and maybe get an answer from --

THE COURT:

Sure.

THE CROWN:

Then, we take our --

THE COURT:

What we'll do, we might as well take our break then, if you want to do that, rather than break again. So, we'll take 15 minutes.

--- Suspension

--- Upon resuming

THE JURY IS PRESENT

MR. FABRIKANT:

Q. So, we finished on the note that you have written to the government what I was doing was fundamental research and you expected me to do applied research within next two years; is that correct? This is why you gave me extension.

A. When I was dissatisfied, I discussed with you and wanted to convey that fundamental research can be continued but more work should be towards application of this.

Q. Is this what you've told me?

A. I have. I have discussed with you, yes.

Q. All right. Now, was it at the time when you told me that you're prepared to give me one more year and after that my position will be terminated? Did you tell me that?

A. What is the question?

Q. Did you tell me during that conversation that you are prepared to give me one more year and after that my position will be terminated?

A. Yes; in 1988 when I had a concern, I had a discussion with you and my concern was that it was the two facets that I talked about were lacking and my concern that, you know, maybe when we have -- I have to make a recommendation to the Department Personnel Committee I perhaps may try to instead of giving a two year recommendation, I may try to give you one year recommendation. However, I would like you -- or I wanted to discuss that with the chairman and with T. S. Sankar before I make the recommendation.

Q. That's what you've told me then?

A. Yes.

Q. Didn't you tell me quite opposite at the time that you already discussed with chairman and T. S. Sankar? Did you tell me during that conversation that you already discussed it with T.

S. Sankar?

A. I have my concern for a number of months, so I had discussed with Don. I have asked you to go and discuss with Don, so that to know you go on discuss so that you could also give an input to Don, so that when I talk to Don again, I will have more input coming back from there. I had a discussion with Don in the beginning, however when I conveyed discussion in the sense of overall objective of the program and when I discussed with you, I conveyed my concern to you and then, I asked you to go and discuss with the chairman, discuss with T. S. Sankar my concerns and I also told that I will also do that with them.

Q. This is not responding my question. Did you or didn't you tell me that you had already discussed it with T. S. Sankar and your decision is that you are prepared from a humanetarian conditions to give me one more year from humanetarian codnitions so that not to kick me out of the university. For humanetarian conditions you are prepared to give me one more year and after that my contract will be terminated; did you or didn't you tell me that?

A. I did discuss with T. S. Sankar and the chairman, but not very specifically. When I discussed with --

THE COURT:

The question is -- the question is: did you tell him?

MR. FABRIKANT:

Q. I'm asking what you told me.

THE WITNESS:

I had several discussions, I told him.

THE COURT:

He's asked you specifically: did you say to him, Fabrikant, for humanetarian reasons, I'll give you a year?

THE WITNESS:

I don't recall it.

MR. FABRIKANT:

Q. And after that position will be terminated?

THE COURT:

And the position will be terminated after one year

THE WITNESS:

I didn't say humanetarian reasons; I told, you know, in order to be fair, we have to, you know, take into consideration because I am not satisfied. My recommendation to the Department Personnel Committee, I will try to make it one year, however I am going to discuss further with these people before I make the decision.

MR. FABRIKANT:

Q. So, this is what you've told me?

A. Yes.

Q. That you did not really make the decision?

A. No.

Q. Of one year, but effectively you've told me that you are going to further discuss it. That's what you told me?

A. Yes, exactly.

Q. All right. How about Section 9 again. I would like this time to hear the tape of the conversation.

THE COURT:

What conversation are you talking about?

MR. FABRIKANT:

Exactly the conversation I refer to with him during which he told me that one more year and my position will be terminated.

THE COURT:

You have a tape; is that what you're telling me?

MR. FABRIKANT:

Yes; and he -- well, he knows very well about the tape.

THE COURT:

I'll have to ask you to go out again, I'm afraid.

AND THE WITNESS SAYS NO MORE.

THE JURY IS RETIRED

THE COURT:

Mr. Sankar, would you take a seat over there. If you find it funny; I don't. I mean I find this a gigantic waste of time, a gigantic waste of time.

MR. FABRIKANT:

Then, don't do it.

THE COURT:

You're the one that's making the application. Where is the tape, where is it?

MR. FABRIKANT:

Then, don't say that it is a waste of time.

THE COURT:

It is a waste of time.

MR. FABRIKANT:

Then, don't do it; you have the privilege.

THE COURT:

Would you swear the witness, please.

APPEARED:

VALERY FABRIKANT,

born: 40-01-28

WHO, having been solemnly
affirmed, doth, depose and say as follows:

MR. FABRIKANT:

I repeat the story all over again.

THE COURT:

Well -- it's not a question of repeating the story all over again. This time, it's a conversation, I suppose, that you had with him.

MR. FABRIKANT:

Yes, it is the same thing I already said about that --

THE COURT:

You repeat the conversation all over again.

MR. FABRIKANT:

Well -- that we had previous conversation during which he told me for 40 minutes how bitter he was with his administrative work and after that, he asked me --

THE COURT:

I'm not interested in what was said. I'm interested in where, when, under what conditions, how recorded.

MR. FABRIKANT:

I'm coming to that, I'm coming to that.

THE COURT:

Come to that then.

MR. FABRIKANT:

Well -- the time for interruption is longer than to let me come to it; I'm a very succinct person. Now -- and when I heard all this, it was clear to me that he is extorting papers from me. So, the next conversation I taped it and the next

conversation, this is what it is and he told me that he spoke to a number of people and this is his decision. That he is prepared to give me one more year, after that the position will be terminated. He didn't say anything that he is still going to talk to Sankar of the chairman or whatever. He did, though, say that he is going to talk to some other departments, so on and so forth.

THE COURT:

I'm not interested in your telling me what he said.

MR. FABRIKANT:

Anyway, so this is how it was made, the same way as it is before, it was in my possession all the time, except that now the guards take it from me. I hope they don't do anything with tape, but I would appreciate if you make an order that they do not take it from me any more.

THE COURT:

Have you a transcription -- a transcript of that tape?

MR. FABRIKANT:

Yes.

THE COURT:

Has the machine disappeared or --

THE CLERK:

Yes, my Lord. Do you want me to get it?

THE COURT:

I don't see any way around it.

THE CLERK:

Do you want me to go right away?

THE COURT:

Well -- if you just wait for a minute, I'll have to adjourn while we have copies of this made. Would you tell me how this was made?

MR. FABRIKANT:

Exactly the same way.

THE COURT:

Exactly the same way, but this is a different application, it's a different one.

MR. FABRIKANT:

Yes. Well -- I had a tape recorder in my pocket.

THE COURT:

And you used a clean tape as usual?

MR. FABRIKANT:

Yes.

THE COURT:

How long after the recording was made was it typed up?

MR. FABRIKANT:

I don't remember exactly when it was typed up but it is effectively the same thing as before because if it was made immediately, I would therefore have put the date there since it is March '88, the reason, it means that by the time I did it, I already did not remember the date of conversation. I think that it might be 1991 they tried to fire me again, maybe at that time I made this, I just don't remember, but it was not immediately after the conversation.

THE COURT:

Might I see this transcript, please? Is there something that's particularly amusing here?

MR. FABRIKANT:

Oh, the facial expression.

THE COURT:

Mine?

MR. FABRIKANT:

No; God forbid. Even if it were so, I would never say so.

THE COURT:

This is going to take us the balance of the afternoon, so I may as well allow the jury to leave and come back tomorrow. Is this really necessary?

MR. FABRIKANT:

Well -- we are going to listen to the whole tape or just the first paragraph?

THE COURT:

Well, I don't know. I don't know which -- I've looked very very quickly, but --

MR. FABRIKANT:

It's up to you to decide. It's up to you to decide.

THE CROWN:

I would suggest, my Lord, we have no choice. Mr. Sankar will be sitting. The only way to make sure it's authentic is Mr. Sankar sitting following. I don't trust Mr. Fabrikant and if ever there is another contradiction that is relevant, then the exercise would have been done once and for all.

THE COURT:

Once and for all.

THE CROWN:

And I would like to ask one question to Mr. Fabrikant, if possible, in reference to that.

CROSS-EXAMINED BY Me LECOURS,
for the Crown:

Q. When you raised that issue, you gave me a transcript which, from what I see, is not in the same -- do you still have it, my Lord?

A. This is exactly what I mean, I was looking for it. Where was it?

Q. This is a copy I gave back to you.

A. Where is the original? I cannot find it.

Q. What is this?

THE COURT:

Listen; what --

THE CROWN:

Q. When was it done?

A. The same as this one. It is --

Q. Did you do it twice?

A. Now, this is the way it is done on word processor. This is how word processor works, so this is -- how to say it -- when you use, say, do you know what word processor is? When you type symbols and all symbols, whatever you type is there. This is the print-out of the way it is in the computer. This is the clean print-out of -- for example, here it is written (inaudible), is it, and after goes text and when you process it on computer you get it (inaudible). This is the difference between this and this. So, this is how it is inside computer and I used it because I couldn't find this one; it disappeared. I don't know if this is really a copy, then where is the original? It disappeared. I've told you many -

THE COURT:

Listen; I have no way of knowing where your documents go.

MR. FABRIKANT:

Well -- maybe you have the decency once to make the order that guards do not separate me from my documents. They disappear.

THE COURT:

I have seen you lose documents in front of you over there in the witness box, turn around and accuse everybody else of being responsible for helping you lose the documents, only to discover that you had stuck the document somewhere else.

MR. FABRIKANT:

You forgot what it was. It was not that I lost the document. It was Barnabe file and I was looking for small small piece of paper I didn't see it.

THE COURT:

So, I'm not issuing this -- the long and the short of it is I'm not issuing any orders to anybody about documents. Now, would you, please, check one of these --

MR. FABRIKANT:

So, is it all right to you that they separate me from the documents?

THE COURT:

Would you, please, check one of these against the other?

MR. FABRIKANT:

There is nothing to check; it is the same thing.

THE COURT:

Fine. If that is the -- if that is the clean copy, we will have five copies of that made. Just a second; one, two.

THE CROWN:

This is highlighted, my Lord. I can show you Mr. Fabrikant has already underlined parts he likes maybe, you know, I'm not sure.

THE COURT:

I think that it's not a question of --

MR. FABRIKANT:

I haven't underlined it. I think it's you underlined it.

THE COURT:

It's not a question of producing this. It's a question of using it.

THE CROWN:

I know I never underlined anything on that.

THE COURT:

We will have five -- 1, 2, 3, 4, Mr. Sankar, five, five copies of that made.

THE CROWN:

How about six, one back-up.

THE COURT:

Six; six copies, s'il vous pla t.

MR. FABRIKANT:

One for me because I don't have any.

THE COURT:

You have one in your hand.

MR. FABRIKANT:

I have this one but not the clean -- not the clean print-out.

THE COURT:

I don't know if there is any point in continuing this this afternoon.

MR. FABRIKANT:

Of course, there is a point.

THE CROWN:

To make photocopies takes five minutes and we're going to listen the tape.

MR. FABRIKANT:

It's not a long -- it is not a long conversation at all.

THE CROWN:

We can get 15 minutes.

THE COURT:

We're going to listen to the whole tape.

MR. FABRIKANT:

I don't think that -- I think that this is effectively.

THE CROWN:

I don't trust.

MR. FABRIKANT:

Okay; if I promise, if I promise that I will not raise --

THE CROWN:

I think we should listen to the tape.

THE COURT:

Fine; so, we will listen to the tape. Mr. Belleau, I wonder if you'll get the recorder, please. I'll adjourn for the minute and I will release the jury. There is no point keeping them here.

THE CROWN:

Absolutely no point.

--- Suspension

--- Upon resuming.

THE CROWN:

My Lord, I insisted that we proceed this afternoon but I still insist that we finish at 4:30.

THE COURT:

Okay, we will.

MR. FABRIKANT:

We could have saved a lot of time if --

THE COURT:

Would you, please, stop arguing. We will break at 4:30 or as close as we can and we will resume tomorrow.

MR. FABRIKANT:

Because I could have found the proper place before that. I see no reason why any --

THE COURT:

The Crown prosecutor wishes to hear the tape and I think it's only fair to Mr. Sankar that he hear the whole conversation.

MR. FABRIKANT:

He was the one who heard it, heard it and everybody else.

ECOUTE DE LA BOBINE

MR. FABRIKANT:

And this is the big one you should (inaudible),

ECOUTE DE LA BOBINE

MR. FABRIKANT:

It will be in your possession?

UNIDENTIFIED VOICE:

Yes.

MR. FABRIKANT:

All right. Did you get the list of witnesses from Mr. Belleau?

THE COURT:

Mr. Fabrikant, you can have your discussions after. We're supposed to be --

MR. FABRIKANT:

I do not have the discussion.

THE COURT:

Well, you're not going to have them just now. We're supposed to be listening to your tape.

ECOUTE DE LA BOBINE

THE COURT:

So, we will adjourn until tomorrow morning.

Je, soussign,e, Jocelyne DeMontigny, st,nographe judiciaire,
certifie sous mon serment d'office que les pages qui pr,cřdent
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.</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 LECOURS
ATTORNEY FOR THE CROWN

MAITRE RICHARD
ATTORNEY FOR THE DEFENCE

MR. VALERY FABRIKANT - ACCUSED
ALSO REPRESENTING HIMSELF

MAITRE LOUIS BELLEAU
AMICUS CURIAE

DATE OF THE HEARING: JULY 7th 1993

OFFICIAL COURT REPORTER: MS. MAUREEN ROWE

CLERK OF THE COURT: MS. ROXANNE DESROSIERS

FICHER NO.: 3411

TRIAL

CASE NO. 01-017372-928

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THE COURT TAKES THE BENCH

BY THE HONORABLE JUDGE FRASER MARTIN, J.S.C.:

OK, we heard the tape yesterday afternoon. That was in the light of an application pursuant to section 9. I would like you to please bring to my attention where the contradiction is between what Mr. Sankar said yesterday and what he said in the course of that conversation because I can't find it.

BY MAITRE JEAN LECOURS
ATTORNEY FOR THE CROWN:

I would like to say that I don't see any contradiction either My Lord.

BY MR. VALERY FABRIKANT
ACCUSED - REPRESENTING HIMSELF:

Let's just hear it. Why don't we play the tape.

BY THE COURT:

Why don't you be quiet and sit down. Your lawyer is on his feet. He's going to speak.

BY MAITRE RICHARD
ATTORNEY FOR THE DEFENCE:

First of all, Your Lordship, before addressing the Court on the issue of section 9, well I have another motion to make regarding the fact that Mr. Sankar could be declared a hostile witness and I'll explain you why. Maybe I would like to discuss that without the presence of the witness as we're going to discuss his demeanor and all that and later on, he'll have to continue testifying. His testimony is not over.

BY THE COURT:
Sure. Mr. Sankar, I wonder if you'd be kind enough to withdraw please.

BY THE CROWN:
Well when we discuss 9.1 but if we discuss the ...

BY THE COURT:
If we're discussing ... if we're discussing the ques-
tion of ... he indicated to me that first of all, he has
a motion to make to have Mr. Sankar declared a hostile
witness and there are a number of things that he would
like to express and he's asked that Mr. Sankar withdraw.
He said that he wished to broach that before ...
BY THE CROWN:
Oh really.
BY THE COURT:
... the question of the 9.1.
BY ME RICHARD:
Yes.
BY THE CROWN:
I was under the impression that we already are dealing
with 9.2 so we have to deal with 9.1 afterwards.
BY THE COURT:
Well I understood you to say that you had a motion to
make first of all.
BY ME RICHARD:
Yes, because I believe that if ever you declare the wit-
ness being hostile, that's ... that's ... the matter is
over.
</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">BY THE COURT:
The matter will be over.
BY ME RICHARD:
If you say no, then ...
BY THE COURT:
Then you would ...
BY ME RICHARD:
Subsequently we'll come back to the question.
BY THE COURT:
We'll come back to the question, the limited question raised by the statement.
BY ME RICHARD:
Yes, that's it.
BY THE COURT:
All right. That's as I ... that's as I saw it.
BY THE CROWN:
You're ... you're the boss.
BY THE COURT:
I read that line somewhere.

THE WITNESS LEAVES THE COURTROOM

BY THE COURT:
Maître Richard, go ahead.
BY ME RICHARD:
OK, so what I'm asking you is to declare Mr. Sankar hostile under the common law, not under 9.1 or 9.2 and if we look at what McWilliams says about hostility and we'll find it at No. 364400. In my version, it's page 3632 and 3632.1, depending on the updating.
BY THE COURT:
364400?
BY ME RICHARD:
Yes.
BY THE CROWN:
Release No. 9? Do you have a date?
BY ME RICHARD:
What I have is April 1991.
BY THE COURT:
Oh dear, I have March ...
BY THE CROWN:
I have March 1993.
BY THE COURT:
So do I.
BY ME RICHARD:
So it's Allmans, not ... it's still not in the book.
BY THE CROWN:
If you look at the front of your book, you'll see ...
BY THE COURT:
Well we'll find it. Here, it's here, it's a little further ahead. Where ... a witness hostile, yes, OK.
BY ME RICHARD:
So on the question of hostility is according to what McWilliams says, it's a matter of demeanor from the witness and often I believe we ... the term itself, hostile, means like aggressive or that's the way we see it but I don't think it is the case and in that specific case, in the case of Mr. Sankar, since the beginning of his testimony, what as far ... is that he's trying, I

believe, to elude answers like to very specific questions almost leading questions and in some cases leading questions, which could be answered simply by yes or no, he'll go on and the answer will last two (2) three (3) minutes, not answering the question.

The question was repeated, the same demeanor occurred, up to a point where yourself, you told him: "Listen, the question is this. Isn't it a fact that, yes or no" and then he will answer and that, I believe, is enough to permit, because the goal of asking the witness to be declared hostile is to permit to cross-examine him at large contrary to what happens with section 9 and if the witness is trying to evade the questions or constantly answers besides what was asked to him, then the only way to cure it is to have him declared hostile and to cross-examine him directly on ... not only on the contradictions in the statement if there are some, but also on the rest of the things, like why he's behaving like that, what ... what are the reasons of his ... of his demeanor and obviously, one thing I think you should take into account in deciding whether Prof. Sankar is hostile or not it's that the relationship that we saw so far between him and Mr. Fabrikant and what happened when it was the moment to renew the contract in 1988, it's true that Mr. Fabrikant tends to attack Mr. Sankar for what happened then and Mr. Sankar doesn't want to be attacked obviously and he wants to try to avoid that and that's probably the reason why he's answering the way he's answering because to a question like "Did you discuss an evaluation with T.S. Sankar" and the answer ... the answer starts and it's no or yes, no, it's not so clear, "But you know it's not ... it was not only my decision, but the decision of the committee includes I don't know how many people" and that's the type of answers we've had since the beginning. So on that point, I believe you should declare him hostile.

BY THE CROWN:

Well My Lord, I'm under a totally different opinion. I think the character of hostility that was shown in the exchange rests upon the questioner. Clearly the questioner, from the beginning, without any questions, is hostile and looks hostile.

What we saw from the witness is a perfectly normal behaviour. He answered honestly to the questions and these are ... these are not simple matters. When you have ... you have the experience in this case, you see that the witness is very ... not the witness, but the questioner is very tricky, very often unfair and if you answer the question only yes or no, especially when it's a leading question he's not allowed to ask, the witness is tricked and the questioner says "Ha ha, you just said this and this and that and I brought you to say this and this and that".

When you have an intelligent witness that sees the trick and he's not just answering by yes or no, it's just because the person wants to give the Court and the jury the complete picture and you yourself said "You're entitled to explain your answer" because as I said to you, most of the times, the question is tricky.

I've never seen one iota of hostility from the ... in the sense of the ... of the evidence rule, I've never seen an

lota of hostility from the witness, My Lord, although as I said to you, I saw a lot of hostility from the questioner.

BY THE COURT:

Well I should say at the outset that Maestre Richard in my view properly brought the motion at this point because of course, the right to cross-examine at large is much wider and clearly distinguishable from the limited right sanctioned by section 9 of the Canada Evidence Act.

Hostility, McWilliams says, is determined by the judge observing the witness in the witness box from his demeanor, general attitude and the substance of his evidence. Frequently the application has been accompanied by and yesterday afternoon was no exception in the cross-examiner's attitude, that the witness was lying.

It is not for me to determine whether a witness is lying or not and unless it is patently obvious to me that a witness is lying, that is not essentially one of the criteria that I have to ... have to consider, though under demeanor, general attitude and substance, I'm obliged to consider his approach to the questions and the manner in which he responds to them.

First of all, there is a language difficulty that exists in this case. Both speak English perfectly well. I'm not attempting to say that that is not the case but there nevertheless is a language difficulty, neither the cross-examiner nor the witness are operating in their first language.

Secondly, the atmosphere of aggression from my point of view and on this point I agree with the crown prosecutor, didn't emanate in any sense from the witness box but rather emanated from the dock from where the questions were posed. That has been nothing new in this case. That has been a standard procedure adopted by Fabrikant throughout while the technical questions that have been asked are in my view only marginally relevant if at all.

When we are talking about the nature of the questions surrounding contract renewal, I don't find it surprising that the witness prefers not to answer yes or no but rather prefers to provide an explanation.

I do agree with Maestre Richard that on a number of occasions, I was required to intervene in the interests of celerity to have the witness address the question rather than give a broad general description of the ... of the situation.

I wasn't of the view that the witness was in bad faith when he answered in the manner in which he did and when he was asked to answer the questions and when I insisted that he answer the questions, the questions were answered.

There is also the element of trickery. The accused seems to believe that the magic wand, the potion, the remedy for all his problems is cross-examination at large. I've said it before and I'll say it again. He seems to have an exaggerated view of his forensic abilities when it comes to ... to cross-examination or not.

He has a fixation with this and with section 9 and I suppose now with KGB. It is, I think, patently obvious to a judge when a witness is trying to evade questions and not trying to relate the situation. It's not an impression I have in looking at Sankar in the box.

Now it's true, the goal is to permit cross-examination at large. The consequence though is also to transmit to the jury the impression that the witness may not be a reliable witness and to transmit to the jury the impression that in the judge's opinion, the witness is evading the questions and isn't trying to answer them and to transmit to the jury in consequence that the witness has some motive not to answer the questions.

I think that at this stage, at least on the basis of what I've seen so far, all of that would be manifestly unfair to the witness.

The witness has been faced with trick questions. We are wasting time here, seeing the witness set up in order to be knocked down so that another application can be made, whether under section 9 or whether under the common law when what the questioner ought to be doing is covering systematically the ground that he wishes to cover with the witness with some efficiency.

His examination thus far has been marked by a total lack of efficiency, a total lack of skill and that became patently obvious on a number of occasions when I intervened yesterday and put the questions in the manner in which I thought they should be put. I don't pretend for a moment that I have any... any particular ability in putting questions but when I did, the witness was able to address the question and on we went.

The accused seems unable to move along. It's frustrating for everybody, it's frustrating for the jury, it's frustrating for me and it's frustrating for everybody else who is involved in the case.

I tried yesterday afternoon to define the limits generally as I saw them of where he may go and where he may not go. It's not the first time that I've done that, Maître Richard. I've done that from the very beginning and systematically every decision that I've made has been ... has been ignored and on every occasion, we've come back to subjects, whether through the front door, the side door, the backdoor or by parachute, which I have already ruled upon.

That's ... that's the trouble with this trial. That is as far as I will go. I may have a number of observations to make later on about ... about the system because there's no question that this trial has ... has tested and is testing the outer limits of what is called the charter right to a full and complete defence and what is called and what has been called the absolute right of an accused to carry out his own defence.

I can only hope that with your presence, that you will be listened to and that your counsel will be sought and taken and that the examination will be conducted forthwith in a direct manner with a view to broaching the subjects which the accused feels he should broach.

He will have to appreciate that having elected to call the witness, it may well be that what the witness says will not dovetail with his interpretation of events. If that's so, then he will have, if he wishes, the opportunity to ... to speak.

This has come up many times in front of the jury and I'm at great disadvantage to make the comment in the light of the Steel case, that: well if you want to put it right, you can get up and testify, you know and there's another

reason why I prefer to exclude the jury before I make that sort of comment because I'm painfully aware of the fact that I'm not supposed as a trial judge to make that comment, although I'm probably exempted in view of the fact that he's already announced that he proposes to testify, but then again, he can always change his mind. Again, I have no... no basis for declaring Sankar hostile in any sense as a result of his arguments and I'm not going to do so, so the motion is denied and we'll move on to ... to the question of the 9 application.

I think Mr. Sankar might come back in at this point because ... before we go on.

BY THE CROWN:

I understand, My Lord, we are at No. 4 in Milgaard, still looking for the inconsistency.

BY THE COURT:

That's right.

BY THE CROWN:

And if ever the further step is 5, we should have ... ask the witness whether the witness admits or not his statement.

BY THE COURT:

Yes, we're at No. 4 of Milgaard.

BY ME RICHARD:

OK, so regarding section 9 ...

BY THE COURT:

Yes, we're at No. 4 of Milgaard, I think, if you ...

BY ME RICHARD:

What I could find as contradictions or differences are the following.

Yesterday, these are ... these are the notes I took so there might be differences between mine and yours but there was an answer and that was to a very straightforward question as far as I remember: if the discussion of Mr. Sankar with his brother, T.S. Sankar, if he had a discussion regarding the renewal of contract of Mr. Fabrikant and what I ... what I noted down was: his discussion with T.S. was not about they should renew but on what should be the team recommendation to the DPC.

From the whole statement which was recorded, it seems to be clear that it's regarding the renewal and that the decision made by Mr. Sankar after consulting his brother was that the position of Mr. Fabrikant will be extended for a year and after it will be terminated. That comes to ... there's not a specific line, I cannot point you to a specific paragraph like it's there, it is but it comes at many ... many points through the statement. So I believe that that ... his affirmation from yesterday is contradicted by the whole statement on this point.

Another thing, yesterday Mr. Sankar, when he was questioned, I believe that question was very straightforward also, regarding the type of research that Dr. Fabrikant was doing, was making at this point, said: "Well fundamental research can be good but without knowing sometimes or without knowing when it can be applied, like we can have something fundamental but find an application for that only in ten (10) years", where at page 4 of the transcript and that's the last ... not the last ... the last paragraph of Mr. Sankar, we find, it's about projects, you know:

"We talk about that you have to involve in ... yourself in a project. I have spoken to you about it. Secondly, even the project that has been ... you know, you're saying that there is another ... this relevance even are ... I understand, these relevancies are ...

BY THE COURT:

Sorry, whereabouts are you in the page? Page 4?

BY ME RICHARD:

Page 4, the last paragraph.

BY THE COURT:

The last paragraph, OK.

BY ME RICHARD:

Where Mr. Sankar speaks.

BY THE COURT:

Sorry.

BY ME RICHARD:

"I do not see direct relevance to an immediate immediate application, OK, because I run this program and I know pretty well."

The problem there is I believe there's a difference between saying that we don't know when something can be applied and there is no relevance to an immediate application. Is it ... it's not relevant at all, that's one problem and the other thing is that yesterday, Mr. Sankar said that he told Mr. Fabrikant, what I have is:

"I told him I didn't say humanitarian reasons."

There was no humanitarian reasons to renew the contract so it was not for that purpose and at page 2 of the transcript and that's about the middle of the second paragraph.

BY THE COURT:

"I feel responsible in the sense of human nature. Because of that, I am prepared to make a recommendation to the appropriate body because the appropriate body acts on a recommendation to the appropriate body."

BY ME RICHARD:

Yes.

BY THE CROWN:

You have there your humanitarian reasons. It doesn't have to be the same word.

BY ME RICHARD:

No, but what ... what Mr. ... what I noted, that Mr. Sankar said yesterday was:

"I told him I didn't say humanitarian reasons"

like there was no humanitarian reasons into his ... he didn't consider that or that aspect for taking the decision he took where it appears there.

BY THE CROWN:

Well My Lord, I don't see, even from the pleadings of my colleague, I don't see any contradiction whatsoever. Of

course, if you want the word for word but our experience is this trial and every trial is never the word for word especially with a four-year old conversation. We should not expect the same wording.

From the general ... even my colleague was not really able to pinpoint direct contradictions. He said the context but I would say the contrary. The context shows it's about the same.

It's trivial and marginal, if ever there is a contradiction and it's not worth ... we were taking about a statement reduced to writing. We're not talking about a context. We're already stretching section 9 right now so I don't ... I really don't see the point.

BY THE COURT:

No, I must say I don't see the contradiction you ...

BY THE ACCUSED:

Well he didn't finish the argument. Can I ...

BY THE COURT:

You may not. Pardon?

BY THE ACCUSED:

I would like to communicate with him.

BY THE COURT:

Well if you wish to communicate with him, go ahead.

(DISCUSSION IN LOW VOICE)

BY ME RICHARD:

I just listened to a part of Mr. Sankar's testimony yesterday. I didn't have it in my notes, where Mr. Sankar answers that he didn't discuss or he didn't say to Mr. Fabrikant will be renewed for one year and he didn't discuss that and that he didn't discuss the fact that he will make a recommendation so that the contract be extended for a year.

BY THE COURT:

I'm sorry, I don't follow you, I ...

BY ME RICHARD:

What ... what I just listened to ...

BY THE CROWN:

Me neither.

BY ME RICHARD:

... is that Mr. Sankar said yesterday that in that conversation, he didn't mention to Mr. Fabrikant the fact that his contract will be extended for a year, that one-year period, that he didn't say it to Mr. Fabrikant and he didn't say to Mr. Fabrikant either that he would recommend the contract be extended for a year, so there, it's a contradiction. It's exactly the opposite.

BY THE COURT:

OK.

BY ME RICHARD:

I just listened to it.

BY THE COURT:

You may have just listened to it but he certainly said at another part ... another part of his testimony that a recommendation would be made and that's what he says here and he says here and he said yesterday that by the time that conversation took place, he had had discussions with several people. We are ... we are, Ma tre Richard, splitting hairs and that's not the purpose of section 9.

Section 9, first of all, before it's invoked and before cross-examination on a contradiction is to be permitted must in my view, there must in my view be revealed a substantial contradiction that is susceptible of affecting the case for the defence or the ... or the witness's testimony as a whole.

I can't ... I can't find that. I wouldn't expect Sankar's testimony yesterday or today to dovetail one hundred percent with the recording of the conversation that took place some four years ago. I would be amazed if that were to happen. It would suggest to me that Sankar too had recorded the thing in some fashion or other and had then memorized the statement so that he put every comma and every period in the same place when he ... when he testified before us but we're not dealing, as I've been at pains to point out in this case from the beginning, with scientific absolutes here. We're dealing with human beings who have different capacities for retention. You ... you said that he said the discussions with T.S. with regard to the renewal, I think what you were saying to me was that what he said was that the question of renewal, he was asked if the question of renewal had been discussed with T.S. and that he didn't talk about a review.

He ... he stated yesterday that this decision was a decision that was made by the DPC. He spoke of a recommendation to the DPC and he speaks at least on two (2) occasions that I can find in the declaration about a recommendation to the ... to the appropriate body which I presume is the DPC. It's on page 2 and again on page ... at page 5:

"Look, based on your involvement, I cannot okay ... this is what I'm going to make, a recommendation so what I'm trying to point out to you in order to help you, OK, I'm trying to see, to help you, we will try to help you if there is a position, you will apply for it. We will try to help rather than saying OK, here it is, that is my recommendation and it is your problem."

There's ... there's no contradiction in anything that he said yesterday and the statement and I'm ... you know, we waste time chasing rainbows, looking for contradictions in pieces of paper for the pure pleasure of finding some word or some phrase or something that might be out of place and presumably facing the witness with it. For what purpose, I don't know.

If the contradiction is glaring enough and there was a contradiction, I felt there was a contradiction last Friday, I extended to ... I don't know if he's your client yet, but I extended to Mr. Fabrikant the ... the opportunity to cross-examine on that particular point.

In this instance, I see no contradiction at all and I wish he would get on with his ... his examination of Mr. Sankar so that we can get on with the examination of the other witnesses on points that are pertinent to this litigation.

I understand that Mr. Fabrikant is not pressed, but I think it's nevertheless to be expected that this matter proceed as efficiently as possible from all points of

view.
So the motion pursuant to section 9 is dismissed.
The jury please.
BY THE CROWN:
My Lord, at this point, I have a motion also.
BY THE COURT:
You do? OK.
BY THE CROWN:
Well at this point, My Lord, I would like to raise the
... the more global issue of the waste of time for
everybody at this process.
We've been losing hours and days, not only on this tes-
timony but on many testimonies. We're dealing with a
conversation of March 1988 and we're looking for a word
that could be different yesterday or today with what was
said in 1988.
Not only is it irrelevant but it's a waste of time. You
yourself used the word, hair splitting. I think what
we're performing here My Lord is entomologic (inaud.).
BY THE ACCUSED:
May I respond to that?
BY THE COURT:
No, you may not.
BY THE ACCUSED:
Why I may not, if you said some ...
BY THE COURT:
Your counsel may respond to that. He's ...
BY THE ACCUSED:
That's all finished, his presentation. I'm responding
now.
BY THE COURT:
Counsel is the one... counsel is the one who is arguing
the point. Sit down.
BY THE ACCUSED:
This time ...
BY THE COURT:
Sit down or out you go.
BY THE ACCUSED:
That's for sure.
BY THE COURT:
Were you making a suggestion?
BY THE CROWN:
Yes, My Lord. We ... we should terminate this whole line.
It's ... I don't see the point and I think you didn't see
the point either for ... for hours and days. Your
attitude is I let go, I let run, we'll see, I give the
chance to the accused but I can see everybody in this
courtroom being fed up with what's going on. It's ir-
relevant and it's a waste of time.
BY THE COURT:
Well on the attitude of everybody in the courtroom, if
you're talking about the ... the public at large, it
doesn't concern me terribly much.
BY THE CROWN:
No but I would say ...
BY THE COURT:
But I mean ...
BY THE CROWN:
... everybody means everybody but the accused maybe.
BY THE COURT:
Maître Richard, have you anything to add?

BY ME RICHARD:

What I will add to that, Your Lordship, is that obviously Mr. Fabrikant seems to be doing his best to go where he believes he has to go in the way he sees his defence and that's what he's doing so far.

If the crown considers it's a waste of time, OK, maybe many people consider it also a waste of time, but that man is right now defending himself, without all the legal knowledge or if we can presume and that's it. There's nothing more I can add than that.

BY THE COURT:

OK, I appreciate what you're saying and I appreciate what he's doing and what he's trying to do, but he is subject to the same rules as everyone else.

He has the option, if he wishes, to ask you to conduct the examinations and if that is what he elects to do, I would have been perfectly receptive to even at this stage of the trial, making that job as easy for you as I ... as I possibly could and granting you some time to get yourself up to speed on ... on where we are and where we're going.

I for one appreciate how painful it must be for you to operate in the situation in which you're presently required to operate and ... but the fact remains and I'm sure you know it. I'll repeat it again that the fact that he's defending himself changes nothing. He is subject to the same rules as anyone else and if I decide that what he's trying to do isn't relevant, then he has to abide by that.

He may not like that decision but he is obliged to respect it and if I make a mistake and believe me, I'm not immune from it, then he may go and complain elsewhere that he was unable to present a full and complete defence, but for him to think that he is obliged to spend his day locking horns with me, poor little him and great big me is ... is counterproductive because I'm not going to bend.

I explained to you yesterday how I saw his possible defence. He won't even tell me what defence he proposes to advance. I maintain at this stage, fifty-four (54) witnesses into the flight plan and a month and a half, I'm entitled to know and I'm prepared to take the position that I'm entitled to know and I'm prepared to take the position "Tell me".

But thus far, he hasn't so I've had to assume beyond exception made of the little snippets that he's given me from time to time when the question of provocation has been mentioned.

We won't go into ... I won't repeat what I said yesterday but it's on ... on the basis of that and on the basis of the decisions that I referred to that I allowed the door to be opened on any of this stuff that goes back to the 1980's and I fully realize that my decision there is ... is in itself debatable, but that, I have allowed him to do and that the crown has ... has acquiesced effectively. The crown makes its objections from time to time when we ... when we stray further but ... that the crown doesn't agree with, but that the crown has of course had to live with, the same as he has to live with the decision to stay within these ... these limits and not get into questions of fraud and grants and what not.

So if he continues this way, it will be stopped because I have no other remedy. I don't dismiss witnesses from here lightly. I did that again yesterday afternoon. I guess we're now at five (5). I don't do that lightly and as far as I know, it probably hasn't been done in this country before but I was laughed at on the last contempt citation and told that "I couldn't care less about your contempt citations. I'm in jail and I don't give a damn." That was what I was informed. Now it's an accessory of my right when someone is disruptive to say out and that's certainly recognized in our law, so too is the right to say "Fine, if you won't examine the witness within the limits set by the law, the testimony of the witness ends" Now the civil libertarians can say what they like about that but that is the position I propose to adopt and there we are.

So he will have to, he will have to live by the rules. I'm not prepared at this point to terminate the line of questioning. I have expressed the hope, pi as though it may be that ... that we get on with it and that we pass through 1988 to 1989 or 1990 or 1991 with ... with some efficiency, but now, if we can't do that and if we don't do that, then you may have to repeat your ... your position because there's another thing to this.

I don't know of any rule whereby one can examine a witness ad infinitum ad nauseam and while counsel ... we rarely have this problem with counsel.

BY THE CROWN:

We never have problems with counsel.

BY THE COURT:

It's always solved and never does a judge have to say: your questioning has gone on long enough, stop. Certainly I have never never had occasion to do that, but I consider that the judge's right to do it is there and as I said earlier, this case is testing the outer limits. So be it, that ... that disturbs me not a bit, if it's testing the outer limits of ... of what one may do or what one may not do, but Fabrikant is going to have to realize that the rules I have here are not my rules. They're the rules of court and he'll live by them, whether he likes it or not.

So we will now continue. Jury please.

THE MEMBERS OF THE JURY ARE PRESENT

PROOF OF THE DEFENCE (Cont'd)

SESHADRI SANKAR

Professor - mechanical engineering

April 9th 1949

SWORN

DIRECT EXAMINATION BY

MR. VALERY FABRIKANT

REPRESENTING HIMSELF:

QOK, so during the conversation we had in 1988, did you or didn't you tell me the following: "I will be able to have

this position for one more year, one more year until the 31st of May 1989 at which time it will be terminated. This particular position will be terminated. This will give you an opportunity for one more year. Beyond that ..." so did you say that?

AI think I did.

QOK. Did this mean that effectively you were prepared to extend my contract for one more year and after that, if I find some other position, fine. If not, there was nothing you could do, right?

AAAt that instant, when I spoke to you, that was my thinking.

QWell this conversation took place before or after you talked to T.S. Sankar?

AI spoke to him and the chairman several times, so I cannot recall exactly. I think I had conveyed to both of them my concern and I also told them that I'm thinking that perhaps I may have to make only one-year recommendation. That's what my recollection. (sic)

QWell let's try to get your recollection of your testimony yesterday and to the best of my recollection, yesterday, you testified that you spoke to T.S. Sankar and chairman and you conveyed to them your concerns and both told you that contract should be extended for two (2) years and you agreed with that. Do you recall that testimony yesterday?

AYes, as I just said before, I spoke to them several times when I conveyed this concern. Both of them advised me, even in those conversations, they said I should give enough time, I should give enough time so that a person can come around and be a part of the whole activity of the research group.

QSo each time, they told you the same thing but at the beginning, you disagreed with them, correct?

AI didn't disagree with them. Yes, they were all the time conveying very ... the very same message to me. What ... I did not disagree with them, I was always maintaining my position, saying I'm thinking that's what I should do, that's what I should do.

QDoesn't this mean that you disagreed with them?

AI haven't made any decision at that time.

QWell does it sound like you didn't make any decision at that time? This is one place. Now at the next ... at the next place, just during the same conversation, you said again that at the end of the year, position will be terminated. That means that we are really talking about a year and let's say three (3) months or four (4) months or a year and two (2) months and at ... later on, you said it again, that I will recommend to appropriate body because appropriate body acts on recommendation that the contract be extended for one year ...

BY THE CROWN:

What is this thing, My Lord.

BY THE ACCUSED:

... at which time the position will be terminated.

BY THE CROWN:

What is this paper?

BY THE ACCUSED:

QDid you or didn't you say it on second occasion during the same conversation?

BY THE COURT:

There's ... just a second, there's an objection, there's an objection.

BY THE ACCUSED:
Objection should wait until I finish question.

BY THE CROWN:
He shouldn't read a paper like that. What is this paper?
I don't know.

BY THE ACCUSED:
Well first of all, I would like you to confirm that crown should wait until question is finished and display elementary civilization.

BY THE COURT:
The paper is the paper that he was referring to yesterday afternoon.

BY THE CROWN:
There's no ruling about it, My Lord.

BY THE ACCUSED:
Now I would like to know what kind of ruling crown is talking about. What ruling do you need to have ...

BY THE COURT:
The questions ... the questions of course are out of ... are not legal questions, that's the problem. If he wishes to refer to a piece of paper ...

BY THE CROWN:
It has to be known ...

BY THE COURT:
... in order to formulate his question, I don't mind. I don't care what that piece of paper is. If he refers to it in order to formulate his question, but to refer to a piece of paper as if it is a statement that ...

BY THE CROWN:
It has to be established that it is a previous statement reduced to writing.

BY THE COURT:
Absolutely and that's ... that's not ...

BY THE CROWN:
This is not done.

BY THE COURT:
This is not done.

BY THE ACCUSED:
Well why wasn't this done? I believe it was done yesterday. Wasn't it agreed that ...

BY THE COURT:
In ... in any event, would you please put your questions in relation to the meeting in 1988 and ask him if he recalls saying something.

BY THE ACCUSED:
Well first of all, let's finish ...

BY THE COURT:
But it is not ... it is not proper for you to simply read from the ... from that piece of paper and ...

BY THE ACCUSED:
Let's ... let's finish the legal part of it. If it is not admitted as his previous statement reduced to writing, so let's discuss it and make this admission.

BY THE COURT:
Well I'll have to ask you to leave again, ladies and gentlemen.

BY THE ACCUSED:
If it is that important but it is just ... this is waste of time.

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

BY THE ACCUSED:

Not what I'm doing is waste of time. This is waste of time.

BY THE COURT:

Now before we discuss that, did you ... you said my decision to excuse the jury is a waste of time, is that right?

BY THE ACCUSED:

Yes.

BY THE COURT:

Is that right? Would you mark: ten thirty (10 h 30) and please give me the ... Madame Desrosiers, please give me subsequently the words.

BY THE ACCUSED:

Ask me to explain why I said it.

BY THE COURT:

If you like, at this point why did you say it?

BY THE ACCUSED:

Because I do believe that we did it yesterday and when application with section 9 is being discussed, it cannot be discussed until this definition is made, that we are discussing statement reduced to writing.

So either what was before, it was total abuse of procedure or I'm right and we did ... no, not we, you I believe should have done it as admitting this transcript as something reduced to writing.

Now if this is already done and to repeat it once again and to send the jury out is a waste of time, deliberate and intentional, because you know very well that it has been done. We couldn't discuss section 9 if we did not already admitted (sic) this.

BY THE COURT:

Your application under section 9 was dismissed. That was admitted in quotation marks as part of a voir-dire, pursuant to section 9. Your application under section 9 was dismissed because I found there was no contradiction. So therefore, that is the basis of the objection.

BY THE CROWN:

I will explain, yes, My Lord.

BY THE ACCUSED:

Well ...

BY THE CROWN:

We were at the stage 4 of the Milgaard application. The stage 4 was:

"The trial judge should read the statement or writing and determine whether in fact there is an inconsistency between such statement or writing and the evidence the witness has given in court."

It blew up at this stage. You ... you looked at it.

BY THE COURT:

That's right.

BY THE CROWN:

And you said there's no inconsistency.

BY THE COURT:

There's no inconsistency.

BY THE CROWN:

The step 5 could be:

"The accused or counsel should then prove the statement or writing. This may be done by producing the statement or writing to the witness. If the witness admits the statement or the statement reduced to writing, such proof would be sufficient. If the witness doesn't admit, counsel could then provide the necessary proof by other evidence."

This, under what ... we never reached that stage, My Lord.

BY THE COURT:

We have never reached stage 5 and the application was dismissed.

BY THE CROWN:

That's correct, My Lord.

BY THE COURT:

So that I told you ...

BY THE CROWN:

He's using this paper as if it ... as if it was an established statement reduced to writing and it was ...

BY THE COURT:

And it was not.

BY THE CROWN:

It was never established. Mr. Sankar never said "this is my previous statement."

BY THE COURT:

I have permitted him on previous occasions to use pieces of paper. I think my ... the example I gave you was it didn't much matter to me whether ... whether he referred to the book of Genesis in order to ... in order to formulate his questions, but to present that document to the witness as a statement reduced to writing of what the witness said in a conversation in 1988 is unfair.

BY THE CROWN:

It's not ...

BY THE COURT:

It certainly cannot be permitted.

BY THE CROWN:

It's not appropriate and moreover, as usual, when I ... when we listen to this tape, there were a lot of things that were inaccurate.

BY THE ACCUSED:

Well first of all, if you read the statement, it means that you admit it as statement in writing. Regardless whether there is contradiction and there is no contradiction, it is his previous statement.

BY THE COURT:

The statement ... you don't seem to make the distinction that the statement found its way in front of me in the course of a voir-dire in order to see whether or not your application under section 9 would be allowed.

Your application under section 9 was dismissed because I found no contradiction. That's the end of it.

BY THE ACCUSED:

You ... because your ...

BY THE COURT:

The statement .. the statement, as far as I'm concerned, doesn't exist.

BY THE ACCUSED:

So what is it now then?

BY THE COURT:

It's nothing. It is ... it is notes that you may use in order to help you formulate your questions. That is all.

BY THE ACCUSED:

Now if you listen to the tape, you would have heard that he said, quote, unquote that I asked him to the question "Did you or didn't you tell me that within one year, my position will be terminated", he said "No". Listen to the tape.

BY THE COURT:

Listen, I don't ... I'm not ...

BY THE ACCUSED:

I asked you before ...

BY THE COURT:

I told you before, you don't ...

BY ME RICHARD:

... on several occasions, to ask you to listen to the tape.

BY THE COURT:

You don't seem to understand that you have an examination you wish to make of this witness. I found no contradiction. You may not use the statement to contradict the witness. That is now what you're trying to do. You may not do that. If you're going to do that, I'm going to have to come to the conclusion that once again, you're refusing to do what you're permitted to do.

BY THE ACCUSED:

All right, I will try to trigger his memory then, right?

BY THE COURT:

The statement as such doesn't exist. You may use the statement, you may use the statement.

BY THE ACCUSED:

All right.

BY THE COURT:

In order to trigger his memory. You may use it.

BY THE ACCUSED:

Yes.

BY THE COURT:

You may not announce to the world that it's a statement reduced to writing. It's not a statement reduced to writing. It doesn't exist.

BY THE ACCUSED:

Well ...

BY THE COURT:

And you may certainly not cross-examine him on the statement itself.

BY THE ACCUSED:

OK, Ma@tre Richard?

BY THE COURT:

The jury please.

THE MEMBERS OF THE JURY ARE PRESENT

SESHADRI SANKAR

(Under the same oath)

BY THE ACCUSED:

OK, Ma@tre Richard has to do some urgent work right now
and I hope we will all excuse him for that.

BY THE COURT:

Pardon?

BY THE ACCUSED:

Ma@tre Richard has urgent work to do with respect to this
thing and we, I hope ...

BY ME RICHARD:

As a matter of fact, Mr. Fabrikant wants me to look for
something.

BY THE ACCUSED:

Yes.

BY ME RICHARD:

So it's all right if I ...

BY THE COURT:

He's given you specific permission at this point?

BY ME RICHARD:

Yes.

BY THE COURT:

To withdraw?

BY THE ACCUSED:

There are some urgent things to attend to.

QOK, so you recall the first statement, you recall also
the second statement that you're prepared to recommend
only one year of extention of my contract and after that,
the position will be terminated, you remember all that?

AI think I discussed that with you.

QDuring that conversation, did you at any time say that
your decision is not final, that you might reconsider it,
that you're going to talk to other people and you might
come with two-year recommendation and position will not
be terminated. Did you tell me this at any time?

AI told you that I have to make appropriate recommendation
to appropriate bodies and my thinking at that time was
that you were not satisfying the goals, so I may have to
do perhaps one-year extention and I would like to discuss
that with you and that's the thing that I spoke to you
about.

QHe doesn't answer the question. Did you or didn't you at
any time during that conversation tell me that your deci-
sion about one year is not final, that you might reconsi-
der it. Did you or didn't you tell me that?

AI don't recall that.

QI'll refresh your memory.

BY THE COURT:

No, you may not.

BY THE ACCUSED:

Well I want him to refresh his ...

BY THE COURT:

He doesn't recall. Now go on with another question.

BY THE ACCUSED:

Well this is the conversation.

BY THE COURT:

Well he said "I don't recall".

BY THE ACCUSED:

Well I want to trigger his memory.

BY THE COURT:

You're not going to trigger his memory. Go on with
another question.

BY THE ACCUSED:

No, I want him to take a look at that, at this document.

BY THE COURT:

Either you ask another question or this ends.

BY THE ACCUSED:

I can produce to him document and ask if he recognize it, this is my right. I can produce to him ...

BY THE COURT:

You may put questions to him.

BY THE ACCUSED:

... document and ask him if he recognizes the document.

BY THE COURT:

You may put questions to him, you may not put that document in front of him. You may put questions to him.

BY THE ACCUSED:

OK.

QThen did you or didn't you say the following:

"I want to talk to you on the conversation we had last Friday, follow up on that. Based on our discussion and after that now, I have looked at our mandate, looked at the details, had a chance to talk to a few other people who are involved in making decisions, based on their ... on our views, what I'm thinking is the following: the continuation has to be made in such a way that it is acceptable to my group at the same time, it is something that is reasonable for you. As far as my group is concerned, as I mentioned to you, I have got only these three positions and it has been made very clear to me that the people who are going to be in the group within Concave Center are going to contribute to this mandate of mine and that mandate of mine is going to be just not 1990, it is going to be mandate of Concave Research Center for the next several years. How many years, I do not know so it is a question of a mandate and that mandate has to be the primary aspect.

As I have explained to you last Friday, we will be looking at a major area, to contributing to that research integration of the area."

Whatever it means, it's ... the phrases are total absurd (sic) but just bear with me.

"We will be looking at the major area to contributing to that research integration of the area...

BY THE CROWN:

What is he doing My Lord? What is the point?

BY THE ACCUSED:

"... and contributions in terms of contract research, you know, and several aspects we discussed.

As an individual, from your point of view, you are a researcher of such ... I take my hat off for you. You're a researcher of high quality and I feel that you, even though you have done ... contributed something to the ...

BY THE CROWN:

I think the questioner is laughing at all of us, My Lord.

BY THE ACCUSED:

"... my interpretation ..."

Ask crown to keep quiet please.

BY THE COURT:

No, I will not. I'll ask you to be quiet at this point and sit down. Mr. Lecours, what have you to say?

BY THE CROWN:

I don't see the point, My Lord. I see he proposes to read a five or six-page text.

BY THE COURT:

What he is now trying to do ...

BY THE CROWN:

Making comments and saying I don't understand and what ...

BY THE COURT:

... is read the text, read the text simply into the record. The question was put and the witness said "I don't recall", that was the answer.

BY THE CROWN:

My Lord, we ... we had a voir-dire yesterday. This is not completely accurate. I have the same position, you know, he's tricking the witness as usual.

BY THE ACCUSED:

Well ...

BY THE COURT:

The question ... the question ...

BY THE ACCUSED:

Can I explain now?

BY THE COURT:

You... you may explain if you wish but ...

BY THE ACCUSED:

Yes, I'm not tricking witness into anything. When jury wasn't here, witness was here. He was listening to the tape. He had the transcript in front of him. So he had full knowledge of the full ...

BY THE COURT:

Mr. Fabrikant?

BY THE ACCUSED:

Let me finish please.

BY THE COURT:

No, no, no, Mr. Fabrikant stop it.

BY THE ACCUSED:

Let me finish please.

BY THE COURT:

Stop it. No, I will not let you finish. That whole procedure was carried out for an entirely differently purpose.

BY THE ACCUSED:

This is not the point. Let me finish my point.

BY THE COURT:

Yes, this is the point, this is the point. Now you may ...

...

BY THE ACCUSED:

The point is that you cannot ...

BY THE COURT:

I'm sorry, would you ... would you please stop.

BY THE ACCUSED:

I haven't finished.

BY THE COURT:

Would you stop, sit down. The objection?

BY THE CROWN:

My point, My Lord, it might well be that you decide it's a previous statement reduced to writing but we never went through this exercise.

BY THE COURT:

Of course we didn't.

BY THE CROWN:

He's taking it and considering it as a previous statement reduced to writing without the proper .. the proper mechanism.

BY THE COURT:

I told him, I told him that if he wished to formulate his questions from that document, that was one thing, but to take that and ... and read that document into the record is not appropriate and your objection is maintained. The last question is ruled out of order.

BY THE ACCUSED:

Well I didn't ask last question.

BY THE COURT:

You didn't need to complete it. You read a good number of lines and you may not ...

BY THE ACCUSED:

Well this is not my problem.

BY THE COURT:

You may not do that.

BY THE ACCUSED:

He's phrased the whole page.

BY THE COURT:

You may not read that into the record.

BY THE ACCUSED:

This is not my fault that he's ... it's four pages.

BY THE COURT:

You may not, I said you may use that to phrase your own questions, you phrase your...

BY THE ACCUSED:

This is what I was trying to do.

BY THE COURT:

Fine. If he can't recall, he can't recall.

BY THE ACCUSED:

Well then I'm trying to trigger his memory. I have no choice but to trigger his memory.

BY THE COURT:

Well you're not going to do it by reading that into the record.

BY THE ACCUSED:

Well this is the text. He said that. What else can I do? I have ...

BY THE COURT:

We... that text is not ... has received no sanction whatever and you may not use it in the manner in which you are.

BY THE ACCUSED:

Well I'm using it to trigger his memory.

BY THE COURT:

If you don't move on to something else, I'm going to put

an end to his testimony right now.

BY THE ACCUSED:

So I cannot trigger his memory?

BY THE COURT:

No, you cannot use that the way you were using it. You can ask him a question: do you recall saying?

BY THE ACCUSED:

This is exactly my point.

BY THE COURT:

You read from that.

BY THE ACCUSED:

No. Do you recall saying I wanted to talk to you on the conversation we had last Friday and I continued. It is not my fault that the whole paragraph of his saying is just full page almost. It is not my fault that he cannot speak concisely, it is not my fault that his sentences doesn't (sic) make sense.

BY THE COURT:

Mr. Fabrikant, you are ...

BY THE ACCUSED:

I just told you ...

BY THE COURT:

You are simply ... put the question to him that you want him to answer and ... and see what happens.

BY THE ACCUSED:

Well this is ...

BY THE COURT:

But you're not going to read from this document too, OK. Now that's it.

BY THE ACCUSED:

Well may I respectfully submit that the whole triggering started because he said that he doesn't recall. He cannot possibly not recall because he had seen this conversation. First of all, it was distributed in my electronic mail, he read it there. It was not secret to him. Second, if he didn't read then, assuming, but I believe he did, he has heard ...

BY THE COURT:

Listen.

BY THE ACCUSED:

... all the conversation once over again so he cannot possibly not remember it.

BY THE COURT:

We are not going to go through ... we are not going to have you read that document into the record in the manner in which you are. That's what I've said. Now if you have a question to put to him, put your question to him but you are not going to read from that.

BY THE ACCUSED:

OK. Now maybe I'll put it then differently.

QDo you recall that at the beginning of conversation, effectively what you told me was that you looked into your mandate, whatever it was, mandate, the word mandate means and you have decided without giving any explanation here that though I'm high quality scientist and you are prepared to take your hat off for me, do you recall saying that, that I'm a researcher of high quality and you're prepared to take your hat off for me?

AI have the conviction at that time you had done some good research, so I did say that, you know, you had good re-

search but I cannot recall exactly all the words, what I said.

BY THE ACCUSED:

Now he will be faking his memory and I cannot refresh his memory. All right and nevertheless...

BY THE COURT:

We are wasting our time.

BY THE ACCUSED:

And nevertheless ...

BY THE COURT:

We are wasting our time, you are wasting our time.

BY THE ACCUSED:

QAnd nevertheless, you continued that you will be able to have this position for one more year until the 31st of May 1989 at which time it will be eliminated. This particular position will be terminated, is this what you told me?

AAgain, I had my concern. My concern was that it was not ...

BY THE COURT:

You don't have to explain why you told him. He asked you "Is this what you told me"?

ATo ... to an effect, very similar to that.

Fine.

BY THE ACCUSED:

QAll right. Now on several occasions later, you also told me that T.S. Sankar knows everything about it, you discussed it with him and after we finish our conversation, I had to go to him and discuss it again. Did you or didn't you tell that?

AAgain, I cannot recall every detail but I did discuss with T.S. Sankar and the chairman before, several times. I ... I told him to go and discuss with him, with them again. I was also going to discuss them (sic) after he has gone and spoken to them.

QTo speak about what? Did you tell me at any time that you are going to speak with them, that you are going to change your mind and recommend two years?

AI perhaps ... I don't remember, I perhaps mentioned that, I told him what I'm going to go and talk ... and talk to them. That was in my mind and perhaps I told him "You go and talk to them about your research activities" so that when I talk to them, they will have a fresh hand information from him to them, so that I can, when I talk to them, again you know, I will have a fresher input that will come to me.

QGood you explain this technique. Why on earth the ... you, director of Concave ...

BY THE CROWN:

This is cross-examination, My Lord.

BY THE COURT:

Yes, this is cross-examination.

BY THE ACCUSED:

All right, then I will change ...

BY THE COURT:

And I'm going one step ... no, I'm going one step further. You have canvassed the meeting of March 1988 with Sankar. You will move on now to another subject.

BY THE ACCUSED:

Well I haven't finished, there are many other things ...

BY THE COURT:

You have finished, you have finished, I've just told you. You are finished with that conversation. Now move on to another subject.

BY THE ACCUSED:

There are many other things which I didn't cover and are important.

BY THE COURT:

If you are not ... if you are not prepared to move on to another subject, then you're going to see this examination terminated.

BY THE ACCUSED:

All right. So I cannot ask him for example that he did not present any reproaches to me.

BY THE CROWN:

He's not respecting your ruling, My Lord.

BY THE COURT:

No, he's not. Move on to another subject. We have exhausted the subject. You've been on it for a day and a half. That's plenty time.

BY THE ACCUSED:

All right, yes.

QSo how many times did you discuss with Sankar or Osman the subject until you finally changed your mind and recommended two-year extension?

AI cannot specifically answer that.

QOK, now why did you change your mind?

ABoth T.S. Sankar and Osman are senior professors, experienced professors and they are the chairman and the past chairman. They have experience and they advised me that you know, we should give enough time to any individual before we take a ... the kind of recommendation that we made so they suggested that I should give enough time, maybe perhaps again a two more year contract.

QSo did they both tell you that effectively I'm not satisfactory but maybe in two more years, I will improve. That was the conversation?

ANo, that's not what I said.

QSo what was the conversation then? Did they tell you that I'm satisfactory and everything is fine and you just have to continue the contract?

ANo, they... they ... what they suggested to me is give enough time to an individual so that the person will have an opportunity to, whatever the deficiency the person may have, can be improved.

QWell then it means that it is now not satisfactory, is it?

BY THE CROWN:

This is cross-examination, My Lord.

BY THE COURT:

Yes it is and the objection is maintained.

BY THE ACCUSED:

OK.

BY THE CROWN:

And moreover this is hearsay. We've been very indulgent in hearsay in this case My Lord.

BY THE COURT:

Yes, we have. I'll have something to say to you about ... about hearsay evidence in due course. It will be ... it will be very short but it will be very illustrative. I think now is probably not the appropriate time.

BY THE ACCUSED:

QDid you or didn't you, during these three years, 1985 to 1988, increase my salary three times without me asking you to do so?

AI don't recall increasing three times.

QOK, let's get to the documents. I want to refresh his memory. Yes.

BY ME RICHARD:

Yes what?

BY THE ACCUSED:

Well I think it is the ... the other pile which came from human resources. Which came from human resources?

BY THE COURT:

QAre you able to say generally whether his salary was increased during this period?

AThere is ... government norms increase every year and whenever that comes, you know, there is an increase which I'm not aware of, you know. It goes through the university budget.

QIt goes through the university budget.

AThere is ... there is, I think you know, cost of living index increase within the grant.

QSo while you are not aware of what the increase was, you are aware that there could be increases?

AThere could be an increase, you know, there is ... there is a budget allocated like that.

BY THE ACCUSED:

QWell wasn't this increase somewhat greater than cost of living or something like that?

ANo, Your Honor, these three positions, not the entire salary came from the government. The university has to augment the salary in order to be at par with the experience these people have so I think the university were adding (sic) some (inaud.) points to their basic salaries coming from the government.

QSo maybe instead of spending ten minutes to the question, maybe you answer just question: did you or didn't you increase my salary three times?

AI has .. it has nothing to do with me. You know, it was the university.

QOK, how did it happen? Someone from the university called you and said "Hey Fabrikant needs to be increased his salary. Would you please sign appropriate document", that's how it was?

AI don't recall because usually the dean does the job.

QSo the dean called you and said "Increase Fabrikant's salary", that's how it was?

AAgain, I don't recall exactly. You know, there were so many people that we had, that you know, there are availability of funds. We try to help the individuals so whenever there is a fund, the dean would suggest: "OK, well let's try to have a slight increase with ... for these people" so it perhaps could have been.

QCould you explain what does it mean "increase of fund"?

It means some additional grant came and you take part from one grant and part from another grant?

AI has ... it has nothing to do with the grant. It is to ... with the university base budget.

QWell OK, what was the source of payment of my salary?

AI cannot answer that, because it is not ... it is not in my privy. It is with the university.

QWell ...

BY THE COURT:

It is also of very dubious relevance. I cannot see ...

BY THE ACCUSED:

Did it come ...

BY THE COURT:

... why it would be relevant to this matter.

BY THE ACCUSED:

Why it would be relevant to the matter?

BY THE COURT:

Yes.

BY THE ACCUSED:

Very simple. Because on the one hand, he says that he was not satisfied with what I was doing. On the other hand, here is ... first of all it is from... coming from the same grant so there was no increase in any university budget. It comes from the same grant, three times it is his signature there, not Mr. Smith, so it was he who was doing this.

BY THE COURT:

Show him, show him the documents then.

BY THE CROWN:

Who cares, My Lord.

BY THE ACCUSED:

Let him see it. Who cares? You still do not understand the logic? I'll explain it to you once again.

BY THE CROWN:

It's marginal, collateral, irrelevant and a waste of time, My Lord.

BY THE ACCUSED:

Yes. Does it match very well if person is not satisfied with someone's work and does increase of salary which is not living increase at all, much bigger than that.

BY THE COURT:

Now you've handed him documents.

BY THE ACCUSED:

QYes, do you recognize those documents?

AYour Honor ...

QDo you recognize those documents?

AThese documents, after it has come through the final signature, I don't get it, you know, initially when I make it you know and then it goes through the system and I don't receive. I think it gets stopped at the dean's office when it is finally approved by all the responsible ...

BY THE COURT:

QSo the dean, the dean is the appropriate person to address the question of ...

AThe dean may be the appropriate person. I may have put those, in order to ... you know, it is possible, the account number that I have put, from the grant application they may not even the fund. You know, this is like suggesting. You know, there is an increase that we work, you know, this is a norm that normally is given.

You know, the government in this particular case, did not even pay the university, you know. It was adjusting the base budget to after two (2) years, three (3) years, you know this is a very very special grant, so it is not like the money came and then you spend from that money. So I cannot really answer this.

QBut these documents do permit you to conclude that he received an increase in his salary?

AHe would have ... he would have received because we have been trying to increase the salary of all these people at par with the experience because the grant money was never sufficient to give them enough to their experience. So we have ... we're always talking to the university administrators to give leeway in order to raise whenever an occasion comes. You know, we may be dissatisfied with a particular person but we want to be very fair, to give the individual as much that we can (sic) you know, so there are two issues to that. I may be dissatisfied, not fulfilling, but at the same time, we were trying to push all these people, as much as we can in order to help them.

BY THE ACCUSED:

QThis is my ... my answer to my question? Do you recognize those documents?

AI ... I answered that, saying that I know when I initiated but I do not know after it was signed, through the number of signatures.

QOK. Did you sign it, just a blank paper without no figures there, nothing, just you took blank paper, sign it and send it to the dean and told him "OK, can you do something about it", this is how it was?

ANo, the ...

QNo. Did you put the figure here or ...

AYes I did.

QSo you put the figure of salary?

AYes.

QNot dean, not anybody else?

AThis is what the government, they gave us every year.

BY THE COURT:

Just ... just answer the question.

AYes.

QDid you put ...

BY THE ACCUSED:

QSo it is your handwriting, correct?

AYes.

QSo the figure of salary is yours, the signature first is yours, the grant number is yours and all other signatures is just confirming what you signed, correct?

AYes, for some of the things that he stated but I do not know whether they confirm it.

QOK, anyway, the document itself with my name there, my social insurance number, all information about me, the new salary, where it comes from and your signature and the date, it's all written by you, correct?

ARight.

QSo somebody else like T.S. Sankar, M. Swamy, all they did here is put their signature. They did not do anything else with this document, correct?

QNo, that is not the way it works. It goes to the dean and the dean is the one who has to make sure that ... whether the budget is available.

QAre you saying that you put certain figures there, send it to the dean without even discussing with him whether he will approve it? That's how it was?

ABecause this is what the grant allows to your maximum.

QHe doesn't answer my question.

BY THE COURT:

In any event ...

BY THE ACCUSED:

Did you or didn't you ...

BY THE COURT:

In any event, if you are trying to establish that you received an increase over the years, you received an increase over the year, that's ... that's established.

BY THE ACCUSED:

No, this increase is not increase as such. What I need to establish, that it was he who made the decisions initially.

BY THE COURT:

He's told you the dean makes the final decision.

BY THE ACCUSED:

No, this is not correct, because ...

BY THE COURT:

That's his testimony.

BY THE ACCUSED:

Well let me just ask questions.

BY THE COURT:

Well ask one ... ask him one question as to who made the decision concerning the increase and he ... I think he's already answered in any event.

BY THE ACCUSED:

Let me ask questions the way I see it and let the jury decide how it was and the point I'm trying to make, that if he had (sic) really concerned with quality of my work, nobody forced him to increase my salary.

BY THE COURT:

Well that's an argument you can make later on. That's not what he said.

BY THE ACCUSED:

It's exactly that. Before I make argument, I need basis for that argument and therefore I need to establish the facts, that salary was increased three times.

QFirst time, it was October 1986, correct? The second time, it was June 1987 and yet another increase in November 1987. Is that correct?

AYour Honor, the grants are given for a three-year period and every year ...

QHow about just answering the question.

BY THE COURT:

No, he doesn't ... he's not required to answer the question with yes or no. Go ahead.

AEvery year, the government informs us what kind of increase into each one of these research funds are, in particular to the three research professors and the graduate student we have hired. Even the graduate students, the funds that we got for them were specifically come out (sic) for the first year, 1986, specifically come out for 1987 which is a slight increase, you know, it is a norm that they set for all the universities that they have given and what I have put there, whatever the government has indicated every year, 1986, 1987 and 1988.

BY THE ACCUSED:

QOK, now did you then receive in 1986 increase in governmental grant, did you?

AI should have.

QDid you or didn't you?

AIf I have put that, that means the government grant should have been there, increased.

QIncreased, all right. What grant you are talking about

now? What governmental grant?

BY THE COURT:

There's no relevance to this at all. There is no relevance to this. You have established ...

BY THE ACCUSED:

It is relevant.

BY THE COURT:

No, it's not relevant.

BY THE ACCUSED:

Because if it is ... let me explain you. If it is regular salary increase, this is one thing. If it is from increase of governmental grants, he's not obliged to increase my salary but still, but I want to show that governmental grant was each year exactly the same. I have information on that.

Second, I want to ... just to trigger his memory about governmental grants. It's important part of ...

BY THE COURT:

It's not, it is far too remote. It's not important. The question of salary has been canvassed. Move on to something else.

BY THE ACCUSED:

Well I haven't canvassed it.

BY THE COURT:

You have. Move on to something else.

BY THE ACCUSED:

I want to show him the governmental grants.

BY THE COURT:

You're not showing him the governmental grants. Move on to something else. Next subject. We're finished with salary.

BY THE ACCUSED:

QYou're still being paid, don't you?

BY THE COURT:

Do you wish to produce these documents?

BY THE ACCUSED:

Well they are produced.

BY THE COURT:

What were these? Marked for identification or ... no, they were produced.

BY THE CROWN:

No, they were produced.

BY THE COURT:

They were produced. They're part of ... they're part of what? D-3 or something.

BY THE CROWN:

D-5.

BY THE COURT:

Or 5?

BY THE ACCUSED:

Where's the rest? I returned it?

BY ME RICHARD:

No, somebody must have ...

BY THE COURT:

D-5 is it?

BY THE CLERK:

You have the file. I think it's D-6.

BY THE COURT:

OK.

BY THE ACCUSED:

This sheet ... this sheet goes in between there.

BY THE CLERK:

It's D-6.

BY THE COURT:

D-6, OK.

BY THE ACCUSED:

QSo did you find it waste of governmental money to increase salary of someone who was not performing well?

BY THE CROWN:

This is a illegal question. It's not permitted, My Lord.

BY THE ACCUSED:

No, I'm asking different question.

BY THE CROWN:

And it's leading and it's cross-examination.

BY THE COURT:

The question should be, if you were dissatisfied with my work, why did you increase my salary?

BY THE ACCUSED:

Well it's exactly the same question I asked.

BY THE COURT:

Well ask it that way.

BY THE ACCUSED:

You see, my brains are just enough to understand why your question is any better. I wish I had better brains.

QSo whatever question is, would you please answer?

AWhat is the question?

QYou didn't hear any of those?

BY THE COURT:

I suggested to him how he asks the question to you.

QIf you were dissatisfied with his work as he says, why did you increase his salary and particularly, why would it have been increased with an increment from the grant?

BY THE ACCUSED:

QAnd twice in one year?

BY THE CROWN:

He already answered that question, My Lord.

BY THE COURT:

I think he did but I'm not certain.

AHe doesn't understand what this special grant program is.

This is a very special Actions Structurantes grant program where the funding is given for a period of four years and when they announce the grant, they announce it specific come out (sic) and every year, after the government works, because it is given to only about ten (10) universities, special group, they have a system, they looked at it and that money is given very specifically to pay salaries for three research professors, one research personnel and thirteen (13) graduate students and they also specify how much we have to pay for each one of them.

We cannot exceed and we cannot decrease. So whatever the amount was given in the first year was given to everyone. Whatever the amount in the second year, we do not know, sometimes the government is late in telling us what should be the budget. They tentatively sell ... send us what could be the increase. So based on that, you put that figure and then three (3) months later, the government send us "this should be for 1986 or 1987", when that figure comes, we have to reinitiate what was initiated three months back, retroactively to adjust the salaries and the salaries were basically exactly the amount, what

the government had asked us to do for the research professors, the research personnel and the thirteen graduate students.
If we exceeded that, at the end of the year, they tell us that we paid extra and we have to adjust that by paying from some other grant.

BY THE ACCUSED:

QWell now just recently, witness said that he paid not from governmental grant but university had contributed. Now where is the truth?

AI have to add that in the case of the three research personnel, we wanted to treat them, whereas the other universities treated them as research associate, we wanted to give them as a research professor, increase their status within the university. We wanted to have them so that we can bring them into the university at the end of the four years, whereas other universities, these people who were hired did not become full-time members. In our case, we wanted to bring these people and give the status of research assistant associate professors. Now calling them as research professors, we have to have at par with other professors so there is a small incremental increase that may be needed to be at par with an assistant professor, an associate professor. So I, in the beginning came ... along with the others members, tried to convince the university and the university went along and tried to give them and that is where the extra additional amount which perhaps came from the university budget.

BY THE ACCUSED:

Well this is clear section 9 again. (sic) A second ago, he said that university has given money to increase salary.

BY THE COURT:

Listen.

BY THE ACCUSED:

Let me finish my application please.

BY THE COURT:

No, I won't let you finish. It's not section 9 at all.

BY THE ACCUSED:

Then ... then he said we are bound by governmental grants and governmental grant comes and they dictate us to increase salary, we increased it and in addition to that, I would like to deposit that governmental grants, not only did not increase, in 1985 / 1986, was three forty-seven thousand (347,000), in 1986 / 1987, it was two hundred and thirty-one (231,000). Government decreased ...

BY THE COURT:

As far ... as far as I'm concerned, the question of your salary increases ...

BY THE ACCUSED:

Now, let me finish please.

BY THE COURT:

The question of your salary increases and the question of the manner in which it is done has been explained. It is of very very dubious relevance. In any event, we've heard all we're going to hear about that. You move on to something else.

BY THE ACCUSED:

So you don't see ...

PAR LA COUR:

You move on to another subject.

BY THE ACCUSED:

You don't see contradiction in ...

BY THE COURT:

No, I don't see. If there's any contradiction first of all, it's not a section 9 contradiction. The jury has heard all of his testimony on the subject. So I see no contradiction.

BY THE ACCUSED:

So the money comes from what? From governmental or from the university?

BY THE COURT:

I couldn't ...

BY THE ACCUSED:

He said both of them.

BY THE COURT:

I could not care less and neither could any of us.

BY THE ACCUSED:

Well it is ...

BY THE COURT:

Move on.

BY THE ACCUSED:

It is (inaudible) because of a question of ...

BY THE COURT:

Move on, move on to another subject. That, we're finished with that.

BY THE ACCUSED:

All right.

QDo you know what Science Citation Index is?

AYes I'm aware of it.

QOK. Could you explain to the jury what the nature of science citation index is and how it might be useful, what purpose is?

AWell in a overall, I can't say because I'm not the person who is involved in doing that. It gives you an indication of how the researchers in the ... in the world are listed with regard to the type of publication that they may have done and gives a summary of it.

QWell could you be more specific as to what exactly can be ... can be found in Science Citation Index?

AI cannot go to very specifics.

QOK, would it be correct then to state that Science Citation Index shows around the world other scientists using or not using your work? If they do use, then they publish scientific paper, they refer to your work. If they are not using, they not refer to your work. If, for example you are not listed there, then it means that nobody is using your work. Would that be correct statement?

APerhaps.

QAll right. Would you be surprised to learn ...

BY THE COURT:

QAre you saying you don't know or ...

AI don't know.

QYou do not know? OK.

BY THE ACCUSED:

QWould you like to take a look at it?

BY THE CROWN:

I don't see any relevance in that, My Lord.

BY THE COURT:

What is the relevance of this?

BY THE ACCUSED:

Well the relevance is very simple.

BY THE COURT:

Oh, it's always very simple but what is it?

BY THE ACCUSED:

The relevance is that during ... I checked for the last five (5) years, his name is not mentioned there.

BY THE COURT:

So what?

BY THE CROWN:

So what?

BY THE ACCUSED:

It means that this great scientist has such an influence on world science that nobody knows about his existence.

BY THE COURT:

As far as I know ...

BY THE ACCUSED:

Ask me so what? Ask me again so what? I will explain further so what?

BY THE COURT:

As far ... yes, so what? Then fine.

BY THE CROWN:

I think that's enough, My Lord. It's irrelevant.

BY THE COURT:

Just a second, we'll see what the ...

BY THE ACCUSED:

So what? If you look ... if you look at my name, it's with each year increasing and the last is about forty (40) entries.

BY THE CROWN:

So what?

BY THE ACCUSED:

Good, now so what. And these people were deciding the value of my research. Ask me again so what. Would you like to ask again so what? I can continue so what.

BY THE COURT:

The objection is maintained. You move on to another subject, far from the Science Citation Index.

BY THE ACCUSED:

Fantastic. Aren't we having unbiased ...

BY THE COURT:

Pardon? What did you say?

BY THE ACCUSED:

Nothing, absolutely nothing. I was just talking to myself, I'm paranoidal and narcissistic.

BY THE COURT:

Eleven sixteen (11 h 16), Madame Desrosiers.

BY THE ACCUSED:

OK, now me, I see a copy of minutes of departmental personnel committee of the year 1988.

Al988, I was not asked to bring that.

QWell I believe yesterday it was ... I believe that it is relevant.

BY THE COURT:

Yes I did, I said yesterday ... you haven't got it, Mr. Freedman?

BY MR. FREEDMAN:

It wasn't clear to me that that was ...

BY THE COURT:

It wasn't clear to you, OK. Well it should be clear to

you now. So if you could have these minutes for this afternoon, that would be fine.

Go on to something else in the interim.

BY THE ACCUSED:

Yes, OK.

QNow do you recall that after the conversation, it seems ... I don't know, I need to get back to that conversation because there was something there which I cannot make connection with ... to my next ...

BY THE COURT:

You better try by some other means because we've finished with that conversation.

BY THE ACCUSED:

Well, OK I will try to do my best.

QSince you did not mention to me ... maybe I do different. Is Osman specialist in my field?

AIn a global sense, if you are a mechanical engineer working in a overall, yes, we are all people who can understand. When we talk about specialists, it's very difficult to answer.

QWell can he be competent to evaluate scientific value of my work?

AI cannot judge Dr. Osman.

QOK. Did you ask him if he is competent to do so because ...

BY THE CROWN:

That's triple hearsay, My Lord.

BY THE ACCUSED:

Well ...

BY THE COURT:

Yes.

BY THE CROWN:

He should ask the question to Mr. Osman.

BY THE COURT:

Objection maintained.

BY THE ACCUSED:

No, but it is important how he made his decision. I'm asking him the procedure of his decision to continue my contract. So what was the input he got?

BY THE COURT:

He talked about the input he got yesterday.

BY THE ACCUSED:

Well I'm going in a little bit detail of that so ...

BY THE COURT:

If your object is to show that in your view, nobody was competent to evaluate your work, that will not help us at all.

BY THE ACCUSED:

Well I don't know his answer. Maybe he is. Why should we ...

BY THE COURT:

The objection to the last question was maintained.

BY THE ACCUSED:

OK.

QWhat made you change your mind and recommend two-year extension of the contract?

AI think I answered several times, My Lord, that yesterday.

BY THE COURT:

You answered yesterday and you answered today. That question has been asked and answered.

BY THE ACCUSED:

Well I wish I knew the answer. In the conversation, he was absolutely clear ...

BY THE COURT:

I don't propose to have a discussion with you. Ask him another question if you have another question to ask.

BY THE ACCUSED:

All right.

QDo you recall after that that I, in order to be safe, discussed with you the program of my future research orally, do you recall that, in the fall of 1988?

AYes, I recall.

QAnd you remember the reason I told you why I'm discussing it with you?

AI don't recall why you discussed with me but I think, you know, your letter of appointment very clearly stated that you should focus your research to the goals and perhaps because of that, you came and you discussed with me.

QOK so did I or didn't I tell you that I do not want repetition of 1988 when you pretended that you didn't know what I was doing, so this time, I decided in advance to tell you what I'm going to do and to get your prior approval, do you recall that, the purpose of the discussion?

AI cannot say the purpose of the discussion. Yes, you came, you discussed with me and you ... you talked about your research.

QWell did I or didn't I explain to you that I do not want you to have another trick on me in 1990?

AThat, I cannot recall.

QYou cannot recall, but I discussed it with you. This you do recall. Now, did you approve the program?

AI told you that, yes, we have ... we're going to give you enough time so that you can continue your research, try to make contacts with other group members and try to ... and I encouraged you to try to be working so that there could be some application down the line.

QIn the program which I submitted to you, was there any indication that in the next two years, I'm going to do something applied? (sic)

BY THE COURT:

I'm going to do something what?

BY THE ACCUSED:

Applied. You see, he ... he distinguishes between fundamental research which I was doing and he claims that he needed applied research, for example, to build a car, which he didn't do either, but this is beyond the point.

BY THE CROWN:

Why is he talking like that? He's supposed to ask questions.

BY THE COURT:

I have no idea.

BY THE ACCUSED:

Yes, you don't ... he doesn't have to explain.

BY THE ACCUSED:

I was asked to explain.

BY THE CROWN:

No.

BY THE ACCUSED:

You're sleeping again. Why would I start talking if judge didn't stop me and asked to explain. I wouldn't

explain.

BY THE COURT:

I missed the last word. That was all. You repeated the last word. I just missed the word that you used.

BY THE ACCUSED:

Well there was honest misunderstanding. I thought that you want me to explain why I'm asking my question.

BY THE COURT:

No, I just wanted you to repeat a word that I had missed.

BY THE ACCUSED:

Fine, so nothing terrible happened.

BY THE COURT:

The word was applied.

BY THE CROWN:

The word applied.

BY THE ACCUSED:

Yes, all right.

BY THE CROWN:

Once the word is repeated, that should be the end of it, My Lord.

BY THE ACCUSED:

No, but applied, no, now I recall.

BY THE COURT:

Go ahead, go ahead, go ahead with your question.

BY THE ACCUSED:

The word was correct, you remembered the word. You asked me to explain what applied means.

BY THE COURT:

No, no, I didn't, I said I didn't get the word. That's what I said.

BY THE ACCUSED:

So you said applied? Applied? Yes, but it was clear to me that you do not understand the difference between fundamental and applied research.

BY THE COURT:

If you've got a question, put it.

BY THE ACCUSED:

QSo was there in the program which I submitted to you anything indicating that in the nearest two years, I'm going to do something applied?

AHaving ... having accepted that is fundamental research and give ... we should give enough time, when I looked at his progress report, his progress report says that this fundamental research, whatever that he was describing in a paragraph, this may be applied to vehicle dynamics. The next paragraph at the end, this may be applied to this, so there is the intention and that is good enough so that over a number of years, we will have somebody working in ... in unison with other people.

QSo you didn't expect me then in the nearest two years to do something applied, did you?

AI wish it could but I'm not sure, you know, what would happen, given the advice that, you know, one should give enough time, my wish may be in the next two days, somebody could do it so it is very difficult, so I wanted to be very open. So I wanted to give enough time and perhaps some day it would be applicable and it is a judgment call, it could be one day, it could be the next day or it could be two years down the line.

QWell then could you explain why, after three years, you

were so impatient as to terminate my employment ...

BY THE CROWN:

This is cross-examination.

BY THE ACCUSED:

... while later on, you were prepared to give me even more than five years to come up with some applications, could you reconcile that?

A In 1988, that was my thinking. After discussion with other people, taking their advice and perhaps maybe ... I may be wrong or maybe I'm right, but I wanted to be very careful so that I should not be wrong so taking those advice (sic) and I augmented my decision and I felt maybe somebody should be given enough time and perhaps maybe that particular individual doesn't have that aspect to carry out even an applied research in his entire lifetime, maybe so, I do not know.

Q OK, suppose this person doesn't have that, then what?

Would it be in the focus of your Concave Center or it wouldn't be in the focus of your Concave Center then?

A My Lord, after 1990, the people in the research positions becomes (sic) a tenure track professor like any other professors. Professors are free to carry out research in their own directions. However, there is always a wish that if somebody has been with a group, that when they continue to do research, they try to support along the same line. They do not just all of a sudden working (sic) in engineering and starting to do research in biology, you know. So it is a wish that somebody could do it beyond 1990 because the professor becomes like a tenure professor and we cannot tell any tenure professor that you should do it. You can wish and you can suggest that they should focus.

BY THE ACCUSED:

Again, he doesn't answer my question. I repeat once again.

Q Did you or didn't you then prepare yourself that applied part would never come and agreed that this is fine too? That this also feeds the focus of your research center? Did you or didn't you?

A I think he doesn't understand what ... the whole thing. Here, I have answered that whatever that he has asked me, telling him that accepting the fact, taking the advice, accepting the fact, OK, we should give enough time and what enough time is I don't know. It's open. So I cannot answer that.

BY THE COURT:

I think that wasn't his question. His question was did you not at some point in time accept the fact that his research would continue to be fundamental, would not be in the area of application but would nevertheless serve the aims of the center. Is that your...

BY THE ACCUSED:

Yes.

A Partially yes, Your Honor, but when he came and spoke to me, I also talked about applications. I talked to him and he listened and he also ... I also told "Go and talk to other people who are in that area" so when you put those two together, I do not totally think you know, he will never apply it, you know. There is perhaps ... something may eventually come out of that.

QSo returning back then, why did you in 1988 want to terminate my employment then? Was it a grave mistake of yours then?

BY THE CROWN:

This has been covered My Lord.

BY THE ACCUSED:

It has not.

BY THE CROWN:

For many days now.

BY THE COURT:

Yes.

BY THE ACCUSED:

Let me ask ...

BY THE COURT:

The objection is maintained.

BY THE ACCUSED:

Let me ask it differently.

QCould there be a very good explanation that you just wanted to scare me to extort papers so that I would tell you, all right, I include you in here, here, here and here and you will be coauthor, just don't kick me out? Was that the purpose of 1988 exercise?

AYour Honor.

QNo. Wasn't it that purpose that you on several occasions mentioned "Go and talk to T.S. Sankar", did you or didn't you at that time prepare to play some kind of good cop, bad cop game with me, that you threatened to have me fired? I go to T.S. Sankar and he will tell me "No way, I'm going to defend you. How could he do that to you. I'm always on your side", could that be part of the game you were playing at that time?

AYour Honor.

QNo. Now when you say that I'm working in certain particular area, could you state for the jury what this area is or was?

AIn an overall sense, he was working in the area of solid mechanics.

QCould you recall some other branches of engineering science?

AI think we can go, these days, engineering has very fine line of expertise that you can specialize in, like in medical so I don't think, you know, we could go into the details. Solid mechanics is a global area and that is where he was working on.

QOK, is electromagnetics part of solid mechanics?

APerhaps when somebody takes an equation, using those equations that have been written and you mathematically model it, it could be applied, it could be ... you can solve the problem of your plate which is a continuum. You can solve the problem of fluids which is a continuum. Once you have formulated it in the mathematical form, it doesn't matter whether it is an electromagnetic theory or it is a plate or is it a fluid, it is a continuum and I think you know, again it comes under the global area of mechanics, solid magnetics extension.

QSo fluid mechanics is also part of solid mechanics, according to you?

AI think ... I think, you know, if he's a great researcher he should know what is mechanics and he doesn't seem to know what a continuum is. A continuum is anything that you can apply. Once you model it, it could be fluid me-

chanics, you don't have to look at it and the methodologies are the same.

I think once you work in a very narrow area, I think you know, you have a blindfold, you don't see things and perhaps that may be the cause.

QHe doesn't answer my question. Is fluid mechanics part of solid mechanics? Just answer the question.

BY THE CROWN:

My Lord I don't see the point. We're going into arguments between two ... two engineers, My Lord.

BY THE COURT:

And I don't think we need this at all.

BY THE ACCUSED:

Well it is not argument between two engineers.

BY THE COURT:

Well what is ... what is the significance of this?

BY THE ACCUSED:

I expected then an expert to be sitting here today, I don't know where he is. I expected Prof. Antipa to be here and to listen to that testimony but in any case, I will give him the tape.

BY THE COURT:

Where are you going with this?

BY THE ACCUSED:

It's very simple, because I retained an expert who is going either to be here, he was here yesterday and he's going to listen to the tapes of testimony and he will come and clarify to the jury what kind absurd (sic) he's talking.

BY THE COURT:

Listen, you ...

BY THE ACCUSED:

And I think it is important.

BY THE COURT:

You are not ... you are not advancing us at all. What is the significance of this for your defence?

BY THE ACCUSED:

OK, significance of this for my defence: to show that when he's talking that I was working in this particular area, it's total absurd because I have publications which I believe not a single person in this country ever had, that they have publications in mechanics of fracture, in contact problems, which are part of solid mechanics, but besides that, I had publications in acoustics, in electromagnetics, in diffusion, in computerated design which are not part of solid mechanics, which are well well outside of that and this is an extremely important part which makes my results of world-class value.

This is why other scientists has (sic) evaluated it that way. So this is what I'm trying to show. Why it is important? Well you want me to explain why it is important?

BY THE COURT:

You better.

BY THE ACCUSED:

Oh yes.

BY THE COURT:

You better.

BY THE ACCUSED:

It is important because when you are doing a lousy job and people try to kick you out, your state of mind is ... well maybe you're unhappy with that but inside your-

self, you understand that you're doing a lousy job. When you are world-class scientist and group of pygmies who are not even listed in Science Citation Index because nobody is using their work ...

BY THE COURT:

I would watch ... I would watch my language if I were you.

BY THE ACCUSED:

All right, I take that back.

BY THE COURT:

That was ... that was right out of place.

BY THE ACCUSED:

Yes, OK, they were not pygmies.

BY THE COURT:

Would you mark ... would you mark at eleven thirty-five (11 h 35) please.

BY THE ACCUSED:

I took it back. They're not pygmies, they're bogus scientists. Those bogus scientists, you see, in Science Citation Index, you are listed even if you, yourself refer to your work. You're listed there, so they're so bogus that they do not even refer to their own work. This is why they are not listed and it happens because they're stealing work of others.

I want to show you for example T.S. Sanker is listed here. He's listed with articles in which I put him as first coauthor. If it was not for me, he wouldn't be listed either.

So the reason they are not listed, because they're stealing from John Smith and he's working in one area. Then they're stealing from another person who is working in totally different area and this is why this particular ... Fabrikant for example, he refers to his own work and to some narrow number of authors in this particular area. Now when somebody uses Fabrikant's work, he refers to it now when I include Sankar as coauthor there, if he's not going there as a first author, then he's not listed there because I didn't refer to any of his work because he has nothing in this field.

Now taking all this into consideration and the great difference between quality of my work and these people who used somebody else's work to enhance their curriculum vitae to several hundreds publications, each from stolen from different field, each unrelated one to another. They do not constitute any continued research. It is just stolen from here, stolen from here, stolen from here. They cannot even write a book because it's all discontinued stuff, it's unrelated stuff.

If you see for example Sankar with two hundred (200) plus papers, if it were you know coherent research in a certain field, it would be at least two (2) three (3) books with new results. He doesn't have any.

So the main reason for that is that it is stolen from here, stolen from there. They cannot be united in one book because those are absolutely different things. Now, and if these people, these bogus scientists, now try to get rid of you, they write that you're a bad teacher when their own course evaluations are much worse than mine, when they write that my research somehow doesn't fit their research focus as they call it - ask him what is focus is, he doesn't know what it is - of course, it af-

fects mind much stronger. (sic) It creates feeling of outrage, if outrage is the right word there. So this is why it is relevant, to show that situation was not an ordinary situation where you know, in many universities it happens where some scientists who may be real scientists and he has conflicts with some junior and this junior is being fired and this junior is just a junior and not really a strong scientist at all, this one thing.

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

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">behave the way they behave, the feeling of outrage is much much stronger. This is the relevance.

BY THE CROWN:

This is much too remote, My Lord. We will be sitting here for years.

BY THE ACCUSED:

It is remote.

BY THE COURT:

Well first of all, this whole line of questioning is of the nature of cross-examination. It's ... it's aimed quite obviously in the adjectives that were used to attack both the character and the credibility of the witness.

The witness is one who has been called by Fabrikant. If he has specific questions to put to him, specific questions with regard to publications, if he has specific questions with regard to threats, then, that he put them but as far as the whole line of questioning is concerned as to the distinction between solid mechanics and electro mechanics and what field it falls into, the whole thing is totally irrelevant and as I say, if you have a specific question to put to him, put a specific question to him concerning publications, your publications and his ... his use of your publications or whatever, he'll answer your question but we're not getting into the whole theory that you've just espoused.

BY THE ACCUSED:

All right.

BY THE COURT:

As the crown prosecutor says, it is far too remote.

BY THE ACCUSED:

All right.

QOK, do you recall on March 11th, I have ... I think that is the date of our ... of the tape. I found the document, there I say that here I prepared so I think it was March 11th, that conversation, I have given to you:

"Please find attached my progress report for period from September 1985 to March 1988. Kindly let me know if you are interested in continuation of this type of research. If your priorities now changed, please let me know my new assignment at your earliest convenience."

Do you remember that?

AYes I remember that.

QSo do you remember I asked you if you are not happy with what I'm doing, give me new assignment and I would be happy to do it, you remember that?

AThis is the time in 1988, I have to make a recommendation so I asked him to provide me a progress report and reading that progress report and talking to him (inaudible) and the whole conversation yesterday and today, what I was answering, is based on that.

QYou asked me to provide this report or I did it on my initiative?

AI think I recall that because I was asked to make a recommendation, I asked you to give me the progress report.

That's what I recall.

QThat's what you recall.

BY THE ACCUSED:

Now I have no choice but invoke again section 9 and we have to back again to the same thing because what it said there, it's clear that it is not he who asked me to prepare it but I, on my own initiative, did it.

BY THE COURT:

Well ladies and gentlemen, I'll have to ask you to withdraw.

BY ME RICHARD:

My Lord, could we take five minutes before the application is discussed.

BY THE COURT:

I suppose it might be a very good idea.

BY THE CROWN:

Very good for health.

THE MEMBERS OF THE JURY WITHDRAW

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

BY THE COURT:

Sit down for a minute, Mr. Sankar.

BY THE ACCUSED:

I think that we need to play certain parts of the tape because, the transcript, though transcript is more or less clear, but as far as recall the tape (sic), on the tape, he even make kind of exclamation "No, I don't need this report of yours".

BY THE CROWN:

He's implying it's not in the transcript?

BY THE COURT:

I have no idea.

BY THE CROWN:

Are we looking into a contradiction right now?

BY THE COURT:

Yes, we're looking for a contradiction and I'm ... I was about to ask where is the contradiction.

BY THE CROWN:

Yes.

BY THE COURT:

That's what I want to know. We have jumped to stage 4 again. I take it that the first three stages of Milgaard have been ... were completed yesterday as far as ...

BY THE CROWN:

Yes, yes. May I suggest that we cover stage 5, whatever your ruling, then before anything, maybe we can ask the witness: "Is it more or less what you ...

BY THE COURT:

Well we may not have to cover stage 5. There's no question.

BY THE ACCUSED:

Where is it?

BY THE COURT:

What is the contradiction, Mr. Fabrikant and where are

you referring to in the ...

BY THE ACCUSED:

When, on second page I think, when I'm telling him that I'm giving ... I've prepared a progress report and I'm giving it to him. You found the place?

BY THE CROWN:

It's right at the top.

BY THE ACCUSED:

Yes, on the top of the page.

BY THE COURT:

"I have prepared something because I wanted to" but you asked him a question that bore on what happened later on.

BY THE ACCUSED:

No, I asked him that during that meeting, I have presented to him progress report. He said "Yes, I requested you to do so", I say, asked him "Are you sure that you requested me to do so and this is why I prepared the progress report", he said yes.

BY THE CROWN:

He said "I think".

BY THE ACCUSED:

Well let's play the tape then.

BY THE COURT:

Which tape? The court tape from this morning?

BY THE ACCUSED:

Yes. If you do not recall what he said, because this time, I will be arguing, not Maëtre Richard.

BY THE CROWN:

As far as I remember, the witness said "I think".

BY THE ACCUSED:

We are not going to remember. We are going to play the tape.

BY THE COURT:

You're not going to tell me what we're going to do.

BY THE CROWN:

My recollection is the witness said "I think I asked you to prepare a progress report in order to make my recommendation", it was not a firm statement.

Obviously a conversation in March 1988 isn't the center of the world for this witness. It might be for Fabrikant. Fabrikant might imagine everybody has only himself or Fabrikant in his own mind talking about what when on with Fabrikant during his ... his or her own life, but what we're dealing if ... what we're dealing with here is a witness trying his best to recollect something that ... that is one fact in his own life.

Fabrikant gives disproportionate importance to ... to the weight and he assumes everybody is faking memory and everybody is lying while everybody, as you said and I said, couldn't care less about Fabrikant.

BY THE ACCUSED:

Well I repeat once again, that this particular witness have read (sic) his own testimony at least, at least two times but I believe more than that because if you wish, we can ask him if he read my e-mail and it was in my e-mail. Then it was submitted to the civil litigation in full and I believe he had the opportunity to read it there too and then it was it was played here yesterday so he had more than enough, the opportunity to recall it regardless whatever is in his life.

Now anyway, I have prepared something because I wanted to, it's clear, because I wanted to. I didn't say "You asked me to prepare report and here it is".

BY THE CROWN:
Well this is not ...

BY THE ACCUSED:
It's clear from ... even from my text.

BY THE CROWN:
OK, if it's not a statement from the witness, it's a statement from Fabrikant.

BY THE COURT:
Yes it is.

BY THE CROWN:
It's self-serving, it doesn't lead us anywhere. This is not evidence against the witness.

BY THE ACCUSED:
Of course it is self-serving, I knew in 1988 that in 1993 I will be on trial for four murders and of course it was important to me at that time, since I know or knew that I will be on voir-dire to prepare it and to say "No, you didn't request it from me, I did it myself."
What the hell he's talking about.

BY THE CROWN:
This is a statement ... this is not a statement from the witness.

BY THE COURT:
Where ...

BY THE ACCUSED:
It's absurd.

BY THE COURT:
Where is the contradiction?

BY THE CROWN:
My Lord ...

BY THE ACCUSED:
Play the tape, what he said first.

BY THE CROWN:
We ... we don't have to talk about contradiction. This is Fabrikant's word.

BY THE COURT:
I realize this is Fabrikant, I realize that.

BY THE CROWN:
It's not the witness's words.

BY THE COURT:
I realize that.

BY THE ACCUSED:
Well play the tape.

BY THE CROWN:
We're wasting our time. This is not a contradiction from the witness, it's Fabrikant ...

BY THE ACCUSED:
Witness said ...

BY THE CROWN:
When Fabrikant said something, it's not a previous statement from the witness.

BY THE ACCUSED:
Witness said that he requested me to prepare this.

BY THE COURT:
So where in his statement did he say something else?

BY THE ACCUSED:

Well let's play that.

BY THE COURT:

Where in this statement did he say something else?

BY THE ACCUSED:

Well first of all, it is clear from what I'm saying that he did not ask me for one. Second ...

BY THE COURT:

Well you can tell that story I suppose, in due course but I can't see any basis for a contradiction from what the witness said today and ... and the statement.

BY THE ACCUSED:

Let us listen to the tape.

BY THE COURT:

The section 9 application is totally unfounded and is dismissed.

BY THE ACCUSED:

Let us listen the tape.

BY THE COURT:

The jury.

BY THE ACCUSED:

No, I mean the tape, on the tape, he even make ... it is not in the transcript.

BY THE COURT:

I dismissed your application under section 9.

BY THE ACCUSED:

It is not even transcript.

BY THE COURT:

It is frivolous.

BY THE ACCUSED:

He makes, when I gave it to him ...

BY THE COURT:

It is frivolous.

BY THE ACCUSED:

... he made gesture he doesn't want it. Let's hear the tape.

BY THE COURT:

It is frivolous.

BY THE ACCUSED:

You didn't hear. It is not in the transcript.

BY THE COURT:

It is frivolous.

BY THE ACCUSED:

Why did you bring the machine if you don't want to listen to the tape.

BY THE COURT:

Sit down.

THE MEMBERS OF THE JURY ARE ALL PRESENT

SESHADRI SANKAR

(Under the same oath)

BY THE ACCUSED:

QOK, would you please take cognizance of this document.

BY THE COURT:

Would you show that document first of all to the crown prosecutor. Non, vous allez ...

BY THE ACCUSED:

QPlease take cognizance of the document. Do you know what

it is?

AYes, I can see this.

QYes, OK, what is it?

AThere is a letter dated March 11th 1988 addressed to me from you, copy to Dean Swamy and chairman of ... Chairman Osman, an attachment which says "Progres report, September 1985 to March 1988", two (2) pages which has an attachment, list of publications in journals and list of conference participations.

QOK, list of publications covers what years?

AI read No. 1, it says 1988. I read the last one, 1986.

QOK.

AI assume it is in chronological order.

QOK, how many publications from ...

AThe list ...

QFrom 1986 to 1988?

AThe list gives thirty, three zero (30).

QThirty, OK. Now can one judge quality of publication by the prestige of the journal where they were published?

AYes perhaps.

QIf you read the names of the journals where they were published, are you aware of stature of those journals?

AEvaluating journals is a subjective matter. It's very difficult to make. It is possible somebody can say Canadian journal is inferior to American journal but it could be vice versa. So it is very difficult to make whether Journal of Australian Mathematical Society is better than the Journal of Computation and Applied Mathematics. If one thinks that Journal of Australian Mathematical Society is great, then one should go on and publish everything in that, so that's where there are varieties of journals and it is very difficult to make a judgment.

QWell that was not my question.

BY THE COURT:

What was this question aimed at proving?

BY THE ACCUSED:

The question first of all was: in this particular case, are you capable, that's all, are you capable, do you know the prestige of a journal?

BY THE COURT:

So what? What is the relevance of this?

BY THE ACCUSED:

What is the relevance?

BY THE COURT:

Yes, what is the relevance of this question, of the answer or anything else.

BY THE ACCUSED:

Quality of my research, quality of my research.

BY THE COURT:

Pardon?

BY THE ACCUSED:

Quality of my research.

BY THE COURT:

The quality of your research is not an issue in this trial.

BY THE ACCUSED:

Well quality of research is issue because I explained to you once and I can explain it again.

BY THE COURT:

No, don't explain it again. You explained to me once and

I gave you the answer before. It is far too remote. So it is not relevant to the issue. Move on to another subject.

BY THE ACCUSED:

So you consider that the person who does lousy work is affected the same way ...

BY THE COURT:

It is not relevant. Move on to another subject.

BY THE ACCUSED:

Well state of mind, it is relevant?

BY THE COURT:

You can ... you can attempt to relate everything to your state of mind but it doesn't remotely relate to your state of mind as far as any defence which you might be proposing in this case is concerned.

BY THE ACCUSED:

Well it is relevant to provocation.

BY THE COURT:

I have ruled that it is irrelevant. Move on to another subject.

BY THE ACCUSED:

Well just yesterday you said different thing. Let me remind you what you said yesterday. Can I?

Yesterday, you said that whatever is related to my employment ...

BY THE COURT:

No, I did not.

BY THE ACCUSED:

And to the way I was treated ...

BY THE COURT:

No, I did not. I said ...

BY THE ACCUSED:

You didn't say it?

BY THE COURT:

I said: if you had specific questions to put to this witness concerning publications and the question of whether he insisted on being listed on your publications as a condition to your employment, put it. That is the narrow definition I gave of publications yesterday, not ... not where you're going now.

BY THE ACCUSED:

So quality of publications ...

BY THE COURT:

I have finished the whole question of the general quality of publications.

BY THE ACCUSED:

All right.

BY THE COURT:

And that, the line of questioning you're embarking on now is irrelevant.

BY THE ACCUSED:

OK.

QDo you recognize the document? Have you received it in 1988?

AYes I think I recall that I received.

QWas it exactly the document which I gave you during our conversation when I said in the transcript that "Here I prepared a progress report", is this the document I was referring to?

AI cannot say whether it is exact, I think you know it looks like but that's all.

BY THE ACCUSED:

OK, this is why I told him to bring records in the subpoena and you cancelled all that. We could have compared now. Now we have doubt whether it is authentic document.

BY THE COURT:

He believes it's the document. Go on.

BY THE ACCUSED:

Well I want to deposit it.

BY THE COURT:

If you're going back to the meeting of 1988, you ... I'm going to move you right on. We're through the meeting of 1988.

BY THE ACCUSED:

I just want to deposit the document.

BY THE COURT:

Fine. Deposit the document, I don't hear any objection.

BY THE ACCUSED:

So that's it, I'm going to any meeting.

BY THE COURT:

32?

BY THE CLERK:

33.

BY THE COURT:

33, OK.

BY THE ACCUSED:

Now ...

BY THE CROWN:

32 was already filed.

BY THE COURT:

Yes, yes, it's 33, it's my mistake.

BY THE CROWN:

Thank you.

BY THE ACCUSED:

QDo you recall that before that, we had a conversation in which you, for forty (40) minutes were talking to me how busy you are with administrative work, do you remember this conversation?

A No, I don't recall.

QNo, OK. The conversation which was recorded was not the first one, right? There was one before that, was it?

A I don't know.

QYou don't recall if there was any conversation before that?

BY THE COURT:

Well he ... he's referring to a question you put, that conversation that was recorded. I gather if you recorded the conversation with a tape recorder inside your pocket, the witness had no way of knowing it was being recorded. That was your question.

BY THE ACCUSED:

No, I asked him whether there was another conversation prior to the one which was recorded and he knows which one was recorded because he listened to the tape yesterday. It doesn't have to be that in 1988 he knew that. Now he knows.

QSo was or wasn't another conversation prior to this one?

A I ... you know, he was in the university. I have met him, I have discussed, so I cannot recall when I met with him and when I discussed.

QWell may ... may I try to trigger your memory, just the first sentence. I wanted to talk to you on the conver-

sation we had last Friday, follow up on that. Does this trigger your memory?

APossibly I spoke to him, maybe on the phone, maybe talk to him personally, I cannot recall.

QSo you didn't ask me at the end of that conversation that if you continue my contract, what would be my contribution to your group?

AI cannot recall, no.

QOK, did you at any time ask me when I ... for example, there was question of my promotion. Did you ask me again "If I recommend your promotion, what would be your contribution to my research group?"

AThere was no conversation at that time about promotion.

QNo, it was conversation at the end of 1989, beginning ... 1988, beginning 1989. At that time, do you recall when I came to you for recommendation for promotion to research professor, you asked me "If I recommend you, what would be your contribution to my research group"?

AIf I understand him correctly, now he's not talking about conversation prior, now he's talking about something after?

BY THE COURT:

No, he's talking about a conversation at the end of 1988 or the beginning of 1989.

ABeginning of 1989. Yes, in 1988 or 1989, in that region, he did come to me to talk to me.

BY THE ACCUSED:

QAnd did you tell me that if you recommend me for promotion, what would be my contribution to the research group of yours?

ANo, we did not. He ... I think, you know, he came to talk to me, whether ... whether I would support his promotion. I think, you know, he had solicited some letters of reference from various professors around the world and he was trying to impress upon me, showing those documents and I told him I ... perhaps I may have glanced at it but I didn't have a chance to read them. I told him, yes, now that we have supported you in 1988 and we are, if everything would be ... you know, you are a researcher, you're working in a given area and if the research is progressing well, I think you know the DPC could make a recommendation, appropriate recommendation but one has to submit the entire document according to the procedures. So if everything goes well, I will support you. So that was kind of, you know, a general conversation that I had.

QSo you never put that question to me? The question which I asked before, you didn't put it to me?

AI don't know what ...

BY THE COURT:

The question he's referring to before was: did you say "You want me to support you. What are you, Fabrikant, going to do which will assist the work of the Center?"

ANow ...

BY THE ACCUSED:

No, what would be your contribution? It is worded in such a precise manner. What would be your contribution to my research group? I don't think I need to translate it in normal English: would you start include me in your papers, that's what it meant.

ANo, Your Honor, I don't think, you know, specifically ...

of course I always was concerned about his research activity, to go and support our focus but I don't think I went and told him: what will you directly contribute if I already support your work. I don't think so.

BY THE COURT:

Now he also asked you a question about including you in his papers.

ANever.

BY THE ACCUSED:

No, that, I asked ... I said, no that was not ...

BY THE COURT:

Oh I'm sorry, OK, excuse me.

BY THE ACCUSED:

I said: this is how it is translated in normal English but he never said it explicitly, no. This is not how it is done at the university. They don't ask you explicitly no, except for the case of Xistris but it was different thing.

QDo you also recall that on several occasions, I asked you to give me your written approval of my research program, do you remember that?

AI think, whenever there was a renewal of contract perhaps, in 1990, you know, you would immediately send in a document, approve this for 1990 to 1995 so that you know he can have a document. I think, you know, I remember I think a couple of times he has done that.

QNo, I'm talking now about 1988 and approval of my program which I submitted to you so that I would not have the same kind of tricks you tried to play on me in 1988 so do you remember, I asked you to give me a written approval of my research program?

AI t is possible, Your Honor, but I'm not sure.

QAll right. Do you remember that for some reason, you just told me "OK, I approve it" but I insisted on you doing it in writing, do you remember that?

AEvery time, even for the promotion, when he wanted to talk to me, he wanted something in writing. You know he has this habit of asking everything, you know, put it in writing, so I do not recall exactly what he wanted. I cannot recall.

QAll right. Do you recall me sending you a letter of January 13th of 1989 saying:

"I have sent you my research program on October 13th 1988 asking you to approve it. You have confirmed its reception but I have not yet received from you any comments related to the research program, despite several oral reminders. I used the stamp "registered mailing" and request once again to approve my research program in writing. No answer within ten (10) days will be understood as a complete approval of my research program."

Do you recall receiving such a letter?

AYes, with regard to a registered letter but I do not know the details of the date, I cannot recall those things.

QAll right. Would you like to take a look at that.

AI cannot recall, perhaps like that, you know, there is no signature or anything.

QOf course not, it's a copy. You have the original. Maybe

after the break, they will bring all this stuff here so we have no problem with that. Can we, Mr. Martin?

BY THE COURT:

I said that the DPC file for 1988 would ... would be relevant.

BY THE ACCUSED:

But this is not DPC file.

BY THE COURT:

What file is this?

BY THE ACCUSED:

This is ... this is Concave file which I've requested too.

BY THE COURT:

No, I'm not going to order that that be brought. I think this is so marginal that ...

BY THE ACCUSED:

You just don't know what documents are there and you consider marginal.

BY THE COURT:

We're not going into that subject.

BY THE ACCUSED:

All right.

QDo you recall that you finally responded with approval? Take a look at that. After registered mail letter, you finally responded? Do you recognize your signature?

AYes I do.

QAll right. Maybe we can file both.

BY THE COURT:

D-34 en liasse.

BY THE ACCUSED:

QDo you have minutes of consideration of my promotion in January 1989?

AI would like to know what is the date.

QWell the letter I received was January 23rd but I don't think you have several considerations of my person in January of 1989, did you?

AI have a letter here, January 23rd 1989 addressed to you by Dr. Osman.

QOK. Do you have minutes of that meeting?

AYes, it is department personnel committee, January 19th 1989.

QOK. May I take cognizance of this document, not January 23rd, I know it. The minutes.

BY THE CROWN:

Well I guess sooner or later we'll get them but that's not the way. He should ask some questions first.

BY THE ACCUSED:

What kind of questions? I want to see the document. I ... I named a specific document, I want to see it.

BY THE COURT:

Show me the document please.

BY THE CROWN:

Can I have it?

BY THE COURT:

Sure.

BY THE ACCUSED:

When you go fishing, when I ask for the whole box but now I ask for specific document and I still cannot see ...

BY THE COURT:

No, I think you ...

BY THE ACCUSED:

It's absurd.

BY THE COURT:

It's only the question of relevance.

BY THE ACCUSED:

It's absurd.

BY THE CROWN:

Well My Lord, I start worrying about the relevance of the DPC as well. We're in 1988.

BY THE COURT:

We're in January 1989, if you want, three years.

BY THE CROWN:

And if we go through all the lines of all the notes, of all the meetings, a lot of people were involved. We might be ... be doing a civil case or a national commission of enquiry here.

BY THE ACCUSED:

May I ask crown how many times does crown think I was considered during the ... all these years, how many times? Just make a wild guess.

BY THE COURT:

Don't even bother.

BY THE CROWN:

I'll ... that was not my intention, My Lord.

BY THE ACCUSED:

Because then it would be obvious absurdity of his statement.

BY THE CROWN:

Because I'll remind you My Lord, you're giving the accused a try on relevance. I ... I don't see where we're going with this DPC. As I said to you, he had a job in 1988, he had a job in 1992. When on August 24th, he had a job. At a certain point, he was in a tenure track position. Why should we go through all that?

BY THE ACCUSED:

Should I explain? May I explain?

BY THE COURT:

No, not for the minute. For the minute you ... yes, he may have that document. It relates to him and it's signed by the witness. Would you pass that document to Mr. Fabrikant.

Now it may be that the questions that are asked, if they are of the same nature of others that have been asked, will ... will not be relevant, I don't know.

BY THE CROWN:

But My Lord, on the question of relevance, I think I stated that before. I don't like to raise and get up at every question. I more or less made a general comment and a general suggestion at the beginning of the defence.

BY THE ACCUSED:

OK, I would like to file both, this and the letter of Osman to me.

BY THE COURT:

Just a second.

BY THE CROWN:

Did you receive a copy of it? Because I expect sooner or later we'll get in it but it's addressed to Mr. Fabrikant and it's signed by Mr. Osman. So it should be filed either by Mr. Fabrikant or Mr. Osman.

BY THE ACCUSED:

Well I can file it if it is necessary because I think it will be good to have both together.

BY THE CROWN:

I think this should be filed by the proper witness, either Osman or Fabrikant.

BY THE ACCUSED:

OK, why don't I go to the box and say whatever is necessary to file it.

BY THE COURT:

Well I see down at the bottom, cc: DPC members, S. Sankar.

BY THE CROWN:

Yes but it doesn't ...

BY THE COURT:

No, you're right.

BY THE CROWN:

But if it's ... if it's a way to save time, I don't object.

BY THE COURT:

File it with the ... D-35.

BY THE ACCUSED:

Isn't crown gracious?

QNow could you please summarize as to what was the reason for denial of promotion at that time?

AIt was not a denial of promotion. It was ...

QDenial of consideration for promotion.

AIt was a consideration for an early promotion. He requested that he shall be considered for an early promotion. According to the collective agreement, he should submit his file to the DPC. The ... when we receive the file, according to the CUFA agreement, we have to look at the person's research, teaching and other activities.

We were ... when we looked at it with regard to his teaching, there were not sufficient proof that he has done, in order for us to make a judgment, with regard to his graduate students supervision or the number of students he has graduated or he has been supervising, again we found that there is a lack of enough evidence for us to make a judgment that we could promote him.

So we didn't even ask him to officially submit to the DPC so that we don't have to go through the course, so it was a consideration and we thought that it is premature and perhaps as soon as these two defects which we felt is rectified (sic), perhaps in the following year, we would reconsider his application.

BY THE COURT:

So we'll adjourn at this point until two fifteen.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ARE PRESENT

SESHADRI SANKER

(Under the same oath)

BY THE ACCUSED:

So is now the minutes of meeting of DPC of 1988 here?

BY THE COURT:

What is that second document you handed to the crown prosecutor?

A Two minutes, March 21st and April 8th.

Q Sorry?

A March 21st.

Q Right.

A And April 8th.

Q Would you hand them to Mr. Fabrikant please.

BY THE ACCUSED:

Something is missing.

A Those were the two minutes.

Q Well there was a letter before that from Sankar recommending one year extension of the contract. It is missing.

A There is no letter recommending one year. There is a recommendation of ... from me to Osman on the 7th of April. This is my internal recommendation.

BY THE COURT:

7th of April 1988?

A Yes.

BY THE ACCUSED:

Q Before that.

A As far as I know, there is no document.

BY THE ACCUSED:

Well they're just hiding documents.

BY THE COURT:

You heard the witness's answer.

BY THE ACCUSED:

OK, let me ...

BY THE COURT:

He said "As far as I know, there is no other ...

BY THE ACCUSED:

Let me try ... let me try to ...

BY THE COURT:

If you have the document, show it to the witness.

BY THE ACCUSED:

Of course I don't. These documents were not shown to me.

BY THE COURT:

Would you please clean up your tone when you're speaking to me.

BY THE ACCUSED:

Q Do you recall that after conversation, you said that you are preparing your recommendation for one year and this will be sent to DPC. Do you recall that?

A I don't recall exactly what he just said. I recall we had a conversation and as I have told several times, in the court, that my dissatisfaction and I was going to perhaps have one year extension.

Q Well who was your secretary at that time? What was the name of the secretary?

A I think 1988, I think ... I think it's Nancy, it was Nancy Nicholson or Nancy ... I think Nancy perhaps Barnaby. I'm not sure about the ... the last name. Nancy somebody, she left in 1988.

Q Well would you be able, through Mr. Freedman, to provide me with exact name of that person? Do you know the whereabouts of the lady?

BY THE CROWN:

What's the relevance, My Lord.

BY THE COURT:

I don't know what the relevance is and how is the secretary after four (4) years going to recall.

BY THE ACCUSED:

Sure, OK.

BY THE COURT:

If you have the letter, if you say as you did "They're hiding documents" which is what you said, you obviously have the letter. Show the letter to the witness.

BY THE ACCUSED:

No, I don't, I don't.

BY THE COURT:

Then ... then you have the witness's answer saying: "I'm sorry, there was no other letter".

BY THE ACCUSED:

Well I know that ... what he told me and his secretary, at a certain point, told me that she's typing a letter and she's going to send it and it was in March. So I want to call this witness to testify. I hope she remembers that.

BY THE COURT:

What is the pertinence in any event of all of this?

BY THE ACCUSED:

Very simple. That ... you know my paranoia, witness is lying. You heard it so many times.

BY THE COURT:

Then there will be ...

BY THE ACCUSED:

How about that?

BY THE COURT:

No, that won't do.

BY THE ACCUSED:

That's won't do?

BY THE COURT:

No, that won't do. Move on.

BY THE ACCUSED:

Witness cannot be lying?

BY THE COURT:

Next ... next question.

BY THE ACCUSED:

Anyway, I would like to get the name and ...

BY THE COURT:

Next question.

BY THE ACCUSED:

... I will get her to testify.

QSo what you are saying is that you never written (sic) anything at all recommending one year reappointment?

AThat's what I recall.

QNow, could you explain what is written here, that Fabrikant agrees to teach courses as part of his workload.

What, you have any indication that I refuse to teach courses? Why was it necessary to write it here?

AI think, you know, one has to know what is the context there. He was invited to the department personnel committee, to appear before the department personnel committee and then he was asked that he should be teaching and that was his reply.

QBut it creates impression, doesn't it, that that was condition and as if I ever refused to do so.

BY THE CROWN:

This is cross-examination.

BY THE COURT:

It's cross-examination and you're arguing with the witness.

BY THE ACCUSED:

All right.

BY THE COURT:

The objection is maintained.

BY THE ACCUSED:

I will be prepared to settle on much less.

ASo I never refused teaching?

BY THE COURT:

I'm not negotiating with you either.

BY THE ACCUSED:

QSo you can confirm that I never refused to teach courses, correct?

ANot to my knowledge.

QBut at least, you do not know that I refused?

AAAs far as the teaching is concerned, it is the jurisdiction of the chairman of the department, of the dean of engineering.

QSo this is put here, not as indication that I refused to teach courses?

AI cannot answer that.

QWere you present there?

AIn the conversation at the department personnel committee, I'm a member, he was invited and that was the statement that he made.

QWell why this question was asked? Are you aware of any refusal of mine to teach courses?

AAgain, teaching of courses is assigned by the dean of engineering and by the chairman and that should be addressed to them.

QThis is not my question.

BY THE COURT:

He says...

BY THE ACCUSED:

Are you aware? I'm asking his personal knowledge, that's all.

BY THE CROWN:

It's a waste of time, My Lord.

BY THE ACCUSED:

How to explain to the witness ...

BY THE CROWN:

It's not the proper way.

BY THE ACCUSED:

... that he should ask ... he should answer question the way they are asked. I asked his personal knowledge.

QAre you aware that by that time I made anything which might be interpreted that I refused teaching courses, are you aware of that?

AI don't know, I don't know.

QThat's it. Now:

"Fabrikant agrees to move to new location of Concave Center."

Now was it also because I refused to move?

BY THE CROWN:

What is the purpose of going through all the item in the minutes, My Lord.

BY THE COURT:

What are we ... what are you attempting to prove by this first of all and how is it relevant to your defence?

BY THE ACCUSED:

All right. What I'm attempting to prove is the following. The change of mind of Mr. Sankar came not because he talked to this or to this or to Osman who doesn't understand a word in my work, not to Sankar who understand not more. The change of mind came after I visited Swamy and I told him point blank that if he doesn't fix the situation, I'm going to blow whistle on the whole thing and next day, right next day, I was invited by Osman and he was all on my side and he said "We'll fight for you, you'll get two-year extension".

This is how it was, but since Mr. Sankar already told me one year, they needed somehow to save face. Now how to save face? He told me one year. Dean Swamy got scared at that time and said "Give him two years, let's keep it quiet". At least then, he had more reason than later on and they needed to somehow reconcile this.

Therefore there must be a need for something to make it look more or less tangible, as if, as if Mr. Sankar had some problems of collaboration, cooperation, whatever, my movement to Concave Center, my teaching. They never told me that I refuse but the way it is written, when someone reads it, it's create (sic) impression that Mr. Sankar wanted one-year extension just because I refuse to do certain important things like:

"Fabrikant is in full agreement that his duty is to cooperate closely with Dr. S. Sankar."

Now what the hell! It is the same thing as to invite someone, to invite for example judge and ask him: are you agreed (sic) to conduct trials?

You understand how stupid it is? Well the same thing it is here. They invited me and they ask me if I'm going to cooperate. It's absurd. He's director, I'm member of the center. Of course, I am.

Then they ask me if I agree to teach courses. Of course, I'm professor at the university. If I agree to move where Concave is, sure but it looks ... so this, this is why you have two DPC meetings rather than one. Why would they have two meetings instead of one? They needed to somehow make it, you know, to save the face. So they had two meetings and they needed ... so it is written here:

"Based on the constant (sic) conveyed by Fabrikant, expressed willingness ... Sankar expressed willingness to recommend DPC that Fabrikant be reappointed for two years."

Because here, there is nothing at all. They just invited me and asked me those two questions and they didn't make any decision.

The decision came later, they were just playing dishonorable game. So this is what I'm trying to show.

BY THE CROWN:

Sorry, My Lord.

BY THE ACCUSED:

That his ... their attempt of extortion didn't work and then they were trying to save face.

BY THE CROWN:

I'm sorry, I don't see any dishonorable game in that. It's like somebody saying to you: he was smiling at me, wanting to say some bad things, you know. It's in the mind of anybody, what you can read through the lines, but the lines are there and in a very normal standard records of a meeting.

BY THE ACCUSED:

Let me ask several more questions.

BY THE COURT:

No. You're not going to go through the minutes of that meeting one by one, asking the questions that you're asking. We're simply losing time.

BY THE ACCUSED:

I just ask why too?

BY THE COURT:

Move on.

BY THE ACCUSED:

How about that?

BY THE COURT:

Move on to another subject.

BY THE ACCUSED:

Can I ask just why too?

BY THE COURT:

No.

BY THE ACCUSED:

OK.

BY THE COURT:

No, move on to another subject.

BY THE ACCUSED:

I want to deposit then.

BY THE COURT:

Fine, file it.

BY THE ACCUSED:

QYou also have a personal letter to Osman. May I see it please.

AThis is not part of DPC.

QIt doesn't matter.

AThis is a letter ...

QIt's about me.

Q... they recommend ... they asked me to write to the chairman.

BY THE COURT:

Fine, would you show him that letter please.

Would you pass it over please.

BY THE ACCUSED:

QYou've made several recommendations in this letter. The recommendation No. 1 says that my research activity should be assigned to me by you. Do you recall that?

AYes, that is what I've written there.

QOK. Did you make any assignments after that?

AAccording to ... this is a recommendation made to the DPC. The DPC takes my input and makes independent recommendation and perhaps some of my recommendations struck out and then once the DPC makes its independent recommendation, faculty personnel committee may drop out some of the recommendations and then the letter is issued from the vice-rector. Perhaps none of the conditions are specified. So some of these conditions, I don't know, because I perhaps don't even get a copy from the vice-rec-

tor at the end in some instances.

QThis is not answer to my question. I asked him if he made any assignments to me. I didn't ask where it goes. My English is not that bad. Did you make any assignments to me, period? Did you or didn't you?

AI have ... I have suggested to him in 1988, after this period, when he came to meet me, I have suggested that he should continue to work in his fundamental research but of course try to integrate some of the applications because the progress report indicates that this may be applicable to vehicle engineering, this may be applicable to vehicle engineering in several places.

QSo effectively, what I was doing before, you just recommended that I continue doing, right?

AI suggested that he should continue doing with the thinking in his mind that it should be applied towards some possible applications in the future.

QSo if you effectively agreed that I continue doing what I did before, why were you strong at the beginning to have me fired then?

AI have told several times, that was my conviction at that time and I have seen that there are ... two focus (sic) were not ... were not fulfilled and after consultation, I thought that one should be given enough time.

QDidn't you change your mind just because Swamy told you that I threaten him to blow whistle?

A.No.

QNo, all right. Now second is:

"Fabrikant shall participate in other activities as writing team grant and contract proposals, writing progress and final reports, discussions with industries and research organizations, preparation of material to promote the activities of team's research objectives."

Now let's do it by ... one by one. Did I ever participate in writing team grant and contract proposals?

A.None.

QWas it because you did it so secret that you refused even to show me what you were writing?

A.No.

QNo. Do you recall when I asked to be shown research proposals, do you remember that you sent to me one page with two lines on them which were related to me. Everything else was forbidden for me to see?

AYes, I do remember, that was access of information in ... I think 1991 or 1992.

QSo you actually refused my request to see those applications, didn't you?

BY THE CROWN:

This is all cross-examination and moreover it's irrelevant.

BY THE ACCUSED:

OK, would you allow me to justify relevance here?

BY THE CROWN:

If he wants to file the letter, let him file the letter and let's move on to the next subject, My Lord.

BY THE ACCUSED:

Would you allow me to justify the relevance here?

BY THE COURT:

What is the relevance?

BY THE ACCUSED:

All right. Because ...

BY THE COURT:

Leaving aside the question of the form for the minute, what is the relevance?

BY THE ACCUSED:

The relevance is the following, that he just now said that I did not participate in all this activity, casting doubt as to quality of me as a worker, while in fact, they did their - how to say it politely - inappropriate activity, like contact with industry and government in the following manner.

He made his private company. They written (sic) those grant applications in secret.

BY THE COURT:

Look, I told you, we were not getting into any of these questions.

BY THE ACCUSED:

You asked me to explain relevancy.

BY THE COURT:

Well I'm telling you now. Having ... Having heard what you have said, it is clear to me that this has no relevance at all and furthermore it is taking us into an area which I have already ruled is not relevant to this trial.

BY THE ACCUSED:

I'm not going into this area. I'm only ... what concerns me, I want to establish one thing: that I didn't refuse to do it. This is the only thing I want to ...

BY THE COURT:

Then why don't you ask the question clearly and succinctly.

BY THE ACCUSED:

But ... but the only way to establish that I did not refuse to participate in contracts and grant applications, the only way to do it is to establish that they did it secretly, without ever showing to me. I signed one of them and they never showed me what I signed even.

BY THE COURT:

If that is where we're going, that has absolutely nothing to do with a murder trial, nor has it anything to do with your state of mind, either remotely or anything else. So the objection is maintained.

BY THE ACCUSED:

But you said yourself that ...

BY THE COURT:

The objection is maintained.

BY THE ACCUSED:

So I'm not allowed to show that I never refused to participate, that they made it just secret from me and this is why there was no participation of mine?

BY THE COURT:

You asked the witness ...

BY THE ACCUSED:

I'm understanding correct?

BY THE COURT:

You asked the witness if you participated, he said no.

BY THE ACCUSED:

But I need to clarify why I didn't participate. Was it because I refused or was it because they keep it secret from me. I need to somehow clarify it.

BY THE COURT:

If you wish to ask why you ... why you were not asked to participate, for the minute, I'll permit that.

BY THE ACCUSED:

All right.

QSo could you say my participation there was because you asked me and I refused to participate or because you never asked me to do that?

AHere, we are talking about individuals taking the leadership and doing the work. It's not participating each one working with the same project. Here, we're talking about ... when we say you should work in team grants, you should work, that means each person, because we are talking about several projects, not one project, so each person takes a lead and what we expected is every single professor should take a lead so that the others who would follow in some and some other professors will take a lead and others will follow in the others.

So in the context when we said that, that is what it is. We expected him to show leadership in taking of his own contact, because we cannot just rely on one person or two persons contact. You want to generate, as I told you, with book with several ... forty (40) industries or more, not because of one person. Every professor made their own contact and this is the essence we are trying to convey them.

BY THE ACCUSED:

He didn't answer my question.

BY THE CROWN:

He got his answer, My Lord.

BY THE ACCUSED:

OK.

BY THE CROWN:

The reason is a lack of leadership from Fabrikant, that's it.

BY THE COURT:

To the question of the memo, the second condition that you wished made part of the contract, whether it was or not, I don't know for the minute, but what you wished made part of the contract was that he participate in the preparation of quotations or ...

BY THE ACCUSED:

Of team, I want to emphasize, team.

BY THE COURT:

Just give me the words.

BY THE ACCUSED:

Proposals, team proposals. Team means group of people, team proposals.

BY THE COURT:

He wants to know whether he was asked to do that and you said no and he says "Why not? Because I refused or was there some other reason" and he ... he suggests a reason. That part of his question is illegal.

AWe have suggested to him that he should participate and take the leadership. We didn't say "You go and work in this particular project" because each individual has their own expertise and they cannot contribute to any given project.

So our wish when I ... when we stated that was he take the leadership and carry out that team. That team doesn't

mean everybody, you know, it could be two people out of the entire group because that's how it worked. In some cases, several members, in some cases, maybe three (3) members and that was the essence.

It is the wish to say "Take the leadership. You haven't done that. Please team" (Sic) and when we say "Write reports", it doesn't mean that, you know, some two professors are working and you go and write a report for that. Impossible.

You write and participate. If you happen to work with three people, try to contribute to that team because we find that perhaps, you know, there is no kind of willingness in doing that. I find there is a lack, you know. The way we have stated there is to address that whole issue, not specifically.

BY THE ACCUSED:

Well he didn't answer my question.

BY THE COURT:

We're far away from ... from what we're here for. Look, I'm not really interested in what your difficulties were right through and right down the line with ... with the department or with the faculty or anything else.

BY THE ACCUSED:

OK.

BY THE COURT:

There are a number of questions you could ask concerning your ...

BY THE ACCUSED:

Just two short questions and I will drop this issue, all right?

BY THE COURT:

... concerning your treatment. That, that is what you're supposed to be doing.

BY THE ACCUSED:

Exactly, this is ... this is exactly what it was, my treatment.

BY THE COURT:

Well would you please go at it directly.

BY THE ACCUSED:

OK. Directly is that the treatment was on the one hand, they demanded this from me. On the other hand, they kept everything secret. I couldn't even see when I came and asked him what you are doing, I was never answered this. Why do you think I went through access to information act and through access to information act, I asked them, I demanded to show me their contract applications and team grant proposals and all this stuff. I demanded it through access to information act and I was refused. How could that possibly be.

I'm a member of Concave and they refused me to see the documents of organization.

BY THE COURT:

Don't complain to me about what happened.

BY THE ACCUSED:

All right.

BY THE COURT:

Put the question to him.

BY THE ACCUSED:

Well, that's ...

BY THE COURT:

As it relates to you.

BY THE ACCUSED:

I'm pointing to you just ...

BY THE COURT:

But your last question doesn't at all.

BY THE ACCUSED:

Just to allow me to put those questions.

QNow do you recall that I did sign one team grant application?

AYes.

QOK. Do you remember that you refused to show me what I signed?

AThis is again the contracts several years later. It was done in 1985 with the intention, we have the new members who have joined the group fresh. We would like to have all the members and there were about forty (40) to fifty (50) projects defined in that and we would like to have the individuals participate and take leading each one of them. (sic)

This individual didn't do any single project in that. So we have talked about it in a general sense, because the projects are put forward in a ... in paragraphs of what ... what is the objective, what is the methodology and left it open, because it has to be done over several years.

So there was no interest. He never asked during the period 1985 to 1988 when we had the work, maybe 1989, he never asked for those things at that time. What he wanted was the information in 1991.

QWell I see do not understand. What grant application I signed and why you refused me to show what I signed?

AWhen the application or request for seeing that, even though he has signed it, he contributed nothing and we worked with a lot of industries and there is a lot of work that has gone in that and we felt that this work has been done by several people and the ... the release of information has to come from those individuals, so that's why he (inaud.).

BY THE CROWN:

My Lord, you already ruled ... ruled that we don't ... we're not the Court of Appeal for the commission of access to information.

BY THE COURT:

I know, I'm aware of that.

BY THE ACCUSED:

QIs it normal to ask someone to sign that thick document without showing him what he's signing?

AIt is in a collegial manner when we're working in the university system. Somebody takes the lead and that person does everything and finally, you know, we have a discussion and finally everybody signs. Nobody wants to have copies so that they can read through because there is an intention and cooperation and we don't look at which document, how we signed it and what we have done. You know, there is a collegiality and each one try to do it.

In this case it is totally different. So what he's asking, I cannot answer because in normal circumstances, we never make copies and give it to every individual, including the researchers who could be coming from various different universities.

BY THE ACCUSED:

Well again he didn't answer.

QWhen person signs certain documents, should he be allowed to read what he's signing? Yes or no, just answer.

AAAt that time, when he signed, if he wanted to see it, we would not have said no. He never asked.

BY THE COURT:

QYour point is that in 1991 ...

A1985, Your Honor.

QYes I know, but in 1991, that was when access was refused to him.

BY THE ACCUSED:

QDidn't I sign yet another grant application in 1991?

AI cannot recall.

QWell Concave grant application which was later refused?

AYes, Your Honor, yes, 1991.

QOK, so I signed it in 1991. Did you show it to me in 1991 what I signed?

AAgain, this is an application. There is a difference between application made in 1985 which is complete in 1988 asking for information in 1991 about 1985, 1985 to 1988.

What he's talking about is an application made in 1991 and again, the same principle: there were about thirty-five (35) people who are part of the team and we don't make copies for everybody.

You know, everybody knows their small portion of research that they're going to be doing and it is something that they have consented, they have provided a sheet and we ... I perhaps take the lead to put together the package and they know that they don't care what other researchers are doing because they have certain lead and they know that what they have given as a write-up is a part of that application and they are the one who initiated it and they really don't care whether they need to look at the entire thick document and that is why we don't make copies and circulate and waste of time and waste of money.

BY THE ACCUSED:

He's avoiding answering question.

QDid you or didn't you show me the whole document that I signed?

AYou did not ask for it and we didn't show it.

QI didn't ask for it. All right, in 1992, I did ask for it. Why you refused to show it to me in 1992 if it was an honest document?

AThis is an application we made and we were not successful and whatever the project that we have put is very precious for us so that we can reapply so I do not want to release that, so that it could go to another university, another colleague who could use the same approach and apply for the grant.

QSo you were afraid that if you show it to me, I will sell it to another university?

BY THE CROWN:

This is called cross-examination.

BY THE COURT:

This is cross-examination.

BY THE ACCUSED:

QThat's ... that's your concern?

BY THE COURT:

It's not what the witness said at all. The objection is

maintained.

BY THE CROWN:

And still My Lord, as usual, I feel and I suggest it's not relevant.

BY THE COURT:

This is totally irrelevant. Would you change your line of questioning. This is clearly irrelevant.

BY THE ACCUSED:

QNow, what about movement to Concave Research Center, why this has never been effected? Did I refuse to go there?

AAAs I mentioned to the court, that I made this recommendation and if there would be my wish, this is what I wanted and when the various recommendations finally came through, these were not carried forward.

BY THE COURT:

Yes, you said that this was your ... this was your recommendation. It has to run through the DPC, it has to run through the faculty committee.

AYes, Your Honor.

It finds its way up to the dean, it finds its way up to the vice-rector academic.

BY THE ACCUSED:

Is it ... is it ...

BY THE COURT:

And that's where the conditions are set.

AExactly.

BY THE ACCUSED:

QIs it really movement of somebody's office to another place should be condition of employment? It's absurd talking (sic) and you are nodding your head. He's talking absurd. Never it was condition of employment, of employment contract of anyone that his office is here or there.

BY THE COURT:

He said he answered your question ...

BY THE CROWN:

He's testifying, My Lord.

BY THE COURT:

He answered your question that it never was made a condition of anything and it never came about, period.

BY THE ACCUSED:

Well, but my question is not about that. If he wanted me to move to Concave and I agreed, why I never moved? This is my question, not whether it was condition of employment or not. It's absurd. Nobody puts this as condition of employment.

BY THE CROWN:

The accused is testifying from the dock, My Lord.

BY THE COURT:

As usual.

BY THE ACCUSED:

I'm explaining.

BY THE COURT:

So I think you should rule this out or put an end to it.

BY THE ACCUSED:

Well wasn't I asked why I'm asking this question?

BY THE COURT:

Yes you were asked why you were asking this question.

BY THE ACCUSED:

I'm explaining, I'm not testifying from the dock.

BY THE COURT:

And if ... I'm trying to see some way through. You have asked the question and perhaps it was answered, perhaps it was not.

Did you in fact move to Concave and I think the answer is no, is that right?

AYes, Your Honor.

QWas it because you refused to move to Concave and the answer is no.

BY THE ACCUSED:

OK.

BY THE COURT:

There is the answer to your question.

BY THE ACCUSED.

QSo why? You didn't want me there?

A space is a problem. Whenever the space would be available, we wished to have all the people, not only him, there were so many other people in other parts of the ... parts of the department and in the university, we would like to consolidate in one area. It is one of my wish and it never materialized.

QWell don't you recall that you had two free offices at that time?

BY THE COURT:

OK, we're not going to get into who had free offices or whatever. We're ... we're spinning our wheels.

BY THE ACCUSED:

Well as soon as witness is cornered, then ...

BY THE COURT:

Oh, the witness isn't cornered at all, don't be ridiculous. Move on to another subject.

BY THE ACCUSED:

Then why not to answer this question. (sic)

BY THE COURT:

Move on, move on to ...

BY THE ACCUSED:

He had two free offices there.

BY THE COURT:

Because you're wasting time. Move on to another subject.

BY THE ACCUSED:

OK, I want to deposit it.

BY THE COURT:

D-37.

BY THE COURT:

And we would be eternally grateful if you could come to the point that we're here ... for which we're here.

BY THE ACCUSED:

I'm always in the point. It's too... too regretful that you just don't see it.

BY THE COURT:

No, you're not.

BY THE ACCUSED:

I'm not. Then release him if I'm not.

BY THE COURT:

That's what it may well come to.

BY THE ACCUSED:

Yes. I believe I'm on point.

BY THE COURT:

Oh you would.

BY THE ACCUSED:

I hope you don't want me right now to say what I will be

arguing with respect to his testimony as I had to go...
I had with budget contracts. You should not have asked me
all those questions.

BY THE COURT:

Have you any ... any further questions to put to the witness?

BY THE ACCUSED:

Of course I have.

BY THE COURT:

I'll ask you what questions I like.

BY THE ACCUSED:

I always complied with your rulings.

BY THE COURT:

Well comply now and put your questions.

BY THE ACCUSED:

I said I always comply so I'm complying now too.

QNow what you've written in your report to the government
was it true statements or you tried to deceive government
about me first of all?

A I don't know what he's talking about.

QOK. Should I refresh his memory?

BY THE CROWN:

What is the relevance, My Lord?

BY THE ACCUSED:

Well let us not spend time on relevance. I explained it
already many times.

BY THE COURT:

It's a reference to the question that was written to the
government saying that Fabrikant had been doing fundamental
research. Is that what it is?

BY THE ACCUSED:

It's more than that. If you wish, I can read it to you
what is written here.

"Fabrikant has been assigned to carry out research on fundamental mathematical tools for computer assisted solutions of problems in solid mechanics, acoustics and electromagnetics. The research efforts are being directed toward development of new algorithms for geometrical modeling of surfaces of revolution with application to vehicle dynamics."

You see, applications are here.

BY THE COURT:

But what is the pertinence of this?

BY THE ACCUSED:

"Dr. Fabrikant has investigated the noise ...

BY THE COURT:

Just a second, just a second, what is the pertinence of this?

BY THE ACCUSED:

The pertinence? Very simple, that this document was written at the same time, it is 1988 document. When on the one hand, he informed government that I'm doing just fine and I'm doing exactly what he ... I'm assigned to do and he has numerous journals and conferences publications to his credit, so everything is fantastic and at the same time, informing government that everything is fine, give

us more money, because this is the document which was sent to the government, give us more money, we're doing fine, at the same time, he was telling me that he want to fire me because he's very unsatisfied with my work.

BY THE COURT:

Well that's your interpretation of it. That's ... it's what you wish to put on what ... on what he testified to. I'm not going to give you my interpretation of it but ...

BY THE ACCUSED:

Well anyway, my question is very simple: whatever he written there, (sic) did he really mean it or he just wrote it in order to get money?

BY THE COURT:

Whatever, whatever the motives, whatever the motive, it won't help us very much. So your question ...

BY THE ACCUSED:

OK, let me change the question.

BY THE COURT:

Your question ... no, the whole line of questioning is disallowed.

BY THE CROWN:

I suggest to you this document is totally irrelevant.

BY THE COURT:

Totally irrelevant.

BY THE CROWN:

This ... this document should not be ...

BY THE ACCUSED:

This document is relevant.

BY THE COURT:

Totally irrelevant. Change, go on, move on to something else.

BY THE ACCUSED:

Well I want to file this document.

BY THE CROWN:

It's irrelevant My Lord.

BY THE ACCUSED:

I want to argue on this.

BY THE CROWN:

I object My Lord. You've already ruled before.

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

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">BY THE COURT:
I have already ruled.
BY THE CROWN:
About these documents.
BY THE ACCUSED:
Now before you rule, before you rule, I want to consult
Ma&Etre Richard and let us discuss it. This is very impor-
tant document. I want it filed, I need to argue on it.
BY THE COURT:
You may want it filed, but I have already decided that
the whole question of the relationship between the wit-
ness, the center and the government is totally irrele-
vant to your murder trial.
BY THE ACCUSED:
I'm not talking about witness and government. I'm talking
about as far as myself is concerned and this document.
BY THE COURT:
You ...
BY THE ACCUSED:
I'm described there, that's all.
BY THE COURT:
You have made ... you have made your point.
BY THE ACCUSED:
I didn't make my point and I need ... I will need to
argue about it. There are many other things in this
document which I wish to argue about and before you make
your decision on admissibility of this document, I need
to discuss with Ma&Etre Richard and I want him to argue
that this is indeed necessary in the view of Ciboyer
(sic), that this is necessary and reliable information
which is pertinent to my defence.
BY THE COURT:
If you wish to discuss with Ma&Etre Richard, I will ... I
will adjourn. I will not deprive you of that chance. I'll
take a look at the document after I've heard the argument
but my first reaction is: that document is in no way per-
tinent.
So I think we'll adjourn for ... we'll take our afternoon
break now.

THE MEMBERS OF THE JURY WITHDRAW

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

BY THE COURT:
Yes Ma&Etre Richard.
BY ME RICHARD:
Yes. So Your Lordship, on this document which is entitled
"Rapport d'Etat", what we can find and I believe it to be
relevant in the following way: it is a report which co-
vers several years but there are few points which are
included into this report which are relevant regarding
Mr. Fabrikant's work record if we want.
One point is there is a description, that's at page 5 of
the document, of what was the task that had to be per-

formed by Mr. Fabrikant and how he carried out that task. There's a paragraph there, I don't know if you want to read it or if you want me to read it aloud, it's:

"Dr. V. Fabrikant has been assigned to carry out research on fundamental mathematical tools for computer assisted solution of problems in solid mechanics, acoustics and electromagnetics. The research efforts are also being directed towards development of new algorithms for geometric modeling of surfaces of revolution with application to vehicle dynamics.

What's in all (inaud.)

BY THE ACCUSED:

Well, it's absurd. He didn't know what he was writing about but this is ...

BY ME RICHARD:

No, no, it's all right. It was just a joke.

BY THE ACCUSED:

It's so ...

BY ME RICHARD:

"Dr. Fabrikant is investigating the noise insulation characteristics of moving vehicle using novel and unethical techniques. He has ...

There it comes.

"He has numerous journal and conference publications to his credit."

That's one thing you find there. After there are ... there's a list from years 1987, 1986, 1985 where are listed publications or conference publications of every member of the staff, including the ones from Dr. Fabrikant and also what were the objectives regarding publications for the whole staff in these years. So I believe it becomes relevant in the way that it might establish that the work record, regarding the objectives of the faculty, were met by Dr. Fabrikant at the same time when he was told that we'll renew it only for a year.

Now what, I discussed it with Dr. Fabrikant and I think it's clear, the only purpose is to file it to use it eventually while there will be summation of the evidence at the end of the case.

There won't be any questions put to Mr. Sankar on this document. It's just to file as it establishes what was the record or what was part of the evaluation of the work of Dr. Fabrikant at this time and that report was made almost contemporary to the decision to renew it only for a year.

So it could explain that Dr. Fabrikant became like off balance, following these two things at the same time. That would be the purpose of filing it, without any questions being put to Mr. Sankar on it. Just for ... for use later on at the end of the case.

BY THE CROWN:

With respect My Lord, thank you Ma&tre Richard, but this

passage was read to you before you rendered your, what I call, decision or pre-decision when you expressed your opinion that this was totally irrelevant. There is nothing new coming from the pleadings of Maître Richard. We know the context. The witness has been asked questions for days on this very subject. I think and I maintain it's totally irrelevant. It's a waste of time to file this document.

BY THE COURT:

Might I see the document please.

BY THE DEFENCE:

Yes, sure and also one point. I might add that it's ... it will be only for the passage which is read. I could understand though ... for example, I can point out that if you look at the year 1987, the objectives were that there should be twenty-eight (28) papers published by the entire faculty. Thirty-four (34) were published, out of it, there were seven (7) by Dr. Fabrikant. So if you withdraw these seven from the thirty-four, you'll come below the objective of the faculty. So it's for that type of thing, for future use, I'll say.

And also you will find at some places grants which were allowed to the ... to the department and in which of these grants, Dr. Fabrikant worked or worked for. You'll see his name appearing in some grants and some team work and also some graduate students supervision.

BY THE CROWN:

My Lord, we're so far from four murders on August the 24th, it's even between ... before 1990 and one thing, My Lord, I profit from the fact that the jury is not there, once you open a door, you're cut, that's a never-ending story.

I think you should realize that by now, that if you start in one way, don't ever expect it will stop on ... on this path and it's very ... it's easier for you to say "Disallowed, I already ruled on that" than to say "I made a decision, I want to make a different decision if I made a mistake the first time, I don't want to make a mistake the second time." It's much easier for you to say "I have already ruled, it's always the same ruling, period. You're not happy? Go elsewhere".

BY THE COURT:

Well the rationale for making the decision isn't of course the course that is easiest.

BY THE CROWN:

No, if it ...

BY THE COURT:

Obviously. Obviously if I feel that ...

BY THE CROWN:

That superposed my argument.

BY THE COURT:

... that I have to ... if I feel that I've kept something out, that in the light of the evidence I've heard, I should have let in, I'm perfectly prepared and always have been to modify my decision, but that's not what I feel here.

This, I've ... I've previously held and I'm still of the same view, that the question of government grants, the question of the program of Actions Structurantes is absolutely foreign to the question which is in front of us here.

True, Fabrikant is mentioned in it. There was an explanation this morning given by this witness in any event as to the report made to the government and as to the manner in which that report was made and how it detailed the work of ... the work of Fabrikant, but to attempt to pretend that this is determinant to any degree of Fabrikant's state of mind and that it might possibly have conditioned what occurred on the 24th, with all due respect for the powder keg defence, which I think is the ... is the term we use for this particular one, for the defence of provocation, I simply can't see it and I'm going to rule this out once and for all.

I've ruled out previously, I have said before that all of these matters that were ... that he attempted to put into evidence from Ottawa were totally irrelevant and I maintain that position and the questions bearing on this ... on this particular line are disallowed.

The jury please.

BY THE CROWN:

And My Lord, since you've disallowed this line, I expect that I don't have to raise and remind you that this is your ruling. You can ex officio say "This is ... I've already ruled, this is irrelevant."

BY THE COURT:

Am I... am I that forgetful?

BY THE CROWN:

No.

BY THE COURT:

Probably. I'm simply lightening the ... no, I presume that you will ... you will nevertheless object if you ... if you feel that we're straying.

BY THE CROWN:

Of course.

BY THE COURT:

Sometimes it's difficult to know, sometimes it's difficult to know but the sooner we get to the point of this trial, the better and we're not there yet and we haven't been there for weeks.

BY MAITRE LOUIS BELLEAU

AMICUS CURIAE:

My Lord, do you think I could have a few minutes at the end of the day to report on the question of the laboratoire de police scientifique?

BY THE COURT:

Sure.

THE MEMBERS OF THE JURY ARE ALL PRESENT

SESHADRY SANKAR

(Under the same oath)

BY THE ACCUSED:

QNow I draw your attention to January 1989 decision not to proceed with my promotion to research professor. The reasons which were stated were not sufficient teaching, is it correct?

AYes, I think so.

QAnd not sufficient supervision of graduate students, is that right?

AI think so.

QNow when you decided not sufficient teaching, how much

teaching did you have in mind to consider it sufficient?
AI It is a very subjective decision. We cannot say that it was ... usually, university professors having teaching (sic) for several years before they come to the promotion.

In this particular case, you have been in the program only as a research professor since 1985, so it is a very peculiar thing, so we cannot put in number there. What we felt was it was insufficient and that was our judgment.

Q Well how many teaching courses did you consider at that time I taught?

AI cannot recall exact numbers.

Q OK. Would it refresh your memory if I give you the documents of my teaching contracts from 1979, 1980? Would this help you?

AMY Lord, he was not as a faculty in 1979. He ... as a faculty, as a research professor, he was there from 1985.

Q Well this is not my question. Was I or wasn't I teaching then?

AI ... I have no idea.

BY THE COURT:

You asked the witness what the reasons were to postpone the question of your promotion to research professor and he's told you. Now you're attempting to put in question the criteria that were used. You may not do that. You're cross-examining again.

BY THE ACCUSED:

I'm just asking what was those criteria, not putting them in question.

BY THE COURT:

If the witness remembers, if the witness can tell you, I suppose he'll tell you.

BY THE ACCUSED:

And if the witness does not, we can refresh his memory by showing him some teaching contracts, can we?

BY THE COURT:

I don't think so, I don't think so.

BY THE ACCUSED:

Why?

BY THE COURT:

Because it's leading us nowhere.

BY THE ACCUSED:

The ... the contracts are there.

BY THE COURT:

It's leading us nowhere, Mr. Fabrikant.

BY THE ACCUSED:

OK, you refuse me to do so.

BY THE COURT:

Yes.

BY THE ACCUSED:

All right.

Q Now about graduate students supervision, how many students would you consider sufficient?

A Again, the number is very difficult to say but I think that in this case, it was very few, maybe one, maybe two, I don't know.

Q So you ...

AI cannot even remember the number.

Q OK, so one student from your student is not enough?

AI It is again ... it is a subjective number. No number is

specified that one should have so many. It is subjective it is weighed on a given person. A person's promotion is based on looking at research, looking at teaching, looking at graduate work, looking at what kind of other activities outside that person has done, so you look at it, it is a very subjective thing. So it may vary from one to the other, so I cannot really say that one is enough for one person or ten is enough for the other person.

So in his case, we felt that whatever that he had at that time which I cannot remember is not sufficient.

QAll right. Could you then explain why next year when none of those conditions really changed, neither teaching nor research, all of a sudden, you have decided to recommend me for promotion?

AThose two points of teaching and graduate supervision, we found the following year, there were ... he was supervising according to the document perhaps he has submitted at that time, if I recall, one masters student was graduated so the recent evidence of at least supervising one at that time and perhaps he had few, maybe two, maybe three, I cannot remember the number, of PhD students who ... who have been supervised by him, so there are some evidences which we didn't see a year ago and again in the case of teaching, during that period, I think, he had taught one or two courses.

Again I cannot remember so there were additional factors that came in, these two factors which I mentioned, which we felt that is sufficient enough. Even in those cases, in the normal sense, we would not have, but we felt maybe we should try to give him again, you know, because he has come so many times and asking for it, I thought we would try to push his case. It is trying to help him, push his case. The decision is not made by us. It is a decision that is made, as you know very well that it is by the DPC, FPC, the whole system.

QDid you or didn't you know that I had many years of teaching back in the Soviet Union?

AHis cv stated that. That's all we know.

QOK. Did you at any time try to write to the Soviet Union to check whether my cv corresponds to what I've written?

AI personally did not know whether that was done. It's... perhaps may have been done by the chair and I cannot answer to that.

QWell he kept it secret from me.

BY THE CROWN:

He did not say so, My Lord.

BY THE ACCUSED:

Did he?

BY THE COURT:

He didn't say so, no.

BY THE ACCUSED:

QOK, I'm asking did he kept (sic) it secret from you?

BY THE COURT:

No, the witness has said to you "I didn't write to the Soviet Union. I can't speak for Osman", that's his answer.

BY THE ACCUSED:

QOK, what is your personal knowlege, did he or didn't he write?

BY THE COURT:

He told he didn't write, he can't speak for Osman. He

doesn't know if Osman wrote. That's what he said to you.

BY THE ACCUSED:

No, he didn't say that. He said maybe Osman wrote. So I'm asking him does he have any personal knowledge whether Osman did or didn't write.

AI have no idea.

QAs the chairman of the department, do you ... sorry, as a chairman of the DPC, do you recall there was question raised as to me having my PhD degree?

AWe were looking at ... we have a person who is with us, we think when we have a colleague, we do not go around trying to think whether this person has a masters degree, whether he has a PhD. We assume such things, you know, in collegiality, we assume such things and we proceed on. We didn't have to go and check whether there is an authenticated PhD degree the person has.

So we make that assumption and we went on and the subject was never thought of.

QSo I was never required to produce my PhD degree to the best of your knowledge?

AAAs far as that time, for the DPC, we never considered that.

BY THE COURT:

QThat, when you say that time, you mean 1990?

AI think, you know, he's talking about 1989.

QHe was talking about 1989 and then he talked about the following year.

AYes, at that time, I'm sorry.

QOK, so he's talking now ...

AThose two incidences.

Q... about the following year.

BY THE ACCUSED:

QOK, but if I put question: at any time, then what would be your answer? Not limiting by 1989?

AI think later, sometime in 1991, I think there were discussions between the chairman and him and I do not know all the details.

QBut wasn't it the decision of DPC of which you're chairman to request PhD diploma from me, was it?

AThere were discussions, I'm not very clear whether it was part of the DPC meeting and I think perhaps I may have heard that the chairman wanted to do something, you know, I'm not able to clearly distinguish between whether he wanted to do it independently about getting some details about his degrees or his cv's or was it a part of the DPC, I cannot tell you now.

QAll right, so we'll get to that then. Do you have minutes of DPC meeting in 1991 where the whole thing was discussed, fall of 1991?

AI think this is the document which he's ... the DPC's recent report on its recommendation concerning reappointment of Dr. Fabrikant.

QNo, this is not what I'm asking you. I'm asking you for the minutes of the meeting, not the recent report. Recent report is filed.

AI don't have the minutes. I... I don't think ...

QOh Oh, that was in the subpoena.

AThe DPC normally ...

QThat was in the subpoena.

AThe procedure is DPC, we don't keep anything. You know, DPC, everything is forwarded to the faculty personnel.

This happen to be in my file and that is what I have brought.

BY THE COURT:

QDo there exist minutes of the meeting of the fall of 1991 of the DPC?

ADPC meeting of 1991? Perhaps, I'm not sure. That ... that could be minutes of ...

QThen you will ... you will verify.

AI could do that.

QIn your capacity as chairman, as you then were I think, I don't think you are any longer, of the DPC or are you still chairman?

AI am, but we do not keep the ...

QYou're still chairman of the DPC.

AEven though we do that, you know, we do not keep, you know once that is done, it goes to the faculty personnel committee.

QWell I saw minutes produced today for 1988, that was in your file?

AI was in my file, personal file, yes. All those things what I have brought, it were in my personal file.

QThen perhaps you would take whatever steps you have to take to have on hand the minutes for ... for 1990 and 1991.

AI will.

BY THE ACCUSED:

Well may I add to that that he would check everything, not just 1991, because I thought that he came here with DPC file, not with his personal file. He's chairman of DPC, he has to come with DPC file.

BY THE COURT:

Your ... your recollection is correct on that point.

That was what I thought he should bring.

BY THE ACCUSED:

So I will try to continue on different subject but tomorrow I would appreciate it, everything is here.

BY THE COURT:

The DPC file from 1988, files from 1988 to 1991, the DPC meetings, the minutes of the DPC meetings.

AI checked with the chair. There is no DPC minutes, there is no file really kept like that. That's ... that was the problem, you know, when I checked with the chairman, there was no real files because we consult so many people that we do not keep putting ... like every year, we have so many cases, so it is like a communication file. We communicate and that ... so I will check with him again, with regard to that minutes of the meeting that has been mentioned.

QOK.

BY THE COURT:

He is particularly interested in the minutes of the meeting in the fall of 1991 and somebody must have been secretary at the meeting and somebody must have kept minutes of the meeting and ...

BY THE ACCUSED:

May I add more to that, because effectively that claim to have spent thirty (30) hours that time, so it was not one meeting, it was about ...

BY THE COURT:

It was several meetings.

BY THE ACCUSED:

... six (6) or seven (7) I don't remember meetings, so I need six minutes of six meetings.

BY THE COURT:

Well I don't know how many minutes of how many meetings you're going to get.

BY THE ACCUSED:

Well whatever.

BY THE COURT:

But anyway, I think Mr. Sankar understands what ...

AYes.

... what he should have with him tomorrow.

AI'm going to go back to the chairman and ask, because that's where it's kept. It's not in my possession.

BY THE COURT:

Fine.

BY THE ACCUSED:

I bet you ...

BY THE COURT:

Mr. Freedman, will you please, would you kindly do what you can, whatever you can to expedite that. Thank you.

BY THE ACCUSED:

QOK, so let's ... do you have in your personal file there let's say 1989 merit award minutes? 1989 Merit award?

AI have. That is a minutes with names of all individuals Your Honor.

QYes this is exactly ...

AIt is not just on one individual alone.

QWell exactly, this is the document I need to file.

May I take a look at it. What is a chair deleting, could you tell me?

AThat is a letter from Dr. Osman to full-time faculty members.

QAbout what?

BY THE COURT:

QMr. Fabrikant ... is that part of the document that Mr. Fabrikant asked for?

ANo sir, no Your Honor.

Fine.

BY THE ACCUSED:

QWell it's letter about what?

BY THE COURT:

You're not going on an investigation. He said that it is not part of what you asked for which is in my hand.

BY THE ACCUSED:

OK.

QIs ... does this letter mention my name?

ANo, it is a general letter to all faculty members which says subject: Career Development Increment.

BY THE COURT:

Pass that to Mr. Fabrikant please. Excuse me, gentlemen, if I appear to shortcircuit you. Your names are not on the list.

BY ME RICHARD:

Maybe before 1993.

BY THE ACCUSED:

All right, I would like to file it.

BY THE COURT:

D-37.

BY THE CLERK:

38.

BY THE COURT:

38?

BY THE ACCUSED:

If it is possible, maybe all DPC stuff, unite into one unit.

BY THE COURT:

I don't think so, because these things deal with different subjects.

BY THE ACCUSED:

QNow you also probably have 1990 career development increment minutes?

AI don't have it, Your Honor. Again, the minutes, I don't have it and again, in that particular case, as opposed to where we have listed all the individuals, I think the letters were made independently so it was ... again I don't have it because it is a thick document of every faculty member so pretty thick so the minutes of the ... if there is minutes, I think that I have to again ask the chair of the department.

BY THE ACCUSED:

OK.

ASo I will make a note of ... of those two.

BY THE COURT:

Would you make a note please to ... yes, make a note of those two things.

AYes.

BY THE ACCUSED:

QOK, the same question to evaluation, 1991, spring?

AI don't know what was the last question, if he can repeat for me.

Q1991, spring evaluation for the year...

AI don't ...

Q... 1991?

AI don't think ... I will go back, you know, there were no evaluation every year. I think, you know, there was one evaluation and then two years skipped.

QYes. That's exactly what I'm talking about, in 1991, spring, there was evaluation according to the new system, do you recall that?

AThat's what I answered, that I don't have the minutes. I don't have the minutes of the ... the DPC meeting of fall 1991 and I don't have the minutes of 1991, spring, SPS points.

QOK and 1992? I mean, 1990 also. All right.

AI... I'm not sure whether there was, the minutes of the meeting of the previous one was 1990. If it is, so I will look for 1990. I wasn't sure whether it is 1990, the previous document.

BY THE CLERK:

1989.

A1989?

BY THE ACCUSED:

Well ...

ASo it is not 1990, it was 1989.

QWell the merit award, yes, but in 1990, I believe there was career development increment evaluation.

AAAs far as I can recall, there was not, because I think it was 1989 and then we skipped two years and then it was 1991.

QAll right.

ASo, you know, I will check. If there is minutes, I will

bring, if there was a career development increase at that time. If I recall correctly, I think you know there was. In 1989, there is minutes that goes with this document and minutes for 1991, spring, SPS salary progression scale award and then the minutes of the DPC of the fall, 1991 which is the final document, the big document. QAll right. Now did you report to the government liquid tanker stability contract as contract which was awarded to Concave?

BY THE CROWN:

What is the relevance of that My Lord?

BY THE COURT:

The relevance of that has already been dealt with and it has already been found to be irrelevant.

BY THE CROWN:

Yes.

BY THE COURT:

The question is disallowed.

BY THE ACCUSED:

All right.

QWould you like to take cognizance of this document?

BY THE COURT:

Pass it first to the crown prosecutor before you do.

BY THE CROWN:

He's not respecting your rules. This is the ...

BY THE COURT:

This is ... this is a PhD thesis.

BY THE CROWN:

Yes.

BY THE COURT:

Yes.

BY THE CROWN:

I think you've been ruling about four times up to now on this subject.

BY THE COURT:

I've ruled on this subject. The witness will not take cognizance of that document and you will pass on to something else.

BY THE ACCUSED:

Well this is not a PhD.

BY THE COURT:

Return that to him. No, it's entitled ...

BY THE CROWN:

Whatever it is ...

BY THE COURT:

... Liquid tanker stability which I have already ruled on and which I'm ruling on again in the same sense and I shouldn't have to rule on it again. It's been ruled out.

BY THE ACCUSED:

QOK, is it ... is it correct that your name is included as coauthor to practically every article which was published by Rakheja and Ahmed?

BY THE CROWN:

This is irrelevant, My Lord. This doesn't concern Fabrikant.

BY THE COURT:

I can't see how this could possibly be relevant.

BY THE ACCUSED:

OK, I'm prepared to answer how it's possible.

BY THE COURT:

How is it possibly relevant?

BY THE ACCUSED:

Sure. Now ...

BY THE CROWN:

I think you've already ruled on that as well, My Lord.

BY THE COURT:

I believe I did.

BY THE ACCUSED:

On that, on that, no.

BY THE CROWN:

No, you said that every other publication where Fabrikant is not mentioned is irrelevant.

BY THE COURT:

He may be linking this to something. I ... I'm not sure, I just want to hear what he says.

BY THE ACCUSED:

Yes, I'm linking indeed. Rakheja and Ahmed were two other people who were in exactly the same position as I. They were the same attachés de recherche, research professors for Actions Structurantes program.

The main difference between me and them was that whatever they wrote and whatever their students wrote, they included Sankar as coauthor all the time.

Me, I didn't and on several occasions, they warned me that if you don't do that, he'll try to get rid of you.

BY THE CROWN:

My Lord, I remember Rakheja and Ahmed. Now you've already ruled on these two personages.

BY THE COURT:

As far as those two are concerned and as far as their publications and the witness's inclusion in coauthorship ...

BY THE ACCUSED:

I didn't finish yet.

BY THE COURT:

No. If you wish to question the witness as to your relationship with him and questions of coauthorship regarding your work, that's something else, but Rakheja and Ahmed, no. We ... we're fine.

BY THE ACCUSED:

Well let me just ...

BY THE COURT:

Thank you very much.

BY THE ACCUSED:

Let me just finish. You didn't allow me to finish.

BY THE COURT:

No, because it became very apparent that the decision had already been made.

BY THE ACCUSED:

It's not apparent at all. You didn't ... you didn't hear to the end. If you did, you would know at least that I never had any publications with this Sankar, together.

BY THE CROWN:

We know by now, My Lord, that's the point. We know by now he has no publications with Sankar. When Mr. Hoa was in the box, he was asked the same question about Rakheja and Ahmed and what was the link between Ahmed, Rakheja and Sankar and so on and so forth.

BY THE COURT:

The question ...

BY THE CROWN:

And you've ruled that irrelevant, My Lord.

BY THE COURT:

The question of Rakheja ... the question of Rakheja ...

BY THE ACCUSED:

Oh oh, may I make correction?

BY THE COURT:

The question of Rakheja and Ahmed's publications and Dr. Sankar's participation or not is not relevant to this trial.

BY THE ACCUSED:

Well ...

BY THE COURT:

So move on to something else.

BY THE ACCUSED:

I didn't ... you never allow me to finish. He interrupts me all the time.

First of all, Hoa was asked about Bargiora and Derjinsky (sic). He probably ... I don't know, those names do not look even close sounding the same thing. They're absolutely different names. I don't know, how come the crown either is sleeping or what. I named ...

BY THE CROWN:

You told him, My Lord, that he shouldn't insult me.

BY THE ACCUSED:

They were two absolutely different names which I named. I never made to Hoa names of Rakheja or Ahmed so I think that crown should at least retract all this stuff.

BY THE COURT:

Listen, whether ...

BY THE ACCUSED:

Let me finish please, all right.

Now I will be coming to how the whole thing affected my mind. This particular individual never had any joint publications with me because from the very beginning, I made it quite clear to him that whatever I prostituted myself with his brother, I'm not going to do it with him, period and he didn't seem to understand the message.

BY THE COURT:

Now, you know why I stopped you of course, because now you're testifying from the dock.

BY THE ACCUSED:

I'm not testifying, I'm explaining and there is nothing wrong in effect in testifying.

BY THE COURT:

Listen, I ...

BY THE ACCUSED:

Because I'm going to testify anyways, so what's wrong with that.

BY THE COURT:

I'm telling you, I'm telling you again.

BY THE ACCUSED:

You don't allow me to finish.

BY THE COURT:

I ... I'm perfectly prepared to permit you to put to him questions bearing on whether you have publications with him and if so, why not. If what you're trying to establish is what you said two sentences ago.

BY THE ACCUSED:

No, no, it's not what I'm trying to establish.

BY THE COURT:

But what ... but what publications he has with Rakheja and Ahmed have absolutely nothing to do with this.

BY THE ACCUSED:

Well let me ... let me explain what I'm trying to establish. I'm trying to establish that he unsuccessfully extorted papers from me. He never got any and those two people who did include him, I will introduce several documents showing that they got absolutely different treatment. They got their tenure in 1990 and 1991 respectively. There never was any question of having them fired, everything was fine with them.

So I believe it is very relevant in proving my point that the only reason I was mistreated was that I was different from them. So this is how they are relevant.

BY THE COURT:

Well you better start with your own relationship and we'll see where we go from there, but unless you start with your own relationship, we're not going to do it.

BY THE ACCUSED:

Well I already started, just let me respectfully remind you that as far as my own relationship, jury didn't hear the tape but you did and in the tape, it was obviously

...

BY THE COURT:

Mr. Fabrikant, the tape is not ...

BY THE ACCUSED:

Let me finish.

BY THE COURT:

No, I will not let you finish or I'll let the jury go for the day and then you can finish.

BY THE ACCUSED:

No.

BY THE COURT:

Because I'm not going ... you're not going to put in front of the jury what is not ... what is not in evidence and what has not been allowed into evidence.

BY THE ACCUSED:

Well jury should know what was not allowed into evidence.

BY THE COURT:

No, the jury shouldn't know what is not allowed into evidence.

BY THE ACCUSED:

Well I think ...

BY THE COURT:

That's the point.

BY THE ACCUSED:

When the ... when the documents which are pertinent are not allowed into evidence which I believe are ...

BY THE COURT:

Well here you see, here, we go again. This was our start point the other day, where you refused categorically to accept any rulings on the question of relevance.

That whole question was not relevant and the question of Rakheja and Ahmed is not relevant. Therefore you may not question on Rakheja and Ahmed's publications, period.

BY THE ACCUSED:

Just a second ago, you said that I might, how is that?

BY THE COURT:

You ... I'm not talking about your relationship, that's

something else.

BY THE ACCUSED:

But my relationship ...

BY THE COURT:

As far as Ahmed and Rakheja are concerned, it's ... it's remote, it has nothing to do with it.

BY THE ACCUSED:

I explained what it has to do with it. You made your rulings.

BY THE COURT:

I've ruled.

BY THE ACCUSED:

QYes, OK. Did I ever threaten you with physical violence?

ANo.

QDid you tell Haines that I told you something about American way or made some shooting gesture, did you tell Haines that?

ANo.

QAre you sure about that?

AYes.

QWere you personally afraid of me at any time?

AI had some concerns.

QYou had concerns for your life?

APerhaps hearing about ... about the incident when somebody was standing there and we thought we were at eleven thirty in the night and he was standing there, so there was a concern because somebody is standing alone and in the department when nobody else is there, so there was a concern.

QSo the first time you got concerned for your personal safety, it was October 30th of 1991?

APerhaps. I have very little concern before that maybe.

QSo before October of 1991, you never heard that I threatened here, threatened there, threatened to kill rector, threatened ...

AI'm not aware of it.

QWere you or weren't you present during a meeting with Haines at which he allegedly informed you that I threatened to kill you and other people?

AI'm not very clear about his question. What he's ... which day, when was that and who were present, you know, it's very vague for me.

QWell let me put it more simple to you. When you are at a certain meeting, when someone tells you that somebody else threatened to kill, I believe you cannot forget that kind of meeting, can you? Or you are being told this stuff at every meeting you attend?

BY THE CROWN:

This is cross-examination, My Lord.

BY THE ACCUSED:

This is not cross-examination.

BY THE COURT:

The witness asked you if you could be more precise in your question from the point of view of the time.

BY THE ACCUSED:

Well ...

BY THE COURT:

If you can, be more precise from the point of view of the time.

BY THE ACCUSED:

QWell 1990, somewhere ... no, 1989, late spring?

AI don't think so. I haven't ... I don't think I met even Mr. Haines at that time.

QOK. So suppose timing is wrong but if you met Mr. Haines and he would have told you that I threatened to kill you, you would remember that, wouldn't you?

BY THE CROWN:

It's hypothetical, My Lord.

BY THE COURT:

Yes it is.

BY THE ACCUSED:

OK.

BY THE COURT:

Objection maintained.

BY THE ACCUSED:

Let me make it differently.

BY THE COURT:

The witness has answered your question, he says "I don't believe I ever heard that". Now that's his answer.

BY THE ACCUSED:

This is not an answer because I don't believe I heard that, it means yes, maybe yes, maybe no, he's not sure. This is why and it is very difficult to assume that the person might not be sure whether someone threatened to kill him or not. Would you believe that? Could a person be unsure whether someone threatened to kill him?

If for example I threatened to kill you, would you remember that?

BY THE CROWN:

My Lord ...

BY THE ACCUSED:

All right.

BY THE CROWN:

... we have a clear answer from the witness. He said "I was not threatened by you". If ever a previous witness was under the impression that Fabrikant threatened Sankar somebody might (inaud.) about it later. There's no point, it's clear now.

BY THE COURT:

The witness's answer is perfectly clear, you're right.

BY THE ACCUSED:

Well witness's answer is that he's not sure.

BY THE COURT:

Move on to something else. He said you never threatened him.

BY THE ACCUSED:

Well ...

BY THE COURT:

You never threatened him with physical violence. I presume killing somebody involves physical violence.

BY THE ACCUSED:

Oh yes.

BY THE COURT:

Yes. There you are, there's his answer.

BY THE ACCUSED:

QHave you even been on a meeting in which Mr. Haines would be present?

AYes.

QOK, when was that?

AI may have met with him maybe two times, three times, I cannot recall, but we met, the DPC members were there I think once we met, when he was there.

BY THE COURT:

Before you get into that, we'll adjourn at this point because I presume you'll be on this subject for at least fifteen (15) minutes.

BY THE ACCUSED:

So tomorrow I hope every document will be here.

THE MEMBERS OF THE JURY WITHDRAW

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

BY THE COURT:

Mr. Belleau, you asked me to remain. You're free to go Mr. Sankar until tomorrow morning.

BY MR. BELLEAU:

Just a few minutes My Lord, if you will. The Court asked me to enquire with Mr. Ste-Marie who is the director of the laboratoire de m,decine l,gale about the availability of experts for the defence. I wrote him a letter which I would like to present to the Court.

BY THE CROWN:

Can I ... do you mind if I ...

BY MR. BELLEAU:

I don't mind if you look at it, of course not and this is the reply that I get from the Direction des affaires juridiques of le MinistŠre de la s,curit, publique. In a nutshell, my request was ... is self-explanatory, just fulfilling the ... the request that you'd made to me and the answer was that apparently the experts are bound by the Loi sur la fonction publique and the rŠglements adopted by virtue of the civil law and they are bound to exercise their profession for the exclusive benefit of the government and on an administrative level, the Direction des expertises judiciaires feels that their experts, if they are available for the defence, that it would hamper them in fulfilling their mandate of, I quote "soutien ... l'administration de la justice" which is one of the reasons for the existence of the Direction.

BY THE COURT:

So they have now reversed themselves and they are no longer available for the defence. Is that how we're suppose to interpret this?

BY MR. BELLEAU:

Well the letter is ...

BY THE CROWN:

I don't think, My Lord, that's why I wanted to ...

BY MR. BELLEAU:

The letter is very clear and it's exactly how it was explained to me.

BY THE CROWN:

I don't think they are at the .. even though the name has changed, I don't think, it was for ... they are experts. They're not the servants of police, that's what ... how I understand that.

BY THE COURT:

That was one ... that was one of the things I understood and I also understood that a number of them chose to appear on behalf of the defence from time to time because I've seen them.

BY MR. BELLEAU:

Well they don't anymore. They'll appear apparently if the Court orders them to appear, to give precision to the court but the defence, they will refuse.

BY THE COURT:

Well that wouldn't help Mr. Fabrikant very much.

BY MR. BELLEAU:

Absolutely not.

BY THE ACCUSED:

Well may I first of all have a copy of all this stuff and second ...

BY THE CROWN:

I think, My Lord, we get all the answers in the ...

BY THE ACCUSED:

And ...

BY THE CROWN:

Mr. Fabrikant, it's his problem to find an expert.

BY THE COURT:

Well I've said I'm not finding him an expert but particularly on this question of ... of blood projected.

BY THE CROWN:

And you see, it's the same thing for lawyers. A lot of lawyers don't want to be bugged by Mr. Fabrikant and they don't ... they don't even ... even though he has a mandate from legal aid, they don't want to go through this suffering. I think the experts are in the same position.

BY MR. BELLEAU:

I will qualify that. It's not a question of the identity of the petitioner, it's a ...

BY THE ACCUSED:

I thought ... I thought crown ...

BY THE COURT:

Mr. Fabrikant, please.

BY MR. BELLEAU:

Insofar as it's ...

BY THE COURT:

It's a matter of policy.

BY MR. BELLEAU:

It's exactly that, the defence ...

BY THE CROWN:

I think it was an argument, a supplementary argument. You said you couldn't force a lawyer to work for Mr. Fabrikant. I suggest to you, you couldn't as well force an expert to work with Mr. Fabrikant.

BY THE COURT:

No, but I think what Mr. Belleau is saying goes far further than that. They are taking the position that they are not available to answer applications from the public at large but rather are only there to answer applications from government agencies, i.e. the police.

BY MR. BELLEAU:

Well that's what I understand.

BY THE ACCUSED:

Well may I ... may I add to this ...

BY MR. BELLEAU:

Which flies in the face of the public relations campaign that they have.

BY THE COURT:

Which flies ... flies in the face of the public relations campaign, yes.

BY MR. BELLEAU:

... they have so successfully mounted for the past few

years.

BY THE ACCUSED:

May I add to this that the crown is outrageously illogical that clear answer that people do not want to work for public, not for Fabrikant. He still want to interpret as ... that experts do not want to work with Fabrikant. Well I wish crown become a little wiser.

BY THE CROWN:

What I say My Lord has nothing to do with these letters.

BY THE COURT:

I think ... I think the crown prosecutor was ... was simply giving us the benefits of his thoughts as ... as they are at the end of the afternoon.

BY THE ACCUSED:

Well, if you call it benefit, well I let you benefit from it but I would like to get court order for Prof. Cachana for this weekend. I understand that now he is coming.

BY ME RICHARD:

Yes.

BY THE ACCUSED:

Because it was several cases when he didn't but this time it looks like he is and maybe for Prof. Antipa if he can say when he wishes ... during the week.

BY THE COURT:

Well if Prof. Antipa wishes to visit you this weekend, Mr. Fabrikant, who am I to stand in his way.

BY THE ACCUSED:

No you just need to write a court order for this.

BY ME RICHARD:

But isn't there a continuing court order concerning ...

BY THE COURT:

I didn't think there was a continuing one. I think ...

BY THE ACCUSED:

It was not continuing. This is the point.

BY THE COURT:

... is it continuing? No.

BY ME RICHARD:

No, I'm sorry.

BY THE ACCUSED:

Maybe we make it continuing and ...

BY THE COURT:

No, no, we'll ...

BY THE ACCUSED:

... and I won't bother you each time.

BY THE COURT:

We'll make it for the weekend. This is ...

BY THE CROWN:

My Lord, as I said, it's a ...

BY THE ACCUSED:

Do you need ...

BY THE CROWN:

... a pre-warning but from the information I got, the ... the eventual testimony of Mr. Antipa or Cachana will ... I will certainly raise the issue that they are not relevant.

BY THE COURT:

You may but for the minute, I'm not debating that issue.

BY THE ACCUSED:

I must tell you that I couldn't care less about it right now. I'm talking about court order that they visited me.

BY THE COURT:

I said to you, you don't need to argue with the crown prosecutor. I said to you ...

BY THE CROWN:

It's just that I want ...

BY THE COURT:

... that I'm perfectly prepared to see that court order issued.

BY THE ACCUSED:

Yes.

BY THE CROWN:

It's just that I want these people to save our time, My Lord.

BY THE ACCUSED:

And I would like Prof. Antipa is here but the guard doesn't allow him to answer. Maybe you would intercede and allow him to answer whether he needs anything during week days which are coming, are you?

BY THE COURT:

Mr. Antipa, come forward if you like and speak to Mr. Fabrikant. I think he wishes to determine whether or not he needs you.

(DISCUSSION IN LOW VOICE)

BY THE ACCUSED:

OK, so for Prof. Antipa, tomorrow evening please, if possible from say seven p.m. until ten p.m.

BY THE COURT:

Tomorrow is Thursday.

BY THE ACCUSED:

Yes.

BY THE COURT:

I thought that this involved the weekend.

BY THE ACCUSED:

Well weekend, Prof. Cachana is coming.

BY THE COURT:

I see so Prof. Antipa isn't going to be covered by the order on the weekend?

BY THE ACCUSED:

Well let him be there too in ...

BY THE COURT:

No, no, it's not ... I'm not ... I just want ... want the order to be ...

BY THE ACCUSED:

In addition, in addition to what was said, in addition to what was said, tomorrow evening from seven p.m. until ten p.m.

BY THE COURT:

What were the normal hours that I fixed during the week?

BY THE CLERK:

From nine until ... it was nine / eighteen for the weekend and I think it was twenty ...

BY THE ACCUSED:

Well you made it from six to nine but six to nine is not realistic. At six, I'm not there. I'm there after seven.

BY THE CLERK:

I'm talking about the weekends.

BY THE ACCUSED:

Ah weekends.

BY THE COURT:

On the weekend it was from ... OK, for the weekend, for

the weekend the same hours relating to Prof. Cachano as ... as before. For Prof. Antipa tomorrow night, exactly the same thing as I said before, from six to nine.

BY THE ACCUSED:

But you know at six I'm not there. I need it from seven to ten.

BY THE COURT:

Mr. Fabrikant, there are more things to be balanced out here than ... than simply your desires.

BY THE ACCUSED:

This is not an answer.

BY THE COURT:

This is an answer. Well that's the answer you're getting.

BY THE ACCUSED:

Well that's too bad.

BY THE COURT:

There are certainly more things to be balanced out than the way you see it.

BY THE ACCUSED:

Well I wish you ... you were more ...

BY THE COURT:

Thank you very much, Prof. Antipa.

BY THE ACCUSED:

I wish you were more explicit on this subject of balancing.

BY THE COURT:

That settles ... is your mandate in any sense more positive or definite than it was, Ma tre Richard?

BY ME RICHARD:

If it goes on that way, I'll spend more quarters trying to reach Ma tre DeLongchamp than what I'll get from (inaudible) in the end. That's the best way I can explain that. I tried again about five six times today and she's not there, she'll be there at lunch. I call at lunchtime, she's out to lunch. Hopefully, I'll get an answer before the trial is over.

BY THE COURT:

OK. Well I'm just ... I was just wondering.

BY THE ACCUSED:

Well I can introduce some clearance there.

BY THE COURT:

Because it would be ...

BY THE ACCUSED:

She was ... it is usual sabotage by legal aid because when I call them, she was there and I spoke with her so ...

BY ME RICHARD:

And also there ... just a little ...

BY THE ACCUSED:

I spoke with her today.

BY THE COURT:

Mr. Fabrikant?

BY ME RICHARD:

Tomorrow morning, I'll ... I don't expect to be here before eleven thirty. I have something with detainees in Granby and I have to settle that. Mr. Fabrikant knows I go there. He's aware of that.

BY THE COURT:

Fine, because if you're going to be ... if you're going to be in the portrait, obviously the more time you can spend here, the better.

BY ME RICHARD:

Yes.

BY THE COURT:

I realize today you were sent off to do some fundamental research or something, but if you would try to be here. Thank you.

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

PROVINCE OF QUEBEC

DISTRICT: MONTREAL CITY: MONTREAL

CASE NO: 500-01-017372-928

TRIAL

PRESENT: HONOURABLE MR. JUSTICE FRASER MARTIN, J.C.S.
(AND AN ENGLISH JURY)

THE QUEEN

vs

VALERY FABRIKANT

APPEARANCES: Me JEAN LECOURS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: July 12th, 1993

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CONTINUATION JULY 13TH, 1993

(THE JUDGE TAKES THE BENCH)
(THE JURY TAKES THE BENCH)
(DISPENSE WITH THE CALLING OF THE JURY)
(ALL ARE PRESENT)

MARK KACHANOV
Professor, Mechanical Engineering
August 6, 1946
DULY SWORN

EXAMINATION BY THE ACCUSED
REPRESENTING HIMSELF:
Okay, I would like to open a voir-dire on declaring
Professor Kachanov an expert in Mechanical Engineering.
BY THE CROWN:
What is the purpose, My Lord? I don't think we need
experts in Mechanical Engineering in this case. Maybe

the accused could explain.

BY THE COURT:

What is the purpose of calling Professor Kachanov?

BY THE ACCUSED:

Well, Professor Kachanov is an expert in a field similar to mine. And as you mentioned yourself, the question of authorship of my papers, and the question of how I was abused at Concordia University is relevant. So the root of abuse was in the fact that I was forced to put names of other people as co-author in my papers. That was the root and the beginning of the abuse. And what happened after that stemmed from this particular situation. Now, Professor Kachanov is a specialist in the field. He was asked to do an expertise of several scientific articles of mine, in terms of their authorship. He did his research in this field. He contacted Sankar and Swamy and he requested them to explain what their contribution was to those articles. And he is prepared to testify as to his findings in terms of authorship of those papers.

BY THE CROWN:

I don't think we need that in this case, My Lord. First, authorship, I don't think is that relevant, you open the door, but the proper witnesses will be Sankar, Fabrikant. And we don't need someone to give...

BY THE COURT:

It is a question of fact surely as to what the contribution of Sankar and Swamy was to certain papers written by you.

BY THE CROWN:

These people will explain their contribution.

BY THE ACCUSED:

Exactly. It is a question of fact and those facts require very qualified scientific expertise, because it cannot be settled in a pure testimony. For example, I will come and testify that their contribution was zero. They will come and testify that we did contribute. We had discussion, as it was in the case let us say of Hoa. And we need an independent and qualified expert who understands the nature of things. We cannot, as you mentioned yourself, put to the jury certain equations and ask them to decide who wrote those equations. We need an independent and qualified expert who can go with deep into the technical stuff of the issue, and provide his opinion. And Professor Kachanov is a world-class scientist in this particular field. So he can be trusted as an expert in the field, and his findings are definitely relevant, because the jury cannot possibly decide from my word, yes, I was the sole author, or from the word of Sankar, who would say, no, I did contribute. We need an independent specialist who will be able to look into the matter deeply and give his qualified opinion under oath.

And since the question of who was the author of those papers you established yourself is relevant, then there is no way to establish it for the jury as through an independent expert who has in his deposition, he has manuscripts. He has initial draft derogations. He was able to go deep into the derogations of various results, which he is familiar with. He can judge specifically what is or what isn't important in certain scientific

paper, and nobody else here is a specialist in the field, therefore, only a very highly qualified expert, by doing a scientific analysis of the material presented.

And the material presented, as I said, was extensive, including contemporary notes and derogations of various results, and he could see how these results crystallized all the dynamics of the thinking, the process. There is no way to establish all those facts through just testimony of myself or Sankar. And one does not preclude the other. But expert opinion is crucial in this matter.

BY THE CROWN:

This looks like the contradiction in advance of witnesses the accused is not even obliged to call, My Lord.

BY THE COURT:

It may well add up to that. That's not the point. Your point...

BY THE ACCUSED:

Witnesses will be called.

BY THE COURT:

The point is that I did not say and never said that any question of the authorship of the papers was in any sense material. I said that the question of the authorship of the papers may be a factor that you would later wish to invoke as having been something which affected your mind. Whether that remains remote, or whether you manage to connect that to something approximate to what we're here for, I don't know.

But one thing is for sure. There are two kinds of evidence. There is expert evidence, and there is direct evidence, evidence of facts. And regardless of what the subject matter is, regardless of how complicated in the field of mechanical engineering or in the field of mathematics you wish to make this, reducing everything to its lowest common denominator, we know that these papers, if there's any debate about them at all, were authored by someone and what someone did with regard to the papers is a question of fact and will be established as a question of fact. In short, the contribution of whoever worked on these papers is quantifiable through the mouth of whoever these people were. What you propose to do by this witness is attempt to buttress some sort of argument through an expertise by having him, if I have understood you properly, say that the hub of the work carried out in this paper deals with the subject of X, and deals with certain equations, and the only person who is an expert in that, is someone with a background of the nature of Fabrikant, and someone of the nature of Sankar, or Swamy, who could not be and couldn't possibly have that knowledge.

It is as the Crown Prosecutor says, an attempt ahead of time to call expert evidence to buttress factual evidence that we haven't even heard yet. The first thing.

Secondly, I disagree with you quite frankly, the authorship of these papers. If it can't be established on a factual point-of-view then it can't be established on a factual point-of-view. But by whichever manner it were established, and it will have to be established by factual witnesses, is so marged that I doubt very, very much what its importance is at the end of the road. But I am certainly not going to hear Professor Kachanov on the line upon which you wish him to embark.

BY THE COURT:

Well, let me explain how important it is.

BY THE COURT:

Well, we've already been through how important it is.

When I decide something I really don't need to hear from you again. You pointed out to me where you are trying to go with Professor Kachanov, and I've told you you're not going that way.

BY THE ACCUSED:

Well, that's not the only purpose of Professor Kachanov here.

BY THE COURT:

What's the next purpose?

BY THE ACCUSED:

Okay. The next purpose there is, I, in my testimony I will definitely show to the jury that the fact that I was robbed from my articles, from the authorship of my articles, affected my mind the most profoundly.

Therefore, if you recall when Hoa testified here, you did not allow me to go into factual material. I wanted to ask Hoa what his contribution was, in detail, and I was just not allowed to do so. Therefore, on the one hand, when a certain witness comes to testify, you just don't allow me to put those appropriate questions.

Now, when I bring the expert witness who did pose specific questions, and his testimony is absolutely not what you think it is, that someone's background... he did a much deeper research. He talked to both Sanker and Swamy, and he asked them directly what their contribution was. And they had, when they are talking to a specialist, they had to admit, both, that in fact their contribution was not there.

BY THE COURT:

You'll ignore that. This is double-digit hearsay which purports to come from Sankar and Swamy.

BY THE ACCUSED:

So this is absolutely a different thing when a specialist talks to another specialist, it is a different kind of conversation. You can, when someone testifies in front of the jury who are not a specialist in the field, he can pronounce many words which, though don't make any sense scientifically, but a jury who is not a specialist in the science would not be able to qualify one way or the other.

When Sankar and Swamy speak to Professor Kachanov, they have to be specific. They cannot say ignorant phrases which, for example, they used in their grant applications. As an example, I will show you that Professor Kachanov looked not only in the articles, he looked also into the grant applications. He looked into the Concordia University documents of those which praised me as excellent and outstanding, and he looked into the documents which were to demand that my employment be terminated. He looked into the reasoning behind those documents which required that my employment be terminated.

And as a specialist he found clear evidence that all those attempts to have me fired was nothing but a veiled extortion of papers from me. Because in the university milieu, nobody comes to you and say, if you don't include me in your papers, you will be fired. This is the most

filthy part of the university life. Because theoretically nobody explicitly forces you to do anything. And the jury is not aware of the specifics of the university life.

And Professor Kachanov looked into the documents, grant applications. He looked into the private contracts of Sankar, with his private companies. He looked into the reports of CONCAVE Research Center, and dissertation of Ramganathan, and he has discovered an obvious fraud in terms of obtaining governmental grants, because the two grant applications which he looked into, authored by Osman, one in eighty-five ('85), and one in eighty-nine ('89), those two grant applications were just made by a cut and paste method. Those were two effectively identical applications. And Osman has received, in fact, twice the money from the government for the same application. He just didn't bother even to change the application four years later. He just sent exactly the same application, practically without changing any words, and he received the money.

Now, this stuff also cannot be established as a matter of fact, because when I will call Osman to testify and I will put to him these grant applications, I foresee that you will definitely say they are irrelevant.

Now, are they really irrelevant or they are relevant?

Let me explain you how I see their relevance, because the attitude of the Departmental Personnel Committee and the University administration cannot be viewed in a vacuum. They are the result of the criminal activity which I have noticed, and the same thing was discovered by Professor Kachanov when he looked into the dissertation of Ramganathan, and the report of S.N.S. Incorporated, the private company of Sankar, to the government for which he received two hundred and eighty-eight thousand dollars (\$288,000.00). And he discovered that the report to the government was just a short version of Ramganathan's dissertation. This means that Sankar got a private contract for his private one-person company and, in fact, didn't do any job. He used a graduate student to do the job and he pocketed the money.

Now, if you take all those facts together, it would be clear why the Departmental Personnel Committee, one a member of which is Osman, and another member is Sankar, has decided to get rid of me in nineteen ninety-one (1991), because they wanted to cover their criminal activity, and nothing else.

Now, there is also no way you can establish all those facts except through the expert who is an expert in the field and who can testify indeed that both cases were cases of fraudulent activity.

He also looked into their argumentation by the Departmental Personnel Committee as to why I should be... my contract should be terminated. And he found out that their interpretation of professional competence is totally absurd and it is totally absurd and it is totally contrary to what is considered professional competence in the universities.

Professional competence in the universities is understood as ability to teach and ability to do the research. It is not how this particular person purchases the printer. It is not whether this person is harmonious with

everybody else. Professor Kachanov will testify as to what academic freedom means in the university, and then the person doesn't have to be harmonious with somebody else, that the way a person purchases printers, or even if he doesn't talk polite to somebody, this has nothing to do with his professional competence.

Professor Kachanov also looked into more strong indicators as to general activity of both Sankar and Swamy, and one of those indicators is Science Citation Index. Professor Kachanov has discovered that Sankar has... well, first of all, Science Citation Index is an index which indicates how the work of some particular scientist is being used by him or any other scientist in future work, and he discovered that Sankar does not even refer to his own work. It means that he does not have any coherent research, because when a researcher do some research, he uses his previous results in obtaining new results. In the case of Sankar that was definitely not the case.

He is practically not even mentioned there, though in grant applications Sankar writes that he is a leading scientist in the field and he secured the first place for Canada in the world by himself. So what Professor Kachanov has discovered, that there is no evidence of his leadership of any kind. He's just mainly either not mentioned in this Index at all, or if he is mentioned, it is due to my articles which are present there.

So, Professor Kachanov, when he looked into all those documents and allegations, he knows university politics very well, and he would be able to explain to the jury that this is a clear case of the University administration just trying to cover up the criminal activity which I have discovered at the University, that there is absolutely nothing else there.

Professor Kachanov also looked into my teaching evaluations and he would be prepared to testify the meaning and significance of the courses which I taught. Because if you recall, I said that I was teaching very important fundamental courses and they are very difficult.

In this particular case, just by sheer coincidence, Professor Kachanov taught exactly the same undergraduate courses, so he can testify that those courses are not CEGEP courses at all, as you remember Osman testified here, that they are extremely difficult courses, that they are courses in which it is very difficult to obtain good students' evaluations, and he will testify not only to the fact that I... the evidence that he discovered, that I was not just only an excellent reseacher, but an excellent teacher, too.

So all this information which cannot possibly be established by any kind of examination, especially taking into consideration that those witnesses which I am going to call... again the problem is that they will be considered my witnesses, and I won't be able even to examine them in depth, because as soon as those witnesses come to a certain difficult situation, as usually someone will stand up and say that this is cross-examination, this is this, this is that, and my question will be disallowed.

So, in fact, there is no other way for me to make some

kind of corroborative evidence for the jury of a qualified specialist who would be able to establish that, indeed, I was abused and persecuted at the University to such an extent that he never seen anything like it in his life. And I believe it is extremely important for the jury to hear this information, because when the jury will decide could a reasonable person be provoked to such an extent as to lose his control, the jury should be aware as to how outrageous the facts are. There is no way for the jury who is mainly not from the University milieu, to establish the degree of abuse. This can be established only through experts, the same way as the state of mind of someone usually is supported by expert psychiatrists. In this particular case, before talking about state of mind as such, it is important to establish that those facts which took place in the university milieu, from the point-of-view of a specialist in the university, those facts are outrageous. They are so abusive, so unusual, so extreme that unless this is... and this can only be established by an expert who knows the university milieu well enough and this is absolutely necessary part of my defense.

BY THE CROWN:

Well, My Lord, the second step...

BY THE COURT:

Are you finished? Sit down. If you would like to sit down.

BY THE CROWN:

The second set of explanations seems even less relevant, My Lord.

BY THE COURT:

The premise upon which the second set of representations appears to me to have been based, was that the accused contends that his mind was affected by the fact that he was robbed of authorship. As I have said before if, indeed, he was robbed of authorship, that is a question of fact and it is a question which is susceptible to be determined by the jury's appreciation of the testimony of those involved.

I ruled long ago that this was not a general wide-ranging inquiry into the goings on, either in Concordia University, or in the university milieu as a whole, and it is, is not going to become such.

It is a murder trial, purely and simply, where certain defenses may be advanced. In order to advance these defenses, it is not essential to the defense to embark upon an inquiry, analogous to that of a Royal Commission, and it's a term I'm used on a number of occasions into who does what in the university milieu. I am sure there is as much back-biting and back-stabbing going on in that milieu as there is in any other commercial or professional enterprise. It wouldn't surprise me at all. Nor do I think that because the participants happen to be endowed with a number of degrees, that the human relationships which take place in these circumstances are any different from human relationships anywhere else. Life is life.

It appears, first of all, that what you propose with this witness is the omni-present preemptive strike. He has gone through, you say, Concordia documents, and he has gone through grant applications, and he has gone through

documents aimed at terminating your employment. On the basis, you say, of the documents he has gone through, he is, you say, prepared to state that Sankar and Osman's activities were subrose, to say the least. This is not the trial of Sankar, Osman, Concordia University, the Departmental Personnel Committee, the Faculty, the Dean or the university system in Canada.

Whatever the complaints, however altruistic your motives, there was at every level a mechanism for these complaints to be addressed, and if all else failed, the Court system was there.

You state that attempts to have you fired was a veiled extortion of papers from you. You mentioned CONCAVE and the dissertation of a graduate student. I cannot see how in any sense evidence along these lines will be of any assistance to the jury in assessing whether in the heat of pasion in the face of sudden provocation, what was done was done before that passion was allowed to cool. And that in the end is the barometer by which, at least within the context of provocation, that defense is measured.

I said from the beginning that there would be no extension of the Lavall,e doctrine, which the Crown Prosecutor qualified as the battered professor syndrome, and there will not be.

Fraudulent activity. I have ruled again and again that your particular view of the world and in coming to specifics your accusations of fraudulent activity on the part of certain professors at Concordia University is not the stuff of a murder trial, and you're not going to be allowed to make it the stuff for a murder trial.

Nor, for that matter, are the general activities of Sankar and Swamy in any way pertinent. Beyond that, Professor Kachanov's interpretation. You know, an expert allows him to be an expert in Mechanical Engineering. It doesn't allow him to be an expert in General Psychology. It doesn't allow him to be an expert in university administration, and it does not allow him to be a private investigator who ruffles through papers and puts conclusions as to the motives of either the DPC, the Faculty, or the Vice-Rector, Academic. On his announced expertise as a professor of Mechanical Engineering, he would never be allowed to profer opinions on these particular points. The teaching evaluations have been gone into over and over again. I have ruled that they are not pertinent.

There have been sufficient people, asked questions from students on up, as to the significance of the courses, of sthetics and dynamics, and the importance of the role of these courses in the general training of an engineer to permit whatever argument you wish to make as to the important of these courses, and as to your proficiency to be put before the jury.

And with regard to the fact that you claim to have been abused and persecuted to such an extent that Professor Kuchanov has never seen anything like it in his life, that is neither here nor there. What Professor Kuchanov has seen in his life, or what he hasn't seen in his life is strictly irrelevant.

The degree of abuse insofar as it may be relevant, and insofar as it may exist is only marginally relevant, and

if it's to be established at all, it will be established simply by factual witnesses testifying as to facts. So on the second facet, I'm not going to permit the testimony of Professor Kuchanov.

BY THE ACCUSED:

Okay. I would like to make the connection between all those facts and...

BY THE COURT:

I'm not going to permit you, either, to reargue this. I have decided...

BY THE ACCUSED:

I'm not rearguing. I'm just continuing.

BY THE COURT:

No, you're not continuing. You have said what you had to say. The Crown Prosecutor has said what he had to say, and I have ruled.

BY THE ACCUSED:

Well, just listen to what I have to say.

BY THE COURT:

I will not just listen to what you have to say, because I have ruled.

BY THE ACCUSED:

I'm talking about something else now.

BY THE COURT:

I'm not going to go into another dissertation with you where you attempt to connect up what you've said and what I've said. This is not a university debate that's going on here. It's a Court of law. So, there you are. I have said what I have to say. If there is any other subject that you wish to contend, that you have the right to ask this witness, then you move to that.

BY THE ACCUSED:

All right. In the jury deliberations, it is important for them to realize, because in my further testimony I will state that the main reason for what happened in Concordia University was the final stage at which Hogben has, in the name of administration, put to me an ultimatum, that either I go to jail, because of contempt of Court, and he told me that Judge Gold has arranged all that, and he told me also, God knows what will happen in jail, which was effectively like a death threat to me. And in this situation, when a person feels that his life is in danger, this argument I need to be supported, because this action of administration can be only qualified as an act of desperation. It is an act of "vanditism" but it is an act of desperation, too.

And in order to give the factual foundation for this act of desperation by the University. They probably... I don't know what was their way of thinking, but they probably thought that they could scare me so much that I will take the three year salary and shut up. But the recklessness of their behaviour can only explain and support it to the jury by the fact that there was widespread fraud at Concordia University. So it is not that I'm trying to put the University on trial, but as supportive evidence, to convince the jury that this is indeed what happened, I need all this evidence to be presented to the jury.

And I repeat once again, that there is no way to establish criminal activity in the scientific milieu by just asking questions of particular witnesses, either you

are criminal or you are not. It has to be some independent qualified person who can testify to this end. Since Professor Kuchanov has obtained even practically admission from both Sankar and Swamy that their contribution to my papers was zero, it is extremely important, his testimony, whenever and whatever they are going to testify in case they do admit, that's fine. But I... in case they do not admit, I would be able to use the testimony of Professor Kuchanov as a contradiction to their prior statements made. Therefore, even for this reason, and for the reason that my defense heavily depends on the ability to prove the criminal activity of the university, because the actions of the university administration cannot possibly be understood, and the degree of provocation they put me through cannot possibly be understood away from the fact that I was a good teacher, though you said the teaching is irrelevant, that I was forced to put other peoples' names in my papers which cannot possibly be established by examination of the witnesses. It's only an independent expert who can do that, and this is the second part which constituted provocation, and all together cannot be possibly advanced to the jury effectively with the final testimony of mine when I will testify that this is, indeed, what triggered the whole thing when I was, in fact, my life was threatened by Hogben with definite approval of the administration. He cannot possibly do that on his own. And the factual foundation to prove to the jury that this indeed happened, I need corroborative material and criminal activity of the University, and the University attempts to cover it up, are the basis on which this final provocation took place. Without this basis, it will be very difficult to convince the jury that this is indeed what happened. So you're undermining my defense by refusing this witness to testify.

BY THE CROWN:

There is nothing new in this third line of estimation, My Lord.

BY THE COURT:

There is absolutely nothing new in this third line. It is simply a repetition of what has been given before. The question and any question of criminal activity at the University is not in any sense going to be explored in the course of this trial.

Furthermore, whatever Swamy and Sankar told this witness at this particular point in time, in any event, is nothing more than hearsay. And I have never heard of one proceeding in the manner in which you propose by way of what I called earlier a preemptive strike by having this witness testify as to his evaluation of two witnesses who you are under no obligation to call, but whom you propose to call. I have heard nothing new that would cause me to change my mind. I cannot see anything relevant in what you propose to do with Professor Kuchanov.

BY THE ACCUSED:

So would Professor Kuchanov be relevant after those two witnesses testify?

BY THE COURT:

I have no idea whether he would be relevant after those two. I have no idea at all. I'm not here to give you my opinion on anything.

A. May I have a quick question, Your Honour?
Q. No, you may not. No.
So we will adjourn for ten minutes, and you can consider what your course of action is.
(THE JUDGE LEAVE THE BENCH)
(THE JURY LEAVE THE COURTROOM)
SHORT RECESS

(THE JUDGE TAKES THE BENCH)
(THE JURY TAKE THE BENCH)
(DISPENSE WITH THE CALLING OF THE JURY)
(ALL ARE PRESENT)

CHARLES BERTRAND
Vice-Rector, Services, Concordia
March 17th, 1939
DULY SWORN

EXAMINATION BY THE ACCUSED
REPRESENTING HIMSELF:

Q. Have you brought what was in the subpoena?
A. I brought the file, the same file that Dr. McKenzie brought from the office of the Vice-Rector, Services.
Q. Isn't this file document of November twenty-first (21st), eighty-eight ('88) concerning to the printer?
A. Perhaps, I don't know. I'm not familiar with the file, since I wasn't Vice-Rector until the first (1st) of January, nineteen ninety-two (1992).
Q. Well, since you are subpoenaed to testify, it would be nice of you to take cognizance of the file which you have with me... with you.
A. I took cognizance of the documents that I signed.
Q. Well, how about the other documents?
A. No, I really didn't look at them.
Q. Well, take a look.
A. Which document was it?
Q. November twenty-first (21st), eighty-eight ('88).
A. There's no such document in this file with that date on it.
Q. Was the subpoena clear?
A. All documents where the name Valery Fabrikant is mentioned, and that's what I have here, the file that was provided in my office.
Q. Well, that's not all definitely. There is a document dated November twenty-first (21st), eighty-eight ('88), and I need it to be deposited.

BY THE COURT:

Are you in a position to give the witness some idea of what that document is?

BY THE ACCUSED:

I already told him what it is.

BY THE COURT:

I understood it was something to do with a printer?

BY THE ACCUSED:

Yes.

A. With a printer, My Lord? I didn't...

BY THE COURT:

Yes, a printer.

A. I wouldn't know anything about it.

BY THE ACCUSED:

Q. This is part of the accusations of the DPC that I am professionally incompetent. So that was the settlement with the University concerning the printer, because what they submitted in their document was just a part of the story. The second part of the story is in this particular document which states in black and white that I was right after all, that my request for a one year warranty was justified, and that the University takes on itself to provide this kind of warranty.

BY THE COURT:

Q. Does that permit you to come to any guess as to where that document might be, or in what record that document might be?

A. It sounds to me like it might be in the computing services area, which is not my office. It's a separate office in the University. It could perhaps be there.

BY THE ACCUSED:

No. This document... this document was signed by Gigliari, therefore, it must be somewhere in your domain.

Q. The documents signed by Gigliari, where are they?

A. A copy should be in the office of the Vice-Rector, Services, yes.

Q. So, I need to get it.

BY THE COURT:

Mr. Freedman will attempt to locate it for you.

BY THE ACCUSED:

Q. Now, do you have in your file any document related to nineteen eighty-nine (1989) surveillance of me twenty-four (24) hours?

A. Dated nineteen eighty-nine (1989)?

Q. Yes.

A. No.

Q. Since there's the file of McKenzie, and I believe at that time I was allowed to take cognizance of the file. Maybe I take it once again.

BY THE COURT:

You've asked your question. The witness has said there is no document there relating to surveillance in nineteen eighty-nine (1989).

BY THE ACCUSED:

Well, he didn't answer my question.

BY THE COURT:

No.

BY THE ACCUSED:

So what changed since then?

BY THE COURT:

Have you another question to put? Put it.

BY THE ACCUSED:

Okay.

Q. Do you have any... okay. McKenzie had with her some kind of list of dates. What happened when? Do you have it there?

A. The only document that I see in here that has anything resembling a list of dates is a memo to Dr. McKenzie from Mr. Grendon Haines which describes three incidents, October and November of nineteen ninety-one (1991), My Lord. That's the only thing that approximates a list of dates.

Q. So it is not in McKenzie's file.

A. Everything that she brought to Court that I am aware of.

Q. Do you have any documents related to implementation of

security measures in nineteen ninety-one (1991)?

A. Yes, November third (3rd), nineteen ninety-one (1991), you wrote John Relton complaining, and I have behind that a security report.

Q. This is not what I am asking.

A. Well, that's what I have at the moment.

Q. Well, do I understand that your office is responsible for security at Concordia University? Is that correct?

A. Yes.

Q. So there must be some trace of that?

A. Well, I'm not sure what you're asking for.

Q. Well, in nineteen eighty-nine (1989) I was asking, there was a twenty-four (24) hour surveillance. It could not possibly happen in such a way that there is no trace in your office of that event.

A. I'm not sure. I wasn't there.

Q. Well, if you were or you weren't there, the documents should be there. And the subpoena states clearly that you have to provide those documents. And you didn't bring those documents. You just ignored what the subpoena required you to do.

A. No. I brought all the documents that... Dr. McKenzie had gone through the files at the office of the Vice-Rector, and these are the documents that she found in response to the same question on her subpoena. And those are the documents I brought.

Q. Her subpoena were different. Her subpoena was to subpoena the documents in which she was directly involved, she personally was involved. Now I am subpoenaing the documents of the Vice-Rector, Services, in their totality. And this is different.

BY Mr. FREEDMAN:

My Lord, if I may...

BY THE COURT:

Yes, Mr. Freedman.

BY Me FREEDMAN:

In response to the original subpoena for Dr. McKenzie, there was no file in the Vice-Rector, Services, that says Dr. V. Fabrikant. An effort was made to go through the various different files to pull out any documents that had anything to do with Dr. Fabrikant. That is what Dr. McKenzie brought. That is what Dr. Bertrand brought. I will undertake to look for the specific document that he's referring to, that wasn't... that people didn't come up with, and we'll see if we can find it. But these are all the documents that were found when the search was made through the various files.

BY THE COURT:

Am I correct that throughout the length of the trail, Me Freedman, you have spoken personally with Mr. Fabrikant in relation to a number of these subpoenas, and in relation to the documents that he particularly wishes to have with a view to clarifying the situation?

BY Me FREEDMAN:

I have.

BY THE COURT:

And is it also my understanding that it's under your direction that these searches for documents in various places are taking place?

BY Me FREEDMAN:

That's correct. That's correct.

BY THE COURT:

Okay. I wonder if you would look for the document that he has referred to, namely that of November the twenty-first (21st), nineteen eighty-eight (1988), and we'll simply continue. Thank you.

BY THE ACCUSED:

Well, the rest of your documents, it must be there, and there is nothing there. They're just hiding the documents. That's all.

BY THE COURT:

You have the explanation.

BY THE ACCUSED:

What?

BY THE COURT:

You have the explanation.

BY THE ACCUSED:

Well, this is not an explanation.

BY THE COURT:

Well, there it is.

BY THE CROWN:

All that has been covered with the security people, My Lord.

BY THE COURT:

Again, and again, this has been covered.

BY THE CROWN:

Why are we dealing with, on that, with the service people?

BY THE ACCUSED:

Well, whatever was covered, I think that it is none of the Crown's business. I am conducting my defense I see fit and what I feel necessary is necessary. I am not repeating those questions.

BY THE COURT:

Well, I think you would do well to look at some of the documents that have been produced, and you would do well to look at the Barnab, file and certain other things which have already been filed, which may contain the documents that you want to refer this witness to.

BY THE ACCUSED:

Well, those are...

BY THE COURT:

But you have his explanation of what he has in his hand, and it will impress no one for you to stand over there and say he's hiding documents, or they're hiding documents. These are the documents he's got. They have explained that there is no file under your name in the Vice-Rector's, Services, office, and they've tried to extrapolate from what is there everything that could pertain to you. That's the explanation.

BY THE ACCUSED:

Well, this is not an explanation. It means that they either deliberately or by omission missed a lot of documents. That's all. It could not possibly be all undocumented.

BY THE COURT:

Why don't you try putting your questions to Mr. Bertrand, and he'll try to answer.

BY THE ACCUSED:

All right.

Q. Where are the documents related to payment of those services in nineteen eighty-nine (1989)? I'm sure those

documents went through your office.

A. I don't know. They may have. I wasn't the Vice-Rector, Services, at the time.

Q. Well, this is not a good answer. Nobody thinks that you were the Vice-Rector at that time. You are required to bring those documents. That's all.

BY THE CROWN:

This is all hearsay for this witness, My Lord. His answer is right.

BY THE ACCUSED:

The documents are not brought. It is fine with you I am having a fair trial?

BY THE COURT:

You are not even going through the documents that have been filed in defense in order to determine whether or not these documents are already in the record.

BY THE ACCUSED:

I know what has been filed.

BY THE COURT:

And I'm not going to do it for you.

BY THE ACCUSED:

I know what has been filed. Those are documents of the Security Department, not documents of the Vice-Rector, Services.

BY THE COURT:

I seem to recall you flipping through a number of bills for security services. I can't recall at what point in time, but I certainly recall you flipping through a number of bills and putting questions to a witness as to the cost of conducting the surveillance.

BY THE CROWN:

And this person has no personal knowledge of that.

BY THE COURT:

This person has been Vice-Rector, Services, since the first (1st) of January, nineteen ninety-two (1992).

BY THE ACCUSED:

So what are the rules? We have to call Gigliari to testify, or what?

BY THE COURT:

I'm not... you call whoever you wish to testify.

BY THE ACCUSED:

Okay.

Q. Were you aware in ninety-one ('91)... okay. Were you present in ninety-one ('91) at the Senate meeting of November first (1st)?

A. Yes.

Q. Where were you sitting?

A. If memory serves, in about the second row from the rear on the right-hand side of the room facing the chair of the meeting.

Q. Okay. Did you hear at a certain moment of time some people asking what is going on?

A. No.

Q. You noticed nothing unusual? You didn't notice any guards in the Senate chamber?

A. I may have. I don't recall terribly well.

Q. Of course. Guards are so usual in the Senate chamber, that you just didn't recall them. Correct?

A. The Director of Security attends most Senate meetings, My Lord.

Q. I'm asking about guards. Are they a usual feature at the

Senate meeting?

A. Normally I would say not.

Q. But you still didn't notice if they were there or not?

A. Well, I can't remember for sure whether...

Q. That's what I mean. It was such a, such an uneventful thing that you just don't remember.

BY THE CROWN:

All this line is cross-examination, My Lord.

BY THE COURT:

Yes, it is.

BY THE ACCUSED:

Oh, yes, it is.

BY THE COURT:

And the objection is maintained.

BY THE ACCUSED:

And the objection is maintained. And I support this objection.

Q. What is your personal knowledge of what happened after November first (1st)?

A. I don't understand the question, My Lord. What does after November first (1st) mean?

BY THE COURT:

If you don't understand the question, ask him to put the question more clearly.

BY THE ACCUSED:

Okay.

Q. Do you have any personal knowledge of me being arrested and searched by the police?

A. I have personal knowledge in the sense that I heard from other people in the University that... yes, I think it was Mr. Fabrikant had been arrested and searched.

BY THE CROWN:

Then it is not personal knowledge, My Lord. It is hearsay.

BY THE ACCUSED:

Q. But again, you are not sure. You are not sure whether you heard or not?

BY THE CROWN:

Unless he was a witness, this is not personal knowledge.

BY THE COURT:

Q. You were not a witness to Mr. Fabrikant's arrest?

A. No, My Lord, not at all. I heard people talk about it. That's all.

Q. Okay

BY THE ACCUSED:

This is what I am asking him.

BY THE COURT:

Then that's not personal knowledge.

BY THE ACCUSED:

I am asking if he heard from anyone...

BY THE COURT:

Heard about it...

BY THE ACCUSED:

... it is also personal knowledge. Personal knowledge is not...

BY THE COURT:

In the sense that he heard... in the sense that he heard about it...

BY THE ACCUSED:

Yes.

BY THE COURT:

... from other people. If I understand correctly what you're trying to establish, yes, it doesn't prove the truth of the fact, but it proves that he heard it said.

BY THE ACCUSED:

Yes.

BY THE CROWN:

And what was the point?

BY THE COURT:

Well, the point may be that Mr. Fabrikant was embarrassed by the situation and by the fact that the news of it was propagated about the University. That may be the point he's trying to make.

BY THE CROWN:

Well, shall we bring every people in the university to ask that question?

BY THE COURT:

I don't know. But if that's the point he's trying to make with the question.

BY THE CROWN:

I don't think it makes sense.

BY THE COURT:

... the question is valid.

BY THE ACCUSED:

I can explain the point. The Crown is trying every minute to interrupt the testimony so that the line of testimony be broken. That's all what they're doing. And I would appreciate the Judge to stop this kind of practice.

BY THE COURT:

The Crown, if he suspected that you were attempting to put hearsay evidence in, was quite correct. I suspect that what you're attempting to do is establish that it was common knowledge, at least among, or in certain echelons of the University, that you were arrested. If you have an argument to make in relation to that, you're permitted to follow this line.

BY THE ACCUSED:

I know that, and the Crown knows that. That it is about the one thousandth time that I am trying to establish just the personal knowledge of certain witnesses without trying to make it kind of a proof of the facts.

BY THE CROWN:

This is useless hearsay.

BY THE ACCUSED:

I have not finished yet. Would you please sit down.

BY THE CROWN:

I don't take orders from this person.

BY THE ACCUSED:

Would you please ask him to sit down until I finish.

BY THE CROWN:

He was finished, almost finished.

BY THE COURT:

Are you finished your argument?

BY THE ACCUSED:

No.

BY THE COURT:

No. Then would you sit...

BY THE ACCUSED:

Would you please ask him to sit down.

BY THE COURT:

... down until he finishes his argument.

BY THE ACCUSED:

And start behaving.

So I repeat, once again, that it is about the thousandth time I'm asking a witness about his personal knowledge of certain facts, because it is important for me to establish that it was a campaign to ruin my reputation and many people were informed about all these facts in a certain specific manner which ruined my reputation. And this is all I am trying to establish at this particular moment, and it is important. And the Crown knows this very well that this is legal and permissible, and each time, nevertheless, stands up and objects, and the only purpose is to interrupt the hearing, and later on to complain that we are spending so much Court time. Now, I am finished and I would like to hear what the Crown has to say.

BY THE CROWN:

This is useless hearsay, My Lord. I just told you we can ask the question to the fifteen (15) people at Concordia University. It leads us nowhere. We already have enough of the people that were witnesses of the incident. Even that, in my mind, is not very relevant.

BY THE ACCUSED:

Well, can I answer to this?

BY THE COURT:

If you wish.

BY THE ACCUSED:

Yes. What is useful and not useful for my defense, I hope it is I who decides. And whether he had it enough, I couldn't care less. I did not have it enough. And as long as I am legally allowed to ask those questions, I will be asking those questions.

BY THE COURT:

You will be allowed to ask that question. The Crown's objection is over-ruled.

BY THE ACCUSED:

And it would nice if the Crown stopped interrupting, too.

BY THE CROWN:

It would nice if the accused stopped making comments, My Lord. He's only entitled to ask questions and make motions.

BY THE ACCUSED:

Q. How was it explained to you, if you call, the reason for the arrest?

A. If I recall, it was explained that certain people thought that you might be carrying a concealed weapon on that day, and then it was explained to me that the police are not allowed to search anyone unless they're under arrest, or I guess unless they have direct probable cause, and therefore it was necessary to arrest you in order to search you to determine whether or not you were carrying a concealed weapon, that some people were afraid you were carrying.

Q. Okay. Do you remember who these some people were?

A. No.

Q. Do you remember who told you that?

A. No, that's what I'm saying. I don't remember who told me.

Q. But whoever told you, did that somebody tell you who exactly was concerned with the fact that I am carrying a weapon?

A. I can't really recall if they did or did not say who was concerned.

Q. Ha, ha, ha. Did you ask yourself?

A. No.

Q. You were so non-curious to know who is that...

BY THE CROWN:
This is cross-examination, My Lord.

BY THE COURT:
He says he didn't ask himself. End of it.

BY THE ACCUSED:
Yeah.

Q. Would you be kind enough why you didn't ask?

A. I don't think it mattered very much to me, to be honest.

Q. Is it often that you hear that a person was suspected to carry a weapon?

A. No.

Q. Do you usually try to find details of some unusual, very unusual events?

BY THE CROWN:
He got his answer, My Lord. This is cross-examination.

BY THE ACCUSED:
This is not cross-examination. It is just a very different question.

BY THE CROWN:
There are thousands of people that did not ask for this information, My Lord. I don't think we should bring them, all of them, and ask them the question, why they did not.

BY THE ACCUSED:
This is irrelevant if there are a thousand or if there are not a thousand people there. I have the right to ask what is his personal attitude to rare events, well, whether he usually asks questions, or not.

BY THE COURT:
Well, I have no idea what Mr. Bertrand was doing at that particular point in time.

BY THE ACCUSED:
So let him answer. That's all.

BY THE CROWN:
All this line is a waste of time, My Lord.

BY THE ACCUSED:
The Crown is continuing the same tactics. My question was legal.

BY THE COURT:
Would you repeat your question.

BY THE ACCUSED:

Q. Do you usually inquire when you hear about very rare events, for details, or you usually don't?

A. I think the answer is sometimes I do, and sometimes I don't. It probably depends on the situation.

BY THE CROWN:
And we don't care, My Lord. Why are we sitting here listening to these questions?

BY THE ACCUSED:
What, what should I do again? It will be interruption like this all the time?

BY THE COURT:
Well, he felt that the matter isn't pertinent. I have thus far permitted your question. So you should ask your next question and see what happens.

BY THE ACCUSED:

Anyway, the objection of type, and we couldn't care, I think this is not an objection at all. Because his personal caring or not caring... nobody cares what he cares about. Would that be permissible to say?

BY THE COURT:

Have you another question to put?

BY THE ACCUSED:

Yeah.

Q. Are you aware of the security measures taken after that?

A. After November of nineteen ninety-one (1991)?

Q. Yeah. After my arrest.

A. No.

Q. Do you have any knowledge, personal knowledge again, of any threats allegedly made by me towards any person?

A. Yes.

Q. Okay. What were they?

A. On the twenty-third (23rd) of June, you confronted Miss Elizabeth Horwood with a piece of paper which was a request to a permit, request for permission to carry concealed weapons.

Q. I ask you if you know any threats.

A. I considered that bullying and abusive behaviour on your part, and I considered it a threat.

Q. Were you present there?

A. No, no.

Q. Ha, ha, ha. What did I do? I presented this piece of paper to her, and this is a threat?

A. In my mind, a staff member does not need or should not be approached by a faculty member with a piece of paper that is a request to carry a concealed weapon when that person has already been, from all that I heard, frightened by that faculty member. So I considered it unacceptable behaviour.

Q. Ah, now we are at something new. So she was already frightened by me?

A. That's what I was told.

Q. Okay. So let us talk about previous threats then. What were those previous threats?

A. That I can't say, other than...

Q. Ha, ha, ha.

A. ... I was told that they were made.

Q. Ha, ha, ha. You are in charge of security. You were told that threats were made, and you never bothered to inquire what those threats were?

A. No, I was told on the twenty-third (23rd) of June, when I heard about your presentation of that piece of paper to Miss Horwood, that this was not the first time that she had been intimidated by you.

Q. All right. So you definitely asked her what were the previous times?

A. No, I did not.

Q. Would you kindly explain why you did not?

A. Because I didn't think that was relevant.

Q. Relevant to what?

A. To the fact that...

BY THE CROWN:

He's arguing with the witness, My Lord.

BY THE ACCUSED:

I am not arguing. I am just specifying.

Q. You thought it was not relevant...

A. Relevant to the fact...

Q. ... not relevant to what?

BY THE COURT:
Just a minute. Listen. You seem to think that you are putting a series of questions that are highly amusing to everybody. In so doing, you're interrupting the witness every time he tries to answer your question. You're cutting him off with guffaws of laughter and whatever. Now, would you please put your question to the witness, and listen to his answer.

BY THE ACCUSED:
Okay. Okay. First of all, I believe the witness did answer. I didn't interrupt him.

Q. Did I interrupt you, Mr. Bertrand?

A. Yes.

Q. Ah, okay. So would you kindly finish your answer to the question which you considered it irrelevant. Continue your answer, please.

A. I considered what had happened previously irrelevant in the sense that I was concerned about your unacceptable behaviour on the twenty-third (23rd) of June.

Q. Well, so, this this not an answer. My question is, if why you did not inquire the previous threats, why did you consider them irrelevant?

A. Because I was concerned with the threat made on the twenty-third (23rd) of June.

Q. Ah, you think that the fact the threat was not the only one, is irrelevant?

BY THE CROWN:
It's argument with the witness, My Lord.

BY THE COURT:
Yes, it is.

BY THE ACCUSED:
Okay.

BY THE COURT:
Objection maintained.

BY THE ACCUSED:

Q. Do you think that systematic threatening is more dangerous than an isolated threat?

BY THE CROWN:
It's still arguing with the witness, My Lord.

BY THE ACCUSED:
This is not arguing.

BY THE CROWN:
When he is not happy with the question, he argues and...

BY THE ACCUSED:
No.

BY THE CROWN:
... starts cross-examining the witness, My Lord.

BY THE ACCUSED:
This is just a different question.

Q. Do you find that a series of threats are less dangerous than an isolated threat?

A. I think it would depend on the situation.

Q. Okay. In my situation? I'm asking you a specific question.

A. I was concerned with your actions on the twenty-third (23rd) of June.

Q. You are not answering my question. Would you please answer the question.

A. Maybe I didn't understand your question.

Q. Well, my English is not that bad.

A. Well, if you'll repeat it, I'll try.

Q. All right. Do you find that a series of threats is less dangerous than an isolated threat?

A. I answered that, My Lord. I said it depends on the situation.

BY THE CROWN:
And this is a (inaudible), My Lord.

BY THE ACCUSED:

Q. And in my situation, how it was?

A. I was so appalled that any faculty member in the University would approach any staff member with a request for permission to carry a concealed weapon, that I was moved to ask people to take action on that day, irrespective of really what had gone on before.

Q. Ha, ha, ha. This is not an answer to my question. The question was, in my case, my previous behaviour, previous threats, were they important or were they not important, and he avoids constantly answering this question.

A. They were important, but not as important as your actions of the twenty-third (23rd) of June.

Q. Okay. If they were important, could you explain why you didn't investigate them?

A. I didn't say I didn't investigate them.

Q. Oh, you did. So share it with us.

A. There was a meeting at three o'clock (15:00) in the afternoon on the twenty-third (23rd) of June when we had heard that you had presented Miss Horwood with that request for permission to carry a concealed weapon, and how upset she was. There was a meeting held in Bishop Court, and at that meeting a number of people filled me in on some of the fears that other members at the meeting had about your behaviour, which added together with what I considered to be your completely unacceptable behaviour on that day, led me then to write a memo to the Rector, co-signed by the Vice-Rector, Academic, asking that you be suspended from the University without pay until such time as a psychiatrist certified that you were capable of returning to the University.

Q. Okay. I cannot get an answer to previous threats, can I?

BY THE COURT:
Well, you don't seem to ask the proper questions, do you?

BY THE ACCUSED:
All right.

BY THE COURT:
He told you that in the course of a meeting he became aware... now, I don't know whether he was aware before. You never asked him if he was aware before the twenty-third (23rd) of June of any threats that you may or may not have made.

BY THE ACCUSED:
I asked him. This is exactly...

BY THE COURT:
You don't... you see, there are many questions that you think you have asked but, in fact, you haven't asked at all.

BY THE ACCUSED:
Well...

BY THE COURT:
And that's why the witness has difficulty.

BY THE ACCUSED:
Ha, ha, ha. The witness has difficulty because he is

avoiding answering, not because...

BY THE COURT:

He's not avoiding answering.

BY THE ACCUSED:

Okay. My question was very simple. He said that before June twenty-first (21st) I also threatened Horwood. And I know I didn't. And I asked him what were those threats? And since he knows there were no threats, but he doesn't want to admit it, so he says he didn't investigate. This is the simple truth under...

BY THE COURT:

He didn't say that at all.

BY THE ACCUSED:

... underneath. No, I'm just explaining to you why he is avoiding.

BY THE COURT:

He didn't mention threats. He said that he was aware that prior to the twenty-third (23rd) Mrs. Horwood was rather concerned. That's what he said. In sum and substance, that's what he said.

BY THE ACCUSED:

Yeah. Okay. Let's play his tape.

BY THE COURT:

Let's just go on with the questions.

BY THE ACCUSED:

I request...

BY THE COURT:

No!

BY THE ACCUSED:

... the tape be played.

BY THE COURT:

No!

BY THE ACCUSED:

All right. Ha, ha.

Q. Okay. So on the twenty-third (23rd) of June was a meeting. Who was present at that meeting?

A. I was there, Dr. McKenzie, Me Freedman, Angela Wilson... Miss Angela Wilson Wright, and Miss Maureen Hubbie.

Q. All right. Who called that meeting?

A. I believe Dr. McKenzie, although she came to my office in the early afternoon and informed me of what had happened, and said she thought there ought to be a meeting, and I said I think I'd better go to this meeting, because I had not been terribly involved in any of this up to that point. The direct line of responsibility in the office of the Vice-Rector, Services, is the Associate Vice-Rector, Dr. McKenzie. The Director of Security reported to her directly. But I said, I'll go to that meeting. And I did.

Q. Okay. So what was the agenda of that meeting? Do you have any notes...

A. To discuss what to do...

Q. ... of that meeting?

A. No, no. There were no notes taken.

Q. Why?

A. Because it was not a meeting that required notes. It required a decision as to what action, if any, should be taken, in response to your action of the twenty-third (23rd) of June.

Q. Shouldn't you take a note of what, who was invited, what was the agenda? So there was nothing absolutely?

A. No.

Q. Okay. Who was presiding the meeting?

A. Well, since I'm the Vice-Rector, it sort of falls to me.

Q. But you were not the one who called the meeting?

A. Well, Dr. McKenzie and I together, I would say, called the meeting.

Q. Okay. So, was Mrs. Horwood there present?

A. No.

Q. Okay. Why didn't you invite her?

A. The point of the meeting had little to do with her.

Q. Well, wasn't the reason for the meeting that I threatened Mrs. Horwood with a piece of paper? Ha, ha, ha.

A. Precisely.

Q. So shouldn't she be there, to testify as to how I threatened her with a piece of paper?

A. She had already done that to Dr. McKenzie. We didn't need to make her go through that again.

Q. All right. But you... did you or didn't you, to establish that there were previous threats, too?

A. Dr. McKenzie, I believe, was the one who informed me of the previous problems that Miss Horwood had had with you.

Q. All right. So what were they?

A. Intimidating, bullying tactics.

Q. Well, this is judging... would you please be specific in terms of fact? Again, I threatened her with paper? I threatened her with a paper clip? What was it? With a stapler? What did I threaten her with?

A. I don't think anyone... I don't think anyone went into any detail.

Q. Well, aren't you supposed to establish facts?

A. I did have a fact.

Q. Well, that was one fact. How about the other facts? Did you establish any?

A. I established that there was a pattern of fear in the Department of Mechanical Engineering, and in particular, a pattern of fear in Ms. Horwood. And beyond that, as I said to you earlier, your actions on the twenty-third (23rd) of June were so unacceptable in my belief that that alone warranted a request for your suspension.

Q. You're not answering my question again. Did you or didn't you establish other facts?

A. No.

Q. No. That's it. Now, are you aware that everyone who needs a gun permit needs a recommendation from employer?

A. I am now.

Q. But at that time you were not aware of that?

A. That's right.

Q. So maybe we would like to apologize and to say that I did nothing wrong except that what is prescribed by the rules and regulations. I asked for such a recommendation. Would you like to apologize then?

BY THE COURT:
That question is out of order.

BY THE ACCUSED:
Okay. I will rephrase it then.

Q. When did you learn that a recommendation of the employer is an absolutely necessary part for any obtension of gun permit?

A. Probably on the... at the meeting on the twenty-third (23rd) of June.

Q. Well, then, if you learned it on the twenty-third (23rd)

of June, why then did you consider my behaviour unacceptable? I did only what was required by regulation. Didn't I?

A. No, Miss Horwood was not your employer.

Q. Well, I didn't... did I ask her to sign it?

A. I'm not sure. I wasn't there.

Q. Ha, ha. Why didn't you clarify who I asked to sign it? I submitted... did I submit it to her as the secretary to the Chairman, and asked the Chairman to sign it?

A. It didn't matter to me. I considered your behaviour unacceptable.

Q. You're not answering my question.

A. I still do.

Q. Did I or didn't I ask the Chairman to sign it? I don't ask your evaluation of my behaviour.

A. I don't know.

Q. Well, shouldn't you ask that?

A. I didn't consider waving that permit a request for permission acceptable. Period.

Q. I'm not asking you what you consider. I'm asking you, did you or didn't you ask whether my request was that she submit it to the Chairman for signing? Period.

A. No.

Q. No. Should you?

A. No.

Q. You shouldn't. All right. But since you now do know that all I was asking her, that the Chairman sign it, then my behaviour is all right?

A. No.

Q. No. What is wrong then in my behaviour if I, ha, ha, ha, ask the secretary of the Chairman, to submit some document for the Chairman to sign, what is wrong with that?

A. The least you could have done is put it in a confidential envelope and asked her to deliver the confidential envelope to the Chair, rather than frightening the woman, as you did.

Q. All right. Now, why... could you explain me why should it be confidential? What is so confidential in getting an arm permit?

BY THE COURT:

Listen, this is degenerating into an argument over the procedure that was followed, and it will advance us not a bit. Move on.

BY THE ACCUSED:

No, it is not degenerating in anything.

BY THE COURT:

Move one to something else.

BY THE ACCUSED:

It is just making the witness to look as silly as he possibly can. That's all.

BY THE COURT:

Move on to something else.

BY THE ACCUSED:

Ha, ha, ha. Okay.

Q. Should one be ashamed that... and hide the fact that he is buying a firearm?

BY THE COURT:

Let us leave the question of the firearm permit and move on to something else?

BY THE ACCUSED:

Well, the firearm permit is important. It's extremely important. And I need to finish this...

BY THE COURT:

What do you need to establish... what are you attempting to establish at this point?

BY THE ACCUSED:

All right. You want me to explain to you what I want to establish. That would be very good. Now, I want to establish the following, that Mr. Bertrand knew very well that all I did was submit this document for the Chairman to sign, because that was the requirement and he knew it very well, and he knew very well that I did nothing wrong, and nevertheless, he also claimed that I did some previous threats and he cannot specify any of those because this is a lie. And you just don't allow me to point it out to the jury.

Next, what I want to establish is that taking into consideration that I did absolutely nothing wrong in submitting this paper for signing, his letter to the Rector that I be suspended as a danger to the University had no foundation whatsoever. And if this letter has not been yet produced... has it been produced yet?

A. It's in the file Dr. McKenzie brought.

Q. Mr. Belleau, has it been produced yet?

BY Me BELLEAU:

Not by me certainly?

BY THE ACCUSED:

I am not asking by you. You are making notes. Do at least something to justify your thousand dollars (\$1,000.00) per day salary, would you? Could you do me such a favour?

BY THE COURT:

Are you finished?

BY THE ACCUSED:

No. I want to know if it has been filed. If not I would like to file it.

BY THE COURT:

I thought we were on the subject of the pertinence of your last question, at least that's where we were the last time I looked. We were not on the question of Mr. Bertrand's letters or anything else, which may be related, but which has nothing to do with what we are discussing at the moment.

BY THE ACCUSED:

Yes.

BY THE COURT:

We are discussing the pertinence of this line of questioning.

BY THE ACCUSED:

Well, the pertinence was very simple, that the University embarked once again on a campaign of defaming and this time in front of the police and the University community, both. Because there is no doubt that this meeting was very widely publicized in the University, and the fact that I requested firearms was displayed in the most atrocious way. There is no doubt in my mind that if really the way it was presented to the University community that I threatened Mrs. Horwood with this piece of paper, nothing could be more a outrageous lie than that. So it is just additional proof as to how the

University tried to malign my reputation.

BY THE COURT:

Well, these are two things. Thus far we're getting nowhere because you obviously have your view, and Mr. Bertrand has his view. And as I understood Mr. Bertrand's testimony, he took exception to the manner in which you presented the permit for signature, rather than the fact that the permit, per se, was presented for signature. And that was the essence of his last answer. Now, if you wish to establish what you've said you wish to establish, you would be far better off going ahead and moving on to the other elements of your theory rather than attempting to wring from him an admission that because you were technically within your rights to ask your employer for a permit, you did nothing wrong, because he's told you what he considered reprehensible in your behaviour.

BY THE ACCUSED:

Well, this is my question was about, that why I needed to be in a confidential letter, because the manner in which I presented it was absolutely correct. It was not a secret document. It was not a confidential document. I didn't plan to commit any crime. I just brought this paper and gave it to her. It's as simple as that.

BY THE COURT:

You will not, first of all, testify from there, and you're not testifying. What you're doing is talking. He has taken the view that you should have done it otherwise.

BY THE ACCUSED:

Well...

BY THE COURT:

That's his testimony. Now, you can't...

BY THE ACCUSED:

That's all right. I'm asking why...

BY THE COURT:

... you can't take Mr. Bertrand's testimony away from him. That's what he said, you should have proceeded otherwise.

BY THE ACCUSED:

Well, so my question is absolutely legal why I should have proceeded otherwise.

BY THE COURT:

No, because...

BY THE ACCUSED:

There's no secret about this submission of a gun permit.

BY THE COURT:

He has told you what he said. Now that's the end of that particular question. If you've got something else, move on.

BY THE ACCUSED:

Okay. So if witness is in a difficult position, you are trying to say ... is not allowed. All right.

BY THE COURT:

The witness... you know, whether the witness is in a difficult position the jury is perfectly competent to decide.

BY THE ACCUSED:

Well, I strongly believe so. This is not the first time I'm disallowed at a critical moment to pose any questions. All right. So I cannot go into detail as to

what was wrong in the manner in which I was presenting.
Right?

BY THE COURT:

You'll be wasting our time if you do. Go on to something else.

BY THE ACCUSED:

Well, that is your opinion. I have a different opinion.

Q. Now, may I see the letter you mentioned? Can I read it?
Can I read it aloud?

BY THE COURT:

It will find its way into the record, I suppose.

BY THE ACCUSED:

No, but can I read it?

BY THE COURT:

If you require to read it for the purpose of asking a question, but I can't... I would presume that you can ask your question without reading it aloud.

BY THE ACCUSED:

Ha, ha, ha.

Q. First of all, this is not just from you. This is also from Sheinin. Was she present at the meeting?

A. No.

Q. No. So could you go into detail as to how you... what... it was decided at the meeting to write this kind of memo to the Rector. Correct?

A. Yes.

Q. Could you describe the argumentation behind that? Why was it necessary to suspend me as a threat to the University?

A. I don't recall, of course, the precise discussion, but I can tell you that in brief it was to my view in particular, that after I had been told by some of the people around the table of the fears expressed by members of the secretarial staff in Mechanical Engineering, by the fears expressed by the members of the secretarial staff in the Vice-Rector, Academics' office, by the Vice-Rector, Academic's own fears about your bullying behaviour, it became, I think, my feeling and I think then I persuaded most of the people in the room to go along with it, that it would be in everybody's best interest, including yours, if we tried to put a stop to that kind of behaviour, and to have you learn how to be civil and respectful in your dealings with other members of the University community, and I felt that the best way to do that was to bring you up short by suspending you with pay, and have you see a psychiatrist, because it seemed that you did not understand the basic set of civil behaviours that we generally use at the University.

Q. Would you please be... I asked you about facts. Would you please stick to the facts. What exactly was said? Who said what?

A. I don't remember.

Q. Ha, ha, ha. That's that. Spectacle number what, one hundred twenty-seven (127). He doesn't remember a single thing, whoever said what. But he made a long speech at my bullying behaviour and me being this, and me being that, and he cannot support with one single fact what he said.

Would you please support what you said with facts?

A. I have a fact. I've said it three or four times. I'll repeat it again. You waved a piece of paper in front of

a secretary and intimidated her.

Q. How I waved? Did you ask her exactly? What did I do?

A. I did not ask her.

Q. So how do you know that I waved?

A. Because Dr. McKenzie reported to me what you did, as told to her by Elizabeth Horwood.

Q. Okay. How was it done? It was your understanding what exactly it means wave? What did I do? Would you please look at me. Like this? What does it mean wave? Or I tried to smash her with this piece of paper, or I did like this something? What did I do?

BY THE COURT:

The witness has told you he wasn't there. You are using this to make a spectacle.

BY THE ACCUSED:

He is behaving so stupidly that it is a spectacle. It's not me.

BY THE COURT:

Hardly, hardly.

BY THE ACCUSED:

Well, I believe each of us has his own brain to undertsand...

BY THE COURT:

Yes, that's right.

BY THE ACCUSED:

... who is doing what here.

BY THE COURT:

That's right.

BY THE ACCUSED:

Q. Now, if you consider that there was something threatening, you should ask how it was waved, and why waving is threatening. Shouldn't you?

A. It was described to me by Dr. McKenzie that not only did you wave it, but you laughed and said, look what I have. Look what I'm going to get. Something of that sort, My Lord, was told to me by a second person.

Q. Ha, ha, ha.

A. That was enough to convince me that it was bullying tactics.

Q. This is something new. So I came myself, look, what I have. Look. Ha, ha, ha. You are writing a memo requesting that someone be suspended without even going into facts, into finding out what really happened. Do you realize that this is a reckless behaviour? Do you?

A. I considered it very responsible.

Q. Do you realize that behaving like this, you are inviting violence?

A. Never.

Q. Never. Do you know what happened at Concordia on the twenty-fourth (24th) of August?

A. I was there.

Q. So, not never. It did happen August twenty-fourth (24th). The violence was not just invited. It was forced.

BY THE COURT:

You'll ignore that last statement.

BY THE ACCUSED:

Now, you're saying that it is appropriate to recommend someone's suspension without going thorough into details as to what happened, how it happened, listening to the other side of the story. Do you think all this necessary

for natural justice?

A. I thought that natural justice, as you term it, could be accomplished after the fact. We had lots of time.

Q. So this is the logic? Shoot first, ask questions later. Right? Do you think that it is possible first to suspend a person, then to ask him questions?

BY THE CROWN:

All this line is cross-examination, My Lord.

BY THE COURT:

Yes, it is. Yes, it is.

BY THE ACCUSED:

Okay. I will change it.

Q. In what order usually a procedure of suspension goes? First, you have to investigate the facts, then recommend suspension, or to recommend suspension first and to investigate the facts?

BY THE CROWN:

He's got his answer, My Lord. He's arguing about the witness as he usually does, you know.

BY THE ACCUSED:

I'm not arguing anything. I am just asking now what is his interpretation of usual procedure.

BY THE COURT:

He has told you what the procedure was that was followed, and he has explained to you why he made the recommendation that he made, along with Sheinin on the day in question. The objection...

BY THE CROWN:

Even then, My Lord, the witness... each single witness has always to answer why he did something or why he did not do something. We're sidetracked. They are here to... they are his witnesses, and once they testify to fact, that should be end of it.

BY THE COURT:

Yeah, you're right.

BY THE ACCUSED:

Well, what, I cannot ask the witness why he did that?

BY THE COURT:

It depends on the circumstances.

BY THE ACCUSED:

So in these circumstances I think it is very natural to ask why. Very natural. Because I think it is patently clear to anyone that question why not to ask and to investigate. It is a very serious action.

BY THE COURT:

In this instance you have asked the witness what he did, and on what he based his decision, and he has told you. That's the end of it. So the objection is maintained.

BY THE ACCUSED:

Well, because the question, why, he just cannot answer, and you are trying to save him. All right.

BY THE COURT:

Twelve-0-five (12:05).

BY THE COURT:

Q. Now, do you know that I threatened in exactly a similar manner several days later the secretary of the Rector?

A. No.

Q. Well, do you know that after the Chairman refused to sign it, I brought the same piece of paper to the office of the Rector, and left it with the Rector's secretary to sign it? Could you explain why, when I came to the

Rector's secretary it was not a threat? There was nothing wrong with that. When I came to the Department secretary, ha, ha, ha, it was such a threat that I needed to be fired?

A. The memo of the twenty-third (23d) of June does not call for your firing.

Q. Oh, oh.

A. It calls for a suspension.

Q. All right.

A. And it is my understand that when you delivered the request to the office of the Rector, you did it in a simple straightforward manner with no bullying and intimidating tactics. You will note, however, that that request on your part received a no from the Rector and resulted in my writing the Suret, on the fourteenth (14th) of July requesting that they not give you a gun permit.

Q. So now you do know that I delivered it to the secretary of the Rector. Just a second ago you said you didn't know that?

A. No. I didn't answer that. I answered a question about did I know how you did it.

Q. So why, ha, ha, ha, why would I do it in any different manner with the secretary of the Department than with the secretary of the Rector?

BY THE COURT:

How can...

BY THE ACCUSED:

If I am bullying...

BY THE COURT:

How can the witness know why you would do anything in a different manner from one day to the next?

BY THE ACCUSED:

Okay.

Q. So was it... was it Horwood who said that I came to her and said, look what I have? Just look what I have. Something like that? Ha, ha, ha.

BY THE CROWN:

It has been covered, My Lord.

BY THE COURT:

Yes, it has.

BY THE ACCUSED:

Ha, ha, ha. All right.

Q. But since you knew that employer's signature is one of the requirements, then why a person should be suspended who did nothing absolutely illegal?

A. Would you repeat the question.

Q. Yeah. Since you knew on June twenty-third (23rd) that employer's signature is one of the requirements, so then why employee should be suspended if his employee did nothing illegal?

A. As it says in the letter, the memo that I wrote... Dr. Sheinin and I wrote to the Rector:

"We preceive you as presenting an immediate and continuing threat to the members of the University because of the way you acted on that day, and the things that were told to me about your behaviour at other times."

Q. Okay. What was behaviour at another time? I am trying

for half an hour to extort from you, what was my behaviour in another time, and you're kind of too shy to tell us. What was my behaviour in another time?

A. Well, you had to be searched. You had to be arrested and searched at a Senate meeting. You told me that this morning.

Q. Oh, oh, oh, oh. So it was my fault that I was arrested and searched. Right? I did something wrong on November first (1st)?

BY THE COURT:

You asked the witness...

BY THE ACCUSED:

Let him answer, please.

BY THE COURT:

You asked the witness to detail what the other things that were discussed at that meeting were...

BY THE ACCUSED:

Yes.

BY THE COURT:

... in addition to doing whatever you did when you presented the gun permit application to Horwood. He's told you what. He said, well, you had to be arrested and searched at a Senate meeting.

BY THE ACCUSED:

Well...

BY THE COURT:

That's one of the things he considered. We are not going into his judgment, or the reasons for his judgment on whether... on who is responsible for what. I couldn't care less.

BY THE ACCUSED:

Well...

BY THE COURT:

Now, if you have any other things that you wish to ask him about what he considered, or what they considered at that meeting, ask him the question.

BY THE ACCUSED:

Well, I'm asking him a question.

BY THE COURT:

Yes, but you're now attempting to engage the witness in an argument over who's right and who's wrong, vis-a-vis what happened at the Senate meeting, and you will not do that.

BY THE ACCUSED:

No, I am asking him a different question.

BY THE COURT:

No, you're not.

BY THE ACCUSED:

Okay. Try me.

BY THE COURT:

I just told you that last question is disallowed.

BY THE ACCUSED:

So I am asking different questions.

Q. What was threatening in my behaviour on November first (1st), nineteen ninety-one (1991)?

A. Obviously some people felt threatened.

Q. Oh, this is not an answer. You recommended my suspension. So you, who signed it, should know what you are signing. And since you signed it you should be sure that on November first (1st) I did something wrong. Shouldn't you?

A. I don't think it's quite that simple. It's not a question of right or wrong. It's a question of your behaviour over the years as reported to me in the meeting of the twenty-third (23rd) of June, the way you frightened a number of people in a number of offices. And that's what I think is important.

Q. He's totally avoiding the question.

My question was, should you or shouldn't you before signing this document be sure that I did something wrong? You mentioned November first (1st). So would you please stick to this particular part, November first (1st). What made you think that I did something wrong on November first (1st)?

A. I didn't have to think about whether you did something right or wrong on November first (1st). People reported to me their concerns. It is my responsibility in the University to insure that everyone behaved in a civil and appropriate matter. You were not doing that, and on the twenty-third (23rd) of June you definitely didn't do that, and that's why I wrote the memo. It has nothing to do with November first (1st).

Q. But you mentioned November first (1st), not I.

A. Because you asked me for a fact.

Q. Yeah. You said November first (1st), and I asked what in this fact was threatening. And you're avoiding constantly answering this question.

A. I said some people found it threatening.

Q. You signed the document.

A. That had to do with the twenty-third (23rd) of June.

Q. You signed the document by using other facts and one of them was November first (1st). Then you should make sure that some peoples' concerns, as you say, were well-founded. Did you or didn't you make it?

A. Oh, I thought they had every reason to search you, once they explained to me what their fears were on the twenty-third (23rd) of June.

Q. Okay. So explain to all of us what their fears were.

A. They thought you were carrying a weapon.

Q. Okay. Why did they think so?

A. You had made threats.

Q. Okay. What kind of threats did I make?

A. Threatening peoples' lives, as I understand it.

Q. Well, yes, names, please?

A. I don't know names.

Q. Ha, ha, ha. That's nice. So I threatened peoples' lives and you never bothered to inquire who exactly I threatened, did you?

A. Not in the past, no.

Q. But before signing this document, shouldn't you inquire who exactly I threatened?

A. You threatened Miss Horwood. That's all I needed.

Q. What did I threaten? Did I tell her I'm going to shoot her? What did I tell her I threatened her?

BY THE CROWN:
This was covered, My Lord.

BY THE COURT:
Yes, it was.

BY THE ACCUSED:
All right.

Q. You said I threatened a number of people. Tell about this number. Who were they?

A. I just told you, I don't know.

Q. Well, how dare you then say that I threatened a number of people, if you cannot name any names?

BY THE CROWN:

This is cross-examination, My Lord.

BY THE ACCUSED:

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behaviour, about all these niceties and goodies. Now this person here dares to say that I threatened lives of a lot of people, and of the question, who exactly, he says, I don't know, now, is this a civilized behaviour?

BY THE COURT:
I'm not here to answer that question.

BY THE ACCUSED:
No, I'm not asking this question to you. I'm saying that question should be permitted. That's all. Because the witness is behaving in a totally reckless way.

BY THE COURT:
Well, that's your interpretation of how the witness is behaving. Perhaps others don't share your view.

BY THE ACCUSED:
Well...
BY THE COURT:
As far as I'm concerned...

BY THE ACCUSED:
... let us take a vote.
BY THE COURT:
No, let's not take a vote.

BY THE ACCUSED:
Yeah. ...
BY THE COURT:
As far as I'm concerned the witness is answering the question, and has answered the question.

BY THE ACCUSED:
Has answered the question?
BY THE COURT:
Yes. The witness has answered the question.

BY THE ACCUSED:
Okay.

Q. Who did I threaten?
BY THE CROWN:
The answer was given to that, My Lord.

BY THE ACCUSED:
I don't know. Well, shouldn't you know about it? If you heard that I threatened someone's life, shouldn't you ask who exactly was threatened?

BY THE CROWN:
All that was covered, My Lord.

BY THE COURT:
It was covered, and the witness has told you what his particular preoccupation was on the twenty-third (23rd), and you have his answer. He's explained it. I'm not going to paraphrase it for you. He's explained it. He's said it. It's been said at least three times.

BY THE ACCUSED:
Yeah. Okay.

Q. So why didn't you bother to ask who exactly I threatened? Life, it's something very, very serious if somebody's life is threatened. Why didn't you ask whose life was threatened?

A. I was concerned about Miss Horwood. And I guess that's "point final". I wasn't concerned about any others at that point.

Q. But if other lives were threatened, other lives is less valuable than that of Miss Horwood?

BY THE CROWN:
This is cross-examination.
BY THE COURT:

It is, and it's not what the witness said.

BY THE ACCUSED:

Okay. I need to rephrase it.

Q. Why weren't you concerned with the lives of other people then?

A. I was concerned with getting you into a psychiatric... under psychiatric care, and out of the University. That's what I was concerned with.

Q. Ha, ha, ha. You are not answering my question.

BY THE CROWN:

That's a very good answer, My Lord.

BY THE ACCUSED:

Q. Would you please answer the question, why weren't you concerned with other threats? It was threats to life.

BY THE COURT:

The witness never said that he wasn't concerned with other threats.

BY THE ACCUSED:

Okay.

BY THE COURT:

What the witness said was I had sufficient, having regard for what I heard about Mrs. Horwood's appreciation of what had transpired in front of her, that when I discussed with the people I discussed with, I drafted that memo. That's what he said. He's been saying that for three-quarters of an hour.

BY THE CROWN:

And the memo is there whether the accused likes it or not, My Lord.

BY THE ACCUSED:

That's it?

BY THE COURT:

That's it.

BY THE ACCUSED:

So my question still stands.

BY THE COURT:

No, your question doesn't still stand. Move on to your next question.

BY THE ACCUSED:

Okay.

Q. Did you ever try to find out who exactly was threatened?

A. I don't believe so. I don't believe so, although... no, I think maybe Dr. McKenzie was trying at one point, but I did not.

Q. What does it mean? You said that you couldn't care less? On the one hand, I would like to file this.

BY THE COURT:

Go right ahead.

BY THE ACCUSED:

On the one hand, on June twenty-third (23rd) you write a memo requesting that I be suspended immediately. It means that you are tremendously worried. Right?

A. No, I wasn't worried. I was more upset with your behaviour.

Q. But you were not worried that someone is in danger really? Were you?

A. No, I have to admit that it never occurred to me in my wildest dreams that anyone at the University would ever kill anybody.

Q. Okay. Then what was the point to suspend me if you felt that nobody was in danger?

A. To teach you how to behave. It's not a question of danger. It's a question of proper behaviour to people.

Q. Oh, oh. So you lied here when you said that you feel that I am a threat to the University? Did you?

A. No.

Q. But you just said that you didn't feel that I am a threat?

A. No, that's not what I said.

Q. All right. So clarify that.

A. I said I didn't think anybody would kill anybody.

Q. What does it mean a person is a threat? How do you understand a person is a threat?

A. A person can be threatening in abusive and psychological as well as physical ways.

Q. Well, so what did you mean when you write the person is a threat to the University, what did you mean then?

A. Well, since you had presented a gun permit, it struck me that you might just... it's hard for me to accept, that you might actually use it.

Q. All right. So you thought that I will kill somebody. Right?

A. It was a possibility.

Q. All right. So this is why this memo appeared?

A. No, it really appeared to teach you how to behave more than anything else.

Q. Did you or didn't you think that I can kill somebody at the time of writing this memo?

A. No.

Q. No. So how then you wrote that I am a threat to the University?

BY THE CROWN:
I think we've been on the subject for long enough, My Lord. The memo is there. All the rest is a question of...

BY THE ACCUSED:
The memo is there. There's nothing to do...

BY THE CROWN:
The jury will make...

BY THE ACCUSED:
Let us stop saving a witness in a difficult situation. Let the witness answer.

BY THE COURT:
I'll permit the last question.

A. I don't feel in a difficult situation.

BY THE ACCUSED:
So answer then.

A. I did. I did once, and I'll do it again. Threats can come in all sorts of manners. Miss Horwood was extremely upset by your behaviour. It is my firm belief that we do not, at the University, tolerate the kind of behaviour that causes people to have psychological trauma or any other kind of trauma. And I thought you should be removed from the University and put under a psychiatrist's care so that you could learn how to behave and then you could be brought back into the University community.

Q. Ha, ha, ha. But you never bothered to ask whether in reality this is what I did or didn't do. You just heard one side of the story. Right?

A. I don't understand the question.

Q. Okay. Have you ever heard that natural justice requires to hear both sides.

BY THE CROWN:
This is argument, My Lord, and leading, and cross-examination.

BY THE ACCUSED:
Nothing arguing and not leading. This is not my...

BY THE COURT:
Why don't you ask the question directly.

BY THE ACCUSED:

What?

BY THE COURT:

Never mind the principles of natural justice. Ask the question you want to ask him directly. Did you...

BY THE ACCUSED:

Well...

BY THE COURT:

... did you speak to me? There you are.

BY THE ACCUSED:

Well, I think I asked the same thing.

BY THE COURT:

No, you didn't.

BY THE ACCUSED:

Ha, ha, ha. Right?

BY THE COURT:

He wants to know why you didn't consult him.

A. Because, as it says in the Collective Agreement, My Lord, when it's a question of a continuing threat, immediately continuing threat, you don't have time and you don't need to take the time to talk to the person considered to be the threat. First remove the threat from the premises, and then time is allowed for discussions and so forth.

BY THE ACCUSED:

Q. But if it is that kind of threat, then isn't it necessary to find out whose life was threatened? You knew that somebody's life was threatened. Right?

A. I had heard rumours...

Q. Okay.

A. ... and discussions.

Q. Did you take it seriously?

A. Not as seriously as I should have, I guess.

Q. Okay. What kind of rumours did you hear?

A. The kinds of rumours that said you had talked about solving things the American way, and that sort of...

Q. Who said that?

A. I have no recollection.

Q. Ha, ha, ha. Aren't you the Vice-Rector in charge of security?

A. Yes.

Q. And if someone tells you something like this, isn't it your duty to remember it?

A. I don't think so.

Q. Isn't it what you are paid for? Is it?

A. No.

Q. No. So when you hear someone telling that Fabrikant threatened, you don't feel that this is what I am being paid for, to immediately write it down, who said what and when?

BY THE CROWN:

This is cross-examination, My Lord.

BY THE ACCUSED:

No, I am asking his duties.

BY THE COURT:

No. The manner in which you are asking the questions is...

BY THE ACCUSED:

Okay. I'll change the manner.

BY THE COURT:

... is cross-examination.

BY THE ACCUSED:

All right.

BY THE COURT:

So the objection is maintained.

BY THE ACCUSED:

I will ask it differently.

Q. When someone tells you that Fabrikant threatened the life of somebody else, shouldn't you immediately take a piece of paper and write it down who threatened when, how, and all the details, as Vice-Rector in charge of security? Should you or shouldn't you do that?

A. If it were that... told to me that directly with that kind of detail, yes.

Q. Okay. So what was told to you?

A. What I just told you, rumours and innuendos.

Q. Well, every rumour has its origin, doesn't it?

BY THE CROWN:

It's a question of argument, My Lord.

BY THE ACCUSED:

Q. Okay. Did you try to get to the origin of those rumours?

A. When? When are you asking about, the twenty-third (23rd) of June?

Q. The twenty-third (23rd) of June or soon after that.

A. I don't think so. I didn't. I think Dr. McKenzie was working on it, as I say. She was in charge of security.

Q. If you were so concerned, why didn't you do that?

A. Well, it wasn't my job. Other people's jobs are to do that. My job was to write the letter to the Suret,, which I did. My job was to try to get you suspended, which I tried to do.

Q. Ha, ha, ha. Did it ever cross your mind that if you tried to suspend a person who did nothing wrong...

BY THE CROWN:

This is an illegal question, My Lord. It should be the usual stuff for the last question.

BY THE ACCUSED:

Let me finish with the question first.

BY THE COURT:

Don't answer the question when you hear it.

BY THE ACCUSED:

Q. Did it ever cross your mind...

BY THE CROWN:

This is the stuff about inviting violence, My Lord. We heard that many times.

BY THE COURT:

Put your question.

BY THE ACCUSED:

It's again interruption. I would like you to explain the rules of civilized behaviour to the Crown. Have him stop interrupting me.

BY THE COURT:

Please don't invite me to make a comment on that last observation. Now, put your question.

BY THE ACCUSED:

Q. Did it ever cross your mind that by suspending someone without a proper investigation, this someone might get so angry that come and shoot you dead? Did it ever cross your mind?

BY THE COURT:

Mr. Lecours, is there an objection to that?

BY THE CROWN:

Of course. I just worded it. But the answer is, no. So I might as well...

BY THE ACCUSED:

Well, what is wrong in my question?

BY THE CROWN:

The waste of time is the asking of the question, My Lord. It's not the answer.

BY THE COURT:

Answer the question.

A. No.

BY THE ACCUSED:

Q. No. Do you know now better?

A. No.

Q. No? You would do everything the same way you did it?

BY THE CROWN:

This is nastiness, My Lord.

BY THE COURT:

Yes, it is.

BY THE CROWN:

This is not questioning.

BY THE COURT:

You're not required to answer that. That last question is disallowed.

BY THE ACCUSED:

Okay.

Q. Did Mrs. McKenzie ever told you that Fabrikant has threatened to kill a lot of people in my presence?

A. I don't recall.

Q. Ha, ha, ha. Now, every normal judge in this situation immediately declare this witness hostile.

BY THE COURT:

Why?

BY THE ACCUSED:

I said that in this situation, without even me asking... okay. I invoke Section 9.

BY THE COURT:

Well, invoking Section 9 won't help you.

BY THE ACCUSED:

Okay. Common Law. The witness says that he was so concerned with the well-being of the University. Now, the witness is the Vice-Rector in charge of Security, so he should be concerned with the University security, not just a human being, whatever his human qualities are, but he is supposed to be in charge of security because he is paid for that.

Now, supposedly McKenzie tells him that now it is not a rumour. I know. I've heard it that Frabrikant in my presence said that he is going to shoot a lot of people. Now, and he claims, faking memory, that he cannot recall whether McKenzie told him so or didn't. Now, can you believe that?

BY THE COURT:

He has said that he heard a lot of rumours and innuendos. He said consistently...

BY THE ACCUSED:

This is not a rumour. I'm sorry.

BY THE COURT:

He has said consistently that he is unable to attach any particular one to any particular person.

BY THE ACCUSED:

But this is...

BY THE COURT:

So, no, I'm not going to declare the witness hostile on that basis.

BY THE ACCUSED:

This is not a rumour. A rumour is when someone comes and says, I don't know when, I don't know who, I don't how. This is a rumour. This is testimony, first thought, first-hand knowledge. McKenzie should have, if... she testified here, too... you remember her testimony, and the jury remembers her

testimony, now, if this is true what she said here, first of all, wasn't she obliged immediately to inform...

BY THE COURT:

I have no idea, Mr. Fabrikant, who was obliged to do what.

BY THE ACCUSED:

Let me finish my logic.

BY THE COURT:

I have no idea who did what.

BY THE ACCUSED:

Let me finish my logic.

BY THE COURT:

And your logic, unfortunately, is your usual logic. It sees everything in black and white, and it sees no shades of gray. It sees no nuances for the different ways people recollect circumstances. And people recollect circumstances in very, very different ways, and some memories are much, much better than others. Some memories are good on one point and very bad on others.

BY THE ACCUSED:

Now, I assume for a second that he remembers that not only I waved this piece of paper, but I allegedly said something like, look what I have. This kind of minute detail he remembers, and he does not remember whether McKenzie, at that time when he was so concerned, told him, look, I have not a rumour. I have fact. He said it in front of me. And he doesn't remember that.

BY THE COURT:

So what?

BY THE ACCUSED:

You believe that? You believe that?

BY THE COURT:

It's not a question of what I believe or what I don't believe.

BY THE ACCUSED:

It is a question.

BY THE COURT:

It isn't.

BY THE ACCUSED:

If you don't believe, then the witness is faking.

BY THE COURT:

I'm not going to come to the conclusion that the witness should be cross-examined at large. I don't come to that conclusion.

BY THE ACCUSED:

But do you believe that the witness could possibly not remember that?

BY THE COURT:

What I believe is of no moment.

BY THE ACCUSED:

It is. Because if you...

BY THE COURT:

But I'll tell you one thing, regardless of what I believe, in the circumstance, I'm not satisfied that the witness is trying not to answer your questions, and you will not get permission to cross-examine at large under the Common Law rule.

BY THE ACCUSED:

So you just...

BY THE COURT:

Have you any further questions for Mr. Bertrand?

BY THE ACCUSED:

Oh, yes. Oh, yes.

BY THE COURT:

Okay. Fine. So we'll adjourn until two-fifteen (14:15).

(THE JUDGE LEAVES THE BENCH)

(THE JURY LEAVES 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)

CHARLES BERTRAND

UNDER THE SAME OATH

EXAMINATION BY THE ACCUSED: (CONT)

- Q. Do you know about the existence of Code of Conduct?
- A. Which Code of Conduct?
- Q. Any Code of Conduct.
- A. Yes.
- Q. Do you know if someone misbehaves then an appropriate place to file a complaint is Code of Conduct, non-academic?
- A. That's one of the possibilities, yes.
- Q. So why there was never any complaint on my behaviour to the Code of Conduct?
- A. I don't know.
- Q. Why didn't you file one?
- A. By the time I got involved in the situation I thought suspension was called for.
- Q. Okay. So it means that the Code of Conduct could not deal with that. Correct?
- A. No.
- Q. What no, not correct?
- A. Not correct.
- Q. The Code of Conduct...
- A. It means I didn't choose to avail myself of the Code of Conduct, non-academic. I thought the situation was more serious than that.
- Q. All right. So it means that someone was in danger. That was your understanding?
- A. No.
- Q. Then why Code of Conduct couldn't deal with that?
- A. Because my belief is that when you're faced with bullying tactics, the best thing to do is confront the bully with the tactics and make him cease and desist.
- Q. Okay. What was the bullying activity? Give examples.

BY THE COURT:

We've been through that all morning, and we're not getting into it again.

BY THE ACCUSED:

Well, he didn't give any examples.

BY THE COURT:

Would you please move on to something else.

BY THE ACCUSED:

All right.

- Q. Did you know that by the time I filed the application for a firearm permit, I have already had the gun at my home?
- A. No.
- Q. You never bothered to inquire what the rules of obtaining a handgun are?

A. When I wrote the letter to the Suret, I had obviously ascertained that it required the permission of the Suret, before you could get a permit to carry a concealed weapon, or to have a weapon at all. That was after the twenty-third (23rd) of June.

Q. Even the police didn't tell you that the permit which I required was just a permit to take the gun from my house to the shooting club?

A. Well, I didn't speak with the police, I wrote a letter to the police.

Q. Did you read at least the gun permit itself, the document?

A. No.

Q. Ha, ha, ha.

BY THE COURT:
Would you please ask some relevant questions. This is leading us nowhere.

BY THE ACCUSED:
It is very relevant. Ha, ha, ha. Would you believe that they didn't bother to inquire...

BY THE COURT:
This line of questioning is a pointless line of questioning.

BY THE ACCUSED:
Okay.

BY THE COURT:
Would you move on to something else.

BY THE ACCUSED:
Okay. Let me explain the point, and then you will rule. All right? The point is the following. They knew very well that what I was asking for was permission to take the gun from my house, which they knew very well I have it at my house, to the shooting club. So the gun is there. The only thing what they were concerned with, is to do some nasty thing to me. They could not possibly not know that the rules in Quebec are very simple. You apply for a permit. You get it, first of all, to get the gun from the store to your house. Then you apply for the second permit to get the gun from the house to the shooting club. And that was the permit which I asked them to sign. And they knew perfectly well what it was. They were just playing their nasty low repugnant games. There was nothing else there. This is the point which I am trying to make. And he pretends to be stupid. He pretends not to have inquired, when he called the police, he didn't even bother to ask them what the situation with Fabrikant is.

BY THE COURT:
As far as your gun permit is concerned, I couldn't care less what he did or didn't do. This whole line of questioning is irrelevant, and it's disallowed. Move on to something else.

BY THE ACCUSED:
Ha, ha, ha. All right. Let us deposit there the document.
(REMARKS RE THE FILING)

BY THE CROWN:
Is it the memo to the Rector?

BY THE ACCUSED:
Or it has already been filed?

BY THE CROWN:
No, it's time to file it. D-42.

EXHIBIT D-42: memo to Rector dated June 23rd, 1992

BY THE ACCUSED:

Q. Okay. So you wrote this memo. What happened next? Did you talk to Kenniff about it?

A. Yes, I did.

Q. Okay. Could you describe the conversation or, of course, you don't remember anything of that conversation?

A. I remember that it was about five-fifteen (17:15) in the afternoon on the twenty-third (23rd) of June, in his office. He was there, and Miss Habib, and we discussed for about fifteen (15) or twenty (20) minutes, the issues raised in the memo.

Q. You see what kind of remarkable memory. He even remembers the time.

BY THE COURT:
Would you please... would you please spare us the comments.

BY THE ACCUSED:
It is not comments. It is the same stuff about adverse witness. Now, all of a sudden, he remembers perfectly, the timing, the date, and how long...

BY THE COURT:
If you don't ask... if you don't your next question, I'll terminate this examination. Now ask your next question.

BY THE ACCUSED:
So my motion is denied.

BY THE COURT:
Your motion is denied, if that's what it is.

BY THE ACCUSED:

Q. All right. Okay. Continue, please. What was the discussion?

A. The question was whether or not the Rector was willing to follow upon the recommendation of the two Vice-Rectors.

Q. Yes. And?

A. And he was not.

Q. Okay. How did you argue it? What was your argument?

A. My argument was that you had bullied Miss Horwood, and that from my information from other people, you had bullied other people and that I thought it was time that you be confronted with your behaviour, told that it was inappropriate and asked, as I said earlier today, to see a psychiatrist, to help you learn more about how to behave with people.

Q. Did you name any names to the Rector?

A. Miss Horwood.

Q. Ha, ha. One second. You said I bullied other people.

A. I'm sorry?

Q. You said I bullied many other people.

A. So I was told.

Q. Yeah. Did you name any names to the Rector...

A. No.

Q. ... who else I bullied?

A. No.

Q. No. Did the Rector ask you, who else did he bully?

A. No.

Q. Ha, ha, ha. Fantastic conversation. What did the Rector tell you then?

A. The Rector did not think he had the legal grounds to suspend you.

Q. Did he declare what he meant about legal grounds? Did he ask you to substantiate your accusations in any way?

A. I think he wanted more evidence than just my word and the word of Dr. Sheinin.

Q. Well, what was the word of Dr. Sheinin, by the way? What did she say?

A. She co-signed the memo.

Q. No. What did she say? Was she present?

A. No.

Q. No. Did she supply you with any facts.

A. Only the fact that she herself felt intimidated, frightened and bullied by you.

Q. Okay. Did she provide you any facts? You don't seem to listen the question. Did she provide you with any facts?

A. That was the fact that she provided me with.

Q. Well, if you rape someone's daughter, you are afraid of the Court, really.

BY THE CROWN:
We heard that line before, My Lord.

BY THE COURT:
We have heard that line before.

BY THE ACCUSED:

Q. But did she provide any facts? Did she, or didn't see? The fact that she was afraid is not a fact.

A. I just told you what the fact was that she provided me.

Q. Fact is what I did that she was afraid.

BY THE COURT:
He told you that she mentioned to him that she herself had had dealings with you and felt intimidated. That was his answer.

BY THE ACCUSED:

Q. Well, I asked facts. What exactly was that? Did she give you any examples?

A. No.

Q. No. Ha, ha, ha. Did you ask her to provide you with any examples?

A. No.

Q. All right. So how did you try to convince then Kenniff to have me suspended without any facts?

A. I had a fact. I had the fact that I felt I was confident with, which was your actions towards Miss Horwood, that you had indeed presented her with this permit. And when the Rector said that he thought maybe that wasn't proper legal grounds, I said let him sue us.

Q. All right. Well, when I presented the same thing to his secretary, was that convincing for him to have me fired?

BY THE COURT:
You'll have to direct that question to the Rector, won't you?

BY THE ACCUSED:
Well, I ask him whether he has any personal knowledge about that.

BY THE COURT:
No, that question is disallowed.

BY THE ACCUSED:
I asked about...

BY THE COURT:
The question is disallowed! Move on to some thing else.

BY THE ACCUSED:
All right.

Q. By the time you spoke to the Rector, you already knew that anyone who needs the gun permit, needs this permit signed by the employer. Did you?

A. No.

Q. You didn't know by that time?

A. No.

Q. When did you learn about it?

A. When did I learn precisely what?

Q. That anyone who wants to have a gun permit needs it to be signed by the employer?

A. As I understand it, it's only the permit to carry the weapon that requires the employer's signature.

BY THE COURT:

Where are you going with this line of questioning?

BY THE ACCUSED:

That's exactly what it was in front of you, a permit to carry.

BY THE COURT:

This whole line of questioning appears to be irrelevant. What are you attempting to establish, and how does this relate to your defense?

BY THE ACCUSED:

How it is related to my defense? I already explained at least a thousand (1,000) times. That the University used this application to smear me further. I explained it this morning and I think you accepted this explanation.

BY THE COURT:

i did not accept this explanation. And it now is perfectly plain to me this subject has been exhausted, that we've been around it and about it, and I will allow no further questions on the matter of the gun permit. Move on to something else.

BY THE ACCUSED:

All right.

Q. Did you speak to the police yourself?

A. No.

BY THE COURT:

I said no further questions on the matter of the gun permit! Do you hear me, or do you not hear me?

BY THE ACCUSED:

This is not the gun permit any more. I am asking about his contact with the police.

BY THE COURT:

In relation to the gun permit.

BY THE ACCUSED:

With whatever relation. Maybe they wanted to arrest me.

BY THE COURT:

Yeah, sure.

BY THE ACCUSED:

How do I know?

BY THE COURT:

Insofar as this relates to the gun permit, the question is not allowed. You've exhausted the question of the gun permit.

BY THE ACCUSED:

What is going on? I'm asking about his contact with the police. This is a normal question.

BY THE COURT:

I said the question of the gun permit has been exhausted and it is not pertinent. Move on to something else.

BY THE ACCUSED:

Q. Okay. Did you try at any point to find out who was threatened and when?

BY THE COURT:

The question of threats was canvassed this morning. You have the witness' answer. The witness gave you his answer. Move on to something else.

BY THE ACCUSED:

Q. Was there any other meeting?

A. About what?

Q. About me, after June twenty-third (23rd)?

A. No.

Q. Miss Habib reported that there was a meeting on August twenty-fourth (24th).... sorry, on August twentieth (20th), I believe.

A. August twentieth (20th), nineteen ninety-two (1992)?

Q. Yes.
A. If there was meeting I wasn't there.
Q. Do we have any trace of that meeting?
A. I don't know. I wasn't there.
Q. I would like to show the witness two depositions which were made before. One is the letter of Habib, and the other is the response of Haines.
BY THE CROWN:
Was it copied to the witness?
BY THE COURT:
I have no idea.
BY THE CROWN:
If not, there is no use for that, My Lord.
BY THE ACCUSED:
Well...
BY THE CROWN:
These documents don't originate from the witness.
BY THE ACCUSED:
I just want to ask him questions. It doesn't have to originate from him.
Q. Maybe you know about these letters? Then we don't have to look for them. Do you know that on July seventh (7th), appropriately, Mrs. Habib has written a letter to Haines?
A. I think I heard something about either that she was going to, or that she had written a letter to Grendon Haines.
Q. Yeah. Do you know what this letter was about?
A. No.
Q. No. It was within your office duties the subject of this letter, wasn't it?
A. I don't know, because I don't know what was in the letter.
Q. You never bothered to find out what was in the letter. Did you hear the name Haines?
A. I believe so.
Q. Have you ever met him?
A. Yes.
Q. So you know him very well?
A. No.
Q. During those meetings on any occasion, did Haines mention that I threatened to kill the Rector?
A. I've never met with Grendon Haines concerning you.
Q. No, just... did he ever mention this to you regardless?
A. Never.
Q. Did the Rector mention to you that his life was threatened by me?
A. I don't believe so.
Q. But you are not sure?
A. I don't recall that he ever did.
Q. It is something that he could have done, but you could have forgotten. Right?
A. I don't think I would have forgotten had he done it.
Q. So it means that he didn't mention it to you. Right?
A. I think not.
Q. Okay. So the letter is found?
BY THE COURT:
No, I don't think it is. I don't think it is.
BY THE ACCUSED:
It was deposited by...
BY THE COURT:
Mrs. Habib.
BY THE ACCUSED:
... Habib, I think.

BY THE COURT:

D-17, en liasse. Il y a quatre lettres. There are four letters.

BY THE ACCUSED:

Q. Okay. Would you please take cognizance of all those documents, please.

Well, do you recall seeing those letters?

A. No.

Q. None of them?

A. Well, yes, I wrote one. So I certainly saw the one on the fourteenth (14th) of July to the Suret,.

Q. Okay. When you wrote this letter, did you or didn't you think that you need to provide them with some facts?

A. I provided them with what I thought was sufficient for their purposes.

Q. Did they tell you that they need facts?

A. They never responded to me.

Q. No, before you written the letter, did you...

A. I didn't speak to them.

Q. Did you understand yourself that you need to provide facts rather than general words?

A. I wrote the letter. Actually it was drafted by someone else, and then I polished it up and I thought it was sufficient.

Q. You are not answering my question.

BY THE COURT:

He said he did not speak to the Suret, before.

BY THE ACCUSED:

No. I am asking a question, don't you think you should provide the police with the facts.

BY THE COURT:

Who cares what he should provide the police with, or who cares what he think. We're here to find out what he did, and he's told you what he did. The question is disallowed.

BY THE ACCUSED:

Ha, ha. Just to show...

BY THE COURT:

The question is disallowed.

BY THE ACCUSED:

All right.

Q. So you never seen either the first letter, nor the letter of Haines?

BY THE COURT:

He's already answered that. He said he saw the letter he sent.

BY THE ACCUSED:

All right.

BY THE COURT:

He hasn't seen the other.

BY THE ACCUSED:

Q. Now, the letter of Haines, shouldn't it be used by the University to alert police?

A. I don't know the answer to that.

Q. Well, how much are you being paid for your job?

BY THE COURT:

Don't bother answering that question, Mr. Bertrand.

BY THE ACCUSED:

Well, I'm sure well over a hundred thousand dollars (\$100,000.00). So for that salary maybe you should know the answer by now...

BY THE CROWN:

All this line is nasty and cross-examination, My Lord.

BY THE COURT:

Yes, it is.

BY THE ACCUSED:

Okay. I'll change the question.

BY THE COURT:

Pardon?

BY THE ACCUSED:

I'll change the question.

Q. So the facts which are given in the letter of Haines, shouldn't they be use by your office to alert the police?

BY THE COURT:

It's the same question and the witness has given the answer.

He said, that's a good question. I don't know, or whatever he said.

BY THE ACCUSED:

Ha, ha, ha.

BY THE COURT:

I think you said, I don't... I'm not sure if I can answer that question, which were your words.

BY THE ACCUSED:

That's all right.

Q. So if someone is informed thhat Fabrikant threatened to kill the Rector, and he still doesn't know whether he should inform the police about it. In nineteen ninety-three (1993), he still doesn't know. Isn't it funny?

BY THE CROWN:

The accused is the only one that thinks it's funny, My Lord.

BY THE ACCUSED:

Well, I'm just asking.

BY THE COURT:

You are not required to answer these musings from the dock, which is all they are. That was not a question.

BY THE ACCUSED:

That is not a question. All right.

Q. How did it happen that this letter didn't come to your attention as Vice-Rector responsible for security?

A. Which letter?

Q. Well, both, and especially the letter of Haines.

A. The University is a big place. Sometimes one office handles the case, sometimes another office. So there are lots of reasons why it wouldn't necessarily have come to my attention.

Q. Well, isn't this a letter related to security?

A. No. At this point when that letter was written, I would say it was related more again to our attempts to deal with your bullying and inappropriate behaviour.

Q. Well, threatening somebody's life is not a question of security, that's what you're saying?

A. No, I didn't say that.

Q. Okay. So threatening someone's life, is it a question of security?

A. It might be.

Q. But you are not sure?

A. I'm not a lawyer and I'm not a police officer. I don't know the law completely.

Q. I'm not asking you a question of law. I am asking you an elementary question, if someone threatens somebody's life, even my son knows what the answer is. Do you? Is it a matter of security?

A. It might be.

Q. But you are not sure?

A. It would depend on the circumstances.

Q. Well, if someone threatened somebody's life.
A. Then that someone should ask the police to intervene.
Q. Aren't you forgetting that you were Vice-Rector in charge of security of the University, were you?
BY THE COURT:
Listen, this is pointless. The witness says he did not receive it. That's the end of it. Why he didn't receive it, or whatever, raises a number of questions, but the witnesses says, that letter of Haines addressed to Maureen Habib, I didn't receive. Period. End of question.
BY THE ACCUSED:
Yeah, and you believe that?
BY THE COURT:
End of question. And unless we get to something pertinent, end of examination.
BY THE ACCUSED:
Well, our perception of what is pertinent and what is not pertinent is different.
BY THE COURT:
It certainly is, and I'm the one that gets to call it.
BY THE ACCUSED:
Well, I would invite you to read once again Seboyer.
BY THE COURT:
I have read it.
BY THE ACCUSED:
Well...
BY THE COURT:
Now, if you have another pertinent question to ask this witness, ask it.
BY THE ACCUSED:
Well, if you read it you would not have disallowed Professor Kachanov to testify.
BY THE COURT:
If you have another pertinent question to ask this witness, ask it.
BY THE ACCUSED:
Yes.
Q. Who wrote that letter for you that you said you polished?
A. I believe the draft was prepared by Me Brahm Freedman.
Q. All right. So he had communications with the police, did he?
A. I don't know.
Q. You never got deep into this stuff at all?
A. No.
Q. So you thought that your only participation is to try to have me suspended, and then you wash your hands off. Correct?
BY THE CROWN:
That's not what he said, My Lord.
BY THE ACCUSED:
Well, he can say, no. This is not...
BY THE COURT:
This cross-examination, again, in any event.
BY THE CROWN:
Alal the way from the beginning.
BY THE COURT:
Unless you put a legal question on a legal point I'm going to terminate this. This has gone on long enough. We are wasting our time.
BY THE ACCUSED:
Well, there is no point in participating in this lawlessness.
BY THE COURT:
Fine.

BY THE COURT:

I thought you were giving an answer when he asked his last question.

A. I don't recall who.

Q. Excuse me.

BY THE ACCUSED:

All right.

Q. So would this trigger your memory if you look at the Minutes of the meeting?

BY THE COURT:

Well, show him the Minutes of the meeting, then.

BY THE ACCUSED:

Well, they are over there.

BY THE COURT:

Ask the Clerk for the document you want.

BY THE ACCUSED:

I think it is... it must be in the big pile.

Q. Do you remember how many motions were there?

BY THE COURT:

Just a second.

BY THE ACCUSED:

October twenty-fifth (25th), nineteen ninety-one (1991).

Well, I think it was the file which was brought by Pat Fried.

Q. Okay. Do you remember the motion that I was non-harmonious with everybody else?

A. Yes, I do.

Q. Right. Is there anything in any document which you know, like the Collective Agreement, or anything else, which says that everybody should be harmonious, God forbid somebody is non-harmonious.

BY THE CROWN:

This is arguing with the witness, My Lord.

BY THE COURT:

Yes, it is.

BY THE ACCUSED:

This is not argument. I asked him if he's aware of any documents stating this. Nothing else.

BY THE CROWN:

This is a waste of time, My Lord.

BY THE COURT:

The objection is maintained.

BY THE ACCUSED:

So I cannot ask for his personal knowledge of documents...

BY THE COURT:

You...

BY THE ACCUSED:

... whatever there are there.

BY THE COURT:

You can't ask the last question.

BY THE ACCUSED:

All right. I ask it differently.

Q. Non-harmonious relationship, is it forbidden by any documents which you know?

BY THE COURT:

You are going into the merits of what transpired, and there is no need to go into the merits of what transpired. If you wish to know the facts, put questions on the facts. The last question is the same as the previous one. And the... while there is no objection to the last question, the last question will not be permitted.

BY THE ACCUSED:

Well, I asked, first of all...

BY THE COURT:

I'm not going to argue with you. I'm not going to argue with you, I've told you. Change your subject.

BY THE ACCUSED:

Ha, ha, ha. Well, these questions were always allowed, personal knowledge of the witness about certain subjects.

BY THE COURT:

Yes, but not about that subject.

BY THE ACCUSED:

Not about that subject. God forbid to say that they were wrong there. All right.

Q. To your recollection, did anyone sitting there at any moment say that we need to hear Fabrikant on that, before making any decision?

A. Really we were discussing... nobody said that. We were discussing the letter that Mr. Fabrikant had sent, and we were strictly on the letter, the reply to the letter.

Q. So nobody mentioned that we should listen to Fabrikant before judge him?

A. I don't recall anybody saying that.

Q. Do you recall the words in this document saying that the Department and the University should stand up to these practices and take appropriate measures against Fabrikant?

A. I do recall saying that we are not happy with the practices, these type of practices.

Q. I'm asking you not this question. Do you remember what I said just now? So, do you remember that?

BY THE COURT:

If you don't understand, ask him to repeat.

A. I don't understand at all.

BY THE ACCUSED:

Q. Okay. Do you remember the phrase:

"We strongly urge the Department and the University to stand up to such practices and to take appropriate action."

A. Yes, I do.

Q. Okay. Now, was it explained to the members what the whole thing means and what kind of appropriate action they have in mind?

A. That was not up to us.

Q. What?

A. That was not up to us. The University was responsible for whatever they see fit... what action to be taken, but the professors was not... we couldn't say anything more. We were so displeased, but that was it.

Q. Well, did you have in mind what kind of action should be taken?

A. That was not up to me personally to say what action might be taken.

Q. For example, firing, were you in agreement with such an action?

A. Firing... firing is done by a committee. I cannot... I cannot answer this question, either.

Q. I am asking you if you would agree with such action?

A. If it were justified.

Q. Well, this is exactly what I am asking. From what you learned from...

BY THE COURT:

Whether the witness would agree with hiring you, or firing you, in these circumstances, is besides the point. BY THE ACCUSED:

No.

BY THE COURT:

All that's besides the point was he participated in a meeting and after the meeting he, I believe, signed a resolution.

That's all.

BY THE ACCUSED:

So I cannot ask this question, what he meant...

BY THE COURT:

No, you can't ask this question.

BY THE ACCUSED:

... what he meant by certain phrases. Right?

BY THE COURT:

If you wish to ask him if certain phrases were discussed, ask him if certain phrases were discussed, and you live with his answer.

BY THE ACCUSED:

Yeah. Do you want to bet his answer? His answer will be, I don't remember.

BY THE COURT:

I haven't a clue what his answer will be.

BY THE ACCUSED:

Okay. Let us try it.

Q. Who introduced Motion No. 1?

A. I think I have answered this. I don't remember. I don't recall.

Q. Ha, ha, ha.

BY THE COURT:

It's very difficult for you to recall. You don't have the notes in front of you.

BY THE ACCUSED:

Of course. Of course.

Q. Who introduced Motion No. 2?

A. My Lord, I don't remember. I don't recall.

BY THE CROWN:

I think there are a lot of these motions. Why not... he just answered the question, he does not remember who ... the motion.

BY THE COURT:

That's right.

BY THE CROWN:

The accused is playing a game now.

BY THE COURT:

Uh, huh.

BY THE ACCUSED:

Of course, the accused is playing a game.

BY THE COURT:

Yes, you are.

BY THE ACCUSED:

Of course. He is an honest witness. He is telling all the truth, and I am playing a game.

BY THE COURT:

Have you another question to put to him?

BY THE ACCUSED:

Yes, I have.

BY THE COURT:

Put it now.

BY THE ACCUSED:

Q. Who introduced the third motion?

BY THE CROWN:

The accused is continuing his game, My Lord.

BY THE COURT:

Okay. That is the end of this examination. Thank you very much.

Have you any questions to put to the witness?

(NO CROSS-EXAMINATION BY THE CROWN)

A. Thank you, My Lord.

AND FURTHER DEPONENT SAITH NOT

(REMARKS OFF THE RECORD)

BY THE COURT:

So we will adjourn until the next witness is here.

(THE JURY LEAVES THE COURTROOM)

(OUT OF THE PRESENCE OF THE JURY)

BY THE COURT:

In connection with... an observation was made by the accused last week, I would file as T... whatever we're at... T... yes, a series of dribble which I haven't read, which was delivered to my office, a letter which I have read in diagonal, which was delivered to my office, addressed to Chief Justice Fraser Martin.

BY THE ACCUSED:

Ha, ha, ha.

BY THE COURT:

And something which purports to be... something which was delivered by registered mail from one, Grušve, or Grunšve, which purports to be an appearance. I believe I was favoured with the attention of it, as was the Embassy of the People's Republic of China, and the gentleman indicates that he wished to appear in the Court record in the case of Dr. Valery Fabrikant for the following legal responsibilities:

"1. Dr. Valery Fabrikant's legal representative.

2. Dr. Valery Fabrikant's expert witness."

Included with this was a program, or whatever, of Les Services et les Activit,s de la r,sidence du Vieux Port. I don't know whether this was being commended to my attention, or what, but in any event I produce it all as I... whatever it is, with the request that the Crown Prosecutor sooner or later have someone look at these things and determine whether or not there's any contravention of the Criminal Code involved in these communications with I found odious and tiresome, and little more than that, but odious and tiresome.

EXHIBIT C-15: documents en liasse

BY THE ACCUSED:

I would like to make a motion on KGB, since we are...

BY THE COURT:

Would you? Well, I would like to adjourn.

SHORT RECESS

SUI LIN
Professor, Concordia
January 14th, 1929
DULY SWORN

EXAMINATION BY THE ACCUSED

REPRESENTING HIMSELF:

- Q. When did you start working at Concordia University?
- A. Seventy ('70).
- Q. As what?
- A. As a researcher associate.
- Q. Then what was your progress?
- A. (Inaudible) research assistant professor, and then (inaudible) professor, then associate professor, then full professor.
- Q. Well, could you give the dates of those?
- A. The exact dates I cannot remember for... as I understand the, from the assistant... from assistant professor to associate professor, the associate professor was seventy-four ('74).
- Q. And then?
- A. The exact date, I'm not remember.
- Q. Do you remember when you become full professor?
- A. Eighty-one ('81).
- Q. And before that associate professor?
- A. I do not remember how, the exact date.
- Q. Since when you are a member of the Departmental Personnel Committee?
- A. Eighty-eight ('88).
- Q. Do you recall our conversation in the spring of eighty-eight ('88)?
- A. Please repeat your question.
- Q. I'm having difficulty understanding him. Could you speak more distinctly, please. What?
- A. I ask what your question. Please repeat your question again.
- Q. Do you recall our conversation in spring of nineteen eighty-eight (1988).
- A. I cannot remember.
- Q. All right. Let me try to trigger your memory. I came to your office in spring, nineteen eighty-eight (1988) and I told you that my contract is for renewal. Does this trigger your memory?
- A. Yes.
- Q. All right. So what else was said during that conversation?
- A. I do not remember whether at this time I am already a member of the DPC. What I told you I cannot recall it.
- Q. Maybe you recall what I told you?
- A. Yes, you was in my office, I remember.
- Q. Yeah. And what did I tell you?
- A. I cannot remember.
- Q. Ha, ha, ha. I asked you that it was about contract renewal, and I said if this triggers your memory and you said, yes.
- A. Yes, you was in my office, but I don't... I cannot recall the words you talk with me. So many people, so many things, students and professors, I cannot remember everything.
- Q. Okay. So when I told you that it was about contract, all what is triggered that, yes indeed, I was there. Correct? Ha, ha, ha.
- A. I tell you I cannot recall the words I talk with you.
- Q. Okay. But at least now you remember that there was a meeting?
- A. Yes, this happened in my office.
- Q. All right. Let me try to trigger you a little bit more, your memory. Did I complain at that time that Seshadri Sankar has told me that despite all my successful work he was going to fire me within one year. Do you remember that?
- A. I not recall.
- Q. Not at all?
- A. No.

Q. Did I at this time complain to you that I have included T.S. Sankar in many papers of mine when his contribution to those papers was zero?

A. It may be. I cannot recall that in detail what (inaudible) in eighty-eight ('88). I didn't write it down everything I talk with a student, or with a faculty member.

Q. How often does it happen that someone comes to your office and complains on scientific fraud? Does it happen every day?

A. No.

Q. Okay. How many times did it happen in your life?

A. I inform you already, I didn't make the memory what the people talk with me every day. And I didn't recall. If that is true, what did you talk with me? If you have a record, you show me the record. I cannot remember everything...

Q. Ha, ha, ha.

A. ... that I talk there in eighty-eight ('88), five years ago.

Q. You missed the point. I am asking you not that question. Please listen to the question. How many times in your life it happened that someone come and complained on scientific fraud?

A. I don't know how many times a student come to me and complained regarding ... courses, many, many times. I cannot recall the how many times for the complaint.

Q. Did I seem to hear what I am asking.? Did students also complain on scientific fraud?

A. Complain is not necessary... I didn't consider you a case, a special case for me. I didn't record anything. I cannot ... memory, you didn't ask me to do memory one time talk with me. Why I should remember everything you talk with me? You didn't write important. I didn't have a record. You keep a record.

Q. I'm just asking...

A. You should... what I do, you should tell me, I talk with you today, this time you have to have a record. And you're now asking me ... anything I have to know. I don't think you have a right. (Inaudible).

Q. Just try to concentrate. Did anyone at any time complain to you on scientific fraud?

A. I don't know what you define as scientific fraud.

Q. All right. Did anyone at any time complain to you that he published papers and include somebody else's name there when their contribution was zero? Did you ever hear that kind of story?

A. I don't know. Maybe, maybe not, except you.

Q. Okay. So maybe I did say it to you?

A. Maybe, I don't know. I cannot recall.

BY THE COURT:
What he said... he said, I don't know if anybody else did, except you, was the way I...

BY THE ACCUSED:

Q. Okay. So it means that I did, or it means that I didn't, or...

A. Maybe. I think maybe, I don't recall. If you have a record, then put the record on, what I saw, what I talk with you.

Q. Ha, ha, ha.

BY THE COURT:
That's not the way it works. That's not the way it works.

A. Excuse me.

Q. It works that he asks you questions, and you try as best you can from your memory...

A. Okay. Thank you.

Q. ... to answer his questions.

A. Okay. Thank you.

Q. If it's a question of a memo or something like that, that helps trigger your memory, then fine. You can look at it, if it is. But by and large you try to answer the questions from your memory.

Q. Okay. Thank you, My Lord.

BY THE ACCUSED:

Q. All right. So do you or don't you recall me telling you this?

A. I don't recall it.

Q. You don't recall. All right. Do you recall maybe... or maybe this will trigger your memory, that when I asked you as a member of DPC to support me on your next meeting, you told me in response, and what does the Chairman think about it? Do you remember that was your response?

A. This is from your E-mail. I saw it. You wrote this from your E-mail.

Q. Yes.

A. This is possibly at the time the DPC, the members of the DPC, have not the right to tell what is the result for the DPC. And the Chairman of the Department is the one representation of the Department to tell the result of the DPC.

Q. I'm just asking if you remember telling me that. That's all.

A. I do not recall. I saw it from your memo, from the E-mail.

Q. But you don't remember personally...

A. No.

Q. ... that you told me that?

A. Yes.

Q. All right. Do you remember the consideration of my contract renewal in nineteen eighty-eight (1988)?

A. Yes.

Q. Okay. Do you will remember that there were two meetings instead of the usual one?

A. I don't recall as you say there is two meetings. I forget it.

Q. Okay. Would you like to refresh your memory looking at the Minutes of the DPC meeting?

A. If you wish I will read it.

Q. This is it.

A. Thank you.

Q. Does this trigger your memory in any way?

A. Yes.

Q. Yes. Okay. So could you explain why was there a need for two meetings rather than one?

A. The DPC... when DPC consider anyone for reappointment sometimes is one, sometimes two, and there could be three. It depend on the situation.

Q. What was so special in that particular situation, why it couldn't be solved in one meeting?

A. Yes. I cannot remember, but I think for your case they would have discussed it, most of the time we cannot make a determination for the reappointment.

Q. Well, do you recall what was the problem? Why? This is exactly my question, why you couldn't make it the first time?

A. I cannot remember. We have discussed lots of things.

Q. Well, isn't it all in the Minutes?

A. I don't remember.

Q. Did you read the Minutes?

A. Yes, I read it.

Q. Well, does this trigger anything at all what was...

A. Yes, is everything stating... stated in these Minutes.

Q. Then, what seems to be the problem then?

A. I cannot recall the exact ... sometimes possibly for the considering your work in this center.

Q. I didn't get the words.

A. Possibly because the reappointment, you are still the associate professor working in the center. In the departmental, for example, in DPC, you really don't know exactly what kind of work you have done in this center. And I think this is important, we would like to know exactly what is your contribution to this center. For example, the second term said, the second item said you have to concentrate the work for the center of, CONCAVE center. I think, I think this should be the consideration of the DPC.

Q. I don't know about everyone. I have difficulty understanding what he is saying.

A. I say the DPC considered... the DPC, your working in the center of CONCAVE, and the DPC, we in the department, we don't know what kind of work you do on the DPC.

Q. Okay. Let me repeat what I understand you said. And you just say, yes, this is what I said. All right? Because I want to make sure I understood what you said. So you said that at the first meeting you had no idea what my work was, and this is why you couldn't make any decision?

A. I didn't say no idea.

Q. All right. I will rephrase it. That you were unaware of what kind of work I have done, and you need to know before you can make any decision. Right?

A. I didn't say. You are asking me why is it two meetings. I said possibility for reappointment possibly the one meeting, possibly two meetings, possibly three meetings. For you ... is one I cannot recall. And from the second meeting, for the Minutes, they said you agree to cooperate with them to the research work in the center for the CONCAVE. And I think from this went... it's to my memory, you would like to stress your work, your research work related to the center of the CONCAVE.

Q. Okay. Let me read you part of it and maybe this would be easier for you to recall. That one of the statements here is that:

"Dr. Fabrikant is in full agreement that his duties to cooperate closely with Dr. S. Sankar, Director, CONCAVE center, on ongoing projects of interest to the center."

Now, try to recall why this phrase appeared there. Did I refuse to cooperate, or what?

A. I cannot remember the work, because you are working in the CONCAVE center and certainly they wish you to work with Dr. Sankar. He is the Director of the center.

Q. Okay. Should one understand this phrase that I should cooperate closely as just a disguised request that I should include his name in my publications?

A. I don't know.

Q. It might be?

A. I don't think at this point they have discussed that in the committee.

Q. Okay. The second one was that:

"Fabrikant agrees to teach courses as part of his workload."

What was the problem there? Did I refuse to teach courses, to the best of your recollection?

A. I don't know. I don't recall the (inaudible). I think for the researcher position, it is not necessarily a duty to teach a course, and the Departmental the possibility later on you will be joined to the Department when the contract of the

CONCAVE finished, and would give you the opportunity to give the teaching experience in the Department.

Q. You're not answering my question. And my question was, was this point there made because I refused to teach the courses, and if not, what was the point to make it?

A. I cannot recall why...

Q. All right. And the third was:

"Fabrikant agrees to move to the new location of CONCAVE center whenever the move takes place."

Now, did I refuse to move? Why was that part necessary there?

A. Because your office was in the Department, and your work yourself, and certainly the center of CONCAVE would like to see the people in the center working in the center together. I think that this is the reason having to make that.

Q. That was not my question. My question was, are you aware whether I refused to move there, or not? That's all. Did I refuse to move?

A. I tell you the situation. You are, your office is in the Department. You're working in the Department, but not in the center, therefore, the center certainly would like to see when the staff, or faculty member belongs to the center, works in the center together.

BY THE COURT:

Q. But his question was, did he at any time... why... he wants to know why was that written in the Minutes about his moving to the CONCAVE center? Did he ever refuse to go, or what? That's what he wants to know.

A. I don't know. I cannot recall. But I know he work by himself in the Department, not work together with the center at this time.

BY THE ACCUSED:

Q. All right. Do you recall a consideration of promotion of me to research professor in eighty-nine ('89)?

A. Yes.

Q. All right. Do you recall why the DPC refused at the time to start the promotion procedures?

A. As I understand at the time when you transferred to the Department, as a new position in the Department at the time...

Q. No. I'm talking about winter of eighty-nine ('89), winter of eighty-nine ('89). I mean eighty-eight ('88) just finished, eighty-nine ('89) started. Do you recall anything about that?

A. Yes.

Q. All right.

A. Your promotion to the, as a professor, the DPC recommend it.

Q. What, recommended promotion, or recommended not to...

A. Recommended promotion.

Q. Would you like to refresh your memory.

A. Here are stated the 2 and the 3, point 2 and point 3. At this time the DPC considered you for the course, teaching course, (inaudible) teaching course, we cannot make judgment and you have graduate students under supervision and, therefore, you were considered for the promotion, were considered for the teaching, and the supervision of the graduate students. It was mentioned here.

Q. Now you recall that I was not promoted at that time. Do you recall that now?

A. Yes. Some... I remember sometime... some before, sometimes we have recommended it to you as a professor, yes.

Q. Now, later that year, later the same year the DPC did recommend me for promotion and nothing really changed. I

didn't have that much more experienced in teaching, neither I have during that time graduated that many students. Could you explain maybe to the jury why the first time you had two, as you can see, good reasons not to promote me, and then at the end of the same year, all of a sudden the DPC decided to promote me, though nothing really changed between that?

A. I cannot recall exactly. I remember we have recommended to you for promotion to the full professor, we recommend it.

Q. Well, could you explain why? Here you stated two reasons not to promote. Then the same year, later on, you decided to promote. Those two reasons were still there. Could you explain the discrepancy in the decisions of the DPC?

A. Really I cannot recall that some reasons shouldn't, yes. I cannot recall. Yes.

Q. When you are sitting there at DPC, do you usually participate in the discussion, or you just... whatever the Chairman says, you say, yes.

A. Certainly I participate in the discussion.

Q. You do. So maybe you'll try to recall what was the argument then and what was the argument later on, how to reconcile those two decisions?

BY THE COURT:

Q. Do you understand the question?

A. Yes, I understand the question. I try to remember what was the reason.

Q. What was said?

A. Yeah, what is the reason. I try to think. Really I cannot remember exactly, yes.

BY THE ACCUSED:

Q. Would this trigger your memory, that in the winter of eighty-nine ('89), Seshadri Sankar again tried to extort from me papers and he told me unless I give him papers, he's not going to recommend me for promotion. Does this trigger your memory in any way?

A. No, I don't remember saying in this way. In the DPC, and I don't think Dr. Sankar had said such words to the DPC.

Q. Ha, ha, ha.

A. In DPC I never hear... I never heard such words.

Q. Ha, ha, ha, ha, ha. I am sorry. Ha, ha, ha, ha, ha.

Do you remember the incident on October thirtieth (30th)... October thirtieth (30th), nineteen ninety-one (1991), where you claimed that I was standing in the corridor eavesdropping your deliberations?

A. Yes, I remember.

Q. All right. Do you recall writing a statement at that time?

A. At the time we (inaudible) to write this report.

Q. Do you recall writing a statement to the Security?

A. I was writing this statement with Dr. Osman together, because (inaudible) we did our report, to write with him together.

Q. You mean that Dr. Osman has dictated you what to write?

A. No. He did the writing. I just tried to get the (inaudible) the copy to him.

Q. So Dr. Osman has written, and you just copied what he has written?

A. Not me, but the secretary for the part of it.

Q. You couldn't write on your own what happened?

A. Because there was a rush at the time, the (inaudible) waited at the time is so late about (inaudible).

Q. Wasn't it faster for you to write separately rather than copy from Osman?

A. I think, I believe we are in the same situation, and he write,

I just... part of it I just copied.

Q. Okay. Ha, ha, ha. Anyway, what is the reason? Does it correspond to what happened?

"As we were during the DPC meeting, we noticed that someone is standing outside the door. Dr. Sankar opened the door and we discovered that Dr. Fabrikant was standing in the corridor."

Now, could you explain how could you notice that someone is standing outside the door, through the door which has no windows?

A. This statement was not correct. We don't know you stand outside. And Dr. Sankar, after I called his home, because it was too late, and he come past the door to open the door, and to see you standing outside.

Q. This is not what is written.

A. Yes, I...

Q. What was written:

"We noticed that someone was standing outside the door."

Now, let me ask you a question. The only way you could see someone... is underneath the door there is a gap that wide. If you put your head to the floor, then you could see someone's legs, and definitely you could not understand who it was. Is this what happened there?

A. I told you this statement not true.

Q. Well, was your English that bad that you couldn't write it how it happened. It describes very clearly:

"We noticed someone standing outside the door. Dr. Sankar opened the door and then we discovered it was Dr. Fabrikant standing."

Well, one couldn't say clearer than that, could it?

A. I told you, this is not true. I copied it from Dr. Osman's part.

Q. When you copied it, did you know that you are copying a non-truth?

A. I think, I believe, because I think we are in the same situation, and we're in the same room, something happened, and he write it quickly. I just copy it.

Q. Did you understand what you have written, what you have copied?

A. In this moment where there is a rush, I just write it down.

Q. Well, did you or didn't you understand what you have written?

A. Yes. I now, I understand this is not correct.

Q. But when you were writing you did not understand?

A. I write in rush. I didn't make... care for the (inaudible).

Q. Could it be that it is quite opposite, that this is an absolutely correct statement?

A. I tell you this is a statement not correct.

Q. If it were not correct, why didn't you correct it at that time?

A. At this time I didn't carefully consider it. I told you.

Q. Well, you are a scientist, aren't you?

A. Yes.

Q. Now, is it very difficult to understand that saying that we noticed somebody standing outside the door. Then the door was opened, and we discovered it was Fabrikant. And if this is not what happened, then shouldn't you write something different then?

A. I said. In the rush here I copied it from Dr. Osman. This

statement is not correct.

Q. Right. I would like to deposit it.

BY THE CROWN:

We don't file previous statements from a witness, My Lord.

That's not the way to do it.

BY THE ACCUSED:

Okay. Then I would like to apply for KGB, because the witness clearly contradicts to what is written here.

BY THE CROWN:

My Lord, we've been wasting a lot of time. Dr. Sankar... the accused is exploiting a weakness in language saying, we noticed someone through the door. Dr. Sankar said no human being sees through the door. And Fabrikant is nailing this little word, hours for hours now.

BY THE ACCUSED:

Well, not at all. What Fabrikant is saying, that they were trapping me, and they indeed were looking through the door, under the door. I checked later on. There was a gap. Not only there was a gap, but there was a gap like this. The gap was of material...

BY THE COURT:

Well, nobody said they looked through the door, I'm afraid.

BY THE ACCUSED:

Well, they said like this, we were...

"During the meeting we noticed that
someone was standing outside the door.
After that the door was opened and we
discovered Fabrikant was standing..."

BY THE COURT:

He told you that's not how it happened.

BY THE ACCUSED:

He is telling, yes.

BY THE COURT:

Yes.

BY THE ACCUSED:

But I know how it happened, because they couldn't possibly... I was standing there for not more than ten seconds. They couldn't possibly open...

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

... the door ...

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

... exactly at the time I was there.

BY THE COURT:

In the end who cares what happened that night?

BY THE ACCUSED:

Okay. Let us see whether who cares.

Q. If I'm right that they were there that late, not because they were doing really some kind of work, they knew I had a lecture.

BY THE COURT:

You're simply speculating. That's all you're doing. You're simply speculating. There are people...

BY THE ACCUSED:

Let me finish, please.

BY THE COURT:

... there are people... no, I will not let you finish. There are people who have come here and said, we were engaged in a

meeting that had started at seventeen hundred hours (17:00), and we were discussing you. And the meeting went on, and apparently on, and then on some more.

BY THE ACCUSED:

Well, there was no need from five p.m. (17:00) to be there...

BY THE COURT:

Listen...

BY THE ACCUSED:

... until eleven-thirty (23:30)...

BY THE COURT:

We're turning in circles. We're turning in circles.

BY THE ACCUSED:

No, we are not turning. There is a previous statement. the witness contradicts to this statement. That's fine. There is a KGB motion which I would like to make, for the jury to consider...

BY THE COURT:

No, not for... not, no, no, no.

BY THE ACCUSED:

... what is right and what is wrong.

BY THE COURT:

The procedure in KGB is very clear. The procedure in KGB is very clear.

BY THE ACCUSED:

Yes.

BY THE COURT:

And the jury has to be invited to leave while this particular part of the proceedings is going on.

BY THE ACCUSED:

I don't think it is written the jury is invited to leave. At least not for KGB. There is not a single word there saying the jury is invited to leave.

BY THE CROWN:

Of course, My Lord, KGB... for KGB...

BY THE ACCUSED:

Well, find the place in KGB which says that the jury has to leave.

BY THE CROWN:

KGB is like a voir-dire, My Lord.

BY THE ACCUSED:

Okay.

BY THE COURT:

KGB speaks of a voir-dire as a matter of procedure.

BY THE CROWN:

A motion based on KGB now is completely frivolous and futile, My Lord.

BY THE COURT:

That's what I'm saying. We're turning in circles.

BY THE ACCUSED:

Okay. Let me explain why it is not frivolous. Because what I plan to prove in my testimony is the following, that they knew very well that I have a lecture which ends at eleven p.m. (23:00), that at this time there will be absolutely nobody in the Department, so nobody could testify anything as to what happened, that they can ambush me unpunished, that they knew very well that my office is in the same corridor to which the door of the Chairman's office opens, so it was a clear setting for a trapping, and there is nothing else there. And this is not a slip of the tongue what is written here. What is written here is exactly what happened. They were sitting there and looking underneath the door. There is that gap...

BY THE CROWN:

(Inaudible).

BY THE ACCUSED:

... underneath the door. And it is possible to see through that gap that someone is in the corridor. Now, they opened the door when I was... the previous witness showed where I was. Nobody in his right mind would eavesdrop at that distance, because the distance is there so big one couldn't possibly hear anything from such a distance. I was standing more close to my office than to theirs. So...

And if you look at the other documents, where this particular incident was used after that, to demand Security so it is clear that it was all staged. Because there was really no need to call Security then. There was absolutely no need to cry for Security after that. They were hoping that by ambushing me they provoke me to say something, to threaten somebody, and nothing of that happened. But still they used this incident.

After that, if you recall, from all other witnesses testifying, that because they found me standing in the corridor late at night, that made a concern for whatever, their life, or anything. They knew very well that I would be there that late, because the lecture just ended at eleven p.m (23:00).

So I was there normally. It was my office there. And they were there. If one believes that one could be sitting from five p.m. (17:00) to eleven-thirty (23:30), discussing something. If you ask this particular witness what did they do all those six class hours, he would say, I don't remember. But in six hours one has to do something. It's not just, you know, nothing.

So this particular incident is very important, because it was used after that to smear my reputation. Because if you remember, McKenzie testified that she had the police arrested me because she read this report, if you recall this testimony. So it is an extremely important part of the events.

Therefore, I want to file it according to a KGB motion, and let the jury decide whether my version is correct, or what the witness is now telling is correct.

BY THE COURT:

Well then I will ask you to withdraw, ladies and gentleman, and obviously I won't get this settled tonight. So, we'll see you tomorrow morning at nine-thirty (9:30).

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

(OUT OF THE PRESENCE OF THE JURY)

BY THE COURT:

May I see that statement, please.

BY THE ACCUSED:

Well, I would like someone to show in KGB where it is written that the jury should be out.

BY THE COURT:

Listen, I'm getting sick and tired of you trying to tell me when I should send the jury out and when I should keep the jury in.

BY THE ACCUSED:

Well, sick and tired is not a legal explanation or justification.

BY THE COURT:

For the moment... for the moment, it will do very, very well.
BY THE ACCUSED:
Well, this is clearly your tactic. But I would prefer you use more legal ...
BY THE COURT:
I will, I will, I will.
BY THE ACCUSED:
Well, it's about time to start.
BY THE CROWN:
My Lord, a voir-dire is always...
BY THE COURT:
A voir-dire, to test the...
BY THE CROWN:
(Inaudible).
BY THE COURT:
Yes. A voir-dire to test the admissibility of a document.
BY THE CROWN:
By necessary implication...
BY THE COURT:
Absolutely.
BY THE CROWN:
... the word, voir-dire, implies the exclusion of...
BY THE COURT:
I'm simply looking for the word.
BY THE ACCUSED:
Since when is that? Voir-dire, when it is an expert, the jury is not excluded, and you know that very well. So a voir-dire doesn't mean that. Would you agree at least with this?
BY THE CROWN:
With this, yes.
BY THE ACCUSED:
So a voir-dire doesn't mean exclusion of jury. By the way, a voir-dire, as far as my French goes, is to see and to speak. Right? Is it?
BY THE CROWN:
I'm not talking to you.
BY THE ACCUSED:
Ha, ha, ha.
BY THE COURT:
You see, KGB is talking about something entirely different from the situation which we're facing here. But certainly in Detrich there was a reserve, apart from voir-dires, to determine the voluntariness of a confession. Well, for the minute, it's not a confession. I wouldn't call this a confession...
BY THE CROWN:
Not at all.
BY THE COURT:
... by any stretch of the imagination. But to determine the admissibility of the statement, that is, in Detrich, in any event, one of the exceptions that the Court indicates, that the jury is sent out for.
BY THE ACCUSED:
Well, in KGB, there is nothing there, and KGB does not necessarily talk about confession. It was just a particular case of a confession which was discussed there. But there decision is much wider than the question of a confession. Their decision is applicable to any previous statement.
BY THE CROWN:
From what I can foresee, My Lord, is the way the accused is twisting the system every time there will a contradiction, we

will have... each time we have a 9, Section 2, a 9, Section 1,
and after that we will have a KGB application.

BY THE COURT:

Oh, yeah, because of course he's learned about KGB.

BY THE CROWN:

When he learns about something, we're done.

BY THE ACCUSED:

Poor you. You are being paid for the time, don't you?

BY THE COURT:

That is not the point.

BY THE ACCUSED:

Well, it is the point. I am the only one here who is just
very, very tired. So believe me, I am not doing this for any
pleasure of it.

BY THE COURT:

Of course you are.

BY THE ACCUSED:

Oh, yeah. You have a very strange impression.

BY THE CROWN:

Can I just suggest to you, My Lord, that we speak about
necessity, reliability, that before all that we could address
relevance.

BY THE COURT:

Yeah. I have to meet a number of lawyers in connection with
a complication that arises from this, from this case I'm
scheduling later on in the year. So I'm going to adjourn now.
I will...

BY THE ACCUSED:

You have to meet lawyers...

BY THE CROWN:

Lawyers, yes, lawyers in my office.

BY THE ACCUSED:

To consult with respect to this motion.

BY THE COURT:

Not to consult with respect to this motion. To reschedule
something that should have been heard this summer, that has to
be heard at another time now. So I'm going to adjourn now,
and I will return to this question of KGB in the morning.

BY THE ACCUSED:

May I in the meantime take the documents which you deposited
earlier today?

BY THE COURT:

No, you can find some time to read them tomorrow.

BY THE ACCUSED:

Why not today?

BY THE COURT:/

Because they're documents of mine, and they're documents that
I deposited...

BY THE ACCUSED:

Yes.

BY THE COURT:

... in order to complete the record. And if that's what
you're reduced to reading, believe me, you can't have very
much else to do. You can find some time to read these
tomorrow. So I will see you tomorrow morning at nine-thirty
(9:30).

(THE JUDGE LEAVES THE BENCH)

ADJOURNMENT

I, the undersigned, MICHEL DAIGNEAULT, Official Court

Reporter, hereby certify the foregoing is a true and faithful transcript of the evidence in the above-mentioned case as taken by mechanical recording, to the best of the quality of said recording.

And I have signed.

MICHEL DAIGNEAULT,

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PROVINCE OF QUEBEC

DISTRICT: MONTREAL CITY: MONTREAL

CASE NO: 500-01-017372-928

TRIAL

PRESENT: HONOURABLE MR. JUSTICE J. FRASER MARTIN, J.C.Q.
(AND AN ENGLISH JURY)

HER MAJESTY THE QUEEN,

vs

VALERY FABRIKANT,

APPEARANCES: Me JEAN LECOURS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: July 7th, 1993

GS: 1418 FILE: 3251

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PROOF OF THE DEFENSE SUSPENDED

CONTINUATION JULY 14TH, 1993

(THE JUDGE TAKES THE BENCH)
(THE ACCUSED AND ATTORNEYS ARE PRESENT)

OUT OF THE PRESENCE OF THE JURY

BY THE COURT:
I was dealing, at the end of yesterday afternoon, with the question of the K.G.B. application. And the case itself sets out the procedure to be followed. Briefly, it intimates that one proceeds according to the terms of Section 9 of the Canada Evidence Act. The rules set out in Section 9 of the Canada Evidence Act are set out by the... in Milgard, and, of course, the second Milgard rule is that the Judge should direct the jury to retire. That is what I did.

BY THE ACCUSED:
Well, then I...

BY THE COURT:
I'm speaking.

BY THE ACCUSED:
All right.

BY THE COURT:
I have since, or prior to the adjournment, I looked at the... I looked at the statement. I really don't feel

that there is any necessity, in order to dispose of the application, to get into the question of the manner in which the statement was taken, or anything else. As far as I'm concerned the contradiction which it is sought to introduce as original evidence is not a contradiction at all. The whole thing bears upon the presence of the accused in the hall, and as far as I'm concerned the application is frivolous. The application is, therefore, dismissed.

The Jury, please.

BY THE ACCUSED:

What about the K.G.B. application before?

BY THE COURT:

We haven't argued it yet, as far as I know.

BY THE ACCUSED:

So, let us argue it.

BY THE COURT:

No, let us not. Let us continue the testimony of Professor Lin.

BY THE ACCUSED:

So, when are we going to argue that motion?

BY THE COURT:

Well, I don't know when we're going to argue that motion, but not at the moment.

BY THE ACCUSED:

Who decides that, not you...

----- (MEMBERS OF THE JURY TAKE THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

SUI LIN

January 14th, 1929, Professor

Concordia

DULY SWORN

EXAMINATION BY THE ACCUSED (CONT'D)

REPRESENTING HIMSELF:

Q. So, we ended yesterday by discovering that your statement in which you said that first you noticed someone standing outside the door. Then Sankar opened the door and you found me standing there. In fact, you copied it from Osman. And my understanding is that your English was not well enough to understand what you copied did not constitute what happened. Is that correct?

A. Not correct.

Q. Okay.

A. My English... my English is not my mother English. I write English relatively slowly, and this guy is waiting for the report, therefore I copied the one part of Dr. Osman's report.

Q. And you had no idea that what you had written does not correspond to what really happened. Right?

A. I have no time. I told yesterday that not time to make a careful consolidation and I just copied one part of it.

Q. And Mr. Martin has decided that there is no contradiction after all there.

BY THE COURT:

I have decided...

BY THE ACCUSED:

The jury should be informed about...

BY THE COURT:

I have decided that your application was frivolous and I dismissed your application.

BY THE ACCUSED:

Yes. Yes. So frivolous, it means that there is no contradiction at all. Everything is fine.

BY THE COURT:

Frivolous means on the whole thing your application is frivolous...

BY THE ACCUSED:

Yes.

BY THE COURT:

... and it's dismissed. Okay.

BY THE ACCUSED:

Yes. That I just, you know, invented the whole thing. There is nothing to talk about, right?

BY THE COURT:

I have no comment to make on your characterization of what I said.

BY THE ACCUSED:

Yes.

BY THE COURT:

I said what I said.

BY THE ACCUSED:

Q. Now, do you recall if you were scared that evening of me?

A. I don't think I scare, but I was concerned about the situation.

Q. Okay. How much you were concerned? You were concerned that you felt your life was in danger?

A. I should wonder... we are discussing your case and you are standing outside to listen our deliberations. Certainly I was concerned.

Q. So, everyone who is eavesdropping potentially is a murderer, right?

BY THE COURT:

That's not what the witness said, and you're cross-examining...

BY THE ACCUSED:

I know this is not what the witness said.

BY THE COURT:

You're cross-examining the witness.

BY THE ACCUSED:

I'm asking a question...

BY THE COURT:

You're cross-examining the witness, and that question is disallowed.

BY THE ACCUSED:

Q. Why did you think that if someone is listening to your conversation that he is intending to kill you?

A. I did not say anything of this, you will kill me.

BY THE COURT:

Just a second. I told you, your last question was disallowed and the question you just asked was of the same nature. It's a combination of cross-examination and arguing with the witness and it's a line of questioning that is not allowed. Now, move to something else.

BY THE ACCUSED:

I will change the question because it is important to find out the reasons for his concern for his life. Because on the face of it, it looks ridiculous. Even if I was listening, which was not the case, but assume for a second that he was...

BY THE COURT:

The witness never told you he was concerned for his life. He said here we are discussing your case and lo and behold, what do we find outside the door, some short distance from it, you. That's what the witness said. So he said, I was concerned. He said no more than that.

BY THE ACCUSED:

Q. Okay. So you were concerned for your life?

A. I was concerned you listen to our deliberations.

Q. Okay. So what was your concern of, of in terms of your safety?

A. I didn't say any safety. You listen to our deliberations to your case. Certainly we are concerned, and therefore the Chairman would rather ask the Security to take a report.

Q. No, I'm asking your personal feeling. Were you concerned for your safety?

A. I agree with our Department Chairman to ask the security guard to take a report. You stand there before the door which, where we discuss your case.

Q. Were you concerned for your safety? I'm not asking you whether you were agreeing with the Chairman.

A. I agree with Chairman to ask the Security to take a record, you stand before the door where we are deliberating.

BY THE COURT:

Q. Mr. Lin, we know that. What he's asking you is when you found him outside the door, were you concerned for your own safety?

A. No, I did not consider it.

BY THE ACCUSED:

Q. Then, explain why you were in agreement with the Chairman. Is it because he's Chairman and the Chairman is always right?

A. No, we are in this deliberation of your case. And you listen what we talk about, certainly we were concerned and we would rather to take a record of the situation, therefore we called the security guard.

Q. But you were not concerned for your safety at all. You just wanted to make a record that I was there. Right?

A. Yes.

Q. All right. What was the reason for you, the three of you to follow me all the way to the garage? What was the need for that?

A. Because the Chairman would record the security guard and ask you to stay in the department. You would rather to leave it. And the Chairman followed you whether to go down to security guard. And I think this is not properly just the Chairman to go with you, if there was argumentation and then later on no one can say anything. Therefore I will follow the Chairman to go with him and to the downstairs.

Q. Well, what was... you are not answering my question. What was the point to follow me, in the first place?

BY THE COURT:

He answered your question. He said because we followed you down to the garage waiting for the security guard because you were told to stay, and you wouldn't stay, or you were asked to stay.

BY THE ACCUSED:

Well, there is no security guard in the garage.

A. We...

Q. What is the point to follow me? This is the question. You didn't answer it.

A. We don't know where you go. And the security guard is in the first floor. We go with you, the Chairman with you would go to the security and then to make a report.

Q. Did you know that I had a lecture which ended at eleven p.m. (23:00) that day.

A. Before, I don't know. Later, and the Chairman said, yes, I know.

Q. So what was strange for me being in the Department at eleven p.m. (23:00)?

A. Yes, this is strange because if I take a lecture in the evening and ends at eleven o'clock (23:00), and a student talk with me a half hour, I'm very tired. I have a wife and children at home. And at the end I have a special time to look the picture. So I cannot understand his situation. It wouldn't happen to me.

Q. Okay. Then explain your situation, please. You started your meeting at five p.m. (17:00). You were sitting for six hours. Don't you have a wife to go to?

A. Because your case we have to make a decision, and therefore we not to spend six hours discussing your case. We have many, many meetings, and they total about thirty (30) hours of discussion, and we have some (unaudible) and we have to make a decision.

Q. He's not answering my question. I'm asking you, once again, since anyway you had to meet many times, what was the need...

A. It was because we were...

Q. ... would you please listen to the question -- what was the need that particular day. You started your meeting at five p.m. (17:00). Didn't you have your wife to go to, let us say, at nine (21:00)?

A. This is because it is important in the Department, in the meeting, to determine your case. And it is important, we cannot neglect, this is our duty, therefore, we discussed your case and continuously until this point.

Q. You're not answering my question.

BY THE COURT:
Yes, it is. He told you, we had an important decision to make...

BY THE ACCUSED:

Q. Why didn't you go to your wife at nine (21:00).

BY THE COURT:
... with regard to your case, and we took the time. He told you...

BY THE ACCUSED:
Four hours of meetings was enough...

BY THE COURT:
He told you they took the time to discuss it. That's what he told you. Now, you cross-examined him. Pass on to something else.

BY THE ACCUSED:
Ha, ha, ha. The witness has a good protection.

BY THE COURT:
Pardon?

BY THE ACCUSED:
The witness has a good protection, I said. Nine forty-eight (9:48).

BY THE COURT:

Nine forty-eight (9:48).

BY THE ACCUSED:

Q. Now, could you tell me, what did you do during all together about nine hours on October thirtieth (30th)? Could you describe what the time was spent on?

BY THE COURT:

Listen, I'm not going to have the witness waste everybody's time by detailing what was discussed during that nine hours.

BY THE ACCUSED:

Don't you worry, he will say, I don't remember.

BY THE COURT:

They had a meeting. They had a meeting. They discussed your case. It not more relevant to the proceedings than that. Move on to something else.

BY THE ACCUSED:

Do you want to bet that he will say I don't remember?

BY THE COURT:

Move on to something else.

BY THE ACCUSED:

Well, it is important.

BY THE COURT:

It is not important, move on to something else.

BY THE ACCUSED:

Okay. You forbid me to ask this question.

BY THE COURT:

Yes.

BY THE ACCUSED:

Q. Would you please give your definition of professional competence?

A. Professional competence includes, from the University, for example, includes teaching, and the research, and the services, and certainly each Department has its own operation principles. For example, you send a document, circulate it in the Department and accused a professor and therefore, the departmental Chairman called a senior department meeting regarding your case. I think that this is the one of the professional competence not satisfied. Another case, for example...

Q. (Laughs...)

A. For example, if we are scientists, or engineer or scientist, each one works in his own field. It is very difficult to comment the other person have not, have a lower level, and your excuse that the Chairman has a lower level than you. I don't think you... if you don't know the other field, how you can comment on the point. And he has (inaudible), he conceded (inaudible) you accused him he cannot evaluate.

You are previously, for example, he requests to you to supply to him your previous curriculum, you stayed as professor in Russian, and you get a doctor degree from Russian. And he requests you to submit the document and you said you, you however cannot, and say, your level cannot evaluate to you. And this, I think, this for the profession is not professional competence, to say one field you cannot determine the other people in other field has a lower level.

For the purpose of the teaching, release of the teaching, and you get a grant. You say it is not enough or you have to use the money to get the teaching release. In the department, in all the departments professors has a

grant. All the professors ask for the release of teaching, then the University... why should the university to hire a professor in the University? And this instance will consider, or I consider also is professional competence not satisfied.

On the other side, one have to realize we are of a professional competence, it is a favour to us, we have to remember and you come to the University, or Concordia Universty, you cannot get the job, and the professor of the Universtiy, and provided a full research grant to you, and to let you and your family in a stable life in Montreal.

And I don't know how (inaudible) the professor in the (inaudible) contributing to our field. But one thing I am sure, that you never supported from the research grant to you is a main contribution to you. You have... given you the environment, given you the environment to do your research work. I think that this is a big contribution. A research grant is not worthy, I just give you, have no return and he has to apply the next year grant to give you financial support. You sent the mail to the outside and you should have put in the condition and you cannot find a job to anywhere. The professor give you the research grant (inaudible) for the you and for the professor. And you just let things go your way. I think this is a favour to you, and you are not mentioned this is my point of view is all not professional competence. This is only for example I say it.

Q. Well, I wonder if anyone understood anything. I didn't.

BY THE COURT:

That would appear to be your problem.

BY THE ACCUSED:

Ha, ha, ha. My question was very simple and clear, what is professional competence. Let me take a look at those notes, please.

BY THE COURT:

I thought... I thought the witness answered your question. He gave examples.

BY THE ACCUSED:

Well, I (inaudible)... Your notes, please.

BY THE COURT:

He has the right to look at your notes, if you've referred to your notes, as you did, Mr. Lin. So, I wonder if you would hand the notes across to...

A. No, I have to read it just...

Q. No, no...

A. ... I have no more notes...

Q. Well, you pulled the notes out of your pocket and you looked at them, so would you please let him look at them.

A. No.

Q. Oh, no, you have to let him look at them. You have to let him look at them.

A. Okay. This one?

Q. Yes, that was the one that was on the top. That's the one you were referred to.

BY THE ACCUSED:

Okay...

Q. Could you read the note aloud, because I cannot get your handwriting...

A. I just said (inaudible) this note, it's notes. I say, the first one, accuses a colleague. You don't know the

background. And the second, accused the Department Chairman. The third, (inaudible) teaching and don't know the departmental operation. At this point I will see you don't know how the Department operates, how the Department works, and you didn't attend the Department meetings and therefore, this is, I consider, as professional competence not satisfied. And the four, favour and not appreciated. No job. And the research, they give you a research grant, give you the environment to work. This is a contribution to your work.

Q. Well, all right. Whatever you said, is it correct to summarize it that professional competence is teaching, research, plus, if I purchase printer wrong, then it is also professional competence or incompetence. Right? Is this what you said?

A. Professional competence, it included for the -- even when working in a company, or in the department, or in the university, institution, should be as a unit, and we should work together to build this unit. All departments have nothing. They start from nothing, that's in thirty years years we are working together to build the Department as one, now, as one of the best Mechanical Engineering department. And anyone in the Department, working in the area is, I think, this here worker is a competent, professional competence, with a person not working in this direction, then I think this is professional incompetence.

Q. Mr. Martin, he answered my question?

BY THE COURT:

Substantially, yes, I think so.

BY THE ACCUSED:

Fine...

Q. So, (laughs) to whatever it's worth. Would you like to take a look at this document, please?

BY THE CROWN:

Excuse me, sir, can I just see it first? ... Madame...

BY THE ACCUSED:

Q. Did you understand the meaning of this document?

A. Yes. It says you have some repair to your printer.

Q. So, does it mean that after all I was very professional in buying my printer?

A. I don't know.

Q. Well, first of all, is buying a printer evidence of professional competence or incompetence, according to you? Is it related to professional competence?

A. I don't have the definition of the professional competence with me. And if you repair (inaudible) computer printer, if you have a repair, the University will repair, no cost for you. The word of this (inaudible) is professional competence, or probably not competence, I don't know.

Q. Well, did you or didn't you include several documents concerning purchase of a printer as exhibits to your reasoned decision? Did you?

A. Because the Purchase office gave some document to the Department to state, to state, to give some statement where according to the document submitted by the Purchasing Department.

Q. How to make him answer the question. I just asked him if he did or didn't include it into their reasoned report?

BY THE COURT:

When the Department put together its reasoned report...

A. Yes. It's part of it...

Q. Okay.

A. ... not specially particular to this item...

Q. He wants to know... he wants to know whether you did, and if so, why you included documents relating to his purchase of a printer.

A. I don't, I didn't read this document. But we received the Purchase office and complied to some point, whether to this point or to other, I cannot remember... the Purchase office have some difficulty with the relation of Dr. Fabrikant. And not only one, other few documents they sent to the Department Chairman.

BY THE ACCUSED:

Q. You still didn't answer why they included it?

A. Yes. Because we received, the Purchase office complained to the Chairman, and quite a few complaints, therefore we put this as a document.

Q. Well, was it as evidence of my professional incompetence included there?

A. It's a marked disturbance, the operation of the University, the daily operation, and I think this is a word, yes, should consider it.

Q. So it was evidence of my professional incompetence, right?

A. If the purchase office and the continuously to give word the Department complaint, and that they said they cannot solve many complaints for, for, for, for -- with your relations, and they give the document to the Department, and Department, based on this one, and we'll put it this as a document.

Q. He still doesn't answer. Was it or wasn't it related to professional competence?

A. It would appear, in the one, in the organization, or in the university, a disturb of the department operations, I think, yes, this is professional incompetence.

Q. So, if I disturb purchasing services, this is professional incompetence, right?

A. Yes, sir.

Q. Okay.

A. For your special case, because possibly that later on, we don't know, there are many complaints and not only a printer, part about the printer, okay, now your documents is okay. But if there are other cases, we don't know.

Q. Okay. Now, but with the printer you were wrong, because I was right after all, correct?

A. We didn't... we didn't receive the document before. We put it in the document, in your document.

Q. I'm asking, now, do you see now that I was right after all? Do you?

A. For this case, special case, yes.

Q. Yes. So wouldn't it be then appropriate in ninety-one ('91) to invite me and to ask me what happened to the printer?

A. I cannot recall.

Q. I'm just asking whether anyone advanced an idea; we have a number of complaints from the Purchasing Department, let us invite Fabrikant and ask him to explain it. Did anyone advance that idea at that time?

A. Because you have many excuses to the other one, and we just, according to this document, and make a, make a,

yes, just make a certain decision.

BY THE ACCUSED:

Now, long this witness is going to avoid questions until you finally discover that he is adverse, Mr. Martin?

Whatever happened, is it enough to declare him adverse?

BY THE COURT:

No.

BY THE ACCUSED:

No. Fine.

Q. Do you think that if you did... well, you still didn't answer the question, if anyone advanced the idea to invite me and to discuss it with me.

BY THE COURT:

Q. Did you listen to that question?

A. Yes, I listened.

Q. Okay. That's what he wants to know, why didn't you invite him to meet with you and discuss the problem with you?

A. I think that the committee has found the difficulty in with the, for then, correspondence with the chairman. I didn't remember. So why you are not complaining to the DPC? If you think this a non collaboration, you should have complained, you ask the DPC has a meeting with you. And you didn't ask this situation.

Q. I didn't understand a word of what he said.

A. The DPC at that time (inaudible) that according to the document or (inaudible) of the Purchase Department, and we have the, we have already a decision made to send a copy to you, and if you think this is a (inaudible) you should have made a complaint and to ask for the department, for Department Personnel Committee to listen to you, but you didn't ask for it.

Q. All right. Fine. Fine. Fine.

BY THE COURT:

It appears not to be clear.

BY THE ACCUSED:

You feel it's all right...

BY THE COURT:

It appears...

BY THE ACCUSED:

... I will continue. If you feel it's all right, let's not spend time.

BY THE COURT:

It appears...

BY THE ACCUSED:

Let's continue.

BY THE COURT:

It appears that it is not clear to him whether you're still talking about the printer and the printer alone, or whether you're talking about the DPC meeting.

BY THE ACCUSED:

Well, you asked the question, and I understand, okay, poor me, I'm asking bad questions, but you're asking questions brilliantly.

BY THE COURT:

Well, I asked the question...

BY THE ACCUSED:

And your question was very clear and...

BY THE COURT:

I asked the question insofar...

BY THE ACCUSED:

... and he didn't respond to you.

BY THE COURT:

... as it related to the meeting. But he seems to have misunderstood my question, because he thinks, probabaly understandably, that it is still related to the printer.

BY THE ACCUSED:

Well, it is related to the printer. You asked him why didn't they invite me to explain the matter with the printer.

BY THE COURT:

Of the printer. The question of the printer was something that was annexed to the general report.

BY THE ACCUSED:

Yes.

BY THE COURT:

So, I presumed, perhaps wrongly, that what you were driving at was why you were not asked to come and either answer questions or put your own position before the DPC before they drafted their reasoned report. Is that what it was?

BY THE ACCUSED:

Yes. But at least, at least in this particular case. It might be general, of course, but right I'm talking still about the printer, why they didn't invite me. If they did, I would have shown him this paper and they would be satisfied that I was right, and maybe...

BY THE COURT:

I understand. I understand.

BY THE ACCUSED:

... we all not be here today. Maybe we will be teaching and doing all our work.

BY THE COURT:

Oh, I see, the printer. Okay.

BY THE ACCUSED:

Yes.

BY THE COURT:

The printer.

Q. What he's saying is before you concluded that his conduct in connection with the purchase of the printer left something to be desired or, to use his words, amounted to professional incompetence. What he's saying is, why didn't you ask him to come and discuss it with you, particularly before you used it in a report which you submitted to the faculty. That was the question, I think.

A. Because we believed, we believed, with the Purchase Department was still mad and to complain to the Chairman and many times, and therefore we make the report, and the reporter has sent a copy to Dr. Fabrikant, and if he didn't make a complaint and said that this is correct, if he think it is correct, he should have make the appear to the Department, to the Personnel Committee. We don't know and there are many things involved. We just cannot ask him each by one, every one to make comments on it. And we sent the, we sent the report to him, and he know what happened to him. If he thinks this is not correct, he should have talked, he should have applied to the Department, or he should have complained of it. And he has made many complaints to the Department Chairman, but if he didn't make any complaint to the Department.

BY THE ACCUSED:

Did he answer now?

BY THE COURT:

Well, you heard what he said.

BY THE ACCUSED:

No, I'm asking you. He answered, from your point of view?

A. Yes, I answered it.

BY THE COURT:

I am not... I heard the question and I heard the answer.

BY THE ACCUSED:

You are satisfied this is the answer?

BY THE COURT:

I'm satisfied the question was answered, sure.

BY THE ACCUSED:

All right. Okay. I would like to file it.

BY THE GREFFIER:

D-43.

BY THE COURT:

I presume there's no objection to that document being filed through this witness.

BY THE CROWN:

No, My Lord, sooner or later this letter will find its way in the record. I guess the proper witness would be Mr. Gigušre, but...

BY THE ACCUSED:

Well, it is addressed to me. I'm as proper as Gigušre.

BY THE CROWN:

Well, or Fabrikant. So that's why I don't object.

EXHIBIT D-43: Memo dated November
21, 1988.

BY THE ACCUSED:

Q. Okay. So do you see any difference between professional misconduct and professional incompetence?

A. Yes, it depended how do you define it.

Q. I'm asking you, do you see any difference between professional incompetence and professional misconduct?

A. Yes, I think so.

Q. Okay. Suppose I spit into your face, is it professional incompetence or it is professional misconduct?

A. I don't understand your question.

Q. Well, if I spit in your face, is it professional incompetence or professional misconduct?

A. Why you spit with me is related with professional incompetence or professional misconduct, why?

BY THE CROWN:

This line is a waste of time, My Lord.

BY THE COURT:

This line is an utter waste of time.

BY THE ACCUSED:

No, it is not a waste of time.

BY THE COURT:

Yes, it is.

BY THE ACCUSED:

Okay. Would you like me to explain my line of questioning and the reason for it?

BY THE COURT:

That may help.

BY THE ACCUSED:

All right. In case of the Department Personnel Committee and their decision not to renew my contract, they made a very interesting trick. The trick was like this, since

they could not challenge excellence of my teaching, they couldn't challenge excellence of my research and professional competence for every normal person is exactly that. It's ability to teach and ability to do the research. Nothing else. And since this cannot be reproached to me in any way, but professional competence is part of evaluation of any professional; therefore, they made flip of words. So they now define professional competence as including anything. Suppose I bothered somebody, it means I'm professional incompetent. I purchased printer and accusing -- printer, the manager of professional, of purchasing services that he is bribed. This is professional incompetence. I am accused a member of being a crook. This is professional incompetence. Now, for every normal person it is clear that this is not professional incompetence.

BY THE COURT:

Oh, is it?

BY THE ACCUSED:

This is professional misconduct. Everyone understands that. And professional -- you don't know that either, do you?

BY THE COURT:

Well, I find your definitions interesting. That's all.

BY THE ACCUSED:

Well, let the jury decide whether my definition is correct. Now, when someone misbehaves professionally, it has nothing to do with his professional competence. He can be extremely competent in his profession, but his behaviour as a professional might be unacceptable. And in this case there is a special place which is called Code of Conduct, Non-Academic, which deals with misconduct. So the trick they did to justify my firing since they could not reproach me anything, they digged out whatever they could from anywhere, whatever, wherever, ever complained on me, without even checking who was right and who was wrong, and appended it as a proof of my professional incompetence, instead of dealing with this in straightforward manner. If they didn't like something of what I did, it has nothing to do with professional incompetence or competence. Professional competence is quality of my teaching and quality of my research. This is what the profession is all about.

BY THE COURT:

Well, that's wonderful, but...

BY THE ACCUSED:

For example, let me finish, please. If you, in Court, make a ruling totally lawless, this is professional incompetence. If you rape your secretary, this is professional misconduct. Those are two different things...

BY THE COURT:

I rather thought... I rather thought the latter constituted an infraction of the Criminal Code, but anyway...

BY THE ACCUSED:

Well, besides that, besides that. So, I just want to make this aggravated examples to make it clear what refers to what. Actions which are relevant to exercise of your profession is professional competence.

BY THE COURT:

Well, all of this...

BY THE ACCUSED:

All actions...

BY THE COURT:

All of this is argument that you, I suppose, can make at the appropriate time, but it is not...

BY THE ACCUSED:

No, you asked me to explain why I'm asking him questions about professional competence and professional misconduct, because I want to demonstrate to the jury that they deliberately made this trick in order that their report would not look totally ridiculous. That's all.

BY THE COURT:

I asked you in connection with an objection that the Crown advanced. Have you anything to add?

BY THE CROWN:

Yes, My Lord. I think this point -- the explanation we just got from the accused doesn't help us. It's leading nowhere. What these people did is they included behaviour in the assessment of an individual. Whether he agrees or disagrees, he likes it or doesn't like it, he could go to appeal to FPC or the Vice-Rector, Academic. They're entitled to make their decision, and if he's not happy he can take the appropriate recourse. Now we're redoing the appeal of the DPC. What we're here for is to know what the DPC did. Whether he agrees or not and what were the consequences. I still maintain my objection. It's leading us nowhere this line of questions.

BY THE ACCUSED:

Well, I don't understand. Effectively he agreed with me, (laughs) that (laughs) effectively he agreed with me that, yes, indeed, we need to find out whether the DPC did or didn't do something wrong. And he agreed with me with that. And whether it leads us to something or doesn't lead us somewhere, it does lead, because if the DPC did something so outrageous, as I said right now, because this is an outrage. They couldn't be that stupid to mix up those two terms, professional misconduct and professional competence, and it was done deliberately and therefore it is important to point it out to the jury the trick DPC made.

BY THE COURT:

Well, that is an argument you can make at some point. But, first of all... first of all, it is not our mission here to find out whether the DPC was right or wrong. You have asked questions upon what criteria the DPC took into account in order to draft their report, you've been allowed to do that. But to get into a discussion with Mr. Lin on the distinction between professional misconduct and professional incompetence, which touches particularly when you relate it to the Collective Agreement and the Code of Conduct and to a legal interpretation of these concepts, you're not going to do.

BY THE ACCUSED:

Well...

BY THE COURT:

So, the objection is maintained. You will move on to another line of questioning.

BY THE ACCUSED:

I'm asking... I'm not asking him any legal...

BY THE COURT:

You'll move on to another line of questioning. The objection is maintained.

BY THE ACCUSED:

(Laughs) All right.

Q. Do you remember the meeting of the so-called senior members on October twenty-fifth (25th), nineteen ninety-one (1991)?

A. Yes.

Q. Do you remember the motions which were passed there?

A. Yes.

Q. Okay. Do you remember who suggested those motions?

A. No, I'm not recall it.

Q. Was it you?

A. No.

Q. Was it Osman?

A. I'm not recall it.

Q. Sorry?

A. I'm not recall... I cannot recall it.

Q. I cannot recall. All right. Did anyone during the meeting raise the question that Fabrikant should be invited and his side of the story should be heard?

A. I don't remember. But you were at the special meeting because you circulated a document and you excused one colleague, and also a document, as a confidential, from the Chairman, and a departmental thing. This is not the correct way to do, and they would call a special meeting.

BY THE ACCUSED:

He's still not answering the question.

BY THE COURT:

No, but that wasn't the question. The question was, did anybody suggest... did anybody suggest at that meeting, "gentlemen, perhaps we should have Dr. Fabrikant in to give us his side of the story and explain to us why he did that". That's what he's asking.

A. I cannot recall whether someone has said this or not.

BY THE ACCUSED:

Q. Now, did you know at the meeting already that you are going to use Minutes of the meeting as one of the exhibits of your recommendation that my contract be terminated?

A. Yes.

Q. Did you inform other members about it?

A. What do you mean "inform other members"?

Q. Other members who are not members of the DPC who signed the Minutes, were they informed that those Minutes will be used as one exhibits of your reasoned decision to terminate my contract?

A. No. I don't think that this has made, because the document has already made, and signed by the senior professors, and that this document, yes, was used, the one document, related to your reappointment.

Q. Can you explain why they were not informed how the document they signed will be used?

A. Because the document is established, signed, when the document in the Department, certainly we can use the Department document as used for this purpose.

BY THE ACCUSED:

Q. Again he's not answering my question.

BY THE COURT:

What he wants to know, at that meeting of senior professors, or senior members of the Department, there

were some, such as yourself, who were members of the DPC and some who were not members of the DPC, like, for example, Svoboda, and what he wants to know is, if you knew, and you said you did, if you knew that you were going to use these resolutions as an annex to your report recommending that he be not renewed, what he wants to know is, why did you not tell the others, like Svoboda, who were asked to -- who were also present at that meeting that you were going to use these resolutions to recommend his dismissal. That's his question.

A. Okay. At the time we don't know how, whether his reappointment should be continued or not. And at this meeting we just discussed the fact what happened to the Department, and we don't know. We just discuss the fact. We didn't consider whether we will use the form for the reappointment, and the reappointment is another, a different, quite a different thing, we're not have a connection to the point at this meeting.

BY THE ACCUSED:

Well, just a second ago he said he knew and now he's saying he didn't know. Well...

BY THE COURT:

There you are.

A. Because I didn't understand what you talk about.

BY THE ACCUSED:

He contradicts himself.

BY THE COURT:

So, there you are. He said he didn't understand what you said to him.

BY THE ACCUSED:

Well, my question was very clear.

BY THE COURT:

Well, perhaps in your mind it was. But I guess he didn't understand it. I don't find your questions limpid much of the time.

BY THE ACCUSED:

What?

BY THE COURT:

I don't find your questions that clear very much of the time.

BY THE ACCUSED:

If I ask questions, did you know during the departmental meeting that you are going to use it...

BY THE COURT:

I don't think you added, did you know during the departmental meeting.

BY THE CROWN:

He did not use the word "know". Did you say that you would use it.

BY THE ACCUSED:

Why don't we play it. It was just...

BY THE CROWN

Let's not waste the time listening to the tape.

BY THE ACCUSED:

... six minutes ago, not more.

BY THE COURT:

I'm not going to waste the time listening to the tape. That's for sure.

BY THE ACCUSED:

Well, I ask you to play the tape.

BY THE COURT:

I'm not going to play the tape. I'm telling you. I'm not going to play the tape. The jury has heard the whole question. For whatever it's worth, they can assess it.

BY THE ACCUSED:

Well, you see we already six minutes later do not remember exactly what was said. So you think that at the time of deliberation, jury would remember what was said?

BY THE COURT:

Go ahead, if you have other questions to put to him.

BY THE ACCUSED:

Okay.

Q. When did you know that you are going to use these Minutes as exhibit in your reasoned report?

A. We didn't consider at this point to your reappointment, for the meeting Minutes. And we have discussed your case for different aspect, for the consideration, and till they decide, and what's a document they should put in, and we select this one document.

BY THE ACCUSED:

Well, he's constantly avoiding answering questions. How many times the witness has to do it until the Judge declares him as adverse. Isn't it about time to declare the witness adverse?

BY THE COURT:

No, I don't think it's about time to declare the witness adverse. I don't think your question is particularly clear.

BY THE ACCUSED:

Well, what is not clear in my question? Let me repeat my question.

BY THE COURT:

When... fine, you repeat your question.

BY THE ACCUSED:

Q. When did you know, at what moment in time did you know that you are going to use the Minutes of the meeting of senior members of the Department as an exhibit in your reasoned reported? To you is my question clear, Mr. Martin?

BY THE COURT:

I understand it. I don't know if the witness understands it. But I understand it.

BY THE ACCUSED:

Well, the witness is, (laughs) he's teached for many years, he is supposed to understand a question like this.

A. I cannot recall what time and think about the point where I discussed there over thirty (30) hours for...

BY THE COURT:

No, no, no, no. What he is asking you is, the meeting of senior members to discuss his conduct in sending that... I think it was something by electronic mail, was that right?

BY THE ACCUSED:

No.

BY THE COURT:

No, what was it? It was in connection with your...

BY THE ACCUSED:

Electronic mail at that time didn't exist.

BY THE COURT:

Fine. Excuse me.

BY THE ACCUSED:

They had a meeting of senior members. There were Minutes

of that meeting. First I asked him, at the meeting, did you know that you are going to use it? He said, yes.

BY THE COURT:

I'm aware of that.

BY THE ACCUSED:

Then we had all this controversy. Now I'm asking another question. Since... okay, he now says he didn't know at that time. I'm asking at what time did he know.

BY THE COURT:

Q. You passed these resolutions at the meeting of October twenty-fifth (25th).

A. For senior...

Q. Yes, senior members.

A. Uh, huh.

Q. And what he wants to know is this, if you didn't know on October the twenty-fifth (25th) that you were going to stick these things on as appendices to your reasoned report, when did the DPC decide to do it?

A. As I understand the DPC, I didn't, at the meeting we didn't consider with his reappointment. And how can we think about whether put on he reappointment, it just looks like we have a prearrangement. And we are meeting for this, to discuss the least, the fact, and he distributed this document, and we didn't consider his reappointment of his situation.

Q. But what he's suggesting to you is that you held that meeting just for the purpose of putting together some resolutions that would be stuck on to the DPC report recommending that he not be renewed. He's asking you if that's true?

A. No. It is not true. He think about, and he can ask other. You can ask other, the other DPC, or the other, the person attended, who attended the meeting.

Q. So who decided and when did they decide to use these resolutions?

A. When later on we discussed again the situation and from many aspects, and then certainly we think that this is all the one point to his situation. And what the time I cannot remember.

BY THE ACCUSED:

Okay. We didn't get an answer.

BY THE CROWN:

Sure we got, My Lord.

BY THE COURT:

I thought we...

BY THE CROWN:

He doesn't remember the time.

BY THE COURT:

I thought I heard an answer. But, anyway...

BY THE ACCUSED:

Yes "I don't remember". That was the answer. Right? After spending about fifteen (15) minutes, we finally got the answer, I didn't remember. All right.

Q. Now, on November first (1st) you had a meeting with Haines, MacKenzie, and other people. Do you recall that meeting?

A. For intervention team, this is the meeting?

Q. Yes?

A. Yes.

Q. Do you remember who was present at that meeting?

A. The people I don't know, many people. And we have the

Personnel Committee of the Department of Mechanical Engineering, whether they were all there, I cannot remember. I think the Chairman, the Dean was there, and the other, I don't know. I don't know the names. I don't know them.

Q. Was Mrs. Horwood there?

A. Dr. Hoa, you mean?

BY THE COURT:

Q. No, Mrs. Horwood, Osman's secretary.

A. I think so. I think so. I forget, I forget, really this meeting.

BY THE ACCUSED:

There is not a single person who can remember that meeting.

Q. How did it happen that -- who called you to that meeting?

A. (Inaudible) has decided for (inaudible) your appointment, and has a certain concern, concerned for the, what happened. And I think the Chairman wrote a memo to the Rector or to whom, I don't know, I forget it who wrote it, the University Administrator, and they say that they will make arrangements for the meeting. I think so, yes.

Q. I just asked you who called you to that meeting?

A. I received a notice from the Chairman have this meeting.

Q. You did or didn't receive it?

A. He informed me of the meeting. Yes, I attended the meeting.

Q. Who informed you?

A. Yes, the Committee, the Personnel Committee and all the members, I think the Chairman. Who called me then, I don't know. I get the information I have to go there to have a meeting.

Q. Do you remember the place where the meeting was?

A. The place, yes, is in the other place, from, near the, near the Bank of Montreal.

Q. Okay. And what happened during that meeting? Do you recall what was the subject of that meeting?

A. Such that there is a possibility, was possible you will have some reaction for this, for this matter, reappointment.

Q. I don't understand what he said.

A. Yes. It was possible you have to take some action.

BY THE COURT:

He said it was possible... he said it is possible that you would have some reaction. I'm not sure what he said after that.

BY THE ACCUSED:

Let us ask him to repeat.

Q. What was the subject of the meeting? What was the purpose of the meeting?

A. The purpose of the meeting I think the Departmental is decide to, not to continue for the appointment, and when they send it to you, the possibility you will take some action and this what we discussed, how, what's happened that you, some action comes, what's happened.

Q. Okay. First of all, what kind of action did you expect from me?

A. I not expect. We discussed.

Q. Well, you said yourself that I might take some action?

A. I said at the meeting it is considered possible you will take action.

Q. Okay. What action was meant?

A. I don't know what action. If know what's action happened, then would no more meeting.

Q. Well, all right, what possibilities of action were discussed?

A. I don't, that we say we should take out some safety, therefore some security in the Dean's office, before the Dean's office, (inaudible) and so on, the University has taken some action.

Q. What the Dean has to do with the departmental decision? Why security should be put at the Dean's office, while decision was departmental?

A. This I don't know. They make the decision how to make security.

Q. Well, what was... you were present there?

A. But not the detail now to do it.

Q. Well, what was discussed?

A. Discussed how you make safety when this letter reach to you, if you take some action, and to take safety.

Q. Any facts were presented that I might take some action which would require security?

A. Yes. This is a meeting, the purpose of the meeting, to discuss what's could happened, and how should do it.

BY THE ACCUSED:
Again he's not answering my question.

BY THE COURT:

Q. He said to you, at that meeting were any... when you were discussing what he might do, were any facts presented, were any, or were any examples given of other things he did? What was the reason for the concern?

A. Because the Chairman, or Department Chairman said, one time you were into the office and said it to him, you know how to do it American way, if this, this is a signal. And this is a very concern for him.

BY THE ACCUSED:

Q. Did he say when it was with respect to what, on what occasion, just what... I came out of blue, did this, and got out. Something like that? Or it was during conversation? Any details? How did it happen?

A. I don't know. You have to ask the Chairman. I don't know. Chairman has said this statement. You have assured him you know how to do it, this is something, American way. This is a signal. I didn't know the situation.

Q. All right. So you didn't go into it -- he didn't go into detail as to why it happened, where it happened, when it happened? Nothing?

A. I cannot recall.

Q. All right. Any other examples were involved then?

A. I cannot recall.

Q. Did anyone say then that I threatened to kill Rector, during the meeting?

A. No, I don't, I don't think so. I don't have anything about this.

Q. Did anyone say that... did MacKenzie say that I, in her presence, said that I'm going to kill a lot of people? Did MacKenzie say that during the meeting?

A. I don't think so.

Q. Well, did she or didn't she? This is kind of phrase which is difficult to forget. Is it?

A. I don't remember. I don't think I heard such a statement

in the meeting.

Q. Okay. Was the case of some children somewhere, with however might say they are dressed or something? Was anything like that discussed during the meeting?

A. I cannot remember.

Q. So what did... did you talk at the meeting?

A. What do you mean, I talked during the meeting?

Q. Well, did you say anything during the meeting?

A. No, I don't think so I did say anything.

Q. Did Mrs. Horwood say anything during the meeting?

A. I cannot remember. I cannot recall that at the time whether she said or not.

Q. How many meetings do you have in your life when you discuss that somebody might come and kill somebody?

A. I don't know whether it was only this one, or some one else.

Q. So it was in a way a remarkable meeting, was it?

A. My attitude to handle the problem, when not to remember something at that time, when I think it is correct, I do, and then I will forget it. Why should I remember? At the time we do, you correct it, I will forget it, and do the other things. I never need to remember something in my mind. This is my attitude to handle my research and my work.

Q. I wish I understood what the whole thing meant...

A. I tell you I do the job, at the time I think correctly I will talk about and handle it, and then I will not to keep this. Why should I keep it? This is go, you forget, and past, is past. And the present is always the present is in the mind. And the future is not come. And why you should recall, remember past? The past is past, we cannot get it back. And I will keep in my present what we talk about in the present. I talk what I know, and what know and when I finish why should I remember this with a copy in my hand.

BY THE COURT:

Q. Well, that was his question, you see. What his question to you was, listen, it's not every day you go to a meeting where the subject that's discussed is the question of somebody doing things, as he put it, "the American way". And he's saying to you, if that's... if you agree that that's exceptional, why do you have such difficulty remembering what was said at that meeting. That was his question.

A. I (inaudible) is really serious or not, I do not care. The meeting which is a meeting. A meeting. I look at the meeting as a usual, not as a special. So, my look at this meeting in this attitude.

BY THE ACCUSED:

Q. So, during that meeting did you personally feel any concern for your personal safety?

A. A little concerned.

Q. A little concerned...

A. Yes.

Q. ... in what way, that I might come and kill you?

A. I don't know that situation is all, because the Chairman say you, possible you know this is a way, and we have to make some concern.

Q. All right. Then could you explain how an armed bodyguard could prevent what was contemplated there. If concern was for me coming with firearms, how an armed bodyguard

which was contemplated, could have prevented that?

BY THE COURT:

It's an opinion you're asking from the witness and the question is disallowed. Don't answer the question.

BY THE ACCUSED:

Q. All right. Did anyone during that meeting raise the question, since we are talking about possibility of Fabrikant coming with firearms and shooting, then probably unarmed bodyguard is not sufficient security. Did anyone raise that question?

A. I don't remember.

Q. Okay...

BY THE COURT:

Okay. I think we'll adjourn 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)

THE WITNESS, SUI LIN, TESTIFIES UNDER THE SAME OATH

EXAMINATION BY THE DEFENSE: (CONT'D)

Q. So, what was decided at the meeting of November first (1st), nineteen ninety-one (1991)?

A. What intervention meeting...

Q. Huh? Sorry?

A. What intervention meeting, I cannot remember the date of the meeting.

Q. Okay. What was decided at the meeting which followed incident in the Department October thirtieth (30th). You had a meeting. What transpired during that meeting? What was decided there?

A. You mean October thirtieth (30th), this meeting?

BY THE COURT:

No. He said... before the break we were talking about the meeting of November the first (1st). And it turns out that the meeting of November first (1st) took place after the incident in the evening when the DPC was meeting. Now, I think everybody has agreed that the meeting of November the first (1st) was between, according to you, at least certain members of the DPC, Haines, I believe you mentioned Mrs. MacKenzie, and you weren't sure, but you thought Mrs. Horwood was there. But the meeting with the intervention team. That...

A. Okay.

Q. ... what Dr. Fabrikant is asking you is what was decided at that meeting.

A. I think that this intervention team, whether I considered this situation and not take any definite action.

BY THE ACCUSED:

Q. Didn't you mention earlier that it was decided to put a bodyguard at the Dean's office?

A. This is, later on I saw the security guard before the Dean's office.

Q. How did you know that it was a security guard?

A. Yes, I ask the people. This, I didn't see it before. He sit always in the Dean's -- before in the Dean's office. And I asked people, and they informed me this is a security guard.

Q. Okay. Was he looking strange that you asked about him?

A. Because I don't know him, and he now is timely, he is there, therefore I ask other people. They said he is a security guard.

Q. Well, do you know everyone in the University?

A. I don't know. I just saw him.

Q. Right. Could it be that he was just another student?

A. I don't know. This here... I asked people say that this is a security guard.

Q. Well, what attracted you to that person to ask who he was?

A. Because this is a stranger in the Dean's office some other people always there.

Q. You've been there several times and you saw the same person there or what?

A. I don't recall whether he is same person or not, to have strange people, a strange person in the place.

Q. Well, still, how did you know that it was not a student, for example? What was...

A. I don't know whether he was a student or not. I ask people. The people inform me this is a security guard. Whether he is a student or not a student, I don't know. I don't care. Just for my, my, my... Just I would ask why now is one person always, nearly every time I go to Dean's office, he is there, someone is there. Whether student or no student, I don't know.

Q. Do you remember who you asked?

A. I don't remember.

Q. No. He remembers everything except that. All right. During that meeting did anyone raise question that Fabrikant should be suspended as danger to the University?

A. I don't recall. I don't think so.

Q. When the idea of suspension me as danger to the University appeared?

A. What does that mean the suspension, dangerous to the University?

Q. Did you ever sign a letter requesting Rector that I be suspended as danger to the University?

A. For a certain aspect that you have an open, you have the opened letter to the public and it have a statement to the Rector and so on, and we think, the Department Committee think there is a possibility there is some... yes, something should be concerned at the University. The University should take some action.

BY THE COURT:

Q. The question was, do you remember signing a letter, where, you know, and by your signature, supporting a recommendation in that letter to the Rector that Dr. Fabrikant be suspended as a danger to the University. That's what he asked you. He asked you if you signed a letter to that effect, whether alone, or along with others, or with I don't know whom, but that's what he asked.

A. I not exactly remember whether the Chairman, this is a letter for the Chairman or who this is for the Department Personnel Committee. One letter, yes, is send it to the

Rector, yes. I forget whether it is from the, inside the Department Personnel Committee, yes, I should sign it. If for Chairman, then I not sign it. I forget. I not remember. However, I remember this is a document sent to the Rector, yes.

BY THE ACCUSED:

Q. Okay. Do you recall when the idea of writing such a letter appeared, what was the reason for that? How did it come to writing such a letter?

A. I think at this time you have a letter, open letter to the public, and some statement... I think... I think a statement regarding that the Department assign a course to you, and you think this is not in your field. And you ask the Rector to take an action and say in, in the letter you have a statement in a certain definite time have to do so, if not you will take legal action.

BY THE COURT:

Q. No, but that wasn't the question. The question was, you said, yes, you recalled a document. You couldn't remember, if I understood your answer properly, whether it was signed by Osman, or whether it was signed by the DPC. And you said, well, if it was the DPC that signed it, I would have signed.

A. Yes.

Q. But I don't remember.

A. Yes, yes.

Q. Now, his next question was, what brought that about? What triggered that letter? What caused that letter to be sent?

A. Because this is the reason, Department Chairman assigned him a course to teach. He said this is not in his field. And he sent a letter, an open letter to the Rector, asking the Rector should change this situation, and if not change the situation, he will take legal action. And for this reason, and Department they think this is not a proper action for a professor assigned a course, a fundamental course for the Mechanical Engineering, and he said he cannot teach, or he said is not in his field, and ask her for the change it. And this is the reason, and a letter to the Rector, open letter to the Rector, and make a statement that at a certain definite should give the response, otherwise he will take legal action to, against the Rector. And that this is for the departmental point of view, a professor in a Department to take such an action that will affect the, all the departmental operations, and therefore will send a letter to the Rector to take an action on this, on this matter.

BY THE ACCUSED:

Q. So, if -- I'm trying to understand what you said. Since I written a letter to the Rector in which I threatened with legal action, you decided that I am threat to the University and I should be suspended as threat to the University. Is my understanding correct of your answer?

A. I don't remember whether in this letter has a suspend or the action, yes. In the Department operation and we have a unit in something, I think that this is not proper way to ask the Rector and to give a definite time to give you a response, otherwise you take legal action. And I don't think this is a proper way for a professor in the Department.

Q. Would you just answer the question, that you decided that

I'm a threat to the University because I advised the Rector about legal action which I can take. Is that what you're implying the reason for you declaring me threat to the University? Just say yes, or no, for a change.

A. I think the Department take action, asking University to take an action, because this matter is right.

BY THE ACCUSED:

Well, unless witness has some certificate that he is sick, I think what his behaviour is contempt of Court. Is it?

BY THE COURT:

No. His behaviour is not contempt of Court at all. He has some difficulty following you, and he seems to have particular difficulty with following some of your questions.

BY THE ACCUSED:

Well, how come you don't have any difficulty following them?

BY THE COURT:

I don't know today.

BY THE ACCUSED:

(Laughs). I think that when the trial will finish you will miss me. (Laughs).

BY THE COURT:

Well, let's see if we can sort this out, I don't think the witness is trying not to answer your questions.

BY THE ACCUSED:

Well, what the hell is this (laughs)...

BY THE COURT:

I think the witness is having some difficulty understanding.

A. I don't recall... if you have the document, I want to see it.

Q. No, but what he is saying to you...

BY THE CROWN:

I think it's a good suggestion, My Lord.

BY THE COURT:

Pardon?

BY THE CROWN:

It will trigger the witness' memory to see the document, if ever there is such a document.

BY THE COURT:

Q. He is saying, did he understand your answer to be this. Because he threatened to take legal action, and because you gentlemen in the Department didn't think that that kind of thing was proper, is that why you asked him to be declared a threat to the University? Is that the point in time, because your answer seemed to imply that that was so? And that's what he asked you.

A. I think so. Because you give the professor in the Department of Mechanical Engineering a new course, a fundamental course assigned to a professor, he should take it. For all departments, each professor has a specialization. The fundamental course have to take... have to give in any special professor. Not as a professor I have selected this course, and he selected the course, and the fundamental course, no person will choose a fundamental course.

Q. So, what he's asking you is, fine, if that's your view...

A. Yes, this is my view.

Q. Okay. Fine. But if that's your view, is this... is that view why a letter was sent to the Rector asking that he be suspended under the terms of the Collective Agreement as a threat to the University?

A. Whether this letter is special write down is is suspend, I don't know. This I don't know. I'm not confirmed that this went. Therefore I cannot answer the question. If he say... I cannot recall of the special term.

BY THE CROWN:

I think the witness has no idea about the letter we're talkng about, My Lord.

BY THE COURT:

Perhaps not.

BY THE ACCUSED:

Q. Do you recall when the question of assigning me objectionable courses arrived? When was that?

A. This are not my duty. The Professor Osman, Chairman, he assigned all the courses to the Department professors, not the Department Personnel Committee.

Q. I am asking you, do you recall when the issue arised?

A. I cannot...

Q. When?

A. I cannot recall the time.

Q. Well, year, just in what year was that?

A. I cannot recall the year, the number of the year.

Q. Okay. If it was ninety-two ('92), or ninety-one ('91), could you at least discriminate between those two?

A. I cannot recall the year, the number of the year.

Q. All right; was it shortly before shooting, or was it more than a year before that?

A. I cannot recall.

BY THE ACCUSED:

And you sent me to check my fitness to stand trial.

BY THE COURT:

That observation is out of place.

BY THE ACCUSED:

Okay. Let us show the witness the document now.

BY THE COURT:

Show the witness the document. You're privileged to do what you wish. You've been given very wide latitude with the witness because there's a difficulty in communication, but it works out. It manages.

BY THE ACCUSED:

I don't think I have it. The letter was deposited... who deposited it. I think Gaudette deposited the letter.

BY THE COURT:

D-27. A letter to Me Gaudette from DPC, re suspension.

BY THE ACCUSED:

It would be nice if Friend of Court for a change maybe make a list of all the depositions so that I would have it for a quick reference, or it is not his duty? Is it?

BY THE COURT:

May I see that letter, please, just for a second. I'll give it right back to you. Okay.

BY THE ACCUSED:

Q. Is it your signature on this letter?

A. Yes.

Q. Now, do you recognize this letter?

A. Yes. Here it say, it recommended the Rector may suspend a member with or without a salary because of the member poses an immediate and a continued threat to the

University. And also has a... also has a proposed to the University to (inaudible) limitation is unable to invoke Article 3907 immediately, the DPC requests that Dr. Fabrikant's office be moved immediately outside the offices of the Department of Mechanical Engineering, enclosed in the CONCAVE Center and that he... Yes, this is what we have proposed.

Q. Well, maybe now we can return to original question. What prompted this letter?

A. Because we considered the situation, your situation as a dangerous to the Department.

Q. Well, could you explain some facts which led you to believe so?

A. Yes. The threats that the Chairman has, you know how to, American way, to handle the problem with this situation.

Q. When was that, that I allegedly threatened the Chairman?

A. I don't know. The Chairman informed us.

Q. Well, why didn't you write this letter, say at the time the threat was made?

A. The Chairman informed me. I don't know. The threat is that you talked to the Chairman, you know how to handle that American way, uses the signal. This I know. Just that you told the Chairman. The Chairman is (inaudible). This is the reason we make the proposal.

Q. Why didn't you write this fact as foundation for your proposal? Why didn't you even mention that in your letter?

A. This is not my letter. This is Department Personnel Committee letter, not my letter. It's not I write.

Q. If that was the reason, why didn't you state that reason in the letter?

A. The Rector give us a clear, as to statement, the fact, and we have to make a recommendation to the University, and the statement, the reason is here. And why it is a fact you said you know the American way to handle problems if you, you said you would use this one, and you make the signal to the Department Chairman, and the Department Chairman informed us, now is the situation, could it be happened, you, we are decide not to continue your reappointment.

BY THE COURT:

Q. But his question isn't that. His question was very simple. His question was, if that's true that Osman told you that he had on one occasion in his office said "I know how to settle things the American way", or whatever it was, his question is just this, if that's true, why was it not written in that letter?

A. This is our Department meeting to decide to make the statement, and not my personal and this is the comment of Personnel Committee make it the decision, make it this result.

Q. And I understand you didn't draft this letter?

A. No, I didn't make the draft.

Q. Who drafted it, Osman?

A. We discussed how to make it.

Q. Who did it? Who made it?

A. I think that all the people has discussed the results and make this draft. The Department Personnel Committee.

Q. Well, you were part of the Department Personnel Committee.

A. You know my English is not good, because as he said that

the English, my English is good. I can, it is very difficult to make formulation of the draft.

Q. But you think that that draft was put together...

A. Yes.

Q. ... was stuck together... one second, listen to me, was stuck together during a meeting of all the members of the DPC?

A. Yes.

Q. And all you can say is that it doesn't mention "the American way" example?

A. We didn't consider it to put on this point.

BY THE ACCUSED:

Q. So, could you explain why the main reason for your concern was not mentioned in the letter?

A. He has said that the DPC is alarmed that the security measures taken so far by the University do not guarantee the full security to the members of DPC as well as to the certain members of the Department, and is therefore...

BY THE COURT:

Q. Dr. Lin, you're not answering his question. A minute ago you gave as one of the principal reasons for this being written, the fact that he had made a statement, or that Osman told you he had made a statement, with a gesture. And you've shown us the gesture two or three times. Now, his question to you is very simple, why was it not written in there, if you participated in the discussion, as you said you did; you may not have written it yourself, but if you participated in the discussion? He's asking you, can you tell him why the example of what he had said was not written in the letter?

A. This is...

Q. That's all. That's all the question is, no more.

A. Okay. This is my concern. I think that this one, at this time possibly that the Committee not concerned with the point. And when we are asked why you are dangerous. Dangerous, I think that this is the point, sure, the dangerous. But this document did not say, not even a statement and it did not say this is... the dangerous did not exist.

BY THE COURT:

I suggest that's all you're going to get from this witness on that point.

BY THE ACCUSED:

Maybe witness is adverse after all.

BY THE COURT:

I don't think so.

BY THE ACCUSED:

Well...

BY THE COURT:

I don't think so.

BY THE ACCUSED:

The witness is either ill, or the witness is adverse. What would be more adverse, that not a single question is answered.

BY THE COURT:

Listen, you've been... you've put your questions up and down, you've asked leading questions, you've been permitted to carry out what qualifies in any book as cross-examination, and the witness says, "well, it wasn't put in, I didn't draft it". Fine. He signed it, but he didn't draft it. It wasn't put in. If it wasn't put in,

it wasn't put in.

BY THE ACCUSED:

Well, I'm not talking about this particular case.

BY THE COURT:

No, no, I mean...

BY THE ACCUSED:

You, yourself, admitted that my questions are very, very simple and the witness doesn't answer any of them.

BY THE COURT:

I admitted nothing.

BY THE ACCUSED:

Either he has medical reasons for that, or if he does not have any medical reasons for that, then he is adverse.

BY THE COURT:

Nonsense, I didn't admit anything. I put a number of questions myself along the same lines as you were asking, and...

BY THE ACCUSED:

All right.

BY THE COURT:

I don't know. Achieved... achieved, I thought, relatively good success in getting answers.

BY THE ACCUSED:

Okay. So it is my fault I am asking unclear questions. Right?

Q. All right. When you were signing this letter, did you feel, again, still concerned for personal safety of yours?

A. For the whole department, yes. Certainly.

Q. Well, for yourself?

A. Not for myself, the whole department, the Chairman, because he has said, certainly for the DPC, and other certain members of the Department.

Q. I'm asking just for yourself. Did you feel concerned for your personal safety at that time?

A. Some concern, yes. Yes, certainly, certainly, some concern, yes. Certainly.

Q. Well, do you realize what the term "threat to the University" means? Could you explain your understanding of this term? How do you understand it?

A. I told you there is dangerous... you sure, you say, is American way to handle the problem. This is dangerous.

Q. Okay. But still you cannot explain why this particular dangerous stuff did not enter this letter, can you?

A. I don't remember why, nothing, because Osman informed us, and we get the information from Osman. We cannot, I don't think this information, we have no document in the hand to put this as a reason. But we know, you say this, it will be dangerous for us.

Q. Okay. What were the reasons invoked in fact, in the letter? Do you remember what were the reasons which you did invoke in the letter?

A. What? I don't understand...

BY THE COURT:

He doesn't understand the question.

BY THE ACCUSED:

Okay.

BY THE COURT:

From the letter in front of him. The letter... that's what you're talking about?

BY THE ACCUSED:

Exactly.

BY THE COURT:

Tell him. Say "look at the letter in front of you, what were the reasons you did invoke?"

BY THE ACCUSED:

Well, I thought that since he read the letter that is enough for him to answer the question. If he needs to read it again, well, I have no objection.

BY THE COURT:

He didn't understand that you were referring to the letter when you asked that question. It was clear to me, anyway, from where I'm sitting. Now he knows.

BY THE ACCUSED:

Q. The question was, do you recall what were the reasons invoked in that letter?

Say it more clearer than I did. How about that? If you can say it more clear, I will say guilty on all Counts and the trial will be finished.

A. Yes, this is a letter...

Q. How about that?

A. ... sended to the...

Q. A good suggestion. Say it clearer, and I will say right away guilty...

BY THE COURT:

It's all right. Let him answer the question.

Q. Go ahead. Now, he's asked you what he reasons invoked were.

A. The reasons said the letter, for, we say, the University consider that this is the dangerous for, for, for the possibility something could be happened in the Department of Mechanical Engineering and asked the, the university to take some action and (inaudible).

BY THE COURT:

The letter is there. The letter speaks for itself. The letter is produced.

BY THE ACCUSED:

That seems to be the problem, that he is either really unable to pick from the letter proper line and interpret it or he is so faking...

BY THE COURT:

Why are you belabouring the point for? The letter is there. He signed the letter. He told you he signed the letter there, what's in the letter is what we sent.

BY THE ACCUSED:

Okay, but...

BY THE COURT:

He's told you, but now he says I can't tell you why we didn't put in the example of bang, bang, bang, or whatever it was supposed to be, you know.

BY THE ACCUSED:

No, no, no, but my question is different. What was put in?

BY THE COURT:

Well, it's there.

BY THE ACCUSED:

I know it's there.

BY THE COURT:

You don't need to have him say what was put in. The jury can read.

BY THE ACCUSED:

Well, what is wrong in my question asking him what was

put in.

A. Yes, give him the letter, in the document.

BY THE COURT:

There's nothing wrong in asking. It's just pointless.

BY THE ACCUSED:

It's just pointless. We are all... except me, we are all normal people here. I'm paranoid and narcissistic, plus borderline, but everybody else is not. Now, the question which is asked to pick from the letter a proper line and to interpret it, and either...

BY THE COURT:

Well, he doesn't interpret...

BY THE ACCUSED:

... if he's sincerely not capable of doing it...

BY THE COURT:

He doesn't interpret the letter. He...

BY THE ACCUSED:

Let me finish my logic. If he is sincerely incapable to do it, then something is wrong with him. If he is faking, then this is contempt of Court. Well, there are no two options, because what he is displaying here is total pathology, if it is sincere, or it is total disrespect of Court if he is faking it. Would you agree with that?

BY THE COURT:

No, I wouldn't agree with that.

BY THE ACCUSED:

No.

BY THE COURT:

What are you... what do you want him to say. He's told you that's the letter he signed. There are the reasons that they gave, "you want him to read them?" That's pointless.

BY THE ACCUSED:

Well, I would be satisfied if he would say it in his own words. If he is unable, okay, let him read it, because it's important at this particular moment to show to the jury that what is written there has absolutely nothing to do with example which he is giving now. So the document is clearly some kind of concoction. Nothing else. So...

BY THE COURT:

Well, that's a question of argument.

BY THE ACCUSED:

I know. I'm explaining to you why I want him at this particular moment to state it to the jury what exactly is there. This is a normal question I would like him to answer.

BY THE COURT:

Q. You've read the letter...

A. Okay.

Q. You've read the letter, haven't you?

A. Yes.

Q. You've read the letter. Now, he's asking you what were the grounds? What were the grounds that you invoked in the letter?

A. ...

Q. Did you understand the question?

A. Yes. You say "what's the ground", what the reason for it.

Q. Yes, you and... you are one of the people that signed that?

A. Yes.

Q. You all got together and you went this letter?

A. Yes.

Q. Now, what he asked you...

A. The reason.

Q. ... what were the reasons you invoked?

A. Yes, the reason I said, because we considered the departmental concern, the safety of... the safety measurement of the Department. This is the reason. Is not, the Department Personnel, the Department Personnel Committee is very concerned about the safety measures undertaken by the University.

BY THE COURT:

Q. Were any facts there in the letter which support your contention that I am a threat to the University; facts, any facts?

A. Yes, for example, we have talked about before, he has make a statement and the Department and with the -- some of the University administration and then, and (inaudible) happened in the time... Department have to make a consideration... and this is statement, is there, and that they know who send this one to the Secretary-General. I think that they understand what we talk about, and the document is sended to the Secretary of General (inaudible) not understand. They were asked us to provide for the information. What's wrong of this one... which is the safety concerned your action, and we think that this document is enough for us to communicate with the Secretary of General. This document is not for you.

Q. May I take the letter for a second? Now, did you read, Dr. Lin, the following lines:

"Information received from
Secretary General, Friday evening,
November first (1st), regarding the
incident at Senate meeting on
Friday afternoon, November first
(1st). The incident on Wednesday,
October thirtieth (30th), nineteen
ninety-one (1991), when Dr.
Fabrikant was caught eavesdropping
at DPC deliberation and his
encounter with the University
security."

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

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

Q. Would it be correct to say that those were the reasons invoked
by DPC in this letter to declare me threat to the University?

A. At this time, yes.

BY THE ACCUSED:

You see, they got that. And this is the person who decided
whether I be working there.

BY THE COURT:

The letter was crystal clear. I mean, none of that was
necessary.

BY THE ACCUSED:

Q. When you... did you know that I had a heart attack in spring
of ninety-one ('91)?

A. I don't know.

Q. Did you know that I had wife and two small children in ninety-
one ('91)?

A. I know you have a wife and two children.

Q. Did you know that the document what you was signing was
equivalent a death sentence for a scientist?

A. Any, any institution, or any department, especially in the
Department of Mechanical Engineering in the last... I have
worked over twenty years, we work harmony all together and
you're the Department (inaudible) and I just cannot see one-
third of the members consider only himself and the make the
exclusion to other one. And if the person (inaudible) is a
first-class in the world of the research, then he should know
if the Concordia University is not his place, and he offend
other people at the place again, he can find another job in
the world, if he is a first-class scientific person in the
world, it should not difficult to find a job. That we just
can't, in the... I think that any organization would allow the
person to work within (inaudible) and the distress to other
colleagues, distress the organization, and make the
disturbance to the colleagues and they trust and they make the
record everywhere, and this is the all time, all time this
person to work with the other people, not trust the people,
and against the people and not have a definite reason to make
it public to disturb the reputation of the colleagues, to
disturb the reputation of Department, to disturb the
reputation of the University, and you now ask the Personnel
Department, and what happened is terrible, and not, and the
Department is not (inaudible) I didn't know how to solve the
problem. And in the unit, in the Department, we have to
worked together, and not consider only yourself. And we have
consider the Department, and you're not interested in the
Department. You're not come to the Department meetings, and
now due to the situation you say, what would happen to my
family. I don't know how to solve the problem, solve your
problem.

Q. Do I understand correct that all the words which you are using
concerning defaming the Department, and causing disturbance,
did you foresee in November, ninety-one ('91) that in February
and March of ninety-two ('92), I will start distributing the
electronic mail? Did you... you have the gift of foreseeing
future?

A. I don't understand the question.

Q. Okay. I will repeat it.

BY THE COURT:

I don't think the question is...

BY THE ACCUSED:

All right.

BY THE COURT:

I don't think the question is in order.

BY THE ACCUSED:

All right. I will change it.

BY THE COURT:

This is degenerating now into a...

BY THE ACCUSED:

Q. Okay. In ninety-one ('91)...

BY THE COURT:

.. a slinging fest of...

BY THE ACCUSED:

Well, he...

BY THE COURT:

... recriminations and that's not going to help us at all.

BY THE ACCUSED:

No, I...

BY THE COURT:

You asked the question. You asked three questions. I don't know why, but you asked them, and you got his answer.

BY THE ACCUSED:

Well, he's telling now that I did this to the Department, I did that. In November of ninety-one ('91), I didn't do anything yet.

BY THE COURT:

That's his perception. That's his perception of the events. You won't change that. That's his perception.

BY THE ACCUSED:

Well, this is not his perception. Either he is taking completely...

BY THE COURT:

And you're not going to cross-examine him on his perception of events. That's his perception of the events. You asked that. Now, I don't know, if you've got something else to ask him on the facts, ask him something else on the facts, otherwise let us stop and go on to the next witness. Because, you know, you don't know when to stop, you really don't know when to stop with this examination that you've embarked on.

BY THE ACCUSED:

Well, I'm asking normal questions. I do not repeat myself.

BY THE COURT:

Nobody says the questions aren't normal. They're just leading nowhere. They're not normal questions at all in that sense.

BY THE ACCUSED:

Oh, they're leading very much so. First of all, okay, you would like to see the purpose of this examination? I can explain it to you. Just ask me. You want me to explain it?

BY THE COURT:

Not particularly.

BY THE ACCUSED:

Ah, all right.

BY THE COURT:

Quite frankly, if it... you know, now you can move on to something else, please, because...

BY THE ACCUSED:

Okay. So then I understand that...

BY THE COURT:

Because enough is enough from those subjects. Enough is really enough.

BY THE ACCUSED:

Well, I continue.

BY THE COURT:

Then move to some other subject.

BY THE ACCUSED:

Sure, sure, I'm moving, I'm moving. Maybe I will be more successful with nineteen ninety (1990). So now I am talking about the year nineteen ninety (1990).

Q. Do you remember in nineteen ninety (1990) there was question of integration of research position into tenure track. Do you remember that?

A. Yes.

Q. All right. Do you remember receiving a letter from me in your mailbox saying that something is wrong with my integration and I would like members of the Department to help me and to support me? Do you remember receiving such a letter?

A. Yes.

Q. Have you answered anything?

A. No.

Q. No. Could you explain why you ignored it?

A. Because you sent, you sent a document that has signed by S. Sankar, Osman, and Dean Swamy were not, or convenient for your position, and this is not the truth.

Q. All right. This is not the truth, this document didn't exist?

A. I don't know. But I know this is not true.

Q. What if I show you this document, then what, would you believe it then?

BY THE CROWN:

This is pointless, My Lord.

BY THE ACCUSED:

All right.

Q. Okay. You didn't respond. Fine. What happened after that? You had a meeting on October thirty-first (31st) with Vice-Rector at Montreal Athletic Association. Do you recall that meeting?

A. Yes.

Q. Do you recall who was present there?

A. Yes, the committee members of the personnel, the Personnel Committee Chairman, and Dean Swamy. And there were other administrators. I don't know their...

Q. Do you know Mr. Relton?

A. Yes, I think so he was there. Yes.

Q. Do you know Miss Torbit?

A. I don't know the names.

Q. All right. What was the subject of that discussion?

A. We recommended your position, and the administrator has a certain concern of your position. This is the one, for the discussion.

Q. Say it again, what?

BY THE COURT:

The administration had a certain concern.

BY THE ACCUSED:

Okay.

Q. Do you recall what was that concern?

A. Because you are disturbing, disturbing the University, the administration operations. I think that this is the main point we discussed.

Q. Do you recall how I disturbed the whole University operation?

A. I didn't say whole University, some you have disturbed. What details I cannot recall.

Q. Well, at least what was that. Did I again threaten somebody,

did I do something else? What was that?

A. You have disturbed to search the documents, to search this document, and to search your grant application, to search your (inaudible). Every place has some problem and, at least, for example, and you wanted this one, wanted this one, and this didn't happen before. And the University (inaudible) you would write some, sometime you would write, sometime I see it, is not related to you, and you would want it.

Q. I...

A. For example...

Q. Okay. Okay. For example, yes, continue, please.

A. Yes. I think that this is, this is mean I have concern, I remember.

Q. Aren't you mixing up nineteen ninety-two (1992) and nineteen ninety (1990)?

A. What?

Q. Are you mixing up the year nineteen ninety (1990) and nineteen ninety-two (1992)? I was looking for various documents and so on and so forth in ninety-two ('92). Did I do the same thing in ninety-ninety ('90)?

A. I just say, I cannot remember, and you say something, I have the idea the administration have some problem, you would try to get some documents. And some say this disturbed the University. I think that this is a concern by the University administration.

Q. But you do not recall any threats or anything mentioned during that meeting?

A. I cannot recall it. The topic of this one is concerned your comment.

BY THE ACCUSED:

Well, I would like still to return my motion. The witness had remarkable resurrection when it was...

BY THE COURT:

You mean recollection.

BY THE ACCUSED:

... recollection. No, I mean resurrection in terms of his ability to recollect. When he, in detail, in remarkable detail produced content of the letter, very obscure, I would say, which was put in his mailbox... well, more than three years ago, and he remarkably reproduced its content, what it was about, the names, everything.

A. This is a different, this situation was different, because you caused the previous...

BY THE COURT:

Just a second.

A. ... put mail in my box.

BY THE ACCUSED:

No, it's all right, let him explain this...

BY THE COURT:

No, no, no... we will run it the way we normally run it. When he's making an objection, just stay quiet and... yes, go ahead.

BY THE ACCUSED:

Well, and that was remarkable. Everything was remembered, everything was remembered correct that, yes, he received it, that, yes, he ignored it, that, yes, I complained about Osman and Sankar and Swamy signing documents. Everything was perfect. And that was just, you know a spark, and after that we again do the same situation where he doesn't remember anything at all. Well, isn't this a clear indication that, in fact, he is faking?

BY THE COURT:

Not to me it's not.

BY THE ACCUSED:

Not to you. Fine.

Q. All right. Did Vice-Rector at any time ask any of you whether you have any personal concerns for your safety in nineteen ninety (1990)?

A. You mean at this meeting with the Vice-Rector?

Q. Yes?

A. Yes. She asked the question and we, at the meeting, at least I expressed my opinion, you are as a research position, in the Department were evaluated as a researcher, and mainly on the research, and your research is very good, and therefore, we would make a recommendation. And how is your personal thing, disturbed to the University administration and this is not all evaluation. And at least we see, even with the University think some disturbances are true, the one, the University should take an action. And the Department of Mechanical Engineering, Personnel Committee, at this time, to evaluate you are as a research associate professor, we concerned only on the research aspect.

Q. Well, so did you or didn't you feel any concern for personal safety in nineteen ninety (1990)?

A. At the meeting, at least I don't consider the point.

Q. Did the Vice-Rector explain why she was asking you about any concern for your personal safety?

A. I didn't recall that anything there, that the Vice-Rector say that as a personal safety. I didn't recall this at the meeting.

Q. But you said yourself that she asked you if you were afraid of me. Didn't you?

A. This is not at the Vice-Rector's meeting.

Q. So, it didn't happen then?

A. At the Vice-Rector's meeting, Vice-Rector had a concern you have disturbance in the University, some... in the University operations, and we have recommended you at this position, and we said we evaluated your are case as a research associate professor, we consider only on the research point. How is your characteristic, this is not on evaluation, nothing in evaluation.

Q. Okay. So, all right. So, could you explain then why in ninety-one ('91), you totally reversed yourself and all of a sudden my personal characteristics became your business?

A. Because you are now integrated with Department, as a personnel, Department personnel. The considerations are different. Previously you are a rearcher and belonged to the CONCAVE Center. Now, you belong to the Department, and Department personnel have to consider the Department point of view.

Q. You are not answering my question. In nineteen ninety (1990), Vice-Rector urged you to consider a question of my behaviour in the general evalution of me, and you said that my personal behaviour is none of your business, you just consider my teaching and research. Right?

A. Not my business. I think that the Department Personnel Committee at this point considered only you are a researcher expert.

Q. Well, why just one year later you totally reversed this point of view?

A. Because we have to consider integration of the Department. And previously you are belong to the CONCAVE Center, and the

CONCAVE Center has recommended to you, recommended for you and the Department Personnel Committee accepted this consideration, therefore, we recommended you to the position. And when you joined to, now to as a professor in the Department, and we consider you as a person integrated to the Department, therefore the consideration is different.

Q. In nineteen ninety (1990), didn't you, in fact, consider integration of me into the department in nineteen ninety (1990), not ninety-one ('91)? Did you?

A. Yes, we considered the point.

Q. So in nineteen ninety (1990) you considered the question of integration. Yes?

A. But we don't know at this time what is your behaviour in this, in joint to the University.

Q. Well, did you or didn't you say that when you considered my integration to the Department, you were concerned with my professional qualities rather than with my behaviour, in nineteen ninety (1990). Correct?

A. In nineteen ninety (1990), I said that you are in the position as a researcher associate professor in the CONCAVE Center. When the CONCAVE Center recommended your case to the Personnel, to the Department, and the Department Personnel Committee considered you are research expert in the CONCAVE Center. And when, later on, the integration to the Department, and we have to consider your behaviour and the characteristics of the Department.

BY THE COURT:

Okay. We'll adjourn until two-fifteen (2:15).

(THE JUDGE LEAVES THE BENCH)

(MEMBERSE OF THE JURY LEAVE THE COURTROOM)

LUNCH ADJOURNMENT

----- (THE JUDGE TAKES THE BENCH)

(THE JURY TAKES THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

THE WITNESS, SUI LIN, TESTIFIES UNDER THE SAME OATH

EXAMINATION BY THE ACCUSED: (CONT'D)

Q. Do you recall any other meetings of the DPC with intervention team, except November first (1st)?

A. I think they have another one. I think.

Q. Was there a meeting November fourteenth (14th)?

A. The time I cannot remember.

Q. Would several issues trigger your memory? At that meeting, Swamy allegedly said that he knows from Rakheja that I have threatened to kill Sankar. Does this trigger your memory in any way?

A. No, I cannot remember this statement.

Q. There was a call from the Gazette to Swamy if I threatened his life?

A. I don't know.

Q. Hoa was asking questions, shouldn't we help Fabrikant to get a position somewhere else?

A. I don't recall in this meeting was such a statement.

Q. Do you recall this meeting in any way?

A. Yes, I know have some...

Q. Okay. So now...

A. ... Hoa have a meeting.

Q. So now you recall that there was a meeting?

A. Yes, I think there was a meeting, another meeting, yes.

Q. All right. So maybe you recall who was present there?

A. I think the Departmental Personnel Committee members. With Hoa, I do not remember. It's possible it's one, he's not there, they send the Chairman, and Dean Swamy, yes.

Q. Mrs. Horwood? Do you recall her presence there?

A. Yes, one time I think that she was over there. But whether it's this time or the previous time, I cannot recall. Yes, one time she was there.

Q. Maybe she was there both times?

A. I cannot recall. I know she was, one time was there, yes.

Q. Okay. If... I'll try again to trigger your memory, that she allegedly said that she got a call from Herman who was wondering whether I was banned from the University. Does this trigger your memory in any way?

A. No, I cannot recall.

Q. Do you recall anything at all from that meeting? What was the purpose of that meeting?

A. Is discussed the safety, or this intervention team considered the safety measures.

Q. Okay. What were those safety measures? What was...

A. They were not determined in the meeting. I think they were considered this way.

Q. Well, by November fourteenth (14th), certain security measures were already in place, weren't they?

A. The time, I don't recall.

Q. Well, assuming that it was November fourteenth (14th), were the security measures already in place?

A. I cannot, I didn't -- I cannot recall. For me I have no record.

Q. Do you recall anything in terms of security measures? Were you told that the following security measures have been implemented? Something like that.

A. I think that in the meeting, as I remember, they have no definite action were taken, the intervention team would have considered a proper way to do it.

Q. The proper way to do what?

A. I don't know.

Q. When you say proper way to do it, it meant...

A. Yes, to do it, to do the safety measures.

Q. Well, what were the ideas discussed there in terms of the proper way of introducing security measures? Any ideas were discussed?

A. I just talked before, because you have a statement, something with the Chairman, how is the other way, either make a statement, I don't know, and we dicussed the, present the situation to the Committee and the possibility may some happened.

Q. All right. Maybe you recall something else then. Did you meet in just DPC, in November, to discuss your so-called reasoned report again?

A. Yes, we have submitted a reasoned report for your, about your recommendation.

Q. Well, when did you finish your reasoned reported?

A. The time, I cannot recall.

Q. Okay. If I give you the Minutes of the Departmental Personnel Committee, would that help you?

A. If the Minutes state the date, they should be at the time make a report.

Q. Do you remember a meeting of the Departmental Personnel Committee at the Dean's office?

A. I think one, if I remember, was for the senior members the

Committee, is in the Dean's conference.

Q. Uh, huh.

A. When the DPC has a meeting at the Dean's office, I cannot recall.

Q. Okay. But the meeting of the senior members was in the Dean's office. Right?

A. In the Dean's conference office.

Q. Yes. Do you know what is the reason for that, for being strictly confidential? This is why you didn't get in the Department?

A. Not me, not me decide. Because your office is directly close to the, directly to the Departmental conference room. And this, I think, is the reason, will think it's better at the Dean's conference room.

Q. So you were afraid that God forbid I will come at the time you are meeting in the Department with your secret senior members meeting. Correct?

A. Not a secret. We had discussed your issue and the way, and we are afraid you have some equipment, in your record, in your room to take a record of it.

Q. How, from my room into another room, that's what you were afraid of?

A. We think so. It would be better not close, not directly, your room is directly connected to the conference room, and you take a record, and this will know, and we don't know whether you have some equipment to put on, could take the record of this...

Q. All right.

A. ... so I thought this is when we change the conference room.

Q. But if you were discussing me, why should that be a secret from me? Shouldn't I quite oppositely be invited to that meeting?

A. The Chairman decided, because you have distributed this letter to the public, and some letter, if I remember, the Chairman give you as a confidence, and you distribute it and such (inaudible) and the Chairman think that is not a proper way to do, and would like to ask the opinion for the senior members to, on this point.

Q. Well, you didn't answer my question. Why was it necessary to keep it so secret from me if you were discussing me?

A. Yes. You have acted this action and you have accused a member of the Department and, yes, the Chairman decided to do it all, and we attended this meeting.

Q. I guess I don't get an answer. All right. So you remember that Department senior members' meeting was in the Dean's conference room?

A. Yes.

Q. And right after that meeting you had meeting of the Department Personnel Committee. Correct?

A. I not recall.

Q. Well, it was the same day right after that meeting?

A. I not recall.

Q. All right. Do you recall that you completed your reasoned report on October thirtieth (30th), nineteen ninety-one (1991), the same day of the incident?

A. Please repeat your question again.

Q. Do you recall the day of the incident when you caught me allegedly eavesdropping on your meeting?

A. On this day?

Q. Did you finish your reasoned report the same day?

A. Yes, we have make a draft.

Q. So you finished the report that day?

A. The draft, yes. We finished the draft of the report.

Q. All right. Now, November eighth (8th), you met again, and again the reasoned report was discussed. Could you explain what was the reason to discuss it again?

A. Because the draft, whether it is properly formulated, we have to discuss it again.

Q. Okay. What exactly was discussed?

A. The formulation we have at the time of the draft, and whether the draft is in the right, whether it is proper formulated, and discussed it again.

Q. Could you give any specifics? What was discussed?

A. Yes, we discussed how to reformulate it, or how to make these sentences and this I cannot recall, and this reasoned report is quite long.

Q. Okay. Could you give any details of any other discussion after that, November thirteenth (13th)?

A. What is the question?

Q. November thirteenth (13th), you again discussed the reasoned report. Do you recall what you again discussed there?

A. Yes, because we have to make the report. The reasoned report is a correct and we have careful to discuss it and then we will submit it.

Q. Can you describe at least one subject which was discussed and what was changed or was not changed? Did anything change in the report?

A. We have this record there, and I cannot remember which is special case, and we have all every time have recorded.

Q. So can you or can't you say what, if anything was changed in the report?

A. I cannot recall it.

Q. According to the meetings also you made a draft of a letter to the Secretary General. Do you know what the letter was?

A. Yes, we have made it, but now I cannot recall it.

Q. What was the letter about?

BY THE COURT:
The witness said to you he cannot recall.

BY THE WITNESS:

A. So many documents, I cannot recall it.

BY THE ACCUSED:

Q. How many letters did you send to Secretary General?

A. I cannot recall it.

Q. When you evaluate teaching performance of somebody else, a member of the DPC, what is your criteria?

A. Student evaluation, one part. Student reaction reported to the Department, student reaction sitting from the students.

Q. Okay. So effectively the criteria is student evaluations and student remarks. Correct?

A. Yes, certainly.

Q. All right. So how did you find my teaching then?

A. I cannot recall it. Our Department have twenty-six (26) professors, how can I remember you as a personal, what is the result.

Q. Well, when you recommend someone to be fired, are you supposed to look at his quality of his teaching?

A. Yes. We have made it.

Q. Okay. And what was that evaluation?

A. Why should I remember this one? Why? We have so many documents, and why should I remember each one, you no remember him, you may remember, and you may remember everything in your life?

Q. Well, if I decide to fire somebody, believe me, I would measure it ten times before doing such...

A. Yes, therefore, the Departmental have many times to consider your, your, your, the reasoned report. It (inaudible) you see it, where we considered many times, considered, considered again, is not wrong?

Q. And now you remember absolutely nothing of that?

A. Not nothing. If you say which document you are not clear, pass it to me, I will look it.

Q. All right. You asked for it. Does this remind you of something?

A. (inaudible) you would write ask me to comment on this one.

Q. Well, do you recall seeing it?

A. We read, we evaluated what you submit, what you submitted in the, what the Department has available.

Q. Do you recall seeing it?

A. Yes, well, certainly. If this is in the Department file, we should see it.

Q. So is it good?

A. It is okay. Certainly.

Q. Do you have better than that?

A. Yes, certainly. Why not, no better than this one.

Q. I mean you personally, do you have better than that?

A. I cannot remember.

Q. You don't...

A. If you were there you will ask the Chairman to give (inaudible). How can I know this one, every one, every year, I have to try to can remember about this one or not.

Q. Would you like to look at this too?

A. We didn't have this. I didn't see this before.

Q. You've never seen it?

A. I cannot recall whether I've seen this document.

Q. Okay. What...

A. I cannot recall it.

Q. What is this document?

A. You mean this. A student submit it to you, send it to you. You are a good student -- a good teacher.

Q. Uh, huh. So you've never seen this?

A. I forget it whether I hav, I cannot recall I see this document.

Q. Okay. But if you did see it, maybe you would change your mind and didn't sign those recommendations?

A. You have many considerations. A student evaluation is not only the way, and student recommended (inaudible) or is not only this way. Sometimes the professor is defavourable to the class, and the students make different coment, and the student was very strict to the course. And this evaluation of the students is, was inputed to this, for a teaching evaluation.

Q. You didn't answer my question. If you did see it, would it change your decision to sign or not to sign the reasoned report?

BY THE COURT:
The question is hypothetical. It's disallowed.

BY THE ACCUSED:
All right.

Q. Okay. From your experience, student's report on courses be lower in number, are higher or generally lower than for the courses, or advanced courses with higher number?

A. I'm not clear of this question.

Q. Okay.

A. What's the number refer to?

Q. No, I'm asking just general question, from your experience. You have seen a lot of students' evaluations as a member of the DPC. Correct?

A. Yes.

Q. Now, when you see evaluations for 200 courses, for 300 courses, 400, 500, 600 courses... now, which courses generally have a better evaluation of the students, those with higher numbers or those with lower numbers?

A. Normally higher numbers, yes.

Q. Higher numbers have what, better evaluation?

A. I think so.

Q. Yes. Is it the same thing... okay. Is this kind of indication that 200 courses is much more difficult to teach than, say, 600 courses?

A. It is not necessary to say this is more difficult, you see. Because the students come from the CEGEP, they have no... the system is different from the CEGEP, and therefore for the first year, the course normally we... for the adjustment of the student, then the evaluation number, evaluation normally is lower. But it is depended on what is the subject. If the subject is easy to understand, then possibly you would get a higher general, you would get a higher rate.

Q. Uh, huh. All right. Static in Dynamics, are those difficult courses?

A. It dependent how is the teacher teaches.

Q. Well, exactly, this is what I meant. But in general, from the point of view of student evaluations are those courses getting high marks from the students usually, or not so high?

A. It depends on who teaches the course.

Q. I'm asking you in general statistics? Of course, it depends who is teaching.

A. The Statics in Dynamics is a general course. That is normal. Is normal. Is not a special high special as a rule.

Q. How about the course 352, is it a difficult course?

A. What course 352 do you mean, referred?

Q. Well, this is one of the courses you taught. I believe you know what this course is. Did you teach course 352? Just don't say "I don't recall", please.

A. If you mention (inaudible) number one, then number one is a certain difficult course.

Q. So you did teach that course?

A. Yes, I teach the course.

Q. Okay. What was your course evaluation?

A. I cannot recall. I don't have the material with me.

Q. Okay.

BY THE CROWN:
You already ruled it's irrelevant, My Lord.

BY THE COURT:
Yes, I did.

BY THE ACCUSED:

Q. When student give a professor a mark like 2.36...
BY THE CROWN:
He's not respecting your ruling, My Lord.

BY THE ACCUSED:
What do you mean, I am not respecting your ruling?

BY THE COURT:
I already ruled.

BY THE ACCUSED:
I'm asking a general question.

BY THE COURT:
I already ruled that whatever evaluations he got in course

anything are of no pertinence to this trial.

BY THE ACCUSED:

How do you know that it was a mark he got? Maybe I'm asking a general question.

BY THE COURT:

I have no idea what you're asking.

BY THE CROWN:

It was same line for...

BY THE COURT:

But if that's what you're asking...

BY THE CROWN:

It was the same line for former witnesses, My Lord.

BY THE ACCUSED:

So I am asking a general question.

Q. So, 2.36 were available for personalized consultation, is a good mark?

A. I don't know. Two point, you mean if this is an every day evaluation, two point...

Q. 2.36.

A. Is a marginal.

Q. Marginal what? What do you mean marginal?

A. Yes. In the code and is (inaudible) in the code, and satisfy in this area...

Q. Well, would you believe that it is in the ten bottom per cent (10%)? So only ten percent (10%) of teachers are worse than this particular individual? Would you believe that this is the evaluation of this particular mark?

A. I don't clear understand what your question is about.

BY THE CROWN:

I think we already know the next question, My Lord.

BY THE ACCUSED:

You do? So what is it?

BY THE COURT:

Well, if any of these questions pertain...

BY THE CROWN:

It's a way to belittle the witness, My Lord.

BY THE COURT:

... pertain to...

BY THE CROWN:

Other witnesses have been tricked like that.

BY THE COURT:

... Mr. Lin, then it's not relevant.

BY THE ACCUSED:

What about in general?

BY THE COURT:

No, not in general. You can't do it that way, if you can't do it directly. So do something else.

BY THE ACCUSED:

(Laughs) Why...

BY THE COURT:

Even if it is only sit down, but do something else.

BY THE ACCUSED:

(Laughs) Why one cannot ask that the person who is judging somebody else should at least have...

BY THE COURT:

Because we don't care, Mr. Fabrikant, who is judging who.

BY THE ACCUSED:

Yeah.

BY THE COURT:

We don't care. It's not relevant.

BY THE CROWN:

He's just confirming that he did not respect your ruling, My Lord, from his statement.

BY THE ACCUSED:

Oh, yes. (Laughs). All right. Okay, give it back to me.

Thank you, Mr. Lin.

BY THE COURT:

Thank you, Mr. Lin.

BY THE CROWN:

I have no questions, My Lord.

BY THE COURT:

Fine.

BY THE CROWN:

Thank you.

AND FURTHER DEPONENT SAITH NOT

BRAM FREEDMAN

Legal Counsel, Concordia

October 21st, 1964

DULY SWORN

BY Me FREEDMAN:

My Lord, just before we begin, I would just like to inform you that the University, through the Rector and Vice-Chancellor, has waived any questions of privilege that may arise during my testimony.

BY THE COURT:

Which means that you are perfectly free to answer any question that falls within the relevant framework.

BY Me FREEDMAN:

That's correct.

BY THE COURT

Thank you. If anything arises that does not get, you know, or something that you hadn't previously anticipated, then let me know...

BY Me FREEDMAN:

Okay.

BY THE COURT:

... and we'll deal with it then.

EXAMINATION BY THE ACCUSED

REPRESENTING HIMSELF:

Q. Did you bring all the documents related to me in any way?

A. That's right. I have.

Q. All right. And of course, I cannot take a look at them, can I?

BY THE COURT:

No.

BY THE ACCUSED:

Q. When was the first time that you encountered my name in your legal work?

A. In the summer of nineteen ninety (1990), I was working as a law student in the office of the Legal Counsel, and I did some research for a memo that I later found out had to do with you.

Q. All right. Do you remember the subject of this memo?

A. The subject... there are two subjects of the memo. One was to do with your eligibility to appeal a decision to the University Appeals Board, and the other portion of the memo dealt with options in dealing with disruptive behaviour.

Q. All right. Do you have this memo with you?

A. I do.

Q. Okay. May I take a look at it?

BY THE CROWN:

If you don't mind...

BY THE COURT:

Q. Mr. Freedman, the question will be, did you write long memos or short memos?

A. I did not write that memo, My Lord.

Q. I see...

BY THE ACCUSED:

Well, the memo is very interesting.

Q. Do you have a second copy of it, because I want to expedite the questioning, and if it is convenient for the Court maybe I could, in spare time, take a look at all this memo so that I would be able to put qualified quesitons...

BY THE ACCUSED:

Well, we're talking about one memo at the moment.

BY THE ACCUSED:

All right. Anyway...

BY THE COURT:

I have no idea whether that is admissible or not. You have it in your hands, if you've questions to put, put them to Mr. Freedman.

BY THE COURT:

Well, then I have to read it.

BY THE COURT:

Then read it.

BY THE ACCUSED:

Q. Okay... My understanding is that you were asked to answer the question what, whether I have the right to appeal the non-decision of the Vice-Rector about promotion? Is that the question which was posed?

A. I believe so. I never saw the original request for a memo. I was given some research work to do by my then superior.

Q. Well, did you... were you asked to answer the question in the first place, whether Vice-Rector has the right just to ignore the documents which were submitted to her?

A. My recollection is that the question that was posed was whether -- it was a very narrow question, whether you had a right of appeal to the University Appeals Board. That was the issue.

Q. All right. But you were never asked the main issue, whether Vice-Rector has the right just to ignore the recommendation of the Department and the faculty for promotion?

A. Not to my recollection.

Q. Okay. When you received this assignment, did you ask whoever gave you this assignment, whether there is a need to investigate in the first place whether Vice-Rector had the right to just ignore all those recommendations?

A. No. The question that was posed was, given the fact that you were not a member of the bargaining unit, and that the University Appeals Board is a body set up under the Collective Agreement, whether you had access to that appeal. That was the issue.

Q. No, I am asking whether you asked that the main issue there was, how does it come to appeal, it comes to appeal then, because something wasn't done, right? But before any appeal is lodged. Isn't it logical to ask the question...

BY THE CROWN:

This is arguing with the witness and cross-examination, My Lord.

BY THE ACCUSED:

All right. I will change the question.

Q. Did you, when you were given this assignment, ask the

question, should I, I mean you, look into the matter of whether Vice-Rector has the right to ignore a recommendation of the Department and the faculty?

A. I don't believe I had any information with respect to who ignored what, or what recommendations were in the file. The question given to me to research was a very narrow one.

Q. Well, your memo indicates that you were aware that Vice-Rector just didn't take any action in respect to this recommendation, right?

A. I would imagine that's not my memo. I did not write that memo. I did some research work on that for my then supervisor...

Q. Okay.

A. ... who asked me to look into it.

Q. Okay. So the right person to ask this question is Me Gamache, right?

A. I would suppose so.

Q. All right. Now, you also mention here, though I don't know if it was your assignment or not, you mentioned here a question of a sabbatical. Were you asked to investigate this question?

A. I honestly do not recall. I don't recall. As I said I did not write that memo. That memo is in the file that I brought here with me. I do recall doing some work on it. I recall reviewing some of your employment contracts and trying to see whether that fit into... how that related to the Collective Agreement, if it did at all, and whether you had access to the University Appeals Board.

Q. All right.

A. That's what I remember.

Q. Okay. So, that was your part, nothing else, as far as sabbatical leave which is mentioned, you didn't do anything at all about it?

A. I don't recall. No, I don't think I did.

Q. All right. Did you get your assignment in some kind of, in writing, that you are assigned to produce a memo and blah, blah, blah?

A. No.

Q. No. Okay. So the question of full-time tenure, track position, which is also discussed here, you have nothing to do with it?

A. As I said, I don't believe so. What I do recollect is the question of the appeal to the University Appeals Board.

Q. Uh, huh. All right. Now, the second part about the so-called disruptive behaviour, did you do anything about that?

A. I recall a discussion with Me Gamache. I don't recall doing any research on that. I remember we talked about the provisions available in the Collective Agreement, and we talked about general principles of labour law with respect to discipline.

Q. Okay. Were you given any facts as far as disruptive behaviour is concerned?

A. Not that I recall, no. As I said, this is... as you can see from the memo it is quite an abstract memo. It's not very fat, specific. It was general legal questions that the legal counsel at the time was asked to canvas.

BY THE ACCUSED:

All right. Can we deposit it? Any objection from the Crown?

BY THE COURT:

What is the purpose of depositing it?

BY THE ACCUSED:

What is the purpose of depositing it?

BY THE COURT:

Yes. What is the purpose of depositing it?

BY THE ACCUSED:

Well, this is the legal work which the University did on me. And since you know part of my defense is to show that I was treated in totally lawless manner, therefore it is very, very relevant.

BY THE COURT:

To prove what?

BY THE ACCUSED:

To prove that I was treated in a reckless lawless manner.

BY THE COURT:

What's the position of the Crown?

BY THE CROWN:

Although the witness waived the solicitor/client privilege, I think you already ruled that legal opinions were not relevant, that we don't go into the merits of the legal grievance.

BY THE COURT:

That's why I'm raising the question. I can't see where we've been going with this examination for the past... for the past fifteen (15) minutes.

BY THE ACCUSED:

Well, unless you... you cannot say A without saying B. If you admit that the subject whether I was or wasn't mistreated is relevant, then definitely the legal part of it is relevant.

BY THE CROWN:

I don't think so, My Lord.

BY THE ACCUSED:

You cannot say A without saying B, because effectively all those treatment which I encountered was more or less related to the legal relationship. You cannot exclude one from the other and it is important for me to show that I was treated recklessly, with total disregard of Collective Agreement, with total disregard of any labour law, with total disregard of any principle of natural justice.

BY THE CROWN:

The problem, My Lord, is..

BY THE ACCUSED:

And there is nothing... there is no better proof of that as the University legal documents.

BY THE COURT:

Well, you have to do it through the testimony of witnesses, if that's what you wish to show. And you have to do it through questions and answers. Because what you are suggesting is that a jury now be called upon to start interpreting legal documents, and that I'm not going to permit, because that... I'm not going to allow.

BY THE ACCUSED:

Well, the jury doesn't have to interpret legal documents. This is different thing.

BY THE CROWN:

They will have to, My Lord, the way it works.

BY THE COURT:

Pardon?

BY THE CROWN:

They will have to, the way this case works. But what I want to say to you is the fact that me Freedman did the research on something, this is a fact. But whether he is right or wrong, we don't need that.

BY THE COURT:

Exactly. That's the distinction I'm making.

BY THE CROWN:

That's the distinction you made from the beginning of the trial.

BY THE COURT:

So you will have to do it through... you will have to do it through questions and answers. And if you want to show that the University, for example, were looking into this question, or looking into that question, you have the thing there to put the questions to whoever the appropriate witness is. But to produce the memo is simply to invite speculation on whether or not a legal memo is right, wrong, or indifferent, if it's get nine out of ten, eight out of ten, or three.

BY THE CROWN:

And the basic problem will be that we go into a waste of time, My Lord.

BY THE COURT:

So you may not produce the letter.

BY THE ACCUSED:

Well, let me finish my...

BY THE COURT:

No, I'm finished. You may not produce the memo.

BY THE ACCUSED:

Well, I did not finish my argument.

BY THE COURT:

You may not...

BY THE ACCUSED:

I have something new to say.

BY THE COURT:

You may not produce...

BY THE ACCUSED:

Will you not allow me to say something new?

BY THE COURT:

You may not produce the legal memo. Okay?

BY THE ACCUSED:

Well, in Seboyer it's written, black and white, that all legal opinions are admissible when they are... when they are necessary and reliable. Now, in this particular case...

BY THE COURT:

Because in Seboyer...

BY THE ACCUSED:

Let me finish, please.

BY THE COURT:

.. in Seboyer...

BY THE ACCUSED:

Let me finish, please.

BY THE COURT:

... in Seboyer the question at issue was the constitutionality of a provision of the Criminal Code. That is the difference between...

BY THE ACCUSED:

No.

BY THE COURT:

It was.

BY THE ACCUSED:

In Seboyer...

BY THE COURT:

What was in issue was the legality of the rape shield law.

That is not what we're talking about here.

BY THE ACCUSED:

Let me finish, please.

BY THE COURT:

It was an entirely different context.

BY THE ACCUSED:

Let me first finish, all right. It is my interpretation of Seboyer, then if you disagree with it, it will be yours, and I will abide by your decision. But at this time Seboyer, indeed, dealt with this law. But it went far beyond that, because here, in Seboyer they dealt in general, question of admissibility of evidence. And they said, not just about rape shield law, but in general, they said the following:

"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."

This is an absolutely general statement, irrelevant to rape shield or anything.

"The Rule of Evidence which prevents trial fact..."

And a trial of fact is the jury,

"... from getting at the truth by excluding relevant evidence in the absence of a clear ground of policy or a law to justify the exclusion runs afoul of fundamental conception of justice and a fair trial, and that the relevancy cannot be determined in vacuum."

And later on... so it is general concept. It is not just rape shield law. It's the admissibility and necessity of the evidence in every case what they deal with, not just the rape law.

Now, in this particular case I do not intend to have the jury to judge whether this particular piece of evidence is right or wrong. All what I want them to see here is the main thing, that it does not address the main issue that the University never bothered to ask legal opinion whether a Vice-Rector can just ignore the recommendation, because that was the main issue, not the appeal as such. Appeal, question of appeal would never have a reason if the Vice-Rector acted according to my contract, and according to Collective Agreement. She received two recommendations from Department and faculty, and she just ignored them. And this is just proof that not only she ignored it, she never bothered to ask for legal opinion and whether she had the right to do so, to ignore it. This is all. And this is evidence that real questions were never raised.

So jury doesn't have to really look into what is in here. And I fail to understand Crown objecting to this either. It discusses Fabrikant's disruptive behaviour. Why not to put it there? Maybe Fabrikant was disruptive after all. I fail to understand Crown's objections. I think Crown should be looking for this document and depositing it. Fabrikant was disruptive. In nineteen ninety (1990) University thought about having him fired because he was disruptive. So isn't it proof for a Crown to grab it and to deposit it?

BY THE COURT:

I would prefer not to answer that question.

BY THE ACCUSED:

Well, I think Crown should answer that question. But as far as you are concerned, I think what I've read is a clear indication that it is not rape shield law, that it is general

condition concerning admissibility of any evidence and in particular it mentions that legal opinions, as long as they are pertinent and necessary, not only admissible but even through objection of a lawyer, he may be forced to testify and to produce the legal documents if they are necessary for defense.

BY THE COURT:

You have finished? You have finished?

BY THE ACCUSED:

Yes.

BY THE COURT:

Good. First of all, in looking at the statements made by the justices of the Supreme Court in Seboyer, one necessarily has to be influenced by the fact that the subject at issue there was the subject of the constitutionality of a provision of the Criminal Code. In that context it is far easier to see that legal opinions would have a much greater pertinence in dealing with the question of the legality, i.e. constitutionality of that provision, than they would in a situation where we are dealing generally with the conduct of the University, vis-a-vis you over a number of years and in relation to a number of varying and varied circumstances.

Secondly, while the observation relates to the question of evidence generally, the portion that you read, very much depends upon the circumstances of each particular case. And the question of relevance, at the end of the day, will be measured insofar as it relates to the case itself.

Thirdly, the flaw in your argument is that a legal position, particularly within an institution, such as the University, is not necessarily developed from one particular document, or from one particular facet of research, or from one particular question that, the instance that concerned us, was addressed at the time by his supervisor to an articling student.

A legal position, whatever it was, adopted by the University may have been the fruit of a number of memos, whether written by Gamache, whether written by Freedman, whether written by outside counsel, whether written by anybody else who may have had some input into the question.

It may have, in addition, been the fruit of meetings which took place as a consequence of receiving these legal opinions, as a consequence of studying these legal opinions, and as a consequence of evolving a policy within the framework of these legal opinions.

To try to say in the present instance that the legal opinion itself addresses the question and establishes the question that the University totally ignored the Vice-Rector's failure to act upon the recommendations, is to presume that the legal opinion itself is the sole element which was considered in the articulation of the policy adopted by the University.

For all of these reasons it becomes patently clear to me that it would be dangerous to put into the record, out of context, out of proper and complete context, any legal opinion which is susceptible of a number of interpretations, depending upon the number of facts which people have, and laterally, as you said yourself, the jury are the finders of fact. That is what they are going to be called upon to do. They are not the determiners of the law.

So, I can see no point at all to produce that legal opinion, and you will not be permitted to produce that legal opinion for these reasons.

BY THE ACCUSED:

If you could clarify the word "dangerous", what do you mean dangerous?

BY THE COURT:

I shan't clarify a thing, Mr. Fabrikant.

BY THE ACCUSED:

Q. All right... Okay. So, that was your first encounter with me as part of this legal opinion. What was the next one?

BY THE CROWN:

It looks like a fishing expedition, My Lord. First, second, third and three hundred (300) times he encountered the name Fabrikant. It's like taking...

BY THE ACCUSED:

So, what is wrong with that?

BY THE CROWN:

This is not specific, My Lord.

BY THE ACCUSED:

I cannot be specific. I don't know his work. If the first question was all right, then the second question is all right, too.

BY THE COURT:

Not necessarily.

BY THE ACCUSED:

Well, if I ask him when did you encounter first, and it was normal, why shouldn't...

BY THE ACCUSED:

Well, I presume there's some pattern that you wish to establish with Mr. Freedman, or are you simply going along to see what you happen to be able to dig out.

BY THE CROWN:

He's fishing, My Lord.

BY THE ACCUSED:

Well, so far I didn't get, I repeat once again, I asked Mr. Belleau on numerous occasions to provide me any authority or jurisprudence saying fishing expedition is forbidden, or saying at least that if person doesn't know exactly what documents the other party has, it cannot ask more or less questions, okay, what is the document you have of this year, or what... anyway, whatever you call fishing expedition, maybe you could do me a favour and assign Mr. Belleau to provide me with either quotation from the authority or the jurisprudence, and that would solve a lot...

BY THE COURT:

On what, on fishing expeditions?

BY THE ACCUSED:

Yes. Where is it written that it is forbidden? If it is written anywhere, it will save us a lot of time because I will never ask any question of a fishing nature.

BY THE COURT:

It derives from the principle that the evidence which is made in a case, whether it be made on behalf of the Crown, or whether it may be made on behalf of the defense, is relevant. And the Code contains no provision which permits you to embark on discovery at large in a criminal case in order to hopefully draw from the witness something that may be in the witness' possession which just may happen to be of some assistance of some sort to you, that you may not do. And you may not do that particularly because of the question of economy of time. You know what the case is that you have to meet. You know what the defense is that you have to make out.

So, I would presume that in calling Mr. Freedman to the stand, you've sought out what you wish to establish with Mr.

Freedman. If you haven't, then it will be a painfully short examination, or painlessly short examination, whichever word one wishes to use. But you're not going to put Mr. Freedman on the stand and simply throw questions out of here and there in the hope that somehow or other the dart might land on the bullseye, because that's not the way it works.

Now, I would suggest that you go and you take fifteen (15) minutes to think out what you want to cover with with Mr. Freedman and when we come back that you cover it. We'll adjourn for the moment.

(THE JUDGE LEAVES THE BENCH)

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

RECESS

(THE JUDGE TAKES THE BENCH)

(MEMBERS OF THE JURY TAKE THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

THE WITNESS, BRAM FREEDMAN, TESTIFIES UNDER THE SAME OATH

BY THE ACCUSED:

Well, I want to just clarify one thing. Suppose someone is accused of murder, and a third party has a document which proves that it is not him who committed the murder by somebody else, and the only way to get to this document from fishing expedition, now would it be considered a fair thing to deny an incident person fishing expedition for the document which might prove his innocence, or it is fair to allow him to do so. This is just an abstract question.

BY THE COURT:

Well, I don't answer abstract questions. But if you think about it, the answer is pretty obvious.

BY THE ACCUSED:

What is it?

BY THE COURT:

I don't answer abstract questions.

BY THE ACCUSED:

Okay. This is why I repeat once again that I would like Mr. Belleau to provide me with some clear evidence of what you said, that fishing expedition is not allowed. Because there is no way, for example, I could have asked questions concerning twenty-four (24) hour surveillance, because I had no idea it happened. So, I possibly couldn't ask the question unless I was given those documents and I could browse through them. The same is applied to many other things.

BY THE COURT:

Have you any questions you want to put to Mr. Freedman?

BY THE ACCUSED:

Okay. So you don't want to answer any of these?

BY THE COURT:

I'm not going to answer them.

BY THE ACCUSED:

All right.

Q. Do I understand correct from this opinion that, in fact, one of the conclusions of this opinion is that promotion should be governed Collective Agreement though at the time I was not a member of bargaining unit. Is that correct statement?

A. If I recall, there are no direct conclusions in that memo. It's more a canvassing of the issues and the possible arguments that could be used. The difficulty was that you had

appointment letters that made reference to certain provisions of the Collective Agreement, and that's where the confusion came in, and that's why clarification was asked for. I don't recall...

Q. Okay. Let me read the phrase and you tell me if my understanding of the phrase is correct.

"Furthermore, in a letter from Dean Swamy to Vice-Rector White dated August nineteen (19), nineteen eighty-five (1985), reference is made to the fact that procedures for promotion would be the same as in Collective Agreement."

So, is this a confirmation that indeed my promotion should follow the same rules as is outlined in Collective Agreement?

A. I would prefer to review the document and see if there is something other than that.

Q. Do you want to take a look?

A. Certainly.

BY THE CROWN:

Whenever there is a legal opinion, My Lord, it's because there is an argument on the point. So an opinion is not a fact.

BY THE COURT:

You're correct.

BY THE ACCUSED:

Well, I'm establishing not legal opinion at this moment. I am establishing the fact that certain opinion was expressed, period. And I have the right to do so.

A. Well, I think you have to read the whole paragraph to get the... that's the last sentence of the paragraph.

Q. Sure, read it.

A. What it says is:

"With respect to the latter contention the employment contract is somewhat ambiguous and it can be argued that it implies that questions of promotion will be dealt with by the procedures set out in Articles 14 and 21 of the Collective Agreement. While the appeal mechanism set out in Article 21 is reserved for full-time members of the bargaining unit, it can be viewed as a contractual one for Dr. Fabrikant to be applied with the appropriate adjustments due to the above-mentioned references to promotion in the employment contract. Furthermore, in a letter from Dean Swamy to Vice-Rector White, dated August nineteen eighty-five (1985), reference is made to the fact that procedures for promotion would be the same as in the Collective Agreement."

There is certainly no definitive statement in that paragraph. What it does is set out the issues and set out what the issue under discussion is.

Q. But how do you interpret the last phrase, that my promotion...

A. It's a statement, in a letter from Dean Swamy to Vice-Rector White, reference is made to the fact that procedures for promotion would be the same as in the Collective Agreement, which I recall is what it did, in fact, say in that letter.

Q. All right. And the conclusion?

A. There is no conclusion. That's the point I'm trying to make.

No conclusion, that there is no conclusion in this legal opinion with respect to that issue.

Q. What is the point to make a legal opinion in which there is no legal opinion?

A. I'm afraid you have to ask Me Gamache that. She's the author of this document.

Q. All right. Okay. The second question, if you could answer, is the following. On the one hand it says that:

"Full-time appointment may only be obtained through appointment process set out in Collective Agreement."

And after that:

"Considering the public nature of Collective Agreement, one cannot exclude it's application through an individual contract of employment."

A. Right.

Q. So, is this effectively saying that my contract guaranteed that since conditions of employment were fulfilled that I have to be hired into full-time position?

A. I don't believe that's what the legal opinion says, no. That's the whole issue under discussion. As I said, I don't believe that the memo comes to any conclusions. More, more than that, it sets out what the difficulties and what the issues are that need to be further discussed. I don't believe there are firm conclusions in that memo.

Q. Okay. All right. So as far as tenure, you will say the same thing, that there is no conclusion there either?

A. I've reread the memo and in reviewing the file, and I don't find any conclusions in those.

Q. All right. All right. Could you comment on another thing here that:

"Fabrikant cannot invoke ten years of service at the University."

Could you comment on that? Why is it that I cannot invoke ten years of service to the University?

A. I believe that was in reference to a specific Article. Is that correct?

Q. Yes, it was in respect to sabbatical leave.

A. If I recall it's because the calculation of your service at the University, using a definition in the Collective Agreement, it would have only started in nineteen eighty-five (1985), when you joined the Action (inaudible) program.

Q. Well, could you elaborate on that? Why eighty-five ('85)?

BY THE CROWN:

Now, we're into legal reasoning, My Lord.

BY THE COURT:

Yes, we are. I don't see the point of this at all. I don't see the point of this at all.

BY THE ACCUSED:

Well, the point is very simple. I would like to clarify the opinions which were made and assuming for a second... you see, I can open my cards like this. What I am trying to establish here is very simple thing, that the University acted against all legal opinions in a reckless way. If this is relevant to my defense, and I believe it is, then I should be allowed to establish it.

BY THE COURT:

How can it possibly be relevant to your defense?

BY THE ACCUSED:

Okay. When jury will decide, for example, if I invoked

defense of provocation, the question whether reasonable person in my position could have lost his self-control in certain situations, definitely it will be important for the jury to know that that particular person was indeed treated in such a reckless and lawless way, that even University lawyers, in principle, disagreed with the administration's decision, and I think that would be very helpful for the jury to know. Does it sound reasonable?

BY THE CROWN:

He admitted it's fishing, My Lord. He doesn't even know himself.

BY THE ACCUSED:

No, I do know. I did not admit any fishing. I do know that I was treated recklessly. I do know that I was treated lawlessly. I do know all this. I just need to establish all this for the jury. Here I am not fishing at all.

BY THE COURT:

Even if one were to presume, for the purposes of the discussion, that you were treated recklessly or lawlessly, I don't see how that could ever constitute the sort of act which could be factored into any defense of provocation in the event that you were ever able to raise any defense of provocation. So it is not pertinent.

BY THE ACCUSED:

Well, I think it is the jury who decide this kind of part...

BY THE COURT:

I decide...

BY THE ACCUSED:

... not you.

BY THE COURT:

I decide what is admissible. It's not admissible.

BY THE ACCUSED:

So, effectively you're denying me important part of my defense.

BY THE COURT:

If that's the consequence, that's unfortunate, but there you are.

BY THE ACCUSED:

All right. So here, there is a statement that I cannot invoke ten years of service, and I believe I'm entitled to a clarification as to why this statement was made?

BY THE COURT:

This isn't the Labour Court.

BY THE ACCUSED:

I know it's not the Labour Court.

BY THE COURT:

We're not talking about sabbaticals.

BY THE CROWN:

The statement is clear, My Lord. What is behind the statement is legal reasoning. We're not here for that.

BY THE ACCUSED:

Well, I think it is important if there is legal reasoning behind it or not.

BY THE COURT:

The objection is maintained.

BY THE ACCUSED:

The objection is maintained. All right.

BY THE COURT:

Let us get to the point of this case, the sooner we get there, the better.

BY THE ACCUSED:

I'm always on the point. I never been off the point. Q.

Okay. I understand that you had another legal opinion made in August of nineteen ninety (1990). Correct? If you wish I can give you even the date. I believe it was August twenty-seventh (27th), something.

A. I see in the file a document dated August twenty-ninth (29th), nineteen ninety (1990)...

Q. All right.

A. ... from Me Michele Gamache and John Relton to Dr. Sheinin.

Q. All right. May I take a look at that?

A. Yes.

BY THE ACCUSED:

Well, this document is just a document to the Crown. I don't think they would refuse to have it deposited. Would you? I would like Crown to say it. (Laughs)

BY THE CROWN:

I'm not going to answer to the accused, My Lord.

BY THE ACCUSED:

All right.

BY THE CROWN:

You already ruled on legal opinions, My Lord.

BY THE ACCUSED:

Well, it's not precisely a legal opinion. Let's consider it internal memorandum and let's file it.

BY THE COURT:

If you have any questions to put to the witness, put them. If you are asking if you may file that... what is the... your position?

BY THE CROWN:

I think we have to be consistent, My Lord.

BY THE ACCUSED:

Well...

BY THE CROWN:

I think the Crown's case is... the Crown has enough evidence at this point, My Lord.

BY THE COURT:

Now, have you a question...

BY THE ACCUSED:

It's not a legal opinion, it's internal memorandum.

BY THE COURT:

That may be. It doesn't necessarily mean it's pertinent.

What... have you any questions to put, first of all?

BY THE ACCUSED:

Well, I would like to file it for the main reason that effectively questions to be put are to Vice-Rector Sheinin rather than to Mr. Freedman or even Me Gamache, because...

BY THE COURT:

Then file it under... file it under an identification number for the minute. And you may wish to refer Dr. Sheinin to it. It is of the nature of an internal memorandum, in my view, not a legal opinion, in any event.

BY THE ACCUSED:

It is. So let's file it then.

BY THE COURT:

Well, unless you have consent, you don't have the proper witness here to file it.

BY THE ACCUSED:

(Laughs) All right.

BY THE COURT:

It is conceivable that you may have questions for Mrs. Sheinin

on that memorandum.

BY THE ACCUSED:

Oh, yes. Oh, yes. Oh, yes.

Q. Maybe you know anything about details of this? No? Nothing at all?

A. No, I have no knowledge of that.

Q. All right. So let us... I think it is present for the Crown. Why would they refuse to sign such a document? Let us file it for the minute and... maybe we could file both under I...

BY THE GREFFIER:

I-14.

BY THE COURT:

I-14.

BY THE ACCUSED:

The previous legal opinion...

BY THE COURT:

The previous legal opinion is not going into the record, so maybe we couldn't...

BY THE ACCUSED:

No, just "I" so that I could...

BY THE COURT:

No, no, no, no.

BY THE ACCUSED:

... ask several questions of Mrs. Sheinin?

BY THE COURT:

No, no.

BY THE ACCUSED:

Why not?

BY THE COURT:

Because I said no...

BY THE ACCUSED:

I have to ask questions.

BY THE COURT:

... it's not going to be produced.

BY THE ACCUSED:

Well, what is the difference? They consider both as legal opinions. If we can file one under "I", we can file another one.

BY THE COURT:

No, you can't file the other one under "I".

BY THE ACCUSED:

Why not? Both... they consider.. the University considered both as legal opinions.

BY THE COURT:

The latter memo addressed to Mrs. Sheinin, you will, as I-14.

EXHIBIT I-14: Memo to Dr. Sheinin

BY THE ACCUSED:

Q. All right. Anything else, any other legal job done in nineteen ninety (1990).

A. ...

BY THE CROWN:

Fishing expedition, My Lord.

BY THE COURT:

Yes, it is. Objection maintained.

BY THE ACCUSED:

So what is wrong with that? Maybe they... assume for a second that there is a legal work to hire an assassin, and I don't know about it, would it be fair for me to allow to browse through documents and found this document? After all, it is either life in jail, which I am facing, or something very

different. So I think from the fairness point of view when someone is entitled to full defense, I think it should include at least possibility to look through the documents if there is some exonerating evidence.

BY THE COURT:

If you wish to ask the witness if he's looked through the file and if there's any evidence of the hiring of an assassin, go right ahead, but otherwise the objection is maintained.

BY THE ACCUSED:

I just gave you an example, and I think example is very clear that there is nothing wrong if I ask that question like this.

BY THE COURT:

The objection is maintained.

BY THE ACCUSED:

All right.

Q. Any other legal opinion concerning my behaviour?

A. At any point in time?

Q. Yes?

A. Certainly there... in nineteen ninety-two (1992), there are certain... there's no other legal opinions per se in the file. The Legal Counsel office was consulted on occasion by various administrators on particular questions, but there's no legal opinions in the nature of the first one we just discussed.

Q. All right. Let's try maybe to be chronological, because I think more logically be, is to do it in a chronological manner. Did Mrs. Sheinin ask legal opinion on the question whether University is obliged to hire me in nineteen ninety (1990), or not?

A. No.

Q. No. Did Mrs. Sheinin ask a question of legal opinion in nineteen ninety (1990) or at any other time, whether I'm entitled to sabbatical leave?

A. There were -- when the grievances -- I believe you filed three grievances at the same time in nineteen ninety-two (1992) that deal with sabbatical, tenure and promotion, and I was consulted by Dr. Sheinin on those three grievances.

Q. All right. Do you have your legal opinion here?

A. There is no legal opinion. What there is, is briefing notes for Dr. Sheinin for the actual grievance hearing.

Q. All right. Do you have a copy...

BY THE COURT:

Q. Sabbatical, tenure and what was the third?

A. Promotion.

Q. Promotion.

A. That's right.

BY THE ACCUSED:

Q. Okay. Do you have a copy of those notes?

A. I do.

BY THE CROWN:

They are equivalent to a legal opinion, My Lord.

BY THE ACCUSED:

I wish I understood what the remark of the Crown meant.

A. No, I'm sorry, I was wrong. There is... there is an actual one... two-page memorandum from myself to Dr. Sheinin on an application for a sabbatical leave by Dr. Fabrikant. And then there are notes for Dr. Sheinin for the grievance hearing, re the three grievances.

BY THE COURT:

Q. Now, these grievances, these are grievances which were filed pursuant, in nineteen ninety-two (1992), to the terms of the Collective Agreement? Is that correct?

A. That's correct.

Q. Yes...

A. That's correct.

BY THE CROWN:

My Lord, I know he waived his privilege, but my concern is that if we go into the merits of any single grievance Fabrikant got in his life, My Lord...

BY THE COURT:

We are not going...

BY THE CROWN:

I suggest to you that, the first point is, it's not relevant.

BY THE COURT:

What is the relevance of this?

BY THE ACCUSED:

It is relevance of any other document. What is the relevance of the one which he filed under "I". You didn't ask it. It's the same time. Let me see it first and then we'll discuss the relevance.

BY THE COURT:

The one that is filed under "I" may have a certain relevance because of its content.

BY THE ACCUSED:

Well, I have no idea...

BY THE COURT:

As far as grievances filed pursuant to the collective agreement when you were part of the bargaining unit, these have no relevance in my book at all.

BY THE ACCUSED:

Well, let me take a look at them first. Then I will formulate a relevance.

BY THE CROWN:

This is legal arugment, My Lord. We know that there are grievances, and that should be the end of it, My Lord. These grievances are under an appeal board right now.

BY THE COURT:

These grievances are not in any way relevant to these proceedings.

BY THE ACCUSED:

Let me take a look first.

BY THE COURT:

I'm telling you they're not in any way relevant to these proceedings.

BY THE ACCUSED:

Let me take a look first.

BY THE COURT:

They are not in any way relevant to these proceedings. Do you understand that? So you may not get into the question of grievances filed pursuant to the Collective Agreement which is a legal mechanism which permits you to settle differences you may have with the University and which is a course that was adopted and which was followed.

BY THE ACCUSED:

Okay. Let me explain you relevance then, since you allow me to see it then, because I think it would be fair for us to let me see them, then ask me for the relevance. But since you don't allow, I will formulate the relevance myself. Because, again, if it is understood that abuse after abuse after abuse accumulates in every normal human being, and then when provocation takes place, the reaction of normal human being is different, taking into consideration previous history. Now, for the jury it would be absolutely necessary to know not

just the fact that I filed those grievances, but whether or not administration behaved in a reckless, lawless manner. Because if my perception of recklessness and lawlessness is confirmed by those legal opinions, I think that my defense is much stronger and the jury would be much more at ease to decide that indeed when University administration behaves with a total disregard for general law, as well as internal University laws, and the person affected knows that, then clearly his state of mind is affected much more than if it were the case where person has no merit to his complaint, and the person is just cranky and crazy individual, I think those are two very different cases and for the jury it would be important to decide which was the case.

Therefore assuming, for example, that in this legal opinions which you refuse even to show me, if lawyers advised the University administration that I was right in my requests, then definitely it is relevant to my defense and it is important to file those documents for the jury to know that certain legal opinion was expressed indeed and that University acted against those legal opinions.

BY THE COURT:

Are you finished?

BY THE ACCUSED:

Yes.

BY THE COURT:

When a mechanism such as the mechanism set up under a collective agreement is provided and may be invoked in order to settle a dispute, quite irrespective of the merits of either party's position, I'm ruling, as I ruled before that that cannot constitute the sort of thing, the sort of incident that you might invoke in support of any question of provocation. It is therefore irrelevant and it will not be admitted.

BY THE ACCUSED:

You just ignored what I said. You didn't even answer what I said. You just ignored it.

Q. All right. Could you explain the nature of the opinion which you expressed to the administration with query about sabbatical? What was your opinion then?

BY THE COURT:

You are back exactly where I was. I ruled that if that was the matter of a grievance, and that is... was this the stuff of a... was this the...

BY THE CROWN:

It was.

BY THE COURT:

It was. If it is a question of a grievance under the Collective Agreement mechanism, it is not admissible.

BY THE ACCUSED:

Well, I'm starting from scratch now.

BY THE COURT:

It is neither relevant nor admissible.

BY THE ACCUSED:

I'm just wanting to establish fact...

BY THE COURT:

Well, then you have to....

BY THE ACCUSED:

... why this particular witness didn't...

BY THE COURT:

You will have to take a different tack if you are proposing to establish facts. But we are not getting into questions of

legal opinions which are at the very best questions of mixed fact and law and that's not what a jury is ever asked to decide and this jury isn't going to be asked to decide that.

BY THE ACCUSED:

Well, I'm asking for the fact that...

BY THE COURT:

Well, then you're going to have to change...

BY THE ACCUSED:

... a certain legal opinion was expressed. Period.

BY THE COURT:

You're going to have to change your tack then.

BY THE ACCUSED:

Well, that's what I asked. I am asking for the facts.

Q. When did you get this request?

A. I don't know when I got the request, but the memo, the response is dated January twentieth (20th), ninety-two ('92).

Q. All right. Did you get this request in writing?

A. I don't believe so.

Q. What kind of documents have you received to work on?

A. I received no documents. It is an analysis of a particular Article of the Collective Agreement.

Q. Right. Do you know what Article was that?

A. Article 26.

Q. The whole Article?

A. Certain... certain... not the whole Article, certain provisions are mentioned in the opinion.

Q. Is Provision 2616 mentioned there?

A. Yes.

Q. Okay. Did you decide that this Provision is applicable to me?

A. I'm not sure where I stand, My Lord. Am I to answer that question? I would be discussing the legal opinion.

BY THE COURT:

You would then be straight into the legal opinion.

BY THE ACCUSED:

Well, I'm asking for the facts, what opinion was expressed and... before when there was an objection from the Crown, you ruled it, yes, I'm entitled to ask questions as to what legal opinion was expressed. And this is what I am asking now. So this is a permissible question.

BY THE COURT:

I don't think so, because it falls under the structure of the... it falls under grievances that were filed pursuant to the Collective Agreement. So it is not relevant to these proceedings.

BY THE ACCUSED:

Well, I'm establishing facts, what opinion was expressed, period, regardless what... whether it is Collective or not Collective Agreement, I fail to understand what collective agreement has to do to establishing fact that a certain opinion was expressed.

BY THE COURT:

I told you...

BY THE ACCUSED:

Suppose I was not a member of the bargaining unit, then I can ask all the questions.

BY THE COURT:

It might be. What I told you was...

BY THE ACCUSED:

What is the...

BY THE COURT:

... that whatever legal opinion was expressed... whatever

legal opinion was expressed... whatever legal position was adopted, a mechanism that you were part of and the University was part of, was set up to settle these disputes. Whatever the outcome... whatever the position of the parties, I cannot see neither from near nor far how the decision of the University to contest your application, or to contest your grievance, can in any way be invoked as an element in support of a defense of provocation. Therefore, if that is so, it is not relevant.

BY THE ACCUSED:

Well, what is abuse then? If a person is...

BY THE COURT:

Abuse is a word you use, Mr. Fabrikant. I do not know what you mean.

BY THE ACCUSED:

Well, this is what I mean. When the person is mistreated at the place of work, when the person is constantly harassed, each time the contract for renewal... there is extortion attempt to include somebody in his work as co-author. In terms of promotion, in terms of anything which this person is entitled to, and this person is unreasonably denied all this, definitely it affects a person's mind. And whether accumulation of such events...

BY THE COURT:

I will say it again...

BY THE ACCUSED:

... combined together with what happened on August twenty-fourth (24th)...

BY THE COURT:

... where there was a mechanism there, as there was in nineteen ninety-two (1992) for you to take advantage of, and which you indeed took advantage of, I do not see how the position of either party, you or the University, could relate to the defense of provocation. And if it does not relate to the defense of provocation it is not relevant to a criminal trial where you are invoking provocation as a defense.

BY THE ACCUSED:

Well, my defense is that there was no mechanism, that this mechanism was not working. This is the main contention of mine that normal mechanism which is supposed to work in an institution which is unionized and where the union is supposed to defend its members, this mechanism not only did not exist, existed quite opposite mechanism, which means that the union together with the administration oppressed its own members. So, the mechanism did not exist, therefore, what you assume to be there just wasn't there, and this is the part of my defense. And I hope you still remember that the person shot first was President of the union, who was supposed to defend me. So, it is very, very relevant. All issues concerning grievances and how it affected my mind are very, very relevant. Just remember who was shot first. Now, am I convincing in relevancy?

BY THE CROWN:

You already ruled, My Lord.

BY THE ACCUSED:

I invoke new information.

BY THE CROWN:

It's even less relevant after the explanation, My Lord.

BY THE ACCUSED:

It's very relevant.

BY THE CROWN:

And I'm speaking about the air of reality.

BY THE ACCUSED:

Yes, air of reality. The person shot first was President of the union. This is the tragic reality.

BY THE COURT:

The fact that the person shot first was the President of the Union, if that is so...

BY THE ACCUSED:

Yes...

BY THE COURT:

... does not in any event change the question of the position of the parties, whether it be the University or you, vis-a-vis grievances filed pursuant to the Collective Agreement. I maintain the position I took that it is not relevant.

BY THE ACCUSED:

You just completely ignored whatever I said. It is totally outrageous.

BY THE COURT:

So, we will adjourn until tomorrow morning, nine-thirty (9:30).

(THE JUDGE LEAVES THE BENCH)

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

ADJOURNMENT

CERTIFICATE

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,

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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 LECOURS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: July 14th, 1993

GS: 1399 FILE: 3033

I N D E X

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BRAM FREEDMAN

October 21st, 1964

Legal Counsel, Concordia University

DULY SWORN

EXAMINATION BY THE ACCUSED (CONT'D)

REPRESENTING HIMSELF:

At the end of the day Crown had the opportunity to view the three legal opinions. I believe I have the same right whether they are relevant or not. So if Crown had the right to read them, I have the right to read them, too. I would like to take cognizance of those documents.

BY THE CROWN:

I don't know what you're talking about.

BY THE COURT:

Is that a fact that you took cognizance of these three legal opinions that I ruled yesterday were inadmissible?

BY THE CROWN:

No.

BY THE COURT:

Thank you.

BY THE ACCUSED:

What no? It was given to him, he looked at it. Then he gave it to you, if you remember.

BY THE CROWN:

I spent about three to five seconds for each document, My Lord.

BY THE COURT:

Gave it to me?

BY THE ACCUSED:

Yes.

BY THE COURT:

I did not read the legal opinion. I looked at a document, but...

BY THE ACCUSED:

You looked at it...

BY THE COURT:

Yes.

BY THE ACCUSED:

...but he looked it first.

BY THE COURT:

I am not going to start an argument with you. You are not looking at these documents. Put your questions to Mr. Freedman.

BY THE ACCUSED:

Well, he did look. I have the same right.

BY THE COURT:

I couldn't care less whether I looked or not.

BY THE ACCUSED:

No, I'm not talking about you, I'm talking the Crown. Crown looked at it, I have the right to look at it, too. It's as simple as that. I have the same right as the Crown.

BY THE COURT:

Mr. Freedman, would you hand him these three opinions, please. The opinions, I underline, are not admissible. You are not permitted to question upon them. And the opinions are not relevant. And the fact that I look at a document does not entitle you to the document.

BY THE ACCUSED:

No, I said that Crown looked at it.

BY THE COURT:

Fine.

BY THE ACCUSED:

It entitles me. There were three of them. I see two only.

A. Those are the documents that were handed to the Crown.

Q. Well, you mentioned yourself there were...

BY THE COURT:

It dealt with three subjects. I believe there were two memos.

BY THE ACCUSED:

Q. Okay. Were you asked for any legal opinion concerning the same issues of grievances after decision of the (Inaudible) Committee?

A. I believe that Dr. Sheinin asked me for my opinion. I'll have to verify whether there's a written opinion on that subject or not. But she did ask for my opinion, I remember.

Q. Okay. Could you check if you have something.

A. No, I don't have anything here. But I do remember the opinion that I gave to the Vice-Rector.

Q. Okay. What did you tell her?

A. Well, if I recall correctly, two of the grievances were rejected by the Grievance Committee, and one was upheld. The one with respect to promotion, I believe, was upheld. My opinion was that the Grievance Committee had... that the same arguments were valid for all three grievances, and I didn't... I couldn't quite understand how they would have upheld two... upheld one and rejected two others. But it should have been consistent. And that was my opinion.

Q. Well, you didn't provide anything at all in terms of... because they presented some arguments. You read them?

A. That's right.

Q. Right?

A. I did.

Q. So, well, you were not required to provide anything in writing?

A. I don't believe so. I remember a telephone conversation with either Dr. Sheinin or her assistant, Angela Wilson Wright, where I discussed my view of their decision, and I thought that the reasoning of the Grievance Committee was not tight legal reasoning, but then they're not lawyers, they're faculty members of the university, and we sort of went back and forth discussing it.

Q. All right. Did you read my letter addressed to Rector with respect to all this? Were you provided with that letter?

A. Not that I recall. I don't believe seeing a letter from you dealing with... after the Grievance decision per se?

Q. After the Grievances I have written a letter to the Rector stating my reasons of disagreement with the decision?

A. No, I never saw any such letter.

Q. So you were not provided with this letter? Were you conducted by Kenniff himself?

A. No, I was not.

Q. To the best of your knowledge, if anybody else at the legal office was contacted?

A. Not that I'm aware of.

Q. All right. Now, did you... okay. Were you asked any legal opinion prior to issuing the letter of warning?

A. Yes. I had discussions with Dr. Sheinin. I advised her on procedure, the proper form of the letter, specific words and phrases from the Collective Agreement that should be included in the letter.

Q. Did she ask you questions concerning that there must be complaint from the Dean first, and there was no complaint?

A. There was some discussion of that, I recall. We came to the conclusion... I believe I recommended to her that given the circumstances that it was my opinion that she had the necessary authority to issue a letter of warning at her own instigation without a letter of complaint from the Dean, even though there was some ambiguity in the

collective agreement.

Q. Could you explain why you call it ambiguities? Isn't it clear in collective agreement that there should be a complaint from the Dean?

A. Well, unfortunately the article on disciplinary measures and dismissal is far from clear. And while an argument can certainly be made that what the text of the collective agreement envisages is a letter of complaint from the Dean, a counter-argument can also be made that it also... that that does not necessarily preclude a letter coming from the Vice-Rector asking for a complaint from the Dean.

Q. Well, how did you reconcile this with necessity to have in any judicial or quasi-judicial procedure, a complainant, a judge and a defendant?

BY THE CROWN:

My Lord, we're into legal argument now.

BY THE COURT:

Of course we are. I don't see what the point of this is.

BY THE ACCUSED:

Okay. Let me explain the point.

BY THE COURT:

Counsel stated that he gave as his opinion, as his legal opinion, that Mrs. Sheinin had the authority to issue the letter of warning. He is not, and does not stand to be cross-examined upon what the basis for his opinion was, and that is not pertinent to these proceedings. I can't see how it could be. If you can convince me that it is, go right ahead.

BY THE ACCUSED:

All right. Collective agreement says explicitly that for letter of warning, disciplinary measure, there should be complaint from the Dean. Vice-Rector should investigate thoroughly the complaint, investigate thoroughly means to ask the other parties if it meets each consideration to that, and then decide whether it is the issue or not the issue.

This is normal practice, what is called natural justice, that there is a party who complains, there is a party on who complaint was made, and there is some allegedly impartial judge, or whatever you call it, Vice-Rector, who decides who is right and who is wrong. This is what natural justice requires, and this is what is written in collective agreement.

In the case when there was no complaint from the Dean, there was no investigation of any kind, I was not contacted. I was not asked to submit any explanation or justification of my behaviour, and in this condition to issue a letter of warning is reckless disregard for any norm of civilized behaviour.

Now, as you know, what I'm trying to point out that this was behaviour of the university all the time, to behave the most outrageous way in order to provoke me into something. And they tried it for years. Regretfully, finally they succeeded. But this is one of the stages. And the jury would be in great difficulty to understand the latest stage if it doesn't see the whole picture. So I should not be precluded to present to the jury the whole picture.

BY THE CROWN:

Do I have to argue that, My Lord?

BY THE COURT:

If you wish to answer.

BY THE CROWN:

Well, clearly we are in the merits of a legal argument. You already ruled that this is not pertinent. I just quote what you said. Me Freedman said he was backing, that he backed Dr. Sheinin. That should be the end of it. Otherwise we're going to be arguing about any grievances, any article in the collective agreement. I don't... we will be sidetracked all the time. And I think you already ruled that many times.

BY THE ACCUSED:

Well, may I respectfully submit that if someone already ruled it doesn't mean that this someone didn't make a mistake, presumably an honest mistake. This is not presumably an honest mistake, and each time when argument comes to a certain point, I believe it is wise to reconsider and to consider very seriously what I said, because if we are not going to investigate at all in any case whether university was right or wrong, then the only thing for the jury will be left is either that I was a cranky idiot who could not understand that I was treated the best possible way, and then my place is in Pinel, or I was a normal person and there were a bunch of criminals at Concordia, and this makes a whole lot of difference. And if I am not allowed to advance this defense, this is unfair trial.

BY THE COURT:

Well, that's your opinion, but you're not going to be allowed to advance that defense. The university... you may establish on what basis the university acted. In this instance, you've established that the university acted on the basis of advice of counsel.

We are going far too far to go into the merits of the advice of counsel, whether it is right or whether it is wrong. Whether the university was right or whether the university was wrong is not, as I have said from the beginning, the issue in this trial. It is not the issue in any sense of the word.

You have used the words "outrageous treatment", a favourite word of yours, or "reckless disregard", another favourite word of yours, and a number of other phrases that I didn't... that I didn't write down. That is your interpretation of the particular facts. But I fail to see... I fail to see how in the context of any defense that the law of this country recognizes... and I'm simply repeating what I said yesterday. I fail to see how the exercise by the university of what it perceived to be its legal right, what on the advice of counsel the university perceived to be its legal right, could ever be the basis for a complaint on your part, or anybody else's, that you had been provoked.

Furthermore... and that is sufficient to dispose of the matter. Furthermore, unless you were privy to that advice and to that decision, I do not see how it could ever be said that this played on your mind. And I have certainly heard no proof so far that the university visited upon you or presented to you the legal opinions which it received. What you are trying to do is determine what these were today. And how you could

possibly argue that the basis of these opinions, or their basis, could in any way have played on your mind defeats me. In any event, the objection is maintained.

BY THE ACCUSED:

Q. Okay. Do you have in your files any questions concerning... well, any documents concerning my complaint to the Code of Conduct?

A. Yes, I do.

Q. Okay. Could you say what they are?

A. After the decisions of the hearing board, I was consulted as to possible grounds of appeal from the hearing board decisions that condemned the university.

Q. You were never contacted before that?

A. I was not.

Q. So the complaint was filed November third (3rd), nineteen ninety-one (1991). And you were never contacted for your legal opinion as to whether university should apologize for malicious arrest, or university should not apologize, or whatever university should or shouldn't do?

A. No, I was not.

Q. Okay. To the best of your knowledge, any other member of legal office was consulted in that?

A. Not to my knowledge, no.

Q. No. All right. As far as appeal goes, have you presented written opinion to that end?

A. Yes. I believe... I believe I did. Yes, there's an internal memorandum to Miss Maureen Habib of the Rector's office with respect to possible grounds for appeal from the decision of the Code of Conduct hearing board.

Q. Okay. Were you asked for factual grounds for appeal, or just to look into some kind of formalities?

A. It wasn't specific. The request was for possible grounds for appeal.

Q. Again, in this request, were you asked whether university should accept recommendation and apologize, or it was imperative that university disagrees and give us the reasons for appeal. Were you asked like this?

Q. I believe the intention of the university was to appeal the decision, and I was asked to find grounds for appeal.

Q. Okay. So again, you were never asked to look into the decision, maybe it is correct, and maybe university should apologize? This question was not posed to you?

A. Certainly not, no.

Q. No. All right. And, of course, you found reasons for an appeal, did you?

A. I certainly found some reasons for appeal, yes.

Q. Okay. Were they factual reasons or they were procedural reasons?

A. Well, as I recall, and I note here in the memorandum, that according to the provisions of the Code of Conduct:

"Any appeal must be based on
procedural defects or a breach of
natural justice..."

Q. Uh, huh. All right.

A. Sorry.

"... or the discovery of new
evidence, in addition."

Q. All right. So you had quite a number of opportunities. It's not just required procedure. Right? You could have appealed it, for example: We have recently discovered that Fabrikant raped a student, so he is definitely a

violent person, and this is a new information and we want you to consider that. How about that? Did you recommend something like this?

A. I certainly did not.

Q. Could you explain why?

BY THE CROWN:

This is cross-examination, My Lord.

BY THE COURT:

No, you may not examine counsel on what the basis was for his opinion. You have established the fact that he made the recommendation, and I even have my... I have serious reservations. I heard no objection. But I have serious reservations about whether that is even admissible on the basis of my last ruling.

BY THE ACCUSED:

Maybe it would...

BY THE CROWN:

Well, My Lord, on the basis of your last ruling, everything we heard is irrelevant.

BY THE COURT:

That is right.

BY THE ACCUSED:

So maybe we'll...

BY THE CROWN:

Since everything we heard is irrelevant, we should not continue hearing what we're hearing, My Lord.

BY THE ACCUSED:

Maybe we'll stop all my defense.

BY THE CROWN:

That was my contention, My Lord.

BY THE COURT:

It is not a question... it is not a question... Pardon?

It is not a question, Mr. Fabrikant...

BY THE CROWN:

What we heard from the beginning is not a legal defense of provocation.

BY THE COURT:

It's not a legal... it does not relate to a legal defense of provocation.

BY THE ACCUSED:

Yes.

BY THE CROWN:

It might be provocation in the mind of the accused, but this is not a legal defense of provocation.

BY THE ACCUSED:

Okay. Are we on the basis that defense of provocation only when I see somebody is with my wife in my bedroom...

BY THE COURT:

No, no, no.

BY THE ACCUSED:

... or if somebody is sodomizing my son, otherwise it is not...

BY THE COURT:

Not at all.

BY THE ACCUSED:

... provocation.

BY THE COURT:

Not at all.

BY THE ACCUSED:

Not at all?

BY THE COURT:

Not at all.

BY THE ACCUSED:

Then let us establish...

BY THE COURT:

What I said was that the decision of the university to exercise it's legal rights in relation to you, in this instance... now, we're talking about an appeal from the decision of the hearing... the two decisions of the hearing board.

BY THE CROWN:

And the firing. The legal right to fire this individual is not even provocation, My Lord. Thousands of individuals... individuals are fired...

BY THE COURT:

Let me deal...

BY THE CROWN:

... in this province every day.

BY THE COURT:

I know they are.

BY THE CROWN:

This guy always had a job.

BY THE COURT:

Let me deal with what I have in front of me for the minute. The fact that the university decided to file an appeal exercises, as I said, its legal rights as a consequence of a decision of the hearing board with which it did not agree would not, and cannot provide you any solace with regard to the defense of provocation, therefore, it is not relevant.

BY THE ACCUSED:

Okay. Let me...

BY THE COURT:

It's the same decision as I rendered before. Perhaps you didn't understand it. It's a very...

BY THE ACCUSED:

Well, I did understand. Not only I did understand, but you might be surprised that I read MacWilliams to this subject, and it says quite clearly that... let us just open the place.

BY THE COURT:

You tell me where it is.

BY THE ACCUSED:

Well, may I have the book, because I want to argue this issue here. At the place... I don't remember which chapter is it. Maybe Mr. Belleau will help me.

BY Me BELLEAU:

Well, if you tell me what you are looking for...

BY THE ACCUSED:

Well, I am looking for defense of provocation which says that when someone is exercising his legal right, this cannot constitute defense of provocation. It's exactly what Mr. Martineau is talking about...

BY THE COURT:

No, not quite.

BY THE ACCUSED:

Well, there is a place in MacWilliams exactly about this, and there is an explanation what legal right means there.

BY THE CROWN:

You're the one, My Lord, that already decided. I think...

BY THE COURT:

I think the argument that I'm...

BY THE CROWN:

I think...

BY THE COURT:

The argument that is being made at the moment is exactly what I said.

BY THE CROWN:

It's exactly the same.

BY THE COURT:

It's exactly the same as I said.

BY THE ACCUSED:

Well, just wait for a second and you will see the difference.

BY Me COURT:

You have my book, Mr. Fabrikant.

BY THE ACCUSED:

Yes. So it is not exactly the same because there is an explicit explanation there what it means legal right.

BY THE CROWN:

But, My Lord, I think your last ruling is very, very interesting.

BY THE ACCUSED:

Of course it is, because it is...

BY THE CROWN:

It means that...

BY THE ACCUSED:

... contrary to MacWilliams.

BY THE CROWN:

... this witness could be terminated, and most of the coming ones from what we know should be terminated.

BY THE ACCUSED:

Sure.

BY THE COURT:

I will let him refer to the book.

BY THE ACCUSED:

Yes. Because we need to decide it once and for all, because if all this stuff which people did to me was exercising of their legal rights, then definitely I don't have any defense.

BY THE COURT:

That is your opinion. I didn't say that.

BY THE CROWN:

That is my opinion, as well, My Lord.

BY THE ACCUSED:

Well, let us check it.

BY THE COURT:

There may have been certain things that you wish to invoke. I don't know.

BY THE ACCUSED:

Okay. Which chapter is it?

BY Me BELLEAU:

I don't know. I don't know where you found it.

BY THE ACCUSED:

What the hell. You are supposed to know, aren't you?

BY Me BELLEAU:

I don't know MacWilliams by heart...

BY THE COURT:

You don't?

BY Me BELLEAU:

Sorry, My Lord. Should I resign?

BY THE ACCUSED:

You... not I... I think you should. You should do it long, long time ago. Well, which chapter is provocation?

BY THE COURT:

Well, I'll give you what you're looking for. The case is R. versus "Gelgae". Undoubtedly you read that, nineteen seventy-two (1972), 6, CCC, 2nd.

BY THE ACCUSED:

Well, what page... what chapter is this?

BY THE COURT:

I'm not reading from MacWilliams. I'm reading from another book.

BY THE ACCUSED:

Okay.

BY THE COURT:

But I think you may have read it in another book. You may have read it...

BY THE ACCUSED:

No, no, no, I read it right here, and if you wish...

BY THE COURT:

Okay, fine.

BY THE ACCUSED:

... I'll find it. Now, which chapter is provocation? Because, you see, I don't have the book.

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

I have what Mr. Belleau gave me...

BY THE ACCUSED:

Mr. Fabrikant, would you look at your Criminal Code in front of you.

BY THE ACCUSED:

Yes.

BY THE COURT:

Now, open your Criminal Code...

BY THE ACCUSED:

I don't have it.

BY THE COURT:

Mr. Belleau, hand him a Criminal Code, open it at article 232 (3).

BY Me BELLEAU:

The section or the...

BY THE COURT:

Yes.

(REMARKS OFF THE RECORD BETWEEN Me BELLEAU AND ACCUSED)

BY THE ACCUSED:

What are you looking? Page 382?

BY THE COURT:

No, I asked you to look at section 232.

BY THE ACCUSED:

Yes, there it is. And...

BY THE COURT:

Just a second. "No one... " I'm looking at the last... for the purposes of this section, the question is:

"Whether a particular wrongful act
or insult amounted to provocation,
and
b) whether the accused was deprived
of his power of self-control by the
provocation that he alleges he
received..."

Well, that would have no application at this stage.

BY THE ACCUSED:

Uh, huh.

BY THE COURT:

"... are questions of fact. But no one shall be deemed to have given provocation to another by doing anything that he had the legal right to do."

BY THE ACCUSED:

Uh, huh.

BY THE COURT:

Now...

BY THE ACCUSED:

Correct.

BY THE COURT:

You are trying to say...

BY THE ACCUSED:

I've read it.

BY THE COURT:

... that the university, I pointed out to you, had the legal right to appeal from the decision of the board. If the university had a legal right to appeal from the board, that act cannot constitute an act of provocation. If you're arguing the larger argument that that can nevertheless constitute one of the insults that made the sudden provocation more potent than the twenty-fourth (24th), I think you're reaching far too far.

BY THE ACCUSED:

Well, believe me, I have read this. But there is an explanation to it. And this explanation amounts to the following, that the legal right to do does not mean just that something could go to Court and file a certain action, or a certain institution could do, let's say, if in principle it has the right to fire, then the firing itself constitutes what this article means, not at all. When the legal right is here, it means that if someone tries to arrest somebody, trying to prevent crime, and if someone claims that he provoked me because he tried to arrest me, thinking that I did a crime, in this case, and only in this case this action cannot be claimed as provocation. So this is explanation I'm looking in MacWilliams. So it is not any legal rights whatsoever, because if someone does, though he legally has right to do so, some kind of vexatious Court proceeding, though he had legal right to do so, this is a provocation...

BY THE COURT:

It refers...

BY THE ACCUSED:

... if it is vexatious.

BY THE COURT:

Legal right refers to a positive right sanctioned by law.

BY THE ACCUSED:

No, not at all. Not at all. This is my...

BY THE COURT:

Well, I'm sorry. That's what the Ontario Court of Appeal said in R. versus Height, nineteen seventy-six (1976), 30 C.C.C. 2nd.

BY THE ACCUSED:

Well, probably from seventy-six ('76), there were changes.

BY THE COURT:

I don't think so.

BY THE ACCUSED:

Okay. Let me read... what case you are referring to now?

BY THE COURT:

Height.

BY THE ACCUSED:

Sorry?

BY THE COURT:

Height, H-e-i-g-h-t.

BY THE ACCUSED:

Height. Okay. Exactly. It means... exactly. Read it.

This is exactly what I'm trying to say. That legal right in this section means a right which is sanctioned by law.

BY THE COURT:

That's what I said.

BY THE ACCUSED:

For example.

"... the right to use lawful force
in self-defense..."

BY THE COURT:

That will do fine.

BY THE ACCUSED:

"... existing from something that
a person might do without incurring
legal liabilities."

BY THE COURT:

Exactly.

BY THE ACCUSED:

Exactly.

BY THE COURT:

A person may positively appeal a decision.

BY THE ACCUSED:

Not at all.

BY THE COURT:

Of course he may. In any event...

BY THE ACCUSED:

Did you find it, Mr. Belleau...

BY Me BELLEAU:

No, no.

BY THE COURT:

... Mr. Fabrikant.

BY Me BELLEAU:

It's not in there.

BY THE ACCUSED:

It is in there.

BY THE COURT:

Mr. Fabrikant, I am ruling that your questions are not relevant to this decision.

BY THE ACCUSED:

One second, read further. The law does not approve of everything which it does not forbid. It means that if someone is legally allowed to murder someone by just harassment, and this person who is harassed, in a legal way claims that this is provocation, he has the right to do so.

BY THE COURT:

You have been permitted... you have been permitted to make proof of the question of surveillance. You have been permitted to make proof of the content of meetings

of the DPC. You have been permitted to make proof of the actions of Relton and the intervention team. You have been permitted to make proof of what took place on the evening of the thirtieth (30th) of October. You have been permitted to make proof of what happened before the senate because, you may argue in relation to all of these things that that constituted a pattern of treatment which as a result of whatever it was that happened on the twenty-fourth (24th) exacerbated the effect of what happened on the twenty-fourth (24th). That you may do if you wish to make that argument. What you may not do is factor into that legal recourses which the university had a perfect right to exercise. And I'm not going to argue with you about it any longer. If that puts an end to Mr. Freedman's testimony, that puts an end to Mr. Freedman's testimony. But that is the way I am ruling. And if you don't like that, if necessary, you will have to take that decision to somewhere else.

BY THE ACCUSED:

Well, it is exactly the same thing. University had the perfect right to call the police. University exercised its legal right. It had, from their point of view, reasonable grounds to believe that I had a big bag and there might be a weapon in it...

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

Let me finish my argument.

BY THE COURT:

I have ruled. I am finished. It's ruled on. I have finished with the argument. Now move on.

BY THE ACCUSED:

Well, you couldn't rule until you've given me the opportunity to explain.

BY THE COURT:

I have given you a chance and I have told you what my interpretation was, and that was that.

BY THE ACCUSED:

Well, then every action, the fact that they had a meeting, they had legal right to have this meeting. The fact that they recommended to terminate my employment, they had legal right to do so.

BY THE COURT:

Mr. Fabrikant, I have told you...

BY THE ACCUSED:

I don't have any defense. Then stop my defense and let us not waste time.

BY THE ACCUSED:

... I have told you... I have drawn a distinction between...

BY THE ACCUSED:

There is no distinction.

BY THE COURT:

... perhaps you don't see one, but I have drawn a distinction. But what you may not do is go into the basis of the counsel given to the university in order for it to decide to act or not to act. The university decided to act. It had a legal right to, in this instance, appeal these rulings. It appealed these rulings. In law that cannot be... that cannot constitute a basis for exacerbation of your state of mind. It just

can't. Now...

BY THE ACCUSED:

Well, it is exactly... exactly the same thing about firing then. Then stop all my defense, because all my defense is about being constantly harassed in terms of firing, being constantly harassed in terms of whether it is a promotion, survive, because... so on and so forth. And in each case one can argue that university exercised its legal right, which it did.

So unless we clarify... I repeat once again what is written here. Let me just...

BY THE COURT:

Look, I said the matter is closed. I have ruled on it. It's finished as far as that last question is concerned.

BY THE ACCUSED:

Well, it is written here in black and white that the law does not approve everything...

BY THE COURT:

If you do not sit down...

BY THE ACCUSED:

... which is ...

BY THE COURT:

... if you do not sit down, I'll have to choice but to send you out. There you are.

BY THE ACCUSED:

Well, I will bring tomorrow MacWilliams, if you don't allow me to take a look...

BY THE COURT:

I'm sorry. I have ruled on the questions decided.

BY THE ACCUSED:

I would like you to hear me.

BY THE COURT:

I have heard you, and...

BY THE ACCUSED:

You didn't.

BY THE ACCUSED:

... I have heard you...

BY THE ACCUSED:

I want to bring MacWilliams and to bring new evidence...

BY THE COURT:

I have heard you. I have given you my MacWilliams.

BY THE ACCUSED:

I didn't find it.

BY THE COURT:

I have told you what my interpretation of it is. And there you are. You have my interpretation of it, and that's that.

BY THE ACCUSED:

Okay. When we have the break, maybe I can have MacWilliams in the cell. I will find the place.

BY THE COURT:

Mr. Fabrikant, do you understand that I have ruled?

BY THE ACCUSED:

Well, I do understand, but if I have a new... something new to present to you, you have to listen to it. If you...

BY THE COURT:

In this instance, I have ruled on the question.

Have you any more questions for Mr. Freedman?

BY THE ACCUSED:

Well, I have, but... What question can I ask, because

all the questions are related to the legal activity of the university.

BY THE COURT:

The legal activity of the university is not going to be permitted. It is simply not relevant.

BY THE ACCUSED:

But all my previous questions were about legal activity of the university...

BY THE COURT:

It sometimes take a long time to know where you're going and to be certain. But once... once I see where, then I've got no option but to start trying to narrow the issues in this case. And that's what I'm doing.

BY THE ACCUSED:

Well, I invite you to stop my defense then. Because I can tell you right away, because whatever issues I will be raising, university had the legal right to do it.

BY THE COURT:

Mr. Fabrikant, I have no idea what your defense is. You don't even tell me what your defense is, and your defense may have...

BY THE ACCUSED:

But whatever happened... whatever happened...

BY THE COURT:

... a number of facets to it. So it's not a question of stopping...

BY THE ACCUSED:

No.

BY THE COURT:

... your defense.

BY THE ACCUSED:

Whatever happened so far, for example, you allowed that I was under surveillance. You allowed those documents to be deposited as relevant. Explain me why the hell they are relevant if university had legal right to have surveillance on me? Why would they be relevant? Then they shouldn't be deposited in the first place. Why...

BY THE COURT:

If you cannot...

BY THE ACCUSED:

Let me continue, please.

BY THE COURT:

... if you cannot see the distinction between a decision of the university to place you under surveillance, the basis for that decision on the part of the university, can you argue that that was in the circumstances an unreasonable decision? Can you argue that it was a decision that was calculated to upset you? I don't know. Perhaps you can. But there is a distinction which you refuse to see between that sort of decision on the part of the university, and in this instance, the exercise by the university of its right of appeal, in this instance, pursuant to a decision taken by the hearing board under the Code of Conduct.

BY THE ACCUSED:

Well, what about grievances? What about the announced sabbatical? If... this is also done just to upset me.

BY THE COURT:

I told you... I told you... well, that's your contention that it's done to upset you.

BY THE ACCUSED:

Yes, and it is relevant.

BY THE COURT:

Mr. Fabrikant, I told you it is not relevant if the university is exercising its right under the collective agreement in that instance. And I add as an aside, unless you were privy to that information, how that could possibly have affected your mind defeats me.

BY THE ACCUSED:

Okay. Let me explain this part.

BY THE COURT:

No, I...

BY THE ACCUSED:

Well, just this part.

BY THE COURT:

I told you, it's not relevant.

BY THE ACCUSED:

Can I explain this part?

BY THE COURT:

No.

BY THE ACCUSED:

No. All right.

Q. All right. So you were not asked to consider any new evidence. Did you know by the time of appeal that I allegedly raped a student?

A. I had had my... a discussion with Suzanne Belson, the ombuds person.

Q. Okay. Could you give a detail how did it come to your knowledge, and when, and what, and how?

A. After... well, it revolved around the whole gun permit issue. After a meeting that was held with several people, with Dr. Bertrand, Dr. MacKenzie, Miss Habib, Miss Wilson Wright. I think that's who was there. It was decided that certain information came out again in the form of vague references to events of the past through rumours, etc. My concern at that point was trying to pin down the information. I said, do we have specific people who we can speak to, specific people who would come forward with any evidence of any improper behaviour, or any reasons that could be invoked to the S-ret, so that we could intervene in the gun permit process? During that discussion I was advised, I believe, by Miss Wilson Wright, to contact Suzanne Belson, related to an alleged assault, or attack that you had done previously. So that was the context of my conversation with Miss Belson.

Q. Okay. You are talking about meeting June twenty-third (23rd)?

A. June twenty-third (23rd), that's right.

Q. All right. What else was said there?

A. As I said, my preoccupation at that point, I had already spoken to the SQ, Les Services des permis who were in charge of gun permits. My preoccupation at that point was trying to see if we could nail down any information, solid, specific information.

Q. Okay. Was Mrs. MacKenzie there?

A. She was.

Q. Okay. Did she say, I have specific information. Fabrikant in my presence said that he is going to shoot a lot of people. Did she say that?

A. She did not.
Q. You are sure?
A. I am certain.
Q. Okay. Did she say anything when the question was, we need specific information? She just kept quiet?
A. No. Her suggestion... she mentioned that she was aware, again, not specifics. She was aware of some rumours and she suggested that we call, in fact, Grendon Haines, who probably had more information.
Q. But she was not aware personally of anything, just rumours?
A. That is what she said.
Q. Remarkable. Now, you had been present during the testimony of Mrs. MacKenzie. Did you learn something new for you from this testimony?
A. I'm not certain what you're referring to.
Q. Okay. Do you recall she testified that I am in her presence, said that I, whatever, North America the only way to get what you want is to go in and shoot a lot of people and this is what I intend to do. Did you hear that testimony of hers?
A. I did.
Q. So...
A. I had not heard that before.
Q. Well, aren't you surprised?
BY THE CROWN:
I think...
BY THE COURT:
No, that's not the point.
A. I had not... I had not...
BY THE CROWN:
She did not use the words Fabrikant used.
BY THE ACCUSED:
What?
BY THE CROWN:
She put some nuances on what she said.
BY THE ACCUSED:
What were those...
BY THE CROWN:
It's not quite fair, the question, My Lord.
BY THE ACCUSED:
Well, I think the witness could specify if I put some nuances. Did I put some nuances?
BY THE COURT:
The witness' testimony was to the effect that he hadn't heard that before from Dr. MacKenzie.
BY THE ACCUSED:
Yes. But, but he heard it during her testimony. Right?
A. That's right.
BY THE COURT:
That's what he said.

BY THE ACCUSED:
Yes.
Q. So did I put any nuances in my question?
A. I don't remember the testimony verbatim, Mr. Fabrikant. It sounded about right.
Q. Well, it sounded about right. So maybe Crown would try to apologize, for a change. Eh? Mr. Martin, can we ask Crown to apologize?
BY THE COURT:

No, we will not ask the Crown to apologize.

BY THE ACCUSED:

No, we cannot, of course.

BY THE COURT:

Just as I rarely ask you to apologize, Mr. Fabrikant.

BY THE ACCUSED:

Of course. Lousy murderer, how can we ask...

BY THE COURT:

And believe me, if we were in the business of requiring apologies, I would be addressing myself to you on numerous occasions.

BY THE ACCUSED:

Well, address, and I will explain each thing what I said.

BY THE COURT:

Now, continue. Continue. Continue.

BY THE ACCUSED:

And I will explain why in those cases there was need for an apology. Because in this case, Crown is clearly wrong.

BY THE COURT:

Would you continue.

BY THE ACCUSED:

Sure, I will.

Q. So, and at that important meeting, she never raised her voice and said, I do know specific information?

A. She did not.

Q. She did not. All right. Did you ask her since... I mean, a week ago, two weeks ago, after her testimony, how come she never mentioned this kind of stuff during meeting of June twenty-first (21st)?

A. I did not.

Q. Would you dare to... care to explain why?

A. Well...

BY THE COURT:

I don't think it's relevant that Mr. Freedman explain to you why he did this or why he did that.

BY THE ACCUSED:

Well, it's very relevant.

BY THE COURT:

It's not relevant at all.

BY THE ACCUSED:

It's not.

BY THE COURT:

You're not required to answer that...

BY THE ACCUSED:

All right. Fine.

Q. Okay. So during that meeting not a single specific case of me allegedly threatening anyone surfaced?

A. Well, again, what surfaced was... I recall the discussion about... somebody said they had heard that you had threatened somebody's children, that you had telephoned and said that you knew where their children are and what they were wearing; as well, doing things the North American way, that was also raised.

BY THE ACCUSED:

In terms of shooting a lot of people?

A. No. no. What I recall is that you had... the report that I received was that you had once said, perhaps in Grendon Haines' presence, that you knew how to get things done, the only way to get things done is the North American way. And that's why it was... Dr. MacKenzie suggested

that we contact Mr. Haines.

Q. All right. And I guess immediately after the meeting you made a phone call to Mr. Haines, did you?

A. I did not. I recall that we sort of divided up. We tried to make a group of people we would contact to see if they had any information. I recall that... I believe Dr. MacKenzie initially said that she would contact Mr. Haines, but then later on it ended up being... for what reason I cannot recall, it ended up being Miss Habib who ended up writing to Mr. Haines.

Q. Okay. Do you have any knowledge why from June twenty-third (23rd) it took Mrs. Habib till July seventh (7th) to write such a letter rather than contacting Mr. Haines on the telephone?

A. As I said, initially my recollection is it was Dr. MacKenzie who was supposed to contact Mr. Haines. I'm not certain why it ended up being Miss Habib who ended up writing him. I really don't know.

Q. All right. Were you told the name of the person who I allegedly raped or attacked? Now you are not sure whether it was rape or attack?

A. I believe, when I spoke with Miss Belson, the term used was rape.

Q. All right. Do you know the name of that person?

BY THE COURT:

If you know the name of that person, you will not mention the name of that person.

A. I recall now, I remember the first name. I may have been told the family name but I certainly don't recall it now.

BY THE ACCUSED:

Well, I fail to understand why I cannot know the name.

BY THE COURT:

I told you why before, and I am not going into that again. You may not know the name.

BY THE ACCUSED:

Well, the information went to the jury. I know I didn't rape anyone, and I have the right...

BY THE COURT:

You made... you asked the questions yourself and I told you... I intervened at the time. I attempted to set this off, and you came back to it again, and there we are.

So, in any event, it is in no sense relevant to these proceedings, and you will not receive...

BY THE ACCUSED:

Well, it is damaging information, and I should be given the opportunity to regard it.

BY THE COURT:

It was another of your straw men, Mr. Fabrikant, and you will not get...

BY THE ACCUSED:

Not at all. Not at all. So tomorrow, they will say, for example, because I am calling witnesses. I have no idea...

BY THE COURT:

Mr. Fabrikant, you're not getting that. It's already decided, and that is that.

BY THE ACCUSED:

All right. Let me ask you another question. If tomorrow you know that all those witnesses are from Concordia, and it was difficult to assume that they are all on my side and all my best friends, therefore, suppose tomorrow

comes witness who says that I, for example, told a student that unless he gives me ten thousand dollars (\$10,000) I will give him failed. And if he gives me ten thousand (10,000), I will give him, say, a "B". And if he gives me a hundred thousand (100,000), I'll give him "A".

And again, suppose this information will pass to the jury, and I want to know who this student is and again I will not be allowed to know that. This gives the Concordia University, in their malicious tactics to smear me, indefinite way to smear me as much as they want and give me absolutely powerless to defend me and to make any rebuttal.

To the best of my knowledge, you know very well that this yellow journalist, in the first day of... after shooting, they digged up every dirt they could possibly dig, and printed it. Now, if there was case of rape, do you think that they would not dig it up and flash it all over the newspapers? Of course they would. And if they didn't do so, it's not because they have any decency or sense of whatever positive morals. They never had any. It means that this person either doesn't exist, and this is why you are refusing me to get the name, or this person does exist but this person is very sick mentally person. Because if you remember when I asked question, is this person mentally ill. And you didn't allow me to ask this question. Now, if person is not mentally ill, what would be such a terrible thing to allow witness to say, no, the person is normal?

BY THE COURT:

I told you it is not relevant to these proceedings, and I am not going back on my decision, and your various reasons, if that's what they are, that you've given just now, have not caused me to change my mind in any sense.

BY THE ACCUSED:

Well, still I have...

BY THE COURT:

So, Mr. Freedman, you will not answer the question.

BY THE ACCUSED:

But I still can ask him whatever he knows about it. Can I? This is a difficult situation.

BY THE COURT:

It's not a difficult situation at all, you see, because you're playing a game, Mr. Fabrikant.

BY THE ACCUSED:

On the one hand you don't allow me to put this person on the stand here...

BY THE COURT:

No.

BY THE ACCUSED:

... and to ask her face-to-face...

BY THE COURT:

No, no, no, I certainly do not.

BY THE ACCUSED:

...what you're telling...

BY THE COURT:

You set this whole thing... you put this whole thing, and brought this whole thing out yourself. You danced about...

BY THE ACCUSED:

I didn't bring it out. I didn't voice...

BY THE COURT:

You danced about talking rape for days before that ever came back the way it came back.

BY THE ACCUSED:

Well, because I know this is lie.

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

And if someone from Concordia University uses this opportunity to pass to the jury whatever damaging...

BY THE COURT:

You have not established...

BY THE ACCUSED:

... information it can.

BY THE COURT:

You have not established that anybody from Concordia University used any question of rape in relation to anything...

BY THE ACCUSED:

Well, this means...

BY THE COURT:

... pertinent to these proceedings.

BY THE ACCUSED:

... that it didn't exist.

BY THE COURT:

I don't know whether it means it didn't exist or not, or perhaps it means that people were particularly cautious about what they said or what they did. That, it would appear to me would be a much more plausible explanation.

BY THE ACCUSED:

Why would you be cautious if you have no doubts that it happened.

BY THE COURT:

Please don't... please don't be ridiculous.

BY THE ACCUSED:

What do you mean, don't be ridiculous?

BY THE COURT:

You know perfectly well why.

BY THE ACCUSED:

Well, if, for example, ombudsman is bound by...

BY THE COURT:

Mr. Fabrikant, we are not going into the question of that subject.

BY THE ACCUSED:

Let me finish this sentence. If the ombudsman is bound by the oath of secrecy, she should not have mentioned even that the fact that complaint was there. And if the oath of secrecy allows her to say it, then I believe I'm allowed to ask for details of that.

BY THE COURT:

You are not, and you may not, and I've already ruled on the subject, and that's the end of it.

BY THE ACCUSED:

Well, this is again unfair.

BY THE COURT:

It's your opinion.

BY THE ACCUSED:

Well, still I believe he can continue in terms of what he heard and what he did.

BY THE COURT:

In the context of the gun permit, that's where you were.

BY THE ACCUSED:

Well, all right.

BY THE COURT:

But, of course, you're attempting to use the gun permit to, as I say, set up another of your straw men.

BY THE ACCUSED:

Well, it's not my straw man.

BY THE COURT:

In the context...

BY THE ACCUSED:

Believe me, I did not invent...

BY THE COURT:

In the context of the gun permit that's where you are at the moment.

BY THE ACCUSED:

Well, maybe you will say also university was exercising its legal right to object the gun permit. So why this question should be allowed in the first place?

University had the right to object me obtaining gun permit. This was legal action...

BY THE COURT:

Have you any further...

BY THE ACCUSED:

... therefore...

BY THE COURT:

Have you any further... have you any further questions to put to Mr. Freedman?

BY THE ACCUSED:

Well, I have, but I would like you to be consistent, at least to yourself.

BY THE COURT:

I am perfectly consistent, believe me.

BY THE ACCUSED:

Okay. Then explain why this is pertinent?

BY THE COURT:

I'm not here to give you any explanations.

BY THE ACCUSED:

All right. Fine. All right.

Q. During that meeting, when question of gun permit was discussed, it was in the context that I might use the gun to kill someone. Right?

A. Well, I don't think that anybody at that meeting... I certainly did not actually consider...

BY THE COURT:

I prefer... I prefer that you speak for yourself.

A. I certainly never considered the possibility that you would ever use a handgun on any member of the university or on anybody.

BY THE ACCUSED:

Well...

A. The point is to be cautious. We did not want to take any chances.

Q. Well, if you were sure that I was not going to use gun on anyone, why should I be forbidden to take it from my house to the shooting club?

A. As I said, caution was the word. We had become... you had made us blatantly aware of the fact that you were acquiring a gun, that you wanted people to sign a recommendation for a carrying permit. That in itself was viewed as harassing behaviour. And while I certainly

didn't feel that you would ever use the gun, I certainly felt that it was my duty and obligation to take whatever measures were necessary.

Q. Would you believe that any of my neighbours to who I waved the same piece of paper to sign, immediately signed it, and nobody ever thought that this is action of harassment.

A. It's possible.

Q. It never crossed anyone's mind.

A. I wouldn't know.

Q. So if you... if you feel that it was a harassment, it was because you... I mean, not you personally, but university administration behaved in such a reckless manner and they knew that they behaved in a reckless manner. It is the same mentality, if you rape neighbour's daughter, then you know neighbour is buying gun, you start thinking it is against you. It was that kind of mentality?

A. It was not, Mr. Fabrikant. Nobody had...

Q. It was not.

A. ... to anybody's recollection, nobody had ever... no faculty member, or no member of the university community had ever arrived at the university asking anybody to sign a recommendation for a carrying permit for a gun. Secondly, it was clear that you were involved in long standing disputes and grievances, Code of Conduct, e-mail, allegations of fraud with the university. We certainly thought that it was in the best interest of the university to take whatever means we could to object to the issuance of that permit.

Q. Well, how do you reconcile it? On the one hand, you were sure I'm not going to use it on anyone. Then the only result of your denying me this permit was just to further annoy me. Nothing else, was it?

A. No, Mr. Fabrikant.

Q. Well, can you reconcile it, please?

A. I have nothing to reconcile. I don't know what you're referring to.

Q. Well, if you are sure that this person is not going to shoot anyone, then why he shouldn't have permit to carry a gun from his house to the shooting club?

A. Perhaps I should not have used "sure". As I said, we were exercising what we thought was the appropriate way to proceed, that is to object to the issuance, given your situation at the university, to object to the issuance of a gun permit.

Q. All right. So would it be then correct to say that you did not exclude the possibility that I am going to use the gun on someone in the university. Right?

A. Well, you're playing with words now, Mr. Fabrikant. I suppose, yes, you're technically correct.

Q. Well, okay. So in this case if that was your thought, shouldn't you act with utmost speed to find out who knows what and inform police immediately? Shouldn't you?

A. I believe that's what we did.

Q. Well, then how do you explain that from June twenty-third (23rd) till July thirteenth (13th), which is twenty (20) days it took to write a letter which finally didn't contain any facts whatsoever. How do you explain that?

A. Well, I had been in contact with the S-ret, on a couple of occasions before that, so it's not as if the S-ret, was not aware of our concern. They were waiting for a

formal written complaint, or people who were willing to come forward. When that was not forthcoming it was decided that a general letter of complaint would be addressed to the S-ret,.

Q. Yes.

A. And that's what happened.

Q. Okay. First of all, would you please state to the jury, when you phoned to the S-ret,...

A. Yes.

Q. ... when did you phone? Do you remember the date?

A. It was either the twenty-second (22nd), June twenty-second (22nd), ninety-two ('92), or June twenty-third (23rd). I can't be certain. It was one of those two days. I became aware of your request and your visit to Miss Horwood on June twenty-second (22nd). So, I'm not certain whether I called him that afternoon or the following morning.

Q. All right. Mr. Bertrand testified that I waved this sheet at her on June twenty-first (21st). So it looked like I didn't. What was the day of waving of this gun permt?

A. I have... in my file I have a fax from Elizabeth Horwood to me containing the form, and it's dated June twenty-second (22nd). So I'm assuming June twenty-second (22nd) is the day that the event occurred.

Q. Okay. Do you have a copy of that fax?

A. I believe so.

Q. May I take a look?

BY THE ACCUSED:

May I ask why is it Crown who looks at every documents first? Maybe we'll make one document looks Crown first, one document I look first. How about equality?

BY THE COURT:

Since you're the one that asked for the document, the Crown looks at the document first in case the Crown has any particular objection coming from the face of the document which would cause me to immediately exclude the jury and argue the question of admissibility. If the shoe is on the other foot, i.e. when the Crown is doing the questioning, it is you who gets to see the document first, before it goes anywhere else.

BY THE ACCUSED:

Well, why the jury should be excluded if it is question of admissibility?

BY THE COURT:

Oh, don't look for some reason to argue with me. I'm telling you. You asked me why, I told you why, because normally...

BY THE ACCUSED:

Well, you know very well the jury should not be excluded.

BY THE COURT:

I do not know very well the jury should not be excluded. Sometimes people have things to say about documents, and sometimes the question of the admissibility of a document might be rather important.

BY THE ACCUSED:

Well, in case it is damaging to the Defendant, yes. But if defense does not request jury to be excluded...

BY THE COURT:

Anyway, why are you engaging me in this argument?

BY THE ACCUSED:

Because I want jury...

BY THE COURT:

Why are you engaging me in it? Because you wish to look for a reason to argue again?

BY THE ACCUSED:

No.

BY THE COURT:

Sit down. You've had the explanation. Now, I'll try and take a look at this and see what's what. Would you convey that to the accused, please.

BY THE ACCUSED:

Q. The date is only on the transmission sheet?

A. That's right.

Q. Did she contact you prior to sending it to you, on the phone, or...

A. Yes, she did.

Q. Okay. What did she explain to you?

A. She called my office. I believe that the facsimile was sent right after the phone call. She called me and said... I believe she had originally tried to call the Rector's office, but all the senior administrators were out at a planning conference, and she was directed to my office. She called me and said... she sounded very agitated and said that you had just been by and left a form, something to do... she wasn't quite sure what it was. She said it's something to do with a gun permit, or a gun, that she had noticed you acting strangely in the previous few days, and that she was extremely concerned. She also indicated that she thought you had already been to the Dean's office with the same form, and that people were quite upset. I must have said, well, why don't you fax me over the document and I'll take a look at it.

Q. Okay. Did I say something, look what I have?

A. I don't recall you saying that to me, no.

BY THE COURT:

And if you did, it would be hearsay.

BY THE ACCUSED:

Well, I know I never did anything like that.

BY THE COURT:

Now you're testifying...

BY THE ACCUSED:

I'm not testifying.

BY THE COURT:

... not asking questions.

BY THE ACCUSED:

I'm just explaining why...

BY THE COURT:

It doesn't count.

BY THE ACCUSED:

... I'm asking this question.

Q. Did she explain what exactly strange did I do any previous day, or all this "strangement" was that I went to the Dean's office and asked them to sign?

A. No, I believe that she said... I can't remember the exact words that she used, something to the effect that she had seen you pacing the halls the previous few days and you didn't look... I can't remember. Well, you were acting stangely. She was... she said you weren't acting like you should. Something like that.

Q. Maybe you are mixing up. Maybe she saw me pacing on August twenty-fourth (24th)?

A. I certainly didn't speak to her on the phone on August twenty-fourth (24th).

Q. No, no, no. I mean maybe you're just mixing up the information?

A. I don't believe so. No, I recall...

Q. I was pacing the hall...

A. ... I recall that one of the reasons that she said she was very concerned was that...

Q. Which, which hall exactly was I pacing?

A. Oh, I certainly don't know, Mr. Fabrikant.

Q. There are no halls there to pace.

BY THE COURT:

Ladies and gentlemen, this is, this I should signal to you again is hearsay. I had said to you that I would explain to you later what precisely hearsay is, and give you a decent example. I just simply want to alert you to the fact that if Mr. Freedman wants to tell you what was reported to him in order to permit him to explain to you what he did, that's one thing. But the accused can ask these questions till the cows come home, but of course this sort of question and this sort of answer do not make proof of the fact that he was pacing either on his, up and down the hall in front of Horwood's office, or for that matter walking on the ceiling. It simply makes no proof of that. Okay.

BY THE ACCUSED:

Well, there is no hall in front of her office. All right.

Q. Okay. So you got this fax. You read it. You understood what it means? What was the understanding? What was that form?

A. I didn't know exactly what it was in the sense that I had never had, previous to that had never had any occasion to deal with firearms, or recommendation forms, or gun legislation or anything of the kind. I certainly understood that from the title of the document that it was a request, it was a request for recommendation for a carrying permit for a gun...

Q. All right. Out of thousands people at the university, not a single person owned a handgun. Is this what you are saying?

A. I don't know. All I know is to my knowledge such a request, or such a recommendation has never been presented to anyone.

Q. Okay. Then they have it illegally because... Are you aware that in order to be able to carry handgun, one of the signatures is obligatory to be that of employer? Are you aware of that?

A. That's not exactly what I was told by the Services des permis when I called, but I know that one of the signatures that they asked for is from the employer.

Q. Okay. Then be precise what they told you, because maybe it is different from what they told me.

A. When I spoke to the SQ, what the constable told me was while it was not mandatory to have a recommendation from the employer, they certainly prefer it, and if the employer objects, as we were doing, just by the fact of my telephone call, that they consider that to be something serious. If somebody takes the time and the

effort to make a phone call, they flag the file.

Q. All right. So you got what you wanted, just to deprive me from the exercising of my legal rights. Correct? You didn't give him any facts, did you, during this conversation?

A. The first conversation I gave to him was an information on exchange, I said, we have here a professor who is asking us to sign this. I don't really know what this is. Could you please explain the process to me? How does it work? What does this mean? What is it for? Is there any way for the university to intervene in the process to register our concerns, because we do have concerns. That was the tone of the first conversation that we had.

Q. Okay. What did he ask you? Did he ask you do you have any facts?

A. He said, well, thank you for calling. It's not often that somebody calls to express concern. We appreciate that. What we would need, he said, was a specific complaint. Do you have a specific complaint? I said, well, not at the moment, I just got the form.

Q. Uh, huh.

A. He said, well, please, in order for us to act, we would need specific complaints, and individuals who are willing to come forward.

Q. Uh, huh.

A. That is what led to the meeting the following day.

Q. So it was clear then to you that there is no point to send a letter of general concern unless and until you have specific complaints. Was it clear to you?

A. It was clear to me that the SQ... what the SQ was asking for was specific people to come forward. Yes, that was clear.

Q. Okay. So it was absolutely urgent then to find those people. Right?

A. That is why we had the meeting the following day. That's correct.

Q. All right. So why not on June twenty-third (23rd), or the latest June twenty-fourth (24th), to contact emergency with Mr. Haines and ask him whether he has an information?

A. I believe I've answered that twice. My understanding was Dr. MacKenzie was going to undertake that. For whatever reason it ended up being Miss Habib. I don't know the reason.

Q. Yes.

BY THE ACCUSED:

And there is no way I can recall them again, can I, to ask them why they didn't act?

BY THE COURT:

No.

BY THE ACCUSED:

No. Of course not.

Q. All right. So time is passing. You tried to use the rape lady, I understand. How did you try to do it?

A. No, what happened was... what came out of that meeting was, I undertook to communicate with a couple of people. I believe I spoke with Associate Dean Sankar, in Engineering. Dean Swamy was out of the country, and Associate Dean Hamblin was away from the university. I spoke to Mr. Sankar. I said... I explained to him...

well, he was already aware of the situation actually. And I said the SQ requires specific information, could you please undertake to contact anybody within the faculty, be it Mechanical Engineering, be it administrative offices, anybody who has anything to say about this.

Q. Uh, huh.

A. He said he would. I then spoke... I gave... I spoke to Miss Belson.

Q. How did it come that you spoke to Miss Belson?

A. As I said, I believe the suggestion came from Miss Wilson Wright...

Q. All right.

A. ... at the meeting. She said, why don't you call Miss Belson about this situation.

Q. Uh, huh. Yes.

A. I spoke with her. We had a... not a very long conversation, five or ten minutes. The gist of the discussion was, yes, there had been an event reported to her. It was ten years previous, and the individual had decided not to proceed with the complaint.

Q. Did she explain why individual decided not to proceed?

A. No, she did not.

Q. Did you ask her why she didn't?

A. I did not. It certainly is not unusual for an individual

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<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">to not proceed with a complaint.

Q. Well, if individual came to ombudsman...

A. Yes.

Q. ... that means an individual came...

BY THE COURT:

You are now arguing with the witness, Mr. Fabrikant. You may not do that.

BY THE ACCUSED:

Q. All right. Individual usually comes to ombudsman to file a complaint, doesn't he?

A. I don't know about that. Often the people come to the ombudsman's office for information more than anything else, what procedures are available to me, how do I... how do I go about doing something.

Q. All right. But to the best of my understanding, this individual wasn't shy at all. This individual, if she existed, phoned university at every opportunity that she learned that I was bad. Right?

A. I don't know anything about that. I've never met the individual...

Q. Okay. Is my understanding...

A. ... nor have I spoken with her.

Q. ... correct that she was the one who contacted office of the Vice-Rector April first (1st) when damaging article appeared in the Gazette?

A. The only knowledge I have of that is from the testimony I heard here.

Q. Well, you didn't ask Mrs. Wilson Wright how does he know about it?

A. No, no. She said, why don't you call Suzanne Belson. I believe she has some information about an assault, or a rape, that occurred some time ago. I said, fine, and I did.

Q. Well, shouldn't this information be confidential from Mrs. Wilson Wright?

A. I don't know. She told me.

Q. Well, but you are lawyer...

A. Yes.

Q. ... shouldn't you...

BY THE COURT:

Now, whatever... whatever it may be...

BY THE ACCUSED:

Shouldn't this information be confidential from her?

BY THE COURT:

Whatever it may be, he's not here to give you his opinion on whether it should be, or whether it shouldn't be. He stated what his purpose was, and he had a conversation. He was with Wilson Wright and he called Belson.

BY THE ACCUSED:

Why do you intervene each time I point out some wrongdoing?

BY THE COURT:

You're not pointing out some wrongdoing. You're simply departing from the path you're supposed to be on.

BY THE ACCUSED:

Well, I'm not departing. I'm just pointing out all the wrongdoings of the university. So this is my path. It doesn't coincide with what you want me to do. I'm sorry.

BY THE COURT:

You may be as sorry as you wish, but if it isn't relevant to these proceedings, it's not going to be allowed.

BY THE ACCUSED:

All right.

BY THE COURT:

Good. Continue.

BY THE ACCUSED:

Q. Yes. So, and you contacted Mrs. Belson and what?

A. I'm sorry, what's the question?

Q. What did you find out from her?

A. What I just said five minutes ago, that the...

Q. Yes, and?

A. ... event had happened ten years ago, and that the person had decided not to proceed with the complaint. And certainly from our discussion I said, well, that's of no help to me in what I'm searching for. Thank you very much.

Q. You didn't ask her to contact the person and to talk with her?

A. No. The student had made it clear that she had no desire to proceed with the complaint and Mrs. Belson indicated that she did not think it would be useful to contact her again.

Q. Well, look, you have been here. You have listened to the testimony?

A. Yes.

Q. And at least from the testimony here you know very well that this student... or student, or whatever it is, was not shy at all. She contacted allegedly Vice-Rector's office on April first (1st). If you didn't hear it then, you heard it sitting here, didn't you?

A. I heard it here, yes.

Q. Yes. So the person wasn't shy at all?

A. You're asking me to base a conclusion on testimony I've heard here. I can just tell you what the facts are and what I did at the time, the conversation I had.

Q. Well, didn't Miss Belson tell you that I am going to call her and discuss it with her?

A. I'm not certain.

Q. Well, she testified here that she did.

A. She very well may have. I... personally, my recollection is I can't recall whether she said that or not.

Q. I hoped you at least would not hide behind all those "cannot recall".

Did you ask her from what faculty this person was?

A. I did not.

Q. No. Did you ask her if it was one of my students or it was just some student?

A. As I said, it was a brief discussion. I did not get into specifics, so I did not ask for details. The gist of the conversation was the event was ten years old. The student had decided not to proceed.

Q. Yes.

A. And that's pretty much where we left it.

Q. Now, my understanding is, since that student jumped on... if she exists, of course... jumped on every opportunity to let her known that she is there and she is still fuming at Fabrikant. I believe she contacted after August twenty-fourth (24th) every newspaper and probably she contacted university as well. Did she?

A. I have no knowledge of that.

Q. She disappeared all of a sudden. Well, I challenge the yellow journalist here, find the lady. I will call her to testify.

BY THE COURT:

And I have told you, no, you will not.

BY THE ACCUSED:

This is an outrage.

BY THE COURT:

Well, outrage it will have to be. But I think we'll adjourn for fifteen (15) minutes at this particular point.

SHORT RECESS

AFTER A SHORT RECESS

MEMBERS OF THE JURY ARE PRESENT

BRAM FREEDMAN

UNDER THE SAME OATH

BY THE ACCUSED:

So, Mr. Belleau just provided me with necessary quotation. Again, here it says:

"A legal right refers to a positive right sanctioned by law, such as right of self-defense, right to prevent commission of crime, right to arrest the accused, as opposed to merely freedom to act."

So freedom to act does not constitute legal right. It means that freedom of the university to fire or not to fire me, freedom of the university to call or not to call the police, freedom of the university to file an appeal or not to file an appeal, is not a legal act sanctioned by this section which what constitutes... doesn't constitute provocation.

Provocation is not provocation when I, for example, do some kind of crime, and someone tries to arrest me, and in doing so provokes me into aggressive act towards that person, then I cannot claim that I was provoked, because I was trying to commit crime and he was trying to arrest me. But otherwise, when someone just has legal right to do so, and by doing so he makes it vexatious, he makes it oppressive, he makes it so difficult like, for example, if you remember the lady who shot herself here at Palais du justice on December fourteenth (14th), nineteen ninety-two (1992), and jumped down with the words, there is no justice here. I think this is the case where she was provoked into such an action.

BY THE COURT:

I suppose you would.

BY THE ACCUSED:

Well, so I am right that whatever university had legal right to do can constitute provocation. Unless it was that they were trying to arrest me. You even can argue that maybe their attempts not to give me firearm, this might constitute, they might say, will try to prevent a crime before seeing the crime. This might be not admissible. But quite opposite, whatever my grievances are, this stuff is admissible according to rule of provocation.

BY THE COURT:

Are you finished now?

BY THE ACCUSED:

Yes.

BY THE COURT:

Sit down. I don't know whether this is the last objection revisited, or the last five objections revisited, or what it constitutes. I've already ruled on the subject, and I'm not about to change my ruling. I'll point out to you, as you've said, first of all, that the question of provocation is articulated in the Criminal Code and is a particular thing. The acts to which you refer are in themselves individually far, far too remote to constitute provocation. Whether they may be factors which caused the events of the twenty-fourth

(24th) of August to play on your mind and provoke the reaction which it provoked, is one thing. But what I am telling you is that acts done by the university, whether it be in nineteen ninety (1990), nineteen ninety-one (1991), nineteen eighty-nine (1989), or whatever, acts done by the university in the furtherance of the university's legal right cannot constitute acts which may have affected your mind. So therefore, I maintain the position that I took previously and I'm not going to re-open the question, and I don't know why it was re-opened.

Now, if you have any further questions to put to Mr. Freedman, put them.

BY THE ACCUSED:

Well, I just suggest that you be logical then and close my defense, because every action of the university was of that nature. So consider it and maybe you make the decision.

Where were we? Yes, okay.

Q. So you spoke to the police... do you remember who you spoke to?

A. Claude "Chiff", Constable.

Q. All right. Then what efforts did you make to collect evidence that I threatened somebody?

A. As I've already stated, I spoke with Miss Belson. I spoke with Associate Dean Sankar, asking him to talk with people in his faculty, in your department. Those were the steps I took. I've already discussed the discussion with Miss Belson. I remember telephoning Dr. Sankar, I believe, the following week, asking if he had any news for me. He said he didn't. And that's where it was at that point.

Further in the week, sometime around early July, I received a phone call back from Constable Chiff of the SQ saying, I'm just following up on our conversation of last week. Do you have any information? Do you have any news for me? I said, no, I do not at this point. We're still looking. I have nothing concrete for you right now. And that was it for that conversation.

Subsequent to that the issue came up again, I was probably discussing it with Miss Habib and maybe Dr. Bertrand, and we had no solid information. We still wanted to register our general discomfort with the issuance of the permit, and that's the origin of the letter that was sent to the SQ.

Q. Well, my understanding is that if police called you, they were more worried than you were.

A. I would not say that, no.

Q. Well, they called you?

A. That's right.

Q. And you were not in a hurry to get information at all, were you?

A. As I said, at that point I had no information to communicate. Had I had information to communicate, I certainly would have.

Q. Well, when you met again with Habib and Bertrand, did you ask Habib about contacting Haines?

A. I don't recall. What I recall is that at that point there was no information forthcoming and I was either told that we were awaiting a response from Grendon Haines or the letter had just gone out to him, or something of that nature.

Q. Why couldn't he be contacted by the phone?

A. I do not know.

Q. You didn't have phone at that time?

A. I did have a phone.

Q. It was in working condition?

A. It was in working condition.
BY THE COURT:
Spare us the sarcasm, would you.
BY THE ACCUSED:
Because the testimony is absurd. This is why sarcasm comes out.
BY THE COURT:
So is the line of questioning.
BY THE ACCUSED:
Yes. All right.

Q. So, didn't you feel personally that letter without any proof would be useful, so why didn't you contact Mr. Haines yourself?

A. As I said on several occasions before, it was decided that Dr. MacKenzie would communicate with Mr. Haines, and for whatever reason Miss Habib ended up writing to Mr. Haines. That is what happened.

Q. Well, but you needed letter to send it to urgently, didn't you?

A. We were looking for information, that's right. And when that information was not forthcoming, a letter was sent in any event to the SQ registering our discomfort and our concern.

Q. Well, information, as far as I know, has no legs, so it cannot be forthcoming by itself. Information should be looked for, right?

A. And it was.

Q. Well, and the source was indicated to you, Mr. Haines?

A. And Mr. Haines was contacted. A letter was sent to him by Miss Habib.

Q. But by the time you needed to write the letter, you didn't have a response from Mr. Haines. Why didn't you call him and ask, Mr. Haines, we need to send a letter, could you please provide your information.

A. I was told that Mr. Haines was being looked into, that a letter had been sent to him, and that we had had no response. It was not my position to circumvent the course that had already been begun.

Q. Well, you were talking theoretically about human lives, weren't you?

A. As I said, we were doing our best to be cautious. As I said, speaking for myself only, I did not think that anything would happen, but we did not want to take any chances. So we undertook to register our complaint, and we took all the steps that we thought were necessary and appropriate.

Q. Well, if you had concern then Mr. Haines should have been contacted, shouldn't he?

A. He was contacted.

Q. Well, shouldn't you extort from him as soon as possible the response?

BY THE CROWN:
All this line is cross-examination, My Lord.

BY THE COURT:
Yes, it is.

BY THE ACCUSED:
Well, I think it is important cross-examination. It should be allowed.

BY THE COURT:
What is the object of all of this?

BY THE ACCUSED:
Object of all of this? Let me explain the object of all of this, to show that they played dirty game of theirs. They are

not that damn stupid not to understand, especially if they were informed by police explicitly, please give us facts. Without facts we cannot do any action. And they were explained it explicitly. Now...

BY THE COURT:

And how does this relate to your defense?

BY THE ACCUSED:

Let me just continue. I will relate it, don't you worry. So... and in this situation suppose they are concerned, it took them from June twenty-third (23rd) to July the seventh (7th), more than two weeks, to write to Haines while he is just phone call a way. Hey, Mr. Haines, would you please provide us, Fabrikant is asking for a gun permit, we need to stop him. Would you please provide us with information. As simple as that. It takes ten seconds to do.

BY THE COURT:

Well, suppose...

BY THE ACCUSED:

They didn't do it.

BY THE COURT:

Well, suppose it does. So what?

BY THE ACCUSED:

Just don't interrupt me, all right?

BY THE COURT:

No. You tell me, where are you going with this?

BY THE ACCUSED:

I will tell you. Be patient. Anyway, don't worry. So it takes ten seconds to do so. They didn't do it. They played with game of indecency, because they knew very well that I didn't threaten anyone.

Now, Mr. Haines testified here that I threatened to kill Rector and so on and so forth. I am asking to put this letter to test as to when it was typed. I don't believe it was typed on the date it was typed, because it is total stupidity the way it is. If they really wanted that, we know also, suppose even the letter was responded July thirtieth (30th), they still had enough time.

We have August third (3rd) the second letter sent from CUFA, again worrying about me getting gun permit. Now, August third (3rd) was after letter Haines already was received by the Rector's office. Now, shouldn't CUFA be informed of content of this letter, and shouldn't it be in that letter that I threatened to kill Rector.

Shouldn't the Rector himself, after he received a letter from Haines allegedly on July thirtieth (30th), he still had twenty-four (24) days to send yet another letter to S-ret, du Qu, bec and to write, okay, now we have facts. Fabrikant had threatened my life. Of course, assuming that Kenniff will come here because I just cannot wait to see him in the box, and telling to the jury, Fabrikant never threatened me, I had no information on that. Can you imagine the funny situation when Haines here under oath says that I did and he did inform MacKenzie, and he did inform Rector. And when the Rector comes here he will play stupid, I never heard about it.

Now, I don't think this kind of trial ever existed on this planet that people looked so stupid in all their testimony and all those contradictions. And I think that it's about time someone had some decency and start introducing some truth, please.

Now, going back to my defense and where it stands. It stands very simply. It proves several points in my defense, that

they never had any proof of any wrongdoing of mine. All they did all the time was to smear me whatever way they could. And they continued doing it here, just if you recall the testimony of one who said that I allegedly said that I was refused gun permit so I'm going to use my wife to get one.

Now, in ninety-one ('91)... in ninety-one ('91) I wasn't refused anything, therefore they couldn't possibly foresee whatever will happen. In ninety-one ('91) I didn't even apply for that gun yet, and they already knew and they passed it to the jury, for the jury to think... because whatever lie goes, human being is arranged in such a way it takes it because, in fact, they know that, yes, two of the guns found belonged to my wife. It is a very smart campaign, campaign of smear. And the same goes with the trip, which again I brought here. I had no idea when I asked the lady here if there had been any complaint on me, that she would pump it out that there was a lady who complained that I raped her. This is absurd that I brought this. I didn't bring this. I had no choice.

This is essence of my defense, that I have to bring witnesses which are not on my side, that I have to bring witnesses to, in fact, extort from them the information which would be helpful in my defense, because due to the content in the yellow media, and no matter how sometime they put on themselves their yellowing heart and they will die yellow, no suntan will help them. This is the reason I cannot get anyone to help me. I cannot have, you know, even a decent lawyer to help unless I plead insanity. Because if I plead insanity, everything is fine. No questions are asked. Everything is all right. Insane person can do anything.

But if a normal person takes a gun, this is something different. Some questions have to be asked. And this cannot be permissible. Especially when it is a university professor who does it, who is not supposed to do it, in principle. I am not sure if it ever happened before on this planet.

So what I am trying to get from this witness is additional proof that university acted not in order, not because they had any reason whatsoever to believe that I might kill anyone. They knew perfectly well I had the gun at my house. They knew perfectly well they are not forbidding me from having the gun. All what they are trying to do is, first of all, to smear me at the police, and second, just to show that they can do whatever they want.

If I want to have a gun to go to shooting club, they can forbid me to have it. That's all. It was not a question of safety or security of any kind. They knew that I have a gun at my house. So effectively if someone wants to commit a crime, how... the gun is at his house. He doesn't need a permit for that. A permit is needed for lawful use of gun, and this is what they tried to deny me. And they try to deny me, to me, in the most vicious way. And they didn't have any facts whatsoever.

This is the only explanation of the comedy they played, with this date that... on the one hand they were concerned, on the other hand it took them two weeks just to write to Haines. Now we have to believe that the letter travelled from July seventh (7th) to July twenty-fifth (25th). Inside campus it takes one day for a letter to get there. So isn't it obvious that it is just yet another demonstration of the reckless behaviour of the university trying to damage my reputation, trying to do something which would make my life more difficult, and there is nothing more to it. This is what I am

trying to show.

BY THE COURT:

Thank you.

BY THE CROWN:

This has no air of reality, My Lord.

BY THE COURT:

Well, I think you better change your line of questioning, because this is carrying us nowhere, the questioning of this witness on these points.

BY THE ACCUSED:

Well, on what points? You allowed yourself questioning on the gun permit.

BY THE COURT:

I know. But where we were going on the gun permit, and with the explanation you've given me, I cannot see how, from near nor far, this could in any way be pertinent to your defense. So I would suggest you pass to something else with Mr. Freedman.

BY THE ACCUSED:

All right.

Q. Did you ever see a letter of Mr. Haines?

A. I did.

Q. When did you see it?

A. A couple of days after it was received by Miss Habib, in early August, I believe.

Q. All right. Who brought it to you?

A. Miss Habib.

Q. Miss Habib brought it to you. Was she surprised at what she read? She was, what? What was her reaction, if you recall?

A. Her reaction was, we finally received a response from Grendon Haines. It looks like there's something here. Why don't you call the SQ and see what's going on there, if they've responded to your letter, or if anything... if any investigation is ongoing, or what the status of the file is.

Q. All right. So... you finally called SQ and informed her that there is specific threats?

A. I called the SQ in early August. I asked to speak with Constable Chiff. I was informed that he was away on vacation until September. I asked if anybody was handling his dossiers. They said no, and that... they suggested I call back in September.

Q. Say it again, what? You spoke to... maybe I missed...

A. I called the SQ...

Q. Yes.

A. ... after receiving a copy of Mr. Haines' letter.

Q. Yes.

A. I was informed... I asked for Constable Chiff, who is the person I had spoken to on two or three occasions, who was responsible for the dossier. I was informed that he was on vacation. I said, oh, is there somebody who is handling his dossiers? They said, no, call back in September.

Q. Well, and you didn't say something, I have an urgent information. We have specific threats. I need to talk to his superior?

A. No, I did not. I remember reviewing Mr. Haines' letter. I thought there was perhaps an information to be transmitted to the SQ. I was also of the opinion that... I believe the most recent of the incidents reported was three or four years... or two or three years old, and while I thought it might be useful for the SQ to have, I didn't consider it to be critical. We had... the university had already passed on its concern to the

SQ in that general letter, and that is where I left it.

Q. You found a specific example. You tried to use rape which was eleven (11) years ago. You found it appropriate.

A. I did no such thing, Mr. Fabrikant.

Q. Well, you called Miss Belson, I understand...

A. That's right.

Q. ... and asked her if she can provide you with proof of whatever violent act was committed there.

A. That's right.

Q. And you knew that it was eleven (11) years ago.

A. No, I didn't. I found that out when I spoke with Miss Belson. That was one of the reasons for not pursuing that avenue.

Q. Didn't you say that the reason was that the lady didn't want to?

A. There were two reasons. The first reason was that it happened ten years ago, and the second reason was that the woman had not proceeded with any complaint.

Q. Not ten, eleven (11). Was it eighty-one ('81)?

A. I don't remember, Mr. Fabrikant.

Q. Well, according to her testimony here, if I recall it correctly.

A. I don't remember her testimony to the exact date.

Q. All right. Did she explain to you how come rape took place in eighty-one ('81) and the lady complained in eighty-two ('82)?

A. I don't believe we got specific about dates. What I recall is Miss Belson saying it happened about ten years ago. That's what I recall.

Q. All right. Did you find it necessary at least to write a second letter to S-ret, du Quebec with new facts?

A. No.

Q. Could you explain why not?

A. I made a judgment call.

Q. Well, this is not an explanation. Why not?

A. It's the only one I got.

Q. All right. Did you know that CUFA is writing a letter of their own?

A. I did not.

Q. Did they contact you?

A. They did not.

Q. Did Hogben contact you in any way?

A. He did not.

Q. Did Hogben at any moment contact you and said that he has some reservation, consideration, concern, whatever?

A. No, I believe I had spoken to Dr. Hogben once in my life and it was on another matter six or seven months previous.

Q. So he never contacted you on my allegedly disruptive behaviour?

A. No, he did not.

Q. Didn't you feel yourself obligated to inform CUFA since I was dealing with CUFA with all my grievances?

A. It did not occur to me, frankly.

Q. Anyways. So you don't think at all that this letter should have been given, at least copy of that letter, to the police?

A. In retrospect are you asking me?

Q. Well, at that time.

A. Perhaps in retrospect, at the time I did not.

Q. Okay. Did you provide it to the police after August twenty-fourth (24th)?

A. No, I did not.

Q. Could you explain why?

A. No.

Q. Well, no.

A. I can't explain why.

Q. Could you explain why?

A. No, I can't explain why. I didn't. It just didn't occur to me. I was not asked for it, nor did I volunteer it.

Q. Well, they couldn't ask you because they had no idea you had such a letter. But you, knowing that there is a letter in which allegedly I treated to kill somebody, as a lawyer, didn't you think that it was relevant?

A. I have no answer. I did not provide it to the police. I can't say why I didn't.

Q. Well, do you feel that it was a mistake?

A. Not particularly.

Q. Would you like to elaborate on that?

BY THE COURT:
You are not required...

BY THE CROWN:
All this line is cross-examination.

A. Not particularly.

BY THE COURT:
You're not required to elaborate on that, Mr. Freedman.

BY THE ACCUSED:

Q. All right. Did you show this letter to Mr. Bertrand?

A. No, I did not.

Q. Well, since he was the author of the first letter, did you ask him whether if he wants to write another one since you have now facts?

A. I did not.

Q. Well, again, may I ask why?

A. As I said, it was a judgment call that I made, and I didn't... I didn't inform them.

Q. All right. You didn't do it because effectively your purpose was just not to let me this gun permit to transfer gun from the home to club, and effectively your goal was achieved and there was no point to do anything else, because that was your purpose, not to have... not to allow me to have this permit to get gun from home to the club, right? And the goal was achieved?

A. That was a convoluted question and I could not follow, Mr. Fabrikant.

Q. Okay. Because your goal was not concern for security of anyone at the university. Your goal was to show that you can make my life miserable in any possible way. And since police told you that they stopped all proceedings of my permit, then your goal was achieved, and there was no need to send another letter. Then everything is logical, right?

A. No, that is incorrect.

Q. Okay. Then give your explanation.

A. I'm not giving you an explanation.

Q. All right. Okay. Were you consulted by the Rector concerning any other issue of mine?

A. It's a broad question.

BY THE CROWN:
I think it's too broad, My Lord.

BY THE ACCUSED:
Well, let witness to decide that.

A. I remember on one occasion, I believe to do with the incident at the senate. You attempted simultaneously to file a complaint under the Code of Conduct and a grievance under the collective agreement. And I believe I was consulted on that matter, what the procedure was for that, what happens when you

have two simultaneous processes begun.

Q. Uh, huh. Okay. What was the question asked?

A. It was... I could find it. It's probably here somewhere. It was generally about... right. I recall now. You had sent... you had lodged a grievance under the collective agreement. It had been sent to Dean Swamy, to respond to. Dean Swamy did not respond to it, I believe, because it had nothing to do with him. It was against the Rector, and so there was that whole issue about who was to respond to the grievance, and what happens if there's a Code complaint going on at the same time, and what direction should the Rector take.

Q. Uh, huh. Okay. And what was your advice in this case?

A. I believe by the time I sat down to write the memo, you had already withdrawn the grievance, and were proceeding solely under the Code of Conduct.

Q. Well, I never withdrawn it. It was... they refused to hear it, if you recall. Right?

A. Okay. Well, that could be.

Q. Okay. Do you know anything about problems with Code of Conduct and difficulties with finding the hearing board members?

A. Vaguely.

Q. Okay. You were never contacted...

A. No.

Q. ... if there is any problem there?

A. No, I was not contacted, no.

Q. Okay. Were you contacted on the subject of my request for access to information?

A. I was not contacted directly. I report to the Secretary-General. I work out of her office. I was certainly aware of the numerous access requests. I don't believe that I worked on any of the access requests, maybe one or two. But to my recollection it was the Secretary-General and/or Michel Gamache who dealt with your access requests.

Q. Okay. Do you have any documents in your file related to that?

A. No, no, the access files are kept by the Secretary-General.

Q. No, I mean the file which you worked on with respect to access...

A. No, it would be... if it was anything it would have been a letter signed by the Secretary-General or Mr. Gamache, and it would be in the access files. I have no separate access files.

Q. Were you contacted by anyone concerning my grievance about workload in the summer of nineteen ninety (1990)?

A. In the summer of nineteen ninety (1990), no.

Q. Do you know if anybody was contacted?

A. I don't know anything about that.

Q. Okay. When there was this skirmish with... during Grievance Committee concerning the warning letter, did you participate in any way?

A. Could you elaborate?

Q. Well, if you remember, I refused to participate in the hearing.

A. Right.

Q. I exited the hearing...

A. Right.

Q. ... and I told them that they can make their decision without me.

A. Right.

Q. I don't have to be present there. It's not my obligation.

A. Right.

Q. It's my right to be present, not to be present. If I chose not to be present, this is my right.

A. Right.

Q. And I exited. Now, and since then there was a comedy played, if you remember. Joint Grievance Committee couldn't make the decision. Then Rector couldn't make the decision. Then the Joint Grievance Committee couldn't make the decision. Then the Rector couldn't make the decision. And they played this dishonourable volleyball for quite a while. Now, were you participating in any way in that?

A. I was aware of that. I personally did not participate. I was aware of those activities and I was aware that you had left the Joint Grievance Committee, that the Joint Grievance Committee didn't know what to do because they felt obligated to give you a chance to be heard, and you refused to participate, so they wrote to the Rector saying, we can't make a decision because Dr. Fabrikant refused to participate, so we're bumping it up to you to make a decision. And if I recall correctly, Dr. Kenniff responded that it was not his role, that they could not abdicate their role and that they should nonetheless come to a decision whether you are there or not, as long as you were given the opportunity to present your position. That was what was called for. I personally did not participate in that. Perhaps Michel Gamache participated in some discussion, but I'm not certain.

Q. All right. Were you consulted about legality of my use of electronic mail?

A. I had some discussions with Miss Habib, yes.

Q. Okay. Did you have any documents to that end?

A. No, there are no documents to that end. There were discussions about whether there was anything we could do to cease your use of e-mail.

Q. Why was there a need to cease my use?

A. Well, it was felt certainly by the Vice-Rector, Academic, who I believe wrote to you to that effect, that you were using the e-mail system for a purpose for which it was not intended. In other words, circulating allegations and realms of material to Concordia University, other universities, and near the end to... on international networks around the world.

Q. Yes. So...

A. And it was felt that that was not appropriate use by a faculty member of the e-mail privilege.

Q. Okay. Did you find any documents to support it?

A. To support what?

Q. To support what you said, that I was making illegal use of electronic mail.

A. Well...

BY THE COURT:
He didn't say illegal. He said it was felt that that was inappropriate.

BY THE ACCUSED:
All right.

BY THE COURT:
There's a distinction.

BY THE ACCUSED:
All right. Inappropriate.

Q. Did you find any documents supporting that contention that it was inappropriate use?

A. Well, my opinion was that it was a privilege, that e-mail was a privilege extended to faculty members, that it was not a right, and should the university decide that it wanted to

withdraw that privilege, that it had every right to.

Q. Well, did you find anything about electronic mail and about the way it should or shouldn't be used?

A. We had no... one of the difficulties that people had with the... Concordia University had no policy, internal policy, on e-mail use. We did have a model policy, I believe, that came from one of the networks. But as I said, my feeling was that it was a privilege and a service extended by the University that could be withdrawn at any time by the University.

Q. Okay. What was that policy you mentioned? Do you have this policy with you?

A. No, I don't have it with me. It was a policy that I asked for. I contacted the computing... the director of Computing Services. I asked him if we had any policies on use of e-mail. He said, no, we don't. We're working on one. But I can send you a model policy that's been circulated by... I can't remember... one of the international networks.

Q. All right. What was this policy of international network?

A. I...

Q. Was there anything which would say that my use was inappropriate?

BY THE COURT:

If it hadn't been adopted by Concordia University, and it wasn't part of the policy of Concordia University, it's irrelevant.

BY THE ACCUSED:

No, it is relevant, because I want to know how other networks deal with that.

BY THE COURT:

The question is disallowed. It's irrelevant.

BY THE ACCUSED:

Am I allowed to explain relevance?

BY THE COURT:

You said what you had to say, and I've ruled. It's irrelevant.

BY THE ACCUSED:

Well, I didn't say what I have to say.

BY THE COURT:

I have ruled. It's irrelevant. That's it. Move on to something else.

BY THE ACCUSED:

So you don't allow me to elaborate?

BY THE COURT:

That would be the immutable conclusion one would have to draw from what I just said, wouldn't it be?

BY THE ACCUSED:

All right.

Q. Okay. Did the university... okay. Who from the university contacted you on the e-mail question?

A. Several people. I recall discussions with Dr. Sheinin, as well as with Miss Habib.

Q. All right. Why didn't Miss Sheinin follow your advice and withdraw the e-mail from me?

A. There was some concern over potential difficulties that faculty members would have, they might see this as a breach of academic freedom, and those concerns were expressed. I personally did not agree with them, but those were the concerns that were expressed.

Q. Uh, huh. So you feel that it is not breach of academic freedom if someone is not allowed to say what he wants to say?

A. Well, it's a little more complicated than that. I felt that under the circumstances at the time, that the university had a perfect right to withdraw the e-mail privileges, and that if you were not happy with that, then you could seek whatever remedy you thought was appropriate. I should point out, in fact, that that did not occur, and that your e-mail privileges were not revoked.

Q. Uh, huh. All right. On the subject of suing me for libel, did you have any assignment of that kind?

A. Never, no.

Q. Well, didn't I accuse various respectable members of the university of improprieties, of fraud, of crime, didn't I?

A. You did.

Q. All right. Did university in any way ask you or anybody else to see what the legal recourse they should exercise?

A. In an informal manner I believe I had discussions, again probably with Miss Habib, and certainly my conclusion was that there was no point in anything of that nature because it would only give you a forum and credence to your allegations, and that I would rather let it (inaudible).

Q. Would it be correct translation into normal English that you told them not to proceed because you knew that I was right?

A. It's an absolutely incorrect interpretation of what I just said.

Q. Well, but if I was wrong, why you were so concerned with the forum?

BY THE COURT:

He doesn't... you're now cross-examining him, and he's not required to answer that. He's given you his answer.

BY THE ACCUSED:

Well, as soon as he's in difficult position, I'm not allowed.

BY THE COURT:

Well, all right, if you think he's in difficulty, you think he's in difficulty. But there's my decision. You may not ask that.

BY THE ACCUSED:

All right.

Q. Were you in any way participated in verification of my allegations?

A. No, I was not.

Q. Well, may I respectfully remind you that at least you were present at one of the meetings, were you?

A. The meeting with... between yourself and Dr. Sheinin, yes, I was present at that meeting. I was certainly not involved in any verification of the allegations, however.

Q. All right. Okay. What was your role on that meeting?

A. My role was to ensure that due process was given to you under the terms of the collective agreement, that we were following the procedures as set out.

Q. Okay. Since you were present there, do you recall what transpired during that meeting?

A. I recall.

Q. Yes. Okay. Could you convey it to the jury what took place?

A. From start to finish?

Q. Yes. As much...

A. The meeting was over an hour, I believe.

Q. ... as you can. Yes. You are one of the rare witnesses who just once during the whole testimony said I don't recall. You see, you must be kind of genius. Everybody else is half idiots here.

A. I recall arriving for the meeting. You arrived with a

journalist from the Mirror, I believe, the community newspaper, to attend the meeting with Dr. Sheinin. Dr. Sheinin was not enamoured of that idea, and asked the journalist to leave, which he did. Professor Gastanzo, who was at that time president of the union, arrived separately from you, I don't believe with you, and he had along with him a lawyer for the association, McManus. Miss Angela Wilson Wright was there.

The purpose of the meeting was Dr. Sheinin was conducting an investigation into a second letter of warning, or a first letter of warning, I'm not certain, under the collective agreement.

The reason for the investigation was your continued allegations that she felt had no basis. You were asked to present whatever evidence you had to support these allegations, and that's basically what happened.

Q. Yes. Okay. Did I present the evidence?

A. Well, you did take out lots of documents, and you did wave things around and you did point that writing and say that's Sankar's writing and that's his only contribution to this. You at one point attempted to play a tape recording, which Dr. Sheinin did not want to hear. You were invited to deposit whatever documents you thought were pertinent and leave them with Dr. Sheinin for further study, because it became apparent that while you were... you seemed intimately familiar with what you were talking about, certainly Dr. Sheinin nor nobody else in the room was familiar with the specifics. You were invited to leave whatever documentation you wanted with Dr. Sheinin to study.

I believe you left some documentation, but not much. You said it was the only copy.

Q. Do you recall the way she didn't want to hear was like this. She just closed her ears.

A. When you... when you...

Q. Do you recall that gesture?

A. When you attempted to play the recording, I believe she did do that, yes.

Q. Yes. All right. Was this recording part of the evidence?

A. I don't know. I never heard it. I don't know.

Q. Well, you also closed your ears?

A. No, I don't think I closed my ears. No.

Q. Well, did you hear at least part of the tape?

A. I don't recall if any part of it was actually played. Maybe a second or two. I really don't recall anything being played.

Q. Well, this is the first time you say I don't recall. You see, you are such a brilliant witness, you remember everything. Now, when I played the tape, you all of a sudden do not recall that, what was happening. You see, I was waiting when would it happen that you do not recall. And it did happen. The most important part you do not recall. All right. Now, as far as waving of documents...

A. Uh, huh.

Q. ... I bet you do not recall also what were they because... I explained for about an hour what did I have, right?

A. I had difficulty, Mr. Fabrikant, in following what you were talking about. You were waving (inaudible) dissertations, equations, manuscripts of books, grant documents. I could not follow what was going on. That's why I suggested to Dr. Sheinin, I said, there's no way that this is any good. I said, ask him to leave whatever he wants to leave here so you can look at them properly.

Q. Did I... was it exactly that I was the only one who was doing the talking for the whole hour, right?

A. McManus interjected on occasion, but for the most part I believe you were the one who spoke.

Q. Yes. Would it be also correct recollection that Sheinin did not respond anything to what I said? She didn't ask any questions to clarify what I said, right?

A. That's correct, yes.

Q. Well, effectively, she ignored whatever I presented?

A. I wouldn't characterize it as ignoring, no.

Q. All right. You recall that when I tried to play the tape, she closed her ears?

A. That's right.

Q. Do you recall when I tried to demonstrate to her, for example, maybe you recall that was what I was trying to demonstrate to her that here is the names of authors written by Sankar, the rest is written by me. Do you recall that?

A. I recall you saying that, yes.

Q. And it is very unclear what exactly I'm talking about, right? Or it is clear when I show a manuscript in which only names of the authors is written by handwriting of Sankar? And I also showed to her that here, here, are here, he made minor changes. Is it really difficult to understand what I'm talking about, or it is easy to understand?

A. The words are clear, but as...

Q. Yes. And what I'm talking about, is it clear?

BY THE COURT:

We're straying into the field of speculation. What I presume you're trying to establish or what the facts are, or what transpired at that meeting. It's not a question of whether one should have, could have, would have been able to, or whatever, understand what were the nature of your complaints that day.

BY THE ACCUSED:

No, it is.

BY THE COURT:

It isn't.

BY THE ACCUSED:

Well, my purpose is to demonstrate that not only Sheinin closed her eyes, but I want this witness to recollect that when I was showing to her this particular manuscript, she did like this.

Q. Do you remember that?

A. I certainly don't recall that, Mr. Fabrikant, no.

Q. You don't recall that she just didn't want to see it?

A. No.

Q. She just didn't want to see it, like this.

A. No.

Q. No. She looked at what I showed her?

A. I don't have a videotape of the event, but I do not recall her turning her head away or covering her eyes, as you just demonstrated.

Q. You recall that she closed her ears but you do not recall that she closed her eyes?

A. That's right. I remember she did not, specifically did not want to hear clandestine recordings of other people. She made that clear. She was not interested in hearing that.

Q. Well, wasn't it a legal thing to do? Did you explain...

A. Whether it was legal or not, I have no idea. She was not interested in hearing it.

Q. Well, did you explain to her that this is perfectly legal?

A. I did not.
Q. Did she ask you if it was legal?
A. She did not.
Q. She did not?
A. No.
Q. All right. So this part, at least, was clear. Right?
A. I don't know what that means.
Q. Do you recall that this was one of the pieces which I presented? Do you recall that?
A. Specifically, no.
Q. Okay.
A. It could be.
Q. Okay. I put it differently. Do you recall that I presented something to which I said, this is manuscript of an article?
A. Yes, I recall that.
Q. The name of the authors are written by Sankar. The rest is written by me.
A. I recall you saying that, yes.
Q. You recall that. All right. Do you recall also that I showed a dissertation of somebody?
A. Yes.
Q. And I also showed liquid tankers' stability...
BY THE CROWN:
We heard about that, My Lord, and I think you ruled.
BY THE ACCUSED:
I am recollecting the events.
BY THE COURT:
In as far as he is simply establishing that in the course of that meeting he mentioned these things. If he wishes to do that, I...
BY THE CROWN:
Well, the best person is himself. The witness does not recall.
BY THE COURT:
The witness was there. The witness has recalled some of it. I don't know whether he recalls...
BY THE CROWN:
He doesn't recall any specifics, My Lord.
BY THE COURT:
I don't know whether he recalls...
BY THE CROWN:
The witness said so.
BY THE COURT:
No. The witness said that he recalled a dissertation being presented.
BY THE CROWN:
No specifics though.
BY THE COURT:
The objection at the moment is overruled. We are on, and we are on simply the nature of what transpired at the meeting. We are not on the question of the content of what was presented nor its veracity...
BY THE CROWN:
Well...
BY THE COURT:
... nor anything else.
BY THE ACCUSED:
Yes.
Q. And did I do something like this to show that whatever is in the dissertation is so one-to-one that one doesn't have to be specialist to understand at this stage and this stage is

exactly the same thing? Do you remember me doing something like this?

A. You may have done something like that. Yes, I remember you comparing documents...

Q. All right.

A. ... and flipping things open and closed.

Q. Yes. Do you also maybe recall that I showed that I did here on the list of figures and tables, I did the whole job of one-to-one identification. For example, figure 417 in this book, it is figure 313 in this one. So each and every single... you see, everything is filled. Did I or didn't I show to the Vice-Rector that whatever is in this report can be found in this dissertation exactly one-to-one corresponding? Do you recall that?

A. As I said, I don't remember specifics. I generally remember you comparing two documents and alleging that they were similar, substantially similar, identical, something to that effect.

Q. Yes. But I mean that I identified each element of this, because this here stuff... did I show that this stuff here presents mainly the tables? There is practically no text here. Almost all of this tables of figures, and I identified each of them in the dissertation. Do you recall...

A. As I said, I cannot remember to that detail. I remember the comparison being made between two documents, and you alleging that they were the same or similar. That's what I remember.

Q. Well, I demonstrated it. Do you recall that?

A. I believe you... I remember you opening books and pointing and turning pages and, yes, I remember.

Q. Yes. And do you recall that one doesn't have to be a specialist to understand that page is exactly the same?

A. What are you asking me?

Q. It is exactly the same, that you don't have to be a specialist just to say, yes, it is the same page. Now, do you recall also...

BY THE COURT:

The witness... what was your answer to that?

A. My answer is, I don't know.

BY THE ACCUSED:

Q. You don't?

A. I don't know.

Q. Fine. Do you also recall that I said at that time that this little booklet cost to taxpayer two hundred and eighty-eight thousand dollars (\$288,000)? Do you recall that?

BY THE COURT:

Look, if you are trying through this witness to get back into the question of all this business of research, cost of research, farming out of research, you are not permitted to do it.

BY THE ACCUSED:

I'm not saying that.

BY THE COURT:

If your point is... if your point is, if the point you are trying to make was you made your presentation and you thought it wasn't listened to, if that's your point, I suppose you'll make your argument. But you will bear in mind that the witness said in the face of the placard of paper which you are waving about, he recommended to Mrs. Sheinin that you be invited to leave it and that she study it in peace and quiet. That was the witness' testimony. Now, you can do as you wish with that, but it is totally irrelevant to try to show that

you made such a pristine presentation on that particular occasion that it should have been acted on instanter, because that's, you know, that's... it's her option to follow the advice she got and to look at it elsewhere and to take her time to look at it.

BY THE ACCUSED:

This is not my point. I am just trying...

BY THE COURT:

Well, you better tell me what you are doing, because...

BY THE ACCUSED:

All right.

BY THE COURT:

... as usual I suspect that what you are doing is simply contravening what you've been previously told. It seems...

BY THE ACCUSED:

I am not contravening anything. First of all, I would like to explain what you are doing. At the point when I said that this costs taxpayers two hundred and eighty-eight thousand dollars (\$288,000)...

BY THE COURT:

I intervened.

BY THE ACCUSED:

... you immediately intervened. God forbid the jury would know really about fraud at the university.

BY THE COURT:

The jury has nothing to answer on the question of fraud at the university. Nothing whatever. Now, if you refuse to accept that, that's too bad. But if you're back on the question of fraud at the university, it's out of order.

BY THE ACCUSED:

I'm not on that question. I am now just trying with this witness to establish facts. Period. No matter how you interpret those facts, there was a meeting, and at this meeting I was asked to substantiate my allegations. And I am resurrecting for the jury how this meeting went. And the witness said that I was doing something incomprehensive. I was waving this. I was waving that. And I believe the witness just maybe have a little bit, have difficulty with memory. So I'm trying to help his memory to recall what really happened. That my presentation was not that tumultuous, that this presentation was very clear...

BY THE COURT:

So what you are doing is cross-examining the witness. Is that what you're doing?

BY THE ACCUSED:

Sorry?

BY THE COURT:

What you are doing is cross-examining the witness, and that you may not do.

BY THE ACCUSED:

I am not cross-examining. I am triggering...

BY THE COURT:

I would suggest that you re-examine your notes during the break, and that you try to get as quickly through this meeting as possible...

BY THE ACCUSED:

Can I get what you deposited two days ago, to read during the break?

BY THE COURT:

Two-fifteen (14:15), ladies and gentlemen.

If you... these various pieces of whatever they are that were forwarded to me through the mail, if you would remit these to him, please, I would appreciate it.

LUNCH ADJOURNMENT

AFTER THE LUNCH ADJOURNMENT

MEMBERS OF THE JURY ARE PRESENT

BRAM FREEDMAN

UNDER THE SAME OATH

EXAMINATION BY THE ACCUSED

REPRESENTING HIMSELF: (CONT'D)

Q. Do you recall if I left both the dissertation and the report for Vice-Rector's use?

A. I recall you left some documents. I cannot recall which exact ones you left.

Q. Do you recall me showing the contracts of Seshadri Sankar's private companies to the Vice-Rector?

A. Not specifically, no, I don't remember.

Q. Okay. Would that trigger your memory if I say that one of them was in the amount of four hundred and forty thousand dollars (\$440,000) for one person's company. Does this trigger your memory?

A. As I said, I can't recall the nature of the documents, but I remember several documents being shown to the Vice-Rector.

BY THE COURT:

This is improper examination. What you are trying to do and what is patently obvious is that by these questions you are trying to read into the record, or say into the record things that I have ruled are not pertinent to these proceedings.

BY THE ACCUSED:

Well, it is as well patently obvious that you are very much concerned the jury wouldn't know the facts about what happened in the university.

BY THE COURT:

So you will take for granted that not only was that last affirmation neither testimony nor pertinent, but obviously there is absolutely no proof of it, and it need not concern you.

BY THE ACCUSED:

Well, okay. How can I trigger memory of that witness...

BY THE COURT:

You are not trying to trigger the witness' memory. You are trying... you are trying to put in evidence through your own mouth what I have already said is not pertinent to the case.

BY THE ACCUSED:

Well, I don't...

BY THE COURT:

That's all you're trying to do.

BY THE ACCUSED:

I don't need that. I will repeat it when I will be testifying. Why would I need to do that?

BY THE COURT:

Well, if you repeat it... if you repeat it when you're testifying, I'll instruct the jury again to disregard it as not being pertinent.

BY THE ACCUSED:

I will be saying that this affected my mind.

BY THE COURT:

Will you?

BY THE ACCUSED:

Yes. So I don't think that you have any legal right to make

the jury disregard it. But what is important for me, why I'm asking this question at this moment, to show that I presented to the Vice-Rector such an irrefutable evidence that it just couldn't be ignored. And, nevertheless, she did. This is my purpose right now, that again it was a reckless behaviour, a reckless disregard, a reckless trying to cover up a fraud at the university. And as a result of this, oppression of me. And this is definitely related to defense of provocation.

BY THE COURT:

The question of fraud at the university or your allegations of fraud at the university are in no way pertinent to these proceedings.

BY THE ACCUSED:

No. This is not what I'm trying to establish. I am trying to establish that I informed Vice-Rector about it. Period. Can I establish that?

BY THE CROWN:

This point is done, My Lord.

BY THE COURT:

Pardon?

BY THE CROWN:

We don't need further details.

BY THE ACCUSED:

No, it is not done.

BY THE COURT:

It is done.

BY THE ACCUSED:

So, can I establish that?

BY THE COURT:

No, you cannot establish it. You have put your question and he has told you, no, I can't recall what, precisely what the document said.

BY THE ACCUSED:

Well, you see I probably praised this witness as being very different from previous ones prematurely. He remembered everything until it came to some very, you know, ticklish points and all of a sudden he does not remember any of those.

Q. All right. Were you asked to examine the documents which I left and to make some conclusions on those documents?

A. I was not.

Q. Okay. Are you aware of any attention, legal attention, paid to the documents which I left with Vice-Rector?

A. I would imagine... no, I'm not personally aware. I would imagine the Vice-Rector would view the documents, but I was not there.

Q. All right. Did you participate in prior inquiry, if you recall the Board of Governors directed Vice-Rector to do an inquiry into my education. Did you participate in any way in those?

A. I did not.

Q. Okay. The second letter related to what to do with the second warning. Were you asked any questions as to legality of second warning on the same subject?

A. Yes, I was certainly involved at that point. I had discussions with either Dr. Sheinin, or more likely with her assistant, Angela Wilson Wright.

Q. Okay. What was the discussion? What did you tell them?

A. Well, as I recall, there was some discussion... you had objected, you had filed a grievance against the first letter of warning, because you felt it was not properly done, that

there had been no complaints from the Dean. Subsequent to that a complaint was forthcoming from the Dean to the Vice-Rector. Since it bore on substantially the same issues as the first letter of warning, the Vice-Rector, in a sense, confirmed her first letter of warning.

Q. No, this is not what I'm talking about. I'm talking about August letter.

A. Okay. And after that, I believe you were directed in the letter of warning, in the first letter of warning to cease and desist certain behaviour. You had not ceased and desisted, and the Vice-Rector was in the process of investigating the second letter of complaint, the second letter of warning.

Q. Yes. Did she ask you whether she can issue second letter of warning while previous grievance is not resolved yet?

A. Yes, I believe that was discussed, and my opinion was, yes.

Q. The previous grievance is not resolved and she can issue second?

A. That's right. My feeling at the time was that the grievance and arbitration hearings can take anywhere from six months to a year to two years and that there was no reason for the university to be paralyzed in its actions while this process was ongoing, and that a second letter of warning could be issued, and if that was grieved and then went on to arbitration, then they could both be heard at the same time.

Q. There is... does exist a principle that if a matter is under litigation, no further action can be taken until this litigation is resolved?

BY THE COURT:

The question of law involved is of no interest to us. He testified that in his view, rightly, wrongly, or indifferently, he gave certain advice to the Vice-Rector.

BY THE ACCUSED:

Okay, now...

BY THE COURT:

You may not test out his opinion.

BY THE ACCUSED:

Q. Yes. What I just said, are you aware of that, and does it mean that you made a mistake?

BY THE COURT:

The question is disallowed.

BY THE ACCUSED:

All right.

Q. Were you asked any legal opinion on the request of DPC to declare me threat to the university?

A. I was not.

Q. To the best of your knowledge, anybody else?

A. I believe the letter came to the Secretary-General who then forwarded it to the Rector's office, I believe.

Q. With what, with her recommendation?

A. No, I don't believe there was any recommendation. It was just forwarded to the Rector's office for disposition.

Q. Okay. Did the Rector then ask any of legal office, to the best of your knowledge?

A. Not that I'm aware of, no.

Q. Okay. By the way, at the meeting in nineteen ninety-two (1992) at which you were present, was there any security guard around there?

A. The meeting that you attended that I was at?

Q. Yes.

A. Not to my knowledge, no.

Q. Did Vice-Rector express any fears, to the best of your

knowledge, to you?

A. She was certainly not comfortable in meeting with you alone. That was one of the reasons that she asked me to be present.

Q. In what way? You could defend her as a man?

A. I'm really not sure. I know that she did not wish to meet with you alone and she asked me to attend.

Q. Well, did she specify that I might be carrying any firearms, or what?

A. No. No, she didn't specify at all.

Q. Did you have any firearm with you?

A. I did not.

Q. How would you defend her then?

A. I don't know.

BY THE COURT:

It's purely hypothetical, and it's out of order. Are we going to go on with this business, that am I bigger than you, or we are going to get something sensible?

BY THE ACCUSED:

Well, this is not a matter I'm bigger than you. It's quite different from that. If you wish, I can explain you what...

BY THE COURT:

No, I would prefer you spare me the explanation and move on to something else.

BY THE ACCUSED:

Because... because you know that I have a very good explanation, much better than I am bigger than you.

Q. Did you give an interview to the newspapers about senate meeting?

A. I did not.

Q. You did not. Are you sure about that?

A. I don't believe... I believe I did speak to the press after a press conference that was held at the university. I may have mentioned the incident at the senate. I can't be certain.

Q. Were you present at this meeting?

A. I was not.

Q. So would you explain why you told the reporters that I was pacing the meeting with angry face, if you didn't see that, and you didn't possibly have any information about it?

A. I don't recall stating that to the newspapers.

Q. Well, again, try to recall your memory better than that. Did you or didn't you tell the reporter that I was pacing forth and back with a very angry face?

A. I recall speaking briefly to a reporter or two after the press conference that was held at the university on about August twenty-sixth (26th) or twenty-seventh (27th). It is possible that I mentioned the incident at the senate. I certainly don't recall what words I used or how I described it.

Q. Well, are those words correct?

A. As I say, I have no idea. I don't recall what words I used.

BY THE COURT:

And the cross-examination of the witness is disallowed.

BY THE ACCUSED:

I'm not cross-examining him. I'm just...

BY THE COURT:

Don't argue with me. The question is disallowed. Move on.

BY THE ACCUSED:

Well...

BY THE COURT:

No wells, move on.

BY THE ACCUSED:

I am moving on.

Q. What is your information about this meeting? Was I pacing forth and back?

BY THE COURT:

It would be hearsay unless, of course, Me Freedman was there.

A. I was not.

BY THE ACCUSED:

Well, I'm asking about his personal knowledge...

BY THE COURT:

No.

BY THE ACCUSED:

... what he was...

BY THE COURT:

No, it depends on the purpose. But the purpose is patently to try to establish...

BY THE ACCUSED:

All right. Let me...

BY THE COURT:

... a question of fact that pertained at that time.

BY THE ACCUSED:

No.

BY THE COURT:

So you have to do that through a witness that was aware of that.

BY THE ACCUSED:

No, let me explain... let me explain you the purpose. The purpose is the following this time, to establish that the university, after the event, tried to use every lie possible to defeat me in the worse possible manner. You know very well I was not pacing. I... the witnesses testified here the only thing, I stood up, I picked up the coffee and I sat again on my place. That was all I did there, and everyone that was there can confirm that. And he knew that, and nevertheless he told the reporters that I was there pacing with angry face.

BY THE COURT:

No, that's not what...

BY THE ACCUSED:

Definitely to justify why the police was called, and I was arrested.

BY THE COURT:

That is not the tenure of the witness' testimony today. So that is the answer.

BY THE ACCUSED:

This is not the testimony of witness today. But this is the behaviour of the university at that time.

BY THE COURT:

He can testify as to what he said, that's it.

BY THE ACCUSED:

Well, so we should call the reporter to confirm that this is what he said. All right.

Q. Were you aware of bodyguards' hiring in nineteen ninety-one (1991)?

A. At a certain point I became aware of that. I believe... I believe in the summer of ninety-two ('92), when I was looking into the Code of Conduct issue, discussions with respect to letters of warning with Dr. Sheinin or with Miss Wilson Wright. I believe I became aware of it at that point that there had been in the past.

Q. All right. So you read the... you read the Code of Conduct

decision, didn't you?

A. I did.

Q. Sure you did. You had to prepare it too?

A. Right.

Q. And in this Code of Conduct decision, isn't it written in black and white that MacKenzie testified there that I am... sometime ago in her presence said that in order to get what you need in North America, you have to get in and shoot a lot of people, and that's allegedly what I was supposed to do. Do you recall reading this?

A. I don't recall it right now, but I know I read the decision. So if that's what it says, I must have read it.

Q. Well, you didn't even pay attention to this passage in the decision?

A. As I said, I don't recall it right now. I imagine I did read it at the time. I know I read the decision.

Q. Well... and it means that even by that time you knew that there is not really a rumour. MacKenzie is a person to address for direct threats?

A. As I said, at the meeting I attended where she was present, she made no direct comments to that effect.

Q. Well, I know she didn't, but you were aware that she should have, weren't you?

A. Well, there are... perhaps I read it in the hearing board's decision, but I always prefer to hear things from people's mouth rather than reading things on a piece of paper.

Q. That's right. So it was natural for you to ask her, hey, Dr. MacKenzie, I've read this in the hearing board decision. Did you or didn't you do that?

A. I don't recall asking that question. Perhaps it slipped my mind. When we were having the discussion about the gun permit, I certainly don't remember asking her that.

BY THE COURT:

Q. Am I right that you also, today at least, cannot remember these words in the decision?

A. I cannot, no.

BY THE ACCUSED:

Q. But you, hearing the evidence of all the witnesses, do you feel compelled to maybe finally find out whether a) according to Haines I threatened to kill the Rector, or b) according to MacKenzie I threatened to get Rector, or c) according to Rector or others, I never threatened anyone explicitly? Are we in any way close to finding out what the truth is? Did you do any steps?

A. The question seems a little academic at the present time.

Q. No, it's not academic at all.

A. Well, I view it as academic at the present time.

Q. How come it is academic? It is important to know what happened, isn't it? Did I or didn't I threaten?

A. I don't see...

Q. Anyway, you didn't do any steps to find out...

A. No, I did not.

Q. ... to reconcile the testimony which is so, so, so, not matching?

A. That's your opinion.

Q. Yes. All right. You mean this is my opinion. And your opinion is that testimony is perfectly matching one to another, right?

BY THE CROWN:

His opinion is irrelevant, My Lord.

BY THE COURT:

Your opinion is totally irrelevant.

BY THE ACCUSED:

All right.

BY THE COURT:

The question is ruled out of order.

BY THE ACCUSED:

Yes.

Q. Were you contacted on the subject of validity of DPC decision to not renew my contract in ninety-one ('91)?

A. I was not.

Q. Were you contacted on my request to address the senate?

A. No, I was not.

Q. Were you contacted with legal opinion on my request that Osman resign?

A. I was not.

Q. Okay. Have you been present to many other meetings concerning me in summer of ninety-two ('92)?

A. There was a meeting on the Thursday before the twenty-fourth (24th), which would have been the twentieth (20th), I guess, with respect to an injunction that you had filed against the university that was to be heard the following week. It was a meeting with Dean Swamy, Dr. Osman, myself and two of our external counsel, with respect to the injunction, the drafting of affidavits in response, and so on.

Q. Uh, huh. Okay. And what was decided in that meeting?

A. The facts were... the facts were set out, and we discussed what the issues were in the injunction, what elements should be in affidavits, the coordination of information. The lawyers were to go off and draft the affidavits, send them back to me. I was to show them to Swamy and Osman for their corrections and their signatures.

Q. All right. Do you have these documents with you?

A. I have some documents.

BY THE CROWN:

I don't see the relevance, My Lord.

BY THE COURT:

What would the relevance be, Mr. Fabrikant, of these documents?

BY THE ACCUSED:

Well, the relevance would be the same as before, that the university continued to do the lawless things they did before.

BY THE COURT:

In contesting your injunction?

BY THE ACCUSED:

Well, let me just see the document.

A. Oh, what I have here...

BY THE COURT:

Now, just a second. Just a second.

A. Sorry, My Lord.

Q. Just a second.

BY THE ACCUSED:

There was nothing to contest there, because my injunction was totally irrefutable. They couldn't possibly contest it.

BY THE CROWN:

This is not an argument, My Lord.

BY THE COURT:

This line of questioning is totally irrelevant. Move on to something else.

BY THE ACCUSED:

Well, why cannot I just see the document?

BY THE COURT:

No, you can't see the document. It's totally irrelevant.

BY THE ACCUSED:

Maybe you make fun of me...

BY THE COURT:

If you wish to establish that these affidavits were served upon you before the twenty-fourth (24th), then there may be some... there may be some pertinence to your question. But unless you had knowledge of the contents of these affidavits before the twenty-fourth (24th), it can't possibly be relevant to your state of mind, can it?

BY THE ACCUSED:

No.

BY THE COURT:

Fine.

BY THE ACCUSED:

But let me submit one thing though. You mentioned already on several occasions that documents which I do not know could not possibly affect my mind. I agree with you one hundred percent (100%), with one exception though, that this document will be presented not as a proof that these particular documents affected my mind, but what affected my mind were the actions behind those documents.

Those documents are for the jury to see that the way my mind

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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 LECOURS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: July 15th, 1993

GS: 1370 FILE: 2526

Official Court Reporter
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CONTINUATION JULY 16TH, 1993

(THE JUDGE TAKES THE BENCH)
(THE JURY TAKES THE BENCH)
(DISPENSE WITH THE CALLING OF THE JURY)
(ALL ARE PRESENT)

BY THE ACCUSED:

Before you start it, maybe I can say something about
fishing expeditions. I have...

BY THE COURT:

I don't wish to hear anything about fishing expeditions.
Call you next witness.

BY THE ACCUSED:

Well, what about provocation and admissibility of
evidence concerning legal action?

BY THE COURT:

Call your next witness.

BY THE ACCUSED:

Okay. When we are going to discuss it? Because it is
important if you claim, as you claim, that whatever is
legal to do, then there is no provocation in any case.
For example, even the case of, the file of, Barnab, file,
again, you will argue I had no idea about this file, so
it couldn't affect my mind.

BY THE COURT:

That is not what I said. And you know that is not what
I said. And you were permitted to allude to the
circumstances yesterday that were pertaining on the
twenty-fourth (24th) of August, and you were allowed to
make evidence that there was a motion presentable the
following week, and you were allowed to make evidence
that as a matter of fact there had been an injunction
proceeding. You were not allowed to get into the merits
of any these things. That is true.

BY THE ACCUSED:

No, I'm talking now in general. Because whatever
document is there, like Barnab, file, and again, you will
say I cannot claim that it affected my mind, because I
had no idea Barnab, file existed. Nevertheless, it is
admitted as evidence. Now, if it is admitted as
evidence, then I do believe that you admitted it because,
of course, though I didn't know of existence of this
particular Barnab, file, but I feel that I was
mistreated, and this Barnab, file is just additional
proof that my internal feeling was correct one. And if
we agree on that, then many other documents, though I
didn't have any idea they existed, are still
admissible...

BY THE COURT:

No.

BY THE ACCUSED:

... to this end.

BY THE COURT:

We are not going to make any general rule. You will face
these things on a one-by-one basis, as I said yesterday.
I am not going to rule by anticipation.

BY THE ACCUSED:

Okay. But still the question of whether it was a legal
action by whoever I allege abused me, then it does not
constitute provocation. And I would like to submit that
I have read the case of "Hite", and it says absolutely
clear that legal right, which means there, is legal right
mandated by law, not any kind of action which person is
allowed to make in general without incurring legal
liability. This is very clear there. It means that if
someone tried to stop me, let us say, when I was
shooting, and I would say that he provoked me into
shooting him, then I cannot say that that was provocation
because it was his legal right to stop me. But on the
other hand, if I was abused before that in terms of

firing, in terms of extortion of papers, in terms of smearing my reputation, calling the police, all this is admissible as evidence for provocation.

BY THE COURT:

Taking your example of extortion of papers, as far as you are concerned, you have been allowed to put questions on that subject. I will go no further than that. But you have been allowed to put questions on that subject. What I ruled yesterday was that the university, acting as it did, in furtherance of a right that it had by deciding either to appeal a grievance, or to contest your appeal in a grievance, to contest an injunction, or to contest a decision that the university wasn't in agreement with in relation to the code of conduct, are not factors which, on a first hand, could constitute provocation, and are not elements that from a realistic point of view anybody can claim affected one's mind. Because if you think that things running back to nineteen eighty-nine (1989), ninety ('90) and ninety-one ('91) constitute acts of provocation, you are dead wrong in law.

BY THE ACCUSED:

They do not constitute act of provocation. They constitute cumulative action which accumulated during years, and combined with certain events which took place on twenty-fourth (24th), did amount to provocation which might make a reasonable person to lose control.

BY THE COURT:

So... on, on...

BY THE ACCUSED:

I understand perfectly well the situation.

BY THE COURT:

On a number of these you have been allowed to make evidence.

BY THE ACCUSED:

Well...

BY THE COURT:

What the effect of them is, that's something else.

BY THE ACCUSED:

But the same...

BY THE COURT:

But what you are not making evidence on is the question of legal proceedings that you're involved in with the university, beyond generally putting in evidence that you were involved in these proceedings. You are not putting the proceedings into the record.

BY THE ACCUSED:

I'm not talking about just yesterday. I'm talking in general because whenever you...

BY THE COURT:

Well, I don't like to talk in general. I prefer to look at questions of evidence as they arise, one by one. Because talking in generalities to you always ends up in difficulties further on. So I treat these things on a one by one basis.

BY THE ACCUSED:

Well, one by one, for example, the grievances. Again, the university has the legal right not to accept my grievances, the legal right to challenge them.

BY THE COURT:

I made my rulings yesterday. We're wasting our time if we start fiddling with the grievances and putting these

into the record. So...

BY THE ACCUSED:

And everything else falls into the same thing.

BY THE COURT:

It may...

BY THE ACCUSED:

University had the right to call the police, too. If they had reasonable grounds to believe that I'm about to commit a crime, University had the right to call the police. Then again, this is not admissible stuff.

BY THE COURT:

I didn't say that. You fail to...

BY THE ACCUSED:

No, I'm saying that.

BY THE COURT:

Well, you're wrong. You failed to make the distinction. If you can't make the distinction...

BY THE ACCUSED:

Well, there is no distinction.

BY THE COURT:

... that's not my fault.

BY THE ACCUSED:

There is absolutely no distinction.

BY THE COURT:

There is. Of course, there's a distinction.

BY THE ACCUSED:

What is the distinction? If University feels that someone is with weapon there, and someone might start shooting, they have legal right... not legal right, an obligation to call the police.

BY THE COURT:

Yes, yes. If somebody...

BY THE ACCUSED:

So they were their legal right.

BY THE COURT:

If somebody feels that, first of all, if somebody were to feel that, first of all, their grounds for suspecting that there was a weapon were frivolous, and if someone believes, secondly, that in fact that was simply an excuse that the University elected to shelter behind in order to annoy Frabrikant, then someone could conclude that this was unfair and that this was a factor that might have affected you, or might have been taken by you as an insult. That's fine.

BY THE ACCUSED:

That's fine.

BY THE COURT:

You've been allowed to make that evidence.

BY THE ACCUSED:

All right. So let us make just one more step in the same direction. The University, who got the decision appealed the Board which stated quite clearly that it acted recklessly... let me finish, please, my sentence. It won't take more than one minute... and University decided to appeal this decision, not on factual basis, but absolutely frivolously in the same way that they challenged the panel to which University itself agreed. University agreed to the panel, and then in the appeal they say we challenge constitution of the panel. This is frivolous appeal. So using your logic it is exactly the

same thing.

BY THE COURT:

No, it's not the same.

BY THE ACCUSED:

They did frivolous action.

BY THE COURT:

No, it's not. And we obviously don't agree on that point, so you'll have to take it elsewhere.

BY THE ACCUSED:

Okay. Mr. Cheff.

CLAUDE CHEFF

Police Officer, S-ret, du Qu, bec

March 15th, 1954

DULY SWORN

EXAMINATION BY THE ACCUSED

REPRESENTING HIMSELF:

Q. Okay. Do you recall the date of your first conversation with Mr. Freedman?

A. If I can take my notes there, I will be able to say that.

BY THE COURT:

Have you any objection to Mr. Cheff referring to his notes?

BY THE ACCUSED:

No.

A. The first time I spoke with Mr. Freedman was June twenty-three (23).

Q. All right. Did you, during this conversation, advise Mr. Freedman that I already have a gun?

A. On the conversation that we had, he told me about some persons having some threats.

Q. Sorry. Say it again.

A. I said during the conversation we talked about people having threats, have been threatened by you.

Q. It would be nice if you...

A. So, we didn't mention about... we didn't mention anything about a gun.

Q. I would appreciate if you listen to the question and answer directly to the question.

A. Okay.

Q. When I ask you whether Mr. Freedman told you that I threatened people, then you will answer what you answered now. But when I ask you, did you during this conversation tell Mr. Freedman that I already have a gun...

BY THE COURT:

Would you... if you wish me to say something to the witness, I'll say it, but it's not for you to lecture the witness.

A. As for myself I don't recall...

BY THE ACCUSED:

Well, it would be nice if you did it on your own then, but since you don't do it ...

BY THE COURT:

The answer...

BY THE ACCUSED:

Whatever witness says is fine with you.

BY THE COURT:

Generally whatever the witness says is fine, because generally whatever a witness says is in response to a question.

BY THE ACCUSED:

Well, in this particular case it was totally not in response.

BY THE COURT:

You're right. It was in this case.

A. Okay. To re-answer your question, I didn't recall, because that was not the main subject.

BY THE ACCUSED:

Q. So he never raised the question whether I have already a gun, and you never advised him that I already have a gun?

A. Like I told you, I don't recall, because that was not the main subject of the discussion that we had.

Q. Well, so the main subject was what, that I threatened a lot of people?

A. Yeah.

Q. Okay. But he couldn't name any names to you, could he?

A. Well, as for the moment there when we talked he didn't have any name that he could give me.

Q. Well, were you surprised that I threatened a lot of people and no names can be given?

A. I don't have to be surprised, or whatever. He just told me that and I took his word. That's all.

Q. Okay. How often does it happen that someone tells you that somebody threatened a lot of people, and at the same time no name can be given? Does it often happen in your practice?

A. The point is that he gave me some information, and I have made some requests to it. But as for the moment when he talked, he didn't have any name that he could give me.

Q. Now, when you, as police officer, hear that someone threatened somebody, isn't it your duty to advise that somebody, the person in question already has a gun?

A. Yes. As for myself, I knew that you already had a gun.

Q. So why didn't you advise him that I already have a gun?

A. Well, that is my personal business, and I see if the people to know it or not to know it. And like I say, in that case, I don't recall if I said so or not.

Q. You have the notes of the conversation with you, I understand?

A. I got the r, sum, about that conversation.

Q. Okay. May I take a look at it?

A. If the Judge permit it.

BY THE COURT:

Yes, it will. You've referred to these notes while you testified, so he's certainly permitted to take cognizance of your notes. You might remove the notes from your file.

BY THE ACCUSED:

And I may take cognizance of the whole file?

BY THE COURT:

No.

A. Je vais juste... je vais faire non pour...

BY THE COURT:

Non...

A. Parce que la chose qui arrive, c'est que j'ai eu une information de monsieur (Inaudible) que j'estime qu'il n'a pas d'affaire ... savoir.

BY THE COURT:

Just a second. You better listen to this.

A. Okay. In that case I would rather buff a name, because as for... we got a person that is from another section of our department. He doesn't have to know the name there.

Q. I see.

A. It's a question of security.

BY THE ACCUSED:

I don't understand. What is...

BY THE COURT:

Just a second.

BY THE ACCUSED:

What is it?

BY THE COURT:

What he says is... we'll have to go another route. Okay.

A. Okay.

Q. Don't put a pen to that. I don't want you to put a pen to that for the moment. Okay. What Mr. Cheff said a moment ago was that there is another name in there of a person...

A. From one of our departments which is take care of security. That doesn't have to be known.

Q. And he estimates that you don't need to know that.

BY THE ACCUSED:

Maybe he will justify it for some reasons.

BY THE COURT:

Q. And that person is engaged in what?

A. Okay. That person is engaged in our services of security.

Q. I see.

BY THE ACCUSED:

So what?

BY THE COURT:

And you estimate that he is not entitled to know that name, why?

A. Because if that person is known there, that might spread into somewhere else, and he might have some problems.

Q. I see.

BY THE ACCUSED:

Why would that person... is it Madame Telmoss?

A. No, that's not Madam Telmoss. And like I say, you don't have to...

BY THE COURT:

Don't answer...

A. Sorry.

Q. ... any further questions from him for the moment. Would you hand me the notes, please, through the Clerk.

A. That's the name at, on the twenty-sixth (26th) of June.

Q. I see the name mentioned on two occasions.

A. Yeah, that's it.

BY THE ACCUSED:

I would like to make a submission.

BY THE COURT:

Don't make your submission for the moment.

I think what I'll do, ladies and gentlemen, I'll ask you to withdraw while I sort this out and see in what form this can be presented.

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

(OUT OF THE PRESENCE OF THE JURY)

BY THE COURT:

Now, what submission would you like to make?

BY THE ACCUSED:

Well, the submission has to be done in presence of the jury, not outside of the jury. I see no reason why jury should be...

BY THE COURT:

Why don't you skip that argument, and move on to the next one.

BY THE ACCUSED:

Well, I want to make for the record that I objected.

BY THE COURT:

Ah, well, there you are. Now...

BY THE ACCUSED:

Yes.

BY THE COURT:

... we've got that into the record, go ahead.

BY THE ACCUSED:

Yes. Now, because all this thing has to be done in presence of the jury. That's what is my contention.

BY THE COURT:

I would not like to make any remarks to you which might possibly be the source of any complaint on your part later on that I had made a remark that had prejudiced you.

BY THE ACCUSED:

All right.

BY THE COURT:

But I can see very clearly why...

BY THE ACCUSED:

All right. Already...

BY THE COURT:

... a name and a local telephone number that the witness would not want to incur the possibility that that might be bandied about the detention center.

BY THE ACCUSED:

Okay. Other than that, what if it is bandied over detention center? What could possibly happen?

BY THE COURT:

Well, I think... I think you should better leave... I think you should better leave to the police to determine what measures, what security measures they'd like to take themselves rather than you dictate it to them. I'm sure if they wish to consult you, they will.

BY THE ACCUSED:

Well, the only reason this is done, it is again, and it is the same very shameful tactics as it was, if you remember, when Bujold came and the matter of addresses of people and phone numbers which I was not supposed to go nearby, was withdrawn. Do you remember that trick?

BY THE COURT:

Yes, I do. I wouldn't qualify it as a trick, but I remember the situation.

BY THE ACCUSED:

That trick was done effectively for one purpose, to influence jury that I am still dangerous. The trick right now is being done for the same purpose, to influence the jury that I am so dangerous that God forbid name of someone in the police could not be given to me. And this is... this is prejudicial to my case, and the fact that jury doesn't hear what I am saying right now is doubly prejudicial.

Second submission of mine is that even police informants who are really vulnerable in many cases, nevertheless, their name is being disclosed whenever it is necessary. Name of police officer who is doing just his job, such an absurdity.

BY THE COURT:

You may think so. I don't. The first answer to your observation. The second answer to your observation, you are the one who, since you read something or other in MacWilliams, and chose to put your own interpretation on to it, you are the one who has taken the view that you wished everything to be discussed in the presence of the jury. You've gone as far as to refuse to even debate certain questions of law if the jury were not present. So I see you very badly placed indeed to start complaining about prejudice if the question of the form which the note should take, and deletions which may require to be made to the notes, was initially discussed in front of the jury. You are very badly placed to make that observation, and you're very badly placed to make that complaint.

BY THE ACCUSED:

I'm not badly placed at all. Since beginning started in presence of the jury, it should continue in presence of the jury. That's all. But what you are doing, you are passing to the jury the bad information, and what I am saying is not going there. That is the worst and unfairest way you are perceiving me.

BY THE COURT:

Rather I passed to the jury simply the message that I would like them to withdraw while we debated this. I didn't make any comment in front of the jury as to why this may be important, or as to why it ought not to fall into your hands.

BY THE ACCUSED:

It doesn't matter.

BY THE COURT:

So...

BY THE ACCUSED:

The whole fact that there is something which, just the name, and it shouldn't fall into my hands, jury is not, you know, like some witnesses would pretend, idiots here. The jury can understand if some names cannot be given to me, it means that I am still extremely dangerous.

BY THE COURT:

That's not the...

BY THE ACCUSED:

It's the only conclusion...

BY THE COURT:

That's not the only conclusion that can be drawn.

BY THE ACCUSED:

What else? Give me an idea.

BY THE COURT:

It's simply the police...

BY THE DEFENSE:

What else?

BY THE COURT:

It's simply the police like to keep some names confidential, particularly in view of the function that these people perform.

BY THE ACCUSED:

Well, confidential for me. It means that I am dangerous.
Crown has seen the name.

BY THE COURT:

It doesn't necessarily mean you're dangerous.

BY THE ACCUSED:

Well, all right. I have exactly...

BY THE COURT:

It may mean that you have a propensity to talk a lot.

BY THE ACCUSED:

I have exactly the same right as Crown. Crown has seen
the document. I have the right to see it, too.

BY THE COURT:

I'm sorry, in this instance, you do not necessarily have
the same right as Crown.

BY THE ACCUSED:

Well...

BY THE COURT:

You and I have some discussion to have eventually on the
question of rights.

BY THE ACCUSED:

Well, let us have it, but in front of the jury.

BY THE COURT:

No, not right now. I will take the name, the function
and the telephone local out of the line adjacent to the
twenty-sixth (26th), and in the third line from the
end... the fourth line from the end, I will delete the
name. Are these the only two places?

A. Yes, sir.

Q. Okay. We will adjourn for the time it takes me to make
these arrangements. It will be done much in the same as
we do with the affidavits under the interceptions.

BY THE CROWN:

So you proceed... you put some white, and then a
photocopy of it...

BY THE COURT:

That's right. That's right. So that it's...

SHORT RECESS

(THE JUDGE TAKES THE BENCH)

(MEMBERS OF THE JURY TAKE THE BENCH)

(ALL ARE PRESENT)

CLAUDE CHEFF

UNDER THE SAME OATH

BY THE COURT:

I have returned to the witness the original. Copies
respectively for the Crown Prosecutor, Mr. Belleau and
Mr. Fabrikant.

Now, I wonder if you would read that, and if you have any
difficulty with the words or in reading it, either Mr.
Cheff will clarify that for you, and if there is any
problem with the translation for you, Madam Traynor is,
or was here... is here.

BY THE ACCUSED:

Well, I think it would be nice if Mr. Cheff just reads
it, I think I would be able to understand what it is.

Q. So, first, it is 92-06-23?

A. Do you want me to translate, or to say it in French?

BY THE COURT:

No, not translate, just read it...

BY THE ACCUSED:

Just read what is written.

BY THE COURT:

... read it in French.

A. Okay.

"En date de vingt (20)... quatre-vingt-douze z,ro six vingt-trois (92-06-23), appel de monsieur Freedman de l'Universit, Concordia..."

BY THE ACCUSED:

Not that fast.

BY THE COURT:

He means... do you mean him to start at the beginning?

BY THE CROWN:

Let's read the whole thing then.

BY THE COURT:

At the twentieth (20th). You mean him to start on the twentieth (20th)?

BY THE ACCUSED:

Oh, the first number is twentieth (20th)?

BY THE COURT:

Yes, the first number is twenty (20).

BY THE ACCUSED:

Oh, I didn't know he had something on twentieth (20th).

Okay.

"Le sus..."

A.

"... le sus-cit, nous a contact,s pour nous dire qu'il venait chercher sa formule de recommandation. Ceci est le troisiŕme lot qui lui est transmis. Madame Diane Champoux lui en a envoy, initialement le trois (3) mars quatre-vingt-douze (92). Par la suite, madame Gisŕle Telmoss lui a fait parvenir une deuxiŕme s,rie en date du quatre-vingt-douze z,ro six quinze (92-06-15) par le courrier. Dans le pr,sent dossier, monsieur Fabrikant fut avis, par moi-m^me que nous n'avons... si nous n'avons pas de retour que son dossier sera class, par un refus automatique. Quatre-vingt-douze z,ro six vingt-trois (92-06-23), appel de monsieur Freedman de l'Universit, Concordia qui nous appelle en rapport ... la demande de Fabrikant, quand il dit que celui-ci a d,j... fait des menaces ... d'autres individus, il me dit que ceux-ci n'en ont jamais fait aucune plainte. Il ne sait pas si ceux-ci sont pr^ts ... s'impliquer. Il dit qu'il va v,rifier et voir s'il a la possibilit, d'avoir des gens pr^ts ... venir nous dire de quoi il s'agit, il va nous rappeler pour nous dire quels sont les r,sultats.

Monsieur Freedman est au num,ro
848-4747. Ça c'est ... l'universit,.
Quatre-vingt-douze z,ro six z,ro six
(92-06-06), appel re tu de... qui dit
que l'un de ses contacts lui a dit
que Fabrikant menace les ,l ves, il
lui a m me montr, une demande de
permis de port d'arme."

P.A. veut dire permis d'arme, permis de port d'arme.

Q. Well...

A. "Selon nos contacts, Fabrikant menace
divers... menace les ,l ves de fa on
r,guli re. Le monsieur en question... si
enqu te - nous autres on proc de ... l'enqu te
- devra  tre rencontr, pour obtenir le nom
de ses informateurs qui seront probablement
inform,s des d,tails."

Q. His French is very difficult to understand.

BY THE COURT:

All right.

A. I can say it...

BY THE ACCUSED:

I understood something that...

BY THE COURT:

One second. You asked, first of all, that it be read.

It's been read.

BY THE ACCUSED:

All right.

BY THE COURT:

I will now, if you would like a translation of that, I
will ask the interpreter to give you a translation of Mr.
Cheff's notes.

BY THE ACCUSED:

But please, slowly.

A.  a c'est monsieur Frabrikant.

BY THE ACCUSED:

That's Mr. Fabrikant.

BY THE INTERPRETER:

"Mr. Frabrikant contacted us to
tell us that he was coming to pick
up some forms for a recommendation
and this is the third lot, or third
bundle, that we have sent to him or
submitted to him. Mrs. Diane
Champoux already... sent him
initially... initially sent him
some forms, March third (3rd),
nineteen ninety-two (1992), and
afterwards Mrs. Gis le Telmoss also
sent him a second series on the
fifteenth (15th) of June, nineteen
ninety-two (1992) by mail. In the
present case, Mr. Fabrikant was
advised and informed by myself that
if we had not received the forms in
question, his file would, or his
request would be automatically
refused. C.C.

On the twenty-third (23rd) of June,
nineteen ninety-two (1992), a call
from Mr. Freedman, from Concordia

University, who called us to report that per Mr. Fabrikant's request that he had already made threats against individuals, that these individuals have never filed a complaint, and does not know if these individuals are willing to get involved. Annex 16-B. He said that he will check into the matter, to see if there is a possibility of people who could report to us what is involved, or what it's all about, and to come and will call us back and give us the result. Mr. Freedman can be contacted at 848-4747. C.C.

And on the sixth (6th) of June, nineteen ninety-two (1992), a call was received from - blank or white-out - who states...

BY THE ACCUSED:

One second, the third date is what?

BY THE COURT:

Twenty-sixth (26th).

BY THE ACCUSED:

Twenty-sixth (26th).

BY THE INTERPRETER:

Oh, I'm sorry. I see 0-six. It's a two. Okay. So it's the twenty-sixth (26th) of June, nineteen ninety-two (1992).

BY THE ACCUSED:

Because it looks like zero six.

BY THE INTERPRETER:

That's what I... Yes. Okay.

"On the twenty-sixth (26) of June, ninety-two ('92), a call received from - and then we have a line which is white-out - who states that one of his contacts, or informers, tells him that Mr. Fabrikant threatened his students and even showed them a request for a carrying permit."

BY THE ACCUSED:

Student?

BY THE INTERPRETER:

"And according to the source, Fabrikant threatened his students on a regular basis - there's white-out. If there is an inquiry, an investigation, the person whose name has been white-out should be contacted to obtain the name of his source who would possibly be available to provide..."

BY THE COURT:

Be in a position to furnish details.

BY THE INTERPRETER:

"... or to be in a position to provide additional details. C.C."

BY THE ACCUSED:

Q. All right. Now I understand why the name was wiped out.
BY THE COURT:
Now, where we are so far...
BY THE ACCUSED:
This is again one case of rape. This... it's incredible.
Now, I'm going to pass this information to the jury, and
I want every student's opinion, to testify whether I ever
threatened any student, where I waved them this gun
permit. This is an outrage. I know it is done for this
yellow journalist to publish. But I couldn't care less.
There are limits to what is...
BY THE COURT:
You are suggesting... what did you just say? What did
you just say about... I know it is done for what? Would
you...
BY THE ACCUSED:
For the yellow journalist here, to be able to write
something.
BY THE COURT:
Would you note ten twenty-eight (10:28), please.
BY THE ACCUSED:
What the hell. I didn't say anything wrong.
BY THE COURT:
Now, you brought...
BY THE ACCUSED:
I didn't say anything wrong.

BY THE COURT:
... you brought, Mr. Fabrikant, into... you attempted to
bring into disrepute the whole process, the Court, and
everything else, in suggesting that this whole question
that the witness is now here for was staged in order, I
suppose, your accusation was to, so that Miss Bucky could
report on it. That's ridiculous.
BY THE ACCUSED:
One second. I did not say...
BY THE COURT:
I'm not going to tolerate this sort of nonsense from you.
BY THE ACCUSED:
I didn't say that you were involved. One second.
BY THE COURT:
Now...
BY THE ACCUSED:
And I just wonder why do you feel that way. I said that
this witness was brought here in order to pass to this
yellow journalist. I didn't say that you brought him
here. So why did...
BY THE COURT:
Mr. Fabrikant, you called...
BY THE ACCUSED:
... take the...
BY THE COURT:
You called Mr. Cheff.
BY THE ACCUSED:
I called him, yes.
BY THE COURT:
You called Mr. Cheff.
BY THE ACCUSED:
Yes. But...
BY THE COURT:
And I am sick and tired of listening to these sorts of

accusations from you or these sorts of innuendos.

BY THE ACCUSED:

I didn't accuse you.

BY THE COURT:

Sit down.

BY THE ACCUSED:

Listen to what I said.

BY THE COURT:

Sit down.

BY THE ACCUSED:

I didn't even mean you.

BY THE COURT:

Now, thus far...

BY THE ACCUSED:

I didn't even...

BY THE COURT:

.... thus far, for whatever purpose you brought this witness here, you interrogated this witness with regard to his conversation with Mr. Freedman. Mr. Freedman testified yesterday that indeed he had called the S-ret, du Qu, bec, and that he had spoken to Mr. Cheff. Thus far, Mr. Cheff has related to the Court solely his conversation with Mr. Freedman. He had said two things. He had said: I don't know whether we discussed the fact that Fabrikant presently has a gun. I don't know if we discussed that. I do know that we did discuss the question of threats. And I presume that he was speaking in terms of his discussion with Mr. Freedman that's reported on the twenty-third (23rd). No illusion has thus far been made to what note appears in the police officer's notes for the twenty-sixth (26th).

Now, you, as is your right, have asked to look at these notes, and you have been given these notes, edited in order to eliminate from it the name of the police officer who was involved in investigations, and who came into possession of information concerning what's in that note. There has been no mention of that facet of the notes. If you want to get into that with the witness, it is on your own head. But you are not going to be permitted to bring police witnesses, students, or anything else. In short, you're not going to be allowed to set up another series of straw men or clay pigeons in order to shoot them down in front of the jury, taking us into an area where we don't need to be.

Nobody has any idea what the veracity of that note is.

Mr. Cheff has made no reference to it so far in his testimony. There is nothing about it. There is no need for you to open it.

BY THE ACCUSED:

I want to open it.

BY THE COURT:

Then I will tell you that if you open it... if you open it, don't come whining to me that you want to call the police officer who was the source, or that you want to call the students who may have given information to whoever, but which the police officer came into possession of. That is an internal note that properly appears in Mr. Cheff's file. You would have had no right to have access to that had not he used these notes for the purposes of his testimony.

At this particular point in time, there is no necessity

for you to go anywhere near that note of the twenty-sixth (26th). And if you do, then you will have to live with the answers you get. But you will not be permitted to, under the guise of this trial, to launch an enqu[^]te, or investigation, into where these rumours came from, and from who. You will not. I'll tell you right now. So if you get into that, you'll get into that, and Mr. Cheff is instructed at this point not to answer any questions on that point unless I specifically permit him to, depending on what questions you ask.

Mr. Lecours, have you any suggestions as to how to approach this problem beyond what I said?

BY THE CROWN:

I was going to suggest the same thing to you.

BY THE ACCUSED:

This is an outrage.

BY THE COURT:

Okay.

BY THE CROWN:

I did not use that note, for sure.

BY THE COURT:

You didn't use that note.

BY THE CROWN:

In my mind, it's hearsay and there was no way to verify...

BY THE COURT:

No.

BY THE CROWN:

... to check the veracity of that. If the accused wants this material to go into the record, or to be read to the jury, that should be the end of it, and we should not expect fifteen thousand (15,000) students to come here to say whether or not they were waved the gun permit, or something like that.

BY THE COURT:

I have already ruled on that. If he gets into it, it will be on his own head. I am...

BY THE CROWN:

Maybe he could get some advice from Me Belleau, whether he should do it or not.

BY THE COURT:

Mr. Belleau, I wonder if... thank you. That's a good suggestion. I'll adjourn for five minutes while you advise him as to just what he is playing with in exploring that question. Would you be kind enough to do that?

BY Me BELLEAU:

Certainly.

BY THE COURT:

Thank you.

(THE JUDGE LEAVE THE BENCH)

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

SHORT RECESS

(OUT OF THE PRESENCE OF THE JURY)

(THE JUDGE TAKES THE BENCH)

(THE ATTORNEYS AND THE ACCUSED ARE PRESENT)

BY THE ACCUSED:

So after discussion with Me Belleau...

BY THE COURT:

I don't need to know the content of your discussion with

Mr. Belleau.

BY THE ACCUSED:

Well, it's... okay. I'm just... would like to make some arguments as a result of this discussion. Now, essence of my defense is that University took every opportunity to smear my reputation. Now, in this particular case, it is again the clear case of such an attempt.

Now, what it says here that the person whose name was wiped out received from informants inside University that I waved this firearm permit in front of the students.

Right? That I regularly threatened students. Now, this is effectively part of my defense. This is, again, obvious attempt to smear my reputation this time, before the police. And, therefore, I should be allowed not only to be given the name of the person who was here wiped out, as well as the informant who should come here and confirm that this, indeed, had happened. Because if threats were made, they're pertinent to the Crown's case. If threats were not made, then it is essential part of my defense.

So, in both cases, this is absolutely pertinent information and it should be dealt with accordingly. And Mr. Belleau cited to me that there were several cases of jurisprudence where the name of informant, when it was necessary for defense, was forced to be disclosed. So in this particular case, there is absolutely need for me to point it out to the jury that this note has been made.

Second, according to Section 9 whatever this witness say, I have all the right on this planet to call other witnesses to contradict him. So you cannot forbid me from calling other witnesses to contradict this particular witness. If he says that I threatened regularly, threatend students, then I should be allowed to call those students and to ask them if this is so. This is black and white in every authority. I can call witnesses and even ask them explicitly this question. Do you remember that? I even quoted from MacWilliams. So, this is my absolute right to do and I would like the name to be restored because now I understand why it was wiped out. It was not for this reason of security, but rather to prevent me from calling this person as a witness. There is nothing else there.

BY THE COURT:

And you have tried to have me preside over a trial where you reached into various files from the beginning, pulled out a name here, pulled out a name there, pulled out a piece of information here, something else from somewhere else, and have attempted to "cubple" this into what you call your defense. Now you find yourself facing something which you say is part of an overall plot on the part of the Unversity to smear you.

First of all, as I read the note, the call was received from one of his contacts... contacts, whoever that is, who said that Fabrikant threatens his students and has even showed them a demand for a firearm permit. We have at the least here a piece of triple digit hearsay which is not relevant to these proceedings, despite the fashion in which you have attempted to make it relevant.

If the jury hears that, the jury could conclude that quite independently of what you have said about the University authorities setting up false threats that you

were supposed to have uttered and spreading them, but quite independently the police came into possession from other sources, from their own sources, whatever they may be, of instances of you threatening students. That could be very damaging for the argument you are trying to advance against the University. So that is why I said to you earlier that if you insist on going along that route, it is on your own head.

Secondly, and last, you are not... you are not going to be given the name of the informer. It is true that there exists precedent for the proposition that when the name of the informer is absolutely essential, absolutely essential to the establishment of the innocence of the accused, then a balance has to be struck.

The question of threats uttered by you were put into evidence by you, not by the Crown. You chose to put that into the record. Furthermore, the question of who you threatened and when, if you ever did, was put into the record as part of your general proposition that the University set out to smear you. You say that it relates, and may be related later to your state of mind. If it is, so be it.

But its importance to the overall question of provocation as a defense is so marginal and so small as to cause me to conclude right away that if I have to make that balance between the interest of the name of the informer, and in this case, it is not an informer at all. The first stage is a police officer whose name was... I think I'm right. Am I?

It was a police officer whose name was taken out...

BY THE WITNESS:

A. Yeah, that's it.

BY THE COURT:

...that I'm not going to permit you to have the name of that police officer from whom you will then attempt to develop the name of the source, from whom you will then attempt to develop the names of whoever the students were. This is chasing rainbows. So I would... I'm not here to advise you. If you get into that, it is much more susceptible to damage you than anything else, and I'm telling you again that it will not permit you either to have the police officer's name revealed to you, nor anybody else's.

The jury, please.

BY THE ACCUSED:

By the way, ... Annex 16B, where is that annex? Can I see it, too?

BY THE COURT:

I have no idea what that means. If you wish to ask the witness, I suppose he'll tell you.

BY THE ACCUSED:

Q. Do you know where is Annex B?

A. Est-ce que vous voulez...

BY THE COURT:

Just a second, Mr. Cheff.

BY THE CROWN:

This is Annex B, what you have in front of you.

BY THE COURT:

This is Annex B, the note to the file.

A. Annex B, that's what you got.

BY THE ACCUSED:

Okay. Maybe I could see the rest of the file?

BY THE COURT:

You are seeing the notes, Mr. Fabrikant, because that is what the witness referred to. You are not seeing the rest of the file.

(MEMBERS OF THE JURY TAKE THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

CLAUDE CHEFF

UNDER THE SAME OATH

BY THE ACCUSED:

Well, this document, I believe that the jury has to be informed that the name which was wiped out here, it's not for security reasons whatsoever. We have yet another case of rape here.

BY THE COURT:

Mr. Fabrikant, if the jury is to be informed of anything, I will inform the jury of what they need to be informed of.

BY THE ACCUSED:

Well, you do not inform. I believe jury has to be informed.

BY THE COURT:

Well, if you would perhaps give me a moment, I will.

BY THE ACCUSED:

I'll, please.

BY THE COURT:

And secondly, I only do so because at your insistence the jury was here and has generally been here during questions of evidence. The jury is not going to receive the particular notes to which you are referring. But the fuss, ladies and gentlemen, for your information, was simply over the identity of a police officer who carries out certain investigations in relation to arms permits and who receives certain information relative to these permits. The police are understandably sensitive about the identity of certain of these people, and that is all that I removed from the notes of Mr Cheff, which he had in front of him when Mr. Fabrikant was questioning him. That is the length and the breadth of it. Mr. Fabrikant has the notes in their entirety, which were in front of Mr. Cheff when he was testifying with the name of the police officer deleted. Period. Full stop.

BY THE ACCUSED:

Well, regretfully this is not period, and not a full stop, because the name which has been deleted is the name of the person...

BY THE COURT:

Mr. Fabrikant, if you have questions to put, put the questions.

BY THE ACCUSED:

I have put... I have questions, but I would like to make my addition to what has been said. I'm allowed to do so.

BY THE COURT:

You are not allowed to do so. You are not in the business of giving explanations to the jury. I am. Now, will you put your questions.

BY THE ACCUSED:

Well, then would you kindly explain another thing that this particular person has nothing to do with security,

that his name was deleted, not because I can go and kill him or whatever.

BY THE COURT:

Mr. Fabrikant, I will not do that all. Now, would you please put your questions to Mr. Cheff.

EXAMINATION BY THE ACCUSED: (CONT)

Q. Mr. Cheff, do you recall every conversation which we had?

A. Well, most of it, yes.

Q. All right. Did we have any conversation before June twentieth (20th)?

A. Before June twentieth (20th)?

Q. Yeah.

A. No.

Q. No. Try to trigger your memory a little bit more, then you will find that we did have conversations. If you remember, let me trigger your memory.

A. Do so.

Q. You allege that on March third (3rd), I've been sent those forms for firearms permit. Right? Do you remember that?

A. It's written there, yes.

Q. All right. Now, do you remember that somewhere in April or May I called several times your office asking about these papers which I did not receive. Do you recall that?

A. I don't.

Q. All right. Do you recall our personal meeting at the firearm permit office?

A. The only meeting we had, person to person, was when you came to pick up the third set of forms that you had to fill out.

Q. All right.

A. That's the only time that I've met you personally.

Q. All right. So maybe you recall... why did I come in person to pick them up? If you allegedly say that you mailed them to me, what was the reason for me to insist that I come and pick them up myself? Do you recall what was that?

A. The reason you came is because after you talked to me about those forms I made a small check-up to our office to see what had happened in that file. So Mrs. Chapoux told me that she had sent you on March the third (3rd) a set of forms. She must have sent you another set of forms on the fifteenth (15th) of June.

Q. Uh, huh.

A. And when you came, it's because you read that it took too much time, so I told you to come at the office to come and pick up the set, this third set of...

Q. But do you recall that I said that I haven't received the first one? Do you remember that?

A. Yes.

Q. Do you remember that on June twentieth (20th), though you claim that you mailed it to me on June fifteenth (15th), I still haven't received them. That was the reason why I came to pick it up personally. Right?

A. Yes.

Q. All right. So do you also recall that I later called you when I did receive them by mail, and I told you that postage stamp there was no July fifteenth (15th)?

A. I remember that you called me telling me that you had received the second set...

Q. Yeah.

A. ... but I don't recall...

Q. After I picked it up from you personally. You remember that?

A. Yeah.

Q. And I told you also that it was a lie that it was sent on June fifteenth (15th), because postage stamp was after June twentieth (20th). Do you remember that?

A. And then I explained to you that the reason why is because as for us we work through the principal post office which is right in the building and it takes a few days from our office to go down and have it post.

Q. Well, you're implying that you mailed it on fifteenth (15th), and on the twentieth (20th)...

A. I didn't say that.

Q. ... it still has not been really mailed?

A. I didn't say that. I said that Mrs. Telmoss sent through the system a second set of forms...

Q. Yeah. And it takes...

A. ... which goes from our department to the mailing department of the building.

Q. And it takes more than a week to go all the way to the postal office?

A. Depending on the priority.

Q. That's what it is?

A. Depending on the priority, yes.

Q. It is normal?

A. Yes, depending on the priority.

Q. Anyway, so now you recall why I came to pick it up on June twentieth (20th). Right?

A. I remember that, yes.

Q. Yeah. All right. Now, do you recall at the same time in our personal meeting I told you that what you are doing, you are creating problem not for criminals, you are creating problems for honest people, because criminals, they have gun at their house, and if they want to commit a crime, they are free to do so?

A. I don't recall that part, because those part are what people tell us a lot, so we go over it and we don't get a reminder about it.

Q. So you don't remember I told you that?

A. No, I don't remember.

Q. No, not at all. All right. So what was it, just I took it from you and we didn't say anything to each other?

A. Well, I remember that you spoke to me, but what was the conversation, I don't recall. But I remember that you...

Q. Well, but this particular part you might have recalled because it's kind of essential remark, was it?

A. Well, that's a remark that at that time I heard about one, two, one or twice every week, so I didn't...

Q. Okay. So effectively many people told you that your rules are ridiculous and creating problem not for criminals, but rather for honest people.

BY THE COURT:
Mr. Fabrikant, we're...

BY THE ACCUSED:

Q. You heard that kind of remark before?

BY THE COURT:
... we're far away, first of all, we're far away from where we ought to be, and secondly, you're cross-examining the witness who, at least to my recollection...

BY THE ACCUSED:

I'am not cross-examining.

BY THE COURT:

... you're the one who called.

BY THE ACCUSED:

I'm just asking him how many times he heard that.

BY THE COURT:

Well, move on to something more relevant, please.

BY THE ACCUSED:

Well, it is relevant.

BY THE COURT:

It's not relevant at all.

BY THE ACCUSED:

It's not relevant at all.

BY THE COURT:

No.

BY THE ACCUSED:

All right. We'll move to something more relevant.

Q. Now, and you say that June twentieth (20th) was the first time I ever contacted you over the phone concerning these forms which I did not receive and should have received long time ago. You do not even remember that I... you were kind of irated that I called you several time and you said to me that you are kind of receiving too many calls frrom me. Do you remember that?

A. I remember that on July the eighth (8th), you called Mrs. Telmoss, and she transferred to you... transferred you to me..

Q. Well, would you please just answer my question.

A. Sir, sir, you asked me a question...

Q. I didn't ask you for...

A. ... if you want me to answer, I'll give you the answer. So don't push...

Q. But answer what I asked you.

BY THE COURT:

Listen, the witness is entitled...

BY THE ACCUSED:

I didn't ask him for Telmoss, or anybody else.

BY THE COURT:

The witness is entitled to answer your question as he sees fit as long as he addresses your question. Now...

BY THE ACCUSED:

He is not addressing my question.

BY THE COURT:

... he's not required to give you...

BY THE ACCUSED:

I asked...

BY THE COURT:

... yeses, or nos, or anything else.

BY THE ACCUSED:

I asked him about conversation with him. So Telmoss has nothing to do with this.

BY THE COURT:

If you had listened to what he said, he said, yes, you called. A call was received by Mrs. Telmoss and it was transferred to him. I take that as a lead-in to a conversation between you and him. Please continue, Mr. Cheff.

A. Okay. So after being transferred to me, I spoke to Mr.

Fabrikant, and he asked me why the admission of his carrying... his transport permit was delayed. So I explained him the reason of the inconvenience since that he didn't send us back his form. That was it was delaying, and until those forms were received, we wouldn't do any processing in his file. Mr. Fabrikant called about two, three times. Always, I've told him politely, to say, explaining the same thing, and he didn't seem to understand, so I just hang up the phone again. And on the fourth time when he called me, he was arrogant saying that it's because... he was sort of bugging. He said, are you getting angry? Are you getting angry? Everything like that. Also bringing the point of... excusez le terme raciste, l..., because he was from another country...

Q. The expression, racist?

A. Yeah. That's it. He was trying to bring that on the subject, saying that it was because he was from another country that we were delaying his request. So I explained to him, listen, until we receive the form, we doon't do any process in the file.

BY THE ACCUSED:

Q. It was what date you said?

A. It was on July the eighth (8th).

Q. Okay. Could you check in your file when you did receive the forms from me.

A. As for that part...

Q. When you receive the form from me? Do we have the date?

BY THE COURT:

What is the possible pertinence of when the forms were received?

BY THE ACCUSED:

Very simple. Because I couldn't have called him July eighth (8th). I submitted my forms to them well before that. He's lying.

A. Sir...

Q. As simple as that.

A. ... we've met on...

Q. I couldn't have called him July eighth (8th), and he would respond to me that they didn't receive my form. On July eighth (8th), they received it.

BY THE COURT:

Whatever... whatever the merits...

BY THE ACCUSED:

It's absurd.

BY THE COURT:

... whatever the...

BY THE ACCUSED:

He doesn't even know how to lie.

BY THE COURT:

Whateve the merits of when the S-ret, received your forms, what is the pertinence of this to your defense?

BY THE COURT:

What is the pertinence? Just wait for a second. I cannot explain each particular question. This is just preliminary stuff, because I'm going...

BY THE COURT:

Well, let's jump the preliminaries and get to the...

BY THE ACCUSED:

I cannot jump. You cannot dictate me how to ask my questions.

BY THE COURT:

No, I can't.

BY THE ACCUSED:

I cannot jump.

BY THE COURT:

But I can certainly ask you... I can certainly ask you why we are doing this, because we seem to me to be wasting time.

BY THE ACCUSED:

No, we are not wasting. I asked him just to check when my forms were received. It's important. It's important in itself.

A. Okay.

BY THE COURT:

Q. Are you able to answer that, Mr. Cheff?

A. Yes, sir.

Q. Fine.

A. Okay. On the twenty-fifth (25th) of June, the subject brought back only four documents on five.

BY THE ACCUSED:

All right.

A. One letter from his wife, one letter from a friend or a person that he knows, and two from his neighbours. And there was also a letter from him saying that his employer refused to sign the letter of recommendation, also, as a member of the University.

Q. On June twenty-fifth (25th) you already received whatever I could provide. Right?

A. You gave us four documents...

Q. Right. So...

BY THE COURT:

Four out of five, if I understand you.

A. That's it.

BY THE ACCUSED:

Q. Yes. So on July eighth (8th), you couldn't possibly demand from me to give you any more forms. I have provided to you whatever I could. Right?

A. Wrong.

Q. Okay. Explain that.

A. On July the eighth (8th), we didn't receive the form from the employer. So as long as we didn't have received that form, we couldn't process your file.

Q. All right. Did or didn't you tell to... first of all, you received from me that the employer refused. So that is the end of it. There is nothing I can do. Right?

A. Wrong.

Q. What do you mean wrong? I can't force employer to sign it, can I?

A. I have a letter of the employer saying why he didn't want to sign the form.

Q. Well, read please, my letter, what I wrote to you.

A. Excusez si j'ai prend du temps, c'est parce que... ..
l',passeur du dossier... O.K.

"Montréal, June twenty-fifth
(25th), nineteen ninety-two (1992).
Service des permis, 1701
Parthenais, Montréal. Dear
sir/madam, I enclose all but one of
your recommendations required for
issuing of the carrying permit for

my first handgun, and the registration and transportation permit for the second one. The employer has refused to sign. I spoke to the employer representative, Dr. Sankar. He told me that he does not want people running around with guns. I explained to him that I did not plan to run around. I asked for a permit to carry my gun to and from the club of which I am a member. He will insist that he was not going to sign this recommendation neither to me, nor to any member of this University. You may wish to communicate with him at (514) 848-3074. I hope to get from you a quick and fair decision on all outstanding issues. Thank you in advance. Yours sincerely, Dr. V. I. Fabrikant."

Q. All right. So I told you the whole story. I gave you the person to contact. And I explained to you in this letter that I was refused it. There is nothing else I can do. Correct?

A. At your level, that might be true.

Q. Yes. All right. Did you contact Mr. Sankar?

A. There was something that happened during that time.

Q. All right. Could you get me any documents related to your conversation with Sankar?

BY THE COURT:

He didn't say he contacted Mr. Sankar.

A. I didn't say that. I said that, like the paper I'll give you, that on the twenty-sixth (26th), we had a phone call from Mr. Freedman.

BY THE ACCUSED:

Q. All right. But did you contact Mr. Sankar? No?

A. No, I didn't have to, because I had a person that called me to give me some information. And due to his rank, that person was able to give me the information I needed.

Q. All right. So now we come... here is the question of June twenty-sixth (26th). Not I. So we have to go into that.

BY THE COURT:

Q. He did not...

BY THE ACCUSED:

I have no choice, he...

A. No, sorry. I am...

BY THE COURT:

He did not. He said he received a call...

A. The twenty-three (23), on June twenty-three (23). Yes.

Q. On the twenty-third (23rd). June, twenty-third (23rd).

BY THE ACCUSED:

No, no, no. He said on June twenty-sixth (26th), he received important information...

BY THE COURT:

Was that...

BY THE ACCUSED:

... through his officer.

A. That was a mistake from my part. I meant the discussion

with...

BY THE COURT:

With Mr. Freedman.

A. ... Mr. Freedman on June twenty-third (23rd).

Q. Okay.

BY THE ACCUSED:

Oh, no, no, no.

BY THE COURT:

Okay. Thank you.

A. ... where he called us.

BY THE ACCUSED:

No, let us play what he said. He said...

BY THE COURT:

He did mention, he did mention June twenty-sixth (26th).

BY THE ACCUSED:

Let us play his latest...

BY THE COURT:

Wait a second.

BY THE ACCUSED:

Let us play it.

BY THE COURT:

He did mention June twenty-sixth (26th), he mentioned

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

BY THE ACCUSED:

Yes.

BY THE COURT:

But he said that he spoke to somebody from the University of a certain rank at the University and he therefore did not need to contact Dr. Sankar at the University. He then corrected the date to be June twenty-third (23rd). That's where we are, and we don't need a reading of the tape to know what he said. He was perfectly clear.

BY THE ACCUSED:

Well, he said once on twenty-sixth (26th), then he jumped from there. But anyway...

BY THE COURT:

If you have another question to put to him, put it to him.

BY THE ACCUSED:

We'll go from there.

Q. So, how could you, on July eighth (8th), demand from me forms if you received all I could, and from our letter it was clear that there is nothing else I could give you. Explain, please.

A. The point is we wanted a written form saying that... the reason why they didn't want to. And by the time...

Q. You wanted a written form from employer?

A. Yes.

Q. Well, I couldn't provide it to you. I asked you to contact them directly and get from them the reasons.

A. Well, that's not part of the job of the permit section, because due to the bulk... well, we got a few thousand requests that come in. If we have to phone everyone, then we would be stuck on the phone about twenty hundred days a year... just phone calls.

Q. Okay.

A. So that's why we ask the people to do that, that part of the job.

Q. Okay. What if employer after refuses even to write their reasons, then what?

A. Then the thing goes through a process of which we send someone to see the employer to see what are the reasons.

Q. Well, exactly. So this is what I informed you about, that I did all I could. Here it is. You do whatever you want to do. Right?

A. Uh, huh.

Q. So, on July eighth (8th), you couldn't possibly tell me to get you the form.

A. I didn't tell you to get the form. I told you to send me a writing of your employer saying why...

Q. May I see your notes from July eighth (8th).

BY THE COURT:

You have the notes in front of you.

BY THE ACCUSED:

No, I don't have from July eighth (8th). I just wonder how much police can falsify information. It's remarkable.

BY THE COURT:

Well, I'm wondering myself for how long you can talk about something that is of no... that has no bearing at all to why we're here. This whole line of question...

BY THE ACCUSED:

Oh...

BY THE COURT:

This whole line of questioning is a total waste of time.

BY THE ACCUSED:

It does have.

BY THE COURT:

Oh, no, it doesn't.

BY THE ACCUSED:

You are concerned with image of the police right now.

BY THE COURT:

Well, you better tell me what the bearing is...

BY THE ACCUSED:

It's very, very simple.

BY THE COURT:

... because if you don 't tell me what the bearing is, you'll be moving on to the next subject.

BY THE ACCUSED:

All right. Then let me explain you the whole point what I am trying to make right now. From the very beginning of this trial, if you recall, I have challenged that there is a conspiracy between police, Concordia University, Crown, to present me in the worst possible way, including every possible lie, everything goes. And if you recall, also, I mentioned on several occasions that I do believe the Judge in this case is biased and doing whatever possible illegal and immoral to help these people to do their job.

We have seen numerous examples of that in terms of one of the victim lying on his back with three fingers like this, holding a letter against his body. The letter itself I could not find for some reason any neurologist, any other specialist to show that this could not possibly happen. In addition, we have witness who first seen the body lying face down, not face up, if you recall that. You couldn't make it more blunder than that.

In addition, I have pointed out also that police, who knew perfectly well that shooting started in my office, nevertheless, has chosen to present press conference on which they described that first I went to office of Hogben and shot him, then to the dean's office. Then, for some reason, I wandered in 929-24, without mentioning...

BY THE COURT:

You meant to say the office of Saber, I think, not the office of Hogben.

BY THE ACCUSED:

No.

BY THE COURT:

Ziogas.

BY THE ACCUSED:

What did I say?

BY THE COURT:

You said Hogben.

BY THE ACCUSED:

Well, I'm sorry. I went the first was, yes, the office of Ziogas. Did I say Hogben?

BY THE COURT:

You said Hogben.

BY THE ACCUSED:

Oh, I'm sorry. Anyway, and then to the dean's office. Then for some reason I entered 929-24, without mentioning that this is my office. For some reason I found in there Hogben. How on earth he can get into my office without me being there, and shot him. Now, why was this done? For a very simple reason. That this would look like premeditated murder, which it wasn't. And police is not that stupid not to understand,

because even just tracing from the timing of 9-1-1 calls, it is clear where it started and how it progressed, because you have call at nine-twelve (9:12) from Department of Mechanical Engineering, nine-thirteen (9:13) from Electrical Engineering, and then call about nine-fourteen (9:15), fifteen (15) from the dean's office. So there is no way they could make such an honest mistake.

In addition, there were several witnesses who tried to pass on to the jury one information that I allegedly, in ninety-one ('91), when I didn't even apply for the gun, I already got refusal, and I planned to use my wife to get those guns.

Now, this didn't stop there. Then was another witness who, of course, I called, and I had no idea what this witness would say, and this witness said that I allegedly raped a student. And, of course, when this information was passed to the jury, there is no way I can get any clarification into it, because when it passed to the jury, it is fine. But when I try to get clarification, then it is irrelevant to the case.

Now, in this particular case we have just yet another case of rape, because in this particular case we have the name wiped out on the note which says not more, not less. It is not security reason, or anything else. This note says that this particular person received information from some informant inside the University that I regularly threatened my students, that I waved at them this firearm permit.

BY THE COURT:

Mr. Fabrikant, what we are discussing at the moment...

BY THE ACCUSED:

I'm explaining where I am going.

BY THE COURT:

... is the line of questioning...

BY THE ACCUSED:

Would you please let me finish.

BY THE COURT:

No, I won't let you finish, because...

BY THE ACCUSED:

No, I am explaining where are we going.

BY THE COURT:

No, you're not explaining where we're going. You are explaining a whole series of things that are not new to me. I'm perfectly aware of them.

BY THE ACCUSED:

Well, at least last part is new to the jury.

BY THE COURT:

The last part is the last part. But what...

BY THE ACCUSED:

So let me finish, please...

BY THE COURT:

... we are basically doing is...

BY THE ACCUSED:

... about the last part, because...

BY THE COURT:

What is the pertinence of your questions to Mr. Cheff concerning...

BY THE ACCUSED:

Exactly. This is what I started to explain with Mr. Cheff. The purpose is...

BY THE COURT:

I understood you to say that there was a conspiracy in your mind...

BY THE ACCUSED:

Yes, yes.

BY THE COURT:

... that encompassed various echelons of the police department, the University...

BY THE ACCUSED:

And here we have yet another proof of that.

BY THE COURT:

And now we have another police department, the S.Q. I suppose now you're telling me that this conspiracy encompassed the S.Q. as well as the C.U.M. Is that it?

BY THE ACCUSED:

Well, let me just continue. Right? So we have the note dated of June twenty-sixth (26th), saying that some informant told some officer, and the name of officer is wiped out, not for security reason. The only reason it is wiped out that I couldn't call that person here to testify that this is a lie. That is the only reason it is wiped out. Because name of police officer has never been secret. It's total absurd. Now, this note says that I regularly threatened my students, that I waved this firearm permit in front of them. Well, this is...

BY THE COURT:

Mr. Fabrikant, you have...

BY THE ACCUSED:

Let me finish, please.

BY THE COURT:

... you know, you're the one who insists that the jury be present during...

BY THE ACCUSED:

Let me finish, please.

BY THE COURT:

Just a second. You're the one who insists that the jury be present during these questions.

BY THE ACCUSED:

Yes.

BY THE COURT:

You're the one who insists on raising all of this. But right now all you're doing is talking a mile a minute from some notes that you have in front of you for the purposes of examining the witness, because the witness consulted the notes.

BY THE ACCUSED:

One second.

BY THE COURT:

That's all.

BY THE ACCUSED:

One second.

BY THE COURT:

Now...

BY THE ACCUSED:

You asked me to explain the pertinence of my question. I'm explaining that.

BY THE COURT:

Yea, I asked you to explain the pertinence of your question. I didn't ask you to jump on to a soapbox and argue the case. And...

BY THE ACCUSED:

I'm not arguing the case.

BY THE COURT:

Well...

BY THE ACCUSED:

I'm explaining the pertinence. So would you allow me to explain to the best of my ability.

BY THE COURT:

I have heard sufficient.

BY THE ACCUSED:

Well, you didn't hear the sufficient.

BY THE COURT:

I have heard sufficient to conclude...

BY THE ACCUSED:

I haven't finished yet.

BY THE COURT:

I have heard sufficient to conclude that the question of your exchange with Mr. Cheff, concerning the issuance of a gun permit, and who had the duty to contact Concordia University, and whose obligation it was to obtain either from Concordia, a letter saying why they opposed the issuance of the carrying permit, or why they didn't want you to have one. I've had enough to conclude that that has nothing to do with the case. So if you wish to move on to another subject with Mr. Cheff, move on to another subject, but the question of who was obliged to do what and when, as far as the permit is concerned, is terminated. And if you come back to it, through that door you go. So move on to another question.

BY THE ACCUSED:

All right.

Q. Did you... did you or didn't you tell to Mr. Freedman that employer's signature is not obligatory?

A. We never told that, because that's one part of the... that's the reason why you send the form, to have the side where the people work, to see what kind of people there are on the job. And we need that form to be signed.

Q. So you never said it to Mr. Freedman?

A. No.

Q. Okay. Because yesterday Mr. Freedman testified that you did.

A. He may have said it, but I...

BY THE COURT:

Mr. Fabrikant, that is not proper examination of the witness.

BY THE ACCUSED:

Well, I can ask him...

BY THE COURT:

That is something... no, that's something you may raise when we get to the stage of argument. But it's not something you may raise simply like that in your examination of the witness.

BY THE ACCUSED:

Well, it is written in black and white in MacWilliams, that I cannot question if such and such witness said so, if this is so.

BY THE COURT:

What... the way you did it is a misinterpretation of what is written in MacWilliams. Move on to your next question.

BY THE ACCUSED:

Well, I have the right to ask him explicitly to confirm or to deny something which was previously...

BY THE COURT:

Move on, move on to the next question.

BY THE ACCUSED:

Q. Yeah. So you never said it to Mr. Freedman?

A. Well, listen, I cannot explain every word, every period that we spoke there. But the point is why the standard of the

Permit Section, the letter of the employer is needed. As to know if I've told him or not, that I cannot recall, because we're talking about a conversation that happened last year.

Q. Uh, huh. All right.

A. So as to know if I've put the dot at a good place, I don't know.

Q. All right. So the question whether I already have the gun, neither you raised it, nor Mr. Freedman asked you about it. Correct?

A. I said I didn't recall if I told him.

Q. Right. Isn't it important part? If someone says that someone threatened...

BY THE COURT:

Would you stop arguing with the witness. The witness has said now three times, I do not recall whether I told him or not.

Okay?

BY THE ACCUSED:

Q. All right. When you write notes of your conversation with Mr. Freedman, aren't you supposed to write the essential part of your conversation?

a. The essential part is on there.

Q. All right. So the information, whether I do or don't have a gun at that time, is it essential, or it is not essential from your point of view?

A. I considered at that time that it was not essential.

Q. Despite the fact that you heard that I allegedly threatened a lot of people, you still consider this non-essential?

A. Like I told you, I just answered to that there.

Q. All right. Now, on June twenty-sixth (26th), you received a call from the person you wiped out, name, which told you, with reference to someone at the University... well, maybe you describe what you wiped out.

A. You ask me a question, I answer.

Q. Sorry?

A. You ask a question. The question I'll answer.

Q. Oh. The question is, what were you told on June twenty-sixth (26th)?

A. What I'm told on June twenty-sixth (26th), it's...

BY THE COURT:

No, just a second. You have the notes. There's been no testimony on the question of June twenty-sixth (26th), apart from a reference you've made to it. You formulate questions. And what were you told on June twenty-sixth (26th) is a lazy way to do it. Do it the proper way.

BY THE ACCUSED:

Well, it is proper.

BY THE COURT:

No, it's not proper. Reformulate your question.

BY THE ACCUSED:

Q. Well, did you have any conversation with respect to myself with anyone after June twenty-sixth (26th), and what was the nearest conversation?

A. On June twenty-sixth (26th) a person...

Q. Sorry, after June twenty-first (21st).

A. On June twenty-sixth (26th) a person called me to speak about you.

Q. Yes, what about that person?

A. Well, God knows who.

Q. Sorry?

A. God knows who.

Q. God knows who. You...

BY THE COURT:

It was an officer of the...

A. Yeah, it was a police officer...

Q. It was a police officer of the S.Q.

A. ... from our department.

Q. Yes.

BY THE ACCUSED:

Q. Okay. Was this call because you asked this officer to do some investigation or it was an independent call?

A. It was an independent call.

Q. An independent call. All right. Yes. What was this call about?

A. The person told me that you had permission from one of his contacts saying that you were threatening your students.

Q. All right.

A. You were showing them a request for a carrying permit.

Q. All right. What was this informant? It was one of the students?

A. He didn't tell me. Because since he was a police officer, I didn't have to ask him where the information... I trusted him.

Q. Okay. So you got information that I was threatening my students. And how I was threatening, that I would kill them, that I would shoot them, that I would... what would I do to them?

A. As from that part I asked him to contact his informer and see if we could meet him.

Q. Okay. Was there any dates mentioned as to when did I threaten students? What students? Any details?

A. The main point was for him to contact his informer to see if they were ready to meet us and give us the information.

Q. Well, did you ask any details, date, when, how? You are a policeman, aren't you?

A. Sure, I'm a police officer.

Q. Did you ask those questions?

A. No, because what he told me there. He said that he was going to make an investigation to see if he was able to find some people who were ready to come and see us and testify about some facts.

Q. But this particular case, you didn't have date, circumstances, anything. So you didn't bother to ask when did it happen. Did you?

A. Under any conversation, he spoke to me saying that you threatened your students and you were showing them your request for the, the request for carrying permit.

Q. All right.

A. As for myself...

Q. It was during, during lecture?

A. ... as for myself, I asked him to find people who were willing to come and give us this information.

Q. Okay.

A. As to have dates, things like that, if people don't want to talk, it's no good. You have to have a proper person who would come and give us proper information.

Q. Okay. Was it, was it during the lecture that I did that?

A. Maybe I didn't say, I didn't mind, because that was not the point.

Q. Well, so you didn't ask anything at all as to the details when at least it has happened, or it happened everyday. What was that? How did I threaten students? What? Their lives, what?

BY THE COURT:

I'm going to interrupt you here. I've told you, ladies and

gentlemen, on a number of occasions that I would have something to say about hearsay. I explained to you generally what hearsay was in the course of my introductory comments at the beginning of the trial. And I've reiterated on a number of occasions that evidence, certain evidence that you heard adds up to, or constitutes hearsay, and I've said to you that it's evidence one should be very careful of. Because, of course, what you're dealing with here is exactly that, an informant tells Mr. Cheff... I'm sorry, a police officer tells Mr. Cheff that an informant told him that certain certain students had told somebody else.

I don't know if you, if any of you remember in your youth coming into contact with a little poem that came out of A.A. Millins, when we were very young. But it starts"

"James, James Morrison, Morrison,
Weatherby, George Duprie took good care
of his mother...."

And it goes on. And a little further on in that poem there's a line:

"King John somebody told me, said to
amend in you. But if people will go down
into the end of the town, what can anyone
do?"

Well, that is the best illustration of hearsay that you can possibly have. The only source of what King John said is King John. And you must be very, very careful not to draw any conclusion as to the veracity of what was supposedly reported to Mr. Cheff insofar as it might relate to any questions in this case. Go ahead.

BY THE ACCUSED:

Well, the main veracity of that is that... not the fact that I threatened anyone...

BY THE COURT:

I didn't ask you to give your direction. You, you just go ahead with your questions.

BY THE ACCUSED:

All right.

Q. Okay. So you asked them whether they would be prepared to meet with you and give you details? Right? What was the answer?

A. Well, precise information, place, hour, things like that, from those people.

Q. All right. Did you get this hour and date and place?

A. No.

Q. No.

A. No, because as for...

Q. Why not?

A. Because as for that part I was off the file because we have transmitted a request of investigation on the subject. So, as for my part, my job was done.

Q. Isn't it fantastic. And that's the end of it. And there is no way I can establish that this is a lie. Yes. All right. When were you transferred from that file?

A. I didn't say I was transferred from that file. I said the part I had to do was done.

Q. Which part which had to be done was done? What do you mean exactly? Which part was done? To get a hearsay and without clarification and specification? That's what the part is done, and you feel that your police job is finished on that? Right?

A. I don't need any judgment from you. The only thing I said, it

was because you were transferred to me because I speak English. Okay?

Q. All right.

A. So I've done the job. I contacted people to have information. I have made some arrangement to have some people to be met.

Q. Uh, huh.

A. As from that part, my job was done.

Q. All right.

A. Other policemen were carrying on the rest.

Q. All right. Who was carrying the rest? I hope this is not a secret.

A. As for myself I transferred a request of an investigation. I don't know who ended up with your investigation.

Q. Isn't that fantastic. Who did you give my file to?

A. The secretary who typed it.

Q. And you have no idea where the secretary transferred it to?

A. She transferred it to the corporal. But, anyway, that's administration, and that's not of your business.

Q. Oh, you bet it is mine. Now, could you tell me who is the head of your department? I believe head of the department would know...

BY THE COURT:

We are not going to get into what happened to the file after it was transferred for investigation. It is not pertinent to these proceedings, and we're not getting into it. Now, move on to something else.

BY THE ACCUSED:

Well, it is pertinent.

Q. Who is the head of your department?

BY THE COURT:

Excuse me. If you argue with me one more time, out you go. It is not pertinent. Move on to something else, right now.

BY THE ACCUSED:

Okay.

Q. When you heard that Fabrikant threatened, first of all, on June twenty-third (23rd) you heard that Fabrikant threatened a number of people. Then on June twenty-sixth (26th), he allegedly heard that I threatened students, waving a firearm permit. Did you check that in June there are no classes, and I couldn't possibly wave it in front of anyone? Such a little detail came to your mind?

A. The threat that you supposedly made to the students, were made through the school period.

Q. Okay. But...

A. That was not established on the twenty-fifth (25th), let's say, of June. That was established through a certain period of time.

Q. Yeah. But the gun permit I get only on June twentieth (20th). Do you recall that?

A. No, the form for carrying permit you had it for a while. As to know how long, I don't know.

Q. Well, don't you recall that I said I never received it. And I received it from you on June twentieth (20th)?

A. No, sir.

Q. Do you recall your testimony?

A. No. I didn't say that. I said that the form that you didn't receive were the recommendation forms.

Q. Yes.

A. The form to request a carrying permit, you had it for a while. That's one thing I didn't told you before. The only thing I spoke to you before was your recommendation that you didn't

receive supposedly. That was sent to you twice.

Q. So which form then I waved? So it was not this...

A. That was the request for a carrying permit that you waved in front of the students.

Q. Well, this request I received on June twentieth (20th) from you. Didn't I?

A. No, sir. No, sir. The form that you received on June twenty-third (23rd) was five forms for requests of... demande de recommandation.... application for recommendation. Those are the forms that I gave you on June twenty-third (23rd).

Q. Okay. And which did I wave them?

A. You wave at them the request for a carrying permit, which was probably sent on March the third (3rd) with the application for recommendation that you say you didn't receive it.

Q. Well, but since I didn't receive it, how could I wave it?

A. That's a point only you can answer because we sent you those forms.

Q. All right.

A. And you sent up back the paper for a request for carrying permit.

Q. Say it again. I didn't understand the last part of it.

A. I said that we had received the form for the carrying permit.

Q. Yes.

A. But we didn't receive the recommendation forms.

Q. Would you please demonstrate to me one and the other. I do not understand what you are talking about.

A. Okay. As for that form, it's a request for carrying permit at... restricted weapon, which form that we sent to... that you filled on the, February seven (7). After that we sent you the recommendation forms.

Q. Okay. And which one...

A. And that is that form that you wave in front of the students.

Q. Okay. May I see the form which I waved? Can I see it...

BY THE COURT:

Would you detach that form from your file, please? Pass that to Mr. Belleau, the...

BY THE ACCUSED:

Q. No. So this form I gave to you, didn't I? I didn't have any copy of that. I just gave it to you. Right?

BY THE COURT:

Would you stop arguing with the witness, Mr. Fabrikant.

A. You didn't give me that form.

BY THE ACCUSED:

Q. No, I mean to your office. I gave it to your office, this form, and I didn't keep any copy of it. Did I? You didn't give me a copy back, did you?

A. I don't know.

Q. Well, usually when person submits this form...

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

... do you give this person a copy back?

A. Sir, I don't know who glued the stamp on the envelope. I don't know who filled out the envelope and sent it to you. The only thing I know is we received that form at our office which you filled out on February the second (2nd).

Q. All right. But when I give... what are the rules? When I give you this form, do you give me back a copy of it?

A. No, sir. You could have made a photocopy.

Q. No. So how could I possibly wave it if I gave it to you?

BY THE COURT:

He said to you you could have made a photocopy of it. That's what he just said. Now, this whole line of questioning is a total waste of time. Would you move to something else.

BY THE ACCUSED:

It's not a waste of time.

BY THE COURT:

I am ordering you to move to something else. I've had enough of this.

Mr. Belleau, would you pass that back.

BY THE ACCUSED:

Q. All right, now...

BY THE COURT:

Now, I'm serious. You are off this subject and you're on to something else, otherwise this is ending.

BY THE ACCUSED:

I'm to something else. Definitely.

BY THE COURT:

Fine.

BY THE ACCUSED:

Q. Did you dispatch a policeman immediately to seize the gun when you heard that I threatened, not just several people in the University, but I'm regularly threatening students? Didn't you dispatch couple of policemen immediately to seize my gun?

A. As for that part I cannot say because I'm not the one who was in charge of that thing.

Q. All right. Did you...

BY THE COURT:

He means pursuant to your conversation with...

A. We... as for myself I made a request to have an investigation done.

BY THE ACCUSED:

Q. Well, I'm asking now that question. When you received reliable information from your internal sources that I am threatening regularly... do I understand correct what is written here, regularly threatening students? Now, did you or didn't you dispatch couple of policemen to seize my gun immediately?

A. First, when we make any request for investigation, what we do is we check if those information are correct, not to take off any right from the people, okay, due to the fact that it was more or less certain we didn't have the grounds to confiscate the weapon right away. But that thing is a matter of a few days there. What happened during the weekend. I don't recall what date the twenty-three (23) or the twenty-six (26) was last year, if it was a Friday, or whatever. But I didn't send right away people to confiscate your gun.

Q. What, you didn't believe the information that you received? You found it unreliable?

A. As for that part I don't have to answer because it's a stupid question.

Q. Well, I would like to direct the witness not to comment on the stupidity of my question.

A. That's a personal opinion I got.

BY THE COURT:

Mr. Cheff...

BY THE ACCUSED:

Well, you better keep it to yourself.

BY THE COURT:

The witness has told you what he did.

BY THE ACCUSED:

Well...

BY THE COURT:

And he said that he did not...

BY THE ACCUSED:

Well, I asked him whether he...

BY THE COURT:

He has said he did not consider he had sufficient grounds at that point in time to confiscate your gun, and he asked for an investigation. Now, that's the end of it. Move on.

BY THE ACCUSED:

I asked a different question. That was not the answer to my question. My question was: Did he consider information received reliable.

BY THE COURT:

The question of his opinion is...

BY THE ACCUSED:

It's not an opinion.

BY THE COURT:

Okay. You're right. You're right.

BY THE ACCUSED:

It's an important question.

BY THE COURT:

You're right, the question is permissible. Go ahead, answer the question.

A. Okay. As for the information, like I say, we're registered by law, ourselves, so we cannot just go like that if we don't have some grounds to confiscate a weapon. Because after confiscation, we have to present them in Court and we have to have sufficient grounds.

BY THE ACCUSED:

He didn't answer my question.

Q. Did you or didn't you consider information reliable? That's all my question.

A. We had reliable... those information were reliable enough so that we start an investigation. But to confiscate the weapon right away, that's one thing we didn't.

Q. Well, so if you find reliable information that I regularly threatened students, and information is reliable and you feel that you need to make some investigation rather than immediately confiscate the weapon, isn't it strange?

BY THE COURT:

No, you're now... no, don't answer that question. You're now moving from the sublime to the ridiculous. You are.

BY THE ACCUSED:

It is ridiculous?

BY THE COURT:

Yes, it is ridiculous. He's told you that, we felt that the information was solid enough that we were required to undertake an investigation, and that's what we did. There you are. You have your answer, and that is that. Now, move on to something else.

BY THE ACCUSED:

All right.

Q. Who did the investigation?

A. Who did the investigation? I'm not sure enough to give a name there.

Q. Well, you don't...

A. I know that's an investigator from our department, but to tell you exactly who it was there, I don't recall, because at that time my duty were in another section of the department. Like

I've told you before, to me the investigation were given. I didn't control it, and that was not my job.

BY THE COURT:

I already ruled that the question of the investigation is not pertinent. So you may not move any further on that ground.

BY THE ACCUSED:

Okay.

Q. May I just ask who is the head of your department?

A. Yeah, for sure. Inspecteur Brosseau, Andr, Brosseau.

Q. How do you spell his name?

A. B-r-o-s-s-e-a-u.

Q. Not that fast. D?

A. B like bravo, R like Romeo, Oscar, sierra, sierra, echo alpha, uniform.

Q. Brosseau?

A. That's it.

Q. B-r-o-s-s-e-a-u. Correct?

A. Yes, sir.

Q. All right. So, when did you take vacation that year?

A. That's not of your business.

BY THE COURT:

No, answer the question. Answer the question.

A. I don't recall. I know that it was in July and August... but the exact date I don't recall.

BY THE ACCUSED:

Q. So it started in July and it ended in August?

A. Yes. If I recall good, yes.

Q. Sorry?

A. If my recall is good, yes.

Q. Okay. Do you recall that you on your own called Mr. Freedman some time after June twenty-third (23rd)?

A. Uh, huh.

Q. Right. Do you have note of that call?

A. No.

Q. How come you didn't make any notes?

A. Because that was a reminder of him to... not to forget me to... about the people that we had to contact.

Q. All right. Do you remember the date of that call?

A. No. I know that it was about a week or so after.

Q. A week or so after. So it was either June thirtieth (30th)...

A. More or less a few days there.

Q. ... or July. Right?

A. It might have been so, yes.

Q. All right. Now, would you kindly reconcile this with your statement that after June twenty-sixth (26th), after you received your call, you were no longer in charge of the case?

A. No. But it's because I spoke to him and I wanted to see where it was going on that night because I was the person who spoke to Mr. Freedman.

Q. But you said you were no longer in case. You were no longer involved, so how come you called him on June thirtieth (30th)?

A. Because, like I said, I had spoke to him and I wanted to check... because even if sometime the file is in the hands of someone else, I like to check with the person who I spoke, to see what are the results.

Q. So that is fantastic. Then maybe you be also so kind to check whether the meeting was made, and whether the persons who claimed that I threatened students also are contacted and what are those results. Did you?

A. That's a question or a statement?

Q. It is a question. Did you find out that certain arrangements

were made with people who claimed that I threatened students?
If you were kind enough, though being out of file, to call
Freedman to remind him, then you surely did investigate or
find out whether there was a meeting with those people who I
allegedly threatened, students?

A. The thing I've said is I called Mr. Freedman to see if there
were any new report that came in that... after a phone call.

Q. You are not answering my question.

A. Well, if you could put it more clearly, maybe I could answer.

Q. Well, I believe it is more than clear.

A. Well, could you repeat it again.

Q. Sure I can. I can repeat it as many times as you want.
Since, as you claim, you were out of file after June twenty-
sixth (26th), nevertheless you found it necessary to call
Freedman, then did you find it necessary to find out the
results of a more important issue, as to did I, or didn't I,
threaten students, those students have been identified, and so
on and so forth.

BY THE COURT:

Okay.

BY THE ACCUSED:

Did you make that inquiry?

BY THE COURT:

Before you answer that question. I told you that the police
investigation into what took place, if it was carried out or
whatever, is not pertinent. Okay? So you may not ask that
question because there is no point attempting to have an
answer to it. It is not pertinent and that is that. Move on
to something else.

BY THE ACCUSED:

Well, the witness is clearly in total contradiction with
himself.

BY THE COURT:

Move on.

BY THE ACCUSED:

So it is...

BY THE COURT:

Move on to something else.

BY THE ACCUSED:

I'm allowed to point out contradiction of this witness.

BY THE COURT:

Move on to something else.

BY THE ACCUSED:

All right.

Q. During that conversation, did you inform Mr. Freedman that you
have information of your own, namely, that I have threatened
students?

A. Maybe so, I don't recall. Because, like I said, the phone to
Mr. Freedman was mostly a phone call, let's say, to know if
there is anything that had come up, and also some P.R. phone
to say, listen, we're taking care of that matter, and we're
taking it seriously. What on your side are you doing?

Q. And you didn't even find it necessary... you didn't see it as
an important information that I allegedly threatened students?

A. We took it seriously because I've asked to have an
investigation made about you.

Q. All right. Then did you, or didn't you inform... even with
the serious letter... did you or didn't you inform Mr.
Freedman about it?

BY THE COURT:

He has told you he does not recall informing Freedman.

BY THE ACCUSED:

I remember that.

BY THE COURT:

Well, fine, that's his answer.

You called him.

BY THE ACCUSED:

All right.

Q. Did... do you have in your file any note of Mr. Freedman calling the police somewhere in July thirtieth (30th) or around that?

A. As for the second phone call I made to Mr. Freedman, I didn't write anything on it because there was nothing new about it.

Q. You're not listening to my question. I am finished with that call. Now I'm talking about something else. In July or early August did you, or didn't you, or maybe not you personally, but your department, receive a phone call from Mr. Freedman? Is there any trace of this phone call in the documents which you have?

A. As for my personal... as for myself, I don't have any information about it.

Q. Okay. Could you check your documents, maybe there is something there.

A. I know that there is a letter here from a Mrs. Susan Heap saying that she contacted one of our police officers from the department about your request.

Q. Okay. Do you know who she contacted?

A. Mrs. Janine Soucy.

Q. Who?

A. Janine Soucy.

Q. Soucy, yes. And?

A. And what?

Q. Well, there is any trace of the phone call of Mr. Freedman?

A. It doesn't say about Mr. Freedman as such.

Q. Uh, huh.

A. It only says that the undersigned is the attorney of the association from the professors of the University of Concordia.

Q. Uh, huh.

A. So I don't know on the behalf of who she is talking to, whatever.

BY THE COURT:

The question you were asked is whether there is a minute of the... indicating that a call was received from Mr. Freedman. That's all the question...

A. Not in this file...

Q. Fine.

BY THE ACCUSED:

Q. Okay. Who is Janine Soucy? What is her position in the department? Was she at the time in charge of the file?

A. No, she's an analyst to the firearm certificate... certificat d'acquisition d'arme ... feu. The FAC, firearm acquisition certificate.

Q. All right. Was she in charge of the file at that time?

A. No, she take care about the emission of the FAC, firearm acquisition certificate.

Q. All right. Could you explain to me why this, for example, particular mode of this here, wasn't given to me according to Access to Information Act?

A. I don't know.

Q. But it was supposed to be given to me. Right?

BY THE COURT:

No. The witness said, I don't know. What the obligations of anyone are under the Access of Information Act is certainly not for the witness to decide. Is it?

BY THE ACCUSED:

Well, how do you know? Maybe he can answer.

BY THE COURT:

I told you, it's not for him, in any event to proffer an opinion as to what one is entitled to under the Access to Information Act.

BY THE ACCUSED:

Why... well, if he knows the answer, what is wrong with that? Because I asked their department according to Access to Information Act to provide me with all the material which they have.

BY THE COURT:

You have the witness' answer. He does not know whether you were provided with that or not.

BY THE ACCUSED:

No, that was not my question. That was not...

BY THE COURT:

No. And your question was, were you entitled to that under the Access to Information Act, and that's a question the witness is not qualified to answer. And he will not answer.

BY THE ACCUSED:

How do you know? Maybe witness is qualified.

BY THE COURT:

Did you hear me?

BY THE ACCUSED:

Yes.

BY THE COURT:

Fine. Then that's the end of it. Move on to something else.

BY THE ACCUSED:

Can you read his mind...

BY THE COURT:

Move on to something else.

BY THE ACCUSED:

... that he's not qualified to answer? Okay.

Q. Do you have in your file my request for Access to Information?

A. Yes, we have it in your file.

Q. All right. Do you have a copy of all what was sent to me, also?

A. No, sir. I don't know.

Q. All right. Let us deposit this request then.

A. Pardon?

Q. Can we deposit this request?

BY THE COURT:

For what purpose?

BY THE ACCUSED:

Well, that I requested the information.

BY THE COURT:

Not at all. It's not pertinent.

BY THE ACCUSED:

It is pertinent, because this stuff is definitely a latest fabrication. There is nothing there. There was no way he could have possibly told them that I threatened my students.

BY THE COURT:

Your request to deposit your...

BY THE ACCUSED:

And they never provided me with any of those.

BY THE COURT:

Your request is refused. The request for Access to

Information will not be filed.

BY THE ACCUSED:

On what grounds?

BY THE COURT:

It's not pertinent.

BY THE ACCUSED:

It is not pertinent. All right. Let me explain the pertinence.

BY THE COURT:

You just explained it. You said they fabricated this note to the file, of the twentieth (20th), the twenty-third (23rd), and the twenty-sixth (26th). That's what you said.

BY THE ACCUSED:

Not only that. Not only that. This Access to Information Act form, which I filled in and sent to them was answered and I believe that there is not just this one. I believe there is a lot of material which was... this, I believe, is a fabrication and again, if I request an expertise as to when it was written, then it would be refused. Correct? Can I deposit the note, original, and ask...

BY THE COURT:

No, you cannot.

BY THE ACCUSED:

... expertise...

BY THE COURT:

No, you cannot.

BY THE ACCUSED:

... as to when it was written?

BY THE COURT:

No, you cannot. And you cannot deposit your request pursuant to the Access to Information Act.

BY THE ACCUSED:

Q. All right. So on June thirtieth (30th), you were still worried about the situation with my gun. Did you make any inquiry as to has this gun been seized from me, or anything at all? Did you follow anything, what was going in your department?

A. No, because the corporal who was in charge of the investigation is a person who is responsible and he's assuming very well his job, so I didn't have to check behind to see if he was doing his job.

Q. Okay. Corporal who? Could you give me the name of the corporal?

BY THE COURT:

I said this was not... this is the investigation that you're talking about? This is the investigation? It is not...

BY THE ACCUSED:

I asked who is the corporal.

BY THE COURT:

It is not pertinent, and you may not ask that question. And you continue to contravene rulings that are made systematically all morning. You may not have that name. Now, move on to another subject or the examination will end.

BY THE ACCUSED:

All right.

Q. What was... is there any notes there as to conversation between Soucy and Miss Heap?

A. That's not up to me to tell you, because I can assume my own notes, but not the notes of the others.

Q. Well, are there notes there? Because it would save time rather than calling Mrs. Soucy to testify.

A. To save time to the Court, there is no note.

BY THE COURT:

Thank you.

A. You're welcome.

BY THE ACCUSED:

Q. All right. To the best of your knowledge, was Mrs. Soucy informed that I allegedly threatened my students?

A. She might have been, but that was not part of her job. Her job is concerning the FAC, the firearm acquisition certificate.

Q. Uh, huh. All right. But you are not sure whether she was or she wasn't?

A. She might have been. I don't know. But like I told you, that was not part of her job. So, she wasn't concerned about that.

Q. All right. Now, was she, to the best of your knowledge, informed that I allegedly threatened students?

BY THE COURT:

You already asked that question, and the witness said she may have been, although that is not her job.

BY THE ACCUSED:

No, I asked him now Mrs. Heap, was she informed by the police to the best of his knowledge.

A. Advised of what, that there was an investigation on you?

BY THE COURT:

No, that he allegedly threatened students.

A. That is a person who knows by her job, so she must know, so... And as for that part, I cannot tell, because (inaudible) in the file.

BY THE ACCUSED:

Q. Now, do I understand correct that the informant had all the information, the names of the students, the date, who was threatened, how it was threatened...

BY THE COURT:

Listen, I told you the whole question of that investigation is irrelevant to these proceedings.

BY THE ACCUSED:

I'm not talking now about investigation. I am talking about his call that he received on June twenty-sixth (26th).

BY THE COURT:

No, that is not what you... that is not the way you prefaced your question.

BY THE ACCUSED:

The question was perfectly...

BY THE COURT:

Would you rephrase your question and if that question...

BY THE ACCUSED:

I don't wish to rephrase it. It was absolutely correct.

BY THE COURT:

What was your question?

BY THE ACCUSED:

The question was that the informant, according to the source he got, this informant had all the details as to how was present, when, how and so on and so forth. So I don't need to rephrase it. The question is perfectly correct.

A. I didn't say that the informer had all the dates and everything and so on and so on. I told you that the police officer said that there was an informer who told him that you had made threats to the people. He didn't spoke about any date, time, place. That's what I said.

Q. Yeah. But was he understanding that all this information was

available?

A. Yeah. Sure. It was probably available with the good person.

Q. But was he understanding that the information was available?

A. I just answered to you that.

Q. I mean the officer who called you, was he understanding that its officer had in his or her possession all this pertinent information?

A. Maybe, I don't know. Because I...

Q. You didn't bother to ask?

A. Like I told you before, I've asked him to contact persons to see if they were willing to come and give me those information.

Q. Oh, to come to you?

A. To our department.

Q. Okay. To come to who?

A. Sir, you just...

BY THE COURT:

Listen, I have ruled that the question of the investigation that was carried out is irrelevant. This is the fourth time you contravene me. This examination is terminated.

Have you any questions to put to Mr. Cheff?

BY THE CROWN:

Yes, My Lord.

BY THE COURT:

Fine. Put them. Sit down.

CROSS-EXAMINATION BY Me JEAN LECOURS

ATTORNEY FOR THE CROWN:

Q. Constable Cheff...

A. Cheff, yes.

Q. Cheff, pardon me. Could you explain the various steps in the acquisition and use of firearms?

A. Okay. First, the first procedure that has to be done is a person has to make a request to have a firearm acquisition certificate, they are commonly called FAC. When we receive the request, what we make is, we make a check to the information system to see if that person has been convicted or a suspect of any crime with violence or any other crime that might include the use of firearm. And if everything is okay, what we do is we issue the FAC in question. After that, that permits a person to, let's say, buy a weapon such as a rifle, a shotgun, a thing like that. If a person wants to buy a restricted weapon, then she has to make a request for the... the form is a request to register a restricted weapon. That goes through a certain process. We do some more check up there. We ask some more information. We ask the person to fill out some forms, like to a person who would be willing to sign for them, one or two. And if all the standards are answered we issue that registration. We send it to the RCMP which after that, they send the registration forms to the person, and that person after that come at the office and make a request to have a convey permit that which allows that person to take the weapon in question from the gunsmith to a dwelling house or the place where the weapon is registered.

Q. And then what is the further step?

A. The further step, if the person wants to use her registered weapon for the purpose of target shooting, then she will make a request to our department, a request to have a carrying permit for a restricted weapon. That goes through another series of recommendation and things like that. And if there is any doubt about the person that may have that carrying permit, we open an investigation to see if the person would be

allowed to have such a permit. And if that permit is issued to that person, it is issued for one year, for the purpose it has been requested for.

Q. Okay. Did the accused fill an application to register a restricted weapon in nineteen ninety (1990)?

A. Yes, on September the seventh (7th), nineteen ninety (1990), Mr. Fabrikant requested the registration of a "Beretta", model 1934, serial No. C83340.

Q. Okay. What was the alleged motive to get the restricted weapon?

A. The alleged motive was protection of the life.

Q. Isn't it... aren't they the usual motives either protection of life, or target shooting, or being a collector of firearms, the most frequently, those reasons alleged?

A. Yes, the usual motives alleged is like you said, target practice, protection of life, collection. Yes.

Q. Okay. And at that time his motive was protection of life. Right?

A. Yes.

Q. Isn't it correct that he was refused the permission to acquire that restricted weapon under this motive?

A. Yes, it was refused because... the reason was...

BY THE ACCUSED:

Just for an experiment. If I ask in this case, what is the pertinence?

A. The reason...

Q. What is the purpose of this series of questions? Let Crown explain what is the pertinence of this line of questioning.

BY THE CROWN:

It is very pertinent, My Lord.

BY THE ACCUSED:

All right. Explain.

BY THE CROWN:

If you want me to give the explanation in front of the jury.

It's very pertinent for first degree murder. My point...

BY THE COURT:

I don't... I don't require your explanation.

BY THE CROWN:

Okay.

BY THE COURT:

The objection is overruled. Go ahead.

BY THE CROWN:

Q. Okay.

A. Okay. So as for the request of Mr. Fabrikant for the motive of protection of life, it's because we, by the explanation and the reason that Mr. Fabrikant gave us, it was not a sufficient ground to issue such a permit.

Q. Isn't it correct that he came back in nineteen ninety-two (1992), in February, nineteen ninety-two (1992), with a second request, a second application, with a different firearm, a MEB pistol calibre 635.

A. If you permit me to find the... Okay. We're speaking about a MEB, yes.

Q. Okay.

A. Model 125, serial No. 162823... the thing isn't too good, because they seemed to have a problem with the photocopies. And it was on May... sorry, February seven (7), nineteen ninety-two (1992).

Q. Okay. And coming back to the first request, the certificate was never issued. So it means that the gun always stayed at

the gunsmith, if you look at the steps you were just describing? For the Beretta, we mean.

A. For the Beretta, Mr. Fabrikant never came in possession of the weapon because the permission to have that gun issued to his name was never issued. So the weapon stayed at the gunsmith.

Q. Okay. And isn't it correct that he phoned you to inquire about the refusal? And on the phone when he was told that that was not a sufficient, he told you then he wanted to be a collector of weapons?

A. There is a note here... the phone call wasn't made to me, but as from the note there, it said that...

BY THE COURT:

Just a second. If the phone call was not made to him...

BY THE CROWN:

It's in the record.

BY THE COURT:

It doesn't matter. If he didn't receive the phone call, he can't testify as to the contents of what took place in the conversation.

BY THE CROWN:

Mr. Fabrikant has been doing that for months, My Lord.

BY THE COURT:

That may be, but...

BY THE CROWN:

Okay.

Q. And then coming back to the MEB pistol, what was the reason alleged to get that pistol?

A. The alleged motive was for target shooting.

Q. Okay. And was, indeed, his application to register the restricted weapon granted?

A. Yes. The weapon was accorded... well, the registration was accorded to him because Mr. Fabrikant had brought at the same time a request for the carrying permit.

Q. And at this time you did not hear anything about this individual, it was like a number...

A. No, we didn't...

Q. ... thousands of people?

A. We didn't have any information at that time saying that there were any problems with...

Q. There was no concern from anybody...

A. No, nothing at all.

Q. Okay. And then you said the application to register... the certificate of registration was issued on what date?

A. On that part... the point is that the certificate is issued by the RCMP. What we do as for us is on the eighteen (18)... ninety-two o-two eighteen (92-02-18), is that the person, since Mr. Fabrikant filled out all the standards requested, we have... nous avons contact, la GRC par courrier... Okay. We have contacted the RCMP by mail saying that according to the request of Mr. Fabrikant, there were no problems issuing a certificate.

Q. Okay. Issuing the certificate, still, if you follow the steps you just described, does not entitle the person to have the gun yet. Right?

A. No. The...

Q. The next step, you said, is to a convey permit from the gunsmith to the house of the person. Right?

A. That's correct. For the person to take possession of the weapon and bring it...

Q. Okay. What you call the permit to convey a restricted weapon...

A. Uh, huh.

Q. ... in accordance with this gun, when was it issued, if ever it was issued?

A. The permit to convey was issued for a period from ninety-two o-two twenty-fifth (92-02-25) to ninety-two o-three twenty-fifth (92-03-25).

Q. Okay. If the assume that the person who went to the gunsmith paid for the gun and brought the gun home during that period, does it entitle the person to take the gun out of his or her home?

A. That does not for any reason at all entitle the person to take that weapon out of his house, in that case, which was registered there.

Q. Okay. And what the house of the... of the request...

A. The address where the gun was... would have to be kept at all times, was 5525 Trent, apartment 504, Montreal.

Q. Okay. So it means that at that point the person has to keep the gun in the home?

A. Yeah. The person has to keep the gun in his home at all times and he doesn't have the right for any reason at all to take out the weapon...

Q. Okay. Then we come to the next step you just described, the carrying permit. What were the formalities in this case, in this file, about the carrying permit?

A. Okay. As for the carrying permit, the person, what he has to do is, he has to fill out a form that, the request for a carrying permit, the issuing of a carrying permit for a restricted weapon, which Mr. Fabrikant filled out on ninety-two o-two o-seven (92-02-07), at the same time that he brought the registration for the MEB.

Q. Okay. And then was there a further formality before issuing that permit?

A. Okay. At the same time Mr. Fabrikant brought with the form a copy of his membership card, which we requested to prove that the person was really applying for target shooting.

Q. Yes.

A. Okay. So we received on the same day the registration form, the request for a carrying permit, and the membership card, which we took a photocopy of it.

Q. Okay.

A. After that what we asked Mr. Fabrikant to do is to fill out these recommendation forms, and also to go pass what they call in French, un cours d'initiation sportive aux armes de poing, issued by the Shooting... (Inaudible) Federation, which entitled the person to follow a course of... I don't recall if it's six or eight hours, showing how that weapon works and how to load it and the safety tips about it.

Q. At one point, did he tell you that he knew how to use weapons, because he was in the Soviet Army, or something like that?

A. He told us that he knew how to use a weapon on his first request, for the FAC... okay, for the FAC firearm acquisition certificate which was made on ninety o-six fifteen (90-06-15), where he said, I have had a complete training on duty in the Soviet Army.

Q. And was there a further formality asking for recommendation letters from various persons?

A. Okay. As for the recommendation for people, those came with the request for a carrying permit.

Q. Okay. And it included neighbours, friends, family, as well as employer. Right?

A. It included his wife, two neighbours, and a friend, or a

person that knew him well, and also his employer.

Q. Okay. And you just said that his employer refused to sign...

A. Yes.

Q. And during that period, and during your whole relationship with Mr. Fabrikant, could you characterize his attitude towards you and towards the S.Q. as harassing behaviour?

A. Well, as for myself, what I can say is that Mr. Fabrikant called a lot of times at the Permit Section, and at the times that I spoke to him, he was arrogant. Like I said before, he brought the motive of racism, because it was taking a while. And he also, sort of speaking, he was coming back, and coming back, and making some sort of remark, are you getting angry? I'm bugging you? Things like that.

Q. And is it standard for an applicant to make a request in accordance with the Access to Information Act?

A. Not usually, no.

Q. Okay. And did ever the employer's letter come into the file for this gun?

A. As for myself, that's a step that I cannot recall.

Q. So I do understand then that the carrying permit was not issued?

A. The carrying permit was never issued because we had never received the letter from the employer, and that the information that came in made us stop from having...

Q. So it means that on August the twenty-fourth (24th), nineteen ninety-two (1992), the applicant, Fabrikant, was not entitled to bring the gun either to Concordia or any other place out of his own home?

A. By the document that I have, Mr. Fabrikant didn't have the right at any time to take out the gun from his home.

Q. And if ever he used someone else's gun, does it mean also that he was not entitled to use them, to take them out and, as I said, to use them?

A. Okay. In the system here, like when the gun, a restricted weapon is registered to a person, the only person who has the right to have that gun somewhere else is the person who has the certificate made at his name.

Q. Even someone in your family, like your wife, she cannot use the gun?

A. No, because the gun had to be registered at that person, and she had to have a carrying permit for that purpose.

Q. Thank you. No further questions.

BY THE COURT:

Have you any questions to put to the witness arising out of the cross-examination... arising out of the cross-examination?

BY THE ACCUSED:

Well, I... I still would like, since he mentioned my letter to them... I would like it to be deposited. You see the problem is, whatever question Crown raises...

BY THE COURT:

I don't understand which letter you're talking about.

BY THE ACCUSED:

One second. Whatever question Crown raises, it's always pertinent. You never ask even question. Now, and I was sitting, and just sitting and enjoying that. He didn't find the whole examination... didn't point out anything at all which would be pertinent.

BY THE COURT:

I take it you have no questions to ask to the witness?

BY THE ACCUSED:

No. I do have. I do have questions to ask.

BY THE COURT:

Then would you ask your questions.

BY THE ACCUSED:

No. Now I'm...

BY THE COURT:

Would you ask your questions. This is the second time of asking.

BY THE ACCUSED:

All right. Well, first of all, since the... my letter to them concerning employer's attitude was mentioned, I again, since Crown mentioned it, and definitely Crown couldn't possibly mention something which is irrelevant. Right? So I would like it to be deposited.

BY THE COURT:

May I see that letter, please.

(REMARKS OFF THE RECORD BY ALL RE THE LETTER)

BY THE ACCUSED:

So you reverse your own decision. You said it is irrelevant. Now it is relevant.

BY THE COURT:

It's not relevant. It was brought up in the matter of cross-examination, as you say, and inasmuch as it was brought up in the course of the cross-examination, I'll let you produce it. That's all.

BY THE ACCUSED:

Well, I think logically, it would be not to allow the Crown to invoke it, if it is irrelevant.

BY THE COURT:

I didn't hear any objection from you from the questions put.

BY THE ACCUSED:

Well, you don't wait for objection when I'm asking questions. You object yourself. You are doing the work for the Crown when it is necessary.

BY THE COURT:

I'm not doing the work of the Crown, Mr. Fabrikant.

BY THE ACCUSED:

Well, at least you don't wait for any objection from...

BY THE COURT:

Have you any questions to put to the witness?

BY THE ACCUSED:

Yes, I do.

BY THE COURT:

Put them.

RE-EXAMINATION BY THE ACCUSED:

Yes. All right.

Q. Now, do we have any notes of yours that would say I was arrogant towards you?

A. Yes.

Q. All right. Could you produce them, please.

A. Well, they're personal notes.

Q. Well, I would like to see them. May I see them, please?

BY THE COURT:

Certainly.

I think we'll adjourn until two-fifteen (14:15).

Would you return Mr. Cheff his note, please.

BY THE ACCUSED:

Well, I would like to take a look at it.

(PV STATES LETTER DATED JUNE 25, '92 DEPOSITED, D-44)

BY THE COURT:

You'll get a chance to look at it later on.

(THE JUDGE LEAVE THE BENCH.

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

LUNCH ADJOURNMENT

(THE JUDGE TAKES THE BENCH)

(MEMBERS OF THE JURY TAKE THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

CLAUDE CHEFF

UNDER THE SAME OATH

BY THE COURT:

It will be a very short session. I got a phone call from Mr. Belleau, who is indisposed and has had to go home. And he hopes to be in shape tomorrow morning to be here. And in the circumstances, he hasn't missed five minutes of this since the beginning, so I will adjourn until tomorrow morning in the hope that he's in better condition tomorrow morning than he is today.

BY THE CROWN:

And I don't know if it will comfort Me Belleau, but Sergeant-Detective H,bert ate the same thing. He went home. He was sick.

BY THE COURT:

I see. Well, that's... I got a phone call from Mr. Belleau saying that's what had happened to him, and he... I thought he looked somewhat off-colour this morning. So we'll adjourn until tomorrow morning. I'm afraid you'll have to come back...

BY THE ACCUSED:

May I say something?

BY THE COURT:

No, I'm not really interested in hearing from you at all, Mr. Fabrikant. That's what I've decided to do.

BY THE ACCUSED:

Isn't it nice.

BY THE COURT:

I'm not interested in your input as to whether we postpone until tomorrow morning or not. We're postponing until tomorrow morning, and that is that. So we'll adjourn until tomorrow morning, nine-thirty (9:30).

Mr. Freedman, I wonder if you would kindly inform your witnesses that they will have to be back.

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,

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PROVINCE DE QUBEC (Chambre criminelle)

DISTRICT DE MONTRAL

CAUSE NO.: 500-01-017372-928

TAPE: PROCES - SUITE

PRSENT: L'HONORABLE JUGE 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 16 JUILLET 1993

FICHER: 2524

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THE JUDGE AND THE JURY ARE PRESENT
THE COURT :
Before we commence, just a word to the members of the jury. Mr. foreman, I haven't forgotten your note, and I think what I'll do at one point in one of the suspensions is probably ask you to come in, and we'll go over these various dates, you and I together here in Court. And there may be one or two explanations that I need to have as to the time, so we'll do that today.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this sixteenth (16th) day of the month of July, personally came and appeared:

CLAUDE CHEFF, born on the fifteenth (15th) of March, nineteen hundred and fifty-four (1954), police officer for the S-ret, du Qu, bec;

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

RE-EXAMINED BY VALERY FABRIKANT :

Q. You spell your name C-h-e-f-f?

A. That's it.

Q. Because in several places it is misspelled completely, S-h-i-f-f...

THE COURT :

You have his name spelling, now would you continue. You were taking cognizance of...

VALERY FABRIKANT :

Yes.

Q. We finished at the note which you handed to me at the time. So, could you hand it again, please? By the way, the letter of Bertrand of fourteenth (14th) July, have you received it?

A. Which letter are you speaking about?

Q. Bertrand is Vice-Rector of Concordia University...

THE COURT :

Mr. Fabrikant, unless my memory is faulty, this is re-examination...

VALERY FABRIKANT :

Yes.

THE COURT :

...and that was not touched on by the Crown in the Crown's cross-examination of this witness. Your examination of the witness was stopped because you refused to obey the orders of the Court as to the subjects which you could go into with the witness. You are limited in your re-examination to the points raised in the cross-examination, and you will please conform to that.

VALERY FABRIKANT :

Well, maybe we make it simpler then since Crown touched upon various aspects of the file, how about just filing the whole file?

THE COURT :

You asked for a memo that related to your demeanour when you called Mr. Cheff and when you met him on various occasions, that is what you are re-examining on at the moment, stick to that please.

VALERY FABRIKANT :

I think it would be nice if you could read it to me maybe, because it's difficult to understand his handwriting.

THE COURT :

Then I will ask the jury to go out, and the memo will be read to you in French. And if you require the interpreter, it will be interpreted to you so that you may examine on the memo.

VALERY FABRIKANT :

Well, I have no secrets from the jury, I do not request jury to retire. It really hinders the whole trial, because jury goes in and out, in and out, and the chain of events is lost. It's up to me to see whether there is something damaging there. I don't see anything damaging, I did not do anything wrong, so I have nothing to hide.

THE COURT :

I'm not asking you to give me, at the moment, your

particular interpretation of Mr. Cheff's memo to the file. The problem is, if you don't understand that memo to the file, the memo will be read to you if you can't read his writing, and his writing isn't the best in the world. And secondly, if you require a translation from the French, then fine. So ladies and gentlemen, I wonder if you'd mind retiring.

VALERY FABRIKANT :

Well, still I do not understand why jury cannot be present in this.

THE JURY LEAVES THE COURTROOM
WITHOUT JURY

THE COURT :

Would you call the interpreter please, madame Desrosiers.

VALERY FABRIKANT :

Maybe in the meantime you care to explain why the jury couldn't be present during all that?

THE COURT :

You know perfectly well why the jury can't be present during all of that.

VALERY FABRIKANT :

No, I don't, if I did I wouldn't ask.

THE COURT :

Q. Mr. Cheff...

VALERY FABRIKANT :

In the meantime...

THE COURT :

Q. ...would you read him... In the meantime nothing.

Would you read him the memo slowly in French, please?

A. Sure.

THE COURT :

And we will attempt to make do without the interpreter, and Mr. Belleau, if your linguistic abilities are needed, perhaps you could lend them to Mr. Fabrikant, should he require them.

A. O.K.:

"92-07-08, le sus-cit, me fut transf,r, par madame Telmoss, et celui-ci me demandait ce qui retardait dans l',mission de son permis de transport. Je lui ai expliqu, qu'en raison des inconv,nients occasionn,s par le retard de l'envoi de ses formules, et du fait que sa demande ,tait en enqu^te, que le tout ,tait retard,, et que son permis de transport serait retard,. Celui-ci me demanda la m^me chose ... trois reprises et je lui ai toujours dit la m^me chose, et cela ... chacune des fois, et ai raccroch, poliment le t,l,phone aprs lui avoir expliqu, une quatriŠme fois la m^me chose."

¶a c',tait suite ... la conversation, j'ai marqu, un petit m,mo en bas :

"Celui-ci au t,l,phone fut arrogant en ce sens qu'il revenait toujours ... la charge, malgr, les explications

fournies, sans vouloir ne rien
comprendre, il tenta ... plusieurs
reprises de me confondre dans mes
dires."

THE COURT :

Fine. Would you hand that to Mr. Belleau, please? The question that was raised in cross-examination by the Crown was were there instances noted, were there instances in Mr. Cheff's relationship with you, where your attitude was arrogant? Mr. Cheff said: "Yes, there were". When you commenced your re-examination you asked him if he had ever noted or made any memo to that effect, he said: "Yes, that is the memo", and that is what you are examining on at this particular point in time. Do you understand the memo or would you...

VALERY FABRIKANT :

Well, I think it would be nice if Mr. Belleau translated.

THE COURT :

Well he's not going to translate it for the record, he will consult with you, and if you still have any difficulty with the memo at all, then we will have to wait for the interpreter who will translate the memo for the record.

VALERY FABRIKANT :

Well, in the first part, my understanding is that he explained to me that I sent my forms too late, and this is why it is late, correct?

THE COURT :

Mr. Belleau, would you approach him for a moment and would you see whether he has any difficulty with the memo?

MEMBERS OF THE JURY ARE PRESENT

VALERY FABRIKANT :

Q. You, in this note, refer to three previous explanations, do you refer to three previous conversations with me?

A. Yes, sir.

Q. All right. So it means that I called you somewhere in April, in May, right? That's what you meant? No?

A. No, it doesn't refer to April... those conversations were very short period of time. As for the length of it, I don't recall it.

Q. Well, I'm asking about timing.

A. Well, I could say about... if my memory is good there...

Q. Yes.

A. ...about two or three weeks that you called about four times.

Q. Well, previous calls, weren't they concerning the forms which you claim that you mailed to me and I never received it, right?

A. Yes.

Q. So it is different subject, and you write here that you explained to me four times the same thing, so I called you on different subjects, not on the same subject each time.

A. No. If I take my note there, it says that each time I told you the same thing. So if I told you the same thing four times, that was for the same subject.

Q. Well, but you admitted just yourself that the first time, previous times, I had not yet received those recommendation forms, and I called you about them,

correct?

A. Like I say, if my memory is good that note is on July the eighth (8th).

Q. Yes.

A. So like I said, maybe two weeks. I've handed you... we spoke on the twenty-three (23), so if I take the twenty-three (23) of June to up to the July the eight (8th), that gives about two weeks.

Q. Are you implying that I... first of all I got from you those recommendation forms on June twentieth (20th), right?

A. Yes, that's it, you came to get the form which I handed to you personally at the counter of the permit section on June the twentieth (20th).

Q. All right. Then I submitted those forms on June twenty-fifth (25th), correct?

A. Yes.

Q. So I could not have called you between June twentieth (20th) and twenty-fifth (25th), right?

A. Well, if you take the time between June twenty-fifth (25th) and July the eighth (8th), that gives about... if my memory is good, my calculation is good, about two weeks.

Q. Well... are you implying that immediately after submitting this document I started calling you everyday?

A. I didn't say everyday, but I said during that time four times that you called us.

Q. Why there is no trace of those calls?

A. It is written there.

Q. It is written here, but why there is no single trace of those four calls which I did?

THE COURT :

Mr. Fabrikant, you are in re-examination and you are limited to what was raised by the Crown. We are dealing with the question of arrogance, and arrogance...

VALERY FABRIKANT :

Exactly.

THE COURT :

No, arrogance purely and simply. So get to that, and then move on to something else.

VALERY FABRIKANT :

I'm getting to arrogance, I'm getting...

THE COURT :

Well, you better get there directly.

VALERY FABRIKANT :

Well, it is direct.

THE COURT :

No, it's not direct.

VALERY FABRIKANT :

If the witness is lying on the number of calls, then obviously witness is lying about arrogance, too.

THE COURT :

Would you get to the subject of arrogance or you will have to move on to something else or this will be ended.

VALERY FABRIKANT :

Well, you seem to be willing just that I examine him the way you want it, I'm sorry...

THE COURT :

No, you will examine him according to the rules, and I set the rules.

VALERY FABRIKANT :

Q. Now, could you explain to me, on the copy which I have, it's black and white something is deleted.

A. Uh, huh.

Q. On your copy there is no such note, what was deleted?

A. Well, I presume that we got the same note there, and like I say here, I explained to you the reason that there were some inconvenience due to the delay...

Q. One second, this is not what I'm asking you. Would you please just keep to the question.

A. Okay. The question again was?

Q. Would you like to read it?

A. No, I got the same copy here.

Q. No, not the same, read here. This is the part that is not the same. Do you read something here?

A. Est-ce que je pourrais le voir, s'il vous pla t?

Q. So it is the same but not the same?

A.  a c'est pas mon ,criture, j'ai aucune id,e de (inaudible).

Q. Well...

THE COURT :

Q. Would you speak in English please...

A. Sorry.

Q. ...for purposes of the record.

A. That, what you showed to me, that's not my writing, I don't know what it's about, because the copy that I have doesn't say it.

VALERY FABRIKANT :

Q. This is not the point, it is written here, black and white, something is deleted, correct?

A. Well, like I told you, that's not my writing, I don't know what it's about.

Q. I am not asking you if this is your writing, I'm asking you if the meaning of inscription on the same note you have and I have says: "Copie ,lagu,e", which means something is deleted on this copy, correct? Is that the meaning what it says? That's all I'm asking you.

A. I don't have to answer that because, like I told you, that's not my writing, and I don't know what it's about.

THE COURT :

Q. You have the file and you need to explain why what you have in front of you is different from what he has, if you're in a position to do so.

A. I'm not in a position because I don't know what it's about. Because as for myself...

VALERY FABRIKANT :

Q. But the meaning is this of that phrase, correct?

THE COURT :

A second. Would you... I'm sorry, would you finish?

A. As for the note that I have, this is my writing with my initials on it.

Q. And that was the note you made...

A. That was the note that I made.

Q. ...and that was the note which related to the question that you were asked by the Crown Prosecutor as to the attitude of Mr. Fabrikant during his conversations and meetings with you?

A. That's it.

THE COURT :

Would you please, and I say it again, and I say it for the last time, would you limit yourself to the question of arrogance on your part, and if you will not I'm going

to put an end to this, that is where we are. You were foreclosed yesterday because of your attitude, and because of your refusal to respect rulings.

VALERY FABRIKANT :

Well, I am limiting to arrogance, but since I wasn't arrogant, I want to show that this is a lie. If you want me just to say: "Yes, I was arrogant", then there is no way I'm going to...

THE COURT :

Would you please then get to the subject?

VALERY FABRIKANT :

...in examination like this. Well, I'm asking normal question.

THE COURT :

The witness has told you that is not his note that's on the file, he cannot explain it to you. That's the end of it.

VALERY FABRIKANT :

I'm asking the meaning of this word, that's all.

THE COURT :

Would you pass on to something else? That is not his note. Now pass on to something else.

THE COURT :

I ask the meaning of the word.

THE COURT :

You may ask Mr. Belleau the meaning of the word if you wish.

VALERY FABRIKANT :

No, I want this witness to say what this meaning is.

That's all, and it is my right to ask that.

THE COURT :

The witness has said that it is not his note, and he cannot tell you what was meant by that note. That is what the witness' testimony is. Now, would you move along?

VALERY FABRIKANT :

Well, second thing which I would like to raise is, this is the copy which was given to me by the Crown, and I wonder how come this copy does not contain the notes which allegedly appeared that I threatened students here.

THE COURT :

Mr. Fabrikant, we were through all of the questions of threats to students, which you insisted in putting into the record, despite the caution you received from me, and all the rest of it yesterday. You were foreclosed and I am not going to listen to anymore on this subject. Now, if you are not going to proceed with a proper re-examination of this witness, on the subjects which you're permitted to re-examine him, this examination will stop. This is the second time of asking.

VALERY FABRIKANT :

All right.

Q. Could you tell me here... would you please take cognizance of this page?

A. Can I see one second please?

Q. Well, it's what you submitted to me.

A. Uh, huh.

Q. Well just look at it, I will ask you questions while you're looking.

A. Okay.

Q. Oh, you have similar stuff in your file, do you?
A. I'll keep that one instead of searching. To save some time.
Q. All right. Well, it is important for me, first of all, if you check if you have the same thing in your file. It is in chronological order, is it?
A. Yes, I have it.
Q. All right. So is my understanding correct that you transferred this investigation to Mrs. Telmoss according to this note?
A. No.
Q. No. What is the meaning of this...
A. I told her that you... that the subject, Mr. Valery Fabrikant, should need an investigation, and she made a request to a different service.
Q. Okay. And she requested it...
A. Under my recommendation.
Q. ...at the bottom there is a name, could you read me the name at the bottom?
A. Carol Avon.
Q. Who?
A. Carol Avon.
Q. Carol... how do you spell Avon?
A. C-a-r-o-l, A-v-o-n.
Q. Okay. This is a lady, is she?
A. No, it's a man.
Q. All right. And do you have in your file anything from Mr. Avon in response to that?
A. No.

THE COURT :

Can you tell me how this relates to the Crown's cross-examination of the witness?

VALERY FABRIKANT :

Well, it relates to Crown cross-examination of the witness, the same way, if you recall, I asked you what is the pertinence of Crown's questions. And you refused the Crown even to answer, and the question Crown posed were totally irrelevant. And you tolerated it, it was fine, and as soon as I'm asking question, no question is allowed. Now, this kind of biased behavior should not be that obvious. Crown asked this witness what did I do in nineteen ninety (1990), what bearing in the earth could be, whatever I did in nineteen ninety (1990) in requesting firearm, how could possibly it be related to what happened in ninety-two ('92). Was Crown also accumulating its own frustrations to explode to claim provocation? Explain me why the Crown was permitted all those questions. I didn't object to one sole reason, because if I object jury might think that I have something to hide. I have nothing to hide, this is why I didn't object those questions, but those questions were totally irrelevant, and you allowed that.

Me JEAN LECOURS :

I think the accused is out of order, My Lord.

THE COURT :

I think the accused is way out of order, I haven't heard any objection from the Crown as to this line of questioning on re-examination, but...

Me JEAN LECOURS :

No, from (inaudible).

VALERY FABRIKANT :

I objected to the whole line, if you remember, and you didn't even want to listen, you said: "Okay, Crown proceed". And since then, I decided I'm not going to object to anything, but all the questions were totally irrelevant.

THE COURT :

You are talking supposedly about a memo which recorded arrogance on your part. I do not recall, you'll correct me if I am wrong, but I do not recall this being raised in the course of your cross-examination, the subject we're not on.

Me JEAN LECOURE :

It might have been, My Lord.

VALERY FABRIKANT :

Well, it was raised, the question...

Me JEAN LECOURE :

When I asked him to explain the different steps, he said one of the steps is an inquiry.

THE COURT :

And I have not seen this document that he has in front of him at the moment, so I'm having...

Q. May I see the document that you were referred to in order that I might... no, the document that you told Mr. Fabrikant you had in your file, which he's questioning you on now.

A. Sorry.

Q. It's to your left hand I think, or the other copy.

VALERY FABRIKANT :

Q. Now, this also refers to...

THE COURT :

Just a second.

VALERY FABRIKANT :

All right.

THE COURT :

Okay. Excuse me, you may proceed.

VALERY FABRIKANT :

Q. There is note here: "Voir note au dossier de Claude Cheff", so what was communication between you and Gisèle Telmoss on the subject? How did it happen that she filled in this form? I believe there was some communication between you and her?

A. Yes.

Q. Okay. Could you describe what this communication was?

A. Well, I'll try the best I can. The thing, as I said, is that due to our conversation, that it might be a good thing that we did an investigation on you.

Q. My conversation?

A. Yes, and all the information that you gave me, and the way you spoke and everything.

Q. Well one second, I think that you had, if I recall correctly your testimony yesterday, you had such an evidence that I'm constantly threatening students, all you had to do is to phone students and immediately send policemen to take my firearm away from me, is my recollection correct of the situation? No matter how arrogant I was.

A. I have answered that question yesterday.

Q. Well...

A. Concerning the confiscation of the weapon.

Q. Well, if I really threatened students...

THE COURT :

Mr. Fabrikant, you're arguing with the witness.

Me JEAN LECOURS :

And that was covered, My Lord.

THE COURT :

And that was covered, and that is not covered... that does not come out of what we're on now.

VALERY FABRIKANT :

All right.

THE COURT :

That's for sure.

VALERY FABRIKANT :

Q. Now, my understanding is that the note of conversation is dated July eighth (8th), correct?

A. Yes, sir.

Q. Note of investigation dated July second (2nd)?

A. Uh, huh.

Q. So you foresee on July second (2nd) that July eighth (8th) I will be talking arrogantly with you?

A. We had before, like I've told you, some previous conversations on the phone when you asked me to have a new set of forms, and when we've met at the counter of the permit section...

Q. Uh, huh.

A. ...and also after receiving the phone call of Mr. Freedman...

Q. Uh, huh.

A. ...and another information.

Q. Uh, huh.

A. So all those mixed together made me thought that an investigation should be done.

Q. Okay. Shouldn't this investigation be five minutes investigation, just make a phone call to the students who allegedly complained...

Me JEAN LECOURS :

This is cross-examination, My Lord.

THE COURT :

In your book does this arise from the cross-examination yesterday? In any event.

VALERY FABRIKANT :

Well, it does arise.

THE COURT :

Well, it doesn't arise as far as I'm concerned.

VALERY FABRIKANT :

All right. How about then making it...

THE COURT :

So move on to something else.

VALERY FABRIKANT :

...making it more simple. Since Crown touched... I just make a motion right now. Since Crown touched questions which are totally irrelevant, and touched them in such a prejudicial manner, if you wish I can give you example how it was touched. For example, Crown asked:

"What did Fabrikant write about his ability to use firearms?"

And the answer was that "he was in the army and knew very well how to use firearms". Period. Now, I hope you recall this question and answer.

THE COURT :

Yes.

VALERY FABRIKANT :

Now, if one looks more precisely into the file, the question was the following:

"Do you know how to handle and use restricted weapons safely? Explain."

Safely. It was not question if you know how to shoot people, it was question how to use weapons safely. And to this question I answered:

"Yes, I was in the army reserve, it has to be stored in a safe place, locked and out of reach of children."

This is a big, big difference from the question Crown raised and the answer given, and what is in the file. So I believe...

THE COURT :

First of all...

VALERY FABRIKANT :

Let me finish my motion, please. I believe that that kind of sleazy practice of questioning witnesses should not be allowed in the first place, it is unfair, it is dishonest, and I believe that jury has the right to see complete file. I have nothing to hide. I did nothing wrong at any moment in my applications for firearm. So I suggest, since Crown raised the question, various questions of my application, and what I write here, and what I write there, jury has the right to see for themselves and let the Judge see for himself, rather than hearing this kind of questioning and this kind of answering. So I make a motion to file complete file here, give full translation in English, and let the jury see the whole story.

THE COURT :

Are you finished?

VALERY FABRIKANT :

Yes.

THE COURT :

Have you anything you'd like to say?

Me JEAN LECOURS :

It's up to your discretion, My Lord.

THE COURT :

First of all the question put by the Crown bearing on what you were asked when you applied for a firearms permit, an acquisition certificate, is perfectly pertinent. You entered no objection at the time...

VALERY FABRIKANT :

I did.

THE COURT :

...and... I'm sorry, you entered no objection at the time when that answer was given which related to your training.

VALERY FABRIKANT :

I objected to the whole line, if you remember.

THE COURT :

You objected later to the whole line, you did not object at the time, there was no objection heard from you, you sat there and smiled. In any event, the question is pertinent as far as I'm concerned. Yes, on re-examination you have a right to question Mr. Cheff on what was said, and in what context you stated that you were in the Soviet Army, or the Soviet Army Reserve as you put it, that is sufficient to settle the question. How you managed to make the quantum leap from there to

the motion that I therefore condemn the Crown's practice is some sort of sleazy practice and toss the whole S.Q. file into the record I fail to see, and I will not do that. So your motion to put the S.Q. file into the record is dismissed. Obviously, you may cross-examine the witness on what you stated when you were asked about your previous experience in the handling of firearms.

VALERY FABRIKANT :

Well effectively, I have additional reason to it...

THE COURT :

I don't wish an additional reason, I have finished, I've rendered my decision, now go ahead.

VALERY FABRIKANT :

I know, but if I have additional reason I believe you have to hear it.

THE COURT :

I have rendered my decision, proceed. You may cross-examine the witness on the point that you raised. End of question.

VALERY FABRIKANT :

Okay.

Q. Now... so, if you look into the file...

VALERY FABRIKANT :

Well, I don't know, should I ask him the same question? Because I already read all that, it makes sense for him to do that?

THE COURT :

Well, I think you better put your question and see if you get an answer, notes are no more than an "aide-memoire". You seem to think you can read them into the record but...

VALERY FABRIKANT :

Yes. All right.

Q. So, would you take the details of my application to register restricted weapon in nineteen ninety (1990)? Could you get it?

A. Of the FAC or the request to register a weapon, which one?

Q. Register a weapon.

A. Yes, I have it here.

Q. All right. Could you make it on page 1. The first question after the reason: "Do you know how...", could you read the question and the answer which I gave?

A. "Q. Do you know how to handle and use a restricted weapon safely?
(Explain)

A. Yes, I was in the army reserve,
it has to be stored in a safe place,
locked, out of reach of children."

Q. Yes. And this is not what you answered. Could you explain why this was not what you answered when Crown asked you, first of all incomplete question, and would you explain why you gave an incomplete answer?

A. Sorry, but I don't recall the answer I gave, since you're saying I didn't give the proper answer. Could you tell me what I said?

Q. Well, you said that I was in the Soviet Army, and I know very well how to shoot.

THE COURT :

No, that is not what the answer was according to my notes.

VALERY FABRIKANT :

Okay.

THE COURT :

He declared to you that he had learned how to use firearms in the Soviet Army, that was the substance of the answer.

VALERY FABRIKANT :

But there was no phrase that I know very well how to use it. Should we play the tape?

THE COURT :

I understood Mr. Cheff to say yesterday that you stated that you had learned how to use firearms in the Soviet Army. You have now put the question and answer into the record, the jury will appreciate that, with everything else.

VALERY FABRIKANT :

But we cannot play tape, what he really answer?

THE COURT :

There is no need to play the tape.

VALERY FABRIKANT :

There is no need. Of course, yes.

A. The question he's referring was to the FAC that he asked me yesterday, that was not the same document that he just asked me now.

THE COURT :

Q. I see. Then you better clarify that situation for him.

A. Yes. The question concerning the Soviet Army that I said yesterday was concerning the application identification firearm acquisition certificate where you answered that you....:

"I have had a complete training on
duty in the Soviet Army."

That's where the Soviet Army was mentioned, not concerning the questionnaire about the restricted weapon.

VALERY FABRIKANT :

Q. Okay. May I see what you have in hand, because I don't seem to have the same kind of stuff.

A. So that, my answer yesterday was correct concerning that file.

Q. But again, the question is, your knowledge of safe storage, it's again... the question was wrong, if you recall. The question here is:

"Explain your knowledge on safe
storage."

Period. And the answer is... again, with the same dishonest practice.

THE COURT :

Would you just ask him if that's your particular view of the situation.

VALERY FABRIKANT :

All right.

THE COURT :

Ask him if the question was not such and such, and if you did not say such and such.

VALERY FABRIKANT :

Yes.

Q. So, why don't you read the question which was answered, because question which Crown asked you was if I know very well how to shoot. What is the question which I answered? Read the question.

Me JEAN LECOURS :

It is very unfair, My Lord. The word "shoot" was not used.

A. Yesterday, when the question was asked to me, it was asked:

"What was the knowledge of the requester of that form?"

I have answered:

"I have had a complete training on duty in the Soviet Army."

VALERY FABRIKANT :

Q. Now, what is...

A. There was no... there was no mention...

THE COURT :

One second, let the witness finish.

A. There was no mention about your knowledge concerning safe storage.

VALERY FABRIKANT :

Q. Well, there was no mentioning, but...

A. For that question.

Q. Exactly, but the question which I answered these words was not the question you answered with my words, right? What was the real question which I answered with these words?

A. If you're talking about the firearm acquisition certificate...

Q. Yes, what was the question?

A. ...that was what I answered yesterday saying:

"I have had a complete training on duty in the Soviet Army."

I never spoke about details of the alleged reason for application to register a weapon yesterday.

Q. Anyway, would you kindly read the question which I answered there?

A. For the FAC? The firearm acquisition certificate?

THE COURT :

Q. The one you've just referred to, yes.

A. Okay.

VALERY FABRIKANT :

Q. Question, what was the question?

A. Please, slow down.

"Section 84.2 of the Criminal Code stipulates that firearm and ammunition must be used, carried, handled and stored safely. Will you be capable of complying with those requirements?"

You've checked yes.

"If so explain:

A. Your knowledge on safe storage of firearms and ammunition."

You have answered:

"A. I have had a complete training on duty in the Soviet Army.

B. How your firearm and ammunition be stored?

A. They will be locked safely, ammunition locked separately."

That's what you have answered.

VALERY FABRIKANT :

Q. Well... so does it make a difference that I answered

question whether I know how to handle it safely? That was the question.

THE COURT :

The word "use" was in the question that Mr. Cheff read.

VALERY FABRIKANT :

Oh no, I remember what was asked.

THE COURT :

He just read it.

VALERY FABRIKANT :

What?

THE COURT :

If you're suggesting that the document is false, well...

VALERY FABRIKANT :

No, the document is not false, safely, that was the emphasis there, how to use it safely.

THE COURT :

Pass on to something else, we've exhausted this subject.

VALERY FABRIKANT :

Well, of course, God forbid there is something good about me, immediately pass to something else. Crown does not object to filing the whole file.

THE COURT :

Would you move to something else?

VALERY FABRIKANT :

All right.

Q. Now, Crown asked you about the rules of obtention restricted weapons. Now, are those rules such that, first of all, you give weapon to a person to have it at home, right?

A. The reason to have a restricted weapon at home is under certain standards which are protection of life, use in the shooting clubs, use in work, those are the reasons that you can have a weapon stored at home. But if you don't... answered to those needs, there's no such authorizations that are given to people.

Q. You're not answering my question. I'm asking just in what order what goes. Yes, suppose one claims one of those three...

A. Yes.

Q. ...then the order is the following, first you allow person to take firearms to his home, right?

A. Yes, with a (inaudible) permit.

Q. Then you request from that person five letters of recommendations, correct?

A. If the person answered to the standards of the registration of a restricted weapon, yes, that was the procedure.

Q. Yes. So in principle, you request letters of recommendations after person has already gun at his house, correct?

A. No. The way that your request happens, everytime you must produce, if my memory is good, at the same time, but due to the different administration things, there are things that go faster. And since you had answered to the standards, that's the reason why we had issued a permit to convey your weapon at your house.

Q. You're not answering my question. Isn't it the usual practice that conveying permit is issued before letters of recommendations are requested, correct?

A. Concerning a shooting club, usually the people are a lot

faster and everything goes at the same time.

Q. When was conveying permit sent to me?

A. Conveying permit was sent to you, valid for the period of ninety-two zero o-twenty-five (92-02-25) to ninety-two o-three twenty-five (92-03-25).

Q. So, from twenty-five (25) of March I had the right to have the weapon at home, correct?

A. Yes, because you had...

Q. Sorry, twenty-fifth (25th) of February...

THE COURT :

Twenty-fifth (25th) of February.

VALERY FABRIKANT :

Q. ...I had the right to have my weapon at home, correct?

A. Correct.

Q. Then, allegedly, when did you mail to me those recommendation forms?

A. They were... the note, on March the third (3rd), nineteen ninety-two (1992).

Q. Okay. So March third (3rd). Now, if I am a criminal, from February twenty-fifth (25th) until whatever date, I had all the possibility to kill whoever, correct?

A. At that time we didn't have any information that you were a criminal.

Q. Okay. Let me ask you differently.

Me JEAN LECOURS :

This is arguing with the witness.

THE COURT :

It is.

VALERY FABRIKANT :

I'm not...

THE COURT :

It is...

VALERY FABRIKANT :

I'm not arguing, I'm asking about rules.

THE COURT :

...and you're not asking about rules, you're straying from that. The witness testified, first of all, generally as to the rules yesterday, and he testified as to your application in relation to the MEB, and he talked about the permits. You may cover the area of your acquisition of that weapon, the conveying permit, and you may ask generally about the rules, but we do not need to get into again questions of argument such as, if you were a criminal, you had the gun at home and could have done this and could have done that, that's not going to advance us at all. You're in re-examination of this witness, that's all.

VALERY FABRIKANT :

Let me explain you how it will advance us, all right, and how it is related to my defense, then maybe we'll agree that my questions are correct. What I'm trying to establish, that the rules which they have are designed to harass honest people, they are not in any way preclude any criminal from committing a crime. The rules are the following. First you apply, and effectively almost no questions asked, you are given this conveying permit. You have your gun in your hands. After that they send you those letters of recommendations, it's up to you, you want, you fill them in and give it to them, you don't want, you don't do it. In my case I didn't receive them. So from February

until somewhere in June, the gun was at my home, I was phoning them asking where is the remaining stuff, they just, you know, were saying anything they wanted: "We mailed it to you", I say: "I didn't receive", and: "We mailed it to you", "I didn't receive". Until I got angry and said: "Okay, I am coming, give it just to me directly". So what I'm trying to point out is that though I had gun at my house, I was effectively precluded to use it in the shooting club of which I was a member, though my membership was paid, money was paid, and I couldn't use it, and it was very frustrating. And on several occasions I told him that: "Your rules are idiotic, that effectively what you are doing, you're harassing honest people while if a person is a criminal, he has already gun in his house and nothing precludes him from taking this gun and shooting somebody". So this was extremely frustrating, and this is what I'm trying to show to the jury, that the rules are totally idiotic. That they should check first all what they need, then to give handgun to a person, rather than to give handgun to a person and then start all this harassment for months and months and months. This is what I'm trying to cover. Now, is it relevant?

THE COURT :

It is not.

VALERY FABRIKANT :

Fine.

THE COURT :

That's the short answer.

VALERY FABRIKANT :

(Inaudible) beautiful.

THE COURT :

There we are.

VALERY FABRIKANT :

Yes.

THE COURT :

So...

VALERY FABRIKANT :

It is not relevant.

THE COURT :

It is not relevant, no.

VALERY FABRIKANT :

(Inaudible) getting a fair trial.

THE COURT :

No, it is not relevant.

VALERY FABRIKANT :

It is not relevant.

THE COURT :

So if that is in summon substance what you're trying to cover, I think we've exhausted what you propose to cover with this witness.

Thank you very much, Mr. Cheff.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURS :

But first, My Lord, I think I saw this witness before, I think he should explain the relevance of this witness. Could we see your subpoena?

VALERY FABRIKANT :

Maybe it will be shorter if you just ask me to respond.

THE COURT :

Just a second. Excuse me, the witness' name is?

RJEAN GARDENER :

Gardener, R, jean.

THE COURT :

Well, Mr. Gardener testified on the twenty-sixth (26th) of June, nineteen ninety-three (1993). He was called, first of all, according to my notes, on the twenty-second (22nd) of June, his testimony was suspended pending the completion of a transcription that was done, and Mr. Gardener was re-called by you on the twenty-second (22nd) of June, and he testified commencing at fourteen thirty-five hours (14:35). Now what is the purpose of re-calling Mr. Gardener?

VALERY FABRIKANT :

Well I just asked him to... I tried to listen to the tapes, and it is extremely difficult without knowing who is talking to who, when, and so on. And I thought maybe he will be kind enough to provide additional information accompanying those tapes in terms of timing of the tape, beginning of the call, who is calling who... well, what is called calling card I believe it is called there. So I just asked him to come and to bring additional information which could make it easier for me to listen and to understand the conversations.

THE COURT :

To listen and understand what conversation?

VALERY FABRIKANT :

Well, which took place on August twenty-fourth (24th).

THE COURT :

The conversation which has been filed?

VALERY FABRIKANT :

Yes.

Me JEAN LECOURS :

Nothing is filed.

THE COURT :

Pardon?

VALERY FABRIKANT :

But they were filed.

THE COURT :

The conversation was filed by the Crown, I think.

VALERY FABRIKANT :

No.

Me JEAN LECOURS :

No, no.

VALERY FABRIKANT :

They were filed, there were nine tapes, they were filed and they were given to me.

THE COURT :

Oh, they were not produced in the Court record?

VALERY FABRIKANT :

No, they were produced.

THE COURT :

Under what...

Me BELLEAU :

I-12, My Lord.

THE COURT :

I-12. They were produced simply for identification.

What has the Crown to say about this manner of proceeding?

Me JEAN LECOURS :

It's the first time I see it, My Lord.

VALERY FABRIKANT :

Well, I cannot understand what is wrong with that.

THE COURT :

Well, I don't think, first of all, the witness box is the proper podium to have Mr. Gardener explain to you who said what and when, or to give you his particular interpretation of the tapes or anything else. I have no idea whether Mr. Gardener is willing to sit down with you and to assist you at the "parloir" downstairs or whatever, with regard to whatever information he has, I have no idea at all. But you certainly cannot, through the medium of a subpoena, bring one of the officers of 911 here simply to tell you who said what, when, and to whom, and his interpretation from...

VALERY FABRIKANT :

No, no, no, probably I was not precise what I was saying. I just want from him some kind of typed material.

THE COURT :

Some kind of what?

VALERY FABRIKANT :

Typed material which would accompany those tapes, that's all. I do not plan to question him on this call or this call, not at all. Because 911 for example provided with their tapes several pages of accompanying information, like timing of call, who calls, to who calls, and so on, it is called calling card. And that's effectively what I expect from this witness to produce another document, that's all.

THE COURT :

Well, if these... what I will do is I will adjourn and I will permit you to consult with Mr. Belleau, and Mr. Belleau, in turn, to consult with the witness, and see whether these conversations exist, see whether they have been transcribed. And if they have and they're in Mr. Gardener's possession, then we'll come to the next facet of the problem. If they have not, that would seem to be the end of the question.

VALERY FABRIKANT :

Well again, I'm not asking transcriptions. I don't know, my English is not that bad?

Me BELLEAU :

I think we can solve the problem, My Lord, if I can have a minute to speak to the witness.

THE COURT :

That's what I thought. If you can solve the problem, fine.

Me BELLEAU :

I think so.

THE COURT :

So we will adjourn for... we'll take our adjournment now.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITHOUT JURY

THE COURT :

Mr. Belleau, are you able to tell me where we are as far as this question is concerned? You had expressed the thought that...

Me BELLEAU :

It might be resolved, yes. I think the question should be asked to Mr. Fabrikant because he was allowed to

discuss directly with the witness during the break and hopefully got the information that he needed, but I couldn't answer for him.

THE COURT :

Mr. Fabrikant.

VALERY FABRIKANT :

Well, we need a little bit just more time to...

THE COURT :

Well, I'm not going to give you more time in the course of the trial, you're going to have to arrange to call Mr. Gardener, or whatever, but you're not going to simply have a conference with Mr. Gardener while everything else waits. This is ridiculous.

VALERY FABRIKANT :

Well, I agree with you.

THE COURT :

Well that's fine, if we agree on that, why don't you arrange to do that, and call another witness in the interim, and we'll get on with this.

VALERY FABRIKANT :

Well, maybe Mr. Gardener has some more...

THE COURT :

I have no idea what Mr. Gardener has, but you're not going to use the courtroom, particularly while I'm here, or while I'm waiting to come in here, to have your discussions with Mr. Gardener with regard to tapes, reports or anything else.

VALERY FABRIKANT :

Well, we could make it then during the testimony as such, I could...

THE COURT :

I'm not so sure Mr. Gardener is going to testify, that's something else. Mr. Gardener already has testified, and if we start calling witnesses for a second time around, this...

VALERY FABRIKANT :

Well, if you recall, madame Audette testified several times, there was no problem with that.

THE COURT :

No, madame Audette's testimony was separated, she did not testify several times. Her testimony was suspended so that she could obtain further information, and she came back with that further information, but if we are going to continue this...

VALERY FABRIKANT :

Well, this is the same thing, it is further information. And if you recall when he came here, I said even at that time that I will try to listen but I do believe that I will need more than that.

THE COURT :

Well...

Me JEAN LECOURS :

And My Lord, the accused doesn't know what he's looking for. He's fishing.

VALERY FABRIKANT :

The witness knows what he's looking for, it's not a fishing at all.

Me JEAN LECOURS :

These Urgences Sant, tapes were not part of the Crown's case, I never saw them, I never listened to them, and I dare... they were irrelevant for me, and he's fishing

and he doesn't know what to do with that, he's looking
for something...

THE COURT :

Well he has the tapes, the tapes are there.

Me JEAN LECOURS :

Yes.

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VALERY FABRIKANT :

So it doesn't have to be part of Crown's case, why should it be part of Crown's case for me to take a look at them, to hear them?

THE COURT :

You have them, you've had an opportunity to listen to them, this witness has already testified. And if we are going to re-open testimonies of witnesses by calling them second and third times, it simply becomes totally unmanageable.

Me JEAN LECOURS :

The problem is we are constantly sidetracked, even once we think we're on the right track, one second after there is another way to be sidetracked, all the time.

THE COURT :

I know.

Me JEAN LECOURS :

We have to be always conscious to maintain the wagon on the rail, My Lord.

VALERY FABRIKANT :

Who is talking about sidetracking? Who is talking about sidetracking? The person who asked Mr. Cheff...

THE COURT :

What do you propose to prove...

VALERY FABRIKANT :

...all these irrelevant questions about nineteen ninety (1990)? You remember that? And this person is talking about sidetracking.

THE COURT :

I told you, as far as I'm concerned, this is perfectly relevant.

VALERY FABRIKANT :

What? In nineteen ninety (1990) it's perfectly relevant?

THE COURT :

Why do we get into a discussion about nineteen ninety (1990) now, we're talking about today, Mr. Fabrikant, not nineteen ninety (1990). Mr. Gardener, thank you very much, you may return to your work, the subpoena is cancelled. Call your next witness.

VALERY FABRIKANT :

Well, maybe we could...

THE COURT :

Would you call your next witness? Now. And it had better be relevant.

VALERY FABRIKANT :

I already suggested to you to stop my defense.

THE COURT :

Have you another witness to call?

VALERY FABRIKANT :

Yes.

THE COURT :

Is that an indication that you haven't another witness to call?

VALERY FABRIKANT :

I said yes, I have.

THE COURT :

Fine. Then call your other witness. This is the first time of asking.

VALERY FABRIKANT :

Mr. Belleau, would you kindly do so?

THE COURT :

Who's the next witness Mr. Belleau?

Me BELLEAU :

I suppose it's an officer from the police?

VALERY FABRIKANT :

Yes.

THE COURT :

Jury please.

Me BELLEAU :

Apparently the wrong witness was subpoenaed, there's another one available.

THE COURT :

Fine.

THE JURY IS PRESENT

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this sixteenth (16th) day of the month of July, personally came and appeared:

S. TUBRAMANYA PERDUR, born on November thirtieth (30th), nineteen hundred and sixty-one (1961), student, confidential address;

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

VALERY FABRIKANT :

I believe we need for his testimony the plan of the ninth floor probably.

THE COURT :

I'm sorry?

EXAMINED BY VALERY FABRIKANT :

Q. Did you see me on August twenty-fourth (24th)?

A. Yes.

Q. All right. Where did you see me?

A. In the department office on the ninth floor, near the photocopy machine.

Q. Near what?

A. Photocopy machine.

Q. Near photocopying machine. All right. Are you a graduate student?

A. Yes, I am.

Q. Okay. In mechanical engineering?

A. In mechanical engineering.

Q. All right. And you saw me near photocopying machine. What was I doing?

A. You were just walking up and down, from the door to your office, and I saw you two times doing that.

Q. From which door?

A. From the door which is exit, that's the entrance door to the department towards your office door.

Q. So I was walking from entrance department to my office door. Where were you? Could you show it on the map?

A. I said towards your office door.

Q. Towards my office door.

A. I have to... I'm no familiar with the plan, even... 905...

Me BELLEAU :

Q. Why don't you try this area up here?

A. Yes, okay. (Inaudible) this is Mechanical Engineering Department, I'm not sure where the door is.

THE COURT :

Q. I'm sorry, you'll have to speak more loudly. You really will.
VALERY FABRIKANT :

Q. Get the microphone please on yourself.

A. I am not familiar with this plan so I had to find where is the door.

Q. How long have you been in mechanical engineering as a student?

A. The last three years.

Q. Three years. So during three years, how many times have you been to Mechanical Engineering Department?

A. Everyday, at least five to six times.

Q. So I believe you know Department of Mechanical Engineering with your closed eyes where is what, right?

A. Yes.

Q. So, why is it so difficult for you to identify the plan?

A. Because I am not really familiar with reading the plans, civil engineering plans, I'm mechanical engineer.

Q. Well, just take a look, one doesn't have to be an engineer to understand which room is which, my son understands and he is ten years old.

A. Okay. Maybe I need a few minutes to look into that.

Q. Okay, take your time.

THE COURT :

Q. Put it flat in front of you and take a look at it, quietly, don't say a thing, just look at it for the minute and ordinate yourself.

VALERY FABRIKANT :

Q. All right. So one doesn't have to be civil engineer after all, right? So where were you?

A. I was here, this corner.

Q. Okay. You were in this corner, you were doing some copying?

A. Yes, I put some (inaudible) to copy, automatic copy.

Q. Okay. And I passed by you, what, from where to where?

A. Yes, from here you ended up here, I don't know, after a few minutes, again you came back, and then you went back, and then again you went out, and at that time I left.

Q. Did I have a gun with me at that time?

A. I...

Q. Did you see a gun?

A. I did not see a gun. No.

Q. Did you or didn't you give an interview to the newspaper saying the following, that you saw me kicking into chairman Osman's door repeatedly? Did you or didn't you give such an interview to the newspapers?

A. No, I did not say that you were kicking doctor Osman's door repeatedly.

Q. So, reporter just took it out of nothing? You never said anything like that?

A. No, if I remember correctly I saw, before the photocopy machines, going there, I saw you coming from doctor Osman's door, because I wanted to see if he's there and I peaked, and I saw you coming towards, I didn't think of anything, and then I started making photocopies.

Q. Okay. Hold on. Now this is something new. Could you get the map again, and which doctor Osman's door you're talking about?

A. I came here and I peaked to see if he's there, because I always used the back door. He wasn't there and you were coming this way, and I didn't think of anything, I went here to make photocopies.

Q. One second. You were going to Osman's office through back door? Why would you do that if there is a secretary there? Did you plan to kill him? Why didn't you go through secretary

to ask if Osman is there?

THE COURT :

The witness told you that he went along the hall, at the top, and peaked into Osman's office to see if he was there.

Q. Is that correct?

A. Yes.

Q. That's what I understood. And I understood you to say that when you came out, he was not there, and you turned and you came back down the hall...

A. Yes.

Q. ...and you saw the accused. Is that what you said or...

A. No, when I went and peaked if doctor Osman is there, I saw him coming from his door.

VALERY FABRIKANT :

Q. From my office?

A. He was very close to the door, with your hand like this, empty hand, and he was doing like this and turning, and I didn't think of anything and I came and started making photocopies.

Q. I don't understand. How could you peak into closed door? Could you explain?

A. It's not closed door, I peaked from this corridor, there is no door here, okay, if I put my head here I can see if doctor Osman is sitting here.

Q. Well this door is always closed, isn't it? Osman's door is always closed.

A. Not all the time.

Q. Well, when Osman is not there, it is always closed, correct?

A. When Osman is not there, yes.

Q. It's always closed. Even if he is there, sometimes he opens it, sometimes he doesn't, right?

A. Yes, sometimes he doesn't.

Q. So, there is no way you can go and peak if he's in through this way rather than going through the secretary.

THE COURT :

Look, I have no idea what you propose to establish with this witness, but you have already drifted into cross-examination, and your last question is disallowed.

VALERY FABRIKANT :

As soon as witness is in difficult position...

THE COURT :

I hear that everyday.

VALERY FABRIKANT :

Yes, you hear it everyday.

THE COURT :

Get on with it.

VALERY FABRIKANT :

All right.

Q. So could you explain why you just didn't go like everybody else to the secretary and ask if Osman is there?

A. Because I worked for doctor Osman.

Q. Yes. And you are not obliged...

THE COURT :

Let the witness finish his answer.

Q. You were saying: "I worked for doctor Osman and..."

A. And that's why I always, you know, go through any office doors whichever I walk towards first, so I don't go through the secretary generally.

VALERY FABRIKANT :

Q. Okay. Could you get again the map? Now, when you entered the department, would you just put your finger at the entrance of the department?

A. Okay.

Q. Now, isn't it closed... now, would you please direct, you entered the department...

A. Yes.

Q. ...go to the left...

A. To the left?

Q. Yes, to the left, continue...

A. Yes.

Q. ...and this is the secretary...

A. Yes.

Q. ...and this is the way. Now, and this is the shortest way, isn't it, to Osman? And now show the other way which you did.

A. Here...

Q. Isn't it much longer like this?

A. No, because...

Q. It is not.

A. ...if I see him, if he's there, so I can save this much distance, so I can retrieve. And moreover, I prefer walking straight than taking curved roads.

Q. All right. Okay, continue your story. So you entered the department, you went to the corridor...

A. Uh, huh.

Q. ...did you just peak if the door was closed or you came to the door and knocked at the door? What did you do?

A. I just peaked.

Q. Okay. You came to the corner... Would you...

A. Yes. Yes, here.

Q. Here, you peaked there, the door is locked?

A. Yes.

Q. So you understood Osman is not there?

A. Yes.

Q. And you went back?

A. Yes.

Q. All right. Now, let us talk about me. You are at the corner...

A. Yes.

Q. ...where am I?

A. You were just near the door, very close, and you were turning like this towards this way.

Q. So you saw me knocking at the door?

A. I did not see you knocking, I saw your hand coming down like this and you were turning, I did not know whether you knocked or not, no, I don't know that.

Q. Now, let me ask you something else. If someone needs to know if Osman is there, isn't it simplest way either to just pick up the phone and dial his number and he would answer and you know where he is? Isn't it the simplest way to do that?

A. I can't answer that question.

Q. Okay. Do you know his personal number of Osman, since you are his student?

A. Yes, I do.

Q. Okay. What is it?

A. 848-3147.

Q. All right. So if you dial this number, it is his number, not his secretary, right?

A. Yes.

Q. So, if he's there he will answer, correct?

A. Uh, huh.

Q. So one doesn't have to peak the door, one doesn't have even to knock at the door, just dial 3147 you will know for sure if Osman is there, correct?

A. That's correct maybe for you, for me, I don't use telephones and other things, if I am nearby I just peak and see if he's there.

Q. All right, but this is not the point I'm trying to make.

Me JEAN LECOURS :

Yes, what is he trying (inaudible)?

VALERY FABRIKANT :

All right, I will say what I'm trying to make.

Me JEAN LECOURS :

The only thing I can see is to nail down the witness...

VALERY FABRIKANT :

No.

Me JEAN LECOURS :

...that he was not obliged to call at all, My Lord.

VALERY FABRIKANT :

No.

Q. So I'm asking, did you or didn't you inform the reporters that you saw me repeatedly knocking at the door...

A. I did not. If you have a copy of the report...

Q. Did you read the newspaper yourself?

THE COURT :

Would you stop arguing with the witness? You called the witness, stop cross-examining the witness and stop arguing with him.

VALERY FABRIKANT :

I'm not arguing with him.

THE COURT :

Yes, you are. Now put your questions or sit down.

VALERY FABRIKANT :

Q. Did you read the newspaper report about you?

A. Yes, I did.

Q. Okay. Was it accurate?

A. I don't remember, it's almost a year ago.

Q. All right. Let me then repeat to you what the newspaper said, that you saw me...

THE COURT :

If you wish to refer him to the newspaper, show him the newspaper. If you haven't got the newspaper, move on to something else.

VALERY FABRIKANT :

Then I have to interrupt his testimony and...

THE COURT :

Oh, you're not interrupting his testimony.

VALERY FABRIKANT :

...(inaudible) newspaper.

THE COURT :

Oh no, you're not interrupting his testimony, he can finish his testimony right now.

VALERY FABRIKANT :

Then I'm allowed to quote the way I remember it, there is nothing wrong with that. So...

THE COURT :

Then you better ask him: "Do you remember reading..." and we'll see what he says.

VALERY FABRIKANT :

Yes.

Q. Do you remember reading the following phrase in the newspaper, that you saw Fabrikant looking pale and shaky, repeatedly knocking on chairman's door?

A. If I did?

Q. Yes.

A. I remember the first part of the phrase saying that I saw Fabrikant, he was looking a bit unusual, maybe the pale, or something, but repeatedly knocking Osman's door, no, I don't remember.

Q. You don't remember reading that?

A. No, I don't.

Q. Okay. Do you remember saying that to the reporter?

A. I don't.

Q. What, you don't remember or you didn't say it?

A. I did not say it.

Q. Okay. Did you say to the reporter: "Obviously Fabrikant was waiting for Osmana to arrive"?

A. I don't remember that.

Q. Well, did you or didn't you say it to reporters?

A. I don't remember.

Q. You could have said that?

THE COURT :
The witness has answered he does not remember, so that's his answer.

VALERY FABRIKANT :
Well, part he does remember, part he doesn't remember.

THE COURT :
That could be. That's his answer.

VALERY FABRIKANT :
So, was I shaking?

A. Shaking what?

Q. Well, shaking.

A. Oh, shaking your body?

Q. Yes.

A. I did not give much attention to you, only I saw your face, and then I kept on doing my work.

Q. Yes. Did you tell the reporter that I looked pale and shaky?

A. I said you looked pale, shaky I don't know.

Q. You might have said that?

A. I might not have said that too.

Q. Yes, this is the kind of people we have. So, you peaked there, you saw me in the corridor, then what? You went to the copier and I went out of the department, what happened after that?

A. You went to the door and you went back, and I don't know, a couple of seconds, one minute or so, again you came back and you went out of the door.

Q. Well... that's all you saw?

A. Yes.

Q. So it was all the reporter's, you know, imagination, that you saw me shaking at the door, shaking, knocking at the door, (inaudible) waiting for Osman to arrive...

THE COURT :
This is argument, and we have not seen what the reporter wrote or anything else, that question is out of order.

VALERY FABRIKANT :
All right. Thank you.

Me JEAN LECOURS :
I have no questions, My Lord.

THE COURT :
Thank you, sir.

AND FURTHER DEPONENT SAITH NOT

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this sixteenth (16th) day of the month of July, personally came and

appeared:

GEORGES D. XISTRIS, born on December thirteenth (13th), nineteen hundred and thirty-six (1936), professor of engineering, confidential address;

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

EXAMINED BY VALERY FABRIKANT :

Q. Now, how many years do you know me?

A. Since early eighties, that would make it about thirteen (13), twelve (12), thirteen (13) years.

Q. Okay. What was our relationship?

A. You were engaged to do some research as part of a collaborative effort with professor Sankar, professor Osman and myself.

Q. Have you brought your c.v. with you?

A. Yes, I have.

Q. May I take a look at it, please?

Me JEAN LECOURS :

What is the relevance? What is the point, My Lord?

THE COURT :

I have no idea what the point is. What is the point, Mr. Fabrikant?

VALERY FABRIKANT :

About just allow me to ask questions. Why is it necessary to absolutely innocent question to waste Court time to asking me what is the point. I asked for his c.v., what...

THE COURT :

Because I strongly suspect you're the one who is wasting Court's time. What's the purpose of asking for his c.v.?

VALERY FABRIKANT :

Well, he claims to have collaborated with me and co-authored several scientific works, so I want to see if those are listed, and I want to see what is listed in general.

THE COURT :

Well, before you ever get to that you better establish the basis of where you're going, and indeed whether there is a question of collaboration. So you have a number of questions to pose before the c.v. could ever become pertinent.

VALERY FABRIKANT :

Well, I already said...

THE COURT :

So your question is ruled premature to say the very least. To say the very least. Continue.

VALERY FABRIKANT :

All right.

Q. What was subject of your Ph.D degree?

A. Random vibrations and reliability of machines.

Q. Uh, huh. Who was your supervisor?

A. Professor Germain Ostiguy at cole Polytechnique.

Me JEAN LECOURS :

What is the purpose of this line of questions, My Lord?

THE COURT :

I have no idea, Mr. Lecours.

Me JEAN LECOURS :

Maybe we should ask the accused.

THE COURT :

Let's wait for the next question, and you may well be right.

VALERY FABRIKANT :

Q. Now, could you describe...

A. Can I just clarify that, Your Honor. I don't recall if I had another supervisor at cole Polytechnique, it's very possible that doctor Alain Dor, was involved in my thesis work, I have to go back and check the record, but my primary professor was Germain Ostiguy.

VALERY FABRIKANT :

Q. All right. Now, how did it happen that, as you claim, we start collaboration?

A. I do not understand the question, Your Honor.

Me JEAN LECOURS :

He never claimed anything, My Lord.

VALERY FABRIKANT :

Well, he claimed that we collaborated...

THE COURT :

You asked the question about your relationship and he said you were engaged to do research in collaboration with Sankar, Osman and him.

VALERY FABRIKANT :

That's right. So I ask...

Q. Would you describe how did it come to collaboration? When and how?

A. As I... Can I answer? In the Department of Mechanical Engineering at Concordia, since the early seventies, there was a group formed to conduct research in machinery dynamics, in solid dynamics. The members of that group were the professors I mentioned before, including myself, as well as a number of graduate students. The field that we're engaged in is fairly broad in terms of the areas of technology it touches on, each one of the professors had a particular area of expertise, and they all contributed to the various research projects that were going on. Near the latter part of the seventies, I don't recall the exact year, you were introduced to me by professor Sankar as having some sort of background in mathematics, and your knowledge could have been brought to bear on some of the problems that we were investigating at the time, and that was the beginning of our association. I agreed with professor Sankar to pay your salary in part for as long as the research effort went on. It lasted for about two years, from that point on your research began to diverse from my interests and the association was stopped, was terminated.

Q. Okay, but...

A. If I can give you some more background to it, I'm interested mainly in the practical applications of this research and interested in the results that people can use. Your interests tended to be more on the theoritical and the abstract side which was of no value to me, and that's why I stopped funding... paying for your salary.

Q. All right. But at the beginning you said you were investigating some problems to which you wanted me to be a part or what? How did it happen? At the beginning, you said you were investigating some kind of problems.

A. Your Honor, what's the beginning?

Q. At the beginning of collaboration. Describe the beginning, what was it? What kind of problems did you study at which you thought I would be useful?

A. I'm interested in analyzing the behavior of machine elements, antifriction bearings, shafts, gears, and trying to predict the life of these elements prior to conducting any major

repairs to equipment. This domain involves the analysis of contact stresses as they arise in the (inaudible) process, the rolling of antifriction elements, the stress that's generated between the (inaudible) elements themselves, the balls or the spheres with the (inaudible) of the bearings. And apparently I was told that you had some mathematical background which you could have brought to bear in the analysis of the various stress and displacements that they place in those elements.

Q. All right.

A. And that was the inception of our association.

Q. All right. So it was not like Sankar described it, that you came to him and said: "I have no publications, I need publications, I want to support the guy so (inaudible) include me in my paper"?

Me JEAN LECOURS :

What are we talking about?

THE COURT :

I have absolutely no idea what we're talking about.

A. If I can set the record straight...

Me JEAN LECOURS :

The accused is testifying from the box.

THE COURT :

When there is an objection, we've already too many people with three people talking, so when there's an objection, as there is from the Crown at the moment, you say nothing. Okay?

A. Okay.

Me JEAN LECOURS :

He's making comments, he's not even asking questions.

VALERY FABRIKANT :

No, I'm asking questions.

THE COURT :

No, that last question was not a question. That last question was, as you put it, was a statement from you.

VALERY FABRIKANT :

Well, I'm just trying to trigger his memory, was it?

THE COURT :

No, you weren't trying to trigger his memory, you were trying to testify, as you usually do.

VALERY FABRIKANT :

Okay.

Q. Try to remember, did you or didn't you visit Sankar at that time, and told him that you were in very difficult position, that your grant might be terminated, and you need publications. And this is why you were prepared to contribute part of my salary so that I included you as co-author, do you recall that?

A. I have no recollection of the event that you're referring to. To set the record straight, I have had several publications before I had the misfortune of meeting you, I had been promoted before I met you, my grant was in no danger of being cut, as a matter of fact has continued since the time that we severed our association. My record shows quite clearly, anybody that wants to look at it, it's a matter of public record at Concordia, because my c.v. is published along with all the other documents the department puts up on a yearly basis, and they're adequate publications to support my claim.

VALERY FABRIKANT :

All right. So here maybe c.v. becomes relevant.

THE COURT :

At this point the c.v. becomes relevant.

VALERY FABRIKANT :

So let me take a look at it please.

A. Could I just...

THE COURT :

Q. No, just wait for a question. There's no room for comments outside the questions and the answers that you feel you have to give to properly answer the questions.

VALERY FABRIKANT :

Q. Regretfully, his c.v. is incomplete. I would like to maybe... is it possible, after the break, to bring complete list of your publications?

A. I have it right here.

Q. Oh, you have it. Okay.

A. That's not my c.v., I consider my c.v. to be the salient points of what I've done the last five or six years, I don't go back to my date of birth.

Q. Well, if you call it point salient, that's fine, but still I would like to get the complete list, if possible.

THE COURT :

Q. That is a complete list of your publications?

A. Up until last May, Your Honor.

Q. Fine.

A. Sorry, May of ninety-two ('92).

Q. So pass that across please.

VALERY FABRIKANT :

Q. Now, if I read correctly your c.v., please correct me if I'm wrong, you had an article, one in the whole year of eighty-one ('81), one in the whole year of eighty-two ('82), none in the year of eighty-three ('83), correct?

A. Can I refer to the document?

THE COURT :

Q. Sure.

A. That would appear to be the case, you're talking about journal publications?

VALERY FABRIKANT :

Q. Yes. And you know...

A. Just a minute. I had three, four conference presentations in eighty-three ('83), one of these presentations eventually became a journal publication.

Q. Which one is it?

A. It is marked in the c.v. with an asterisk.

Q. All right. Now, do you know these people who decide on grants look mainly at journal publications rather than at conference presentations, do you?

A. You can ask them what they look at.

Q. Well now, in eighty-three ('83) you said you have what?

A. You remember as well as I do what the answer was, perhaps the stenographer can repeat it for you.

Q. All right. So let it read what you have in eighty-three ('83). This is exactly my point, so you had nothing in terms of conference presentation, you had nothing in eighty-two ('82), correct?

A. Your Honor, can I get my c.v. back so I can revise that question?

THE COURT :

Why are you asking these questions? If you've got a point you wish to make, why don't you come to it and let's get on with it.

VALERY FABRIKANT :

Well, then better you just trust me that yes, indeed, this is the case, so we'll go over very quickly then.

Q. Now in eighty-three ('83)...

THE COURT :
I'm not so sure I understand the pertinence of your question, that's what I'm saying to you. So if you have a point you wish to make, I wish you'd make it.

VALERY FABRIKANT :
Okay.

Q. In eighty-three ('83) you claim you had four conference presentations, three of those are written by me, correct?

A. Perhaps you may have been a co-author in them.

Q. Perhaps or...?

A. I don't know, you have the c.v., why are you asking me?

Q. All right. So take a look.

VALERY FABRIKANT :
And the point I'm trying to make, that he was indeed in a very panicky situation, he didn't have any conference presentation since eighty-one ('81), he didn't have any publication in eighty-three ('83), so he desperately needed something in eighty-three ('83) because he had to apply for a grant. This is my point.

THE COURT :
Put your question, but I'm not sure I understand the relevance of it even at that.

VALERY FABRIKANT :
Well...

THE COURT :
Are we on this question that papers were extorted from you?

VALERY FABRIKANT :
Yes. And this has been ruled relevant.

THE COURT :
Go ahead for the minute.

VALERY FABRIKANT :

Q. So you didn't have, again I repeat, any publication, any conference in eighty-two ('82); in eighty-three ('83) you got three of them because you employed me, correct?

A. You have participated in the three presentations, conference presentations in eighty-three ('83), I have no doubt about that.

Q. Okay, we'll get to it how participation was made, but anyway, if I wasn't there then in the whole eighty-three ('83) you would have had one conference presentation and not a single article, correct?

A. I would have employed my time in a much more productive fashion than wasting it with you in those two years, so I don't know what I would have done.

Q. All right, but now we're at a different situation, now you are telling me that we sat together for hours and hours and hours doing some work, is this your contention?

A. I have not responded in that fashion. I've said I wasted enough time with you in those two years, and the total result of that effort was the four conference presentations that are shown here... the two conference presentations with you and two general papers. I do not consider that to be a very productive association.

Q. Well three conference presentations and two articles, right? You don't even remember what it was? Three conference...

A. There are three conference presentations, you're quite right...

Q. And two articles.

A. ...and two articles.

Q. Now, you mentioned that you spent time, could you describe how

this time was spent and how much did you spend time? What exactly did you...

A. Discussing with my colleagues, doctor Sankar, doctor Osman, the direction of the research, the application of the kind of work that you were doing, and those are meetings that you have refused to attend. I've spent some time with you discussing methods of presenting the results so that people could make some use out of them, understand what it is that you were trying to do, and also helped you revise and re-edit the English language of your papers.

Q. Yes, all right. So mainly you spent your time discussing with somebody else my work, correct? How much time did you spend with me?

A. I don't recall exactly how many meetings we had and all the time we spent together.

Q. How many minutes. So, you cannot say that you spent much time, so nobody prevented you from doing your research, at least not I, right?

A. Your Honor, I do not remember how much time I spent with the defendant.

Q. All right.

A. It could be hours, it could be minutes, it could be days, I cannot tell you that thirteen (13) years ago.

THE COURT :

Fine.

VALERY FABRIKANT :

Q. It was how many years ago?

A. Ten years ago. Twelve (12) years ago.

Q. Yes. But you said that the time you spent, you could have used more productively in writing your own articles, right?

A. I said I could have used it more productively, I didn't say what I would have done with it.

Q. Well, more productively?

A. I didn't say articles.

Q. Okay, more productively means that you spent a lot of time.

Me JEAN LECOURS :

These are all leading questions, My Lord.

THE COURT :

They are leading questions and they are leading nowhere.

VALERY FABRIKANT :

They're leading nowhere.

THE COURT :

Now, would you come to the point?

VALERY FABRIKANT :

I am coming to the point.

THE COURT :

Please get there.

VALERY FABRIKANT :

Yes.

Q. So, could you tell me if I did not attend those meetings, as you said, why did you need to spend the time on it in the first place?

A. Because I still discussed with my colleagues which way the research was going to develop, what specific problems we were going to address, and what application was going to come out of the work that was going on.

Q. Well...

A. These are things that perhaps a non-engineer cannot appreciate. I am interested, as well as my colleagues are, who are all engineers, in coming up with practical results that could be used, and that takes time, this is perhaps

something you cannot comprehend.

Q. Well, who did the research itself? Was it I?

A. I've answered that before, Your Honor, it was collaborative research.

Q. Well, what does it mean collaborative? Okay, let us... do you have in front of you, let us say, article on conditions of infinity in external... you don't even get the title right. Could you read the title, is the title correct? No, no, I opened at the right page. Look at the first one.

A. (Inaudible) crack problems, the crack is missing.

Q. Crack is missing. All right. What crack...

A. If you are trying to tell me that I make mistakes, there are mistakes in my c.v., typographical errors, yes, I admit, it's not perfect.

Q. This is not the point.

THE COURT :

No, it isn't the point.

VALERY FABRIKANT :

Yes. All right. So...

THE COURT :

So would you please come to the point?

VALERY FABRIKANT :

I am coming to the point.

THE COURT :

Yes, well I'm getting fed up listening, and I'm getting fed up waiting, because you're not coming to the point.

VALERY FABRIKANT :

Q. So describe collaboration on this particular article.

A. Your Honor, I'm sorry, I cannot recall the extent of discussions that we had ten years or twelve (12) years ago.

Q. Okay.

A. The article was published in eighty-six ('86), it was probably presented sometime in eighty-one ('81), eighty-two ('82), eighty-three ('83), in that time frame, I don't have that kind of information available for you.

Q. Well, what exactly did you do there?

A. I explained to you before in response to a previous question what it is that (inaudible).

Q. Well, what exactly? If you...

A. The potential application of the kind of development that you were doing, the type of integral operators that you were developing, interested me in applying those equations, or that type of mathematical manipulation to the behavior of (inaudible) bearings, to the development of cracks in machine elements which are under (inaudible) stresses and they grow fatigue cracks, and they eventually fail, in the (inaudible) process, I saw all kinds of potential areas that I could advance, and that was my contribution. I also edited the papers, I discussed the ways of presenting the results with you, and that's as far as my memory goes to this point.

THE COURT :

Q. He wants to know what his contribution was.

A. His own contribution?

Q. His own contribution, and where...

A. His own contribution, Your Honor...

Q. ...and where it relates in the whole collaborative effort, that's...

A. His own contribution was to provide the mathematical expertise in developing some of these (inaudible) differential equations and solving (inaudible) differential equations, looking at some functions which are published in the literature. And I

have no interest in going to the library and look them up because they're part of the public domain, and generally in providing the mathematical expertise.

VALERY FABRIKANT :

You see, you are nodding your head.

A. I'm not nodding my head.

Q. No, no, no, I'm talking to the Judge.

VALERY FABRIKANT :

You're sitting and your nodding your head, this is the reason why we need an expert, because what he's saying is total absurd. And if there was a scientist sitting here, he would have blushed because what he was saying is total absurd, there are no integral differential equations involved there...

A. There are (inaudible) operators involved all over the place.

VALERY FABRIKANT :

There is nothing in this particular article.

THE COURT :

Listen. Listen. Listen.

VALERY FABRIKANT :

Let us look at the article.

THE COURT :

Look, we are not going to go through these articles from a technical point of view and you are not going to put an assessor in here with a view to coming along and saying that, from a scientific point of view, he disagrees with Mr. Xistris' assessment of who did what in the project. The witness is here, he'll give his version of what you did and what he did. I suppose it will be opened to you to present your version of the whole thing, as you say you intend to do.

Me JEAN LECOURS :

He's not obliged to bring the witness, My Lord, if he's not happy with the answers.

VALERY FABRIKANT :

Well one second.

Me JEAN LECOURS :

And if he gets the answers, he has to live with them.

VALERY FABRIKANT :

On second.

THE COURT :

I agree with you, it's perfectly clear.

VALERY FABRIKANT :

One second, I'm not obliged. When I tried to bring an expert who would testify to that end, I've been told that I can prove it, that this is matter of fact, and I can call those people and prove through their testimony, right?

THE COURT :

You have someone here who's testifying...

VALERY FABRIKANT :

Yes.

THE COURT :

...and what you wish to do now is...

Me JEAN LECOURS :

That's the end of it, My Lord.

THE COURT :

...is get into a technical debate with him, and that's going to advance nothing. Now put your questions about the publications, if you have any. I couldn't care less if you wish to quibble with the witness as how you qualify a particular brand of equation, I could not care less.

VALERY FABRIKANT :

Well this is not the point, what is the point, that he cannot even answer...

Q. Okay, say in your own words...

THE COURT :

The witness has answered the question, the witness' answer is there.

VALERY FABRIKANT :

Well the problem is...

THE COURT :

You may not agree with it but that's too bad.

VALERY FABRIKANT :

It's not that I don't agree, it is the same thing as for example to say... assume for a second that you are Judge, and you hear the lawyer saying something that hearsay is always admissible, you would say: "Gosh, what is he saying, it's absurd", right? From a mathematical point of view, this is approximately what he is saying. It's total absurd. He does not even understand how to join words together, and this is why we need an expert.

THE COURT :

Have you any questions to ask him?

VALERY FABRIKANT :

Of course I have.

THE COURT :

Ask them.

VALERY FABRIKANT :

But this is what I'm explaining to you why we need an expert.

THE COURT :

Because we are a long, long way from the defense you're advancing, believe me, a long, long way.

VALERY FABRIKANT :

Not at all.

THE COURT :

Oh yes, we are.

VALERY FABRIKANT :

We are right on the point.

Q. Now, the title of the paper is "on conditions at infinity in external crack problems". Now, how on earth an external crack could occur on any of the machines there which you mentioned?

A. Fatigue cracks, are you familiar with fatigue cracks?

Q. I'm talking about external cracks. Do you know what external cracks, first of all? Could you explain to the jury what external crack is?

Me JEAN LECOURS :

It think we're sidetracked, My Lord.

VALERY FABRIKANT :

We are not sidetracked, it is elementary thing, if he knows what it is, he would be able to explain it, because later I will explain it, the jury will understand what it is.

Q. Could you explain to the jury, in your own words, what is external crack?

A. What are you trying to do now, give me a course?

Q. No. Not at all, just explain what external crack is.

THE COURT :

Q. Can you answer that last question?

A. Without going into some technical...

VALERY FABRIKANT :

Q. Without going into anything, it's so elementary, it could be explained to even a child.

THE COURT :

Would you kindly be quiet?

A. It's a separation of surfaces which are studied under what is called half space in elastic materials.

VALERY FABRIKANT :

Did anyone understand anything?

THE COURT :

Q. Sorry? Have you finished?

A. I have finished, that's the explanation I'm going to give you.

Q. Fine.

VALERY FABRIKANT :

Q. So you are talking about separation between half spaces?

A. No, I did not say that.

Q. Okay. What did you say then?

A. Let the stenographer tell you what I said.

Q. Okay. Could you repeat it once again what you said, and explain how the separation between two spaces could be in all those journal bearings which you mentioned, or whatever? How on earth could it be relevant to what you were describing just before?

A. There is a certain amount of work that has to be done between the initial development of the theoretical formulations before you apply it to a practical problem. And what you were going here, in this paper, was the initial background, preparatory work, that eventually led up, hopefully would have led up to the study of contact surfaces and the behavior (inaudible) bearings and (inaudible) process. That was my impression of where the research was going.

Q. Do I understand...

A. As I pointed out to you... can you let me finish, please? As I pointed out to you, when I saw the direction that you wanted to take the research, I decided that it was not the area I wanted to work in. My whole intent in associating my work with you was to get some mathematical, some theoretical background. That did not evolve in the direction that I wanted to and at the rate that I wanted to.

Q. Now, explain please, you didn't answer my question, how on earth external crack could be applicable to any what you name (inaudible)? Any machinery, whatever.

A. The method that you use to describe the displacements and the stresses in external cracks are equally applicable to the kind of problem that I wanted to address. The formulation of the stress tensors and the (inaudible) stresses, and the displacements, apply equally well to the items of the machinery components that I've just mentioned before.

THE COURT :

Okay. Thank you, Mr. Xistris. Just sit down for the minute. We'll adjourn for lunch and we'll resume at two fifteen (2:15). I wonder, Mr. Foreman, if you'd just remain for a minute and we'll see if we can cover the points that you raised in the note.

THE JURY LEAVES THE COURTROOM
WITHOUT JURY

VALERY FABRIKANT :

May I have the c.v. once again?

THE COURT :

It may be helpful if you would go to the microphone and then the whole thing will be recorded. I got a note from you on July the twelfth (12th).

"In looking ahead to possible and committed days,
when individually or collectively we would like you

to consider adjournment the following dates are submitted."

I'm correct, Tuesday the twentieth (20th), one of the jurors has a doctor's appointment.

THE FOREMAN :

I understand that's also been requested separately by him, I was just listening basically.

THE COURT :

Yes. Okay. Friday, July the twenty-third (23rd), general R & R. I understand, rest and recuperation is the... Now, Monday the twenty-sixth (26th) already requested, yes, it's only in the morning is it?

THE FOREMAN :

That's correct, yes.

THE COURT :

Yes. Okay.

THE FOREMAN :

Even the July twentieth (20th) one is from nine thirty (9:30) to twelve (12:00).

THE COURT :

Yes, I understand, it's the morning, nine thirty (9:30) to twelve (12:00). Okay. So what you propose is that we go from... we adjourn Thursday night and have a three and a half day weekend there, and resume on the Monday afternoon?

THE FOREMAN :

That's correct.

Me JEAN LECOURS :

I did not follow the last... which date?

THE COURT :

The twenty-sixth (26th). We wouldn't sit on the twenty-third (23rd), twenty-fourth (24th) is Saturday, twenty-fifth (25th) is Sunday, twenty-sixth (26th) is Monday a.m. Then we... August the thirteenth (13th), that's a whole day is it?

THE FOREMAN :

That's is correct.

THE COURT :

That's correct. Okay. That's what I thought.

THE FOREMAN :

It's a fact that where it is, it's travel time...

THE COURT :

Yes, sure, I understand. Wednesday the eighteenth (18th) and Thursday the nineteenth (19th), is that a two day appointment?

THE FOREMAN :

It's a two day test at a hospital that the doctor has requested at that time, we did ask him if it could be changed and the doctor actually wants it as soon as he can, (inaudible).

THE COURT :

I see. And that's as soon as he can have it?

THE FOREMAN :

That's correct.

THE COURT :

Okay. I ask that because... and it will take the two days?

THE FOREMAN :

It is a two day set of tests I understand.

THE COURT :

It's a two day series of tests.

THE FOREMAN :

Right.

THE COURT :

Well, we may run into a longer period there for another reason

that I'll discuss with you, that would run into the next week if ever we end up going to that time. And Friday the twentieth (20th), to give really a long weekend. Yes. Okay. Maybe yes, maybe no, if it... we might almost use from the eighteenth (18th), if we have to, through into the next week until at least the Wednesday. It might end up being a whole week, you might want to kick that around with everybody that possibility of...

THE FOREMAN :

I think they may be overjoyed.

THE COURT :

They might be overjoyed, I don't doubt it, because perhaps we would adjourn on the Tuesday, the seventeenth (17th) of August, if ever we go to that point. And you would have Wednesday, Thursday, Friday, Saturday, Sunday, and then Monday and Tuesday, and maybe even Wednesday. Because I also have the odd problem that comes up now and then, and I have one that requires me to be out of time that week too. So I wondered if we were to combine the two, it's not giving you all a hell of a long holiday but at least it's better than nothing.

THE FOREMAN :

There will be no objection, My Lord.

THE COURT :

There will be no objection to that. Okay. Fine. Okay. I understand now what everything is, leave it with me and I'll work out a schedule and I'll give it to you at least in part this afternoon, and the other part probably within the next couple of weeks, depending on how this thing unfolds.

THE FOREMAN :

Okay, thank you.

THE COURT :

Okay? Thank you very much. Okay. We'll adjourn until two fifteen (2:15).

VALERY FABRIKANT :

Well I hope I also get a copy of the schedule.

THE COURT :

Pardon?

VALERY FABRIKANT :

I hope I will also get a copy of that schedule.

THE COURT :

Oh, it will be a pleasure to convey one to you.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

THE JUDGE AND THE JURY ARE PRESENT

VALERY FABRIKANT :

Can I make a motion to disclose the name of the lady who I allegedly raped?

THE COURT :

You can make a motion if you like, but it's not going to be granted.

VALERY FABRIKANT :

Well, why not?

THE COURT :

Carry on with your examination of professor Xistris.

VALERY FABRIKANT :

With your permission, am I not entitled...

THE COURT :

Carry on your examination of professor Xistris. I presume

this is simply to provoke me.

VALERY FABRIKANT :

Well, I had no idea this might provoke you.

THE COURT :

Would you remove him from the courtroom please, we'll adjourn until Monday morning, ladies and gentlemen.

TRIAL CONTINUED TO JULY 19, 1993

Je soussign,, Michel Daigneault, st,nographe officiel
bilingue, certifie que les feuilles qui pr,cšdent sont et
contiennent la transcription de bandes d'enregistrement
m,canique, hors de mon contr"le; et est au meilleur de la
qualit, dudit enregistrement. Le tout conform,ment ... la Loi.

Et j'ai sign,,

Michel Daigneault,
St,nographe officiel bilingue

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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 J. FRASER MARTIN, J.S.C. ET JURY

NOM DES PARTIES:

SA MAJEST LA REINE

Plaignante,

c.

VALERY FABRIKANT

Accus,,

COMPARUTIONS:

Me Jean Lecours
PROCUREUR DE LA PLAIGNANTE

DATE DE L'AUDITION: LE 19 JUILLET 1993

FICHER: 3382

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WITHOUT JURY	
Me FREEDMAN :	
Good morning, My Lord.	
THE COURT :	
Good morning, Mr. Freedman.	
Me FREEDMAN :	
A couple of issues to raise with respect to subpoenas and witnesses, especially in light of the discussion last week about taking some days off for the jury. I have three witnesses, who two have been under supoena for several weeks, one who just received a subpoena last	

week, who are all leaving the country, two of them July thirtieth (30th) and one of them July twenty-ninth (29th), which is the end of next week.

THE COURT :

Who is leaving July twenty-ninth (29th)?

Me FREEDMAN :

Dr. Cheng, C-h-e-n-g. He's gone from July twenty-ninth (29th) until January, he's on sabbatical leave. And then we have Dr. Kenniff and Dr. Swamy, who are leaving on July thirtieth (30th). Dr. Kenniff is gone until August twenty-second (22nd) and Dr. Swamy is gone for an indefinite period of time on administrative leave.

THE COURT :

I know you mentioned four months at one point.

Me FREEDMAN :

That's right.

THE COURT :

Is Kenniff going out of the country or...

Me FREEDMAN :

He's rented a house in Maine for three weeks with his children.

THE COURT :

I see.

Me FREEDMAN :

As I said, Dr. Kenniff has been under subpoena for... I don't have the exact date, probably close to a month now I gather, three weeks or a month.

Me LOUIS BELLEAU :

June twenty-one (21).

Me FREEDMAN :

June twenty-one (21)?

Me LOUIS BELLEAU :

Yes.

Me FREEDMAN :

So almost a month.

THE COURT :

Yes, because we will not be sitting tomorrow morning. I have been asked for Friday, but as general rest and recuperation. That I am prepared, depending on what difficulties we get into, if we get into any, to discuss with the foreman. We will not be sitting on next Monday morning but we will be sitting in the afternoon. These are the problems that come between now and the end of next week. Well, I don't know, I suppose I will have to put the question to the accused and see what he says, but there is obviously no reason why all of these witnesses cannot be dealt with and dealt with now, with as much dispatch as possible. Can you see any reason, Mr. Fabrikant?

VALERY FABRIKANT :

Well, as I said before, I always accommodated and I'm trying to do my best. As far as Dr. Cheng is concerned, I see no problem to schedule him, say for tomorrow. Swamy initially planned to go August fourth (4th), and this is what I had in my documents. So four (4), does it mean that he changed his plans or...

Me FREEDMAN :

I can verify that.

VALERY FABRIKANT :

Because if you recall you gave me schedule...

Me FREEDMAN :

That's right.

VALERY FABRIKANT :

...and Swamy is listed as August fourth (4th).

Me FREEDMAN :

I can verify that.

VALERY FABRIKANT :

And Kenniff is also listed as August second (2nd).

Me FREEDMAN :

Well August second (2nd) is Monday, Mr. Fabrikant, and the thirtieth (30th) is Friday, so obviously Friday is the last available Court date.

VALERY FABRIKANT :

Oh, all right, so it is the same thing.

Me FREEDMAN :

That's right.

VALERY FABRIKANT :

In this case, as far as Kenniff is concerned, it is very important for me to question him after many other witnesses. Therefore, if for example, to be sure that it will last at least until August twenty-second (22nd), maybe we'll question him after that. Or, if for example, we proceed so expeditiously that need for him to come will be in between that, maybe he would be kind enough to come from Maine for one day to testify, I don't know. But since he's around, and I planned him to be one of the witnesses at the end, therefore to me, unless again you just give me an ultimatum where I have no choice. But still, it's kind of difficult to have three witnesses in such short time to be questioned in a qualified manner, so I'm prepared to accommodate two of them, Cheng and Swamy. And as far as Kenniff is concerned, I think it would be kind of him just to be... Again, I will try to keep him at the end, and my estimation is that it will be not before August twenty-second (22nd) but it might be before, because sometimes witnesses go fast. So maybe Kenniff would be kind enough to, in principle, agree, if we run in a situation where we need him before that, if he would agree to come.

Me FREEDMAN :

Well, he's six hours away, My Lord, if he has to return he'll have to return.

THE COURT :

He'll return.

VALERY FABRIKANT :

And as far as the other two, I will, starting tomorrow, let's say Cheng and after that Swamy.

THE COURT :

You will have to do that...

VALERY FABRIKANT :

Yes.

THE COURT :

...because if they're going out of the country, then...

VALERY FABRIKANT :

Yes, there is no choice.

Me FREEDMAN :

There's one other issue, My Lord. I received a subpoena last week for D. Elbaz who, if you recall, several weeks ago the director of Computing Services was subpoenaed to

bring with him the electronic mail or the computer file of D. Elbaz, that subpoena was quashed on the ground of pertinence. Mr. Fabrikant has now attempted to subpoena D. Elbaz directly, with his e-mail and his computer file. I don't know D. Elbaz, I don't believe Mr. Fabrikant knows D. Elbaz. I believe he's a student, or a graduate student at the university. Technically I could track him down. And since the Defense started I've been receiving the subpoenas at my office in order to save time, even though that's not the technically correct way they should be served on the people individually at their homes. But I certainly don't see my role as sort of an investigative role for Mr. Fabrikant to track down students for him, and...

THE COURT :

Not at all, if you've been receiving students for personnel who work for the university, that's one thing.

Me FREEDMAN :

That's right.

THE COURT :

But I cannot see why you would be receiving or accepting any obligation to receive subpoenas for students.

Me FREEDMAN :

So, that's where we are. I just wanted to inform, I don't plan to do anything about it, I just wanted to inform you about it.

THE COURT :

I don't propose to ask you to do anything about it either.

Me FREEDMAN :

Thank you.

THE COURT :

Thank you.

VALERY FABRIKANT :

Well, then I think that Mr. Belleau should then investigate what is the proper address to serve the subpoenas and to serve it there.

THE COURT :

Yes.

Me SIMON LAPOINTE :

Bonjour monsieur le juge, je suis Simon Lapointe de la Commission d'accès ... l'information. Je m'excuse auprès de la Cour si j'ai pas mon rabat, je vous demande quand même l'autorisation de pouvoir m'adresser ... vous. Le président de la Commission d'accès ... l'information...

THE COURT :

Just a second, the trial is in English. If you would like I can have an interpreter brought here, but...

DANIEL REICHER - INTERPRETER

SOLEMN DECLARATION

Me SIMON LAPOINTE :

Je représente la Commission d'accès ... l'information, monsieur Paul-Andr, Comeau...

- I represent the Access to Information Commission, Mr. Paul-Andr, Comeau...

Me SIMON LAPOINTE :

...qui est le président de la Commission d'accès ... l'information.

- Who is the president of the Commission for Access to Information.

Me SIMON LAPOINTE :

Nous avons reçu un subpoena intimant monsieur Comeau d'être ici présent ce matin...

- We received a subpoena asking for Mr. Comeau to be here this morning...

Me SIMON LAPOINTE :

...le subpoena a été reçu vendredi dernier...

- ...the subpoena was received last Friday...

Me SIMON LAPOINTE :

...et actuellement monsieur Comeau est en Europe, en Belgique.

- ...and Mr. Comeau is actually in Europe, in Belgium.

Me SIMON LAPOINTE :

Maintenant, j'aimerais vous entretenir sur la pertinence, ... tout, venant, aujourd'hui ou ... une autre date, de la présence de monsieur Comeau ici.

- Now, I'd like to deal with the pertinence of having Mr. Comeau here, either now or later.

Me SIMON LAPOINTE :

Et ... cette fin, je voudrais faire une motion pour obtenir la libération de monsieur Comeau en ce que l'assignation n'est pas pertinente au débat en cause.

- And to this effect, I would like to ask the Court that Mr. Comeau be freed because the pertinence of having him here is not evident.

Me SIMON LAPOINTE :

Monsieur Comeau n'est pas au courant des faits qui se sont déroulés dans cette affaire...

- Mr. Comeau is not aware of the facts that took place in this case...

Me SIMON LAPOINTE :

...et la Commission d'accès ... l'information actuellement ne détient aucun document dans un dossier actif.

- ...and the Commission doesn't have an active file regarding the case.

Me SIMON LAPOINTE :

Il est vrai qu'il y a deux dossiers actuellement ouverts...

- It's true that there are two cases that are now opened...

Me SIMON LAPOINTE :

...mais aucune audience n'a été tenue encore ... date dans ces deux dossiers.

- ...but no hearing was held in either of these two cases.

Me SIMON LAPOINTE :

La raison pour laquelle il n'y a pas eu d'audience ... ce moment-ci c'est qu'on s'en remettait au procès actuellement en cours en ce que... par respect pour les tribunaux supérieurs, on attendait que le procès se déroule pour reprendre ensuite.

- And the reason why these hearings are not taking place is with respect to the fact that there's a trial now taking place.

Me SIMON LAPOINTE :

Dans le résumé, au niveau des faits, le président ne connaît aucun fait relatif ... ce qui se passe ici, ni ne détient aucun document pertinent ... la présente cause.

- So to summarize, the president doesn't have any knowledge of the facts of the case...

Me SIMON LAPOINTE :

C'est-à-dire que le président ne connaît aucun fait et

ne d,tient aucun document concernant cette cause.

- ...and he holds no document concerning this case.

Me SIMON LAPOINTE :

Pour ces raisons nous vous demandons de le lib,rer de l'assignation.

- For this reason we ask you to free him from being assigned here.

THE COURT :

Would you be kind enough, first of all, to show me the subpoena? So it contains no duces tecum, it's simply a subpoena to Mr. Comeau personally. You've heard the representations, Mr. Fabrikant, what have you got to say?

VALERY FABRIKANT :

Well first of all, there must be duces tecum there.

THE COURT :

Could you show that to Mr. Fabrikant, please?

VALERY FABRIKANT :

Well if there is not it is a mistake, I can check who's mistake it is. Well, I trust you that there is no...

THE COURT :

Well not that I can see anyway.

VALERY FABRIKANT :

There is nothing there.

THE COURT :

So you've heard counsel's representations, what have you to say?

VALERY FABRIKANT :

Let me check first of all who's mistake it is. Well it is Mr. Belleau's mistake, not mine.

Me LOUIS BELLEAU :

I'll check on my copy.

VALERY FABRIKANT :

Well it is your copy. This is funny thing, it is your copy.

Me LOUIS BELLEAU :

No, it's not my copy.

VALERY FABRIKANT :

It is your copy, mine has been...

THE COURT :

Mr. Fabrikant, stop it.

Me LOUIS BELLEAU :

It's possible, My Lord, that there may have been a mistake.

THE COURT :

Okay. So duces tecum, no duces tecum, in the event that you meant to serve Mr. Comeau with a subpoena duces tecum, apparently that hasn't happened. Now what is the pertinence of Mr. Comeau for this trial?

VALERY FABRIKANT :

Well I can just repeat once again, I am prepared to explain pertinence in presence of the jury.

THE COURT :

No, you will explain pertinence to me now.

VALERY FABRIKANT :

Well, this is one thing which you cannot force on me.

THE COURT :

I cannot force that on you?

VALERY FABRIKANT :

No.

THE COURT :

All right then, then we'll solve the matter very quickly, the subpoena for Mr. Comeau is cancelled.

Me SIMON LAPOINTE :

Thank you very much.

THE COURT :

And the procès-verbal will reflect that the accused refused, on two requests, to furnish the Court with any explanation as to the pertinence of that subpoena.

VALERY FABRIKANT :

Well, maybe to be honest, it should reflect that you refuse demanding the jury be there.

THE COURT :

It is my privilege to decide whether the jury will be there or not, not yours.

VALERY FABRIKANT :

Well, this is why I wanted to press criminal charges against you, because you are falsifying the report.

THE COURT :

Everything that I said is recorded.

VALERY FABRIKANT :

I know, but some people just look there and don't listen to the recording.

THE COURT :

Now, could you bring the jury, please? Excuse me, votre nom c'est quoi, c'est maÊtre?

Me SIMON LAPOINTE :

Simon Lapointe.

THE COURT :

Me Lapointe. O.K.

MEMBERS OF THE JURY ARE PRESENT

VALERY FABRIKANT :

Well, I think jury should be informed the Judge has recently refused me...

THE COURT :

Mr. Fabrikant...

VALERY FABRIKANT :

...(inaudible) witness without even hearing my explanation because I demanded the jury be there, be present.

THE COURT :

The jury is perfectly aware that I have the right to determine whether the jury be present or not be present during your arguments. Now, put your questions to professor Xistris.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this nineteenth (19th) day of the month of July, personally came and appeared:

GEORGES D. XISTRIS, born on December thirteenth (13th), nineteen hundred and thirty-six (1936), professor engineering, confidential address;

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

EXAMINED BY VALERY FABRIKANT :

Q. Well, I thought first time you just was slip of the tongue, I think you should be more precise in terms of your position, you are not professor, you are what?

A. I am an associate professor in the Department of Mechanical Engineering at Concordia University...

Q. That sounds more correct.

A. ...but my understanding is that engineering professor applies to an academic appointment above the rank of lecturer.

Q. Okay. Do you need your list of publications or you have them?

A. I have a copy.

Q. All right, and I have additional copy. All right. Now we finished discussing the article on conditions (inaudible) infinity and external crack problems. Would you like to take cognizance of the article and confirm that this is exactly the article we are talking about. Mr. Belleau. Is this the article in question?

A. That's the article on which you asked me some questions last time I was at the stand.

Q. All right. Now, you mentioned that there are some integral differential equations there and integral operators, find single integral differential equation there.

A. They're integral operators, they're integrals which arise in attempting to compute the total force which acts on the space and their investigation, and the expression of the stresses, after you've integrated the whole space, of course are double integrals.

Q. Just answer first question, do you find any integral differential equation there?

A. No, I do not, but that is a matter of opinion.

Q. Oh, you mean that there might be something which might be interpreted as integral differential equation there?

A. In the derivation of these terms where only the results are shown, there may have been all kinds of steps which I do not have available to me at this time. In the paper itself you have a series of double integrals which are computed based on the results that you have obtained in a couple previous publications where you discuss integral operators.

Q. In this particular paper, is there any... So the first answer is no integral differential equations there, right?

THE COURT :

The witness has answered the question and he's qualified his answer. He said to you, no, and he qualified his answer.

VALERY FABRIKANT :

All right.

Q. Now, is there integral operator there? If yes, show it where it is.

A. The form of the intergrals that you have in this paper is identical to the formulations discussed in two previous notes on integral operators.

Q. Is there any integral operator in this article? If yes, show it please.

A. An integral operator, My Lord, as far as I understand the mathematics of this field, is a formulation which is used, an operation which is used to solve complicated integrals. There are integrals in the paper, and the solution of these integrals is given in the paper, the immediate steps are missing. The paper summarizes the results, it does not go into details in the derivation, which Mr. Fabrikant has taken about two years to achieve.

Q. I repeat once again, look through the paper if there is explicitly present operator shown there?

THE COURT :

He has explained his answer and he will go no further, you'll move on to your next question.

VALERY FABRIKANT :

Well, he didn't answer, I asked to show the operator if there is one or there isn't.

THE COURT :

I am satisfied that he answered the question, move on to the next question.

VALERY FABRIKANT :

Q. Okay. You have the article, maybe you'll give it back to me then, you have one copy of yours. All right. So you cannot show a single integral operator in this particular article, can you?

A. I think I've answered this before.

THE COURT :

The question has been answered, move on to something else.

VALERY FABRIKANT :

Well, I ask him to open and show, there it is.

THE COURT :

I said the question has been answered, move on to something else.

VALERY FABRIKANT :

All right.

Q. Okay. Look at expression 10, please. This is the integral operator you couldn't find, right? You said it is not there, it is there, you just don't know what it is. Now, do you understand now that this is integral operator?

A. Is that a question, My Lord?

Q. Yes.

A. What is the question again?

Q. Do you understand that expression 10 is integral operator?

A. Expression 10 has two... is a double integral the operators use to find the solution (inaudible). You have a big difficulty understanding terminology, Mr. Fabrikant, and I don't think you and I have agreed on many things in the past.

Q. You have difficulty, I never had.

THE COURT :

You can ignore that last observation.

VALERY FABRIKANT :

All right.

Q. Now, what was... Okay, describe the meaning of the article, what the whole thing is all about. What is the value of this article?

A. The main purpose of this article is to describe the stress distribution on surfaces, on volumes which have discontinuities which are sometimes referred to as cracks. The external cracks in this case, which the article covers, are cracks which occur on the surface of the volume under investigation. And as I pointed out to you last time, my interest in this article was because of the analysis of the stresses and the displacements which occur under spaces which are loaded under different conditions. The same type of situation occurs

in practice, in mechanical shafts, which are included in all kinds of rotating machinery that are slightly loaded, and under fatigue loads cracks initiate on the surface, and these lead to failure. And this is my interest in this particular paper, because of the potential implication. This paper looks at the stress formulations, even by previous investigators, modifies some of these expressions and produces a somewhat different solution from what was available in the literature before. The article includes a series of calculations of the stresses at various points, in the topology of the crack, and proceeds also to make estimates, theoretical estimates of the displacements or deformations that occur on the surface as a result of the loading conditions. I should point out that this paper has absolutely no experimental verification, it's simply a development of the theoretical approach, which is somewhat different from previously published results.

Q. Could you be more specific? What exactly is new in this article and just limit yourself to answer to this question. What exactly is new as compared to what it was before?

A. The article does integrate the stress fields over the surface to compute the forces and bending moments, its "act" which forms a load on the surface. And it concludes that contrary to previous results, there should be presence of bending moments, I believe it's bending moments at a distance far away from the location of the crack.

Q. What is in your result there?

A. I've just finished explaining to you but you don't want to listen. Maybe you don't understand. Maybe if you'd like me to give you a course in "elasticity" I'll be glad to do it.

Q. All right.

A. I quote you that the perimeter at the infinity space far away from the location of the crack, it explains that consistency was observed, results or expectations can only be achieved if the bending moment does not disappear, it's not zero, and it provides our interpretation of the results, puts lights (inaudible) for that supposition.

Q. Let me bring to your attention. Title is: "Under conditions at infinity in external crack problems". Now, what exactly conditions I am discussing, and what is new am I developing about these conditions? I'm just helping you to answer the question.

Me JEAN LECOURS :

I think he got his answer, My Lord. If we go into scientific discussion...

VALERY FABRIKANT :

Well, I need... Let me explain. I need those answers, they will be analyzed by an expert who will come and testify as to how absurd is what he's saying.

THE COURT :

With a view to proving what?

VALERY FABRIKANT :

To prove, one, that he doesn't... Even, you see, he knew that he will be examined on this paper, he still... the whole paper is just two pages, he was unable...

THE COURT :

With a view to proving what?

VALERY FABRIKANT :

...even to understand...

THE COURT :

I don't care what was in...

VALERY FABRIKANT :

...(inaudible) to understand what the whole thing is all about.

THE COURT :

I don't care...

VALERY FABRIKANT :

He's not capable even.

THE COURT :

...what in your mind he was able to understand or what he wasn't able to understand, with a view to proving what?

VALERY FABRIKANT :

With a view to proving what, that he never contributed anything to this paper, this is what. That he, after it was published, the whole thing is two pages. Even if I didn't publish it myself...

THE COURT :

You will move on...

VALERY FABRIKANT :

... and if I have brain, I would have read it, I would have understood it, and I would be able to present what the whole thing is all about. Now, what I'm trying to demonstrate right now, he had the whole weekend, he knew that I will be asking him questions about this article, the whole article is two pages. He is so low in his level, he's unable, even written article of two pages, to read and to understand what the whole thing is all about. This is what I'm trying to explain to the jury, that people with absolutely no possibility to do research of their own hire scientific prostitutes to do it for them. This is the fact that I'm trying to prove.

A. If you want to exchange insults, I'm prepared to exchange.

THE COURT :

Q. Excuse me, Mr. Xistris...

VALERY FABRIKANT :

What did he say?

THE COURT :

Q. ...you're not here... If you and he start exchanging insults...

A. We're not going to get anywhere.

Q. ...rather than he and I or whatever, then the whole thing degenerates beyond what it's already at.

THE COURT :

Listen, this whole line of questioning is pointless.

VALERY FABRIKANT :

I didn't insult him in any way.

THE COURT :

This whole line of questioning is pointless. He has told you in what circumstances the article was made, he has told you that it was a collaborative effort, he has given you his particular view of what he thought its value to be, and that is that. You may hold a different view, I don't know, but you are taking us nowhere by

engaging in a scientific discussion with him here, and that is not what we're here for, so the objection is maintained.

VALERY FABRIKANT :

Well, there was no objection.

THE COURT :

Yes, there was.

Me JEAN LECOURS :

There was one, a couple of questions before, My Lord.

VALERY FABRIKANT :

Well, I repeat once again, I do not expect anyone here to be engaged in scientific dispute, I am asking this question so that expert would be able to listen to his explanation and later come and give his opinion on the validity of those answers.

THE COURT :

I will deal with that when I have to deal with it, but you are not going to use an expert as some brand of truth expert.

VALERY FABRIKANT :

What? Some brand of what?

THE COURT :

Truth expert.

VALERY FABRIKANT :

Well, it's just scientific opinion...

THE COURT :

No, it's not, I'm not interested in your scientific opinions, now move on to something else.

VALERY FABRIKANT :

All right.

Q. Now, what was your particular contribution in this article? What did you personally do?

A. In the actual derivation of the equations I did not participate, I was shown the results from Dr. Sankar, he obtained, and I said: "Yes, I'm interested in this kind of research because it can have application to fatigue, failures of metal and machine components". We discussed the presentation of the paper you and I on a number of occasions and that was my contribution.

Q. Whose idea was of this article?

A. As far as I recall, it was Dr. Sankar's, and he thought that the potential of using this work, in the field that I'm interested in, would have been of value.

Q. So he gave the idea of the article as far as you know, right?

A. As far as my first introduction to this topic was through Dr. Sankar, not yourself, and I understood from him that he supervised your work.

Q. Anyway, it was not your idea.

A. That's right.

Q. As far as Sankar is concerned, we'll ask him, but as far as you're concerned you didn't give the idea of this article, no?

A. No, I did not.

Q. Okay.

A. But I saw the application of this work in my own field of research.

Q. Did you supervise in any way the work itself?

A. ...

Q. No.

A. I have answered this.

Q. All right. So you saw already paper which was finished?

A. I saw the results that were finished...

Q. So...

A. ...I did not see a paper that was finished. What I was presented from you could not have been published.

Q. Okay. And what did you do, correct my English or you made some significant remarks on the manuscript? What did you do?

A. Both.

Q. Okay. So you...

A. To the best of my recollection.

Q. Okay...

A. I did not keep notes of what I did ten, twelve (12) years ago.

Q. All right, but you remember very well that you corrected my English and you...

A. To the best of my recollection, I do.

Q. Okay. So you made significant changes in the article itself?

A. That is up to you to judge.

Q. No, no, but you, your opinion is that you did?

A. I've made a contribution...

Me JEAN LECOURS :

All the questions are leading in cross-examination, My Lord.

VALERY FABRIKANT :

I am not doing any cross-examination, I'm just qualifying that he should say that, yes, he did correct the manuscript.

Q. You saw the manuscript and you corrected it, right?

Me JEAN LECOURS :

The proper question was... should be: "What did you do?" and he got his answers many times.

THE COURT :

You're correct.

Me JEAN LECOURS :

That should be the end of it, My Lord.

THE COURT :

You're correct, the objection is maintained.

VALERY FABRIKANT :

Well, what is wrong to ask question...

THE COURT :

The objection was maintained.

VALERY FABRIKANT :

Yes. All right.

Q. Okay. So the manuscript which you saw already contained all the results, right?

A. It contained the solutions to the problem, the mathematical solutions. I do not recall if it contained all the results (inaudible) particular paper.

Q. Okay. And you added to the article what? What part of article did you add to that? Or you did just corrections, or you made some additions to the article.

A. I don't recall (inaudible).

Q. Okay. But at least corrections you made?

Me JEAN LECOURS :

It's about the tenth time the question is asked, My Lord.

VALERY FABRIKANT :

Let me explain why I'm asking this question.

Q. Take a look at the manuscript. Did you ever see it?

A. I don't recall seeing this.

Q. Are remarks on this manuscript is your handwriting?

A. I said I do not... no, they're not my handwriting, but this is only one draft.

Q. Compare this draft with the final article, is it the same?

A. They would appear to be the same, unless I sit down and go over word for word, I don't know.

Q. All right. So...

A. Is that what you expect me to do, go word for word on the paper?

Q. Whatever you want.

THE COURT :

Q. Your previous answer was fine, just leave it there and wait for the next question.

VALERY FABRIKANT :

Yes.

Q. So, in this particular manuscript you didn't do anything, did you?

A. In this piece of paper you just handed me, no, I have not contributed.

Q. But there was another one to which you did contribute, right?

Me JEAN LECOURS :

He never said so, My Lord.

VALERY FABRIKANT :

Q. So maybe you now recall better that you never saw the manuscript, you never did a single solitary thing in this particular article?

A. That is not true at all, that's fallacious.

Q. That's fallacious. All right. So would you just specify then, look again into the manuscript, in the article, whatever?

THE COURT :

Look, you are now clearly cross-examining the witness, you have had the witness' answer on his participation, you brought the witness, that's it.

VALERY FABRIKANT :

Okay.

THE COURT :

So go on to something else.

VALERY FABRIKANT :

Now, isn't it enough to declare the witness hostile, he is obviously lying. He's never seen it, there is not a single remark with his handwriting there.

THE COURT :

I do not propose to declare the witness hostile, if that's the motion you're making. If you're making a motion to declare the witness hostile, it's dismissed.

VALERY FABRIKANT :

It's dismissed. All right.

Q. So explain why do you feel that you did contribute anything to the article which would merit you to be a co-author?

THE COURT :

The witness has already explained his contribution to the article, move on to something else.

VALERY FABRIKANT :

All right.

Q. Could you explain how the second article appeared?

A. The one on the... (inaudible)?
Q. Yes. I hope you at least read it.
A. Pardon me? What do you mean to explain?
Q. Well, how did it come? Well, did you give me an idea of this article?
A. No.
Q. No.
A. It was to Dr. Sankar that I've dealt on this article.
Q. For Dr. Sankar. How come Dr. Sankar is not even an author there?
A. You ask him that.
Q. Could you explain why you never communicated with me if I was the one who was doing the job, and you, for some reason, communicated with Sankar?
A. It was Dr. Sankar that was supervising your research, and my dealings and my discussions were mainly with Dr. Sankar and Dr. Osman, and on occasion I met with you.
Q. You're not answering my question. Why, if you say you participated in the research, shouldn't you communicate with person who does that research directly, should you?
A. Your director was Dr. Sankar, my main contact was through Dr. Sankar. Dr. Sankar employed you, he supervised your research, if you don't recall that I remind you.
Q. Well, let us look...
THE COURT :
Q. We're dealing with Dr. T.S. Sankar, are we?
A. T.S. Sankar, that's correct.
VALERY FABRIKANT :
Q. Yes. You were paying, at that time, major part of my salary, weren't you?
A. I was paying, making a contribution, whether it was major or minor, I don't know.
Q. Well let us check.
A. I don't make it my business to go and look at people's salary.
Q. Okay, why don't we check. Do you remember how much you paid?
A. In the order of ten thousand dollars (\$10,000) a year.
Q. Okay. If my salary was sixteen thousand dollars (\$16,000), then...
A. Then I agree with you, it's a major contribution, but don't ask me that question.
Q. It's a major contribution. Now, shouldn't you, paying major contribution, to go a little bit deeper in what I was doing than communicating with Sankar?
A. You have the wrong impression of faculty professor's duties.
Q. Okay. Explain what are those duties.
A. My involvement in this research, as I told you before, was through Dr. Sankar and Dr. Osman. We have a number of graduate students to supervise, and you were brought along as being able to bring some mathematical background to the on-going research. That was your involvement. My contribution to the university goes a lot beyond that. I have graduate students I supervise, I have administration work to do, and of course to teach. I rely on my colleagues to provide me a mathematical background, which you're supposed to have developed to the point that it could be used in practical field. I saw no reason to come and discuss it

with you, I discussed with you only when the results got to the point they were interesting. And you recall very well that you insisted in going in a completely theoretical tangent which was of no value in my own field of work, and that's why we parted company shortly after.

Q. So why did you pay me for three years then?

A. Not three years, please. I was under the impression that you had the potential to contribute something to my own work, (inaudible) you did not.

Q. Okay. You got the first paper, you were unable to understand that it has no applications in your field? You are supposed to be qualified...

A. You are totally incompetent to see the application, that's the problem. The first problem, the first paper, the second (inaudible) apply in the contact stress problem which occur in mechanical systems, and to fix (inaudible) as I mentioned before, but you're unable to grasp that. Your purely a mathematician that deals in abstractions.

Q. Did I ever tell you that I was going to get involved in "ball bearing" or anything else? Did I?

A. I don't recall if you did this in the terms that you're just expressing now, but everytime I met with you the indication was that you would be able to apply some of your background in the problems that I was looking at.

Me JEAN LECOURS :

My Lord, what is going on is certainly not examination-in-chief.

VALERY FABRIKANT :

All right.

Q. So...

THE COURT :

Yes, it certainly isn't.

VALERY FABRIKANT :

Q. ...what was your contribution to this particular article?

A. The same as in the first one.

Q. What do you mean the same one, what?

THE COURT :

He gave you the answer, the same as in relation to the first paper. He criticized the manuscript and corrected the English.

VALERY FABRIKANT :

All right.

THE COURT :

Q. Is that correct, Dr. Xistris?

A. That's correct.

VALERY FABRIKANT :

Q. All right. Now, look at the manuscript and find your own handwriting anywhere on it.

A. Do you have any other copies of the manuscript, earlier copies? You've giving me one.

Q. Turn over.

A. And you are not the kind of person that writes only once, you write several times before you get it right. Can I see some of the previous... There are some... Yes, this is some of my writing here.

Q. It's yours?

A. It would appear like my handwriting, I have a hard

time...

Q. All right. So you see, you found your handwriting, this is good.

A. No, I'm sorry, this is similar to mine but I can't... I don't think it's mine.

Q. Can you... can you at least understand the text, if it is your handwriting or not your handwriting, you would have understood the text itself.

A. Just a minute. The comments that you have, the revisions here, handwriting is very similar to mine but may not be mine, I cannot vouch for that.

Q. Well, the meaning of the handwriting, if you did it...

A. The meaning of the handwriting?

Q. Well, what is written there, read it...

THE COURT :

Listen, this is cross-examination and it's a waste of time. Would you pass that manuscript back, please? Move on to something else.

VALERY FABRIKANT :

Well, you just don't allow me to question witness.

THE COURT :

This is a waste of time.

VALERY FABRIKANT :

This is wrong, this is...

THE COURT :

This is a waste of time.

VALERY FABRIKANT :

This is not waste of time.

THE COURT :

Yes, it is, and I've decided that. Move on to something else.

VALERY FABRIKANT :

Well, you're a biased judge, this is the problem. You don't allow me to establish that this particular witness did absolutely nothing.

THE COURT :

Move on to something else. What was the date of that paper?

A. Nineteen ninety... Well, the manuscript would have been eighty-one ('81), eighty-two ('82), that time frame. The paper was published probably in eighty-four ('84), eighty-five ('85), again give or take a year.

Q. Thank you.

A. I could give you the exact date of publication.

Q. No, I don't need the exact date, you answered my question.

VALERY FABRIKANT :

Q. Okay. How come Sylvain Durand was a co-author in this paper? Did you communicate with Sylvain Durand in any way?

A. I certainly don't know about Sylvain Durand.

Q. Okay. So did you ever ask question how come professor Sylvain Durand is co-author there? Sankar is not, Osman is not, Sylvain Durand is, how come?

A. I don't recall the actual events of that particular paper. Dr. Sankar, as I said before, supervised your work much more closely than I did, he put some advice, his name on the paper, he must have had some reason for doing so.

Q. I'm asking you.

A. I am the third author in that paper. Right? So I could

not tell you what Dr. Sylvain Durand's contribution was.

Q. No, but...

A. From what I understand...

Q. ...three authors allegedly...

A. ...my recollection is that Dr. Sylvain Durand... let me finish, okay. My understanding is Dr. Sylvain Durand was in civil engineering, he has some interest in foundation work, and that is related to the topic of the paper, and one of the applications is in that area.

Q. Oh, yes.

A. So there may have been a connection, there may have been some contribution he made to you directly, I'm not aware of it.

Q. Uh, huh. So in all those discussions... so we had a lot of discussions about this article too, did we?

A. Not with you I didn't.

Q. Ah, so with me you didn't?

A. No.

Q. All right. So you didn't...

A. I have seen...

Q. You didn't make any discussion, you didn't make any corrections, and nevertheless you are co-author, explain it.

A. I never said I did not make any corrections, I never said I made no discussions whatsoever, I had discussions with other people who were involved in this kind of research.

Q. Okay, but not with me.

A. You failed to grasp collaborative research. There are a number of issues that have to be considered, (inaudible) considered. Mathematics by themselves are not valid to engineers, you have to have an application.

Q. All right. So you contributed some applications to this article, what was your contribution there?

A. My association with you was in the hope that some of the results of your development, in pure abstractions, could be applied to the analysis of machine stresses, the behavior of machine elements. That did not materialize, this was the initial phase of the work, and when I realized that it was not what I wanted to do we parted company. If you have difficulty remembering that, I can perhaps refresh your memory.

Q. What your hopes were is one thing, what your contribution was, you cannot be a co-author because you hoped on something.

A. That is your claim.

Q. What is...

THE COURT :

Would you please move on to something else?

VALERY FABRIKANT :

Sure.

THE COURT :

I could not care less what your view of who should or shouldn't be co-author of papers is.

VALERY FABRIKANT :

All right.

THE COURT :

That is not what we're here for. This is a murder trial after all, let's try to remember that.

VALERY FABRIKANT :

Don't you think I remember this better than anybody

else?

Q. All right. Now, let us go to the conference presentation. Usually conference presentations are repetition of articles already published, now how many conference presentations did you have?

A. I have more than forty (40).

Q. No, in cooperation with me.

A. If you put the question that way you get a different answer.

Q. All right.

A. Probably about two or three, I don't know.

Q. Okay. Now, let's go one by one. Exact solution to an inversed problem in crack theory, is it just repetition of some article published...

A. The mechanics or given the mathematical solutions...

Q. ...or it was a new result?

A. ...which you used in the previous paper explain... no, this is a very short, it's a one paragraph paper which you presented some conference, mathematical conference. It's purely mathematics, manipulation (inaudible).

Q. Well anyway, was this ever published as a separate article?

A. I'm not aware that it did, this is the basis on which the previous journals were discussed before, the one dealing with crack.

Q. All right. Let me refresh your memory. Take a look at the text. Maybe this will refresh your memory. Is this just another title for an article published?

Me JEAN LECOURS :

Is that a question, My Lord?

VALERY FABRIKANT :

Yes.

Me JEAN LECOURS :

This was a comment. He's not allowed to make comments.

VALERY FABRIKANT :

No, I asked, it was a question. Is the material which I gave him, the title is just another title for an article already published?

A. A lot of the material is common to what was published in the first journal, that we talked... journal that we talked about, it would appear from the excerpt you've given me. This is an article, a presentation that you made to the Society of Engineering Science in New York in nineteen eighty-three (1983), I have not the full text of the presentation.

Q. Well what, you mean you never had full text of presentation?

A. No, as far as my records show I do not have the full text of the presentation, but this article...

Q. How...

A. ... this article... let me finish. Let me finish. This article is based on some of the tools and some of the concepts that had been discussed in the previous paper that we talked about for half an hour, before.

Q. Which one you are talking about now?

A. The article on the conditions of infinity and external crack problems.

Q. It is related to this one, or it is the same, just another title?

A. From the title I cannot tell you.

Q. Well, look at the description, I gave the description.

A. I don't know what else you do, you give me an abstract (inaudible) paper, all I have is five lines here.

Q. Well, every normal person can say from five lines...

THE COURT :
You are now arguing with... Just a second.

VALERY FABRIKANT :
Okay.

Me JEAN LECOURS :
This is not examination-in-chief.

THE COURT :
This is not examination-in-chief, you're now arguing with the witness...

VALERY FABRIKANT :
All right.

THE COURT :
...and your question is (inaudible).

VALERY FABRIKANT :
No, no, no.

Q. Can you, from this abstract...

Me JEAN LECOURS :
He's not obliged to bring this witness... he brings witnesses to test them, he's not obliged to bring a witness, that's not the proper purpose of examination-in-chief.

THE COURT :
Of examination-in-chief, you're perfectly right.

VALERY FABRIKANT :
No, I just expect witness to tell the truth.

A. I answered you to the best of my ability.

THE COURT :
That answer won't do, his answer is his answer.

VALERY FABRIKANT :
All right, so read please...

THE COURT :
No, don't read it, you have answered the question.

THE COURT :
Move on to another question.

VALERY FABRIKANT :
Well, he didn't answer the last question.

Q. Did... Is this...

THE COURT :
He has told you that he cannot tell from the description whether it is identical or whether it is not. He does not know exactly what you said and he said from the five lines that are there: "I can't tell you", that's your answer, now move on to something else.

VALERY FABRIKANT :
Okay. Did you read at least those five lines?

A. I've just read them.

THE COURT :
Mr. Fabrikant, I told you to move on to something else.

VALERY FABRIKANT :
No, I just want to make sure that he read it.

THE COURT :
Move on to something else.

VALERY FABRIKANT :
You don't allow me to ask questions.

THE COURT :
You have asked your question and he gave you his answer.

VALERY FABRIKANT :
Okay, he read this. Let me ask question concerning what

he read.

THE COURT :

Formulate your question concerning what he read.

VALERY FABRIKANT :

Exactly. Exactly.

Q. Now, you read these five lines, do they give you sufficient information as to main content of the presentation?

A. In a very brief form, yes.

Q. Okay.

A. It deals with cracks, stress distribution of the crack faces, and displacements in the cracks.

Q. So if they do, then you can answer definitely the question whether this is the same or if it is related, how?

A. I don't know what equations you used to describe the stress distributions and the displacement distributions here. Unless I've seen these equations, I would not be able to answer.

Q. All right. So you cannot?

A. There are many different ways of expressing mathematical terms, some real concepts, some real problems, some of them are right, some of them are wrong. And unless I see the actual equations and the actual formulations, I cannot answer your question.

Q. Fine, you cannot answer the question. Good. Now, at the time the presentation was prepared, what was your part in this preparation? You said you never saw complete text?

A. No, I did not.

Q. So how come did you become co-author there? What did you do there? You didn't even correct the English, what did you do?

A. This is a continuation of the previous work that you've done on cracks, and it was only a conference presentation. I'm not sure I've even prepared anything beyond (inaudible).

Q. But what was your contribution? You cannot come to conference, read just five lines, right? You have to speak for half an hour at least, you have to present something to the conference. And if you never saw the full text, then what was your contribution?

A. The work that you presented at this conference is a continuation, and it uses the same concepts that you developed in the previous paper. Therefore, it is the same trend of research that was on, and it's only in that, I guess context, that my name appears in this presentation.

Q. So what was your contribution there? You didn't even correct English here, so what was it then? You didn't give the idea, you didn't do any derivation, you...

THE COURT :

You fail to understand the answer that was given. The answer that was given was that in substance, what you presented at the conference incorporated the work from the paper where Mr. Xistris had previously made the contribution that he said he made, namely discussions with Sankar, some discussions with you, and a criticism of the manuscript, and correction of the English. That is what he said, he said the two... one goes with the

other.

VALERY FABRIKANT :

Okay. I did not get that. I didn't get that. Let me clarify it from the witness once again.

THE COURT :

No, I think the witness has answered the question...

VALERY FABRIKANT :

No, it's you, you said that, the witness didn't say it.

THE COURT :

Q. Dr. Xistris, did I summarize accurately what you said?

A. Very much so.

Q. Fine.

THE COURT :

Move on to something else.

VALERY FABRIKANT :

All right.

Q. Could you explain to the jury what the term inverse problem in crack theory means? What problem is called inverse?

Me JEAN LECOURS :

This is not an examination, My Lord, I don't think we really care.

VALERY FABRIKANT :

Well, we do care because I will ask the expert to comment on that.

Q. So, could you formulate what external problem is?

A. External crack...

THE COURT :

Just a second, I have an objection in front of me.

VALERY FABRIKANT :

Inverse problem, what it is.

THE COURT :

I have an objection.

Me JEAN LECOURS :

Because this can go on forever, eh.

THE COURT :

Yes.

VALERY FABRIKANT :

It won't go forever.

Me JEAN LECOURS :

It could be an examination of every people in the world.

THE COURT :

The objection is maintained, move on to something else, this is not pertinent.

VALERY FABRIKANT :

I want to demonstrate to the jury that he does not understand even the title.

THE COURT :

That's what you're not going to be able to do.

VALERY FABRIKANT :

All right.

THE COURT :

Okay? So the question is not pertinent, move on to something else.

A. I have no problem explaining.

VALERY FABRIKANT :

All right.

THE COURT :

Q. I'm sure you have no problem explaining it, but that's not the point.

VALERY FABRIKANT :

Well, if he doesn't have any problem, let him explain it.

THE COURT :

You and I are not negotiating, sir.

VALERY FABRIKANT :

All right.

Q. So, okay. The next presentation. Take a look, or you maybe say... new solutions to mixed potential problems and their applications. Do you know what the whole thing was about? Did you see the full text? What was your contribution there?

A. This is another conference presentation and again it deals with integral operators. Solution of integrals which appear in potential problems, and I was... I had some hopes that that type of approach could be used to describe the stress fields in machine elements.

Q. I am not asking you hopes, I'm asking what your contribution was, would you please stick to that question?

A. I reviewed your manuscript, is that the one you presented to the "Cancan"?

Q. New solutions... Yes. New solutions to the mixed potential problem in the application...

A. It's a mathematical paper which deals with the solution again of double integrals using operators, integral operators, all right? It's a one page note, and that does not take half an hour to present, less than ten minutes at "Cancan", that's the kind of conference it is.

Q. One page is an abstract, right?

A. That's all that you do at "Cancan", it's a collection of abstracts.

Q. You present the article, now what did you do there?

A. I've told you, I've seen your manuscript and commented on it.

Q. You've seen the manuscript.

A. This does not represent any new work, it presents again an extension of the mathematical manipulations that you've been doing for the last... as long as I knew you.

Q. Okay. Let me take a look at what you have now for a second.

A. I don't have anything.

Q. No, you have that page, don't you, from "Cancan"?

A. You have something yourself?

Q. No.

A. Did you ask me to bring it here?

Q. Yes.

A. I wasn't asked to bring it here.

Q. Well, you have it, I have the right to look at it.

THE COURT :

If the witness hasn't referred to the document...

VALERY FABRIKANT :

He referred to it, it is right there. He is looking at it.

THE COURT :

Q. Did you refer to...

A. I have a copy of the paper.

Q. Would you please...

VALERY FABRIKANT :

He's looking at it.

Q. Now, even after looking at the article here, can you say

whether this, first of all, appeared as a full article?
If yes, what was the title? And what was your
contribution to it?

A. These are questions... the last question I've answered
already.

Q. Uh, huh.

A. As far as I know...

THE COURT :

Q. Would you turn towards the jury please, so...

A. Sorry. As far as I know, this presentation was a one
page summary of the work that was done elsewhere.

VALERY FABRIKANT :

Q. What was your contribution to it?

A. I answered that question so many times, I don't want to
repeat it anymore.

Q. All right. Was it your idea of it?

A. No, certainly not.

Q. No.

A. The mathematics is not my idea.

Q. Okay. The idea for the article was not yours. The
derivation wasn't yours. The whole thing, what you've
seen just one page, you didn't see more than that, did
you?

A. That's all there is.

Q. Oh no.

A. There is a second page which says: "References...",
anyway.

Q. All right. So what was your contribution to this
particular article?

A. For the last time, this work is very similar, the
formulation of this is equations, is very similar, or
identical to the one I used to cope with in analyzing
contact stresses in machine elements. It was pointed
out to me and it was realized during several discussions
with my colleagues that that approach could also have
applications to different types of contact problems. I
have reviewed as a result of the solutions that you
obtained to those integrals, I reviewed the manuscript,
and I commented on it, a one page thing that you
presented at "Cancan". Period.

Q. Okay. Are there integral differential equations in
(inaudible)?

A. There are double integrals which can be solved using
operators, integral operators.

Q. Fantastic. Are there or aren't there integral
differential equations there? Did you find one?

A. In this one page piece of paper that you have there are
no integral differential equations, unless one attempts to
get the full force and displacements of bending moments.

Q. All right. Let me show you where it is.

A. My foot! I'm not going to sit there... I follow double
integrals, you (inaudible) equations.

Q. Okay. Give definition, what is integral...

THE COURT :

Don't give a definition, this will end. Move on to
something else.

VALERY FABRIKANT :

Well, when witness is in difficult position, go on to
something else.

THE COURT :

Yes, fine, move on to something else.

VALERY FABRIKANT :

All right.

Q. Now, the third presentation, a new type of integral operator and the applications and potential theory, what was that?

A. The same thing as this stuff here.

Q. What do you mean, the same thing?

A. Exactly that different methods of solving integrals, using integral operators.

Q. So those two presentations are the same?

A. Along the same vein. The form of the equation, the form of the integral that you choose to attack is somewhat different but essentially is the same stuff, mathematical manipulations.

Q. Well, mathematical manipulations is not the same stuff, if this is mathematical manipulation and this is mathematical manipulation, it doesn't mean that it is the same stuff. For example, what Newton did is mathematical manipulation, what Einstein did was also mathematical manipulation, they didn't do the same stuff, they did very different things.

A. You are looking at different functional formulations in your integrals, but the approach is the same, is using integral operators to solve... to compute the value of integrals, to find the solutions of those integrals.

Q. What is the difference between integral and integral equation?

A. An integral is... An integral is simply a summation of a function over a space. An integral equation is an equation which includes, as its terms, various integrals. It's an integral equation, right, you can say integral differential equations.

Q. No, no, no. Integral equations is what? Say it again?

THE COURT :

Listen, this is leading us nowhere, move on to something else.

VALERY FABRIKANT :

Well, it leads us very well.

Q. What is integral equations you said?

THE COURT :

I said would you move on to something else? Your last question is disallowed. Now, if you persist in coming back to it I'll terminate the examination.

VALERY FABRIKANT :

Yeah.

THE COURT :

What did you say? Did you say "yeah"?

VALERY FABRIKANT :

No, I just said: (cough-cough).

THE COURT :

Right.

Q. Dr. Xistris, thank you very much.

THE COURT :

Have you any questions for Dr. Xistris?

Me JEAN LECOURS :

No questions, My Lord.

THE COURT :

Thank you.

AND FURTHER DEPONENT SAITH NOT

VALERY FABRIKANT :

Well, you just need excuse.

THE COURT :

One more word from you and out you go. One more word from you and...

VALERY FABRIKANT :

I have more questions.

THE COURT :

Take him out.

THE ACCUSED IS TAKEN OUT OF THE COURTROOM

THE COURT :

We'll adjourn, ladies and gentlemen. So we'll adjourn for fifteen (15) minutes.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

MEMBERS OF THE JURY ARE PRESENT

VALERY FABRIKANT :

Well, I want to deposit list of publications of Xistris.

THE COURT :

Call your next witness.

VALERY FABRIKANT :

I said I want to deposit list of publications, and you pretend not to hear me, this is impolite.

THE COURT :

I don't pretend not to hear you, I said call your next witness.

VALERY FABRIKANT :

Well if you did hear, then respond.

THE COURT :

Is there any objection to the deposit of this?

Me JEAN LECOURS :

It's irrelevant, My Lord.

THE COURT :

Objection maintained.

VALERY FABRIKANT :

He doesn't even have to explain why it is irrelevant.

THE COURT :

Would you call your next witness, I heard your explanation. Call your next witness.

VALERY FABRIKANT :

You didn't hear my explanation. Ask me my explanation first.

THE COURT :

Call your next witness, now.

VALERY FABRIKANT :

Well, don't raise your voice at me, I'm not scared of you.

THE COURT :

Mr. Fabrikant, call your next witness.

VALERY FABRIKANT :

I said I have something to deposit, you have to ask my explanation.

THE COURT :

Mr. Fabrikant, call your next witness.

VALERY FABRIKANT :

You're abusing procedure.

THE COURT :

Call your next witness.

VALERY FABRIKANT :

Not only you're abusing procedure, you are intentionally delaying the process too by excluding me, or expelling me from the courtroom.

THE COURT :

Do you propose to call another witness?

VALERY FABRIKANT :

Let me finish my phrase.

THE COURT :

Do you propose to call...

VALERY FABRIKANT :

Yes, I do.

THE COURT :

Then call him, right now.

VALERY FABRIKANT :

Yes, and you're just delaying the Court procedure by expelling me from the courtroom, it is absolutely unreasonable thing to do. And if I said "yeah", it doesn't mean that you have to disallow me to question witness. This is lawless. Now, there are some people from Broderick here.

THE COURT :

Would you call your next witness, please?

VALERY FABRIKANT :

Well, I don't know their names.

Me LOUIS BELLEAU :

Monsieur H, bert.

VALERY FABRIKANT :

Okay.

DANIEL REICHER - INTERPRETER

SOLEMN DECLARATION

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993),
this nineteenth (19th) day of the month of July,
personally came and appeared:

JACQUES HBERT, born on July first (1st), nineteen
hundred and forty-one (1941), student supervisor,
confidential address;

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

EXAMINED BY VALERY FABRIKANT :

Q. All right. Do you recall participating in surveillance
of me?

-Q. Est-ce que vous vous souvenez d'avoir particip, ... une
surveillance de moi?

A. De lui, non.

-A. Of him, no.

Q. Have you participated in surveillance?

-Q. Est-ce que vous avez particip, ... une surveillance?

A. J'ai particip, ... une surveillance.

-A. I participated in a surveillance.

Q. Okay. Maybe you'll find some reports.

VALERY FABRIKANT :

Could you show the witness reports.

Q. Could you identify if any of the reports are yours?

-Q. Pouvez-vous identifier les rapports qui sont les v"tres?

THE COURT :

These reports, Mr. Belleau, are I...

Me LOUIS BELLEAU :

I-30, My Lord.

VALERY FABRIKANT :

Q. Okay. Could you go through them and explain to the jury what happened...

A. I have nothing to explain, because when you're working for security place, as a sideline or a third or second job, you make a report and everything is normal.

Q. Uh, huh.

A. So I don't know the reason why I'm here. Everything... if I put a report that I saw something, I saw somebody, something wrong, it's written on the report. Now you can come here, but everything is written normal...

Q. Okay.

A. ...you didn't see anybody, nobody, you did your job and nothing... everything was okay.

Q. Okay.

A. Things like that, when I see things... excuse me if I don't speak English very well.

THE COURT :

Q. Non, mais vous avez ... votre disposition un interprète qui est là, donc...

A. Nous autres, quand on fait des rapports...

-A. When we make reports...

A. ...c'est marqué, "normal", donc il y a rien rien eu.

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

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

...it's marked "normal" so there was nothing.

VALERY FABRIKANT :

Q. Okay...

THE COURT :

Q. Mr. H, bert, I think it may be better just to wait until the questions are put to you and see what the questions are, they may relate to other things than simply your report.

VALERY FABRIKANT :

Q. So could you identify what exactly you were looking for from the point of view being abnormal? What were you looking for during surveillance?

A. When I was working for that company as a third job, I was working, I was not working the same place every weekend.

THE COURT :

Monsieur H, bert, je crois que c'est peut-[^]tre mieux que vous r,pondez en fran#ais. It think it's better if you reply...

A. Lorsqu'on travaille pour cette compagnie...

-A. When we work for this company...

A. ...comme, on va dire une deuxi#me ouvrage...

-A. ...as a second job...

A. ...vous pouvez travailler ... diff,rentes places toutes les fins de semaine.

-A. ...work at different places every weekend.

VALERY FABRIKANT :

Q. Could you take microphone, maybe interpreter will take microphone to him so that... or both, I don't know.

THE COURT :

Now, Mr. H, bert, would you turn and face us, and Mr. Reicher you speak loudly enough so that...

VALERY FABRIKANT :

Well still I would...

THE COURT :

Just put your questions and the interpreter's interpretation will be recorded.

VALERY FABRIKANT :

All right.

Q. Do you recall what was your assignment with respect to the surveillance?

A. #a fait tr#s longtemps premi#rement...

-A. It's a long time ago firstly...

A. ...puis l... je surveillais, il y avait une maison pour pas que personne aille proche de la maison.

-A. ...and there was surveillance so that no one would go close to the house.

Q. Okay.

A. That's all.

Q. What was the address of the house?

A. Oh, my God! La compagnie pourrait dire #a d'apr#s les rapports qu'eux nous ont envoy,s l...-bas l...

-A. The company could say that from the reports that they sent there.

Q. Well, is the address where you were on the report?

A. No. La seule chose, nous autres, qu'il y avait sur le rapport...

-A. The only thing that was on the report...

A. ...s'il y avait quelque chose.

-A. ...is if there was something.

Q. Okay. May I take a look at the report, please?

A. S'il y aurait eu quelque chose je l'aurais ,crit sur le

rapport.

THE COURT :

Q. Just a second, Mr. H,bert, just wait for the questions.

VALERY FABRIKANT :

Okay.

Q. The address is there, you just didn't notice it. The address is there but you were at two different addresses, weren't you? Take a look, maybe this will trigger your memory. The address is there, on the report.

A. Yes, on n'a pas le num,ro de la porte, l...

-A. Yes, but we don't have the number of the door here.

Q. Well, here not, but on the other report there is number, right?

A. Ça c'est pas la m^me chose, l...

-A. That's not the same thing.

Q. Yes. So you were at two different addresses, right?

A. Oui.

Q. Okay.

-A. Yes.

Q. Do you recall what you did at one address and what you did at another address?

A. La seule chose que je me rappelle moi, laquelle des deux, mais c',tait pour surveiller une maison pour pas que personne approche de l..., l'autre chose je me rappelle pas. C',tait pour surveiller la maison, je sais pas, le recteur, l..., l'autre chose je me rappelle pas.

-A. It was first to do surveillance work on a home, a rector's home, I don't know.

Q. Okay. That was one address, but another address, Trent and Ashdale, look at that, do you recall what was your assignment there?

A. Oui, je me rappelle qu'on nous avait donn, une photocopie, la photo de quelqu'un...

-A. I remember that we got a photocopy of a photograph of somebody...

A. ...puis elle n',tait pas claire du tout...

-A. ...and it wasn't clear at all...

A. ...si quelqu'un passait dans ce bout-l..., bien, je me rappelle plus, l...

-A. ...if someone went around there, but I don't remember.

Q. If we get Barnab, file, maybe this will trigger your memory?

A. Comment qu'il dit ça?

-A. How does he say that?

Q. Well, we are getting to show you some document.

THE COURT :

Just a second. D-22.

VALERY FABRIKANT :

Q. Take a look at the instructions, at the first page, do you recognize ever seeing this first page? Take a look at this page, do you recall seeing this page?

A. Je me rappelle de ça puis de monsieur Stass.

-A. I remember this and I remember Mr. Stass.

Q. Uh, huh. Okay. Now, do you recall what were your instructions in terms of where you should put your car, what you're supposed to watch for, do you recall anything?

A. L'auto ,tait dans la rue.

-A. The car was on the street.

Q. On what street? Do you remember what street was...

A. Which one... I don't remember which one. Une place ou l'autre, l'auto ,tait dans la rue.

-A. One place or another, the car was on the street.
Q. And you were watching the car?
A. Pardon?
-Q. Et vous surveilliez la voiture?
A. Non, non, la voiture de la compagnie ou la n"tre, l..., c'est arriv, une fois qu'il y avait la voiture de la compagnie.
-A. It's the company car or ours, once the company car came.
Q. No, I'm asking, what were you surveilling, the car? Which car was on the street you are talking about? Your car on the street?
A. Yes, we were in the car.
Q. Okay. If it is Ashdale and Trent, it means that you were at the corner of Ashdale and Trent?
A. I didn't...
Q. Do you see your report which says Ashdale and Trent? You see that report?
A. Yes.
Q. Does it mean that you were located at the corner of Ashdale and Trent?
A. Oh, nearly.
Q. Well, in vicinity of corner Ashdale and Trent?
A. Not really...
Q. Okay.
A. ...if there is no parking you go further. But the only right answer I can say it's written on that "normal", normal it means nothing. If I had seen somebody or something wrong I put it here, I put "normal", and we had a radio, so there is... There was nothing there.
Q. Do you recall what were you watching for?
A. We were watching that street here, Mr. Stass sent us.
Q. Well, yes. Were you shown... okay, were you shown my apartment?
A. No.
Q. Do you have firearm permit?
A. No.
Q. Do you have any background in surveillance?
A. I was in the Air Force before. The answer is here.
Q. Did you do any surveillance in the Air Force?
A. Excusez?
-Q. Est-ce que vous avez fait du travail de surveillance dans l'aviation?
A. Oui.
-A. Yes.
Q. Who did you survey in the Air Force?
A. Saint-Jean d'Iberville.
-Q. Vous deviez surveiller qui dans l'aviation?
A. Ah, bien l..., in fifty-nine ('59). You're laughing at me.
Me JEAN LECOURS :
We're in fifty-nine ('59), My Lord, I think...
A. Well, I'm really honest, it's written "normal".
THE COURT :
You might as well come back to more current events, what he did surveillance on while he was in the Air Force in nineteen ninety-nine (1959) doesn't interest us at all.
A. I'm working...
VALERY FABRIKANT :
You pretend not to understand why I ask this question or you do understand, you just... I just want to know.
THE COURT :
Excuse me...
VALERY FABRIKANT :

Do you really not understand why I ask about fifty-nine ('59)?

THE COURT :

I told you, would you move to something more current?

VALERY FABRIKANT :

I'm just trying to find out what his background is.

THE COURT :

Who cares what his background is, quite frankly.

VALERY FABRIKANT :

I care.

THE COURT :

Now would you kindly move to something more pertinent, and if you have nothing more pertinent to move to, sit down.

A. Or you should call mŕre Th,rŕsa or Ginette Reno.

THE COURT :

Q. Un instant. Un instant, monsieur H,bert. Vous, vous ^tes ici pour r,pondre aux questions purement et simplement, pas plus.

A. Je vais pas faire rire de moi non plus.

Q. Un instant. Un instant.

VALERY FABRIKANT :

All right.

Q. What do you do in your main work?

-Q. Qu'est-ce que vous faites dans votre travail principal?

A. Surveillant d',lŕves, de deux mille cinq cents (2500) ,lŕves.

-A. Student supervisor, two thousand (2,000) students.

Q. Where, at what, at school?

A. In Longueuil, fifty-two (52) years old and intelligent too. If I had seen something wrong when I was there, it should put... on the report it's written "normal".

Q. Well, I am trying to figure out, what would you consider to be abnormal? What were you looking for? Could you formulate that?

A. Normal, nothing would happen, I didn't see anybody, nothing, it's written here.

Q. That's not my question, my question is what would you... what were you looking for and what kind of things which you would see you would consider abnormal? What were you looking for?

A. I told you we had a picture, it was not too bad, a photocopy picture to watch somebody near the... I don't remember which address, the house of the director of the school, I don't remember, and if somebody was going near the house or...

Q. All right.

VALERY FABRIKANT :

Let us just deposit it.

Thank you.

THE COURT :

He'd like you to file your three reports.

D-45.

Me JEAN LECOURS :

I have no questions, My Lord.

THE COURT :

Q. Merci beaucoup, monsieur.

A. Excuse me if I was wrong a bit, it's the first time I come here and... comment #a marche.

AND FURTHER DEPONENT SAITH NOT

Me LOUIS BELLEAU :

Monsieur Gratton.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this nineteenth (19th) day of the month of July, personally came and appeared:

MARIO GRATTON, born on July twenty-first (21st), nineteen hundred and sixty-six (1966), refrigeration technician, confidential address;

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

EXAMINED BY VALERY FABRIKANT :

Q. Do you recall participating in surveillance in eighty-nine ('89) on Trent Avenue?

-Q. Est-ce que vous vous souvenez d'avoir particip, ... une surveillance sur la rue Trent en quatre-vingt-neuf (89)?

A. Sur la rue... quelle rue?

-A. On what street?

Q. Trent.

-Q. Trent.

A. Non.

-A. No.

Q. Let us show him his report. Could you identify, out of those, if you have any reports signed by you?

-Q. Pouvez-vous identifier s'il y a des formulaires que vous avez sign,s parmi ceux-ci?

A. Un ici.

-A. There's one here.

Q. Take it out.

-Q. Sortez-le.

A. Un autre l..., #a c'est ma signature.

-A. Another one here.

Q. Do these reports trigger your memory?

-Q. Est-ce que ces rapports vous rafra#chissent la m,moire?

A. Oui, je me souviens d'avoir d,j... rempli ces papiers-l...

-A. Yes, I do remember having filled out these forms.

A. #a fait longtemps, l..., mais...

-A. It was a long time ago...

A. ...c'est moi, il y a pas de probl#me avec #a.

-A. ...but it's me, there's no problem.

Q. So do you remember what was your assignment at that time?

-Q. Est-ce que vous vous souvenez de votre travail ... ce moment-l..., de votre assignation?

A. Vaguement, l..., mais je me souviens un petit peu mais pas plus qu'il faut, l...

-A. Vaguely, not that much, not more than necessary.

Q. Well, describe what you remember.

-Q. D,crivez ce que vous vous souvenez.

A. Je me souviens qu'on faisait juste des "shifts" de douze (12) heures sur la rue Ashdale...

-A. I just remember that we were doing twelve (12) hour shifts on Ashdale...

A. ...mais rien de sp,cial, l..., il y a juste une journ,e que je me souviens, puis tout est ,crit l..., l..., son d,placement puis...

-A. ...but nothing special, just on one day, the displacement or the moving.

Q. Okay. Describe what you saw on Monday.

-Q. D,crivez ce que vous avez vu lundi.

A. Un lundi?

-A. A Monday?

Q. Well, you said Monday, so it's Monday.

-Q. Vous avez dit lundi?

A. Bien, je le sais pas, c'est #a que j'ai compris, je sais pas, l...

-A. That's what I understood.

Q. All right. What happened that day?

-Q. Qu'est-ce qui est arriv, ce jour-l...?

A. Bien, c'est ça, j'ai ,crit ça l..., l.... C'est vague mais...

-A. That's what I wrote, it's vague...

A. ...je me souviens parce que je l'avais suivi ... la bibliothŠque, il avait ,t, ... la bibliothŠque ... C"te-St-Luc.

-A. ...I followed him to the C"te-St-Luc Library.

A. AprŠs ça il avait ,t, au Mail Cavendish, je me souviens de l'avoir suivi l... aussi.

-A. Then I remember having followed him to the Cavendish Mall...

A. ...puis il avait ,t, au parc Hudson, l..., sur la rue Kildare...

-A. ...then he went to Hudson Park on Kildare...

A. ...avec un jeune enfant il me semble, je me souviens plus, ça fait longtemps.

-A. ...with a young child, I don't remember, it was a long time ago.

A. Il a ,t, au march, Westminster...

-A. He went to the Westminster market...

A. ...puis il est retourn, ... la maison.

-A. ...and then he went back home.

Q. All right. Did you follow me to the library, inside library?

-Q. Est-ce que vous m'avez suivi ... l'int,rieur de la bibliothŠque?

A. Non.

-A. No.

Q. Inside Cavendish Mall?

-Q. A l'int,rieur du centre d'achats Cavendish?

A. Non plus.

-A. Neither, no.

Q. Were you assigned to see for something specific in terms of what I do?

-Q. Est-ce qu'on vous a demand, de regarder ou de faire attention ... quelque chose de pr,cis en ce qui me concernait?

A. Probablement que oui, mais ça fait tellement longtemps, l..., peut-ˆtre qu'il m'avait dit : "Si vous le voyez ... telle adresse..." ou quelque chose comme ça probablement, mais...

-A. Probably yes, but...

A. ...ça fait tellement longtemps, c'est tellement vague l... que...

-A. ...it's so vague, it's such a long time ago, maybe if he goes to a certain address.

Q. And then what you were supposed to do?

-Q. Et alors qu'est-ce que vous deviez faire?

A. Deviez faire de...?

-A. Should do...?

Q. If I go to a certain address.

-Q. Si je vais ... une certaine adresse.

A. Bien, s—rement que je devais communiquer avec la compagnie pour laquelle je travaillais dans ce temps-l....

-A. Surely to communicate with the company that I was working for at that time.

Q. Uh, huh. Do you have any background in surveillance?

-Q. Est-ce que vous avez de l'exp,rience en travail de surveillance?

A. Bien, si j'ai travaill, pour Broderick c'est parce que j'en avais un petit peu, l..., mais...

-A. If I worked for Broderick it was because I had a little experience, some experience.

Q. When I ask background, it means specific education in field of surveillance.

-Q. Quand je demande exp,rience, je demande dans le contexte d'exp,rience pr,cise dans le domaine de surveillance.

A. Non, j'ai jamais suivi un cours ou quoi que ce soit, l..., j'avais de l'exp,rience juste parce que j'en faisais comme ça pour Broderick, l..., mais...

-A. No, never formal courses, I was working for Broderick.

Q. All right. Do you have a profession?

-Q. Est-ce que vous avez une profession?

A. Maintenant l...?

-A. Now?

Q. Well, at that time, did you have any?

-Q. A ce moment-l... est-ce que vous en aviez une?

A. Je penserais pas. Non.

-A. I don't think so. No.

Q. Right now?

-Q. Maintenant?

A. Oui.

-A. Yes.

Q. What is your profession now?

-Q. C'est quoi votre profession maintenant?

A. Technicien en r,frig,ration.

-A. Refrigeration technician.

Q. So you have finished some courses in this field, right?

-Q. Alors, vous avez suivi des cours dans ce domaine, n'est-ce pas?

A. Exactement.

-A. Exactly.

Q. All right. Did you have a firearm permit at that time?

-Q. Est-ce que vous aviez un permis pour arme ... feu ... ce moment-l...?

A. Non.

-A. No.

A. J'en ai jamais eu d'ailleurs.

-A. I've never had any in fact.

Q. Did you have a firearm when you did surveillance?

-Q. Est-ce que vous aviez une arme ... feu quand vous avez fait la surveillance?

A. Bien, je pouvais pas avoir d'arme ... feu, je viens de dire que j'avais pas d'autorisation, j'ai jamais eu de permis pour port d'arme.

-A. I couldn't have a weapon, I never had a permit to carry one.

Q. Anything else happened on other days? Could you take a look at other days what happened?

-Q. Est-ce qu'autre chose est arriv,e les autres jours? Est-ce que vous pouvez v,rifier les formules pour voir...

A. Oui, oui.

-A. ...s'il y avait de quoi...

A. Oui, j'ai v,rifi, tant"t, puis comme j'ai marqu, : "Rien ... signaler, aucun d,placement du sujet".

-A. I checked earlier, nothing to inform about, no movements.

A. (Inaudible) aussi "rien d'anormal".

-A. Nothing unusual.

A. Puis il faut dire que les autres fois je travaillais la nuit, ça fait que monsieur dormait probablement...

-A. And the other times I was working at night and the gentleman was sleeping...

A. ...puis la journ,e que je l'ai suivi, bien, j'ai travaill, de jour cette journ,e-l..., ça fait que...

-A. And the day...

A. ...la journ,e que j'ai travaill,, que j'ai eu un d,placement avec monsieur...

-A. ...the day I was working...

A. ...c',tait le jour.

-A. ...and I followed him, that was during the day.

A. Les autres... je travaillais la nuit, mais c'est tellement vague, l..., que...

-A. The other times were at night, and it's so vague.

Q. Uh, huh. All right. Did anyone show you how I look? How did you start following me? You recognized the car or you recognized me?

-Q. Est-ce que vous avez reconnu la voiture ou moi?

A. Si j'ai reconnu la voiture ou la personne?

-A. Did I recognize the car or the person?

Q. How did you start following me?

-Q. Comment est-ce que vous avez commenc, la filature?

A. Avec mon v,hicule personnel ... moi.

-A. With my personal automobile, my own car.

Q. No. I mean, you recognized the car or you recognized me?

-Q. Est-ce que vous avez reconnu l'automobile ou est-ce que vous m'avez reconnu?

A. Probablement que c'est l'automobile parce qu'on avait la plaque puis une description de l'automobile ... ce moment-l....

-A. Probably the car because I had a description of the vehicle and the licence plate.

Q. So you were checking licence plates of the cars which were passing by?

-Q. Alors, vous v,rifiiez les plaques des voitures qui passaient non loin?

A. Exactement, puis on avait une photo, l..., de la personne aussi ... ce moment-l....

-A. Yes, and we had a picture of the person at that time, too.

A. C',tait une photo, l..., sur... une photocopie, c',tait pas une vraie photo, l..., c',tait une photocopie, l..., qui donnait une description de la personne.

-A. It was a photocopy photograph, it wasn't a true photograph, giving the description.

Q. Do you remember where your car was located? Was it on Ashdale? Where your car was located, on Ashdale Street?

-Q. O-,tait situ,e votre automobile, sur Ashdale?

A. Exactement, sur Ashdale.

-A. Yes.

Q. So you were watching entrance to the garage, correct?

-Q. Alors, vous surveilliez l'entr,e du garage, n'est-ce pas?

A. Oui, puis l'entr,e principale sur Ashdale.

-A. Yes, and the main entrance on Ashdale.

Q. Okay. Were you advised that the main entrance of Trent is Trent, and I could go out on foot there?

-Q. Est-ce qu'on vous a avis, que l'entr,e principale est sur Trent et que je pouvais sortir ... pied de cette entr,e Trent?

A. Non.

-A. No.

Q. So if I went out on foot you would never notice that?

-Q. Alors, si je sortais ... pied vous ne pourriez pas savoir?

A. Exactement, parce que moi j'avais juste l'adresse, l..., sur Ashdale.

-A. Yes, because I just had the address on Ashdale.

Q. Okay. I would like to file the document. Thank you.

Me JEAN LECOURS :

I have no questions, My Lord.

THE COURT :

Merci beaucoup, monsieur Gratton.

AND FURTHER DEPONENT SAITH NOT

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this nineteenth (19th) day of the month of July, personally came

and appeared:

SYLVAIN ST-DENIS, born on December sixth (6th), nineteen hundred and sixty-three (1963), security guard for the City of Montreal, confidential address;

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

EXAMINED BY VALERY FABRIKANT :

Q. In nineteen eighty-nine (1989) were you employed by Broderick?

-Q. En dix-neuf cent quatre-vingt-neuf (1989) est-ce que vous ,tiez employ, par Broderick?

A. Oui.

-A. Yes.

Q. Do you recall participating in surveillance on Trent Street?

-Q. Est-ce que vous vous souvenez avoir particip, ... une surveillance sur la rue Trent?

A. Oui.

-A. Yes.

Q. Okay. Could you, to the best of your recollection, describe what your assignment was at that time?

-Q. Pourriez-vous d,crire, d'aprřs le meilleur de votre connaissance, vos devoirs ... ce moment-l...?

A. Oui. A l',poque on faisait une surveillance de monsieur Fabrikant...

-A. Yes. At the time we were surveilling Mr. Fabrikant...

A. ...et puis on avait une liste d'adresses...

-A. ...and we had a list of addresses...

A. ...o- monsieur Fabrikant ne devait pas se rendre...

-A. ...where Mr. Fabrikant was not supposed to go...

A. ...et puis notre travail ,tait de faire une filature, une surveillance g,n,rale de ses all,es et venues.

-A. ...and our work was to do general surveillance of his goings and comings.

A. Et puis c'est řa, l..., on avait des photos, des descriptions g,n,rales de son v,hicule.

-A. We had photos and general descriptions of his vehicle.

A. Et puis c'est řa, c',tait le gros du travail.

-A. That was the main part of the work.

Q. Well, could you take the microphone on yourself.

-Q. Pouvez-vous mettre le micro sur vous, s'il vous plaĒt.

Q. Thank you. Could you identify from the reports which are in front of you, which are yours?

-Q. Pouvez-vous identifier, d'aprřs les rapports qui sont devant vous?

A. C'est les miens.

-A. These are mine.

Q. Okay. Could you take out those which are yours?

-Q. Pouvez-vous sortir ceux qui sont les v"tres?

A. Those are mine. řa c'est les miens.

-A. These are mine.

Q. So you spent significant time there?

-Q. Alors, vous avez pass, un temps... assez de temps l...?

A. Oui.

-A. Yes.

Q. Okay. Were you the first one who got the assignment, who started the surveillance?

-Q. Est-ce que vous ,tiez le premier ... commencer la surveillance?

A. J',tais un des premiers oui, j',tais pas le premier, premier mais j',tais un des premiers, le troisiřme ou peut-Ētre le

deuxième "shift", troisième "shift".

-A. I was one of the first, maybe the second or third shift.

Q. Well, what is the date of the first report?

-Q. Quelle est la date du premier rapport?

A. O.K. Le premier aurait ,t, la nuit du vingt-huit (28) au vingt-neuf (29) mars quatre-vingt-neuf (89).

-A. The night of the twenty-eighth (28th) to the twenty-ninth (29th) of March, eighty-nine ('89).

Q. Were you armed at that time?

A. No.

Q. Do you have firearm permit?

-Q. Est-ce que vous avez un permis pour arme ... feu?

A. Oui. A l',poque, oui.

-A. At the time, yes.

Q. Didn't Concordia request specifically that person be with firearms, to the best of your recollection?

-Q. Est-ce que Concordia... d'aprřs votre connaissance, au meilleur de votre connaissance, Concordia n'a-t-elle pas demand, quelqu'un qui avait justement droit ... un permis d'arme ... feu?

A. Ça se peut mais je me souviens vraiment pas si j',tais arm, ou non, d'aprřs moi j',tais pas arm,.

-A. It's possible, I don't know whether I was armed or not, I don't think I was.

Q. So now you are not sure if you were armed?

-Q. Alors, vous n'^tes pas s-r si vous ,tiez arm,?

A. Selon moi je n',tais pas arm, parce qu'en g,n,ral, en filature, on ne porte jamais d'arme pour une filature ou une surveillance, alors...

-A. According to me I wasn't armed because for a surveillance, the surveillance, usually I'm not armed.

Q. Okay.

VALERY FABRIKANT :

Let us get the Broderick file and maybe he will recall better whether he was armed. Can we get the Broderick file?

A. Okay. On my report they say I was armed. J',tais arm,.
C'est indiqu,.

-A. I was armed, it is indicated.

Q. All right.

A. J'indique tout sur mes rapports.

-A. It's all on the reports.

Q. On all...

A. Not all, I have here... okay, it's here, and... Okay. It says on the first one I'm armed but not on the other one. Yes, on the first one.

Q. Well, are you obliged to say on your report whether you were armed or not?

A. No, we don't have to say with arm or whatever, it's...

Q. So it could be that you were armed all the time but you just mentioned it the first time but didn't mention on other reports, could that be too?

A. Not exactly because this one is the first day we've been there, okay. So what we do, we put "armed" or "not armed" for the payroll, because it's not the same salary, so we put it in. But maybe it wasn't armed, I don't know, because I didn't put it on the other one, so I'm not sure exactly. Maybe we were armed or we weren't, but I don't recall it right now, I can't remember if we were armed, but I think I was... I have my permit to carry a gun, that I remember, I always have one, but I don't recall if I had one that time, at that period.

Q. All right. What kind of firearm do you have?

A. 38 special.

Q. Okay. Is it the typical firearm for the security guards?

A. Normally, we had a special bodyguard, the smaller one, it's a real small gun for those assignment because 38 is too big, too big to carry in the car, so we only had the small one under the arm, the shoulder holster.

Q. Okay. According to your instructions, in what case are you supposed to use the firearm?

A. Only for our defense. It's only... c'est seulement pour se d,fendre soi-m^me, we don't have the right to take the gun or whatever, it's only for our protection, that's it.

Q. Okay. But if you're assigned to body guard somebody else and that somebody else is in danger, then you're also supposed to protect him with fire power?

A. It always depends in what case and... each case is different, because our job wasn't to protect somebody, the only thing we have like instruction, it was, we have a certain address and if the person we were supposed to look over goes near that address we call 911 and call the policemen and that's it, that was our job, we didn't have to go there or intervene or whatever.

Q. Are you sure that you're supposed to call 911 or you're supposed to call another number?

A. No, no, no, no, we had... in the contract they said if the person goes near one of the addresses, we call the policemen right now, that's it, that was our job, because we had to do the surveillance and follow the person. If the person is okay all day long, there's no problem with it, if it was going near the address we had, so we had to call the policemen to intervene, but we didn't have to intervene in no such manner.

VALERY FABRIKANT :

Is it possible to show the witness this instruction of Mr. Strass, please? The first page, yes.

Q. Do you recall seeing this instruction?

A. Yes.

Q. Could you read it?

A. Out loud?

THE COURT :

Q. Read it to yourself.

A. Okay.

VALERY FABRIKANT :

Q. Just to yourself.

A. Okay. To myself. Okay. Yes.

Q. Does it say that you were supposed to call 911 and police?

A. Not on that, okay, my officer explained the case, okay, and like he said to me, normally, if everything is normal, we have to call the number we have on that, but if it looked funny, whatever, we had to call 911 to be sure that...

Q. Okay. You had additional instruction which was not written...

A. Exact.

Q. ...it was an oral instruction?

A. Exactly. Yes.

Q. All right. And suppose... What was your understanding? Suppose I pass by certain address, you call 911, but I just passed, I go along, would police be able to intercept me anywhere?

A. It's not exactly that, if you were going at that address, you get out of the car and go in, I would call 911.

Q. Oh.

A. But if you go by there, you don't do nothing, I don't have to call 911.

Q. Uh, huh.

A. You go with logic, you don't go because the guy goes in front of the house he's going to do something. So if somebody really strange would happen I would call, but not if you go in front or whatever.

Q. Uh, huh. All right. What if I go to another place, what were your instructions?

A. Only to follow you, that's it.

Q. All right. Could you go through your reports just one by one and tell the jury what you did on each of those days?

Me JEAN LECOURS :

If the reports are filed they speak for themselves, My Lord.

VALERY FABRIKANT :

Reports do not say everything, I'm asking him to recollect, using reports, what he did.

THE COURT :

Well, I don't think you can ask him that sort of question, you'll have to ask him a question yourself, let him take cognizance of his report to see if it refreshes his memory and go from there.

VALERY FABRIKANT :

Well, this is exactly what I did.

THE COURT :

It's not what you're doing, you're asking a general question, it's too wide.

VALERY FABRIKANT :

We have difficulty communicating clearly.

THE COURT :

Now your question?

VALERY FABRIKANT :

Q. All right. So could you tell what happened during that time covered by this report?

A. Okay. The first report is the first day I've been there, so the night of the twenty-eighth (28th) to twenty-ninth (29th) March, I've been there until twenty-one thirty (21:30) to eight (8:00) in the morning, so... Okay, I arrived at the place at twenty-one twenty-seven (21:27), and I looked around for the car of the person. After a while I didn't see the car anywhere so I verified if there was somebody at home.

THE COURT :

Q. Is this all in your report, monsieur...

A. Yes.

Q. It's all there?

A. Oui, oui, c'est tout dans mon rapport.

-A. It's all in my report.

A. Yes, it's in there.

THE COURT :

Well, if it's all in the report what's the point of him reading it all into the record?

VALERY FABRIKANT :

Well, maybe he will remember a little bit more than that, that's the point.

THE COURT :

Well, you'll have to put your question.

VALERY FABRIKANT :

Well, I asked him to recall what happened...

THE COURT :

Fine, then ask him to take cognizance of the report and ask him if there is anything that occurred that wasn't put in the report. If you're not prepared to do that we're wasting our time.

VALERY FABRIKANT :

Let him just re...

THE COURT :

Are you going to do it that way or are you not?

VALERY FABRIKANT :

I am asking the way I feel is right, there is no way you can dictate me how to put my questions.

THE COURT :

No, you will... I am not dictating to you how to put your questions, but you're not going to ask him to read into the report what are already in the reports and what are going to be filed.

VALERY FABRIKANT :

So disallow my question, but don't dictate me how to ask the question.

THE COURT :

Your last question is disallowed.

VALERY FABRIKANT :

I will ask questions as I see fit.

THE COURT :

Your last question is disallowed.

VALERY FABRIKANT :

That's all you can do.

Q. So you didn't see the car anywhere, what did you do next?

A. It was the first day, so what I've done, I tried to figure if there was somebody at home, who was somebody at home...

Q. How did you check it?

A. I don't remember, I think I called. Okay. On my report I put I called to see if there was somebody home, and a woman talked to me, and I said to her I had the wrong number, so now I know there was somebody home. But I presume he wasn't there yet, so I stayed in front of the house.

Q. All right. Do you remember where did you stay?

A. Pardon?

Q. Do you remember where did you stay, on Trent, on Ashdale?

A. No, I was in front of the apartment, afterwards I found out there was a garage going out on a second street, but the first time we didn't know that, so we were in front of the building, I don't remember what street exactly. Trent. Yes, on Trent. Trent Street.

Q. So you were on Trent near the main entrance to the building, right?

A. Exactly.

Q. All right. So on the first night did you finally find my car?

A. On the report... Yes, I didn't find the car the first day, I found it on the second day though.

Q. So on the first day you just stood there watching the main entrance?

A. Exactly.

Q. All right. It was from evening twenty-eighth (28th) until morning twenty-ninth (29th).

A. Yes.

Q. When was your next shift?

A. The next day, the twenty-ninth (29th) to the thirty (30).

Q. Twenty-ninth (29th) what time?

A. Twenty (20:00) to... eight o'clock (8:00) in the night to eight o'clock (8:00) in the morning.

Q. All right. So what did you do on that day?

A. Okay. On my report I put... I talked with my... la personne que j'ai remplacé, the person...

-A. I talked with the person I replaced...

A. ...okay, and he tell me he never saw anybody going out of the building, so I figured there was something wrong because you can't go out and in like that without going by the door. So what I've done, I go in the building, I go downstairs, in the garage, and I find the car, I found the car. So after that I checked was the garage door going on, and after I discovered the garage door was going on another street, so like that I found out where the person going in and out always without we can't see him, so I put that in my report in detail.

Q. So at first night you didn't discover where garage entrance was, and you watched just the main entrance. Now, the second you found where the garage was and now where were you located in your surveillance?

A. Okay. After we were going on Ashdale.

Q. So you were then placed on Ashdale yourself?

A. Yes.

Q. Watching the main entrance to the garage?

A. Yes.

Q. Okay. Did you see from that place the Trent entrance to the building?

A. Yes, because it was like a little bit like corner, we didn't see really well the entrance but what I do sometimes, I park there and I watch the garage door and sometimes, like each... I don't know, maybe ten minutes, I go around quick to see who could go in the corner and see one a little bit one, a little bit on the other one, it depends where we could park.

Q. Uh, huh. Do you recall what place of Trent were you located, near the entrance to the garage, at certain distance from the garage?

A. No, we were like maybe forty (40) feet from the door of the garage, because when you're too near the garage it's simple to spot us. So if we're like forty (40) or fifty (50) feet, if somebody going in or out, he can't see us, or he can't see, there's always somebody parked there.

Q. Okay. But from that place did you have any possibility to see the main entrance from Trent?

A. I don't remember very well because it's been a long time ago, maybe, maybe not, I'm not sure.

Q. All right. Okay. What did you notice during your second shift, if anything?

A. I don't put how... Okay. That night I go out at the fifth floor, at the apartment 504, and I stood outside, and I listened to a man and a woman talking, so I presumed you're there, or the person is there with his wife, so I go back downstairs. Okay, after I go downstairs to find the car, I find the car with the number and the matching number I have on my reports, and after, at that part I found out there's another garage door, so it's all on the report though.

Q. How did you get into the building?

A. With another person.

Q. Somebody else was entering and you just entered together?

A. Yes.

Q. All right. How did you find out which windows are mine?

A. Because I figured... I've been upstairs at the apartment, so I made a "croquis" of the building, and with the emplacement of the door I can manage to see where is the window going on. So after we calculated and the window goes like, if we're like here, on Ashdale, the garage door is here, so the window of the building goes on the corner of the building, so we can see very well inside of the building, in the apartment window.

Q. All right. Were you instructed to watch what is going on in the apartment too?

A. Yes, like that we can see when you go up, when you go down, if you have to go, so if we see the light going down, we know you're going to sleep at, I don't know, maybe twelve o'clock (12:00). But we see the light out and you go out, so now we can figure when you go out or in, whatever, but we only look more for the light, something like that, to see if there's somebody home or not.

Q. Uh, huh. All right. So during the second shift of yours you didn't see me, did you?

A. Yes, I saw you, you were in the kitchen.

Q. Okay. What was I doing?

A. Nothing special, I don't put it on there, maybe you were washing the dishes or whatever, but I don't have nothing special on that. I have the time you closed the light and that's it.

Q. All right. Did you have binoculars?

A. Yes, we all have that.

Q. Now, next shift was what date?

A. The thirty (30) to thirty-first (31st) March.

Q. What time?

A. Same thing... No, this was more... it was twenty-three (23:00) to seven o'clock (7:00).

Q. All right. Do you know why it was seven hour shift rather than eight?

A. No, it's an eight hour shift but they changed the time, I don't know why, but they changed the lapse.

Q. All right.

A. Until eight (8:00) to eight (8:00) they put seven (7:00) to seven (7:00), maybe there was somebody who couldn't come first, or whatever, it happened sometime.

Q. All right. Did something happen during that shift?

A. Everything is very normal, I begin my shift at twelve (12:00), the lights go off, everything is okay, and... Yes, there's nothing else.

Q. All right. Next shift?

A. The thirty-first (31st) to first (1st) April.

Q. What time?

A. Same thing, twenty-three (23:00) to seven (7:00), and...

Q. Anything happen?

A. The only thing... okay, the light closed at twenty-three thirty-one (23:31) and they're going back on three forty-eight (3:48) in the morning, there's somebody in the kitchen, but that's it. He closed back the light at three fifty-nine (3:59) and that's it, there's nothing else on it.

Q. So you didn't sleep the whole night?

A. Yes, I've been there until seven o'clock (7:00) but nothing happened, nobody wasn't out.

Q. All right. What happened during next shift?

A. Exactly the same thing, the light goes on, off, and that's it, nothing special.

Q. Could it be that I exited from main entrance on Trent, took a taxi cab and went somewhere to those prohibited addresses?

A. Maybe, I'm not sure. It could happen.

Q. Well, from the place where you were, there is no way to see it, right?

A. Like I said, I don't recall exactly where the streets are, so I can't really tell you exactly if I could or could not see you or whatever, so... Because the problem, they only put one person on that contract, they should put two persons, that was

the problem.

Q. Yes. All right. What happened then, did you tell the administration that surveillance is inadequate?

A. I think I spoke a little bit with my boss at the time, like I said to him, we can check one place but we can't check both at the same time.

Q. Yes.

A. So maybe it would be okay to put another guy, so maybe... I don't know if he called the administration to ask them maybe to put two guards or what or whatever, but I don't...

Q. But you understood it and you discussed it with your superior?

A. Yes. Yes, yes, yes.

Q. Do you remember what was the answer?

A. No, I never had an answer on that.

Q. You just said what you said and...

A. Yes, exactly.

Q. ...that was the end of it?

A. Yes.

Q. All right. Okay. What happened at the next shift?

A. Okay. So the next shift was... I was there on the fourth (4th). The seventeen (17:00) to one (1:00) in the morning, I don't know why but... so they changed... we changed shift maybe to cost less or something like that, I don't know. So...

Q. Anything happened during that time?

A. The only thing I have on that, it's at twenty-two forty (22:40) there's a woman washing the dishes for twenty (20) minutes, that's it. And the lights go off at twenty-three twenty-three (23:23), and I have nothing else.

Q. Could it be that the shift was from seventeen (17:00) until one o'clock (1:00) to check if the person surveyed, say I'm home very late or quite opposite, go somewhere at late hours?

A. Like I said to you, you could, because what I have, they tell me to be there until that date and that date or that hour, that hour, I do what I have to do between those hours, but after it's not my problem.

Q. Were you replaced by somebody else at one a.m. (1:00) or there was no replacement?

A. From those reports I don't think so, I'm not sure, I don't think so. I think they cut the night shift.

Q. All right.

A. After a while, when they figured it didn't happen nothing special, so maybe they said: "Okay, we're going to put somebody there until one o'clock (1:00)" and you're not supposed to go out after, I don't know. I don't recall, even with the other ones, I don't think so there was a night shift.

Q. All right. What was your instruction if I go certain place, were you supposed to follow me?

A. Yes. I was supposed to follow you without... sans que vous vous en rendiez compte.

-A. ...without you realizing it.

Q. All right. If I go to the university, were you supposed to follow me inside the university?

A. No. No, no, we followed you to the university, we parked like two or three places near your car, and we wait there, and when you come back we follow the car, we always follow the car.

Q. Okay, but if I go to certain store, to Cavendish Mall for example...

A. Exactly the same thing, you put your car there, I put it like ten spaces upper, and we wait you come back and that's it.

Q. So you don't follow inside?

A. No, no, no, no.

Q. Okay. I appreciate you coming here.

VALERY FABRIKANT :

I would like to file that document. If I may, one small question.

Q. Wwere you ever told by your superiors that I made threats against somebody, any details, any kind of detail?

A. Yes, we had... my boss explained me what exactly was the case.

Q. Okay. How did he explain it to you? What exactly was the case?

A. Okay. He explained me that there were certain... il y a eu des menaces de faites contre certains professeurs ou directeurs.

-A. There were certain threats made to certain professors or certain directors.

A. And that there was maybe not real threats or whatever but that was why the University Concordia asked us to follow that person to check what exactly he's doing, but on n'avait pas de other obstruction than that, maybe real one or not, but it's only to explain us exactly what was exactly was happening, because I'm not always like that, I don't want to go on something if I don't know exactly what happened.

Q. Uh, huh.

A. For my own protection or whatever.

Q. So the threats were against professors and rector?

A. That's what I recall.

Q. And it was threats to their lives?

A. I don't remember if it was for their lives but they had threats. I don't remember if he tell me for lives or broke a leg or whatever, but he tell me there was certain threat to certain person at Concordia University, and I had to follow that person to be sure it's not going to happen, something like that, that's what I had like information, that's it.

Q. Were you informed in any way whether I had firearms, whether I'm buying firearms?

A. No, never.

Q. Not a word about firearms?

A. No.

-Q. Okay.

Me JEAN LECOURS :

I have no questions.

AND FURTHER DEPONENT SAITH NOT

THE COURT :

Thank very much. We'll adjourn until two fifteen (2:15).

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITHOUT JURY

DISCUSSION RE CONTINUATION

VALERY FABRIKANT :

Well, if possible I would like also to raise the question of full disclosure, because when Mr. Cheff testified he produced document which was not disclosed to me by the Crown, and I would like Crown to explain why it was not disclosed to me.

Me JEAN LECOURS :

You remember, My Lord, it was a note with the name of an informer and a source. Anyway, Mr. Fabrikant got to see that document, so...

THE COURT :

Well be it, with the name of the informer, or at least the name of the police officer who dealt with the informer

deleted.

Me JEAN LECOURS :

And as far as I was concerned, this triple hearsay threats were not relevant.

VALERY FABRIKANT :

No, this is not the point, I would like Crown to explain why...

THE COURT :

He's not going to explain it, and I'm not going to explain it, and you got your opportunity to see that note because Mr. Cheff testified with regard to it, and that is that.

VALERY FABRIKANT :

But I was supposed to be given it in advance by the Crown, wasn't I?

THE COURT :

No, you were not. I don't believe so.

VALERY FABRIKANT :

Why not? Maybe explain why not. This is full disclosure, concerns full disclosure.

THE COURT :

Full disclosure does not concern the police archives.

VALERY FABRIKANT :

Well, if Crown had that, it was supposed to be given to me too, right?

THE COURT :

Not necessarily.

VALERY FABRIKANT :

Well then, explain it to me why not necessarily. I didn't see any document saying that police name is protected, and I asked Mr. Belleau to give me any jurisprudence or authority saying that there are situations in which name of police officer should be protected, and...

THE COURT :

I canvassed it with Mr. Cheff, and I am satisfied that the name of that particular police officer requires to be protected, particularly having regard for what you could possibly ever hope to prove through the use of that officer's name. So on the balance of your right to clear yourself, I'm satisfied that whatever that officer's identity is, and whatever his testimony would be, it is of such marginal bearing upon this case that I don't see why it should be disclosed and it won't be disclosed.

VALERY FABRIKANT :

Well, this is not the point, the point is that Crown didn't disclose it before your judgment, it couldn't foresee your judgment in the first place, it didn't disclose it, period. And the second disclosure, which I believe still is pending, because I didn't see it yet. If you recall, Mr. Lecours, during interrogation of Mr. Cheff, said that during certain conversation I said that I want to be a collector or something, and you stopped him at this point, do you recall that?

THE COURT :

Vaguely.

VALERY FABRIKANT :

Yes. Well, I didn't see any document saying that I ever claimed anyone to be a collector.

THE COURT :

Perhaps there is no document.

VALERY FABRIKANT :

Mr. Lecours referred to my conversation with "Thelmos", it means that he is in possession of that conversation, I would like to see it.

Me JEAN LECOURS :

I have absolutely no objection, My Lord, to give a copy to Mr. Fabrikant.

VALERY FABRIKANT :

But I would like to be explained why it wasn't given to me before.

Me JEAN LECOURS :

It was not part of the record.

VALERY FABRIKANT :

Well, when it did become part of the record. Could you explain me when it has become part of the record?

Me JEAN LECOURS :

I received a second set later.

VALERY FABRIKANT :

Okay. Could you give me the whole set then?

Me JEAN LECOURS :

No problem.

VALERY FABRIKANT :

Not just this conversation but the whole second set.

Me JEAN LECOURS :

This is the second set, I'll make a copy of the whole thing and I give you.

VALERY FABRIKANT :

All right, but I think I shouldn't ask for that, you should just give it to me, shouldn't you? So I will receive the whole set?

Me JEAN LECOURS :

Sure.

VALERY FABRIKANT :

All right. Now... and if you recall a long time ago I asked question of the "croquis", what was mentioned in, I believe, Mr. Soucy's report, and this "croquis" still has not been found.

Me JEAN LECOURS :

We did research about ten times, My Lord, he did not write a report. What I understand is he was quoted in a police report that Mr. Fabrikant got and that was the essence of that person's testimony.

THE COURT :

You have not been able to put your hands on the "croquis"?

Me JEAN LECOURS :

No... I'm in a position to say that there is no police statement from this person, to the best of my knowledge.

VALERY FABRIKANT :

No, no, no, you are mixing up something.

THE COURT :

It's a "croquis" that he's looking for.

Me JEAN LECOURS :

Ah, le croquis.

VALERY FABRIKANT :

Report was there.

Me JEAN LECOURS :

Okay. This I think we did some research... I might be in a position to provide it, it's very tiny, a little thing that was appendix to all the declarations.

VALERY FABRIKANT :

Well why don't you do it, I asked for it a long, long, long time ago. Why should I have...

Me JEAN LECOURS :

I don't have it now but... I never got it but I'm told that we can find it, so...

VALERY FABRIKANT :

Well, but why do I have to catch Crown each time that it does not provide the full disclosure?

Me JEAN LECOURS :

This person is catching everybody all the time, My Lord.

VALERY FABRIKANT :

Well, this person is catching because everybody seems to be doing something which they were not supposed to do, this is the problem. Now...

Me JEAN LECOURS :

Okay, the "croquis" I will... I don't have it but...

THE COURT :

The "croquis" you will provide. Okay.

VALERY FABRIKANT :

Well, what else is still there, until I get to it? Could you check again without me asking? If you received recently something else, which I don't know about, could you just check it and just give it to me without me asking?

Me JEAN LECOURS :

No problem.

VALERY FABRIKANT :

All right.

THE COURT :

Mr. Freedman, did you manage to clarify dean Swamy's departure date?

VALERY FABRIKANT :

Yes, you didn't say about Swamy, is it August fourth (4th)?

Me FREEDMAN :

I haven't been able to... he wasn't available when I tried at lunch but I will be in a position tomorrow.

THE COURT :

You will be in a position tomorrow, because...

Me FREEDMAN :

Or I can try again right now.

THE COURT :

...we will not be sitting tomorrow morning.

Me FREEDMAN :

Right.

THE COURT :

So I wonder if you might try during the afternoon. We won't be sitting tomorrow morning, and if I'm going to have to ask the jury to reconsider the question of Friday, on sitting on Friday, I would like to know. Now, I won't ask the jury to reconsider, I won't sit Friday. If dean Swamy or if he is going to be present until, you know, the Monday and Tuesday.

Me FREEDMAN :

Yes, it's a matter of two extra days whether he's available the Monday or the Tuesday.

THE COURT :

Two extra days, exactly. If I've got the Monday and Tuesday of the following week, then we'll stop this Friday, because as far as I'm concerned there's no question of there not being ample time in reasonable circumstances.

VALERY FABRIKANT :

And also I would like to have a copy of the Court order that we are not sitting tomorrow morning.

THE COURT :

There's no Court schedule, there's a note from the jury.

VALERY FABRIKANT :

No, no, what I want, just a piece of paper saying that we, tomorrow, are sitting in the afternoon, and if you wish I can explain why I need it.

THE COURT :

Yes, because you don't want to be brought from Parthenais in the morning.

VALERY FABRIKANT :

Exactly, because they do not do their job. They received a piece of paper, they ignore the time, so I need to have a piece of paper with me so I could show the guards: "No, you are wrong, I am going to the Court in the afternoon". Would it be possible to make this for me?

THE COURT :

Yes, surely.

VALERY FABRIKANT :

All right. And the whole schedule, if you have it already...

THE COURT :

I don't have a schedule, I have a note from the jury.

VALERY FABRIKANT :

Yes, I understand, but is it already kind of processed in some kind of way?

THE COURT :

No, it's not already processed in any kind of way.

VALERY FABRIKANT :

Well, when it is processed I would like to have a copy of that to know when what happens.

THE COURT :

But there is the question of this Friday, Friday the twenty-third (23rd), and the morning of Monday the twenty-sixth (26th), and that's why I want to know whether Swamy is going to be around until the fourth (4th) of August.

VALERY FABRIKANT :

Yes. And the last thing, if it is possible, to make copy of all my depositions so maybe I would have it on my table and wouldn't bother each time, and I would know what I deposited. Because the list I was given it just says "document en liasse" and the date, and I have no idea...

THE COURT :

But what you have, you have what everybody else has I think, don't you? You have the clerk's list.

VALERY FABRIKANT :

Yes, I know, but this doesn't tell me anything.

THE COURT :

Well that's all I have.

VALERY FABRIKANT :

Document of date, that, I don't remember what was that date.

THE COURT :

That's unfortunate but there is no more detailed list.

VALERY FABRIKANT :

Okay, but what I'm asking for, just this pile of documents which were deposited, just a copy to be made, and I keep it on my desk, and it would save us a lot of time.

THE COURT :

No, you'll just simply have to refer to the document when you require.

VALERY FABRIKANT :

What, I'm not entitled to the documents I'm depositing? It's just to make a copy of the documents which I deposited.

What's the reason for that? I don't require it urgently, it could be done tomorrow.

THE COURT :

Did you look at the thickness of these files?

VALERY FABRIKANT :

Yes, so what?

VALERY FABRIKANT :

Well so what, nothing so what.

VALERY FABRIKANT :

What, thickness of the file, if you look at transcripts there are that much, not that, that much already, those which were made. And those which are not made, if you make them, they will be up to the ceiling. So that much is not much.

THE COURT :

Have you another witness to call?

VALERY FABRIKANT :

Yes.

THE COURT :

Jury please.

MEMBERS OF THE JURY ARE PRESENT

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this nineteenth (19th) day of the month of July, personally came and appeared:

FRANCOIS THROUX, born on November twenty-first (21st), nineteen hundred and seventy (1970), agent, confidential address;

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

EXAMINED BY VALERY FABRIKANT :

Q. Are you still working for Broderick?

-Q. Est-ce que vous travaillez toujours pour Broderick?

A. Non.

-A. No.

Q. Will you take the microphone?

-Q. Voulez-vous prendre le microphone?

Q. Now what company are you working for now?

-Q. Pour quelle compagnie travaillez-vous maintenant?

A. Secpro.

-A. Secpro.

Q. Okay.

A. Excusez, c'est Secpro, S-e-c-p-r-o.

-A. Secpro, S-e-c-p-r-o.

Q. As a bodyguard?

-Q. Comme garde de corps?

A. Non.

-A. No.

Q. Do you have a firearm permit?

-Q. Est-ce que vous avez un permis pour arme ... feu?

A. Non.

-A. No.

Q. Do you recall in nineteen eighty-nine (1989) you worked for Broderick?

-Q. Est-ce que vous vous souvenez si en mil neuf cent quatre-vingt-neuf (1989) vous travailliez pour Broderick?

A. Oui, monsieur.

-A. Yes, sir.

Q. Do you recall doing surveillance on my house, or myself?

-Q. Est-ce que vous vous souvenez d'avoir fait la surveillance sur ma maison ou moi?

A. Oui, je me rappelle vaguement, l..., de ça, l..., il faudrait que j'aille le rapport pour me souvenir exactement, l....

-A. Yes, I remember vaguely, I have the report to remember more specifically.

Q. Okay. Would you like to take cognizance? Are those your reports?

-Q. Pouvez-vous prendre connaissance? Est-ce que c'est vos rapports?

A. Non, pas ceux-l....

-A. No, not these.

A. Il y en a deux ici.

-A. There's two of them here.

Q. All right. Do these reports refresh your memory in any way?

-Q. Est-ce que ces deux rapports vous aident en ce qui concerne votre m,moire?

A. Oui, mais il y avait rien de sp,cial. Il ,tait rien arriv, de sp,cial comme c'est indiqu, ici, l....

-A. Yes, but nothing special happened as is indicated here.

Q. Okay. You were in surveillance on what date?

-Q. Vous ,tiez en surveillance quelle date?

A. Le huit (8) avril.

-A. The eighth (8th) of April.

Q. From what time until what time?

-Q. De quelle heure ... quelle heure?

A. De minuit (12 h) ... huit (8 h).

-A. From midnight (12:00) to eight (8:00).

Q. Okay. And after that?

-Q. Et après ça?

A. De vingt heures (20 h) ... huit heures (8 h).

-A. From twenty hundred hours (20:00) to eight o'clock (8:00).

Q. On what date?

-Q. A quelle date?

A. La m^me date.

-A. The same date.

VALERY FABRIKANT :

All right. Let us deposit.

THE COURT :

Take out the two that relate to you.

Me JEAN LECOURS :

I have no questions for the witness, My Lord.

THE COURT :

Merci beaucoup.

A. Merci.

AND FURTHER DEPONENT SAITH NOT

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this nineteenth (19th) day of the month of July, personally came and appeared:

SUBHASH RAKHEJA, born on June fifteenth (15th), nineteen hundred and fifty-three (1953), associate professor, confidential address;

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

Me JEAN LECOURS :

Well, My Lord, we already heard many times about Dr. Rakheja, it's like Dr. Ahmed, I submit respectfully to you that this

testimony is not relevant. Unless he has some publications with the accused, but there's publications with Sankar or anybody else, it's not relevant in this case.

THE COURT :

You may be substantially right, on the other hand there were a number of factors which were covered with Dr. Ahmed that were... he was permitted to testify, it simply depends on the questions, so I think we'll wait for the questions. You can repeat your objection depending on what is asked.

EXAMINED BY VALERY FABRIKANT :

Q. Okay. How many years do we know each other?

A. I believe I know you from nineteen seventy-nine (1979).

Q. Could you please put the microphone on yourself?

So effectively all the time I've been in Canada, right?

A. I do not know that.

Q. All right. What was our relationship? How would you characterize it?

A. In nineteen seventy-nine (1979) I was a graduate student, so there wasn't much of a relationship. In nineteen eighty-five (1985), when I joined the faculty, we were colleagues.

Q. Well, I am afraid to ask question, were we kind of friends?

A. We were colleagues.

Q. So we were not kind of friends, no?

A. Well, friends, I believe is a relative term.

Q. Yes.

A. We weren't enemies, let's put it this way, but we were involved...

Q. How would you call a person to whom you disclose information about criminal activity of Seshadri Sankar, and you, yourself, said that...

Me JEAN LECOURS :

My Lord, that's the object... that was the object of my objection.

VALERY FABRIKANT :

I would like to be allowed to finish the question.

Me JEAN LECOURS :

I think it's about time to ask the accused the relevancy of this testimony.

VALERY FABRIKANT :

I would like to finish the question first, all right? And Crown...

THE COURT :

No, you're not going to finish that last question.

VALERY FABRIKANT :

Why?

THE COURT :

Because I told you before that your allegations relating to what you call criminal activity of Seshadri Sankar has absolutely nothing to do with this trial.

VALERY FABRIKANT :

Just listen to my question.

THE COURT :

No, I will not listen to your question, and I'm not going to permit you to use the witness box as a pulpit to continue to flog that horse when you have been told that that is not relevant. So the objection is maintained.

VALERY FABRIKANT :

I'm establishing different thing, I'm establishing...

THE COURT :

Yes, you may be, but...

VALERY FABRIKANT :

...that we were friends.

THE COURT :

Yes, you may be, but you'll have to find another way to do it than the question you asked.

VALERY FABRIKANT :

He conveyed to me information which was very confidential, this is the point I'm trying to make.

THE COURT :

Then you will have to ask your question in a different fashion.

VALERY FABRIKANT :

Well, there is no way in a different fashion because this was the only confidential information which he has given to me...

THE COURT :

I have no idea...

VALERY FABRIKANT :

...and the fact... Let me finish please, we cannot talk together, either you allow me to explain or you don't allow me to explain. If you do allow me to explain...

THE COURT :

I told you, I am not going to listen to any testimony on what you characterize as criminal activity.

Me JEAN LECOURS :

What I suggest, My Lord...

VALERY FABRIKANT :

I do not ask him...

Me JEAN LECOURS :

...is that at this time you ask him what is the relevancy of this witness and you will decide...

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VALERY FABRIKANT :

I do not ask him...

THE COURT :

Sit down, Dr. Rakheja.

Me JEAN LECOURS :

...what is permitted and what is not.

THE COURT :

What do you propose to establish with this witness?

VALERY FABRIKANT :

Well, first of all I would like to emphasize that I do not ask him for any details of criminal activity in the first place, so I am not abusing any ruling at this point. I'm just trying to establish that we were in a sufficiently close relationship, whatever you call it, that he found it possible to convey to me this information. If you want to safeguard crooked activity of Sankar, not to be heard by the jury, that is fine with me, but just to establish the fact that he conveyed this information to me, I want to establish that we were sufficiently close, period. And this is normal question, and I should be allowed to ask this question.

THE COURT :

He has said you were colleagues, if you wish to go further into the nature of the relationship between you and him, that is one thing, but whether he conveyed that information to you or not is not relevant to this case.

VALERY FABRIKANT :

Well, it is relevant as to...

THE COURT :

First of all. First of all.

VALERY FABRIKANT :

...what was our relationship.

THE COURT :

Secondly, what do you propose to establish through the testimony of Dr. Rakheja?

VALERY FABRIKANT :

Well, this is different question.

THE COURT :

That's right, that's a different question.

VALERY FABRIKANT :

...let us rule on this first.

THE COURT :

On the objection that was made I maintain it as far as the last question was concerned, and I maintain it for the reasons I already gave. Secondly, what do you propose to establish with this witness?

VALERY FABRIKANT :

Well, I propose to establish with this witness many things, one of those things I want to propose to establish was that he, in nineteen ninety (1990), conveyed to me information which was definitely confidential at that time because he, himself, told me that except himself and those two Sankars, nobody knows that information, so I was the only one to whom he conveyed this information. So first of all I want to establish what kind of relationship we had. Second, I want to establish that at that time he told me that he feels that this is a criminal activity which has to be revealed in Court of law. And I want to establish also that during that conversation, though I, on several occasions, told him that I am peaceful person and I do not plan to do any kind of

revealing activity, he, on the other side, told me that he feels from his point of view, he feels obliged to do so. He also told me, during that conversation, that this information, if it ever be released, it has to be released in Court. As strangely as it looks now in the setting, he is here, we are in Court, and he is not allowed to reveal this information. Next thing, what I want to establish with him, is that he conveyed to me that he had, himself, to include Seshadri Sankar in his publications and also the same thing had "Ahmed" to do. He also informed me that there were a number, not just those two, there were a significant number of private contracts from Bombardier, for example, with private companies of Seshadri Sankar. The work on this contract was done by university students and employees and Sankar pocketed the money. He also told me that usually, to get contract from the government, it requires some kind of bribe of the official who is in charge of awarding these contracts. And in particular, in the case of liquid tankers' stability he told me that they had, to his knowledge, to include the officer which awarded the contract as co-author in several articles, though his contribution was zero, so it was kind of indirect bribe what he was aware of. Also he told me that he was writing a certain book on that subject, and again he had to include Seshadri Sankar as co-author. He also informed me during that conversation that he and Ahmed decided to do something of their own and to write several papers without including Sankar, but they had to do it in such a way that Sankar wouldn't know. Also he told me during that conversation that supervision of graduate students, when he has to supervise graduate students for Sankar, quote, unquote, he told me: "If they -- meaning Sankar -- have a joint supervision, second guy is always going to do it, I have done it too, and they have ever looked at it". So he told me that he did a lot of supervision of graduate students to which both Sankars didn't even look at the dissertations. Now, what is the relevance of this information? The relevance of this information is the following. At the time when Hogben threatened me that unless I take three years' salary and resign from the university, and sign certain papers promising to shut up, they will put me in jail, and he told me that Gold has taken care of it. So, it is important for me, in order to justify for the jury the fact that I decided to scare Hogben, that I acted of necessity, that it was obvious that I was dealing with a group of bandits who had supporters as high as Chief Justice of Quebec, or former Chief Justice of Quebec, who was at the same time Chancellor of Concordia University. And though I have prepared to defend myself against contempt of Court, on the other hand it was clear to me that this threat was real, that I was dealing with indeed a group of criminals who were supporting each other. So this part of his testimony is definitely relevant. Second part of his testimony, it will be similar to the questions I asked Ahmed concerning events of fall of ninety-one ('91), and what happened after that. So in both instances this witness is relevant.

THE COURT :

As far as your comments relating to what you call the activities, or criminal activities of Sankar and the revelation of secrets to you by Rakheja, that I rule irrelevant. Secondly, with regard to the obligation of this witness to include Seshadri Sankar in his papers, in the same context as I ruled it irrelevant with regard to Ahmed, I rule

it irrelevant with regard to him. All that is of relevance in this case is what your relationship was with Sankar and what the requirements were as far as your being required to include him in your papers. As far as private contracts are concerned, whether we are talking about Bombardier or whether we're talking about the liquid tanker stability matter, that is totally irrelevant to these proceedings, I have ruled that at least fifteen (15) times, as is any question of a bribe received by or paid by anyone. In a similar vein, the question of the book that professor Rakheja was writing, and which Sankar was included as a co-author, that is irrelevant to these proceedings. In a similar vein so is any question of papers prepared by professor Rakheja or Ahmed for that matter, and whether he once told you that it had to be done behind Sankar's back or not won't advance us one bit. The same goes for the supervision of the graduate students, all that interests me may be the question of your supervision of graduate students, not anybody else's. And what you have to say about Hogben and the former Chief Justice of the Superior Court, we will see when we get there, but whatever it is, it bears no relationship to the six points that you have mentioned there. Therefore, each and everyone of these points, you are not permitted to question the witness. As to the events of the fall of nineteen ninety-one (1991), I'll look at these in a question by question basis and you can put your questions as to the events of the fall of nineteen ninety-one (1991) to professor Rakheja, and if the Crown has any objection, the Crown will make it. That is the ruling.

VALERY FABRIKANT :

I need to establish that we had friendly and confidential relationship because it bears on other questions which I'm going to ask him.

THE COURT :

You may establish that, the objection...

VALERY FABRIKANT :

Well, there is only one way to establish it...

THE COURT :

...the objection that was made was... at least the intervention that I made was to the form of the question and (inaudible), talking about criminal activity on the part of Sankar.

VALERY FABRIKANT :

Well, this is the proof that I have...

THE COURT :

You are not going to get into the question of Sankar's activities, I am sure you have enough ingenuity to establish, if you can, that you and the witness had a... I'm sure you have the ingenuity to establish the nature of your relationship with the witness without having recourse to that sort of statement from over there.

VALERY FABRIKANT :

Well, what else is the proof that he...

THE COURT :

You're not going to make the proof of criminal activity.

VALERY FABRIKANT :

I'm not making proof of criminal activity...

THE COURT :

Fine. If you wish to establish...

VALERY FABRIKANT :

...I'm making proof of the fact that he conveyed it to me.

THE COURT :

You may wish to establish, if it relates to the events of the fall of ninety-one ('91), that you had a certain relationship with professor Rakheja. Put your questions.

VALERY FABRIKANT :

Well, I put already question.

THE COURT :

Well, your last question was ruled out of order, so you better try it a different way.

VALERY FABRIKANT :

Okay, let me try it differently.

Q. Did we have a conversation in September of nineteen ninety (1990)...

Me JEAN LECOURS :

That's another way of (inaudible).

THE COURT :

Just a minute, wait for the question.

VALERY FABRIKANT :

Q. ...when our integration into full time tenure track position was delayed?

A. Yes, we did have some conversations.

Q. Okay. Did you convey to me during that conversation some very, very confidential information?

A. I do not recall any confidential information which I know of I could convey.

Q. All right. So would this trigger your memory if I remind you several phrases from this conversation? If you recall, you told me: "Let me tell you one thing first, one minute, let me close the door. Okay. I want to mention one thing, apart from Seshadri Sankar and myself nobody has this information".

A. I couldn't possibly recall the words, no.

Q. You could not recall the words?

Me JEAN LECOURS :

Well, My Lord, clearly this does not respect your ruling.

VALERY FABRIKANT :

Well, this is different.

Me JEAN LECOURS :

Still, it is the same subject and it's irrelevant.

VALERY FABRIKANT :

Absolutely not.

Me JEAN LECOURS :

Even their relationship, it has been covered, that should be the end of it, he said: "We were colleagues", period.

VALERY FABRIKANT :

No, I am trying to remind him that we were a little bit more than that. So...

Q. When I told you that I am a peaceful person and I have no intention to do any breach of confidentiality you responded to me: "No, I don't mind, out of moral, we do have certain moral obligation towards the ethics, so I would probably do it", do you recall that?

A. How could I recall a three year old conversation, and with you all I had was a bunch of corridor talks.

Q. All right.

THE COURT :

Q. A bunch of what?

A. Corridor talks, you know, meeting the colleague and you saying something.

VALERY FABRIKANT :

Q. All right. So do you recall that further you said: "Okay, look, if this information is ever to be released, it is going

to be released in Court, not here, there, okay, simple as that". And I told you: "And not by me essentially I hope". And you said: "No, we'll do it together in Court", we are doing it together in Court.

A. I'll answer to that. I think I should...

Me JEAN LECOURS :

We're going into... you just ruled on that.

THE COURT :

Q. Sorry, you said what?

A. In the late eighty-nine ('89), or early nineteen ninety (1990), I cannot recall the dates, we were supposed to be integrated in the tenure track integration, and Dr. Fabrikant always called me and told me: "Look, there are wrong-doings, we're not going to integrate it", he raised a lot of allegations about many of my group members, who I take pride in working with, and with integration which was supposed to come in April of nineteen ninety-one (1991). It eventually came in November or December, I do not recall exact, of nineteen ninety-one (1991). And in that process I was trying to calm him down, I had suspected the delay in the integration is due to the tactics Dr. Fabrikant has adopted, writing nasty memos, throwing accusations on the people who (inaudible) department, and I was trying to calm him down, say: "Look...", and he wanted to go to the Court because of the delay in the integration. I remember saying that: "Look, let me handle the thing in a little bit more civilized manner, if it has to go to the Court I will surely join you", this is what I recall, saying: "If nothing else works out, sure, we'll see about that". But I was advising him simply to refrain from writing those nasty memos so that the process can move on, and that's the best thing I can recall there.

VALERY FABRIKANT :

Q. All right. So I believe we need to play the tape for him so he would be able to recall better.

THE COURT :

I'm not sure you do at all, you were going into the question of his relationship with you, we've gone into the question of his relationship with you and he's talked about the question of the relationship with you. So we will go on from there.

VALERY FABRIKANT :

All right.

Q. Do you recall telling me that there were number of contracts with Bombardier...

THE COURT :

No, I'm sorry, you're not getting into that. You're trying to do indirectly... the Crown prosecutor, of course, is perfectly right and I'm not surprised. I'm not surprised. I waited until this particular point because what you posed before could have related, and it seemed too to the events of the fall of ninety-one ('91), now you're into the contract with Bombardier, you will not go there, move on to something else.

VALERY FABRIKANT :

Well, I need to establish this particular conversation.

THE COURT :

Move on to something else, you will not establish that.

VALERY FABRIKANT :

Well, it is important for my defense to establish...

THE COURT :

It is not important for your defense, Mr. Fabrikant, that is clear. Move on to something else.

VALERY FABRIKANT :

All right.

Q. Now you mentioned nasty memos in nineteen ninety (1990), did you see any of those nasty memos in nineteen ninety (1990)?

A. Nineteen ninety-one (1991). I did not say nineteen ninety (1990).

Q. Oh, oh, but we are talking about nineteen ninety (1990) in times of integration.

A. Integration was in nineteen ninety (1990)?

Q. Into tenure track position.

A. I am not very good with the dates, so I suppose it's nineteen ninety (1990). It could be.

Q. So did you see in nineteen ninety (1990) any nasty memos of mine?

A. I recall one you circulated yourself referring to Dr. Osman.

Q. About what?

A. Now, I do not remember the exact contents of it, it was, I believe, on the subject of (inaudible) exemption.

Q. Well that was ninety-one ('91), I'm talking about nineteen ninety (1990).

A. I cannot remember the dates, okay, so I've seen so many memos, I cannot possibly tell you the contents.

Q. Well nineteen ninety (1990) was the time when we were still research people and we were to be integrated in a tenure track position.

A. We were integrated in November of nineteen ninety-one (1991), I believe. November nineteen ninety (1990).

Q. December nineteen ninety (1990).

A. Okay. All right. So the memos...

Q. Did you see any nasty memos of mine at that time?

A. Yes, I did, I recall that.

Q. What was it about?

A. Not only the memos, but there were also... there were memos raising allegations against Dr. Osman.

Q. Again, in nineteen ninety (1990).

A. That's the best I can recall.

Q. Okay. What was about this allegation? What it was about...

A. I do not remember the contents, there were many of them.

Q. All right.

A. There were e-mails, electronic mail addresses and there were memos.

Q. Okay. E-mail started when?

A. I do not remember.

Q. Well, with accuracy of a year.

A. I believe it was nineteen ninety (1990).

Q. In nineteen ninety (1990) there was electronic mail. So electronic mail continued for more than two years?

A. I wouldn't know, I have to check that.

Q. You have to check that.

VALERY FABRIKANT :

Well, witness is pretending not to remember such an elementary thing. Let us refresh his memory then. Let me get this big file and we'll try to refresh his memory, because he is clearly pretending to be not...

THE COURT :

Would you continue to put your questions?

VALERY FABRIKANT :

No, I want to refresh his memory.

THE COURT :

No, you won't refresh his memory, put your questions.

Me JEAN LECOURS :

And if he's not happy he's not obliged to bring this witness.

THE COURT :
He's not obliged to bring this witness, exactly, put your questions.
VALERY FABRIKANT :
I want to refresh his memory.
THE COURT :
You're not going to refresh his memory, put your questions.
VALERY FABRIKANT :
You cannot forbid me to refresh his memory.
THE COURT :
I just did.
VALERY FABRIKANT :
Well you did, too bad.
THE COURT :
All right, now go on.
VALERY FABRIKANT :
I am not going on, I want to refresh his memory.
THE COURT :
You're not going on?
VALERY FABRIKANT :
No.
THE COURT :
You wish to refresh his memory with regard to what?
VALERY FABRIKANT :
With regard to certain points which I...
THE COURT :
With regard to what?
VALERY FABRIKANT :
In respect to memos which he has difficulty to remember.
THE COURT :
Then you show him the memo that he has difficulty to remember.
VALERY FABRIKANT :
This is what I want to do, and there is no way you can forbid me doing this...
THE COURT :
Now, what memo do you want? What memo do you wish to show him?
VALERY FABRIKANT :
I want this thick file and I will find it.
THE COURT :
Which file?
VALERY FABRIKANT :
The file which was given here by "Radfree", and I want to refresh his memory.
THE COURT :
The file that was deposited by Mrs. Radfree?
VALERY FABRIKANT :
Yes.
THE COURT :
D-7.
VALERY FABRIKANT :

Q. Take a look at this, is this one of the memos you have in mind?

A. This is the nineteen ninety-one (1991), Your Honor, but before that there were many electronic mail addresses and the memos which I cannot possibly remember. In the office operation you get so much of that, I cannot possibly remember the dates but this is not the one, this is definitely a year later. There were many electronic mail addresses or the memos, I cannot possibly put exact name there.

Q. Well, just give the subject of one of them.

A. The electronic mail addresses were very disturbing in the sense they were trying to accuse some people in the department of some, like for example, publications issue. And secondly like some people, like Dr. Osman he had accused of a few things, such as calling him names, which I won't say it in the Court, and calling him names, which was there in electronic mail, which was very, very disturbing for me. And I suspected because of that my appointment was delayed for nine months, I suffered for nine months (inaudible).

Q. So electronic mail appeared before those memos, right?

A. That's the best I can recall.

Q. Okay. So I accused everyone of everything in nineteen ninety (1990), right?

A. Yes, there were some accusations.

Q. In nineteen ninety (1990)?

A. Well, that's the best I can recall, you keep repeating the year but I do not remember those dates.

Q. Okay. So how come, in nineteen ninety (1990), when I was writing all those nasty memos, in September of nineteen ninety (1990) you told me that: "What I'm saying is, no one is ever (inaudible) to fight for their right". And later on you also told me, during the same conversation, that: "If this information is ever to be released, it's going to be released in Court". Now, and when I said: "Not by me essentially I hope", you said: "No, we'll do it together in Court". Now, if I was so nasty during nineteen ninety (1990), how could you possibly tell me this? Or when I asked you why Swamy supports Sankar, you said: "You see, it's politics". I asked you: "It is what?", you said: "It is politics".

Me JEAN LECOURS :

My Lord, my understanding was that you ruled on the subject.

VALERY FABRIKANT :

No, not on this subject, and I would like Crown not to interrupt me.

Me JEAN LECOURS :

This person doesn't take no for an answer, My Lord.

VALERY FABRIKANT :

This is not the subject at all, I am trying to refresh his memory that it couldn't possibly be that I wrote all those nasty memos and he was telling me these things, so...

THE COURT :

He has told you that to the best of his recollection he believes it was nineteen ninety (1990) but...

VALERY FABRIKANT :

So I'm trying to trigger his memory, that's all, that it couldn't possibly be nineteen ninety (1990)...

THE COURT :

It's not the question of you trying to trigger his memory, it's the way you try to trigger his memory that gives birth to the objection.

VALERY FABRIKANT :

Well, birth to the objection, he didn't give any foundation, so I continue.

THE COURT :

For the minute you may continue.

VALERY FABRIKANT :

Q. "It is politics, Swamy has a whole lot of meetings, Swamy wants to push something, he needs the support of certain people, he has got certain people within the faculty too, it doesn't matter what Swamy wants to do, they will support him". I said: "I see", Rakheja says: "Swamy in return, like you

scratch my back I'll scratch your back, that kind of thing", do you recall saying that in September of nineteen ninety (1990)?

A. I cannot recall the exact words but in any organization, I would say that in a corridor: "You scratch my back and I scratch your back" but I see nothing wrong with it.

Q. No.

A. I do not recall the words anyways.

Q. You miss the point that: "There are certain people in the faculty that, no matter what Swamy wants to do, they will support him".

A. I do not recall this.

VALERY FABRIKANT :

Well, I request this to be played to the witness so that he would be able to recall that, because it is important to establish that no nasty memos ever, or anything was done in nineteen ninety (1990).

THE COURT :

I'm not going to accede to that request. The question of nasty memos and the question of what you just said do not interrelate, and what you're trying to do is do indirectly what I prevented you from doing directly before.

VALERY FABRIKANT :

Well, let me tell you one thing though, that there is no way, if my only purpose was to convey this stuff to the jury, I will do it during my testimony, and there is no way you can stop me. So this is not my purpose at all at this time. When I will be there testifying, all these conversations, whether you allow me to play them or not, there is no way you can disallow me, to tell me what the conversation was.

THE COURT :

If they're not relevant I will prevent you talking about them.

VALERY FABRIKANT :

Well, let us get to that point.

THE COURT :

Yes, well that's it. Right now we're at this point, and we're not going to play another of your tapes, with everybody absent on...

VALERY FABRIKANT :

Not absent, not at all. Not at all.

THE COURT :

I'm sorry, you let me finish, on a section 9 application, we are not going to do it, in order to make the point that you are trying to make, because you haven't...

VALERY FABRIKANT :

I didn't make section 9 application.

THE COURT :

You haven't...

VALERY FABRIKANT :

I'm sorry, I didn't make section 9 application.

THE COURT :

Then that is the only way you could possibly cause me to listen to yet another of your tapes.

VALERY FABRIKANT :

I just want to trigger witness' memory when he hears his own voice, then probably he will recall that he said that.

THE COURT :

Would you please continue.

VALERY FABRIKANT :

Okay.

THE COURT :

Let us recall that what you are trying to do is have the witness talk about electronic mail, period, full stop, that was the question.

VALERY FABRIKANT :

No, I am trying to establish...

THE COURT :

And you have not read anything out of there that indicates, gives me the slightest indication that it's related to electronic mail.

VALERY FABRIKANT :

Well, it is not related because in nineteen ninety (1990) there was no electronic mail, and I'm trying to...

THE COURT :

Then fine, if it is not related because in nineteen ninety (1990) there was no electronic mail, that answers the question, if that is a fact, obviously Mr. Rakheja is in error, period. Now let's move along.

VALERY FABRIKANT :

Well, it doesn't feel so.

THE COURT :

Then let's move along.

Me JEAN LECOURS :

That's the case for every witness, My Lord, there are mistakes for every witness. If we start trying to prove to the witness he was wrong, we're always sidetracked, you know.

VALERY FABRIKANT :

Let me try to trigger...

Me JEAN LECOURS :

It's the examination-in-chief.

VALERY FABRIKANT :

Let me try to trigger his memory with something else and then maybe it will be clear for him that he could not have possibly talked to me like this if I had any nasty memos in nineteen ninety (1990).

Q. When I asked you, there must be need to give kickbacks to get contracts, is this more or less correct assumption...

THE COURT :

Look I'm stopping you right there, you are again trying to get into the seven, six areas that I said you could not get into and are not pertinent. Sorry, you will not do that.

Me JEAN LECOURS :

The main thing, My Lord...

VALERY FABRIKANT :

I'm now only establishing...

THE COURT :

I only allowed this witness, from the point of view of his submission, that he had questions to put to him along the same lines as he had to Ahmed with regard to the events of the fall of nineteen ninety-one (1991), that was all.

Me JEAN LECOURS :

Which events?

THE COURT :

I don't know, but there were a number of events that were covered with professor Ahmed that...

Me JEAN LECOURS :

May as well ask the accused which events he wants to cover and then you could limit the questions to these events, we wouldn't be wasting time listening about allegations of conversations and tapes and...

THE COURT :

It is not just that, Mr. Fabrikant, there's more to it than that, you are trying to prove, by some inverse method of yours, that if A, B and C were true, therefore irrefutable conclusion D could not be, and that is not how witnesses testify. Witnesses testify as to facts, he's testifying as to facts. Now, I would suggest you come to the fall of ninety-one ('91) and we get on with this thing.

VALERY FABRIKANT :

No, it is important to me to establish, because when it will be again question of state of my mind, it is extremely important for me to establish that we had that kind of relationship that he conveyed to me a very confidential information. And this is why... let me finish, please do not interrupt me. And this is why, when I saw his signature on this so-called senior members meeting, his signature shocked me more than anything else. I couldn't possibly imagine that person who, all the time kind of was friend and confidant, and whatever you call it, could secretly attend a meeting, sign his signature on a piece of paper effectively demanding that I be fired and never mention this to me. You cannot imagine what kind of blow to me it was. And if you do not allow me to establish the kind of relationship we had, then there is no way I can prove that it was an extreme blow.

THE COURT :

No one is preventing you establishing your relationship with this witness. What I am preventing you from doing is using that excuse as a trampoline to put before the jury evidence of the six points that I have ruled inadmissible.

Me JEAN LECOURS :

And even then, My Lord, who cares whether this witness signed or did not sign the senior members' resolution?

VALERY FABRIKANT :

He seemed to be sleeping when I explained it. Do you want me to repeat again? When you see...

Me JEAN LECOURS :

I would ask you to be respectful, please.

VALERY FABRIKANT :

When you see someone who you never knew sign the document demanding that you be fired, this is one thing. When a person who you consider to be close friend signs this, it is something else in influence of your mind.

Me JEAN LECOURS :

Well, the best person to testify on that is the accused, My Lord, he's not bringing the whole planet in this box.

VALERY FABRIKANT :

Not at all. Not at all. Don't tell me this story, that it is best that I testify. I testify, I will testify, don't you worry, but at this particular point it is extremely important for me to establish, and there is no other way to establish it by showing what kind of confidential information he gave me at that time. And if Sankar and Swamy and whoever are mentioned there, that's too bad.

THE COURT :

Is it? Well you will not get into the six areas that I have already ruled out.

VALERY FABRIKANT :

Why are you so protecting them?

THE COURT :

I have ruled out those six areas...

VALERY FABRIKANT :

Well you made a mistake.

THE COURT :

Did I?

VALERY FABRIKANT :

Yes.

THE COURT :

Well, I will live with it, if that is so. So you move on to something else, the objection is maintained.

VALERY FABRIKANT :

Well, what objection? I just was reading to him that the kind of information he gave me was that, again...

THE COURT :

Well, would you kindly stop reading to him and formulate another question?

VALERY FABRIKANT :

Well, there is no other question except that I want to establish what kind of information he gave me.

THE COURT :

Listen, I told you, you are not going to use that excuse as a trampoline in order to get into those six points that I have ruled inadmissible by simply saying: "Now, since your last ruling I've had another thought as to how to do it", that's all you're doing, that's all you're doing.

VALERY FABRIKANT :

Well you made a mistake, you just have to have courage to admit that you made a mistake, that's all.

THE COURT :

Listen, I have ruled and that is that, so you're not getting into that. If you have nothing else to ask Dr. Rakheja, let him go back to his business, let him get on with what he has to do.

VALERY FABRIKANT :

All right.

Q. Okay. If we were not sufficiently close, would you have told me that you sent several papers without Sankar being co-author, and you told me he doesn't know... "he doesn't come to scare me anymore, he knows I do not get scared, he can scare Ahmed, he told Ahmed: "I know you guys are working on something, you should come and discuss with me and we should put a joint effort". So he kind of indirectly sent us a message: "Okay guys, keep doing your work..."

THE COURT :

Mr. Fabrikant, that is point 5, that was ruled out. So, this is the last time of asking, if you transgress once more, that is the end of Mr. Rakheja's testimony and you will go on to your next witness, I give you fair warning.

VALERY FABRIKANT :

Well, I don't need the fair warning.

THE COURT :

You don't need the fair warning?

VALERY FABRIKANT :

No.

THE COURT :

Then don't transgress again, that's your last warning.

VALERY FABRIKANT :

Well, you cannot imagine how scared I am, I'm so scared that I don't know even what to do. You are trying to protect crooks, and the guys that you ruled already, and I cannot go into it, I established...

THE COURT :

That is right, I ruled and you cannot go into it. Now, if you won't take no for an answer, that is that. Have you anything

else to cover with this witness beyond these points?

VALERY FABRIKANT :

All right. Let us try it differently then.

Q. Do you recall seeing bodyguards in Concave?

A. Yes.

Q. Do you remember when was that?

A. No, I do not.

Q. Was it nineteen ninety (1990), ninety-one ('91), ninety-two ('92)?

A. Nineteen ninety-one (1991) or nineteen ninety-two (1992), I do not recall exactly.

Q. How was it explained to you why bodyguard was there?

A. How, I did not ask for an explanation, Concave is a small group, and I was the only one in those days coming in the office, and I just ignored it.

Q. You never asked for explanation?

A. No, I never asked for it.

Q. So you had no idea why the bodyguard was there and you never asked for it?

A. I had an idea. I had an idea.

Q. So you had an idea?

A. I did not ask for an explanation and nobody ever told me either why.

Q. All right. So what was the idea which you had (inaudible)?

A. This was the (inaudible) to the senior professors meeting, it was brought up in that meeting that how Dr. Osman felt about it, and how everybody else felt about it, and from there I had an idea, maybe there is a threat from yourself.

Q. Okay. Now you mentioned senior professors meeting. So, do you recall being present at that meeting?

A. Yes, I do.

Q. Do you remember where this meeting was?

A. Yes, I do.

Q. Okay. In which room was that?

A. I don't know the room number but I know it's in dean's office area.

Q. In the dean's office area. Do you know why it was not in the department rather than in dean's office?

A. I do not know, that happens very frequently because the meeting room in the department is at times booked for theses examinations, so it happens at times you have to move to a different room.

Q. How could it be booked if all the senior members were there?

A. Well, there could be junior members...

THE COURT :

You're cross-examining the witness and you're out of order.

VALERY FABRIKANT :

Q. Wasn't it moved there by any chance I would come, because my office is just next door to the conference room?

A. Well, I do not know anything about that.

Q. You don't know. Okay. Tell the jury what happened during that meeting.

A. I don't think I understand the question.

Q. Okay.

THE COURT :

Q. He wants you to tell the jury what transpired during that meeting.

A. Okay. In that meeting there were facts brought up, such as that you did not want to teach, you wanted to buy the course exemption. This department, I have been a student in this department ever since nineteen seventy-six (1976), and I know

how important teaching is. Nobody comes out and buys teaching, a professor who does not like to teach does not definitely belong there. And secondly, Dr. Osman had mentioned that you had come to his office with some kind of threats, and thirdly, the Concave group was also concerned... you were a part of the Concave just like I was, and you were asked to do like a certain work, in the general mandate, although no faculty member is asked to do any area of research, but we were obligated to carry out a research in the general mandate of the Concave. And just because you had a grant from NASA for, I believe, about ten thousand (\$10,000), eleven thousand dollars (\$11,000), you had asked to be excused from the mandate of the Concave, you had asked to be excused from the teaching. And apart from that there were allegations you were raising against everyone threatening Dr. Osman, so these are the facts which were brought up in the senior professors meeting, and as a result, collectively, the senior professors decided not to reappoint Dr. Fabrikant. At least recommend that, however they did not.

Q. Okay. So this is interesting thing. So it was discussed during that meeting, so members present at the meeting knew very well that the paper they were signing was related to my not reappointment, right?

A. That's correct.

Q. So everyone knew then when they were signing, they knew that effectively they expressed opinion that I, my contract be terminated, everyone understood it.

A. I understood it, I cannot speak on behalf of everybody, I understood.

Q. Well, was it explicitly said to everyone that...

A. Yes.

Q. Okay. All right.

VALERY FABRIKANT :

Where are the previous memos, may I have them back?

Q. So the phrase here: "We strongly urge, the department and the university, to stand up to such practices and to take appropriate action", effectively everyone who signed it understood, at least it was explained to them that this means that my employment should be terminated, right? This is the phrase, relevant phrase, correct?

A. I do not recall what's mentioned in that thing.

Q. All right. Take a look.

A. But that was the essence of the discussion which went on there.

Q. Take a look.

Me JEAN LECOURS :

Maybe you should give the page 1 as well.

VALERY FABRIKANT :

Well, he doesn't need that.

Me JEAN LECOURS :

Well...

THE COURT :

Give him the whole memo.

Me JEAN LECOURS :

And I guess there is a page 3 as well.

VALERY FABRIKANT :

Page 3 is just signature.

THE COURT :

My comment wasn't limited, I said: "Give him the whole memo".

VALERY FABRIKANT :

Q. Now I draw your attention to the phrase on the second page:
"We urge university and the department that they could profit
measures".

A. Yes.

Q. Now, this particular phrase effectively meant for everyone
that my contract be terminated, right?

A. That's what I believe.

Q. Yes. And everyone present there understood it in exactly...
At least they were informed what it means, right?

Me JEAN LECOURS :

That's not what he said, he just said he could not speak for
the others, My Lord.

VALERY FABRIKANT :

No, I'm asking if they were informed.

A. I do not recall that. I believe they were informed but I
cannot recall exact proceedings at that meeting.

Q. All right. Weren't you the one who told me that Sankar got
exactly the same thing, namely release from teaching duty and
he paid another person to teach course for him? Weren't you
the one who told me that in the first place?

A. I do not recall that.

Q. You do not recall that. All right. Now, taking into
consideration the kind of relationship we had, did you have
any hesitation signing this document?

A. No, I did not.

Q. Did you have any thought that you might... should have called
me and at least inform me about that?

A. No, I did not.

Q. All right. You also did know, at the time of signing, that
this document will be part, will be one of the exhibits of
D.P.C. decision not to renew my contract, right?

A. That was the understanding.

Q. Yes. So everyone was informed so?

A. Again I have stated, as far as I recall I knew it, I cannot
speak on behalf of everyone.

Q. Well, somebody told you separately that? You knew it from the
meeting...

A. No, no one told me separately.

Q. So...

A. I cannot recall exactly if it was stated to everyone openly in
the meeting and how it was stated. I certainly understood
that.

Q. All right. Now Osman, you said, mentioned some threat, could
you go into details what exactly threat and what occasion...
what was said.

A. To the best of my recollection, he stated you came in his
office, and you threatened him that you know the American way
with waving your hand.

Q. Well, it was what, out of blue or I said: "If you don't do
something", then what? I just came and said: "I know American
way"?

A. Like I said, Your Honor, I do not recall exactly what -- this
is what I recall, which we were all concerned about.

Q. Okay. Did anyone at the meeting ask question, maybe we should
call Fabrikant and ask his side of the story?

A. There were some attempts made earlier to, I believe, for some
of our colleagues to discuss with you, to make piece.

Q. Oh yes, who was that?

A. I believe Dr. "MacLean" spoke to you, Dr. Saber was trying to
help you.

Q. Dr. Saber was trying to help me, how? Did Dr. Saber tell you that?

A. He was present in that meeting and he did not sign the document. And yes, he did tell us that he has been talking to you and he will continue to talk to you to (inaudible).

Q. He didn't sign the document?

A. As far as I recall.

Q. Oh yes. So his signature is falsified there, is it?

A. No, he did sign the document, okay, I'm sorry. Okay. He did state that he will continue to talk with you.

Q. He did state it. This you do remember. Now let us check your memory. Do you remember who made the motion?

A. No, I do not. As far as I recall, it was a collective motion.

Q. But you do remember what Saber said?

A. As far as I recall, it was a collective motion.

Q. Well what, you just rehearsed it in one voice, all together, motion is being made, someone has stand up...

THE COURT :

This is your witness, would you cut this out right now?

VALERY FABRIKANT :

Well, this is witness I called.

THE COURT :

I said stop that manner of proceeding immediately.

Me JEAN LECOURS :

This is a witness he's not obliged to call, My Lord.

VALERY FABRIKANT :

I am obliged to call, I'm in defense.

THE COURT :

I think we'll take ten minutes.

WITHOUT JURY

Me FREEDMAN :

My Lord, if I may.

THE COURT :

Yes, surely.

Me FREEDMAN :

I have some news on Dr. Swamy. I spoke with him just before, the information is as following, he is presently in town and available, he is leaving on August second (2nd), which is the Monday, to New York for ten days, from where he's flying to Moscow. And as well he informed me that on July thirtieth (30th), which is the Friday, he has a doctor's appointment that he's been waiting for for four months with a cardiologist. That's where we stand.

THE COURT :

When do you propose to commence with Dr. Swamy?

VALERY FABRIKANT :

Well, as soon as I finish with Cheng, I'm doing my best, so I will commence right away.

THE COURT :

You will be starting with... how long are you going to be with Dr. Rakheja?

VALERY FABRIKANT :

Well, I don't know, but not for long since you...

THE COURT :

Then you will start with Mr. Cheng this afternoon?

VALERY FABRIKANT :

Maybe, but I'm not sure.

Me FREEDMAN :

Dr. Cheng, he's going back to Toronto this evening at six o'clock (6:00).

THE COURT :

I see, so he can't be heard until tomorrow afternoon.

VALERY FABRIKANT :

Tomorrow.

THE COURT :

So...

Me FREEDMAN :

There's Dr. Cheng and there's Dr. Swamy, there should be enough time to get them anyway.

VALERY FABRIKANT :

Well, I think there is no problem, I don't see any problem.

THE COURT :

For the minute the jury have asked for Friday off, and they have asked for Monday... well, and Monday morning is out because of a medical appointment for someone.

VALERY FABRIKANT :

Yes. Well...

THE COURT :

We'll play it by ear for the minute.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

THE COURT :

I went over the question of the dates, Mr. Freedman, and indeed for everybody else who's concerned, I'm not inclined to take away from the jury Friday, the twenty-third (23rd) of July. Now I'm conscious of the fact that Swamy has a medical appointment the following Friday. If the worst, the very worst comes to the worst he may be delayed a day or so in New York, I would not have kept him off an international flight that was already arranged, and in any event there should be sufficient time, but that's, as I see it, the worst scenario.

Me FREEDMAN :

That's why I brought to your attention that his flight was not until ten days afterwards from New York to Moscow.

THE COURT :

Okay, so we will go ahead as we planned. Jury please.

MEMBERS OF THE JURY ARE PRESENT

THE COURT :

You have, or the clerk handed to you your order for tomorrow afternoon?

VALERY FABRIKANT :

Yes.

WITNESS: SUBHASH RAKHEJA -- UNDER THE SAME OATH

EXAMINED BY VALERY FABRIKANT (CONT'D) :

Q. Would you describe to the jury, at any meeting of the department, how usually motion is being made?

A. Usually the motion is raised by an individual, which is discussed by other members, and it may be approved, it may not be approved.

Q. Well, I think you are missing one point. After the motion is read by individual there should be what, somebody else who...

A. Seconds it.

Q. Yes. So this is the rule. One individual stands up, reads the motion, then there should be somebody else who seconds that, and only after that the motion is discussed, correct?

A. Correct.

Q. So, at this particular meeting, who presented the motion and who seconded it?

A. I do not remember.

Q. Were three motions presented by the same person?

A. I cannot possibly recall that.

Q. You remember what Saber said, that he was going to talk to me...

A. Yes.

Q. ...but you don't remember who on earth presented the motion?

A. Because that was a discussion between Dr. Saber and myself also.

Q. What? At that meeting?

A. Well, after that meeting.

Q. After that meeting?

A. Or during that meeting, I do not remember.

Q. So, how come you don't remember who presented the motion?

A. ...

Q. Okay. Do you know that usually in the minutes it is written explicitly who presented the motion and who seconded that, is that correct?

A. Correct.

Q. Why, at this particular meeting, there is absolutely no information as to who presented and who seconded? Was it discussed not to say it explicitly?

A. It was... everyone had agreed with this, so it was decided, as far as I recall, that since everyone agrees that it be a collective motion.

Q. So...

A. That's as far as I recall.

Q. ...there is no names?

A. No names, that's correct.

Q. Yes. Could it be that just it was so dishonest that no individual wanted to associate his name with that? Could that be the reason for that?

THE COURT :

That calls for a conclusion on the part of the witness.

VALERY FABRIKANT :

No, I'm asking whether he has any knowledge, maybe that was the reason.

A. No, I do not.

Q. No. All right. In our personal relationship, has there ever been any animosity?

A. No.

Q. No. Did I, at any occasion, threaten you, or in your presence threaten anybody else?

A. No.

Q. Did I, in any way, intervene with your work, interfere, whatever, did damage to your work?

A. As I have stated earlier, my appointment was certainly delayed because of... there were difficulties between you and some administrators.

Q. It was at the time when you gave me all this confidential information, was it?

A. I do not recall giving you any confidential information.

Q. Okay. Wasn't your appointment retroactively made to June first (1st) of nineteen ninety (1990)?

A. I'm sorry, I do not understand the question.

Q. Your appointment, it was in December but it was retroactive to June first (1st) of nineteen ninety (1990), was it?

A. I do not remember that.

Q. You do not remember your own appointment?

A. No, because I did have the appointment earlier, the only thing was it was changed to a provisional appointment.

Q. So it was not delayed in any way, you got exactly what you wanted?

A. I got the appointment only in December, a provisional appointment, which I was supposed to get in April of nineteen ninety (1990).

Q. Well, it was... All right. Wasn't it retroactive back to June first (1st)?

A. I do not remember.

Q. You do not remember. You do not remember your own appointment?

A. I do not remember the details.

Q. Details of your own appointment. Do you remember when you got tenure?

A. Yes, I do.

Q. Okay. When was that?

A. May or June of nineteen ninety-one (1991).

Q. Think again.

A. May or June of nineteen ninety-one (1991).

Q. Think again, it was nineteen ninety (1990).

A. No.

Q. No.

A. May or June of nineteen ninety-one (1991).

Q. Do you recall in winter of nineteen ninety (1990) we stood in the corridor, and you're nervously waiting for... ah yes, yes, ninety-one ('91), yes, but this is exactly what you wanted, this is exactly what was supposed to be, right? So nineteen ninety (1990) you got your appointment and in the winter you were given your tenure, right?

A. I was given the tenure in May or June.

Q. Well, that's exactly what it was supposed to be, it was not delayed in any way, right?

A. The appointment was delayed to December ninety...

Q. How did you suffer?

A. Because there was a level of uncertainty.

Q. A level of uncertainty. Didn't you see the document saying that you and Ahmed both are guaranteed integration and the question was only with me, whether I will be given, did you see such a document?

A. No, I never saw a document like that.

Q. Didn't I show it to you?

A. No.

Q. No. All right. At the time of signing of this document, did you know that I had a wife and two small children?

A. I knew that, yes.

Q. Did you know that in the spring of that year I had a heart attack?

A. No, I did not.

Q. Did you know that I had tried at least a thousand (1,000) universities and couldn't get job anywhere?

A. No, I did not.

Q. I never told you that?

A. No.

Q. No. Should you know that, would it change anything? Would you still sign it?

THE COURT :
The question is out of order.

VALERY FABRIKANT :
Out of order. All right.

Q. Now, how soon after that meeting did you see the security guard at Concave Center? What time elapsed between those two events?

A. Your Honor, I'm not very good with the dates, I cannot remember the dates.

Q. Was it couple of weeks, couple of months, couple of years?

A. I believe a month or so, I don't know.

Q. All right. Do you recall any agitation in Concave when I appeared somewhere at a distance in the street?

A. I heard about it. I heard about it, but I did not see anything, I guess I wasn't there at the time.

Q. Okay. What did you hear?

A. I heard...

Me JEAN LECOURS :

Hearsay, My Lord.

THE COURT :

It really is.

Me JEAN LECOURS :

And a waste of time.

THE COURT :

Yes.

VALERY FABRIKANT :

Well, I'm asking to his personal knowledge how it has been told to him.

THE COURT :

I said no.

VALERY FABRIKANT :

Okay. Let me explain why it is important, because my point is to show that there was general psychosis being introduced artificially and intentionally among all members of the university, they didn't have facts but they introduced it artificially. So how certain events were given or recalled to somebody else are relevant and important.

Me JEAN LECOURS :

There are twenty thousand (20,000) members at the university, My Lord, this is hearsay.

VALERY FABRIKANT :

Well, as soon as I get to one thousand (1,000) you will object. So far I would like to respectfully remind that Crown to prove the facts which I never denied in the first place, needed about forty (40) witnesses, just to prove the facts which I never denied. Now, I have to prove so many facts, and I am at about sixteen (16) maybe witness, so I think that I'm very, very modest. If Crown needed forty (40) to prove facts which I never denied and I was prepared to admit, and none of them was necessary, then I believe Crown should admit that I'm very modest with the number of witnesses.

Me JEAN LECOURS :

My objection is based on hearsay, My Lord.

VALERY FABRIKANT :

Well, I am not trying to establish the fact, I am trying to establish how it was told to this particular witness, this is my point here, not to establish fact that there was a turmoil at Concave.

THE COURT :

The objection is overruled.

VALERY FABRIKANT :

Q. So, how was it told to you?

A. The secretary told me at one time that they saw you around, and that's about it, and they kind of were concerned, that's about it.

Q. Well, did she tell you that she ran around to tell everyone that I'm somewhere on the horizon?

A. No, they did not tell me that.

Q. Okay. Why would she tell you that? When you returned she

told you what: "I saw Fabrikant on the horizon"?

A. She told me that you were around, that's about it.

Q. Okay. Why did she... okay, what is your impression, why was it important for her to tell you that?

A. I did not pay any attention, we'd talk in general, that was a general talk, I did not pay any attention to it.

Q. Well, I asked you if there was some kind of turmoil and you said: "Yes".

A. Yes, they mentioned they were concerned, it wasn't really a turmoil, they were concerned.

Q. Okay. They were concerned with what?

A. Well, they were concerned about their safety.

Q. All right. Did I threaten any of them?

A. I do not know.

Q. Well, did you ever ask if anyone was threatened?

A. No, I did not.

Q. Okay. Were you threatened?

A. No.

Q. No. Did it ever cross your mind that it is unfounded psychosis?

A. No, it never did.

Q. It never did. Okay. Do you know the reason why the bodyguard disappeared later on?

A. No, I do not.

Q. Could you explain to the jury why... Okay, first of all, did we start this Actions Structurantes program at the same time you and myself?

A. Yes, we did.

Q. Okay. Now, do you recall that when in nineteen eighty-eight (1988) Sankar tried to have me fired, you were the one who gave me this report, so that I could use it to defend myself, do you recall that?

A. I do not recall if I gave you the report to defend yourself, this is a progress report which every member has a right to see. I happen to have a copy, you asked me, I said: "Sure, you can have a look at it".

Q. Well, do you recall that I told you that Sankar threatened to have me fired, that he's extorting papers from me in eighty-eight ('88), do you remember that?

A. No, I do not remember that, I do not even know that there was an attempt not to reappoint you at that time. I did not even know about that, because that's a confidential matter, I have no business knowing that.

Q. But you remember that you were the one who gave it to me?

A. You asked me, just like any other member, or another colleague will ask me if I have a document, which is a public document...

Q. All right.

A. ...sure.

Q. Do you remember that Sankar, later on, threatened you that if you give me again any document that you will suffer the consequences?

A. No, I do not remember that.

Q. Okay. Let me recall you how...

A. There were no such...

Q. I believe this is not a taboo subject, is it?

A. ...

Q. Do you remember, during the same conversation, when I told you that... when I reminded you that you gave me this document, you said that: "Well, I was but I got out of it, I did get out of it"...

Me JEAN LECOURS :

Well, My Lord, it's totally different from the allegation included in the first question. I think the accused is being very unfair in putting his questions, I think we should stick to examination-in-chief. It's cross-examination and leading questions all the time, and by using that we have no way to verify and it could be very unfair with the witness, My Lord.

VALERY FABRIKANT :

Well, I see no unfairness of any kind, I am trying to trigger his memory that he, himself, in this discussion, remembers that in eighty-eight ('88), that Sankar told him that he shouldn't give me any documents, and if he does, then he will suffer the consequences.

THE COURT :

He told you, he answered that, he said: "I don't recall that".

VALERY FABRIKANT :

Well, so I'm trying to trigger his memory.

THE COURT :

He simply said he doesn't recall it, he doesn't recall it.

Me JEAN LECOURS :

So My Lord, he triggered already in the question. When you're very specific in a question, and the person doesn't recall, that's the end of it, My Lord, you must not trigger forever.

THE COURT :

He's told you, you've asked him the question, he's answered. He has answered.

VALERY FABRIKANT :

(Inaudible) trigger forever.

THE COURT :

He has answered the question, he said no.

VALERY FABRIKANT :

Well, let us play the tape, it is there.

THE COURT :

Ladies and gentlemen, I'll have to ask you to withdraw. Given the hour, I would suggest that you...

VALERY FABRIKANT :

Don't withdraw, I don't ask to play the tape.

THE COURT :

Fine.

VALERY FABRIKANT :

Because it's a waste of time, you will say anyway there is no contradiction, everything is fine. I already know all that by heart. All right.

Q. Now, could you explain to the jury how come you, who were exactly at the same position as I, scientific prostitute, you signed this document which effectively was supposed to terminate my employment? Could you explain the moral of this kind of action?

THE COURT :

No, that question will not be allowed.

VALERY FABRIKANT :

Okay. Why?

THE COURT :

Because your view of morality, Dr. Rakheja's view of morality, the jury's view of morality or mine has nothing to do with this.

VALERY FABRIKANT :

Okay.

THE COURT :

The fact is he signed the document and that's it.

VALERY FABRIKANT :

Well, all right.

Q. Did the thought that you included Seshadri Sankar in your paper the same way I included T.S. Sankar in mine, and did this thought, in any way, appear in your mind that you are the least person who should be signing that kind of document?

Me JEAN LECOURS :

He's arguing with the witness, My Lord.

THE COURT :

That question will not be permitted either. This is all argument.

VALERY FABRIKANT :

I just ask if this thought came to his mind.

THE COURT :

No, it won't be permitted.

VALERY FABRIKANT :

This is not argument.

THE COURT :

The question will not be permitted.

VALERY FABRIKANT :

The question will not be permitted.

Q. All right. Thank you.

THE COURT :

Cross?

Me JEAN LECOURS :

No questions for professor Rakheja.

THE COURT :

Thank you professor Rakheja, you're free to go.

AND FURTHER DEPONENT SAITH NOT

Me FREEDMAN :

There are no more witnesses here.

THE COURT :

There are no more witnesses. Okay. So tomorrow being Tuesday, July the twentieth (20th), we will not sit in the morning, we'll resume at... would two o'clock (2:00) be okay tomorrow afternoon everybody? Okay. Fine. So I'll see you all at two o'clock (2:00).

TRIAL CONTINUED TO JULY 20TH, 1993 - 2:00

Je soussign,, Michel Daigneault, st,nographe officiel bilingue, certifie que les feuilles qui pr,cŕdent 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

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

MAITRE MICHEL OUELLETTE
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MAITRE LOUIS BELLEAU
AMICUS CURIAE

DATE OF THE HEARING: JULY 20th 1993

OFFICIAL COURT REPORTER: MS. MAUREEN ROWE

CLERK OF THE COURT: MS. ROXANE DESROSIERS

FICHER NO.: 2433

THE COURT TAKES THE BENCH

BY MR. VALERY FABRIKANT -
ACCUSED

I would like to introduce Maître Ouellette who agreed to assist me in this process. He will be responsible for legal argumentation whenever it will be necessary. In some cases, he will also question witnesses and give me all legal advice I need. I mentioned on several occasions that I do need that, so I hope that this time, it is until the end of the trial.

BY MAITRE MICHEL OUELLETTE
ATTORNEY FOR THE DEFENCE:

So with the permission of the court, my name is Michel Ouellette. According to the representations of Mr. Fabrikant, I would like to have permission to appear in the file and represent Mr. Fabrikant in the present proceedings.

BY THE HONORABLE JUDGE FRASER MARTIN, J.S.C.:

And as things stand at the moment, you will be representing Mr. Fabrikant with regard to the presentation of legal arguments, the possible questioning of witnesses.

BY THE DEFENCE:

Yes.

BY THE COURT:

I presume that Mr. Fabrikant will make that determination. Have I ... have I understood?

BY THE DEFENCE:

Well it already have been discussed. For the benefit of the court, let me tell you that I'm already involved with Mr. Fabrikant's representations since May 1st 1993 this

year. So I've been working with him and for him since that time. I already introduced some legal procedures to the Supreme Court of Canada on his behalf from a decision of the Court of Appeal related to these procedures and I never had any big problems with Mr. Fabrikant regarding the collaboration that I have from him and only to this case, I'm quite familiar anyway with the procedures that have been done since the beginning of the trial.

At a previous point in time, we discussed the opportunity of myself interfering in this trial or representing him and we didn't quite agree at that point in time on what was to be my role.

This morning, we finally came to the conclusion that it was time for me to represent him and my mandate in the first place, in order not to disrupt the conduct of that trial, will be to argue in law all the questions that could arise from the witnesses or interrogations of witnesses. So we agreed together that all questions and issues of law will be argued by myself and not by Mr. Fabrikant.

For the time being, this is his list of witnesses. He will keep on interrogating the witnesses. If he falls short or he gets stopped, I may at that point in time interfere and conduct the interrogation by myself, OK, in order to help him if I totally understand what is going on or what is the expectation from that witness. After that ...

BY THE COURT:

Can I ... can I interrupt you?

BY THE DEFENCE:

Yes.

BY THE COURT:

Am I to understand that you are saying if in the middle of the interrogation of a witness, he runs into difficulty, you'll ask permission to take over?

BY THE DEFENCE:

Yes, at one point in time. It could happen with the permission of the Court. I don't know yet. What I don't want to do is to disturb the process of this trial.

I have to familiarize myself. I'm not going to ask for any recess of any kind. I'm not going to ask for an interruption, even if I'm not absent ... present all the time, OK, because I still have especially for the end of the month some engagements that I have to fulfill but basically in August, I will be ... I will be here full-time.

I was not expecting to come in before August. I have to complete my month but anyway, this is not a big problem. There will be no interruptions, there will be no recess but as long as we go, as long as I get more familiar with exactly the actual state of this trial, at that point, Mr. Fabrikant may decide to say: here you go.

What is already decided is that I'm arguing in law. The other thing that is already decided is argumentation and further witnesses that I may decide to call. This is already decided but this is later on.

For the actual time of the procedures, what we expect to do right now is to shorten the length of that trial somehow. We want to expedite things. We want to come out with a conclusion of this trial that will be satisfactory for everybody. So that's what I represent this morning.

BY THE COURT:

OK, so that there be no misunderstanding ...

BY THE DEFENCE:

Yes.

BY THE COURT:

... the position I took before, when Matre Richard came into the file and the position I took when the first Matre Richard came into the file at the ... at the question of the fitness hearing was that you would have to decide in advance with him who was going to question witnesses, that I was not going to permit one person to question so far and then another to take over which is and has been my position and believe me, I won't be modifying it so you know ...

BY THE DEFENCE:

OK, fine so let's ...

BY THE COURT:

That's why I mention it now so that the ...

BY THE DEFENCE:

OK, let's clarify it right now. So what we're saying is that for the actual list of witnesses that are called by Mr. Fabrikant, he's going to put questions forward.

BY THE COURT:

If he starts, he continues. That's what I said.

BY THE DEFENCE:

And I'm not going to interrupt, OK. For the witnesses that I will call, I'll do the work, he's going to sit down. His role will be mere presence in the courtroom. Is it agreeable?

BY THE COURT:

Oh, listen it ... the only point I'm making is that two people won't question the same witness.

BY THE DEFENCE:

OK fine. It's perfectly correct with me, if it is agree-
able to Mr. Fabrikant.

BY THE COURT:

If ... if it is workable obviously, I have no ... if it's
workable and as long as it works out all right, if he's
questioning.

BY THE DEFENCE:

Yes.

BY THE COURT:

And there is a question of law that arises, I have no ...
I have no objection that you address that but I'm not
going to listen to arguments from two people.

BY THE DEFENCE:

This is perfectly clear, this is the consideration of my
interference in that trial today.

BY THE COURT:

Fine.

BY THE DEFENCE:

I'm not in August. Mr. Fabrikant wants me to argue the
question of law.

BY THE COURT:

So as long as this is ...

BY THE DEFENCE:

And this is my exclusive role. I shall do that, he shall
sit down.

BY THE COURT:

Now, a matter of housekeeping.

BY THE DEFENCE:

Yes.

BY THE COURT:

Maître Richard No. 2 ...

BY THE DEFENCE:

Yes.

BY THE COURT:

... was in this file for approximately a week.

BY THE DEFENCE:

Yes.

BY THE COURT:

It's ... it's a bit like a Shakespeare play. Lawyers have their entrances and their exits and when he withdrew, he withdrew with my permission.

BY THE DEFENCE:

Yes.

BY THE COURT:

On his representations. I took his representations to mean that he was not in agreement with the role which he was asked to fulfill and he was not used, as he put it, to sitting by while the client, in this instance the accused, questioned the witnesses and substantially argued the objections although it is true that he argued certain objections. I gave him permission to withdraw and when he withdrew, at Mr. Fabrikant's request, I made and gave no explanation to the jury as to where he was gone. I have received no note as to his whereabouts. Now of course, with your appearance here, common courtesy requires me to say something.

BY THE DEFENCE:

Yes.

BY THE COURT:

I presume that you are in agreement that I repeat to the jury substantially what you've told me.

BY THE DEFENCE:

It should be done, I totally agree with that.

BY THE COURT:

And do you agree that I tell the jury that with my permission, Maître Richard withdrew of his own motion.

BY THE DEFENCE:

Personally I don't see how it could be damaging the case, but I didn't have any relation with Maître Richard and I think this is something ...

BY THE COURT:

Perhaps you would talk to Mr. Fabrikant right now to see

if we can straighten that up.

BY THE ACCUSED:

Well ...

BY THE DEFENCE:

OK, this ... this issue is not very clear to me. I wasn't here. I don't know what type of relation was in between Mr. Fabrikant and Maître Richard. If you're telling me that you're going to tell the jury that with your permission, Maître Richard withdrew from the case without any reason for that, I mean not specifying anything, I don't see any problem with that.

Now this is under the reserve that I don't know about what was going on at that time.

BY THE COURT:

I realize that and that is why, before I open my mouth, I would prefer to have the matter crystal clear.

BY THE DEFENCE:

Clarified. Could you clarify that with Mr. Fabrikant.

BY THE ACCUSED:

Well since ... since I was here and Maître Ouellette was not here at that time when Maître Richard withdrew from the case, to the best of my recollection, he never mentioned either that he disagrees with my defence nor that he feels himself uncomfortable, sitting there or doing nothing. I'm afraid that your memory doesn't serve you well in this particular case.

BY THE COURT:

My memory serves me perfectly.

BY THE ACCUSED:

Well anyway ...

BY THE COURT:

And I'll tell you precisely what he said.

BY THE ACCUSED:

What we ...

BY THE DEFENCE:

Are we going to say ... are we going to give reasons to the jury or only saying to the jury that you ...

BY THE COURT:

I'm prepared to content myself with saying that with my permission, he withdrew and that is all they require to know.

BY THE ACCUSED:

Period.

BY THE DEFENCE:

OK, period, that's OK, that's what I ...

BY THE COURT:

I was not ... I was not under the impression that Maître Richard's services had been terminated. I was not under the impression, as Mr. Fabrikant said, that he disagreed with the presentation of the defence. He did use the words "I'm not used to functioning at a trial in this capacity", whatever that means. I wouldn't want to ...

BY THE ACCUSED:

So there is ... there is no need to fantasize then.

BY THE DEFENCE:

Settled. I think this is a question of law.

BY THE COURT:

Now ...

BY THE DEFENCE:

You want to address the jury, telling them that he withdrew, you gave him permission. This is fine with me.

BY THE COURT:

Now ...

BY THE ACCUSED:

Yes and no Shakespearean humor.

BY THE DEFENCE:

That's it, good.

BY THE COURT:

Pardon?

BY THE DEFENCE:

Let's do it.

BY THE ACCUSED:

No Shakespearean humor.

BY THE COURT:

Would you ... your first ... if you're here, your first unfortunate task, because now that you're here, difficult and all as it may be, a lawyer is to some degree accountable for the manner in which his client behaves and you are probably not without knowing that I have had some difficulty throughout this trial.

BY THE DEFENCE:

Yes.

BY THE COURT:

And you also know obviously that that is not the way counsel conduct themselves and I really don't appreciate the comments from him when you're the one that's doing the talking.

I would much obviously prefer to have whatever exchanges I have to have with you.

BY THE DEFENCE:

Good, good.

BY THE COURT:

So I ...

BY THE DEFENCE:

I think it's clear, perfectly clear for me.

BY THE COURT:

Well it's perfectly clear to me and I'm sure it's perfectly clear to you.

BY THE DEFENCE:

Yes.

BY THE COURT:

The questions is: is it perfectly clear to your client.

BY THE DEFENCE:

It will.

BY THE COURT:

We'll see. There's one other question. When Maëtre Richard appeared on the scene, there was a request from Mr. Fabrikant. He's repeated it many times, that I dispense with the services of a friend of the court. I do not propose to do that.

BY THE DEFENCE:

There is no ...

BY THE COURT:

I hope ... I hope that's ...

BY THE DEFENCE:

No, it's perfectly ...

BY THE COURT:

... perfectly clear.

BY THE DEFENCE:

... perfectly clear and I totally agree with the way it's done right now.

BY THE COURT:

OK. As long as that is perfectly clear, that is ... that is fine, because as I say, lawyers have come and lawyers have gone.

BY THE DEFENCE:

Basically what I'm saying is that we're doing a criminal trial and everybody has a role to play and I clearly understand what is the role of everybody during that trial. I'm sure the Court already knows that and as long as everybody is doing whatever they're supposed to do and only what they're supposed to do, I'm perfectly happy with that.

BY THE COURT:

Well if that's the way it works out, it can only work out for the better. The jury.

You will indicate for the procès-verbal that I permit the appearance of Maître Michel Ouellette on behalf of the accused.

THE MEMBERS OF THE JURY ENTER THE COURTROOM

BY THE COURT:

Good afternoon, ladies and gentlemen. You will note Maître Ouellette that is sitting to the left of Mr. Belleau is Maître Michel Ouellette.

Maître Ouellette made certain representations to me this afternoon and on the strength of these representations, I permitted him to appear on behalf of Mr. Fabrikant. He has detailed to me what his mandate will be at least initially and that is perfectly satisfactory to me.

You will recall that there was another lawyer, Maître Richard, who was present for approximately a week. With my permission, Maître Richard withdrew from the file. You need not speculate on whatever the reasons were. I deemed it appropriate to grant him that permission and that is what happened. That is why you have noted that he was absent for the past four (4) or five (5) days.

Maître Ouellette will fulfill at least initially substantially the same functions, in that he will not at least initially be examining witnesses but rather will in all probability be making any presentations in law which require to me made.

PROOF OF THE DEFENCE (cont'd)

RICHARD CHENG

Professor - Concordia University

November 17th 1938

SWORN

DIRECT EXAMINATION BY

MR. VALERY FABRIKANT

ACCUSED

QWhat kind of relationship we had? How would you characterize it?

AI think we are ... we worked in the same department for quite a number of years but we hardly had any direct

professional interaction or otherwise.
QSo would it be correct to classify it kind of Hi and Bye relationship?
ACould you repeat that? Hi and?
QAnd Bye?
AI do not understand this, Hi and Bye.
QIt means hello and goodbye.
AI see, I see.
QMainly content of our interaction, would it be correct?
AI think it is more correct to say it is a Hi relationship rather than a Bye.
QWell ...
AWe usually meet in the morning and I nod to you and that was about all, right.
QYes anyway the nature is more or less clear. All right, during all these years, did I threaten you in any way?
ANot that I can recall.
QYou mean that it could be but you just forgotten by now?
AI don't recall any ... any threatening by yourself.
QDid I do anything to damage your work in any way?
ANot that I know of.
QAll right. Do you recall receiving in your mail box somewhere in the fall of 1990 a letter from me informing you that something very unusual happened, that my contract is not being respected, that Sankar, Osman and Swamy signed certain documents which puts in doubt my integration into tenure track position. Does this ring a bell?
AI only rings a bell to the extent that possibly about that time, I did receive something from you through the mail but I cannot recall all the details about the ... who signs what and the reasons leading to your complaint.
QOK. Do you recall that I asked at that time to get a meeting of the department and discuss it at the departmental meeting and at the end of the letter, there was kind of prepared response: yes, I agree that there is the ... there is a need for departmental meeting and the person could sign it and send it back to me. Does this ring a bell?
AI only remember that perhaps there is a form asking me to sign and to say yes and no, but honestly I do not recall exactly what the nature of the request was.
QThe problem is that I had this document and I showed it to other witnesses but guards regrettably somehow during those searches, this document disappeared. I asked the Court on several occasions not to allow guards to take documents away from me but it was ignored.
BY THE COURT:
Mr. Fabrikant ...
BY THE ACCUSED:
Now I cannot show it to the witness.
BY THE COURT:
It will not be the first time that you've misplaced a document that you've had in your hands.
BY THE ACCUSED:
I didn't misplace it. Anyway ...
BY THE COURT:
If you had documents ...
BY THE ACCUSED:
QAll right, but you recall there was a document. Did you respond anything to that document?
AI did not respond to it.

QYou did not. Do you ... do you recall why you ignored it?

I do not recall exactly what the reason was that I did not do anything about it.

QAll right.

AAfter all, it's quite ...

QCould the reason be that just you didn't give a damn about it? Just such a simple reason would fit here?

AWell I don't know how to explain about not giving a damn to something for not replying, because there are many pieces of paper coming to my desk. Some of these things I would reply because it was within my duty and jurisdiction.

Others, I may not reply because there are so many ... too many pieces of paper were coming to my desk that may not require markers on attention and others, I may not reply because it is the explicit duties of other people, administrators for instance, to deal with certain cases.

So I do not necessarily have to respond to every request that comes my way and I don't think that is necessarily adopting an attitude of not giving a damn or anything.

QWell you were sure at that time that administration is doing his job and doing it properly, this is why you didn't intervene, right?

ANo, I did not have to satisfy myself of whether the administrator or administrators at the time dealing with any particular incident would necessarily satisfy me that he or she or they are doing the correct things, because after all, I'm not one of the administrators in charge of perhaps the kind of things you referred to and I'm not an elected member of certain committees whose duty it was to deal with the kind of things which you may refer to. No, I don't think I need to go into every single thing to satisfy myself that every administrator has done the correct things.

QHave you received ... OK, do you recall that in 1990, you were replacing chairman of the department for some time?

AYes, I was asked by the dean to be the acting chair of the mechanical engineering department for three (3) months.

QSo could it be correct then to say that in some sense, you had even duty (sic) as past person who was supposed to do something in capacity of chairman to respond to that, to my letter? Did you?

AActing chair is not the same thing as the chair. Acting chair is there to look after the shop during the absence of the chair and as such, common sense would dictate that the acting chair does not necessarily go into major ... anything that could be considered to be major, which he is not in a position, a) to find out all the details about and b) to be able to finish to satisfaction before his acting term is finished.

So therefore an acting chair is somebody who is more or less, to put it very plainly, a kind of ... of a keeper of the house, to make sure the routines go uninterrupted and ... but not necessarily looking at all the files, assuming that he is the chair.

So in that sense, there may be certain things which I, as acting chair, for three (3) months, did not have the capacity or the capability nor the understanding to go through fully, especially one that is not something that is specifically requested of me to perform or to com-

plete.

QI ...

AThat is my understanding of an acting chair for a very limited period of time.

QIs my understanding correct that acting chair is person (sic) who does every effort not to act?

AAn acting chair is somebody who does every effort to maintain the routines going, but not necessarily involved in everything.

QAll right. Now you said you were not explicitly requested to act. Do you recall receiving a memo from Swamy which explicitly requested you to act? Do you recall that?

AI do not recall. Perhaps you can give me more detail about what specifically Swamy asked me to act on.

QWell not only more detail, I will be happy to hand you the whole document. Please refresh your memory. Do you recall now receiving this memo?

AYes, I must have received this. This is dated 24th of July 1990.

QOK, what this memo is about?

AThe memo from Dr. Swamy refers to the integration of three (3) Concave attach, to ushers (sic) positions as regular establishment positions in the faculty of engineering and computer science.

QAll right. Do you know who he was talking about in this memo?

AWell I think it referred to the three (3), what we call the Research Professors who are ... who were working in the Concave in the Actions Structurantes grant. They should be yourself, Professor Ahmed and Professor Rakheja.

QOK and what it requested from you?

ADr. Swamy requested of me, I read:

"I therefore request that you initiate the standard procedures for the appointment of individuals to full-time probational faculty positions in accordance with the collective agreement."

QEffectively he requested you to act, correct?

AHe requested me to initiate the process.

QWell to make certain action. What kind of action? I believe he specifies what exactly you were supposed to do.

AWell he did not say what exactly what, (sic), except that the standard procedures for appointment of individuals to full-time probational faculty positions. Now because of the background of employment of these three (3) positions, there are some qualifiers in this paragraph. You want me to read it to you?

QWell if you can say it with your own words, that would be fine. If you cannot, then ...

AI would prefer to read it rather than ...

QAll right.

A... trying to ... to reply from my memory because it was quite some time ago.

QAll right. What exactly he requested you to do?

ANow, even these positions are going to be probationary appointment because they are committed to the area of computer and vehicle engineering, it is obligatory ...

obligatory to obtain recommendations from the director of the Concave center concerning them.

So I have to therefore, as instructed by Dean Swamy, to request to obtain the recommendations from the director of the Concave. It is imperative that the director of the Concave makes specific recommendations regarding each individual as to his suitability to fill the position and at the same time, ensure that they possess the appropriate research profile for the center. So this is what I have been instructed to do.

QJust that or a little bit more than that? So one of your actions was to request S. Sankar to write a recommendation. What was the next action you were supposed to do. Could you read a little bit more. I believe there is something else you are supposed to do. That was not the only thing you were supposed to do.

AOK.

"After obtaining recommendations for each of these individuals, please follow the usual procedures for recommending probationary appointments."

Including recommendations from the DPC, but that is after obtaining the recommendations.

QSo your next action was to meet with DPC and make another recommendation, right?

AIf I have the recommendations, after I received the recommendations from the director.

QExactly, so that was the second thing you were supposed to do. Now what else you were supposed to do according to this memo?

AAccording to this ... to this memo, I have to be advised by the vice-rector, academic that because of the integration of the attach, to ushers positions into regular probationary positions is a new procedure at Concordia, the individuals involved do not receive any information about the process until the procedures in general and in particular are worked out.

QI ... I'm not sure that this is action. It rather requires inaction.

AIt's inaction, yes, it is ...

QWell I'm asking you about action, next action (sic) you were requested to do, if you could read a little bit further, maybe it will be clear to you what else you were requested to do.

A

"Should any of the incumbents be deemed unsuitable, please inform me ..."

I suppose that is what you would call as action, please inform me about the reasons.

"... and advise me of what arrangements you will be making to recruit for the vacant probationary position or positions.

I would appreciate it if you could take action as soon as possible...

and so on and so forth.

QNot so so forth (sic). Could you please be specific. He

gives you ...

A "I would appreciate it ... you want me to read this?

Q No, I ... I would prefer you to explain it in simple words to the jury but you prefer to read it, what can I do about it. What else he asked you to do?

A

"I would appreciate it if you could take action as soon as possible and send me your recommendation promptly and in any case, no later than 24th of August so that I can make recommendations to the vice-rector before the 31st of August 1990."

That's the end of the memo.

Q OK, now here we are.

A So these are my ... were my instructions.

Q OK.

A As acting chair at that period of time.

Q OK, now would it be possible now for you to summarize without looking at the document what exactly you were supposed to do?

A Well I was told that the three (3) positions are now up to ... are up to consider (sic) the professors who were occupying the three attach, to ushers to be considered, to be transferred to probational positions of the department.

I was instructed that it is obligatory to obtain from the Director of Concave recommendations concerning these three individuals and my understanding therefore is upon ... upon receiving the recommendations from the director I would get the usual process of ... of employment going including certain meetings with the departmental personnel committee and my understanding is that it was and still is that upon receiving the recommendations from the director of the Concave center, together with the DPC members, I would discuss the merit and demerits of individuals and if certain individuals merited the transfer to the regular professional tenure track position, we were then ... we would make the recommendation as such. If for any reason, we decided that certain individuals were not suitable for such a recommendation, I would have to inform the dean of the reasons for not accepting that particular individual and I'm to do it as soon as possible and in the meantime, because the whole ... the whole process of transferring ushers, attach, to ushers from Actions Structurantes grant into the regular probational positions of a department is a new process, I was instructed not to inform the individuals concerned, individuals involved until such time as the university has worked out the procedures.

So I think that is what I understood. I'm sure there was what I .. the way I reacted to my understanding.

Q All right. So how long time were you given to do this job?

A I was asked to take action as soon as possible and sent to the dean the recommendation promptly and in any case no later than the 24th of August.

Q Could you make a conclusion how long time were you given to do the job?

A The 24th of July to the 24th of August, that would be about one month to make a recommendation to the dean.

QAll right. Now did you get recommendation from the director of Concave center?

AI did not. You have to remember this. I, as an acting chair of the department, did not because my period of acting lasted three (3) months, ending at the end of July and I took my holidays, my personal holidays at the beginning of August so I believe, I cannot recall, I cannot say for sure, but I think this is what happened.

Upon receiving this instruction, I discussed with the dean for clarification and afterwards I wrote, I believe I wrote to the director of the center, asking him to give the instruction ... to give the recommendations concerning the individuals.

QMaybe your memory serves you not so well. Maybe you recall that in August, you were in the department?

AMaybe, but I think I ... my term ends in the end of July and I left for one month.

QWell try to recall better. You were there until September 1st when Osman returned. Does this trigger your memory?

ANo, it does not.

QIt does not.

ANo, it does not. I can only say that I do not remember very clearly whether that was the case.

QDid you respond to Swamy anything?

AI do not recall whether I wrote to him as a reply but probably in writing to the ... to the director of the center, most likely I would keep a copy of my memo to Dean Swamy. That is ...

QWould it ... would it be possible to obtain from you a copy of that letter which you allegedly wrote to Sankar?

AI do not know whether I keep a ... a copy of that in my own personal file but I suppose it is quite possible to contact the secretary of the department to see if a copy of that memo is in file. I suppose it's possible.

QAre you sure you wrote to Sankar about it?

AI may not... you see, I ... I cannot say I'm sure but I think under these normal circumstances, these circumstances, it's very likely that I did just that because these instructions asked me very specifically, it is obligatory to obtain the recommendation from the director of the center. So I ... I think in all reasonableness, I did just that.

QDid you receive additional payment for acting chairmanship?

AAgain I did not ... I do not remember very clearly whether I did receive a stipend, maybe I did, I really can't recall that.

QIf you did receive additional payment, maybe at least this should have prompted you to understand that it was future of three individuals.

BY MAITRE JEAN LECOURS

ATTORNEY FOR THE CROWN:

This is arguing with the witness, My Lord and all this line is cross-examination for a long time.

BY THE DEFENCE:

Well I think to me that it is very clear that the witness understands there are some difficulty in remembering exactly what happened at that point in time and I think the only thing Mr. Fabrikant is trying to do is to help him remember, providing him with some documents or

asking him if there were ... could be some other documents that will help him to remember exactly what happened. So I don't think this is cross-examination at all.

BY THE COURT:

Well the objection followed a question that bore on whether or not he received a stipend for what he did and if that should not have prompted him to take some action. That's not ... that's not helping the witness remember. That's the approach to sarcasm, that's what that is. So the objection is maintained.

BY THE ACCUSED:

QSo in fact you received this document on July 24th and when you transferred your chairmanship back to Osman, September 1st, would it be correct to say that nothing has been done by September 1st in what is mentioned in this memo?

BY THE COURT:

Excuse me, but I didn't understand the witness to say that he transferred back to Osman September 1st. I understood him to say that his tenure ended at the end of July.

BY THE ACCUSED:

Well when I reminded him that he was in department in August, he said that probably he was.

BY THE COURT:

Then you better clarify as to whether he may be in error as to his tenure or ...

BY THE ACCUSED:

Well why don't we then try to get additional documents from the department as to length of tenure of him being acting chairman. That would help us a lot and then it will be clear for us exactly for how long he was chairman.

At the same time, maybe we'll search whether he wrote to Sankar or didn't write to Sankar because those questions are extremely important to establish whether he just ignored this memo or he did something.

BY THE COURT:

Now let us make something very clear.

BY THE DEFENCE:

Yes.

BY THE COURT:

Let's make something crystal clear right now. I put a question to Mr. Fabrikant who is carrying out the examination and Mr. Fabrikant gave me an answer.

BY THE DEFENCE:

Yes.

BY THE COURT:

I was in the process or about to, I was drawing a breath to reply to that when I'm treated to your hand go up, quiet, and you turn around and confer with Mr. Fabrikant. Don't you ever do that in my courtroom again.

Now you will establish - will you please sit down - you will establish, Mr. Fabrikant, that either he was or he wasn't acting chairman in August. Whether he was there or not, for the moment, I'm not concerned with but it isn't clear to me and I don't think it's clear to the jury that ... that he was acting chairman in August.

You may very well be right but you might try and ask him that, I don't know whether his holidays coincided with the end of his tenure or whether it didn't, but for the

minute, I'm under the impression his tenure ended at the end of July.

BY THE ACCUSED:

Well this is why I'm saying that why don't we postpone questioning of this witness or I will, to use court time, go to other questions.

BY THE COURT:

You can certainly go to other questions I'm sure.

BY THE ACCUSED:

But still I would like someone take care of that to look into departmental files to make it clear the issues which I raised as to until what date he was appointed as chairman, did he or didn't he act with respect to this memo and if he did, when and what the document relevant is.

BY THE COURT:

You may ... you may wish to establish when his chairmanship or acting chairmanship ended. You can go ahead for the minute, either on other things or as to what he did, if he remembers in relation to that memo. He may recall.

BY THE ACCUSED:

Well I've already asked, he was very unclear. He was not even sure whether he wrote or didn't write anything.

QDoes it make any sense to continue? Would you be able to recall anything what you did or didn't do or we should go to other subjects and return to this subject when he get necessary documents? What do you prefer? Would you be able to recall first?

AI do not recall clearly what I did, what I wrote and on what date.

QAnd you are not even sure whether you did write anything at all?

AThe only thing I can tell you is that I think I asked, because I was obligated, I asked the director of Concave to give me the recommendations.

However right now, in my mind, I cannot recall a memo being wrote (sic) with in ... and the words go like this and like this. I would like ... I would be feel ... I would feel much more comfortable if yes, I wrote that memo and this is the way I wrote it.

Right now, it is several years ago. I really cannot recall that vividly to commit myself one way or the other.

QAll right but it was clear to you at that time that Osman would not come until September, right? Was that clear to you at that time?

AYou see, again if my term is and I remember my term ended in July, the end of July, OK, so if that is the case, if that were the case, then obviously Osman would come back right after my term as acting chair is finished.

Now whether he did actually come back on the 1st of August, my feeling was that I went on holiday at the beginning of August and it is really all I can remember.

QAll right.

ABut that can be verified.

QSo I think that ...

AYes.

Q... since this question is unclear, we postpone this question and return to other subjects and we'll return to this question later on because it is an important part.

BY THE CROWN:

Why do we postpone, My Lord? He brought this witness.

He's bound by ... by his answers and if he doesn't agree

he can testify or bring someone else who will say the contrary. There was no duces tecum about these memos and the witness is not even sure he wrote this memo.

BY THE DEFENCE:

Well this is exactly what I was explaining to Mr. Fabrikant. This may be totally pertinent to his defence and clearly the witness has difficulty remembering exactly what was going on.

There is a possibility that is a reason to the fact that there is documentation and the witness already said that these documents would be asked. The only thing that Mr. Fabrikant is asking for is the name of that person who may have these documents and at that point, a subpoena / duces tecum will be issued to that person or the witness may by himself, at a later date, come back with these documents and I don't see that the witness is hostile at all. He's trying to answer honestly all the questions and we want the jury to hear honest answers.

So I think that it is perfectly normal for Mr. Fabrikant to ask for a recess so the witness may bring by himself these documents that could perfectly exist or be filed somewhere or the other alternative would be to subpoena that person that may be holding the documents right now.

BY THE COURT:

Mr. Freedman, Mr. Freedman, I don't know how much of this you ... you heard.

BY MR. FREEDMAN:

Fortunately, My Lord.

BY THE COURT:

OK. There is some question as to when Professor Cheng's tenure as acting chairman ended, whether it ended in July of 1990 or whether it ended at the end of August 1990. I would presume that you have a means of ... of carrying out that verification and ... and obtaining whatever ... whatever documentation there is, if any, on that particular point.

BY MR. FREEDMAN:

Absolutely.

BY THE COURT:

OK, I wonder ... I would appreciate it very much if you would do that.

BY MR. FREEDMAN:

Sure.

BY THE COURT:

Thank you.

BY THE ACCUSED:

If I make a little bit addition to that? So whatever is relevant to Mr. Cheng's response to Dean's memo of July 24th, if there is anything at all, to bring it here as well as length of his tenure and maybe question whether he was especially remunerated for being acting chairman.

BY THE COURT:

I haven't put that right around it and I'm not going to put that right around it, OK.

BY THE ACCUSED:

OK.

QThen next question is: do you recall being present at the so-called senior members' meeting on October 25th 1991?

AYes I remember I was present at the meeting of a senior members' meeting.

QDo you remember where it was? What room was that?

AI believe it ... it was in a conference room, very likely to be a conference room within the dean's office on the ninth floor of the Hall building.

QDo you know why it was not in the department?

AYou ask me why it was not in the department?

QWell we have ... well we ... department of mechanical engineering has its own conference room where departmental meetings are usually held, don't they?

AYes, it's correct.

QSo why was an exception made?

AI don't think I'm privy to the reason why a room was arranged somewhere else. Maybe that particular room was occupied on that particular day during that particular time slot.

You see, I ... I was given the time and the ... the day and the place to go. I did, I ... I was not the one setting up the meeting so I cannot tell you if there was any particular reasons one way or the other.

QWere you informed that meeting is strictly confidential and not ... its contents not to be disclosed to anyone?

AI remember ... yes I remember the following, that there would be ... there will be discussions. There would be minutes taken of the meeting. Now whether that meeting was supposed to be ... whether the minutes was supposed to be confidential, I do not recall. I mean, confidential means not to be circulated to anybody else beyond those people who were present. I do not recall such a consensus of confidentiality.

QDo you remember who introduced motions at that meeting?

AWho introduced the various motions?

QYes?

AThat were recorded in the minutes? Is that the question?

No I do not recall. I mean there are a number of people there. People spoke and as usual, since professors are not lawyers, they have difficulty of even deciding sometimes on the wording of the motion and eventually somebody would say: well the ... I move or why don't you move. So I really do not recall exactly who moved a motion and then for that matter, who seconded a particular motion. No, I do not recall that.

QWere it you? (sic)

APardon?

QWere it you who did it?

AThere were several motions, I believe, that were moved and passed. I do not recall whether I moved anyone of them. If I did, I could have but I really cannot put my finger and say I moved motion 1 or 2 or 3 or for that matter, whether I particularly seconded anyone of them. I do not recall that.

QYou make a motion to terminate somebody's employment and you don't even recall whether you're the one to make such a motion? Is it the case?

AI do not recall a motion to terminate anybody's employment. I do not recall that.

QAll right. How do you interpret the words that department and university should take appropriate measures? What is your interpretation of this part?

AAppropriate measures would be measures which are deemed suitable under the circumstances on the evidence being given. I think that that is a very general term and just to do the right thing. If the right thing leads to termi-

nation, so be it. I do not ... really I do not recall that there was a lot of discussion to the effect that a certain person's employment should be terminated. No, I don't think that was the intention, to the best of my recollection, that is.

QSo what was intended when this motion was presented, what was your understanding of this motion?

AYou are referring to a motion which asked the university and the department to stand up to certain practices.

QYes?

AAnd that appropriate action should be taken?

QYes?

AIf this is what you refer to, I think I can tell you that the general sentiment of the senior members in the meeting was quite concerned that there is a fair amount of confrontation between yourself and the chair and the chair was actually seeking support of his colleagues. After all, a chair is ... the chair of the department is a professor who had been elected to serve the rest of us so I believe that at a certain point in time, he decided that there seemed to be a lot of ... a lot of things going his way, confrontations for instance, strong words from yourself included I presume, that he really wanted to seek the opinion of his colleagues, especially colleagues who were senior within the department, who has been (sic) with the department for quite some time, to explain to them the situation, what he went through and asked their opinion whether what he went through is considered to be a normal practice of a chair and in general seek support. I think this is only moral support, as the senior professors' meeting is not a ... is not a (inaud.) of the body, is not an elected body. It's just a group of these senior colleagues sitting together to discuss something amounted (sic) to be a problem as conceived by the chair.

I think that was the spirit of the ... of the meeting. I do not recall at any time anyone of us said (sic) you know, terminate somebody's ... I think the general sentiment is if there is too much abuse, too much confrontation, I think the university should stand up to all this and not simply give in, that kind of thing.

QWere you informed at that meeting the minutes of the meeting will be used one of exhibits (sic) in the department personnel committee decision to terminate my employment? Were you informed that the minutes of that particular meeting will be used as an exhibit in the final decision of DPC?

AWe were, to the best of my recollection, we were not informed in those specific words.

QWhat did you think happened to the meeting of that kind? How those minutes will be used? Did you ever enquire what happened to the minutes of that meeting?

AThe minutes, the minutes is only a record of what's being concluded in the course of the discussion of the senior colleagues of the department. You have to remember that people who are not familiar with the make-up of a department and so on, when it comes to termination or non or denial of reappointment or anything, it is the responsibility of the department personnel committee usually consisting of three (3) members from the department and the chair and these same very people, senior members of the

department and very likely those same very people were at that particular meeting themselves.

Dr. Osman definitely was at the meeting. I cannot recall whether the members of DPC were all of them present, but it is not a surprise to me if they were all present. So whether ... whether there is a minutes being drafted as such, these people whose duty it was to discuss the re-appointment or whichever of a faculty member, they would know exactly what went on anyway.

QWhen did you learn that department personnel committee has decided to recommend not to reappoint me?

AI ... I do not recall when I knew about it. As a matter of fact, I ... I'm not even sure if I know exactly what the ... what the series of events actually took place leading to your reappointment or non reappointment. I mean I ... these ... these are matters that deal with an individual. There are a lot of I'm sure confidential material associated with a particular individual. Other professors are not privy to it. Most of the time, we don't necessarily ... we are not informed that the DPC and the chair decided not to appoint somebody or decided to appoint somebody.

There is no requirement for a professor like myself who is not part of the departmental personnel committee to be informed. We ... we did not, we do not have to be informed. If we do get to know about it, it would be hearsay. We don't ... you know, we don't see a piece of paper coming our way.

At least I don't ... I don't ... do not recall having received any piece of paper which said certain people were not reappointed. OK, I ... I cannot recall seeing a piece of paper like that in your case or in any other case.

QMy question was: when did you learn? I'm not asking about piece of paper. I'm asking when did you learn that DPC recommended against my reappointment?

AI do not have a very clear idea in my mind as to when I learned about it because there were... there seemed to be a lot of things happening with respect to your appointment, reappointment.

It gets to a point which we just ... we're not able to follow exactly what happened, but put in a general context, perhaps we learned sometime in October or at the end of 1991 or something. I mean I really can't recall.

QSo in October, you already knew that, right?

AProbably, I mean I just cannot put my finger on a date.

QBut you did know about it?

AProbably. Again it's not one of these things which is a very distinct experience in my life, to say Ah I know about it and I'm not particularly very good in remember (sic) those ... those dates or even a month.

QWell it was at that meeting where effectively the decision was made not to reappoint me or it was just couple of days later when the decision was made?

AWell I want to repeat this. The decision is never to be made by the professors. The professors cannot make a decision to appoint or not appoint, not appoint anybody because they do not have ... they're not privy to the detailed information that should be used leading to such a decision and I want to repeat that in the senior members' meeting, it was a gathering of the colleagues at

the request I believe by the chair who really was seeking for some advice and some ... some comfort I believe and some support from his senior colleagues and I never recall, I never recall that matter of denial to reappoint or reappointing was ever discussed because it would be very inappropriate for the senior professors to presume that they could participate without all the files, all the facts and all the details and to formally ask for a denial of reappointment.

So I cannot recall anything like this happening. So it is not as if the senior professors got together and say let us deny reappointment of a certain individual. The motion to the extent I can recall, I mean there are so many, this was a couple of years ago at least, the motion which I can recall that here is the situation. The chairman felt a little bit ... at least a little bit uncomfortable about all the encounters and without the ... the chairman away, you have your ... our support. You don't have to give in to, you know, unnecessary encounters, abuses, that's all. I mean that is a very simple statement, do whichever is appropriate.

Now whichever is appropriate, it should be supplemented by details, not just by sentiments expressed by anybody and I do not recall, to my best of my knowledge and recollection, I do not recall any of the senior members actually saying let's us deny the reappointment of anybody because I ... I'm sure I would be the first one to stand up and object to anybody making a suggestion like this because it's simply not proper; b) it's not the role of ... of the professors who were not elected or given a mandate to do these things, to try to do these things and I don't think we even tried to influence the chair or DPC one way or the other.

QI don't know if I can do something to just get short answers to short questions.

AI'm sorry.

QBut I probably just cannot do anything about it, can I?

AI'll try to be short.

QAll right.

BY THE COURT:

It's not that. He'd like you to answer the question.

BY THE ACCUSED:

QThe question ...

BY THE COURT:

What he wants to know is whether or not on the 25th, when you met to discuss these various resolutions with Osman, whether it was common knowledge that the DPC was considering no reappointment. A very simple question.

ANot in my ... not in my recollection.

Not in your recollection.

BY THE ACCUSED:

QAll right, later on, when did you learn that? How many days after that did you learn that the decision was such? Just with accuracy, a week, two (2) weeks, what?

AI do not remember. I ... I simply do not remember.

QBut you knew about it at a certain moment in time, somewhere in November say?

AYes, probably in October, in November 1991, yes.

QYes, OK. When you were told that, what was your reaction if any?

BY THE CROWN:
He doesn't recall, My Lord. He told ... he told the court two times.

BY THE COURT:
He said probably ...

BY THE CROWN:
He cannot recall his reaction.

BY THE COURT:
He said probably October or November 1991. Now then there is another question.

BY THE ACCUSED:
QSo what was your reaction when you learned about it?
AWell my reaction of course is not ... not a reaction of joy. I mean if anybody isn't going to be reappointed, it cannot be a sentiment of joy but I just want to be brief.

QWas there any reaction? I'm not asking if you danced at that. I'm just asking was there any reaction?
AReaction in what respect? Reaction, reaction ..

BY THE CROWN:
His reaction is not relevant, My Lord.

BY THE ACCUSED:
It is relevant.

AWhat am I suppose ... what kind of reaction? I mean, I'm a professor and there is a committee and there is a chair who will study all the details and make a recommendation.

BY THE COURT:
We know all that. What he wants to know is did you feel compelled or impelled to do something when you found that out?

BY THE ACCUSED:
Exactly.

AI did not feel any compulsion to do anything about it.

QAll right. Did you have any information concerning my qualities of researcher? What was your personal knowledge about it?
ACan you repeat the question? The quality?

QWhat was your personal knowledge at that time about my qualities as a researcher?
AFrom which source? Quality of researcher, I mean ...

QWell did you have any information, opinion about my quality as a researcher?
ANo, I do not have any particular opinion of you as a researcher.

QYou had no idea whether I did publish something, didn't publish something? You had no information whatsoever, did you?
AWell I'm sure you must be publishing something but that is not intimate knowledge, I have no idea what you published.

QWell ...

AThe same goes to ... to many of my colleagues. I mean they ... occasionally I learn they received a research grant and I feel very happy for them and knowing how grants are being awarded, I don't give another guess. They must have suitable productivity or they must have certain capabilities as judged by the planning agency. So I ... no, I don't ... I did not form a specific opinion about the quality of your research and for that matter, the quality of research of many of my other colleagues.

BY THE COURT:
OK, we'll stop here for ten minutes.

SUSPENSION OF THE HEARING

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ENTER THE COURTROOM

RICHARD CHENG

(Under the same oath)

BY THE ACCUSED:

Is my recollection correct that Matre Lecours asked today until four o'clock or it is not today.

BY THE CROWN:

Not today, Thursday.

BY THE ACCUSED:

QAll right. Do you usually receive departmental reports?

AWhenever the department prepares and publishes, those departmental reports, yes, I receive a copy of it.

QDo you browse through it?

AYes, I do go through the report.

QOK, did ... did you see my name in this report?

AI did not pay particular attention to your name, so it's quite possible that your name appeared in the report.

QBut you didn't notice that?

ANo.

QIn the list of publications, did you ever wonder the ... at least in terms of number of publications, did you notice anything at all about me in these reports?

AI did not pay any particular attention to your publications or for that matter many ... the publications of many of my colleagues. I assume they ... they all do their work.

QSo you had no idea what kind of researcher I am, right?

AI had very little idea of exactly what you do as a ... as a researcher except that you're affiliated with Concave.

QSo you cannot even qualify whether I'm good researcher, bad researcher, average? You have no knowledge?

AI have very little knowledge to describe you one way or the other.

QAll right. Did you see any of my publications?

ADid I read any of your publications?

QYes?

ANone of them ever came my way except on one occasion you asked me to read two (2) of your manuscripts but those are not publications. It was a manuscript simply.

QWhat about those manuscripts, were they good?

AI did not strike me as, you know, anything breathtaking. No really, it did not.

QIs your work breathtaking?

AI beg your pardon?

QIs your publication breathtaking?

APerhaps not, but it's not up to me to judge.

QWell at least are you aware that those were published in the best journals in the field, are you aware of that?

AI beg your pardon?

QThat those publications appeared in the best journals in the field, are you aware of that?

BY THE COURT:

Presumably we're talking about yours and not Dr. Cheng's?

BY THE ACCUSED:

Oh no, not his, no, definitely not.

AYes, I probably know they appeared in the top journals but as I said, I ...

QYou have no knowledge.

A... I have no particular knowledge.

QAll right.

ABut maybe.

QAll right. At the meeting on October 25th, did Osman mention that I threatened him?

AI do not recall him saying that word, threatened.

QWas anything mentioned which may be interpreted like a threat?

AI do not get the impression that he was trying to tell us that he was threatened by you.

QDo you recall that soon after that meeting, certain security measures were implemented? Are you aware of that?

AWhereabouts?

QWell ...

AI'm not aware of it.

QNothing at all?

ANot that I can recall. OK, maybe you can help jog my memory.

QAll right. Were there any consideration that at hearing of news I might do some violence or whatever, at hearing the news that my employment is to be terminated, that I can do some violent acts?

AThe best I can recollect was probably that you may react in a strong way but I do not recall that people said specifically that you would behave violently, if by that you mean using, you know, using weapons, that kind of thing. No, I did not get that impression at the time.

QWell what was expected of me to be done to the best of your recollection?

AProbably raising a scene. I suppose that was what people were not that comfortable about.

QA scene to who?

AIt doesn't even occur to me as a scene to whom. That you'll probably feel very unhappy if you were to be denied any reappointment.

QWell was your feeling that I was fairly denied this appointment?

AI can only say the following. I did not debate in my own mind whether your denial, if ever the denial ever came, was fair or not fair. It only occurred to my mind that the decisions taken were taken fairly by our own colleagues, the elected colleagues who ... it did not occur in my mind in a very strong way that if there was going to be a denial, that it's going to be unfair.

QDid you get university merit award in 1989?

AI believe I have. I usually get merits.

QNo, I mean in 1989?

ABut 1989, I do not recall specifically but I daresay I did.

QDo you know how many people from the department were supposed to get those merit awards?

ANo, I do not.

QYou were not informed that only twenty-five per cent (25 %) of department is eligible to get merit award?

AI do not recall whether I was informed as such.

QDid you know that I got merit award in 1989?

AI did not.

QIf you did, would you question fairness of your colleagues then?

BY THE CROWN:

This is hypothetical, My Lord.

BY THE COURT:

Objection maintained.

BY THE ACCUSED:

QHow was it ... how were you told that I might react in some unusual way on hearing the news? How were you told that? Who told you that? Do you recall it?

AIIt was probably in a conversation with some colleagues in the department, it was not ... definitely not a formal information session. So I do not recall where, from whom I got the information from.

QDid you have any personal concern for your own safety?

AAAs a result of your denial?

QYes?

ANo, the ... I ... the thoughts did not come into my mind, no.

QWere you aware of hiring of bodyguards?

ABodyguard for whom?

QWell did you see a bodyguard in the dean's office at that time?

AI daresay I heard about it, but not necessarily at the time and I don't even recall exactly when bodyguards were hired for the dean. It is my ... I'm sure my memory must be all mixed up with all the things I have been reading recently from the newspaper so I ... I don't ... nobody ... nobody has the mandate to inform me that the dean has a bodyguard so I probably heard about it in the corridor with the ... with the colleagues, sometimes with the secretaries.

QWell did you know that this bodyguard was against me?

ANo, I cannot say that I know that the bodyguard was against you.

QWell I mean to guard somebody against me?

AYour name certainly was ... seems to be mentioned.

QWell what was your reaction to that?

AOf course, it is a very unusual thing to have a bodyguard to be employed within a university campus for any reason. It's very unusual to have bodyguards or to have the necessity of bodyguards being employed.

QIf it is unusual, then did you try to find out what were the reasoning behind such an action?

AI did not make a systematic or a concerned effort to find out what was the reasoning behind this.

QDid anyone tell you the reason behind this without you asking?

ANot that I can recall.

QDid you participate yourself in any way in those security measures?

AIn terms of bodyguards?

QWell I don't know what. In terms of whatever?

AI did initiate some security but that security was installed in the building in which I have my office and laboratories. The location is right outside of the Hall building, probably called the annex B.
QSo what exactly did you do there?

AI instructed my technician, electronic technician, to acquire a couple of these very inexpensive telecommunications devices from places like Radio Shack, have it slightly modified so that the long shot of the design is such that the two secretaries (2) on the fifth floor of annex B each would have a push button underneath their desk.

On pressing the button, the other unit of the intercom which is supposed to be in the pocket of my technician who usually is on the second floor or first floor or the basement, he could then come up to the fifth floor just to ... to find out what happened. That's all. So that was the security measure I initiate in order to give the secretaries some degree of comfort.

QDid the secretary complaint to you that they are scared of me?

AYes, I think some secretaries did express very deep concern.

QWho exactly expressed concern?

AThat they may need to ... that they need to confront you.

QWho exactly expressed concern?

AThere was one meeting in which I was invited and it was the meeting of the several secretaries of the department of mechanical engineering, together with a few members of staff of the university whose exact role I did not recall. I believe the occasion was to discuss their concern and for that matter, the fear that you may appear in an office, for instance, Dr. S. Sankar's office, Dr. T.S. Sankar's office or Dr. Osman's office and that something unpleasant might happen and I took that to mean a really uncivilized confrontation.

So there was a meeting in which the several secretaries to express their concern.

QMy question was who of the secretaries expressed concern to you?

AThe secretaries that were present there were the departmental secretary (sic) of the ... of the department of mechanical engineering: Mrs. Horwood, I'm sure she was concerned. Then we had two (2) secretaries who worked in the Concave who certainly was (sic) quite concerned and there was one secretary located at annex B who served several professors including myself as the director of the center for (inaud.) control. I don't think he (sic) was particularly concerned as such because he ... she certainly didn't think that she has not to deal with you. (sic) I do not remember whether the personal secretary to Dr. T.S. Sanker ... I do not recall whether that particular secretary was at the meeting. She might be, but then I just do not recall. So these are the several secretaries that crop into my mind.

QHow to make it (sic) respond to the question. You said you made security in annex B and I asked you who in annex B, of your secretaries, expressed their concern? I didn't ... I didn't ask you about any meeting yet. I will ask about it later but my question is very simple: you made security for your ... for your secretaries. Who of your secretaries expressed concern? Period. Just give the names. Could you be that short.

AYes.

QAll right.

AI thought the question was which secretaries but now

you're ...

QExactly, which secretaries, yes.

ANow your question is: which secretary in annex B.

QWell you did security, not for Concave, did you?

AI did secretary for annex B. (sic)

QSo who in annex B complained to you?

AWell my reaction to the situation is that since there are sufficient concern (sic) raised among the secretaries ...

BY THE COURT:

You were ... Dr. Cheng, you were just asked who these secretaries were on the third floor in annex B?

AOne secretary is Mrs. Helena Morris. The other secretary who is the personal secretary to Dr. T.S. Sankar, her name was Shera (sic) but I ... I do not recall her family name, Shera.

BY THE ACCUSED:

QOK and both told you that they're concerned for their safety because of me, right?

AI do not recall that they told me they were concerned.

QWell if they didn't tell you that they were concerned, then would you kindly explain why there was a need for a security for them?

AThere is sufficient ... there is concern expressed by the other secretaries and that prompted me to do things just in case it might happen because it is quite possible that you may go and visit Dr. T.S. Sankar on the third floor of annex B.

So my ... my decision at the time is let's put some security over there and I think it's a very reasonable step for me to take.

QSo now we finally came to an answer, that none of the secretaries of the third floor, annex B, expressed any concern about me, correct?

AI do not recall whether Shera was at the meeting.

QShe was.

AHum?

QShe was.

BY THE COURT:

Mr. Fabrikant, that is not ...

AI do not know.

That is not proper examination.

BY THE ACCUSED:

QOK. Whether she was or she wasn't, I believe she is on the third floor of annex B, right, where your office is located so you meet her regularly every day, right?

ARegularly, yes.

QSo let's forget for a meeting (sic) for a second. During those meetings, every day, did she ever express to you her concern about her safety?

ANo she did not.

QOK.

ANot that I can remember.

QAnd Miss Helena?

AJust a little bit but I don't think she was ... she is a very calm person. I don't think she was going into a state of panic.

QWhat do you mean? She expressed to you concern or she didn't express?

ASome concern, yes.

QWhat exactly did she say?

AI do not recall the exact words.

QWell did she say that I was impolite with her, that I threatened her, that any kind of confrontation I had with her?

A No, she did not say that.

Q So why on earth could she express any concern? OK, let me ask you different question. Could it be that concern appeared after the meeting or after you installed panic button as a reaction to the panic button? Could it be that person gets concerned if someone gives him panic button and tells that this is in case Fabrikant appears? Could it be that you introduced fear into these people? Could that be the case?

BY THE COURT:

It calls for a conclusion on the part of the witness.

BY THE ACCUSED:

All right.

BY THE COURT:

It really does. It's an improper question.

BY THE ACCUSED:

OK, I will ... I will ask it differently then.

Q Did you have intention at that meeting to introduce fear and concern in secretaries who did not have it before the meeting? Was that the purpose of the meeting?

A Certainly not.

Q Who invited you to that meeting?

A Elizabeth Horwood invited me to the meeting.

Q How did she explain to you that you are needed there? Why you?

A It's a very good question because I believe that she has a fair amount of respect for me as a colleague. I did spend ... I do spend time listening to some of the secretaries' concerns and so on.

Q Are you implying that she has less respect for her immediate boss Osman?

A No, I don't think that's the implication.

Q No, so did she explain to you why you?

A Yes, as I explained to you. I mean because I, you know, very often listen to what they have to say.

Q This is what she told you when she invited you?

A More or less to that effect, yes.

Q Why was there a need for a faculty member at all if it is meeting of staff?

A I do not ... I cannot answer that question.

Q Did you ask yourself or her if it is meeting of supported staff, why there is a need for a faculty member to be there?

A I was asked to go for a meeting in which some of the secretaries would be expressing their concerns and if I would like to come and listen to them and I do nothing inappropriate so I attended.

Q You ... you knew in advance that secretaries would be expressing concern?

A More or less to that effect, yes.

Q Did you check with your own secretaries at that time? Were they expressing concern?

A No I did not.

Q Did they invite you just to make it more convincing for the secretary to start getting concerned because it is more respectable when a faculty member is there?

BY THE COURT:

You can't ... you can't ask that question.

BY THE ACCUSED:

QOK, describe the meeting please? What happened during that meeting? Did you make any record during that meeting?

ANo I did not make any record.

QWhat happened during that meeting?

ADuring the meeting, there were a few ... I think there were three women staff of the university, staff members of the university and I do not even recall exactly what roles (sic) they were. I'm sure that could be checked out and then the whole idea, I suppose, is for the meeting to voice their concern about yourself. I think one of the secretary actually was in tears, expressing concern about Dr. S. Sankar. She didn't elaborate exactly what she meant when she said she was afraid for Dr. S. Sankar.

QWho was in tears?

AOne of the two secretaries in Concave.

QWho?

AWell there is two secretaries, one of ... one is called Eileen I believe.

QShe was in tears?

ANo, it's the other one.

QWhat is the name of the other one?

AI cannot recall the name of that particular secretary but again it can be checked out very easily.

QShe was concerned, not for herself but for S. Sankar, right?

ANow whether she was concerned about herself or not, I do not know but certainly a statement came out that she was concerned about S. Sankar.

QOK, how she explained that? Did I threaten S. Sankar ever?

AI believe that she thought you might threaten S. Sankar.

QDid she explain it, why, what, anything? Did I come before and threaten? Any fact supporting that?

ANo, we didn't go into the scenarios of that happening.

QNo, I mean when one is concerned, he usually is based on previous events.

AMaybe.

QI'm asking were there any previous events which would justify such concern to the best of your knowledge?

AIn my recollection, I mean the conversations took place sometime ago and I didn't take notes. I believe that they were troubled, the two secretaries were troubled to find that either you were in the ... in the Concave building on one occasion or you attempt (sic) to get into the building and I do not recall exactly and so, at that point, the other secretary, not Eileen but the other secretary was expressing concerning about Dr. S. Sankar.

QCould you please elaborate. What does it mean, enter a building, attempt to enter? You don't forget that I'm member of Concave.

AYes.

QSo what does it mean then, attempt to enter? This is the place where I have full right to go, right?

AThat's all ... yes, that is all I ... I can recall because ...

QSo why my appearance there, just appearance, might create concern?

AI ... I can only surmise that because your office normally is not in the Concave, I mean I'm wrong?

QYes.

AAnd for you, just as for me to turn up in the Concave it must signify a visit of some nature.

BY THE COURT:

We have gone right across to the field of pure speculation and I was going ...

BY THE ACCUSED:

OK, I will ...

BY THE COURT:

... to say to the jury: be particularly careful what you do with that because it's ...

BY THE ACCUSED:

QOK, does it mean that if you appear at Concave, then secretary also will be concerned with safety of Seshadri Sankar?

AI think it's up to them to answer that question.

QWell still, just fact that somebody appeared there ...

BY THE COURT:

Again, you're ... you're asking him to speculate. You can't do that.

BY THE ACCUSED:

QAll right, so let us stick to the facts. Who said that I appeared or attempted to appear? What does it mean attempted to appear? What, I was not ...

AAttempted to go into the building.

QWell what, I wasn't let in? What does it mean attempted? If attempted, I enter.

AIt's so long ago now, I do not remember exact words. I'm not even sure I'm correct to say that prior to that secretaries' meeting, there was a security installed in Concave. Now I'd just like to ... to tell you from my recollection of things which I did not write down as such.

QYou mean there was already bodyguard at Concave, that's what you mean?

APossible, possible.

QHow was it explained to the secretaries at the meeting, the whole thing? Were secretaries informed that I'm to be terminated, my employment? Was the secretary (sic) informed about it at the meeting?

AIt probably was, but I ... I cannot recall that anybody brought it up as a subject matter. I think the subject matter was more to do with the fact that you may confront some people and S. Sankar and T.S. Sankar and the result of the confrontation may be less than desirable.

QHow was it explained to them that after twelve (12) years of being in the university, all of a sudden there is concern that I may confront somebody? How was it explained to them? Why on November 5th of 1991?

AI don't think anybody took the initiative of explaining to them why. I mean, I don't understand your question. I mean it was their concern. It wasn't ... it was their concern and I'm sure that it was their spontaneous feelings. I .. I do not recall anybody explaining to them why they should feel concerned. It was something which they brought to the ... to the meeting. My recollection was not something they took away. I mean, they brought to the meeting and they discussed to share their feeling, that kind of thing.

QWell how the meeting started? OK, here they are, they came. Now how did it start? "Let's talk about Fabri-

kant"?

AYes, somewhere along those lines, I suppose.

QAll right and what? Were any facts brought to the attention that something happened? Why now, why on November 5th?

APerhaps because you were denied ... you were notified of denial of reappointment.

QSo it means that it was explained to the secretaries, right, that I was denied? Secretaries already knew on November 5th that?

BY THE COURT:

QWhat he's asking you is, what he's asking you is even if it wasn't specifically discussed, as somebody who attended that meeting, was it your perception that everybody knew ...

AThat was ...

Q... amongst these secretaries that the DPC had recommended that his contract not be renewed, that's what he wants to know?

AI think that's a fair way to putting it. (sic)

BY THE COURT:

OK. So at this point, we'll adjourn until tomorrow morning, nine thirty (9 h 30).

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

BY THE COURT:

Mr. Fabrikant, are you ... are you in a position to tell me how long you will be with Dr. Cheng because I'm thinking of your next witness?

BY THE ACCUSED:

Yes, well I won't be long but I think that we have enough time, don't we.

BY THE COURT:

I have no idea.

BY THE ACCUSED:

Well we ...

BY THE COURT:

I would hope we've got enough, I would hope we've got far more than enough time.

BY THE ACCUSED:

We have tomorrow. I'm sure that I will start with Swamy tomorrow.

BY THE COURT:

Fine.

BY THE ACCUSED:

And after that we have Monday, Tuesday.

BY THE COURT:

OK, that's fine.

BY THE ACCUSED:

We have ... we have enough time. Just I wish to remind tomorrow the documents relevant to what we discussed here please.

BY THE COURT:

One thing I was not clear on. It is ... it is next Friday that Swamy has some appointment or other?

BY THE CROWN:

Exactly.
BY THE COURT:
OK.
BY THE CROWN:
It's on the 3rd I believe.
BY THE COURT:
OK. Fine, tomorrow morning nine thirty (9 h 30).
Thank you.

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 LECOURS
ATTORNEY FOR THE CROWN

MR. VALERY FABRIKANT
REPRESENTING HIMSELF

MAITRE MICHEL OUELLETTE
ATTORNEY FOR THE DEFENCE

MAITRE LOUIS BELLEAU
AMICUS CURIAE

DATE OF THE HEARING: JULE 21st 1993

OFFICIAL COURT REPORTER: MS. MAUREEN ROWE

CLERK OF THE COURT: MS. ROXANNE DESROSIERS

FICHER NO.: 2890

TRIAL

CASE NO. 01-017372-928

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TRIAL TO CONTINUE ON JULY 22nd 1993

THE COURT TAKES THE BENCH

THE MEMBERS OF THE JURY ARE PRESENT

PROOF OF THE DEFENCE (Cont'd)

RICHARD CHENG
Professor - Concordia University
November 17th 1938

SWORN

DIRECT EXAMINATION BY
MR. VALERY FABRIKANT - ACCUSED
REPRESENTING HIMSELF:

QWe were talking about meeting of support staff, November 5th 1991. Do you recall who told the secretaries that DPC has decided to recommend termination of my contract?
AI do not recall that anybody told the secretaries at the meeting about that.

QWell does it mean that they already knew it, what ...

AI presume they already knew but that ...

BY THE HONORABLE JUDGE FRASER MARTIN, J.S.C.:

That was the sense I thought of the answer to the question I put yesterday.

BY THE ACCUSED:

QOK, so you, when you came to the meeting, you knew it and secretaries knew it too, is this my understanding correct (sic), that everyone at the meeting already knew it?
AI knew it but whether everyone knew it, I cannot say on their behalf.

QWell try to recall how the meeting started?

AI would not have an accurate recollection of how the meeting actually started. It ... it must be a meeting in which the secretaries gathered together, together as I said yesterday with three ... three (3) staff of the university. It sounded like a gathering to discuss the discomfort among themselves so to the extent I can recollect, probably one of the members of the staff started the meeting and exactly what he ... what she said or what other people said, I did not ... I do not recollect so ...

QSo you have absolutely no recollection of that meeting. Let me try to trigger your memory. I have here a list, people present there: Horwood, Altimas, Ann Pearson,

Sheila, Eleonore, Arlene, Cheng, Miss Belzon and Miss Torbit. Is this a complete list or someone is missing?

AYou see, I only recognize some of the names there. The ... the other names, I do not know. Now that only means that I do not know the name of everybody who happen to be there or I ... I do not remember the names of everybody.

QOK, which name you do not know?

AI'd rather tell you the names I remember. Elizabeth Horwood was there, myself was there. Eleonore Morris was there. Did you say Arlene?

QArlene, yes?

AArlene was there.

QSheila?

ASheila. As I said yesterday, I do not remember whether she was there but since you brought up the name, yes Sheila was one of the secretaries. She might have been there.

QShe's secretary of T.S. Sankar, is she?

AShe is the secretary of T.S. Sankar, yes.

QOK. Ann Pearson, who is she?

AI do not recollect the name.

QIs she secretary of Haines?

ASecretary of?

QHaines? You know Mr. Haines?

AMr. Brendon Haines?

QYes. Brendon Haines?

AI see, I do not know. I do not know, it's ... I do not know who she was.

QOK, there was second secretary from Concave also there?

AI believe so.

QBecause she is not on this list but since she cried out of concern for Seshadri Sankar, she must have been there. Otherwise, she would be unable to cry, OK and do you know Miss Belzon?

AI do not know Miss Belzon.

QSo you were not introduced. You came there, they were so impolite not to introduce you to people there?

AI'm sure they introduced themselves but it would be my fault for not being able to recall names. That happens many times. I do not have a good memory for names for someone introduced to me first time. (sic)

QMaybe you call ... recall at least your role?

AMy role is very simple. Mrs. Elizabeth Horwood informed me or talked to me over the phone one day and said there is such a meeting among the secretaries and she asked if I may care to come along and then I said yes, I would come along. So that's ... there was my role.

QOK, did she dare ... did she care to inform you why you should come along? You are not one of the supportive staff, are you?

AI'm not a member of a support staff.

QSo did she explain to you why you should come along?

AI recall the reason ... yes, the reason is certainly out of a ... she asked me to come along because I'm sure she was convinced that usually, I give my ears to herself, when she has something to talk about, some concern. After all, we have been colleagues for over twenty years and I think she ... out of ... I suppose out of respect, she just asked me to come along and I ... I consented to come along.

QWell ...

ANot to play any particular role, but just as somebody who was invited to share the concern of the secretaries, whoever.

QWell, so you had concern too of your safety?

AI had no concern of my safety, no, that was ...

QSo could you explain how could you share your concern with them?

AOh, I did not mean I shared my concern with them but what I ... what I mean was that if other people like the secretaries want to share their concern with me, no, I'm very... I'm very ready to listen and to talk to them if necessary. That was my ... my feeling.

QWell again, why with you? Everybody else refused to hear them?

AThat is not answer I could give to you ...

QAll right.

A... when they approached me.

QHow many people in the department have the same twenty (20) years of service at the university? Was McQuinn less at the university than you?

AMcQuinn was more senior than me.

QSo he wasn't listening Miss Horwood? She didn't ... she didn't respect him?

BY MAITRE JEAN LECOURS

ATTORNEY FOR THE CROWN:

All this line, My Lord, is sarcastic and it's not examination, proper examination.

BY THE COURT:

It's not ... it's certainly not proper examination.

You're ... you're not taking us anywhere with this.

BY THE ACCUSED:

OK.

BY THE COURT:

He told you Miss Horwood asked him to go and he ...

BY THE CROWN:

That should be the end of this, My Lord.

BY THE ACCUSED:

QOK, what was your role at that meeting? What ... what did you say at least? Maybe you remember that.

AI do not remember exactly what I said. No, it's just ... you know, there's a meeting. So many people say things. I probably did, put in a couple of words but I do not remember exactly what I said at the meeting.

QDo you recall Osman ever at that time mentioning that I came to his office and made some kind of hand gesture like this? Look at me please, like this as imitating that I'm shooting somebody. Did Osman say it at the meeting of senior members?

AAt the senior meeting, at the senior members' meeting?

QYes?

AI do not recall him making a gesture like this.

QIt could be that he did and you just didn't pay any attention? It's normal gesture.

AIt could be.

BY THE CROWN:

That is speculation, My Lord.

BY THE COURT:

The witness's answer is he doesn't recall.

BY THE ACCUSED:

QOK, but would you consider this kind of gesture, some-

thing which make ... often occur (sic) and isn't worth paying attention to?

A Can you repeat the question.

Q OK. Would you consider this kind of gesture ...

BY THE CROWN:

This line is bringing us nowhere, My Lord. The witness does not recall, period.

BY THE COURT:

The witness has said he doesn't recall, Mr. Fabrikant. That's the end.

BY THE ACCUSED:

I'm asking different question.

BY THE COURT:

No, you're not. No, but ... but what you're doing is you're trying to say: and surely you would have remembered that if he had made it, therefore you must have ... you know, therefore he mustn't have.

That ... the witness has said "I don't recall Osman making that gesture."

BY THE ACCUSED:

I do ... I do not make any gesture, sorry I do not make any, how to say it, side trick in this particular case. I'm just trying to trigger his memory.

BY THE COURT:

Well no, you're not.

BY THE ACCUSED:

That this kind of gesture ...

BY THE COURT:

He's ... he's given you his answer, he said "I don't recall Osman making that gesture or ... or saying that at the meeting and that's the end of it. So the objection is maintained. Move on to something else.

BY THE ACCUSED:

Q OK, now do you recall who told you that DPC had made their decision not to reappoint me?

BY THE CROWN:

I believe the witness already answered that yesterday, My Lord. He did not recall.

BY THE ACCUSED:

Well maybe today he does.

BY THE COURT:

Q Do you understand the question?

BY THE ACCUSED:

One day has passed.

A Yes, I understand. I do not recall anybody specifically told me that the DPC did not approve your reappointment.

Q But you just recently said today that you knew that decision is such, so ...

BY THE COURT:

But he says he doesn't know who told him.

BY THE ACCUSED:

No, he said that he does not recall anyone telling him that. So it means that he probably didn't know or some stork has brought it to him.

BY THE CROWN:

We were on that yesterday, My Lord. Mr. Fabrikant, every time a witness comes more than one day, asks the same questions every day. I think it's a waste of time.

BY THE ACCUSED:

Well there is nothing wrong with that either. Witness might not remember something yesterday. Today, he might

remember.

BY THE COURT:

Yes, I know but there really is no point asking questions four or five and six times.

BY THE ACCUSED:

No, it's not four, not five, not six. It's just second time and I will explain later why I'm asking this question.

BY THE COURT:

Well go ahead for the moment but ...

BY THE ACCUSED:

QAll right, so you said that you did know. It means that someone told you that? You cannot be half pregnant.

AI don't ... I don't recall who first told me about that but by the time when Elizabeth Horwood mentioned that to me over the phone, inviting me to attend that meeting, I knew. Now whether she was the first one who mentioned this to me, whether it was anybody else, I just do not remember.

QOK, was it at least one of the DPC members who told you first?

AI do not recall any of the DPC members told (sic) me about that.

QOK. Is this information supposed to be confidential, is it?

AWhich information? That you were denied ...

QThat DPC has made the decision not to reappoint, recommend not to reappoint me, is this decision supposed to be confidential?

BY THE COURT:

He's talking about the DPC decision, would you agree, before it arrives on the dean's desk? Would ... would that be the question?

BY THE ACCUSED:

Yes.

BY THE COURT:

OK.

BY THE ACCUSED:

Well it should be confidential all the time but ...

BY THE COURT:

That's the level you're at at the moment?

BY THE ACCUSED:

Yes, but the funny thing is everybody knew but me. This is funniest part of it.

AI't's ... it is a DPT ... DPC decision. It should be a decision which I consider to be confidential because it's just something to be ... to be regarded as a recommendation to the dean.

QOK, then when Mrs. Horwood told you that DPC made decision not to recommend me, did you tell her that she is not supposed to tell you such things, did you?

AI do not ...

BY THE CROWN:

This is not examination-in-chief, My Lord. The proper question should be: did you tell her anything, period.

BY THE ACCUSED:

All right.

BY THE COURT:

You're correct.

BY THE ACCUSED:

I will change this.

QWhen Mrs. Horwood told you that DPC made decision not to recommend my reappointment, did you tell her anything about it?

AI don't think Mrs. Horwood told me the following: that the ... that the DPC has recommended on denial, that kind of thing. I don't recall that it was what she told me. My recollection was, the long and short of it, the secretaries are having a meeting because they were uncomfortable, they were ... had some concern, that you were denied reappointment. Now the timing of the knowledge, I have no specific recommendation.

BY THE COURT:

QMr. Cheng, let's see if we can get back on track.

AYes, because what I'm saying ...

QYou said three (3) things: Horwood mentioned to you over the phone when she invited you to the meeting, she mentioned the DPC recommendation. You said you were not sure if she was the first, but that by the time you went to the meeting with the secretaries, you were aware. Now what Mr. Fabrikant asked you a minute ago was if this decision which you agreed is supposed to be confidential how did you react when Horwood gave you this information over the phone?

ANow I ... Your Honor, I'm ... I may have not been exceedingly careful when I answered the question, to the extent that I referred specifically to the DPC, of saying the denial and so on and so forth. I was certainly referring to the fact, when I answered the question, that when the secretaries knew about the denial of the ... of Mr. ... Dr. Fabrikant's reappointment, I did not intend, it wasn't my specific intention to say it was because they learned it from the DPC or maybe I was confused. I did not make the point very clearly.

QNo, he ... he was interested in where you learned it first of all and you said "Horwood mentioned it. By the time I went to the meeting, I knew about it but I'm not sure if Horwood was the first". It was only about you that he was asking the question and then he wanted to know what your reaction was when Horwood mentioned it to you, given that it's supposed to be confidential. That was his question.

AI still want to say once more that I was not too careful in my answer. I certainly was thinking of the fact that at one point, I knew that Dr. Fabrikant was ... was denied reappointment but I wasn't thinking that clearly that it was the time ... it was ... it was something directly from the DPC. I did not reply that the information was necessarily from the DPC.

BY THE ACCUSED:

QWell he's clearly avoiding answering questions. He's clearly contradicting to himself (sic) and at this point, I would like to make a general application to declare the witness adverse.

He's clearly avoiding and contradicting to himself. He said once that he knew that, that Miss Horwood told him later on. He's not sure if she was the first one or not. When I asked question whether he did say anything to Miss Horwood with respect to that, all he said, again something irrelevant, totally saying that he was not so careful, that maybe he didn't even understand that denial of reappointment was not from DPC.

He now pretends that there is some other body in the university who makes that decision. He definitely knows better than that but if this decision comes from somewhere, it is from DPC. It cannot come from anywhere else. This is the only body which makes the decision. So now he's just trying to mislead the Court. So the witness has clearly demonstrated himself hostile, adverse.

BY THE COURT:

Mr. Fabrikant, I ... I don't think the witness is adverse and I don't think the witness is trying to mislead you. I think the witness probably is experiencing some sort of confusion because we're talking about two (2) things. A recommendation of the DPC isn't a decision not to renew your appointment. It's a recommendation not to renew your appointment, which as you know, has to ... at least as I have learned during this trial, has to go through various additional stages.

I understand and I wish and I'll try once more, I wish

Mr. Cheng would try to focus on the question.

QNow do you remember saying that, when Horwood phoned you, she mentioned the decision of the DPC? You remember saying that here, because that's what my notes say.

A I do not remember she said the DPC said so.

BY THE ACCUSED:

QWho else on earth could say so? There was only DPC at that stage involved. There was nobody else.

BY THE COURT:

QThat's ... that's what you were ... you were asked. You said that Mrs. Horwood mentioned the decision of the DPC, mentioned over the phone the DPC decision when she invited you to the meeting. That ... that was the answer you gave and that's what I wrote down in my book anyway. Now think about it.

AYes, now let me think about it. You see, what ...

QAre you feeling all right?

AThat was the ... the stomach acting up, no, no, I'm OK. I'm ...

QAre you sure?

AYes, I'm OK. I just want to make sure that I get the thing right. You see, when I do not recall and then I might have misled the Court so I must apologize very deeply.

When she told me that and I don't even recall the conversation very vividly but it certainly referred to the fact that there is a denial of Dr. Fabrikant's reappointment. Now whether the ... whether it was specifically coming directly from the DPC's recommendation or after the ... the recommendation has come to the dean's office, I really did not think about that very carefully, so at this point, now that this implication came up, I ... I honestly say that I do not even recall that those were the very words which she ... all I'm saying is the sentiment was that the denial of Fabrikant is now known, the secretaries were concerned so there was a meeting and she asked me to come along.

BY THE ACCUSED:

Well it doesn't change anything. Denial may come only from DPC. The fact that this document came to the dean's office or didn't come to the dean's office doesn't make it any less confidential. It is still strictly confidential stuff so ...

BY THE CROWN:

So what? The witness knew about it, period.

BY THE COURT:

He asked the witness: did the fact that there was an obvious breach of confidentiality strike you or prompt you to do anything or say anything?

BY THE ACCUSED:

Exactly and he never responded to this question.

BY THE COURT:

That's ... that's his next question.

AIt did not prompt me, it did not prompt me to think along the lines that here is a breach of confidentiality.

BY THE ACCUSED:

QDid the fact that you, yourself, was not supposed to know it strike you as a breach of confidentiality?

BY THE CROWN:

This is a conclusion, My Lord.

BY THE ACCUSED:

OK, I will ...

BY THE COURT:

You're correct.

BY THE ACCUSED:

I will rephrase the question.

BY THE CROWN:

He's here to state facts.

BY THE ACCUSED:

QWere you supposed to be privy to this kind of information according to your position?

BY THE COURT:

He said yesterday no, he wasn't.

BY THE ACCUSED:

QOK, so how come...

BY THE COURT:

But he was, you know.

BY THE ACCUSED:

Well ...

BY THE CROWN:

That's it. The witness is here to ...

BY THE COURT:

So you've established the fact that ...

BY THE CROWN:

... to state facts.

BY THE COURT:

You've established the fact that it's supposed to be confidential but lo and behold, the witness knew about it. Now there you are.

BY THE CROWN:

The fact is there and if the accused doesn't like it, he could argue about it later.

BY THE ACCUSED:

It is not that I don't like it. It's very interesting situation that ... can we get the decision itself from, what is the number, the thick file of ... D-7? Yes.

BY THE CROWN:

Because we do more than eliciting facts now. We go into arguing and challenging and belittling the witness, every time there is something the accused doesn't like.

BY THE ACCUSED:

It is no belittling at all. The witness regretfully is faking his memory by pretending here and now he doesn't remember anything.

BY THE COURT:

Mr. Fabrikant, just put ... find the document you're looking for and put your next question to the witness.

BY THE ACCUSED:

It should be put in chronological order, then it would be easier to find something here. Yes.

QTake a look at this page please. What is the date of decision? What is the date of the decision?

AThe date was November 18th 1991.

QOK and by November 5th at least or maybe before that, you already knew what the decision was, correct?

AI do not recall the exact date when Elizabeth Horwood called me.

QWell there is information that meeting took place on November 5th. Now, when whoever you cannot recall told you about decision of DPC, which at that time was not even typed, what was your reaction?

AThat you were not reappointed?

QYes, recommended not to be reappointed.

AWell recommended, recommended. I had no particular reaction one way or the other. This is the work of the DPC and the chair. I do not ... I did not have any particular reaction one way or the other.

BY THE COURT:

That was covered yesterday.

BY THE ACCUSED:

No, that was not my question now, because now I'm asking another aspect of that. That whether he should or shouldn't protest, that was yesterday. Now I'm asking him different aspect of that.

QDid you feel that this is an acceptable breach of confidentiality when someone is telling you this?

BY THE CROWN:

This is a leading question, My Lord.

BY THE ACCUSED:

Well there is no way I can ask it differently then.

BY THE COURT:

I'll permit the question.

ACan you repeat the question.

BY THE ACCUSED:

QWell when someone told you strictly confidential information that DPC has decided against my reappointment, did you say to this person that what person is doing was breach of confidentiality and that person was not supposed to do that?

AThe context of the conversation did not prime me to think along the lines of confidentiality of the information.

So I did not react along that line.

QIs one requirement of collective agreement respect of confidentiality?

BY THE CROWN:

This type of question, My Lord: isn't it your duty, isn't it the collective agreement, shouldn't you ...

BY THE COURT:

The question to this duty ...

BY THE CROWN:

... shouldn't you be doing this and that, this has nothing to do with examination-in-chief.

BY THE COURT:

It's not going to advance a thing, it's not going to

advance a thing.

BY THE ACCUSED:

OK, let me explain maybe.

BY THE COURT:

You ...

BY THE ACCUSED:

Let me explain what I'm trying to establish. Then it will be clear in terms of advancing.

What was going in the department at that time was very simple and very dirty thing. They made their decision but this decision was so outrageous in view of their own excellent evaluation of myself, that they needed to prepare the members of the department and outside department to this kind of decision and the only way to do that, there was a need somehow to explain it, what is behind that and the only way again to do that is to present me some kind of violent. (sic)

This is why there were volunteers like Mr. Cheng who pretends now not to remember anything at all and as usually, (sic) when you have big crooks, big criminals who cannot and do not want to say that we are afraid or concerned that how decision is so outrageous, that normal person might become violent and do something about it, so they are usually hiding behind secretaries because the best way to say: we are not protecting our skin, it is not that we are crooks and we are afraid to be exposed, it's we care about little people. This is what we are. We are concerned with our secretaries.

God forbid Fabrikant comes and damage our secretaries so the secretaries are called. None of them has any concern. Some of them testified here. Some of them even testified that they had concern when they started seeing bodyguards but before that, they didn't have any concern and the secretaries are brought there and Mr. Cheng is there, not because he is just listening or he's so very much respected by Horwood. He's there to ... to give some credibility to the whole scheme because he's kind of outsider. He's not one of those obvious crooks. He's just friend of them.

So he looked like he's outsider there and if he comes there and he says to the secretaries that there is general concern, then the secretaries listen and especially when secretaries, right after that, see bodyguard in Concave, they see bodyguard at the dean's office because the date is exactly the date where the bodyguard appeared. If you look at the bills, they start November 5th. It's exactly that date and he testified himself that no secretary expressed any concern. No facts of any kind were presented to secretaries that I can do something.

Then what is the basis for concern? There is nothing there and he himself said that he introduced some panic button. My gosh, if I were secretary and I have no concern about some Mr. X who I never really saw ...

BY THE COURT:

You're using this objection simply to make an argument and we're getting nowhere with this. This is ridiculous and I'm stopping you right now.

The question had to do and the question bore upon what Mr. Cheng's reaction was to a decision or not. I couldn't care less and nor could the members of the jury what Mr.

Cheng's reaction was to any given decision or where this falls in Mr. Cheng's scale of moral values and ... and to use that objection to simply go into a lot of reasoning that undoubtedly you'll go into later on, putting whatever facts you ... you wish in support of your view of the world, that's fine, but that's not arguing as far as the objection is concerned.

The objection is ... is well founded and it's maintained. Mr. Cheng's particular view of ... of a decision or a mode of conduct has nothing to do with this.

What I presume you're attempting to establish is ... is the facts of that conduct. Then you'll see them your way I suppose. The prosecution will see it in his way and insofar as it might relate to your ... your defence, I suppose the jury will see it their way, if ... if they conclude that it relates to your defence.

BY THE ACCUSED:

Well the question was ... where I'm driving at and I explained where I'm driving at ...

BY THE CROWN:

No, the objection was the way the questions were put: isn't it your duty and why not and shouldn't you be doing that.

BY THE ACCUSED:

Yes.

BY THE COURT:

And those questions always lead to the same problem.

BY THE ACCUSED:

Well isn't it your duty ...

BY THE CROWN:

This leads us nowhere.

BY THE ACCUSED:

... I have asked in this ...

BY THE CROWN:

I wasn't finished.

BY THE COURT:

It doesn't matter what his duty was.

BY THE CROWN:

When facts are there, that should be the end of it, whether we like it, we don't like it, whether it's the duty or it's not the duty, or whether the witness should have done something else, who cares.

The facts should be the end of it.

BY THE COURT:

You're perfectly right.

BY THE CROWN:

And the facts, My Lord, for this witness, should take about five (5) minutes. He was at a meeting. The purpose of the meeting was this. The rest is always arguing with the witness and trying to nail him down and ...

BY THE COURT:

Well as I've said, the ...

BY THE CROWN:

... I respectfully submit we are wasting our time.

BY THE COURT:

The objection to the last question is maintained and then you'll make your objections as we go along.

BY THE ACCUSED:

Well I was allowed many times to ask questions: was this duty, such and such, it is a normal question. All of a

sudden, this question becomes not permissible.
I asked exactly the same question: did you say to Mrs. Horwood that she's breaching confidentiality and it was allowed. Now the last question to which the objection was made was: did you tell to the person who told you that he's breaching.

So if question with respect to Horwood is allowed, the same question with respect to somebody else is allowed.

BY THE COURT:

Look, look, I told you, don't trot out that argument. In ... in extending to you, in extending to you the latitude that I've extended to you often, often in this trial, you've been asked to ... you've been permitted to put questions which in my mind, sitting here, are of limited pertinence but I haven't sometimes known, I haven't been certain because you won't tell me, you see, so I didn't know what we're looking at.

What his reaction was, what he said to somebody about a breach of confidentiality, all of this which bears on ... on his particular scale of moral values won't help us at all. What you're trying to establish are facts. So as I said, the objection is maintained.

BY THE ACCUSED:

Well I'm not trying to establish his moral standard. What I ... I repeat I'm trying to establish ...

BY THE COURT:

Why must you to continue to argue with me when I've ruled.

BY THE ACCUSED:

All right.

BY THE COURT:

You know, I mean when a lawyer continues to argue after a ruling, he's in contempt.

BY THE ACCUSED:

QNow since we're on this subject, maybe you could ... you could tell what is the family name of Sheila if you know? Family name of secretary named Sheila?

A I do not ... I do not know the family name of Sheila.

QAll right. OK, were any facts to the best of your recollection mentioned during that meeting which would support anyone's concern?

BY THE COURT:

You mean the secretaries' meeting?

BY THE ACCUSED:

QYes, I'm talking about secretaries' meeting, were any facts mentioned on that meeting which would support anyone's concern for my so-called behavior?

AAAs I mentioned yesterday, I think it was the two ... the secretary or both secretaries of Concave, they were concerned because in my recollection, they thought that you either went to Concave or attempted to enter into the building of Concave.

That was ... these are the only things that I can recollect as far as facts leading to the concerns.

QWell could you elaborate: went to Concave, what does it mean went to Concave? I didn't have the right to do there? What ...

BY THE CROWN:

This was covered yesterday, My Lord.

BY THE COURT:

Yes it was. We were all through this yesterday after-

noon. Move on to something else.

BY THE ACCUSED:

QWell anyway, that was the only fact mentioned, that I went to Concave, yes. During that meeting, did such fact cross your mind that if you go somewhere and after that, someone says that you went there and therefore, I'm concerned, would you find that reason valid reason for concern?

BY THE CROWN:

This is an improper question, My Lord.

BY THE ACCUSED:

No, I asked if ...

BY THE CROWN:

The question should be: did you have any thought during the meeting, period. This is leading, this is not an examination-in-chief.

BY THE ACCUSED:

A leading question, I repeat once again ...

BY THE CROWN:

And this has also a flavor of arguing with the witness.

BY THE ACCUSED:

... from the authority. A leading question ...

BY THE COURT:

You heard the objection.

BY THE ACCUSED:

... should not be objected to unless it threatens crown's case. If it does threaten, they may object. If not, then there is nothing wrong. I don't think there is any reason to suspect that this particular witness is my witness in the sense that he's supposed to say anything favorable for me. So there is no danger whatsoever that I'm tailoring his answer and this is the main protest against leading questions.

BY THE CROWN:

There are many grounds for which this question is improper, My Lord, including testifying from the box.

BY THE COURT:

That's ... that's the biggest one in this instance.

BY THE ACCUSED:

Well I'm not testifying from the box. I'm just asking him certain ...

BY THE COURT:

Can you simplify that question.

BY THE ACCUSED:

All right.

QWhat was your feeling when you heard arguing like I entered or tried to enter the building? Did any thought cross your mind when you heard that?

AI do not recollect exactly what thought came into my mind at that moment, except possibly to register the fact that the secretaries were concerned.

BY THE COURT:

QBut what he's asking you is: did this concern seem to you realistic or did this concern seem to you to be somewhat hysterical? That's what he's asking.

AI did not think it was not realistic. I mean, this was the concern there, so I just ... just took it in, that was all I did at the time.

BY THE ACCUSED:

QBut you were not aware personally of any facts in the past which might justify anyone's concern for my beha-

viator, do you?

A If there's anything I'm going to say, it is only because I hearsayed, I have not witnessed any fact but I have ... I have heard, if I can use that word, that you had been confrontational, that you are a very difficult person to deal with. Now whether that was a fact or whether that was simply presented to me as hearsay, I ... I really cannot elaborate any further.

Q Well this ... this is neither. Fact is that I assaulted such and such person on such and such date, this is fact. The fact that I'm ... just word that I'm confrontational is not the fact. The fact is that I confronted such and such person telling him "I know what in North America (sic) and I'm going to shoot a lot of people", this is fact, so many facts ...

BY THE COURT:

No, that's ... that's not a fair question. That's ... you're not being fair with him.

BY THE CROWN:

He gave his answer anyway.

BY THE COURT:

You're not ...

BY THE ACCUSED:

No, I'm just explaining to him what I'm asking from him.

BY THE CROWN:

You're not ... you're not being fair with the witness. The witness has told you three (3) things. He said no or it's the answer to the question I put which was the question I believed your answer, "I thought the concern was genuine and what I know about you is not from my own personal experience with you but if you're asking me what I've heard", then he qualified it and he said it's pure hearsay, that you're a confrontational person and I've heard that you're difficult to deal with and he said yesterday afternoon on the same thing relating to the panic button, "I was afraid you would make a scene." There ... there are his concerns. Now ...

BY THE ACCUSED:

This is not answer to my question.

BY THE COURT:

It ... of course, it's an answer to your question.

BY THE ACCUSED:

No, I asked for facts.

BY THE COURT:

But if ...

BY THE ACCUSED:

Whether he was aware of facts. This is just general words.

BY THE COURT:

He's ... he's told you.

BY THE ACCUSED:

And you know that better than anybody else.

BY THE COURT:

He's told you what he was aware of. Now move on to something else.

BY THE ACCUSED:

Well this is not answer to my question.

BY THE COURT:

It is an answer to your question. That's his answer to your question. Now move on to something else.

BY THE ACCUSED:

Well I would like him to say: no, I don't know any specific facts. That's what the answer should be.

BY THE COURT:

He has told you what his sentiments were when he went to that meeting. You're the one that asked him and that's what he said. You're not going to dictate his answer to him.

BY THE ACCUSED:

I'm not dictating answer but the question is and answer should be corresponding to the question.

BY THE COURT:

Move on, you have ...

BY THE ACCUSED:

Not about something else.

BY THE COURT:

Move on, you have your answer.

BY THE ACCUSED:

All right.

QDo you recall Dr. Hamami (sic) was fired about a year before me?

BY THE CROWN:

I understand Mr. Fabrikant was never fired, My Lord.

BY THE ACCUSED:

There is nothing wrong in my question, whether I was or wasn't fired. What kind of absurd objection is this?

BY THE CROWN:

Well it presupposes a fact, it presupposes a fact that is not in evidence.

BY THE COURT:

That is not in evidence.

BY THE CROWN:

It is not in evidence that Fabrikant was ever fired, My Lord.

BY THE COURT:

And what is the ... what is the pertinence in any event?

BY THE ACCUSED:

I'm not saying I was fired. What kind of ...

BY THE COURT:

Well you said it, you said it. It's the words you said. They came right out of your mouth.

BY THE ACCUSED:

I asked him if he was aware about Dr. Hamami being fired about a year ...

BY THE COURT:

Before you.

BY THE ACCUSED:

Well before events.

BY THE COURT:

Well all right, but that's ...

BY THE ACCUSED:

I change the question.

BY THE COURT:

OK, change the question.

BY THE ACCUSED:

Not before ... if before me sounds like before I was fired ...

BY THE COURT:

That's right.

BY THE ACCUSED:

... then sorry.

BY THE COURT:

That's the way it came out.

BY THE ACCUSED:

Well all right, English is not my first language. Sometimes I make mistake but that was not intentional mistake and it doesn't give me any plus at all.

What I meant, before 1991, before this concern about discontinuing my contract, Dr. Hamami was fired about a year ago and I'm asking him if he remembers that. Now he will ask who is Hamami. Just look at him. He pretends not to remember.

AI remember that Dr. Hamami had a one-year contract in 1990.

BY THE CROWN:

So this was an unfair question. This person was never fired either, My Lord. His contract terminated, period.

BY THE ACCUSED:

I will change the question.

QDo you remember there was situation with Dr. Hamami when he got recommendation not to renew his contract which in fact was not renewed and his contract was terminated this way. Do you recall that?

AI do not recall anything at all.

QDo you recall at least that there was time Dr. Hamami was your neighbor on the third floor?

BY THE CROWN:

What is the relevance of Dr. Hamami, My Lord?

BY THE COURT:

I have no idea what the relevance is.

BY THE ACCUSED:

Just bear with me a little bit, all right.

BY THE COURT:

No, I won't bear with you a little bit.

BY THE ACCUSED:

You won't bear with me?

BY THE COURT:

No.

BY THE ACCUSED:

All right, then I will explain to you what I want to ask next, though it isn't fair from you to demand me to reveal my next question. My next quesiton will be: when Dr. Hamami got the same recommendation of not renewal of his contract because situation was exactly the same. He got limited term. I got limited term contract. He got recommendation not to renew, I got recommendation and my next question will be: did you also hire bodyguard? Did you also have that meeting of the staff? Did you also install panic button? This is what I want to ask him.

BY THE CROWN:

And the next question will be: how many people did he kill, My Lord.

BY THE ACCUSED:

Did who kill? You say that in 1991, they knew that in 1992 I will kill four (4) people?

BY THE CROWN:

To summarize, I maintain the whole line is irrelevant.

BY THE ACCUSED:

It's absurd.

BY THE COURT:

You're perfectly right, it is.

BY THE ACCUSED:

What?

BY THE COURT:

Leave Dr. Hamami out of it and go on to something else.

BY THE ACCUSED:

Well it is not irrelevant question to ask why they treated this case differently.

BY THE COURT:

No, no.

BY THE ACCUSED:

Why not?

BY THE COURT:

It just isn't. I'm not interested in the case of Dr. Hamami. I'm interested only in the case of you.

BY THE ACCUSED:

Well I'm trying to establish that I was mistreated, that they had no more reason to get that meeting when they recommended termination of my contract than they had when they recommended termination of Hamami's contract.

BY THE COURT:

It is far too remote, so the objection is ...

BY THE ACCUSED:

It's not remote at all.

BY THE COURT:

Well the objection is maintained.

BY THE ACCUSED:

All right. May I have D-38 I believe. Yes.

QTake a look at this page please.

BY THE CROWN:

It doesn't seem that this document emanates from the witness, My Lord.

BY THE COURT:

It relates I think to a question that was put yesterday.

BY THE ACCUSED:

And I believe D-41 if possible. No, that's not it.

DPC decision of 1991, what number is it? The documents disappear. I know I had all of DPC's copies and they're no more there. This one was what, 38? Maybe D-44? No.

BY THE COURT:

Have you a question to put to the witness with regard to D-38?

BY THE ACCUSED:

Well all right, I have it in my hand.

QDid you ... did you see the last page?

APage 3?

QYes, what does it say?

A

"Candidates who are not members of the faculty bargaining unit, within brackets (the Concordia Faculty Association) but have relevant privileges as the faculty members for the evaluation under the terms and conditions of performance review.

The following two candidates who belong to this category, working under the Actions Structurantes program, are rated as outstanding to excellent and within brackets (listed in alphabetical order):

1. V. Fabrikant

QOK, could you say it in your words, that this is evaluation which was made by DPC which puts me between outstanding and excellent, right?

BY THE CROWN:

What's the point, My Lord. He could show that paper to every witness. If this document doesn't emanate from the witness, it's leading us nowhere.

BY THE ACCUSED:

It doesn't have to emanate from the witness.

BY THE CROWN:

He can show his publications to everybody, his credentials to everybody.

BY THE COURT:

The witness has acknowledged that he looked at the document.

BY THE ACCUSED:

All right.

BY THE COURT:

Fine.

BY THE ACCUSED:

Let him look at another one.

BY THE CROWN:

It's a waste of time My Lord.

BY THE COURT:

What are you showing him now?

BY THE CROWN:

The first question should be: do you recognize your signature on this document. Otherwise, he can show the whole record.

BY THE COURT:

I'll wait for the next question before I rule.

Mr. Belleau? Mr. Belleau?

BY THE CROWN:

I don't see the witness's signature on this document here. There were and there will be proper witnesses to deal with ...

BY THE ACCUSED:

What kind of absurd is that? (sic) Where is it written that I cannot show to witness document which is not signed by him.

BY THE CROWN:

Because he must have seen it before and it ... the only way it could be to ... is to trigger his memory, My Lord.

BY THE ACCUSED:

Well that is ...

BY THE CROWN:

To show documents the witness never saw is a waste of time.

BY THE ACCUSED:

How do you know?

BY THE COURT:

We'll let the witness take cognizance of the document and then we'll wait for the question.

BY THE CROWN:

I did not object when it was the members of the DPC in the box but it shouldn't ...

BY THE COURT:

No, no, no, I'll wait for the question.

BY THE CROWN:
It looks like ...
BY THE COURT:
I don't know what the question is yet.
BY THE ACCUSED:
Why are you so nervous.
BY THE CROWN:
It's a never ending story, My Lord.
BY THE ACCUSED:
Relax, relax. You have a strong case, don't you.
BY THE CROWN:
Well he's not allowed to talk to me, My Lord.

BY THE COURT:
No, he's not.
BY THE ACCUSED:
OK, would you please ask the crown to relax, that they
have strong case and they have nothing to worry about.
BY THE COURT:
Would you ... would you wait until ... look, would you
... I don't find this funny. You may but I don't.
BY THE ACCUSED:
Well the behavior of crown is strange, isn't it.
BY THE CROWN:
The accused is not entitled to make comments, My Lord.
BY THE ACCUSED:
Well, the behavior of crown ...
BY THE COURT:
Mr. Fabrikant, wait until the witness is finished
reading. Then ask your question.
BY THE ACCUSED:
Yes.
BY THE COURT:
OK, the witness has taken cognizance of the two (2) docu-
ments. What's the question.
BY THE ACCUSED:
OOK, what ... first of all, what is the second document?
Could you in your own words say what it is?
BY THE CROWN:
This is not proper, My Lord. He could bring a hundred ...
all the documents and ask the witness to ... to say what
it is.
BY THE COURT:
He could.
BY THE ACCUSED:
What is wrong ...
BY THE CROWN:
That's not the way to ...
BY THE ACCUSED:
What is wrong with that?
BY THE CROWN:
He should ask him: do you recognize your signature, did
you ever see that document before?
BY THE COURT:
He may ... he may have an entirely different purpose, Mr.
Lecours, in putting these documents in front of the wit-
ness. I don't know, I'm waiting for the question relating
to the documents.
BY THE ACCUSED:
I'm trying ..
BY THE CROWN:

It will be a long trial.

BY THE ACCUSED:

Well why don't crown try to ...

BY THE COURT:

Mr. Fabrikant, why don't you just put your question. The witness has looked at the two documents.

BY THE ACCUSED:

All right.

QCould you in your own words say in just in one sentence what it is?

BY THE CROWN:

The only person that can do that is Mr. Sankar or Mr. Osman, the people who wrote that document.

BY THE COURT:

The people who signed it.

BY THE ACCUSED:

QWell what is your understanding of the document? What is it?

BY THE CROWN:

This is improper, My Lord.

BY THE COURT:

Does the document have a title?

BY THE ACCUSED:

I think it does.

BY THE COURT:

Now what is the question you wish to ask him.

BY THE ACCUSED:

Well first of all, I would like ...

BY THE COURT:

Just ... just what is the question you wish to ask him in relation to these documents? What do you propose to ask?

BY THE ACCUSED:

Well question will come after that: how did they here identified (sic) what the documents are because there will be no understanding in mind of jury if I just ask the question without jury knowing what document I showed.

BY THE COURT:

Well the first document related to the merit award.

BY THE ACCUSED:

Yes.

BY THE COURT:

QFine. The second document relates to? What is it entitled?

AThe title is The Reasoned Report of Salary Progression Steps.

QFine.

A1989/1991.

BY THE ACCUSED:

QAnd in general, what it said?

BY THE COURT:

The document ... the document is filed. It's an exhibit.

BY THE CROWN:

But it doesn't relate to the witness at all, My Lord.

BY THE COURT:

And it doesn't emanate from the witness.

BY THE CROWN:

If we start that with all the witnesses, it's going to be a long trial.

BY THE ACCUSED:

What is such a panic that witness would say that I got

highest marks in the department. Why ...

BY THE CROWN:

Because ...

BY THE COURT:

Listen, because there's no need ...

BY THE ACCUSED:

... is the crown so concerned?

BY THE COURT:

There's no need for the witness to say it.

BY THE ACCUSED:

Well ...

BY THE COURT:

It's there, it's been filed. It's been filed by somebody else. It's been filed, I can't remember, either by consent or by Sankar or by someone who ...

BY THE CROWN:

And the witnesses that were ... that will be allowed to say it without any objection are the accused or Mr. Sankar or Mr. Osman or Mr. Lin or ...

BY THE COURT:

Yes.

BY THE CROWN:

But if we have ... I'm only concerned of working properly in this trial. If we do that with all the witnesses, we will sit here forever. That's the only ...

BY THE ACCUSED:

Well ...

BY THE CROWN:

We have nothing to hide. It's just ... let's not get sidetracked.

BY THE COURT:

If he wishes, I'm not ... I'm not going to permit him to interpret the document or anything else. He has the documents in front of him. I'm now asking for the last time put your question in relation to these documents and we'll see.

BY THE ACCUSED:

Well first of all, if crown is so concerned, it is arguing for about six (6) minutes by now with something which would have been finished at least four minutes ago if she (sic) didn't argue.

BY THE COURT:

Would you put your question in relation to those documents. The witness ...

BY THE ACCUSED:

Well I need the documents to be identified in terms of ...

BY THE COURT:

The ... the jury is not stupid. The jury has the numbers of the documents. Now put your question.

BY THE ACCUSED:

Well number ... number doesn't say anything.

BY THE COURT:

Put the question.

BY THE ACCUSED:

Well I want him to identify the documents, what is the content of the documents. That's my next question.

BY THE COURT:

He's not going to say what the content of the document is. He's not going to interpret the document. The document is there.

BY THE ACCUSED:

Why ... why he was allowed to say what the first document was about? Second he is not allowed? What? Why is this document any different?

BY THE COURT:

I'm .. I'm waiting for your question in relation to the document. Now put it.

BY THE ACCUSED:

Well the question ...

BY THE COURT:

Or don't put it, as you wish ...

BY THE ACCUSED:

The question will be after the document is identified.

BY THE COURT:

No, you will ask your question now. Ask your question.

BY THE ACCUSED:

Well I will not.

BY THE COURT:

All right. That's the end of this examination. Have you any questions to put?

BY THE CROWN:

I have no questions for Dr. Cheng, My Lord.

BY THE COURT:

Fine, thank you, Dr. Cheng. You're excused.

END OF THE TESTIMONY OF THIS WITNESS

BY THE COURT:

Your next witness?

BY THE ACCUSED:

Swamy.

BY AN UNIDENTIFIED VOICE:

Yes, Dr. Swamy, I told him to be here at eleven (11 h 00) so then ...

BY THE COURT:

Fine, so we'll adjourn for our morning break.

BY THE ACCUSED:

I saw it at ten thirty. (sic)

SUSPENSION OF THE HEARING

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ARE ALL PRESENT

SRIKANTA SWAMY

Professor - electrical engineering

April 7th 1935

SWORN

BY THE COURT:

Mr. Swamy, I wonder if you would put that microphone on

around your neck just so that I'm certain that what

you're saying is picked up and I wonder if you could

speak as loudly as you can so that we can all hear you.

AYes, Your Honor.

Thank you.

DIRECT EXAMINATION BY

MR. VALERY FABRIKANT - ACCUSED

REPRESENTING HIMSELF:

QCould you please state what is your criteria for being coauthor in a scientific paper?

AMy criteria is that it could take several terms. One is by giving ideas, statement of a problem, research problem or discussions at different levels and during the discussions, contributing and then to look at the result that have been obtained and to the best of your ability, to see that they are correct. So it could take several forms.

QWhat is necessary and sufficient to be a coauthor? For example, just to look into the result and to find out whether they are correct ...

ANo.

Q... does this make you a coauthor?

AParticipating in the discussion, that makes a person a coauthor of an article.

QWould you just answer the question please. Looking into the article and checking if it is correct, does this make you a coauthor?

AJust looking and whether the articles ... the results are correct or not will not make.

QWill not make. Now in discussion, suppose someone comes to you, just to consult in the field which you know, does this make you a coauthor?

AIt depends. If the discussion is involved and if the person who is the one who is writing the paper feels that the contribution made by me during the discussion warrants my name to be put as an author, yes. Nobody demands that I should be an author.

QThis is not my question. My question is what is your criteria in terms of discussion? What should be in that discussion which would justify you being a coauthor?

ADuring the discussions, things come up. It could be a step that perhaps one is stuck or an argument or an idea which might trigger in a very different direction. It could take several different forms.

QDid you see scientific articles in which at the end, an author says that I'm grateful to such and such and such for extremely useful discussions? Did you see that kind of articles?

AYes, I have seen.

QDo you find that this is proper way of dealing with discussions or all those names should be listed as coauthors?

AThat depends as I said on the amount of discussions and it is the person who is working on the problem, whether it is a student or a colleague who decides whether the contributions warrant the other person to be included as

an author or to thank the person, but if the person is being thanked feels there is a need, that his involvement was quite a bit and he's not being included as an author, then this other person could say that he should be an author, but otherwise normally, it is the person who is discussing with the other gentleman or the lady is the one who decides whether the other person should be an author or not.

QWhat about the person with who discussion is made, is this person supposed to make his professional judgment too?

AWell yes. If he felt that it was ... it did not warrant, he should say that he should not be included.

QAll right, now you are aware of two scientific articles which were published with your name listed as coauthor, are you?

AYes I am.

QAll right. Could you tell to the jury why you feel that your name is justified as coauthor to them?

AYou have come several times in my office with Dr. Reithman (sic) who is now a professor of the City University of New York to discuss what you were doing in connection with the two papers that I'm a coauthor of and that is the reason why my name is included. At no time did I demand that my name be included. It is you who included and you thought that my contributions might be ... under the discussions with you warranted my authorship and I did not object because I felt the same way as you did.

QAre you sure that we came to your office several times and not just once?

ANo, you came several times. That's what my memory tells me, during the summer of 1980 and the summer of 1981.

QNow during this so-called discussion, did you say a word?

AYes I did. I ... I looked at what you were doing and I suggested that one could go this way or that route.

QAll right.

AAnd in the second paper, if I correct ... if I remember, I said that instead of looking at spherical cap, simply one particular kind of surface, that you can look at general surface.

QAll right, so it was your idea after all, right?

AI did not say that. I said you could ... you could look at the general surface. Maybe it was already in your mind too.

QBut it was your idea to look at the general surface?

AAnybody who has read calculus would know that (inaudible) coordinates can be used to solve problems and not spherical coordinates alone to solve a spherical cap problem, depending upon the geometry, depending upon the symmetry, one could use different sets of (inaudible) coordinates and spherical coordinates are one such set of coordinates.

QAll right, so maybe you can shortly describe what was the main problem of moving from spherical cap to a general surface?

ASorry, I didn't get the question.

BY THE CROWN:

It could be very interesting, My Lord but why are we into a scientific discussion.

BY THE ACCUSED:

What is ... as soon as witness is in difficulty, the crown is right here.

I'm asking him question what was the main difficulty and the reason I'm asking this question is because his response will be analyzed by the expert who will come ...

BY THE CROWN:

You ruled about that.

BY THE ACCUSED:

... and give his opinion as to how valid his response is, whether his response is scientifically sound, whether his response is response of a person who understands what he's talking about or whether his response is somewhat different.

BY THE CROWN:

We run into the same discussion with different collaborators, My Lord and I think, well many people could not follow and you already ruled about the experts coming to give an opinion on the merits of scientific papers. We're here for a murder that occurred on August 24th 1992, My Lord.

BY MAITRE MICHEL OUELLETTE

ATTORNEY FOR THE DEFENCE:

If we're talking pertinence, (inaud.) a thing that Mr. Fabrikant is going to show right now that at one point in time, Concordia was appropriating somebody's work for their own personal benefit and that this conduct could affect his state of mind at the moment of the crime. I guess that this line of questioning could be definitely relevant and pertinent to the case at the moment of the crime.

The only thing that could be done or told ... to tell to Mr. Fabrikant right now is to rephrase the question in order to respect that intention that he's having right now.

BY THE COURT:

I'm sorry, but I have some difficulty seeing it in the manner in which you do. Up until now, when these questions have come up, Mr. Fabrikant has put it that he is attempting to show that coauthorship of his papers was in quotation marks "extorted" from him and that he was forced to include as coauthor people like and Dr. Swamy's name has been ... has been mentioned.

Now I have said and I have ruled that insofar as the question of coauthorship and coercion may be pertinent to his defence and I entertained doubts as to the pertinence of that, but when in doubt, I have ... I have attempted to permit the evidence, confident of the fact that if I have to tell the jury later on that you will have to ignore that evidence, then they will.

I have taken the view, rightly or wrongly, but I have taken the view and I think rightly that the question stands to be determined on the testimony of the witnesses who participated in these papers.

This whole trial is not going to be permitted to deteriorate into a scientific slinging fest of who did what when and I did that, you did the next thing. The witnesses will testify as to their role and that is that and insofar as it may be a factor that the jury will have to consider, because one thing is for sure, the jury will not as such have to consider who wrote what paper when or who did sixty-five percent of the work or eighty percent of

the work or whatever.
In that context, I have also taken the position that I'm not going to entertain the hearing of an expert who is someone analogous if you like to ... to a truth expert who is going to come and say: I'm a mathematician and I'm ... I'm a well-known mathematician or an engineer or whatever and I've looked at this and I've read Fabrikant's books and by gosh, eighty-five percent of that paper divulges from some differential equations on page 68A of volume 1 of Fabrikant's two books. Therefore I come to the conclusion that eighty-five percent of this paper was ... was done by Fabrikant, that it's essentially his work and necessarily the conclusion is that when Swamy said he collaborated, Swamy is a liar.
I'm not going to permit that, so if that is the purpose as I understand it of bringing the expert, no dice. He won't be heard.

In that context, we are getting into ... I'm mean, what we are doing and I've said it before, you weren't here but I've said it before, what we are doing is seeing witnesses set up as either straw men or clay pigeons or call it what you like and then somebody else is brought along to ... to knock him down or ... or to put him out of commission and that's not how a trial runs and that's ... at least, that's not how this trial is going to run and that's that.

So where we've gone now is we have ... we have gone into that. Mr. Fabrikant's declared his colors in a sense and it's perfectly obvious that what he's doing is preparing the way to set the witness up and to try to bring some other witness to shoot him down and that's the purpose of the last question.

We've trespassed into a technical field that quite frankly I don't pretend to know anything about and I don't need to know anything about, nor does the jury so the objection to the last question is maintained. I have gone on, excuse me, at length so as to ... to permit you, Ma tre Ouellette, to ... to appreciate a problem that's arisen before today and which I've had to deal with before today and I'm dealing with it in exactly the same manner as I've dealt with it before.

BY MAITRE OUELLETTE:

Shall I understand that the ruling is about the possible coming to the stand of an expert, saying that this will not be permitted, this was ruled or is that ruling saying that Mr. Fabrikant is not allowed to exploit the possible participation of the witness into some kind of a scheme to deprive him of his work?

BY THE COURT:

Mr. Fabrikant has not talked about being deprived of his work as such thus far, to answer the last part of your question first.

To answer now the first part of your question, it is very difficult for me, knowing what I know or more particularly not knowing precisely what is being presented to make a general rule that an expert won't be heard, because an expert is a witness like any other, but what I will not permit is an expert to come and testify along the lines that I've previously said. That's as far as I wish to go with the ruling as such.

BY THE CROWN:

There is a precedent, My Lord, Mr. Cachano. (sic)

BY THE COURT:

Mr. Cachano is an example because when Mr. Cachano was called, Mr. Fabrikant detailed what he proposed to ... to accomplish through Mr. Cachano and I ruled on that and you can find that ruling on the tape.

BY THE ACCUSED:

Since Maître Ouellette wasn't here, maybe I will add a little bit.

BY THE COURT:

No, you won't add a little bit.

BY THE ACCUSED:

Well ...

BY MAITRE OUELLETTE:

May I talk to Mr. Fabrikant a moment?

BY THE COURT:

Certainly, certainly.

BY THE ACCUSED:

QWould you be specific into what your contribution was to the first paper?

A I don't recall everything that you discussed but one of the things that I do remember is the integration of differential sine, the differentiation under integral sine, that formula and we were doing it together. That's all I remember on that particular paper.

QIntegration on differential sine?

A No, differentiation under integral sine.

QOK, could you show this place and what you did? This is the paper, take a look and describe how we did it together?

A It is regarding questions 24 and 25. It's been quite some time since I looked at this paper, however I do remember that it's a question of differentiation by parts and then applying the rule for the derivative of an integral with ... with what might be a variable. In this case it was variable. It comes from the fundamental theorem of calculus.

QSo you said it is differentiation by parts?

A Plus differentiation by parts. I didn't say differentiation, integration by parts. If I said differentiation I'm wrong. Integration by parts, integral of $U \cdot BV$, $V - \text{integral } VBU$ (sic) and then substituting the limits and then taking the ... the second integral VBU would be again an integral with the variable on one of the limits ... one of upper ... in fact it's an upper limit, upper limit.

QAll right.

A And therefore in differentiating that using the fundamental theorem of calculus.

QAll right. This is what you did and I couldn't do that, right?

A I didn't say you couldn't do it. When ... I have written a number of papers. When I discuss with students and with my colleagues, I never go under the impression they don't know. They are as good as I am, sometimes even better and that is ... and perhaps they learn something from me. That's why they want to work with me and I contribute what I know and my colleagues have come on their own, with their own scholarships to work with me because they think that they learn something from me and I certainly

have learned from them.
So I'm not trying to say that you couldn't have done that but this is what we did in my office and Dr. Reithman was also present.
QOK, so we sat together and I asked you how to do the differentiation. Please go into detail, how it was? I asked you ...
BY THE CROWN:
I think that's as far as we should go, My Lord.

BY THE COURT:
No, I'm not going to permit you to go into details, Mr. Fabrikant. I have said to you that you're trespassing now into highly technical questions of mathematics and we're not ...

BY THE ACCUSED:
Absolutely not. I just asked him for particulars. We sat together.

BY THE COURT:
No, he's given you ...

BY THE ACCUSED:
I was writing, he was writing, that kind of stuff.

BY THE CROWN:
He's got his answer, My Lord.

BY THE COURT:
You've got your answer.

BY THE CROWN:
That's specific enough.

BY THE COURT:
He told you ... he told you what he did. Now ...

BY THE ACCUSED:
Well I just ask who was writing, who was dictating, what's wrong with that.

BY THE COURT:
We have gone as far as we're going to go into that. You asked him his contribution. He's told you his contribution. Now move on. You're not obliged to agree with it. You... but he's told you. You ask him and there you are.

BY MAITRE OUELLETTE:
May I have thirty seconds?
With your permission again, I think what Mr. Fabrikant is trying to do is not to go on the technical merits of the paper but the actual physical participation in these meetings that the witness... that he had with Mr. Osman and Mr. Fabrikant.

(PORTION MISSING ON RECORDING)

BY MAITRE OUELLETTE:
... and that type of question. I don't believe that Mr. Fabrikant wishes to keep on arguing on the merits of the paper. I think your ruling was very clear on that.

BY THE COURT:
OK, for the minute, he may go, provided that he follows the route that you have ... that you have detailed.

BY THE ACCUSED:
QOK, so describe please in detail how it was? I asked you that I don't know what to do here, would you please help me or what? Please in some details, how did it come out that this is what we did together?

AMY Lord, this is around 1980 or 1981 somewhere. I cannot

recall twelve years ago everything that we did and how much time we met each time and I don't remember how much time I met with my students just last summer. I mean, they come to my office. My office is open and they come to my office and they discuss with me when they find time and when I find time.

Now I remember this one particular thing because before that, equation 23, it had ... up to that, it had been derived and it could be simplified by using integration by parts and that I remember, it was in ... in my office, but as to how much time we ... we discussed and then how many times we met on this particular thing, I can't really recall.

BY THE CROWN:

And My Lord, do we really care?

BY THE ACCUSED:

That was ...

BY THE CROWN:

I think we heard that Mr. Fabrikant has more than sixty (60) papers and some of them or some work took months or years with many meetings or many sessions. Who was sitting, who where and what was said at that meeting, which date, do we really care, My Lord?

BY THE COURT:

No, he has ... he has Mr. Swamy's answer.

BY THE ACCUSED:

Well that was not my question. I didn't ask him how much time we spent. You just don't listen to my question. My question was quite different.

BY THE COURT:

Your lawyer ... your lawyer pointed out that you were going to ask him questions on timing, on participation.

BY THE ACCUSED:

Yes and that was my question. How did it come? I asked him to help me with this formula? He noticed himself and said something? Did he write? Did I write? These details, this is what ...

BY THE COURT:

Well he's told you that the details, after ten (10) twelve (12) years, he can't recall.

BY THE ACCUSED:

Well he can recall ...

BY THE COURT:

But he can recall and he knows and he referred to one ... one part of the paper and he said "Now this causes me to recall that I worked on equations 24 and 25" and he's given you the nature of his participation.

BY THE ACCUSED:

Well this is what I'm asking. How we worked? I was sitting together (sic), he worked himself and then came to me and showed it to me? How was it? I'm just asking details.

BY THE CROWN:

We don't care, My Lord and moreover, we're talking to two people at the same time, My Lord. I think the accused should be quiet and his lawyer ...

BY THE ACCUSED:

Well there are certain details which Maître Ouellette doesn't yet know.

BY THE COURT:

Well I know, but if ... if we are going ... if you're going to argue objections ...

BY THE ACCUSED:

All right.

BY THE COURT:

... then you're going to have to argue the objections.

BY THE ACCUSED:

All right, I'm prepared then to do it in this way, in indirect way. If crown insists, that's fine with me.

BY THE COURT:

But I thought that what Ma tre Ouellette had said, I thought that what Ma tre Ouellette had said to me was a course of action which you were going to be able to go to, get through and pass on from.

BY THE CROWN:

In my viewpoint, My Lord, it don't ... I hardly see the relevance of this line.

BY THE COURT:

And ...

BY MAITRE OUELLETTE:

Very briefly.

BY THE COURT:

You heard what the crown prosecutor said?

BY MAITRE OUELLETTE:

Yes I have.

BY THE COURT:

OK.

BY MAITRE OUELLETTE:

So I'm coming back to my last intervention where I told the Court what Mr. Fabrikant was trying to do.

Now what is going on, it's that the witness stated to the Court that he doesn't remember the details that Mr. Fabrikant is asking him and this was permitted by the Court. It's totally surprising that a witness could remember the merits or the technical parts that are very complex to me, he could remember this detail and he could not remember the actual physical details of the discussion, who was there, who did what.

So what Mr. Fabrikant is asking again is permission to rephrase his question in order to try to refresh the witness's memory.

BY THE COURT:

What I suspect is what Mr. Fabrikant is trying to do is what Mr. Fabrikant normally does, is cross-examine the witness first of all.

Secondly, yes, on the strength of your intervention, I ... I allowed the last question and I will permit him to rephrase his question but I'm not going to permit him to go very far because if as I suspect, what he's attempting to do is embark on cross-examination of the witness, I'm not going to permit it. Secondly the witness has already testified that Mr. Fabrikant included his name, he did not ask him to.

Now in ... in the light of that answer, that ... that answer is the witness's answer. In the light of that answer, keeping in mind the question of purpose, what is the purpose of this whole examination? I mean it's very interesting but I don't ... I don't know that it's going to advance anything.

It may be that other witnesses will say that ... that the

witness's affirmation is not true, I don't know but I can't see how it's going to help us getting into the technicalities of who did what in 1980 in Swamy's office. Mr. Fabrikant has a penchant for detail and the problem is and I interpret the objection in this sense, that if we continually keep going into these minute details which have no bearing on where we're going, we're going to be here for a very long time.

BY THE CROWN:

We're getting the story of all the meetings affecting him in his life, My Lord.

BY THE COURT:

And ...

BY THE CROWN:

That's what we're doing.

BY THE COURT:

Fine if he has ... if he wishes to rephrase his question, for the minute, he can rephrase it but I have ... I have grave doubts about this ... about this route that he's ... he's on at the moment and I wish on one occasion you would explain to him that because he's permitted a certain latitude in one question, it doesn't mean that I abdicate my right to change my mind when it becomes crystal clear to me that this isn't advancing us one bit.

BY MAITRE OUELLETTE:

In light of your last remark, would it be possible today, part of his argumentation is on a technical problem, in light of this, I would wish also to talk with Mr. Fabrikant to explain clearly what you are stating, in order for him to understand and hoping that will shorten the time of that trial.

BY THE COURT:

So let's see if we can push ahead a bit because I've explained it a hundred times before and I ... I don't think we need to adjourn at this point for you to explain that. If you really feel you do, then we will but ...

BY MAITRE OUELLETTE:

Well what I'm ... the only thing I want to do is at one point in time, before we stop, we may talk here and if we can have five, ten minutes and discuss things like this, when Mr. Fabrikant will stay in the box, I will talk to him.

BY THE COURT:

That causes a technical problem for the ... for the detention center.

BY MAITRE OUELLETTE:

I understand that but maybe we want to discuss that before twelve thirty (12 h 30), at one point.

BY THE COURT:

Well I don't know if you need to discuss it before twelve thirty but certainly between twelve thirty and ... and two fifteen, (14 h 15), you can arrange to meet Mr. Fabrikant at the ... at the parloir downstairs and ... and go over that with him but it's not the first time it's been explained, believe me.

BY MAITRE OUELLETTE:

Yes.

BY THE CROWN:

I think your rulings are very clear, My Lord and Mr. Fabrikant is an intelligent person. He should understand.

BY THE ACCUSED:

QSo is ... is my understanding correct that you remember that you participated in this particular equation but you have no recollection in terms of physical participation? Who was there, who do ... was doing what, who was writing, who was ... whatever, can you give any details of physical participation rather than technical?

ADr. Reithman was there in my office at the time the discussion took place and there was a table, a ... a round, an oval shape table to the left where my desk was and that's where we three were sitting and if you are sitting there, obviously we couldn't be sitting without a piece of paper.

As to who was writing, I don't remember but the three (3) of us were there. Then we discussed, I have discussed with over twenty-five (25) students who have worked with me for masters and Phd, I don't remember who was writing. We go on the blackboard, write something and somebody erases and writes something else. I can remember that, but Dr. Reithman was there when this was being discussed.

QDid Dr. Reithman contribute anything to this particular differentiation under the integral sine?

AHe was sitting there, I can't really say who contributed what. This is what I suggested, between the 23, that one could simplify that and that's when this thing ... I ... I did not derive everything right there. I said it can be done by integration by parts and then using the fundamental theorem of calculus and I asked you what exactly was the contribution of Dr. Reithman, you should ask him because he was ... had been dealing with you much more than I was and in fact, it was you who introduced ... it was he who introduced you to me by bringing you to my office. Otherwise I didn't even know you. You were not my student, you were not my post-doctorate fellow. It was Dr. Reithman who brought you to my office to say that there are certain things that we could work and he ... that you expressed that we could work together.

QAll right.

AOtherwise, this area is not my main area of research. I'm in the area of circuits and (inaud.) processing but I have a degree in mathematics and because of my mathematical background, I'm understand you told him and it was he who brought you to my office.

QAll right. How did it come to this particular question if you remember? What, I asked you that I'm having difficulty there or what? Could you give a little bit detail to that? How did it come to that particular question?

AI don't recall all the details. I ... if I remember correctly, what I remember that you showed things that you had done up to about 22 or 23 and then you said, well you know, this is the certain results that I have and Dr. Reithman told me that we could discuss these things together and that's why I come here and I don't remember if it was the same meeting or it was the next time, again when I looked at that equation, that I said maybe we can do it by integration of parts. I can't recall all the things that took place eleven (11) twelve (12) years ago.

QOK and that's ... that was all your contribution to this particular paper?

AThat was my main contribution. I was also looking at what

you had done to see that ... whether the things were correct, to my best of my ability. Otherwise using this would have been no ... no consequence if the previous things were not correct.

QOK, so you probably looked at the manuscript and made some corrections there too, did you?

AThe final manuscript, I did not. You had brought something to my office in the beginning, up to that ... it was not quite 22 or 23, but up to that equation and that's when you asked me to have a look at what you were doing and in fact, the purpose of that thing was that Reithman, he brought you to tell that there were certain theoretical problems that we were working on, myself and Dr. Reithman on second time singularities in two variable complex functions and that because of your mathematical background, you could contribute there too.

However, it all stopped when Dr. Reithman's name was omitted from the second paper after having sent the paper for publication. That was the time when everything stopped and in fact, you were telling Dr. Reithman that the things that you were ... that he was working on, on two (2) variables things, where you were asked to solve first from zero (inaud.), you wanted to publish and Dr. Reithman said "No, those are trivial business" because that was our field and that we knew what was ... what was trivial and what was not trivial.

QAll right. Do you know that differentiation under integral sine, one can find in any undergraduate textbook?

AYes, I do know. I used to teach calculus myself.

BY THE COURT:

Mr. Fabrikant, now we're arguing about technicalities.

BY THE ACCUSED:

One ... one second, I'm not arguing. I'm just asking if he knows that it is in every undergraduate book?

BY THE COURT:

Now ... I know, but you're ... you're crossing a line into ... into cross-examination of him on his participation. You called him, he's told you what his participation was on that paper, that's it.

BY THE ACCUSED:

All right, all right.

QSo I just want to ask you: if this stuff is in every undergraduate book, then why do you think that this part is ...

BY THE CROWN:

You just said he crossed the line, My Lord and he continues, he continues.

BY THE ACCUSED:

... sufficient to give you coauthorship?

BY THE CROWN:

I make a formal objection. He doesn't respect your ruling.

(DISCUSSION IN LOW VOICE)

BY THE ACCUSED:

OK, so you don't allow me to ask a question why since this is in every undergraduate book, why it merits his coauthorship? This question is not allowed, correct?

BY THE COURT:

I'm not going to have a discussion with you. You ... your

lawyer argued ...

BY THE ACCUSED:

No, do I understand you?

BY THE COURT:

Your lawyer argued the objection.

BY THE ACCUSED:

This question is not allowed? All right, all right.

QOK, could you ... could you describe what is the main (sic) achievement of this article in general? Could you explain it in a simple word?

AYes, it's the solution of an integral equation using the table operator (sic) which is given in any integral equation question book and the introduction of the end operator (sic) by you.

QSo OK, so what's ... what's such a big deal? What is the value of the article? This is what I'm asking you.

AWell in mathematics, we derive a lot of things, the value of which comes out much later and here is a closed form (sic) solution of a particular type of problem of the potential distribution being given, that charge distribution being found. This is in this problem of the charge being given and the potential distribution being found. It is a (inaud.) problem and there have been no... there were no closed form solution until then.

What you have done is to give closed form solution and you asked for some discussion with me on certain things. Just because certain things are given in a textbook does not make it automatically actual thing. In fact, that's the reason why we go to libraries to find out what is given in the books to be able to translate it at a particular, to recall at a particular time when we get stuck.

After all, the differentiation equations and integral equations are known. Then it's only how you apply it at a particular time, recalling some of those things and what to apply there is where the utilizing the material that is already known to contribute to new things, that is research.

Nobody remembers everything up here to derive everything right here. It is by looking at the reference books, by looking and being able to recapitulate what has already been done and to be able to (inaud.). Many times, you even contribute the same thing not new, that has already been done a hundred years ago perhaps by somebody which is written in the books already which we have not seen and somebody else points out that it is already being done.

So as far as I'm concerned, this (inaud.) is the closed form solution for the distribution of the charge, even the potential distribution in a closed form way and for simple way, you could ... you'll integrate. Because you have that form doesn't mean that you can always get for any general function, that itself (sic) and you might have to go to the tables to find out the values of those functions.

We talk about closed form solutions for vessel (sic) functions and all that, yes, the notation is very simple, GNRX (sic) but in order to find out what GNRX is, one has to go to the book of tables to find what GNRX is at that particular value of X. So it's closed form in the sense that the notation is there and the notation, the value of

that, one has to go and consult in the book of tables.

Yes, that is a good contribution.

QAll right, could you explain in the same lucid manner as you did before why mankind was not able to obtain closed form solution before and why I was able to do that?

BY THE COURT:

Dr. Swamy, don't bother. Listen, you embarked on this, presumably for the purpose of showing that you were affected because you were obliged to include Dr. Swamy as a coauthor.

The relative merits of that paper, the relative merits of your mathematical work may be very merited. I don't know and I'm not being rude when I say I don't care. It's not going to advance this case one bit and we're not going into that.

I wonder if you would care to ...

(DISCUSSION IN LOW VOICE)

BY THE COURT:

Maître Ouellette, perhaps before Mr. Fabrikant puts his next question, it's ... it's time to follow up.

BY MAITRE OUELLETTE:

Yes.

BY THE COURT:

In a certain direction on the suggestion you made just a little while ago. I have no way of knowing to what ... to what degree you're aware of what route Mr. Fabrikant proposes to cover with this witness but I'm inclined to think that it might be an idea that I adjourn to permit you to meet with him and go over that.

For your guidance, there were a whole series of areas which I did not permit Mr. Fabrikant to get into. For example, questions of private contracts, there were ... there were a whole series, private contracts, people's private companies, research, misuse of government grants, alleged misuse of government grants and what not.

I tell you, my orientation was simply and I've said it before this morning, what happened between Mr. Fabrikant and the dean, the administration, the chairman relating to his contract and to his treatment may be pertinent inasfar as it may have affected his mind as a general background to what actually occurred on the 24th, that I thought in the context of ... of the latest jurisprudence dealing with ... with the question of provocation which I ... I haven't been told is being pleaded, but I ... it was raised as a possibility, that I permitted Mr. Fabrikant to get into and as an adjunct of that, I concluded that the question of authorship, if indeed he was of the view that ... that coauthorships had been forced upon him or extorted from him, might be pertinent.

That is why I guess we're here but that is why you're seeing objections every time we get into the technicalities of appreciating what the contribution was because as I've said, we're not going to be here to appreciate the contribution.

One witness is going to say: you asked me if I contributed, here was my contribution. It's going to have to remain on the level of what the witnesses say rather than important to this technical assessment. Why? Because the whole case in the end shan't turn upon these technical

assessments.

If the case turned on the technical assessments, it might be different but it is but one factor and I have underlined to Mr. Fabrikant that these incidents in themselves don't constitute provocation. They may simply provide a background in which the argument of provocation may operate. I don't know, because I ... I have often felt that I ... I should say: well listen, come ... come to the main point first and then we'll see whether any of this has any pertinence at all because if the main point doesn't have an air of reality to it, we're ... we're all spinning our wheels here.

If ... if it does, then maybe we're not, I don't know but if you want ... if you want to know the climate in which I have permitted a number of these questions, that's ... that, believe me, is it. I'm not attempting to close the door on anything that is remotely relevant but my gosh, when we get into ...

BY THE CROWN:

The best example of an irrelevant matter is for instance the witness's publications with other people than Mr. Fabrikant.

BY THE COURT:

So maybe it would save time in the end if we adjourn now until two fifteen (14 h 15) to give you an opportunity to sit down with Mr. Fabrikant and see if you can assess with him where he's going in his examination of this witness and hopefully, eventually the other witnesses in order to try and see if we can get this ... this thing onto the rails.

You were the one that used the word expediting yesterday and there may be a way.

BY MAITRE OUELLETTE:

Again in the same dimension, could I do ... could I have that interview in the court, in here? Would it be possible?

BY THE COURT:

No, it's not.

BY MAITRE OUELLETTE:

Downstairs at that time, this is very technical, there is lunch, there is a lot of persons going in and out and I'm telling you, it is not quite easy to have ...

BY THE COURT:

Well if you ...

BY MAITRE OUELLETTE:

This is the type of problem that I'm going into.

BY THE COURT:

If what you require for today is an order that ... that you ... that you see him downstairs at the parloir for the lawyers, I'm prepared to make that order. I'm not prepared to say that you may see him in the courtroom, because I do not like anymore than I have to to interfere with the regulations of the ... of the detention.

BY MAITRE OUELLETTE:

Would it be possible for detention to bring him straight to that parlor? I'll get there straight.

BY THE COURT:

I would think so. OK, est-ce qu'il y a ... il n'y a aucune raison pourquoi vous ne pouvez pas reconduire Monsieur Fabrikant directement au parloir selon une

ordonnance que j',mettrai.
PAR UNE VOIX NON IDENTIFIEE:
Il y a pas de problŠmes.
PAR LA COUR:
Aucun problŠme, trŠs bien.
BY MAITRE OUELLETTE:
And I'll be there.
BY THE COURT:
OK, so if you would make that order, Madame Desrosiers.
So we'll adjourn until two fifteen, ladies and gentlemen.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ARE ALL PRESENT

SRIKANTA SWAMY
(Under the same oath)

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BY MAITRE OUELLETTE:

I was talking to Dr. Fabrikant at noon regarding your last objection of this morning.

What I understand from Dr. Fabrikant is that since proof of misappropriation of intellectual rights by Concordia could be a fact that could affect his state of mind at the time of the crime, Mr. Fabrikant needs to prove that such misappropriation happened and since this alleged misappropriation is a very subtle practice that was prevailing at Concordia, to him, the only way to demonstrate that would be to go directly to the papers and demonstrate the authorship of each document in order to establish the general practice that could have prevailed at Concordia before the events.

So in that way of thinking, this is why Mr. Fabrikant wants to elaborate on the participation of witnesses to papers that he could have written.

As regards to the way that he's asking questions, that could be interpreted as leading or inappropriate, I think that Dr. Fabrikant agrees with the point that the questions should be put more directly to the witnesses and I guess that the last question of this morning, that he was preparing himself to ask, is if the witness had any participation as coauthor in the document that was shown, so having this on ... in mind, with the ruling that misappropriation or extortion or so-called extortion could be pertinent in the perception of Mr. Fabrikant at that time and his state of mind at the moment of the crime, this is what Mr. Fabrikant wishes to do, since nobody will admittedly open (sic) that was such a policy of participation of the different witnesses to authorship, even if they were not in fact coauthors.

BY THE CROWN:

I was under the impression he was supposed to explain to the accused that he should respect your rulings, My Lord, not to argue again. He reopens the argumentation. You already ruled on all these subjects, My Lord.

BY MAITRE OUELLETTE:

What I definitely explained to Mr. Fabrikant was the sense of your ruling and basically I reexplained exactly what was told this morning, irrelevancy, pertinence, the extent of your ruling on the admissibility of such events that could have affected his state of mind.

What I'm telling the Court now is that in the point of view of the accused, since it's not obvious that he could bring forward evidence of the general practice that was not totally directed against him but it was a general practice, a policy of Concordia that one perceived and this perception affected his state of mind.

Nobody will come out openly here. Evidently if somebody from Concordia was to come here and say: listen, this is the way it is working, this is an unwritten rule where we do this and this and this, the same as a policy in a big corporation, where we have no written rule. If somebody was a witness and would come forward and say just that, I think it is obvious at that point that Mr. Fabrikant will not have to call so many witnesses to try to extract that statement from the witnesses and I'm definitely convinced that what he's aiming at, to do whatever he can to

show that the actual policies and practices at Concordia were such that there was always some policy on coauthorship or ownership in that faculty and from there, that he perceived that as a fact that affected his state of mind. So basically the position of the Court was clearly indicated to Dr. Fabrikant, but I can also understand where he's coming from.

BY THE COURT:

So can I, so can I.

BY THE CROWN:

Obviously My Lord, he doesn't agree with you but you ... you settled the matter many times. This is not a new discussion for all of us.

BY THE COURT:

He'd like to speak to you I think.

BY MAITRE OUELLETTE:

Yes, the only thing to add to this is that we totally agree with the Court on the fact of the difference, that the so-called extortion could be a factor that influenced and that could be relevant to this so I'm not in any way reopening that debate.

BY THE COURT:

Like anything else, it's ... it's a question of trying to put some sort of reasonable limit on the debate in order to keep it within the bounds of reason. I and the crown prosecutor have certainly not agreed on the point of whether the question of authorship of papers was pertinent. I've taken the position right through that if Mr. Fabrikant could relate that to his state of mind, then I was perfectly prepared to hear the evidence and wait and see what evidence was made later on that would be necessarily required in order to complete that phase of the portrait. In that context, authorship of papers and extortion of papers is something that should be heard about.

Mr. Fabrikant however has a penchant for attempting to demonstrate with mathematical accuracy every proposition since Isaac Newton that finds its way into these papers and I should have perhaps said from Ptolomy and it quickly leads to a situation where no one either comprehends or needs to comprehend what we're hearing about. As a concrete example from this morning and I think you hit the nail on the head a minute ago when you said that Mr. Fabrikant perceived this to be.

Mr. Fabrikant, in his arguments, has ... hasn't drawn the distinction between perceive this to be and the probative force of showing this to be and as candidly said, I'll be in a much stronger position if I can show it to be.

If it were simply perceive this to be, then the only thing that's relevant is what Mr. Fabrikant's perception is.

I have bought to a certain degree Mr. Fabrikant's argument that he's be in a stronger position if he can show this to be, that's why I permit the line of questioning. Otherwise there would be no need for me to permit the line of questioning. He could ... he could simply make proof of his perception, but I've always had to say to myself: what are you trying to decide here? Are you trying to ... is this ... is this a civil suit, based on collecting an amount of money for extortion of papers? We all know the answer to that, because if it was, it may be that the quantification of what Dr. Swamy, what Dr. Fa-

brikant did or what somebody else did would be important, but at the end of the day, the only relevance that all of this may have would be to the question of state of mind. Now we've reached that, some twelve (12) years. I again agreed with Mr. Fabrikant that you don't draw an arbitrary line between 1989 or 1987 or 1982. You perhaps don't draw an arbitrary line but at least you draw a practical line because in 1980, in 1981, in 1982, in 1985, in 1987, Mr. Fabrikant stayed there. He ... he lived this situation.

So when I balance the probative force of this proof, taking it for what it is, as simply one factor because there were other factors that affected Mr. Fabrikant's mind, the question of the renewal of his contract, the question of how he perceived himself to be treated, the question of what happened to him at the senate, the question of what happened to him outside Osman's office, the question of the reasoned report, the question of the investigation launched by Sheinin, the question of Sheinin's meeting, all of these right up to the gun permit, he has put forward as ... as elements that have to be taken into account when one examines the 24th, of which I have heard nothing at this point in time.

So my position, fine, as this goes on and on and on and runs into the seventieth witness, I say to myself, what is ... where can, from a practical point of view, can the lines be drawn.

Now where from a practical point of view and where from a legal point of view, because it's ... you know, you can argue I suppose that everything and I'm perhaps borrowing an argument from Maître Lecours, but you can argue that anything that's happened to you from ... from arrival in this bail of tears is ... is pertinent to your state of mind and I have to try to look at what is going to be helpful to the jury and obviously fair to Mr. Fabrikant and unfortunately I have to draw some lines.

I've told him I'm the one that draws the lines. He doesn't like that but ... but nevertheless, that's ... that's the way it has to be.

Now, I've gone as far as to say fine, I suppose he may lead evidence as to the authorship of papers. He can certainly ask questions to Mr. Swamy about the authorship of papers insofar as Mr. Swamy and he may have been implicated or insofar as Mr. Swamy may have direct knowledge evolving from his function as dean if that is so, but it is of so limited probative value to the defence of provocation, putting it in its best light, Maître Ouellette, putting it in its best light, presuming everything is eventually connected up, that when we get into a scientific sling fest, as to who thought about E vs MC or whatever it is, then we're not ... we're not advancing very far and that's where I've drawn the line and that's why I can't agree that the question of authorship of papers is so so important that we have to embark on that sort of minuti that Mr. Fabrikant loves but which drives crown counsel to distraction and me sometimes too.

So I say no. When we get to that point, it's a question of backing off and leaving it for argument. The jury is there in the end to assess what Mr. Swamy says and what anybody else that testifies and they will be instructed that they assess it, not from the context of a civil suit

where they are going to award damages at the end of the day but rather whether a fact did play in his mind and all that this would strengthen is outhit to have played in his mind and I've allowed that because of the outhit to have played in his mind because if we get the provocation, the yardstick by which it will be measured will be the effect on the reasonable man.

Now I ... honestly I think I have been as ... you know, I've been as accommodating as I ... as I possibly can be and still keep this within the ... within the confines of a murder trial but that's why I cannot permit a ... a science fest on ... on formula or anything else and on the second point, if the questions can be put more directly and the answer is just accepted and go on to the next thing there.

As I said earlier and I ... you know, I'm sorry if I'm repeating myself in a sense, but I'm not repeating myself for you. You haven't heard me say this before. There are so many factors that he wishes to invoke which may be valid enough, but he's been allowed to touch each and every one of them.

Now what I said I wouldn't get into is the question of university fraud or working among a gang of thieves or in a den of thieves or a den of bandits or whatever he wishes to call everybody, no, because in the end, the whole thing has to have some air of reality and ... and you have to remember in what context the defence is presented.

For ... yes, it could be so that one's mind is affected by appropriation of papers if that ... if that happened but one also has to remember that the law provides other remedies and in fact, over the years, Mr. Fabrikant for a number of things at the university, had recourse to many of these remedies.

So that being the case, all I'm trying to do and all I'm saying is let's not get just one facet blown out of proportion to such an extent that we have to ... we have to dig at it and get it under the microscope and examine it to the end of degree because then it never ... it never ends. Somewhere I, as the traffic cop, have to say no, move on.

So no, I'm not going to let get him into the question of authorship in minute detail. I will let him put the general questions that he put this morning.

BY MAITRE OUELLETTE:

So my understanding of that ruling is clear. I agree with you that you're the one drawing the lines, I totally agree with you and Dr. Fabrikant shall agree with that too, whether he likes it or not.

What we're saying right now is that authorship, like any other event, could be a contributing factor and we agree to say that this could have, each a different ... totalizing with the others, will be ... will have a cumulative effect so in that perspective, I think that I understand that you would allow Dr. Fabrikant to ask questions on authorship if we don't enter into any details?

BY THE COURT:

Yes.

BY MAITRE OUELLETTE:

If the question ...

BY THE COURT:

And within ... if you remain within reasonable limits.

BY MAITRE OUELLETTE:

Within reasonable limits, so if the question would have been asked: why were you the coauthor of that article, this would be a straight question put forward and that type of question will be allowed.

BY THE COURT:

I even allowed him to go further than that. Now it may be because often what Dr. Fabrikant does is fish and when you fish, if you catch a trout, that's fine but now and then he catches a shark and unfortunately when you go fishing, that's one of the risks you take.

BY MAITRE OUELLETTE:

Good. Thank you very much.

BY THE ACCUSED:

Well if I understand correct word, (sic) fishing means when someone goes and doesn't know what the real situation is then. In this case, I know the situation first hand. Therefore I'm not fishing at all. Here, I know perfectly what happened, when it happened, everything is known to me.

BY THE COURT:

Well look, your lawyer did the arguing so you do the questioning.

BY THE ACCUSED:

QYes. So on the strength of what was said before the break, do you consider to be a coauthor of the first article namely Closed Form Solution to Electrostatic Potential Problem for Spherical Cap?

AYes, I answered it then and I repeat that, yes.

QOK. Now the second article, was it your idea to write the second article?

ANo, when we were discussing the first article, I simply mentioned that it's maybe possible to look at the general thing of not just spherical coordinates and spherical cap, that it would be maybe possible to look at a general surface of revolution. This, everybody knew exactly what the matters are going to be and what department outcome is going to be when there is not much research to be done.

What we do in the case of research is to look at the possibilities and see whether those possibilities work or not and if it works, yes, then we continue. If it doesn't work, we try to see what the alternate ... alternatives are and so even I said that when we're looking at the first problem, I said that if it were possible to look at general surface of revolutions, that was just an idea. It maybe couldn't have worked but obviously it has. That is the reason why there is an outcome namely a paper.

QSo what was the main problem of going to general surface of revolution?

AWhy? The general surface revolution was such that we could still express that in a particular form for which you had already defined the end operator in the previous paper so it had to be put in a particular format. That format was with respect to the distance between two (2) points in (inaud.) coordinates and that had to be expressed in a particular form so that the results of the first paper could be applied to the second paper.

QCould you a little bit be more specific? What exactly was needed there, that the results be applicable?

AI ... I think I already answered you that question. The spheric ... the (inaud.) coordinates could not have been X=F1FU1, Y=GU1, Z=WE1. (sic)
Then you would not have been able to rearrange the denominator of the integral in the format so that you could use the operator, the table operator and the end operator that you yourself had defined. So it had to be in a particular format. That's why you used the form something like function multiplied by sine and in another form, the same function multiplied by cosine and a third function for x, y and z so that you could take the distance between two (2) points, x, y, z and x1, y1, z1 (sic) and express that in a particular form.

There is something that I ... I have not looked for ten (10) years and even then, I can remember just the important aspects of that paper, because that one, it could not have been solved for any set of general ... general (inaud.) coordinates so you had to take a particular type of expressions for x, y and z.

QAll right and you're saying that you, before this testimony, you never looked into any of those papers, did you?

AWhich papers?

QBefore the testimony, before coming here, did you or didn't you look into those two (2) papers?

AYou mean these two papers specifically?

QYes?

AI have not looked into great depth or anything, but when we did talk about that into ... you're taking me to the civil court, I wanted to make sure I knew what the ... the details were because nobody remembers all the details of ... of one's contribution after a certain number of years. I've written a lot of papers with single authorship and I cannot recall what exactly there are contained in it. (sic) Otherwise we could all go to classrooms and talk about our own work without any notes, without any preparation and why did we prepare, because we have to recapitulate this, what we have done and when you move from one field to another, on one problem, one research problem to another, there are certain things which you retain, there are certain things which you do not retain because it's of not much ... not much consequence at that time.

BY THE COURT:

Just a second, a second. I ...

ASorry, My Lord.

I understand from the last five (5) minutes that if we could it ... if we could put it in one capsule answer, that you suggested the scope of the second paper, that was the question that was addressed to you and that was ...

APart of the scope.

Part of the scope, OK. Let's go back to that. He suggested the possible scope of the second paper.

BY THE ACCUSED:

No, you missed my ... my last question. My last question was very simple. Did he or didn't he look into the paper before coming here.

BY THE COURT:

Oh no, I have ... he heard your last ...

BY THE ACCUSED:

And all what was required, to say yes I did or no, I

didn't.

BY THE COURT:

No, he said ...

BY THE ACCUSED:

He said ...

AI said answer to that. (sic)

BY THE COURT:

He qualified his answer. He said "I didn't for this but I did for the civil ... for the civil matter."

BY THE ACCUSED:

QOK, so you looked at it what, several months ago? A year ago? How ... how would you estimate that?

ASpecifically the paper, somewhere around the last July, when I came back in July from India and that you had already filed the civil suit against me for the authorship of this paper, at that time, I did look into that. QSo and before coming here, you did not even look at that? AOOh, I mean I had a look at the paper, I mean it's not as if I don't look, I mean I knew very well you would be asking about this too, so I had a look at the paper. I'm not going to say that I didn't have but if you think that I started looking at details of each one of them, I have got a lot of other things to do and I have got a lot of other students with whom I'm discussing, I did not go and start rewriting the paper, if that's what you mean.

QWell I just asked if you looked at the paper before coming here? Before you said no, now you say yes, so did you or didn't you?

AI did in a little more depth at the time when you had the civil case.

QOK.

ARight now, I just had a look at the paper but I did not from the same point of view as I did last July and ... and beginning of August because I knew that you were ... you would be asking about the paper itself and as I said many times, it's not possible to recall everything that is written by oneself.

QAll right.

AUnless one looks into that.

QWhen you say just quoting one of the lines here in the article, what you did, you say that it is just a coincidence that you quoted exactly one of the lines on the first page when you said X of U, Z of U ...

BY THE CROWN:

My Lord, this is deteriorating.

BY THE COURT:

Yes, it is I'm afraid.

BY THE ACCUSED:

All right.

BY THE COURT:

You ... it was ... it was fine for a minute.

BY THE ACCUSED:

OK.

BY THE COURT:

And then it ...

BY THE ACCUSED:

QOK, now if you ... could you indicate what was the main result of this particular paper and what was your contribution to it?

AI think I answered the first part of it already by saying

that one of the things that I suggested when you were looking at the very first one was to look at the possibility of using general (inaud.) coordinates for generalizing the solutions that were there for the spherical cap. The second one, even though that was already in the very first paper, was to use the same set of equations, namely the ... the one, the derivative of the integral using the same results that I talked in the morning of integration by parts and then substitute ... and using the fundamental theorem of calculus, that the same thing could be done and in exactly the second paper, it's the generalizing of the first paper using general functions U and B, once it had been brought to the form where table operator and your L operator could be used.

QSo effectively, what you told me, those two phrases, "Use general coordinates and try to use the same apparatus, differentiation under the integral sign", those two (2) phrases which you said is your contribution, correct?

AYes, that's correct.

QAll right and ...

AExcept that again, when you ... you had come to my office with Reithman, I discussed also once or twice and we had a look at what you done in the general context. That was not giving ideas or anything, but just looking at what you had done.

QOK, so you looked through the paper too, did you?

ANot the whole paper, what you had ... it was what you had done. I mean you never showed me the final one which you sent to the journals. You sent the papers to the journals and not ... I did not send the paper to the journals.

QYou say that you've never seen the manuscript?

ANo, I did not receive the final copy of the manuscript from you after it was typed and sent.

QNo, I mean handwritten?

AThat's the time I told already that you brought ... come once or twice to my office and we discussed it. That was some preliminary work that you had done.

QDid you or didn't you see this?

ANo, I don't remember that I have seen this at all. What I've seen was scribbles of different steps, not the fully written paper.

QSo you've never seen that?

ANo.

QAll right. What was ... you mentioned that ...

AMay I say something, My Lord?

BY THE COURT:

No, just answer the questions, Mr. Swamy.

AOK.

BY THE ACCUSED:

No, if he wants to finish his answer, let him finish.

BY THE COURT:

Well I'm attempting to prevent any sort of statement by the witness that will cause a problem unless he's answering your question. Now if he hasn't finished his answer to the question, you're perfectly right.

BY THE ACCUSED:

Don't you worry. This time I'm not fishing and this is not a shark so...

BY THE COURT:

Just if you ...

BY THE ACCUSED:

Let him say whatever he chooses.

BY THE COURT:

If you feel that ... that this, what he's about to say is finishing your answer, then ... then he can say it.

BY THE ACCUSED:

Sure.

BY THE COURT:

QAre you ... is this finishing the answer you already gave or what you want to say?

ANo, it's just that ...

QWell no, OK. If it's not finishing the answer, don't say it.

BY THE ACCUSED:

All right.

QSo are you saying that in addition to these two (2) phrases which you find so important, that it warrants you to be a coauthor there, did you do anything else?

AFirst of all I didn't call them as phrases.

QOK.

ABecause when somebody suggests something as a possible avenue to look into a new research problem, that, I wouldn't call it a phrase and if everything one does, one solves then one doesn't have to discuss with anybody else. When I discuss with my students or my post (inaud.) I don't go and work with every step for them. I ... sometimes it's just a possible idea. Sometimes they suggest an idea and we look at that and then we discuss one or the other and might be able to move a little bit further on the problem. So I wouldn't call that as a phrase.

If you're talking about if there was any other contribution from me with regard to the paper, the answer is no. There ... one was the possibility of ... of looking at general surface of revolutions with (inaud.) coordinates and the other one was to use exactly the same technique that had been used in the previous paper, of simplifying the integrals.

QAll right. So what is the main achievement in this particular work? How would you classify it?

AI think I already answered that. It's the generalization of the spherical cap to the general surface of revolution. In fact, this ... these functions that you have got there, which I talked about before, x , y , z , (inaud.), etc. by two double substitutions, one can get the spherical cap. In fact, you have used it as an example yourself.

QAll right, so is it now applicable to other surfaces of revolution due to this work?

AThere are certain conditions that are in the paper. If they are satisfied, they're applicable.

QOK. Would you name the surface which is now treatable by this new method?

AI really can't answer that question because as I said, it has been a long time. It has to satisfy certain functions, certain conditions for the context F and D . (sic)

QWell you looked at it one year ago and the question is very simple. I repeat it, maybe you don't get the question. So that first one was done for spherical cap. Now this is generalization of surface of revolution. Now for example, this part of what you're drinking from, it's surface of revolution, right? Cap is the surface of revo-

lution. Is it applicable to this surface?
AI have to look whether it satisfies the conditions or not. I know there's a ... it's a cone which is stuck up so it's a surface, there is a revolution or ...

BY THE CROWN:
I think we're too far, My Lord.

BY THE COURT:
We're ... you see, we've flipped it again.
BY THE ACCUSED:
All right, fine, fine.
BY THE COURT:
We've flipped it again.

BY THE ACCUSED:
QSo you cannot answer right away. Is my understanding correct?

BY THE COURT:
We ...
AWithout looking at the conditions, to see what other functions satisfy that...
But whether he can answer right away or whether he can't, we drifted off what you're trying to establish with the witness.

BY THE ACCUSED:
All right.
Q OK and what ... how would you classify the conditions which need to be satisfied? Could you explain what is the essential in these conditions?

BY THE CROWN:
My Lord, we're going into exams on these papers, My Lord.
BY THE COURT:
Yes. There's no ... there's no need to get into this side.

BY THE ACCUSED:
All right.
BY THE COURT:
Unless ... unless Mr. Ouellette can demonstrate why we wish to get into this.

BY THE ACCUSED:
Well if he wishes to answer, maybe he wishes to answer.

BY THE COURT:
No, but that's not why we're here, Mr. Fabrikant.

BY THE ACCUSED:
Fine.
BY THE CROWN:
Even if he wants to answer.

BY THE COURT:
This isn't a public forum for a scientific debate between you and Dr. Swamy.

BY THE ACCUSED:
All right, OK.
QNow do you recall talking to Prof. Cachano about those two (2) articles?
AYes, he called me two (2) weeks ago and talked to me over the phone and I said that I'm not an expert in this area, but I'm a mathematician and therefore ...and my first degree is in mathematics and that is the reason why Dr. Fabrikant was brought by Dr. Reithman to my office and that he could talk to Dr. Reithman if he ... in fact if he wanted to and that my contributions were of a

general nature which I have explained right now.

Q Did you ...

BY THE CROWN:

I've let the witness answer, My Lord but you already ruled that Mr. Cachano is irrelevant to this case.

BY THE ACCUSED:

I'm not talking about Mr. Cachano.

BY THE CROWN:

And any reference to Mr. Cachano.

BY THE COURT:

No, not any reference to Mr. Cachano.

BY THE ACCUSED:

I don't think that Mr. Cachano ...

BY THE COURT:

I ... ruled that what ...

BY THE ACCUSED:

... is so forbidden.

BY THE COURT:

I ruled that what Dr. Fabrikant wanted to ask Prof. Cachano was irrelevant to this case. Now that ... that this witness spoke to Prof. Cachano two (2) weeks ago ...

BY THE CROWN:

It's not more relevant.

BY THE COURT:

I don't know if it's ... if it's relevant at all but in any event.

BY THE CROWN:

Well I suggest to you that we already know it's not relevant. It was explained by the ... by the accused on the relevancy of the testimony of Dr. Cachano. It was discussions on the substance of the paper with Dr. Swamy, nothing else.

BY THE ACCUSED:

Well maybe I could add if you ...

BY THE COURT:

You put your ... he's put the question, the answer is there. He explained to Cachano his contribution.

BY THE CROWN:

OK, I let it go for one question.

BY THE COURT:

Fine.

BY THE CROWN:

Because I wanted to show that we don't ... we don't have anything to hide but that should be the end of it, not the discussion of the paper.

BY THE COURT:

No.

BY THE CROWN:

If we let discuss the paper between the accused and the witness ...

BY THE COURT:

No, not a discussion, OK.

BY THE CROWN:

... we have to discuss the paper between Dr. Swamy and Dr. Cachano.

BY THE COURT:

So the next question is what?

BY THE ACCUSED:

So my understanding is that I can ask those questions as

previous statement of the witness of which I'm aware and I can ask him whether he made such a statement.

BY THE CROWN:

No My Lord. It's his own witness and section 10 of the Canada Evidence Act says:

"On any trial, a witness may be cross-examined as to previous statement made by him in writing or reduced to writing."

(DISCUSSION IN LOW VOICE)

BY THE CROWN:

And section 11 which deals with cross-examination as to previous oral statements only applied to cross-examination, not to the witness you choose to bring yourself. So when you're in chief, you can ask questions on previous statements in writing or reduced to writing. When you're in cross-examination and the accused is not in cross-examination, that's the only time when you can cross-examine on a former statement, a previous oral statement.

BY THE ACCUSED:

Well I'm not trying to cross-examine him. I'm trying just to ask him if he made such a statement.

BY MAITRE OUELLETTE:

Well I don't really understand what was the question. I think the question ...

BY THE COURT:

The question hasn't been ... the last question was answered which was ... which was his discussion with Cachano.

BY MAITRE OUELLETTE:

Did you talk with Cachano?

BY THE COURT:

Yes.

BY MAITRE OUELLETTE:

And the objection that was raised right now is ...

BY THE COURT:

And he said "Yes, I explained my contribution".

BY MAITRE OUELLETTE:

... to me premature.

BY THE CROWN:

He explained the purpose. The purpose is to compare previous oral statements.

BY THE COURT:

Yes.

BY THE CROWN:

It's his own witness. If he doesn't like the previous oral statements, he just ... don't bring the witness in the box.

BY MAITRE OUELLETTE:

My understanding is if the Court decides that the next question you see that is coming is not permissible, at that point we have to determine exactly if this is permissible or not and this is your judgment.

BY THE COURT:

Well yes, but save and except that Dr. Fabrikant declared where he was proposing to go with that.

BY MAITRE OUELLETTE:

Yes.

BY THE COURT:

And having declared where he was proposing to go, it seems to me patently obvious that he can't go there, so there it is.

BY THE ACCUSED:

Well then it is patently obvious that we need Prof. Ca-chano here because according to the same act which Mr. Lecours quoted, each side is entitled to ...

BY THE COURT:

Look I'm not ... I'm not going to listen to argument from you.

BY THE ACCUSED:

... to bring other witnesses.

BY THE COURT:

Listen, I'm not going to listen to argument from you and from Maëtre Ouellette.

BY THE ACCUSED:

All right.

BY THE COURT:

Maëtre Ouellette, you told me, was going to present the arguments. He's presented the arguments, he's presented them clearly and lucidly.

BY THE ACCUSED:

Fine.

BY THE COURT:

You ... you're going to ask the questions so you ask the questions.

BY THE ACCUSED:

Fine.

QOK, what was to the best of your knowledge contribution of Reithman to those papers?

AWell I stated that in ... in the morning, with respect to the first paper, the answer is the same. He was present with me and with you. In fact, you never came alone. You always came with Dr. Reithman to my office with the further discussions.

As to whether he had more discussions with you outside, I really don't know. It's only something that you can ask Dr. Reithman but he was present during these discussions that we were having together.

QAll right and during those discussions, did he make any contributions to the best of your recollection?

AYes. I think he said something about the possibility of simplification and along the same lines that I mentioned. I mean, you know, I cannot recall something that ... ten years ago of what the discussions took place. I can only talk in general terms and all the three of us were sitting at that oval table.

QSo now you're saying that both of you have suggested to use general coordinates? Is that what you're saying?

ANo, I didn't say general coordinates. I talked about the differentiation of the integral sine. The surface of revolution are simply mentioned as ... as a possibility that one could look into and I didn't even know whether it was going to work.

QAll right and Reithman didn't do even that, right?

AI cannot answer that question. As to why ...

QWell during ... during the meeting at which you were present, what Reithman did or didn't do to the best of your

recollection?

AI think I have answered that question already, that he was present at the discussion and as to exactly what he said or not, I cannot recall.

QAll right. Do you recall why on the manuscript, how many authors are there?

AYes, there are four (4) and this morning I mentioned that, that in fact, Dr. Reithman's name was not there when the actual paper was printed. That was the time when I told Dr. Sankar that it was not very ethical to include Reithman's name in the first instance and then remove it because it was the same paper which you had also included for presentation with the same four (4) authors and it was because of that, there has been no more interaction with you regarding any research whatsoever. Otherwise, I already stated in the morning, there was a problem on two-dimensional second time singularities (sic) stability theory, that I and Dr. Reithman was (sic) looking, where we wanted to involve you.

That was my only project. I have started that somewhere around 1977 and we wanted to involve you. You were even asked by Dr. Reithman whether you could solve for the (inaudible) certain types of paranominal steps (sic) but after this happened, there was absolutely no contact with you whatsoever because I did not consider that to have been the rightful ... the right way of doing it.

If you felt in your opinion Dr. Reithman did not contribute enough, you did not and you should not have included his name and you did not show this paper when the paper was typed and afterwards, to have removed the name after having told that his name was there was what I call something that I could not accept and that was the reason why neither Dr. Reithman who introduced you to me nor I had any contacts with you whatsoever with any research from that day on.

QOK, how did Reithman explain to you why his name was removed? Did he?

AHe was ... he was not very pleased, that's all what I can say that his name was removed.

QWell did you ask him if I explained it to him why his name was removed? Did you ask him?

AI ... I did not ask him, except that he knew that ... he was quite annoyed that his name was removed and I ... I always thought and today, to date I've thought that you removed his name arbitrarily because you should not have included his name if you felt that he did not contribute enough.

QWell I should not have included your name either but I couldn't remove you, you were the dean.

AIt has nothing to do with deanship, it has nothing to do with deanship.

QNo, sorry.

BY THE COURT:

This is ... I'm sorry, this ...

BY THE ACCUSED:

Sorry, sorry, sorry.

BY THE COURT:

Yes.

BY THE ACCUSED:

Sorry. This time I'm saying sincerely sorry.

BY THE COURT:

Why don't you consider that you've covered the area of the papers.

BY THE ACCUSED:

Yes so ...

BY THE COURT:

And go on to something else and let's this go ahead in an orderly fashion.

BY THE ACCUSED:

QSo why didn't you ask Reithman to explain the reason?

AWhy should I ask him?

QMaybe there was valid reason.

BY THE COURT:

No, I said ... I said this has gone far enough and it doesn't matter.

BY THE ACCUSED:

QOK.

BY MAITRE OUELLETTE:

Could I talk to ...

BY THE COURT:

Certainly.

BY THE ACCUSED:

QNow you mentioned physical aspects of including or removing Reithman from the authorship list. Is there any rules or regulations at Concordia with respect to authorship or ethics, anything at all?

AThere are no rules and regulations. The rule ... the authorship is a question of trust, a question of mutual understanding between the different people who work together as members of a team. Now if the ... the people who are working together decide that the authorship consists of only these people because the contributions made by others is ... is not of warrant, the ... the name of the person to the authorship, that is decided together.

It is not done post priori. It is done a priori. It is done before the paper is sent.

At that time, if one doesn't feel that somebody should be an author, that is the time to discuss and say no, you should not be an author or he should not be an author because the contribution doesn't warrant that person, so we work on mutual trust, we work on mutual respect for the different people who work together.

Otherwise one cannot work as a ... as member to the group, one will be locking up oneself in one ... in one's own office and be working on a lonely basis. One would not even approach students if that is the way one operates.

QOK, now when you or somebody else higher, a post-doctoral fellow and you pay his salary from governmental grant, now who decides when contracts expires, whether to continue the contract or not?

AI can answer that question. The person who generates the grant by making an application to the agency who defines the research project and it is looked at by the peers to see whether the (inaud) record of the person who is applying is good enough, whether the project is sustainable, whether the project perhaps will yield results, by looking at that, the peers make a judgment as to whether that person should receive grants or not.

Once the grants are received, that professor is ... is at liberty, according to the regulations of the agency, to hire a post-doctorate fellow or a research student or

work with a colleague and have technicians for the practical type of work to do and to carry out the experiment of the project.

That is the reason why one is given, so that we can work as members of a team, so that we could tackle problems of interdisciplinary nature as well as use the talents of different people. Not all people have all the talents. Some will be very good in a mathematical side, some will be very good on the modeling side, some will be very good in the experimental side. Some will be very good in writing computer programs and the person who is looking at the overall thing, who has an overview of this is the supervisor or the person who is generating the project and who is generating the money and so he has to have an overview of the whole thing. He may not be able to do every part of the work. If he was able to do every part of the work, then he doesn't need a team of people to work on different aspects. One would be able to do the work all alone in one's own office.

Therefore yes, the person who brings the grant, if he is not satisfied with the work carried out by the post-doctorate fellow, one ... the supervisor can say "thank you very much" but with respect to the students, it's quite different.

There is a responsibility on the part of the supervisor. If he ... if he accepts a student and if he's ... passes the competent examination, to do much more of a close supervision, to make sure that the student is on the right track and finished the PhD thesis. With a post-doctorate fellow, one has to be ... one has to use one's only judgment because a post-doctorate fellow is not a student in the usual sense. He already has a doctorate degree so he already has gotten such experience so one should not be telling that post-doctorate fellow: do this, do that, etc. as if he is made to be ... look like a technician carrying out the orders of the supervisor. One gives a lot of latitude to a post-doctorate fellow so that one could follow during the post-doctorate fellowship to use one's own knowledge that already one possesses to be able to contribute, to be able to contribute to the thesis in a way that he ... that feels that he has been given independence that he really deserves as a post-doctorate fellow and that is exactly what it was and I have to tell that you were not my post-doctorate fellow at any time.

BY THE COURT:

Madame la greffière ...

AI did not pay from my grant any time and you were a post-doctorate fellow of Dr. Tom Sankar and the only reason why I have known you in this context of research was because Dr. Reithman brought you to my office and he has told you that I have a science background in mathematics because my first degree is also in mathematics. That was that and that was the only reason why.

You asked him to perhaps ... at the same time, you also felt that working with me on other projects might help you to get a job, because of the fact I had already published a lot of papers and I was in a position where I could write reference letters.

BY THE ACCUSED:

Would you believe that this is the answer to a very sim-

ple question: who decides whether to renew contract or not and all what I was required (sic) as an answer was that yes, this is the person who holds grants, he's the one who decides, that's all. Is it possible to direct the witness just to answer the question.

BY THE COURT:

Yes, it is possible.

BY THE ACCUSED:

SO I ...

BY THE COURT:

And I'll do it making the following observation. We would all be ... be fools if we didn't think that the tensions between the various people who were involved in this whole tragedy a year ago weren't very real and very much alive and I'm perfectly conscious of the fact that very often a question will trigger that sort of reply which covers a whole scale, a whole area of matters.

If you possibly can ...

AI'm sorry, My Lord.

... would you please just try to stick to the answer and we'll get through far faster.

BY THE ACCUSED:

All right.

BY THE COURT:

The question was answered in essence but ...

BY THE CROWN:

It was on the subject.

BY THE COURT:

Yes, he went ... he went on for a long ... for a long time, that's all.

BY THE ACCUSED:

This wasn't the (inaud.)

QSo since it is the grant holder who decides whether to extend contracts of post-doctoral fellow, does post-doctoral fellow have any recourse whatsoever if grant holder decides to say thank you, but no thank you?

AIf he has done good work and if he feels that the supervisor is not satisfied with the good work, than the person looks for a position elsewhere because if his relationship with the supervisor and the post-doctorate fellow is not correct, is not good, then there will be no research work that can come out.

As I told before, it is a question of mutual understanding, mutual trust between colleagues, between the students and the supervisor, the supervisor and the post-doctorate fellow and the grant holder. Without that, no research can be done.

QShould I understand that ... that post-doctorate fellow if his contract is not renewed has no recourse, is that the answer?

BY THE CROWN:

The answer is he could find a job elsewhere, My Lord.

BY THE COURT:

Yes.

BY THE CROWN:

If he's so good.

BY THE ACCUSED:

Well this was not my question. That would be the answer to the question if the person can look for job elsewhere.

BY THE COURT:

Well ...
BY THE ACCUSED:
My question was ...
BY THE COURT:
Then you're asking a legal...
BY THE ACCUSED:
... does he have any recourse?
BY THE COURT:
Then you're asking a legal question to the witness which
... which the witness isn't qualified to answer.
BY THE ACCUSED:
What?
BY THE COURT:
If ... if you're talking about a legal recourse and I
think that's what you're talking about ...
BY THE ACCUSED:
Well any recourse. OK, witness is dean. He's administra-
tor.
BY THE COURT:
Even though.
BY THE ACCUSED:
So any recourse inside university, he's qualified to
answer.
BY THE COURT:
Well then qualify that as your question.
BY THE ACCUSED:
I did qualify.
BY THE COURT:
Within the university context, no you didn't. You said
... you could have said within the university framework,
what is ... what is the recourse if any.
BY THE ACCUSED:
Well he didn't answer any of the questions. He just said
that he can look for job elsewhere. That was not my ques-
tion.
BY THE COURT:
Well the fact ... the fact that you didn't like the ans-
wer is no reason not to ask the question properly.
BY THE ACCUSED:
All right, I repeat it properly now.
QIf post-doctoral fellow's contract is not renewed, does
he have any recourse according to university rules and
regulations?
AI will answer that question. The post-doctorate fellow-
ship is not a permanent job. Post-doctorate fellowships
are given with the clear understanding that they are
employees under the B.50 policy of the university, that
is number 1 and secondly, that it will be maybe conti-
nued depending upon the progress of the post-doctorate
fellow and availability of funds. These are the two con-
ditions.
So at the end of the year, if the supervisor, even if
he's satisfied with the work, if he doesn't have enough
money, he might have to reluctantly let the post-docto-
rate fellow go, that's one.
Secondly, if the work is good ... is not good, not sa-
tisfactory, then the supervisor can very well clearly
state, because of the ... the thing that have been put in
the ... in the letter, saying that it's only an offer,
can say "I'm not satisfied, why don't you look for a job,
why don't you go somewhere else." That's a possibility.

The third one is if he has got the money and if he ... and the relation of work is good, if he doesn't want to hire, then he has ... to continue with the hiring, he has to give valid reasons as to why he doesn't want to ... to continue with that person, but these are not permanent jobs.

The post-doctorate fellowship is never meant to be a permanent job. This is supposed to be a kind of ... of opportunity for the post-doctorate to work with another professor so that during that period of time, one could look for a permanent position elsewhere or some industry or university and this is a training. It is a very common thing of ... of people who get the PhD's to work as post-doctorate fellows.

I had a lot of post-doctorate fellows who never stayed more than two (2) or maximum three (3) years. They all look for a job and most of them are doing exceedingly well in the positions that they hold right now.

QSo what is the answer? Does the person have any recourse? Suppose he didn't find job anywhere or he doesn't have recourse?

BY THE COURT:

He's answered ... he's answered the question.

BY THE ACCUSED:

Well the simple answer is no, there is no recourse. That's ... that's all that was required from the witness. AI didn't say that, My Lord, that there is no recourse. I answered, tried to answer that in three parts: one with respect to the funding, one with respect to the work not being satisfactory and ...

BY THE COURT:

And you ... and you said that if the funding is there ... AYes.

... and if the work is satisfactory and he still doesn't wish to renew, he must then give reasons.

AValid reasons, yes.

And that is ... that is the crux of where we're going.

BY THE ACCUSED:

QWell who he has ... who is the grant holder accountable to when he decides to renew or not to renew someone's contract? Is there anything in the university policy which says that grant holder should explain his actions? ANo, it is not written anywhere. I have worked at least in four (4) different institutions in Canada. I have not seen anywhere any such regulations, because as I've said, it has always been work ... this thing has been working on the mutual trust and respect that individuals have, the supervisor and the post-doctorate fellow, but the work is going on well, there is no reason and the money is there, there is no reason why the supervisor will not continue.

At the same time, I have a supervisor who did not want to reappoint post-doctorate fellows to be with me for more than two (2) or three (3) years because in the long run, that is not good for them to be with the same supervisor. That is not good for the mind. They should go and work elsewhere. Even as a post-doctorate fellow, if they're get a job with some other professor and I would advise them so.

BY THE ACCUSED:

He's clearly avoiding answering questions.

BY THE COURT:

No, I don't think so.

BY THE ACCUSED:

You don't think so, all right.

QSo in the case when supervisor is just not satisfied with the fact post-doctoral fellow doesn't include him as co-author and decides to terminate his contract, for this sole reason, does this post-doctoral fellow has any recourse?

AI think I answered that, I'll try to answer that again My Lord, that the research thing is not done in that (inaud.) this has been... is being done between two individuals, where two individuals are concerned.

BY THE COURT:

No, he's put you ... he's put you a very specific question.

BY THE CROWN:

That was a hypothetical question, My Lord.

BY THE COURT:

It was a hypothetical question, but he was at the time the dean.

BY THE CROWN:

Is ... there is no evidence of that in this case, My Lord.

BY THE ACCUSED:

There is no evidence of that?

BY THE CROWN:

There's Fabrikant testifying from the box all the time but that's the only point, My Lord. There is no evidence of that.

BY MAITRE OUELLETTE:

Well I think the question is quite clear which calls for a very straight answer. The witness is saying that at one point he was the dean. He's saying that there are rules. He's saying that there is relation of trust. He's talking about reasons why a person should be maintained and reasons why a person shall not be maintained.

The question, straightforward, is: suppose the first time he's not maintained, is there any recourse inside Concordia or any other person that he could appeal?

BY THE COURT:

No, the question has gone beyond that. Now the question is one step further and that was why I stopped Dr. Swamy because he wasn't answering the question and I'm going to let him answer the question.

The question was what recourse does the fellow have, a research fellow have, in the situation where the sole reason that the supervisor doesn't wish to renew is that the fellow has refused to include the supervisor as co-author of papers? That was your question.

AI didn't understand the question very clearly. I can answer that question, My Lord.

QOK, there is the question.

AOK, if that is the case, then the complaint has to be first of all lodged with the chair of the department. If no suitable answer comes to the dean or to the vice-rector and next to the rector, there may be no rules, however we all work on certain natural justice, if I might use the word, that if the person has done work and he is not ... his thing is not being continued only be-

cause he refused to include the supervisor's name on the paper, then it has to be looked into, whether there is two different statements or not, because just because Dr. Fabrikant has the hypothetical question that he doesn't put the name of the supervisor, therefore the contract is not renewed, it doesn't become automatically the truth because it would be quite conceivable that was the problem of the supervisor which he had gotten from the granting agency.

BY THE COURT:

Yes, I stop you there. All he asked you for the minute was: is there a mechanism and you said yes, there's is a mechanism. The chairman of department, then dean then vice-rector.

AThen rector.

QThen rector, so there's your answer.

BY THE ACCUSED:

QAll right, suppose post-doctoral fellow comes to the chair and ...

BY THE CROWN:

Hypothetical question, My Lord.

BY THE ACCUSED:

No, I'm ... I'm entitled to ask this question to explain to the jury.

BY THE CROWN:

Mr. Fabrikant is testifying from the box.

BY THE ACCUSED:

To explain to the jury the rules of the university.

I believe jury has a right to know what are the rules at the university.

BY THE CROWN:

Then the question should be: explain the rules of the university, not put hypothetical questions.

BY THE ACCUSED:

Well this is ...

BY THE CROWN:

This is our rule.

BY THE ACCUSED:

How else ...

BY THE COURT:

I think what he's trying to do, you'll correct me if I'm wrong, is you're trying to establish first of all what the rules area and then I presume, I presume that you are going to put specific questions to Dr. Swamy concerning what happened in your case.

BY THE ACCUSED:

Exactly.

BY THE COURT:

OK.

BY THE CROWN:

Why not to start about his own case, My Lord.

BY THE COURT:

It probably would be as well because Dr. Swamy can explain the framework of the rules in ... as he goes, but in any event, I'm not here to dictate to you how you're going to ask your questions so ...

BY THE ACCUSED:

So still ...

BY THE COURT:

So he's given you ... he's given you the ...

BY THE ACCUSED:

Yes.

BY THE COURT:

... the framework of the complaint. Now you're ...

BY THE ACCUSED:

Are you ...

BY THE COURT:

You weren't finished your next question before you were interrupted.

BY THE ACCUSED:

QSo when person comes to the chair and says that his supervisor doesn't want to continue his grant because he didn't include him as coauthor, now chairman calls the supervisor and tells him: do you do that? and supervisor says no, not at all. I don't need his articles. I just not (sic) satisfied with what he's doing. He has published yes, but I don't like this work and I do not wish to continue. Now what after that post-doctoral fellow can do?

BY THE CROWN:

This is not proper questioning.

BY THE COURT:

No, it is not, because here we're going to get into trouble.

BY THE CROWN:

What ... he told you the next step is ...

BY THE COURT:

The framework is fine.

BY THE CROWN:

He should cover his own situation, period.

BY THE COURT:

The framework was fine but the hypothetical question is ... is open to far too many, far too many difficulties.

BY THE ACCUSED:

OK, I change ...

BY THE COURT:

I think you'll have to orient it ...

BY THE ACCUSED:

I'll change the question.

BY THE COURT:

... toward what happened in your case.

BY THE ACCUSED:

No, I'll just change the question.

QDoes the chairman ...

BY THE COURT:

No, you won't just ... if you're going to get into the ... into a hypothetical question ...

BY THE ACCUSED:

No, no, it's not hypothetical now. Now it is not hypothetical.

BY THE COURT:

It is not hypothetical.

BY THE ACCUSED:

Well now it is not hypothetical. I want to ask just if chairman has the power, official power to force a grant holder to rehire certain post-doctoral fellow if grant holder says no, I'm not going to rehire him? Does the chair has such an authorty?

AThere is no legal power because the grant comes to the individual professor to carry out the work and he will lose the grant if the work was not deemed carried out and

they report to the granting agency.

However no professor would like to be in a situation where there is a complaint against the professor that the only reason why somebody's post-doctoral fellowship is being terminated is because of the question of the authorship, that he's going to say I will do whatever I want. He wants to get his name equally clear, Dr. Fabrikant and that is the reason why then he would give his side of the story to the chair and if that is not satisfactory, then the person can go to the next level, the dean.

If the answer is not satisfactory at the dean's level, one goes to the vice-rector.

QAll right, let's go my case. Do you recall in 1988, somewhere in winter, early 1988, I came to your office and I told you ... well maybe you recall that meeting and you can tell the jury what ... what the conversation was, do you?

AYou have come to my office so many times and I can't recall what exactly happened in one meeting unless you talk about a specific thing that must ... that discussion must have taken place. My office is always open.

BY THE COURT:

So the ... the answer is no, would you please be specific in your question.

BY THE ACCUSED:

Fine and I be specific.

QSo in the winter of 1988, I came to your office and I told you that Seshadri Sankar just told me that he's prepared to extend my contract for one more year after which he says that my contract would be terminated and I told you that no valid reason for that was given. I told you that I was extremely successful in publishing just in about two (2) years thirty (30) scientific publications in the best journals around the world, does this ring a bell or should I continue?

ANo, I ... I don't remember all the conversation but I remember you're coming and talking about your appointment but that was not a post-doctorate fellowing. You were no longer a post-doctorate fellow at that time. You were under the Actions Structurantes program as Research Associate Professor. You were not a post-doctorate fellow at that time.

QExactly. This is what I'm trying to emphasize that post-doctoral fellow doesn't have any rights whatsoever.

AI didn't say that.

QAll right, I did, I had a valid contract with the university with certain obligations and I informed you that this contract is not being respected. Do you recall that?

AYes and I told you at that time to have patience, that there are different levels, that Dr. Seshadri Sankar's recommendation is only one, namely as the director of the center. Then it has to go to the department personnel committee. Then it comes to faculty personnel committee and then and only then that recommendation will go to the vice-rector and that Dr. Seshadri Sankar does not have the absolute power to say no. He was not paying just from his own grant as a post ... you were not a post-doctorate fellow at that time.

QWell did you... do you recall that I also told you that I have already spoken to the chairman about it?

AI don't exactly recall but you might have very well told him because that's a normal thing. If ... otherwise I would have asked you to go and talk to the chair before coming and talking to me.

QAll right and what was the answer of the chair to the best of your recollection? How did I convey it to you?

AI don't remember, that's what I said, I don't remember the complete conversation but I said you must have gone to the chair because otherwise I would have advised you to go and talk to the chair before coming to me. That is the normal procedure.

QAnd you do not recall what was the answer of the chair?

AI don't ... I don't recall exactly what you told. I mean we are talking about five (5) years ago.

QWell was there anything specific during that conversation that you could have or should have recalled? Was there anything?

BY THE COURT:

That question is simply argument and it won't ...

BY THE ACCUSED:

It's not argument, it's quite ... quite opposite.

BY THE COURT:

You're asking his opinion on what he should have remembered.

BY THE ACCUSED:

No, I just asked him if there was something so specific that he cannot possibly forget.

BY THE COURT:

He said ... he said "I can't recall. It's logical that you would have been to see Osman first because that's the root but I can't recall what you told me Osman told you."

BY THE ACCUSED:

All right.

BY THE COURT:

So ...

BY THE ACCUSED:

Let me ... let me trigger his memory a little bit more.

QDid I or didn't I tell you that I spoke to Osman and he told me that he doesn't interfere in this, that this is Sankar who decides everything and it is between me and Sankar, do you recall that?

AI don't recall that, absolutely not, because if that had been the answer of Dr. Osman, I would have told you and I would have told Dr. Osman that Dr. Seshadri Sankar's is only a preliminary recommendation as the director of the center. Of course, it has a certain value as the director of the center with whom you are supposed to work directly in that center as a member of the group. However it was according to the ... it was going to be handled according to the ... the practice of all Actions Structurantes people, namely that the recommendation of the director was going to be considered by the department personnel committee which is an elected body and their recommendation would come to the faculty personnel committee which I chaired and that was an active committee and you know it very well.

QSo do you recall that the main reason I told you that there is not due process when chairman says that it is none of his business, that it is Sankar who decides everything and they will just rubber stamp whatever Sankar says. Do you remember that?

AI don't recall.

QThat was my main concern.

AI don't recall. If you had conveyed that kind of thing that Dr. Osman said, then I would have called Dr. Osman right away and told him, I would have told him that the procedure was not ... that the procedure was from the DPC and I would have told you so and in any case, it did come to the DPC and the FPC according to the practice that was practiced for everybody under the Actions Structurantes program.

QNow do you recall that I tried to explain to you why Sankar did that?

AI cannot recall, Dr. Fabrikant.

QAll right.

AI'm sorry, I cannot recall.

QHow many people in your lifetime came to you complaining on extortion of papers?

AThere is nobody who has complained, come to complain to me about extortion of papers.

QAll right. Then try to remember that this is exactly what I told you why Sankar wants to terminate my employment, because I didn't include him in my papers, do you recall that?

AI cannot recall, I'm sorry, I cannot recall any such conversation.

QAll right. Do you recall also that I did complain to you that I have included T.S. Sankar by that time in thirty-five (35) total publications to which his contribution was zero, do you recall that?

AI remember that.

QYou do?

AI do remember that because the next ...

QAll right, so at least something you remember.

BY THE COURT:

Just a second, let the witness answer.

AI remember that very well, your statement and I ... you were standing at the left side of my desk. When you made that statement, I got up from the chair.

QYou see, all ...

AAnd I said "What exactly do you mean by that", I've never forgotten that because it came as a complete shock to me.

QYou?

AAnd then ... yes, and then on top of it, you continued:

"The same amount of contributions that you have made for the two papers" and then I said "Explain yourself? What are you talking about? What about all the discussions in my office". I have never forgotten that particular conversation and you did not continue anything more after that. When you said that what you went and complained to the vice-rector who happened to be the rector at that time and I advised the rector and I requested the rector to talk to you and to write a letter to you saying "If you have got any complaint of that nature, you should put it formally in writing so that it can be looked at and heard" because I do not like the idea of anybody accusing a professor of that ... in that kind of thing, saying that there had been no contribution and I remember that conversation exceedingly well.

BY THE COURT:

OK, so ...

BY THE ACCUSED:

Some ... something ...

BY THE COURT:

We'll stop at this point for ten minutes.

BY THE ACCUSED:

All of a sudden he remembers something.

BY THE COURT:

Maitre Ouellette, I wonder if I can have a word with you,
just after the jury leaves.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

BY THE COURT:

I've tried to impress on Mr. Fabrikant, maybe you can,
that questions, yes, whatever the answers are, receive
the answers but for heaven's sake, cut out this cackling
that goes on. It's pointless. I wonder if you'd be kind
enough to make the point.

BY MAITRE OUELLETTE:

Sure.

BY THE COURT:

Thank you.

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

SRIKANTA SWAMY

(Under the same oath)

BY MAITRE OUELLETTE:

With your permission, I will have two issues to clarify
before the jury comes back. One of the first questions is
the talk when we left. It's not really easy, during
adjournment, to talk to Mr. Fabrikant. I understand that
the detention has some laws and at lunchtime, for exam-
ple, at lunchtime, this is another problem at the parlor
downstairs.

So when the court is requesting me to discuss certain
avenues with Mr. Fabrikant, it's creating some problems
to some extent, even if they take ... they take Mr. Fa-
brikant and they bring him straight downstairs where he's
supposed to be and where I'm supposed to see him, they
could not I think kick out the other lawyers in the front
of the parlors. There are only two (2) parlors.

There is another directive there that says that starting
at twelve fifteen (12 h 15), parlors on the AA is for
priority for all the persons that are in 3.07. Now it's
(inaud.) so there is only one parlor and at the same
time, there are all the persons going out of this court
and coming in for the afternoon. So with all the good-
will that we may show, it's taking a lot of time to see
Mr. Fabrikant and this is not the problem of the Court,
this is not my problem, this is not a problem with de-
tention. This is the situation.

So in order for me during ... well during weekends,
that's quite easy for me ... for me to go to Parthenais
and explain to him retroactively what you're saying but
it will be five (5) days later.

So I wonder if it would be possible to come out with some type of an agreement. If we have issues to clarify and I still understand that he could not talk with me while he's not sitting here, so this is the only problem I have so far. I don't know how to deal with that issue. For the specific request that you had for me, well I have no problem with that but I can tell him right now, tell Dr. Fabrikant that I don't appreciate either the way he's behaving and it's not really easy for me to tell him whatever you want me to tell him if it's not possible to talk to him, but I can tell that and I'm sure that he can appreciate that. This is one area that I would like the Court to consider at one point.

The second issue why I didn't ... I asked for the jury to be out for a few minutes is that I want to come back at the request of Dr. Fabrikant on the Shiff (sic) ruling, if we may call it like that. Mr. Shiff at one point testified on the ... the permit issues and the notes that he was testifying on were given to Mr. ... to Dr. Fabrikant.

In these notes, there was one page where a name was written off and from the tapes that I heard, I understand that this was done at the request of Mr. Shiff saying that he didn't want to reveal his informant. From the lecture of the document ...

BY THE COURT:

He wasn't an informant. It was a police officer who was engaged ...

BY MAITRE OUELLETTE:

That's it.

BY THE COURT:

... in a particular facet of investigation relating to firearms. That was ... that was what it was. It wasn't a police informant.

BY MAITRE OUELLETTE:

It was ... it was a member of ...

BY THE COURT:

It was a member of the SQ, a member of the SQ.

BY MAITRE OUELLETTE:

And I understand that that name was stricken out. My understanding of the situation is that in the scope of his defence, Mr. Fabrikant wants to show, related to these documents, wants to show that at one point in time, Concordia did whatever they could to get rid of him or to harass him and that at one point in time, what they've done, they communicated by themselves to the SQ, either by letters and we've already seen that documentation or by phone and Mr. Shiff was releasing that information. To me, the name is not very much relevant but the fact to have the possibility to have that specific person, even if that specific person comes in with a ski mask on his face to say yes, I was called by Concordia to stop that thing, I think that's what Mr. Fabrikant wants to show and what he wants to show is the interference of Concordia in this issue and this will be another factor in the defence where we will have a cumulative effect for (inaudible) and the state of mind.

So basically the objection of the defence to the ruling was not to removing the name or tampering with evidence. It was (inaud.) with the possibility to show that "this is another event where Concordia took the initiative to

interfere with my own personal life and this affected my mind" so if we could not have that name in order to assign that witness to the stand, I'm wondering if it would be possible to arrange something, because security is involved, to have that specific police officer deliver his testimony.

BY THE CROWN:

First Fabrikant didn't know about that, it cannot affect his state of mind. Second Concordia is not involved. It's a police officer with contacts. It's an independent source from Concordia and third it's one of these straw men that Fabrikant chooses to bring and kick down afterwards. Nobody obliged him to bring constable Shiff or to dig into this note and fourth, you already rules. It's not because there is a lawyer that comes in, that wants to reargue something that is already decided, that you should reopen the discussion, My Lord.

BY MAITRE OUELLETTE:

I'll only answer that part. Mr. Fabrikant knew that Concordia was involved, wasn't ... was, is involved in his dealings with the arms because he went to Concordia to ask if this was ...

BY THE CROWN:

No, but we're talking about the note that was edited.

BY THE COURT:

OK, let me ... let me... the very short answer.

BY MAITRE OUELLETTE:

Yes.

BY THE COURT:

The very short answer would be I canvassed the whole question and I ruled that that name be taken out.

BY MAITRE OUELLETTE:

Yes.

BY THE COURT:

And on at least one occasion afterwards, I declined to come back on that. For your... for your edification because you weren't here, Mr. Fabrikant asked for a note which the police officer used to refresh his memory with regard to the events of June 23rd.

On that same note was a chronological follow-up on the same sheet. There were no questions put to the police officer at this point with regard to that. He was testifying with regard to the 23rd. On the sheet of paper was a note concerning a piece of information that was transmitted to Shiff by telephone, by an SQ officer on the 26th of the month which, if my memory serves me well, was to the effect this police officer reported that Dr. Fabrikant had threatened some students and had waived a gun permit in front of them.

Now in the absence of the jury, over his protestation, in the absence of the jury, I canvassed with him and Maitre Belleau was specifically asked by me to instruct him on the consequences of putting that into evidence.

I was strongly of the view that it couldn't do him any good. What Mr. Belleau counselled him, I don't know but I asked Mr. Belleau to counsel him because I was strongly of the view that it would do him no good. It did not need to go in evidence, it was seen, it was recognized and it was isolated and the issue could have ended there.

I ordered or I in fact blanked out the name because it wasn't a situation ... I realized we're not dealing with an informer, but the representation was made to me that it was a member of the SQ who had certain contacts and if his identity became known, it would risk, it would tend to compromise the operations or his operations in that particular section and my feeling and I said it quite candidly, if that name were bandied around Parthenais it would simply cause a problem that it didn't need to cause.

From any ... with any stretch of the imagination, the identity of that officer couldn't affect the guilt or the innocence of Valery Fabrikant, not in a month of Sundays could it do that and I was satisfied with that, which was why I said why would you ever want to put that in front of the jury, but he chose to put it in front of the jury. He chose to put it in front of the jury on the theory that it was part of a vast conspiracy that involved Concordia University, its officials, the MUC and now the S--ret, du Qu, bec.

As soon as the jury was brought back in, he broached the subject and of course, the question was raised and I had declined before and I declined again to ... to give the identity of that officer and I'm not even going to countenance hearing that officer or hearing any of the students, the same as I'm not going to countenance hearing the person that ostensibly complained of a rape which you may have heard about because as the crown prosecutor pointed out, these are the straw men that have been set up to be knocked down when there was no need for it in the first place.

So I ... you know, that was my reasoning at the time. I mentioned that to you to bring you up to date but the ruling has been made and I realize you're following your instructions but I'm not going to go back on rulings that I've made in this case, certainly ... certainly not.

BY THE CROWN:

And My Lord, I think that should be true for all your rulings because if ... I don't criticize Maître Ouellette but if ... he comes on and asks you to review all the rulings you've made in the last five months, I don't think it's leading us anywhere. It should be clear for him at this point.

BY THE COURT:

Well I think ... I think it probably is but I'm dealing with the question that was raised this afternoon.

BY MAITRE OUELLETTE:

So basically what we have is a clean cut ruling on that Shiff incident, OK fine.

As ... and I would like everybody here in court to be very comfortable with my presence. It is clear to me and I thought it was clear yesterday that I'm instructed and my services are requested to argue in law. I'm ready to argue in law and it is also clear that I'm not going to embark on many past rulings.

This incident came out because we gave the document, copies of the document to Mr. Fabrikant.

BY THE CROWN:

Well I did all the disclosure with Maître Ouellette yesterday after the court.

BY MAITRE OUELLETTE:

That's after the court.

BY THE COURT:

OK, I see, I didn't know that.

BY MAITRE OUELLETTE:

And we gave back these documents to Mr. Fabrikant this morning and there was that page missing and that page missing was the one with the name on it.

BY THE COURT:

With ... with the white, yes.

BY MAITRE OUELLETTE:

With the white. So my duty was to make sure that there was not any misunderstanding on this and you ... you say that this is the ruling, this is perfectly clear to me. I do not intend to come back on any other ruling. What you said earlier, you're the one drawing the lines and I would like to make sure that I clearly understand. We're not coming back on any other ruling, any of your rulings. Mr. Fabrikant is conducting interrogations and I'm arguing in law.

The only other problem that still exists is when we have specific issues like the one before the recess. It's very difficult for me to go on and instruct or discuss that matter. So yesterday ...

BY THE COURT:

I'm sorry, I'm sorry, I'm not with you, what matter?

BY MAITRE OUELLETTE:

Well the thing, the reaction of Mr. Fabrikant with the witness.

BY THE COURT:

Yes, OK.

BY MAITRE OUELLETTE:

Yesterday you told me that a defence lawyer is always in some part responsible for the conduct of his client. That is difficult ...

BY THE COURT:

I realize that, I ... I'll clarify that. I look to the lawyer to do his level best to make sure that the client conducts himself according to the rules of the ... the rules of the court.

BY MAITRE OUELLETTE:

And I'm pretty sure that Mr. Fabrikant understands very well what you're saying.

BY THE COURT:

OK, I'm sure too but ...

BY MAITRE OUELLETTE:

And I talked to him and what he told me during that short recess is that he understands that position and he will definitely try his best to prevent such reactions. So I hope everybody is very comfortable with that. Thank you very much.

BY THE COURT:

I, on your other question ...

BY MAITRE OUELLETTE:

Yes.

BY THE COURT:

Leave it with me until tomorrow morning and I will see whether I can devise something to help you.

BY MAITRE OUELLETTE:

Thank you very much.

BY THE COURT:

There are no promises in advances but I'll ... I'll see what I can do. It may useful that I ... that I speak to those in charge of the detention centre and see whether there's some sort of alternatives that can be put at your disposal, given the difficulty that you face.

BY MAITRE OUELLETTE:

There could be one possibility that I see. I don't know if this elevator ... well no, there is one other parlor on the third floor. I don't know if it would be possible to go there. There is a lot of ...

BY THE CLERK:

It's locked from here.

BY MAITRE OUELLETTE:

It's locked from here, I don't know but downstairs is all the accused.

BY THE COURT:

I ... I raised the question of the ... Mr. Fabrikant, just a second, you can speak to Maître Ouellette later. I raised the ... the question of the parloir on the third floor and I was told that it did present a lot of problems. Now last fall, I used that parloir on the third floor in a similar fashion with ... with some measure of success which is why ... which is why I want to discuss this with ... with those responsible for the ... for the detention centre or for the detention unit and ...

BY MAITRE OUELLETTE:

And I think that we should investigate the possibility because the only other alternative that you have with downstairs is a written order that whenever we go down, we kick everybody out of the ...

BY THE COURT:

Yes but I can't ...

BY MAITRE OUELLETTE:

I think it would not be fair to deal ...

BY THE COURT:

I don't think I can write that kind of order in ... on a regular basis. So if you ... if you leave it with me, I promise nothing but I'll see what I can do.

BY MAITRE OUELLETTE:

OK, fine.

BY THE COURT:

OK.

BY MAITRE OUELLETTE:

The other possible solution was to put me in jail with Mr. Fabrikant so I can talk to him.

BY THE ACCUSED:

No I mean I see no problem why we cannot stay here and talk or why we cannot be in the cell just behind the wall.

BY MAITRE OUELLETTE:

We'll investigate that.

BY THE ACCUSED:

It's extremely simple stuff.

BY THE COURT:

For you, it's extremely simple, Mr. Fabrikant but if ... if there are twenty judges doing similar things all at the same time, the ... the rules of the house, if I may use that expression, become impossible to apply and there

are considerations from this point of view.

THE MEMBERS OF THE JURY ARE ALL PRESENT

BY THE ACCUSED:

Well since there was a remarkable recollection, maybe this recollection would help the witness to recall the rest of the conversation.

QSo try to recall, since you now recall so clearly, where I was standing, where you were sitting, how you made the gesture with your finger, in such a minute detail, maybe now you recall that I complaining (sic) on Seshadri Sankar too, do you?

AI cannot recall. This one was such a shocker to me, coming for the first time, that kind of a thing against any professor in my period at four different institutions, it was such a shocker, I remember and then I stood up and then when I said "What exactly do you mean" and your answer was "Just like your contributions" and then I repeated "what do you mean by that" and then you had no answer. That was the time I myself, when you went to the vice-rector who was rector and was acting vice-rector, academic in the beginning of 1989, I told him and I told Catherine McKenzie that if he's got any complaints of that nature, what he ought to do is to put it in writing and giving it ... give it to the dean or to the vice-rector so that it can ... the matter can be looked into.

QSo when I told you that Sankar extorts papers from me, this was not a shocker to you?

AYou didn't not ... you did not use the word extort, I don't remember that. You said his contribution was not there and that's exactly ... I said "Exactly what do you mean by saying he did not contribute".

QOh Oh, one second, there is misunderstanding. I said Seshadri Sankar threatened to terminate my employment and he effectively extorting papers from me and I told you I gave his brother more than enough and I'm not going to do it again. This is how T.S. Sankar appeared on the scene. Do you recall that?

AI do not recall. If you had used the word extortion, I would have certainly remembered that, because of course when you talked about the contribution being nothing, I ... it was such a shocker to me, I remembered that so if you had used the word extortion, I certainly would have remembered that.

QAll right. Did I at the beginning complain on Seshadri Sankar, right?

AI said I don't remember. The only thing you said was that you are having difficulty with Seshadri Sankar.

QAll right, so I was complaining on Seshadri Sankar?

AYes, but the difficulty was with regard to the reappointment. You never talked about publications and all that with Dr. Seshadri Sankar.

QAll right, how came it (sic) to the conversation? I came to you to discuss the problem which I had with Seshadri Sankar, right?

ANo, I ...

QHow on the earth did it come from one subject to another?

AI don't recall in how it came, I ... I cannot recall but the only thing I remember, because it was such a shock to me when you used the words "contribution was nothing" and

then when I asked you that "What exactly do you mean", you were saying "Just like your contributions". That, those two sentences, I distinctly remember and then my answer to you "What exactly do you mean" and there was no answer after that from you.

QReally? I had nothing to answer?

ANo I did not hear any answer from you.

QSo what was it then, the end of conversation?

AYou did not pursue, in my memory you did not pursue it anymore on those papers until about February or so in 1989 when you went and made the same complaint to Dr. Catherine McKenzie and who conveyed that to the rector and I had a discussion with the rector at that time, saying that if he has those complaints, he should put it in writing so that the matter can be looked into.

QAll right. Now you're talking about different thing. I went to the vice-rector in 1989, not in 1988, correct?

AYes, around February 1989.

QAll right, but we are now in 1988. Would you please concentrate on 1988.

AYes I do.

QAll right, so ...

ABecause afterwards you did not bring that subject matter again. If you had, I would have asked you the same thing. If you were complaining again, I would have said put it in writing so when you made that ... the complaint again to Dr. McKenzie, I told her that he should put it in writing so that it could be looked into.

QSo in 1988, when I came to you and complained on Seshadri Sankar, what was, if any, continuation of that conversation which you so vividly remember?

AI don't recall all the thing except that my telling you over and over again: "Please wait until the DPC and the FPC make ... their recommendations are made" and that you should not go on complaining about everybody until all the different stages are ... the process goes through the different stages and that's exactly the same kind of advice I gave you again in 1990. Consistently I was telling you, it is not one person. There is the DPC, there is the FPC, the faculty personnel committee, the department personnel committee which are elected and which make recommendations.

BY THE ACCUSED:

I don't know if it is possible to make ... to remind again witness to stick to the question. We'll come to 1990. Just to answer the question. It is possible? The question was what the continuation if any. So now when he recalled that I accused T.S. Sankar and himself of benefiting from my work as early as 1988, what was after that?

BY THE COURT:

Well the problem seems to be that you continued to mix up the plays in a certain sense.

BY THE ACCUSED:

You...

BY THE COURT:

You prompted his memory. First of all, you asked him a series of questions involving Seshadri Sankar.

BY THE ACCUSED:

Yes.

BY THE COURT:

And in substance, he's replied to you that he didn't recall any question of papers in relation to Seshadri Sankar, rather it was the question of the renewal of your employment which was the concern you had expressed there. That might be, that might not be, that's what he recalls. You then attempted to trigger his memory with the observation that you told him that you had included T.S. in thirty-five (35) out of thirty-six (36) papers and that you didn't intend to do the same thing as far as Seshadri was concerned and that triggered his memory all right, that ... you got answers.

BY THE ACCUSED:

Yes.

BY THE COURT:

Then he said and it was just before the adjournment, that he said to you and I ... at least I have it in my notes, I don't think I'm wrong, that he said to you that if that was your position, that you would have to take your position to the vice-rector which I took as being the reason why he said a minute ago that in fact, you didn't go to the vice-rector until 1989, the spring of 1989.

Now that dealt with a certain series of your questions.

Now you're trying to bring him back to something else.

BY THE ACCUSED:

No, not to something else. I just asked him what happened after that in that conversation.

BY THE COURT:

In that conversation.

BY THE ACCUSED:

Was it end of conversation or not, it's very simple question.

BY THE COURT:

OK.

QDo you understand where ...

AYes, I understand the question Your Honor.

QFine.

AAnd as I said, I do not remember anymore conversation except that I always told him just like I always felt "Wait until the department personnel committee makes ..." and nothing about the contract is final until the faculty personnel committee makes its recommendation to the vice-rector. That is a standard answer as a dean I've given to anybody who was coming for promotion or reappointment or tenure arrangements, that the committee ... that it has to go to the committee and to have patience.

BY THE COURT:

QAnd in fact, nothing is final until the vice-rector makes her decision?

AYes, that's correct.

BY THE ACCUSED:

Well it doesn't mix up. First I came to him, complained on Seshadri Sankar and he agreed with that, that yes, that was the case. All of a sudden, he doesn't remember how ... all of a sudden I said that I have included T.S. Sankar in thirty-five of my publications and I included him in two and both contributions was zero. They didn't understand a word in it.

Now he claims that at this point, he jumped at me and said something and I couldn't answer anything. I take his answer as it is.

BY THE COURT:

Fine.

BY THE ACCUSED:

I'm not arguing with him. All I'm asking, OK, I didn't answer anything. What was after that? Did you tell me something after that? Did I say something? Was it the end of conversation?

BY THE COURT:

He said ... he said he told you to wait until the decision or the recommendation had been made to the vice-rector, I think that's what you said.

BY THE ACCUSED:

So after I didn't answer anything, he repeated this to me.

AYes, My Lord, I can't recall every conversation. That particular one was ... I remembered because it was about the integrity, a question about myself. That's why I remember that.

BY THE COURT:

QOK, now he wants to know what happened?

AI ... I don't remember anything.

QAt the end of the ... you don't remember anything.

AAAs I said, the only thing that I could have said, like I always state is wait until the DPC and FPC. He always used to come to my office and go on complaining from that time on about his treatment by others and I always use to tell "Please leave others alone. You work for yourself within the rule, don't go on bothering everybody." I have told this many many times and once he even came at me, sitting in my office on the chesterfield to the left, I was not at my desk, I was sitting on the couch and he had thanked me many times for ... and he said "I will not bother anybody else" and now all of a sudden, he said he's trying to ...

QJust ... just a second.

BY THE ACCUSED:

I didn't get the word.

BY THE COURT:

Thanked.

BY THE ACCUSED:

Thanked?

BY THE COURT:

Thanked.

BY THE ACCUSED:

What does it mean, thanked?

BY THE COURT:

Say thank you to.

BY THE ACCUSED:

Ah thanked, Oh, I mean to say thank you.

BY THE COURT:

Yes.

BY THE ACCUSED:

That's what you said?

BY THE COURT:

That you had thanked him for counsel that he gave you not to bug people.

ANot at that particular meeting, some other meetings, he has thanked me.

QOK, well stick to that particular meeting.

AOK, fine. I do not recall anything more, Your Honor.

BY THE ACCUSED:

Well how to make witness just to answer the question.

BY THE COURT:

Well he said he doesn't recall anything more of that ... of that particular meeting.

BY THE ACCUSED:

QSo fine. What happens after that? Don't go please to 1989. We're still in 1988, the conversation is finished.

BY THE CROWN:

Five years (5) (inaud.) My Lord.

BY THE ACCUSED:

QWhat happened?

BY THE CROWN:

Meeting by meeting, day by day.

BY THE ACCUSED:

Well it is important part.

BY THE CROWN:

What are we doing here?

BY THE ACCUSED:

It's part of extortion.

QSo you remember everything about integrity. Did I question integrity of Seshadri Sankar at the same conversation?

AI've said that already, if you had talked about that, I would have remembered. I do not remember any such words as extortion or anything of that nature.

QOK, how did I explain to you why Seshadri Sankar wants to terminate my employment?

AI have no idea. That is the reason why we had the DPC and the FPC looking at the recommendation of the different people. He cannot just ... because you told that he wants to end your employment, that that automatically means that's what ... it was a conversation between you and him, I really don't know what he said or what you think he said.

However the recommendation from Seshadri Sankar is to the department, is either official one (sic) and if he had complaints about your work, then he will have to put it in writing very clearly as to why he doesn't want the appointment to continue.

I mean it's not an arbitrary decision by anybody to curtail or to end anybody's employment without reason.

There are committees to ask for reasons.

QAll right, so do you recall what happened to my employment in this particular case?

AI think the recommendation ...

QDid you talk to Seshadri Sankar after that?

ANo, I don't remember I talked to Dr. Seshadri Sankar at all after that. Why should I? Because a recommendation comes from the department personnel committee. Dr. Seshadri Sankar does not ... did not report to me. It's the chairman of the department who reports to me and the department personnel committee is the one which looks ... looks at recommendations.

QOK, did you call to Osman to find out what is going on?

AYes, I remember I talked to Dr. Osman, saying what's all about this Dr. Fabrikant complaining that Seshadri Sankar doesn't want to renew his ... doesn't want to recommend renewal of his contract. He said "I will not talk to Dr. Seshadri Sankar. He will be making his recommendation and once the recommendation is made, the DPC will meet and then you will get your recommendation."

QWhat?

AAnd you ...

QOsman told you that he knows nothing about it?

AHe said that he was going to get the recommendation from Seshadri Sankar and then discuss with the DPC. I remember very well, because it was not the first time, you were always coming to me and telling me "You can direct people to do these things. You're the dean, you can ask them to do this" and I always used to tell that this is a democratic country. We run the university with certain committee structures and those committees have to make the recommendations and you have to wait for the recommendations to come.

BY THE ACCUSED:

There is no way to make his to answer the question, is there?

BY THE COURT:

I thought he answered the question.

BY THE ACCUSED:

Well I just asked him very simple question. Did you or didn't you ask Osman whether he's aware of the problem and the answer should be yes I did ask, no I didn't ask, period. There is no need to repeat over and over again, we have committees, we have ...

BY THE COURT:

You asked the questions over and over again. So he repeats it over and over again.

BY THE ACCUSED:

No, this is the first time I ask him: did he or didn't he talk to Osman. If he did, did you ask him: what about Seshadri Sankar. Again, you did, you didn't, period. I'm asking very short, very specific questions.

BY THE COURT:

Well I didn't think he ... I didn't think his answer was at all out of line. I thought his answer was perfectly ... perfectly satisfactory as far as your question was concerned.

So we'll adjourn until tomorrow morning, nine thirty. (9 h 30).

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

ADJOURNMENT

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A D A
COUR SUPERIEURE
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PROVINCE DE QUBEC

DISTRICT DE MONTRAL

CAUSE NO.: 500-01-017372-928

TAPE: PROCES - SUITE

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

NOM DES PARTIES:

SA MAJEST LA REINE

Plaignante,

C.

VALERY FABRIKANT

Accus , ,

COMPARUTIONS:

Me Jean Lecours
 PROCUREUR DE LA PLAIGNANTE

DATE DE L'AUDITION: LE 22 JUILLET 1993

FICHER: 3457

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WITHOUT JURY
Me FREEDMAN :
Good morning, My Lord.
THE COURT :
Good morning, Mr. Freedman.
Me FREEDMAN :
As has become a habit, I'm here to raise some questions about subpoenas. I received the latest batch of subpoenas yesterday, included in that batch were three subpoenas for three secretaries. I'd like to raise a question with respect to pertinence of those, as well as the previous subpoena that was received several weeks ago for another secretary. The three secretaries yesterday are three secretaries in Mechanical Engineering, Arlene Zimmerman, Eleanor Morris and Nancy Nicholson, and the fourth person who I'd like to discuss is Cindy Edridge.
THE COURT :
Cindy Edridge is who?
Me FREEDMAN :
She's a secretary in the Vice-Rector Academics office. Now, I'd like to raise the issue of, under the terms of article 698 of the Criminal Code, a question of pertinence and material evidence that these witnesses could provide. In my opinion, this is a continuation to (inaudible) from the Crown Prosecutor of the never ending story of who said what, when, how, to whom, in

what context. I would be hazarding a guess as to why the three Mechanical Engineering secretaries were subpoenaed, I would guess something to do with the meeting with the secretaries that we've heard about. We've heard from Dr. Cheng who was there, we've heard from Miss Torbit, we've heard from Miss Delson, and certainly the secretaries had no authority over doctor Fabrikant. I can't see how any question of them affecting the state of mind, or anything to that nature, could be relevant, I don't know what evidence they could offer that would be pertinent material. And the same goes for Miss Edridge. So it's a general request for the quashing of the subpoenas on the grounds of pertinence.

THE COURT :

Well, let's listen to the question of pertinence first, and then we'll see whether you're going to make a motion to quash them. You're raising the question of pertinence of the subpoenas and we'll see. Me Ouellette, are you in a position to enlighten us?

Me OUELLETTE :

Well, this was to be exactly my point, I am not in a position to answer or argue anything on this question. When I came up to this trial I told the Court that I was to argue any question of law that could be arising during the trial from the day where I appeared, this is a question that has arisen right this morning. This (inaudible) the question that I brought yesterday, where I was talking about the possible people myself to sit down on a daily basis with doctor Fabrikant where I could confer on of this. I don't have that opportunity so right now this morning, the only thing I can do is to wait at the recess, at (inaudible) point in time, talk to Mr. Fabrikant to find out what happened yesterday night, or during the afternoon, I'm not aware of the subpoenas, then discuss with him why they were assigned, then I could argue that motion, or even (inaudible).

THE COURT :

Okay. The reason I asked you was, you did say to me the other day that you had been in the wing, so to speak...

Me OUELLETTE :

Yes.

THE COURT :

...since the month of May.

Me OUELLETTE :

Yes...

THE COURT :

So I wondered whether... Okay. To answer your first... or your last question first, I have no answer yet on the question of the third floor, it's in the works. As far as generally finding out what the situation is, I should have an answer for you this morning on that point. I hope to have an answer for you this morning. Sure, we can let it ride for the moment, until the adjournment, when you might have a chance to discuss with Mr. Fabrikant what these are... and what these are for. And once you've done so, the time will probably be appropriate to discuss this wholesale question of bringing everybody who ever had anything to do with any particular aspect of this case. So you can live with that for the moment?

Me FREEDMAN :

Sure. Thank you, My Lord.

THE COURT :

Thank you.

Me OUELLETTE :

With your permission, this morning again, in reaction to what happened yesterday, because I had a discussion with doctor Fabrikant yesterday night, I guess we still are going to have the same witness this morning, and Mr. Fabrikant would like the Court to declare that witness not hostile but adverse, according to 9.1. So if you wish to do it in front of the jury I don't have an objection.

THE COURT :

I don't... I've called for the jury...

MEMBERS OF THE JURY ARE PRESENT

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twenty-second (22nd) day of the month of July, personally came and appeared:

SRIKANTA SWAMY, born on April seventh (7th), nineteen hundred and thirty-five (1935), professor, electrical engineering, confidential address;

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

Me OUELLETTE :

During the testimony of the actual witness yesterday, at one point in time there was an objection by the Crown attorney, according to (inaudible) of the (inaudible). Previously you have stated that it was perfectly understandable (inaudible) motions arising from testimony, due to the relation that existed the previous time. Basically what I'm arguing right now is that we do not wish to declare the witness hostile at all, according to 11, and 11 is not applicable. We were talking about the previous oral statement, and according to the last... paragraph 1 of the Evidence Act is applicable. Either the president of this Court decides that effectively the witness is adverse, not hostile, and that question was already decided, adverse was not related to hostility but (inaudible) witness, we thought (inaudible) in the sense of assuming by his testimony a position opposite to that of the party (inaudible). So basically that's what we have, and if the president of this Tribunal is not satisfied with that position, we will proceed to a voir-dire, or doctor Fabrikant will ask positively questions on the previous oral statement, and then you may decide if effectively this is an adverse witness in the sense of 9.1, and at that point it will be possible for doctor Fabrikant to cross-examine. This position, if you take that position, at that point it may be very useful (inaudible) dates, because it will expedite the process, he will be asking such and such questions, according to 9.1. So this is my suggestion to you that 9.1, according to the various decisions of (inaudible) is applicable in that case, althout the witness is not at all hostile, he's adverse.

Me JEAN LECOURS :

I guess Mr. Fabrikant pleaded the same motion

approximately forty (40) times out of seventy-one (71) witnesses, I see nothing different in this case. And I would say the witness did not show any sign of not wanting to answer questions, on the contrary, sometimes we have to stop him. So...

THE COURT :

My observation yesterday afternoon shouldn't be interpreted in any sense as rallying to the submission that the witness is either adverse or hostile. I simply made an observation that, as a consequence of the emotions that everybody has gone through in relation to this thing, it was understandable that the witness said more than he had to say to answer the question. Yes, there is a distinction involved between hostile and adverse, Wawanesa and Haines and "Casebo". I can't conclude that thus far the witness has proved adverse. The fact that the witness ascribes to a point of view different from that of Dr. Fabrikant makes him neither adverse nor hostile in itself. I appreciate you make the distinction but the question of cross-examining him on a statement is something that will have to be approached if ever the situation arises. For the minute I can't see that the witness has even crossed the first threshold aspect in proving adverse at all. So at this point the motion is dismissed, you can repeat it if you feel you should at some point in the future, but for the minute it's dismissed.

I might add one thing for your guidance, I've been relatively liberal when it has come to the question of putting suggestive questions to the witness, Crown Prosecutor disagrees with me on this point, his position has always been that as soon as you permit him to ask suggestive questions, you make it extremely easy for him to cross the threshold into cross-examination, and of course it happens continuously. I have tended to rally to Mr. Fabrikant's view that inasmuch as the question has not generally been one which could be interpreted as a direct attack on the Crown's case, permit the leading questions that perhaps gets us to where we're going a little quicker. That hasn't been my experience however, my experience has been that every time a leading as been permitted, it's led almost directly to cross-examination and we've had a series of impossible situations, or situations very, very difficult to control. So I just want to stress that because of the latitude that he's been granted, he's been half-way to cross-examination virtually throughout his defense. He seems to think that right to cross-examine holds some magic potion that is going to permit him to accomplish all sorts of things, but I say as a matter of fact that by and large he's been very close to cross-examination throughout. And lastly... no, that will suffice for the moment then. So any... I don't know if you can bring that to bear with him, I would appreciate it.

Me OUELLETTE :

I fully understand the position of the Court considering the (inaudible) and that it's fully recognized that the Crown case is very strong. And I understand that at that point, considering all of that, Mr. Fabrikant is allowed a lot of things, but we still have, and this is basically what I was arguing yesterday, we are still

back, one step back. The only thing that is not achievable (inaudible) that track, and I don't want to come back to the Pearson case and all of that thing that was already discussed by that Court, the Court of Appeal and Supreme Court, regarding detention. What I'm saying is the only thing that is missing, according to the Charter of Rights in that thing, in order to have a full defense will be (inaudible) to be able to sit down and express that type of feeling that you may have, and we don't have that (inaudible).

THE COURT :

I told you I'm doing my best...

Me OUELLETTE :

Yes, I understand that, but...

THE COURT :

You know, you can see him in the evening at Parthenais, that's always there, that's always opened to you.

Me OUELLETTE :

Well, we made, out of the jury, a complaint, we did discuss that whole aspect, I don't want to take the time of the jury for that.

THE COURT :

Fine.

Me OUELLETTE :

Okay. But basically what I'm doing now is not only to argue with you, it's basically I'm trying to do indirectly what I cannot do directly, I'm talking to doctor Fabrikant right now.

THE COURT :

Uh, huh. Okay. Well listen, as I say, I'll do my best to accommodate you during the day.

Me OUELLETTE :

Okay.

EXAMINED BY MR. VALERY FABRIKANT :

- Q. Would you please state to the jury what are the main criteria for granting agencies when they award a grant to a professor at Canadian University? What do they look at?
- A. They look at the following things. Number 1, the qualifications of the professor, the kind of previous record that he has in terms of publications, the proposal itself, how clear it is, whether the objectives can be met in a reasonable period of time, because after all the grant is given for one, two, or three years. And then finally, one of the important things (inaudible) grant (inaudible) is looking at is the training of manpower or human resources, both at the student level and at the post-doctor level.
- Q. All right. So, two things are of extreme importance, it's publications and preparation of master and doctoral graduates, correct?
- A. Yes, and in addition the proposal itself is of extreme importance. If the proposal is not concerned by the peer, the (inaudible) is looked by a scientific committee, if the scientific committee is not... does not think that the proposal made by the professor who warrants the funding, it won't give. (Inaudible) the publications are, if the proposal is not (inaudible).
- Q. Uh, huh. What happens in the case where certain

professor submits his grant application and he gets the money, and then, several years later, he submits exactly the same application...

Me JEAN LECOURS :

My Lord, I think...

VALERY FABRIKANT :

Q. ...made by cut and paste method, would the peer review committee notice that?

Me JEAN LECOURS :

...you already ruled on that, I let the first two questions, My Lord, but he's still not respecting your ruling.

VALERY FABRIKANT :

I would appreciate the Crown be seated until I finish question.

Me JEAN LECOURS :

He's always testifying from the box. It is clear from the wording, My Lord, we don't have to hear the rest of this question.

VALERY FABRIKANT :

There is nothing clear, there is elementary rule of mutual respect, and if Crown wishes respectful behavior from me, then Crown should behave respectful in the first place.

Me JEAN LECOURS :

The accused is testifying from the box and he's not respecting your ruling, My Lord.

VALERY FABRIKANT :

The accused does not testify anything. This is absolutely normal question concerning practices of granting agencies, period.

THE COURT :

It is perhaps a question you wish to put concerning the practice of the granting agency. I did not interfere for two reasons, first there was no objection, and secondly I thought that you might have been relating this to the question of publications. It's obvious to me now that you're not relating this to the question of publications, but rather we are engaged on a frontal attack on Osman's submissions to the government, and...

VALERY FABRIKANT :

I didn't mention his name.

THE COURT :

No, I know you didn't mention his name.

VALERY FABRIKANT :

How do you know it's Osman?

THE COURT :

It's very obvious to me, and I have already discussed the whole question of government funding and grants, and I said that it is not relevant to these proceedings. It's clear that's where the question is going, and the objection is maintained, you will move on to another area.

VALERY FABRIKANT :

Q. How many publications do you have in total?

Me JEAN LECOURS :

Well, My Lord, again I want to make a warning, we're concerned only with joint publications, I think it was covered yesterday. Mr. Swamy did some publications with somebody else, we're sidetracked if we go into the (inaudible). So I make a formal objection, My Lord.

VALERY FABRIKANT :

What is wrong with that question? I'm asking him how many publications he has.

Me JEAN LECOURS :

Because we're here for a murder trial, My Lord.

VALERY FABRIKANT :

Yes.

Me JEAN LECOURS :

That's what is wrong with it, and we're in our fifth month, My Lord.

VALERY FABRIKANT :

We are in the fifth month because Crown, and the Judge, spent one month and a half in Pinel, discussing very important question of fitness, who nobody ever doubted, and after that there were forty (40) witnesses for the Crown to prove the case which I never denied in the first place. This is what was spent on four, so we are not in the fifth month, in the second.

THE COURT :

The objection is maintained.

VALERY FABRIKANT :

All right. I looked into my draft papers and I would like Mr. Swamy to take a look whether this is the contribution he mentioned yesterday.

Me JEAN LECOURS :

I think that subject was covered yesterday, My Lord. The accused has the...

VALERY FABRIKANT :

Well, it was...

Me JEAN LECOURS :

I'm not finished. The accused has the tendency to repeat his examination from day to day, My Lord.

VALERY FABRIKANT :

It wasn't finished, I didn't have those documents yesterday, I had no idea that he would claim that he derived something. And when he caught me all by surprise I...

Me JEAN LECOURS :

Again he's not fair, My Lord...

VALERY FABRIKANT :

... and no way...

Me JEAN LECOURS :

... he said he suggested to derive by part, he did not say he did the relation himself, My Lord.

VALERY FABRIKANT :

I had no way to confront him with the document, therefore now I do have it, and I want him to take a look at it, and maybe he will recall better, just to trigger his memory.

Me JEAN LECOURS :

My Lord, it's scientific arguing, there is not a single word in these sheets, it's only equations, I don't think the jury is very interested.

VALERY FABRIKANT :

So what is wrong with that? I want to trigger his memory, what he did, when he did, how he did it.

THE COURT :

Taking things step by step. I have no idea yet whether the nature of the testimony you want to elicit is going to fall into the technical category that I declined to

permit yesterday.

VALERY FABRIKANT :

Not at all.

THE COURT :

But on the general question of reopening his contribution, you're perfectly within your rights to do so.

Me JEAN LECOURS :

I suggest you have a look first at the papers, My Lord, and assess yourself.

THE COURT :

Well, I didn't bring my calculator, I'm pretty slow on...

Me JEAN LECOURS :

Not only calculated, there's no single... I don't think there is a single...

VALERY FABRIKANT :

You don't need even calculator, there's no numbers there.

THE COURT :

Let us refer...

VALERY FABRIKANT :

It's just simple, so you don't even need a calculator. No numbers. And it is not easy even to find what is top and what is bottom.

THE COURT :

I managed with the numbers.

VALERY FABRIKANT :

Yes. All right. And I just wonder if doctor Swamy would be able to discriminate what is what there, he is co-author.

THE COURT :

Now, you're showing the document to doctor Swamy, now put your question.

VALERY FABRIKANT :

First of all I would like him to look at it.

Me JEAN LECOURS :

While he's reading, My Lord, I would like to say to the Court that the accused tried the same thing with doctor Xistris and it was disallowed.

THE COURT :

Mr. Lecours, yesterday questions were put to doctor Swamy relating to his contribution to two papers, I understand that the questions that are about to be put are in the same category. Now, I can't see why what was pertinent yesterday afternoon, or what was permitted yesterday afternoon with regard to these two papers wouldn't be permitted now in the light of anything that transpired yesterday. If, as doctor Fabrikant says, he, as a result of an answer, looked into something and wishes to put another question, for the minute he'll put his other question. Whether the other question takes us or transports us into technicalities, which make it pointless to go further, I don't know, I'd rather wait and see that.

Me JEAN LECOURS :

It is obvious, My Lord.

THE COURT :

Q. You've looked at that...

A. Yes.

VALERY FABRIKANT :

Q. Are those (inaudible) trigger your memory in any way?

A. Yes, it doesn't trigger my memory as to whether this is the same sheet that I saw in nineteen eighty-one (1981) or eighty ('80), but what I stated yesterday was that I suggested that the two integrals, here I don't know the equation number, there it was 23, these two integrals could be moved, taken from the right side, (inaudible) one, (inaudible), once back the (inaudible) is ten, then moved to the exterior and (inaudible) respect to you too. And that integral is what (inaudible) 180 on the top as (inaudible) that integral has been integrated by fax, first, and the (inaudible) taken on each one of the parts. Yes, this is exactly what I stated yesterday, I did not say that I (inaudible) it, and I said this many times, that when I discussed with (inaudible) or with my students or with my colleagues, when we discussed and they made a suggestion, it is not that I go and do it myself. Yesterday I've done this, that is exactly what I talked about in terms of integration by fax, and then differentiated. And it has been done two times, one with respect to you, and one other time with respect to you too.

Q. Uh, huh. All right. So how does it trigger your memory in terms of the events? I came to you with those sheets of paper where this part was not written yet, how was it? Just describe the events.

THE COURT :

This we've been through, Mr. Fabrikant.

VALERY FABRIKANT :

No, no...

THE COURT :

This we've been through yesterday, and he's told you.

VALERY FABRIKANT :

Maybe this will trigger his memory who did what, when, how.

Q. Does it trigger your memory in any way?

A. I can answer that, My Lord. I stated that I don't remember whether this could be sheet, this could have been done afterwards in a (inaudible) form before publication. What I (inaudible) was that when doctor Osman brought him to me, in the very first meeting, what I remember was that the general idea that he said that you're working on, and he showed me (inaudible), that was the one which I was quite impressed with. And that is the reason why I looked at that, otherwise he was not working with me, I was not the least bit interested in that work because it is not even in my area. Because (Inaudible) operator was something I thought was significant, I looked at it, and I thought that when he wanted to discuss with me (inaudible). And all I remember was when he explained the problem, what he was doing, then he showed some of the results that he had gotten, the only thing I remember was, it was at the stage where I thought certain integration tricks could be used to simplify that. That's all that I can remember. As to whether it was this sheet or not, I cannot say that. To me, when I have done my work, there's a lot of scribbling and crosses and things so (inaudible), because I don't know where the first time it could lead to. And so this looks like it has been

written at the end and everything has been worked out in a neat form before it can get typed.

Q. Does it look like a neat form? Maybe you would like to look at more of that.

THE COURT :

No, this has gone on long enough. Let us move on to something else.

VALERY FABRIKANT :

Well, I just want to show to the jury that this is original derivation, it is not neat form...

THE COURT :

Listen...

VALERY FABRIKANT :

...there are crosses there...

THE COURT :

...original derivations, if we're arguing between what was a copy and what was not, we've gone on long enough.

VALERY FABRIKANT :

Okay.

THE COURT :

You've reopened it, you...

VALERY FABRIKANT :

Q. Is it your handwriting there? Is any of your handwriting there?

A. No, it is not my handwriting.

Q. This is not your handwriting. Okay. Now, did doctor "Reitman" did anything on this stage there, which you could recall, or which is traced there?

A. I answered this yesterday, and I'll answer again, he was present during the discussions, as to whether he contributed, before it even came... he brought me to my office, (inaudible) this particular one (inaudible) seventy-nine (79), the top (inaudible) is given, by the time (inaudible), whether you had any discussions with him or not, I have absolutely no idea.

Q. Uh, huh. But you recognize that this is part of what you were talking about, the questions 24 and 25, correct?

A. No, part (inaudible) 24 and 25 that you were talking yesterday was the first paper, this is the second paper. The kind of (inaudible) that you have are not about different, I can substitute for one of these things equations (inaudible), the corresponding value, I don't have (inaudible) paper here, I didn't get the other integral which is in the prospect.

THE COURT :

Now, would you take that paper, hand it back to Me Ouelette, please. Now, Mr. Fabrikant, this question of those two papers is finished, move on to something else.

VALERY FABRIKANT :

Well, I have a tape on which doctor Reitman states himself that he included also Swamy into his publications without Swamy contributing anything to those papers as well.

Me JEAN LECOURS :

This is irrelevant, my Lord.

THE COURT :

This is totally irrelevant, and it's irrelevant on the same basis as Ahmed's testimony on that point, or Rakheja's was ruled out.

VALERY FABRIKANT :

Well, it is irrelevant to point out that...

THE COURT :

No, you may not.

VALERY FABRIKANT :

...that Swamy did this practice with everybody, not just with me. It's irrelevant.

THE COURT :

I am interested only in your relationship with Dr. Swamy, period, full stop.

VALERY FABRIKANT :

All right.

Q. Could you describe to the jury the technique of joint supervision of graduate students?

A. Yes, I can. With our joint supervision of students, when we feel that the strength of two different professors could be utilized to supervise the students and put them to different aspects of the problem, elicit problem, so that one may be more experimental, one could be theoretical. Or one could perhaps be more familiar with the numerical techniques, and one may be more familiar with the mathematical techniques. The strength of these two supervisors will help the student to tackle a problem where both techniques are required.

Q. Okay. This is why, in the last fifteen (15) years, out of eight doctoral students, or out of nine doctoral students, seven you had in course supervision, and out of seven master students, six are in course supervision, is that the reason for that?

A. The reason if you work as a team, in fact our (inaudible) grant that we get from Quebec City, it is a joint grant for four... right now there is three, a person has left, people that we get, and therefore we supervise jointly between different people. I have supervised once with doctor (inaudible) Ahmed, I supervised once with doctor "Placton", I have supervised some time ago with doctor (inaudible), and we work as a team.

Q. Okay. Is it typical that usually there are two supervisors and one of them is some kind of a boss, dean or chairman of the department, and the other is a professor. Is it just a coincidence?

Me JEAN LECOURS :

Maybe the accused could explain the relevance of this line, My Lord, I don't see it.

VALERY FABRIKANT :

Ask me, I'll explain.

THE COURT :

What is the relevance, Mr. Fabrikant?

VALERY FABRIKANT :

Very simple. I had exactly the same experience that I had to supervise a graduate student for the same reasons and the same situation where T.S. Sankar was, the so-called course supervisor. He didn't understand the word in that dissertation, he never even looked at it. This is the reason.

THE COURT :

What is the relevance of that to your defense?

VALERY FABRIKANT :

Relevance, very simple, this was yet another abuse which I took at Concordia University, and I want to show that this abuse is typical, it is not something which was

unheard of, this is accepted stuff that there is a professor who has no brains but has money. There is another professor who has brains but no money. Then those two joined together because one professor contributes money, because you cannot have graduate students if you cannot pay him. And professor who has brains does the supervision. And this is what happened to me. And I want to show that Mr. Swamy is one of the world's record holders, because he has practically almost all of his graduate students supervised by something else, his scientific papers written by somebody else. He made number of publications which exceeds those of Einstein. Einstein in his whole life didn't make that much as Mr. Swamy did in just twenty (20) years, out of it fifteen (15) he was in dean's position. And everyone knows that if one in a dean's position he has a lot of administrative work to do, somehow Mr. Swamy managed to have twenty (20) papers per year published. You just... if you put a typist just to type them, that's what about how much it takes, for typist, without taking into consideration the paper has to be conceived, the paper has to be thought of, the paper has to be written, the paper has to be discussed. And if you look at the list of the so-called collaborators, you'll see about hundreds of names there who allegedly collaborated. Out of those names I know at least two persons, and I have even recorded that, "Plotkin" and Reitman both, that included even number of paper, putting his name first even. And Plotkin got himself a very good tenure position because of that. So, is it relevant all this kind of stuff which goes on at the university to my state of mind? It is not necessarily... I think it is ludicrous to think that whatever was done to me only affects my mind. What I see is being done around myself sometimes affects even more, and it is obvious for every normal person. So you cannot possibly exclude just to what happened to me, I have eyes, I have brains, and I see what is going on, and this affects people very often much more than what has been done to them directly.

Me JEAN LECOURS :

That's exactly what I said, My Lord, it's totally irrelevant.

THE COURT :

The practices followed at Concordia University generally, as far as supervision of graduate students, is not relevant to this litigation. The only thing which may have made something relevant is the manner in which it affected you. How easy it is to say that everything, everything upon this earth that occurred affected my mind. You effectively declared yourself when you said: "I propose to show that this witness participated in this sort of supervision with all sorts of people", the only way you could ever have hoped to make that relevant to your case is by saying it affected you, and from the explanation you have given me, I cannot see how it possibly affected you. And laudable as your altruistic motives might possibly be, I'm interested only in his dealings with you, and I am not prepared to permit you to get into this question. So the objection is maintained.

VALERY FABRIKANT :

All right.

Q. Do you recall seeing this?

Me JEAN LECOURS :

I'm going to wait for the questions, My Lord, but it does not originate, it does not bear the name of the witness, My Lord. We can ask the witness whether he saw any document in the world, My Lord. Usually we restrict that to the documents emanating from the witness.

THE COURT :

I'll wait for the questions.

A. No, I have never seen this.

VALERY FABRIKANT :

Q. You've never seen this?

A. No.

Q. Let me try to trigger your memory. We are in nineteen eighty-eight (1988) and, if you recall, you were so outraged by my accusation of T.S. Sankar, you recall that?

A. Yes, that particular meeting which I talked about yesterday, yes.

Q. Yes. Now, you asked me to prove, what proof do I have. Now, this is what was shown to you that in this particular article only the names of the authors are written in T.S. Sankar's handwriting, and some synonyms replaced by another word. Now, this triggers your memory?

A. It really does not.

Q. Okay. You might have seen it another time, at the meeting with Grendon Haines, who was also provided a copy of that paper, maybe he showed it to you, or McKenzie.

A. I really do not recall having seen this.

THE COURT :

Fine. Would you hand it back, please? There's the answer.

VALERY FABRIKANT :

All right.

Q. So we are in the question of authorship of papers. Did you read in Civil lawsuit my version of how you became co-author of those papers?

Me JEAN LECOURS :

Is the Civil lawsuit relevant, My Lord?

VALERY FABRIKANT :

Civil lawsuit is relevant...

Me JEAN LECOURS :

We're not here to settle Civil litigation, we're not here to settle problems regarding access to information, we're not here to settle Labor Law grievances. Once we know that there is a Civil litigation, that should be the end of it, this is a fact. But to go into the merits and the arguments, he's being sidetracked again, My Lord.

VALERY FABRIKANT :

I am not going into merits or arguments, I'm just asking him, this is a preparatory question to ask about authorship, that's all. And Civil lawsuit is mentioned here as just a source, because it might be another source as well. So in this particular case, Civil lawsuit is mentioned as a source of possible information for me to be able to ask other questions related to it,

period. And in general, if Crown wants to know how Civil lawsuit is relevant, unless Crown doesn't pay any attention to what I'm saying here, she might remember that the shooting occurred on August twenty-fourth (24th), one day before hearing of contempt of Court accusations which were brought in the Superior Court and to be heard on August twenty-fifth (25th). And I hope Crown also remembers what kind of threats were made at that time on me with respect to the Civil lawsuit. So Civil lawsuit is relevant. But in this particular case I'm just asking this as I would have asked about any other source of information so that I can put my other questions to him, period.

Me JEAN LECOURS :

But my point, My Lord, is the only relevant items are facts. It might be known, it might be relevant that the jury knows there is a Civil lawsuit, it might be relevant that the jury knows there is a hearing for contempt of Court, but that's the end of the facts, the rest is merits.

THE COURT :

You say the question is introductory?

VALERY FABRIKANT :

Yes.

THE COURT :

Proceed for the moment, the objection is overruled for the moment.

VALERY FABRIKANT :

Q. So did you read my explanation as to how your authorship came about in these two papers?

A. Yes, I read it, and I denied everything that you have stated there, and my lawyer wrote that up and gave that, saying that I deny the things that you have stated there.

Q. Okay. What were the things which I stated? Do you recall this...

Me JEAN LECOURS :

You see, My Lord, it is equivalent to testifying from the box.

THE COURT :

There we go. There we go. You said to me the question was an introductory one in preparation for your next one, now you are into the details of the Civil litigation, the objection is maintained.

VALERY FABRIKANT :

It's not details of Civil litigation, it's details of how it...

THE COURT :

I have ruled, the objection is maintained.

VALERY FABRIKANT :

All right.

Q. Did Dr. Reitman explain to you, when I crossed his name out of the list of authors, that I did it because he promised me to arrange with you a permanent position in another department if I give you the paper, do you recall that? Did he explain that to you?

A. He never said that to me. I do not know what discussions went on between you and him, he never said that to me.

Q. Did you ask him why his name was deleted?

A. I was surprised that I did not see his name, as I said

yesterday, and he was equally annoyed that his name was removed.

Q. Well, doesn't it sound logical to discuss the reasons here?

A. No, that is the reason why he felt that we should not have any dealings with you whatsoever (inaudible) or anything else. Because if you felt that he did not merit to be an author, you should not have included his name. But to include his name and then to remove it, (inaudible) anybody else was not ethical, and therefore we did not want to have any dealings with you. I said that yesterday and I repeat it.

Q. This was not my question. You see person annoyed and angry and you don't bother to ask him what were the reasons stated to you? Did you?

A. I did not ask why it was removed because I thought the whole thing was bizarre. Putting somebody's name and removing it. But I did talk to him, and he said this is the reason why we have not had any dealings with you whatsoever afterwards, and I told Dr. Sankar also that I would not like to have any research collaboration with you.

Q. Well, if it was bizarre, then the more reason to ask what is the reason for that.

THE COURT :

You are now arguing with the witness and you're in cross-examination, and you've been in cross-examination for the last several minutes.

VALERY FABRIKANT :

All right.

Q. Does the explanation that Mr. Reitman used me to be a co-author and promised in your name possibility of permanent position make the whole thing clear and not bizarre at all?

A. No, the question of offering permanent position to anybody does not arise because first of all the position has to be in the department, and it goes to the departmental (inaudible) such committee and department (inaudible). Secondly, there is no connection between working as a post-doctor fellow, and you were not a post-doctor fellow, and getting a job, but we had several post-doctor fellows working with me, and they don't automatically get jobs. And finally, doctor Osman was himself a post-doctor fellow, and he never looked for a job in our institution, and he was there one year and a half. And as I said yesterday, I advised most of my post-doctor fellows to seek a job and go elsewhere, and not to stay at the same place. And he stopped and got (inaudible) office and he took the one (inaudible).

Q. So you say it is not related at all to publications. Now, may I ask you, appointment of "Thulasiraman" who is specialist in (inaudible) theory to the Department of Mechanical Engineering at the time when you allegedly joined book was ready to publication, isn't this an example that they are very, very related? Is it?

Me JEAN LECOURS :

Do we care about Thulasiraman, My Lord?

VALERY FABRIKANT :

Well, he mentioned himself those things are not related, he raised this question. So since he raised the question whether publications and appointments are

interrelated, I'm asking him how come person who is not specialist in mechanical engineering at all, nothing to do with mechanics, if...

Me JEAN LECOURS :

I know, My Lord, the witness wants to respond but...

VALERY FABRIKANT :

Keep quiet please. Is it possible to make Crown behaving?

THE COURT :

Perhaps he thought you had finished, I'm not sure.

VALERY FABRIKANT :

Well, he couldn't possibly think.

THE COURT :

Let's not argue about it.

VALERY FABRIKANT :

Yes. It's impossible to make remark that Crown is impolite, it's always I who is impolite. Naughty boy it's me, not the Crown.

THE COURT :

Generally.

VALERY FABRIKANT :

What?

THE COURT :

Generally, that's the truth. Not always, but generally.

VALERY FABRIKANT :

Okay. So let's, for a change, call Crown the same name.

THE COURT :

Yes, he shouldn't have interrupted you.

VALERY FABRIKANT :

Beautiful.

Me JEAN LECOURS :

And if I did so, I apologize.

VALERY FABRIKANT :

Oh, start of a new life. Okay. So since doctor Swamy mentioned that publications and appointments are not related, I just want to remind him that professor Thulasiraman, who at all accounts, and his own, was the real author of the book, and who included Swamy there as the first co-author, and if Swamy remembers well, he tried to put Thulasiraman to electrical engineering where he effectively belongs, and Chairman at that time rejected that, and he paid his position for that as far as I understand. Then he tried to put him in Computer Science and they didn't take him either. And then there was the best friend, T.S. Sankar, Chairman of Department of Mechanical Engineering who gladly accepted Thulasiraman, in exchange Thulasiraman immediately put T.S. Sankar as co-supervisor of his graduate students, so it is very, very interrelated. So this is why I am asking this question, and this is why I want to put air of reality to my allegations as to how Swamy has become co-author.

THE COURT :

The question of how Swamy became co-author, the question of the adventures of Thulasiraman at Concordia University and its various faculties is not relevant to these proceedings and the objection is maintained.

VALERY FABRIKANT :

Well, here I ask question about...

THE COURT :

I've ruled.

VALERY FABRIKANT :

Okay.

Q. So it is never like you give me publications, I give you the position, it has never been done at Concordia University, correct?

A. Not to my knowledge.

Q. What about...

A. The colleagues work together, and you always (inaudible) any work between two colleagues as always with a motive. That's not just true.

Q. Uh, huh. What about Plotkin? Didn't he give you about fifty (50) publications before he became...

Me JEAN LECOURS :

It's always the same, My Lord.

THE COURT :

It's always the same thing, we don't care. No.

Objection maintained.

VALERY FABRIKANT :

Okay.

Q. Do you recall in eighty-eight ('88) now, when I came complaining to you on Seshadri Swamy, did I threaten you in any way during that meeting?

A. First of all it is Seshadri Sankar, and you did not threaten me.

Q. Okay. Did I tell you something that you should clean up this mess or I blow whistle on that?

A. I don't remember that, but you could have very well said that, I don't remember.

Q. All right. So what is your recollection as to what happened to my contract renewal in nineteen eighty-eight (1988)?

A. Your contract renewal, the Department of Personnel Committee made a recommendation to the Faculty Personnel Committee that you be reappointed for a period of two years and to the Actions Structurantes program, as a research associate professor. And that for that, that teaching would become a part of your responsibilities because this position might be integrated into the university tenure track (inaudible) if the program was going successful and the money was given to the university. Because the first contract did not include, in fact it stated that (inaudible) was not a part of your responsibilities. And the Faculty Personnel Committee considered that, along with other (inaudible) Actions Structurantes, and a recommendation was made that you be reappointed for a period of two years.

Q. Okay. So the threat worked and I got my two year reappointment, right?

A. It had nothing to do with any threat you might or you might not have made, I do not remember, but as happened in all other cases, it was... the recommendation came from the Department Personnel Committee, which is an elected body of professors, and that recommendation came to my Faculty Personnel Committee which consists of four elected people from different departments, and I chair that committee. And both of those committees unanimously recommended that you be reappointed, it was in the merits of your research profile, even though the teaching, while you had not done, and it was going to be (inaudible) as a part of your responsibilities.

- Q. So there was no problem, I just invented all that stuff, correct?
- A. I did not state that, I stated yesterday that you had come to complain that you were having difficulty with regard to the reappointment, and (inaudible) recommendation from doctor Seshadri Sankar, Director of the Center. But then I told at that time, as I told you subsequently several times, that there are procedures in the university, that this recommendation was only a preliminary one to the Department Personnel Committee, and that it would come to the Faculty Personnel Committee. Until then nothing was complete and afterwards (inaudible) who makes this decision.
- Q. Well, did you check about the problem? Was there any problem? Did you do anything to verify the facts which I gave you?
- A. What facts? You made a comment, a statement, which I stated yesterday as a (inaudible) about doctor Tom Sankar, and subsequently (inaudible) by saying the same contribution that he has done. And my answer at that time was, (inaudible), and I said: "What exactly do you mean by that?" there was absolutely no comment from you. If you had put a written complaint about doctor Sankar, either to me or because I was myself, you were accusing me, if it had been sent to the Vice-Rector, appropriate action would have taken place, but you never did that.
- Q. By appropriate action you mean I would have been fired? That's what you mean appropriate action?
- THE COURT :
That is not a question, that is an observation from the dock.
- VALERY FABRIKANT :
No, it is a question.
- THE COURT :
It's not a question.
- VALERY FABRIKANT :
Okay. I'll make it a question.
- Q. What do you mean by appropriate action?
- A. Appropriate action would have been, if it had come to me, (inaudible) a complaint had come to me, about one of my professors, my responsibility as the dean would have been to hear both sides, first of all. And if it could not have been resolved, then I would have set up a committee of professors to look into the allegations and to see whether it was justified that much, just speak out the professor complaints about another professor, it does not become fact.
- Q. All right. So if we can just make a little jump then and will return back. We are in ninety-two ('92), I did put it all in writing about you, about Sankar, about scientific prostitution, and I sent it to the Board of Governors, do you recall that?
- A. I do not recall any letter that has been written by you to the Board of Governors about me. I do know, unless there is something there which I am not seeing, you did complain to the Board of Governors in the month of... around November or December, about Seshadri Sankar, and which the board asked the Vice-Rector to look into the matter. And the Vice-Rector, after having looked into the matter, (inaudible) issued a statement, I made my presentation to the Board with (inaudible) that the

public statement in the university newspaper and in the Senate.

Q. Well, was there any committee of professors at that time organized to investigate my allegations, to the best of your knowledge?

A. No, there was not, but I said what I would have done.

Q. Do you know if Vice-Rector even bothered to talk to me before, publishing her denial?

A. I do not know (inaudible), you have got to ask her.

Q. All right. Now, did you see my second letter to the Board of Governors, where I put all the details including about yourself?

A. I have not seen that letter. If there was, then action should have been taken to set up such a committee.

Q. Okay. So if it wasn't taken then what, there was some breach in the rules and regulations?

A. No, I have no idea what the Vice-Rector... you could have been taken to the Board, what the Vice-Rector's answer was to the Board, I have no idea.

THE COURT :

You are in the area of speculation.

VALERY FABRIKANT :

All right.

LA COUR :

He said: "I did not see that letter", that's it.

VALERY FABRIKANT :

Yes. Okay.

Q. So you didn't bother to check at that time when I told you that I've written thirty (30) publications, which is remarkable number, and Sankar wanted to terminate my employment, you didn't find any troublesome to look into that at that time, correct?

A. I did not use the word yesterday that you wanted... that he was was going to terminate, I always said you had difficulty with the contract, it did not mean termination.

Q. Okay. So I did not...

A. You said that you had some difficulty with doctor Sankar regarding your reappointment...

Q. So I didn't tell...

A. ...with Seshadri Sankar.

Q. ...I didn't tell you that he wants to recommend one year and termination after that, I didn't tell you that?

A. It is possible you could have told, but I do not recall, what I do recall is the recommendations from the DPC and the FPC.

Q. Yes, you have a very selective memory.

THE COURT :

Please spare us the comments.

VALERY FABRIKANT :

All right.

Q. Okay. What happened in January, about December, January, December eighty-eight ('88), January eighty-nine ('89)? What kind of problem was there, if you recall?

A. I don't recall of no problem, I know that you wanted to be considered for promotion to (inaudible) research professor, if that's what you are talking about. Then it was... you were requesting early promotion.

Q. Yes. Okay. And what happened to it?

A. The early promotion is given to people with seven

years... sorry, anybody who has four or seven years, it's in the seventh year that one can be considered for a promotion to a full professor, anything earlier than that is considered an early promotion. The early promotion is determined by... it cannot be requested, it can only be considered by the Department Personnel Committee if it feels that early promotion is warranted. In this particular case the Department Personnel Committee felt that there was no evidence with regard to the teaching (inaudible). Because your first three years of service, from eighty-five ('85) to eighty-eight ('88) as a research associate professor under Actions Structurantes program, it was clearly stated that there would be no teaching responsibility for you. However, the contract that I just now mentioned that you got (inaudible) recommended in December nineteen eighty-eight (1988) was to the effect that teaching would be included. And since teaching was not yet established in your case at that time, they stated the promotion was early. An early promotion cannot be considered by the Department Personnel Committee, and you were not very happy with it, and I know that you came and talked to me several times, and my answer was the same, that the teaching is an important aspect, particularly since Actions Structurantes program that would be integrated, it would become a permanent... a position leading to permanency. And I say one has to have input about teaching before one can be considered full professor promotion.

Q. Wasn't I considered for research professor rather than professor? Was I?

A. It is true, but as I said earlier, if we had positions like this of professors on a permanent basis, then teaching would not have been perhaps a major criteria. However, the Actions Structurantes program was itself only for five years, and if the program was successful, automatically the positions would be integrated and you would have been considered for one of those positions. And therefore, we had to make sure that the rank was even, subsequently it was going to become the rank of a professor, not simply a research professor because the research would be dropped at that time. So we had to make sure that you could satisfy the research part, the teaching part, and service to the community, all the three aspects. And the committee felt that they did not have sufficient positive evidence to take up the promotion on an early basis.

Q. Okay. Are you aware that I did do teaching in early eighties and it was good?

A. You taught, as far as I remember, I think you taught one course in probability and statistics, I do not remember if you taught any other course.

Q. Well, but I taught it several times and it was consistently good, was it?

A. I said I do not remember anything other than the probability and statistics course, you might have taught, but the aspect of early promotion is concerned, it is for the Department Personnel Committee to see whether somebody could be considered for early promotion, it is not something that a professor can demand because it's the seventh year, that a professor

can demand. However, the department did have a look at your c.v. and felt that they did not have sufficient evidence on the teaching itself.

Q. Well, does collective agreement say anything about teaching when question of professor is concerned?

A. The collective agreement... the then collective agreement, in fact did not include the research appointed at all as a part of a bargaining unit, but if the collective agreement had been taken just that alone, then you wouldn't have been eligible for promotion. However, you wanted to make sure (inaudible) basis, and that is the reason why I suggested to Dean and Vice-Rector, doctor Francis White, that all the conditions, even though this (inaudible) the collective bargaining unit, that as far as (inaudible), we use the same procedures with regard to the promotions and other things that we use for regular professors. It was at my suggestion that the letter was written that we use the same procedures.

Q. That was answer to my question: Does collective agreement say anything about teaching in the section of promotion to full professor, and only answer is: Yes, it does, or no, it doesn't.

THE COURT :

The answer is permitted. The answer is comprehensive and the answer, one part of the answer follows from the first.

VALERY FABRIKANT :

Q. So what is the answer, does it or doesn't it?

A. The answer is that at that time you were not even member of the collective bargaining unit. However...

Q. That was not my question, who I was. My question was, does collective agreement say anything explicitly about teaching in the part related to promotion for professor?

THE COURT :

You are falling into the same pit as you accused the Crown of falling into, the witness was not even half-way through his answer when you interrupted with your last question.

VALERY FABRIKANT :

No, he already answered.

THE COURT :

Would you go ahead and answer...

VALERY FABRIKANT :

He started answering a second time.

THE COURT :

Q. Would you go ahead and answer what you were answering?

A. Yes, My Lord. The collective agreement for those people who are members of the bargaining unit, (inaudible) considered for promotion, they would have to be associate professors in the seventh year to be considered (inaudible), otherwise it has to be considered early. One other primary condition for anybody as an associate professor, not (inaudible) but associate professor, is that he or she has shown teaching of good quality over (inaudible), that was required for an associate professor, before he or she can become a full professor. In this particular case, doctor Fabrikant was a research associate professor, and that is based only on research, and the first three years appointment did not even call for any teaching,

therefore it was extremely important to make sure that he qualified for the associate professor teaching part before he could (inaudible) for promotion.

Q. Yes, but his question bore upon the applicability of the collective agreement to him.

A. At that time it was not even...

Q. I understood you to say that he was not part of the bargaining unit?

A. That's right. Yes.

VALERY FABRIKANT :

Q. That was not my question, my question was much more simple, abstract, irrelevant to me. Does collective agreement, in the part which describes condition for promotion to full professor, say a single word about teaching? Period. Does it or doesn't it?

A. It does not state at the professor level but it's already assumed that one is an associate professor where the teaching is a requirement.

Q. All right. So did I or didn't I have at least evidence that I'm a good teacher since nineteen eighty (1980) at this university at that time? Did I?

A. It was in the mind of the DPC that there was not sufficient evidence of teaching, an associate professor usually has taught, usually teaches four courses per term for a period of years. And if somebody has taught for five or six years, they would have taught twenty-four (24) to twenty-five (25) courses over different areas of the particular department he or she is in. And even if you have taught three or four courses, the department felt that was not a sufficient (inaudible) because it was not comprehensive in terms of the area of coverage of the different courses to be given in the department.

Q. All right. Suppose this is the truth, how come just in eight months after that they decided to recommend me? What happened between the time they denied my promotion and eight months later nothing happened, I didn't do any big teaching during that time, I didn't do any graduation of graduate students ten times, nothing happened, and nine months later all of a sudden they decided to promote me, how do you explain that then?

A. First of all it was not ten months later, it was exactly after one year, the next January, February that the whole question of promotion came up. By that time you had...

THE COURT :

Q. Excuse me, are we talking about January of ninety ('90) now?

A. Yes.

VALERY FABRIKANT :

Q. Well, they started promotion in September, I've been told to prepare that year for promotion.

THE COURT :

Q. Excuse me, I interrupted you, I said, are you talking about January ninety ('90)?

A. Yes, My Lord.

Q. Fine.

A. Just (inaudible) for nineteen eighty-nine (1989), promotion, the dossier was prepared in the winter of eighty-eight ('88), (inaudible) review the case for the next year for consideration in January, February, the

dossier would have been prepared in the winter of nineteen eighty-nine (1989), so it's approximately a twelve (12) month period. Secondly, by that time, if my memory doesn't fail, I think doctor Fabrikant had taught two more courses by that time, the course in statics and I think a course in dynamics, I'm not really sure but I thought you had taught two more courses, and the department was prepared to look at the promotion.

Me JEAN LECOURS :

At this point, My Lord, I would like to raise the question of this whole line is irrelevant. Mr. Fabrikant explained to you that it could explain a certain state of mind that could be relevant to provocation at a certain point, but the Code is very clear, Fabrikant has the right to ask for an early promotion, the university has the right to deny an early promotion. The Code says:

"No one shall be deemed to have given provocation to another by doing anything that he had the legal right to do."

Asking promotions, making grievances, and all that could not be considered by the jury in a defense of provocation.

THE COURT :

I'm not sure I agree with you. The provocation that that section is talking about is the final act which constitutes the provocation. If provocation there is, if provocation there is, it will have to be found necessarily on the twenty-fourth (24th) of August, if provocation there is. What makes his testimony relevant is the possibility of the accused argument that various acts, not provocation in themselves because...

Me JEAN LECOURS :

Are legal.

THE COURT :

...not acts of provocation in themselves but acts, facts, may have combined to put him in a certain frame of mind whereby on August the twenty-fourth (24th), something happened and he reacted in the manner in which he did. These acts themselves, I don't regard as acts which trigger in any sense the defense of provocation but rather which may be susceptible of producing an effect on his mind, which puts it in the state which it was in on the twenty-fourth (24th).

Me JEAN LECOURS :

Okay. My submission is that it is too remote.

THE COURT :

You may be right that it's too remote, but it's... you're perfectly right that it's too remote as the trigger of the defense of provocation. These acts are not, in my view, too remote in the sense of whether they affected him so as to combine with whatever happened on the twenty-fourth (24th) to cause him to do what he did. And that is the only possible...

Me JEAN LECOURS :

I think you read... it's the section in Ewaschuk that...

THE COURT :

Yes, that's what I thought.

Me JEAN LECOURS :

I have to answer to that that the story of his life

would be relevant then.

THE COURT :

Well, the story of his life like anything else has to know some limits somewhere along the way. Now, we haven't gone into the story of his life, and I'm not, I think, about to go into the story of his life, but rather I'm limiting myself to the question I've already pointed out to you before. Just a second. The cases I referred you to before were Conway and Devault.

Me JEAN LECOURS :

Yes.

THE COURT :

Events prior to an actual killing may be relevant to the accused's state of mind at the time. Thus a person suffering a series of wrongful acts and insults may more readily lose self-control upon receipt of a further wrongful act or insult proffered immediately before the killing. Apart from the old case of "Krawchuk" originating in British Columbia you have two decision in nineteen eighty-five (1985) and nineteen eighty-six (1986) respectively of the Ontario Court of Appeal. That to me is the only way any of this is relevant, and whether it ever hooks up to anything or not is going to depend. But we're not debating that, we're debating the question of his right to make that proof at the moment.

Me JEAN LECOURS :

Yes, but now he's making the proof that he asked for an early promotion and he was denied because there was not enough teaching. And then he wants to argue the merits of that and so on and so forth.

THE COURT :

What you're saying is that in your estimation, what he qualifies as insults and mistreatment is not, in fact, an insult and mistreatment, and I don't know that now is the time for you to raise that.

Me JEAN LECOURS :

Well, I might see some relevance in an insanity defense, but not in a provocation defense. The way I understand it there's no insanity defense up to now in this case.

THE COURT :

I think you're raising an entirely different thing when you talk about an insanity defense. I'm not talking in terms of an insanity defense, I'm talking in terms of a provocation defense. There's no point in my reading to you what I just read to you because you heard me, but...

Me JEAN LECOURS :

Then my suggestion, or my submission...

THE COURT :

It's in there, if you want to look at it.

Me JEAN LECOURS :

...yes, would be to draw the line closer to the events and to restrict the scope of this examination and this defense.

THE COURT :

That is one possibility I thought I had with regard to the two papers in nineteen eighty (1980).

Me JEAN LECOURS :

Because, My Lord, I think after seventy-one (71) witnesses you have more information than after the beginning of the defense.

THE COURT :

It's at the end that the question of whether a defense has an air of reality or not, it's not today that it has an air of reality, it could be wrong I think to decide on a piecemeal basis that one facet of the proof has no air of reality, therefore it can't go in. My difficulty has always been to try to afford on one hand the right to a full and complete defense, which isn't in my mind a completely opened and an unlimited proposition, not by any stretch of the imagination. But my problem has been to permit a full and complete defense, on one hand, but on the other hand attempt to see it presented in a manageable and a succinct fashion, that's what's proved to be far more difficult. But on the question of the relevance of it and his perception of these events as being things that constitute mistreatment, I think that he's entitled to make these points. What they add up to in the end is an entirely different question. Anyway, I'm going to stop for fifteen (15) minutes at this point and...

SUSPENSION OF THE HEARING
RE-OPENING OF THE HEARING
WITHOUT JURY

THE COURT :

As far as consultation with Mr. Fabrikant is concerned, in principle I'm advised that there's no objection to the use of the "parloir" on the third floor. The only problem is that there's no access from this side, so you'll have to go... if you want to use it you'll have to go down and come back up again, which might involve a delay of ten minutes. I leave it to you, because it may be that that would be more accessible in any event than the ones downstairs. In principle, if the ones downstairs are free, you're quicker using those, I'm told.

Me OUELLETTE :

Okay. What we're saying is that I'm to go downstairs first, if there is (inaudible) there, I'll see him there, then if it's not possible, (inaudible).

THE COURT :

I'm saying it's up to you to decide which way you want to proceed, but that might be the quickest one, that's what's suggested to me. Okay? So I would let the guards know what you consider best.

Me OUELLETTE :

Basically... anyway they don't have... if I understand correctly they don't have any choice at all, they have to bring him downstairs first.

THE COURT :

Effectively. To simply finish the discussion on the question we were on before, I am conscious of the ruling I made with regard to the exercise of the university of its right of appeal, either under the collective agreement or pursuant to decisions of the Code of Conduct. I ruled that these could not constitute insults in any sense of the word. I make a distinction between appeals launched by the university pursuant to decisions and the manner in which decisions relating to Mr. Fabrikant were made, whether by the DPC, the FPC or the Vice-Rector. Because to take any other position would effectively bar him from making any proof of any

of these incidents and I don't think that would be right.

MEMBERS OF THE JURY ARE PRESENT

VALERY FABRIKANT :

I would like just to add to what Crown said before, that I'm not trying to establish that I was or I wasn't promoted to full professor position. What I'm trying to establish is that the reason for that non-promotion was not what Swamy says, that I didn't have enough teaching experience, the reason was that before that Sankar again tried to extort from me papers. And when I told no, then there was decision not to promote, this is the point.

THE COURT :

I don't need to have that explanation, you'll put your questions and...

VALERY FABRIKANT :

Well, but Crown knows that, I mentioned that, and nevertheless Mr. Lecours finds it necessary to stand up and pretend that he doesn't know. Because I do not believe that he is sitting here and just not listening what is going on, or if he is, then again, it's no good. Whatever is the case.

THE COURT :

Well go ahead with your questions, will you?

WITNESS: SRIKANTA SWAMY -- UNDER THE SAME OATH

EXAMINATION BY VALERY FABRIKANT (CONT'D) :

Q. Now, we are in January of eighty-nine ('89) and my promotion was denied. In January of nineteen ninety (1990) it passed through, there was no twenty (20) courses taught, in the meantime nothing really changed. As far as teaching, if you recall, I had in eighties about five courses taught, though the same course five times. So either they had the opportunity to establish what my teaching was or they didn't. So could you give the viable explanation why, in eighty-nine ('89), I was not recommended for promotion in nineteen ninety (1990) when practically nothing changed, I was recommended for promotion?

A. I'll repeat what I said earlier. In the beginning of the year eighty-nine ('89), ninety ('90)... no, eighty-eight ('88), eighty-nine ('89), when you asked for promotion, you had not taught any course than Actions Structurantes period except for the course in statics that you were just then teaching in the first term. I did not know that you had taught four or five courses during the eighties, at all, and I'm not sure that it's true, I have no idea. I was not handling part-time courses and doctor Gigušre was handling the part-time courses. But I do know that the DPC did not reject your promotion, there is a difference between not promoting and not considering, (inaudible) they do not have enough evidence to consider your promotion, which is different from rejecting the promotion. The year afterwards they had at least two, or perhaps three courses extra, the statics and dynamics that you taught in eighty-eight ('88), eighty-nine ('89), during that year, and also the statics of the first term of the (inaudible). And they felt that that was sufficient evidence to promote you as a research associate professor to a research professor, and the Faculty Personnel Committee also (inaudible),

and they unanimously recommended to the Vice-Rector.

Q. All right. Were you aware that I got my Ph.D. degree in sixty-six ('66)?

A. It's possible, I don't remember always the year. Yes, it's possible.

Q. And you also might recall that since sixty-six ('66) to eighty-nine ('89), which is twenty-three (23) years, I had significant experience of teaching in another country, did this cross your mind?

A. First of all it is the DPC which looks at the early promotion, it was not at the faculty level. And secondly, the DPC felt that there was not evidence that they could show about the quality of teaching, as of the best of teaching you might have taught before, but they were not satisfied of the evidence that they had. And the succeeding year they had two more, or three more teaching evaluations, and they were prepared to consider, and in fact they recommended promotion.

Q. Okay. Did I come to you to complain in winter of eighty-nine ('89)?

A. You have come to my office so many times, I'm sure you have complained about not being considered for promotion.

Q. All right. What was my reasoning at that time? Do you recall? Did I explain to you what was going on in the department again?

A. I don't recall all the explanations, I don't know how many times you have come to my office complaining about doctor Seshadri Sankar not wanting to retain you, not wanting to promote you, the Department Personnel Committee not wanting to consider your promotion. And my answer every time was the same, it is the DPC which looks at this, and I know, you told me several times: "You, as a dean, can promote me", and I have told over and over again: "I do not have absolute power, it is the DPC and the FPC (inaudible) recommendation, then, and only then, can I make my recommendation". And I must have said this thing over and over again to you.

Q. Well, try to recollect better. In eighty-nine ('89) you said that you remember very well when I questioned integrity of somebody.

A. It was not...

Q. Did I in eighty-nine ('89) tell you that they're trying to extort papers from me?

A. I do not remember the word "extort" at all, I told this yesterday, I said this morning, and I repeat it, you made that comment about doctor Sankar, as I said in eighty-eight ('88). You might have made the same statement in eighty-nine ('89) because you went to doctor Catherine McKenzie and the Vice-Rector Academic, who was Rector at the time (inaudible). And I said that yesterday and I'll repeat, I did talk to the Rector to state that you should put it in writing so that appropriate measures can be taken to look into this matter.

Q. You're not answering my question. Would you please stick to the question? Question was, extortion or no extortion, in other words, in any words, did I or didn't I mention to you that Seshadri Sankar uses his position to make me to put his name into the articles, and this is why I didn't get the promotion, did I or didn't I?

A. I don't remember that at all.

Q. So how did I explain this to you?

A. You went on saying that they did not want to promote you.

Q. And I didn't give you any explanation of mine?

A. Yes, that doctor Seshadri Sankar is not prepared to recommend you for promotion.

Q. You're not listening to my question. I'm asking you, did I or didn't I explain to you why?

THE COURT :

He has told you, he doesn't... you suggested the answer to him and he's told you he doesn't recall you saying that. Now, will you leave it alone when he doesn't recall and go on to something else?

VALERY FABRIKANT :

No, I'm asking, so how did I explain then?

Q. Did I explain it and how?

A. I don't remember, My Lord. I don't remember.

VALERY FABRIKANT :

Well, he claimed himself that he remembers very well when the question of integrity is raised, how come he doesn't remember that question?

THE COURT :

I have no idea, Mr. Fabrikant, how come anything.

VALERY FABRIKANT :

Well, isn't witness faking his memory?

THE COURT :

That's your view.

VALERY FABRIKANT :

Q. Okay. So, you don't recall how I explained it to you, but did I explain in any way what is going on?

A. The only thing I know (inaudible) was that you were not very happy that professor Seshadri Sankar was not prepared to recommend you for promotion. And the DPC was not prepared to consider a promotion on an early basis because they felt that you did not have enough evidence to show on teaching aspect.

Q. And I didn't bring you my other teaching contracts, I didn't show it to you, did I?

A. I don't remember any of those.

Q. All right. So, that was the end of our conversation then and I went to see the Vice-Rector, correct?

A. I don't know whether you went to see the Vice-Rector or doctor Catherine McKenzie, but I do know of the fact that (inaudible) a call from Catherine McKenzie that you had seen her.

Q. All right. What did she tell you? How did I explain it to her my dissatisfaction? Did I mention to her all this question of integrity?

A. Yes, you must have, because what she told me was that you had conveyed to her that your promotion had not been recommended because of the fact that you did not participate in group research with doctor Seshadri Sankar. And that also you stated to her, that's what I recollect her telling me, that there was joint publications that Seshadri Sankar, rather joint research to be carried out with doctor Seshadri Sankar. And that also, I don't know how and in what way you (inaudible) explained that doctor Tom Sankar had gotten papers from you, that his name was included without any contribution, and that in fact you said the same kind of

comment about my publications with you.

Q. Could you clarify please the one part that I did not participate in collective research with Seshadri Sankar? This is what I said, to the best of your recollection?

A. I don't know what was said, what I recall is that she told that you were not... that Seshadri Sankar asked you to do joint research with him, and perhaps that what you thought are joint publications. And I don't know in what context you brought doctor Sankar's name, Tom Sankar's name, maybe you just left it in my office, compare that (inaudible) Sankar, I don't know, but you had given the clear impression to her that you were complaining that doctor Sankar did not contribute... that Tom Sankar did not contribute to the publications and he had put his name. And at the same time you had also complained about the publications, the joint publications of mine with you.

Q. Well, what about Seshadri Sankar? Could you make it more or less clear, I couldn't possibly complain that I didn't do joint research, there is nothing to complain in doing joint research. If I am complaining, then it means that I am complaining that he is forcing papers out of me, right?

Me JEAN LECOURS :

This is arguing and double hearsay, My Lord.

THE COURT :

Yes, it is.

VALERY FABRIKANT :

All right, I will change the question.

Q. Could you clarify more or less this part about Seshadri Sankar, what my complaint was?

A. I don't know what exactly what you complained to doctor Catherine McKenzie...

THE COURT :

Listen, no, I'm not going to permit that, because unless the witness was there when you spoke to doctor McKenzie, there is no point asking the witness what you said to doctor McKenzie, or what doctor McKenzie said to the witness, you said to doctor McKenzie, we're too remote.

VALERY FABRIKANT :

No, this is not my purpose now.

THE COURT :

Well then don't ask it if it's not your purpose.

VALERY FABRIKANT :

My purpose is to establish his knowledge of that time, because he consecutively denies any knowledge of extortion, and I'm asking whether maybe he got that knowledge from Mrs. McKenzie. Period. So I am now questioning his personal knowledge of the subject.

THE COURT :

Put the question in those terms then.

VALERY FABRIKANT :

Well, I am doing my best.

Q. Did or didn't doctor McKenzie inform me about my allegation that Seshadri Sankar, extorting papers from me, and this is the only reason why I wasn't promoted?

A. No, she did not convey that in those words at all.

Q. Okay. Did she, in any words, convey my explanation why I wasn't promoted? Maybe it was in different words, what was that?

A. The only thing that I remember Catherine McKenzie telling me, that doctor Fabrikant feels that he is not being treated fairly, that his promotion is not being considered properly, and that doctor Seshadri Sankar is complaining that he does not do work... group research, does not contribute towards joint research work.

Q. Who is complaining now?

A. That you mentioned to Catherine McKenzie that Seshadri Sankar was asking you to work on joint projects, and to participate in research activities of the center where the center members interact with each other.

Q. And I complained on that?

Me JEAN LECOURS :

My Lord, Mr. Sankar, Mr. Seshadri Sankar was in the box, I don't see the point of getting into this double and triple hearsay.

THE COURT :

No.

VALERY FABRIKANT :

No, this is not the point, this is what McKenzie allegedly told him.

THE COURT :

Well I know, but this is pointless.

VALERY FABRIKANT :

Fine.

THE COURT :

This is pointless.

VALERY FABRIKANT :

Fine, I continue.

THE COURT :

What McKenzie told him is of no interest.

VALERY FABRIKANT :

All right. All right.

Q. What happened next?

A. Doctor Catherine McKenzie phoned me and told me about this, and then my reaction to her was that the DPC had not considered his promotion because of the lack of evidence on teaching. It has nothing to do with any other thing that he is talking about, and if he has got any such complaints about other matters, he ought to put it in writing and make a complaint to me as the dean, or to the Vice-Rector Academic, so that appropriate action can be taken. And I conveyed the same information to doctor Kenniff, who was the then acting Vice-Rector to let you know that if you have any such complaint you should put it officially in writing for that it could be looked at in appropriate manner.

Q. Did you or didn't you tell her at that point that Fabrikant's complaints that he is forced to do joint research are totally unfounded? This is what he's supposed to do if it is a joint research, did you tell her something like that?

A. I don't remember anything of that nature that I told her.

Q. Okay. Did you ask her how come Fabrikant objects to...

Me JEAN LECOURS :

This line is improper, My Lord, the only question could be: Did you ask her anything?

VALERY FABRIKANT :

Well... should I again mention that Crown should not stand up unless the case is in jeopardy? Because just

general question wouldn't work in this particular case, it's obvious. There is no way to ask a general question about it.

THE COURT :

Your question is permitted.

VALERY FABRIKANT :

Okay.

Q. So, did you tell her that complaint about being forced to do joint research is totally frivolous?

A. I don't remember to have said anything of that nature. I'm not... as I explained, I don't remember that, it's possible I might have explained about (inaudible) the center, because (inaudible) many times (inaudible). And why, how the center gets grant to do work on interdisciplinary work as well as joint research.

THE COURT :

Q. Well, unless you remember saying that...

A. I don't remember, My Lord.

Q. Fine. You don't.

VALERY FABRIKANT :

Q. All right. Okay. So you explained it all to Miss McKenzie, explained it all to Kenniff. Do you recall any other events of nineteen ninety (1990)?

A. Nineteen ninety (1990)?

Q. All right, let me be more specific. Do you recall that doctor McKenzie has written a memo to Kenniff saying that DPC definitely did not follow collective agreement and therefore there is a need for further discussion? Do you recall that kind...

A. I don't recall at all, I (inaudible) receive a copy of that letter.

Q. Okay. Did Osman maybe inform you that Miss McKenzie has visited him and discussed the matter with him?

A. Osman did tell me that he had a discussion with Catherine McKenzie about the promotion but he never stated anything of the nature that you are talking about.

Q. All right.

VALERY FABRIKANT :

Did we deposit this document? I don't remember. I was given list of depositions which I cannot use because it is written "document en liasse" and certain date, and there is no idea what it is. So I repeat once again, there is a need to make a copy of what is deposited and have it on my desk so that I would know what do we have. I don't know yet.

THE COURT :

Look...

VALERY FABRIKANT :

It's not a big deal.

THE COURT :

...you get tapes at the end of the day, you have that list, you have all the opportunity in the world to make notes of what these exhibits are. And you have paper in front of you, and you've got a desk there, and you've got a lawyer in front of you, if you want to show the witness a document, you show the witness a document.

VALERY FABRIKANT :

Yes. All right. Maybe.

Q. Okay. Do you recall any meetings with Grendon Haines?

A. I don't recall the details of that, I think we had a

meeting with Grendon Haines, and I don't even remember whether Catherine McKenzie was there or not, but I remember having had a meeting with Grendon Haines.

Q. All right. What it was about? How many meetings did you have and what was it all about?

A. I really don't remember.

THE COURT :

You might wish to locate the meeting in terms of time and, in that manner, it might assist Mr. Swamy.

VALERY FABRIKANT :

Q. How about meeting somewhere in March with Grendon Haines and he was talking to you about this field of promotion and possibility maybe to transfer to another department, do you have any recollection of that?

A. I don't recall specific things, My Lord, I mean there were so many discussions that (inaudible) Fabrikant himself, he himself requested whether it is possible for him to go into another department, so I don't know whether it was discussed with Mr. Haines, or about Mr. Haines, I really can't recall that.

Q. Was it discussed ever?

A. Yes, you had mentioned to me, whether it was in presence of Mr. Haines or not, I don't know, whether it was possible to move to another department. And I thought that you told me once that you even (inaudible) department to ask, you asked me that I could suggest you to go to Mathematics Department. And I said: "You go and talk with Chairman of Mathematics Department". But I don't know whether all this was in the same time frame, or with Mr. Haines present, without Mr. Haines, without him being not present, I don't remember. He used to come to my office so many times, My Lord, I really don't know when these things took place. There were a lot of solutions that were proposed because of (inaudible) relationship with the people in the center.

Q. I'm talking about your discussion with Haines without me.

A. I really cannot recall. I really cannot recall.

Q. Haines didn't come to you so many times, did he?

A. Haines did come to me, or talked to me on the phone, I don't remember, but... and again I don't remember that it was (inaudible) also.

THE COURT :

You gave him a month, you didn't give him a year, that might help.

VALERY FABRIKANT :

Well, I think it's clear we are talking about nineteen eighty-nine (1989), is it? It is clear that we are talking about the year nineteen eighty-nine (1989).

A. I remember in eighty-nine ('89) when the promotion was denied, there was a letter written by Catherine McKenzie, and myself and doctor Osman to you about the promotion, why you were not being given. And afterwards, or before that there was a meeting with Mr. Haines, and I don't know (inaudible) this meeting with him or with you, the possibilities are for your (inaudible) to another department, that that department accepted was discussed, but I don't remember anything more.

Q. Okay. Does the words "illegal blackmail" ring a bell in you?

A. No, it doesn't.

Q. You never used that kind of expression in a conversation with Mr. Haines?

A. I don't remember.

Q. Would this trigger your memory if I tell you that Mr. Haines told you that I'm prepared to undertake legal action, and you said that this was illegal blackmail?

A. I really cannot recall, because I told Mr. Haines that if he has got complaint, he should make it to the Vice-Rector, and that (inaudible) that information that Mr. Fabrikant should put it in writing so that (inaudible) could look into this matter.

Q. All right. Did Mr. Haines discuss with you questions of life threats?

A. In one phone call Mr. Haines did mention to me that it seems you called him or told him that you were going to go for hunting, and that you had bought a rifle. And that in some other context you said that you know how to settle that in an American way or something of that nature, I can't recall exactly but something to that effect.

Q. All right. Let us deal with first, first. So, I bought a rifle and I am going hunting. That's all I said? Hunting Swamy?

THE COURT :
The witness has no idea what you said.

VALERY FABRIKANT :
No, no, but I'm asking him...

THE COURT :
You asked him whether Haines discussed the question of threats, now let us not get into a cross-examination of the witness over what Haines might have told the witness.

VALERY FABRIKANT :
It's not cross-examination, I'm just asking details.

Q. Did he say that I'm going hunting Swamy?

A. No, I repeat what I said, over the phone he said... I don't remember whether you went to him or made a phone call, that something to the effect that you have bought a rifle and that you are going to go hunting.

Q. It was in eighty-nine ('89)? Was it in eighty-nine ('89)?

A. I don't know whether it was in eighty-nine ('89), but it was during the eighty-eight ('88), eighty-nine ('89) period, that was period. I don't know exactly when.

Q. All right.

A. It could have been in eighty-nine ('89), it could have been in eighty-eight ('88), late eighty-eight ('88).

Q. Why was it a threat?

A. I don't know.

Q. Well, I asked you, do you know about threats? You answered this, so it means that you perceived it as a threat?

A. This was not a threat against me, he stated that you mentioned to him that you had bought a rifle, that you were going to go hunting. Whether it was the same context, the same time or not, he also mentioned that you would settle it in American way.

Q. To who? To Haines?

A. To Mr. Haines.

Q. Not to Osman?

A. I don't know what... to Osman also I was mentioned that,
that you mentioned that to him.

Q. Who to who mentioned what?

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That you told Osman that you would settle it in the American way, Osman has mentioned that, but it was not in my presence, so I don't know whether you said it or not.

Q. So now it looks like I told it to two people to the best of your knowledge, right?

THE COURT :

That question is disallowed.

VALERY FABRIKANT :

All right.

Q. You heard this from two people, correct?

A. Yes, Osman has mentioned this to me, and I think Haines told me over the phone, whether it was the same phone call or not, I don't know.

Q. Okay. What were the details?

A. I don't recall any other details. He was trying to say that you had approached this matter in such a way that would solve the whole set of problems. And I said that what's we are trying to do to DPC, FPC, etc. Whether he (inaudible) or not, I cannot answer that.

Q. Well, when did you hear from Osman about North America, it was the same eighty-eight ('88), eighty-nine ('89)?

A. It might have been well... much later, it might not have been at the time you stated that to him. It might have been the time when, much later than during the time of the reappointment that he might have mentioned it to me, so I don't know when exactly you told him.

Q. And you never bothered to ask him in what circumstances, when, how, did you?

A. I don't recall. I don't recall, it might have been in connection with... because there were so many things going on, you were not very happy that you were not being considered for tenure, you were not happy that you were not getting sabbatical leave, you were not happy that your reappointment was having difficulty, so I don't know in what context you might have told.

Q. Well, why don't you stop putting everything in one hip. When someone comes to you and tells you that professor made that kind of a threat, how many cases of that kind of threat have you heard in your life?

A. He also told me when he asked you what it meant, you simply shrugged your shoulders, so I don't even know (inaudible) at that time or not.

Q. Did you hear my question?

A. Yes, I did.

Q. So would you kindly answer the question rather than something else?

A. It has not been on my experience any time at all of having anybody coming and saying that he will settle it in American way, whatever that meant.

Q. All right. So could you explain why you didn't ask for details as to when it was said...

Me JEAN LECOURS :

My Lord, we heard these lines with, I would say, fifteen (15) or more witnesses, and all that is the nature of cross-examination.

THE COURT :

Yes, it is.

Me JEAN LECOURS :

Why didn't you, didn't you, isn't it your duty, and so on and so forth.

THE COURT :

Objection maintained.

VALERY FABRIKANT :

Q. What were your actions when you heard it from Osman?

A. My reaction was the same as when I heard from Mr. Grendon Haines, and I brought this to the attention of Catherine McKenzie, by that time (inaudible) as Associate Vice-Rector Services.

Q. Did you ask for any details as to when it happened, how, in what circumstances?

A. No, that was discussed between Osman and Catherine McKenzie, and then we had a meeting, discussing this whole matter.

Q. So...

A. I brought to the attention of the people to look after the security (inaudible) and that is (inaudible) services hired his assistant, Catherine McKenzie.

Q. So you then discussed it, it means that you know the details as to when it happened, how, why, do you?

A. It's so many things that happened at that time, (inaudible), we discussed so many things, with regard to the summit thing, with regard to... your allegations about the DPC, that you were overhearing the conversation that was taking... the discussion that was taking place about, I think, your appointment. The whole thing was being discussed.

Q. In what year we are? What year you are talking about?

A. This was in the year nineteen ninety-one (1991), during the time of your appointment, October, November, December, around that period.

Q. All right. And during that time you never asked Osman to clarify when it was said at least? At least when, did you?

A. I might have asked him, I just don't remember, because we were having discussions with five or six people at that time, doctor Osman was present, Elizabeth Horwood was present, I was present, and Catherine McKenzie was present, and Mr. Grendon Haines was present.

Q. In eighty-nine ('89), what do you recall in terms of threats?

A. I do not... there was no direct threat against me by you any time. However, Grendon Haines, in eighty-nine ('89), over that phone call, had mentioned this, and I think the people in the security must have heard that there was cause for concern, and they had taken appropriate actions, whatever they were.

Q. How do you know that security people were concerned?

A. Because (inaudible) afterwards. I was told that the matter would be taken care of and that... what I had also heard was that your movements were being watched.

Q. Okay. When did you get this information?

A. Around the same time, sometime in the early period of nineteen eighty-nine (1989).

Q. Uh, huh. Did they explain to you why my movements were watched? Because I decided to go hunting?

A. That I do not know because it was Mr. Haines who must have conveyed that information to the people who were in charge of security for this action to be taken, because I had not complained that you had come and threatened me anytime at that time.

Q. Did Haines tell you that I threatened to kill you, to shoot you?

A. I don't remember Haines having said anything of that nature. I think people were generally concerned about the welfare.

Q. So the only thing you remember from that time is going hunting, correct?

A. I don't know whether you went hunting or not, what I said is that Mr. Haines told something...

Q. I mean the phrase.

A. ...to the effect that you have a rifle and that you are going to go hunting, that's all I know.

Q. Who told you about surveillance? Was it McKenzie?

A. Yes, I think it's McKenzie who told that you... there's no concern, there's nothing to be concerned about because that you were being watched.

Q. Okay. How long did this watch last?

A. I really don't know.

Q. All right. How...

A. Obviously I didn't know you were being watched all that much because I used to go to Van Houtte for coffee and spend a lot of time. If I was really threatened I wouldn't be sitting all alone, or with my friends having coffee even.

Q. I don't understand, what you are talking about now?

A. I don't know how long you are been surveyed, you were under surveillance. All that I know was that Catherine McKenzie mentioned that: "We are taking care of it, you don't have to worry, his movements are being watched", that's all I know. How long it was there, I do not know.

Q. Uh, huh. Did she tell you that I'm being watched inside university too?

A. She simply stated that you were being watched.

Q. All right.

A. I don't know whether you were being watched inside or not, I have seen you (inaudible) up and down, and many times I've seen you going up the escalator when I was going down the escalator.

Q. And there was nobody nearby to watch me?

A. I have no idea.

Q. Did you get scared when you saw that?

A. I was not scared but I was concerned, I mean it's a feeling that one cannot explain.

Q. Uh, huh. You were concerned with what at that time?

A. I don't know, because if somebody says that you are being watched and that you said something about rifle and hunting, I mean obviously you are concerned. But at the same time I did not think that you were going to do anything either, otherwise my office... Even after that, how many times you have come to my office, and I used to be alone in my office, and my office door is always opened.

Q. Do you recall meeting March twenty-second (22nd) with Kenniff? March twenty-second (22nd), nineteen eighty-nine (1989).

A. I don't recall, I might... I don't recall.

Q. You also met Kenniff so many times about Fabrikant that you cannot recall?

A. As a Dean to the Rector, I had several times I had to go and see him on many different activities, so I cannot recall whether I met or not twenty-second (22nd) or not.

Q. I'm talking meeting Kenniff about Fabrikant and about promotion.

A. About your promotion? I don't know it was March twenty-second (22nd) but I did meet with doctor Kenniff regarding your promotion. And because he asked me why you were not being considered for promotion, and I explained to him very clearly that the DPC feels it's an early promotion. If it was a regular promotion, this promotion would have been considered and either it would have been recommended or not recommended for the Faculty Personnel Committee to look into. However,

the DPC if it does not recommend to the FPC, the FPC cannot act, and it is DPC which decides whether somebody can be considered for early promotion or not. And I was told that it was justified by the DPC... that the DPC justified it by saying that it does not have enough evidence on teaching.

Q. Did Kenniff talk to you anything about threats?

A. Not that I can remember, Kenniff also talked to me about this business of... which I mentioned earlier, about the business of the publications of Tom Sankar, and that also you were concerned that (inaudible) Catherine McKenzie about my publications with you. And I repeated at that time, I stated to him clearly: "If he feels anything at all in that way, he should be making a written complaint to you so that you can take appropriate action on that", I remember that, that's all.

Q. And that was the end of it, there was nothing else said?

A. No, that was not the end of it, at that time he stated that in a letter should be going jointly between the Dean and the Chair of the department along with the assistant to the Rector, it is Catherine McKenzie, to explaining why you were not being considered for early promotion, and the letter was sent to you.

Q. Letter from whom?

A. Myself, Sam Osman and I think Catherine McKenzie.

Q. Maybe Osman wasn't there, and maybe this letter was never sent?

A. To you?

Q. Yes.

A. If my memory doesn't fail me, I thought that the letter was sent to you.

Q. Do you have it in your file?

A. Maybe it was sent only by Catherine McKenzie and me but there is a letter sent to you about your promotion.

Q. Do you have it in your file?

A. I'll check. No, a copy was sent to Dr. Osman, it was sent by Catherine McKenzie and myself, and the letter is dated fourth (4th) of April, nineteen eighty-nine (1989).

Q. And there is no note there that it was never sent to me?

A. Your Honor, the letter has been sent, I cannot say that it was not sent, it was signed by me and Catherine McKenzie, and copies to Mr. Grendon Haines, doctor Kenniff and doctor Osman. And the only reason why it hasn't gone to Vice-Rector is there was no Vice-Rector at that time, the Vice-Rector Academic was Rector himself.

Q. Uh, huh. Now, do I understand correct that during this meeting were present Kenniff, you, McKenzie and Haines, is that correct?

A. Pardon me? Can you please repeat the question?

Q. During the meeting were present Kenniff, you, McKenzie and Haines?

A. I do not recall whether Mr. Haines was there or not, I remember the meeting with doctor Kenniff, I don't even know whether Catherine McKenzie was there or not, it's possible they were there, I cannot recall.

Q. Do you recall where the meeting took place?

A. The meeting of doctor Kenniff took place in his office, outer office.

Q. Uh, huh. Do you recall during that meeting discussion on postponement of tenure? Does this ring any bell?

A. Postponement of tenure?

Q. Yes.

A. In nineteen eighty-nine (1989)?

Q. Yes.

A. No. Not at all, the question of tenure didn't even arise because you were not even in a tenure track position.

Q. Yes. Would you like to take a look at personal notes of Mr. Haines of that meeting and maybe they will help you to recall something?

THE COURT :

Has the Crown anything to say about this?

Me JEAN LECOURS :

If he was present and it triggers his memory.

THE COURT :

Pardon me?

Me JEAN LECOURS :

It's your ruling, if it's relevant, I have nothing to say.

THE COURT :

Q. Now the question is to look at that by yourself and see whether or not those notes, in any sense, trigger your memory. If they do, they do, if they don't, they don't.

A. I don't recall at all anything about the tenure, I mean if I attended the meeting with Mr. Haines and Catherine McKenzie and Kenniff, I did. As I said, I don't recall, there might have been (inaudible), but I don't recall to have had any discussion about tenure.

VALERY FABRIKANT :

Q. Maybe it will trigger your memory if furthermore I would mention to you that that was one of the tactics you later employed to kind of safeguard that I would not blow whistle, that as long as I'm not tenured you considered that I cannot blow whistle, I need the job. So does that trigger your memory as possible weapon against whistle blowing?

A. Whistle blowing had nothing to do with tenure, you had already conveyed the information to the Vice-Rector Academic (inaudible) and Catherine McKenzie. So the question of whistle blowing really didn't arise or doesn't arise. They had already known it that your allegations. And I had stated very clear to both of them that you should put it in writing so that it could be looked into, because just because somebody alleges something it doesn't make it a fact. And so there was no question of (inaudible), you had been using that for many times, to me there was no whistle blowing, you had already conveyed the information and I told the Rector that you should put it in writing so that it could be looked into. So combining that with tenure, I don't see any connection at all, the tenure thing came up much later because the Vice-Rector Academic she felt so far that the teaching part (inaudible) information, and the department felt... the department in fact did not even talk about tenure, they were prepared to go along with the previous contract, because the Vice-Rector would decide if tenure part should be put in, and I agreed with her.

Q. Could it be that all of you felt that I did not yet blow whistle because since it is inside the university, Rector will cover up for you? So whistle blowing, when it is outside the university, could that be the case?

A. It could not be the case, because of the fact that a person who goes on saying that whistle blow, whistle blow, now the whistle blows tomorrow, is the kind of person with whom one has to face the facts right then and there. That was the reason why I told the Rector clearly that he should inform you to put it in writing so that we could face whatever it was right then and there.

Q. Yes.

THE COURT :

Okay. So we'll adjourn until two fifteen (2:15).

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITHOUT JURY

THE COURT :

There was the question of Mr. Freedman's submission this morning concerning the subpoenas to Zimmerman, Morris, Nicholson and the outstanding subpoena to Edridge.

Me OUELLETTE :

(Inaudible), the motion to quash. Before we go to that, I would like to tell the Court that I went down at twelve forty (12:40), I've seen Mr. Fabrikant at thirteen ten (13:10), at thirteen thirteen (13:13) he was sitting in the booth and at thirteen twenty-five (13:25) the interview was over. Mr. Fabrikant had to take his lunch at thirteen fifteen (13:15), so on his request we didn't have time at all to discuss the pertinence or the relevance of the witnesses, so he told me that he was going to argue that question, on motion to quash, by himself. My position on this is that when I came in, I was introduced by doctor Fabrikant as his lawyer in that case to argue the question of law, and this was also my representation to that point. And I'm very committed to stick to my word, and I'm totally committed to represent him on any question of law. What I was not prepared to do, and this was my (inaudible) when I came in, was to argue any question of fact on the questions that were asked to the witnesses that were already assigned by doctor Fabrikant. And my position was, at that point in time, that when I was going to call my own witnesses, I was going to do the work, and the understanding and the agreement that I had with doctor Fabrikant was, at that point, his role to be reduced to mere presence in Court. Having all this in mind, I understand that since the beginning of that trial doctor Fabrikant was fully aware of the rights that were guaranteed by the Charter of Rights, and especially the fundamental justice principle that states that an accused has the right to control his own defense. And I'm totally convinced that this Court did almost everything that was possible to do to grant him his right and to guarantee that he has a full and fair defense. The only point in law where I was disagreeing at one point was that in order to get a full defense and full representation we were to come out with some kind of an agreement where I could represent him on the question of law, at the time of the issues, and not five days after, and this is the question. Basically the question of law that I raised, or that I was raising, or that I was calling for is the same that I brought up to the Supreme Court of Canada for a decision of the Court of Appeal of this province regarding ulterior or other events not related to that (inaudible), being the fact that even if the Superior Court of this province is trying to do all the best they can, in order to make sure that the accused who elect to represent himself, and if the Superior Court tried to do the best it could to guarantee these rights, there could be occasions or facts where administrative decisions or regulations that are originating from the Minister of Justice would prevent application of such (inaudible). This was my point at the Supreme Court, and this is basically what I'm saying here. But what I want to state here, right now, is whatever a Court says, whatever a Court do in order to guarantee applications of all the fundamental principles of justice to a full and

fair defense, there is a limit. I am sworn to act as an officer of justice, and there is nothing in that world that will make me something illegal during a trial. And I also told that Court that I was going to stick to the question of law and I was going to do it, I intend to respect my mandate all the way, even if it takes twelve (12) more years for that to happen, I'm going to stick to it. So at that point Mr. Fabrikant, or doctor Fabrikant wants me to represent you, that he wants to argue that question of law. Obviously I'm not in a position to represent him on this because that interview was terminated. If you decide to do that, I would like a clear ruling of what is exactly my mandate. I am not withdrawing, I'm not asking request to withdraw, I'm here to stay, unless I am terminated. If I have to be terminated, what I'm saying, this will have to be justified. And what I'm also saying is all the principles of the Charter ought to be measured according to the community sense of fairplay of this attitude. So this is... I'll leave the question opened to you.

THE COURT :

Well, as to the extent of your mandate, Me Ouellette, there's no point tossing me the ball, I can't define your mandate for you. And that's one of the problems that we face, because the rights of the accused, on this particular issue, which you've referred to, and which I referred to in one written judgment at the very beginning of this whole thing, of course come into conflict with just precisely you're asking me to do, which is why there is no way I can define your mandate for you, or anything else. I can offer you my sympathy and I can offer you my assistance in the sense that, unless there's something pressing, can this question wait until Monday afternoon or Tuesday morning? Nobody's leaving on vacation...

Me FREEDMAN :

Well that's another issue, we'll get into (inaudible).

THE COURT :

All right, but we don't need to get into that...

Me FREEDMAN :

Absolutely not, My Lord.

THE COURT :

Okay. If that's of assistance to you, I'm prepared to put any debate on this question off until you've had a chance to talk to doctor Fabrikant about it, and to brief yourself on what the issues are. You haven't been here but the Crown has made a number of objections, and the word that the Crown Prosecutor has used fairly often is exponential. And what he's meant by that, in the context of this trial, is that a witness talks about a name, or two names or three names, often secretaries for example, and that results in subpoenas being sent to these individuals, just as it results in subpoenas having been sent to quite a percentage of the Department of Engineering at Concordia University. I only throw this out, I can't impose my will on anybody, as you know, and I'm not trying to impose my will on anybody, but I would say this, I question if, to put forward what doctor Fabrikant wishes to put forward is much easier for me to say it with you in the picture as his attorney. I'm not sure that it's necessary to call all of the witnesses who are being called to cover all of the ground that's been covered with them. Swamy and Osman, to some extent, cover the same ground but probably cover different aspects. And I don't know, but I would think it might be useful to discuss this with Mr. Fabrikant and see whether or not his interests could be as well served by limiting the

debate to covering certain areas, the principal areas of interest with regard to each of these witnesses. If so, we would certainly shorten this considerably, always bearing in mind that all of this evidence, virtually from the beginning, has been admitted on the basis of the qualifications I made this morning, and have made, you know, before today. You will have no difficulty from me, at least within the limits of reason, getting opportunities to sit down with him and to speak to him, but I'm not prepared to... I know you did not ask me to revise anything and I'm not prepared to. Mr. Fabrikant is incarcerated, and he's incarcerated during this trial for what, in my estimation, is a very good reason. And when one elects to plead whether partially or wholly one's own defense in that context, one does so knowing full well that there are certain restrictions upon one. And in that context he's not being treated any differently than anybody else. In fact, I've bent over backwards without disrupting the whole series of regulations that are in force in the Ministry of Public Security to furnish him with what I could. It's not perfect, there's no question, I recognize that, I recognize it's not perfect but there it is. So anyway, we'll debate this question on Monday afternoon, I don't know how long it will take but... I had thought we would see how far we were able to get with Dean Swamy, and if at four o'clock (4:00), because I was thinking of adjourning... you asked me if I would adjourn at four o'clock (4:00) today because of your medical appointment, or your dental appointment. If we had progressed sufficiently with professor Swamy I would have been inclined to solicit your thoughts on putting this off until Tuesday morning rather than Monday afternoon with two things in mind, 1) to give you an opportunity to have a thoroughly ruined weekend, or a busy weekend, whichever way you want to look at it, and to go into with him what you had to go into, and secondly to give the jury that extra half day, which might not have meant an awful lot from the point of view of testimony but would maybe mean a lot to them in turning it into a four day weekend. Now, I don't know, we'll see, we'll see where we are, because I have to try to see some light at the end of the tunnel in this thing. So anyway, I'll canvas your thoughts on that at four o'clock (4:00) this afternoon before you go off to your session with the dentist.

Me JEAN LECOURS :

Thank you very much.

THE COURT :

Okay.

VALERY FABRIKANT :

May I say something? There is effectively not one but two issues which need to be covered, and I took the liberty to do so because we didn't have the opportunity to talk but the matters cannot wait. One of those is the matter which, if you remember I asked question about professor "Kachano" and Mr. Lecours just tricked me at that time quoting from Criminal Code. When I came home and looked into the Criminal Code and looked into "Kaseba", it has become absolutely clear to me that I was just tricked. Kaseba states quite clearly that oral statement can be put to the witness not just in cross-examination but in examination-in-chief, and I think it is very deplorable for the Crown to use my ignorance in such inappropriate way. So I would like this question to be revised and to return back to the moment when I asked question about his conversation with professor Kachano and to allow me

to put his previous statement to him and to ask him whether he made that statement. If he admits that yes, he made, I believe I'm entitled to ask about content of the statement and to establish whether the statement contradicts to what he was saying here, and this cannot wait. And I have another question which I raised later on, when we finish with this one.

THE COURT :

Pardon? You have another question?

VALERY FABRIKANT :

Yes, but let us finish with this one.

THE COURT :

No, what's your other question.

VALERY FABRIKANT :

I don't know if it makes sense to jump to another question because it is relevant to this one.

Me OUELLETTE :

Basically what doctor Fabrikant is referring to is 9.1.

THE COURT :

Yes, that's what I'm looking at.

Me JEAN LECOURS :

By submission, My Lord, as long as doctor Swamy is not considered an hostile or adverse witness he cannot be cross-examined on previous oral statements. It's covered by section 10 and 11 of Canada Evidence Act.

VALERY FABRIKANT :

Well, I was not trying to cross-examine, maybe his statement is consistent. How do you know? I never said that I'm going to cross-examine him, all I was willing to do is to ask him whether conversation took place, and what transpired, because the questions he was asked were similar and what he answered then, and maybe he would say exactly the same thing, so there is nothing then to talk about. If he will say different, then question arises. It is not cross-examination in any way, I was not talking about any cross-examination yet.

Me JEAN LECOURS :

And the further argument I brought forward at that time was also that professor Kachano's testimony was ruled, it was ruled out as being irrelevant.

VALERY FABRIKANT :

And again, it has nothing to do with that, Kachano came as an expert, and he was ruled on as an expert at that particular time when neither Swamy nor Sankar testified yet. So this ruling cannot be put now to any use or logical connection, this ruling has nothing to do with what I'm talking about now. I'm talking about a case where Kaseba states quite clearly that previous oral statement can be put to witness and witness can be asked whether he made that statement and what was the content of the statement. And after that, if there is a contradiction, then we'll see what we can do. But what I was precluded is even to ask the question whether the statement was made, and this is against the existing jurisprudence, this is what I'm talking that Crown tricked me, and this is not good at all.

THE COURT :

Your only problem there is that on your first point, you are correct, I said that you could not hear professor Kachano by way of... or hear his testimony with regard to his conversation with Swamy by way of a pre-empted strike, that was what I said.

VALERY FABRIKANT :

Exactly.

THE COURT :

What transpired between Kachano and Swamy relating to the authorship or contribution toward papers is not something that comes out of the expert testimony that you wish to elicit from professor Kachano, correct again. If your purpose, your sole purpose is to ask Swamy about his discussion with professor Kachano, which is as far as you can go at this point, if that's the purpose...

VALERY FABRIKANT :

Yes.

THE COURT :

I'm prepared to permit you to do it.

VALERY FABRIKANT :

All right. So that's exactly what I was talking about...

THE COURT :

All right.

VALERY FABRIKANT :

...and I hope Crown will not use my ignorance next time in such a way that... there are many things which I don't know, and Crown shouldn't try to use it, I don't believe that Crown sincerely didn't know all what I said now.

Me JEAN LECOURS :

The accused is not allowed to make a statement, My Lord, he's there to ask questions or to make motions.

VALERY FABRIKANT :

Well, I don't know, I...

THE COURT :

I'm not sure you'll go much further than whether the statement was made, I don't know.

VALERY FABRIKANT :

Well, I can also ask about content of the statement.

THE COURT :

But it's got to be two things, you've got to establish the statement was made and you've got to establish that it's substantially inconsistent with his present testimony.

VALERY FABRIKANT :

Exactly, yes. Yes. Yes, I understand that.

THE COURT :

But if that is your purpose, if that is your purpose, then on that limited basis, yes, you can put the question to him. Now you said you had another point?

VALERY FABRIKANT :

Yes. The second point is...

Me JEAN LECOURS :

The only person that could establish that is the witness.

THE COURT :

The witness, yes.

Me JEAN LECOURS :

Not bring any other witness...

THE COURT :

I said for the minute, the witness.

VALERY FABRIKANT :

For the minute it is the witness, but my understanding is that if there is a contradiction, there is this, there is that, then I believe I will be allowed to bring professor Kachano and to ask him to state what transpired during their conversation.

THE COURT :

There will be a point where, I suppose, that may come up, it's not here yet. And I would think that from a practical point

of view, I would think from a practical point of view it is something you might want to discuss with Me Ouellette also.

VALERY FABRIKANT :

Yes.

THE COURT :

Quite apart from the strict right.

VALERY FABRIKANT :

Okay. Now, the second thing is that I have received from Crown two files, one file is file of my wife, which is not a party to anything, and I would wonder why Crown keeps it. I think that Crown should give some explanation. What relevance my file of my wife has here if they didn't introduce anything?

Me JEAN LECOURS :

Since Mr. Fabrikant has a lawyer, I'm talking to his lawyer, My Lord, I'm not obliged to talk to him.

VALERY FABRIKANT :

Sorry, what? I didn't hear, what?

THE COURT :

He said that you have a lawyer and he's prepared to furnish an explanation to your lawyer.

Me JEAN LECOURS :

This was covered with your lawyer, I sat down almost an hour with Me Ouellette a couple of days ago, and I went through the material with him.

THE COURT :

I see.

VALERY FABRIKANT :

Well, you see, I have no idea about that.

THE COURT :

Well, I haven't got the slightest idea of the nature, what's behind your observation, Mr. Fabrikant, I don't know whether you're able to enlighten us.

VALERY FABRIKANT :

Okay. There is second thing, and second thing is that my file, which they provided me with, is incomplete. And I'm not just talking about page where name of the police officer was deleted, I'm talking about many things which are clearly not there. Would it be possible to take a look at your copy, in your presence, I'm not going to look at this specific page.

THE COURT :

Listen, this is the sort of thing that can be sorted out between you and Me Ouellette on one hand, and Me Ouellette and the Crown Prosecutor on the other, this need not occupy our time here.

VALERY FABRIKANT :

Well, it looks like there is no good will, this is the problem. There is no good will. Since it was given to me this way, my understanding is that either Me Ouellette was misled somehow, because definitely file is incomplete. Why, since Me Ouellette was not here from the very beginning, he cannot possibly know many, many things, so...

THE COURT :

Well, you then can talk to him and you can advise him and instruct him on what he cannot know, and armed with that he may sit down with the Crown Prosecutor, and if after that there's any problem, he will surely let me know.

Me JEAN LECOURS :

And I told Me Ouellette my door is always opened for any discussion...

Me OUELLETTE :

And this is very much consistent with what we said, so this is

a new question and tomorrow I'm available all day to talk with doctor Fabrikant, provided he doesn't have break for lunch too long.

VALERY FABRIKANT :

Well, anyway, one second, the file is incomplete, the file is...

THE COURT :

I've said, listen, you speak to Me Ouellette and let him take that up with the Crown Prosecutor. I surely don't have to get involved in all of this direction of traffic on all of these points.

VALERY FABRIKANT :

One second. Since I am participant, I believe it would be nice if we sit three of us together and discuss things, because it is very unproductive. He spent a whole hour with Me Ouellette, Me Ouellette didn't have chance to talk to me, and this is totally non productive. Can we sit three of us together?

THE COURT :

I am certainly not going to mix myself into who sits besides who.

VALERY FABRIKANT :

All right. The last thing. If you remember, I was asking for a drawing relevant to report of Lagac,, what...

Me OUELLETTE :

And this, again, was covered with the Crown, the drawing that Mr. Fabrikant has is signed by two of the officers that prepared it, and the report that is contained into the documents that were provided to doctor Fabrikant, gracefully by the Crown, states that. If you read it, and I read it, at that point I'm totally satisfied with the fact that this is effectively the only drawing that could (inaudible). And I followed all the reports of Mr. Soucy, which is doctor Fabrikant's reference to, and I followed that step by step on the drawing with Me Lecours, and this is exactly what happened. There were three persons involved, three police officers, they prepared the drawings, two of them signed and the other one signed the report, I'm totally satisfied with that.

VALERY FABRIKANT :

Well again, I just wish Me Ouellette was not that gullible, that's the only thing I can say. Now, the report, let me just show you.

THE COURT :

Look...

VALERY FABRIKANT :

They tricked not only me but Me Ouellette, because...

THE COURT :

Look, we're spinning our wheels...

VALERY FABRIKANT :

Just for a second, all right?

THE COURT :

No, no, no, not for a second.

VALERY FABRIKANT :

It is not no.

THE COURT :

It is no, it's not just for a second.

VALERY FABRIKANT :

This is the report and this is the drawing they provided, it is the same thing, and this is report of policemen Fournier

and L,pine, this is what they provided me with, I already had that. Now, what I'm talking about it is something else.

Me JEAN LECOURE :

He wasn't there, My Lord.

VALERY FABRIKANT :

Would you please not interrupt me? What I'm talking about is totally different thing, we have report of Lagac,, and here he refers to drawing of ninth floor, he puts here signs, for example this is sign where suspect was "S". Now, find the "S" here.

Me OUELLETTE :

I found it yesterday.

VALERY FABRIKANT :

Show it to me.

Me OUELLETTE :

We'll discuss that tomorrow.

VALERY FABRIKANT :

No.

THE COURT :

Mr. Fabrikant...

VALERY FABRIKANT :

Well, he was tricked, this is the point, there is no symbols which are here. They are not here, it is not that drawing.

THE COURT :

If he feels he was tricked, or if he was tricked, if you manage to convince him that he was tricked, he will express...

VALERY FABRIKANT :

Well, I'm sorry, this is too much for me to convince my own lawyer that he was tricked. If he was tricked and still does not understand it, that's too bad, I have enough people to convince, I have two Crowns here, I don't need a third one.

THE COURT :

I presume you're referring to me, and would you please not. Jury please.

Me FREEDMAN :

My Lord, I understand we'll deal with the issue either Monday afternoon or Tuesday morning?

THE COURT :

We'll deal with the issue either Monday or Tuesday morning, depending on what we decide at four o'clock (4:00).

Me FREEDMAN :

Thank you.

MEMBERS OF THE JURY ARE PRESENT

WITNESS: SRIKANTA SWAMY -- UNDER THE SAME OATH

EXAMINED BY VALERY FABRIKANT (CONT'D) :

Q. Okay. I will ask the question which was attempted yesterday. Do you recall having conversation on the telephone with professor Kachano?

A. I don't remember his name, I had a discussion with some professor who introduced himself as a professor at Tuft University and he called me about eight or ten days ago, I don't recall his name.

THE COURT :

Q. You remember him as professor...

A. I don't remember his name, he introduced himself as professor so and so from Tuft University.

Q. From Tuft University. Okay.

A. Yes.

VALERY FABRIKANT :

Q. Did you discuss with him question of authorship of the joint papers?

A. He tried to discuss that with me, he stated in the beginning that he was requested by the Court to get some information. However, as we went along I found out that it could not have been the way he was asking me, and I did not want to give any information to him. And I stated that... I was quite evasive, and I stated that I don't remember. Because when I told him that... when he asked me the specific questions: "What is your exact contribution?" The same question that you had asked, by that time I decided I was not going to answer him. And he asked: "Don't you remember how long you discussed with him?" I said: "I don't remember how long I discussed", which is true, and I said: "I remember what I discussed with my students, and I remember what exactly I told, I said that may be true with you, it is not true with me. The discussions, in my mind, are those where both of us have contributed and we are exchanging information". And therefore I did not want to... I was busy, and I did not want to answer him because I felt that he was not really requested by the Court to ask me that, and therefore I said however... I decided I (inaudible) answer it would be here. And on top of that he had been very (inaudible), he said (inaudible), I'm sorry to waste your time, etc., so I thought he was generally asking me something but as it went along it was quite clear to me that he could not have been asked by the Court to ask me these questions. He introduced himself as an expert asked by the Court.

Q. Did you or didn't you tell him that you just don't remember what your contribution was?

A. Yes, I did say that because I wanted to be evasive. I did not want to tell him what the contribution that I made was, because it was clear to me at that time he couldn't have been asked by the Court.

Q. Did he or didn't he tell you? Maybe you do not recall that well, that he told you that he just was appointed an expert to report to Court rather than he was asked by the Court?

A. It's possible, but the way he put it, it looked as if I was being asked so that he could be coming as a witness to answer the questions here, that's the impression that I got. And I was honest in the beginning, but as it went along, the way he was asking questions, I thought that it was not (inaudible) and I was not going to be giving him the answers, so I was evasive.

Q. So in fact he did not misrepresent himself, did he?

A. I don't know if he misrepresented himself, but I got the impression in the beginning that the Court had asked him to discuss with me about that particular paper, but as it went along it was clear to me that the Court could not have asked him.

Q. Well, if he told you...

THE COURT :

Oh, that's plenty, you're cross-examining him.

VALERY FABRIKANT :

All right.

THE COURT :

You have covered your ground, go on.

VALERY FABRIKANT :

All right.

Q. So my understanding is that he told you that he was asked to be an expert to report to Court his findings, correct?

A. I've stated that two or three times, that's what he might have told, but he gave me the impression in the beginning that, as an expert witness, he was examining me on the paper. So I got

the impression that we was asked by the Court, (inaudible) perhaps I could (inaudible) call you back and I should have checked with the Prosecutor and Mr. Freedman to find out. I made a mistake and with all sincerity I started answering him, but as it went along I clearly, I could get the impression that he was not asked by the Court, and therefore I did not want to answer any questions whatsoever on what my contribution was, etc. I said (inaudible) somebody else telling me what my contribution was to the Court, I could as well talk to the Court what my contribution was for those two papers.

Q. Well, did you or didn't you tell him then: "I do not want to talk to you, I'm not obliged to talk to you, I will tell to the Court my part of the story", did you tell him that?

A. I did not, I should have told that... if I had gotten -- if I had not... I had given him... If I did not misunderstand at the very beginning that he was asked by the Court, if I clearly understood it was you who had asked him to talk to me, I would have said that whatever I'm going to say I will state in the Court.

THE COURT :

Well, what you would have said or what you wouldn't have said won't...

VALERY FABRIKANT :

Q. Anyway, what you are saying now, that you were indeed evasive, and indeed you told him that you do not remember what your contribution was, correct?

A. I didn't exactly say that, I was evasive enough to say I don't remember anything, because I did not want...

Q. Exact.

A. ...to talk about that, because after all, last year, when you filed that Civil suit I made sure that I've gone through the paper so that I could know, again, the entirety of the paper as well as what... where my contribution was at certain point. However, I did not want to discuss with him.

Q. Well, if you knew that, for example, you contributed to question twenty-four (24), let us say, what was the problem for you to state it to him?

Me JEAN LECOURS :

The witness already answered, My Lord.

THE COURT :

Yes, the witness has answered the question and we've exhausted this subject. Move on to something else.

VALERY FABRIKANT :

Well, it's clearly contradictory statement.

THE COURT :

It's not contradictory at all, move on to something else.

VALERY FABRIKANT :

Well, before moving to something else I would like to make a submission.

THE COURT :

The question is not contradictory at all, he has said what he said, he has agreed with what he said.

VALERY FABRIKANT :

No.

THE COURT :

He has told you what he said.

VALERY FABRIKANT :

Yes, and this is totally...

THE COURT :

And he's told you why.

VALERY FABRIKANT :

And this is in full contradiction to what he's saying here.

THE COURT :

And what is your submission?

VALERY FABRIKANT :

Well, submission is very simple, that first of all here he said that he made contribution to certain expression, that he gave me idea of second paper, now...

THE COURT :

I'm aware of that, I heard what he said.

VALERY FABRIKANT :

Now, he admits now that, to professor Kachano he told absolutely different story, saying that he does not remember anything, he does not remember what conversation was about, he does not remember exactly what his contribution was, and one couldn't go more contradictory than that.

THE COURT :

All right. Now where do we go from there?

VALERY FABRIKANT :

Well, where do you go from there, then I should be allowed to cross-examine him, since he admits that the statement was made, I should be allowed to cross-examine him on the statement as to his contribution.

THE COURT :

He admits that statement was made, he's given an explanation as to why, the jury have heard his answers in relation to this, the jury heard his testimony yesterday, they'll assess his testimony in consequence. So now you move on to something else, we've exhausted this subject.

VALERY FABRIKANT :

Well, I...

THE COURT :

I've ruled. I have ruled, move on.

VALERY FABRIKANT :

So you don't see here contradiction?

THE COURT :

Move on, I've covered the question of the contradiction, I've said what I have to say, move on to something else, we've exhausted this subject.

VALERY FABRIKANT :

Well, I'm applying on section 9.1 now.

THE COURT :

You have absolutely no need to cross-examine him, he has admitted what he said, and he's told you why. There is no question.

VALERY FABRIKANT :

I need to cross-examine him to establish the following, that the way he told Kachano he knew that he was talking to specialist, and to specialist he could not state these absolutely ridiculous things he stated here. Here he could say that I introduced to these expressions...

THE COURT :

Mr. Fabrikant...

VALERY FABRIKANT :

...Kachano knows very well that these expressions are absolutely elementary.

THE COURT :

Mr. Fabrikant, move on to something else, we are finished with this subject.

VALERY FABRIKANT :

Why don't you let me explain.

THE COURT :

We are finished with this subject. Now, if you're not prepared to accept that ruling, you run the risk of having the examination of this witness ended.

VALERY FABRIKANT :

Okay. I would like to show to him several more pages.

THE COURT :

What, are we back in the nineteen eighty (1980) papers?

VALERY FABRIKANT :

Well, from another paper. If I was allowed to show him pages from one paper, why cannot I be allowed to show him pages from another paper?

THE COURT :

I thought the question of the papers had been exhausted.

VALERY FABRIKANT :

Well, the time we spend on arguing, just for him to look, and I will ask simple question, that's all, there is no point to argue on that.

THE COURT :

Well, if you are coming back on the question of the two papers we discussed yesterday, you may not, we're finished with that.

VALERY FABRIKANT :

It is with the other paper, I spoke about one, now it is about another.

THE COURT :

If it is one of the two papers that were discussed yesterday, we're finished with that, move on to something else.

VALERY FABRIKANT :

I see no reason.

THE COURT :

Obviously it has to do with the two papers we discussed yesterday, so you move on to something else, we're finished.

VALERY FABRIKANT :

This morning I was allowed to show him papers.

THE COURT :

We are finished with that subject, move on to something else.

VALERY FABRIKANT :

So where were we. In nineteen eighty-nine (1989), I believe, I gave him notes of Mr. Haines, and I asked him if those notes ring any bell. And in those notes there were several things, one of them was...

THE COURT :

He told you, he looked at those notes, and he handed them back, and he said: "If my memory serves me correctly, you'll correct me if I'm wrong, but I do not remember what transpired at that meeting. And as far as I can recall the question of tenure or postponement of tenure was not discussed". I think that was your answer, doctor Swamy.

A. That's correct, My Lord.

VALERY FABRIKANT :

Q. All right. There was second thing there, in these notes, I don't know where they are. There was another thing in these notes about threats: "Shoot them all", does this ring any bell?

A. Could you please repeat that?

Q. Another thing which was mentioned in those notes was phrase: "Shoot them all", probably related to some threats?

A. I still don't understand what is "shoot them all".

THE COURT :

No, I'm not sure I understand either, so just wait until the question is clarified.

VALERY FABRIKANT :

Q. No, two statements, a) "Kill them", b) "security", does this ring any bell?

A. It doesn't ring any bell at all, it doesn't ring any bell at all, what is that "kill them", okay, you should ask the person who wrote that note. And as for the second one is concerned, "security", it's probable we might have discussed the security in the sense that I told you already, that doctor Catherine McKenzie had told me that she would take care of whatever is necessary here, and that I should not have to worry. And so the same thing might have been said even at that meeting, that I need not worry, that it would be taken care of.

Q. Okay. Was it at that meeting or at another meeting when she told you: "Don't worry, we'll take care of it", you went out in the street and just bumped in me, and you came to her and said: "What the hell is your security? He's walking out in the street, nobody is following him"?

A. It was not I, I know that Sam Osman mentioned that to me, that I was walking down the escalator and you were going up, I was there (inaudible), I was going up the escalator and you were walking down the escalator: "Doctor McKenzie, you stated that we don't have to worry, and that you will take care of that, and (inaudible) was coming and he was going up, I don't know what you mean by taking care of". Yes, he said that and I was there, and I did see you when we were coming down, you were going up the escalator.

Q. Well, and you got worried immediately?

A. I said this many times that I was concerned, but I never expected you to do anything to me (inaudible) harm to me.

Q. Did you know that those surveillances were outside university, not inside the university?

A. I had no idea, I already said that in the morning, only she said that: "Don't worry, we will take care of the surveillance". And whether it was inside, outside, or both, I really don't know. And you had come to my office even after that many times, so what can I say?

Q. Didn't it look ridiculous to you?

THE COURT :

That's out of order.

VALERY FABRIKANT :

All right. Did such thought that surveillance of me, at the time when I'm coming alone to your office, where you are alone, sounds kind of ridiculous, did such thought cross your mind?

Me JEAN LECOURS :

This is the same question, My Lord.

THE COURT :

This is the same question dressed up in a different form.

VALERY FABRIKANT :

Well, what is wrong with this question...

THE COURT :

It's disallowed, let's not worry about it, it's disallowed.

VALERY FABRIKANT :

All right.

Q. Now, what happened after that meeting with Kenniff and Haines and McKenzie?

A. After that meeting was over I had a discussion with Catherine McKenzie and we were told to draft a letter, which I mentioned in the morning, to send to you about the promotion part. And as far as any security and all the things of concern, I had no role to play in that one, it was left to those administrators

who were in charge of that.

Q. Okay. Do you know what happened with surveillance, what it was continued, it was stopped, if it was stopped, why? Do you know any details of that?

A. I really do not know.

Q. You never inquired about that?

A. Well then I was told that I do not have to worry, and that you would be under surveillance. I had full confidence in the people who were telling me that, that they would take appropriate measures.

Q. Did you...

A. Why should I doubt that?

Q. Did you ever ask why surveillance is warranted in the first place?

A. I thought I said that in the morning, that Grendon Haines must have talked to Catherine McKenzie about this. I had also mentioned the one thing that Grendon Haines had talked to me on the phone about you having bought a rifle and saying that you would go hunting, I mentioned that to Catherine McKenzie, and Catherine McKenzie must have talked in detail to Grendon Haines, who was in constant touch with you.

Q. Did, to the best of your knowledge, anyone at the university ever went hunting?

A. I really do not know whether the people go hunting or not, so I cannot answer that question.

Q. All of them are put under surveillance if they say that they went hunting?

A. It must have been the context and the way you stated that to Grendon Haines, that he thought that there is sufficient cause for people to be concerned that he brought it to my attention, as he should. And he also brought it to the attention of Catherine McKenzie and so did I.

Q. So why your attention, of you? Why you? Why not Osman? Why not Sankar? Why you?

A. Because I happen to have been the Dean of the faculty and the Dean of the faculty was being informed.

Q. Well, why not Rector?

THE COURT :

The fact is that it was brought to his attention.

VALERY FABRIKANT :

Well...

THE COURT :

His opinion as to...

VALERY FABRIKANT :

Okay. I will change the question.

Q. Did Haines explain to you why he's calling you if I didn't mention your name? Or maybe he told you that I did mention.

THE COURT :

But he told you, he's answered you that question, he said:

"It was brought to my attention in my capacity as Dean of the faculty", end of problem.

VALERY FABRIKANT :

Well...

Q. Did he explain to you the circumstances? Did he tell you anything why such an innocent phrase might be interpreted like this? Did he explain it to you in any way?

A. I don't remember even if he had explained, what he explained to me, but those two words were ringing in my ears. I still remember him saying that doctor Fabrikant said that he has bought a rifle and he is going to go hunting. And as I said earlier, I don't know what kind of relation went on between

you and him, he thought it was of sufficient importance that it should be brought to my attention as the Dean of the faculty. And I also told him at that time I'll bring it to the attention of doctor Catherine McKenzie and that: "You should also talk to Catherine McKenzie". And I told Catherine McKenzie: "You should talk to Grendon Haines to get more information about this, it was he with whom doctor Fabrikant has directly talked, not with me".

Q. Okay. Was it brought to the attention of Osman too, to the best of your knowledge?

A. Yes, because in fact Catherine McKenzie called a meeting with doctor Osman and myself too. And in one such meeting that when we were going down the escalator, that both of us saw you going up the escalator, as I already said before.

Q. Uh, huh. Of course, if I'm going down the escalator and you are up, you should run and call the police, this is also...

THE COURT :

You're being sarcastic now, Mr. Fabrikant, let's pass on to something else.

VALERY FABRIKANT :

Well, I hope that someone will give me jurisprudence saying that there is no way one can be sarcastic.

THE COURT :

Well, I'm giving you jurisprudence.

VALERY FABRIKANT :

Well, as soon as I get...

THE COURT :

Pass on to the next question.

VALERY FABRIKANT :

Okay.

Q. Did...

THE COURT :

We've just made the jurisprudence for the third or fourth time today.

VALERY FABRIKANT :

I made the jurisprudence. I have no doubt that this case will be quoted...

THE COURT :

Next question.

VALERY FABRIKANT :

...in years to come, as far as jurisprudence is concerned.

Q. Did McKenzie, at any point, tell you that I, in her presence, uttered certain threats?

Me JEAN LECOURS :

My Lord, after seventy-one (71) witnesses, I think it's about time to stop hearsay, single, double or triple.

THE COURT :

Perfectly right.

VALERY FABRIKANT :

Well, before saying perfectly right, have the courtesy to ask the other side.

THE COURT :

I said... I'm saying to you, what is the purpose of this question? That's what I said to you, I said: "He's perfectly right". Now what's the purpose of this question?

VALERY FABRIKANT :

Well, when you said: "You are perfectly right", you know very well Judge should not say such a thing before asking the other side, because saying: "It's perfectly right", you made the decision.

THE COURT :

The question is out of order, the question can't possibly stand the way it was phrased. Now, what are you trying to do with this line of questions?

VALERY FABRIKANT :

Well, what I am trying to do is the following. There is a very interesting and quite ridiculous picture which evolving right now. We have heard several witnesses which testifying totally different, totally inconsistent things. One is Haines, if you remember, who never pronounced here anything about hunting, anything about rifle, if he was talking here about, it was gun and shooting the Rector. We know all that. He also mentioned here that he called Swamy, and he advised him that I threatened to kill him, that we know all that too. McKenzie testified here that I allegedly told her, in her presence, if you remember all that I would not spend time what I told her. We also heard witnesses testifying here that on numerous occasions McKenzie was sitting at the meetings, the question was discussed at the meetings whether I ever threatened anyone, and she kept silence. Now, I can continue all this ridiculousness of the testimony. Now this witness testifies something totally different, and of course you feel that there is nothing wrong with that.

THE COURT :

Absolutely not, the witness testifies according to the best of his memory and that's that.

VALERY FABRIKANT :

No, the witness is faking his memory, he is faking his memory so many times, all of a sudden he remembers all the minute details, then he doesn't remember a single solitary thing. Then he again remembers all the details, and then he again does not remember a single solitary thing. Now the witness is being told, for example, Osman comes to him and tells: "If Fabrikant comes to my office..." I will make it North American way, and make a gesture like shooting everybody, and I'm asking witness: "Did you ask Osman when did it happen? How did it happen?" We are all normal people, we are not, you know, were born yesterday, if someone comes and says something like that, would you or wouldn't you ask the question: "Gosh, how did it happen? When did it happen?" It's so normal and so obvious, and he never asked. He admitted himself he never asked. He does not remember. He does not know when it happened. This is total absurd. For every normal judge that would be enough to declare witness hostile because this is total and obvious faking of the memory. Now, he is saying here that he remembers that when I raised question of integrity, this he remembers very well. I came to him complaining on Seshadri Sankar, we are all grown up people, if I complain on something, then I should definitely have said something, that Sankar wants to fire me because of... "bla bla bla", and this "bla bla bla" is that Sankar has extorted papers from me. He doesn't remember that. This is question of integrity. Now, one integrity he does remember, another integrity he does not remember. Now, why he remembers that one integrity there and another not there, very simple, because question of authorship, there is a Civil lawsuit, so there is no point for him to deny it, that this was said. Question of extortion of Seshadri Sankar, well there is no lawsuit about it. Second, if he admits that yes, I told it to him, then he knows very well there will be second question: "Why didn't you investigate that?" So he prefers to claim that he never heard that, he never said that. Now, then I go

to McKenzie, and again I am telling her the whole thing, and again he remembers from McKenzie only the authorship part, but he does not remember the extortion part. And he presented it in such a ridiculous way that I complained that I'm being forced into collaborative research. What is wrong in collaborative research, if it is a collaborative research, if it is not an extortion, there is nothing wrong with that, how could I possibly complain on that.

THE COURT :

Is all this leading something?

VALERY FABRIKANT :

It is leading to something. It is. The question was, is...

Me JEAN LECOURS :

The accused was out of order and was not pleading on the subject, My Lord.

VALERY FABRIKANT :

As soon as Crown feels that the witness is in difficulty, then it immediately jumps and puts an objection, and I feel that this is totally unfair.

Me JEAN LECOURS :

This is not the subject either, My Lord.

VALERY FABRIKANT :

The witness should be declared hostile and I should be allowed to ask him the questions I need.

THE COURT :

Well, the subject I thought of the objection was double hearsay.

Me JEAN LECOURS :

That is correct, My Lord.

VALERY FABRIKANT :

Double hearsay has nothing to do with that, I explained on many occasions that the purpose of all this questioning is to show that this is not a coincidental thing, it is not... there is a lawyer there, don't you worry, he coordinates each witness, he assigns each witness what to say. It is very well designed disorder, it is not, you know, someone comes and says this, and someone comes and says that, it's very, very well organized. And it is very well organized for one reason only, just to show to the jury that there are all options there. And the main reason to show to the jury, because university is in extremely stupid position right now, on the one hand the Rector...

THE COURT :

You're not arguing an objection, you're on on one of these rambling dissertations that doesn't relate at all to the objection. Now...

VALERY FABRIKANT :

All right.

THE COURT :

...the objection related to a question you put to the witness...

VALERY FABRIKANT :

You don't see the logic in what I'm saying? You do not realize why I'm asking the same question to many witnesses.

THE COURT :

Listen, I'm not here to either see or not see the logic in your argument, it's not my position to take any part in...

VALERY FABRIKANT :

Anyway, I'm explaining...

THE COURT :

Just a second ...take any part in the logic of your position,

but at least when there is an objection, since you appear to have changed the ground rules which were presented to me, whereby counsel was going to argue the question of objections and you've taken it upon yourself to argue them, the first point I want to make is that surely you could stick to the stuff of the objection, that's not what you've done. You've gone off on one of those mind numbing dissertations on your particular theory of what happened and why. Look, I am here simply to control traffic in the sense of making sure that the witnesses are heard and the questions that are put to them are legal. What the witness says, I have no control over. If I thought for one minute that someone was programming witnesses on a systematic fashion, I would be very shocked indeed, I'll tell you quite candidly, I think that's drivel. The witness has the witness' memory. I'm no expert on people's minds and neither are you. I don't know why one particular set of facts sticks in someone's mind, or why it reflects itself in some particular form of recollection, I don't know, but I do know from my own experience. In the ten years that I've been sitting here, that people have different recollections of different things. Some people remember better than others. Some people remember much better than others, look at the question of your security guards. That's true for everybody. People have other things in their lives but V.I. Fabrikant, you know, and so they have had over the last few years. So you have to take the witness for what he's worth and you have to take his memory for what it's worth. And you've got jurors who are sitting there listening to the case, and who will assess insofar as they have to, what the witness says, and how much credibility they wish to attach to it. But if you think that you're going to put together some sort of puzzle that interlocks at every corner, and that somehow or other what is going to emerge is a work of Greco, then you're dreaming in cinemascope.

VALERY FABRIKANT :

Yes. Well, just wait for the final argument, then you will see if I bring it together...

THE COURT :

The final argument... the final argument is one thing, but for the minute you take the witness' testimony as it comes.

VALERY FABRIKANT :

That's what I'm doing.

THE COURT :

Now, to come back to the objection, the objection is maintained, the question was simply (inaudible) hearsay, and it wasn't even reliable hearsay. Now, ask another question.

VALERY FABRIKANT :

Well, you didn't let me finish my explanation.

Me JEAN LECOURS :

But from now on hearsay is disallowed?

THE COURT :

It depends on the hearsay. I'm not...

Me JEAN LECOURS :

It rare circumstances, in accordance with the decision of Khan and Smith, when there is reliability and necessity, but all this is very marginal, there is absolutely no necessity for this type of hear-say.

THE COURT :

Okay. Perfectly right.

VALERY FABRIKANT :

No, in this case there is a necessity because I wanted to know

his personal knowledge on the subject. And it is very important for me to know whether his personal knowledge at that time was just this information from Grendon Haines...

THE COURT :

He has told you that, he told you that this morning and he's told you that this afternoon.

VALERY FABRIKANT :

So what was wrong if I ask him if McKenzie told him that?

THE COURT :

Because the question was illegal, and the question isn't allowed, and you are the first one to throw darts at people for making objections. You have been rambling away for the last fifteen (15), twenty (20) minutes, and we're accomplishing nothing. Now, the question is disallowed, put another question to the witness.

VALERY FABRIKANT :

Q. Have you, at that time, heard from anyone anything similar to what you have heard from Mr. Haines, or in any case, any kind of threats?

A. I do not remember anything else other than one of doctor Osman, but I don't know whether it was in eighty-nine ('89) or during the time of your reappointment and other things to consider, I just really can't recall which time. But I remember Osman having told, and then my bringing that to the attention of doctor Catherine McKenzie. I don't know whether it is the same time or at the next time, I don't remember.

VALERY FABRIKANT :

Well, would you believe that, he cannot remember whether it is eighty-nine ('89) or ninety-one ('91).

THE COURT :

Whether I believe it or not couldn't matter a damn. Now...

VALERY FABRIKANT :

It could matter, if you don't believe you should declare him hostile. It does matter.

THE COURT :

The witness is not evading your question, the witness is not indicating that he's having a chronic loss of memory, there's no question in my mind of evasion. Now, would you get on with it. If you don't like the answers, that's too bad, you could have elected not to call the witness.

VALERY FABRIKANT :

Well, I like his answers, I love them, you just don't allow me to question him.

THE COURT :

If you like his answers, then what are you complaining about? Go right ahead.

VALERY FABRIKANT :

But you do not allow me the questions, that's the only thing I am complaining. As far as answers are concerned, I love them.

Q. All right. In nineteen ninety (1990), when did you learn that Vice-Rector has intention to terminate my employment?

A. First of all, I want to correct what is being asked, there was no question of Vice-Rector terminating the appointment. The Vice-Rector had already given you an appointment for two years, going from nineteen ninety (1990), first (1st) of June, to nineteen ninety-two (1992), thirty-first (31st) of May, as a research associate professor. So you had an appointment which was valid for two years under research associate professor.

Q. Could you just please stick to the question, and answer is either she never meant, I never knew about it, whatever choice, it's your choice, but answer the question.

THE COURT :
No, he's not obliged to answer a question that's put like that, I'm sorry. That question had factored into it the question of a decision of the Vice-Rector to terminate your employment. The witness is not obliged to accept that, he's perfectly entitled to say: "You are wrong, that is not what the situation was" as a preface to his answer.

VALERY FABRIKANT :

Q. So Vice-Rector never intended to terminate my employment as far as your knowledge is concerned?

A. She could not have terminated because the appointment ran up to nineteen ninety-two (1992) thirty-first (31st) of May, and you had an appointment letter to that effect as a research associate professor. So the question of termination would not have arisen.

Q. All right. Do you remember that by that time you were negotiating a new collective agreement?

A. It's possible. Yes.

VALERY FABRIKANT :
There is no limit, you know, to...

THE COURT :
Spare me your comments.

VALERY FABRIKANT :

Q. So you do remember or you don't remember?

THE COURT :
He said it's quite possible.

VALERY FABRIKANT :

Q. Do you remember that we had some kind of talk about that, about new collective agreement and how we can terminate my employment?

A. My Lord, I do not remember, I mean collective agreement negotiations take place every three years, but sometimes it is delayed almost one year, and I was not on the negotiating team, so I cannot remember. However, if the dates are pointed out that there was negotiation going on, I would accept that the negotiation was going on.

THE COURT :

Q. I think you were still reflecting on that when he asked you his next question. His next question was whether or not you or he had a discussion on how, in virtue of the terms of the collective agreement, his employment could be terminated, a discussion between you and him, that's what he's asking.

A. I don't remember anything because as far as the collective agreement included the research people or not, because that particular new collective agreement included, whether it was done then or later, I don't recall. However, research professors were going to be included into the collective bargaining unit, before that they were not. However, he still had the position as a research associate professor running until ninety-two ('92), thirty-first (31st) of May, starting from nineteen ninety (1990). So if those people who are research associate professors were going to be included in the new bargaining unit, obviously automatically he would also be included, we cannot exclude one person, if the collective agreement talks about all research associate professors being included. And if they are excluded, he could not have been included either.

VALERY FABRIKANT :

Q. And that was the answer to my question, do you remember our conversation that my employment can be terminated? Do you accept this as an answer?

A. I do not remember, and again I have to state the same thing, your appointment could not have been terminated, it was a valid contract up to thirty-first (31st) of May, nineteen ninety-two (1992).

VALERY FABRIKANT :

Okay. Let me trigger his memory, he seems not to remember that conversation. May I have the collective agreement, please?

Q. To make it short, do you remember there was an article which said that research position will normally exceed five years? Do you remember that?

A. Vaguely, there was something about a research position being for five years, to be integrated, or something of that nature, I can't recall exactly.

Q. All right. Then recall it. It is D. On page, left, section D.

A. The total duration of such appointment does not normally exceed five years.

Q. Exactly.

A. Yes.

Q. This was the problem. Now, do you recall our conversation about it?

A. I still don't recall. However, you had already been given that appointment for two years before the collective agreement was even drawn up.

Q. Do you recall I asked you that this particular part, since collective agreement supersedes any individual agreement, maybe you was to terminate my employment because I was more than five years, do you remember that?

A. I really don't remember that.

Me JEAN LECOURS :

My Lord, it's in evidence that Mr. Fabrikant was integrated in the collective agreement, so what's all the fuss about that?

VALERY FABRIKANT :

Should I explain?

THE COURT :

No.

VALERY FABRIKANT :

Then let Crown be quiet then.

Me JEAN LECOURS :

I formulate an objection on the relevance, My Lord.

VALERY FABRIKANT :

Then let me respond.

THE COURT :

Okay. There's an objection on the relevance, what is the relevance?

VALERY FABRIKANT :

The relevance was that by that time the union, which was company union, made a good agreement with administration. They introduced several articles in collective agreement which looked quite innocent, on appearance, but were directed to the possibility to legally terminate my employment, even despite the fact that I was given this two year reappointment until ninety-two ('92). And one of those was this innocently looking phrase that "research appointments normally shall not exceed five years". And there is no doubt in my mind that it was not just something coincidental which was put there, they were preparing all the legal ways to terminate my employment.

And I consulted with lawyers at that time, and all of them told me the same thing, that this innocently looking part can be used, they cannot use, they can use, because the phrase is: "Normally will not exceed". So administration can say: "This is done like this", that, for example: "Mr. Johnson, we didn't fire him because collective agreement says normally do not exceed, but we decided this is an exceptional case. Fabrikant, we fired him. Well, normally should not exceed, and we just followed collective agreement". This is why it was done in such a smart way that it would not affect anybody else if administration doesn't want these people to be affected, but it would affect me if they wanted to be affected. And when I spoke to (inaudible), who testified here, about it, that union is effectively preparing to stab me in the back, he agreed with me. Not of course he agreed with me that union is stabbing in the back, he agreed with me in principle. He faked here that he doesn't remember this conversation but he agreed with me that yes, they should negotiate with administration clarification of this particular part, because it might affect me. He never did that, but at least he promised me that he would do that. So the relevance is that university administration, together with union, did all they could to find some so-called legal way to terminate my employment, and this definitely affected my mind in nineteen ninety (1990), affected to such degree, not just my mind but my heart too, because shortly after that I had a heart attack. This is relevant.

THE COURT :

Well, the question of your mind in nineteen ninety (1990) and the question of your physical health is only very, very marginally of relevance here, first of all. Secondly, as far as this witness is concerned, you've put the question to the witness as to whether, with reference to the provision of the collective agreement, and it doesn't trigger his mind, that's the end of the subject.

VALERY FABRIKANT :

I agree (inaudible).

THE COURT :

And there we are, so you move on to something else.

VALERY FABRIKANT :

That's exactly what I plan to do.

THE COURT :

I have not ruled for the moment in any sense on the rest of what you said. If you're in a position to establish that the university conspired with the union to give you the shaft, then you'll have to prove that. But obviously you're not establishing it through this witness because he's got no recollection of the conversation you had, go on to something else.

VALERY FABRIKANT :

Well, because he's faking his memory, but...

THE COURT :

Mr. Fabrikant, that's a submission, that's a question of argument that you can make later, don't make it now.

VALERY FABRIKANT :

All right.

Q. Okay. Do you recall, in nineteen ninety (1990), the so-called smell in Dean's office?

A. Yes, I do remember, because I had made even jokes about that in the Senate room. Yes, I do remember that.

Q. Okay. Could you tell the jury what kind of arrangement you

made at that time in the Dean's office?

A. The smell was intolerable, I had asked people to come and check where it was leaking, and what kind of... perhaps from the chemistry lab, or from some other lab, some gas was leaking, and it was not possible to have our offices then so I temporarily moved to the seminar room in the Dean's complex, it was a temporary measure, it was not the most convenient one. And my secretaries, my budget (inaudible), everybody had moved, and a plastic curtain was pulled between the people to examine and find out what it was all about.

Q. Well, could you explain at the time when this smell, all of a sudden, appeared, the same day I was in the office with you, and you never said anything about smell, and I didn't feel any smell?

A. I'm sorry if you did not smell, and I am not going to discuss about the smell, everybody who comes to my office to discuss some official matters, dealing with themselves. But I did find the smell to be obnoxious enough for me to complain, and for the people to come and conduct enough test to find that there was something wrong, and the air was not clean.

Q. Uh, huh. All right. Now, what happened is that you ended up in your conference room, right?

A. That's correct.

Q. All right. And part of the Dean's office was shielded by plastic?

A. That's correct.

Q. All right. Was there any work from there?

A. Sorry, I didn't get that question.

Me JEAN LECOURS :

Could we know the relevance of that, My Lord?

THE COURT :

I am just about to ask, this is fascinating but, I mean, what is the significance of the smell in the Dean's office?

VALERY FABRIKANT :

There was no smell, this is significant.

THE COURT :

Pardon?

VALERY FABRIKANT :

There was no smell, never been.

THE COURT :

No, I'm sorry, you'll have to do better than that.

Me JEAN LECOURS :

And what's the link with Fabrikant?

VALERY FABRIKANT :

Well, just allow me to continue my question.

THE COURT :

No, no, no, no, no, no. We've had the relief for the moment, but you'll have to tell me what the pertinence of this is and how it relates to your defense.

VALERY FABRIKANT :

All right. There was no smell, never been one. What they did there was the following. They tried to demonstrate to everyone how they were scared of me. That time, instead of hiring bodyguard, they did the following thing. They established a very interesting rule, if there is a smell there, what it has to do that the door of what remained Dean's office was locked all the time. If you want to come to see the Dean you have to call from the outside and they will open the door for you. Now, I would like to know what it has to do with the smell. You have part of the office, Dean's office, part of it was shielded by plastic, only central part was

occupied. Now, here was Dean, Associate Dean, and that's about it. The door was always locked. Where Dean was, either there is smell, then how poor Dean is doing there? If there is no smell, why should the door be locked? And if you want to get in, you have to call from the outside. Those two things are so ridiculous, so not matching to one another, that it is total, you know, outrage. The way I was explained this stuff, unofficially...

THE COURT :

I think you can stop there. I think you can stop.

VALERY FABRIKANT :

No.

THE COURT :

How does this possibly relate to your defense?

VALERY FABRIKANT :

Very simple, they tried to smear my reputation because to everybody else... you see, at the university, everybody else in nineteen ninety-one (1991) knew the DPC had made decision to terminate my employment, I was the only one who didn't know that. All the secretaries knew, you heard the evidence, nothing was confidential there, everyone knew that, I didn't know. In nineteen ninety (1990) the same thing was made a spectacle, everyone was out of the Dean's area and dispersed to show that if Fabrikant comes with gun, here is courageous Dean who is prepared to meet him, but everybody else he tries to save, so everyone was dispersed. But courageous Dean was always locked under the lock, if you want to get inside you have to call, and explanation was smell, and nobody could buy that stupid story. If it is smell, then get out of there, if there is no smell where you are, allow other people to come in. Why should other people call first if they want just to get inside?

THE COURT :

Okay, Mr. Fabrikant, I'm ruling now. The saga of the malodorous office is not relevant to these proceedings, and there will be no further reference to it. Okay. Let's continue.

VALERY FABRIKANT :

Why don't we establish that this is what it was? Why don't we ask him why he was locked?

THE COURT :

Why don't you move on to something else, I've ruled...

VALERY FABRIKANT :

All right.

THE COURT :

...this is out.

VALERY FABRIKANT :

Can I ask that this smell all of a sudden disappeared when I got my reappointment?

THE COURT :

It's out. It's out. We're finished with the smell, move on to something else.

VALERY FABRIKANT :

Yes, it is too embarrassing, you're trying to save the university.

THE COURT :

Move on to something else.

VALERY FABRIKANT :

Yes. So it is all coincidence, that all the smell disappeared. I checked several times, there was no...

THE COURT :

I told you one time before, you risk having the witness' testimony terminated, this is the second time of asking.

VALERY FABRIKANT :

All right.

Q. In nineteen ninety (1990) you recommended to the Vice-Rector that I be promoted to research professor, do you recall that?

A. Yes, I do.

Q. Okay. When did you learn that she is not going to do anything about it?

A. I came to know about that because your dossier was not along with the other dossiers to be considered by the Vice-Rector's Committee which consists of all the deans, and I think at that time they had elected professors too. I don't exactly know but anyway, there's one more committee called the "UCCC", University Committee on full (inaudible), and your dossier was not there for the time I found out that you were not being considered.

Q. Okay. When was that?

A. It must have been around March, April, because that's the usual time when those meetings take place.

Q. Okay.

A. It might have been April.

Q. Did you ask for explanation?

A. Yes, I did. I asked the Vice-Rector why your promotion was not being considered at the UCCC level.

Q. And what was the answer?

A. The answer was that you were not eligible for consideration of promotion under the collective agreement because you were not a member of the bargaining unit, and therefore that it does not hold for you.

Q. Did you agree with that?

A. I did not.

Q. Did you try to argue with her?

A. I did.

Q. Did you inform me about it?

A. Yes, you came to me several times about that, and I informed you, I informed the Chair of the department, doctor Osman. Doctor Osman was not pleased with the decision, nor was I.

Q. Did you inform me in April about it?

A. I don't recall exactly when it was but once I found out it was... that I tried my level best for that dossier to be included for consideration of promotion. When I knew that I completely failed, I told you at that time there's nothing that I can do.

Q. Do you recall that you disappeared in June for several weeks, as soon as they knew that I was aware that I was not considered, you disappeared for several weeks from the university?

A. I did not disappear, I went to a conference in Singapore where I was presenting papers. From there I went to India for three weeks. I left somewhere around June second (2nd) or third (3rd), and then I came back.

Q. Yes. And it is also coincidence that Osman disappeared at that time too?

A. Osman did not disappear, Osman went on leave, he had advised to go on leave.

Q. He was advised to go on leave, because otherwise Fabrikant will come and shoot both of you, right, as soon as he learns that he was not promoted?

THE COURT :

Ignore that last question.

VALERY FABRIKANT :

Q. Okay. By the way, do you have in your file the letter which you sent to... I believe Francis White, concerning promotions?

A. Yes, I do.

Q. Can you deposit it?

THE COURT :

Would you remind me next week to have you a copy made of that so that the copy can be deposited I guess rather than the original. That would suit you?

Would you just show it to Mr. Fabrikant to make sure it's what he intends to file?

VALERY FABRIKANT :

Q. Well this is not the one, this is the contract, you wrote a separate letter to, I believe, White.

A. I have both. I wrote a letter to doctor Francis White on the twenty-seventh (27th) of August, nineteen eighty-five (1985), and that was the letter that doctor White sent.

Q. So what I'm asking is letter to White, not from White to me.

A. Fine. Here.

Q. This is the one.

THE COURT :

Okay. That's D-49. We'll stop here.

VALERY FABRIKANT :

Now, it's my understanding that Monday is afternoon?

THE COURT :

Just a second, we'll stop here. Sit down for the moment.

AND FURTHER DEPONENT SAITH NOT

VALERY FABRIKANT :

Because I need a copy.

THE COURT :

I'm going to adjourn at four o'clock (4:00), the bad news is the Crown Prosecutor has to visit his dentist, I don't think he minds me telling you that, on a rather urgent basis, that's the bad news. As far as the good news if, we'll adjourn now, or maybe that's the bad news, I don't know. You had asked me about tomorrow, and tomorrow we won't sit. And we're not sitting Monday morning, unless I detect some violent disagreement if I were to adjourn until Tuesday morning, making it a four day weekend, would everybody agree? Okay. So we'll take until Tuesday morning, and might I wish you all a very good weekend.

WITHOUT JURY

You had asked for a copy of that letter?

VALERY FABRIKANT :

Yes. Well, I need a copy of the Court order concerning Tuesday, or they will bring me Monday.

THE COURT :

I see. Not if the "d,faut mandat" says Tuesday.

VALERY FABRIKANT :

They can bring me tomorrow, I know Parthenais.

THE COURT :

The "defaut mandat" is for Tuesday.

VALERY FABRIKANT :

Still I would like to get a copy of that.

TRIAL CONTINUED TO JULY 27TH, 1993

Je soussign,, Michel Daigneault, st,nographe officiel
bilingue, certifie que les feuilles qui pr,cŕdent sont et

contiennent la transcription de bandes d'enregistrement
m,canique, hors de mon contr"le; et est au meilleur de la
qualit, dudit enregistrement. Le tout conform,ment ... la Loi.

Et j'ai sign,,

Michel Daigneault,
St,nographe officiel bilingue

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PROVINCE OF 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 LECOURS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: July 27th, 1993

GS: 1428 FILE: 3413

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CONTINUATION JULY 28TH, 1993

OUT OF THE PRESENCE OF THE JURY

(THE JUDGE TAKES THE BENCH)

(THE ACCUSED AND ATTORNEYS ARE PRESENT)

BY THE ACCUSED:

Mr. Ouellette is fired. He is no longer representing me.

BY THE COURT:

Have you anything you can add to this, Me Ouellette, or is that the state of the union this morning?

BY Me OUELLETTE:

Well, I would have something to say about this. As a matter of fact, it is generally accepted that practices of counsel discussing certain aspects of the case in the Judge's chambers is to be discouraged when there is a trial in front of a jury. So this morning I was ready to discuss these matters with yourself and the Crown Attorney. But obviously we don't have to have this in this case.

BY THE COURT:

I have never had this in this case, no.

BY Me OUELLETTE:

Exactly. So basically I would like only to relate exactly what is going on, although maybe Mr. Fabrikant would like to explain to the Court why he is firing me.

BY THE COURT:

Yes. You probably don't have to relay an awful lot. It's not the first time it's happened, and I wasn't going to put to Mr. Fabrikant any questions as to why or whatever. If there's anything else you want to add, that's fine. But maybe the least that's said, the better, you know.

BY Me OUELLETTE:

Well, basically what I want to add is that obviously I spent a lot of time on this case during the weekend and I talked to Mr. Fabrikant on Friday, July twenty-third (23rd).

Basically what I was requested to do on Friday, July twenty-third (23rd) was to present several motions to that Court. One was of mistrial on the basis of your lawlessness. One was to argue with you that you are unfair. The other one was to tell the Court, the Crown Attorney that he was also unfair and misleading that Court. The other motion that I was to present was a motion to review the conditions of detention. The other thing that I was to do was to tell the press that Dr. Fabrikant is not having a fair trial. The other thing that I was required to do was to force Concordia to deposit in Court all of their documents. The other thing that I was asked to do...

BY THE ACCUSED:

What the hell, is he allowed to release this kind of confidential information? What the hell he is doing? I do not understand it. Why do you allow him to speak?

BY THE COURT:

Just a second.

BY THE ACCUSED:

Confidentiality no longer exists or what?

BY THE COURT:

I think, Mr. Fabrikant, Me Ouellette probably felt that he had some explanation he wanted to make as to what had transpired. I had suggested to him that it's not necessary, and having...

BY THE ACCUSED:

Well, he can make whatever...

BY THE COURT:

Having heard what he said it's not necessary. I think that if your position is that...if your position is that, from your point of view, you and Mr. Fabrikant don't agree on what position you should adopt, I'll understand that, and if he says that he's terminated your mandate then, as I said earlier, perhaps the least said the better. There's no harm done, in my view. But the jury is not here, and I would presume that Mr. Fabrikant is going to inform the jury. If he's not, I am, that your mandate has been terminated, and that's that. The jury has seen it before. So... but there's no point you or I debating any of these things, because none of them are new. None of them are new, and their position is that Mr. Fabrikant had advanced throughout this trial and, in fact, right back to the days beforehand.

So I don't know what I have left to say, except to thank you for your contribution, and to offer you my sympathy, but I can't offer you anything else. I'm sure it wasn't easy.

BY Me OUELLETTE:

Agreed.

BY THE COURT:

And I must say that really since the beginning, you know, you did what you could and that's it. That's what happens.

BY Me OUELLETTE:

(Inaudible) motion to quash and (inaudible).

BY THE COURT:

So...

BY THE ACCUSED:

My tapes, please.

BY Me OUELLETTE:

Thank you very much.

BY THE COURT:

There's very little more I can add, except to wish you a good summer.

BY Me OUELLETTE:

Thank you very much.

BY THE COURT:

Okay, Me Ouellette, thank you.

BY THE ACCUSED:

Well, did you bring my tapes?

BY Me OUELLETTE:

I will.

BY THE ACCUSED:

All right. Now, if you wish to inform the jury that he is fired, then I believe I have the right to explain why he is fired. Because I believe jury has the right to know what happened.

BY THE COURT:

Listen, there's no point in getting sidetracked. I will reflect on what I'm going to say to the jury.

BY THE ACCUSED:

Well, I can give you some idea of what to tell the jury.

BY THE COURT:

No, I don't... I said to Me Ouellette, please don't go into details. He's mentioned a number of things and...

BY THE ACCUSED:

Well, this is not the point. He didn't mention the major number of things. That the main problem was that he wanted me to sign to him that he will get paid more rather than less.

BY THE COURT:

Mr. Fabrikant, let's... let us just leave it. Let us just leave it that you and...

BY THE ACCUSED:

No, this is... this is an important part.

BY THE COURT:

Well, let us just...

BY THE ACCUSED:

I must tell you...

BY THE COURT:

Let us just leave it that you and Me Ouellette no longer agree on the conduct of your defense, and you have terminated his services. That's all.

BY THE ACCUSED:

Well...

BY THE COURT:

Now, I don't see why you have to get into detail with the jury as to why.

BY THE ACCUSED:

Okay. Let me explain why I think this time it is necessary to get into detail, because all previous lawyers as soon as there was question of their credit of what they are doing they just, you know, stood up and out they go. This one instead starting threatening me. He told me that if I do not sign for him greater payment, that he will...

BY THE COURT:

Listen, listen, listen, let's... let's...

BY THE ACCUSED:

Let me finish.

BY THE COURT:

I don't want to hear it. You...

BY THE ACCUSED:

No, no, no, because he is not a criminal lawyer. He's a lawyer criminal.

BY THE COURT:

Mr. Fabrikant, he isn't here. He's withdrawn. He's no longer in the record.

BY THE ACCUSED:

Well, he tried to scare me that if I tried to fire him he will make my defense short. He will make appropriate motions that I be removed from the Court and he will take charge of the defense. How do you like that? Shouldn't the jury know about that?

BY THE COURT:

I don't think so. And I have no idea...

BY THE ACCUSED:

Look, this is...

BY THE COURT:

You know, look, I wasn't there. He's not here.

BY THE ACCUSED:

This is a lawyer criminal. Isn't it? If he tells to his client such thing.

BY THE COURT:

Mr. Fabrikant, you know perfectly well that the trial has not gone on for one second when you have not been in the courtroom.

BY THE ACCUSED:

I know that he... look, it is not what counts. I didn't believe one second to his threats...

BY THE COURT:

He's... there's...

BY THE ACCUSED:

... but the fact that those threats were made, it is so outrageous. It never happened before that lawyer would try to threaten me...

BY THE COURT:

However you may see it...

BY THE ACCUSED:

... to intimidate me...

BY THE COURT:

However you may see it...

BY THE ACCUSED:

... this is something the jury should know.

BY THE COURT:

It doesn't... it's not something the jury should know. It's got nothing to do with what the jury has to know.

BY THE ACCUSED:

Well, if you're going...

BY THE COURT:

Now, I'm not putting, you know, I have no power to gag you, but I don't think that needs to be said.

BY THE ACCUSED:

Absolutely. Absolutely. Because this is unique. I hope you agree with me, that situation is totally unique.

BY THE COURT:

Well, Mr. Fabrikant, there are a number of things that are unique, but I'm not sure whether they're unique, or whether they're simply unique in your perception.

BY THE ACCUSED:

Okay, what, you are telling me that it is custom for a lawyer to intimidate a client?

BY THE COURT:

I wan't there, Mr. Fabrikant. I don't...

BY THE ACCUSED:

I know that you wasn't there, but...

BY THE COURT:

I don't know what transpired at all.

BY THE ACCUSED:

But this is... did you hear... I just was kind of curious what he is going to do. And he started telling content of our conversation. Isn't it obvious from the very beginning that he doesn't give a damn of code of...

BY THE COURT:

He did not... he did not talk about your conversation. He talked about steps that he felt he... or he interpreted that he had been expected to take.

BY THE ACCUSED:

Well...

BY THE COURT:

None of which...

BY THE ACCUSED:

... even this...

BY THE COURT:

... none of which I haven't seen before.

BY THE ACCUSED:

Even this...

BY THE COURT:

None of which, none of which I haven't seen before.

There have been more motions from this trial...

BY THE ACCUSED:

This is not the point.

BY THE COURT:

... in this case than any case I've ever heard.

BY THE ACCUSED:

Well, this is not the point. I have nothing to hide.

But the point is that my lawyer, without my authorization, is not supposed to reveal any information about my future steps. Is that obvious?

BY THE COURT:

We are not here to solve that sort of problem. All we are here to do is get on with this trial and get it finished as expeditiously as we possibly can.

BY THE ACCUSED:

Well, I couldn't agree more.

BY THE COURT:

Good.

BY THE ACCUSED:

But this is not the point.

BY THE COURT:

Listen...

BY THE ACCUSED:

The point is that... you saw that behaviour is quite unique. He is not supposed to tell you anything about my intentions. He's not authorized to do so. And the jury has a right to know that, that this lawyer had no regard for any norms of behaviour.

BY THE COURT:

Well, not quite. A judge often has the right, indeed, the need to know why it is that during a trial... now, in your case, I agree it's a little different in the sense that he has not been here for very long. But in the situation where a lawyer has been in the file and wishes to withdraw during a trial, it's very, very rare that the trial judge will permit that, for the good reason that it is the sort of thing that may prejudice the defense in some instances. Now, in your case he hasn't... he hasn't, as far as I know, been in the portrait very long, although he pointed out to me that he had been advising you since the month of May, which I heard him say. But often when a lawyer wishes to withdraw the judge needs to know at least the general lines of why. All of the general lines of why, apart from what you started to say boil down to the fact that you and he disagree. Well, okay, if you and he disagree, that's fine.

BY THE ACCUSED:

Well, maximum... maximum what he could tell you is exactly the general line that he disagreed with something...

BY THE COURT:

Well, that's...

BY THE ACCUSED:

... but not specify what I asked him to do and what he didn't do.

BY THE COURT:

Well, in any event...

BY THE ACCUSED:

Well, all I am saying...

BY THE COURT:

... I am not shocked, and there it is, so...

BY THE ACCUSED:

... that the jury has to be informed. Either you do it, or I will do it.

BY THE COURT:

Well, I'll simply inform the jury that Me Ouellette is no longer your attorney.

BY THE ACCUSED:

Well, then I will inform them that he tried to intimidate me that if I do not give him higher pay that he will make such a motion that to make my trial short and that I will get the first degree murder. I think this is total outrage.

BY THE COURT:

I don't think you should say that, and I don't think you can say that, and you are not to say that.

BY THE ACCUSED:

Well, this is the truth, and jury should know that.

BY THE COURT:

You are not to say that.

BY THE ACCUSED:

Well... Now, as far as the motion is concerned, Mr.

Belleau, in his usual capacity of saboteur, first of all, he promised to bring it at eight-thirty (8:30). He brought it about nine (9:00). I didn't have time to read it. Second, he underlined in this...

BY THE COURT:

What... I don't know what you're talking about.

BY THE ACCUSED:

Well, I just decided to look into the whole thing of quashing subpoenas, and I found interesting things. Now, right now I am making kind of preliminary objection. First of all, we need to find out whether counsel for witness is a party to any proceedings, because what I've been brought here is jurisprudence where Mr. Belleau has underlined the following, that... I am now looking at British Columbia Supreme Court, October eighth (8th), nineteen eighty-two (1982). It says here that:

"While it would appear that there may have been no right prior to enactment of Charter for counsel for a witness to be heard before a trial judge."

Did you get that point?

BY THE COURT:

I haven't the foggiest idea what we're talking about.

BY THE ACCUSED:

All right. My question is the following. So I am forming preliminary objection. And it is...

BY THE COURT:

To what?

BY THE ACCUSED:

... in this particular jurisprudence, referred decision of nineteen seventy-five (1975) which says:

"Witness is not a party to proceedings, and doesn't become a party by the appointment of counsel for... on her behalf. The issue of relevancy and admissibility of evidence in a criminal case is wants all of it to be considered on the basis of submissions of Crown counsel and Defense counsel."

Is the message clear?

BY THE COURT:

What are we talking about?

BY THE ACCUSED:

I am talking about a request to quash subpoenas. Aren't we here for that?

BY THE COURT:

We're here to discuss the question of the subpoenas. Whether there's a motion to quash the subpoena will depend.

BY THE ACCUSED:

Well, so my question is, first of all, that on the face of it, it appears that it has to be Crown to bring such a motion, not a third party. Lawyer for a witness is not a party to proceedings.

BY THE COURT:

Are you suggesting to me a witness may not move to quash a subpoena?

BY THE ACCUSED:

Well, at least this jurisprudence says it explicitly,
yes.

BY THE COURT:

Particularly since the enactment of the Charter?

BY THE ACCUSED:

One second. Now, let us go to enactment of Charter. So,
before enactment of Charter, it looks like situation was
clear that witness was not a party to a proceeding. We
agreed with that. Now we move to the Charter.

In this particular jurisprudence witness alleges that his
or her right under the Charter has been abused. I didn't
hear Mr. Freedman saying that somebody's Charter of
Rights has been abused. So let us decide this case
first. If attorney for witness does not allege any abuse
of harter of Rights, I believe that this jurisprudence is
still valid, that counsel for a witness, or witness
itself, is not party to proceedings and should not make
any motion before a judge. So I would like you to rule
on this, and when you rule on this, I would continue with
further objection.

BY THE COURT:

What are the cases that you wish to submit to me?

BY THE ACCUSED:

Well, I didn't have time to look at all of them,
because...

BY THE COURT:

Well, you have...

BY THE ACCUSED:

... you see, what he brought to me, and what he...

BY THE COURT:

What are you citing to me now?

BY THE ACCUSED:

All right. I'm citing to you British Columbia Supreme
Court, October eighth (8th), nineteen ninety-two (1992).
It is Chase and the Queen.

BY THE COURT:

Okay. What's the... look at the top of the thing and
you'll see there's numbers.

BY THE ACCUSED:

Canadian Criminal Cases...

BY THE COURT:

Pardon?

BY THE ACCUSED:

... 1 C.C.C. (3d). This is what you...

BY THE COURT:

Yes.

BY Me BELLEAU:

1 C.C.C. third series, page...

BY THE COURT:

1 C.C.C., third, page...

BY Me BELLEAU:

188.

BY THE COURT:

188. Okay.

BY THE ACCUSED:

Now, this is what I have seen so far. I didn't have time
to look into detail, but another case is Medicine Hat
Green Houses (Inaudible) and the Queen. It is 34 C.C.C.
(2d), page 339.

BY THE COURT:

34 C.C.C., 3rd, again.

BY Me BELLEAU:

2nd.

BY THE COURT:

2nd.

BY THE ACCUSED:

2nd.

BY Me BELLEAU:

339.

BY THE COURT:

339.

BY THE ACCUSED:

Now, here... I didn't have time to look at it, but the main thing here is that it is by the Court of Appeal who has to deal if there is a motion to quash subpoena, or it has to be another judge, not you. Now...

BY THE COURT:

What? No, that doesn't... no, that doesn't make any sense what you just said.

BY THE ACCUSED:

Okay. Well...

BY THE COURT:

If there is any... presuming we get over the first problem, if there is anybody who has jurisdiction to quash a subpoena it's the trial judge.

BY THE ACCUSED:

One second. Let me argue that next, because that will be my next. Let us rule first...

BY THE COURT:

Why don't you... why don't you put them all on the table first.

BY THE ACCUSED:

All right. Because you see, it would be good if you need some time to make your decision to let me read the rest, because I didn't have time to read the rest of jurisprudence brought.

BY THE COURT:

Well...

BY THE ACCUSED:

I think that would be fair to give me the opportunity to read the rest, because as I told you... of course, after Mr. Ouellette, I consider Mr. Belleau to be a fine lawyer. He's at least not a criminal. But he's a quiet saboteur. He gives me jurisprudence. He underlines what he wants me to read, and doesn't bring to my attention what is really important. He brings me the jurisprudence which is against the ideas which I advanced. And you know just by chance I see further, and I say, my gosh, it's not that bad as he described it.

So the next objection is the following. I didn't get from him this kind of stuff how good it is, but I think still would like to submit to you the following. If you look at Article 699, itself, part one, it says that:

"Where a person is required to attend to give evidence before a Superior Court of criminal jurisdiction, a subpoena directed to that person shall be issued out of the Court before which (inaudible) of the person is required."

So subpoena, whether it has been signed by peace...
justice of peace, still is deemed to be issued by this
Court, according to article.

BY THE COURT:

I think you have to read 699 along with 698.

BY THE ACCUSED:

Well, it doesn't contradict one to another. The point in
699 is that person should be issued subpoena from this
Court if it is Superior Court. If it is magistrate, it
could be issued when a person is here, by justice of
peace, when person is out of province, Superior Court.
But if the witness is to appear before Superior Court,
then the subpoena is deemed to be issued by Superior
Court, not by justice of peace. So actually by you. And
since it has been issued by you, you seem to be in pretty
ridiculous situation right now, because you have issued
subpoena and it looks like if you support, for example,
motion to quash subpoena, it looks like you didn't look
at what you were doing.

BY THE COURT:

What subpoena are you talking about?

BY THE ACCUSED:

Well, the subpoena to be quashed.

BY THE COURT:

I didn't issue these subpoenas.

BY THE ACCUSED:

Well... you don't understand what I am saying.

BY THE COURT:

No.

BY THE ACCUSED:

Subpoenas for people who are to appear before Superior
Court has to be issued out of this Court, means out of
Superior Court.

BY THE CROWN:

They are.

BY THE COURT:

They are.

BY THE ACCUSED:

Okay. So...

BY THE COURT:

But they're not issued by me.

BY THE CROWN:

But they are issued by Superior Court.

BY THE COURT:

They're issued by Superior Court.

BY THE ACCUSED:

Well, who is Superior Court? Is he a clerk, Superior
Court?

BY THE COURT:

Well, in this instance... in this instance, the clerk or
whoever it is who...

BY THE ACCUSED:

Well, clerk who signed cannot sign it...

BY THE COURT:

... signs it.

BY THE ACCUSED:

... on her own.

BY THE COURT:

Listen...

BY THE ACCUSED:

She has to be authorized by you, so it is deemed it has been issued by you, whoever signed it.

BY THE COURT:

Listen, your subpoenas have been issued in the regular fashion. The only one that I have signed, or ones that I have signed, relate to out of province witnesses, which requires the signature of a Superior Court justice. I signed them because the trial was going on. Normally they would be signed by whoever is presiding over the Practice Division. Otherwise on the strength of counsel's affirmation that witnesses are required, subpoenas are mechanically issued for witnesses within the province through the clerical facilities that the Court has.

BY THE ACCUSED:

Well...

BY THE COURT:

And that's what Mr. Belleau has recourse to each time he issues a subpoena, or has issued a subpoena, to bring your witnesses. Now, all of this... all of this has nothing to do with the question you're coming to. The question you're coming to is how can Me Freedman have status to represent these people who received subpoenas, and how can Me Freedman request that these subpoenas be quashed.

BY THE ACCUSED:

No, no, this is one objection. Now I'm talking about second objection. You don't seem to be getting the point. Let me repeat once again. The point here is, no matter how it has been done. If it has been done contrary to 699 (1), I couldn't care less. This is none of my business. It has to be issued out of this Court. Period.

Read again Article 699 (1). There is difference. It clearly states difference between witnesses who appear before Superior Court and witnesses who appear before Provincial Court, or other lower Courts. Look (1) and (2). Those are two different things. A person who appears before a Superior Court has to be subpoenaed out of this Court. And whatever is done, if it is done contradictory to this provision of the Code, I couldn't care less. This is none of my business. What is here at issue is that it was supposed to be signed by you, or on your behalf. Now, if we go to this and if we read this Medicine Hat short summary, it says:

"An order for issue a subpoena by
Superior Court judge..."

And this is exactly the case where we are. All your subpoenas are issued out of this Court.

"... may be reviewed by Appeal
Division, as well as Trial Division,
not under any expressed Code
provision, but in the indirect
jurisdiction of the Court to review
his own process. Sample
intervention is exceptional. This
means that it has to be reviewed
only exceptional cases."

You see this case in your Criminal Code?

BY THE COURT:

Uh, huh.

BY THE ACCUSED:

All right. So, this is my second objection, that if they want to quash, they have to go to Appeal Division or to another judge, not to you. So this is my second objection.

The third objection is the following. According to Article 688 (2), it says that:

"Person who is likely to give material evidence."

BY THE COURT:

698 you mean.

BY THE CROWN:

698.

BY THE ACCUSED:

Yeah, 698.

BY THE COURT:

You said 688.

BY THE ACCUSED:

Sorry. 698 (2). It says that:

"Person who is likely to give material evidence..."

To the best of my recollection, Mr. Freedman did not say here that person is... has no knowledge of the file, has no information to give. He did not state that, therefore his motion is just frivolous and (inaudible).

In another jurisprudence what I have seen... so this is my third objection, according to Article 698. Where did I see that? If he... in one of jurisprudence, I don't remember now in which one. Oh, yeah, here. Now I'm talking about Regina versus Williams, 64 C.C.C., (2d), page 514. And here again... what is important here, I believe, two things, which again, of course, Mr. Belleau didn't underline, but which are important in my case.

BY THE COURT:

Well, I mean, he gave you the case. What's he supposed to do...

BY THE ACCUSED:

He supposed...

BY THE COURT:

... spoon feed you the porridge?

BY THE ACCUSED:

Oh, oh. He's supposed to underline what is in my favour, not what is against me. This is what he's supposed to do. But he is friend of the Court. He is... he does what Courts wants, not what I need.

Now, what is important here is the following. First of all, on page 516, it says that... at least my understanding is, that if person has no evidence to give, there should be affidavit by that person presented to this end. No affidavits were given.

Second, it indicates here, again, that Crown should argue. On the same page it says that it is Crown who should argue. So effectively, it again supports my first objection that lawyer for witness is not a party to proceedings.

If we believe again this jurisprudence of British Columbia, he might be in the case when he alleges Charter of Rights violations, but I don't see any violation of

Charter of Rights of the witness here claimed at least. The rest I didn't read, so... oh, yeah. There is one more here which he brought, but it says here one thing... what he underlined, Mr. Belleau, that:

"It will be much more preferable
that the motion be brought before
trial judge to quash subpoena."

But, what he did not underline, in his usual manner, that here the motion is based on the question of admissibility. And judge argues here that question of admissibility is within the trial judge's discretion, therefore, this should be argued before trial judge. I agree a hundred percent (100%). Again, Mr. Freedman does not argue question of admissibility here. So, again, we see a very, very fine sabotage by Mr. Belleau. He thinks that I would not notice this little, little nuance.

Well, I did. I hope that sooner or later he will understand that this trick wouldn't work with me, but he might try, or at least continue trying. So, again, it looks like this jurisprudence, at least, does not contradict my contention that still question of quashing subpoenas out of Superior Court should be done if they want to do that either at the Trial Division, at the Appeals Division, wherever they want to do it if they have sufficient grounds.

Well, so far that's about it. I didn't see the rest. Now, since I'm having floor and you want me to raise all the questions, I want to raise some other questions. In particular, I asked Mr. Belleau to get me some jurisprudence on, or authorities on the name of police officer being withheld. He didn't so far. And I do need either something about it, or if there is nothing about it, then it looks like... it looks like you just did a wrong thing, because police officer does not have any privilege. What he gave me, Mr. Belleau, is that a police informant is usually protected, unless it is absolutely necessary for Defense to establish innocence of the accused. I don't argue that. In this particular case, the police officer's name was deleted, and police officer is not a privileged person. First.

Second, it is necessary for my defense, because whatever you say, that I brought this information myself, I was advised not to bring it. I reiterate once again, because this information is not damaging to you... to me. This information is quite opposite. It's exculpatory information because it supports my contention of abuse, because the university did not stop at outright lie, if this was the case, to provide police officer with false information, which is defaming me.

So it clearly is consistent with my defense. It is a very important part of my defense and therefore this information is relevant, and police officer's name should be restored and I should be able to question him without revealing the name of informant, if this is privileged, the content of the information. Because if you recall, Mr. Cheff couldn't give neither the time, neither the place, neither the circumstances, nothing at all. So this is important for my defense.

Now, I also asked several times Crown to produce information, which they didn't. I refer to the following. Through the files from S-ret, du Qu, bec,

Permit Division, I have pretty good idea that they withheld certain information. And this starts looking like abuse of process.

They also tried to mislead me with the drawing made by Lagac,, by giving me the false drawing from another report. This was not an innocent mistake, because even when I brought it to their attention, they still insist that this is the drawing in question.

And Mr. Ouellette, regretfully was definitely in collusion with the Crown because when I asked him... you remember here he said that he checked that everything is fine, when I asked him to identify on the drawing all these legend signs, well, those legend signs are just not there, and this means that Lagac, refers to another drawing, not to this one. It is obvious.

Besides that, Crown said that they had one hour meeting with him. Mr. Ouellette said that it was just fifteen (15) minutes meeting. Now, they couldn't be both right. I would like to know whether they had one hour meeting, then what did they discuss. I didn't get it from Mr. Ouellette. Maybe Crown would describe what they discussed.

Now, my next request is I tried to listen to the tapes of Urgences Sant,. They are in French, and they speak numbers, and very quickly. I need those to be transcribed. So I need your order to have it transcribed. Then at least I would be able to look into those conversations. I'm prepared that it be transcribed exactly as it is. I mean, in French, without translation. But it needs to be transcribed, because the way Ungences Sant, speaks, they say, for example, 10-44, which means go somewhere or... they use numbers instead of words, and it is difficult when you listen to look at the table of numbers to see what the number means. It makes it totally impossible to listen to, unless you know all those numbers by heart.

The next thing is that I have prepared a motion on behalf of about twenty (20) inmates at Parthenais, with respect to Charter of Rights. This motion is to order the Parthenais administration to segregate smokers from non-smokers, because... well, I would like you to sit a little bit in common (inaudible) in the bus, and you would not...

BY THE COURT:

Sorry, you would like what?

BY THE ACCUSED:

Well, you made me such a look at what he's talking about. No, I'm just trying to inform you that this is cruel and unusual punishment because the intensity of smoke is so, so strong that it is cruel and unusual punishment to be exposed to that.

Well, this motion I would like to be filed and presented before another judge of Superior Court, to be heard at the earliest possible, and since I do not have any lawyer to file it, and Mr. Belleau refused to do so. He told me that if you ask him to do so, he will do so. So I would ask you to instruct Mr. Belleau to deposit the motion. This is a collective motion and I believe it deserves to be heard by a judge.

Also, I reiterate my request for... to make copy of all depositions which were made so far. It will expedite

questioning significantly if I have it on my desk, so I would know what has been deposited, when and I would be able to give the witness the document right away, rather than asking the clerk to produce certain exhibit. So that would be rather helpful.

And the last but not least, I would like you to allow me to stay in the courtroom for a little while so that I can put some kind of order on my desk, because desk is so much of things here, I need just to clean up a bit the things which are no longer needed, so that I would at least dispose of them and the table will be something workable.

Yeah, now... yeah, this is another thing which is also important. There are many witnesses here. I have no time to make any notes. Mr. Belleau refused to provide me his notes. For summarizing to the jury, a summation to the jury and arguing, I need transcripts. At least, if not all witnesses, then at least specific witnesses which are most important. But it would be good if a transcript could be made of the whole proceedings.

I have a company who is prepared to do it very quickly, because the amount, the number of tapes so far accumulated makes it practically impossible to prepare for argument within a reasonable time limit.

Besides that, you know that from six a.m. (6:00) till about seven a.m. (7:00), I am in Court every day, and there is very, very little time left besides that, and you don't want to do anything about it, but you have to realize that you are just physically depriving me from working on my defense, because there are only twenty-four (24) hours in every day. Well, that's about it.

BY THE COURT:

Mr. Lecours.

BY THE CROWN:

My Lord, I would like shortly only to address the first point. I think the others are out of order. I refer you to Ewaschuk, the chapter on motion to quash subpoenas.

It's in chapter 1, page 32. It says:

"The Superior Court has jurisdiction to quash a subpoena on the basis that its issuance constitutes an abuse of process and that the Court is satisfied that the subpoena was not issued for the purpose of obtaining material evidence or that the witness served is unable to give material evidence."

When I made the motion, or Mr. Freedman made the motion, we always referred to 698, which speaks about material evidence. I think the way you follow from the beginning is quite proper, and the Canadian Charter of Rights gives certainly the Crown, and certainly the witness, to make this request to the Court, and I think I see no problem. You continue the same way you started before.

I think the other points are out of order, but I might shortly address disclosure. Me Ouellette was fully satisfied of the disclosure and he transferred... when we spoke about that, he said the matter is closed.

BY THE ACCUSED:

Okay. May I?

BY THE COURT:

Now, surely you don't have to come back with another argument on this?

BY THE ACCUSED:

Well, I just want to comment on the submission of the Crown. May I?

BY THE COURT:

If you have something else to say, say it. You've made your submission.

BY THE ACCUSED:

Well, first of all, quote from Ewaschuk does not contradict anything what I said. What he said from Ewaschuk that Superior Court has the right to do so, definitely, yes, but not the trial judge or not on application. If it is a trial judge, then it has to be Crown to raise the question, or if witness wants to quash his subpoena, then his lawyer has to go to another judge of Superior Court and quash it. This is exactly my point. It doesn't contradict to what Mr. Lecours is saying. Yes, Superior Court has jurisdiction and this is what is written in jurisprudence and the Criminal Code, that either Appeals Division or Trial Division can do that.

So, definitely, yes. If witness wants to quash subpoena, they have to go to another judge and do that. If it is in this particular Court, then either they should argue the Charter of Rights has been abused, which they didn't... well, or it has to be Crown who has to do that. So there is no contradiction in what I said.

As far as other objections is concerned, just to say that they are out of order, I don't think this is a good argument. So there is nothing to respond here.

BY THE COURT:

Now, I require some information from you which I might as well solicit at this point, and deal with it in the course of the disposition I make of all of this.

You have issued a subpoena to a Madame Amyot, who is the secretary of Mr. Justice Bishop.

BY THE ACCUSED:

Yes.

BY THE COURT:

Madame Amyot will be away between the second (2nd) of August and the eighteenth (18th) of August.

BY THE ACCUSED:

That's all right, isn't it?

BY THE COURT:

Well, it may not be. Madame Amyot is the secretary of Judge Bishop. What could she possibly have to say that would be relevant to this case?

BY THE ACCUSED:

Well, I just wonder why you inquire about this particular witness.

BY THE COURT:

I will tell you why I inquire about this particular witness. She drew the question of her subpoena to the attention of the Associate Chief Justice, and the Associate Chief Justice informed me that she planned to be on vacation between these dates, and asked me what the situation was. So I said I will inquire and I will attempt to find out. There's no...

BY THE ACCUSED:

Why didn't you tell her that this is none of her business...

BY THE COURT:

I did not...

BY THE ACCUSED:

... and she should not intervene on behalf of the secretary.

BY THE COURT:

I did not... I did not speak to her. I did not speak to her. Now...

BY THE ACCUSED:

Anyway, do you find it proper that Associate Chief Justice uses his or her power to inquire on behalf of someone's secretary? Secretary is the same person as everybody else.

BY THE COURT:

I find it absolutely appropriate.

BY THE ACCUSED:

Why?

BY THE COURT:

Particularly in this case.

BY THE ACCUSED:

Why?

BY THE COURT:

Particularly in this case.

BY THE ACCUSED:

Why is it appropriate?

BY THE COURT:

Because you have had witnesses standing in that hallway for days and days and days, and whether they address themselves by way of counsel, or whether an inquiry is made otherwise, what I would like to know is how long do you expect to be with that witness?

BY THE ACCUSED:

Well, not more than fifteen (15), twenty (20) minutes, probably. And she is not going to stand in the halls. I understand that she is working in this particular building, so she's available on very short notice, and I see no inconvenience for her whatsoever.

BY THE COURT:

Well, you may see no inconvenience for her, but if she has planned to be on vacation between the second (2nd) and the eighteenth (18th) of August...

BY THE ACCUSED:

Okay.

BY THE COURT:

... it makes it incumbent upon you to either have her heard before she goes on vacation.

BY THE ACCUSED:

Well, we'll hear her after.

BY THE COURT:

Well, I'm not so sure that this case will be going on afterwards.

BY THE ACCUSED:

Well...

BY THE COURT:

And I want you to know that I am not, and she's not in any different position than people at Concordia or whatever, except those that I would call the more major players, if you like. I have said that Kenniff and Sheinin, if necessary, could make... could arrange to

return from wherever they were. But I understand what your requirement for Kenniff and Sheinin is. Where, on the face of it, there are other witnesses, such as the ones Mr. Freedman is talking about, about secretaries, such as Madame Amyot, as an example, then, before I torpedo these people's vacations I have a right to know what... why you wish to call them. Because this whole thing is going to have to be brought under control, and you're showing no signs of bringing this trial, or the presentation of this defense of yours under control. And if it doesn't come under control very soon, then I'm going to have to make the decision that it's gone on long enough.

BY THE ACCUSED:

Well, it's up to you.

BY THE COURT:

Now...

BY THE ACCUSED:

It's up to you to make the decision...

BY THE COURT:

You are going to have to justify the inconvenience that you're causing to some of these people.

BY THE ACCUSED:

I'm not causing... let her go on her vacation. I'm not terminating anything. She wants to go on vacation, let her go on vacation. Period. You don't seem to listen to what I am saying. She doesn't suffer any inconvenience.

BY THE COURT:

I am suggesting to you that if this trial has terminated before she returns, then she will not be heard.

BY THE ACCUSED:

Well, if you wish to terminate it before she returns...

BY THE COURT:

Because...

BY THE ACCUSED:

... do so.

BY THE COURT:

... what I am saying to you is...

BY THE ACCUSED:

You can terminate it today.

BY THE COURT:

What I am saying to you is you are going to have to get your act in gear and get this thing moving, because this is ridiculous.

BY THE ACCUSED:

Well, you feel that it is not in gear and not moving. I feel that it is in full gear and moving as fast as it can.

BY THE COURT:

Well, it's not.

BY THE ACCUSED:

Then terminate it today, if you feel that way. You are the trial judge.

BY THE COURT:

That is not what I'm saying.

BY THE ACCUSED:

So then you won't have to be irritated with me. I am much more tired than you are. I'm getting up every day at six a.m. (6:00), and unlike you I am not being paid, and unlike you I'm staying in...

BY THE COURT:

Mr. Fabrikant, don't talk utter nonsense. That is most of what you've talked for the last few minutes. Utter nonsense. I couldn't care less whether you're being paid or not.

BY THE ACCUSED:

Well, why is it utter nonsense? I am just trying to inform you...

BY THE COURT:

You do not seem to appreciate that you are the accused in these proceedings. You are in the dock. You are the one who stands accused of having committed four murders. Not I.

BY THE ACCUSED:

Yes, yes, so what? I am trying just to give you an idea...

BY THE COURT:

Well...

BY THE ACCUSED:

... that it is not a pleasure for me to come here every day, if you didn't get what I'm trying to convey to you.

BY THE COURT:

It may not be a pleasure for you to come here, but it's also incumbent upon me to do what I can to make sure that this thing unfolds at least in as normal a fashion as it can. And that isn't happening.

BY THE ACCUSED:

Well, I can only repeat once again that I know that whatever happens I will be much better off in any other place rather than Parthenais, so it is not in my interest in any way to prolong this trial longer than it is necessary.

And whatever I am telling you that I'm not paid, that I'm the one who is standing, I'm the one who gets up at six a.m. (6:00), and travels in all this smoke atmosphere, it is... it is very unpleasant experience just to move from Parthenais here and back. So believe me, if I could terminate this trial before that, I would have done so. That's the only thought I'm trying to convey to you. If you feel that this is nonsense, well, we have different logics. But this is my thought to...

BY THE COURT:

Well, I'm pointing out to you... we were on the subject of Madame Amyot. If you finish with Mr. Swamy this week, you have a choice, you can hear her this week while she remains available before she goes on vacation. If you do not hear her this week, then I will take you at your word that you do not require her, and that you do not interfere... that you do not wish to interfere with her vacation, and you take your chances as to whether this... whether you're able to hear her after the eighteenth (18th) or not. It's the same thing as I've said to you with regard to other witnesses.

BY THE ACCUSED:

Well, if you are going to terminate my defense...

BY THE COURT:

I have said you are going to have to move along with your defense.

BY THE ACCUSED:

I'm moving as fast as I can.

BY THE COURT:

Because otherwise... otherwise eventually, eventually I have to say to you that you better come to the point and put in front of the jury what has to be put in front of the jury.

BY THE ACCUSED:

Well, if you don't see that I am putting in front of the jury pretty explosive information, then what can I say?

BY THE COURT:

That's true, what can you do.

BY THE ACCUSED:

We just got different logics.

BY THE COURT:

I will adjourn for a few moments to look at those cases to which you have referred me.

BY THE ACCUSED:

All right.

BY THE COURT:

And I will then dispose of each and everyone of these points that has been raised, and we will move on to the question of the... we will move on to the question of the subpoenas if that's the conclusion I come to. I'll see what conclusion I come to after I've looked at these cases.

BY THE ACCUSED:

Can I stay here to make some order on my table?

BY THE COURT:

No, you'll go back.

(THE JUDGE LEAVES THE BENCH)

SHORT RECESS

(CONSTABLE DENIS GRENIER SWORN IN AS JURY GUARD)

OUT OF THE PRESENCE OF THE JURY

(THE JUDGE TAKES THE BENCH)

(THE LAWYERS AND THE ACCUSED ARE PRESENT)

BY THE COURT:

The Court is called upon to rule on a series of questions, not the least of which touches upon the power of the Court to quash subpoenas issued in relation to witnesses summoned in defense.

It seems pointless to embark on any discussion concerning the validity of subpoenas issued at the accused's request in order to, or having for their purpose the convocation of witnesses whom the accused deems it necessary to have heard.

It will suffice to say that the Court itself has the power in the appropriate circumstances to quash subpoenas authorized even by a member of this Court. That power is normally exercised by the trial judge who, because of his particular position, is better able to appreciate the appropriateness of the subpoenas in question. If that is the case, it becomes pointless to discuss the procedure followed and the validity of that procedure as far as the convocation of witnesses is concerned.

The Crown Prosecutor referred to a number of decisions reported by Ewaschuk relating to the power to quash subpoenas. A Superior Court has jurisdiction to quash a subpoena on the basis of lack of jurisdiction, or a fundamental defect relating to its issuance. That is not the instance here.

In addition, it is nevertheless preferable that a move to quash a subpoena be made at trial instead of prior to trial in view of the fact that the trial judge is in a

better position to appreciate the pertinence of the evidence which the party, be it Crown or accused, proposes to adduce.

I have reviewed the cases of Williams and Chase. Chase which is reported at 1 C.C.C., 3rd, page 188 is authority for the proposition, first of all, that a motion to quash is properly receivable before the trial judge.

While the Superior Court as such has concurrent jurisdiction to quash a subpoena, presumably prior to trial, the Court was of the view that a Superior Court should normally decline that jurisdiction in view of the fact that interminable delays are likely to be involved. In this instance the problem does not arise. The accused finds himself before the Superior Court and the subpoenas in question were issued out of the Superior Court.

The question which does arise is whether or not a witness may, through counsel, move to set aside a subpoena validly issued by the Court on the ground of relevance. Chase, which is a decision rendered since the Charter, referred to an earlier decision of the Ontario Court of Appeal, which underlined that a witness as such is not a party to proceedings, and may not be represented by counsel. It follows from the foregoing that at least prior to the Charter motions to quash had to be initiated, either by the Crown Prosecutor or by counsel for the Defense.

I would be inclined to adopt the view that since the Charter, this rule has been modified only insofar as the witness claims a Charter right. If the witness does not claim a Charter right then I cannot see why one would be forced to conclude on the basis of the Charter alone, that the witness was entitled to be represented by counsel in order to oppose the question of the witness' testimony and to have the subpoena set aside.

The question is more theoretical than practical, since from a practical point of view, it is always open, given the stage we're at, for the Crown Prosecutor to raise the question of the pertinence of evidence.

It is also, in my view, perfectly proper for the trial judge to entertain the prosecutor's motion in that regard, and if the trial judge deems it appropriate, to set aside the subpoena, if he is not satisfied that the witness in question is prepared to give material evidence.

The matter was canvassed by the Quebec Court of Appeal in Jean-Guy Savard versus the Queen. A bench composed of Justices Gendron, Brossard and Proulx, CAM 500-10-000109-890. A decision rendered on the twelfth (12th) of September, nineteen ninety-one (1991). And I refer in particular to page 12 of the notes of Mr. Justice Proulx, where he declined to pass on the general procedure of the judge determining in advance the relevance of evidence, in this instance prior to the issuance of subpoenas requested by the Defense, the Court did nevertheless rule that on the basis of the transcript it was clear that the witnesses were not relevant to the question at issue, and the Court declined to intervene to order a new trial.

I take it that from that decision, very, very much depends upon the particular problem facing the trial judge and the manner in which the defense is unfolding and is being presented.

In the present proceedings we are now in the area of seventy (70) witnesses having been heard in defense. We are in the middle of the summer season when many of these persons who have been under subpoena for days on end can legitimately ask whether or not other plans which they have require to be cancelled, and given the nature of the defense that is being presented, I think it's perfectly appropriate that on motion I inquire into the pertinence of these witnesses rather than decline to do so, and require that they be brought to testify before making such an inquiry.

The bottom line, however, is that unless there is a Charter right involved I do not think it appropriate that Me Freedman make the challenge. And if challenge there is to be, it should properly devolve from the responsibilities, in this instance, of the Crown Prosecutor. There is no doubt, and there can be no doubt that the Court has the authority to quash subpoenas if the Court is of the view that the witness is not likely to give evidence relevant to these proceedings.

Passing to the question of the name of the police officer which was deleted from the police report, I have ruled on that and I do not propose to return to it. The police officer's name, as I have pointed out previously, was removed from the notes of Mr. Cheff, and that police officer is not a witness who is able to give any evidence which is relevant to the defense insofar as I have previously ruled that I would not permit the accused to place in evidence the notes of the conversation between Cheff and that officer, and then proceed to call the persons therein enumerated in order to knock down what he himself, of his own free will, had chosen to establish. It is simply not pertinent to these proceedings, and that is why the name was not revealed to him, and that is why there will be no change.

The complaint that the Crown withheld information is simply a repetition of previous interventions which the accused has made, and there is no basis for any conclusion that information pertinent to the accused's defense has been withheld in relation to his "permit" applications, nor for that matter am I inclined to make any order in relation to Lagac,'s diagram.

The accused has been furnished with the other tapes which he requested from Urgences Sant,. He has the means of listening to these tapes. I am not in the circumstances prepared to order that these tapes be transcribed for his convenience.

A motion on behalf of twenty (20) inmates of Parthenais in respect of the Charter of Rights to order the authorities to segregate smokers from non-smokers is bizarre in the circumstances, particularly in the context of this case. If the accused wishes to file such a motion before the Practice Division, then let him file it before the Practice Division. I have nothing to say one way or the other as to the viability or presentation or service of such a collective motion. And I'm certainly not about to order within the context of this trial that any steps be taken to serve such a motion. Mr. Belleau, quite rightly, declined to take any action to bring such a motion before the Court.

The accused has been provided on a daily basis with all

the positions taken... excuse me, with tapes of all of the testimony rendered in this trial. I said before, and I do not propose to change my position, I am not ordering that any of these depositions be transcribed.

As far as his request for permission to stay in the courtroom, I have pointed out on many occasions that I consider it for me to interfere as little as possible in the operation of the Detention Unit. If he wishes to put his affairs in order, then it is for him to collect his affairs, take them with him and bring them back in order after covering the twelve (12) cases he has to cover from the holding cell to the dock.

When it comes time to prepare summations for the jury, the accused is in every bit as good a position as everyone else inasmuch as he has had all of the material which has been produced in this trial at his disposal. I think that disposes of the questions which I had to dispose of and hopefully we will now manage to proceed. I leave it, Mr. Lecours, to you to decide what you wish to do as far as subpoenas are concerned. But unless there's a Charter issue involved, I'm not.., I don't think it's up to Mr. Freedman to make these presentations.

BY THE CROWN:

Can we adjourn for two minutes, My Lord?

BY THE COURT:

Sure.

BY THE CROWN:

I would like that.

BY THE ACCUSED:

You forgot several questions. One was the exhibits.

BY THE COURT:

You used the word "depositions" taken so far.

BY THE ACCUSED:

No, one thing what I asked you to do and you declined is to transcribe the depositions...

BY THE COURT:

The evidence.

BY THE ACCUSED:

... of witnesses...

BY THE COURT:

Right.

BY THE ACCUSED:

... is one thing. The second thing which I raised is those exhibits which are on the table, to make a copy of them and give them to me so that at least I know what has been deposited so far. This is not too much to ask for.

BY THE COURT:

Have you not received copies of most of these exhibits?

BY THE ACCUSED:

No. I received D-3, D-4, D-5, to the best of my recollection. And D-36, 37 and 40, I believe. That's all. And mainly the thick pile which was brought here by Miss Freed and by Susan O'Reilly, those thick piles are the most important because they contain all my documents from employment at Concordia, and I definitely need to know what has been deposited. So far when I tried to produce some of them to witnesses, I didn't find it there. So it looks like some are missing.

BY THE COURT:

Mechanically, Madame Desrosiers, what is involved in

reproducing these... copies of these exhibits which have been filed?

BY THE CLERK:

Only time.

BY THE COURT:

Only time. Is there someone who can do that in your office?

BY THE CLERK:

I don't know.

BY THE COURT:

You don't know. Perhaps you would check over the luncheon adjournment. In principle, there's no reason why you shouldn't have copies of the exhibits that have been filed.

BY THE ACCUSED:

The second thing, I would like to clarify one point which is substituted by something else. I didn't ask you to revise your decision on police. I asked you to direct Mr. Belleau to provide me with some information in that regard. That's all. So you substituted one question for another. I believe I have the right to educate myself as to whether this decision was right or wrong. That was my request. Not to change your decision. So you didn't dispose of that.

BY THE COURT:

I am not going to make any order to Mr. Belleau in that regard. If you think my decision is wrong, you will have ample opportunity, I suppose later on to argue in another place that my decision was wrong. But that is my decision.

BY THE ACCUSED:

Well, in all the due respect you realize yourself that right now your decision today proves one thing that all previous attorneys who came here for various witnesses and those witnesses were denied to me, all those decisions have to be revised right now.

BY THE COURT:

Not at all. They don't have to be revised at all. You were given ample opportunity to show what was the relevance, the pertinence of the testimony of these witnesses. I took the initiative to ask you what was the pertinence of these witnesses. In some cases you declined to speak to me, in which instances the subpoenas were annulled.

In other instances you didn't satisfy me that they were pertinent at all. It makes no difference whether the application is made, in essence, by an attorney or by the Prosecutor. You were given an opportunity to show me...

BY THE ACCUSED:

Well, it makes...

BY THE COURT:

... what the pertinence was. But I think that your... after looking at that case, I think your point is correct that unless there's a Charter issue involved, the witness... the witness may not, through an attorney, object to the subpoena.

BY THE ACCUSED:

Well, but he... the witness already objected...

BY THE COURT:

I have no intention...

BY THE ACCUSED:

... many times.

BY THE COURT:

I have no intention of revising a single thing as far as these witnesses are concerned. You were given every chance to convince me that the testimony of these witnesses was pertinent.

BY THE ACCUSED:

Well, at that time I didn't know...

BY THE COURT:

Oh, nonsense, you didn't know.

BY THE ACCUSED:

... that it was illegal for attorneys to come here...

BY THE COURT:

It's not illegal.

BY THE ACCUSED:

... and make the presentation.

BY THE COURT:

It's not illegal. I simply think after looking at the decision that you cited to me that the preferable course is to leave the matter to be raised by the Crown Prosecutor and, of course, the Defense attorney, if there was one, would have his chance to say what he has to say. But beyond that I certainly didn't endorse the position that the question can't be raised, particularly in a case like this where we've had a parade of witnesses, one after the other. I see absolutely no reason to revise a single thing. You were given every chance to indicate what the pertinence was, and I am sure the question will arise again.

BY THE ACCUSED:

Well, the question was posed wrongly, because there is another thing there. It is burden of the person who intervenes to establish that this particular witness is unlikely to give evidence.

BY THE COURT:

Not at all.

BY THE ACCUSED:

It is not burden on me.

BY THE COURT:

Yes, it is.

BY THE ACCUSED:

No.

BY THE COURT:

If I... if I...

BY THE ACCUSED:

It is person who raises question usually.

BY THE COURT:

I'm sorry. If I raise the question of what is the pertinence of this witness' testimony, I may. And that is in sum and substance what the Court of Appeal said in the case that I cited.

BY THE ACCUSED:

Well...

BY THE COURT:

Or at least the Court of Appeal. I won't go as far as that. I'll say the Court of Appeal declined to interfere.

BY THE ACCUSED:

Well, it was not you who raised the question. It was the lawyer who came here and raised the question, and you

just responded, okay...

BY THE COURT:

In the question... in the question of the Court of Appeal case, it was the accused who wished certain subpoenas to be issued, and the trial judge inquired into the question of pertinence and declined to do so.

BY THE ACCUSED:

Well, may I see that case because... you are talking about Savard versus Queen?

BY THE COURT:

Well, I'm sorry, I mean, I cited the case. I cited the case. I'm not in the business of furnishing you with jurisprudence.

BY THE ACCUSED:

I'm not asking you. You have friend here to do that. But you are referring to case, Savard versus the Queen. Right?

BY THE COURT:

That's right. Uh, huh.

BY THE ACCUSED:

So may I ask your friend to provide me with that case.

BY THE COURT:

Surely, ask him if you like.

BY THE ACCUSED:

Well...

BY THE COURT:

I don't know whether he has that at his disposal.

BY Me BELLEAU:

It's unreported. I'll try and locate it.

BY THE COURT:

I have... I can... if you wish to have a copy of it. Fine. I have a copy of it, rather than incur extra expense to obtain it, but it's certainly not for me to provide you with jurisprudence, Mr. Fabrikant.

BY THE ACCUSED:

No, I'm not talking about you personally.

BY THE COURT:

And that, in any event, has nothing to do with the general question that was raised.

BY THE ACCUSED:

But let me see whether it has or hasn't.

BY THE COURT:

It hasn't. And you... you were given ample opportunity.

BY THE ACCUSED:

But I...

BY THE COURT:

You were given ample opportunity to address me with regard to the pertinence of the testimony of these witnesses. So, as I say, the question is more technical than practical.

BY THE ACCUSED:

Well, this is not the point. It was done in contradiction to the normal procedure, therefore, the proceeding is invalid.

BY THE COURT:

It wasn't done in contradiction to the normal procedure.

BY THE ACCUSED:

Okay.

BY THE COURT:

Quite frankly.

BY THE ACCUSED:

You feel it this way. That's fine with me.

BY THE COURT:

It was not done in contradiction to the normal procedure. But I do think after looking at that, that unless the witness' testimony raises a Charter right, then the problem has to be raised either by Crown or Defense, depending on who it is.

BY THE ACCUSED:

Well...

BY THE COURT:

That's all I said.

BY THE ACCUSED:

... if from now on we are changing the rule, therefore I believe it should have a retractive...

BY THE COURT:

A very, very small change, Mr. Fabrikant.

BY THE ACCUSED:

Well, not small at all.

BY THE COURT:

And you're not... and it's not going to have retroactive effect.

BY THE ACCUSED:

Okay.

BY THE COURT:

It doesn't need to have retroactive effect.

BY THE ACCUSED:

Okay. Now, I presented the evidence that Crown withheld certain information, and it is just disregarded. Crown should stand up and explain where is the drawing in question.

BY THE COURT:

The Crown said what the Crown had to say. That was the second point that the Crown addressed when...

BY THE ACCUSED:

They didn't address. They didn't respond anything.

BY THE COURT:

The Crown spoke very briefly on that point, which related to the conversation that he had with Me Ouellette last week. I'm satisfied that the Crown has given you what the Crown has got. Now, what I'm telling you is I'm going to withdraw the Crown Prosecutor's request until he...

BY THE CROWN:

Five minutes.

BY THE COURT:

Five minutes. And then we will see where we are. But after that let us get on with the testimony...

BY THE ACCUSED:

Well...

BY THE COURT:

... of Mr. Swamy, so that Mr. Swamy can get on with his life.

BY THE ACCUSED:

Sure. But the Crown argued that... he explains something to Me Ouellette who is a saboteur. It is not satisfactory to me.

BY THE COURT:

Well, if it's not satisfactory to you...

BY THE ACCUSED:

He didn't explain anything to me.

BY THE COURT:

... if it's not satisfactory to you, that's just too bad.

Yes?

BY Me FREEDMAN:

My Lord, I understand your ruling perfectly. I just want a clarification. Am I still permitted to bring to your attention problems of scheduling...

BY THE COURT:

Sure.

BY Me FREEDMAN:

... and vacation...

BY THE COURT:

Surely.

BY Me FREEDMAN:

... things of that nature?

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BY THE COURT:

Surely, surely.

BY Me FREEDMAN:

I have several.

BY THE COURT:

Surely. You may have. But what I'm saying you may not do, is say...

BY Me FREEDMAN:

I understand perfectly.

BY THE COURT:

... here I am counsel for, in this instance, Mr. Jones and...

BY Me FREEDMAN:

Right. I understand perfectly. It's similar to the issue you raised about the secretary of Mr. Justice Bishop. I have...

BY THE COURT:

A number of...

BY Me FREEDMAN:

... a number of people who are in similar situations due to go away for anywhere from ten days to three weeks, to a month.

BY THE COURT:

Can we save that till the end the day?

BY Me FREEDMAN:

Sure. Absolutely.

BY THE COURT:

Okay.

BY THE ACCUSED:

Well, may I... there is no need to spend Court time on that. So far out of seventy (70) I didn't inconvenience one single person. Maybe you can name one single person I inconvenienced? Could you?

BY THE COURT:

Let us not...

BY Me FREEDMAN:

I would prefer not to...

BY THE ACCUSED:

Well...

BY Me FREEDMAN:

... but I can assure you that is not the case.

BY THE COURT:

Let us not...

BY THE ACCUSED:

No, he did.

BY THE COURT:

... get into that.

BY THE ACCUSED:

Okay. Name one person I inconvenienced?

BY THE COURT:

No, don't, don't...

BY THE ACCUSED:

Everyone who wanted to go...

BY THE COURT:

I will discuss...

BY THE ACCUSED:

... did go on vacation. Not a single person was inconvenienced.

BY THE COURT:

Are you finished?

BY THE ACCUSED:

What you are talking about?

BY THE COURT:

You have a number of people in that situation?

BY Me FREEDMAN:

Yes.

BY THE COUR:

Okay. So we will canvass that at the end of the day. And certainly I will hear you on such questions, because it's the only practical way to do it.

Five minutes.

(THE JUDGE LEAVES THE BENCH)

SHORT RECESS

OUT OF THE PRESENCE OF THE JURY

(THE JUDGE TAKES THE BENCH)

(THE ATTORNEYS AND THE ACCUSED ARE PRESENT)

BY THE CROWN:

Following your recent ruling, I would like just to raise the question of four subpoenas. You already heard the names. It is Mrs. Arlene Zimmerman, Eleanor Morris, Nancy Nicholson, which are all secretaries in the Mechanical Engineering Department, and Cindy "Hedrich", who is also secretary at the Vice-Rector, Academics.

I don't see the relevance at all of these testimonies. We already heard the line, who said what to whom, and did you say something to someone, and if you did not say something, why not, and so on and so forth. These people have no legal nor moral authority on Mr. Fabrikant. They could not in any way affect his state of mind on August the twenty-fourth (24th), nineteen ninety-two (1992), My Lord. I think at this point you could ask Mr. Fabrikant what is relevant in these testimonies, and if not, to quash these subpoenas.

BY THE COURT:

Are any of these people on the point of leaving on vacation?

BY THE CROWN:

On vacation...

BY THE COURT:

If you don't stop it. You're going out of here.

BY THE ACCUSED:

Well, I can explain why...

BY THE COURT:

And I'll canvass this question without you, if you keep that up. Now cut it out.

BY Me FREEDMAN:

Ms. Zimmerman is due for her annual vacation, August fifth (5th) to September seventh (7th). My last communication with her was she had not set any plans yet because of the subpoena she had received as to whether she was going to be out-of-town. She certainly plans to be out-of-town, but has made no plans yet awaiting further information from myself.

Ms. Eleanor Morris is due out-of-town from August sixth (6th) to the sixteenth (16th).

Ms. Nancy Nicholson is presently on maternity leave at home with her baby, and she's not leaving town.

Ms. Hedrich is presently on vacation, due back... she's not even aware of the subpoena... due back next Monday. So that is the vacation situation for those witnesses.

BY THE CROWN:

But still, My Lord, I think we can request the accused to justify the relevance of these testimonies.

BY THE COURT:

Why these, and not others?

BY THE ACCUSED:

Exactly. This is why I was laughing.

BY THE CROWN:

That's my point, My Lord. I always said to you that all these witnesses were not relevant.

BY THE COURT:

There may be...

BY THE CROWN:

I have even a special request from these witnesses.

BY THE COURT:

Pardon?

BY THE CROWN:

From these witnesses, I have a special request.

BY THE COURT:

Transmitted to you through Me Freedman?

BY THE CROWN:

Yes. You said yourself you could see some remote relevance from what you called the first players, like Mr. Swamy, or Mr. Kenniff, or Mrs. Sheinin. But it's very hard to see any relevance in these testimonies.

BY THE COURT:

Mr. Fabrikant, what do you propose to establish by Mrs. Zimmerman?

BY THE ACCUSED:

Well, first of all, I have preliminary objection, if you allow me. And this objection is as follows. According to Criminal Code, 988, if witness is likely to give material evidence, witness should be subpoenaed. Now, I refer...

BY THE COURT:

You're being asked what material evidence is Mrs. Zimmerman likely to give.

BY THE ACCUSED:

One second. One second. Let me finish, please. If you look at the case, Regina versus Williams, in the annotation it is written:

"... not shown that witnesses could not give material evidence. It is general rule, if you look into the case itself, that:

It is necessary..."

I'm reading page 516:

"... that Crown has to argue that none of them would be likely to give material evidence."

I didn't hear the Crown arguing that none of these persons would give material evidence. So I see nothing to respond to so far. Unless and until Crown argues that certain particular witnesses are unlikely to give material evidence, there is nothing to respond to. This is my position so far.

BY THE COURT:

Well, the Crown's position was that these are secretaries in the Chemical Engineering Department at Concordia, who had no authority over you.

BY THE ACCUSED:

This is total absurd. It's so ludicrous and stupid I don't think it deserves even a response. Why the hell it has to be that the person has to have authority. But Battista had authority on me. Battista had authority on me. No?

BY THE COURT:

Pardon?

BY THE ACCUSED:

Well, Battista was here. Did he have any authority on me?
Ahmad was here. Did he have any authority on me? Rakhjeda.
Did he have any authority on me? It's absurd.

BY THE COURT:

No, this is getting absurd. The list of subpoenas is getting
absurd. The list of people is getting absurd. What you're
establishing is getting absurd, because thus far you're
establishing very little, indeed, as far as I'm concerned.

BY THE ACCUSED:

Well, this is your opinion.

BY THE COURT:

That's right.

BY THE ACCUSED:

And it's different from mine.

BY THE COURT:

That's right. So eventually I have to say what from a public
order point of view can I do, and I can say to you, fine,
what... what do you propose to establish? We're into the
third month of the defense. What do you propose to establish
by these people?

BY THE ACCUSED:

We are not in the third month of the defense.

BY THE COURT:

What do you propose to establish by these people?

BY THE ACCUSED:

Well, I believe that you should not be substituting for Crown.
Crown has to stand up to argue. And so far I didn't hear.
But I again would say that Judge should not be substituting
for Crown. Until I hear...

BY THE COURT:

Look...

BY THE ACCUSED:

... Crown arguing that these people are not material
witnesses, there is nothing to answer.

BY THE COURT:

The Crown has said these witnesses are not material witnesses
as far as he's concerned.

BY THE ACCUSED:

I didn't hear that. And even if Crown says so, Crown has to
prove that these people are not...

BY THE COURT:

Look, you can't send...

BY THE ACCUSED:

He never spoke to...

BY THE COURT:

You can't send subpoenas to the entire university...

BY THE ACCUSED:

I'm not...

BY THE COURT:

... and stand there and say that I'm going to bring a parade
of people down here, line them up in the hall and bring them
in one by one, and I have to wait until each approaches the
witness box before I can inquire into what is the pertinence
of these people. There is a limit to which you can
inconvenience people. And...

BY THE ACCUSED:

I do not inconvenience a single person.

BY THE COURT:

Perhaps you don't think so.

BY THE ACCUSED:

Well, so far there is not a single name who was inconvenienced.

BY THE COURT:

Are you prepared...

BY THE ACCUSED:

Everyone who wanted to go on vacation did go.

BY THE COURT:

Are you prepared to tell me... because Mrs. Zimmerman wishes to be away from the fifth (5th) of August to the seventh (7th) (sic) of August, what you propose to prove.

BY THE ACCUSED:

Well, let her go.

BY THE COURT:

What do you propose to prove by her?

BY THE ACCUSED:

I have no problems for her going, first of all. So I see no reason to raise the question. No one is inconvenienced. If she wants to go from tomorrow, let her go.

BY THE COURT:

Are you saying the same thing with regard to Mrs. Morris?

BY THE ACCUSED:

Well, I understand she goes for ten days. Is my understanding correct? I already said in this Court the trial will not be finished in thirty (30) days. It's as simple as that.

BY THE COURT:

So you have... you have absolutely no objection that these subpoenas be cancelled and that these witnesses testify later?

BY THE ACCUSED:

Well, there is no...

BY THE COURT:

If the case is still going on.

BY THE CROWN:

That's not my... I did not raise vacation at all. I raised relevance, and you put a question to the accused to justify the relevance.

BY THE ACCUSED:

Well, you didn't raise question of relevance. The fact that...

BY THE CROWN:

These people are not relevant, My Lord. I'm not talking about vacation.

BY THE ACCUSED:

Well, then you have to explain yourself.

BY THE CROWN:

And you put a question to the accused. He should answer, My Lord. And if he doesn't answer, you should act accordingly.

BY THE ACCUSED:

Well, I believe that person who raises the question has the burden to explain why that person raises the question. If Crown raises the question, Crown has to explain.

BY THE CROWN:

Up to now we heard seventy-one (71) witnesses who are all irrelevant, My Lord.

BY THE ACCUSED:

All right. So I believe that Crown should cite at least single case where seventy-one (71) is the limit. I repeat once again, Crown called about forty (40) to prove something which I never denied. I have to prove much more than that. So seventy (70) is not really much at all.

BY THE CROWN:

The accused still did not answer the question you put to him,
My Lord.

BY THE ACCUSED:

I don't have to answer anything until the question is properly
raised.

BY THE COURT:

I'm not going to interfere with regard to these subpoenas for
the time being.

BY THE ACCUSED:

And next time I believe Crown should talk to those witnesses.
Crown should get their...

BY THE COURT:

I don't think the Crown...

BY THE ACCUSED:

... affidavits, if they want.

BY THE COURT:

I don't think the Crown needs a lecture from you on what it's
obligations are. I said for the moment... for the moment I'm
not going to intervene...

BY THE ACCUSED:

Okay.

BY THE COURT:

... with regard to these witnesses.

BY THE ACCUSED:

Okay. Now, here is a page which clearly has been raised.
Could be something more obvious than that?

BY THE COURT:

Mr. Fabrikant, we're going to continue with the testimony of
Mr. Swamy.

BY THE ACCUSED:

Well, when are we going to discuss this stuff? Crown delays
disclosure.

BY THE COURT:

Yes, Mr. Freedman.

BY Me FREEDMAN:

Am I to understand then that these people are free to do on
their vacations then? I'm not sure...

BY THE COURT:

I understand from Mr. Fabrikant that if they haven't been
heard by the fifth (5th) and the sixth (6th)...

BY Me FREEDMAN:

Whatever the day is...

BY THE COURT:

... that he has absolutely no objection that these people go
on their vacation.

BY THE ACCUSED:

Well, I understand they are going for ten days, two weeks.

BY THE COURT:

And he fully understands...

BY Me FREEDMAN:

One is for a month.

BY THE COURT:

And he fully understands that he...

BY THE ACCUSED:

Which one?

BY THE COURT:

... takes his chances.

BY THE ACCUSED:

Which one goes for a month?

BY THE COURT:

Mrs. Zimmerman.

BY Me FREEDMAN:

Zimmerman, August fifth (5th) to September seventh (7th).

BY THE ACCUSED:

All right. I am prepared to hear her then as soon as I finish with Swamy if she goes for a month.

BY Me FREEDMAN:

And once I'm up here, there's other witnesses, Professor McQueen is due to leave July thirtieth (30th) till August ninth (9th).

BY THE COURT:

Just a second.

BY THE ACCUSED:

I will hear him before that.

BY Me FREEDMAN:

Okay.

BY THE COURT:

Just a second.

BY THE ACCUSED:

Sorry. July thirtieth (30th), you said?

BY Me FREEDMAN:

That's right.

BY THE ACCUSED:

July thirtieth (30th) till?

BY Me FREEDMAN:

August the ninth (9th).

BY THE ACCUSED:

Okay. Let him go. It's all right. No problem.

BY THE COURT:

Just a second. Professor McQueen will be away when?

BY Me FREEDMAN:

July thirtieth (30th) till August ninth (9th).

BY THE COURT:

Uh, huh.

BY Me FREEDMAN:

Mr. Gervais is gone for a couple of days, July twenty-eighth (28th) to the thirtieth (30th). Me Gold is away from August sixth (6th) till the seventeenth (17th). I think I've mentioned this one before. Dr. Kenniff is away from August second (2nd) until the twenty-second (22nd), and the last week, from the fifteenth (15th) to the twenty-second (22nd), he is not reachable at all. And that's about it.

BY THE COURT:

Just a second. The fifteenth (15th) to the twenty-second (22nd), not reach...

BY Me FREEDMAN:

Not reachable. He's out of contact. And I think that's it. A couple of other witnesses are just ninety (90) minutes or so away, so they can be here on a day's notice.

BY THE ACCUSED:

Well, I suggest, once again, that there is no point to spend Court time on that. I always was accommodating to Mr. Freedman, and I really see no reason for this public relations exercise what he is doing now. I repeat once again, there was not a single person inconvenienced so far. So there is nothing to talk about.

BY Me FREEDMAN:

My only concern, My Lord, obviously is safeguarding the rights of the people under subpoena. They just... I have to know,

and they have to know whether they're free to go on their vacations, or whether they're going to get in trouble.

BY THE ACCUSED:

Not a single person will get in trouble.

BY THE COURT:

Well, I ask myself, looking at the time, if there's any point in bringing the jury in before the luncheon adjournment. I think what we'll do is we'll adjourn until two o'clock (14:00). We'll start at two o'clock (14:00).

BY THE ACCUSED:

Well, maybe we could discuss now the question of disclosure. Just six minutes will be enough for that. Why don't we do that?

BY THE COURT:

Go ahead. What have you to say about the question of disclosure?

BY THE ACCUSED:

Well... all right. So where is the page which I have shown? First of all, if you look, so many empty pages. I don't believe. I would like Crown to show their book.

BY THE CROWN:

It's because there was a yellow page between two documents and my secretary photocopied the whole thing, of the file, I guess.

BY THE COURT:

Have you checked what... you've checked through what he was given, and it's...

BY THE CROWN:

My secretary... I gave that to my secretary. I told her make an integral copy, and I gave that to Me Ouellette.

BY THE ACCUSED:

Now what about...

BY THE CROWN:

The white pages are...

BY THE ACCUSED:

... this page?

BY THE CROWN:

He got exactly what I got. And I removed...

BY THE ACCUSED:

Okay. Open, please...

BY THE CROWN:

Let me finish, I'm speaking.

BY THE ACCUSED:

Please open.

BY THE CROWN:

I removed the page he already got from you in the presence of Me Ouellette.

BY THE ACCUSED:

This is not that one. Open Appendix 20, please.

BY THE CROWN:

It looks like a rubber stamp at the back of a...

BY THE ACCUSED:

It's not a rubber stamp on the back.

BY THE CROWN:

... to show the day that it...

BY THE ACCUSED:

Something has been erased here. I don't know at what stage. But something definitely is erased here. There is even trace of paper which laid on the text. And something has been erased.

BY THE COURT:

What is the significance of this, do you know?

BY THE CROWN:

I don't know.

BY THE ACCUSED:

Well...

BY THE CROWN:

I never bothered.

BY THE ACCUSED:

Well, you never bothered. I don't know, but something has been...

BY THE CROWN:

It looks like the back of a page.

BY THE ACCUSED:

... erased here. The fact that he has in his possession, even the same copy as mine, doesn't change the whole thing. This has been... something has been erased.

BY THE CROWN:

I have nothing to hide, My Lord.

BY THE COURT:

I'm satisfied, Mr. Fabrikant, that you've received what you should receive.

BY THE ACCUSED:

Well, I haven't finished yet.

BY THE COURT:

I have. Two o'clock (14:00).

(THE JUDGE LEAVES THE BENCH)

LUNCH ADJOURNMENT

AFTER THE LUNCH ADJOURNMENT

(THE JUDGE TAKES THE BENCH)

(THE JURY TAKES THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

DR. SRIKANTA SWAMY

Professor, Electrical Engineering

April 7th, 1935

DULY SWORN

BY THE COURT:

Before we start, ladies and gentlemen, I should simply advise you that Me Ouellette is no longer representing Mr. Fabrikant.

BY THE ACCUSED:

Well, he was fired because, not just... he intimidated me.

BY THE COURT:

Mr. Fabrikant, you don't know need to get into an explanation.

BY THE ACCUSED:

I need to get.

BY THE COURT:

You do not.

BY THE ACCUSED:

I thought... I thought he's a lawyer criminal. He's not a criminal lawyer, but he is just a sick person. Look what he gave me. He...

BY THE COURT:

Mr. Fabrikant, would you put that down, and would you put your questions to Mr. Swamy.

BY THE ACCUSED:

He prepared motion here, if I fire him, he prepared motion that I be... you can't believe it... silenced or...

BY THE COURT:

Mr. Fabrikant, are you going...

BY THE ACCUSED:

... out of the courtroom.

BY THE COURT:

... to put your questions to Mr. Swamy or are you going to be removed from here?

BY THE ACCUSED:

Well, this is the motion here he wanted to make.

BY THE COURT:

Put your questions to Mr. Swamy.

EXAMINATION BY THE ACCUSED

REPRESENTING HIMSELF:

Q. Do you recall when T. S. Sankar has resigned as Chairman of the Department of Mechanical Engineering?

A. Yes, I remember.

Q. What were the reasons for him to suddenly resign in the middle of somewhere January?

A. The reason given was that he had some contract that he was working on, some Federal government contracts, and that he wanted to be relieved of his duties and responsibilities as Chair of the Department.

Q. Well, to the best of your knowledge, did he have any contract which was so urgent that make him resign in January?

BY THE CROWN:

I think this is not the proper witness, My Lord.

BY THE COURT:

What is the...

BY THE ACCUSED:

Well, I think it is none of Crown's business what I am aiming at. Just Crown... let's be patient.

BY THE COURT:

No. What is the possible relevance of this?

BY THE ACCUSED:

It is relevant.

BY THE COURT:

What...

BY THE ACCUSED:

Just be patient.

BY THE COURT:

No. What is the possible relevance?

BY THE ACCUSED:

I'm not going to answer this question.

BY THE COURT:

You're not going to answer this question?

BY THE ACCUSED:

No. I think it is unfair. Crown should have patience. If I just ask one question which makes someone look not so good, I think it is none of the Crown's duty to protect crooks at Concordia. I ask question, question is preliminary...

BY THE COURT:

We are not getting into the question of crooks at Concordia, as you choose to put it. We are not getting into it.

BY THE ACCUSED:

Well, this is...

BY THE COURT:

If that is where you are headed...

BY THE ACCUSED:

No, this is not where I...

BY THE COURT:

... change direction now.

BY THE ACCUSED:

No, this is not where I am heading. Let him answer the question.

BY THE COURT:

If that is where you are headed, we are not getting...

BY THE ACCUSED:

No, this is not where I am heading.

BY THE COURT:

Where are you headed?

BY THE ACCUSED:

I'm headed to the same thing. I'm proving abuse of me at Concordia, but this is preliminary question.

BY THE COURT:

Well, I don't see the pertinence of that question.

BY THE ACCUSED:

Well, you cannot see every question's pertinence, because it's total absurd to ask every question what the pertinence is of this question.

BY THE COURT:

In your case it's not totally absurd.

BY THE ACCUSED:

I am saying that to ask from every question I request from the witness to answer what is the pertinence, is absurd.

BY THE COURT:

The objection to the last question is maintained.

BY THE ACCUSED:

Okay.

Q. Do you remember you were present during that meeting in department when it was announced?

A. Yes, I was that.

Q. Uh, huh. Do you remember he was almost crying when he declared that?

A. I don't remember.

Q. You don't remember that?

A. I don't remember. He announced that he was leaving and I do know that afterwards a lot of professors requested him to continue, and he stated that he was taking up that contract from the government.

Q. Uh, huh. And the real truth of the reason was that he misappropriated about a million dollars (\$1,000,000). Is that correct?

BY THE COURT:

Don't answer that question.

BY THE ACCUSED:

Yeah. Of course, Concordia should be put there.

BY THE COURT:

I told you whatever... whatever your view may be, the question of fraud at Concordia is not pertinent, your particular view of it, or anything else. Now, you have systematically declined to follow the ruling. You've lied to me. You have told me that this was a preliminary question. It was not a preliminary question at all.

BY THE ACCUSED:

It was preliminary...

BY THE COURT:

That was where you intended to go. It's very, very clear.

Now, if you continue this, I'll end this examination. Move on to something else.

BY THE ACCUSED:

Well, you just don't allow me to continue along this line.

BY THE COURT:

I don't continue to...

BY THE ACCUSED:

I didn't lie to you.

BY THE COURT:

I do not continue to... allow you to continue along this line.

No.

BY THE ACCUSED:

No. That's what I said. Crooks has powerful protection.

Okay.

Q. Do you recall seeing this document?

BY THE COURT:

Show that to the Crown Prosecutor, please.

A. Yes.

BY THE ACCUSED:

Q. All right. Could you tell the Court what happened to that document, why it was substituted by something else?

A. I did not substitute anything. I remember to have signed it and sent it to the higher level, namely the Vice-Rector, Research.

BY THE CROWN:

This document is not signed by the witness, My Lord.

BY THE ACCUSED:

So what? What is this objection except for wasting Court time? Explain this to me. How long Crown is going to continue like this?

BY THE CROWN:

He said, I remember signing this document. Obviously his signature is not on this document...

BY THE ACCUSED:

So what?

BY THE CROWN:

... My Lord.

BY THE ACCUSED:

So what? Make conclusion. His signature is not there. Then what? The question is disallowed? What? Why did you stand up? Explain this to me.

BY THE CROWN:

I'm not talking to... My Lord.

BY THE ACCUSED:

Why did he stand up? There is no signature. All right. Why did he stand up?

BY THE CROWN:

The witness said...

BY THE ACCUSED:

Why is it important?

BY THE CROWN:

... I remember signing this document.

BY THE ACCUSED:

Well, he's saying it. Yes, so what?

BY THE CROWN:

This document is not signed by the witness.

BY THE ACCUSED:

So what?

BY THE CROWN:

There's something wrong. Maybe the question is unfair.

BY THE ACCUSED:

Why is it unfair?

BY THE COURT:

We'll see if the question is unfair.

BY THE ACCUSED:

You cannot object because question is unfair. He thinks so.

BY THE COURT:

Continue for the minute.

BY THE ACCUSED:

Well, maybe you'll still make a remark to the Crown to stop interrupting.

BY THE COURT:

I'm not making any remark. I said continue for the minute.

Continue for the minute.

BY THE ACCUSED:

All right.

Q. When you signed that document there was also somebody else's signature at that time?

A. I would not have signed it without Dr. Osman's signature. I remember to have signed it. I do not have a copy of this document with me.

Q. All right. So at the moment when you signed it, there were two signatures before you. Right?

A. I said I remember to have signed, and I wouldn't have signed if Dr. Osman hasn't signed it. Without the Chairman's signature, I would not sign it, and I remember to have signed it. That's all I can say.

Q. All right. Do you recall to which office you sent this document?

A. Could you please repeat the question, I didn't hear.

Q. To which office after signing you sent the document?

A. To the Research office.

Q. To the Research. You mean to Mrs. Williams?

A. Yes.

Q. All right. Could you explain why you sent it to her? It doesn't look like her signature is required here, does it?

A. It says, Vice-Recteur ... la recherche or equivalent. And any application for a research grant are sent... any application is sent to the Vice-Rector and Associate Vice-Rector, Research... and the Director of Research (inaudible). So everything goes to our office.

Q. Well, this is not a grant application, is it? If it is a grant application, what this document is?

A. This is not a grant application. But anything concerning research with the integration of the positions for Actions Structurantes, all these things were being sent to Audry Williams' office.

Q. Okay. What is the content of this document? What does it say about me?

A. It says:

"The University will make... are making an offer to the candidate, (inaudible) appointment in the Department of Mechanical Engineering, effective one (1), June, nineteen ninety (1990). The candidate, (inaudible) a member of the faculty bargaining unit, with all the (inaudible) privileges of a faculty member."

That's what it says.

Q. All right. And this document is in English. Is it?

A. That's correct.

Q. Did you see this document?

A. I don't completely understand the word-to-word of this. But it is not the same as here.

BY THE COURT:

Q. It is not the same?

A. Yes.

BY THE ACCUSED:

Well, this is not my question. My question was, did you see it?

A. I saw that for the first time when Mr. Fabrikant grieved against the administration's decision on something else. At that time he had presented this as a part, and the one which I saw had the stamp, which is in the corner, that is received from (inaudible).

Q. Could you look at the last page of this document. Is it your signature there?

A. Yes, my signature is there.

Q. So do you remember signing this document?

A. I don't remember signing the document in the French language.

Q. Were you informed that the document which was sent to the government was not the document which you signed?

A. I don't remember, but I could have been informed, because there was a lot of discussions with regard to (inaudible) at that time.

Q. Well, were you informed that the content of the first document which said that I am integrated essentially, has been changed to a different content, that Rakheja and Ahmed had been integrated, and I'm not. Were you informed about that?

A. I do not remember. I might have been very well informed. I do not remember.

Q. Well, it is what, such an insignificant thing that you could forget?

A. The only thing I remember is that this... I have not gotten the French one for me to sign. I signed once and only once, and I sent it.

Q. Well, this is not what I asked you. Would you please stick to the question.

A. Could you please repeat the question.

BY THE ACCUSED:

Is it possible to ask the witness to just listen to the question for the first time, and answer the question, instead of answering something else.

BY THE COURT:

Repeat your question.

BY THE ACCUSED:

Q. Is it such an insignificant thing when you were informed that Fabrikant is not being integrated while the other two are, and you could have forgotten that?

A. It is not... I don't consider that as insignificant. What I do not remember was whether it was going to be put into the application or not, and the Vice-Rector has every right to do so. She had been discussing with me about the possibility of... about your appointment, because she had not agreed to your appointment at that time.

Q. She did not what, say it again?

A. She had not yet agreed to your being appointed into that position.

Q. Uh, huh. So she informed you that she's changing the text?

A. I stated twice, I do not remember whether she informed that she had changed the text. What all I remember clearly is that she had told me that the appointment into this position for Dr. Fabrikant was still to be negotiated.

Q. How was it said, negotiated between who and who?

A. There was still negotiation going on, because she did not...

she was not prepared to offer you the position at that time...

Q. Negotiation...

A. ... because she wanted me to advertise for the position.

Q. Negotiation between who and who?

A. The word was that you were still being negotiated. Obviously it was with me, because I was the Dean, and then with the Chair of the Department.

Q. Did she explain to you the reason of that?

A. The reason was that she was not satisfied, that she was... I can't remember all the details. The whole question of promotion and the teaching at that time had come up, and she was not sure that you should be appointed to a permanent position in the faculty. And she clearly stated that the positions were given to the university, but the people are not automatically going to be fitted into that position, and that each one was going to be looked at... on its own merits.

Q. Now, you mentioned several things. Would you please elaborate on them. First, promotion. What did I do in terms of promotion to deserve such an anger?

A. I didn't use the word "anger", My Lord, for I don't know what...

Q. All right. What did I do in terms of promotion to deserve disapproval?

A. It was not a...

Q. All right.

A. It was not a question of Mr. Fabrikant doing anything, or doing anything. The promotion had been requested for. The DPC and the FDC had made its recommendations, and I had forwarded them to the Vice-Rector. But the Vice-Rector had not taken up the case at that time for promotion. She had written a letter to Mr. Fabrikant stating that he was not eligible for consideration of promotion under the collective agreement, and other ways were being worked out to look at his promotion.

Q. Would you please speak to the question. I repeat it again. What was Vice-Rector unsatisfied with concerning my promotion?

BY THE CROWN:

I think the question should be asked to the Vice-Rector, My Lord, otherwise he can ask this question to everybody.

BY THE ACCUSED:

I'm asking a question about the communication which was given to him. Right now we are discussing what was...

BY THE COURT:

Well, you have not established that the Vice-Rector communicated with him the fact that she was dissatisfied with you.

BY THE ACCUSED:

Well, you are not listening.

BY THE CROWN:

Even then, My Lord, that would be hearsay.

BY THE COURT:

And then it would be hearsay.

BY THE ACCUSED:

You are not listening.

BY THE CROWN:

After seventy-one (71) witnesses, My Lord, you already ruled that we... unless the hearsay fits the rules of Smith and Khan, it's a waste of time.

BY THE ACCUSED:

First of all, you are not listening to the conversation. Mr. Swamy has testified already that Vice-Rector indicated to him

a) that because of promotion, because of teaching something, she was not prepared to give me that position.

BY THE COURT:

It is not...

BY THE ACCUSED:

So it was already set.

BY THE COURT:

It's not up to Mr. Swamy to say why the Vice-Rector was dissatisfied, if indeed she was dissatisfied.

BY THE ACCUSED:

No, that was not my question. My question was, did she explain it to him what she wasn't satisfied with.

BY THE COURT:

That was not your question. If that's now your question, then that question is permitted. But as far as your last question is concerned, the objection is maintained.

BY THE ACCUSED:

Well, I think that the meaning was clear. There is no need...

BY THE COURT:

The meaning is not clear.

BY THE ACCUSED:

There is no need for nitpicking except for delaying the interrogation. That's all.

BY THE CROWN:

To the last question the answer should be yes, or no. We don't need the details. The details still have to come from the proper witness.

BY THE ACCUSED:

I'm now inquiring into the knowledge of the witness on the subject, because it is important to me in order to explain the behaviour of witness, it's important to me to establish what he did or didn't know.

BY THE COURT:

Well, that's one thing. But for the minute, you asked him a question, did the Vice-Rector tell him...

BY THE ACCUSED:

Yes.

BY THE COURT:

... why she was dissatisfied with you or not.

BY THE ACCUSED:

Exactly.

BY THE COURT:

That's the question. He can answer that question.

BY THE ACCUSED:

Yeah.

A. With regard to the promotion, the Vice-Rector never stated to me that she was dissatisfied with him. It was simply that he did not come under the collective agreement.

Well, again, this is not my question. He responded that Vice-Rector had reason not to offer me reappointment, because a) promotion, b) teaching, and I don't remember c).

BY THE COURT:

Well, if the Vice-Rector... if the Vice-Rector had her reasons, the Vice-Rector is the person to put the question to.

BY THE ACCUSED:

Well, I'm asking about his knowledge of those reasons.

BY THE COURT:

The fact that the Vice-Rector related to him whatever her reasons were doesn't make it admissible.

BY THE ACCUSED:

Well, I'm not making...

BY THE COURT:

Move on, ask another question.

BY THE ACCUSED:

I didn't get answer to this one.

BY THE COURT:

You're not going to get an answer to that question. He's not going to relate to you what the Vice-Rector told him.

BY THE ACCUSED:

Well, I'm discussing the document and what happened to the documents.

BY THE COURT:

Have you another question to put to this witness?

BY THE ACCUSED:

Yes, I have other questions.

BY THE COURT:

Put it.

BY THE ACCUSED:

But I want to finish with this document, what happened to those two documents.

BY THE COURT:

Well, ask him what happened to those documents. If he knows, he'll tell you.

BY THE ACCUSED:

Well, that was what I was discussing. He mentioned that... I asked him if he knew about this document.

BY THE COURT:

Put your question about this document.

BY THE ACCUSED:

Well, that's what I asked him. And I asked him whether he was informed about content of this document. And he said that Vice-Rector told him that because of promotion, because of teaching, she was not prepared to give me the position, and I asked him for details of that. That's all. I'm putting normal questions. And let us stop interrupting me.

BY THE COURT:

Your question bearing on what the Vice-Rector told him will not be allowed. If you want to ask him what he did with that document, that's something else.

BY THE ACCUSED:

Well, I'm asking about his knowledge concerning content of this document, because this document, when it is in French, it says totally opposite to what the original in English said. So my questions are normal and I am asking him what...

BY THE COURT:

Your questions are not normal. Now you better put your question again, and you better put it differently.

BY THE ACCUSED:

Q. So how was it justified to you, if it was, the document was replaced and content has been changed?

A. I don't remember to have seen this document at all, I stated already, My Lord, till I went to the grievance time, and even then I did not really study it at that time.

Q. Okay. Were you informed that your signature was attached to a document with different content?

A. I don't remember at all.

Q. You didn't receive a copy of this document from Vice-Rector as Dean?

A. No, I have not.

Q. Okay. Now, do you recall your own memo of July twenty-fourth

(24th), nineteen ninety (1990)?

A. I don't know what memo he is referring to, My Lord.

Q. Okay. Here it is.

A. Yes, I remember this.

Q. Were you one of the signatories of the final report of CONCAVE Research Center before it went to the government?

A. I don't remember. But normally the Dean has to sign the reports that go out from the Center.

Q. All right. Did you look at what you were signing? I am talking about final report, nineteen ninety (1990), of CONCAVE Research Center?

A. I don't remember the final report. But it was about the work as being, having been satisfactory.

Q. All right. So you noticed there that all three attach,s de recherche were evaluated satisfactorily there in this report which went to the government?

A. I don't remember if it's written there. I can look at the document and say that.

Q. All right. Now, do you recall the conditions of the contract of all three of us, in terms of integration?

A. Yes.

Q. Okay. Could you state what were they?

A. If it was that... first of all, the Actions Structurantes program was successful, and that the performance of the individuals in those positions... if the performances were found satisfactory, that they would be integrated into those positions at the same rank.

Q. Okay. Why... July twenty-fourth (24th) all these conditions, were they already satisfied?

A. This was a standard letter that was written for all the people who were attach,s de recherche positions, to follow a certain procedure to integrate them. And I was asked by the Vice-Rector to write to the Chair to follow the normal procedures for hiring and the... since this was the very first time that such Actions Structurantes positions were being integrated that the individuals involved do not receive information about the process till the process was defined. And I wrote to Dr. Cheng who was the then acting Chair to take appropriate measures to consult with the Director of the Center and to make suitable recommendations for all the three people.

Q. Now, I'm asking this Court again, how long this witness will ignore the question. My question was absolutely not what he answered. My question was, were the condition which he mentioned by July twenty-fourth (24th) satisfied.

A. It was for the Director of the Center and the DPC to have seen that they were satisfied and to recommend to me, because there is a procedure for hiring people and integrating people. That is the one that (inaudible).

Q. Okay. One of the conditions was governmental approval. Was it received by July twenty-fourth (24th)?

A. Yes, it was.

Q. Okay. The way you reported to the government performance of all three attach,s de recherche, was it satisfactory, the way you reported it to the government?

A. I don't remember exactly whether it was stated that each individual's performance was satisfactory, or whether the Center had performed satisfactorily to fulfil its obligations with regard to Actions Structurantes grant.

BY THE ACCUSED:

Yeah. Now, does it make it pertinent to get this report,

because I requested it in one of subpoenas which you quashed.

BY THE COURT:

No, it does not.

BY THE ACCUSED:

No, it does.

BY THE COURT:

It does not.

BY THE ACCUSED:

Because it is important to see that...

BY THE COURT:

Because we are far from where... we are far from where we should be.

BY THE ACCUSED:

We are not far...

BY THE COURT:

Yes, we are.

BY THE ACCUSED:

... at all.

BY THE COURT:

Yes, we are.

BY THE ACCUSED:

It is important to see what they reported to the government.

BY THE COURT:

I am not going into that.

BY THE ACCUSED:

All right.

Q. Now, if you reported to the government that everything is satisfactory, why did you raise the question that somebody of incumbance might be unsuitable to fill the position? Could you explain why you raised that question?

A. Yes. It is... I stated that once before. It is the Actions Structurantes program that was looked at by the expert who came to look at the CONCAVE Center. And the report stated that it was satisfactory. It was not about any particular individual. And it was not specifically written with respect to one person, because it referred to all the three who were being... the positions that were being integrated.

Q. So when you wrote, if you find somebody unsuitable to fill the position, you didn't mean me, did you?

A. Certainly not.

Q. You just wrote it just like that, just in case, yeah? Is that correct?

A. It was not a question of throwing in. It was not addressed specifically about any particular individual. It was addressed about all the three positions.

Q. Did you ever inquire about all three and about all three performance?

A. My job as the Dean was to... asking Chair to take appropriate measures to get the recommendations from the Director and follow the procedures through DPC. It was not for me to ask about one particular individual or the other.

BY THE ACCUSED:

He again ignores the question.

BY THE COURT:

He doesn't ignore the question.

BY THE ACCUSED:

As a Dean... as a Dean of the Faculty...

BY THE COURT:

His answer is there, and his answer answers the question.

BY THE ACCUSED:

Okay. For you, of course, it is answered.

Q. For you, as the Dean of the Faculty, do you recall that just a little bit before that you supported the departmental decision that I be awarded merit award? Do you remember that in eighty-nine ('89)?

A. Yes, I remember the merit award. Yes.

Q. And in nineteen ninety (1990), you wrote that I'm world-class scientist and I should be promoted to research professor. Did you endorse that kind of affirmation to the Vice-Rector?

A. I don't remember the exact words as to whether world-class scientist was put, but the committee did recommend that he be promoted as a research professor, and then I sent that recommendation to the Vice-Rector. That's true.

Q. Uh, huh. And just several months later you raised the question that I might be unsuitable to fill in the position. Is that correct?

A. The position was a tenure track position which included teaching, also. Research associate professor to research professor promotion was with regard to research performance mainly, whereas the probationary appointment has to take into consideration teaching, research and the service to the community board, internal and external. There were three different parts.

Q. Oh, yes. Let us recall your recommendation whether... do you remember that in eighty-nine ('89), January, I was refused promotion for the same reason that there was not enough teaching. Do you recall that?

A. Yes, I recall it.

Q. So teaching was taken into consideration. Was it?

A. In eighty-nine ('89) it was taken into consideration, and that's why early promotion. The department was not prepared to take up.

Q. So why do you mislead the Court that teaching was not taken into consideration for promotion?

A. My Lord, let me answer that. I am not trying to mislead the Court at all. I said for such appointment I said mainly it was the research criteria that is important for promotion. However, for a probationary appointment, the teaching is an extremely important aspect, the teaching, both at the undergraduate level and at the graduate level, and the breadth of teaching, as well as the quality of teaching. Whereas for a research position, it is only (inaudible).

Q. Well, let us see about teaching. Was there any problem with my teaching by that time?

A. It depends upon what you mean by teaching problems. I did not hear any problems from the students about your teaching. But teaching is not simply classroom delivery. It is more than that.

Q. Would you just answer the question. Was there any problem with teaching?

A. If your question means problem, that there was student complaints, no.

Q. No. I don't mean that. I mean how my teaching was evaluated then. This is what I mean.

A. It was satisfactory.

Q. Yeah.

A. Of the two courses that you were asked to teach.

Q. All right. Let us read. Do you have in your file a document of Mechanical Engineering, February five (5), nineteen ninety (1990)?

A. There are quite a number of documents here on February, nineteen ninety (1990). Would you please refer to which

document.

BY THE COURT:

February the fifth (5th), he said.

A. February the fifth (5th). That's the recent report.

Q. Uh, huh. Now, if you go to, one, two, three, four, five, six, seven, eighth paragraph, did you find the paragraph:

"Candidate has offered courses at the undergraduate level"?

A. Yes.

Q. Well, read the next sentence.

A. "The DPC evaluated the candidate's teaching performance on the basis of the evidence presented and judged it to be very good."

Q. Well, why do you mislead the Court that it was satisfactory then?

A. That's the opinion of the DPC.

Q. All right. Are you implying that Faculty Personnel Committee opinion was different? Well, you don't remember?

A. Because I don't remember to have seen anything specifically mentioned about teaching in the faculty report.

Q. Oh, yes.

A. That's what I'm looking.

Q. All right. Did you find it?

A. Yes. I see it on page 2, paragraph 3.

Q. Okay. And what is written there?

A. "In order to let our students profit from his knowledge and experience (inaudible) the ability of the teacher, Fabrikant has taught, has regularly taught at least one course per term including first level undergraduate courses. The information on file indicates that his teaching performance is very good."

Q. So...

A. "He has successfully supervised master student."

Q. So are you misleading the Court, or you are not saying that my teaching was satisfactory?

A. I am not certainly, My Lord, (inaudible) to mislead the Court. I made my opinion about his teaching, that it is satisfactory. Yes, I did say that. But this is the report from the Faculty Personnel Committee. I do not have to agree as the Dean with each and everything that a committee makes a report to me.

Q. Okay. So what was your reason to disagree? Explain to the Court why you disagreed to both committees?

A. No, on an overall...

Q. Have you ever been present at my lectures?

A. I have not been present at your lectures.

Q. All right. So what was the basis for your disagreement?

A. It was not a question of disagreement. That one is simply talking about classroom teaching in two of the undergraduate courses. I have said that before, teaching to me, as the Dean of the Faculty, teaching extended beyond classroom teaching. It involves a different number of factors.

Q. Well, why didn't you write them then that many factors are missing, and his performance is just satisfactory? Why didn't you write that?

A. I did not have to write anything because it was a Faculty Personnel Committee recommendation on an overall basis. I felt at that time that I agreed with the Committee recommendation on an overall basis that you should be promoted

from a research associate professor to a research professor.

Q. Well, what both committees missed?

BY THE CROWN:

All this line is cross-examination, My Lord.

BY THE COURT:

Yes, it is. Yes, it is.

BY THE ACCUSED:

Well, how do you define cross-examination? I just asked him what those two committees missed.

BY THE COURT:

You are going too far. The objection is maintained.

BY THE ACCUSED:

When witness is in difficult position, I'm going too far.

Okay. Let me ask it differently.

Q. As administrator, can you reproach to someone that he didn't do something which he wasn't asked to do? Is my question clear?

A. Yes.

Q. Okay.

A. Can you reproach somebody, but he didn't do anything, if you are not being asked to do?

Q. Yes. Can you reproach...

A. The answer is, no.

Q. No. All right. So now would you please inform the Court what part of teaching I didn't do, from your point of view?

A. At the that time the promotion was being considered in nineteen ninety (1990). He had been asked to teach certain courses, and he have done that. And since... from research associate professor to research professor was a research promotion, I was prepared to go along with the teaching part of these two courses. So I do not find any inconsistency at all in my opinion at that time with regard to the promotion from research to a research rank.

Q. This is not an answer to my question.

BY THE CROWN:

This is cross-examination, My Lord.

BY THE ACCUSED:

I asked what part of teaching I was missing.

A. If it was purely a research position, you had done what you had been asked to. But a probationary appointment is quite different.

Q. I'm not talking about a probationary appointment. I asked... you evaluated my work as satisfactory. You disagreed with the Department Personnel Committee. I am asking what was your reasoning behind your decision, what was...

BY THE CROWN:

The accused is playing with words, My Lord. I think we're wasting our time.

BY THE ACCUSED:

What? What is it I'm playing? He said my...

BY THE CROWN:

Every time there is a word, a single word with which he disagrees...

BY THE ACCUSED:

My teaching performance was...

BY THE CROWN:

... we go in a long challenge to the witness which leads us nowhere.

BY THE ACCUSED:

I'm not challenging anything. I am asking him to clarify.

That's all.

BY THE COURT:

Well, he's clarified it.

BY THE ACCUSED:

He didn't.

BY THE COURT:

Yes, he did. Now, move on.

BY THE ACCUSED:

He didn't answer the question what was...

BY THE COURT:

Move on to something else. We're spinning our wheels. Move on.

BY THE ACCUSED:

Again, the same situation. Now, on what grounds now my question is disallowed? The question was normal. Could you explain why it is disallowed now?

BY THE COURT:

It's disallowed. Move on to something else.

BY THE ACCUSED:

Oh, this time you don't even bother to explain. All right.

Q. Now, so what was the problem then with tenure track appointment, in terms of teaching?

A. It was not a question of a problem with regard to your teaching. It was a general statement should any of he incumbents be deemed unsuitable. It did not say with regard to teaching, with regard to research. To look at the whole thing (inaudible) to all the three people, to make a case for each one of them. And nothing more and nothing less.

BY THE ACCUSED :

He's again replacing my question by something else. I didn't ask him about his memo. I asked him about appointment to tenure track position, if there was any problem with my teaching. Period. I didn't refer to the memo this time.

BY THE COURT:

Q. Is that how you understood the question?

A. I understood the question to be did you have any problem with teaching.

BY THE ACCUSED:

Yes.

BY THE COURT:

In relation to his tenure track position.

A. Well...

Q. That was what he said.

A. ... may I answer that? It can't be answered yes or no.

Q. Okay.

A. In any probationary appointment, we look, as I said, at the teaching, research and the service to the community. So when an appointment is being made for a tenure track position, the Committee has to look at all the three aspects. We do not start out by saying there is a problem with respect to this, or with respect to that. Whether a person can deliver all the three aspects of what one is asked to look into by the Department Personnel Committee before an appointment is made. So I was not referring in this letter to any problem. So if the question is, is there any problem, I was not saying there is a problem.

BY THE ACCUSED:

Q. All right. So let us then clarify. In nineteen ninety (1990), was there any problem of any kind from your point of view with this tenure track appointment?

A. It's the same question again, My Lord. It is not a question of having problems. One has to look at all the three different aspects, and whether one is capable of delivering all the three aspects or not. And that's all what that letter is stating.

Q. I'm not talking about letter.

BY THE COURT:

Listen, you have exhausted this question.

BY THE ACCUSED:

I didn't exhaust it.

BY THE COURT:

Yes, you did.

BY THE ACCUSED:

He doesn't answer the question.

BY THE COURT:

Yes, you did. You have exhausted this question. You've had your answer. Move on to something else, or sit down. As you wish.

BY THE ACCUSED:

Well, how long it will continue like this? The witness doesn't answer. You just don't let me to question.

BY THE COURT:

I'm satisfied the witness answered your question.

BY THE ACCUSED:

You are satisfied. Fine.

Q. All right. So could you describe to the jury how did it happen that I agreed to three year postponement of my tenure? Do you recall that meeting, and could you describe it to the jury what happened during that meeting?

A. You used to come to my office so many times, I can't recall any... the composition of one meeting from the other. And I do not remember the discussions on the tenure, except for only one thing, namely, that more information would be required about your teaching, and the only way you can establish your teaching record, because you have not been teaching many courses, except for only Statics and Dynamics, because of the fact that you were not required to teach in the first three years. That was a part of your contract. And that there was not sufficient information.

And I went through with you on two or three occasions trying to explain that in every case, if it is a promotion or what, it has always been the teaching that it was not sufficient evidence, and not sufficient evidence did not mean it was bad. That there were a lot of things that were required to show that one had satisfied the teaching portfolio, and that this would give sufficient time to produce this, and that I would be able to tell to the Vice-Rector to make the appointment if it is a probationary appointment starting with your tenure, that you would have sufficient time to prove beyond doubt that your teaching abilities are there for you to get tenure. Because at that time the collective agreement stated very clearly that if somebody is considered for tenure and he actually does not get tenure, then there is no more reappointment. So it was in your own favour that if there was a... the tenure started afresh, that one could... one would have time to prove your teaching abilities.

BY THE ACCUSED:

Is it fine with you?

BY THE COURT:

Yes.

BY THE ACCUSED:

All right.

Q. Do you recall that Rakheja got his tenure immediately after appointment?

A. Yes. I don't know whether it is immediately, but he did get his tenure. I remember that.

Q. Okay. He got his tenure in ninety-one ('91), didn't he, in the spring of ninety-one ('91), right after the appointment, didn't he?

A. My Lord, I don't exactly recall. There were over a hundred (100) professors. I can't recall who got tenure in what year, but I do remember that Professor Rakheja got his tenure.

Q. All right. Do you recall at least that his offer of tenure track position was with five years during Actions Structurantes considered for tenure, and mine was that all those five years were not counted. Do you recall that we had different offers?

A. I recall very well that your offer of appointment was different from that of Dr. Rakheja.

Q. All right.

A. Yes. Because there was nothing stating that the tenure will be considered in the third year for Dr. Rakheja, and it was put fourth year.

Q. All right. So could you explain why we got different offers? Did Rakheja have more teaching experience than I?

A. Rakheja, in the opinion of the Department Personnel Committee, they had sufficient information... in the case of Dr. Rakheja, not to put that as an additional condition for the integration of Rakheja into one of his slots in Actions Structurantes.

Q. Oh. So it was Department Personnel Committee who made the difference. Right?

A. No. But in the case of yourself, the Department Personnel Committee also did not put teaching as a condition of... I'm sorry, the tenure one in their recommendation. They had clearly stated that for tenure your service should be considered. The Department was consistent with respect to all the positions.

Q. So it means that you're again misleading the Court. You said before that DPC made the difference between me and Rakheja, and it looks like DPC didn't make the difference.

BY THE CROWN:

I think we're sidetracked, My Lord. I think we heard enough about Rakheja and Ahmed and...

BY THE ACCUSED:

How do you like that? Immediately. Witness is in difficult position and here is the Crown to save him. Crown heard enough. How long this shameful stuff will continue? This is all what I am asking.

BY THE COURT:

I'm wondering how long this marginal evidence will continue, that's going to help nothing.

BY THE ACCUSED:

It's not marginal at all.

BY THE COURT:

Yes, it is.

BY THE ACCUSED:

Rakheja...

BY THE COURT:

Yes, it is. How they...

BY THE ACCUSED:

... they included...

BY THE COURT:

What the criteria were with regard to Rakheja and what the criteria with regard to you, and a comparison between the two is of no importance to this at all.

BY THE ACCUSED:

Okay. Would you like me to explain the importance?

BY THE COURT:

No, I don't require you to explain the importance.

BY THE ACCUSED:

Because you know... you know what the explanation is.

BY THE COURT:

Because there is no importance. The question is you. That's what you're supposed to be dealing with.

BY THE ACCUSED:

Well, if one is discriminated against another, this affects someone's mind, does it?

BY THE COURT:

I don't know whether this affects someone's mind or not...

BY THE ACCUSED:

If someone gets something, and someone doesn't get it.

BY THE COURT:

But the witness has told you that understandably enough that each of you was assessed on your own merits, more or less, and that's what... that's what he said.

BY THE ACCUSED:

Well, he misled the Court.

BY THE COURT:

That's what it comes down to.

BY THE ACCUSED:

He misled the Court. We both were assessed on departmental level exactly the same way. Department has recommended that those...

BY THE COURT:

Move on. Move on to something else. We've heard enough of the comparison between you and Rakheja.

BY THE ACCUSED:

All right.

Q. So you totally do not recall the meeting in which I was in duress and I agreed to this condition because alternatively it was put to me that I might be fired, at all. Do you remember that, the extortion part of that meeting? Do you remember?

A. First of all, I do not remember any extortion part of it. Secondly, there was no question of being fired. I've stated that last week, also. You had an appointment for two years, up to ninety-two ('92). There was no way anybody could have done anything. There was a legal contract. And thirdly, that, in fact, you were even prepared to take a research position for three years, or four years, so that you could take an early retirement. You even stated that. And I stated clearly that there was going to be no difference with regard to the probationary appointment. If the DPC recommended, I was going to recommend. I did recommend. However, there were enough questions that had been raised in my own mind with regard to your teaching (inaudible) apart from (inaudible) that I discussed it with the Vice-Rector, and I put teaching... sorry, for tenure has to be considered only in the third year. That was my recommendation to

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HEARING IS RESUMED

THE COURT TAKES THE BENCH

PROOF OF VOIR-DIRE

SRIKANTA SWAMY
(Under the same oath)

BY THE COURT:

Your step five, Mr. Fabrikant, is proving the statement
in writing. I presume you can do that by asking two (2)
questions.

BY THE ACCUSED:

Well just whether witness recalls making that statement.

BY THE COURT:

That's right. Whether the witness recalls testifying on
the day in question and whether he recalls making that
statement.

AWhich statement, My Lord? Which statement, My Lord?

QI think the first one was pages 95 to 96.

AYes, I did make the statement. I did not know they were
... they were bodyguards.

QNo, just recognize for the minute whether ... having
looked at that, whether you recall having made the state-
ment?

AYes I recall.

QThe same thing for pages 102 to 103?

AThe only thing is the vice-rector, I really meant asso-
ciate vice-rector. I never called the vice-rector. If I
had said vice-rector, that's not what I intended.

Associate vice-rector always I was dealing with, Dr. Catherine McKenzie.

QOK, but you recall testifying here on the 29th of April and ...

BY THE ACCUSED:

This is not ... this is not the question he is asked.

BY THE COURT:

Just a second.

QYou recall testifying on the 29th of April?

AYes

QAnd having read these various pages, you recall having answered duly the questions and the ... the answers that are there?

AYes.

QFor the minute?

AYes.

BY THE CROWN:

I have no questions.

BY THE COURT:

And you have no questions, good.

BY THE ACCUSED:

Step five is finished.

BY THE COURT:

Step five is finished. Part of six is finished.

BY THE CROWN:

I don't want to raise anything on item six.

BY THE COURT:

No.

BY THE ACCUSED:

Well then six is finished too.

BY THE COURT:

So then it's all finished, save that I have to decide and I will decide that we'll bring the jury back and you may cross-examine Mr. Swamy on his ... on his previous statement.

BY THE ACCUSED:

Yes, but not only that, but according to section nine, after this cross-examination, there is a need to make the decision that witness is adverse indeed because this is what the motion is all about.

It's not just cross-examine on his previous statement.

BY THE COURT:

What you may do is cross-examine him on his previous statement, the two (2) parts that we've discussed where I found there to be contradictions.

If you think that this is an avenue into cross-examination at large, you're wrong.

BY THE ACCUSED:

Well you already make up your mind. You already made up your mind? You cannot do that.

BY THE COURT:

I can ... what I'm telling you is that thus far, thus far as we've gone now, as far as we've gone now, you can cross-examine the witness on his previous statement.

BY THE ACCUSED:

Right.

BY THE COURT:

That does not give you the right to cross-examine him at large.

BY THE ACCUSED:

Absolutely not, that's what ... not what I'm saying. I'm

saying ...

BY THE COURT:

What are you saying?

BY THE ACCUSED:

... that this cross-examination should be used in your decision whether to declare witness adverse. This is what the whole thing is all about.

Am I telling something new to you?

BY THE COURT:

Not at all.

BY THE ACCUSED:

So, I hope it is not new.

BY THE COURT:

So we'll bring the jury back and you may for the moment, you'll cross-examine on the statement at the moment.

BY THE ACCUSED:

Yes.

BY THE COURT:

You ... you ... then we'll see what happens after that.

BY THE ACCUSED:

Yes.

PAR LA COUR:

Le jury s'il vous plaEt Madame.

BY THE ACCUSED:

OK, may I have it back.

BY THE COURT:

QDo you need that?

AI might need that.

QYou might need that, OK.

If you would hand it back for the minute. Dr. Fabrikant will give you the questions and the answers as he puts

the questions and if you require it back, all you have to do is ask.

BY THE ACCUSED:

And I think I also gave him the agenda of another meeting and I don't think I got it back. Did I and my understanding is that we have three (3).

BY THE COURT:

There is your agenda there.

BY THE ACCUSED:

Yes, OK.

BY THE COURT:

Mr. Belleau will pass it to you.

BY THE ACCUSED:

Yes, all right. I understand that we have three (3) contradictions.

BY THE COURT:

No, you have two: page 95 to 96.

THE MEMBERS OF THE JURY ENTER THE COURTROOM

BY THE COURT:

You're correct, you have three.

BY THE ACCUSED:

Yes, all right.

BY THE COURT:

Yes.

BY THE ACCUSED:

So we have three contradictory statements as compared to ...

BY THE COURT:

No, that's not how you do it. Now you ... you ask the

witness if he recalls testifying.

BY THE ACCUSED:

All right.

BY THE COURT:

Give him the question and give him the answer or give

him the questions and the answers if there's a continuity.

CROSS-EXAMINATION BY
MR. VALERY FABRIKANT
ACCUSED - REPRESENTING HIMSELF:

QAll right. Do you recall testifying on April 29th 1993 during fitness hearing?

AYes.

QOK, do you recall that you, among others, made a statement there that I always were persistent if I wanted to see you, I just would come into your office and just yesterday you have admit that ...

BY THE COURT:

Well just a second. Do you recall ...

BY THE ACCUSED:

Yes.

QDo you recall making that statement?

BY THE COURT:

I asked you ... I asked you the following question.

BY THE ACCUSED:

OK.

BY THE COURT:

Read him the question and you gave the following answer.

BY THE ACCUSED:

Well, OK.

QThe question was:

"Still why were there university security people at your office?"

The answer was:

"The reason is that some of my secretaries were telling me that you are coming from one door off the main dean's office and walking through the other door many many times and when asked why you were there, you wouldn't say anything and you just walked out and secondly, my office door is always open. It was never closed and I did not want to be disturb by you coming in because you were always persistent. If you wanted to see me, you would just come into my office."

Do you recall making this answer?

AYes.

QAll right. Now do you recall that just yesterday, Oh no, OK, yesterday one point was made yesterday. When I asked you: "Did I ever come to your office without first calling your secretary" and you admitted that no, I never done that, so that last part of your answer is in contradiction to what you said yesterday. Would you please explain this contradiction?

AMy Lord, when I stated that he was not coming to my office unannounced, it was not as if he was barging in. He used to make phone calls and ask the secretary. Sometimes my office used to be open and I ... I used to go and take my own Xerox. If I used to go out of my office and you would ask me can I see you, sometimes I would say yes, sometimes I would say I'm busy and then you would say: "When can I see you then" and this was not simply that year. It had happened even in previous years so when I meant that it was not as if he was rude and simply came into my office without telling anyone, but was persistent in saying that he wants to see me.

So from that point of view, he was in fact either calling or getting an appointment to see me in that sense because he never came to my office, just barging in but he was persistent every time when he wanted to see me to see me.

QWell here it says: "You would just come into my office". To the best of my understanding of English, it means I would just barge in. How would you ... how would you interpret these words: you would just come into my office?

AMy Lord, I've explained myself. I was trying to be ... I thought that I was trying to be ... to elaborate yesterday in order to explain and if I'm not ... I'm explaining myself: he did not barge in. That was not my interpretation to what I stated. I really meant that when he wanted to come, either he would make a phone call. Sometimes he used to come to my office and if I was there, he would ask can I see you. Sometimes I used to come out to make a Xerox and he used to ask me and I used to say yes or no, I'm busy.

BY THE COURT:

Now you've had that question answered. The jury will decide first of all eventually whether there is a contradiction, if they ... if they feel they have to and what significance to attach to it, what importance to attach to it. Move on to the next one.

BY THE ACCUSED:

Well he didn't answer this.

BY THE COURT:

Move on to the next one.

BY THE ACCUSED:

QAll right. Now your explanation if you recall, today I asked you even twice for the reason to have bodyguards and you mentioned here the answer was that Haines called you. Osman said something and you never mentioned me coming to your office and going through another door as main reason for having security there. Could you explain this contradiction?

AYes, My Lord. First of all, the question started off as saying Haines complained. I didn't talk about Haines complaining that particular year. That was another year when you made the phone call. Now I did not ... this morning

when I testified, in addition to the other reasons, I forgot this reason, but yes after all, I'm a human being and I'm going through for the last ... one year, it has not been easy for me, so if I forget, you have to excuse me, My Lord and he used to come and you can I ... you can ... the secretaries who complained could be asked the same question and that was a combination of so many things and it is very hard to remember exactly everything what happened then.

I have to tell that, My Lord, because there was so many things were being talked in the corridor, whether it was talked in the corridor, whether it was talked afterwards when we were looking at all these things. It's very difficult to remember. I'm trying my level best to remember everything and ... and last time, in April, when it was asked, that was one of the reasons and perhaps I did not go into all the different reasons which made up (sic) and it was in the context this morning of the first meeting that we were talking about and I stated there was a second meeting and if I forgot it, I have to be excused My Lord.

QWell the ... first of all, if you recall again, your answer today was that there were several meetings and effectively bodyguard was decided due to those meetings. You never mentioned a single meeting on April 29th. Could you explain that?

AI was asked so I did not go into all the details and I did not say several meetings. I remember only two (2) meetings, one of the day of the senate and one subsequent. If there was, I don't remember. I remember two (2) meetings.

QWell you didn't mention a single of them. Could you explain that?

BY THE COURT:

He's explained that. He's told you why not. Now move on to your next question.

BY THE ACCUSED:

He doesn't allow me to ... to ask questions. He didn't explain anything.

QNow do you still insist that indeed in 1991, I was coming to your office, entering one door, exiting another door. Someone was asking me, I didn't respond anything. Do you still insist on the truth of that statement?

AIIt's not a question of insisting. That's what I recall. There were many things and this was one of the reasons.

QAll right and when you placed bodyguard, I stopped coming?

AI ...

QOr I continued coming?

AI didn't use the word bodyguard. I don't want the ... afterwards to be told that I used the word bodyguard, My ... My Lord.

QAll right.

AIIt was a security guard and when I ... I'm not saying that you were not coming or not (sic). In fact I remember once, even when you were sick, you ... I saw you in the corridor when I was taking a Xerox but I don't know what you did or what you didn't, (sic), I took the Xerox and went back to my office.

QHe doesn't answer my question. You got complaints from your secretaries that I was coming to one door and exit-

ing another door.

AYes.

QYou got the security guard there. Did those complaints stop or I continued coming?

AFirst of all, I didn't get the security guard. I'm telling you once again ...

QAll right.

A... it was Catherine McKenzie who placed. Secondly I don't remember afterwards in fact anybody complaining and I requested Catherine McKenzie that she should remove that plainclothes person because it was in fact making others wonder who this person was, who was sitting all the time. I requested her to remove him from my office.

QHe didn't answer my question. Did it help or it didn't help because ...

AWell nobody complained after that.

QSo I stopped coming but I had no idea there was bodyguard. How come I could stop? If I was coming and I had no idea there is bodyguard, so for some reason, I stopped coming, that's what you're saying?

AI have no idea why you stopped coming. I'm sorry, I cannot answer that question because mainly the reason was that the faculty personnel committee was meeting at that time.

BY THE COURT:

Well let's not speculate on the reason. You just ...

AFine, My Lord.

BY THE ACCUSED:

QSo when was that that I was coming? Was it November 1991, coming and going? Every day? How it was?

AI did not say every day. You must ... I was not sitting in the corridor to watch you. There were complaints from the secretaries that you had done that and too the way you were walking there, going from one door to the other. They complained to me that this was what was happening.

QWell that was the first and the only reason which you stated on April 29th. You never mentioned ... could you explain why on April 29th, you didn't mention such an important that I bought a rifle and went hunting?

AI did not remember. If the questions were like what you have been asking one, I would have remembered one by one. Even this time, there are a lot of things I'm recollecting only after the documents are given or questions are being asked of me.

QWell I asked you exactly the same question. Why was security guard there?

BY THE COURT:

You have his answer.

BY THE ACCUSED:

He didn't answer.

BY THE COURT:

Go ahead, next question.

BY THE ACCUSED:

All right.

QDo you recall I asked you question as to when did you learn they were in fact security guards?

AYes.

QAnd that your response was:

"I think the very first day that somebody was sitting outside of my office, I called the

vice-rector, services and found out that it was ... there was a security guard placed outside of my office."

Do you recall that?

AYes.

QToday you testified that you were informed in advance by Dr. McKenzie that there will be security guard and when security guard came, he introduced himself so you were not surprised at all. You didn't have to call anyone. So how could you explain that discrepancy?

A I don't think I said I was not surprised. I didn't say I didn't have to call. I stated that ... that there were... I was informed there was a security guard. I don't know which happened first. I can't recall, but I called Catherine McKenzie and she told me it was a security guard. The reason why I called was the security guard of the university is always in a uniform. Here was a plainclothes person sitting there and that is the reason. If there was a security guard sitting there, I would not have asked the question but there was a plainclothes person sitting there and I asked whether it was because of that that the person was asked to introduce or he introduced himself first and therefore I asked Catherine McKenzie to say ... to expressing (sic) a surprise because I would expect a security guard, I can't recall but both things happened.

I called Catherine McKenzie because it was not a regular security guard. If a security guard was there, I would have ... it would have seem right to me.

QWell your response was that:

"I think the very first day that somebody was sitting outside of my office, I called the vice-rector services and found out that it was. There was a security guard placed outside my office."

I asked you again:

"I didn't get the answer. Someone called you and ...

You responded: No. I said I called when somebody was sitting there. I called the vice-rector office and was told that there was ... there was a security guard that was sitting there.

Question: Why did you suspect that this person was a security guard or anybody special?

Why did you call about him in the first place?

Response: Because he was in plain ... in plain clothes.

Question: Well he might be just a student. Why did you think that he's somebody special?

Answer: That is because if anybody wants to see me, they go to my secretary and say that they want to see the dean, so nobody sits there simply outside my office on a chair."

This, do you recall making these answers?

AYes.

QWell these answers clearly mean that the person was sitting there and he didn't bother to introduce himself. Is that correct how this answer mean? (sic)

AI stated, My Lord, that ... and every one of the things that I stated is correct. If there was a student or somebody else who wants to see me, he would not be sitting there and I did call Catherine McKenzie and she told that was the security guard. The day ... I would not have called Catherine McKenzie if in fact the security guard for the university in his uniform was there and it may be as a consequence of that. I can't ... I can't remember something that happened in 1991. It may be as a consequence of that he came and he introduced himself because I called Catherine McKenzie to ask who was that person sitting outside, because of the fact that if it was a security guard in the regular uniform, I wouldn't have asked that question because this was discussed at the second meeting, that she would take appropriate measures.

QSo you ... do I understand that you change your story once more, that now you do not even recall whether he did or didn't introduce himself? Maybe he was just sitting there and maybe this answer is correct and you called and after that, he came and introduced himself? That's ... that is your new story?

ANo, it's not a story. I did not say that he didn't not introduce himself now. I said he introduced himself, yes. What I'm saying is that I cannot recall whether he was ... I don't even know whether he was there for some time before introducing himself. This was a person in plain clothes and when I saw him there, then I contacted McKenzie and it might have been afterwards, that because of that phone call, she must have told "You better tell him who you are" because if he was a security guard, I would not have asked that question. I'm trying to explain that as clear as I can.

QWell I ... he didn't answer my question.

BY THE COURT:

You have your explanation. Now move on to something else. We've plugged this horse long enough.

BY THE ACCUSED:

OK.

QNow try to recall better. Could it be that in fact it was not just security guard, but it was Mr. Francisco with security guard who came to see you and introduced this particular guard? Maybe this was the situation? Could you recall it now better than that?

AYes, My Lord, yes, he has brought that back, memory back. When I called Catherine McKenzie ...

BY THE COURT:

Just a second, you'll continue your answer in a minute. That's about the twentieth time that when the witness has started to give an answer, you have given this sarcastic laugh. I'm sick and tired of this sarcastic laugh. Yesterday you had occasion to cite me the case of R. versus Chase, 1, C.C.C., third, page 188. It's not a case you looked up. It's a case that was furnished to you by Mr. Belleau.

It would do you a power of good to read that case again because you will find in there in dealing with the question of whether a witness is entitled to be represented by counsel, you will remember you made the argument that

a witness not being a party is not entitled to be represented by counsel, that in that case it was held that any witness is entitled to courteous and fair treatment by those that are examining him or her and that a lawyer is surely not necessary to ensure that, that rather it's the court's obligation to ensure that.

Now you have been anything but courteous and anything but fair in your treatment not only of this witness but with the whole parade of witnesses who have come before us.

Now I suggest to you that from this point on, you clean up your act or I'll simply terminate the witness's testimony and the same will hold true for everyone that follows.

BY THE ACCUSED:

Well I agree with whatever is said in this case but this laugh was kind of, you know, I just couldn't help it. I apologize.

BY THE COURT:

Is that so?

BY THE ACCUSED:

Well witness is changing again his story and it looks really funny because he doesn't recall that it was indeed Francisco who came. Would you believe that childish

...

BY THE COURT:

I'm not interested, I'm not interested in your arguments on the subject. Now ...

BY THE ACCUSED:

As far as ...

BY THE COURT:

Dr. Swamy, would you ... would you continue your response. There was a question of Mr. Francisco and you said yes, this triggered your memory.

BY THE ACCUSED:

Well he may be ...

AI don't know whether his name Francisco. Yes it was one of our university people who came and said that this is a security guard, that he will be always outside my office.

BY THE ACCUSED:

QAll right, so now you recall it better, that was Mr. Francisco who came to your office and introduced this security guard. He explained to you everything and I believe that if you had any questions, could you ask Mr. Francisco all those questions? For example, why he is plain clothes or something like that? Could you ask Mr. Francisco whatever questions you had?

AI didn't ask Francisco anything because Mr. Francisco is not the person who is in charge of security. It was Catherine McKenzie.

QWell the person who is in charge of security, as such security, is Francisco and Bujold, if you know that too?

Are they?

BY THE COURT:

The witness has told you why he didn't ask Francisco and that is that. Don't argue with him. Go ahead.

BY THE ACCUSED:

I'm in cross-examination now, don't I ...

BY THE COURT:

You're no longer in cross-examination.

BY THE ACCUSED:

I am, I am enquiring in all these questions, I'm in cross-examination.

BY THE COURT:

You are no longer in cross-examination

BY THE ACCUSED:

What do you mean I'm no longer ... I continue the same questions.

BY THE COURT:

You have covered the question of the contradictions.

We're ... we're on now ...

BY THE ACCUSED:

No, I'm still discussing the same questions. Who introduced who? Did he make those phone calls?

BY THE COURT:

In any event, you are ... first of all, you're no longer in cross-examination and secondly, the witness has given you his answer.

BY THE ACCUSED:

Well ...

BY THE COURT:

He said to you "I did not discuss it with Francisco because he's not in charge of security. As far as I'm concerned, Catherine McKenzie is." Your next question was argument. You started to argue with the witness. You've got the witness's answer. That's it, now move on.

BY THE ACCUSED:

No, it was my question: do you know that the head of security is Bujold?

BY THE COURT:

Are you going to move on? Are you going to move on with your next question? Good, then do so.

BY THE ACCUSED:

Well that was my next question: do you know that the head of security is Mr. Bujold.

BY THE COURT:

He has told you, as far as he was concerned, security divulged from Dr. McKenzie. That was his answer.

BY THE ACCUSED:

My question is: does he know or doesn't he. Let him answer. This is normal question in cross-examination. Let him either answer. Do not answer instead of him. I don't think this is duty of trial judge to answer instead of witness. Either you rule this question as inadmissible, then do so. If this is an admissible question in cross-examination, let him answer. Let us stop abusing the process.

BY THE COURT:

He has answered the question so your question is inadmissible.

BY THE ACCUSED:

Well he said that ...

BY THE COURT:

I ruled on it. You asked me to rule, I ruled. Now put your next question.

BY THE ACCUSED:

QAll right, do you know Mr. Bujold?

AYes I know Mr. Bujold.

QDo you know what his position is at the university?

AHe's in charge of security, that's all I know.

QOK.

ABut he reports to Catherine McKenzie, he used to report to Catherine McKenzie.

QOh yes? Is Catherine McKenzie reporting to somebody?

AYes, there is a whole line of responsibilities. Catherine McKenzie reports ...

QOK, who is she reporting to?

ATo the vice-rector, services.

QWell why didn't you call the vice-rector, services? That would be even higher than that.

AI can answer that question. Catherine McKenzie was the one who had arranged the intervention team. She was the one who was given the responsibility for this whole security thing and so I was dealing with her. Otherwise every time, the ... for all these things, I had to be dealing with the rector, everything.

QAll right, now since you were perfectly explained who is security guard, why is he in plain clothes and so on, why did you answer the way you answered. I'm again citing to you questions and answers. You said:

"No, I said I called when somebody was sitting there. I called the vice-rector, services office and I was told that there was ... it was a security guard sitting there.

Question: Why did you suspect that this person was a security guard or anybody special? Why did you call about him in the first place?

Answer: Because he was in plain clothes.

Question: Well he might be just a student. Why did you think that he's somebody special?

Answer: That is because if anybody wants to see me, they go to my secretary and say they want to see the dean. So nobody sits there simply outside my office on a chair."

Now this means that nobody came to you and introduced himself. You had no idea who that person is.

Now you are telling not only that that person introduced himself but he came with Francisco and Francisco introduced him and explained to you everything. How do you reconcile those two statements?

AMy Lord, I'll repeat that. The person from the security office introduced this person to be ... after he has stated about Francisco, I don't know his name, yes I remember. However I did call Catherine McKenzie also.

That I remember very well and I have to repeat, I thought I'm answering the question with ... without going off at any tangent. If there was a security in the university in ... in uniform, I would not have called. Because of the fact that at the meeting, if she had taken ... that she was going to take appropriate measures and in the appropriate measures in her opinion was to have a security guard in front of my office, it would not have been a surprise to me. Because I saw somebody sitting there and if there was anybody who wanted to see me, they would have gone to the secretary to get an appointment. Then I must have called at that time. I mean, otherwise there is no reason why I should remember calling Catherine McKenzie and asking that question and her answering it's a security guard and that was the reason. Perhaps now I'm

only saying ... conjecturing that it must have been after that that then the security person who was in the uniform who I know, who introduced this person to me.

QNow we have a new story. So there was ... so he didn't come together with the officer? He was just sitting there? This is your story now? Is that ...

ANo, it is not a story. What I remember was that the person was sitting there in front of my office and I ... and I remember clearly somebody sitting in front of the office, my calling Catherine McKenzie and that person was in plain clothes and my calling Catherine McKenzie and asking and her saying it's a security person and then also being ... afterwards being introduced by ... by one of the security people of the university and that would be in front of my office of course.

QSo would you believe that story that they would put somebody there without ...

BY THE COURT:

I don't need your comments. You have ...

BY THE ACCUSED:

... without usual normal introduction.

BY THE COURT:

I don't need your comments. You have his answers.

BY THE ACCUSED:

Well I have it answered and I continue my motion. So we have ... don't forget, I'm in section 9 of Canada Evidence Act. What ... that's what the whole thing is all about. We have discovered three (3) contradictions, namely the first one was that during his testimony on April 29th, he said that I was just used to come into his office, that's it.

Recently he admitted that I never came to his office and the words here, I repeat once again: "You would just come into the office." I don't think that his English is that bad to think one thing and to say this: "You would just come into my office" so this is ... this cannot be misinterpreted.

When he was asked to reconcile those two, he just didn't give any satisfactory answer. He said that he didn't mean that I would just come into his office. He meant that I would call. Well those are two different stories. That's totally irreconcilable.

The second contradiction was: I asked him on several occasions today because I was waiting for him to mention me coming and going into the office. This is why you remember, you even forbid me to ask him what were the facts which you had in mind to ask the security guard and he said that it was my motion with hand, it was rifle in North America. He never mentioned me entering and exiting and I asked over again in a different form were these all the facts? Any other facts, anything else which prompted your concern. He never mentioned that.

Now here, he answered one and sole thing. He never mentioned any meetings. Now he claims here that he could have forgotten about those meetings. This doesn't make any sense. These meetings were important part of the whole events. He couldn't have possibly forget about it. He just thought at the time of testimony on April 29th that well, he knew very well that I had no idea about the meeting, so he thought that most probably it would never come out because it came out inadvertently, that I have

just discovered it, by using what you call fishing and I think this is a good thing for defence, to be able to fish because very interesting things are coming when you do fish and when the university is not open and not honest in its behavior.

So in this particular case, there he mentioned that secretaries were telling him that I was coming and going out of the office, coming from one door and exiting through another door and that was the only reason he quoted and again this is total absurd. When I asked him: Now OK, there was security guard there. It was plain clothes, therefore it was plain clothes because just to make him hidden so that I wouldn't know that there is a security guard and since I didn't know that there was a security guard and it was my pattern of behavior, why would it stop and security guard anyway, he didn't stop me either.

I would have understood to put security guard there to ... OK, I enter, he would stop me and say: what are you doing? Why did you come here? Don't come again. That would make sense, but just to have there a security guard, for me to go again and exit again, this is total absurd.

If this bothered him, then security guard should have intervened. Anyway he should have known something about it. Now he doesn't know. He remembers that there were complaints but he doesn't remember whether at that time, there were additional complaints or when security guard was there, the complaints stopped. He had no idea about that either.

And the last but not least and this is the most outrageous contradiction, that when he was asked about security guard, how he learned about security guard, he said that he just came there. Someone was sitting and he got suspicious why someone is sitting there and doing nothing so he called vice-rector, services.

Then he testified that ... today he testified absolutely different story. Today he testified that this person came and introduced him, himself. So he knew that was security guard. Not only that, he also testified that he was informed several days before that that security guard is coming and because we had here Mr. Francisco who testified that he was the one who brought security guard upstairs, not that security guard was there and he just came to introduce him, he brought security guard with himself and we all know that in any, you know, more or less civilized behavior, no one in his right mind would put security guard there without first introducing him to the head of the office.

This is total absurd, even to think that this ... this kind of stuff could ... could have been produced there. This is total absurd and when he was asked, the questions were so clear and unambiguous, I asked him: "Why did you suspect that this person was security guard or anybody special?" In every normal circumstance, the person who is not committing perjury would say "Well I didn't suspect, I knew he was a security guard. I was informed several days before that there will be security guard so it was not a surprise to me at all. I knew he was security guard. I was informed about it and he introduced himself. So I was not surprised at all."

He answered something different. He answered: "Well this is because if anybody wants to see me, they go to my secretary and say that they want to see me. Nobody sits there simply outside of office on a chair." So it means that someone was sitting there without introducing himself.

Now it's obvious that witness committed perjury, not just contradiction. So I believe that more than sufficient reasons are there to declare witness adverse.

BY THE COURT:

Thank you. I don't need to hear you.

Section 9.2 of the Canada Evidence Act reads as follows:

"Where the party producing a witness alleges that the witness may at other ... may have made ... sorry, that the witness made at other times a statement in writing or reduced to writing inconsistent with his present testimony, the court may, without proof that the witness is adverse, grant leave to the party to cross-examine the witness as to the statement."

That permission was granted to you. Of course the permission to cross-examine the witness on his statement does not in any sense make it incumbent upon you to make the motion that you've just made, although indeed, you might make that motion because the article continues:

"And the court may ... may consider the cross-examination in determining whether in the opinion of the court, the witness is adverse."

What that says to me is that whether now or whether this morning or whether yesterday afternoon or on the other ten (10) or so occasions that you've asked me to declare this witness whether adverse or hostile, what that last part of the article says to me is that I consider his testimony globally in making that determination and that I may take into account the cross-examination on the previous inconsistent statements.

Yes, I'm prepared to take the previous statements into account in making the determination, that one must bear in mind that the witness's world did not revolve around Valery Fabrikant. The witness's world revolved around being dean of the faculty of engineering and computer science.

From his testimony, that required him to have numerous meetings on numerous occasions with numerous people on numerous subjects and I suppose in ... in his view or in his mind, the problems of Valery Fabrikant were only one aspect which he had to concern himself with during the period which concerns us.

I've told you time and time again that different people's recollection work in different ways, that very very frequently and we've seen examples of it here, something causes the witness to remember something which he otherwise did not.

Because your preoccupation is yourself and your own problems, you of course find it inconceivable that someone wouldn't remember some dimension of his dealings with you. I don't see it in those terms. I can see quite ea-

silly that one would probably forget some dimension of his dealings with you and quite frankly, that doesn't surprise me.

In making a determination, what I'm more concerned with is the demeanor and attitude of the witness, what has the witness possibly got to gain by being less than frank with you about his recollection of the posting of security guards?

The question of the security guards is of marginal relevance to this case, maybe none, maybe none. It's admitted because it's of marginal relevance or because it may have some relevance.

The contradictions are not contradictions that catch the witness flat-footed and leave him in a position where he can't explain what he said one day in relation to what he said another day.

Very very much depends on the way the question is put to the witness, how the witness understands the question and what the importance of the question is at the time.

When a number of these questions were put to Dr. Swamy beforehand, we were in the middle of what was called a fitness hearing. These questions by and large were not relevant to the fitness hearing which you were told over and over again and I know that I, for one, pressed matters along as fast as I possibly could at that time.

Why the witness remembers one thing one day and one thing another day is a question you'll have to direct to a psychiatrist or a psychologist. I can't answer that but I know that in the witness's general demeanor, for my part anyway and I ... what I say of course doesn't bind the jury in any sense, I haven't thought that he was purposely trying not to answer your questions and therefore the answer is the same as it's always been.

Even considering the cross-examination, I don't think the contradictions that you demonstrated are anything more than trivial. I don't think they demonstrate to me, in fact I know they don't demonstrate to me any ... any attempt on the witness to evade your questions or to act in bad faith and I can't see why the witness should be considered adverse in the circumstances.

So your motion is denied and we have wasted enough time on this subject. I wish you would get to something pertinent.

PROOF OF THE DEFENCE (cont'd)

BY THE ACCUSED:

Well I am and since I know my defence, I'm always on something pertinent.

Q Now this document which was shown to you, do you recall what meeting was that? It's agenda of what meeting?

A It ... there was two that I ... as far as I can recollect, there were two meetings. I think this was the agenda of the second meeting.

Q All right, now what do you recall about second meeting? Who was present? What was the purpose of that meeting and how it evolved?

A I don't recall everybody who were ... who were there. I think the DPC was there, certainly Catherine McKenzie was there, Mr. Relton was there. I don't know who else was there and there were several things that were being dis-

cussed. One was ... by that time, the department personnel committee had made its decision as to what recommendation they were going to make. So they were quite concerned about the reaction, your reaction once you read it. So it was decided that I would give by hand the department personnel committee recommendation to you and that Mr. Relton would be present at that time, just to make sure that if there was any question, that you ... any clarification you needed when I gave, there was somebody actually present there. The second one was that it was also discussed whether somebody should talk to you, perhaps to console you (sic), to see a psychiatrist.

QNo. Sorry.

AAnd also Catherine McKenzie wanted to make sure that Dr. Osman and I would give assurance to the people who are concerned about their safety that appropriate measures were going to be taken by Catherine McKenzie. These were the main things that were discussed and agreed upon.

QWell could you elaborate about psychiatrist? Was there ...

AThat's all, it was ...

QWas there anything in my behavior which seemed to you abnormal or not normal or whatever?

AIt was not considered normal to make a statement to the chair of a department that you would settle it ... you would settle it in an American way, whatever it meant. That's not what a professor would tell a chair, that's not considered normal.

Walking through one door and going to another door, simply moving around like that was not considered normal so there was several ... things of this nature are ... were not considered normal so perhaps whether there was any good at all in asking you to get, to seek help. Maybe I should have used the word psychiatrist, even though the word psychiatrist was ... I think was used, it was whether you could get help and that of course also depended upon your reaction at the meeting with me, with John Relton present, how you would react when you saw the letter and that we would meet if there was a need after you met with me.

BY THE ACCUSED:

He didn't answer my question but you feel he did? He did?

BY THE COURT:

Yes he did.

BY THE ACCUSED:

All right.

QIs it accepted in civilized society when someone allegedly comes and made the gesture which you said I allegedly made, just to call me and say: did you make that gesture? Did you do that and if you did, could you explain what you did and why you did that? Is that would be (sic) a normal behavior in civilized society?

BY THE CROWN:

This is cross-examination, My Lord.

BY THE COURT:

Yes, it is. The objection is maintained.

BY THE ACCUSED:

All right, I will rephrase it.

QDid you at any time consider appropriate to call me, put

these questions squarely to me, why do you enter one door and exit another door? Why did you come to chairman and make the hand gesture and said about something North America? (sic) Did you consider to tell me that and ask me explanation?

AI did not because I did not consider this normal behavior and I'm not a medical doctor, because I didn't consider that as normal. So the only thing that I could do was to bring it to the attention of Catherine McKenzie and that's why, the whole reason why the whole intervention team was called. It was not something, one person who decided or could see what action should be taken. That's why there were so many people looking at the different possibilities.

QSo you were sure that I'm insane something? (sic)

AI did not say that.

QAll right, so you were sure that something was wrong with me so there was no point to talk to me, that was your opinion at that time?

AThe few times I ... you came to my office, I tried to communicate, it was difficult to communicate with you.

QCould you go into details? What was the problem communicating with me?

ABecause you would not ... yes, for example, I had told you over and over again not to call the vice-rector's office in connection with the promotion the previous year, but you didn't ... I did not succeed in telling you that. You did call her office over and over again. That was one instance.

Secondly, I told you not to correspond with her regarding promotion, just debate but you, yourself, you wrote letters to her regarding your promotion over and over again, so there was not ... there was no way I could communicate with you, because whatever I told you, it was not helping.

The same thing in 1990, when you got the appointment, I talked ... you came to my office and thanked me that day for having gotten the probationary appointment and at that time, I told you again: Dr. Fabrikant, this ... please, you have ... this is a new book, turn the new leaf and from now on, just concentrate on your work. Don't simply find ... try to bother anyone." I don't think that had any effect.

Therefore there was no way I could talk to you and I'm not a counsellor to be able to counsel you so the only thing that I could do was to bring it to people who could contact the appropriate people to ... to see how or what kind of action or what kind of process one should go through.

BY THE ACCUSED:

Well he is not answering question. Question was why he did not put me the question squarely and his answer is because I didn't listen to him, what he advised me. I don't have ...

BY THE COURT:

No, he did not.

BY THE ACCUSED:

... to listen to him. The question was differently.

BY THE COURT:

He said you were difficult to communicate with and you asked for ... and you asked him in what sense and he give

you some examples.

BY THE ACCUSED:

Well, that I somewhere followed, somewhere didn't follow his advice is a different story.

BY THE COURT:

The question has been ... the question has been answered. Move on to something else.

BY THE ACCUSED:

All right.

QSo you never, neither you nor anybody else ever asked me question whether I did make this gesture, whether I did enter and exit, ever to your recollection, you or anybody else to your knowledge?

AI don't know about others. I can only speak for myself. I did not because I knew that I could not communicate with you.

QWhat? I did not hear you? I did not answer you? If I disagree with you, it doesn't mean that we cannot communicate, does it? To you, a person who disagrees ...

BY THE COURT:

The witness has given you his answer. He said that experience showed him he could not communicate with you.

That's it.

BY THE ACCUSED:

QWell why then you decided to give me this decision if you couldn't communicate with me? Such an extremely crucial decision, you were not sure what I'm going to do and you decided to communicate with me in the first place? How to reconcile that? Then probably you were not the right person to do that.

ACommunicate with you? I don't understand, My Lord.

BY THE ACCUSED:

All right. He said that he didn't ask me because he was unable to communicate with me. Now there is a question at the meeting: who is to convey to me decision of DPC and for every normal person, it should be DPC who is supposed to do the job. Instead, dean takes on himself the job. So for this so risky job with bodyguard standing just behind the door, he's prepared to do that and to ask me a simple question: did I didn't make (sic) this hand gesture, he could not communicate with me. Now how many inconsistent (sic) it is needed to declare the witness adverse? I'm applyin again.

AI will answer the question now.

BY THE COURT:

No, your motion again is dismissed. Answer the question, Dr. Swamy.

AI'll answer the question, My Lord. Here, I was doing that job. I was the dean of the faculty and the department personnel committee would have normally sent it by internal mail. They wouldn't even send it by registered mail. Here, the intervention team, when the discussion took place, it was turned ... it was advisable because we did not know what the reaction of Dr. Fabrikant would be, that I would personally hand this recommendation to him and also in the presence of Mr. Relton, the code administrator so that any confrontation that took place would be in the ... would be in the presence of another person and which I did and I explained to him what was available to him under the collective agreement once the department

personnel committee recommendation was issued. I was doing my job as the dean.

BY THE ACCUSED:

QWell isn't it your job as a dean, if somebody allegedly threatened somebody else, to call that person and to ask him why he's doing that? Is this also your job as a dean, isn't it?

AIn the normal circumstances, it is my job. When I had failed to communicate with you, there was not much point in trying to talk this with you. Therefore the only thing that I have to do was to bring it to - I've said this three times, that will be a fourth time - to Catherine McKenzie so that the whole group of people, I mean, could look at this and suggest ways and means of handling it.

BY THE ACCUSED:

He doesn't answer the question.

BY THE COURT:

The question is answered.

BY THE ACCUSED:

All right.

QSo did you at any time ask members of DPC what were their reasons to recommend termination of my employment?

AThat is not how we deal with the recommendations. The departmental committee recommendation came and there is a faculty personnel committee, the dean does not make decisions of his own. There is a committee, a (inaud.) committee at the faculty level, so this was brought to the faculty personnel committee and I also told you what the avenues were according to the collective agreement. That you could rebutt the department personnel committee recommendation and in fact, at that time, you made a statement "What is the point? You've already made your decision?" and I said "Give the benefit of the doubt to the faculty personnel committee. Let it read your rebuttal" and the you asked for extra time which was given to you. Then you asked whether you could meet with the faculty personnel committee. That is not common and the faculty personnel committee agreed to meet with you and they met.

So we got ... the faculty personnel committee nor the dean goes and discusses with the department personnel committee. A reasoned recommendation was already there from the DPC, which was given to you by hand by me.

BY THE ACCUSED:

Could you direct Mr. Belleau to give me some jurisprudence on sarcasm because I do believe that it is allowed and it is just asked ...

BY THE COURT:

I gave you it a little earlier and it is: don't do it.

BY THE ACCUSED:

Well sarcasm doesn't mean disrespect. Sarcasm is normal human reaction to some dishonest behavior.

BY THE COURT:

Don't do it.

BY THE ACCUSED:

Well I find the jurisprudence first and I will read it to you. If jurisprudence says that sarcasm is allowed, then I would like you to keep that jurisprudence.

BY THE COURT:

If you have another question to put to Mr. Swamy. If you

don't, we'll end this.

BY THE ACCUSED:
Well I do.

BY THE COURT:
Then do it.

BY THE ACCUSED:
I do a lot of questions.

BY THE COURT:
All right.

BY THE ACCUSED:
QWell question was if he asked those people for the reasons and the answer is what? Did you or didn't you? Could you just answer simple question? Yes I didn't, no, I didn't?

BY THE COURT:
He told you that is not ... he told you, he said "That's not the way we proceed." I take that to mean no I didn't go and ask.

BY THE ACCUSED:
Well what was the need then ...

BY THE COURT:
And he told you how he proceeded.

BY THE ACCUSED:
... to waste court time with whatever he told after that. Could you direct the witness that court time is very valuable and wherever it's possible, answer yes or no and he will answer yes or no.

BY THE COURT:
Listen coming ... coming from you, no, I will not make that direction.

BY THE ACCUSED:
All right. My business is to ask you. You refuse? That's fine with me.

BY THE COURT:
Because you are a past master at wasting court time.

BY THE ACCUSED:
Oh no. Just wait for my summation, you will see everything will be logically in its place. There will be not a single thing which is irrelevant or unnecessary.

BY THE COURT:
Have you a question to put? Put your question.

BY THE ACCUSED:
Oh yes, all right.

QSo did you feel like you were playing Russian roulette if you took all these bodyguards stuff seriously?

BY THE CROWN:
This is out of order, My Lord.

BY THE COURT:
Yes, this is ruled out of order.

BY THE ACCUSED:
This is not a sarcasm at all. This is very serious question.

BY THE CROWN:
This type of question has been ruled out.

BY THE COURT:
Out of order.

BY THE ACCUSED:
Out of order?

BY THE COURT:
You don't ask that question.

BY THE ACCUSED:

Why? May I ask why?

BY THE COURT:

You may not ask that question, OK.

BY THE ACCUSED:

That's all?

BY THE COURT:

That's all you need to know.

BY THE ACCUSED:

No explanation?

BY THE COURT:

That's all you need to know.

BY THE ACCUSED:

All right. You see, how agreeable I am. OK.

QDo you... did you in 1991, at the time when DPC has informed you about their decision recommend (sic) my termination, did you recall that just two (2) years ago, the same DPC rated me from excellent ... outstanding to excellent? Do you remember that?

AI remember the whole case.

QAll right, do you remember that you, yourself, has quoted some people, scientists, saying that I'm in the top ten scientist in the world in my field and so on and so forth, do you recall that?

AI don't remember exactly whether it was top ten percent (10 %) or not but the letters indicated that you were ...

QNot top ten percent, top ten (10)? Top ten is not ten percent?

AOr even top ten, I don't remember that. However the letters were very supportive of your ... of your research activities and I said that before and that was the reason why in 1990, from Research Associate Professor, the department, when it recommended, the faculty personnel committee also accepted that recommendation to promote you to Research Professor.

QAll right. Do you recall also that my teaching evaluation were in top, at least on average, ten percent, do you recall that too?

AYes I recall and I've also gone through that yesterday, that teaching evaluations ...

QWell just say yes, that would be sufficient. How about that for a change, just say yes. Now ...

BY THE COURT:

You answer the questions as you feel you should, Dr. Swamy.

AThank you My Lord.

BY THE COURT:

QOK and taking all this into consideration, when DPC comes to you and says that they want to terminate a person, shouldn't you, as responsible dean, ask them "Are you crazy?"

BY THE CROWN:

This is improper, My Lord.

BY THE ACCUSED:

All right, I will change the question.

QTaking all this into consideration, when faculty ... when department personnel committee comes to you and tells you that they want to terminate my employment, what should be your reaction?

AMy reaction would be exactly what I did, to give the chance to the individual to present his or her case, in this particular one, your case so that the faculty per-

sonnel committee has not only got the reasoned recommendation from the department but your rebuttal to the recommendation so that you could ... you could rebutt each and every reason that they have ... they have given in the recommendation as to why your appointment should be terminated and I gave you that chance and in fact, even you requested a meeting. I gave you that chance too.

QWell if you, at that time, had serious concerns as to what my reaction would be, doesn't that indicate that you all understood that reaction was outrageous? Sorry, that the decision was outrageous?

AIt is not for us to think whether it's outrageous or not until the faculty personnel committee looked at the whole documentation and read the reasons and your rebuttal to that. Otherwise it is making a judgment before even the faculty personnel committee had a chance to look at the whole case.

QYou didn't answer my question. Shouldn't you, as a dean of faculty, ensure that department works according to collective agreement and not according some ulterior reasons? Should you ensure that?

AYes, the department had worked according to the collective agreement. The department had sent its reasoned recommendation. They had met several times and gotten all the dossier that you had given and also had given its reasoned recommendation attached and number of exhibits as they call, with the recommendation.

So they had given what they thought was sufficient evidence to terminate or not to renew your appointment. That's the reason why it was just different, from the different levels.

QSo it was your opinion that their decision was not outrageous, their decision was logical, normal and well founded?

AI did not say it was logical, well founded and all that, in which case you would not have gotten the one-year appointment the faculty personnel committee gave. I simply stated that the department had made its recommendation and at that time, the only thing one could look at is whether the department committee was properly constituted and whether they had gone, according to the collective agreement for you ... I mean, in order to secure the documentation that they required from you in order to consider your reappointment and they had done so.

If they had not done, the faculty personnel committee would have asked for that information, but at the same time, I explained to you what course of action was available to you and I told you that you could make your rebuttal.

BY THE ACCUSED:

He continues the same story. He doesn't answer the question.

BY THE COURT:

He's answering the question.

BY THE ACCUSED:

He's answering, fine. You see how I'm agreeable. You feel he's answering, he's answering.

QNow meeting, November 14th, do you recall that meeting?

AI don't know what that meeting is. There are so many meetings that were taking place. I was chairman of the faculty personnel committee and I had so many meetings

with regard to different people. I don't know which meeting you're talking about. Please?

QWell it's meeting again. How many meetings did you have about bodyguards, about security guards, about Fabrikant? I'm talking about meetings about me, not about ... meetings about somebody else. How many meetings did you have about me?

AI said that there were two meetings and I did not remember the two dates. I said one was on the day of the senate meeting and there was a subsequent meeting when I also told, to the best of my memory, what event transpired there including that the faculty ... the department personnel committee recommendation was going to be given to you by hand by me. If that is the meeting you are talking, if it happens to be November 14th, so it is.

QNo, the second meeting was November 8th what you are talking about. Now I'm talking about third meeting, November 14th.

AThen I don't remember whether there were two or three. I'm sorry, I mean I can only recall ...

QOf course.

A... what went on a global basis. I did not keep minutes.

QOf course, he doesn't remember. Let's refresh his memory. Every day he had meetings about someone who threaten to kill somebody, so of course he doesn't remember.

AI can't first of all read this. Secondly, My Lord, if this meeting took place, I was there. I mean I cannot remember how many meetings I had and maybe today I feel I should have kept ...

BY THE COURT:

QIn any events, these are not your notes.

ANo, it's not my notes, it's not my handwriting.

BY THE ACCUSED:

QWell every member of the meeting I believe was given agenda, right? Were you given the agenda on each meeting?

AIt's possible, I'm not saying ...

QThen what did you do with this agenda? Did you throw it out?

BY THE CROWN:

This question is ...

BY THE ACCUSED:

QDid you throw it out?

A(inaudible) kept it.

QWhy?

BY THE CROWN:

What is this?

BY THE COURT:

No idea, I haven't seen it.

BY THE CROWN:

Did you ever see that?

ANo.

Well there's no point using this.

BY THE COURT:

That's what I'm saying, they're not his notes.

BY THE ACCUSED:

Well it doesn't have to be his notes. I'm just asking whether he's seen this agenda. That's all. I'm not asking him anything about notes.

BY THE COURT:

Well you have his answer. He's looked at that, he's looked at the ... the typed part and he said no, I don't remember this meeting. I don't know. He said ...

BY THE ACCUSED:

Well my question is look at agenda only please.

QDo you recall seeing this agenda?

AI... I really don't remember. I mean I don't remember how many meetings we had. I said I remember in ... two meetings. If there were three meetings, there were three meetings. I ... I can't recall.

BY THE COURT:

If you don't ... if you don't recall, that's fine.

AI can't recall.

If you can't recall it, that's fine. End of that.

BY THE ACCUSED:

QYes, we believe that you had meetings about somebody who threatened to kill and you just don't remember how many?

BY THE COURT:

Now you're cross-examining the witness. It's out of order.

BY THE ACCUSED:

I'm not examining, I'm just saying that we believe that.

BY THE COURT:

Now I think we'll stop for ten minutes.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE COURT TAKES THE BENCH

THE MEMBERS OF THE JURY ARE PRESENT

SRIKANTA SWAMY

(Under the same oath)

BY THE ACCUSED:

QSo you can recall absolutely nothing of this particular meeting?

AI cannot recall the meeting at all.

QAll right. Would this trigger your memory if on the day what what happening, the people were told that there is one guard in your office and there is one guard at Concave, does it trigger any memory?

A.No.

QNo, all right. Does this trigger your memory, that you informed people who were there that I allegedly told Rakheja that I'm going to kill Sankar?

AI don't remember anything of that nature.

QTo the best of your recollection, did Rakheja ever tell you that I told him that I was going to kill Sankar?

A.No.

QWell why did you lie at the meeting?

AI said I didn't ... I don't remember that I said anything of that nature, I said.

QThat was exactly my question. Why did you misinform people present at that meeting that I did?

ASorry, I'm saying I don't remember that I've said anything of that nature, I said.

BY THE COURT:

That's the answer. You're not permitted to ask the next question.

BY THE ACCUSED:

QYou were present during that testimony, weren't you? All right. Was the Gazette calling you and asking you that if I had threatened you?

AI don't remember, I mean there are newspaper people and they were trying to call me, yes.

QYou do remember?

AI said I don't remember.

QAh, you don't remember.

QWell try to ... to recollect. Did they or didn't they?

AThe Gazette had called, yes.

QOK, the Gazette called in 1991, November?

A1991, November? No, I was thinking of after August 24th. I don't remember anything at all, Gazette calling me in 1991.

QWell how ... how to inform witness that I'm talking on November 14th 1991 meeting, how to make it clear that this is what I'm talking about?

BY THE COURT:

Well if the witness doesn't remember, what would you like him to say?

BY THE ACCUSED:

No, I just want the witness to be informed that we are talking of November 14th 1991 meeting.

QAt that meeting, did you inform the people present there that someone from the Gazette called you and asked you if I ever threatened you?

AI don't remember anything of that conversation at all, anything that I've said that way, I don't remember.

QFine, now at the same meeting, do you recall Miss Horwood mentioned that Dr. Herman (sic) called her and asked her whether I'm banned from being on campus?

AI don't recall any of ... any such thing.

QDo you recall Hoa saying that "Let's try to find for him position somewhere else"?

AI don't recall Hoa saying that, but I ... he asked me whether mathematics department or somewhere you could get, you could transfer and I said you could go and ask any department if they ... if you wanted to transfer. I don't know whether Hoa said that or not, I don't know, I can't recall.

QAt the same meeting, do you recall Hoa saying that it would be good to know when someone might become violent?

AI do not recall at all.

QNow did it ever cross your mind at that time, if you were serious about security measures, that instead of playing Russian roulette, it would be nice to meet between faculty personnel committee and department personnel committee and sort out what they want to do, whether they have sufficient reason to do what they are doing and probably you wouldn't need all these meetings, security guards, money, time and everything be spent? Did it ever cross your mind that?

BY THE COURT:

You're cross-examining the witness now and you may not.

Whatever happened is whatever happened. That's what you're supposedly establishing.

BY THE ACCUSED:

Why ... why don't you let the crown to do their job instead of doing it for them?

BY THE COURT:

Because it's my responsibility to make sure as far as I can that the questions that are put are put according to the rules, are put legally and that's what I'm doing sometimes on this, I guarantee you that ...

BY THE ACCUSED:

Shouldn't ... shouldn't crown be for that? I think it is unfair to have two crowns and a single judge in this.

BY THE COURT:

I don't care whether you interpret me as being a crown. That's not what I am.

BY THE ACCUSED:

All right.

BY THE COURT:

You have your own interpretation of a number of things.

BY THE ACCUSED:

You'll see how good they are, how receptive these people are. You are remarkable with your humor.

BY THE COURT:

Pardon? What did you say?

BY THE ACCUSED:

I said that your humor is so met with receptive way (sic) with the people in the audience that it's remarkable.

BY THE COURT:

I will say what I feel I have to say.

BY THE ACCUSED:

Well I don't forbid you. I just commend you for your remarkable sense of humor.

BY THE COURT:

Well you just ask questions, then we'll get on far faster.

BY THE ACCUSED:

Yes. It would get much faster if the witness would not spend a lot of times, instead of answering just yes or no to majority of my questions.

OK, I will try to rephrase the question.

Q Were you seriously concerned about possibility of me being violent at that time?

A I personally am not a psychiatrist but we were concerned that is the reason why I conveyed it to the authorities who could take appropriate measures.

Q Well did you try to diffuse the situation in a more simple way, just to discuss with department personnel committee of their reasons?

BY THE COURT:

Look I told you, you were not to cross-examine the witness on what he did or what he didn't do. What he did are the facts that you've established. He's told you what he did and what he didn't do.

BY THE ACCUSED:

Well I'm ...

BY THE COURT:

So I want no more questions on what you think he should have done with the DPC. He has told you at length what transpired and the steps the matter went through.

BY THE ACCUSED:

All right.

QDo you recall also discussing at the meeting a letter of department personnel committee to Secretary General requesting that I be declared threat to the university and suspended?

AYour Honor, I don't know whether it was at that meeting, because I recall only two meetings but I do recall a letter that the DPC had written, clearly stating that they were concerned about Dr. Fabrikant's behavior, that he should be ... something to the extent that he should be suspended or at least, if there is not valid reason, he should be moved out of the Hall building and not into the Concave building because they were afraid of him.

QAll right, you ... you thought it was totally impossible if my office somewhere else (sic) that I couldn't come with gun and shoot somebody when my office is not there?

AI did not write the letter. The DPC wrote the letter.

QWould you please just answer my question, that was not who wrote the letter.

BY THE COURT:

The answer was ... the answer was excellent. He didn't write the letter. So presumably you have to address your question to whoever did.

BY THE ACCUSED:

QDid you discuss this letter at the meeting?

AOnly to the ... I don't remember whether the letter was read or not, only to the extent, I remember it was that a letter had been written expressing fear on the part of the DPC and that he should be either suspended or at least if not suspension, that there is not a valid reason, that he should be removed out of the Hall building and not into the Concave premises. That part of it was mentioned by Dr. Osman.

QAll right. What is the date of that letter? Do you recall the date of that letter?

AI don't recall the date of the letter. It was around the same period.

QDo you have a copy of it with you?

AI don't have a copy of the letter here.

QOK.

AIt must be in the file.

QTo save the time, would you believe me that it is November 7th?

AI said it is around that time. It is not a question of believing or not. I don't have a copy of the letter, period.

QAll right, assuming that it was November 7th, now was it discussed the same day the letter was written or it was discussed later on, so we would know? This would trigger your memory that probably you would remember the third meeting, would you?

AI don't know whether there ... whether there were three meetings, Your Honor. I'm saying this over and over again but this matter was discussed. If November 7th was when the letter was written, I ... I know that the rector talked to me and he asked me whether I thought that this matter was serious in the minds of ... for the DPC that they are writing this letter and there was ... whether the ... they wanted to find out whether it was an exagge-

ration or what to put it plainly and I thought that ... that it was important enough for the rector to talk to the DPC directly, (inaud.) told me and after having discussed that, I think he either wrote or he conveyed to Dr. Osman that he had asked Marin Habib (sic) to meet with Professor Osman on this issue.

QSo effectively you didn't answer. Can you explain a little bit ...

A No, therefore what I'm ... yes, I'm sorry, I did not complete. Therefore, I don't know, I said there were two meetings. Whether it was on November 8th and 13th or only 14th all these things were discussed, I cannot say that but this was brought to the attention that he had written a letter, that the DPC had brought it to the attention of the rector and therefore that they were serious in what they were expressing.

Q This is the answer to the question? Did you or didn't you respond to the question of Kenniff and he started again talking about two meetings. Is it all right with you? Are you going to do something about it.

A Sorry, I ...

BY THE ACCUSED:

My question was ... either he's not listening to my question or whatever it is, I don't think that this behavior ... for several days in a row, I'm asking something and he, hours on hours, continues saying something different and then you will reproach to me that I'm too long. I was hoping I will be finished today. I'm not even halfway.

BY THE COURT:

Well you better get going because you will be finished...

BY THE ACCUSED:

Well if you better tell the witness to give the answer.

BY THE COURT:

You will be finished ... you will be finished tomorrow afternoon at four thirty (16 h 30).

BY THE ACCUSED:

Well then ...

BY THE COURT:

Believe ... believe you me, you will be finished tomorrow afternoon at four thirty.

BY THE ACCUSED:

Then direct ... direct the witness, when I ask a question, did you or didn't you answer Kenniff ...

BY THE COURT:

Most of the times, the witness ...

BY THE ACCUSED:

... answer yes I did or no I didn't.

BY THE COURT:

Most of the times, the witness answers your questions and you will not dictate to the witness how to answer your questions.

BY THE ACCUSED:

Well you should dictate. I'm not dictating, you should do that.

BY THE COURT:

No, the witness will answer your questions as he feels he should. If I feel it's not being answered, I'll intervene.

BY THE ACCUSED:

Well if you're fair, you did ... would, but you are not.

This is the problem.

BY THE COURT:

I have intervened frequently.

BY THE ACCUSED:

Oh yes, you usually intervene at the end of the day to create the jury impression that you're fair judge.

BY THE COURT:

Oh, I see.

BY THE ACCUSED:

So it's almost end of the day, it's about time you do.

BY THE COURT:

Time I intervene, time to intervene, yes.

BY THE ACCUSED:

Yes, you could go home proud to think that you're remarkable judge.

BY THE COURT:

Now what was your question?

BY THE ACCUSED:

All right, my question was: did you or didn't you respond to Kenniff's question.

AYes.

QSo you ...

AYes I did and I said that it was of sufficient importance that he should talk to the people who have written the letter directly.

QWell, but you didn't tell him that yes, Fabrikant should be suspended or Fabrikant shouldn't be suspended? That was the question of Kenniff, was it?

ANo, he did not ask that. He said "Is this letter, the letter that they had written, in my opinion, whether it was something that they were making something big out of something which should not be" and I said no, they have got real fears and he should talk to the people who have written the letter, so that he could directly find out whether their concerns were real or imaginary.

QAll right, but did he ask you whether you have personal concerns of yours, did he?

AI don't remember, because I didn't write a letter to him saying that he should be suspended.

QWell this is funny. He remembers everything. As soon as I ask some specific question ...

BY THE COURT:

You're the one that is editorializing now.

BY THE ACCUSED:

Well I'm again applying to you for 9, article 9.

BY THE COURT:

Save your breath.

BY THE ACCUSED:

All right, I save.

BY THE COURT:

Continue.

BY THE ACCUSED:

QAll right, so did he or didn't he, I mean Kenniff asked you what facts do you have to express your concern?

AHe did not to the best of my memory at that time.

QOK, did he or didn't he tell you: "Oh Fabrikant, I know him, he threatened to kill me too"?

ANo, he didn't say anything of that nature.

QNow did you support the letter at that time?

AI did not support, I did not intervene, I ... it was a copy that was sent to me. It was a letter addressed to

the Secretary General who said it should be going to the rector and it was sent to the rector. The rector called me and asked me and I said it already and Mari Habib met Dr. Osman.

QThat was not my question. My question was: when you read the letter, in your mind, did you agree with the recommendation?

AIf I had agreed that you should be suspended?

QYes?

AI ... I would have made a recommendation at that time, only after having gone into the details. I did not write any such letter.

QAgain, he's evading question.

BY THE COURT:

He's not evading the question.

BY THE ACCUSED:

When ...

BY THE COURT:

You don't understand. He said "If I had thought so, I would have written a letter", so obviously the answer is no, I didn't so.

BY THE ACCUSED:

Well he's evading question.

BY THE COURT:

He's not evading the question. He's answering the question.

BY THE ACCUSED:

Well what is the problem to say no, I didn't.

BY THE COURT:

Well I don't know, perhaps that's the way your mind works. I had no difficulty understanding what he said.

BY THE ACCUSED:

(Inaudible)

BY THE COURT:

And I'm sure nobody else here did.

BY THE ACCUSED:

It's not the worst at all.

BY THE COURT:

So there's nothing wrong with his answer. The answer is fine.

BY THE ACCUSED:

The answer is not fine. He's evading question.

BY THE COURT:

That's your opinion, not mine.

BY THE ACCUSED:

QWhen... how often in your life did you see that kind of letter?

AI had not seen anything of that nature and I don't want to see any such thing of that nature.

QAll right, so when you saw that letter, did it cross your mind that it is about time to meet with members of DPC and discuss their reasons for recommending my termination?

AI was trying to keep the two things separate in terms of the termination which is for the faculty personnel committee. It is not the dean who decides of the termination. The faculty personnel committee, I wanted to keep that aside. No faculty personnel committee members even was told that any letter that was written by anybody. I was trying to keep that separate from what I had to do as

an administrative officer in order to make sure the higher authorities knew that there was enough concern by the department. That's why they were writing that letter. In their mind, it was serious. Whether it was serious or not is something that he should find out by directly talking. I think I'm making the two ... I'm making that very clear.

QHe again totally evade my question, but you mentioned that this letter was what, secret from the members of DPC. Did they sign it?

AI said FPC.

QOh, FPC.

AYes.

QAll right, wouldn't it ... since Herman called Miss Horwood, doesn't this mean that everybody in the university knew about existence of this letter? How come Dr. Herman knew that such a letter is there?

BY THE COURT:

There's no point asking him.

BY THE ACCUSED:

QDo you have any idea? Did you inform Dr. Herman yourself?

BY THE COURT:

He's not ... he's not here to put forward ideas or to speculate or not.

BY THE ACCUSED:

No, no, I'm not asking ideas. I'm asking specific question.

QDid you inform Dr. Herman yourself of existence of this letter?

ANo.

QNo. Did you inform anybody else of existence of this letter?

ANo.

QNo. Were you informed by Miss Horwood that Dr. Herman called her and asked her questions about this letter?

AI don't remember.

QHa ha, sure. Now do you recall the meeting between me, you and Mr. Relton because that was the next, was it?

AThe meeting when I handed you the DPC report.

QWell to be precise, you didn't hand me at all. You handed to me just the text, not the appendices, do you recall that?

AI don't recall.

QYou don't?

AI don't recall but if the appendices were not given, you would have asked and what I thought from the ... I was asked by the department personnel committee to give you the reasoned recommendation to you which was already in an envelope and to explain to you what was the ... the avenues that were open for you for ... at the FPC level and I don't remember whether it had or it had not and in fact, I had not seen the recommendation completely myself at that time. That was given to me to be given to you.

QWell taking into consideration all this seriousness of the matter, wouldn't it be a more grown-up behavior to discuss this matter with these people so you wouldn't have to be scared in the first place?

BY THE CROWN:

We're interested in what went on. We're not interested in what should have been or ...

BY THE COURT:
You're perfectly right.

BY THE CROWN:
And you've ruled many times on that.

BY THE COURT:
I've ruled on that over and over again this afternoon.

BY THE CROWN:
And he's coming back all the time.

BY THE COURT:
And we always come back to it.

BY THE ACCUSED:
All right, I will ...

BY THE COURT:
The question is out of order.

BY THE ACCUSED:
QFine. What transpired during that meeting? How did I react? Did I react normally? Did I react abnormally? What did you expect and what happened?

AYou were very calm.

QI was very calm. How about that! So if I was very calm, maybe that was the good time to ask me whether I made this hand gesture? Did you?

BY THE CROWN:
Again My Lord, if it was not asked, we're not interested in knowing whether it should have been asked or whether it was a good time to ask or anything.

BY THE COURT:
Objection maintained.

BY THE ACCUSED:
What objection maintained? I just asked him whether he did it or not, that's all.

BY THE CROWN:
That was not the question, My Lord. He said wasn't it ...

BY THE ACCUSED:
That was the question.

BY THE CROWN:
... wasn't it a good time to ask.

BY THE COURT:
Wouldn't it have been a good time. The objection is maintained.

BY THE ACCUSED:
Well OK, I will change the question.

QDid you or didn't you ask me this particular square question about this hand gesture?

AI did not.

QAt that meeting?

AI did not.

QWell could you explain why not?

BY THE COURT:
No, he's not required to explain why not. He didn't. Go on.

BY THE ACCUSED:
Could it be that he knew that this is a lie?

BY THE COURT:
Mr. Fabrikant, now you're arguing. Next question.

BY THE ACCUSED:
All right.

QSo what did you tell me, what I told you? Could you go into more detail. OK, I was calm, fine.

ATo the best of my ability, I ... what I remember is that

I gave you that and I told you that according to the collective agreement, you may make a rebuttal on the faculty personnel ... sorry, department personnel committee recommendation and ... and you were very calm. You stated that "I'll read it" or something to that effect and there wasn't that much conversation because you did not ... it was as if that there was not much point in talking to me, that kind of attitude. You were simply keeping silent, sitting there and not saying much. That's all that I remember and I gave you the article number, which I don't recall, what was available to you in the presence of Mr. Relton.

Q Well all right. Since witness doesn't remember, we need to refresh his memory. Luckily for the history, I have recorded this conversation. I would like to play it to him.

BY THE COURT:

You are not going to play that conversation to him.

BY THE ACCUSED:

Well meaning to refresh his memory. I have no other way to do that. He doesn't remember and we need to refresh his memory and I believe that such an important meeting, taking into consideration that they were so concerned on how I would behave, I believe it is very important for the jury to be present at that meeting because this tape would give them exactly what happened there and whether they had any reason to think that I might be violent.

BY THE COURT:

I think what I'll do is ...

BY THE ACCUSED:

I believe they should hear this tape.

BY THE COURT:

... let you go for ... for the day and I'll solve this particular problem in your absence and hopefully we'll be able to resume with .. with Mr. Swamy's testimony tomorrow morning at nine thirty.

BY THE ACCUSED:

Well I think this question has to be decided with jury. It's admissibility of evidence.

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

BY THE COURT:

Sit down, Dr. Swamy.

Now we have ... we're facing what? You're proposing to play another of your surreptitious conversations. Is this ... recordings, I should say. Is that what it is?

BY THE ACCUSED:

What is it surreptitious? What does it mean, surreptitious?

BY THE COURT:

Surreptitious means that you recorded it and nobody else knew it was being recorded. It's not necessarily pejorative. I'm just saying that's what it is. Is that what you are proposing?

BY THE ACCUSED:

Yes.

BY THE COURT:

OK. What do you propose to accomplish by this?

BY THE ACCUSED:

Well since it was extremely important meeting and since the whole concern, the whole meeting of ... look what we have here, we have a whole bunch of evidence: meeting of November 1st, then there was meeting of November 5th with secretaries and the secretaries expressed their concern and the whole bloody thing was about how I would react when I've been told that my contract is to be terminated and then again, we have meeting ... Oh, I was wrong, there was meeting November 7th, then there was meeting November 8th.

BY THE COURT:

So what?

BY THE ACCUSED:

Then there was meeting November 14th.

BY THE COURT:

So what? Thus at this point ...

BY THE ACCUSED:

Then all those ...

BY THE COURT:

At this point ...

BY THE ACCUSED:

Well one second, one second and all these meetings were just to ... to ... for the people who pretended to be scared while in fact, they were just, you know, doing some kind of psychiatric experiment on human beings because it is totally absurd to think that if people are scared for their lives and someone just ... just assume, let's us think like grown-ups should think.

If people think seriously that someone might become violent when he's told he's fired, first of all people might make sure that their decision is well founded, that their decision is necessary because you don't play just Russian roulette.

Now this witness testified that he didn't find it necessary to discuss the reasons. They preferred to have 1, 2, 3, 4, 5, six (6) meetings with various people to discuss all their concerns instead of doing one very simple thing, to say to each other: guys, let's discuss whether he should be fired in the first place because what we are scared of is how would he react when he's told he's fired so let's make sure that we are doing the right and fair thing first. Then when we are sure that person doesn't belong here, OK, let's fire him because we shouldn't get scared because we are doing the right thing but let us make sure that we are doing the right thing. Now they didn't do that.

BY THE COURT:

You know, you're like the itinerant juggler. You've got about six balls in the air at the one time. Unfortunately they've all fallen. What happened ...

BY THE ACCUSED:

I haven't finished yet.

BY THE COURT:

What happened was your premises are all wrong.

BY THE ACCUSED:

My premises of what?

BY THE COURT:

There was simply a recommendation which was the first stage, that your contract not be renewed. The dean has said it had a number of steps to go through, not the least of which was the one which he chaired which was the

faculty personnel committee and after that it had another step to go through. That was the vice-rector, academic. So you're wrong when you say that they had decided to fire you.

A recommendation from your department had been made that your contract not be renewed firstly. Secondly, where you were when all of this started was on the question of refreshing his memory as to a conversation with you. He has said "I remember participating in this conversation, I remember your attitude. You were quiet, you were calm. You said you would read it. You said very little else." He pointed out to you the clauses in the collective agreement that applied. What are you now talking about, about playing a tape? I mean you obviously want to play a tape that you recorded.

BY THE ACCUSED:

No.

BY THE COURT:

That's wonderful but ...

BY THE ACCUSED:

No, I'm not ...

BY THE COURT:

... what is the point in playing the tape? What is the tape going to ... how is the tape going to advance us?

BY THE ACCUSED:

Because I wasn't quiet at all. He's lying again.

I wasn't quiet at all. I was talking at least one third of the time, maybe more than one third because there were three of us there, so at least one third of the time, I was talking. I wasn't quiet at all. I wasn't absolutely behaving like the witness said that I practically didn't want to talk with him. This is total absurd. He's misleading the court so the court should know the truth, that's all and if he sincerely doesn't remember, even more than that, we need to play it to ... to be there and to see what happened.

BY THE COURT:

I'm not sure you have to play it. There may be a number of other things you can do. You may ask him if he ...

BY THE ACCUSED:

Well I don't have the transcript so there is no other way.

BY THE COURT:

Well that's your problem, if you don't have a transcript.

BY THE ACCUSED:

No, it's ...

BY THE CROWN:

If there's no transcript, there's no reason to discuss it, My Lord. That's the end of the discussion.

BY THE COURT:

If there's no transcripts, if there's no transcripts, I'm not proposing to carry the discussion one step further. So we'll adjourn until tomorrow morning, nine thirty.

BY THE ACCUSED:

Well I want to introduce it anyway.

BY THE COURT:

No.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

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

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">THE COURT TAKES THE BENCH

THE MEMBERS OF THE JURY ARE ALL PRESENT

PROOF OF THE DEFENCE (cont'd)

SRIKANTA SWAMY
Professor - electrical engineering
April 7th 1935

SWORN

BY MR. VALERY FABRIKANT - ACCUSED
REPRESENTING HIMSELF

While witness is still in the box, I would like to depo-
sit his cv if there are no objections.

BY MAITRE JEAN LECOURS
ATTORNEY FOR THE CROWN:

What is the relevance, My Lord?

BY THE HONORABLE JUDGE FRASER MARTIN, J.S.C.:

What is the pertinence of this cv?

BY THE ACCUSED:

All right, I will need it for my arguments to the jury.
There are important things from my point of view there
which I will need up in my argument to the jury.

BY THE COURT:

On what basis is ... is his cv or anything else impor-
tant to your argument to the jury?

BY THE ACCUSED:

Well on the basis that, I believe, jury might be inte-
rested to see that he just not only exploited me but he
... general pattern (sic) of publications is first of all
the sheer number of this, so obviously he didn't do it.

The subjects of those publications also clear (sic) that it is borrowed from here, from here, from here. He did not write a single paper which would be consistent with, you know, every normal scientist does some research which is logical continuation of results. One result is based on previous and the next is based on previous. In his case, it is just what he grabbed from somebody else. It is unrelated research stolen from here, from here, from this person, from this person, from this person.

I would also like to show that ... that so-called his book which was written also by Tolasiraman (sic) does not contain more than I believe thirteen (13) references to this ... about four hundred (400) publications.

Now it's clear to understand that if someone does research which is logical and consistent and he publishes a book, his publication would enter the book and if out of about four hundred, only eleven (11) are referred in the book, this means that they are just unrelated to the subject of book. (sic) They are unrelated between themselves. He does not refer in one work to another work. So I think that jury should know all that information.

BY THE COURT:

Neither ...

BY THE ACCUSED:

But I could not argue that unless it is in the proof. Is ... is my understanding correct?

BY THE COURT:

Your understanding is correct but neither his ... his publications not his cv are of any pertinence. So you may not produce his cv.

BY THE ACCUSED:

Well let me explain then the pertinence because I just explained what I'm going to argue. Now how it is related to the defence, would you like me to explain that?

BY THE COURT:

Listen, his cv is not pertinent and his cv will not be produced.

BY THE ACCUSED:

Well you don't allow me to relate it to defence?

BY THE COURT:

Go ahead then, relate it to the defence.

BY THE ACCUSED:

All right.

BY THE COURT:

If you can.

BY THE CROWN:

I think My Lord, you already ruled on the publications of other people that ...

BY THE COURT:

I generally did rule on the publications of other people.

BY THE CROWN:

So why should we waste our time listening to that.

BY THE COURT:

We'll take a moment to listen to it.

BY THE ACCUSED:

We're wasting time listening to the crown more than to me because I will be very short. I ...

BY THE COURT:

Is that a promise?

BY THE ACCUSED:

Oh yes.

BY THE COURT:

OK.

BY THE ACCUSED:

Just check the time, I will finish in one minute because the part of my defence will be based on defence of necessity and self-defence and I will need to show that I was dealing with bandits of world-class and I had reasons to be concerned for my life at that time and the grandiose of their activity (sic) in terms of publications and money they got from the government were sufficient to convince me that my concern is reasonable.

BY THE COURT:

OK, how do I answer that.

BY THE ACCUSED:

Did I make it in one minute.

BY THE COURT:

Yes. I have no comment to make, at least with the jury present, on the defence of necessity or the question of self-defence. That will be canvassed in due course. I have already given you a number of indications in relation to the question of self-defence.

If that is your purpose ...

BY THE ACCUSED:

But what about necessity?

BY THE COURT:

If that is your purpose ... necessity? I cannot, by any stretch of the imagination of a ... on a fair reading of Perka (sic) see any basis at the moment ...

BY THE ACCUSED:

Well you don't seem to ...

BY THE COURT:

... for the defence of necessity.

BY THE ACCUSED:

You don't seem to be listening to the words I'm presenting.

BY THE COURT:

So as far as I'm concerned, as far as I'm concerned, I will rule now. You will not cover this ground with ... with Dr. Swamy and his cv and his publications are of no pertinence and they will not be admitted.

BY THE ACCUSED:

Well you didn't rule on ... on necessity.

BY THE COURT:

I'm not ruling on necessity at the moment.

BY THE ACCUSED:

No, I mean to necessity, it is pertinent to show that I made ...

BY THE COURT:

Well fine, OK, then ladies and gentlemen, if I have to rule on necessity, I'll have to ask you to ...

BY THE ACCUSED:

OK, OK, OK. Well ...

BY THE COURT:

... to withdraw.

BY THE ACCUSED:

We don't have that much time because I want to finish with him before he leaves. I have still a lot of questions.

BY THE COURT:

Well you may still have a lot of questions but I mean, if you wish to ... if you wish to make something of the

question of necessity, then we'll make it right now and

you ... and you will tell me in what possible context.

BY THE ACCUSED:

Well I want to say it in presence of jury.

BY THE COURT:

No, no, no.

BY THE ACCUSED:

I see no reason why you're not ...

BY THE COURT:

You're not going to burden the jury with ... with your arguments in the defence of necessity if the defence of necessity isn't put to the jury. So you have your choice you can go ahead and you can ... you can question him but as far as I'm concerned, I'm satisfied that I'm not going to permit you to produce his cv and I'm not going to ...

BY THE ACCUSED:

Well let us raise this question at the end.

BY THE COURT:

No, let's not raise the question at the end. You said the witness ...

BY THE ACCUSED:

Because

BY THE COURT:

... is in the box and you want to produce his cv. I'm not going to permit you to produce his cv.

BY THE ACCUSED:

This is not the first time you're abusing the procedure.

If you imagine that I have defence of necessity ...

BY THE COURT:

Have you any ... have you any further ... pardon?

BY THE ACCUSED:

If you imagine that I do have defence of necessity, then
it is pertinent.

BY THE COURT:

Then let's sort that out right now. I wonder if you'd
withdraw for the next few minutes.

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

BY THE COURT:

Now how could the defence of necessity ever possibly ap-
ply in your case?

BY THE ACCUSED:

Very simple. Defence of necessity is applicable when
someone commits a crime which is less than harm which he
believes will be done to him, correct?

BY THE COURT:

No, wrong.

BY THE ACCUSED:

OK, what is the definition of necessity?

BY THE COURT:

I'm not going to articulate the defence of necessity for
you.

BY THE ACCUSED:

Anyway, this is what I have, OK, I had it somewhere. I
mean you have it open the book and read the necessity.

BY THE COURT:

You open the book and you read it.

BY THE ACCUSED:

Well I don't have the book. This is a problem. I asked
you to afford me to ... to buy the book. You refused. Do
you remember that?

BY THE COURT:

You can buy the book yourself.

BY THE ACCUSED:

I cannot.

BY THE COURT:

You've chosen to defend yourself, you can buy the book.

BY THE ACCUSED:

Well I cannot. Well ...

BY THE COURT:

There's no reason why the citizens at large should buy
you law books.

BY THE ACCUSED:

You gave me ... you gave me a copy of necessity. From
what book it was?

BY MAITRE LOUIS BELLEAU

AMICUS CURIAE

I'm looking for it right now.

BY THE ACCUSED:

Well you don't remember what you gave me?

BY MAITRE BELLEAU:

Over five (5) months, I've lost track of some of the
items, My Lord.

BY THE ACCUSED:

Well necessity was just recently, just three (3) days ago maybe, four (4) days ago.

BY THE CROWN:

Well that's ... you quoted yourself Perka. It's ... there is a summary under section 8. If we read that, it's totally and absolutely farfetched. If you allow me:

"The basic criterion of the excuse of necessity is the moral involuntariness of the penalized act. Defence of necessity is available only in circumstances of imminent risk, where the action was taken to avoid direct and immediate peril.

The act must be inevitable, unavoidable and afford no reasonable opportunity for an alternative course of action that doesn't involve a breach of the law.

The harm inflicted must be less than the harm sought to be avoided."

And so on and so forth.

BY THE ACCUSED:

Well this is what I said.

BY THE CROWN:

It's totally farfetched, My Lord.

BY THE ACCUSED:

Well isn't it this (sic) what I said? Didn't you repeat exactly what I said?

BY THE COURT:

No.

BY THE ACCUSED:

He did not? What is the difference? When someone commits a crime to avoid a greater harm to himself and when the harm committed is less than the harm he expected.

BY THE COURT:

Oh come on now! You take ... it's absolute nonsense. You take a gun on the 24th and shoot people.

BY THE ACCUSED:

This is not what I'm talking about. I didn't plan to kill anyone. This is exactly what I'm talking about.

BY THE COURT:

Well that's what you would have to be ... need to show.

BY THE ACCUSED:

You don't understand what I'm talking about. I need to explain to the jury ...

BY THE COURT:

Well you're not going to explain to the jury something that doesn't apply and won't be applied. You're not going to be allowed to do that.

BY THE ACCUSED:

No, I need to explain to the jury ...

BY THE COURT:

You talk about necessity and self-defence, I've already told you: self-defence isn't working.

BY THE ACCUSED:

No, self-defence ...

BY THE COURT:

And my ruling is not being extended one millimeter.

BY THE ACCUSED:

Self-defence, whatever you do, it's up to you but neces-

sity

BY THE CROWN:
It's been ruled out and ...

BY THE COURT:
Whatever I do is up to me and whatever I rule controls you. You will not argue that before the jury and if you do, you'll go through that door.

BY THE ACCUSED:
What do you mean?

BY THE CROWN:
My Lord, I think ... I think self-defence ...

BY THE COURT:
Because I won't permit you to argue a defence that is not an admissible defence before the jury and you better get that through your head.

BY THE ACCUSED:
Well I argue what I feel necessary to argue.

BY THE COURT:
Oh no, you don't.

BY THE ACCUSED:
And your duty, you may say them (sic) after that: disregard it. There is no way you can ...

BY THE COURT:
Not at all, no, no, no.

BY THE ACCUSED:
... you're going to shut me up.

BY THE COURT:
You have ... if that's your appreciation of it, then... then your appreciation is wrong.

BY THE ACCUSED:
Well OK.

BY THE COURT:
It was chapter 21, 3000.

BY THE CROWN:
My Lord, self-defence, it's already ruled. We shouldn't waste one second talking about self-defence. You already made your point and made your ruling on that.

BY THE COURT:
I'm not proposing to go back on my ruling.

BY THE CROWN:
And we'll not reopen this debate on self-defence. Now we're talking about necessity. Necessity is totally far-fetched. Even in my mind, provocation is farfetched.

BY THE COURT:
I appreciate that.

BY THE ACCUSED:
I'm not talking ...

BY THE CROWN:
So necessity is ...

BY THE COURT:
I appreciate that.

BY THE ACCUSED:
Look ...

BY THE CROWN:
... it's way, a thousand miles without ... compared to provocation.

BY THE ACCUSED:
Why is crown presented (sic) to be not understanding. I'm not talking about necessity as justifying of murder. (sic) I'm talking necessity of the situation in which I

was on August 24th and I had no legal recourse. This is what I'm talking about and I need to establish it to the jury, with the jury, that I did all I could to get legal resolution of the whole thing with every instance possible and when they threatened me with jail and also a murder in jail, then I thought that there is no way I'm going allow to do that. (sic)

BY THE COURT:

That ... that is absolutely farfetched.

BY THE ACCUSED:

What do you mean farfetched?

BY THE COURT:

I'm telling you it's farfetched. When is the defence of necessity available? Now don't ... don't adopt that attitude. You're not going to reinvent the wheel here. The criminal law is well established and you're going to have to fit yourself into what is permitted in the circumstances in which you find yourself. Briefly put:

"The defence of necessity may be available in an urgent situation of clear and imminent peril."

BY THE ACCUSED:

That's exactly what it was on 24th.

BY THE COURT:

"When compliance with the law is demonstrably impossible."

BY THE ACCUSED:

Exactly, this is what it was on 24th.

BY THE COURT:

"The defence is not available when the evil averted was a lesser evil than the offence committed to avert it."

BY THE ACCUSED:

Exactly.

BY THE COURT:

"Or where the evil could have been averted by anything short of the commission of that offence."

BY THE ACCUSED:

OK, so ...

BY THE COURT:

Now how, how in your mind you can possibly say that taking a gun and shooting four (4) people ...

BY THE ACCUSED:

I didn't take a gun to shoot anyone. No one in his right mind would plan to kill four secondary people. I didn't ... everyone knows that I didn't even try to enter his office. So you realize yourself, do not pretend that you do not understand. Crown didn't present a bit of proof that it was a premeditated murder. They didn't present a single inch of that.

BY THE COURT:

That's ... that's not true at all.

BY THE ACCUSED:
OK, what was the proof that it was premeditated?
BY THE COURT:
Well for starters ...
BY THE ACCUSED:
There was a proof here for ...
BY THE COURT:
For starters, there were some guns there.
BY THE ACCUSED:
So what?
BY THE COURT:
For seconds, there were ... there were some ammunition
there.
BY THE ACCUSED:
One cannot get a gun just ... just to try to scare some-
body?
BY THE COURT:
Well that's something else.
BY THE CROWN:
That's another debate, My Lord.
BY THE COURT:
Pardon?
BY THE ACCUSED:
All right.
BY THE CROWN:
That's another debate. I will have occasion to plead on
the first-degree murder.
BY THE COURT:
Oh yes.
BY THE CROWN:
And Mr. Fabrikant will have the occasion to refute them.
BY THE ACCUSED:
All right, so far what we have ...
BY THE COURT:
But I'm not ... I'm not going to permit into this proof,
that sort of proof bearing on the defence of necessity
when the defence of necessity has no application by any
stretch of the imagination to this case. That's why I
sent the jury out at this point.
BY THE ACCUSED:
Now look, how many times do ...
BY THE CROWN:
I agree, I agree with you. I think we're wasting time.
Necessity, it's so obvious that it doesn't apply.
BY THE ACCUSED:
How ...
BY THE COURT:
Yes.
BY THE ACCUSED:
How many times do I have to say that necessity, I do not
apply it to murder. I apply it to the situation in which
I was.
BY THE COURT:
Well if you don't ...
BY THE ACCUSED:
That the guns were there, this is what I'm trying to
justify.
BY THE COURT:
Well if you don't ... if you don't apply the defence of
necessity to murder ...
BY THE ACCUSED:

No.

BY THE COURT:

... the defence of necessity is no answer then to a charge of murder. That's what you're being asked to answer, it's a charge of murder.

You're not being asked to somehow or other weave the question of necessity into some sort of justification for having guns or having ammunition or ... or whatever.

BY THE ACCUSED:

Because ... well ...

BY THE COURT:

That's ... that's a side issue. That's ... you're sidetracking and that's not ...

BY THE ACCUSED:

I'm not sidetracking.

BY THE COURT:

Oh yes you are.

BY THE ACCUSED:

All right, anyway, let me explain you last time and please do not pretend that you do not understand that what the real crime what was committed there, that I was with guns there, that was the only crime which was contemplated and against this crime, I have defence of necessity. Now is that clear now, what I'm talking about?

BY THE COURT:

No.

BY THE ACCUSED:

It's not?

BY THE COURT:

You're not charged with having guns.

BY THE ACCUSED:

I know that I'm not charged with that.

BY THE COURT:

You're charged with murder.

BY THE ACCUSED:

I know that.

BY THE COURT:

And therefore if your ... the defence of necessity will not ... will not have any application to the charge of murder.

BY THE ACCUSED:

Well my logic is very simple.

BY THE COURT:

That you have guns there is ... is a part of another argument that you're trying to make, that you didn't intend to kill anybody. That's fine. You can make the argument that you didn't intend to kill anybody.

BY THE ACCUSED:

Well, but ... but then since I'm admitting to another crime of having guns there and having intent to threaten somebody, against this crime, I have defence of necessity.

BY THE COURT:

No, you don't, no, you don't.

BY THE ACCUSED:

What do you mean I don't.

BY THE COURT:

Well you don't. It makes no sense in the context of this case and it makes no sense in the context of ... of the offences with which you're charged. So ...

BY THE ACCUSED:

The offences which I'm charged, I agree, you cannot defend murder by necessity.

BY THE COURT:

That's right.

BY THE ACCUSED:

So do not pretend that I'm that idiot. I'm not.

BY THE COURT:

And you can't ... and you can't defend the other three (3) that you're charged with by necessity either.

BY THE ACCUSED:

No.

BY THE COURT:

There are two counts of sequestration and one of attempted murder.

BY THE ACCUSED:

This is not what I'm talking about. You ... you really do not understand what I'm talking about?

BY THE COURT:

Listen...

BY THE ACCUSED:

I need to justify ...

BY THE COURT:

You are not going to make a defence of necessity to some phantom charge which is not on the indictment.

BY THE ACCUSED:

Well this is the only real charge which should be there. This is my contention.

BY THE COURT:

That's not the charge that's there and that's ...

BY THE ACCUSED:

I know.

BY THE COURT:

So that's not a valid contention.

BY THE ACCUSED:

Well ...

BY THE COURT:

That's not a valid contention. That's absolute nonsense.

BY THE ACCUSED:

Well because this is the only thing what really happened.

BY THE COURT:

Absolute nonsense.

BY THE ACCUSED:

All right, now you're talking always about air of reality. Anyone in his right mind, when he's offered three-year's salary and there was evidence of that here, right, anyone in his right mind who would plan to shoot somebody, first of all to shoot secondary people and second, at least if you plan to shoot somebody, get the money first, right?

BY THE COURT:

I have absolutely no idea how your mind works.

BY THE ACCUSED:

So it's ... you're talking about air of reality. Now go real. You have this evidence there. Who in his right mind would plan to do what I did?

BY THE COURT:

I have no idea.

BY THE ACCUSED:

It's absurd. Isn't it absurd?

BY THE COURT:

I don't know whether it's absurd or not. I'm ... I'm

facing the situation ...
BY THE ACCUSED:
You're talking about air of reality.
BY THE COURT:
Yes, I'm talking about ...
BY THE ACCUSED:
OK, get real.
BY THE COURT:
I'm talking about the defence ...
BY THE ACCUSED:
Does it make any sense?
BY THE COURT:
I'm talking about the defence having an air of reality
and I'll limit my words to saying that I've already ruled
out self-defence. It doesn't apply. I've already ... I'm
now ruling out the question of necessity. That doesn't
apply.
Whether, whether provocation, at the end of the day or
whenever this ends, will have an air of reality to it
sufficient to be given to the jury is an open question.
That's the only reason you're getting, that's the only
reason we're sitting here, for weeks on end, listening to
all of these little points which you say, which you say
or which you said at one point caused you to explode.
We'll see. We'll see if it has an air of reality in the
end.
That is the only reason. Otherwise I wouldn't be wasting
my time listening to all of this, nor would the jury.
BY THE ACCUSED:
Anyway ...
BY THE COURT:
So the ruling is very clear. The cv will not be permitted
into the record and the whole question of who he collabo-
rated with, who ... who Dr. Swamy collaborated with on
papers may be very interesting to those wishing to look
into that, but it's of absolutely no interest to us in
the context of this case. The jury please.
So you will proceed with ... hopefully with dispatch with
your examination of Dr. Swamy so that he too can get on
with his life.
BY THE ACCUSED:
I'm as dispatched as I can. If the crown doesn't inter-
rupt me, I will be the most dispatched.
BY THE COURT:
The crown will do what the crown thinks fit.
BY THE ACCUSED:
Well I mean both crowns.
BY THE COURT:
Everyone has their job to perform.

THE MEMBERS OF THE JURY ARE PRESENT

SRIKANTA SWAMY
(Under the same oath)

BY THE ACCUSED:
OK, we finished on your ... your action to Osman that you
do not permit me to accept scientific exchange award from
National Research Council of France. Do you have the ...
BY THE COURT:
I don't think that was quite what the witness said. He

said that he was not prepared to accept that you go during the university teaching year. He was prepared to see you accommodated on another ... on another basis?

BY THE ACCUSED:

Well that was just detail of that, that he ...

BY THE COURT:

Yes, yes, but sometimes it's a good idea to remember the detail.

BY THE ACCUSED:

OK, let's investigate this detail.

BY THE COURT:

When you're making ... when you're summing up what the witness said.

BY THE ACCUSED:

All right, now we'll investigate this detail.

BY THE COURT:

Well we shan't investigate. You will put your questions.

BY THE ACCUSED:

QAll right, so is there university teaching in summer?

AThere is teaching in summer for a certain number of courses which the department made per course.

QAll right, how many sessions are in summer?

ATwo (2) sessions.

QTwo (2) sessions in summer, so one can teach during summer the whole year load of teaching, right?

AThat's not correct. We do not run a trisemester system like Waterloo. People who teach during the summer time get extra payment and it's on rare occasions, we allow people to teach in the summer a load if... if the chair and the dean cannot get anybody else to teach, then we might have another faculty member to teach that course during the summertime and they will have one course less during the wintertime or the falltime.

QAll right, so it can be replaced, can it?

AIt can be replaced only when there is no part-time member that we can get during the summertime. We want full-time faculty member as far as possible to spend the summer-time on either research or on going to industry, to work in industry and bring that back to the classroom for the benefit of the students.

QOK, now what would be wrong, how university would suffer if I assigned teaching duties in summer instead of the fall term and in fall term, I would allow (sic) to go to industry and bring all the benefits you mentioned here, how university would suffer on that?

AIt is not a question if anyone would be suffering. I'm not suffering. During the fall and winter, we want the full-time people to teach the courses to our undergraduate students.

QAnd what ...

AAnd that is the reason why during fall and winter, people will go on ... will teach and will go on summertime for these things or if they go on leave without pay, we can hire another full-time, a limited term appointee to teach those courses. That's why I even stated that if you wanted to go leave without pay, you could do so.

QAll right. Who is being taught during summer? Not students? Not the same students are being taught during summer?

BY THE CROWN:

This is arguing with the witness, My Lord. I think the subject has been covered.

BY THE ACCUSED:

The subject has not been covered.

BY THE COURT:

The subject is not going to be covered any further and I'll tell you why the subject is going to be covered any further. You have put in evidence that you received an offer from France and Mr. Swamy has ... has given you the basis of the decision that was made. Now what you're trying to do is question whether it was a good decision, a bad decision, an indifferent decision, a judicious decision or an injudicious decision. We couldn't care less so move on to something else.

BY THE ACCUSED:

Well if ... if I'm trying to show that this was an insult, then I need to show the details, otherwise how could I possibly argue that it indeed was an insult. I'm not presenting this for the sake of presenting it.

BY THE COURT:

I have absolutely no idea the way you perceived it. The bare facts are there and he told you what his decision was and he told you why his decision was there. We're not going to sit here and listen to him being effectively cross-examined on what he might have decided and what might have been the consequences if he'd made another decision. So would you move on to something else now.

BY THE ACCUSED:

Well if you just have in mind that if he made another decision ...

BY THE COURT:

This is the first time of asking. Three (3) strikes and you're out.

BY THE ACCUSED:

All right.

QDid you ... OK, I would like those documents to be deposited here. I believe you have a message from Dr. Mag, (sic) that I've been awarded that because I don't have those documents. Do you have it in your file?

AThe document was supplied during the time ... I went through the whole thing yesterday night. There is a document submitted during the re-appointment time as an exhibit by the department personnel committee and a letter written by Prof. Osman to Mr. Fabrikant along with a letter that has been ... that Dr. Fabrikant had given to Osman with no copy to me.

QWell do you have the text which says that I've been awarded "Poste Rouge" award? Do you have that letter? It must be in my response to faculty personnel committee. AYes, there is a letter which he has submitted during the ... the faculty personnel committee when he came and that letter is here.

QOK, what does it read, this letter? Is it ... does it say about "Poste Rouge" or you have another letter which does not say it?

AI have a letter that he has submitted, My Lord, and that's what is here:

"Dear Dr. Fabrikant,
An award for you a "Poste Rouge" at CNR ...
CNRS for 1991 suggesting we could work together

on the transition (inaudible) and contact mechanics.
I wait for the answer. Thank you for (inaudible). Sincerely"

And there's no date on that. Then there is another one, there is something written, it's not very clear. It's in handwriting which has been xeroxed.

"The CN ...

QThe CRNS.

A

"... has awarded you a "Poste rouge", you ... for four (4) months, during September to December 1991. You will receive soon a former ... a formal invitation directly from CNRS."

QAll right, so this is what I want to be deposited.

BY THE COURT:

I wonder if you'd take it out of your file.

AYes.

And file it.

BY THE ACCUSED:

May I continue?

BY THE COURT:

Well let him get his file back together again. OK, go ahead.

BY THE ACCUSED:

QWhen Prof. McQuinn received Gumbalt (sic) award last year of a hundred thousand marks in Germany, was he allowed to accept the award during the same time, winter, fall?

AHe was on leave without pay.

QWithout pay?

AYes.

QWhat about information that he was with pay?

AAAs far as I can recall, I do not think so.

QYes. Can we produce these documents that he was without pay because I know that he left with pay.

BY THE COURT:

You are trying to contradict the witness. You've asked the witness a question. The witness has given you his answer. That's the end of it. The witness says "I believe he was on leave without pay", there you are.

BY THE ACCUSED:

Yes, you believe that!

QDo you ... do you know that, when person goes to another country for four (4) or six (6) months, he has to either live in hotel or to rent a furnished apartment which much more expensive (sic) than regular apartment and he still has family in Canada so he has to pay double expense and this has to be somehow compensated?

BY THE CROWN:

This is arguing, My Lord.

BY THE COURT:

Yes, it is.

BY THE ACCUSED:

Do you know that?

BY THE COURT:

If that's an objection, it's maintained.

BY THE ACCUSED:

QAll right. Do you recall, during one of the conversations I told you that if you wish to fire me, you have to do it legally? I don't mind to be fired but you have to have good reasons for that and if you do it illegally ... do you remember that?

AI don't remember.

QMaybe this would trigger your memory, if I finish the phrase that I used then, that I consider it as attempted murder? Do you remember that now?

AI don't remember.

QYou don't. This kind of phrase, I believe, you should remember.

BY THE COURT:

The witness has answered you. He said he doesn't remember.

BY THE ACCUSED:

He does.

QDo you recall that in December of 1990, I got a sick leave?

AYes, there was a letter, there's a letter in the file that you were on sick leave.

QDid you understand why I got this sick leave?

AI do not know.

QHow did I look at that time? Did I look like I was ill?

BY THE COURT:

I rather gather that Dr. Swamy is a mathematician and an engineer. I didn't understand that he was a physician.

BY THE ACCUSED:

Oh no, he doesn't have to be physician. They tortured me to such an extent that I was completely debilitated by that time. This is why and when I came to doctor, he just gave me three (3) weeks, like that.

BY THE COURT:

Now you're ... now you're testifying.

BY THE ACCUSED:

That's how sick I was ...

BY THE COURT:

Now you're testifying.

BY THE ACCUSED:

... looking. I'm not testifying, I'm explaining my question. So one doesn't have to be physician to see that person is tortured to ... to the end and they saw it and they enjoyed it definitely.

BY THE COURT:

You're testifying again.

BY THE ACCUSED:

I'm explaining my question. I'm not testifying. Don't object, I will not explain it.

QSo my question was: did I look ill at that time?

AI really don't know, My Lord. I ... there are so many people whom I see and nobody asks whether they look sick or not. I'm sorry, I cannot answer that question. Sometimes they're in a mood there, even if they're are sick, they can look ... look like sick (sic) so I can't answer that question.

QWell all right. Now could you tell the story of bodyguards in your office. How did it come that bodyguard appeared in your office?

AIt was not bodyguard. They were security guards.

QAll right, anyway, how did they appear? Did you ask for

... for the guard or what?

AI did not ask for the guards.

QOK, how did it happen?

AThis was in the year 1991, around November, December. It was after a meeting of the so-called intervention team where the department personnel committee had talked to me as well as Dr. Catherine McKenzie. They were quite concerned about your behavior and there was impending thing of the department personnel committee making its recommendation to the faculty personnel committee. They had no idea how you might react so they brought it to my attention as well as Dr. Catherine McKenzie's attention and there was a meeting of the so-called intervention team. I think in fact it was on the same day as the senate meeting, a preliminary meeting what to do about it and I left for the senate meeting around two o'clock (14 h 00). I was late for the senate meeting. That was the same senate meeting where you were present and after that incident and also the incident that you were supposed to have ... you had arranged to have ... you had eavesdropping (sic) on the discussion that was going on at the department personnel committee on your re-appointment. Because of these two as well as the discussion that Catherine McKenzie had with you during the 1989 period and with Brendon Haines during the 1989 period, all those things combined, enough (sic) to force Catherine McKenzie to think that something ought to be done and she called the intervention committee meeting a second time after the senate incident and at that time, she said that she was going to take appropriate measures to ... from the point of view of the security.

It was at that time a security guard was posted outside of my office, I think as well as at Concave Centre and there are somebody going around the ninth floor, (inaudible).

QLet's go a little bit in more detail. You're talking first about November 1st meeting, correct? A meeting on November 1st 1991?

AA meeting of what?

QWell intervention?

AI don't remember the exact date. I said the ... we had a preliminary meeting when the DPC was ... met. It was ... it was a meeting and then it wasn't ... I don't know the date. It was on the same day as the senate meeting. That much, I remember. I don't know whether it was a November meeting or what but a senate meeting and that I went to the senate meeting late. That's all I remember.

QAll right. So it was November 1st. Could you describe in more detail first of all how did you learn about meeting? Who called you to that meeting? How it was explained to you, need for the meeting (sic)? Could you go in more detail of that?

AYes. I had brought to the attention of Catherine McKenzie that the department was concerned and Dr. Osman had done the same thing, that he was quite concerned and the department personnel committee was very concerned about the meeting ... sorry, about the reaction that you might have once the department personnel committee made its recommendation. So that's the reason why a preliminary meeting was called to find out if there was a need for any extra security or what action should be taken.

QWell all right, so before you were concerned, there must be some interaction between you and Osman?

AYes, Osman did mention to me that he was concerned and that is ...

QSo ...

A... the reason why I called Catherine McKenzie.

QWell so describe in detail how it happened? So Osman came to you, you came to Osman. How it happened?

AOsman came to me.

QYes?

AAnd he told me that he was concerned of your reaction once the department personnel committee made its recommendation.

QWas it the first time that Osman told you that he's concerned or before that, he told you too?

AWell I ... I already said that yesterday, some ... whether it was at that time or in 1990, 1989, I don't know. He had told me that you had mentioned to him in his office that you would settle in an American way and when you were asked what do you mean by that, you shrugged with the shoulders and something to the effect, he also told me that he told you "You're watching too many American movies" or something of that nature.

QOK, so did you ask when it happened and in what circumstances and what matter I was going to settle?

AI might have asked, but I don't remember.

QHow many of that kind of phrase do you encountered (sic) in your life?

AI don't think Dr. Osman really at that time thought it was all that serious, otherwise he would not have told you not to ... that you're watching too many American movies but I think it's a question of one by one adding up and that made him concerned and he brought it to my attention and it was my responsibility at that time, if there was nothing, then ... then no action would have been taken but I couldn't have kept quiet after it was brought to my attention, that the DPC was concerned and so I had to bring it to the attention of the person in charge of security, that is Catherine McKenzie.

QSo was it before the incident in the department that Osman came to you or it was after the incident in the department?

AI don't remember exactly, My Lord.

QWell try ... try to trigger your memory with very simple thing. When Osman came to you, did he tell you "We got Fabrikant his job" or he didn't tell you that? If he came to you and said that, then it means it was after. If he didn't say it, then it was before. How about that?

AIt's not that simple. When there is a lot of things that you hear from different people and you also read afterwards, you don't really recall what was told at that particular instant of time and by whom. It's very difficult for me to synthesize and tell that this was the only part that was told by somebody at that time. I cannot.

QWell do you at least recall the story of eavesdropping? I think it's also kind of unusual story.

AYes, that I remember.

QWho told you that story first?

ADr. Osman came and told me.

QAll right, so here we are. Maybe this will trigger your memory. So he came to you and what did he say?

At that they were having a department personnel committee meeting in the night, around eleven thirty (23 h 30) or eleven forty-five (23 h 45), that you were found to be standing right near the door and then asked "What are you doing here?" You said that "I'm seeing the old pictures" and he told me that at eleven thirty in the night, to be seeing the pictures of the students who have graduated some years ago which has ... those pictures have been hanging there for a long time, looked rather ... not a plausible explanation and that he asked you to wait there so that he could call the security people to inform them that you were there and that you didn't wait there and that you left and I don't exactly recall the details but I think one or two of them, I don't know whether it was Osman and Sui Lin (sic) but two people (2) went to ... to make you stop and that you didn't, etc. He came and told me that and I stated that, clearly at that time, that should also be brought to the attention of the associate vice-rector, Catherine McKenzie.

QOK. Was I near the door or I was pretty far from the door? How was it told to you?

BY THE COURT:

QWere you at the meeting? You were not at the meeting?

BY THE ACCUSED:

No, I asked him how ...

AI was not at the meeting. I was not even in my office.

BY THE ACCUSED:

... how he was told.

BY THE COURT:

Never mind how he was told, that's hearsay.

BY THE ACCUSED:

Well I'm not establishing the fact. I'm establishing ...

BY THE COURT:

You may not ask that question. Go on to something else.

BY THE ACCUSED:

I'm just asking to find out whether he had any reasonable ground to call McKenzie, that's all.

BY THE COURT:

He ... he has told you why he called McKenzie, where you were standing, whether you were twenty-five (25) centimeters from the door or four (4) meters makes no difference. He has told you why. Where ... to have him say where you were standing will simply involve in relating something that was told to him. So we won't ... we won't get into it.

BY THE ACCUSED:

Well it's important how it was told to him.

BY THE COURT:

It's not important how it was told to him. Move on.

BY THE ACCUSED:

Because I need to find out about his actions. Therefore ...

BY THE COURT:

Move on. Ask him about his actions.

BY THE ACCUSED:

Well, but there is no way ask for a action (sic) unless we know what was his knowledge at that time.

BY THE COURT:

Ask him about his actions.

BY THE ACCUSED:

But before that I need to establish what was his knowledge.

BY THE COURT:

We have heard about this incident again and again and again. Ask him about his actions.

BY THE ACCUSED:

Well I don't know what he knew. We heard, yes, but what he knew, I don't ...

BY THE COURT:

Ask him about his actions. Never mind asking him what he was told.

BY THE ACCUSED:

I would like you to schedule, I would like to present a recusation motion because I have so much new material of your lawless behavior that I can present another motion of recusation.

BY THE COURT:

I'm not prepared to entertain a recusation motion. I refuse to entertain a recusation motion. Now continue with your cross-examination.

BY THE ACCUSED:

Well you have no right to refuse it.

BY THE COURT:

Then tell that to someone else. You continue with your cross-examination.

BY THE ACCUSED:

All right.

BY THE CROWN:

With his examination, My Lord.

BY THE COURT:

Excuse me, did I say ... did I say cross-examination? A slip of the tongue, your examination.

BY THE CROWN:

Indeed, you were right though.

BY THE ACCUSED:

Well this is how it was intended. I think it was rehearsed before, this spectacle.

BY THE COURT:

Pardon?

BY THE ACCUSED:

Well I think it was rehearsed before.

BY THE COURT:

Put your questions to ...

BY THE ACCUSED:

It is definitely kind of very nicely done, to act it.

BY THE CROWN:

Nice rehearsal, wasn't it?

BY THE ACCUSED:

QSo what was the reason for concern? Did I behave in any threatening way to the best of your knowledge during that incident?

AIt was not a question of threatening behavior. It was my responsibility as the dean and if I was going to err, I was going to err on taking an action. It was my responsibility as the dean when the chair of the department comes to me and says that you're eavesdropping at eleven thirty in the night and looking at the photographs that have been there for years there of graduates or students who have graduated, that was enough reason for me, because of what had happened in 1989 from Brendon Haines,

what I've heard, there are sufficient reasons for me to at least let Catherine McKenzie know and also to tell Dr. Osman to go and talk to Catherine McKenzie himself directly.

QAll right, you also mentioned some numerous events. What numerous events you had in mind which made you be (sic) concerned?

AWhat ... the incident with ... with the guard who ... what I told you already and Haines calling me and telling me about 1989, that you had said that you bought ... you had bought a rifle and you're going for hunting.

QAll right.

AAnd the fact that Catherine McKenzie had told you would be under surveillance under 1989.

QAll right.

AOK and the fact that at eleven thirty in the night, you were eavesdropping there and that was sufficient reason in my mind at least to bring to the attention of the person who is in charge of security so that at least she was in full knowledge of this. That was my responsibility. Afterwards as to what measures they were going to do or they were going to take was the responsibility of that particular officer.

QSo this is all the fact you knew by that time? Nothing else?

ANo, it was a general kind of feeling that ... that Osman expressed, that people were quite concerned, both at Concave and in the department.

QI'm talking about you.

AYes, that's what ... what was expressed to me and that was enough for me to at least bring this to the attention of the person who was in charge of the security and I state it again, I stated once before, I would rather err on that side.

QYou do not answer my question. Is that all the facts you knew by that time? That's all I'm asking.

AI think so, including Dr. Osman's statement about settling in an American way.

QAll right. Do you recall meeting of November 1st. Did Dr. McKenzie at that meeting or earlier, when you called her mentioned to you that I, in her presence, made quite explicit threats sounding like if you want to get ... I forgot what is the phrase, something like if you want to get what you need, you have ... I have to go and shoot a lot of people and this is what I was intending to do. Did she mention any of those?

ADr. Catherine McKenzie never said anything of that nature to me.

QWhen you expressed to her your concern, she in response did not say that she has concerns of her own?

AIf she had, she didn't express to me.

QAll right. Was that time, when you called McKenzie about this meeting the first time you heard from Osman that they decided to recommend termination of my contract or you knew it before that?

AWhat the department ... the department is recommending is not told to the dean. The department discusses and only when the final recommendation is coming, then only and in the normal circumstances, they don't even tell me that. They will send me the recommendations straight.

In this case, when his ... when he ... because of the

eavesdropping and all that, he was quite concerned and that's why he had told me and he clearly stated that if the ... the departmental report is ... is ... comes out, that he has no idea what ... in what way you might react and that's the thing that he mentioned to me.

BY THE ACCUSED:

How long this would last? I ask something and he answers something else. Now I make against official motion to declare this witness adverse. During all his testimony, on numerous occasions, he demonstrated either complete faking of memory where he did not claim not to remember things which are ... could not be not remembered (sic). On the other hand, well you don't recall. You would like me to give you the facts?

BY THE COURT:

No, no, no.

BY THE ACCUSED:

OK, so you recall all these facts. To make it short, when he pretended not to remember things which one cannot possibly not remember. Now ...

BY THE COURT:

That's what I was smiling at, that observation.

BY THE ACCUSED:

Well there are things which you cannot forget. If someone makes death threats ...

BY THE COURT:

That's ... that's your ...

BY THE ACCUSED:

... you cannot forget that.

BY THE COURT:

That's your gratuitous opinion.

BY THE ACCUSED:

Yes, Oh yes, it is gratuitous. Now next thing, he always every day, each question I ask, he answers something else.

Yesterday, if you remember, though I believe it was done just to demonstrate the jury that you can be impartial, because all the previous questions were not any better than the one in which you decided to ask him finally to answer because all the previous questions were exactly of the same nature, but I believe, as good psychologist, you think that at the end of the day, it's better for you to demonstrate your impartiality so that jury would go home with good opinion, that you are not on anyone's side. So you finally decided to press him for answers and we never got one. Four times you need to press him to finally get the answer if you recall.

Now today, he's doing exactly the same thing. Each question I have to repeat twice and I finally either get or don't get the answer and this was again the same demonstration that I asked him: was it the first time you learned about DPC's decision not to recommend my re-appointment and he answered that he didn't learn about it, that Osman came to him and expressed concern. Concern about what? If they recommended positively, why should he be concerned? It's childish game. He ... he just tried to elude the question rather than to answer it. Isn't it obvious?

BY THE COURT:

He didn't, he didn't. You obviously didn't listen to the answer.

BY THE ACCUSED:

Of course, he didn't. All right, what was the answer?

BY THE COURT:

What he said was "In normal circumstances, I'm not privy to their debates."

BY THE ACCUSED:

This is not answer to my question. I don't need that.

BY THE COURT:

Just ... just a second. You're the one who's forever invoking logic. Think for a minute. He said "Normally I'm not privy to their deliberations. They don't tell me about them. They arrive on my desk as a recommendation. In this instance, Osman mentioned it to me because he was concerned." There you are. Now if you don't find your answer in there, I'm sorry but I find your answer in there.

BY THE ACCUSED:

Well was it ... was it the first time or not the first time? What is the answer?

BY THE COURT:

It would appear to me that by exception, this time, the ... the communication that he received from Osman was the first one. That's at least how I would interpret it.

AYes, My Lord.

QAm I ...

AYes, My Lord.

Yes. Fine.

BY THE ACCUSED:

QSo it was the first time you heard that department personnel committee has decided to recommend termination of my contract, that's correct?

AI don't even remember that he said that it was going to be terminated, My Lord. He said the department is quite concerned if once it makes the recommendation, what his reaction would be. So obviously, I can tell that if it was going to be a complete two-year appointment, he would not be concerned but as the later discussion must have gone, he must have felt it wouldn't go for two years. That's why he came and expressed to me that he's quite concerned, once the ... the department makes its recommendation, how Dr. Fabrikant would react.

BY THE ACCUSED:

How about that childish game? So he didn't say that he learned it. He says now that he had no idea what the recommendation was. How about that childish game!

You see, you were wrong.

AMy Lord ...

He didn't admit that this was the first time.

AMy Lord, I didn't say that, I stated very clearly that I do not remember whether he stated whether it was going ... what the ... whether he was going to be terminated or not. What I said is that there was concern that once the department made its recommendation, what reaction of Dr. Fabrikant would be and that's obvious. I'm telling now, I'm extrapolating. Obviously, if they were making the regular two-year appointment, there would be no reaction but Dr. Osman must have thought that the way the discussions are going, that he wasn't too sure it might happen. That's why he wanted to bring to my attention he was concerned.

BY THE COURT:

QWell all Osman was talking about, if I understand it correctly, was a recommendation. Osman doesn't make any decisions as far as renewal is concerned.

AThat's correct. He's not member of the committee.

QIt's simply a question of recommendation.

AThat's correct.

QWhich goes to you?

AYes.

QIs run ...

AFor my committee.

QIs run through your committee and then goes to ...

ATo the vice-rector.

Q... Dr. Sheinin?

AYes.

QFine.

BY THE ACCUSED:

What fine? He never answered still. So it's looks like you were wrong. He never learned about it on that time.

Is that ... that's his answer? So you were wrong. He didn't learn about it. You see, you misunderstood it.

Let's get the answer.

QDid you or didn't you learn during that meeting that DPC has intention to recommend termination of my contract?

You see, he doesn't answer.

AI will ... I will answer and as clear as possible. I do not remember whether Dr. Osman told me that the appointment is going to be terminated. I'm stating that again but he expressed the concern that once the recommendation is made, there might be cause for us to be concerned.

BY THE COURT:

QSo he ... did he tell you that ...

AI don't remember.

QDid he tell you that it would ... that they were inclining toward a negative recommendation? That's what he wants to know.

AWell it was clear to me it was not a positive recommendation. Otherwise we would not ...

QOtherwise, what's the purpose of the discussion.

AYes, yes, yes.

QYes, OK.

BY THE ACCUSED:

Well how more evasive a witness could be? I think this is the limit of evasiness.

BY THE COURT:

Is it? Well it will do fine as far as I'm concerned. Move on to something else.

BY THE CROWN:

Who said what to whom, it's hearsay all the time.

BY THE ACCUSED:

This is not ...

BY THE CROWN:

And you've already ruled on the hearsay. If the hearsay leads us somewhere, OK, but it leads us nowhere.

BY THE ACCUSED:

It leads us to very simple thing.

BY THE CROWN:

We've been sitting for months asking did you say that to ... to this person and this and it's all hearsay. What we want is facts.

BY THE ACCUSED:

I want to clarify the reasons for his actions. Therefore I need to know his knowledge of facts, that's all and that is perfectly legal.

BY THE CROWN:

We should limit that to actions, My Lord.

BY THE COURT:

The question that is normally put to a witness is without saying what you were told, what did you do, that is the right way to put the question.

BY THE ACCUSED:

Well there is no way ... there is no way to say what did you do unless it is explained why he did what he did. If he said that he conveyed to McKenzie his concern ...

BY THE COURT:

In any event, in any event ...

BY THE ACCUSED:

... then I need to know why.

BY THE COURT:

... I'm satisfied, I'm satisfied that the question you put was answered. So move along.

BY THE CROWN:

I think he should ... he should question the way you just suggested, My Lord.

BY THE ACCUSED:

Well I ...

BY THE CROWN:

When there is a police officer going on a call, let's say for a robbery, he's not entitled to say: there is robbery going on and I went there. I got some information and I went there.

BY THE COURT:

Without telling me what ...

BY THE CROWN:

The robbery is hearsay.

BY THE COURT:

Without telling me what was told to you, would you go ahead and ...

BY THE CROWN:

That's it and then this case could be a few months less.

BY THE COURT:

Well I'm not sure. We've made an exception to the rules on a number of cases in order to try to expedite it.

BY THE ACCUSED:

Anyway, it was my motion, if you didn't forget, to declare witness adverse.

BY THE COURT:

Your motion is dismissed.

BY THE ACCUSED:

Oh yes, of course, all right.

So where we are now? Did he or didn't he learn that department intends to make negative recommendation.

BY THE COURT:

We've covered that point. Move on to another question.

BY THE ACCUSED:

So I should read it that he did learn about it.

BY THE COURT:

I don't know how you wish to read it. He's answered the question. Move on to something else.

BY THE ACCUSED:

QAll right. Did you ask Osman why he was there at eleven thirty p.m.? What was the need for him to be in the department at eleven thirty p.m.?

AI didn't have to ask him. Dr. Osman, I've known, keeps long hours and comes late and works until ten o'clock, eleven o'clock in the night. I have talked to him many times at ten o'clock (22 h 00) because I work late. So it was not at all surprising.

QHow about the other people?

AMany meetings in mechanical engineering department start only after about five o'clock (17 h 00) because the scheduling of classes and Dr. Osman would like have meetings at five o'clock.

QWell from five until eleven thirty, it is six and a half (6 1/2) hours. It's another working day, isn't it?

AI don't know when the meeting started on that particular day, My Lord, but I've seen Dr. Osman working late. This is not unusual for Dr. Osman at all.

QOK. Did you ask him why I was there? Did you know that I had a lecture which ended at eleven p.m.?

BY THE CROWN:

This is all hearsay, My Lord.

BY THE ACCUSED:

Who cares? I explained already reason for hearsay. I know all that.

BY THE CROWN:

He should be asked what he did, period.

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<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">BY THE ACCUSED:
I would like to ...
BY THE COURT:
It's going into the whole conduct of Dr. Swamy.
BY THE ACCUSED:
I would like the crown to stop interrupting me.
BY THE COURT:
He's not interrupting you, he's making an objection.
BY THE ACCUSED:
Well he shouldn't make any objection. I already explained, I don't need to explain thousand times why I'm asking questions about his knowledge because I need to have the reasons for his actions, period.
BY THE COURT:
The objection is maintained. Ask him what he did.
BY THE ACCUSED:
All right.
QOK, so you made a call to McKenzie when? The same day or the day before that? When was your call to McKenzie? October 31st or November 1st?
AI don't remember the dates. The day when Dr. Osman came to me and related the story, that must have been the day after all these things happened. Then I called Catherine McKenzie right away and instructed Dr. Osman also to call Catherine McKenzie.
QWell was it on the date where the meeting was or it was before that?

BY THE COURT:
He's told you he doesn't know exactly what date.
ABefore which meeting?
BY THE ACCUSED:
QWell I'm talking about meeting on the day the senate was, the first meeting?
AIIt was ... it was ... I don't remember with ... how many days elapsed between from the time that I called and that particular meeting. Dr. Osman related to me the very next day what happened and then I called Catherine McKenzie and told Dr. Osman also to do the same, to give the details to Catherine McKenzie and it was Catherine McKenzie who arranged this meeting of the intervention team.
QAll right. So you both called to Dr. McKenzie about it. Now, and you asked ...
AI called and I instructed him to call.
QYes and you both asked her to convene intervention team?
AI did not, I didn't even know the word intervention team until she said that she was going ... she had arranged a meeting with the intervention team.
QAh, all right, so it was her suggestion to ...
AIIt was not her suggestion. It was her action.
QAll right and at the meeting, could you describe in more detail what happened? Who was present to the best of your recollection?
BY THE CROWN:
This is all hearsay, My Lord. The fact that there is a meeting should be sufficient. This has been covered ... covered over and over.
BY THE ACCUSED:
OK, should I explain?

BY THE COURT:

In what context, yes?

BY THE ACCUSED:

All right, the witnesses which we had before, if you recall, practically all of them claimed such a bad memory that we ... after hearing so many witnesses, we still don't really know what happened there. So I hope this particular witness will have better memory, that's all and I would wish the crown not to sleep but to be here and to remember what happened before and if crown remembers, then crown should remember that every single witness coming here claimed that they have no real memory of who did what. Do you remember that? Absolutely no memory. They were there. If you remember, Haines said that he was there but he was there just to coordinate. He absolutely don't remember who said what. He just remembered in which order, who spoke, but what was spoken, he had no idea. Do you remember that? So I hope this particular witness will at least say what he said there. At least that much maybe.

BY THE COURT:

So the objection is overruled.

ACan you repeat now the question. With all the arguments, I forgot the question. Please?

BY THE ACCUSED:

QWell to the best of your recollection, what do you recall from that meeting? Who said what? What was ... how it was defined as a purpose of the meeting? Was it defined? Who presided? Did you make any records from that meeting? Whatever you find possible to ... to say.

AI did not make any records. I stayed there for the meeting for perhaps about half an hour or so, then I went to the senate meeting. The rest of the people remained. Myself and Dr. Osman both are on the senate. We went to the senate meeting.

It was the general context of what had happened that previous week or night, I don't remember the date.

QSorry to interrupt you. Osman was member of the senate at that time?

AYes, Osman was a member of the senate. Osman and I both left for the senate meeting and ...

QCan we get the list of members of the senate?

BY THE COURT:

No, you can't. You're getting your answer. Now let the witness finish the answer. You're the one that asked the question.

BY THE ACCUSED:

All right, all right.

QDid McKenzie leave with you too at the same time?

AI don't remember because myself and Dr. Osman left together. As to whether ... McKenzie came a little bit late. She didn't come with us, to the best of my memory, because we two left.

QOK.

ANow we two are members of the senate. Whether she is not a member of the senate, she attends senate meetings. To the best of my recollection, that meeting was supposed to have been a preliminary meeting to see if there was any need at all to meet again and what should be done, including possibility of talking to you and discussing

with you as to why those actions were ... and why you were present at that time, at that ... late in the night.
QWhy I was present? They didn't know that I had a lecture that day until eleven?

BY THE COURT:

Listen you asked the witness to relate what happened during the time he was there. That's what he doing. Now let him relate it and stop interrupting him and arguing with him.

AThe people who were present, to the best of my knowledge, were the members of the DPC, Dr. Osman, Brendon Haines. There were two meetings My Lord and John Relton, I don't know which meeting he was there, John Relton and myself and I think there was also Nancy Torbit, I'm not too sure, the nurse and the concept of the intervention team was explained by Dr. McKenzie, that is that they intervene to see what ... to see how certain things could be handled, because intervention team doesn't talk about security and all that. That is purely Dr. Catherine McKenzie as an administrator who would take action on that but it was more like a brain storming session, to hear the different people to see whether there are some things that could be done to alleviate the problem and Oh yes, there was ... I think Elizabeth Horwood was also there. I don't know if it was first meeting or second meeting, but she was also present, maybe for both meetings, that's the secretary of Dr. Osman and they were expressing concerns and the ... Dr. McKenzie stated that we would meet again to see what action should be taken but in the meantime, that the ... the people should be told that this ... the secretaries and others, not to ... for them to get worried, that this information has been brought to the attention of the associate professor. That's what I recall and then I left and I don't know how long the meeting continued after that, but there was a second meeting after that.

BY THE ACCUSED:

QDo you know why Miss Horwood was there?

AMiss Horwood is the secretary of Dr. Osman and I think she was also concerned about you were going to her over and over again asking for this information or that information. I really don't know but she was called because she deals with Dr. ... she was ... she's Dr. Osman's secretary and anything that is typed, etc. everything she types and to ... because it was important to ... to have her also and as to whether she had also ... Dr. Osman suggested she should be there, I really don't know.

QWell she types, why ... why still she's there? The fact that she types, did she ... did she express anything that I threatened her in any way? What?

AAAt that meeting?

QYes?

AWhen I was there, she didn't talk about that except that she said something to the effect that she is concerned about ... that you were coming and going, was not ... you know, was not particularly the kind of thing that most professors do, to come and ask the same thing with her again and again.

QWhat do you mean, the same thing?

AWell I don't know, I mean something to the effect that she was concerned that your dealings with her were not

the same as that of other professors.

QWell did she specify what exactly was there? What did I ask her for? Documents?

AI ... I don't remember. The only thing I remember is that much, that somehow she felt that your relationship with her was not the same as the relationship of other professors to her.

QBut no facts were given?

AAAt that meeting, I don't remember anything more Elizabeth having said.

QAll right. Now was your secretary also concerned?

AI did not discuss that with her so I do not know.

QWell did she on her own initiative express any concern?

AShe had not.

QSo my dealing with her was all right? May I assume that?

BY THE CROWN:

This is not a question.

BY THE COURT:

No, it's not a question.

BY THE ACCUSED:

Well ...

BY THE COURT:

You may assume nothing. He said that he's not aware if his secretary was concerned, period.

BY THE ACCUSED:

QAll right. Was Sankar's secretary there at that meeting?

AWhich Sankar?

AI believe one Sankar was present at the meeting, now two?

AYes, Dr. Seshadri Sankar.

QSo was his secretary at the meeting?

AI do not remember, I do not remember that.

QShe might have been, you just don't remember.

AI don't remember.

QHow do you like that!

BY THE CROWN:

That's the answer My Lord.

BY THE COURT:

It seems.

BY THE CROWN:

There's nothing unusual.

BY THE ACCUSED:

Yes, all right.

QNow you mentioned documents. Do you have a copy of my letter to you asking for access to my own file? It was in early September.

A30th September?

QYes, September 1991.

ASeptember 11th 1991 is that the one?

QYes.

AYes, I have it here.

QWhat does it say?

A

"I've requested recently access to my file. I was shown only the material dated from 1990. According to the access to information act, I'm entitled to see my complete file since December 1979.

Kindly let me know when I can see my complete file.

Thank you in advance."

QAll right. Now according to collective agreement, aren't you supposed to show me my complete file without me writing to you, without me asking you?

AAccording to the collective agreement, the file can be accessed given sufficient notice for the person to come and have a look at the file. That was quite clear and this letter, "I was shown only the material dated from 1990", that mean it was ... actually when you request that must ... it means it must have been shown up from 1990 on.

Now the reason for that is the file before 1990, that is from 1980 to ... 1985 to 1990, he was not bound by the collective agreement. He was under the Actions Structurantes program and the ... and he was not a faculty member and there, I had to find out whether he had access to that or not and before 1985, he was a Research assistant and Research assistant professor and all that which was not from the university fund, it was from grants of professors and therefore there was no file kept in my office because there are so many post-offer fellows and others that we hire and we don't keep the files.

The files that are kept in my office are the professors' files and up to ... from 1990 on, in fact the file here starts off with 1990 and it is even written file No. 1 because change to file No. 2 only after ruling came from the Secretary General that he should have access to the file from 1985 to 1990, whatever was there and I sent the whole file to Belanger-Gaudet (sic) who made it available and then it was that file, which is in fact even in a different color as you can see and that was written No. 1 afterwards to make sure this is No. 1, No. 2, No. 3.

QSo what was the problem? Why didn't you just show it to me at least from 1985 if you had it? Why was there a need for me to go Secretary General, to inconvenience her? Why couldn't it be done in just informal manner?

ABecause it was not a part of your personnel file until then. Your personnel file started as a probationary faculty member, from 1st of June 1990. That was the reason why it was not a part of the file, the personnel file.

QThis is not my question. My question was why he didn't show it to me without any formalities?

AIt was not a question of formality.

BY THE ACCUSED:

Would you ... would you please direct him to answer why he didn't show it to me directly?

AI'm saying that he ...

QWhy was there a need to make Secretary General busy with all that?

ABecause you asked for access to personnel file and the personnel file is defined in the collective agreement in a particular way. That is the probationary appointment and your probationary appointment started on June 1, 1990 and the file was made available to you as soon as you asked.

QThat's not my question. Why didn't you show the rest? Why was there any ...

BY THE COURT:

He says because ... it's obvious from his answer and his interpretation, you weren't entitled to see it.

BY THE ACCUSED:

Well I was entitled. Secretary General did show it.

BY THE COURT:

Well that's fine but in his interpretation of the ... of events, you were not.

BY THE ACCUSED:

All right, OK. May I have the ...

BY THE COURT:

So you took whatever step you took and ...

BY THE ACCUSED:

All right, may I have the collective agreement please?

BY THE COURT:

Listen, we're not going to argue about who is right and who is wrong under the collective agreement. He has told you what the situation was. He ... the matter was submitted to Gaudet, it was finally reviewed and you received access to that part from 1985 to 1990, OK. So I ...

BY THE ACCUSED:

I received more than that. I received from 1979.

BY THE COURT:

Well wonderful, you received from 1979, good for you but let us not go into the collective agreement and waste time.

BY THE ACCUSED:

No, this is not the point. What do you mean, waste time? I'm trying to establish that they abused their own rules. This is part of my defence. It is important to show that new collective agreement specifically says that research appointments from now on are also faculty appointments.

BY THE COURT:

How ... how can that possibly have a bearing? You received access to your file in due course.

BY THE ACCUSED:

This ... this is not the point. That he abused collective agreement, even in such a minor thing, just to show me my file. This is the point I wish to make, that he abused what explicitly is written in collective agreement.

BY THE COURT:

Listen, he has stated that his interpretation of the situation, when you asked him, was that you were only entitled to receive from what was in your file from 1/6/90 onwards and that's what apparently he showed you.

BY THE ACCUSED:

There is nothing to interpret. It's written black on white in collective agreement. Let me ... let me refresh his memory and after that, I will explain why he did what he did.

BY THE COURT:

What do you mean, you'll explain why he ... he can tell us why he did what he did. You're not here to explain why he did what he did. He's here to tell us that.

BY THE ACCUSED:

All right, all right.

BY THE COURT:

Put your question.

BY THE ACCUSED:

Let me refresh his memory. May I have the collective agreement.

BY THE CROWN:

This is a waste of time, My Lord.

BY THE ACCUSED:

No, no, no, the last one.

BY THE CROWN:

Let's not go into that.

BY THE COURT:

We are not going into the collective agreement. Get on with the question of what he did. Leave the collective agreement alone.

BY THE ACCUSED:

Well this is part of my defence.

BY THE COURT:

It's not part of your defence, Mr. Fabrikant.

BY THE ACCUSED:

Well if (sic) not part of my defence to show that they abused their own regulations.

BY THE COURT:

Put your ... put your questions.

BY THE ACCUSED:

How come it is not my ...

BY THE COURT:

Put your questions.

BY THE ACCUSED:

All right, I put my question, then it will become OK.

QDo you recall that collective agreement in effect at that time stipulated explicitly that research positions are also faculty positions and members of research appointments are also members of bargaining team, did you know that?

AIt became effective on 1st of June 1990.

QAll right, so you knew that? So in ...

AYes I did.

QOK, so in 1991, you knew that you are abusing collective agreement by refusing me to see my research documents?

AThat's not correct My Lord. My interpretation was that the people who are on research positions from 1st of June 1990 would be covered under the collective agreement. He was actually on a probationary appointment anyhow from 1st of June 1990. His research appointment dates back to 1985 to 1990, at which time the collective agreement did not provide for those positions to be under the bargaining unit. So that was my interpretation.

BY THE COURT:

QThat was your understanding?

AYes that was my interpretation and understanding.

BY THE ACCUSED:

QBut did collective agreement ...

BY THE CROWN:

That should be the end of it, My Lord.

BY THE ACCUSED:

Why is crown so concerned. Crown's case is in jeopardy or what? Let crown not intervene until crown feel that his case is in jeopardy. How about that? Such elementary courtesy?

BY THE COURT:

It's not a question of, as you put it elementary courtesy, it's a question of what is pertinent and what is ... and what is relevant.

BY THE ACCUSED:

Well abuse is pertinent. If I'm claiming provocation, then it's pertinent.

BY THE COURT:

You have the witness's answer as to how he understood the provisions of the collective agreement.

BY THE ACCUSED:

All right.

BY THE COURT:

We're not going to get into a debate as to who is right and whose interpretation of the collective agreement, nobody cares.

BY THE ACCUSED:

All right.

QNow you also mention here that I was not a faculty member until what year from your point of view?

AFrom the point of view of the university, not just my point of view, we have taken the same stand, that your appointments started in 1985 ... 1985 when you were appointed as a Research Associate Professor under the Actions Structurantes program.

QAll right. Can you locate in your file my appointment in 1982? Could you please?

AI do not have anything here before 1985.

QWell maybe in the thick file?

ANo, this is from 1985 on, because Dr. ... when I requested B, langer-Gaudet to ... I gave the whole file to her and asked her what should be done about the file, his personnel official file and I was told from 1985 on so I have got all the things from 1985 on.

QSo what is in the thick file then?

AThis is continuation, 1, 2, 3.

QSo the thick file is after 1991?

AThis is from ... this is from 1985 to 1990 when he was under the Actions Structurantes program. This starts off with the letter of appointment issued by the vice-rector on a probationary appointment and goes up to 2nd of December 1991, request for access.

QAll right and?

AAs ... and as for the letter of Maître Gaudet dated 14th November 1991, which was ... copy of it was sent to him by Gaudet, all the material that is in my possession and dating back to 1st of September 1985, is become a part of your personnel file and that is the reason why this one was ... and then afterwards put as No. 1 and what was No. 1, because the first personnel ... the personnel file started from June 1990 was changed to No. 2.

QAll right. What ...

AAnd this one is from then on, after that (inaud.)

QWhen ... when the second file ends, could you look at the last document in the second file? What is the date on the last document in the second file?

A2nd of December 1991.

QNo, the last document, not the first, the last?

ASorry, I don't ... I'm showing you the last document.

QWell it starts ...

BY THE COURT:

QThe most recent document?

AHum?

QThe most recent document?

BY THE ACCUSED:

Yes.

BY THE COURT:

QIs it at the end of your file or are you looking at the most recent one?

AOh it ...

QIt starts at the back and ...

AIt starts at the back and as we get new material, it is automatically ...

BY THE ACCUSED:

QWhat is then the first document in this file?

AThe first document is a letter:

"Based on the evaluation and the documents submitted the department personnel committee recommends that Fabrikant be awarded ...

Sorry.

"... a probationary appointment for Dr. Fabrikant."

QWhat is the date of this document?

ASeptember 12th 1990.

QAll right.

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 COURT TAKES THE BENCH

THE MEMBERS OF THE JURY ARE PRESENT

SRIKANTA SWAMY

(Under the same oath)

BY THE ACCUSED:

QDo you remember what you responded to me on my September 11th letter? In the meantime, may I ask for this thick file because I want to show something to the witness, the thick file with my documents?

BY THE COURT:

D-4 and 5 I think.

BY THE ACCUSED:

No, well ... well I think all of the ... of that would ...

QSo do you have the response?

AYes.

QOK, what was it?

A "I apologize for the delay in replying to your letter of 11 September. The reason is that this has been forwarded to the University's legal counsel for an opinion and we have not received the reply. I'm afraid I cannot give you a precise date for ... a precise date for when you can expect a response but as soon as I receive it, I will respond to your request."

QWhat is the date of that letter?

A23rd of September.

QOK. What happened after that?

AYou wrote me a letter on 26th of September.

QOK. Yes, what did it say?

A

"Thank you very much for your recent letter. I have been informed that the maximum time delay allowed by the law is twenty (20) days. I understand the difficulty of your situation but the law regrettably doesn't allow any extension of this deadline for such a reason as no response from a legal counsel.

This is to inform you that I've been effectively denied access to my file for over three (3) weeks. I'm prepared to wait until Monday, September 30th 1991. I should greatly appreciate if you make your decision by that date.

Thank you in advance."

QAll right and?

AThen I answered you on 30th of September. I referred to your letter of 26th of September on the above subject.

"In my letter to you of 23rd of September, I told you that I sought legal advice. I have now heard from the University lawyer and the response according to article 43 of Act 65 is as follows. Quote:

The request must be addressed to the person in charge of access to documents within the public body, unquote.

The person interested is Ma^{tre} B, langer-Gaudet, Secretary General of the University. Would you therefore please make your request to her in writing."

QAll right. Did you personally know that it was Secretary General who is in charge of access to information?

AI did not know. I'm not a lawyer so I wrote to her asking her what I should do, that's all. In fact, it was told that that's how I should write to you, that the ... that quote is from that. The request must be addressed to the person in charge of access to documents within the public body and the person interested was Ma^{tre} B, langer-Gaudet was told by her, because article 43 of Act 65, I didn't know what it contained.

QAll right, so when you received by letter of September 11th, you wrote to Secretary General asking her what to do, is that correct?

AI don't remember that I wrote. I talked to her in first instance but I did write to her afterwards how I should proceed and this is what I got as a response that I should be writing to you, that the request must be addressed to the person in charge and the person in question is Ma^{tre} B, langer-Gaudet.

QAll right, so when you received my letter of September 11th, you phoned to the Secretary General, correct?

AI just don't recall, My Lord, exactly whether I phoned on that very day. This is not the only thing I was doing as the dean.

BY THE ACCUSED:

I would like Ma^{tre} Freedman to check their files and to find if there is anything in writing to Maitre Gaudet or you have it with you?

AI do not have anything. I have to ...

QAll right.

A... check with B, langer-Gaudet on the file, it doesn't contain ...

QYou phoned her and told her that Fabrikant wants access to his file according to Access to information Act and she told you: "Wait, I'll think about it" and on September 30th, you finally heard from her, is this how it happened?

A No, I didn't say that. I don't remember exactly whether I called her right away or not. I remember I talked to her, saying how should I do and she said that "put it in writing as to exactly what he wants to know" and I think that that's what she told me. I can't recall but I did get this information from Maëtre Gaudet as to what I should do in order to answer your letter.

QAll right, so ...

A Actually, I had also talked to Prof. Proppe and because he's the one who looks after the collective agreement and that's where there's copies there also to Mr. Proppe because he also suggested that I should talk to the Secretary General.

QAll right, so is it correct that you, at least, contacted Secretary General before your response dated September 23rd, correct?

A Which one? 20?

Q 23rd.

A 23rd?

Q So it was before 23rd, right?

A Yes. When I wrote you on 23rd saying that I forwarded it to the legal counsel.

Q So you contacted her about my access to information file and you ... she didn't tell you immediately: OK, tell him to contact me? She didn't do that?

A I don't remember, Your Honor. As soon as I got the response, I have written to him dated 30th of September.

BY THE CROWN:

My Lord, when Maëtre Gaudet testified, you ruled that we should not go into the merits of access to information requests and that's what we are doing now.

BY THE ACCUSED:

This is different story. We're not going into merits. I just asked him whether Maëtre Gaudet if ...

BY THE CROWN:

I don't think we're interested in ...

BY THE ACCUSED:

Who's talking?

BY THE CROWN:

... in the details.

BY THE ACCUSED:

You're finished or you didn't?

BY THE CROWN:

I was not completely finished.

BY THE ACCUSED:

Oh OK, continue.

BY THE CROWN:

Now I'm finished.

BY THE ACCUSED:

All right. Now I'm not going into merits of anything. I'm just asking who did what, period and I'm asking him whether Maëtre Gaudet, in response to his question, that Fa-

brikant needs access to his file, what should I do, whether she responded to him, all right: I'm the person in charge and let him contact me and the answer I need from him: yes, she did so or no, she didn't and instead here again, in his usual manner, he started answering something else.

BY THE COURT:

The objection is overruled.

AI do not remember exactly what she told over the phone. The only thing I remember is I contacted her and told that he wants access to ... there were two (2) parts to this. This is not simply access to information alone, in the sense first I talked to Hal Proppe because it is the question of 1985 to 1990 which was not a part of the collective agreement. That was the main reason and I thought if he interprets the collective agreement to say that this one is a part of the personnel file, then it would have been ... I would have asked him to put it in writing. He could not answer that. That is the reason why I next went to the legal counsel, as to first of all this is a part of the personnel file or not and I was told it's going to be made a part and first of all, part of the personnel file in fact, he obviously didn't answer me because much later, I said: "Is it now a part of the personnel file" but he was talking about access. First of all, access to give it to him so I ... she came to my office, picked up the whole thing afterwards and she asked me to write this, with the quotation, the request must be addressed to the person in charge and that is ... that is Maître Gaudet.

QWell would you please direct the witness to answer the question, whether when he spoke to her, she informed him that she's the right person to address?

BY THE COURT:

On the 11th of September?

BY THE ACCUSED:

Well he at least spoke to her before September 21st.

BY THE COURT:

QDo you understand the question?

AYes I understand the question My Lord and I don't remember at all whether she answered me, straight away saying that ask him to contact me because it was written to me in writing and then I wrote that letter on 30th of September, as soon as I got the response.

BY THE ACCUSED:

QWell would you believe that, that he talks to the person in charge and asks her what to do and ...

BY THE COURT:

Listen ...

BY THE ACCUSED:

... she said OK, wait until September 30th while you respond to him.

BY THE COURT:

Don't ... don't raise your voice when I interrupt you. The witness's answer is the witness's answer. There it is.

BY THE ACCUSED:

All right, so I would like to get ...

BY THE COURT:

Go on to something else.

BY THE ACCUSED:

Well I would like Maëtre Freedman to look into the University file and to find what dean has written to Secretary General and what Secretary General has responded to him and when. Can we have it after ... after the break, can we?

BY THE COURT:

I have no idea whether it's available after the break or not.

BY THE ACCUSED:

Could you do it, Mr. Freedman?

BY THE COURT:

If you have other questions to put to this witness, he says he hasn't got a copy of the letter so go ahead.

BY THE ACCUSED:

Well I would like to be settled.

BY THE COURT:

Just go ahead with your questions.

BY THE ACCUSED:

All right. Well first of all I would like to deposit my letter of September 11th, I believe, his response of September 23rd, my letter of September 26th and his response of September 30th. I think it will very useful for jury to know how human time was spent instead of just telling me: OK, come, I'll show your file, it's your file. You have the right to see it.

Instead, at least four (4) letters, absolutely unnecessary, but I believe that there were more than four.

BY THE COURT:

Is that the purpose? To demonstrate how time was ... time was spent?

BY THE ACCUSED:

No, not only that, but ...

BY THE COURT:

Because if that's the purpose, you're not going to deposit them.

BY THE ACCUSED:

No, the content, I believe also of interest.

BY THE COURT:

Pardon?

BY THE ACCUSED:

The content of those letters is also of interest.

BY THE COURT:

I see. Would you take out those four letters please and they will become D-51 en liasse.

BY THE ACCUSED:

And I believe it is ... if it is possible to reserve place to attach to them the ... whatever correspondence.

BY THE COURT:

D-51 en liasse.

BY THE ACCUSED:

By the way, what en liasse means? Something ...

BY THE COURT:

Together, filed with ... filed together, all together, as one ... as one exhibit number.

BY THE ACCUSED:

May I continue?

QIs my understanding correct that you did have my file but you just didn't want to show it to me, is my understanding correct? Or you just didn't have those documents? What ...

AThe file from September 1985 to 1990 was there in my office but it was not a part of your personnel file. You had wanted access to your personnel file and I said that was before. The personnel file definition, according to my understanding of the collective agreement was during the probationary appointment. That's why you got access up to 1990, April 1990. Then I wanted information as to whether 1985 to 1990 was considered part of your personnel file and if so, whether access can be given to you. QAll right, so you had those documents but you just didn't want to show it to me, is my understanding correct?

AWhether it was a part of your personnel file was the question, yes.

QNo, this is not my question. How about asking witness to answer the question.

BY THE COURT:

The witness has answered the question...

BY THE ACCUSED:

If he had those documents ...

BY THE COURT:

... half a dozen times.

BY THE ACCUSED:

So he had those documents?

BY THE COURT:

Yes.

AYes I had.

BY THE ACCUSED:

All right.

AAnd I gave to Maître Gaudet.

QWell I don't ask that. I just asked whether you had it, period. So you had it. Is it possible we would be finished with the whole interrogation if he just answered the questions, long ago.

BY THE COURT:

We would be finished with the whole interrogation if you asked less convoluted questions.

BY THE ACCUSED:

We'll make it less convoluted and I finish my defence.

QDid you have my files from 1985 on ...

BY THE COURT:

He told you he did.

BY THE ACCUSED:

... or you just didn't want to show it to me? How to make it less convoluted.

BY THE COURT:

He's told you ... he's told you he did and he's told you he was not certain whether these were part of your personnel ... these were considered part of your personnel file to which you had access.

BY THE ACCUSED:

I didn't ... I didn't ask that.

BY THE COURT:

He's been saying that for the last three quarters of an hour.

BY THE ACCUSED:

No, I'm just asking whether he had the documents.

BY THE COURT:

It's been answered.

BY THE ACCUSED:

Now all right.

QBefore 1985, did you have those documents too?

AThere were some documents before 1985. It was not a file kept in the sense of the probationary appointment where everything is noted down. There were some things which were sent to me by your supervisor and I had kept them.

QWell anyway, you had documents before 1985 too?

AYes there were some documents which were in the file.

QAnd you refused to show them to me, all right. Did you see my appointment of 1982?

AYes, I don't know the exact date, if you're referring to the letter from John Daniel?

QYes. What did this letter say? What kind of appointment I was offered then?

AIt was called I think visiting Assistant Professor.

QVisiting?

ASorry, Research Assistant Professor, sorry, Research Assistant Professor.

QOK, was it called a faculty position?

AIt was called a faculty position by John Daniel wrongfully.

QOh, he didn't know his job, right?

AIt's not for me to say that.

QRight. Then explain to the jury. First of all would you just confirm that he called my appointment faculty appointment, is that correct?

AHe called it a faculty appointment, yes.

QAll right. Not only that, did he also said in his letter that I'm entitled to be a member of the bargaining unit as well?

AHe did and it was wrong.

QYes, it was wrong, all right. May I ask him why it was wrong?

ABecause the collective agreement does not ... did not include any research positions at that time and that is the reason why no dues were collected from you by the Concordia University Faculty Association.

QWell this is not my question. Why is it not faculty position?

ABecause it was a research position. It was defined in the collective agreement at that time what were the faculty positions and they were tenure appointments and limited term appointments, no research appointments.

QHow come all my ID cards were the same as faculty ID cards? It was also a mistake?

AI cannot answer that question, only the people who issue ID cards can answer that question.

QOK, so they don't know their job, all right. Now was the whole thing on this letter writing and me bothering Secretary General instead of you showing him the file, arranged intentionally just to make an impression that I'm bothering everyone?

ANo.

QIt was not, all right. Now OK, let's go back. What were you informed about the results? How, if you were informed and if yes, how you were informed of results of the first meeting on November 1st 1991?

AThat's the one, intervention team with Catherine McKenzie you're referring to?

QYes?

AMy office was called that there was going to be a meeting that Catherine McKenzie had arranged and that I should be coming and there will be other people, including the DPC

of mechanical engineering department.

QAll right and when you were there, did Osman mention that I made this hand gesture during that meeting of November 1st?

AHe might have, I don't recall.

QWell did Brendon Haines at that meeting said that I threatened to kill rector and kidnap him?

ANot that I recall.

QWell did he at least mention what he told you that I bought a rifle and going hunting?

AMY Lord, I don't remember. This pointing and the rifle thing was talked over the phone. If he had told it again, I don't remember what was ... whether he told it again or not.

BY THE COURT:

QAt the meeting?

AAAt the meeting.

At the meeting.

BY THE ACCUSED:

How do you like that. People can't be concerned. (sic)

BY THE COURT:

Listen would you please leave the editorializing. The witness is there and he's ...

BY THE ACCUSED:

It's not editorializing. There's an application under common law to declare witness hostile and I'm arguing this application.

He is faking his memory. There is no way one could forget anything like that. If he really told him that I bought rifle and went hunting and there is there Osman who is saying that I came to him and made this hand gesture, this is absolutely nice place to say to either Haines himself, to say either or I don't know really, because you know, he testified here to something very different, but this is a natural place for Mr. Haines to say at least one of those and if he didn't say, then for ... it's natural place for Swamy or Osman or somebody else to say "Haines, do you remember you said that" so how concern is well justified and witness doesn't remember that. So he's faking his memory.

BY THE COURT:

That's your opinion. Your motion to have him declared hostile on common law is denied.

BY THE ACCUSED:

All right.

QWhat was participation of Mr. Haines at that meeting if you recall?

AI don't recall. Haines was there, that's all I remember. I have no idea why Catherine McKenzie ... I mean I have an idea as to why she would have called, because of course Haines was contacting you through the whole period of 1989. He was talking to you and it was he who had talked to Catherine McKenzie as well as to ... the other conversations that I've mentioned twice now, I mean many times about the ... the rifle bit.

So he might have been ... I'm sure he was present because of that factor. As to whether Catherine McKenzie got more information from him or not, I don't know but I can't recall exactly what conversation took place at that meeting.

QOK. Do you remember what you said at that meeting?

AAAt the first meeting?

QYes?

AI stated that ... I told Catherine McKenzie that appropriate measures, whatever intervention team thinks ought to be taken, should be taken to allay the fears of our concerns of the department of mechanical engineering, in particular the department personnel committee. The department personnel committee was quite concerned about a possible behavior.

QWhat exactly they were concerned with?

AThey said that they are concerned. I can't read their mind. They said "We are really concerned about how you might react."

QDid they say anything specific? What concern? What? That I spit at them? That I kick somebody? That I shot somebody? What exactly was concern?

AYour Honor, I have answered that question two or three times. It was not that you kick or anything. They had a general concern because of the behavior pattern. I stated that the secretary was concerned, the DPC was certainly concerned after that eavesdropping incident and the previous one of 1989, all these things together gave them the concern to express it to Catherine McKenzie to take appropriate measures.

QThat was not my question.

BY THE COURT:

Well that is your answer, so move on to something else.

BY THE ACCUSED:

QAll right. Did anyone at that meeting say that we need to define exactly what we are afraid of? If we are afraid that he will spit at us, maybe a security guard would be helpful.

BY THE COURT:

Listen, listen, listen, I told you: move on to something else. The witness has answered your question. You are simply belaboring the point. Now go on ...

BY THE ACCUSED:

I'm what?

BY THE COURT:

... to something ... belaboring the point. Go on to something else.

BY THE ACCUSED:

What does it mean?

BY THE COURT:

We've heard what the concerns were, we've heard his answer, we've heard the testimony from a whole raft of people who were also at that meeting. The jury has sufficient to appreciate what transpired at that meeting, if ever they have to.

Now move on to something else.

BY THE ACCUSED:

Well they don't, he doesn't remember. He again doesn't remember.

BY THE COURT:

He has told you what the nature of the concerns were. Now you are now attempting, despite the ruling, to cross-examine him upon what, as you like to call it, facts were presented. He's told you specifically he doesn't remember. There was concern as to how you would react. End of question, move on to something else.

BY THE ACCUSED:

Well because when it is...

BY THE COURT:

And if you will not move on to something else, I'll put an end to this.

BY THE ACCUSED:

Well all right.

QDid, at that meeting, discussion take place that ... to ask administration to suspend me as threat to university?

AIt was not at that meeting.

QIt was not at that meeting, OK. At this particular meeting, did Relton or Haines or somebody else ask you and members of DPC to present facts?

AI told you, they were there for only for half an hour. At least I and Sam Osman and it was only a preliminary meeting and what I remember is the explanation ... not the ... the incident being recapped again on what happened at a particular day and a particular night at eleven thirty and that there was plenty of concern in both the Concave Centre and the department about your possible behavior.

QAll right. Were you personally concerned too?

AYes, in a general way. My concern was in a very general sense, that if the department is concerned, if people who are working in my faculty expressed concern, they may not exactly say they're afraid but if they expressed concern, yes, I'm concerned. That is the reason why I told Catherine McKenzie.

If I did not think it was important, I would not have conveyed it to her.

QAll right. Were you concerned for your life, for your physical appearance? Could you specify what your concern was?

AI was concerned for anything that might take place or that ... or that, if the secretaries and the DPC members were concerned in any possible way, I had to express my concern. I cannot say that concern was that you're going to do something. They were concerned about the general ... your behavioral pattern.

QNow, you mentioned secretaries?

ANo, I was talking in general. If the secretaries of the professors are concerned, so will I be as the dean.

QWell were secretaries concerned? Was ...

AI said that, the only person I remember who was there was Elizabeth Horwood at that meeting and Elizabeth did express concern in a general fashion.

QSo would you ... would you refrain then from saying what you didn't know? So you didn't know that secretaries were concerned at that time, did you?

AThey did not come and tell me the secretaries were concerned. Dr. ... Dr. Osman had expressed to me that his ... that the people in the department were concerned and people would include secretaries but no secretary came to me and complained to me.

QOh, all right, so it is not just DPC members which were concerned? Other people in the department were concerned too? Is this what you're implying?

AWell Dr. Osman had mentioned that at Concave centre, that you were seen one day and that they were ... they were concerned about your presence there because your office was not at the Concave Centre.

QHave you ever been at Concave?

AYes.

QWere they concerned? Your office is also not in Concave.

AI don't understand the question, My Lord.

QOK, your ... is your office in Concave?

ANo, my office is not in Concave.

BY THE COURT:

Listen, you're going nowhere with that sort of questioning.

BY THE ACCUSED:

Well he's ridiculous with this.

BY THE COURT:

It's ruled out ... it's ruled out of order. He said that it was reported to him by Osman that there was concern at Concave. That's your answer. It's also ...

BY THE ACCUSED:

Well he said ...

BY THE COURT:

It's also hearsay.

BY THE ACCUSED:

He said because I was there. How do you like that?

Because I was there, they was concern.

BY THE COURT:

Move on, let's not ... let's not quibble. Move on to something else.

BY THE ACCUSED:

All right.

QNow was there anything more specific than that discussed to the best of your recollection?

ATo the best of my recollection, that was a preliminary meeting and I left around two o'clock (14 h 00) to go to the senate meeting.

QAll right.

AIf there was something discussed after I left, I really do not know.

QThey never told you what was discussed?

ANo, they never ... they did not tell me but we had a second meeting after some time.

QAll right, now take a look at this document. Have you ever seen it?

AYes I remember this.

QOK. What is it?

AThis is areas we discussed.

QNo, I asked you what is this document?

AThis is a document that was given to us by Catherine McKenzie, the different kind of areas to discuss at the meeting.

QMeeting what? The day they ... over the senate?

ANo, I don't ... I said there were two meetings. My first meeting of ... there were two meetings. The first meeting was a short one, at least as far as I was concerned. There was a second meeting.

QAll right. Which one is this? This is the first or this is the second?

AThis, to the best of my recollection, is the second meeting.

QThis is the second meeting?

AThat's correct.

QAll right, now do you know about meeting of the secretaries?

AA meeting of the secretaries?

QYes? Are you aware of that meeting?

AWith who?

QWith secretaries, with Cheng, Belzon and Torbit?

ACheng, Belzon and Torbit, no, I'm not.

QYou know nothing about it?

AI'm not aware of any meeting between Cheng, Belzon and Torbit.

QNo, they met with secretaries.

AThat's what I already said.

QAnd asked them if they have concerns?

AI'm not aware of that.

QAll right. Did you ask that bodyguard be placed in your office?

AI did not ask for a bodyguard and he was not a bodyguard. He's a security guard.

QWell but he was not from University security, was he?

AI do not ... I was not in charge of security. We brought our concerns to Catherine McKenzie who was in charge of that and she took whatever measures in her opinion had to be taken and that included having a security guard near my office.

QOK, why you? Department personnel committee plans to deny my contract. You have nothing to do with that. Why you?

AI cannot answer that question. It was for Catherine McKenzie, in her opinion, she thought that I needed to have a security guard in front of my office and so she took appropriate measures.

QRight. How did you saw ... it was total surprise to you when one day you found security guard sitting somewhere, right?

AIt was a complete surprise because she told me. Otherwise I would be wondering why somebody would be sitting near my office all the time, because otherwise I would have asked the question: do you want to see me?

QAll right, so she advised you that there will be security guard, yes?

AYes.

QWhen did she inform you about it?

AI don't remember, but obviously before the security guard came.

QAll right. So one day you came to your office, you saw someone sitting and you understood it was security guard since she advised you about it, right? This is how it happened?

ANo.

QNo?

AI think he ... he came and he introduced himself, that he's been asked to be outside the office and they asked me where he should sit and there was a chair right outside my office and I told him he could sit there.

QOh all right, so it is different story. Now am I allowed to invoke section 9 and to read to the witness his previous story?

BY THE COURT:

You're talking in the context of the fitness hearing, are you?

BY THE ACCUSED:

Yes.

BY THE COURT:

I wonder, ladies and gentlemen, if you would ... I think what you can do is you can probably go out to lunch while

I sort out whether indeed there's a contradiction or not.

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

BY THE ACCUSED:

Now ...

BY THE COURT:

What does it say? What date was it?

BY THE ACCUSED:

It was April 29th 1993.

BY THE COURT:

If you care to pass me the pages.

BY THE ACCUSED:

Yes, it starts on page 103.

BY THE COURT:

And it continues to what page?

BY THE ACCUSED:

It continues to on and off until 111 and since we are here, not to make it twice, there is effectively not one but two contradictions.

If you want to look ... if you look at his explanation how security guard appeared there, he said that:

"The reason for that was that I was coming and going out of his office."

Which totally contradicts to what he explained today. Today he explained that there were meetings and he expressed his concern to McKenzie. At that deposition, he testified totally differently. He said and I quote from page 95 at the bottom:

"The reason is that some of my secretary (sic) were telling me that you're coming from one door of the main dean's office and walking through the other door many many times and when I asked you ... and when asked why you were there, you wouldn't say anything and you would just walk out and secondly, my office door is always open. It was never closed and I didn't want to be disturbed by you coming in because you were always persistent if you wanted to see me. You would just come into my office."

This is another contradiction because just yesterday he testified that I never came without calling his secretary first.

So that's another contradiction.

BY THE COURT:

It's not what he testified to yesterday. What he testified to yesterday was that his door was always open, his secretary was there and you would speak to his secretary and generally if he was ... if he was available to receive you, he would receive you.

Obviously if he had somebody in his office, he wouldn't be able to receive you. That's what he testified to yesterday.

BY THE ACCUSED:

Well I asked him whether I phoned the secretary first.

BY THE COURT:

I'm not ... I'm just telling you ...

BY THE ACCUSED:

And he agreed to that, that I didn't come like that, I phoned the secretary first.

Now here, he says:

"You were persistent and you would just come into my office."

It means that I didn't even ask permission, I just got into his office like that.

Now the reason for security guard was that I'm coming in one door and exiting in another door and this is total absurd (sic) and it's clearly contradicts to what he says today.

Now on ... on page 102, he says:

"I think the very first day that someone was sitting outside my office, I called the vice-rector."

Vice-rector, not McKenzie.

"I called the vice-rector, services and found out that it was ... there was a security guard placed outside my office."

So it was total surprise to him. Security guard never came, never introduced himself. He came and saw somebody sitting outside and I continue:

"I didn't get the answer. Someone called you and ...

and he continues:

"No, I said I called, then somebody was sitting there. I called the vice-rector, services, office and I was told that there was ... it was a security guard who was sitting there.

I'm asking:

"Why did you suspect that this person was a security guard or anybody special? Why did you call him in the first place?

Response: Because he was in plain ... in plain clothes.

Question: Well he might be just a student. Why did you think that he's somebody special?

Answer: That is because if anybody wants to see me, they go to my secretary and say that they want to see the dean. So nobody sits there simply outside my office on a chair.

Question: Well it was not right out your office. It was outside 907, correct?

Answer: Well in the month of December, there was somebody sitting right outside of my office."

So again, it's totally different story. It was total sur-

prise to him. He saw somebody sitting. He decided to verify who it was. He called vice-rector, services and he was informed that it was security guard. So we have three (3) contradictions: one the reason why security guard was there. I do not have to repeat it, do I? You remember? Two different explanations.

Second, that I was just barging in his office and yesterday, he had to admit that I never did that kind of thing and third is that he knew, he was advised in advance that there will be security guard and when security guard came, he introduced himself, well which looks quite natural.

At the time when he testified, it looks total absurd to me. It didn't look absurd to you, as far as I recall, but the whole explanation that he saw somebody sitting there and he had no idea who it was, it was total absurd and three (3) contradictions.

BY THE COURT:

Well you have to show me the pages.

BY THE ACCUSED:

I ... I told you, when I read, I told you the pages.

Once again? All right. Page 95, starting at the bottom and before that, he also said:

"I didn't know they were bodyguards."

Well that's all right, he now claims that that was security. OK, at the bottom of 95 until ... well the whole answer of his.

BY THE COURT:

The bottom of 95 to where?

BY THE ACCUSED:

To next question of ... on 96.

BY THE COURT:

Yes and then what? Page 95 to page 96.

BY THE ACCUSED:

Yes.

BY THE COURT:

OK, after that?

BY THE ACCUSED:

After that, page 102 starting with "I think the very first day that someone was sitting outside my office, I called vice-rector, services and found out".

BY THE COURT:

Page 102 to page what?

BY THE ACCUSED:

To page 103, somewhere in the middle.

BY THE COURT:

Yes. After that?

BY THE ACCUSED:

Again on 105, he again insists that all he informed authorities of was that I was entering his office and exiting his office, rather than something else.

BY THE COURT:

I don't remember you putting that question to him today.

BY THE ACCUSED:

Well I asked him how did it happen that bodyguards were there. I didn't ask first time also whether I entered and exited his office. I asked him today the same question I asked him that time.

BY THE COURT:

It may well be that the ... the answer isn't ... isn't superimposable one hundred per cent on ... on what he gave before. By and large, one has to look at the thing and see whether there's a serious contradiction between what he said before and what he said today and ... and furthermore, what's the significance of that?

BY THE ACCUSED:

What is significance of that?

BY THE COURT:

105 to what, to page what?

BY THE ACCUSED:

Well significance ...

BY THE COURT:

105 to what?

BY THE ACCUSED:

What?

BY THE COURT:

Page 105 to where? I'm not going to read the whole thing.

BY THE ACCUSED:

Well at the bottom of 105, it's just the same confirmation, that ... that he informed the authorities.

BY THE COURT:

OK, go on. Where else?

BY THE ACCUSED:

Well I think that's enough.

BY THE COURT:

Fine, would you hand me these pages.

BY THE ACCUSED:

Well I can give you the whole thing because it is stapled.

By the way, since we are here and we have some time left, is it possible that guards do not separate me from my documents? They ... all the time, my documents are being searched without me being present. They are separate me (sic) when I'm going back from here to Parthenais. They don't care about documents. It's like this, they throw it any way they can. Today they took tapes from me.

When you are finished reading this, I would like to add one more argument.

BY THE COURT:

OK, le procureur de la couronne s'il vous pla t?

BY THE ACCUSED:

Well one ... may I make one more argument?

BY THE COURT:

What's your other argument?

BY THE ACCUSED:

Well if you recall, I intentionally asked him today, not once but even twice whether he had additional reasons for concern? I mean this entering and exiting and he never mentioned this entering and exiting and he never mentioned this because when a person lies, he just doesn't remember what he lied previous time. This is the problem. This is usual method to find out if person is telling the truth; just ask him to repeat what he said.

BY THE COURT:

I have no idea about that. There, you're drawing I suppose on your wealth of past experience.

BY THE CROWN:

For the fourth step of Milguard, My Lord, I'm ready to

take your judgment and save time.

BY THE COURT:

Well as far as the fourth step on Milguard is concerned, yes, there is a contradiction at page 95 to 96. There is a contradiction in relation to the question of comings and goings and there is a contradiction, there is an apparent difference in any event that might be a contradiction between the comings and goings and between the complaints and in relation to the complaints from the secretaries.

At page 102, there is an apparent contradiction between what Dr. Swamy said today, namely that the bodyguard was introduced to him because otherwise he would have wondered who it was and what he said at pages 102 to 103 where he said that he noticed the person sitting there and picked up the phone and called the vice-rector, services.

So for ... for whatever that is worth, I will ... I will permit him to put questions to Dr. Swamy after letting him see what he said before and ... and let him ...

BY THE CROWN:

Step five is without jury.

BY THE COURT:

Step five is without the jury. Well this may be done by producing the statement or writing to the witness so the witness admits that he made the statement.

BY THE ACCUSED:

What is step five? Where is step five?

BY THE COURT:

Open ... open your criminal code at section 10 of the Canada Evidence Act.

BY THE CROWN:

No, section 9.

BY THE COURT:

Section ... sorry, section 9. It's on page 1295 if you have the Tremier's edition. (sic)

BY THE ACCUSED:

Yes, 1295?

BY THE COURT:

1294, 1295 which sets out the ... the seven Milguard rules. In any event, we'll leave that step until ... until after the adjournment. I will complete that step when we come back and we'll see what the answer is.

BY THE CROWN:

Could we let the witness have the notes. Maybe we could save time and he could look at them during lunch.

BY THE COURT:

I would think that's a good suggestion. The witness ...

BY THE ACCUSED:

Maybe someone make copy of those pages because I want to look through it during ...

BY THE COURT:

Well Dr. Swamy, would you arrange to be back for two fifteen on the spot and we'll take five (5) minutes. It's all it will take you to read what you need to read.

AYes.

BY THE ACCUSED:

Well crown should have their own copies, don't they?

BY THE CROWN:

I don't.

BY THE ACCUSED:

You have the ...
BY THE CROWN:
I don't.
BY THE ACCUSED:
How come? It was ... it was given only to me?
BY THE COURT:
Two fifteen.
BY THE CROWN:
Yes.
BY THE ACCUSED:
It's ridiculous.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

SUSPENSION OF THE HEARING

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HEARING IS RESUMED

THE COURT TAKES THE BENCH

PROOF OF VOIR-DIRE

SRIKANTA SWAMY
(Under the same oath)

BY THE COURT:

Your step five, Mr. Fabrikant, is proving the statement
in writing. I presume you can do that by asking two (2)
questions.

BY THE ACCUSED:

Well just whether witness recalls making that statement.

BY THE COURT:

That's right. Whether the witness recalls testifying on
the day in question and whether he recalls making that
statement.

AWhich statement, My Lord? Which statement, My Lord?

QI think the first one was pages 95 to 96.

AYes, I did make the statement. I did not know they were
... they were bodyguards.

QNo, just recognize for the minute whether ... having
looked at that, whether you recall having made the state-
ment?

AYes I recall.

QThe same thing for pages 102 to 103?

AThe only thing is the vice-rector, I really meant asso-
ciate vice-rector. I never called the vice-rector. If I
had said vice-rector, that's not what I intended.

Associate vice-rector always I was dealing with, Dr. Catherine McKenzie.

QOK, but you recall testifying here on the 29th of April and ...

BY THE ACCUSED:

This is not ... this is not the question he is asked.

BY THE COURT:

Just a second.

QYou recall testifying on the 29th of April?

AYes

QAnd having read these various pages, you recall having answered duly the questions and the ... the answers that are there?

AYes.

QFor the minute?

AYes.

BY THE CROWN:

I have no questions.

BY THE COURT:

And you have no questions, good.

BY THE ACCUSED:

Step five is finished.

BY THE COURT:

Step five is finished. Part of six is finished.

BY THE CROWN:

I don't want to raise anything on item six.

BY THE COURT:

No.

BY THE ACCUSED:

Well then six is finished too.

BY THE COURT:

So then it's all finished, save that I have to decide and I will decide that we'll bring the jury back and you may cross-examine Mr. Swamy on his ... on his previous statement.

BY THE ACCUSED:

Yes, but not only that, but according to section nine, after this cross-examination, there is a need to make the decision that witness is adverse indeed because this is what the motion is all about.

It's not just cross-examine on his previous statement.

BY THE COURT:

What you may do is cross-examine him on his previous statement, the two (2) parts that we've discussed where I found there to be contradictions.

If you think that this is an avenue into cross-examination at large, you're wrong.

BY THE ACCUSED:

Well you already make up your mind. You already made up your mind? You cannot do that.

BY THE COURT:

I can ... what I'm telling you is that thus far, thus far as we've gone now, as far as we've gone now, you can cross-examine the witness on his previous statement.

BY THE ACCUSED:

Right.

BY THE COURT:

That does not give you the right to cross-examine him at large.

BY THE ACCUSED:

Absolutely not, that's what ... not what I'm saying. I'm

saying ...

BY THE COURT:

What are you saying?

BY THE ACCUSED:

... that this cross-examination should be used in your decision whether to declare witness adverse. This is what the whole thing is all about.

Am I telling something new to you?

BY THE COURT:

Not at all.

BY THE ACCUSED:

So, I hope it is not new.

BY THE COURT:

So we'll bring the jury back and you may for the moment, you'll cross-examine on the statement at the moment.

BY THE ACCUSED:

Yes.

BY THE COURT:

You ... you ... then we'll see what happens after that.

BY THE ACCUSED:

Yes.

PAR LA COUR:

Le jury s'il vous pla t Madame.

BY THE ACCUSED:

OK, may I have it back.

BY THE COURT:

QDo you need that?

AI might need that.

QYou might need that, OK.

If you would hand it back for the minute. Dr. Fabrikant will give you the questions and the answers as he puts

the questions and if you require it back, all you have to do is ask.

BY THE ACCUSED:

And I think I also gave him the agenda of another meeting and I don't think I got it back. Did I and my understanding is that we have three (3).

BY THE COURT:

There is your agenda there.

BY THE ACCUSED:

Yes, OK.

BY THE COURT:

Mr. Belleau will pass it to you.

BY THE ACCUSED:

Yes, all right. I understand that we have three (3) contradictions.

BY THE COURT:

No, you have two: page 95 to 96.

THE MEMBERS OF THE JURY ENTER THE COURTROOM

BY THE COURT:

You're correct, you have three.

BY THE ACCUSED:

Yes, all right.

BY THE COURT:

Yes.

BY THE ACCUSED:

So we have three contradictory statements as compared to ...

BY THE COURT:

No, that's not how you do it. Now you ... you ask the

witness if he recalls testifying.

BY THE ACCUSED:

All right.

BY THE COURT:

Give him the question and give him the answer or give

him the questions and the answers if there's a continuity.

CROSS-EXAMINATION BY
MR. VALERY FABRIKANT
ACCUSED - REPRESENTING HIMSELF:

QAll right. Do you recall testifying on April 29th 1993 during fitness hearing?

AYes.

QOK, do you recall that you, among others, made a statement there that I always were persistent if I wanted to see you, I just would come into your office and just yesterday you have admit that ...

BY THE COURT:

Well just a second. Do you recall ...

BY THE ACCUSED:

Yes.

QDo you recall making that statement?

BY THE COURT:

I asked you ... I asked you the following question.

BY THE ACCUSED:

OK.

BY THE COURT:

Read him the question and you gave the following answer.

BY THE ACCUSED:

Well, OK.

QThe question was:

"Still why were there university security people at your office?"

The answer was:

"The reason is that some of my secretaries were telling me that you are coming from one door off the main dean's office and walking through the other door many many times and when asked why you were there, you wouldn't say anything and you just walked out and secondly, my office door is always open. It was never closed and I did not want to be disturb by you coming in because you were always persistent. If you wanted to see me, you would just come into my office."

Do you recall making this answer?

AYes.

QAll right. Now do you recall that just yesterday, Oh no, OK, yesterday one point was made yesterday. When I asked you: "Did I ever come to your office without first calling your secretary" and you admitted that no, I never done that, so that last part of your answer is in contradiction to what you said yesterday. Would you please explain this contradiction?

AMy Lord, when I stated that he was not coming to my office unannounced, it was not as if he was barging in. He used to make phone calls and ask the secretary. Sometimes my office used to be open and I ... I used to go and take my own Xerox. If I used to go out of my office and you would ask me can I see you, sometimes I would say yes, sometimes I would say I'm busy and then you would say: "When can I see you then" and this was not simply that year. It had happened even in previous years so when I meant that it was not as if he was rude and simply came into my office without telling anyone, but was persistent in saying that he wants to see me.

So from that point of view, he was in fact either calling or getting an appointment to see me in that sense because he never came to my office, just barging in but he was persistent every time when he wanted to see me to see me.

QWell here it says: "You would just come into my office". To the best of my understanding of English, it means I would just barge in. How would you ... how would you interpret these words: you would just come into my office?

AMy Lord, I've explained myself. I was trying to be ... I thought that I was trying to be ... to elaborate yesterday in order to explain and if I'm not ... I'm explaining myself: he did not barge in. That was not my interpretation to what I stated. I really meant that when he wanted to come, either he would make a phone call. Sometimes he used to come to my office and if I was there, he would ask can I see you. Sometimes I used to come out to make a Xerox and he used to ask me and I used to say yes or no, I'm busy.

BY THE COURT:

Now you've had that question answered. The jury will decide first of all eventually whether there is a contradiction, if they ... if they feel they have to and what significance to attach to it, what importance to attach to it. Move on to the next one.

BY THE ACCUSED:

Well he didn't answer this.

BY THE COURT:

Move on to the next one.

BY THE ACCUSED:

QAll right. Now your explanation if you recall, today I asked you even twice for the reason to have bodyguards and you mentioned here the answer was that Haines called you. Osman said something and you never mentioned me coming to your office and going through another door as main reason for having security there. Could you explain this contradiction?

AYes, My Lord. First of all, the question started off as saying Haines complained. I didn't talk about Haines complaining that particular year. That was another year when you made the phone call. Now I did not ... this morning

when I testified, in addition to the other reasons, I forgot this reason, but yes after all, I'm a human being and I'm going through for the last ... one year, it has not been easy for me, so if I forget, you have to excuse me, My Lord and he used to come and you can I ... you can ... the secretaries who complained could be asked the same question and that was a combination of so many things and it is very hard to remember exactly everything what happened then.

I have to tell that, My Lord, because there was so many things were being talked in the corridor, whether it was talked in the corridor, whether it was talked afterwards when we were looking at all these things. It's very difficult to remember. I'm trying my level best to remember everything and ... and last time, in April, when it was asked, that was one of the reasons and perhaps I did not go into all the different reasons which made up (sic) and it was in the context this morning of the first meeting that we were talking about and I stated there was a second meeting and if I forgot it, I have to be excused My Lord.

QWell the ... first of all, if you recall again, your answer today was that there were several meetings and effectively bodyguard was decided due to those meetings. You never mentioned a single meeting on April 29th. Could you explain that?

AI was asked so I did not go into all the details and I did not say several meetings. I remember only two (2) meetings, one of the day of the senate and one subsequent. If there was, I don't remember. I remember two (2) meetings.

QWell you didn't mention a single of them. Could you explain that?

BY THE COURT:

He's explained that. He's told you why not. Now move on to your next question.

BY THE ACCUSED:

He doesn't allow me to ... to ask questions. He didn't explain anything.

QNow do you still insist that indeed in 1991, I was coming to your office, entering one door, exiting another door. Someone was asking me, I didn't respond anything. Do you still insist on the truth of that statement?

AIIt's not a question of insisting. That's what I recall. There were many things and this was one of the reasons.

QAll right and when you placed bodyguard, I stopped coming?

AI ...

QOr I continued coming?

AI didn't use the word bodyguard. I don't want the ... afterwards to be told that I used the word bodyguard, My ... My Lord.

QAll right.

AIIt was a security guard and when I ... I'm not saying that you were not coming or not (sic). In fact I remember once, even when you were sick, you ... I saw you in the corridor when I was taking a Xerox but I don't know what you did or what you didn't, (sic), I took the Xerox and went back to my office.

QHe doesn't answer my question. You got complaints from your secretaries that I was coming to one door and exit-

ing another door.

AYes.

QYou got the security guard there. Did those complaints stop or I continued coming?

AFirst of all, I didn't get the security guard. I'm telling you once again ...

QAll right.

A... it was Catherine McKenzie who placed. Secondly I don't remember afterwards in fact anybody complaining and I requested Catherine McKenzie that she should remove that plainclothes person because it was in fact making others wonder who this person was, who was sitting all the time. I requested her to remove him from my office.

QHe didn't answer my question. Did it help or it didn't help because ...

AWell nobody complained after that.

QSo I stopped coming but I had no idea there was bodyguard. How come I could stop? If I was coming and I had no idea there is bodyguard, so for some reason, I stopped coming, that's what you're saying?

AI have no idea why you stopped coming. I'm sorry, I cannot answer that question because mainly the reason was that the faculty personnel committee was meeting at that time.

BY THE COURT:

Well let's not speculate on the reason. You just ...

AFine, My Lord.

BY THE ACCUSED:

QSo when was that that I was coming? Was it November 1991, coming and going? Every day? How it was?

AI did not say every day. You must ... I was not sitting in the corridor to watch you. There were complaints from the secretaries that you had done that and too the way you were walking there, going from one door to the other. They complained to me that this was what was happening.

QWell that was the first and the only reason which you stated on April 29th. You never mentioned ... could you explain why on April 29th, you didn't mention such an important that I bought a rifle and went hunting?

AI did not remember. If the questions were like what you have been asking one, I would have remembered one by one. Even this time, there are a lot of things I'm recollecting only after the documents are given or questions are being asked of me.

QWell I asked you exactly the same question. Why was security guard there?

BY THE COURT:

You have his answer.

BY THE ACCUSED:

He didn't answer.

BY THE COURT:

Go ahead, next question.

BY THE ACCUSED:

All right.

QDo you recall I asked you question as to when did you learn they were in fact security guards?

AYes.

QAnd that your response was:

"I think the very first day that somebody was sitting outside of my office, I called the

vice-rector, services and found out that it was ... there was a security guard placed outside of my office."

Do you recall that?

AYes.

QToday you testified that you were informed in advance by Dr. McKenzie that there will be security guard and when security guard came, he introduced himself so you were not surprised at all. You didn't have to call anyone. So how could you explain that discrepancy?

A I don't think I said I was not surprised. I didn't say I didn't have to call. I stated that ... that there were... I was informed there was a security guard. I don't know which happened first. I can't recall, but I called Catherine McKenzie and she told me it was a security guard. The reason why I called was the security guard of the university is always in a uniform. Here was a plainclothes person sitting there and that is the reason. If there was a security guard sitting there, I would not have asked the question but there was a plainclothes person sitting there and I asked whether it was because of that that the person was asked to introduce or he introduced himself first and therefore I asked Catherine McKenzie to say ... to expressing (sic) a surprise because I would expect a security guard, I can't recall but both things happened.

I called Catherine McKenzie because it was not a regular security guard. If a security guard was there, I would have ... it would have seem right to me.

QWell your response was that:

"I think the very first day that somebody was sitting outside of my office, I called the vice-rector services and found out that it was. There was a security guard placed outside my office."

I asked you again:

"I didn't get the answer. Someone called you and ...

You responded: No. I said I called when somebody was sitting there. I called the vice-rector office and was told that there was ... there was a security guard that was sitting there.

Question: Why did you suspect that this person was a security guard or anybody special?

Why did you call about him in the first place?

Response: Because he was in plain ... in plain clothes.

Question: Well he might be just a student. Why did you think that he's somebody special?

Answer: That is because if anybody wants to see me, they go to my secretary and say that they want to see the dean, so nobody sits there simply outside my office on a chair."

This, do you recall making these answers?

AYes.

QWell these answers clearly mean that the person was sitting there and he didn't bother to introduce himself. Is that correct how this answer mean? (sic)

AI stated, My Lord, that ... and every one of the things that I stated is correct. If there was a student or somebody else who wants to see me, he would not be sitting there and I did call Catherine McKenzie and she told that was the security guard. The day ... I would not have called Catherine McKenzie if in fact the security guard for the university in his uniform was there and it may be as a consequence of that. I can't ... I can't remember something that happened in 1991. It may be as a consequence of that he came and he introduced himself because I called Catherine McKenzie to ask who was that person sitting outside, because of the fact that if it was a security guard in the regular uniform, I wouldn't have asked that question because this was discussed at the second meeting, that she would take appropriate measures.

QSo you ... do I understand that you change your story once more, that now you do not even recall whether he did or didn't introduce himself? Maybe he was just sitting there and maybe this answer is correct and you called and after that, he came and introduced himself? That's ... that is your new story?

ANo, it's not a story. I did not say that he didn't not introduce himself now. I said he introduced himself, yes. What I'm saying is that I cannot recall whether he was ... I don't even know whether he was there for some time before introducing himself. This was a person in plain clothes and when I saw him there, then I contacted McKenzie and it might have been afterwards, that because of that phone call, she must have told "You better tell him who you are" because if he was a security guard, I would not have asked that question. I'm trying to explain that as clear as I can.

QWell I ... he didn't answer my question.

BY THE COURT:

You have your explanation. Now move on to something else. We've plugged this horse long enough.

BY THE ACCUSED:

OK.

QNow try to recall better. Could it be that in fact it was not just security guard, but it was Mr. Francisco with security guard who came to see you and introduced this particular guard? Maybe this was the situation? Could you recall it now better than that?

AYes, My Lord, yes, he has brought that back, memory back. When I called Catherine McKenzie ...

BY THE COURT:

Just a second, you'll continue your answer in a minute. That's about the twentieth time that when the witness has started to give an answer, you have given this sarcastic laugh. I'm sick and tired of this sarcastic laugh. Yesterday you had occasion to cite me the case of R. versus Chase, 1, C.C.C., third, page 188. It's not a case you looked up. It's a case that was furnished to you by Mr. Belleau.

It would do you a power of good to read that case again because you will find in there in dealing with the question of whether a witness is entitled to be represented by counsel, you will remember you made the argument that

a witness not being a party is not entitled to be represented by counsel, that in that case it was held that any witness is entitled to courteous and fair treatment by those that are examining him or her and that a lawyer is surely not necessary to ensure that, that rather it's the court's obligation to ensure that.

Now you have been anything but courteous and anything but fair in your treatment not only of this witness but with the whole parade of witnesses who have come before us.

Now I suggest to you that from this point on, you clean up your act or I'll simply terminate the witness's testimony and the same will hold true for everyone that follows.

BY THE ACCUSED:

Well I agree with whatever is said in this case but this laugh was kind of, you know, I just couldn't help it. I apologize.

BY THE COURT:

Is that so?

BY THE ACCUSED:

Well witness is changing again his story and it looks really funny because he doesn't recall that it was indeed Francisco who came. Would you believe that childish

...

BY THE COURT:

I'm not interested, I'm not interested in your arguments on the subject. Now ...

BY THE ACCUSED:

As far as ...

BY THE COURT:

Dr. Swamy, would you ... would you continue your response. There was a question of Mr. Francisco and you said yes, this triggered your memory.

BY THE ACCUSED:

Well he may be ...

AI don't know whether his name Francisco. Yes it was one of our university people who came and said that this is a security guard, that he will be always outside my office.

BY THE ACCUSED:

QAll right, so now you recall it better, that was Mr. Francisco who came to your office and introduced this security guard. He explained to you everything and I believe that if you had any questions, could you ask Mr. Francisco all those questions? For example, why he is plain clothes or something like that? Could you ask Mr. Francisco whatever questions you had?

AI didn't ask Francisco anything because Mr. Francisco is not the person who is in charge of security. It was Catherine McKenzie.

QWell the person who is in charge of security, as such security, is Francisco and Bujold, if you know that too?

Are they?

BY THE COURT:

The witness has told you why he didn't ask Francisco and that is that. Don't argue with him. Go ahead.

BY THE ACCUSED:

I'm in cross-examination now, don't I ...

BY THE COURT:

You're no longer in cross-examination.

BY THE ACCUSED:

I am, I am enquiring in all these questions, I'm in cross-examination.

BY THE COURT:

You are no longer in cross-examination

BY THE ACCUSED:

What do you mean I'm no longer ... I continue the same questions.

BY THE COURT:

You have covered the question of the contradictions.

We're ... we're on now ...

BY THE ACCUSED:

No, I'm still discussing the same questions. Who introduced who? Did he make those phone calls?

BY THE COURT:

In any event, you are ... first of all, you're no longer in cross-examination and secondly, the witness has given you his answer.

BY THE ACCUSED:

Well ...

BY THE COURT:

He said to you "I did not discuss it with Francisco because he's not in charge of security. As far as I'm concerned, Catherine McKenzie is." Your next question was argument. You started to argue with the witness. You've got the witness's answer. That's it, now move on.

BY THE ACCUSED:

No, it was my question: do you know that the head of security is Bujold?

BY THE COURT:

Are you going to move on? Are you going to move on with your next question? Good, then do so.

BY THE ACCUSED:

Well that was my next question: do you know that the head of security is Mr. Bujold.

BY THE COURT:

He has told you, as far as he was concerned, security divulged from Dr. McKenzie. That was his answer.

BY THE ACCUSED:

My question is: does he know or doesn't he. Let him answer. This is normal question in cross-examination. Let him either answer. Do not answer instead of him. I don't think this is duty of trial judge to answer instead of witness. Either you rule this question as inadmissible, then do so. If this is an admissible question in cross-examination, let him answer. Let us stop abusing the process.

BY THE COURT:

He has answered the question so your question is inadmissible.

BY THE ACCUSED:

Well he said that ...

BY THE COURT:

I ruled on it. You asked me to rule, I ruled. Now put your next question.

BY THE ACCUSED:

QAll right, do you know Mr. Bujold?

AYes I know Mr. Bujold.

QDo you know what his position is at the university?

AHe's in charge of security, that's all I know.

QOK.

ABut he reports to Catherine McKenzie, he used to report to Catherine McKenzie.

QOh yes? Is Catherine McKenzie reporting to somebody?

AYes, there is a whole line of responsibilities. Catherine McKenzie reports ...

QOK, who is she reporting to?

ATo the vice-rector, services.

QWell why didn't you call the vice-rector, services? That would be even higher than that.

AI can answer that question. Catherine McKenzie was the one who had arranged the intervention team. She was the one who was given the responsibility for this whole security thing and so I was dealing with her. Otherwise every time, the ... for all these things, I had to be dealing with the rector, everything.

QAll right, now since you were perfectly explained who is security guard, why is he in plain clothes and so on, why did you answer the way you answered. I'm again citing to you questions and answers. You said:

"No, I said I called when somebody was sitting there. I called the vice-rector, services office and I was told that there was ... it was a security guard sitting there.

Question: Why did you suspect that this person was a security guard or anybody special? Why did you call about him in the first place?

Answer: Because he was in plain clothes.

Question: Well he might be just a student. Why did you think that he's somebody special?

Answer: That is because if anybody wants to see me, they go to my secretary and say they want to see the dean. So nobody sits there simply outside my office on a chair."

Now this means that nobody came to you and introduced himself. You had no idea who that person is.

Now you are telling not only that that person introduced himself but he came with Francisco and Francisco introduced him and explained to you everything. How do you reconcile those two statements?

AMy Lord, I'll repeat that. The person from the security office introduced this person to be ... after he has stated about Francisco, I don't know his name, yes I remember. However I did call Catherine McKenzie also.

That I remember very well and I have to repeat, I thought I'm answering the question with ... without going off at any tangent. If there was a security in the university in ... in uniform, I would not have called. Because of the fact that at the meeting, if she had taken ... that she was going to take appropriate measures and in the appropriate measures in her opinion was to have a security guard in front of my office, it would not have been a surprise to me. Because I saw somebody sitting there and if there was anybody who wanted to see me, they would have gone to the secretary to get an appointment. Then I must have called at that time. I mean, otherwise there is no reason why I should remember calling Catherine McKenzie and asking that question and her answering it's a security guard and that was the reason. Perhaps now I'm

only saying ... conjecturing that it must have been after that that then the security person who was in the uniform who I know, who introduced this person to me.

QNow we have a new story. So there was ... so he didn't come together with the officer? He was just sitting there? This is your story now? Is that ...

ANo, it is not a story. What I remember was that the person was sitting there in front of my office and I ... and I remember clearly somebody sitting in front of the office, my calling Catherine McKenzie and that person was in plain clothes and my calling Catherine McKenzie and asking and her saying it's a security person and then also being ... afterwards being introduced by ... by one of the security people of the university and that would be in front of my office of course.

QSo would you believe that story that they would put somebody there without ...

BY THE COURT:

I don't need your comments. You have ...

BY THE ACCUSED:

... without usual normal introduction.

BY THE COURT:

I don't need your comments. You have his answers.

BY THE ACCUSED:

Well I have it answered and I continue my motion. So we have ... don't forget, I'm in section 9 of Canada Evidence Act. What ... that's what the whole thing is all about. We have discovered three (3) contradictions, namely the first one was that during his testimony on April 29th, he said that I was just used to come into his office, that's it.

Recently he admitted that I never came to his office and the words here, I repeat once again: "You would just come into the office." I don't think that his English is that bad to think one thing and to say this: "You would just come into my office" so this is ... this cannot be misinterpreted.

When he was asked to reconcile those two, he just didn't give any satisfactory answer. He said that he didn't mean that I would just come into his office. He meant that I would call. Well those are two different stories. That's totally irreconcilable.

The second contradiction was: I asked him on several occasions today because I was waiting for him to mention me coming and going into the office. This is why you remember, you even forbid me to ask him what were the facts which you had in mind to ask the security guard and he said that it was my motion with hand, it was rifle in North America. He never mentioned me entering and exiting and I asked over again in a different form were these all the facts? Any other facts, anything else which prompted your concern. He never mentioned that.

Now here, he answered one and sole thing. He never mentioned any meetings. Now he claims here that he could have forgotten about those meetings. This doesn't make any sense. These meetings were important part of the whole events. He couldn't have possibly forget about it. He just thought at the time of testimony on April 29th that well, he knew very well that I had no idea about the meeting, so he thought that most probably it would never come out because it came out inadvertently, that I have

just discovered it, by using what you call fishing and I think this is a good thing for defence, to be able to fish because very interesting things are coming when you do fish and when the university is not open and not honest in its behavior.

So in this particular case, there he mentioned that secretaries were telling him that I was coming and going out of the office, coming from one door and exiting through another door and that was the only reason he quoted and again this is total absurd. When I asked him: Now OK, there was security guard there. It was plain clothes, therefore it was plain clothes because just to make him hidden so that I wouldn't know that there is a security guard and since I didn't know that there was a security guard and it was my pattern of behavior, why would it stop and security guard anyway, he didn't stop me either.

I would have understood to put security guard there to ... OK, I enter, he would stop me and say: what are you doing? Why did you come here? Don't come again. That would make sense, but just to have there a security guard, for me to go again and exit again, this is total absurd.

If this bothered him, then security guard should have intervened. Anyway he should have known something about it. Now he doesn't know. He remembers that there were complaints but he doesn't remember whether at that time, there were additional complaints or when security guard was there, the complaints stopped. He had no idea about that either.

And the last but not least and this is the most outrageous contradiction, that when he was asked about security guard, how he learned about security guard, he said that he just came there. Someone was sitting and he got suspicious why someone is sitting there and doing nothing so he called vice-rector, services.

Then he testified that ... today he testified absolutely different story. Today he testified that this person came and introduced him, himself. So he knew that was security guard. Not only that, he also testified that he was informed several days before that that security guard is coming and because we had here Mr. Francisco who testified that he was the one who brought security guard upstairs, not that security guard was there and he just came to introduce him, he brought security guard with himself and we all know that in any, you know, more or less civilized behavior, no one in his right mind would put security guard there without first introducing him to the head of the office.

This is total absurd, even to think that this ... this kind of stuff could ... could have been produced there. This is total absurd and when he was asked, the questions were so clear and unambiguous, I asked him: "Why did you suspect that this person was security guard or anybody special?" In every normal circumstance, the person who is not committing perjury would say "Well I didn't suspect, I knew he was a security guard. I was informed several days before that there will be security guard so it was not a surprise to me at all. I knew he was security guard. I was informed about it and he introduced himself. So I was not surprised at all."

He answered something different. He answered: "Well this is because if anybody wants to see me, they go to my secretary and say that they want to see me. Nobody sits there simply outside of office on a chair." So it means that someone was sitting there without introducing himself.

Now it's obvious that witness committed perjury, not just contradiction. So I believe that more than sufficient reasons are there to declare witness adverse.

BY THE COURT:

Thank you. I don't need to hear you.

Section 9.2 of the Canada Evidence Act reads as follows:

"Where the party producing a witness alleges that the witness may at other ... may have made ... sorry, that the witness made at other times a statement in writing or reduced to writing inconsistent with his present testimony, the court may, without proof that the witness is adverse, grant leave to the party to cross-examine the witness as to the statement."

That permission was granted to you. Of course the permission to cross-examine the witness on his statement does not in any sense make it incumbent upon you to make the motion that you've just made, although indeed, you might make that motion because the article continues:

"And the court may ... may consider the cross-examination in determining whether in the opinion of the court, the witness is adverse."

What that says to me is that whether now or whether this morning or whether yesterday afternoon or on the other ten (10) or so occasions that you've asked me to declare this witness whether adverse or hostile, what that last part of the article says to me is that I consider his testimony globally in making that determination and that I may take into account the cross-examination on the previous inconsistent statements.

Yes, I'm prepared to take the previous statements into account in making the determination, that one must bear in mind that the witness's world did not revolve around Valery Fabrikant. The witness's world revolved around being dean of the faculty of engineering and computer science.

From his testimony, that required him to have numerous meetings on numerous occasions with numerous people on numerous subjects and I suppose in ... in his view or in his mind, the problems of Valery Fabrikant were only one aspect which he had to concern himself with during the period which concerns us.

I've told you time and time again that different people's recollection work in different ways, that very very frequently and we've seen examples of it here, something causes the witness to remember something which he otherwise did not.

Because your preoccupation is yourself and your own problems, you of course find it inconceivable that someone wouldn't remember some dimension of his dealings with you. I don't see it in those terms. I can see quite ea-

silly that one would probably forget some dimension of his dealings with you and quite frankly, that doesn't surprise me.

In making a determination, what I'm more concerned with is the demeanor and attitude of the witness, what has the witness possibly got to gain by being less than frank with you about his recollection of the posting of security guards?

The question of the security guards is of marginal relevance to this case, maybe none, maybe none. It's admitted because it's of marginal relevance or because it may have some relevance.

The contradictions are not contradictions that catch the witness flat-footed and leave him in a position where he can't explain what he said one day in relation to what he said another day.

Very very much depends on the way the question is put to the witness, how the witness understands the question and what the importance of the question is at the time.

When a number of these questions were put to Dr. Swamy beforehand, we were in the middle of what was called a fitness hearing. These questions by and large were not relevant to the fitness hearing which you were told over and over again and I know that I, for one, pressed matters along as fast as I possibly could at that time.

Why the witness remembers one thing one day and one thing another day is a question you'll have to direct to a psychiatrist or a psychologist. I can't answer that but I know that in the witness's general demeanor, for my part anyway and I ... what I say of course doesn't bind the jury in any sense, I haven't thought that he was purposely trying not to answer your questions and therefore the answer is the same as it's always been.

Even considering the cross-examination, I don't think the contradictions that you demonstrated are anything more than trivial. I don't think they demonstrate to me, in fact I know they don't demonstrate to me any ... any attempt on the witness to evade your questions or to act in bad faith and I can't see why the witness should be considered adverse in the circumstances.

So your motion is denied and we have wasted enough time on this subject. I wish you would get to something pertinent.

PROOF OF THE DEFENCE (cont'd)

BY THE ACCUSED:

Well I am and since I know my defence, I'm always on something pertinent.

Q Now this document which was shown to you, do you recall what meeting was that? It's agenda of what meeting?

A It ... there was two that I ... as far as I can recollect, there were two meetings. I think this was the agenda of the second meeting.

Q All right, now what do you recall about second meeting? Who was present? What was the purpose of that meeting and how it evolved?

A I don't recall everybody who were ... who were there. I think the DPC was there, certainly Catherine McKenzie was there, Mr. Relton was there. I don't know who else was there and there were several things that were being dis-

cussed. One was ... by that time, the department personnel committee had made its decision as to what recommendation they were going to make.

So they were quite concerned about the reaction, your reaction once you read it. So it was decided that I would give by hand the department personnel committee recommendation to you and that Mr. Relton would be present at that time, just to make sure that if there was any question, that you ... any clarification you needed when I gave, there was somebody actually present there.

The second one was that it was also discussed whether somebody should talk to you, perhaps to console you (sic), to see a psychiatrist.

QNo. Sorry.

AAnd also Catherine McKenzie wanted to make sure that Dr. Osman and I would give assurance to the people who are concerned about their safety that appropriate measures were going to be taken by Catherine McKenzie. These were the main things that were discussed and agreed upon.

QWell could you elaborate about psychiatrist? Was there ...

AThat's all, it was ...

QWas there anything in my behavior which seemed to you abnormal or not normal or whatever?

AIt was not considered normal to make a statement to the chair of a department that you would settle it ... you would settle it in an American way, whatever it meant. That's not what a professor would tell a chair, that's not considered normal.

Walking through one door and going to another door, simply moving around like that was not considered normal so there was several ... things of this nature are ... were not considered normal so perhaps whether there was any good at all in asking you to get, to seek help. Maybe I should have used the word psychiatrist, even though the word psychiatrist was ... I think was used, it was whether you could get help and that of course also depended upon your reaction at the meeting with me, with John Relton present, how you would react when you saw the letter and that we would meet if there was a need after you met with me.

BY THE ACCUSED:

He didn't answer my question but you feel he did? He did?

BY THE COURT:

Yes he did.

BY THE ACCUSED:

All right.

QIs it accepted in civilized society when someone allegedly comes and made the gesture which you said I allegedly made, just to call me and say: did you make that gesture? Did you do that and if you did, could you explain what you did and why you did that? Is that would be (sic) a normal behavior in civilized society?

BY THE CROWN:

This is cross-examination, My Lord.

BY THE COURT:

Yes, it is. The objection is maintained.

BY THE ACCUSED:

All right, I will rephrase it.

QDid you at any time consider appropriate to call me, put

these questions squarely to me, why do you enter one door and exit another door? Why did you come to chairman and make the hand gesture and said about something North America? (sic) Did you consider to tell me that and ask me explanation?

AI did not because I did not consider this normal behavior and I'm not a medical doctor, because I didn't consider that as normal. So the only thing that I could do was to bring it to the attention of Catherine McKenzie and that's why, the whole reason why the whole intervention team was called. It was not something, one person who decided or could see what action should be taken. That's why there were so many people looking at the different possibilities.

QSo you were sure that I'm insane something? (sic)

AI did not say that.

QAll right, so you were sure that something was wrong with me so there was no point to talk to me, that was your opinion at that time?

AThe few times I ... you came to my office, I tried to communicate, it was difficult to communicate with you.

QCould you go into details? What was the problem communicating with me?

ABecause you would not ... yes, for example, I had told you over and over again not to call the vice-rector's office in connection with the promotion the previous year, but you didn't ... I did not succeed in telling you that. You did call her office over and over again. That was one instance.

Secondly, I told you not to correspond with her regarding promotion, just debate but you, yourself, you wrote letters to her regarding your promotion over and over again, so there was not ... there was no way I could communicate with you, because whatever I told you, it was not helping.

The same thing in 1990, when you got the appointment, I talked ... you came to my office and thanked me that day for having gotten the probationary appointment and at that time, I told you again: Dr. Fabrikant, this ... please, you have ... this is a new book, turn the new leaf and from now on, just concentrate on your work. Don't simply find ... try to bother anyone." I don't think that had any effect.

Therefore there was no way I could talk to you and I'm not a counsellor to be able to counsel you so the only thing that I could do was to bring it to people who could contact the appropriate people to ... to see how or what kind of action or what kind of process one should go through.

BY THE ACCUSED:

Well he is not answering question. Question was why he did not put me the question squarely and his answer is because I didn't listen to him, what he advised me. I don't have ...

BY THE COURT:

No, he did not.

BY THE ACCUSED:

... to listen to him. The question was differently.

BY THE COURT:

He said you were difficult to communicate with and you asked for ... and you asked him in what sense and he give

you some examples.

BY THE ACCUSED:

Well, that I somewhere followed, somewhere didn't follow his advice is a different story.

BY THE COURT:

The question has been ... the question has been answered. Move on to something else.

BY THE ACCUSED:

All right.

QSo you never, neither you nor anybody else ever asked me question whether I did make this gesture, whether I did enter and exit, ever to your recollection, you or anybody else to your knowledge?

AI don't know about others. I can only speak for myself. I did not because I knew that I could not communicate with you.

QWhat? I did not hear you? I did not answer you? If I disagree with you, it doesn't mean that we cannot communicate, does it? To you, a person who disagrees ...

BY THE COURT:

The witness has given you his answer. He said that experience showed him he could not communicate with you.

That's it.

BY THE ACCUSED:

QWell why then you decided to give me this decision if you couldn't communicate with me? Such an extremely crucial decision, you were not sure what I'm going to do and you decided to communicate with me in the first place? How to reconcile that? Then probably you were not the right person to do that.

ACommunicate with you? I don't understand, My Lord.

BY THE ACCUSED:

All right. He said that he didn't ask me because he was unable to communicate with me. Now there is a question at the meeting: who is to convey to me decision of DPC and for every normal person, it should be DPC who is supposed to do the job. Instead, dean takes on himself the job. So for this so risky job with bodyguard standing just behind the door, he's prepared to do that and to ask me a simple question: did I didn't make (sic) this hand gesture, he could not communicate with me. Now how many inconsistent (sic) it is needed to declare the witness adverse? I'm applyin again.

AI will answer the question now.

BY THE COURT:

No, your motion again is dismissed. Answer the question, Dr. Swamy.

AI'll answer the question, My Lord. Here, I was doing that job. I was the dean of the faculty and the department personnel committee would have normally sent it by internal mail. They wouldn't even send it by registered mail. Here, the intervention team, when the discussion took place, it was turned ... it was advisable because we did not know what the reaction of Dr. Fabrikant would be, that I would personally hand this recommendation to him and also in the presence of Mr. Relton, the code administrator so that any confrontation that took place would be in the ... would be in the presence of another person and which I did and I explained to him what was available to him under the collective agreement once the department

personnel committee recommendation was issued. I was doing my job as the dean.

BY THE ACCUSED:

QWell isn't it your job as a dean, if somebody allegedly threatened somebody else, to call that person and to ask him why he's doing that? Is this also your job as a dean, isn't it?

AIn the normal circumstances, it is my job. When I had failed to communicate with you, there was not much point in trying to talk this with you. Therefore the only thing that I have to do was to bring it to - I've said this three times, that will be a fourth time - to Catherine McKenzie so that the whole group of people, I mean, could look at this and suggest ways and means of handling it.

BY THE ACCUSED:

He doesn't answer the question.

BY THE COURT:

The question is answered.

BY THE ACCUSED:

All right.

QSo did you at any time ask members of DPC what were their reasons to recommend termination of my employment?

AThat is not how we deal with the recommendations. The departmental committee recommendation came and there is a faculty personnel committee, the dean does not make decisions of his own. There is a committee, a (inaud.) committee at the faculty level, so this was brought to the faculty personnel committee and I also told you what the avenues were according to the collective agreement. That you could rebutt the department personnel committee recommendation and in fact, at that time, you made a statement "What is the point? You've already made your decision?" and I said "Give the benefit of the doubt to the faculty personnel committee. Let it read your rebuttal" and the you asked for extra time which was given to you. Then you asked whether you could meet with the faculty personnel committee. That is not common and the faculty personnel committee agreed to meet with you and they met.

So we got ... the faculty personnel committee nor the dean goes and discusses with the department personnel committee. A reasoned recommendation was already there from the DPC, which was given to you by hand by me.

BY THE ACCUSED:

Could you direct Mr. Belleau to give me some jurisprudence on sarcasm because I do believe that it is allowed and it is just asked ...

BY THE COURT:

I gave you it a little earlier and it is: don't do it.

BY THE ACCUSED:

Well sarcasm doesn't mean disrespect. Sarcasm is normal human reaction to some dishonest behavior.

BY THE COURT:

Don't do it.

BY THE ACCUSED:

Well I find the jurisprudence first and I will read it to you. If jurisprudence says that sarcasm is allowed, then I would like you to keep that jurisprudence.

BY THE COURT:

If you have another question to put to Mr. Swamy. If you

don't, we'll end this.
BY THE ACCUSED:
Well I do.
BY THE COURT:
Then do it.
BY THE ACCUSED:
I do a lot of questions.
BY THE COURT:
All right.
BY THE ACCUSED:
QWell question was if he asked those people for the reasons and the answer is what? Did you or didn't you? Could you just answer simple question? Yes I didn't, no, I didn't?
BY THE COURT:
He told you that is not ... he told you, he said "That's not the way we proceed." I take that to mean no I didn't go and ask.
BY THE ACCUSED:
Well what was the need then ...
BY THE COURT:
And he told you how he proceeded.
BY THE ACCUSED:
... to waste court time with whatever he told after that. Could you direct the witness that court time is very valuable and wherever it's possible, answer yes or no and he will answer yes or no.
BY THE COURT:
Listen coming ... coming from you, no, I will not make that direction.
BY THE ACCUSED:
All right. My business is to ask you. You refuse? That's fine with me.
BY THE COURT:
Because you are a past master at wasting court time.
BY THE ACCUSED:
Oh no. Just wait for my summation, you will see everything will be logically in its place. There will be not a single thing which is irrelevant or unnecessary.
BY THE COURT:
Have you a question to put? Put your question.
BY THE ACCUSED:
Oh yes, all right.
QSo did you feel like you were playing Russian roulette if you took all these bodyguards stuff seriously?
BY THE CROWN:
This is out of order, My Lord.
BY THE COURT:
Yes, this is ruled out of order.
BY THE ACCUSED:
This is not a sarcasm at all. This is very serious question.
BY THE CROWN:
This type of question has been ruled out.
BY THE COURT:
Out of order.
BY THE ACCUSED:
Out of order?
BY THE COURT:
You don't ask that question.
BY THE ACCUSED:

Why? May I ask why?

BY THE COURT:

You may not ask that question, OK.

BY THE ACCUSED:

That's all?

BY THE COURT:

That's all you need to know.

BY THE ACCUSED:

No explanation?

BY THE COURT:

That's all you need to know.

BY THE ACCUSED:

All right. You see, how agreeable I am. OK.

QDo you... did you in 1991, at the time when DPC has informed you about their decision recommend (sic) my termination, did you recall that just two (2) years ago, the same DPC rated me from excellent ... outstanding to excellent? Do you remember that?

AI remember the whole case.

QAll right, do you remember that you, yourself, has quoted some people, scientists, saying that I'm in the top ten scientist in the world in my field and so on and so forth, do you recall that?

AI don't remember exactly whether it was top ten percent (10 %) or not but the letters indicated that you were ...

QNot top ten percent, top ten (10)? Top ten is not ten percent?

AOr even top ten, I don't remember that. However the letters were very supportive of your ... of your research activities and I said that before and that was the reason why in 1990, from Research Associate Professor, the department, when it recommended, the faculty personnel committee also accepted that recommendation to promote you to Research Professor.

QAll right. Do you recall also that my teaching evaluation were in top, at least on average, ten percent, do you recall that too?

AYes I recall and I've also gone through that yesterday, that teaching evaluations ...

QWell just say yes, that would be sufficient. How about that for a change, just say yes. Now ...

BY THE COURT:

You answer the questions as you feel you should, Dr. Swamy.

AThank you My Lord.

BY THE COURT:

QOK and taking all this into consideration, when DPC comes to you and says that they want to terminate a person, shouldn't you, as responsible dean, ask them "Are you crazy?"

BY THE CROWN:

This is improper, My Lord.

BY THE ACCUSED:

All right, I will change the question.

QTaking all this into consideration, when faculty ... when department personnel committee comes to you and tells you that they want to terminate my employment, what should be your reaction?

AMy reaction would be exactly what I did, to give the chance to the individual to present his or her case, in this particular one, your case so that the faculty per-

sonnel committee has not only got the reasoned recommendation from the department but your rebuttal to the recommendation so that you could ... you could rebutt each and every reason that they have ... they have given in the recommendation as to why your appointment should be terminated and I gave you that chance and in fact, even you requested a meeting. I gave you that chance too.

QWell if you, at that time, had serious concerns as to what my reaction would be, doesn't that indicate that you all understood that reaction was outrageous? Sorry, that the decision was outrageous?

AIt is not for us to think whether it's outrageous or not until the faculty personnel committee looked at the whole documentation and read the reasons and your rebuttal to that. Otherwise it is making a judgment before even the faculty personnel committee had a chance to look at the whole case.

QYou didn't answer my question. Shouldn't you, as a dean of faculty, ensure that department works according to collective agreement and not according some ulterior reasons? Should you ensure that?

AYes, the department had worked according to the collective agreement. The department had sent its reasoned recommendation. They had met several times and gotten all the dossier that you had given and also had given its reasoned recommendation attached and number of exhibits as they call, with the recommendation.

So they had given what they thought was sufficient evidence to terminate or not to renew your appointment. That's the reason why it was just different, from the different levels.

QSo it was your opinion that their decision was not outrageous, their decision was logical, normal and well founded?

AI did not say it was logical, well founded and all that, in which case you would not have gotten the one-year appointment the faculty personnel committee gave. I simply stated that the department had made its recommendation and at that time, the only thing one could look at is whether the department committee was properly constituted and whether they had gone, according to the collective agreement for you ... I mean, in order to secure the documentation that they required from you in order to consider your reappointment and they had done so.

If they had not done, the faculty personnel committee would have asked for that information, but at the same time, I explained to you what course of action was available to you and I told you that you could make your rebuttal.

BY THE ACCUSED:

He continues the same story. He doesn't answer the question.

BY THE COURT:

He's answering the question.

BY THE ACCUSED:

He's answering, fine. You see how I'm agreeable. You feel he's answering, he's answering.

QNow meeting, November 14th, do you recall that meeting?

AI don't know what that meeting is. There are so many meetings that were taking place. I was chairman of the faculty personnel committee and I had so many meetings

with regard to different people. I don't know which meeting you're talking about. Please?

QWell it's meeting again. How many meetings did you have about bodyguards, about security guards, about Fabrikant? I'm talking about meetings about me, not about ... meetings about somebody else. How many meetings did you have about me?

AI said that there were two meetings and I did not remember the two dates. I said one was on the day of the senate meeting and there was a subsequent meeting when I also told, to the best of my memory, what event transpired there including that the faculty ... the department personnel committee recommendation was going to be given to you by hand by me. If that is the meeting you are talking, if it happens to be November 14th, so it is.

QNo, the second meeting was November 8th what you are talking about. Now I'm talking about third meeting, November 14th.

AThen I don't remember whether there were two or three. I'm sorry, I mean I can only recall ...

QOf course.

A... what went on a global basis. I did not keep minutes.

QOf course, he doesn't remember. Let's refresh his memory. Every day he had meetings about someone who threaten to kill somebody, so of course he doesn't remember.

AI can't first of all read this. Secondly, My Lord, if this meeting took place, I was there. I mean I cannot remember how many meetings I had and maybe today I feel I should have kept ...

BY THE COURT:

QIn any events, these are not your notes.

ANo, it's not my notes, it's not my handwriting.

BY THE ACCUSED:

QWell every member of the meeting I believe was given agenda, right? Were you given the agenda on each meeting?

AIIt's possible, I'm not saying ...

QThen what did you do with this agenda? Did you throw it out?

BY THE CROWN:

This question is ...

BY THE ACCUSED:

QDid you throw it out?

A(inaudible) kept it.

QWhy?

BY THE CROWN:

What is this?

BY THE COURT:

No idea, I haven't seen it.

BY THE CROWN:

Did you ever see that?

ANo.

Well there's no point using this.

BY THE COURT:

That's what I'm saying, they're not his notes.

BY THE ACCUSED:

Well it doesn't have to be his notes. I'm just asking whether he's seen this agenda. That's all. I'm not asking him anything about notes.

BY THE COURT:

Well you have his answer. He's looked at that, he's looked at the ... the typed part and he said no, I don't remember this meeting. I don't know. He said ...

BY THE ACCUSED:

Well my question is look at agenda only please.

QDo you recall seeing this agenda?

AI... I really don't remember. I mean I don't remember how many meetings we had. I said I remember in ... two meetings. If there were three meetings, there were three meetings. I ... I can't recall.

BY THE COURT:

If you don't ... if you don't recall, that's fine.

AI can't recall.

If you can't recall it, that's fine. End of that.

BY THE ACCUSED:

QYes, we believe that you had meetings about somebody who threatened to kill and you just don't remember how many?

BY THE COURT:

Now you're cross-examining the witness. It's out of order.

BY THE ACCUSED:

I'm not examining, I'm just saying that we believe that.

BY THE COURT:

Now I think we'll stop for ten minutes.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE COURT TAKES THE BENCH

THE MEMBERS OF THE JURY ARE PRESENT

SRIKANTA SWAMY

(Under the same oath)

BY THE ACCUSED:

QSo you can recall absolutely nothing of this particular meeting?

AI cannot recall the meeting at all.

QAll right. Would this trigger your memory if on the day what what happening, the people were told that there is one guard in your office and there is one guard at Concave, does it trigger any memory?

A.No.

QNo, all right. Does this trigger your memory, that you informed people who were there that I allegedly told Rakheja that I'm going to kill Sankar?

AI don't remember anything of that nature.

QTo the best of your recollection, did Rakheja ever tell you that I told him that I was going to kill Sankar?

A.No.

QWell why did you lie at the meeting?

AI said I didn't ... I don't remember that I said anything of that nature, I said.

QThat was exactly my question. Why did you misinform people present at that meeting that I did?

ASorry, I'm saying I don't remember that I've said anything of that nature, I said.

BY THE COURT:

That's the answer. You're not permitted to ask the next question.

BY THE ACCUSED:

QYou were present during that testimony, weren't you? All right. Was the Gazette calling you and asking you that if I had threatened you?

AI don't remember, I mean there are newspaper people and they were trying to call me, yes.

QYou do remember?

AI said I don't remember.

QAh, you don't remember.

QWell try to ... to recollect. Did they or didn't they?

AThe Gazette had called, yes.

QOK, the Gazette called in 1991, November?

A1991, November? No, I was thinking of after August 24th. I don't remember anything at all, Gazette calling me in 1991.

QWell how ... how to inform witness that I'm talking on November 14th 1991 meeting, how to make it clear that this is what I'm talking about?

BY THE COURT:

Well if the witness doesn't remember, what would you like him to say?

BY THE ACCUSED:

No, I just want the witness to be informed that we are talking of November 14th 1991 meeting.

QAt that meeting, did you inform the people present there that someone from the Gazette called you and asked you if I ever threatened you?

AI don't remember anything of that conversation at all, anything that I've said that way, I don't remember.

QFine, now at the same meeting, do you recall Miss Horwood mentioned that Dr. Herman (sic) called her and asked her whether I'm banned from being on campus?

AI don't recall any of ... any such thing.

QDo you recall Hoa saying that "Let's try to find for him position somewhere else"?

AI don't recall Hoa saying that, but I ... he asked me whether mathematics department or somewhere you could get, you could transfer and I said you could go and ask any department if they ... if you wanted to transfer. I don't know whether Hoa said that or not, I don't know, I can't recall.

QAt the same meeting, do you recall Hoa saying that it would be good to know when someone might become violent?

AI do not recall at all.

QNow did it ever cross your mind at that time, if you were serious about security measures, that instead of playing Russian roulette, it would be nice to meet between faculty personnel committee and department personnel committee and sort out what they want to do, whether they have sufficient reason to do what they are doing and probably you wouldn't need all these meetings, security guards, money, time and everything be spent? Did it ever cross your mind that?

BY THE COURT:

You're cross-examining the witness now and you may not.

Whatever happened is whatever happened. That's what you're supposedly establishing.

BY THE ACCUSED:

Why ... why don't you let the crown to do their job instead of doing it for them?

BY THE COURT:

Because it's my responsibility to make sure as far as I can that the questions that are put are put according to the rules, are put legally and that's what I'm doing sometimes on this, I guarantee you that ...

BY THE ACCUSED:

Shouldn't ... shouldn't crown be for that? I think it is unfair to have two crowns and a single judge in this.

BY THE COURT:

I don't care whether you interpret me as being a crown. That's not what I am.

BY THE ACCUSED:

All right.

BY THE COURT:

You have your own interpretation of a number of things.

BY THE ACCUSED:

You'll see how good they are, how receptive these people are. You are remarkable with your humor.

BY THE COURT:

Pardon? What did you say?

BY THE ACCUSED:

I said that your humor is so met with receptive way (sic) with the people in the audience that it's remarkable.

BY THE COURT:

I will say what I feel I have to say.

BY THE ACCUSED:

Well I don't forbid you. I just commend you for your remarkable sense of humor.

BY THE COURT:

Well you just ask questions, then we'll get on far faster.

BY THE ACCUSED:

Yes. It would get much faster if the witness would not spend a lot of times, instead of answering just yes or no to majority of my questions.

OK, I will try to rephrase the question.

Q Were you seriously concerned about possibility of me being violent at that time?

A I personally am not a psychiatrist but we were concerned that is the reason why I conveyed it to the authorities who could take appropriate measures.

Q Well did you try to diffuse the situation in a more simple way, just to discuss with department personnel committee of their reasons?

BY THE COURT:

Look I told you, you were not to cross-examine the witness on what he did or what he didn't do. What he did are the facts that you've established. He's told you what he did and what he didn't do.

BY THE ACCUSED:

Well I'm ...

BY THE COURT:

So I want no more questions on what you think he should have done with the DPC. He has told you at length what transpired and the steps the matter went through.

BY THE ACCUSED:

All right.

QDo you recall also discussing at the meeting a letter of department personnel committee to Secretary General requesting that I be declared threat to the university and suspended?

AYour Honor, I don't know whether it was at that meeting, because I recall only two meetings but I do recall a letter that the DPC had written, clearly stating that they were concerned about Dr. Fabrikant's behavior, that he should be ... something to the extent that he should be suspended or at least, if there is not valid reason, he should be moved out of the Hall building and not into the Concave building because they were afraid of him.

QAll right, you ... you thought it was totally impossible if my office somewhere else (sic) that I couldn't come with gun and shoot somebody when my office is not there?

AI did not write the letter. The DPC wrote the letter.

QWould you please just answer my question, that was not who wrote the letter.

BY THE COURT:

The answer was ... the answer was excellent. He didn't write the letter. So presumably you have to address your question to whoever did.

BY THE ACCUSED:

QDid you discuss this letter at the meeting?

AOnly to the ... I don't remember whether the letter was read or not, only to the extent, I remember it was that a letter had been written expressing fear on the part of the DPC and that he should be either suspended or at least if not suspension, that there is not a valid reason, that he should be removed out of the Hall building and not into the Concave premises. That part of it was mentioned by Dr. Osman.

QAll right. What is the date of that letter? Do you recall the date of that letter?

AI don't recall the date of the letter. It was around the same period.

QDo you have a copy of it with you?

AI don't have a copy of the letter here.

QOK.

AIt must be in the file.

QTo save the time, would you believe me that it is November 7th?

AI said it is around that time. It is not a question of believing or not. I don't have a copy of the letter, period.

QAll right, assuming that it was November 7th, now was it discussed the same day the letter was written or it was discussed later on, so we would know? This would trigger your memory that probably you would remember the third meeting, would you?

AI don't know whether there ... whether there were three meetings, Your Honor. I'm saying this over and over again but this matter was discussed. If November 7th was when the letter was written, I ... I know that the rector talked to me and he asked me whether I thought that this matter was serious in the minds of ... for the DPC that they are writing this letter and there was ... whether the ... they wanted to find out whether it was an exagge-

ration or what to put it plainly and I thought that ... that it was important enough for the rector to talk to the DPC directly, (inaud.) told me and after having discussed that, I think he either wrote or he conveyed to Dr. Osman that he had asked Marin Habib (sic) to meet with Professor Osman on this issue.

QSo effectively you didn't answer. Can you explain a little bit ...

A No, therefore what I'm ... yes, I'm sorry, I did not complete. Therefore, I don't know, I said there were two meetings. Whether it was on November 8th and 13th or only 14th all these things were discussed, I cannot say that but this was brought to the attention that he had written a letter, that the DPC had brought it to the attention of the rector and therefore that they were serious in what they were expressing.

Q This is the answer to the question? Did you or didn't you respond to the question of Kenniff and he started again talking about two meetings. Is it all right with you? Are you going to do something about it.

A Sorry, I ...

BY THE ACCUSED:

My question was ... either he's not listening to my question or whatever it is, I don't think that this behavior ... for several days in a row, I'm asking something and he, hours on hours, continues saying something different and then you will reproach to me that I'm too long. I was hoping I will be finished today. I'm not even halfway.

BY THE COURT:

Well you better get going because you will be finished...

BY THE ACCUSED:

Well if you better tell the witness to give the answer.

BY THE COURT:

You will be finished ... you will be finished tomorrow afternoon at four thirty (16 h 30).

BY THE ACCUSED:

Well then ...

BY THE COURT:

Believe ... believe you me, you will be finished tomorrow afternoon at four thirty.

BY THE ACCUSED:

Then direct ... direct the witness, when I ask a question, did you or didn't you answer Kenniff ...

BY THE COURT:

Most of the times, the witness ...

BY THE ACCUSED:

... answer yes I did or no I didn't.

BY THE COURT:

Most of the times, the witness answers your questions and you will not dictate to the witness how to answer your questions.

BY THE ACCUSED:

Well you should dictate. I'm not dictating, you should do that.

BY THE COURT:

No, the witness will answer your questions as he feels he should. If I feel it's not being answered, I'll intervene.

BY THE ACCUSED:

Well if you're fair, you did ... would, but you are not.

This is the problem.

BY THE COURT:

I have intervened frequently.

BY THE ACCUSED:

Oh yes, you usually intervene at the end of the day to create the jury impression that you're fair judge.

BY THE COURT:

Oh, I see.

BY THE ACCUSED:

So it's almost end of the day, it's about time you do.

BY THE COURT:

Time I intervene, time to intervene, yes.

BY THE ACCUSED:

Yes, you could go home proud to think that you're remarkable judge.

BY THE COURT:

Now what was your question?

BY THE ACCUSED:

All right, my question was: did you or didn't you respond to Kenniff's question.

AYes.

QSo you ...

AYes I did and I said that it was of sufficient importance that he should talk to the people who have written the letter directly.

QWell, but you didn't tell him that yes, Fabrikant should be suspended or Fabrikant shouldn't be suspended? That was the question of Kenniff, was it?

ANo, he did not ask that. He said "Is this letter, the letter that they had written, in my opinion, whether it was something that they were making something big out of something which should not be" and I said no, they have got real fears and he should talk to the people who have written the letter, so that he could directly find out whether their concerns were real or imaginary.

QAll right, but did he ask you whether you have personal concerns of yours, did he?

AI don't remember, because I didn't write a letter to him saying that he should be suspended.

QWell this is funny. He remembers everything. As soon as I ask some specific question ...

BY THE COURT:

You're the one that is editorializing now.

BY THE ACCUSED:

Well I'm again applying to you for 9, article 9.

BY THE COURT:

Save your breath.

BY THE ACCUSED:

All right, I save.

BY THE COURT:

Continue.

BY THE ACCUSED:

QAll right, so did he or didn't he, I mean Kenniff asked you what facts do you have to express your concern?

AHe did not to the best of my memory at that time.

QOK, did he or didn't he tell you: "Oh Fabrikant, I know him, he threatened to kill me too"?

ANo, he didn't say anything of that nature.

QNow did you support the letter at that time?

AI did not support, I did not intervene, I ... it was a copy that was sent to me. It was a letter addressed to

the Secretary General who said it should be going to the rector and it was sent to the rector. The rector called me and asked me and I said it already and Mari Habib met Dr. Osman.

QThat was not my question. My question was: when you read the letter, in your mind, did you agree with the recommendation?

AIf I had agreed that you should be suspended?

QYes?

AI ... I would have made a recommendation at that time, only after having gone into the details. I did not write any such letter.

QAgain, he's evading question.

BY THE COURT:

He's not evading the question.

BY THE ACCUSED:

When ...

BY THE COURT:

You don't understand. He said "If I had thought so, I would have written a letter", so obviously the answer is no, I didn't so.

BY THE ACCUSED:

Well he's evading question.

BY THE COURT:

He's not evading the question. He's answering the question.

BY THE ACCUSED:

Well what is the problem to say no, I didn't.

BY THE COURT:

Well I don't know, perhaps that's the way your mind works. I had no difficulty understanding what he said.

BY THE ACCUSED:

(Inaudible)

BY THE COURT:

And I'm sure nobody else here did.

BY THE ACCUSED:

It's not the worst at all.

BY THE COURT:

So there's nothing wrong with his answer. The answer is fine.

BY THE ACCUSED:

The answer is not fine. He's evading question.

BY THE COURT:

That's your opinion, not mine.

BY THE ACCUSED:

QWhen... how often in your life did you see that kind of letter?

AI had not seen anything of that nature and I don't want to see any such thing of that nature.

QAll right, so when you saw that letter, did it cross your mind that it is about time to meet with members of DPC and discuss their reasons for recommending my termination?

AI was trying to keep the two things separate in terms of the termination which is for the faculty personnel committee. It is not the dean who decides of the termination. The faculty personnel committee, I wanted to keep that aside. No faculty personnel committee members even was told that any letter that was written by anybody. I was trying to keep that separate from what I had to do as

an administrative officer in order to make sure the higher authorities knew that there was enough concern by the department. That's why they were writing that letter. In their mind, it was serious. Whether it was serious or not is something that he should find out by directly talking. I think I'm making the two ... I'm making that very clear.

QHe again totally evade my question, but you mentioned that this letter was what, secret from the members of DPC. Did they sign it?

AI said FPC.

QOh, FPC.

AYes.

QAll right, wouldn't it ... since Herman called Miss Horwood, doesn't this mean that everybody in the university knew about existence of this letter? How come Dr. Herman knew that such a letter is there?

BY THE COURT:

There's no point asking him.

BY THE ACCUSED:

QDo you have any idea? Did you inform Dr. Herman yourself?

BY THE COURT:

He's not ... he's not here to put forward ideas or to speculate or not.

BY THE ACCUSED:

No, no, I'm not asking ideas. I'm asking specific question.

QDid you inform Dr. Herman yourself of existence of this letter?

ANo.

QNo. Did you inform anybody else of existence of this letter?

ANo.

QNo. Were you informed by Miss Horwood that Dr. Herman called her and asked her questions about this letter?

AI don't remember.

QHa ha, sure. Now do you recall the meeting between me, you and Mr. Relton because that was the next, was it?

AThe meeting when I handed you the DPC report.

QWell to be precise, you didn't hand me at all. You handed to me just the text, not the appendices, do you recall that?

AI don't recall.

QYou don't?

AI don't recall but if the appendices were not given, you would have asked and what I thought from the ... I was asked by the department personnel committee to give you the reasoned recommendation to you which was already in an envelope and to explain to you what was the ... the avenues that were open for you for ... at the FPC level and I don't remember whether it had or it had not and in fact, I had not seen the recommendation completely myself at that time. That was given to me to be given to you.

QWell taking into consideration all this seriousness of the matter, wouldn't it be a more grown-up behavior to discuss this matter with these people so you wouldn't have to be scared in the first place?

BY THE CROWN:

We're interested in what went on. We're not interested in what should have been or ...

BY THE COURT:
You're perfectly right.

BY THE CROWN:
And you've ruled many times on that.

BY THE COURT:
I've ruled on that over and over again this afternoon.

BY THE CROWN:
And he's coming back all the time.

BY THE COURT:
And we always come back to it.

BY THE ACCUSED:
All right, I will ...

BY THE COURT:
The question is out of order.

BY THE ACCUSED:
QFine. What transpired during that meeting? How did I react? Did I react normally? Did I react abnormally? What did you expect and what happened?

AYou were very calm.

QI was very calm. How about that! So if I was very calm, maybe that was the good time to ask me whether I made this hand gesture? Did you?

BY THE CROWN:
Again My Lord, if it was not asked, we're not interested in knowing whether it should have been asked or whether it was a good time to ask or anything.

BY THE COURT:
Objection maintained.

BY THE ACCUSED:
What objection maintained? I just asked him whether he did it or not, that's all.

BY THE CROWN:
That was not the question, My Lord. He said wasn't it ...

BY THE ACCUSED:
That was the question.

BY THE CROWN:
... wasn't it a good time to ask.

BY THE COURT:
Wouldn't it have been a good time. The objection is maintained.

BY THE ACCUSED:
Well OK, I will change the question.

QDid you or didn't you ask me this particular square question about this hand gesture?

AI did not.

QAt that meeting?

AI did not.

QWell could you explain why not?

BY THE COURT:
No, he's not required to explain why not. He didn't. Go on.

BY THE ACCUSED:
Could it be that he knew that this is a lie?

BY THE COURT:
Mr. Fabrikant, now you're arguing. Next question.

BY THE ACCUSED:
All right.

QSo what did you tell me, what I told you? Could you go into more detail. OK, I was calm, fine.

ATo the best of my ability, I ... what I remember is that

I gave you that and I told you that according to the collective agreement, you may make a rebuttal on the faculty personnel ... sorry, department personnel committee recommendation and ... and you were very calm. You stated that "I'll read it" or something to that effect and there wasn't that much conversation because you did not ... it was as if that there was not much point in talking to me, that kind of attitude. You were simply keeping silent, sitting there and not saying much. That's all that I remember and I gave you the article number, which I don't recall, what was available to you in the presence of Mr. Relton.

Q Well all right. Since witness doesn't remember, we need to refresh his memory. Luckily for the history, I have recorded this conversation. I would like to play it to him.

BY THE COURT:

You are not going to play that conversation to him.

BY THE ACCUSED:

Well meaning to refresh his memory. I have no other way to do that. He doesn't remember and we need to refresh his memory and I believe that such an important meeting, taking into consideration that they were so concerned on how I would behave, I believe it is very important for the jury to be present at that meeting because this tape would give them exactly what happened there and whether they had any reason to think that I might be violent.

BY THE COURT:

I think what I'll do is ...

BY THE ACCUSED:

I believe they should hear this tape.

BY THE COURT:

... let you go for ... for the day and I'll solve this particular problem in your absence and hopefully we'll be able to resume with .. with Mr. Swamy's testimony tomorrow morning at nine thirty.

BY THE ACCUSED:

Well I think this question has to be decided with jury. It's admissibility of evidence.

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

BY THE COURT:

Sit down, Dr. Swamy.

Now we have ... we're facing what? You're proposing to play another of your surreptitious conversations. Is this ... recordings, I should say. Is that what it is?

BY THE ACCUSED:

What is it surreptitious? What does it mean, surreptitious?

BY THE COURT:

Surreptitious means that you recorded it and nobody else knew it was being recorded. It's not necessarily pejorative. I'm just saying that's what it is. Is that what you are proposing?

BY THE ACCUSED:

Yes.

BY THE COURT:

OK. What do you propose to accomplish by this?

BY THE ACCUSED:

Well since it was extremely important meeting and since the whole concern, the whole meeting of ... look what we have here, we have a whole bunch of evidence: meeting of November 1st, then there was meeting of November 5th with secretaries and the secretaries expressed their concern and the whole bloody thing was about how I would react when I've been told that my contract is to be terminated and then again, we have meeting ... Oh, I was wrong, there was meeting November 7th, then there was meeting November 8th.

BY THE COURT:

So what?

BY THE ACCUSED:

Then there was meeting November 14th.

BY THE COURT:

So what? Thus at this point ...

BY THE ACCUSED:

Then all those ...

BY THE COURT:

At this point ...

BY THE ACCUSED:

Well one second, one second and all these meetings were just to ... to ... for the people who pretended to be scared while in fact, they were just, you know, doing some kind of psychiatric experiment on human beings because it is totally absurd to think that if people are scared for their lives and someone just ... just assume, let's us think like grown-ups should think.

If people think seriously that someone might become violent when he's told he's fired, first of all people might make sure that their decision is well founded, that their decision is necessary because you don't play just Russian roulette.

Now this witness testified that he didn't find it necessary to discuss the reasons. They preferred to have 1, 2, 3, 4, 5, six (6) meetings with various people to discuss all their concerns instead of doing one very simple thing, to say to each other: guys, let's discuss whether he should be fired in the first place because what we are scared of is how would he react when he's told he's fired so let's make sure that we are doing the right and fair thing first. Then when we are sure that person doesn't belong here, OK, let's fire him because we shouldn't get scared because we are doing the right thing but let us make sure that we are doing the right thing. Now they didn't do that.

BY THE COURT:

You know, you're like the itinerant juggler. You've got about six balls in the air at the one time. Unfortunately they've all fallen. What happened ...

BY THE ACCUSED:

I haven't finished yet.

BY THE COURT:

What happened was your premises are all wrong.

BY THE ACCUSED:

My premises of what?

BY THE COURT:

There was simply a recommendation which was the first stage, that your contract not be renewed. The dean has said it had a number of steps to go through, not the least of which was the one which he chaired which was the

faculty personnel committee and after that it had another step to go through. That was the vice-rector, academic. So you're wrong when you say that they had decided to fire you.

A recommendation from your department had been made that your contract not be renewed firstly. Secondly, where you were when all of this started was on the question of refreshing his memory as to a conversation with you. He has said "I remember participating in this conversation, I remember your attitude. You were quiet, you were calm. You said you would read it. You said very little else." He pointed out to you the clauses in the collective agreement that applied. What are you now talking about, about playing a tape? I mean you obviously want to play a tape that you recorded.

BY THE ACCUSED:

No.

BY THE COURT:

That's wonderful but ...

BY THE ACCUSED:

No, I'm not ...

BY THE COURT:

... what is the point in playing the tape? What is the tape going to ... how is the tape going to advance us?

BY THE ACCUSED:

Because I wasn't quiet at all. He's lying again.

I wasn't quiet at all. I was talking at least one third of the time, maybe more than one third because there were three of us there, so at least one third of the time, I was talking. I wasn't quiet at all. I wasn't absolutely behaving like the witness said that I practically didn't want to talk with him. This is total absurd. He's misleading the court so the court should know the truth, that's all and if he sincerely doesn't remember, even more than that, we need to play it to ... to be there and to see what happened.

BY THE COURT:

I'm not sure you have to play it. There may be a number of other things you can do. You may ask him if he ...

BY THE ACCUSED:

Well I don't have the transcript so there is no other way.

BY THE COURT:

Well that's your problem, if you don't have a transcript.

BY THE ACCUSED:

No, it's ...

BY THE CROWN:

If there's no transcript, there's no reason to discuss it, My Lord. That's the end of the discussion.

BY THE COURT:

If there's no transcripts, if there's no transcripts, I'm not proposing to carry the discussion one step further. So we'll adjourn until tomorrow morning, nine thirty.

BY THE ACCUSED:

Well I want to introduce it anyway.

BY THE COURT:

No.

SUSPENSION OF THE DEPOSITION OF THIS WITNESS

ADJOURNMENT
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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 LECOURS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: July 29th, 1993

GS: 1356 FILE: 2429

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CONTINUATION JULY 30TH, 1993
OUT OF THE PRESENCE OF THE JURY
(THE JUDGE TAKES THE BENCH)
(THE CROWN, Me BELLEAU AND ACCUSED ARE PRESENT)
BY MR. VALERY FABRIKANT
THE ACCUSED REPRESENTING HIMSELF:
First of all, I would like to say that you promised that
machine be here. Is it here?
BY Me BELLEAU:
Well, if it becomes necessary, I'll get it for you.
BY THE ACCUSED:
Well, didn't you promise that it be here?
BY THE COURT:

Have you anything... did you say what you have to say to me?

BY THE ACCUSED:

Well, first of all, I didn't ask him that you come here without a jury. That is the first thing.

BY THE COURT:

Well, here I am. And that's where I was last night. So that takes care of your first thing. Now let's move to your second thing.

BY THE ACCUSED:

Well, there is no second thing. It ended that I wanted to trigger witness' memory. I still want to do that, and I need the machine. It's as simple as that. And the fact that you stormed out of courtroom yesterday, this was just yet another demonstration of lawlessness.

Nothing else. There is nothing to say there.

BY THE COURT:

What do you propose to do with this tape? First of all, it hasn't been reduced to writing. So...

BY THE ACCUSED:

It doesn't have to be reduced to writing. Stop being lawless. I do not invoke Section 9. And do not try to trick me once again.

BY THE COURT:

You do not invoke Section 9, because yesterday you invoked Section 9.

BY THE ACCUSED:

Yesterday I invoked Section 9 in respect to this manuscript. You were not sleeping yesterday, were you?

BY THE COURT:

One more word from you and through that door you go. I'm not going to listen to this from you. I'm not going to put up with it from you. I've had enough from you, Fabrikant.

BY THE ACCUSED:

Well, I had enough, too, because...

BY THE COURT:

Now, sit down.

BY THE ACCUSED:

... you're abusing the law.

BY THE COURT:

Sit down.

The jury, please.

Your motion is dismissed.

BY THE ACCUSED:

I didn't make any motion.

BY THE COURT:

We are finished with the question of the tape. You'll continue with your cross-examination of Dr. Swamy.

BY THE ACCUSED:

I will continue. If he does not remember, I want to trick his memory.

BY THE COURT:

You are not using that tape. You will get on with it. You're going to finish with him this afternoon, and that is that, and you're going to have a limit set on all your witnesses from here on in.

BY THE ACCUSED:

Well, I couldn't care less what you say.

BY THE COURT:

That's fine. This trial will go ahead.

BY THE ACCUSED:

(Inaudible) can stop it.

BY THE COURT:

Apparently one of the jurors has been held up this morning, so I'll adjourn for a few minutes until he's here.

(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)

DR. SRIKANTA SWAMY

April 7th, 1935, Professor, Electrical Eng.

(ADDRESS CONFIDENTIAL)

DULY SWORN

BY THE ACCUSED:

Well, we finished yesterday on the point where witness said that he does not remember. And I wanted to refresh memory of a witness, and here is case Queen versus Neils, and Queen versus Rose, which says that:

"It is possible it is allowed to refresh witness memory from a tape recording by playing it back to him."

If you wish I can read more details on that.

BY THE COURT:

You will continue your examination of Mr. Swamy. It's a question of discretion for me to decide whether or not it's going to be allowed or not. You will continue your examination of Mr. Swamy. You're not going to play that.

BY THE ACCUSED:

Well, it is not question of discretion. There is jurisprudence which says...

BY THE COURT:

If you have questions to put to Mr. Swamy, would you please put them.

BY THE ACCUSED:

I have questions to put, but he doesn't remember. I need to refresh his memory.

BY THE COURT:

You can...

BY THE ACCUSED:

This is my right.

BY THE COURT:

You may put your questions to him any way you like. You may make reference to whatever you wish to make reference to, to see if it refreshes his memory, but you are not playing the tape, and that is that. Now would you put your questions to him.

BY THE ACCUSED:

Well, I need to establish what happened during that meeting. The meeting was important.

BY THE COURT:

Are you going to put your questions, or am I ending this now?

EXAMINATION BY THE ACCUSED (CONT.)

REPRESENTING HIMSELF:

Q. So what do you recall from that meeting?

A. My Lord, actually there is a letter that I sent to him after the meeting, in fact, the very same day of the

meeting. I will read that letter.

Q. This is not what I am asking. I'm asking what happened during the meeting.

A. The only thing I remember is that I gave you the Department Personnel Committee recommendation to you by hand, and I told you what was available for you at... through the collective agreement that... from the Faculty Personnel Committee, that you can rebut the recommendation of the DPC and give any documents that you wish to give.

Q. Okay. What else? What did I say? What was the role of Relton there? What did he say?

A. I don't remember.

Q. Well, this is the problem. So we need to refresh his memory.

BY THE COURT:

We are not going to go through any more of that. This is marginally pertinent, if pertinent at all. Continue.

BY THE ACCUSED:

This is the most important meeting. They were...

BY THE COURT:

You have until this afternoon to finish with this witness. I suggest you get on with it.

BY THE ACCUSED:

Well, about...

BY THE COURT:

You have been four days...

BY THE ACCUSED:

About the afternoon, I have another jurisprudence here which says... if I can read it to you. If you... and it says:

"There is no way a judge can put a limit as long as there are pertinent questions to interrogation."

BY THE COURT:

As long as there are pertinent questions.

BY THE ACCUSED:

All right.

BY THE COURT:

And I'm not certain there are pertinent questions.

BY THE ACCUSED:

Well, as soon as they are not pertinent, then you do it.

BY THE COURT:

And I am satisfied that you are not moving with the dispatch with which you can move, and that is that, and it's been the same with every witness. You have till this afternoon. You have known that Mr. Swamy is leaving. You have known that Mr. Swamy is not available tomorrow, and you have known that for two weeks.

BY THE ACCUSED:

I advised you on several occasions that he responds much longer than necessary, and he doesn't respond to questions. I would have finished a long time ago...

BY THE COURT:

If you are... if you have questions to put to him, I'd suggest you get on with it.

BY THE ACCUSED:

I have questions, but I suggest that you stop abusing the law. You ignore all the jurisprudence which I quote to you. You are above the law, and this is no good.

BY THE COURT:
Sit down. This interrogation is ended.
BY THE ACCUSED:
No.
BY THE COURT:
Mr. Lecours, have you any questions to put to Mr. Swamy?
BY THE ACCUSED:
I have questions.
BY THE CROWN:
I have no questions, My Lord.
BY THE COURT:
Fine. You're excused, Dr. Swamy.
BY THE ACCUSED:
Well...
AND FURTHER DEPONENT SAITH NOT
BY THE COURT:
Call your next witness.
BY THE ACCUSED:
Whatever I do, you cannot excuse the witness.
BY THE COURT:
Call your next witness. You were warned yesterday and
you've been warned today, and you continue arguing, and
you refuse to put your questions. That's it.
BY THE ACCUSED:
You behave like a little low crook.
BY THE COURT:
Call your next witness... Pardon?
BY THE ACCUSED:
Little low crook.

BY THE COURT:
Take him out.
We'll adjourn for fifteen (15) minutes.
(THE JUDGE LEAVES THE BENCH)
(MEMBERS OF THE JURY LEAVE THE BENCH)
SHORT RECESS
OUT OF THE PRESENCE OF THE JURY
(THE JUDGE TAKES THE BENCH)
(THE CROWN, Me BELLEAU AND THE ACCUSED ARE PRESENT)
BY THE COURT:
Might I hear, please, the tape of the last few minutes
before we adjourned.
BY THE ACCUSED:
Well, I can repeat it myself, if you want it.
(THE TAPE IS PLAYED IN THE COURTROOM)
BY THE COURT:
Can you show any reason why you should not be held in
contempt for that last statement?
BY THE ACCUSED:
Contempt of who?
BY THE COURT:
Contempt of Court.
BY THE ACCUSED:
You are not Court.
BY THE COURT:
Thank you. Sit down.
BY THE ACCUSED:
May I finish my explanation?
BY THE COURT:
If you have anything else to add, add it.
BY THE ACCUSED:

I have something else to say.

I hope you have seen this. Did you?

BY THE COURT:

Have you anything else to say in relation to your comment which you made?

BY THE ACCUSED:

Yes. I have, yes. This is what I'm talking about. This caricature shows you as a puppet. At least this is my understanding of this caricature.

BY THE COURT:

Be very careful that you don't step across the line again. I'm asking you whether you have any explanation to give as to why you should not be held in contempt of Court...

BY THE ACCUSED:

Yes, this is what I'm trying to explain to you, and I believe that everybody, not just myself, understands that your behaviour is totally lawless, that you behave like a puppet, and puppet essentially is someone who is being directed by somebody else. You know, a puppet is a doll. Someone pulls the string, and this doll does whichever string is pulled. So effectively when I said that you are a little and low crook, this effectively is a repetition of the same thing what is here.

BY THE COURT:

Sit down.

Throughout this trial you have elected to defend yourself. That, of course, is your right. That makes it incumbent upon me, unfortunately, to have a number of exchanges with you, which I would not ordinarily have. Human nature being what it is, a number of these exchanges have, of course, been heated, and that in itself is probably to be expected. I, however, in dealing with you, have always respected the limits of basic politeness. I have thrown no insults at you. When you call me a little low crook, you express contempt not only for me, but for the whole system which, whether you like it or not, in this country we happen to be proud of.

BY THE ACCUSED:

(Laughter) I'm sorry.

BY THE COURT:

It may be that you sit there, or stand there and thumb your nose at contempt citations. And when you do, of course, the weakness of the system is that you're able to do it with impunity. The strength of the system is that it progresses. Your trial goes on, and at the end, whenever it is, you will be tried and the jury will decide what the jury has to decide.

So along with the weakness of the system is its strength itself, because its strength is rooted in the fact that most of us in this country have some faith in it. It may not be perfect, but by and large it works pretty well.

That is why when you call me a little low crook, not only am I not personally obliged to accept that sort of behaviour on your part, I'm obliged to use the authority which I have to punish that. Whether you feel that the punishment affects you one way, or the other, or not is, in a sense, besides the point. The point is that nobody is obliged to put up with that sort of thing in a Court

of law, and the message has to be made very clear that this sort of thing will not be tolerated. You may laugh at sentences of imprisonment for contempt, but when a situation commands that they be imposed, they will be imposed. And if it makes the system look weak and impotent, then that is a misconception of the system in this country, which is rooted in basic freedoms, one of which you have been exercising since the beginning of this trial, and that is to defend yourself. Your behaviour this morning since the beginning has basically merited that you be removed from the courtroom. But then, of course, as I've said before, the problem which arises is how do you defend yourself if you're removed from the courtroom. The answer is obvious. So we'll go on. We will go on. If necessary time limits will be imposed depending on the situation and this case will move ahead. As things stand at the moment, I find you guilty of contempt of Court. I told you that in the ten years that I've been here, I never had occasion to pronounce one judgment in contempt of Court against anyone until this trial began. Thus far I don't know whether I'm at four or five with another series waiting in the wings. That disappoints me, but it is unfortunate.

I find you guilty of contempt of Court and for that last contempt I sentence you to six months imprisonment to be served consecutively to the sentences which you already served. I can tell you that if an incident such as this morning repeats itself, the same approach will be adopted, and your trial will continue. And we will get to the end, whether you like it or not, with you, or in spite of you.

So if... are the other witnesses here?

BY Me FREEDMAN:

Yes...

BY THE COURT:

The witnesses are here. Mr. Freedman, thank you. The jury, please.

(MEMBERS OF THE JURY TAKE THE BENCH)

(ALL ARE PRESENT)

ELEANOR MORRIS

January 1st, 1945, Secretary

(Address confidential)

DULY SWORN

BY THE ACCUSED

REPRESENTING HIMSELF:

Well, first of all, when jury was not here another act of lawlessness took place. I was not even allowed to explain myself. Judge has told me to sit down. This is lawlessness.

BY THE COURT:

Are you going to put...

BY THE ACCUSED:

You asked me to explain in terms of contempt of Court...

BY THE COURT:

You will put questions to this witness. The witness has been sworn, now put your questions to the witness, or the witness will be excused.

BY THE ACCUSED:

You want...

BY THE COURT:
This is the first time that I ask...
BY THE ACCUSED:
... to be lawless, you be lawless.
BY THE COURT:
Would you put your question...
BY THE ACCUSED:
I have the right to explain to the jury what happened
here.
BY THE COURT:
Mrs. Morris, you're excused.
A. Thank you.
BY THE CROWN:
I have no questions.
AND FURTHER DEPONENT SAITH NOT
BY THE ACCUSED:
You want me to tell you again that you are a little low
crook.
BY THE COURT:
You obviously have no questions. Pardon?
BY THE ACCUSED:
I can tell it. Basically, this is here.
BY THE COURT:
Have you another witness to call?
BY THE ACCUSED:
I have.
BY THE COURT:
Would you call the next witness, please.
BY THE ACCUSED:
You are puppet of Concordia. And this...
BY THE COURT:
Would you note that, please.
BY THE ACCUSED:
And this not just my opinion. This is...
BY THE COURT:
I am... what did you say? I am a puppet of Concordia?
BY THE ACCUSED:
Well, more than Concordia.
BY THE COURT:
Thank you.
BY THE ACCUSED:
But this is what you are.
BY THE COURT:
Eleven-twelve (11:12), would you note that, please.
BY THE ACCUSED:
It's not just my opinion. I hope you seen it. It's the
opinion of La Presse. We cannot disrespect (inaudible)
at all.
BY THE COURT:
I will deal with you later with regard to that remark.
BY THE ACCUSED:
Why don't you ask me to explain it to you in presence of
the jury?
BY THE COURT:
We are getting on with the trial.

September 12th, 1961, Secretary
(Address Confidential)
SOLEMN DECLARATION

ARLENE ZIMMERMAN

EXAMINATION BY THE ACCUSED

REPRESENTING HIMSELF:

Q. How long have you been with Concordia?

A. Five years. I'm not sure actually, I have to check.

Q. All right.

A. Maybe eighty-eight ('88), I think.

Q. Okay. And all those years with CONCAVE?

A. Yes. Well, with the students. I've been working at Concordia at CONCAVE, yes.

Q. Were you ever concerned for your safety in respect to me?

A. I'm always concerned about my safety from everyone, because everyone has good and bad, including all men have good and bad, and this is the truth. But it so happens that men are more likely to do all sorts of things, especially in the light of Polytechnique. So to me, I'm sort of, you know, always suspicious of every man, so you, also, definitely.

Q. All right. Just because I am a man.

A. Just because of the situation of society...

Q. Okay. Let me ask you then...

A. ... you have to be careful, but also look at all the good points of everyone, too.

Q. Well... are you married?

A. No.

Q. Because you are afraid of men?

A. Why? Are you thinking that women have to get married, if they're afraid of men, like what...

BY THE COURT:

This is not... Mrs. Zimmerman...

BY THE ACCUSED:

Okay. I'm sorry.

BY THE COURT:

Mrs. Zimmerman, this is not a debate between you and Mr. Fabrikant.

BY THE ACCUSED:

All right.

A. I know. So why did he ask me...

Q. All right. I'm sorry. I'm sorry. I just ventured in a wrong... I'm sorry...

A. Yes.

Q. ... in a wrong direction. Because I didn't expect that kind of an answer.

Let me ask you different event. Did I ever threaten you?

A. No, you never personally threatened me, no.

Q. All right. Did you have any other reasons... okay.

First of all, did you have any reason whatsoever to be afraid of me?

A. I just stated that to the best of my ability, I feel...

Q. No, I understand. In terms of facts which occurred, which were observed by you, which made you think that I might be dangerous for you, do you know of any facts?

A. Can you explain better, please...

Q. Right.

A. ... I'm not sure I understand.

Q. Okay. Did I ever behave... did you observe me behaving in any way that you might interpret as threatening?

A. I haven't seen you too much. Like I'm not even sure any more, because it's so hard to remember. But I might have met you once or twice at a Christmas party, or something. But I'm not even sure of that, so I can't say it for sure. But like I've hardly ever seen you, you know.

Once I saw you get off the shuttle bus, but I'm not even sure if that was you, because I saw a picture of you. But who knows? I can't answer that question, because I might have never seen you there.

Q. Oh, so you can answer. If you almost never see me, then probably you can answer that you didn't observe anything which might sound threatening to you, or you did, during the time which you did observe me?

A. But I didn't observe you.

Q. All right. I believe we met probably just once in the hall last time when I brought to you a letter in January of ninety-two ('92).

A. Oh, yes, I forgot about that. That's true. Yes, I forgot that.

Q. Okay. You recall that. Yes? Okay. Did I behave that time in any way that was in any way threatening?

A. I can't remember really.

Q. Anyway, if it was threatening you would remember?

A. Maybe.

Q. All right. But in ninety-one ('91)... so in ninety-one ('91), you didn't have any reasons to be concerned or to be afraid of me. Is that correct?

A. I'm really not sure because... I really don't know. I know I was hearing... hearing things about you, and I hear things about so many other people, too, so I really don't know. I can't answer that.

Q. All right. So I understand that if you had concern, it was because you heard something. Is that correct?

A. Yeah.

Q. Not because you observed something?

A. Like my friends were talking with me. My friends were talking about you, about, you know, things, you know.

Q. Okay. Could you transmit in terms of what you have heard, in terms of whether it could make you concerned? Could you share it with Court?

A. Well, I could say that for sure. For ninety-one ('91), see, I was losing track of time, so I'm not sure like in ninety-one ('91), like I can't sort of sense how soon it was that... like I really don't know.

Q. All right. Still, what... okay. To locate you more precisely in time, do you recall participating in a meeting on November fifth (5th), nineteen ninety-one (1991) at Health Services, with Miss Torbit?

A. You have to remind me more things.

Q. All right. There was a meeting... you know where Health Services are?

A. Loyola or Sir George?

Q. Health Services at Sir George.

A. Yes.

Q. You know where it is?

A. Yes.

Q. Have you been there at a meeting?

A. Yes, it's sort of coming back.

Q. All right.

A. I remember somehow now being there, but I don't know for what exactly, but, yes, for some sort of department meeting. Yes.

Q. All right. Do you recall who was present there?

A. No. Maybe you can remind me more.

Q. All right. Have you been at many meetings where my reappointment was discussed, that I am being... okay,

that Department Personnel Committee is to recommend not to reappoint me? Do you recall that kind of meeting?

A. Well, no, but also, like, you know, secretaries... it's much more when the hierarchies... so I wouldn't be at meetings where things like that would be discussed, you know. So even, you know, I don't remember, but I'm sure I wasn't because of that, you know. It wouldn't make sense.

Q. It wouldn't make sense what?

A. For me to be in where they're discussing things that, you know, people higher up, like administrators and professors, and staff would be talking about things like that, not secretaries. So...

Q. Your perception is wrong. Miss Horwood was present at all top meetings. So...

A. Well, she's secretary to a...

Q. So do not under estimate secretaries.

BY THE COURT:

Please don't deal or discuss with the witness. Put your questions to the witness, and she'll answer them as best she can.

BY THE ACCUSED:

Q. Still, do you remember any meeting at which you were asked if you were concerned for your safety because Fabrikant is going to hear soon that his reappointment is not recommended, and he might become violent?

A. Say the first part again.

Q. All right. Have you been present at any meeting where you were asked if you have any concern for your safety?

A. My safety, you're saying?

Q. Yes. Taking into consideration that Fabrikant is to hear soon that his reappointment is not recommended and he might become violent?

A. I'm not sure because, like, you know, it's all sort of a mix in my mind, like the media reports and me discussing with my friends, you know, things that actually happened with, you know, my work environment. I'm sure at the late stages something was discussed, you know, discussing that, you know, you had done certain things, you know, that made you maybe like the Polytechnique guy and do something, I don't know. But, you know, that must have been like right, right before it. But I'm really not sure. I can't say yes or no, because I can't remember. And I could be saying that out of my memory from like the media and re-discussing with friends. So, I mean, you know, it's so long ago, I can't remember any more, you know.

Q. Your theory is that you could mix up what you read in the media...

A. Yes.

Q. ... and being present at that meeting?

A. Yeah. Because I remember things up to the idea behind it, rather than the actual thing usually. That's how I think usually, you know. I make an analysis and I sort of remember things according to ideas more, and feelings, more than the actual things that happened. That is why.

Q. I wish I understood what you are saying. So you completely do not even recall being on such a meeting?

A. I have like a vague... but, you know, I really don't know.

Q. Okay. Do you know Professor Chen?

A. Do I know him, yeah.

Q. All right. Do you know how he looks?

A. Yes.

Q. All right. Maybe this would trigger your memory because it was unusual meeting in the sense they were all secretaries, plus for some reason Professor Chen.

A. I remember a meeting where he was sort of facilitating a meeting with secretaries. I do remember that.

Q. All right. So this is the meeting. Here we are. Now, could you tell us what happened during that meeting?

A. No, I'm sorry. I don't remember it all.

Q. All right. You now recall Professor Chen being there.

A. Yeah, at some point, yes. At some sort of meeting like that, yes.

Q. What, you mean he was not there from the very beginning?

A. No, I said at some sort of meeting. At some point, I mean at some meeting, yes, I visualize now him with the secretaries. But that's all that comes up right now.

Q. All right. At least do you recall your presence at the meeting in terms of what you said at that meeting? Were you asked any questions?

A. I remember one thing that I was talking about. At one meeting, I'm not sure if it was that meeting, okay, they talked about... I don't know what they talked about, but I mentioned in response to something, that I know self-defense, and I was happy about that. And I mentioned what I said to you earlier that, you know, anyone is a potential danger, and you know, you just have to sort of be prepared type of thing, and look at the good points of everyone, but also be prepared, because these things are reality. So I remember that.

Q. All right.

A. Yes, I do remember.

Q. All right. So you were asked... were you asked there a question if you were concerned, or if you had any reasons to be concerned for your safety because of me?

A. Say that again. Sorry.

Q. Were you asked at that meeting whether you had any concerns for your safety because of me.

A. I can't remember for sure.

Q. All right. Have you been at any meeting where my name was pronounced and discussed as a potential danger?

A. Yeah, I'm sure I must have. I mean I still can't remember, but I'm sure I must have.

Q. How many meetings have you been of that kind?

A. I don't know if they just mention your name, or said you know, something else instead of your name, but, you know, I mean, like the person...

Q. How many meetings did you have in your life where you discussed potential danger of somebody?

A. That might entail a discussion again, if... what do you mean by that?

Q. Well, I think my English is not that bad. How many meetings did you participate in where someone asked you if you feel yourself in danger because of somebody else?

A. How many meetings at the university, you're saying?

Q. In your lifetime.

A. Well, I'm always talking about things like this. I'm always talking about the dangers and about society. I mean, I think differently. I have different political (inaudible) I'm always discussing things like that all

the time.

Q. But your...

A. So, you know, you're talking... your question, I can't answer it the way you're expecting, because to me these are things I discuss. I think it's...

Q. I do not expect you anything. I just expect you to tell the truth. And when you are discussing this, you are discussing it in general, or you are discussing it with respect to a specific person?

A. ...

Q. Was my question clear?

A. No.

Q. No. When you discuss danger, do you discuss it in general, or you discuss it in respect to certain particular person?

A. General.

Q. Okay. But my question is not about general. My question is about a certain particular person, namely me. How many times did you discuss danger from a particular person, in your lifetime?

A. I think you're leaving out details of the question that's make me, look, just answer it simply, at the end...

Q. Could you tell me what is unclear in my question? What problem do you have with this question?

A. Well, I don't want to sort say the question for you though.

Q. All right. Then would you kind answer the question. If it's not clear, ask for clarification. But if you don't want to ask for clarification, there is nothing I can do. How many people in your lifetime did you discuss a potential threat? Period.

A. I answered that question already, basically.

Q. Well, how many?

A. Well, I did. I feel like I'm... it's like game playing. And just ask me something that I could answer. I don't know.

Q. Have you ever sought help of a psychiatrist in terms of dangerousness?

BY THE COURT:

I'm not going to permit you to ask that question. It's got nothing to do with what we're here for. What we're dealing with is whether she recalls attending a meeting at Health Services in connection with CONCAVE. And the last question is disallowed.

BY THE ACCUSED:

You cannot disallow last question without asking me how pertinent it is. I advise you once again to stop your lawlessness. Just respect procedure, at least, if you don't want to be called a crook.

BY THE COURT:

I will not permit you your last question. It really wouldn't matter what you had to say.

BY THE ACCUSED:

It would matter.

BY THE COURT:

It would not matter.

BY THE ACCUSED:

Start respecting the procedure.

BY THE COURT:

It would not matter what you said.

BY THE ACCUSED:

Start respecting the procedure.

BY THE COURT:

Have you... I said I disallowed your last question. Have you another question to put to Mrs. Zimmerman?

BY THE ACCUSED:

I have, but I...

BY THE COURT:

Then put it.

BY THE ACCUSED:

... want you to start respecting procedures. Stop your lawlessness.

BY THE COURT:

Put your question to her or I will end this examination.

BY THE ACCUSED:

Oh, I am scared. You cannot imagine how scared I am.

BY THE COURT:

Mrs. Zimmerman, thank you very much.

A. Thank you.

THE COURT:

Have you any questions to put? The Crown has no questions?

BY THE CROWN:

No.

AND FURTHER DEPONENT SAITH NOT

BY Me FREEDMAN:

I have five witnesses for tomorrow. I managed to track down three for today. The third is available after lunch.

BY THE COURT:

Well, we'll have no unfortunately choice, but to postpone until this afternoon in view of the termination of Dr. Swamy's testimony. I regret that. But there you are. I think what we'll try and do is resume at two o'clock (14:00). Would that be okay? And we'll hopefully get an afternoon in. So we'll adjourn until two (14:00). Thank you.

(THE JUDGE LEAVES THE BENCH)

(THE JURY LEAVES THE COURTROOM)

LUNCH ADJOURNMENT

AFTER THE LUNCH ADJOURNMENT

(THE JUDGE TAKES THE BENCH)

(THE JURY TAKES THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

BY THE ACCUSED:

I would like to say, first of all, I have no idea who is now witness because nobody asked me who is the next witness, and I object to this kind of conducting trial, when some witnesses are brought here without my consent, without me being asked who is the next witness. So I would like to know who is the next witness.

BY THE COURT:

Well, I would like to know who is the next witness. I would have to presume. Perhaps Mr. Belleau, you can clarify this, that the order of the witnesses at some point was established, and I know that... I see Mr. Freedman on his feet. I know that Mr. Freedman has frequently spoken with you with regard to witnesses and has gone to some length to try to expedite the orderly bringing of the witnesses. Can anybody enlighten me?

BY Me FREEDMAN:

Yes, My Lord. I had spoken to Mr. Fabrikant yesterday just prior to adjourning at four-thirty (16:30) as to who the next witnesses would be after Dr. Swamy is finished. That was fine for tomorrow. Given what happened this morning, all I did was try to get the five witnesses we had decided on for Friday, to come immediately.

BY THE COURT:

I see.

BY Me FREEDMAN:

And there are...

BY THE ACCUSED:

Okay. Who is in now?

BY Me FREEDMAN:

June Chaikelson.

BY THE ACCUSED:

Well, I told you that she is for tomorrow. I am not prepared to question her. Who else is in?

BY Me FREEDMAN:

There is nobody. There were five names for tomorrow. I managed to get in touch with three. Two have been here. This is the third that I could get in touch with for today.

BY THE COURT:

For today?

BY Me FREEDMAN:

That's right.

BY THE ACCUSED:

This lawlessness should stop.

BY THE COURT:

This is not lawlessness.

BY THE ACCUSED:

Lawlessness. There is no another word for that.

BY THE COURT:

I presume that you wish to question Mrs. Chaikelson?

BY THE ACCUSED:

No, I am not ready. I didn't get my files. I was prepared to question today Swamy, and nobody else. And I was kind of trying to do my best to finish today so that I would be prepared tomorrow, and you ignored all my arguments. You ignored jurisprudence. You ignore every possible rule and regulation which you proudly call existing in this country. And this country is depriving me...

BY THE COURT:

I do not propose to re-open the question of the decision I made. If you had wished to proceed with your questions, all you had to do was proceed with your questions and cease and desist arguing with me once I had taken the decision or made the decision which I made. Now, here we are this afternoon, it was indicated this morning by Mr. Freedman that three of the witnesses have been contacted who were foreseen for tomorrow. There has always been the possibility that an inquiry would end early.

BY THE ACCUSED:

What kind of possibility?

BY THE COURT:

And you yourself said...

BY THE ACCUSED:

Just lawless possibility...

BY THE COURT:

And you yourself said yesterday afternoon that you had hoped to complete the testimony of Dr. Swamy yesterday. These were your own words.

BY THE ACCUSED:

Yes. But I told you that I am not even half through.

BY THE COURT:

Well...

BY THE ACCUSED:

Why do you quote just part of what I said?

BY THE COURT:

Well, Mr. Fabrikant, what I would suggest you do is you take fifteen (15) minutes and decide what you have to cover with Mrs. Chaikelson, and then we'll come back in fifteen (15) minutes. And since Mrs. Chaikelson is here you will do that.

BY THE ACCUSED:

There is no... there is no point. I need the documents with me.

BY Me HAROLD LEHRER:

If it pleases the Court, Your Lordship, my name is Harold Lehrer.

THE COURT:

Yes, Mr. Lehrer.

Me HAROLD LEHRER :

I represent the witness, Mrs. Chaikelson. We did provide Mr. Fabrikant several months ago with copies of the file. If it can help him at all, we're prepared to give him additional copies which we have with us today, so that he could proceed with that examination.

BY THE ACCUSED:

Let us see what...

BY THE COURT:

Is this a thick file, or is this...

BY Me harold LEHRER:

Not terribly. He did subpoena the last time all of his grievance arbitration files. We have extra copies with us if he doesn't have them with him. We'd be pleased to give them to him, if it would assist the Court in...

BY THE ACCUSED:

Well, still I need some time to let through... to go through to make some kind of a system in which I want to question. One thing is when secretary from Mechanical Engineering comes, okay, I can question her impromptu without being prepared in any way. This is the President of the Union, and I need some time to prepare for the questioning, even if the files are provided.

BY THE COURT:

You have had something in the vicinity of close to a year to do whatever preparation you had to do.

BY THE ACCUSED:

Well...

BY THE COURT:

This is your trial. Your trial started in the month of March.

BY THE ACCUSED:

Yes.

BY THE COURT:

You had ample time to take whatever steps you needed to prepare these things. But here you were waltzing around presenting some sort of motion on behalf of the non-smokers and the smokers who had puffed in here the other

day. Perhaps if you had directed your attention a little more closely to the preparation of the examination of the witnesses that you had to examine, you wouldn't find yourself in this position.

BY THE ACCUSED:

What do you think, do you really think that I do not spend enough time on preparation of this trial? I think from the method I proceed with questioning, I think you should be convinced by now that I do spend sufficient time on preparation for questioning of certain witnesses.

BY THE COURT:

Mister Lehrer...

BY THE ACCUSED:

But I do not have in my head all the sequence and logic and all questions for all witnesses. I was hoping that today I will finish with Swamy, and until tomorrow I will look through the file and I would be ready.

BY THE COURT:

I will withdraw for half an hour. If he wishes to take you up on your offer, that's fine. And in half an hour we will, I think, be in a position to have him question Mrs. Chaikelson, and surely he must know what he proposes to ask her. So we will do that, and we will see from there.

(THE JUDGE LEAVES THE BENCH)

(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 WITNESSES)

(ALL ARE PRESENT)

BY THE ACCUSED:

... I cannot examine her, I suggest we adjourn until tomorrow morning because I, in addition to the amount of material to be looked through, I have remembered that I have some additional material at home... I call Parthenais home... in Parthenais, which I do need, anyway, for conducting. So I suggest that we make adjournment until tomorrow morning. And that's as far as I can go today.

BY THE COURT:

Your motion for adjournment is denied. You will examine Mrs. Chaikelson now, or she will be released.

BY THE ACCUSED:

Well, you want to go lawless, go lawless. I did my best.

BY THE COURT:

Thank you, Mrs. Chaikelson, you won't be required.

Next witness.

BY THE ACCUSED:

What?

BY THE COURT:

Next witness.

BY THE ACCUSED:

Mr. Lecours.

BY THE COURT:

No.

BY THE ACCUSED:

Would you care to explain why no.

BY THE COURT:

Because. Unless you can justify why you wish to put the Crown Prosecutor into the case as a witness thereby

creating an impossible situation in the case...

BY THE CROWN:

I would gladly do it, My Lord. It would remove me from the case. So...

BY THE COURT:

Don't make a comedy of this any further than you already have.

BY THE ACCUSED:

Well, I already mentioned that comedy, namely puppet theatre, what you are making of this trial, not me. I am taking it very seriously.

BY THE COURT:

I wonder, ladies and gentlemen, if you would withdraw just for five minutes...

BY THE ACCUSED:

Why wouldn't they hear all that?

BY THE COURT:

... and I will let you know then whether or not I will require you today or not.

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

(OUT OF THE PRESENCE OF THE JURY)

BY THE COURT:

Well, you would appear to have one option. You have said before, and I don't wish to say it in front of the jury, that you propose to testify. I suppose you could start. That would take you from now until four-thirty (16:30).

BY THE ACCUSED:

You must be kidding?

BY THE COURT:

Not at all. I'm deadly serious, Mr. Fabrikant.

BY THE ACCUSED:

I am more than not prepared to testify yet. I have still many, many witnesses to be heard. So there is no way I'm going to testify. I would like Mr. Lecours to testify or... frankly speaking, I don't want him to be removed, because I think he is...

BY THE ACCUSED:

Mr. Lecours is not going to testify unless you convince me that you require Mr. Lecours to testify...

BY THE ACCUSED:

All right.

BY THE COURT:

... and that will take some convincing.

BY THE ACCUSED:

I do not want him to be removed. I didn't think that his testifying would remove him. You see, I am still ignorant at law. So I think he is one of the best I could possibly have. I hope you understand what I mean. So definitely I don't want him to be removed.

BY THE COURT:

All right. I'll cut you short.

BY THE ACCUSED:

Well, I haven't finished yet. Let me explain why I need him.

BY THE COURT:

I have finished listening to you. I will tell you this. You will be prepared as of tomorrow morning to proceed.

BY THE ACCUSED:

Yes.

BY THE COURT:

If you are not prepared to proceed tomorrow morning for

whatever reason... for whatever reason, you risk your defense being declared closed. We will go on tomorrow, and then we will go on the following week, and we will go on witness after witness until we are finished.

BY THE ACCUSED:

That's a good idea.

BY THE COURT:

This is the last adjournment that you will get at your particular request.

BY THE ACCUSED:

It's not at my particular request. It is at your lawlessness.

BY THE COURT:

And that is it. Take him out. Tomorrow morning, nine-thirty (9:30).

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 FRASER MARTIN, S.C.J.
(AND AN ENGLISH JURY)

THE QUEEN

vs

VALERY FABRIKANT

APPEARANCES: Me JEAN LECOURS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: July 31st, 1993

GS: 1362 FILE: 2484

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CONTINUATION AUGUST 4TH, 1993

(OUT OF THE PRESENCE OF THE JURY)

(THE JUDGE TAKES THE BENCH)

(THE LAWYERS AND ACCUSED ARE PRESENT)

BY THE COURT:

I came in without the jury, first of all, because there is an administrative question to settle in the beginning. You will correct me if I am wrong, Mr. Belleau, but do I sum it up as follows. That in view of the extended

length of the trial you have found that if you continue your practice will suffer, possibly irreparably, and in these circumstances you had put the question to me as to whether or not it would be possible for me to agree to your being replaced as the Friend of the Court.

My sentiment to that is I have no objection, in principle, provided that there be some continuity. And I wonder if you might not take it from there, and put to me the suggestion you have for the sake of the record.

BY Me BELLEAU:

Well, the...

BY THE COURT:

Quite obviously you and I have previously discussed this problem.

BY Me BELLEAU:

Absolutely. And what you've just said is correct and represents exactly what was discussed on that matter. Now, as to the continuity, I have looked for different people to replace me, and one of the candidates was Mr. Boutros who is a lawyer in our office, and who is an experienced attorney, and who is also available to continue the trial to the end.

So we discussed this with Me Sherman, who is with the Association des Avocats de la defense and with Legal Aid, also, and it was agreed that it was possible that Mr. Boutros could come in and replace me at this stage. I'll be available for Mr. Boutros if he would need any assistance on any matter related to the case, and that's about it. He's right here and I could introduce him to the Court. Gabriel Boutros.

BY ME BOUTROS:

Good morning.

BY THE COURT:

It's a pleasure, Mr. Boutros, to have you join the trial. And as I, in general... I, of course, was not privy to any discussions between you and Mrs. Sherman or between you and the Legal Aid corporation, but if these two facets have been straightened out, I'm perfectly happy. I'm very, very sorry, in a sense, that you are not... that you don't see your way clear to finish this, but I must say that I am the first to understand the implications of being away from your practice for this sort of time. I know a practice isn't something that can be shut down and started up at will, and I appreciate the consequences and I want to take this opportunity to publicly thank you for the excellent work that you've done.

I am comforted by the fact that Mr. Boutros and you are partners, and that there is that sort of cooperation which is going to permit there to be a continuity and I can tell you that in this case, the idea of a Friend of the Court is one that, as far as I'm concerned, has worked out very well, and I'm glad, Me Boutros, that you're going to continue.

BY Me BOUTROS:

Thank you, My Lord.

BY THE COURT:

The jury, please.

BY THE ACCUSED:

Shouldn't you ask me if I have any questions?

BY THE COURT:

You haven't a word to say at the moment. You know perfectly well the situation between you and the amicus curia.

BY THE ACCUSED:

Ha, ha, ha, ha, ha, ha. You could have done it just for the sake of formality, you know.

BY THE COURT:

I don't require to hear anything more from you, Mr. Fabrikant.

(MEMBERS OF THE JURY TAKE THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

BY THE ACCUSED:

Well, ladies and gentlemen, welcome to the muppet show.

BY THE COURT:

Would you record the time, please.

BY THE ACCUSED:

Nine forty-two (9:42).

BY THE COURT:

Nine forty-two (9:42).

BY THE ACCUSED:

If you wish I can add, presiding muppet, Mr. Martin.

BY THE ACCUSED:

Is there any reason why you should not be held in contempt of Court for that?

BY THE ACCUSED:

Well, if you wish I can explain what is the reason why you shouldn't held me for contempt of Court. But this time I hope you will let me to explain it, not how it was yesterday.

Now, why did I say that this is a muppet show? Because this is not a trial the way it is defined in any legal document, the way it is defined in any constitution or Charter of Rights, anything which Mr. Martin claims this nation is proud of. There is nothing of this kind. You saw it...

I give you just several examples of what is going on here. You noticed on numerous occasions when witnesses were in the box and some difficult situation comes out, immediately Mr. Martin intervenes and says, go on to your next subject. Well, he has no right to do that, in the first place, because every jurisprudence states several things about norms of behavior of a judge. For example, the judge is supposed to be neutral. Not only he is supposed to be neutral, his appearance should be neutral, because a judge projects extreme power and authority in Court.

And members of jury usually is looking up to him, because they... well, the majority of them have never been in Court, and when I was like you, I also was sure the judges are decent people. I was sure that police are decent people. They never lie. They never fabricate evidence. So a judge should be very cautious in his interventions.

In this particular case, in this trial, it started from the very beginning. All I was asking for, for months and months... I didn't ask to be released. I didn't ask for any favours. All I was asking for, since I cannot find a lawyer who would be sincerely defending me...

BY THE COURT:

I have not asked you for the story of your life. I have asked you why you shouldn't be held in contempt of Court for announcing "welcome to the muppet show", when the jury came in this morning.

BY THE ACCUSED:

Well, this is exactly what I am explaining.

BY THE COURT:

Unless you come to the point I will have you sit down, and I'll decide whatever I have to decide. Now come to the point and get to it quickly.

BY THE ACCUSED:

Well, I am at the point and the point I'm trying to make, and please do not pretend that you do not understand, that this is a long story of abuse of process.

BY THE COURT:

Mr. Fabrikant, sit down.

BY THE ACCUSED:

Well, again...

BY THE COURT:

Sit down.

BY THE ACCUSED:

... this is lawlessness. You are obliged to allow me to explain.

BY THE COURT:

I am not obliged to listen to you for all of the morning. That is for sure.

BY THE ACCUSED:

Well, it is not of the morning. I guarantee you I will finish in maximum seven minutes. How about seven minutes?

BY THE ACCUSED:

No, Mr. Fabrikant. I don't negotiate times with you.

BY THE ACCUSED:

Well, I believe...

BY THE COURT:

If you have anything pertinent to say, to justify your...

BY THE ACCUSED:

...is the ...

BY THE COURT:

... if you have anything pertinent to say...

BY THE ACCUSED:

Yes.

BY THE COURT:

... to justify your remark, I suggest you say it and that you say it quickly.

BY THE ACCUSED:

Well, I suggest that after I say it, you decide whether it is pertinent, and not interrupt me. I have the right, because what you are doing now is the best proof that what I said was correct. You have no decency right now to allow me seven minutes to say what I feel is pertinent to explain to you why I call this a muppet show, and you the presiding muppet.

Now, have the decency, at least, for the sake of formality to allow me to explain it. It is after that your duty to say, no, what he said is not relevant, and I still find him in contempt of Court. So have the decency at least doing that, because there is no way you can dictate me how to justify my action. How I justify my action is my business. For you, as a judge, to decide

whether my justification is valid. Do you understand at least that simple thing, what you as a judge is supposed to do.

BY THE COURT:

I don't need a lecture from you. I said come to the point.

BY THE ACCUSED:

You do need a lecture.

BY THE COURT:

You've been rambling around for thirty (30) seconds, and obviously you don't intend to come to the point.

BY THE ACCUSED:

I intend to come to the point...

BY THE COURT:

Right. Get there now.

BY THE ACCUSED:

If you would spend three minutes for me to explain it to you what...

BY THE COURT:

Sit him down. Sit him down. Sit him down.

I find you in contempt of Court for the remark you made when the jury came into the courtroom, and I sentence you to a further three months imprisonment for that remark, to be served consecutively to the terms of imprisonment already imposed upon you.

BY THE ACCUSED:

Well, if you wish I can repeat once again that this is a muppet show and you are the presiding muppet. Give me three more months.

BY THE COURT:

What provoked all of this, ladies and gentlemen, was the fact that in view of the length of the trial which from March is now stretching to five months, with some time to go, perhaps, that Mr. Belleau has found it impossible to continue in his capacity as the Friend of the Court. When he accepted that position it was on the belief that, or on the thought the trial would take three to four months, at the outset. His reasons, from my point-of-view, I deem serious, because a lawyer's practice, and in this instance his practice has effectively been put on hold during the time of the trial, and you all know the feeling of this because your lives have been put on hold, too.

The consequences for him will be relatively far reaching unless he's able to re-establish his practice when the term opens in September. And he asked me whether it would be possible in these circumstances for me to consider his replacement as a Friend of the Court. And I said I would certainly be prepared to give some consideration to it, on the understanding that the task could be taken over by a member of the Bar, who had some experience in criminal matters and who would have the time available to see the thing through to the end.

He suggested to me the attorney who is at his left, Me Gabriel Boutros, who has the advantage of being Mr. Belleau's partner, or one of Mr. Belleau's partners, and who because of that relationship is familiar to some degree with, not just what's transpired here, but with the manner in which Me Belleau has been exercising the functions of amicus curia, so that that continuity which I feel is important, would that way be perserved. He

will, of course, have access to Mr. Belleau if he has any questions with regard to what has transpired so far. So in these circumstances I agreed to permit Mr. Belleau to withdraw. I agreed with some considerable hesitation because he's been of great assistance to me throughout this matter, and...

BY THE ACCUSED:

And to the Crown.

BY THE COURT:

... I expressed thanks to him before you came in, and I do so again. And he'll be with Mr. Boutros throughout the day and then as of Monday Mr. Boutros will assume the functions of Friend of the Court. And to this end he has discussed at length with Mr. Belleau how the task has evolved in the context of this trial. So that is what I gather prompted the comment when you came in this morning.

Call your next witness.

BY THE ACCUSED:

Well, it's not exactly this that prompted... it was just...

BY THE COURT:

Would you call your next witness.

BY THE ACCUSED:

Otherwise what, you will release the witness?

BY THE COURT:

Otherwise I will release the witness.

BY THE ACCUSED:

You have no right to do that. The witness is here.

NANCY NICHOLSON

July 2nd, 1964, Secretary

(Address confidential)

DULY SWORN

EXAMINATION BY THE ACCUSED

REPRESENTING HIMSELF:

Q. Are you still in Mechanical Engineering?

A. No.

Q. No. In what department you are now?

A. Graduate Admissions.

Q. Okay. But in eighty-eight ('88) you were working where, in eighty-eight ('88)?

A. Mechanical Engineering.

Q. Okay. More specifically it was with...

A. With Dr. Seshadri Sankar.

Q. So it was CONCAVE. Yeah, it was CONCAVE Center. Right. Okay.

Do you recall somewhere in March of eighty-eight ('88) typing a letter concerning my reappointment?

A. I don't recall in any month...

Q. All right.

A. ... in eighty-eight ('88).

Q. But do you recall typing a letter?

A. No, I don't.

Q. Do you recall typing maybe two letters? One was positive and one was not so positive. Maybe this would trigger your memory that one recommended just one year reappointment with no future reappointments, and the other recommended a two year reappointment?

A. I'm sorry, I don't recall.

Q. In eighty-eight ('88)... how long have you been with CONCAVE?

A. I worked with Dr. Sankar for four years.

Q. When did you transfer from CONCAVE to another place?

A. Four years ago. I've been working in Graduate Admissions for four years now.

Q. So in eighty-nine ('89) you left?

A. Uh, huh.

Q. Is that correct, in eighty-nine ('89)?

A. Four years ago, in...

Q. You don't recall what year it was?

A. No, I don't have my resum, so...

Q. So you recall absolutely nothing from your being in CONCAVE and typing anything which contained my name?

A. I've typed documents containing your name. I don't recall exactly what was in these documents.

Q. All right. Have you heard anything about me being a dangerous person during your time at Concordia?

A. I wouldn't say I've been told you were dangerous, but I've been told that there was problems, but I don't recall ever being told that you were dangerous.

Q. Could you relate to the jury more or less when have you heard first that there are some problems and what were the problems, the way that you were told?

A. Could you repeat...

Q. Do you recall when you first heard about problems?

A. No. I worked with Dr. Sankar for four years. The first year, I don't recall anything. I don't recall when I could have heard that, but afterwards, eventually as I was working there, it was conversation that there was problems going on.

Q. You mean when you still were with CONCAVE?

A. Yes.

Q. All right. So... what kind of problems? Could you share the content of the problems?

A. I don't know the specifics of the problems, but I obviously know that there was difficulties between you and your faculty members. I don't know anything specific.

Q. Well, how was it? Someone came to you and said, there are some problems between Fabrikant and some other members, without specifying what kind of problems, what members? That's how you heard it?

A. I don't recall how it happened. But I think the combination of seeing you at work among other professors, and conversations, it was brought up that obviously there was problems going on.

Q. Well, you mentioned seeing me. What seeing me could give you in terms of what is going on? Could you elaborate on that?

A. Well, I can recall seeing you under distress a few times when you did come down to Dr. Sankar's office.

Q. All right. So you recall that I came to his office on the eighth floor, it was?

A. Yes.

Q. All right. So around that time what did you see in me, that I looked stressed?

A. Stressed, angry.

Q. All right. So this is one thing which you may conclude that there was some problems. Yes. And at that time,

since you recall that I was coming to his office, maybe you recall how many times I came to his office?

A. No, but I think that it was... I don't think it was frequent, but it wasn't seldom, either. I think there was a few times that you have come down to the office and...

Q. You think it was more than two times?

A. Yes.

Q. More than two?

A. Yes.

Q. You're sure about that?

A. I would think so.

Q. All right. During that time, since you recall me coming to his office, you still do not recall that you were typing some letter of recommendation, or non-recommendation?

A. I may have written. I can't say that, yes, I have done this. I can't say, no, I have not. I've typed many documentations. Dr. Shankar was on many committees, and there was many recommendations and there was a lot of work. I can't say that I can recall specifically typing this recommendation, or non-recommendation.

Q. All right. Would it help to you if you are shown the letter itself? Would this...

A. Sure.

Q. ... help in any way? Okay. If I recall correctly, it's around 37 to 40 something. Can we have this D between 37 and up.

(REMARKS OFF THE RECORD)

Do you recall typing this letter?

A. Not specifically. I mean, obviously I have my initials down here when I typed it, but I don't recall that day, sitting there typing that.

Q. Well, the text doesn't ring a bell?

A. You mean the format?

Q. No, the text itself. You read the whole letter.

A. Oh, the information.

Q. Yeah. Does this trigger your memory, okay, yes, I did type it?

A. Yes, I'm familiar with this type of contact, yes.

Q. So you recall... it's not just that your signature is there, but you...

A. What I'm saying is, I don't recall specifically typing this. I recall this information. But I've type many of these, like, you know. So, okay, yes, maybe I typed it, but I can't say that I remember that day. I remember information like this.

Q. Okay. Could you recall that you typed also another letter with a similar subject, but with a different conclusion? At the end it was not two years, but a recommendation of one year, and termination of contract. Do you recall typing that letter?

A. I don't. I could have typed it, but I don't remember.

Q. Well, taking into consideration that you recall that there were some problems, then you could recall also that these problems resulted in typing something...

A. At that time...

Q. ... related to those problems.

A. ... in my life, when I was working there and I was typing up, let's say, as you're asking me, the opposite of this letter, I could have took note, yes, look what's

happening. But today I don't remember. It's not part of my life right now.

Q. Yeah. All right. Do you recall at least in terms of problems, what exactly was conveyed to you? What were those problems?

A. I don't know anything specific. I know that there was distress between the professors. I know that you were looking for anything, I guess, to prove... I don't recall anything specific. I know that there was problems obviously and...

Q. Right. Later on when you were already at the Graduate Student Admissions, have you heard anything at all concerning me in any sense whatever?

A. No, I did not.

Q. So absolutely nothing, not a word about...

A. Well, I did hear about your... the E-mail...

Q. Right. Before E-mail, nothing?

A. Nothing, nothing that I can recall right now.

Q. Okay. Let me try to refresh your memory. In November, ninety-one ('91), have you heard that I have been arrested at Loyola campus?

A. No, I didn't.

Q. Thank you for coming. I appreciate it.

BY THE CROWN:

I have no questions for Mrs. Nicholson.

BY THE COURT:

Thank you very much, Mrs. Nicholson. You're free to go.

AND FURTHER DEPONENT SAITH NOT

BY THE ACCUSED:

Mr. Karpman.

BY THE COURT:

Who is your next witness?

BY THE ACCUSED:

Mr. Karpman.

BY Me LEHRER:

Your Lordship, for the purposes of the record, my name is Harold Lehrer. I'm representing the interest of the witness, Mr. Karpman.

ALAN KARPMAN

April 24, 1954, Professional Officer

(Address confidential)

DULY SWORN

EXAMINATION BY THE ACCUSED

REPRESENTING HIMSELF:

Q. How long did you know Dr. Hogben?

A. I knew Dr. Hogben since nineteen eighty-nine (1989).

Q. How many times have you been into his office?

A. Countless times.

Q. Can you recall his usual position when he was sitting at his desk?

A. His desk was facing the front entrance, and that's where he sat.

Q. All right. For example, his hands, were they like this on the desk? Were they like this?

A. I can't recall.

Q. Well, you've seen him numerous times.

A. I can't recall if he kept his arms together or if they were on the desk. I would imagine that he was in all these positions. I don't recall any one position as standing out.

Q. All right. What about his legs, was it usually like this, like this? Do you recall anything about his legs?

A. Just facing the desk, is the first position that you assume there.

Q. So that was the typical position?

A. That's right.

Q. Do you recall any other position?

A. No.

Q. Not at all. All right. You're sure you didn't see any other position?

A. I didn't say I didn't see other positions. I said I don't recall like specific positions he was in, just that he was in a number of positions.

Q. Well, could you then describe those number of positions?

A. With his arms in front of him?

Q. No, no, I'm talking now about legs.

A. I don't know. I couldn't see his legs. His legs were under the desk.

Q. Okay. So you couldn't see them...

Now, do you recall my appearance in CUFA on August sixth (6th)?

A. Yes.

Q. All right. Could you describe to the jury whatever you recall from that meeting?

A. There was a meeting with Dr. Hogben and Mr. Fabrikant on August the sixth (6th). This was a meeting late in the afternoon, around three (15:00), three-fifteen (15:15). The purpose of the meeting, I believe, was for Mr. Fabrikant to review his files, and Dr. Hogben was there for that purpose. He gave him an audience. I was asked to attend that meeting because there was some concern about whether or not Mr. Fabrikant would comport himself, would take care of himself in a proper way, that is, that he wouldn't pose a threat, or a risk to either Dr. Hogben or to anybody else in the CUFA office. And I recall, as well, that Mr. Fabrikant was not pleased with the outcome of the meeting, that he didn't receive, so he said, all the documents that may have come into the CUFA office. And he was, at one point in that meeting, he was clearly belligerent with Dr. Hogben and that was when I was called in to be, I suppose, to be somebody there for the purpose of witnessing, and you had made some reference to him being a pig at the time.

Q. Exactly. Did I specify why I called him a pig?

A. I can't recall what... it's not a matter of recall. I was called into the office and these were the words that you were using at that time. I wasn't privy to the discussion just before that, so I don't know why you called him a pig. I only know that you did.

Q. Try to recall, because I understood that you were called to be a witness, therefore, I specified why I said that his behaviour is like the behaviour of a pig.

A. I was called to witness...

Q. Try to recall because I explained in your presence, and I asked him to confirm that this is what happened before. Try to recall that. It's an important part, that when you entered... I'm trying to trigger your memory. I

repeated it in your presence why I called his behaviour as being like a pig, and I asked him to confirm in your presence that this is exactly what happened before you came. Do you recall that?

A. I recall the statements that you made. I don't recall what transpired... I don't recall...

Q. This is why I call it a muppet show.

BY THE COURT:

You are not here to make comments. You're here to ask questions. Ask questions. If you're not going to ask questions, that's it.

BY THE ACCUSED:

I am asking questions.

Q. Now, let me trigger your memory. I told him that he put his legs on the table, and this is behaviour of a pig.

Now, does this refreshes your memory?

A. No, it doesn't, quite frankly.

Q. It doesn't at all.

A. No. No, I wasn't...

Q. Now you understand, I was asking you where usually his legs were, because it was important to me that it was not a usual position of his. He wanted to display to me his total disregard and disrespect.

BY THE COURT:

Are you giving us a story, or are you...

BY THE ACCUSED:

No.

BY THE COURT:

You're not refreshing the witness' memory at all.

BY THE ACCUSED:

I'm trying to refresh his memory.

BY THE COURT:

Under the guise of doing that, you're testifying. Now, put questions.

BY THE ACCUSED:

Q. Does this trigger your memory why I was belligerent?

A. No, it doesn't. I wasn't there... I don't... I wasn't there when he changed his posture.

Q. For every normal judge that would sufficient to declare a witness adverse. Not for you.

All right. What else transpired there? Do you recall anything else?

A. That... I recall the look in your eyes, that you showed what appeared to me, as a tremendous anger, almost a murderous rage in your eyes.

Q. All right. But before you said there was concern for Hogben's safety, was this concern based on any previous fights?

A. I didn't say that we were concerned inclusively for Dr. Hogben's safety. It was a matter of the safety of all personnel in the CUFA office. I included myself...

Q. So...

A. ... and the secretary.

Q. So you were not afraid to come in there and sit there, were you?

A. I don't think I was comfortable. I know that I was uncomfortable coming in there and sitting there, because one couldn't predict necessarily what you would do.

Q. When you were coming into the office, do you recall that all I did was exiting from Hogben's office into the corridor? Do you recall that you met me in the corridor,

because I couldn't stand seeing his legs on the table facing me?

A. Yes, I did.

Q. So do you recall... so that all I did is just exiting from his office. That's all. Right?

A. That's correct.

Q. It's good that you remember at least that. Now, after he called you, we returned both there, and maybe now you recall that I stated once again why I exited his office?

A. I don't recall.

Q. You don't recall. Fine. But my understanding is that you didn't have any facts whatsoever to think that I might become violent in the office, did you?

A. We had reasonable grounds to suspect that you would... that under the right circumstances, or I should say the wrong circumstances that you could show some violent behaviour.

Q. All right. What were those reasonable grounds?

A. Well, there was a meeting that you had with Professor Barbieri about a month before where you had lost your temper. It seemed as if you were going to come to blows with Professor Barbieri. You yelled at him something that wasn't quite coherent, ran out and slammed the door. I think those were behaviours that at least gave us some sense that we should take caution with you.

Q. Well, could it be that your only reason was that you just thought that the behaviour of CUFA was so outrageous that every normal person might become violent? Could that be best reason you had?

A. Absolutely not.

Q. Absolutely not. CUFA behaved perfectly, defending me everywhere. Correct?

A. That's correct.

Q. All right. So what do you remember else from this conversation?

A. I remember that you insisted that there were more files and that you wanted to... that you wanted to have access to those files. I recall that you had started to do a chronology of the letters that appeared in your file, and so you said, what was the letter that followed up on this particular document that I have in my hand. And certainly we weren't prepared to be interrogated at the juncture, and I think that you left rather frustrated because we didn't have all the answers that you would have liked. We didn't have all the documents memorized and ready to distribute.

Q. All right. Let me try to invoke section... not section, just Common Law. You just now saw a remarkable memory of this witness, as to such minute details that he remembers very well that I was handing a letter saying something and there was no response to this letter. This is fantastic. He remembered that I call Hogben's behaviour like a pig. And he does not remember why was that. Now, would you believe that? If he remembers such minute things and he remembers that I called him a pig and he does not remember something which followed immediately that. Would you believe that? Is this witness adverse?

BY THE COURT:

Is this your motion under the Common Law?

BY THE ACCUSED:

Yes, it is. Yes.

BY THE COURT:

It's dismissed.

BY THE ACCUSED:

Entirely. Ha, ha, ha.

BY THE COURT:

This is your motion to cross-examine at large because the witness is hostile?

BY THE ACCUSED:

Yes.

BY THE COURT:

It's dismissed.

BY THE ACCUSED:

Dismissed, yes. All right.

Q. Do you recall anything else from that conversation?

A. No.

Q. Okay. I bet your don't recall one very interesting point there, that Hogben once again asked me if I am prepared to accept the settlement of the university. Do you recall that?

A. Yes, I do.

Q. Oh, fantastic.

A. But not in those words.

Q. All right. So your words would be different. Okay. That's also an approach. Okay. What was that I asked him?

A. You had said something to the effect that twelve (12) years would be the only solution that you would be prepared to accept.

Q. Ha. Twelve (12) or thirteen (13)?

A. Twelve (12), in my recollection.

Q. Twelve (12). Ha, ha, ha. It was I who initiated that, not Hogben?

A. I recall those words, and they were spoken by yourself. I don't recall...

Q. Well, how?

A. I don't recall the exchange, because the purpose of that meeting was to look at the file, presumably to look at the file. This was something that you had mentioned in that conversation, and I don't remember anything more.

Q. Okay. But it should somehow come into the conversation. I was looking into the file. You don't recall that Hogben asked me if I am prepared to accept the settlement of the university?

A. No.

Q. No.

A. But I recall your saying...

Q. So, but this somehow should come to the a conversation. It couldn't come out of the blue, could it?

A. No, I don't...

Q. How do you like that selective memory? Could you again recall that I never mentioned anything about what I would settle with? Try to recall that this is just your fantasy.

A. I'm trying to understand what your question is.

Q. Well, the question is, try to recall that I didn't say anything which I would settle with. I told him that no, I'm not. Period.

A. That's not my recollection.

Q. Naturally. All right. What else do you recall from that conversation? Anything else?

A. No.

Q. No. This is the problem. I should have recorded it. Now you would have had what really happened there. All right.

BY THE COURT:

As ever, you'll ignore these remarks. The principle is very simple. You can ask as colourful a question as you like, but if the answer is, no, the colour goes along with the no, and off it goes.

BY THE ACCUSED:

Q. Do you recall the problem of judges at the Hearing Panel?

A. Yes.

Q. All right. When did it start this problem?

A. I don't have the documents in front of me, so I'm not quite sure when it started. It was something that predated, certainly predated your arrival on the scene. It was a matter of policy, a policy difference that CUFA had with the university over the system of... the different codes that were operative, or are operative in the university, and we weren't quite sure that CUFA should participate in a system where our members may have to render decisions that would be against the better interest of those same members, at least, as we would defend them by the Collective Agreement. And I don't recall... there was an exchange of letter for sure with John Relton. I don't have any of those documents, so I can't speak except in the most general terms.

Q. All right. But one thing is very important. You say it appeared before my first complaint to the Code of Conduct. Right?

A. That's correct.

Q. All right. Could you explain then all my requests to CUFA could not produce a single document dated before November. Do you know of the existence of those documents? And if yes, we will ask Mr. Lehrer to attend to it and to find them. So you are sure that there exists documents before November, ninety-one ('91)?

A. I'm sure that this was a running discussion that CUFA had with the Code of Conduct, not academic, with the formation of that Board. Now, it predated you, for sure. I don't know when. I don't know how far back, and I don't know that there are documents, either, that are, that can be produced to that effect. Much of the discussion have been orally on the phone with John Relton, and those can't be reproduced. And if there are documents, then I don't have them, and I don't know them.

Q. Well, those documents... do you recall at least some signed by you?

A. Yes, there was... after you had arrived on the scene, there were documents that I had signed, documents sent to John Relton.

Q. All right. Before I arrived at the scene, any document in existence, to the best of your knowledge?

A. To the best of my knowledge, no. No, there weren't documents to...

Q. Ha, ha. So documents appeared after my complaint was filed. Right?

A. Yes. Documents that I know of.

Q. Ha, ha, ha. All right. Could you explain then when... so I arrived at the scene in November, for sure my complaint was filed. Now try to recall when the problem appeared and in what way? To the best of your

recollection, who raised the problem?

A. The problem was raised by the circumstances. We were asked to produce names, people to be appointed to sit on this Hearing Panel, and we were reluctant to do so. That was the nature of the...

Q. Well, when was the first time CUFA was asked to produce members of the Hearing Panel?

A. We... it's an annual, I believe, because I don't work on the Code per se. I work with the CUFA Collective Agreement. But I believe that we were asked to appoint people on an annual basis. So it's something that would have arisen naturally each year, and it was incumbent on us that year to appoint people because the people that had been appointed previously had exhausted their terms. And we were reluctant... the CUFA executive, the administration at that time had serious reservations about whether or not we should participate on that hearing panel.

Q. Well, could you explain how come you appointed these people year after year after year, and there was no problem? Then all of a sudden, at the time I filed my complaint, by a strange coincidence, the CUFA executive become concerned. Now, why did you appointed year after year after year without raising any concern?

A. We had two concerns actually. One of them... both of them arised...

Q. Before you state what the concerns were, would you please stick to the question. Why did you appointed year after year after year with no problems?

BY THE CROWN:

This line of questioning is not relevant, My Lord.

BY THE ACCUSED:

What did he say?

BY THE COURT:

He thinks that this line of questioning is not relevant.

BY THE ACCUSED:

Oh, all right. Would you have the decency to ask me about relevance before ruling, because usually you rule, not even bothering to ask me. So would you make an exception this time?

BY THE COURT:

The relevance is, and the relevance came out of the examination that he takes the position that the university in concert with the Faculty Association purposely dragged its feet in dealing with his complaints. And that this...

(TAPE DEFECTIVE A FEW SECONDS)

... the purpose of the question.

BY THE CROWN:

The point is made. Now he is asking why and why not and arguing and cross-examining the witness.

BY THE COURT:

He is cross-examining the witness, that is true. What he is saying is why did the thing suddenly become a problem, he says, suddenly become a problem which isn't the testimony of the witness when...

BY THE CROWN:

It's not in evidence. The witness did not say that.

BY THE COURT:

... when his complaints arrived. I suspect that is where...

BY THE CROWN:

The witness did not say year after year after year it was fine and when you came into the picture there was a big problem. That was the question.

BY THE COURT:

No, the question was, why was there suddenly a problem, as far as people from the... people who were faculty members, and members of the bargaining unit, to form part of these panels, why did suddenly become a problem from November, ninety-one ('91) on, when his complaints were deposited when people had been appointed year in and year out prior? That's the question. I'll permit the question.

BY THE ACCUSED:

I couldn't tell it... explained it better.

Q. So?

A. Well, contrary to your belief, the controversy around that Hearing Panel was evident for reasons other than yourself, and certainly before you became an issue within CUFA. The reason that this executive took issue with that... with those appointments was because of, one, the university had just approved... and just recently approved and put into place a sexual harassment document, and that document was to be administered by the same people on this code of conduct, not academic.

And the university was also preparing a disruptive behaviour policy that, again, we took issue to, because it would contradict some of the principles and procedures that we have in our collective agreement. And it was in relation to those... the development of those two policies, and the fact that they were going to be administered through Relton and the Board, the Hearing Board, that was, those were the major issues of the day. Those were the issues that we were responding to. Certainly it wasn't because your case had come up and we wanted to delay justice.

Q. Well, so, you... before you appointed with no problems because there was no sexual harassment policy, and there was no disruptive behaviour. That is your answer, is my understanding?

A. My answer is that those two policies put for us, as an organization put that, that our participation on that Hearing Panel, in question.

Q. All right. But before there was no problem, before this policy appeared?

A. Before, no, there was no...

Q. No problem. You could participate. No problem. Now, explain why these policies all of a sudden created problems?

A. Because those...

Q. What was in those policies that created problems?

A. The policies indicate remedies and sanctions, that is, the types of punishment that would be accorded to any member found guilty under that Code. And our Collective Agreement has its own chapter, if you will, on remedies, and sanctions, and disciplinary measures, and procedures, and we felt that the Collective Agreement subordinates any other documents.

Q. One second, let us make it clear one thing. In the Code of Conduct hasn't always been a certain number of sections which are the same as in the Collective

Agreement? Do they?

A. Not to my knowledge.

Q. All right. Let me give you... ask you one thing. Was in the Code of Conduct such a sanction as suspension all the time, without sexual or not sexual harassment?

Suspension, was it there?

A. I don't know.

Q. Ha, ha, ha. Well, then what kind of sanctions are you talking about?

A. We're talking about fines. The things that concerned us were fines...

Q. Yes.

A. ... being asking not to be on the campus, being removed from the campus, being removed from the classroom, that apologies might have to be made public, things of that kind where there was very specific mention in those Codes, in that document. Those were the types of remedies that certainly weren't agreeable with CUFA and we couldn't accept easily.

Q. Okay. What sanctions, to the best of your knowledge, were before in the Code of Conduct which you did accept? Which sanctions you did accept?

A. I can't... now I just can't answer all these questions. I mean, I've been working there since nineteen eighty-eight. I don't know what discussions, because that Code was in existence. I don't know what those discussions were prior to my coming into the organization as an employee.

So, you know... and I think that the first couple of years, at least until these two documents came into existence, that first bit of time that I spent in the organization, it was just a matter of oversight. Nobody had occasion to look at the Code. We didn't have any reason to. There was nothing that brought the Code to our attention, so we simply... I believe the organization simply appointed people year after year, without putting it into criticism.

Q. Well, are you saying that you never looked into the Code?

A. I am offering you my impression, and that's all it is...

Q. Right. So...

A. ... of what transpired before those two documents.

Q. So you had numerous discussions with Relton and during these discussions you never asked him what sanction code foresees in a general case? Did you?

BY THE CROWN:

All this line is cross-examination.

BY THE COURT:

This is all cross-examination, and it's all minutiae that doesn't concern us.

BY THE ACCUSED:

Well, it does concern us, because it is the same subject which you so eloquently explained to pretending not to understand the Crown. Because I do not believe... I have a much higher opinion of his intellectual qualities, that when he stood up and says, what is the relevance, I really do not believe that he really did not understand the relevance, and that it was you who finally explained it to him. I believe he did understand that I have a very high opinion of his intellectual qualities. Now, I am just continuing exactly the same thing, because...

BY THE COURT:

You are not continuing the same thing. You are cross-examining the witness on a whole series of matters. The witness' answers are there. The witness said the problem, vis-a-vis the Code had not presented itself to us in the sense that we realized that there may be a potential problem. That's what he said to you. There you are.

BY THE ACCUSED:

I heard what he said.

BY THE COURT:

Well, you're not going to be permitted to to cross-examine him. He has said what he said, and that's it.

BY THE ACCUSED:

That's fantastic. I accept what he said.

BY THE COURT:

Fine.

BY THE ACCUSED:

I'm just going in more detail.

BY THE COURT:

No, you're not going in more detail. You're cross-examining. The last question is out of order.

BY THE ACCUSED:

Ha, ha, ha. All right.

Q. Now, what seems to be the problem with the sanction, let us say, a fine, as far as CUFA was concerned? Could you explain this?

A. I'm not sure what you're talking about.

Q. All right. So the Hearing Board has fined a member, what seems to be the problem with that?

A. There's no provision for that particular sanction in our Collective Agreement. We don't make provision for fines.

Q. Well...

A. And that's what was disagreeable.

Q. Well, you don't make provisions for fines. So what? So what? What seems to be the problem? If persons somewhere, let us say, hits a security, there is nothing in the Collective Agreement about that. They call police and police does that. The same concern is with the Code of Conduct. If someone does something...

BY THE CROWN:

He's arguing with the witness.

BY THE COURT:

It's arguing with the witness, and it's cross-examination, and you're not...

BY THE ACCUSED:

All right. I will change the question.

BY THE COURT:

No, you won't change it. You'll listen to me for a minute. You're not going to be permitted to do it. The witness has given you his point-of-view. What you are attempting to do now is cross-examine the witness with a view to establishing, in your mind, that he's not telling the truth. That's all you're attempting to do. He has told you... now, we're not going into whether CUFA was well-based in taking the position they took, or whether they were not well-based. He has said what position they took and that is that. Now carry on with something else.

BY THE ACCUSED:

Ha, ha, ha. So you made your spectacle when you explained to the Crown to display how objective you are and here you are back again to what you were doing all the time.

BY THE COURT:

Not at all. You're the one who has to establish that they...

BY THE ACCUSED:

Isn't it always that the witness is in a difficult position, now you're trying to save him?

BY THE COURT:

It's not obvious to me at all.

BY THE ACCUSED:

Well, I think it's obvious for everybody else.

BY THE COURT:

It may be obvious to others, but it's certainly not obvious to me.

BY THE ACCUSED:

Well, I think it is obvious to everybody else.

Q. All right. So was anyone before, in years and years, fined under the Code of Conduct, to the best of your knowledge?

A. To the best of my knowledge, no.

Q. No. About apology?

A. There was an incidence where somebody was asked to make an apology.

Q. Well, the Collective agreement tolerated it? Everything was fine then?

A. What's your question?

Q. Well, my question is, someone was asked to do an apology, and you say that there is no such provision in the Collective Agreement to make an apology. Did I understand you correct?

A. Our... the organization was not going to participate willingly in any Hearing Panel that would force any one of our members to respond to a discipline that wasn't in that Collective Agreement. That's simply what I stated. The Collective agreement on it's own can't take any position, vis-a-vis, a member. It's up to the association, and this was what the association believed to be the correct...

Q. So why did you then accept this verdict of apology then?

A. This was an individual that had gone through the procedure, and had decided to adhere to the remedy that was suggested by that, by that Hearing Panel. And we weren't happy with it. But we can't tell our members what they should or should not do. But we certainly could tell ourselves as an organization whether or no we were going to appoint people to that Hearing Panel.

Q. All right.

A. And we did that.

Q. Is there anything in the Collective Agreement, any Article which deals with misbehaviour of a person, anything?

A. Article 29, in the Collective Agreement, deals with discipline and dismissal.

Q. Well, all right.

A. That's the Article there.

Q. But not every misbehaviour deserves dismissal. Is that correct?

A. That's correct.

Q. All right. So misbehaviour which does not deserve a dismissal, is there anything in the Collective Agreement about it?

A. There's... the only thing is letters of warning that

would be issued under Article 29.

Q. Well, letters of warning, it's again something very, very serious. All right. That's correct?

A. It's something of a serious matter, yes.

Q. Yeah. Suppose something less serious, shouldn't there be a body to administer certain remedies in case where a letter of warning is not warranted?

BY THE CROWN:

He's still arguing in cross-examination, My Lord.

BY THE ACCUSED:

Q. Could there be that?

BY THE COURT:

Your objection is maintained. This is a point...

BY THE ACCUSED:

The objection is maintained.

BY THE COURT:

This is a pointless... this is a pointless course of cross-examination...

BY THE ACCUSED:

Oh, yes, it is very pointless.

BY THE COURT:

... of examination, excuse me, of examination.

BY THE ACCUSED:

Yeah, yeah, okay, make your humoristic remark. There is a very receptive audience there.

BY THE COURT:

Would you kindly desist from your comments. I'm getting sick and tired of them.

BY THE ACCUSED:

Well, I'm more sick than you.

BY THE COURT:

Fine. Take him out, please. We'll adjourn for fifteen (15) minutes.

(THE JUDGE LEAVE THE BENCH)

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

SHORT RECESS

(OUT OF THE PRESENCE OF THE JURY)

(THE JUDGE TAKES THE BENCH)

(THE ATTORNEYS AND THE ACCUSED ARE PRESENT)

BY THE COURT:

I came in without the jury in view of the fact that I received from the jury the following note. It covers two points. The first is:

"Owing to the span over which
Defense evidence is presented, it
would be of great assistance if the
complete date of specific events,
meetings, letters, et cetera, could
be mentioned, and in particular,
the year."

The second point:

"I would request of the Defendant
to be more concise."

So I will produce that note into the record and instruct you, Mr. Fabrikant, and try to conform to it. It's a valid request as far as I'm concerned. The jury please.

(MEMBERS OF THE JURY TAKE THE BENCH)
(DISPENSE WITH THE CALLING OF THE JURY)
(ALL ARE PRESENT)

ALAN KARPMAN
UNDER THE SAME OATH

BY THE ACCUSED:

Oh, I suggest, Mr. Martin, that you stop expelling me from the Court. I mean, it only delays the trial. It's to nobody's interest.

BY THE COURT:

I don't wish suggestions from you, Mr. Fabrikant. Put your questions.

BY THE ACCUSED:

Well, it's my business to make the suggestions, and your business is to follow it, or not to follow it.

BY THE COURT:

Your business is to put your questions.

EXAMINATION BY THE ACCUSED (CONT):

Q. Does Code of Conduct function now?

A. Yes, it does.

Q. No problem in appointing judges? Ha, ha, ha.

A. No, we've resolved that issue.

Q. So how did you resolve it, no more problem? How do you explain that? Why was it a problem when I was there? I'm no longer there, there is no problem to appoint judges.

Q. The problem was before you were there, and it since got resolved.

A. Well, explain to the jury how, why you no longer object to fines, why you no longer object to sexual harassment, why you no longer object to harassment policy, why everything is fine now?

A. We still object to those remedies and sanctions. What we... what we took issue with, we still take issue with, but we have decided until such time as we can negotiate a better agreement with them, an agreement that would indicate these kinds of remedies and sanctions in our Collective Agreement, that we would be prepared to sit.

Q. All right. So, now no delays. Delays were only when were my grievances pending. Right?

A. No, before your grievance. Before your complaints. They weren't grievances.

Q. Okay. Complaints, yes. But delays were only at the time when my complaints were pending. It was not before that. There is no delays now.

BY THE CROWN:

This is cross-examination, My Lord.

BY THE COURT:

Yes, it. It's disallowed.

BY THE ACCUSED:

All right. Anyway, now we have no problems, be it appointing judges. Everything functions perfectly.

Q. All right. Now, do you recall when did you start your conversation, how well before my complaints arrived?

What it was summer of ninety-ne ('91)? Maybe nineteen ninety (1990) even?

A. The concerns that we had started to emerge with that sexual harassment document that I spoke of. And that was, I believe, and I don't have my, any notes here, but I believe it was in the summer of nineteen ninety (1990).

Q. All right. So what did you do then? Did you inform Relton that you disagree with something?

A. No, our... what we did was, in fact, we didn't appoint people as their terms expired, and we waited for Relton to come to us.

Q. Uh, huh. Did he?

A. Now, we were hoping, as well, that some of the issues would be resolved before anybody came before that Code Hearing body, and that wasn't the case.

Q. Well, in nineteen ninety (1990), you said, what did you do in nineteen ninety (1990)? Did you inform Relton that you disagree with something?

A. No.

Q. No.

A. No, the discussions were within the executive of the association.

Q. So why didn't you inform Relton then that you disagreed with something?

A. Because there was no issue at the time that needed any kind of deliberation by one of CUFA's members.

Q. Are you saying there were no complaints in nineteen ninety (1990), in the whole year?

A. To my knowledge...

Q. Yes.

A. ... there were no complaints.

Q. Well, this is not what we heard from Mr. Relton. He said that he was so busy with complaints, he was swarmed with complaints. Could you reconcile that stuff?

BY THE COURT:

Q. You're not required to reconcile anything. You have your recollection of events, and that's all you're required to say.

BY THE ACCUSED:

Q. All right. So there were no complaints in nineteen ninety (1990). Are you usually informed about the existence of complaints, or they are confidential and you should not know about them in the first place?

A. There is no obligation on the part of John Relton or his office to inform us of any of the complaints that come before the Code of Conduct, non-academic. It's not incumbent on any member who is brought before that body to bring the matter to our attention. They may do so if they want additional assistance, or if they object to whatever procedures they're going through. But nobody is under any compulsion to tell the Association. So if we weren't told, then we wouldn't know.

Q. So effectively you have no idea if there were or there weren't any complaints in nineteen ninety (1990)? Are you?

A. I said, to my knowledge there weren't.

Q. Well, you are not privy to that, are you, to this </pre></body></html>

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

BY THE COURT:

The witness has explained his position. You're cross-examining him again. Move on to something else.

BY THE ACCUSED:

Ha, ha, ha. All right.

Q. Okay. So what happened after that? When did you finally inform Relton that you are not appointing judges for the Hearing Panel?

A. When your case became of issue, when...

Q. Ha, ha, ha. Here we are. So when my case became an issue, you decided not to appoint judges. Right?

A. No, that's not what I said. It became an issue to us and in John Relton's office when your complaints were forwarded there and there weren't any appointees from CUFA sitting on that Hearing Panel. And that's when the issue... that's when we had to deal with the issue, not just in an abstract sense as a policy question, but in terms of real flesh and blood, were we going to put people there or not.

Q. How did it come to your attention? What? He called you? He sent you a letter? What?

A. I don't recall.

Q. Ha, ha, ha. Do you recall anything from that time in terms of did you talk to Relton at all on this subject, or he called you on that subject? What? Anything? Do you recall anything at all?

A. I recall having spoken to Relton on the phone.

Q. All right. When was that?

A. I don't know. If you're asking me what month or day, I don't know.

Q. Do you have any...

A. It was sometime after your case had come to his attention.

Q. Okay. Do you have any agenda or any notes of yours which would be of assistance to you?

A. No.

Q. You never make any notes? Do you have an agenda?

A. I have...

BY THE COURT:

Listen, you're not permitted to ask that. That's cross-examination again. The witness has told you, I can't be precise about the time. That's your answer.

BY THE ACCUSED:

Well, I'm trying to help him.

BY THE COURT:

You're not trying to help him at all.

BY THE ACCUSED:

Well, it's your perception. I'm trying to help him.

BY THE COURT:

And my perception is correct.

BY THE COURT:

Would you like me to remind how many times you were wrong, and you admitted that you were wrong...

BY THE COURT:

Have you another question to put?

BY THE ACCUSED:

Yes.

BY THE COURT:

Put it.

BY THE ACCUSED:

Q. Okay. Do you put any information in your agenda which might be helpful to you?

A. At that time I didn't have an agenda.

BY THE COURT:

Mr. Karpman, don't say any more about your agenda. You've pointed out you had no agenda. That's it. Move to another subject.

BY THE ACCUSED:

He said there is an agenda. And I think that I have all the right on this planet to refresh the witness' memory with his own notes.

BY THE COURT:

The word, refreshing memory, doesn't cover everything. Move on. You have his answer.

BY THE ACCUSED:

It doesn't cover everything, but I have the right to request that his notes be brought to Court and he would be able to refresh his memory, and we could pursue it.

BY THE COURT:

Mr. Fabricant, move along.

BY THE ACCUSED:

I'm moving along. Okay.

Q. Did you write anything to Mr. Relton?

A. I recall having written a letter to Mr. Relton.

Q. Yes. What was in this letter, and when?

A. I don't know when it was. Again, it was... it followed your becoming an issue. The letter was with regards to the appointments that were being requested of us, and that's all that I recall about that letter.

Q. All right. Do you recall that at that time when my complaint came there were a sufficient number of judges right there, and there was no problem?

A. No, I don't recall that.

Q. That you've effectively withdrawn people from the Board, not just, you know, not appoint?

A. I don't recall that. I recall that their terms had expired, not that we had withdrawn anybody.

Q. All right. At the time when my complaint came, November, ninety-one (1991), what was the situation with the Hearing Board? Was it full, complete?

A. My recollection is, as I stated, that the terms of the people who had been appointed expired and we hadn't appointed new people.

Q. Okay. Do you remember who was there appointed, and who was expired?

A. I remember who was appointed. I don't remember the people that had served on that Board previously.

Q. All right. Who was appointed?

A. Gwen Newsham, Steve Buxton, and a Professor Herman.

Q. Well, you're talking about appointments in ninety-two ('92), in late ninety-two ('92). I'm talking about ninety-one ('91).

A. I don't recall.

Q. You don't recall. This is fantastic. All right. Now, do you recall who you spoke to in Relton's office? Was it Relton himself?

A. Yes.

Q. And you informed Relton himself that CUFA is not going to appoint judges. Right?

A. I had spoken to John Relton. I also had spoken to his assistant, and we made it clear what the problem was that we were dealing with at that time.

Q. Uh, huh. Which was what?

A. Which was whether or not we would participate on that board.

Q. Uh, huh. All right. Now do you recall asking for a legal opinion?

A. We may have asked for a legal opinion. I don't... I don't recall specifically if that, in fact, happened. It's quite possible that the president or vice-president had asked for a legal opinion. That would have been done orally. There was certainly nothing on paper for distribution.

Q. Uh, huh. Are you present at all executive meetings?

A. Yes.

Q. Okay. And you do not recall a single executive meeting where this stuff was discussed?

A. I didn't say that.

Q. Okay. So there was a meeting where this stuff was discussed?

A. This material had been discussed by the executive, on occasions. I don't remember which month, what meeting, and probably not the year.

Q. Are you telling to the Court that you now and then just did blah, blah, blah, and that was it? Did you do any actions?

A. Our action was our inaction, if you will. What we did was not immediately appoint people to sit on that Hearing Panel, and by not doing something we were, in effect, being quite active.

Q. And it is just by coincidence, it was at the time when my complaint appeared. Right?

A. Yes.

Q. Okay. Now, maybe this would refresh your memory. May I have it back?

All right. Now I'm talking about CUFA executive meeting, Monday, December second (2nd), nineteen ninety-one (1991), nine-fifteen a.m. (9:15). At that meeting, allegedly the following thing transpired.

"CUFA is being asked to appoint two members of the Code Hearing Panel. Legal advice will be sought as to whether CUFA should participate on this committee."

Now, does this trigger your memory?

A. Whether or not legal advice was sought, is that the question?

Q. Yes.

A. Well, it's clear to me that from that that this was something that would have been done. I wasn't party to that legal opinion. I wasn't present when it was made and I really don't recall having discussed any such opinion.

Q. Do you at least know who was asked to give this opinion?

A. Well, at that time we would have probably asked either Me Heep, or we would have gone to the Federation and spoken to one of the two lawyers there.

Q. But you don't know who it was?

A. No.

Q. You know nothing about it at all?

A. No, I wasn't party, as I said, to those conversations.

Q. Well, if, for example, legal opinion comes, you just are not privy to that?

A. It depends on the matter. There are certainly occasions when I would be there to hear hear what the opinion was. There would be occasions when I could be asking for the opinion myself. This wasn't one of those occasions.

Q. Anyway, you never saw any opinion?

A. No.

Q. No. It never arrived. Could you tell the Court why do you need to pay a private lawyer if you have lawyers of

federations available to you free of charge?

BY THE COURT:

What is the possible pertinence of this?

BY THE ACCUSED:

The possible pertinence of this is that I have distributed at that time in my electronic mail information on the financial status of CUFA.

BY THE COURT:

And?

BY THE ACCUSED:

And it has been discovered that there were a lot of irregularities in CUFA.

BY THE COURT:

And?

BY THE ACCUSED:

You don't see any relevance there?

BY THE ACCUSED:

No, I don't see any relevance.

BY THE ACCUSED:

You don't see any relevance.

BY THE COURT:

How is that possibly relevant...

BY THE ACCUSED:

I can totally disclose all the details and I think it is unfair. I think it would be much simpler to allow the witness to answer on the presumption that I know what I am doing. How about that for a change?

BY THE COURT:

That's precisely why I'm asking the questions.

BY THE ACCUSED:

Well, that's too bad.

BY THE COURT:

And that question is out of order. And you won't pursue that line of questioning any further.

BY THE ACCUSED:

I don't think this is a fair way to extort from me what I am getting at, because witnesses are not my business.

BY THE ACCUSED:

I'm not going to argue with you any more. I've ruled. That line of questioning is out of order.

BY THE ACCUSED:

Well, you know very well this is not my witness. And if I disclose what I am aiming at, the witness would know and definitely he will adjust his answer.

BY THE COURT:

That question and line of questioning is out of order. It's not pertinent. Last time. Now, if you persist in arguing, I'll end the interrogation of this witness.

BY THE ACCUSED:

Well, to this point I would like to tell you, do not scare me. I couldn't care less. If you want to do another illegal thing, do it. All right. And never again try to scare me.

BY THE COURT:

Mr. Karpman, thank you very much. If the Crown has no questions you're excused.

BY THE CROWN:

I have no questions, My Lord.

AND FURTHER DEPONENT SAITH NOT

BY THE COURT:

Next witness.

BY THE ACCUSED:

Well, I think it's about time to repeat again, you are little low crook.

BY THE COURT:

Okay. That's it. You are out of order. Remove him from the courtroom. I will decide between now and twelve o'clock (12:00) what my next step is going to be. But it is obviously impossible to proceed with this trial in the manner in which you're behaving yourself. Your behaviour has become totally disruptive. Out, now. We'll adjourn till twelve o'clock (12:00), ladies and gentlemen.

(THE JUDGE LEAVE THE BENCH)

(MEMBERS OF THE JURY LEAVE 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:

Mr. Lecours, before I take the decision that I have to take, I wonder whether the Crown has anything to say, and the decision obviously that I'm contemplating is the closing of the Defense. I wonder what the Crown's position on that is.

BY THE CROWN:

I agree with that, My Lord. I think the situation has become intolerable.

BY THE COURT:

Thank 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, in view of the situation in which we find ourselves I have decided that the time has come to terminate the Defense which... or the evidence in Defense which is being called by Mr. Fabrikant. I think that I owe you an explanation as to why I've come to that decision, and the explanation will be brief.

We hear in this country over and over again the word "rights". In particular, in relation to the Criminal Law, we hear the right to a full answer in defense. And in the context of the word "rights", we hear invoked again and again the question of the Charter of Rights, whether it be the Federal Charter or whether it be the Quebec Charter.

The concept of a full answer in defense wasn't created by the Charter and isn't new. It's something which has been part of our criminal law for a long, long time. I say a right to a full answer in defense. Yes, it's a right, but it carries with it a concomitant duty, and that is a duty to exercise that right within the rules which apply to the running of a criminal case.

And as I explained to you in the beginning in the running of a criminal case, the judge has, among other things, the power to decide both as to the admissibility of evidence, as to the pertinence of evidence, and as to the manner in which that

evidence is to be adduced.

The parties have the duty to respect the judge's rulings because, as I said to you before, if the judge errs along the way, that is why there is an appeal procedure which is in place in order to undo any injustice which might result. Systematically it has become more and more difficult to see these basic rules respected. The right to a full answer in defense is not unlimited. One cannot simply throw oneself before the high altar of the Charter of Rights and expect by invoking it to be able to behave as one wishes, casting aside all of the rules which apply to the orderly running of a Canadian court. And unless proceedings can devolve in a calm atmosphere, then obviously the rules are being abused somewhere.

This morning is but the culminating point, and in the light of what transpired this morning, virtually all of which transpired with you present, I've decided that this trial cannot usefully proceed any further, and that the time has come simply to put an end to the Defense evidence.

There isn't much precedent for this in our Criminal Law, but then there's not much precedent for a lot of what we have met along the way in connection with this trial. And the bottom line is that it stands now to be decided on the basis of the record as it exists now. What I propose to do is move to the next stage, which is to ask the Crown Prosecutor if he has any rebuttal evidence to present. I don't know what the answer is.

BY THE CROWN:

I have no rebuttal evidence.

BY THE COURT:

You have no rebuttal evidence to present. The next stage then will be to pass to a pre-directives, or pre-argument conference which doesn't involve the jury. I will do that, therefore, in your absence, where I will hear from the Crown and I will hear from the accused. The Criminal Code establishes the order which the parties make their presentations to you. I wonder if you might remain and hopefully by twelve-thirty (12:30) I'll be able to tell you when I will next need you, but obviously in view of the time that the trial has taken up, fairness requires that some time be given both to the accused, the Crown, and myself, to prepare, in my case, the charge, and in their cases whatever argument they wish to present to you.

I would anticipate, therefore, that probably we will be able to resume next week. But if you would give me a few minutes with the parties, I'll try to canvas that, and I will let you know as quickly as I can so that at least the rest of your day can be put to some profitable use. Thank you.

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

(OUT OF THE PRESENCE OF THE JURY)

BY THE COURT:

The Criminal Code sets out the order in which the parties address the jury. Yours is first, Mr. Fabrikant. I would like to know from you how long you will require in order to present whatever you have to present. And I should tell you that it must devolve from the evidence that is already in the record.

It's a preliminary question which I'm asking at the moment relating to the time you think you will need to prepare your presentation. I will have to reconvene this next week in order to hold a more formal pre-directives conference in order to set out what may be argued and what may not be argued.

BY THE ACCUSED:

Now, first of all, I fail to understand your logic. If you cannot continue, you cannot continue. But I fail to understand how come you cannot continue defense but you can continue argument. This is total absurd.

BY THE COURT:

I couldn't care less whether you think it's totally absurd.

BY THE ACCUSED:

No, I couldn't care less about you either. But one has to be logical in his decision.

BY THE COURT:

I have told you...

BY THE ACCUSED:

If you cannot consider the procedure... let me finish this.

BY THE COURT:

I told you what the decision is, that there is no point discussing the decision. We are now...

BY THE ACCUSED:

I'm not discussing the decision.

BY THE COURT:

You will now have your opportunity to put, on the basis of the evidence we have, whatever argument you wish to the jury.

BY THE ACCUSED:

Well, let me, first of all...

BY THE COURT:

Within the context of that evidence. That's all.

BY THE ACCUSED:

Let me first of all explain the situation.

BY THE COURT:

Oh, I understand the situation clearly.

BY THE ACCUSED:

Yes. The situation is totally ridiculous. If you claim that you cannot continue, you cannot continue. Then just direct the jury to go into deliberation and deliver their verdict. This is if you cannot continue. But you are very selectively cannot continue. For some reason you cannot continue the defense, but you can continue with arguments. I can call you a crook during the arguments. What would you do then?

BY THE COURT:

I will do the same thing as I did before. You will find that your argument ends.

BY THE ACCUSED:

One cannot be more ridiculous than that, because there is nothing in the law which says...

BY THE COURT:

Mr. Fabrikant, I'm not interested in a lecture from you about what is in the law as to the next stage of these proceedings. The Criminal Code...

BY THE ACCUSED:

Anyway, there is not point in discussing...

BY THE COURT:

... spells it out clear.

BY THE ACCUSED:

... this ridiculous situation.

BY THE COURT:

Your defense...

BY THE ACCUSED:

I didn't present the evidence. I didn't present my own testimony. And what do you expect... what kind of summation, is total absurd, because this is obviously a mistrial. If you do not understand, then this is too bad. But this is what it is.

BY THE COURT:

If you have nothing to say to the jury, then let me know now.

BY THE ACCUSED:

Well, I have a lot to say to the jury, you bet. But I need... well, I need significant time. You didn't bother to provide me with transcripts.

BY THE COURT:

How much time do you think you require?

BY THE ACCUSED:

Well, a couple of weeks.

BY THE COURT:

Oh, you're not getting a couple of weeks.

BY THE ACCUSED:

Well, then don't ask me. You do illegal things. Do them.

BY THE COURT:

Fine.

BY THE ACCUSED:

Sure.

BY THE COURT:

Mr. Lecours, how long will you require to prepare what you have to say?

BY THE CROWN:

To prepare, I can do it on Monday, My Lord.

BY THE COURT:

I would rather... I would rather have a pre-trial conference on Monday morning in order to tempt to delineate what may be covered and what may be put in front of the jury, particularly by the accused.

BY THE CROWN:

I suggest we do it right away. Maybe we will get the same answer from the accused.

BY THE COURT:

We may do it... well, we may do it this afternoon.

BY THE CROWN:

Well, but you said you might come back to the jury to let them know. I think we have time until twelve-thirty (12:30).

BY THE COURT:

I would certainly like to think about what approach I propose to take. I won't be long, but I would like to think about that. I would... it would be my thought that the jury be asked to come back next Wednesday...

BY THE CROWN:

That's perfect with me.

BY THE COURT:

... and that the accused will make whatever submissions he has to make on Wednesday. He'll be followed by the Crown. And whether, depending on the length of these submissions, I will direct possibly immediately at the conclusion of these arguments, or possibly the following Monday. It just depends.

BY THE CROWN:

And do you want to know the length of my pleadings?

BY THE COURT:

Vaguely.

BY THE CROWN:

Between fifteen (15) minutes and half an hour.

BY THE COURT:

Between fifteen (15) minutes and half an hour.

BY THE CROWN:

Yes.

BY THE COURT:

Okay. So we'll adjourn until two-thirty (14:20) this afternoon, and we'll attempt to proceed with a pre-directives conference this afternoon, if we possibly can.

LUNCH ADJOURNMENT

AFTER THE LUNCH ADJOURNMENT

(OUT OF THE PRESENCE OF THE JURY)

(THE JUDGE TAKES THE BENCH)

(THE ATTORNEYS AND ACCUSED ARE PRESENT)

BY THE COURT:

I don't know how far we're going to be able to go on this afternoon. Perhaps we'll be fortunate enough to get through the whole question of the pre-directives conference quite quickly.

The Code establishes the order in which the parties present their arguments, and inasmuch as the accused elected to call witnesses, it is for him to address the jury first. He will then be followed by the Crown, and that will be followed by my charge to the Jury.

I will give you a thumbnail review of the points I propose to cover with the jury. Obviously it's not at this point written in stone because it will depend very, very much, both in form, content and substance upon the arguments that are presented. But I propose, putting it very briefly to start with the functions of judge and jury, to distinguish between questions of law and questions of fact, underlining that the trial judge holds sway on questions of law, whereas the jury holds sway on questions of fact.

I propose to draw the distinction between evidence which is all of the elements of proof which have been presented, and facts which it is for the jury to distill from that evidence. That is why I propose to talk about evidence throughout my charge, not facts.

I propose to outline that whatever I say, or the accused may say, or Me Lecours may say, the jury's memory prevails with regard to questions of fact, and if in the course of my charge I express my opinion with regard to any part of the case, or with regard to the case as a whole, and that I won't do, that in these circumstances, while I'm entitled to my opinion, the jury, nevertheless... it's the jury's opinion, or each juror's opinion that prevails.

I propose obviously to talk very briefly about the presumption of innocence, and proof beyond a reasonable doubt.

I propose to talk about the credibility of witnesses underlining that it's for the jury to assess both credibility and weight. I propose to stress that they believe part of what a witness says, or all of what a witness says, or nothing.

And I propose to make a distinction between questions of discrepancies in evidence as opposed to outright lies and the

consequencies insofar as they relate to the conclusions that the jury might form in either case.

I will talk very, very briefly on direct and circumstantial evidence, and I'll make the distinction, on the one hand, between inference and conjecture, or speculation.

I shall talk in some detail, citing examples of evidence which is of no probative value, because in this case there was lots of evidence of no probative value.

I shall talk very briefly about prior inconsistent statements insofar as they may relate to the credibility of a witness.

I shall talk briefly about expert evidence, eyewitness evidence.

I think I'm prepared to listen to what is said to me, but I think that I will probably talk about similar facts insofar as they may relate to multiple Counts. And I shall have a very, very brief word to say about collateral matters.

I presume, although I may be proven to be wrong, but the Crown does not intend to rely on statements from the dock if the Crown does not intend to rely on statements from the dock, then that will be the end of the matter. If the Crown does, then it would be a question of identifying what statements, and of course it would be a question of taking the statement as a whole. I don't mean each statement as a whole, but the statement as a whole.

BY THE CROWN:

So your presumption is right. I don't intend to...

BY THE COURT:

That you do not intend to... fine. If you do not intend to rely on it, then it is not a problem.

BY THE ACCUSED:

I wish you would explain what you are talking about now. What statements from the dock?

BY THE COURT:

Statements that you have made from time to time.

BY THE ACCUSED:

Yes. What about them?

BY THE COURT:

And if the Crown does not intend to rely on them, they will not enter into the picture.

BY THE ACCUSED:

What does it mean, they intend to rely on it& Could you explain this phrase?

BY THE COURT:

The Crown may rely on an admission you may have made from the dock in order to support its case.

BY THE ACCUSED:

What kind of admission I made from the dock?

BY THE COURT:

I'm not saying any kind of admission you made from the dock. You said a number of things. A number of things you said throughout the trial were questions put to witnesses. On other occasions you made statements, and you made statements such as saying that you did not deny that you had shot people, for example. These statements are admissible against you if the Crown proposes to invoke them. The Crown has informed me that it does not propose to invoke any of these statements as part of its case, therefore, I do not need to be concerned with the problem.

BY THE ACCUSED:

How about statements which were in my favour?

BY THE COURT:

That doesn't...

BY THE ACCUSED:

That doesn't count.

BY THE COURT:

That doesn't count.

BY THE ACCUSED:

All right. Fantastic. The trial is so generous.

BY THE COURT:

I propose to talk about motive and opportunity, and I propose to talk about tape recordings in the context of the 9-1-1 tape. I will explain the Code provisions insofar as they relate to the offence of culpable homicide, followed by an explanation of the elements of second degree murder, leading from there to an explanation of the additional element of planning and deliberation, which goes into the offence of first degree murder.

The elements of first degree murder in the order in which I intend to put them are as follows: the identity of the accused named in the indictment, as the offender; the time and the place of the commission of the offence. Third, that the accused caused the death of each of the four victims. Third, excuse me, the third, that the accused caused the death of each of the four victims. Fourth, that the accused caused the death of each of the victims by means of an unlawful act. Fifth, that the accused did that unlawful act for an unlawful purpose, and sixth, that the accused ought to have known that the act was likely to cause the death of the victim, and intended to do so.

As far as the two Counts of confinement are concerned, I propose to outline the elements as the identity of the accused as the offender, time and place of the commission of the offence. Thirdly, that the accused restrained the victims. Fourth, that he did so without lawful authority, and fifth, that he intended to restrain the victims totally and physically.

From the wording of the attempted murder Count in the indictment, it is an all or nothing proposition, the Crown not having outlined the manner in which the attempted murder was carried out. That means that it carries with it either a conviction or an acquittal. There are no included offences. That the accused was the offender, is the first element. Time and place is the second. The third is the specific intention of the accused to commit the murder of Mrs. Horwood, and fourthly, that the accused did something for the purpose of carrying out that intention.

Obviously in the context of all of that I propose to stress that the burden is and never shifts from the Crown to establish each and every one of these elements beyond a reasonable doubt.

I have no idea of what the accused intends to argue, but as far as legal defenses are concerned, legal defenses apart from, and I draw a distinction between the presence of the essential elements of the offences, and I draw a distinction between whether the murder falls into the category of first degree murder or second degree murder.

Beyond these two arguments I do not see any defense such as provocation. I do not see any defense such as self-defense, and indeed I have already ruled that out, and I do not see any defense flowing from necessity or, in short, any of the defenses contemplated by Section 8 of the Criminal Code.

As far as verdicts are concerned, the unlawful confinement is

a guilty or not guilty. The attempted murder is a guilty or not guilty, in my view at the moment. And as far as the four charges of first degree murder are concerned, I see the possibility of first degree murder. I see the possibility of second degree murder, and I see no other possibility. So that, in a nutshell, is the manner in which I would intend to work through the charge.

Mr. Lecours, I know you speak second, but I'll ask you how the Crown sees the presentation of the Crown's case in order to give Mr. Fabrikant some appreciation of what your position is before he...

BY THE CROWN:

I see it, My Lord, exactly in the same light as you. I would like just to stress one argument or to file one case concerning the element of premeditation. I think your charge should contain a statement to that effect. It's the case of Dross versus the Queen. And in this case we read:

"The accused was charged with first degree murder as the result of the death of his two children. The evidence indicated that the accused planned to kill his wife by staging a car accident. In fact, the collision occurred when the accused's children were also in the car and they were killed, although his wife survived. And the Supreme Court ruled in that case that the requirement of planning and deliberation is a requirement relating to the intention to take a human life, and not to the identity of the victim."

So I think it should be stressed to the jury that the intention, what was planned and deliberate is the intention to take human lives. Whether they are first players or second players, if the intention was there to take a life, it's first degree murder. That would be my only comment to your own comment, My Lord.

BY THE COURT:

There is a finer distinction to be drawn there, also, with regard to members of a target group, and it was a distinction that was drawn again by the Ontario Court of Appeal in a case in, I think it was nineteen eighty-five (1985), eighty-six ('86), or eighty-seven ('87), which I don't have in front of me at the moment. But in sum and substance, what that said was that even if you set out to kill Smith and Jones, and you kill Harry instead, if Harry is a member of the target group, then the quality of the act does not change.

BY THE CROWN:

I believe it's the state of the law, My Lord.

BY THE COURT:

I don't think, you know, beyond what I have said and beyond what you have said, the situation presents any more complications than that...

BY THE CROWN:

I don't think so.

BY THE COURT:

... in general terms.

I wonder if either you, Mr. Belleau, or Mr. Boutros, would take the time to instruct Mr. Fabrikant. First of all, in the state in the record, at the moment, pointing out to him that he may in his argument invoke only the facts which have been proven, or put in evidence, I should say, put in evidence would be a better way to express myself... and may not stray

into areas which have not been the subject of evidence before the Court. I think he needs to be told that, because if he strays into what is not in evidence before the Court, I will have no choice but to stop him.

BY THE ACCUSED:

Well, why don't you ask my opinion? You asked the opinion of the Crown.

BY THE COURT:

I'm coming to you, Mr. Fabrikant. I'm coming to you, and here I am. What have you to say?

BY THE ACCUSED:

Ha, ha, ha. I must say that you are in the stupidiest possible position, and I express to you my condolences, because the way it is now, first of all, the Crown already prepared some kind of jurisprudence to put on my table. I have nothing to put on your table, and this is the main problem, because I have two friends who are Friends of the Court, not of me.

In a normal situation, if I had a lawyer who had access to jurisprudence, he would have had at least something here to say. I don't know. Maybe it is the first time in the history the thing what you did. But if it is not the first time in the history, then it would be nice to have something either to justify what you did, or at least to allow me to entertain a motion of recusation.

BY THE COURT:

Forget it. Okay. From a practical point-of-view...

BY THE ACCUSED:

Well, I will not forget it.

BY THE COURT:

... forget it.

BY THE ACCUSED:

This is what I am saying right now, that I need some kind of either authority or jurisprudence which would say something about it, and I don't have that stuff. What you instruct Friend of Court to tell me... I couldn't care less what you allow or don't allow me to say. I will say what I want to say.

BY THE COURT:

Well, if you propose to adopt that...

BY THE ACCUSED:

Let me finish, please.

BY THE COURT:

If you propose to adopt that view...

BY THE ACCUSED:

Be polite. I didn't interrupt you, all right?

BY THE COURT:

Yes, you did, first of all.

BY THE ACCUSED:

I did not.

BY THE COURT:

Yes, you did interrupt me.

BY THE ACCUSED:

I just asked for clarification. But I didn't...

BY THE COURT:

That's interrupting.

BY THE ACCUSED:

Well, I asked for clarification...

BY THE COURT:

And secondly, don't tell me that you will say what you intend to say, because if you say and if you stray beyond where

you're legally permitted to go, you will be stopped.

BY THE ACCUSED:

I couldn't care less what you do.

BY THE COURT:

If you couldn't care less, then I suppose you'll end up going through that door. I don't know.

BY THE ACCUSED:

Gosh...

BY THE COURT:

We'll see.

BY THE ACCUSED:

... how scared I am to go through that door.

BY THE COURT:

Fine.

BY THE ACCUSED:

You cannot imagine. There is nothing more scary for me than go through that door. This is not what I'm talking about. I appreciate you do not stop me any more. Let me please say what I have to say, or your freedom of speech is no longer respected, too. Is it?

BY THE COURT:

Well, I guess it is, because we're going into about the fifth month.

BY THE ACCUSED:

Well, it is in respect... then respect it, at least for today. Now, for the rest of the day. Ha, ha, ha. Okay. So I do not have that. And if you wish to direct the new Friend of Court to do something useful, this is what I need right now, either a motion for a mistrial, or a motion for recusation, or both, and I need to have information on that because... the way things are now, if you recall just yesterday you said right there, and it would be nice maybe to play what you said yesterday, because what you said yesterday is a total contradiction to what you said today. Yesterday you were sitting there just almost crying over your powerlessness, poor you, how could you practically do nothing with evil me, because I'm entitled to my full defense, and this is why you couldn't remove me from Court yesterday, and this is why maximum what you could do yesterday was to impose the contempt of Court on me.

Today we see absolutely the new Mr. Martin. He is no longer the powerless. He is no longer claiming that there is nothing he can do because I am entitled to my full defense. Today he forgot about my entitlement to a full defense. What difference does it make if I said that you are a crook twice, or I said it three times? It doesn't make that much difference, does it.

Therefore, now, as far as defense is concerned the next question which would be very good to ask is the following. Suppose the defense is not finished, and there was at least at your own admission, elements of provocation which as you mentioned yourself, if I were allowed to testify and if events on August twenty-fourth (24th) indeed amounted to provocation on the side of Hogben, then I would have had the defense of provocation, because this is why you allowed the whole parade of witnesses in the first place. Now, we are now in the situation where I'm not allowed to testify, and I'm not allowed to present additional evidence.

Now, here is a very good question to ask. What... in the situation where the accused might have a valid defense, but he is not allowed to present it. Should the jury interpret it as

his defense was presented in favour of accused, or they just disregard it and consider only the part which was presented, and this is total absurd?

As far as I know I've seen a lot of jurisprudence which said that in any case of doubt it should be interpreted in favour of accused. And since there were elements of provocation definitely, even in the number of testimonies which were presented here, the fact that I'm not allowed to present the final part, it is your fault. It is not mine. I am prepared to present it. Now, and in this situation again, there must be some other previous jurisprudence or authority on the subject.

I don't know whether you are making such a history which had no precedent in the whole, you know, this planet as such. I wouldn't be surprised if you are really so lawless that no judge before you were as lawless as you are. I wouldn't be that much surprised. But if this is not the case, if there are judges as lawless as you are, then probably there must be something somewhere, and I believe I have the right to this, too, to that kind of jurisprudence, to know were there other. And I believe this is not an empty question, because elements of provocation were presented. You don't allow to present the rest. Now, what the jury should presume? I think the jury should presume that I have a valid defense, because the jury should interpret it in favour of the accused I think this is plain and obvious, therefore, I cannot understand why you withdraw from the jury, for example, a verdict of manslaughter.

As far as my declarations from the dock, I couldn't care less if the Crown take them. I never denied what I did. This is not the point. I never said that my defense is a defense of wrong identity or something. So this is absolutely a different story. What I am talking about is to present my full defense. You don't allow me to do that.

And in every normal case the judge should just recuse himself by doing that, because the second thing of what is totally stupid in your position is that you claim that you cannot continue like this. Well, it is clear to me that you discredited yourself so much that you just want to get out to save your face. This is no doubt to me.

And, of course, if the Court of Appeal will later reverse that stuff, you couldn't care less. Your salary will not be reduced. You would not lose your job, so this is a kind of... a good way for you to get out no matter how lawless you are. I understand what you are doing perfectly well. You know that what you are doing is lawless. You know that what you are doing has no justification in any law, jurisprudence, authority, whatever. That you are doing it just to get away from it, and this is the only way for you to do so. And if this country allowed you to do so unpunished, well, too bad. There is not much I can do about it. So...

BY THE COURT:

That's a fact that you're all wrong. You're talking...

BY THE ACCUSED:

What, you will be fired if you will be found that you did a lawless thing?

BY THE COURT:

You're talking pure nonsense.

BY THE ACCUSED:

What do you mean nonsense?

BY THE COURT:

You're talking pure nonsense.

BY THE ACCUSED:

Okay. Explain in words my nonsense. Would you address all those questions which I raised?

BY THE COURT:

If you're finished, I'll address those questions.

BY THE ACCUSED:

All right. So in the meantime, if you really want to accord me some help, it should be not help to explain to me what I can or cannot say from there, because I'm going to say what I want to say.

BY THE COURT:

You say it from there.

BY THE ACCUSED:

Well, from any place. From here, from there, any place, I'm going to say what I want to say, and this is how it will be and you have no doubts about it, in terms of what I am going to say, so don't spend Friend of Court's time for that. But as far as the questions which I raised, because they are very important, and I don't think it is total nonsense. Now would you like to address...

BY THE COURT:

Uh, huh. I'll address it very briefly. If you were not able to complete the defense that you set about to present, you have no one to blame but yourself. You have not me to blame. You have not any one of the eight or ten counsel, depending upon which way one counts to blame, nor do you have Mr. Belleau to blame, nor do you have Mr. Lecours to blame. You're the one responsible for that.

BY THE ACCUSED:

You are the one, not I.

BY THE COURT:

It was always... you asked me not to interrupt you.

BY THE ACCUSED:

All right. All right.

BY THE COURT:

Perhaps you'll...

BY THE ACCUSED:

This time I am sorry.

BY THE COURT:

Perhaps you'll extend me the same courtesy.

BY THE ACCUSED:

But we are even. We are even. You interrupted me once. I interrupted you once.

BY THE COURT:

The only person you have to blame is yourself because, you see, I told you time and time again that as long as you were prepared to abide by the rulings of the Court, you could have presented whatever you wish only. I am the one who in the end has the responsibility of determining whether or not it's pertinent, and you have to live by that. You chose not to live by that.

You were warned again, and again, and again. You have had latitude now in its third month. So don't tell me you've had no latitude and don't tell me I'm lawless, because I'm not lawless at all. But I happen to believe that if this place can't function calmly and serenely, it can't function properly and that's the point to which you drove it.

So it matters little to me that you find yourself in the position in which you find yourself. That is on you and you received fair warning. So I'm not going to instruct anybody

to look up for you further material on motions to recuse or further material for motions for a mistrial, because I'm not going to entertain a motion to recuse myself at this stage, nor am I going to entertain a motion for a mistrial. The proof is completed.

And the fact that the defense has not finished is from your point-of-view, I suppose, unfortunate. But as I have said, you're the one that forfeited your right to testify, and you're the one that forfeited your right to present a complete defense, because you've made every effort to turn this into a complete circus, which I suppose is your way of... is your way of reacting.

Now, the jury will consider, can consider only what has been presented. You haven't presented one single element of provocation. I don't think you even know what the word means. But provocation, if it had existed, would have had to grow out of your meeting with Hogben. There is no evidence before the jury with regard to your meeting with Hogben, save and except the evidence that saw you... the witnesses who saw you going across the secretaries' area towards your office with Hogben. Whatever transpired at that meeting, there's no evidence dealing with it at all.

That there isn't is your fault and nobody else's. Because if you had followed the rules and if you had done what anybody else, anybody else, in this country is required to do, whether in the dock, or whether at counsel table, you would have had every opportunity in the world to have said what you had to say. And I'm prepared to stand by my own record on that point. I've been listening to this since March.

So what you've presented so far are a series of remote incidents that might have helped a defense of provocation that didn't appear to quite get there. You haven't even got a start. Haven't even got a start.

And all that evidence of your treatment at the hands of the university, your question of the Senate, your question of the DPC and Sankar and friends in the garage is of no pertinence at all. They are no more elements of provocation than anything else. As I say, they may... they may, by some possible stretch of the imagination, have helped a defense in provocation that fell a little bit short. That's all these incidents may have done.

Having no defense of provocation to latch on to, they are simply irrelevant and are of no meaning to the jury, and they will not assist the jury in addressing any one of the questions that the jury now has to address.

So the jurisprudence you want in relation to my decision to act as I did, or to stop the trial, if you can find it, find it, but save it for the Court of Appeal. It won't do you any good in the balance of this trial.

Lastly, your declarations from the dock will be the object of a direction to the jury to disregard them. They're not evidence. They're not testimony. The Crown is not invoking them. And, of course, you can't invoke them, because in these circumstances an accused could say anything from the dock while not under oath and not subject to the test of cross-examination and expect the jury to consider it. That you cannot do.

So I think that deals with the four questions you raised.

BY THE ACCUSED:

Well, it doesn't deal at all with any of those questions, because what I asked for... all right, you are so lawless that

you do not want to even to listen if there were some kind of jurisprudence saying that you cannot do what you did. But still the question is, what happens if the case where certain... you know very well that the only defense of provocation support would come from my testimony there. There is no other source and you realize this yourself.

BY THE COURT:

You had no defense of provocation. None.

BY THE ACCUSED:

But it could have come from my testimony. Right?

BY THE COURT:

But it didn't. You forfeited that right.

BY THE ACCUSED:

It didn't. All right. So, since it didn't, what in this case, should the jury presume in favour of defendant that it did since there were elements of that at least supporting...

BY THE COURT:

The jury will not even address the question. They will be told not to.

BY THE ACCUSED:

Well...

BY THE COURT:

And if you talk about it, you'll be told to be quiet.

BY THE ACCUSED:

Well, this is... well, how can you shut me up? I do not understand that.

BY THE COURT:

Oh, physically I have no way of shutting you up apart from sending you out of the courtroom when you become disruptive. I'm perfectly prepared to live with that. That suits me fine. This is Canada. This is Canada. Just remember that.

BY THE ACCUSED:

Ha, ha, ha. Well, I think this is...

BY THE COURT:

I'm perfectly prepared to live with that.

BY THE ACCUSED:

This is a very interesting test of what is Canada.

BY THE COURT:

Uh, huh.

BY THE ACCUSED:

If... ha, ha, ha, if suppose the accused is disruptive...

BY THE COURT:

I shan't suppose a thing. If you're disruptive, out you go.

BY THE ACCUSED:

Well, out you go. How about his full defense and presumption of innocence?

BY THE COURT:

Too bad.

BY THE ACCUSED:

Well, too bad.

BY THE COURT:

Too bad.

BY THE ACCUSED:

What, too bad.

BY THE COURT:

Too bad.

BY THE ACCUSED:

He is guilty because he is not allowed to present his defense...

BY THE COURT:

Right.

BY THE ACCUSED:

... because he is disruptive.

BY THE COURT:

That's right.

BY THE ACCUSED:

That's absurd.

BY THE COURT:

That's right. If you... it's well established that if you're disruptive, the trial can't properly proceed, then you can be removed. If you're represented by counsel, then counsel would have presented your defense and that would have been that.

BY THE ACCUSED:

All right. But what if I am not represented...

BY THE COURT:

That's happened before. There's nothing new there.

BY THE ACCUSED:

What if I am not represented, then what?

BY THE COURT:

If you're not represented, that's what I said. There's a problem.

BY THE ACCUSED:

Well, how come yesterday you complained that you couldn't possibly remove me because I'm entitled to my defense?

BY THE COURT:

Mr. Fabrikant, we are wasting our time...

BY THE ACCUSED:

No, we are not wasting. You are contradicting...

BY THE COURT:

It is a sterile argument. I've told you. I've ruled and I've done... I've taken the position I've taken, and that's it.

BY THE ACCUSED:

Well, you've taken the position which is totally against what you said yesterday.

BY THE COURT:

You are...

BY THE ACCUSED:

So you are contradicting to yourself.

BY THE COURT:

You are perfectly entitled to say what you wish to say. My position was taken as a measure of your behaviour this morning.

BY THE ACCUSED:

Well, anyway so...

BY THE COURT:

That is perfectly clear and perfectly well-documented.

BY THE ACCUSED:

Anyway, so you refuse to provide me with any jurisprudence on any subject which I mentioned. Right?

BY THE COURT:

I'm not going to instruct anyone to waste their time looking for grounds of recusation, or looking for grounds of a mistrial at this stage because you're not going to get...

BY THE ACCUSED:

Okay.

BY THE COURT:

... either a recusation from, nor are you going to get a mistrial at this stage.

BY THE ACCUSED:

All right. How about the last part? What is supposed the jury to think if defense was not presented?

BY THE COURT:
That it simply wasn't presented.
BY THE ACCUSED:
Oh...
BY THE COURT:
They will look at the evidence as it exists, and they will
decide on the evidence as it exists.
BY THE ACCUSED:
Well, how about jurisprudence on that subject?
BY THE COURT:
I'm telling you what the jury will consider.
BY THE ACCUSED:
I am not asking you.
BY THE COURT:
It's not a question of jurisprudence on that subject.
BY THE ACCUSED:
You are not an authority to me. I'm asking for...
BY THE COURT:
Well, good, if I'm no authority, I've asked Mr. Belleau or Mr.
Boutros to speak to you as far as the next stages of the
proceeding are concerned, because that's what concerns me.
BY THE ACCUSED:
Well, this is not what I need.
BY THE COURT:
Well, that's too bad. You'll just have to save that for the
Court of Appeal, or whatever, if you ever need to go there.
So...
BY THE ACCUSED:
I couldn't care less what you are doing. The more lawless you
are, I think the better it is.
BY THE COURT:
Are you finished? Thank you.
So we will adjourn until Wednesday morning, I think. We've
managed to cover this fairly substantially.
Have you any questions Mr. Belleau, or Mr. Boutros, as far as
what I asked, so that there be no misunderstanding about what
your duties might be towards the accused.
BY THE ACCUSED:
I need a copy of the mandate then, if it is Wednesday, because
they will bring me Monday. It could happen...
BY THE COURT:
Would you make sure, madam, that the mandate indicates
Wednesday morning, nine-thirty (9:30), so that...
BY THE ACCUSED:
Well, I need a copy of that.
BY THE COURT:
You'll get your copy of that, the same as you get from Madame
Desrosiers. I'm simply asking the Clerk to indicate Wednesday
morning, so that you may remain and do whatever preparation
you have to do.
Madame, voulez-vous m'apporter tout ça, s'il-vous-plaît?
BY THE ACCUSED:
Well, two days is not enough. Absolutely.
BY THE COURT:
With your brilliance, Mr. Fabrikant, I'm sure you'll manage.
BY THE ACCUSED:
Ha, ha, ha.

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>