

PROVINCE OF QUEBEC

DISTRICT OF MONTREAL

STAGE: TRIAL

CASE NO. 01-017372-928

PRESIDING: THE HONORABLE JUDGE FRASER MARTIN, J.S.C.

NAMES OF PARTIES: HER MAJESTY THE QUEEN
 Complainant

-vs-

VALERY FABRIKANT
Accused

NAMES OF ATTORNEYS: MAITRE JEAN LECOURS
 ATTORNEY FOR THE CROWN

 MR. VALERY FABRIKANT - ACCUSED
 REPRESENTING HIMSELF

 MAITRE GABRIEL BOUTROS
 AMICUS CURIAE

DATE OF THE HEARING: AUGUST 4th 1993

OFFICIAL COURT REPORTER: MS. MAUREEN ROWE

CLERK OF THE COURT: MS. CECILE PREVOST

FICHER NO.: 2438

BY THE HONORABLE JUDGE FRASER MARTIN, J.S.C.:

I came in first of all without the jury for one reason in particular. I gather that was served, I understand there was served a motion that is presentable or was presentable at nine fifteen (9 h 15) before the Court of Appeal this morning which in some substance asked the Court of Appeal to order me to recuse myself and in the second place asked the Court of Appeal to order that the trial continue under another presiding Judge.

Am I... am I correct in substance with ... as to the content of that motion?

BY MAITRE JEAN LECOURE
ATTORNEY FOR THE CROWN:

Yes My Lord.

BY THE COURT:

What has happened to that? Are you able to tell me or ...

BY THE CROWN:

I went this morning to the Court of Appeal and they fixed the hearing of this petition at two o'clock (14 h 00) this afternoon and we didn't receive any order to suspend the proceedings here and I submit to you that on its face, this ... this petition is frivolous because it's an interlocutory matter and the Court of Appeal already denied some motions from Mr. Fabrikant on the ground that it was interlocutory.

BY MR. VALERY FABRIKANT
ACCUSED - REPRESENTING HIMSELF

First of all, he's not telling the truth. There was no motion denied on the basis that it was interlocutory. Maybe crown would quote one.

BY THE CROWN:

Sure.

BY THE ACCUSED:

All right, which one was interlocutory and it was denied

for that reason.

BY THE CROWN:

This is the file, "Requ[^]te pour permission d'en appeler", it was the judgment of Mr. Justice R, jean Paul. It was a motion in accordance with the Canadian charter and it was Mr. Justice McCarthy from the Court of Appeal who denied the motion on the ground that it was interlocutory.

BY THE ACCUSED:

All right. Why don't you tell them the whole truth? It was (inaud.) Mr. Hamel who asked for permission to appeal. If you would tell the whole truth, then it would be known that exactly the same motion was heard by the Court of Appeal when I presented it because I didn't ask for permission to appeal. That is the full truth, isn't it? Mr. Hamel, instead of presenting appeal, asked for permission to appeal and this is what (inaud.) do. They do something a little bit wrong, what they were not supposed to do, and judges, I mean crook judges (sic) are very glad, you know, to use that there is some kind of friendship between crook lawyers and crook judges. So crook lawyer does a (inaud.) work, crook judge takes it and have an excuse not to hear the motion. That was the case.

BY THE CROWN:

Anyway, My Lord, we didn't receive any order from the Court of Appeal to suspend the procedures here.

BY THE COURT:

Was the question raised with the Court of Appeal as to whether these proceedings ought to be suspended? Was Mr. Fabrikant present?

BY THE CROWN:

No, but the Court of Appeal could fix it this morning and they did not and there is a pending habeas corpus in front of the Superior ... the Supreme Court and we never received a direction from the Supreme Court to suspend these proceedings, My Lord. I don't see any ... any reason why we should suspend.

BY THE ACCUSED:

Well first of all Crown didn't answer whether my correction was really what happened then. Would crown ...

BY THE CROWN:

It's clear, My Lord. An interlocutory appeal or petition is frivolous. The Court of Appeal has no jurisdiction. It's obvious.

BY THE ACCUSED:

Well ...

BY THE CROWN:

And I don't want to discuss the merit. I will discuss in the Court of Appeal but the case of Melser from the Supreme Court says very clearly:

"The charter doesn't provide for an appeal where none is provided by law. An interlocutory appeal in criminal cases has no basis in law."

That's what the state of the law is, My Lord.

BY THE ACCUSED:

Well so you don't want to answer my question. All right.

BY THE CROWN:

I was not there for ...

BY THE ACCUSED:

All right. Now about interlocutory motions and appealability over those interlocutory motions, if you read more attentively, again regretfully I was not really provided with very much of jurisprudence but what I have here says the following:

"There is an exception to general rule that in criminal matters, no appeal lies from interlocutory decision except ...

You see, there is always "except" which crown thinks that I might miss and this except says:

"... where a decision has the effect of terminating the proceedings."

Now this is exactly the case we have here. Though you may call this decision as interlocutory but effect (sic) of this decision is that it terminates the proceedings. It terminates in effect the defence and since defence is terminated ...

BY THE COURT:

You're reading from what?

BY THE ACCUSED:

Well if you cared to ask me what I'm reading from, when I was reading the jurisprudence when Swamy was here, I would not have called you "a little old crook" and we wouldn't have the whole problem in the first place.

BY THE COURT:

You are reading from what?

BY THE ACCUSED:

I'm reading from Mills versus the Queen and I believe there is much more than just what I, you know, found by accident. This is the lawlessness of the situation.

BY THE COURT:

You're reading from Mills versus the Queen. What's the citation of that case and what page?

BY THE ACCUSED:

Yes, it is 26 C.C.C., 3-D, page 484 and on page 508, there is something which I believe also there is a need to take a look at.

There is there something which is called universal declaration of human rights which is not in contradiction with Canadian charter of rights but there is something universal there because the decision which was taken by Judge Martin is so outrageous, it is so unheard of that so far, any lawyer I spoke to, none can quote a similar case when defendant's part was just cut off because he insulted the judge which is total outrage.

Now it says:

"Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights guaranteed him by the constitution or by law."

And after that, it says:

"A remedy must be easily available and constitutional rights should not be smothered in procedural delays and difficulties."

Now if you read this stuff, then it is quite clear that common sense tells that it was an extremely long and costly trial.

Now the decision like this cannot possibly stand. There is no way the decision just to cut off the defence and where in the (inaudible) it's procedures when the major witnesses had not testified, when I have not testified yet, which is the most important part, this decision cannot possibly stand.

Therefore what is going on is that you are trying to kind of save face and get out of the kitchen when it got too hot for you, that's all and you're doing the lawless possible things which I don't ...

BY THE COURT:

I don't wish ... I don't wish a rehash on what you think of last week's decision. You were citing Mills and you were citing a particular part of Mills.

BY THE ACCUSED:

Yes. Now I'm citing page 508 and 509. Now if we read this stuff as normal human beings, then it is quite clear that this is a special case. This is an extraordinary case. It has never happened before that defence was just cut off, just like this, stop and that's it.

We don't want the explanation the judge doesn't like how I address him. Well there is contempt of court for that and six months (6) in jail is more than sufficient punishment for calling judge a crook.

I think every normal person would consider it kind of a normal punishment and that should be it. It's for example if I kill somebody in court, my defence would not be stopped. I would be charged with another murder but this murder trial would proceed. If I slap, for example, Mr. Belleau in court, again my defence would not stop. I would be charged with an assault but that's what it is. You cannot possibly mix up one action with another.

If accused (sic) commits another crime while he's in court, he should be charged with this crime and according to the law. It should not affect the current case. It's ... it's that simple and it is regretful that that simple truth, you pretend not to understand.

So I think that in an entire judiciary dignity, (sic) if any ever been there, (sic) should tell you to postpone until Court of Appeal pronounce on that (sic) but in the meantime, in the meantime, I would like to raise several questions which are important before the pleading, even if the Court of Appeal decides against me. Still there are certain things which need to be clarified before the pleading.

One of them is that I checked the exhibits which we have present there and now I understand why you, for a long time, refused me access to those files, because they were so incomplete.

Concordia University did not present many necessary documents and I had no idea that they were not there. So this file has to be complete for my pleading.

The second thing, if you recall again, Concordia University claimed during testimony of the Secretary General, when I asked for copies of my telephone calls which they recorded and they say that they have everything except the phone calls.

Now I wish to inform this Court that they lied and I have proof of that because just recent, (sic) I have received from someone inside Concordia a copy of those telephone conversations so they are well and alive there and they should be deposited because Concordia just lied that they are not there.

I also received information, not only my telephone conversations that they're ... they are even present in two (2) places at Concordia University.

So since Concordia University lied and I have proof of that, those documents are here with me, they have to be deposited.

Concordia University lied in many instances. I don't have yet proof of that but if you remember, I asked for department personnel committee decision in April 1991 and they claim it is not there. I know it is there. I haven't received a copy of that yet but I hope to receive it soon too, but it might be too late.

So I would ask you to question really good the representative of Concordia University, where these documents are and to deposit them.

Also at the testimony of Swamy, there was question of documents which he alleged to have sent letter to Secretary General and she allegedly responded to him or not responded. Anyway there was something to verify and their lawyer never ... Mr. Friedman never came back to me and never said anything.

There is a huge, how to say it, omission in those exhibits. Majority of them which are in French, majority are not translated. They have to be translated for the jury. Majority of them are not.

The last exhibit, at least the way I received it, looks strange. It is three (3) copies of the same letter instead of being copies of three different letters. Whether it is error of copying or it is really three (3) copies of the same letter, then it is not what I deposited.

One exhibit contains page (sic) which I never deposited but it is there.

In addition, I still have not received from the crown full disclosure in terms of the file from S-ret, du Qu, -bec. I gave already example of page which was clearly just closed and copied and the text is not there. There is no way to believe that Concordia University sent two (2) papers, two letters there and there is no response in the file. There must be some response to those two letters in the file. There is nothing there.

There is also question of tampering with evidence. The name of police officer (sic) was illegally deleted but in addition to that, I looked through all the material which Mr. Belleau gave me at that time concerning privileges, I looked through all privileges. There is privilege of informer, there is privilege client / solicitor, there is privilege client and doctor. There is crown's privilege now and there is nothing else.

If this material ... there is no such thing as witness's privilege. Witness cannot invoke privilege. This is black and white, written in the material which Mr. Belleau provided to me and in this particular case, it was witness who invoked some kind of privilege which is total absurd. (sic)

If... and this privilege, it has to be invoked by the

crown so we have the same lawlessness here. Crown never invoked that privilege and if crown invokes the privilege the crown has either to justify the privilege and to either withdraw the whole thing or judge should make a decision and disclose information because crown has never justified this as a privilege, except that probably that we have second crown who decided that but it is an official crown. Officially, it is the judge.

What is missing there again, the paper which I'm talking about, it is appendix 16B. Now one doesn't have to be that smart to decide that if there is appendix 16B, there must be appendix 16A. Where is it? It's not there. How about that!

Next, I on many occasions raised the question of drawing of Lagac,. I showed to Mr. Lecours that the drawing he gave me doesn't correspond in legend and description to what Lagac, meant. There is some signs on the legend which might be very important for my case. I still have not received that.

So I believe it would be nice if we spend the time until my presentation at Appeal Court by sorting out all these things, like addition of certain documents into the file which was brought by Vice-rector, academic, checking to exhibit 1 which has three (3) of the same letters and instead of three different letters, whether it was error of copying or not, one exhibit which contains one page which I never deposited, translation of majority of French parts of exhibits which were not done and full disclosure from crown.

So let's address all those questions now.

BY THE COURT:

Are you quite finished?

BY THE ACCUSED:

Yes.

BY THE CROWN:

The accused is out of order, My Lord.

BY THE COURT:

I will address briefly the remarks you made and I'll address them in the context of the case of Mills vs the Queen to which you referred.

It may possibly be arguable in Canadian criminal law that if, for no obvious reason, a defence is terminated, that some justification could be made for an interlocutory appeal.

Much depends on the circumstances and of course, it's not for me to decide the motion which you propose to present before the Court of Appeal. It is however for me to look at it and try to decide whether in my mind, there's sufficient substance to it that I should interrupt these proceedings until this afternoon or whether I should not. Your simplistic view of the administration of Canadian criminal justice is laughable. The underlying principle of our law is that when a matter comes to court, it should be able to proceed in a calm and serene atmosphere.

You proposed to present a defence which broadly speaking encompassed all your relations with Concordia University, the relations between Concordia University, its professors and certain government agencies, the question of misuse of funds and in effect what you tried to do was

turn this court into a royal commission with the judge sitting as the research director.

If you look at the case of Swain, I think, or the jurisprudence that's referred to therein, you will find that that is not the purpose of a criminal trial and accordingly, throughout I was at pains to try to restrict the issues which were put before the jury in order to ensure that this matter proceeded in such a fashion that the evidence which was made related to the charges which you were called upon to answer.

You are the one who not only insisted in refusing to abide by these rulings but who throughout, in not abiding by these rulings, subjected me in particular and the officers of this court in general to treatment which in the context of the administration of justice in this country, we are not obliged to accept.

You thumbed your nose at this court and you said on numerous occasions that as far as the remedy of contempt of court is concerned, you - to quote you "couldn't care less" and I believe you. I don't suppose you could. That being your attitude, the remedy becomes toothless. What you suggest is that a Canadian court is obliged to continue to sit in the teeth of all sorts of insults, barbs, sarcasm, rudeness and downright bad behaviour thrown at it by somebody like you. You seem to think that because you have the status of accused, that you have the right to do precisely what you please regardless of what the rules are. In my book, you do not.

So if at a given point in time and Friday was the breaking point, you elected to behave that way and I came to the decision that this trial could no longer proceed in the calm and serenity so necessary for it and that's my decision and I stand by that decision.

You have no one to blame but you that your defence was not permitted to go ahead but we're in the situation where if you become disruptive and you became disruptive then necessarily, as the architect of your own defence, your defence stops as do you and had you ... had you been unfit, I may have raised or had to raise a question as to whether you were fit, but I raised the question of fitness.

You didn't like me to raise the question of fitness but I raised the question of fitness because the question of fitness had for its object to determine whether you are capable of understanding these proceedings, whether you are capable of understanding court orders and whether you are capable of conforming to a procedure.

The jury, after three hours of deliberation, concluded that this was so. Therefore in my mind, you're perfectly capable of knowing when to shut your mouth and when to speak.

You're perfectly capable of understanding that a particular line of questioning is not relevant to your defence and therefore will not be permitted and it was explained to you on numerous occasions that whether you liked it or not, it was unfortunately from your point of view the judge's decision as to whether a particular line of questioning was pertinent or was not.

So in that context, on its face, what I see before the Court of Appeal certainly looks frivolous to me. That's ... that's a gratuitous comment but there you are.

My attitude with other similar motions, directed, whether it's the Court of Appeal or to the Supreme Court of Canada has been: if I'm told, if I'm told to stop these proceedings, I will of course stop. Now thus far, I have not received that order and my position has been that until I'm told to stop, I will continue.

Quite obviously, had I thought that the motion raised any serious question that required an immediate determination then my position may have been different.

Now passing to the eight questions that you raised, it won't do to say: exhibits provided by Concordia University are not complete. The parties are responsible for the production of the exhibits which they filed. You filed the two (2) exhibits to which you're referring. I gather it's D-4 and D-5 and you have had an opportunity to verify these.

In any event, the stage we are at now is that your proof is closed and that brings me to the next question. You never throughout this trial ever indicated to me, save in very general terms, what defence you propose to advance. I told you on numerous occasions that all of the evidence relating to your treatment or your alleged treatment at the hands of Concordia University might be admissible, might be admissible. I didn't say it was admissible, I said it might be admissible for one purpose. Quite obviously events in 1985, in 1988, in 1989, in 1990 or in 1991 and indeed in 1992 up until the 24th cannot ... up until the 23rd I perhaps should have said, cannot in themselves constitute provocation.

I allowed you to make that two and a half months of proof in part because I hadn't the slightest idea that it would ... would encompass two and a half months first of all and secondly I allowed you to make it because I thought that while it could not ever in itself constitute the defence of provocation, it might serve to assist a defence of provocation as to incidents on the 24th and that fell a little short and pushed the incidents into an area which the jury could realistically consider.

Because of your behaviour, there is of course no evidence of what transpired on the 24th, save and except what was led by the crown and save and except what was led by a number of eye witnesses who you elected to call.

Therefore, as far as contracts are concerned, as far as the the senate is concerned, as far as the meeting in the mechanical engineering department is concerned, as far as the other perceived insults over the years, I shall be obliged to instruct the jury that these are worth precisely nothing as far as a defence is concerned.

That observation covers virtually all of the subheadings that you have raised in connection with the exhibits, in connection with disclosure to the SQ, etc. etc. etc.

The question of the omission of the police officer's name from the report never ceases to amaze me. You are the one that elected to place that evidence before the jury and now you propose to attempt or you proposed to attempt to call witnesses in order to negative the proof that you elected to lead.

It makes no sense and in any event, as I ruled at the time, it is not relevant to your defence.

As far as the drawing of Lagac, is concerned, I'm satisfied that you received full disclosure and on that point,

the proof is now closed. All of these points, as the crown prosecutor has stated, are out of order and the only question that remains is the question of proceeding and proceed, we will.

I will adjourn so that you can go before the Court of Appeal this afternoon to present your motion but for the moment, I'm going to adjourn for fifteen minutes and following that, I'm going to call upon you to ... to make your presentation, your argument to the jury. You have been told what the parameters are for that argument, so you will govern yourself by these parameters.

BY THE ACCUSED:

I have some more questions because you may say you're satisfied. Crown didn't give me the picture. How can you say you're satisfied?

BY THE COURT:

The subject is closed.

BY THE ACCUSED:

The subject is closed.

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ENTER THE COURTROOM

BY THE COURT:

We are now at the stage of what is called argument, ladies and gentlemen or the addresses by the parties to the jury.

The criminal code sets out the order in which these addresses are made and inasmuch as evidence was called in defence, it is for the accused to commence and he will be followed by Mr. Lecours.

These arguments are final. There is no right of reply and these arguments will be followed by my charge to you dealing with the questions of evidence and facts which this litigation presents.

So that will suffice for the moment. Mr. Fabrikant, it's for you to commence.

BY THE ACCUSED:

Well first my suggestion is in case when defence doesn't call witnesses and in this particular case, it gets worse than that, defence was not allowed to call witnesses. I think that the crown should start.

The second argument is that since they have two crowns here, I think it is unfair to ask me to talk and then two crowns will continue the case. So I suggest if crown starts presenting the case.

BY THE COURT:

Your request is dismissed.

BY THE ACCUSED:

What?

BY THE COURT:

Dismissed.

BY THE ACCUSED:

Dismissed.

BY THE COURT:

I count seventy-three (73) witnesses, seventy-four (74) witnesses who were called in defence before it was

closed.

BY THE ACCUSED:

Well I can repeat only once again that crown called forty-four (44) to prove something which I never denied and it was all right. So for me, it is not too much at all.

BY THE COURT:

It is for you to commence, commence.

BY THE ACCUSED:

And taking into consideration that you don't allow me to testify either.

All right, so I will go through exhibits first to give my explanations to what has been deposited and why it has been deposited.

I start with exhibit D-6 which contain mainly the contracts. You will see there from the very beginning that I came to Canada in December of 1979. I was fired as temporary full-time Research Assistant to T.S. Sankar with annual salary of seven thousand dollars (7,000 \$). So they had me pretty cheap at that time.

This was continued with the same seven thousand per year salary until August of 1980 where I got increased. My salary then went to twelve thousand dollars (12,000 \$) per year and I was promoted from Research Assistant to Research Associate and I would like to bring to your attention that I came to this country already established scientist (sic) who already had scientific publication and experience and my degree goes back to 1966 so when I came to this country, I was already thirteen (13) years after my PhD degree.

The money were (sic) paid from two (2) grants. One was Sankar and another was Swamy, eighty-five hundred (8,500 \$) by Sankar and thirty-five hundred (3,500 \$) by Swamy. Next you will see the contract, the teaching contract. They used me to teach courses too.

It was applied probability and statistics in 1980, full term. They paid me for this teaching two thousand dollars (2,000 \$). For you to make a comparison is that it is about one eighth (1/8) to what average professor would get for the same job.

Then in June of 1981, I got another increase of my salary. Then it was sixteen thousand dollars (16,000 \$) and again it was part Sankar, part Swamy. You will see yet another teaching contract, the same amount of money. I don't see evaluations but there's a good (sic) at that time too because Concordia regretfully supplied the documents they wanted to supply, not the documents I needed.

If you recall, on several occasions, I asked Mr. Martin to provide me with whatever was deposited and I finally got a copy of what was deposited. It was last Friday, so as soon as I checked and I found that many things are missing. Our fair judge doesn't allow me to do any addition to whatever has been deposited.

So in 1st June of 1982, I got first academic appointment. It was called Research Assistant Professor. The main difference is that Research Associate and Research Assistant is considered technical personnel. They're not academic appointments.

This appointment was an academic appointment and since then, this is why all my documents from then on are in

another big file which was in faculty personnel office. So I was considered faculty. No matter what witnesses say, that collective agreement doesn't contain Research Professor as member, the point is it couldn't possibly contain it because I was the only Research Professor at that time at the University. So when collective agreement was signed, they had no idea that that kind of position will be at the university and at that time, my salary was paid by Swamy, Sankar and Kistris.

Kistris, you saw him here testifying that his contribution to the publications was that he thought it might be applicable in his field. When I asked him again: "What was your contribution", he again repeated if you remember "I thought it will be applicable in his field".

Again, the proof that he was then in desperate situation, that he needed publications and otherwise he would lose his grant, it is obvious in his curriculum vitae that he didn't have any publications by that time, but again, our fair judge did not allow me to deposit this information. You have yet another teaching assignment so you see I did quite a lot of teaching. I'm pointing it out to you so that when we will discuss the reason for department personnel committee to say that they didn't have enough teaching at Concordia, you will see that they had more than enough teaching in previous years. They just have chosen to ignore it at that time, but I will not jump. We will come to that situation.

We will also see the ... the letter of appointment which says explicitly black on white:

"Dear Dr. Fabrikant,
Enclosed please find an official offer of appointment to the full-time faculty of Concordia University."

So there was no misunderstanding at that time who I was, full-time faculty and the fact that such a position was not mentioned in collective agreement, well collective agreement was signed before that and I was the only one in the whole University and nobody thought that there is a need to change collective agreement because of me. There is also a letter of recommendation here signed by T.S. Sankar for my promotion from Research Assistant Professor to Research Associate Professor. He writes among others here:

"Dr. Fabrikant's record of research achievements through scholarly publications during the past two (2) years has been truly outstanding. In addition, he's tackling the fundamental problem in diffusion and if successful, this will represent a major breakthrough in science and engineering and would lead to wide environmental application."

How do you like that! I repeat once again:

"Achievements truly outstanding. It will be major breakthrough in science and engineering."

The funniest thing is that he didn't understand the word

and what was written there but at least he said something nice about me, it's nice.
And after that, he writes:

"In my estimation, even the present recognition of his work by us through the word of this promotion is long overdue."

At least, this, he did understand it. My position was not ... not corresponded (sic) to my stature.
Again letter from vice-rector which says that:

"Faculty personnel office will be able to help you in the various details."

So again he underlines that all my files from now on is in faculty personnel office. It means that I'm faculty member. Again from Sankar on the same subject:

"Dr. Fabrikant has impressed me with his vast research abilities in his recent prolific publication rates and very fundamental contributions in the area of diffusion and contact mechanics have been made."

Now, and of course, there is a letter here. When there was question of my promotion, at that time, there was an incident which I described later on. I'm not testifying. It is all in the documents here, that during French classes, a teacher started smoking where smoking in classroom was forbidden by decision of senate and I made the remark to her that she shouldn't have smoked and as it is usually done, I was the one who was guilty.
So it is written here:

"This is especially so in this particular case since Dr. Fabrikant's behavior, both in connection with (inaud.) and center for continuing education has given cause for complaint in several quarters."

So if someone somewhere is complaining, God forbid, you cannot promote such persons.
What is interesting is that at that time, Sankar has responded something which was quite on point. He said here:

"I was always under the impression that we took decisions on promotions, reappointments and salary merit increases purely on the basis of scholarly achievements and academic excellence rather than on the individual's behavior patterns or our administrators' personal likes and dislikes. I hope my understanding is still valid."

Now this is the letter which later on, department personnel committee attached not as a proof that they did something very different from what is in this letter, but as a proof that I have behavior pattern problems.
They did not or pretend they did not understand that question of reappointment should be judged on the subject

of personal likes or dislikes of administrators. This should not be determining there. After that, I got that promotion effective January 1, 1984 and my tremendous salary at that time was twenty-three thousand two hundred and fifty dollars (23,250 \$) while average salary of Associate Professor at that time was about sixty thousand dollars (60,000 \$). Then ... then I got continuation of the same position, Research Associate Professor at salary of twenty-seven thousand dollars (27,000 \$) in 1984 and later on, it was increased to thirty thousand dollars (30,000 \$) in 1985. Then came Actions Structurantes about which we have already heard. This was the program administered by the government of Quebec. The salary was then thirty-six thousand (36,000 \$) and in the letter of appointment, what was written by Swamy himself, this is interesting to underline that what he's written here is the following parts:

"That appointment would be renewal (sic) for additional period of two years subject to satisfactory performance. Procedures for reappointment would be similar to those in collective agreement."

This is a very important part.

"Procedures for reappointment will be similar to those in collective agreement."

So effectively, whatever is in collective agreement for reappointment, the same criteria should be applied to me. Terms and conditions for any promotion would be the same as in collective agreement. It means the same thing that if promotion is due, whatever is written in collective agreement should be applicable to me, though I was not a member at that time of the bargaining unit. Well effectively, this was done to ... though union was on their side, but to make person even less or should I say more powerless against administration, they made all of us not member of bargaining unit and the last but not least:

"Your service of five (5) years would be considered as employment in the university from the point of view of tenure, promotion, etc."

It means not just tenure and promotion, it means when you see etc., it means sabbatical for example so all these years should be counted and this is signed by Swamy who reneged on his own writing later on as we will see it. Then we will see the contract itself which effectively repeats what was written in the letter of Swamy and it says also that service will be applicable to tenure and promotion consideration and one of the privileges that is written here: promotion. It's a specific item here, promotion. I'm eligible for promotion. So after that, on the 20th of October of 1986, you will see my salary increased to thirty-seven thousand five hundred (37,500 \$). On June 30th 1987, it has become forty thousand (40,000 \$) and the same year in November

it was increased to forty-two thousand (42,000 \$). If you recall Seshadri Sankar testified here when he said that he was not satisfied with my work during the years 1985, 1988 and if you recall, I asked him: "How come, if you were not satisfied, why did you give me three pretty hefty salary increases?" and he said "Well this is ... just we got more money from Quebec".

This is not the case. If you see here, it is the same grant, nothing changed. It is the same grant number to which it is charged, it's the same. They didn't get any more money or not more money. Probably they got more money from the very beginning but they didn't want to give it right away. They wanted, you know, to see that employee each time come and say "Oh thank you, you're giving me increase, thank you, you're giving me increase."

So this is, you know, psychological trick. At that time, normal salary of Associate Professor was about sixty-five (65,000 \$), seventy thousand dollars (70,000 \$) so in terms of thank you, there was really not very much to thank for, taking into consideration again that this money didn't come from the university budget.

The university effectively from its budget never paid me a penny and all the time, it was the government who was paying.

In 1988, if you recall from testimony, the first problem appeared because there was time for reappointment and if you recall from testimony of S. Sankar, he first denied that he told me point blank that "one more year and after that, your position will be terminated."

By that time, I had published about thirty (30) scientific papers. This is incredible number of papers in about three (3) years because I made some kind of mathematical discovery at that time. This is why it was easy to write many publications because it was all new. Nobody ever tried it before and it was possible to write that much. It was incredible achievement and despite this incredible achievement, the conversation was, if you recall, he couldn't say anything, any kind of reproach as to whether I did something not what was supposed (sic) to do or there wasn't really no reproach.

The only thing that was there is that I published those articles on my own. That was the problem, because if you look at my list of publications at the beginning, I had to include T.S. Sankar, I had to include Swamy as co-authors of my papers.

When in 1985, I got this position which was no longer paid from personal grants, I felt that I by no ... first of all, I felt that I gave those people more than enough articles. Altogether to Sankar, thirty-five publications. Some people don't do that much in their lifetime and I thought that these people would understand it. OK, you got it, enough is enough. Period, finish. These people did not understand it. They tried to extort papers from me and this is what happened in 1988 because S. Sankar couldn't tell me directly, you know "You start including me in my ... in your papers as co-author or I fire you." There is no way anyone can say that but by the code of should I say conduct or misconduct, this is what it is assumed in the university. You either include your boss as co-author or if boss has

the power to terminate your employment, this is what you will get and everyone understands that and this is why everyone really complies.

I didn't. I thought that well enough is enough. People should have understanding that there are certain limits as to how and how much someone could be robbed. They got more than enough and that's enough but they didn't understand it or didn't want to understand it and at that time again our fair judge did not allow me to play the conversation which I had with Seshadri Sankar but we played it in your absence and he had to admit that on that tape, he indeed said that one more year and after that, my position will be terminated and it was clear to me that it was an extortion and as every normal person, you try to get some protection from some other place so normal person start talking to other faculty members and it doesn't get any support.

He talks to the chairman of the department and he tells "Well it is between you and Sankar. I can do nothing about it". Then person goes to the dean of the faculty and tell him that and dean of the faculty starts telling you that there is due process, that Sankar is not the one who decides. Now that person tells him that he tried already to talk to chairman of department and chairman of department said that there is nothing I can do so it looks like there is no due process.

Then a threat came, but not the threat of going hunting because in this situation, there was no other way but to tell him "If you want to have me fired, then I will have to go public with all this fraud and extortion" and at that time, it did work. The next day I was invited by Osman and it was a different Osman. He said he was all on my side and of course, I will get my two-year reappointment but they needed somehow to save face so here we have what transpired if you look at the documents there.

You will see the following, that they invited me to their meeting and I was asked the following question: whether I agreed that I be in close contact and work closely with S. Sankar and of course I said yes, but if you wish to translate it from their English into normal English, to work closely with Sankar could mean only one thing. He didn't do any work. He hasn't written a single paper in his entire life so to work closely with him meant only one thing: you are going to include him in your articles to which inside myself, of course I said no but since question was if I'm prepared to work closely, I said yes. As long as he works, I'm prepared to work closely with him.

The second question was whether I'm prepared to teach. Of course I'm prepared to teach and the third question was if I was prepared to move my office to Concave. Fine, I was prepared to move my office to Concave and it looked like ... well when you read it, it looked ridiculous. It creates impression what, before that I refused to do so. If you remember I asked here Leam (sic) I believe: why are those issues raised there? Did I refused to comply with it? Did I reject that: no, I don't want to teach. Did I ever say that no, I don't want to collaborate and no one said that that was the problem. No. So why was the need to write all this?

Just to save face, because there was no way they wanted

to admit that what it was, it was an attempt to extortion and nothing else so at that time, the threat did its action and I got a two-year reappointment but the problem didn't stop there.

In 1989, by the way my salary was increased at that time to forty-six thousand dollars (46,000 \$) per year. It was 1988. I think from there on, we need to switch to another file.

What also helped, I'm returning a little back before the appointment, the reappointment of 1988. I'm now talking about D-33 because it is relevant to that situation. I felt that I need to document all this stuff and I have written a memo to S. Sankar with copy to Swamy and Osman and I have written here the following:

"Following our conversation, please find attached my progress report for a period from September 1985 to March 1988. Kindly let me know if you're interested in continuation of this type of research. If your priorities now changed, please let me know my new assignment at your earliest convenience."

The purpose of this memo was not to allow Sankar to say that I did one thing and it is not what Concave center wants, that I needed to do something else so here was my progress report and I here outlined my achievements in contact problem, in the mechanics of fracture, in acoustics, electro-magnetics, diffusion and computer ready design. (sic)

I don't think you can find a single person in this country who will have publication in so various different fields and I attached a list of publications in these journals which contained publications from 1986 to 1988 and there were thirty (30) of them and all of them in the top journals around the world.

So when I got the reappointment and my understanding was that this was not the end. It was clear to me that extortion will continue, that these people somehow do not learn the lesson. They somehow do not understand what they are being told because I believe I told them more than clearly, I gave more than enough, there will be no more prostitution. Period, finish. Just there will be no more but these people do not understand it.

On January 20th of 1989, no, on January 13th 1989, before that I tried on several occasions to discuss with Sankar.

"OK now tell me in advance what do you want me to do so that when next time, comes reappointment, you would not be able to tell me you did this, I wanted you to do something else. Here is my program of research. Either approve it or tell me to do something else. I will do something else" and he never responded to that.

He said "All right, all right, do it. It's fine, do what you do, it's fine" but I know that I'm dealing with totally dishonest people. Therefore I wanted it in writing and here I sent him a letter, January 13th which said:

"I've sent you my research program for 1989/94 on October 13th 1988 asking you to approve it. You have confirmed its reception but I have not yet received from you any comment related to

the research program despite several oral reminders.

I used this time registered mailing and request once again to approve my research program in writing. No answer within ten (10) days will be understood as complete approval of my research program.

Thank you in advance."

And the copies were sent to Swamy and Osman.

On January 20th, I have received finally response which said:

"As we discussed in our earlier meetings, I confirm my approval of your proposed research program for our academic year 1988/90. I wish to encourage you to communicate to me the results, the research results as you progress in your work.

I wish to send you my best wishes for the new year and for a productive year.

Signed: Seshadri Sankar"

So this way, since I had his approval of my research program there was no way for them to say that I didn't do what I was supposed to do. Well naive of me, they still managed to say it, despite all that.

In 1989, I raised question of promotion to Research Professor because by that time, I was already five years (5) in this position and everybody else got their promotion after about four (4) years. There was nobody. Officially of course, it is seven years (7) but in the department, whoever got his promotion, they were promoted regularly at the fourth year. I was in the fifth so I raised that question and immediately, Seshadri Sankar said "All right OK, I will talk to the chairman. Everything will be fine" but to me, I understood what the whole thing meant when he came back to me and said "All right, I spoke to the chairman. Everything is fine. Now we need to talk" and as soon as I heard "We need to talk", it was clear what we need to talk about.

His question was again if he recommends promotion, what would be my contribution to his group as he said it and I told him point blank that I have already contributed to his brother more than enough and that is it and as far as my publication, I have published thirty (30) papers. It's more than enough for extremely productive, you know, group, not just for one person because the whole group of Concave didn't publish thirty (30) papers, what I published myself and of course I didn't get the promotion, but the reason was stated, the following. They said:

"Fabrikant has numerous research publications which have received good comments from established journals to the university. DPC judge his research performance to be of high quality. Dr. Fabrikant's teaching record at Concordia is not of sufficient length for proper judgment to be made.

Dr. Fabrikant's record of supervision of gra-

duate students, of graduation of graduate students at Concordia is not sufficient for the proper judgment to be made."

So therefore they cannot recommend me. Now at this point I would like to get a hold of collective agreement in force at that time. No, no, collective agreement, it's a small ... a small green books, yes this and this one, yes. Well they are almost all the same. Now since according to my contract, the rules should be the same for promotion. This is what it says here:

"In addition to the criteria for promotion to Associate Professor, it shall be expected that the contribution to knowledge made by faculty member be recognized as substantial by other experts in the candidate's field of research. Evidence of such recognition shall include evaluation by scholars who are professors in the same discipline in other universities as well as appropriate recognized experts in the discipline in other organizations. It is understood that such recognition is for superior academic achievement which with rare exceptions can be established only after a period of several years."

So the only thing about here is that only criteria is recognition by other professors in other universities or other organizations. There is no other criteria. There is no criteria of teaching. There is no criteria of graduation of graduate students. It's just not there, it is not mentioned there. So that was yet another demonstration of total lawlessness.

Now the best proof that it was just an attempt of extortion and nothing else, I hope you recall that just a year later, when nothing really happened, there was no change, neither in teaching, I have already a pretty good record of teaching in this university. Besides I was teaching from 1966, not even from 1966, from 1962 because I was teaching while making my degree too, so I had so extensive number of years of teaching that there is really no point for them to argue about teaching.

As far as graduation of graduate students is concerned, in 1989, I didn't have any more graduate students than I had in 1990 graduated. In 1989, one was to graduate and he graduated. That was it. There was no more to graduate so it was obvious it was an attempt to ... to extort papers from me because whenever you ask these people for any favor, then you have to give them paper back. They do not understand that favors back already were given (sic) and were given too much and that was it. They didn't understand it, period.

Now what happened after that, you know from witnesses's testimony. I went to ... I tried to see the dean first and it was totally useless a discussion because when person doesn't want you know to argue, I show him: this is collective agreement. It is not there. Their reasons are not in the collective agreement. He says: "Your understanding is different from my understanding." Isn't it a familiar phrase. Do you remember, I argued

here for example that there is a difference between perceived persecution and real persecution. If it is just perceived persecution, then it might be delusional. If it is real persecution, there are no delusions and I hope you remember during the fitness hearing, I argued about a hundred times and somebody else was telling me "Well your logic doesn't correspond to my logic". What can you do in this situation and it was never clarified what his logic was. Anyway he said that his understanding is not the same as my understanding, period.

So I thought well I couldn't get justice here. I get it somewhere else. I erupt. Well I was wrong. I tried to reach the rector and of course, the rector was too busy to see me but McKenzie who testified here did meet with me and I explained to her that I was a victim of extortion, that I have already contributed to several people, like Sankar and Swamy, my publications and instead of those people saying at least thank you because they were world-class publications in world-class journals, instead of that, they just cannot stop.

They continue to extort papers from me. They continue to harass me, anything. My contract is for renewal despite the fact that I'm doing an excellent job and she testified here that I was extremely irritated, angry at the situation and that I asked her that I be transferred to another department because it was clear to me that I'm dealing with a group of bandits because when you come to the chairman and tell the chairman that something is wrong (sic) in the department and he doesn't want to listen to you and you come to the dean and tell him the same thing, if you remember, Swamy testified here that I told him, though it was a very funny testimony if you recall.

If you recall, that I told him about authorship of papers. As he explained it to you, he remembered it because it was a question of integrity and he couldn't possibly forget and when I asked him "OK, extortion by Seshadri Sankar, is it also a question of integrity" and if you recall, I was stopped there by our unbiased judge, but you could make a conclusion yourself how probable it is that he did remember all this and he did not remember that I told him about extortion but this part at least, it was settled. After I talked to him, after I threatened him, it was settled but lessons were not learned and you think you go in for extortion (sic). You want to get promoted, you have to pay for it.

Well my idea was: I have already paid too much because they didn't have, if you look at Kistris, in his lifetime he didn't do as much as I gave to T.S. Sankar. This is why I wanted to deposit his CV and list of publications and I was not allowed to do it.

Now she testified here that during that conversation, I allegedly told her that - let me recall precisely the wording - that in order to get what you want in North America, you have to go in and shoot a lot of people and this is what I was intended to do. (sic)

Now the phrase is totally absurd. By now I believe you know me well enough to realize that well, whatever I do, at least, I ... my phrases are logical. To say something like that, totally illogical, is just not me because when you go in and shoot a lot of people, you don't get what you want unless you want to be where I am and definitely

that was not my purpose at that time. So I couldn't have possibly said so but on the other hand, crown might argue well if McKenzie wanted to lie, she couldn't have invented more logical phrase.

Probably, but maybe that was the purpose of the lie to ... to sound it (sic) illogical so that first nobody could say: well if it is invented, it would be more logical. Maybe that was the purpose.

Second, what I think may be the most plausible explanation why this phrase it was used, because all the time they wanted to present me as kind of insane. They didn't have any reason, they didn't have any ground for that but this is the best way to deal with the person, to declare him strange, insane. This is how Mr. Martin tried to deal with me before that if you remember. There was no reason to put me in Pinel. They had absolutely no grounds for that but again, this is a very good weapon.

I don't know what is going on for example now with some Mr. Yussef who claims, according to the newspapers, that he got offer from Ecole Polytechnique of a position and he is prepared to take the position and Ecole Polytechnique said that they never offered him anything and whenever I go, everyone asks me kind of questions, you know, they draw parallel and maybe it is too much to think. I just don't know, that this Mr. Yussef is just playing some kind of role in this particular moment when the trial is to be decided. We'll see.

I'm not that, you know, paranoidal to suggest that it is just an actor who plays some role, but it is very strange the appearance of this Yussef exactly at this particular moment in time and if you look at the interviews which were given, they're also strange.

For example, in one interview, Yussef says: "I'm world-class scientist." You see, resemblance with me "And I have recognition from Bourassa and Brian Mulroney." Well this is not exactly what I claim, but ... well it doesn't have to be exactly. You know, you can always draw a parallel and what is surprising to me, that the reporter didn't bother to ask "OK, you're world-class scientist. Show your publications". It's that simple. He never asked.

"You have congratulations from Brian Mulroney. Could you show it to us", he never asked. It's a very very strange interview which leaves more questions than it answers and again, I'm not ... you know, it would be really kind of too much to make this kind of actors play (sic) but something is ... something is not kosher in this case because the interviews, the way they goes (sic), they do not just ask the right questions of that person but we'll see.

In general, everything, when we will discuss, I do not want to go to that at this moment, but when we will discuss what police did with the evidence and how they presented all events at their press conferences, you will see that all efforts were made to present me some kind of insane. (sic) So there is some parallel here, no doubt about it.

So this is as far as I can go in terms of this reason why McKenzie quoted me this way. So the only thing, what I can come up to his ... well, you decide by yourself how plausible it is for me to say something like this. If I really wanted to threaten someone, I could have said you

know much more in a remote way. It is total ideatism (sic) you know, to say "It is necessary to kill a lot of people and this is what I want to do". Only a complete idiot would say it. Even if ... even if he thinks so, he wouldn't say that. So obviously something there is not kosher.

Now if you go into testimony of ... I want just to draw some parallels with other testimonies so that you would appreciate how the spectacle is being played. Now I jump to remind you about meeting June 23rd, 1992 where allegedly vice-rector Bertrand, McKenzie, Habib, Wilson Wright were present and they were discussing my request for a firearm permit.

Every witness testified that McKenzie was there, that the question was raised whether Fabrikant ever threatened anyone and every witness testified McKenzie didn't utter a word.

Now can you give any plausible explanation to that? If this did happen, wasn't it her duty to say it. Instead they were playing some kind of game. Everyone pretended OK, did he ever threaten anyone? If you remember Bertrand here said "Well I threatened the secretary". The secretary herself ... herself never complained that she was threatened and secretary is always ... if you could notice, it is kind of benchmark at Concordia. They never tried to protect themselves. They always tried just to protect secretaries.

If you recall, they got a meeting of secretaries to protect them. They got this ... one of these requests which was made June 23rd, stated exactly the same thing. It is signed by Bertrand and Sheinin, Bertrand signed on behalf of Sheinin. I hope you remember it. Where is it? Anyway it is one of the exhibits. It is dated June 23rd and it says that since Fabrikant threatened secretary, he should be suspended as danger to the university and not allowed to the university until he gets evaluation or something like that. Well I cannot find it right now but ... Oh, here it is:

"Following upon Dr. Fabrikant's recent intimidation of the secretarial staff in the department of mechanical engineering ..."

So it's no longer Mrs. Horwood, it is intimidation of secretarial staff, it means everybody, every secretary was intimidated.

"...in the department of mechanical engineering, it is our recommendation that he be immediately suspended from the university. In our opinion, Dr. Fabrikant presents an immediate and continuing threat to the members of university community as set forth in article 29.07 of collective agreement.

We suggest that he be suspended indefinitely and he be forbidden to enter any university building until such time that suspension is lifted.

As a condition for reinstatement in the university, Dr. Fabrikant must be required to produce a statement from a psychiatrist chosen

by the university attesting to his mental stability."

Now if you recall, I asked Bertrand who signed that what reasons did he have when he was signing this to do it. He says he didn't need any reason, that I waived with my firearm permit request in front of a secretary. I never waived any papers. This is just not me and if you remember, Horwood testified here. She never testified neither that I had threatened her at that time, nor that I waived something in front of her. She never testified that I had any threats made to her or any threatening gesture to this end.

I hope you recall her testimony here too and so they do not stop at just obvious falsification and besides that, OK, on July 13th, Bertrand writes a letter to the police that I not be allowed to carry a gun.

Well if I intimidated secretarial staff, why don't you write about it to the police. He didn't if you recall it, so this is yet another best proof that this was a lie.

Now returning back to the situation with McKenzie, so as you see, what is there which could be believed is that indeed I was there, that indeed I was complaining, that indeed I was angry, that indeed I asked to be moved to another department because I felt that these people just do not understand elementary things and my impression was that these people would never stop and my understanding also was that I was not going to tolerate that.

So I thought that in this situation the best thing to do was to move me to another department. Since my education was so broad, I could teach in electrical engineering, I could teach mathematics, I could teach physics, I could teach civil engineering. So there was ample opportunity to do so.

Should they listen to me then, probably we would not be here today. I will come to this on many occasions that so many things could be done that we would not be here today but regretfully they were not done. Whatever was done was done in the most reckless, the most most dehumanizing, the most disrespectful manner it could possibly be done. So the only result of that conversation, according to the testimony, was that Mr. Brendon Haines came to the picture. Mr. Brendon Haines came to the picture, well to me, at the beginning, you see I'm a trusting person and to me, at the beginning, since he usually was ... whatever I was saying, he was nodding his head, "Yes, you're right, yes, you're right, yes, yes, yes, I understand you, yes, you're right", probably this is what psychologists usually do or psychiatrists and it was kind of ... how to say it, pleasant to see the person who, though sincerely or not sincerely understands you, understands your feeling and it never crossed my mind when I was talking to him that he would distort something which I might have said to him, to such an extent that this would result in twenty-four (24) hour surveillance. I hope you remember the picture when Bujold first came and judge allowed me at that time to look into his file and when I found in this file that I was followed twenty-four hours and I just jumped at that and Mr. Martin was so upset that they gave me this information that he declared witness hostile right away and if you remember the testimony

of Mr. Bujold, it was a very interesting one.
So we spoke about threats and he seemed to be aware of
many of them but strangely enough, when question was rai-
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"OK you heard about threats, about some children and I know how they dressed, who told you that"? "I don't remember". "Aren't you director of security?" "Yes I am". "Isn't it your duty to record all these signals and to investigate?" "Yes it is" "So why didn't you do that?" and this is exactly at the moment where Mr. Martin stops me usually because this is a difficult position for the witness and of course, I cannot continue questioning. Move to another subject but talking about this, what is interesting is that so far, if you recall, I asked almost everybody who was here about this particular threat and I'm kind of wondering because for example, North America, it could be construed at least from something which I could have said like - I'm just imagining what could have been said in order that it be, you know, distorted the way it was. I could have said for example that I'm not surprised that level of violence in North America because you have so much injustice here or I could have said that I'm not surprised that someone goes and shoots a lot of people. You make people so upset that they do not understand what they are doing.

I don't know, I do not remember when this ... I even said that but something like this could have been said. How do you go from this kind of phrase to that kind of phrase? Well if you're a dishonest person, you can definitely. As far as children is concerned, this totally escapes me because there is absolutely nothing even to start with because you understand very well that this kind of phone call could be made to, you know, to a good friend of yours.

For example, you are passing a school where you know your friend's children are and you say "Ah maybe they are friends of my children" and I could call him "Ah, you know who I see just recently, you know how children they are dressed", well this ... this might have happened but I just was not that close to anybody and my children were not friends of any children in the department.

So this kind of phrase could be said but only in this context. There is no other context because again, it looks totally idiotic if you call somebody who you don't know and say "You know how children how dressed" but the purpose of this is again clear: to describe me some kind of insane.

Well you know again me long enough to realize that you can accuse me of anything but not of being illogical and I don't believe that you find any trace of insanity in me all time you saw me.

So this was just something malicious which I cannot possibly neither understand nor comprehend nor even give some plausible explanation.

As far as the rector and to kill rector and to kidnap rector or again we have quite a number of contradictions here and I do not really know what to address because during conversations with Haines, of course it looks totally idiotic. Just imagine picture: I'm coming to Haines and I'm saying "You know what, I want to kidnap and kill the rector". This is total absurd.

Now let's ... let's go from just logical stuff. Assume, so let's act on the presumption that this did happen. Now

when did it happen? We have several documents to this end. One of them is the Barnaby file. Now this is exactly what I said I meant it has to be all translated. We did not address this question but I think it is unfair not to allow the jury to be able to read this stuff in English. Now in the Barnaby file, we have the report dated March 21st 1989. Where is the Barnaby report? Oh here it is. It says the following.

"I was replacing - I'm not getting right the name Clark or something - for a short break at the desk when I received call from Dr. McKenzie and Brendon Haines informing me that Dr. Fabrikant has made threats towards the rector, Dr. Kenniff and requested a guard to be sent to the rector's office immediately.
Two (2) minutes later when Clark returned, I immediately went to the rector's office."

Now I don't remember J.C., what abbreviation means.

"Four minutes (4) later, J.C. arrived and I was positioned out in front parking. Seventeen thirty (17 h 30) again appeared J.C. Mr. Sodon (sic) and Green followed the rector in the university car."

So as far as I recall, the witness testified that rector in his car was followed by two other cars from security guards of the university. So it is quite an impressive demonstration of danger.

On the other hand, we found that I had no meeting with Mr. Haines on March 21st. When McKenzie was asked, she testified that that was the date when I threatened. Again how could you believe that? That I threatened to get rector. If you remember the story of McKenzie, that I threatened to get rector and she didn't know whether I had a gun or I was going to buy a gun.

From testimony of Haines, it was absolutely clear that I threatened not just to get but to kidnap and kill, whatever it might mean, you know, the total absurdity. If you want to kill, there is no point to kidnap. To kidnap and kill the rector and I told him that I had a gun.

Now how could this possibly be both, you know, reconcilable.

I foresee that in his address, crown will tell you there is no contradiction there. This is how human memory works. I've been to many trials and I have seen even more contradiction than that and second, crown will tell you exactly the same thing, that it is no contradiction at all. It is normal, it is how human memory works. This is how it is.

Now you are to decide by yourself is this really how human memory works. Is it really when such an extraordinary happens, is it really that you can confuse those two? Whether I want to get the rector and I'm going to buy a gun or I'm going to kidnap and shoot the rector and I have a gun, but the point is that this discrepancy, if it were just discrepancy, it has the logical continuation. If you call recall, McKenzie testified that security guards were hired to check if I'm going to buy a gun

somewhere. You remember that?

So the main purpose of those security guards were to see whether I'm going to certain place and most of all whether I'm going to buy a gun.

Now according to Haines, I already had a gun. According to the security guards which testified here, I asked them, each of them, explicitly: "Did you have any special duty?" If you recall, I asked them "If I'm going to a store, are you going to follow me?" You see, it was so kind of leading stuff. None of them said that they worked all to check if I'm going to buy a gun, not a single security guard said that.

So definitely it was not ... with all the spectacles crown play, I wouldn't be surprised that at least one security guard would say that, but strangely enough, none of them said that.

So again, we have total contradiction against testimony of McKenzie and testimony of Haines. Now if you add to that testimony of Swamy which was terminated before much more interesting things could be revealed, he said something else: that Haines told him that I'm buying a gun and going hunting. If you recall, Haines never said that. Now on several occasions also, I asked Haines whether he informed rector about threats and he said "Yes of course" and I asked him if he informed McKenzie about it, "Yes of course" and I asked him "So what did McKenzie say?" he said "I couldn't remember" and that was the question, if you recall, when I pointed to him that March 21st was not the date according to him when I threatened the rector. According to him, when I threatened the rector, was March 28th of 1989.

Now when I showed him this, you remember this, I showed him this, March 21st and he needed to somehow save face because it didn't fit his description, he said "Oh I remember. On that day you called my office and he's - let me just remember it correctly because it is so ridiculous that ... he said that I called the office and I spoke to his secretary and I asked her, what did I ask her, if she knew the room number for the rector at Loyola and if yes, then I'm going to see him.

Well the whole call... when I asked him "All right, is your secretary anybody related to the rector", "No", "Is it necessary, when you want to see a rector, to call your secretary?" "No", "Is the rector's room indicated in the telephone directory?" "Yes it is", "Is the telephone of the rector at Loyola is indicated in the telephone directory?" "Yes it is". Now why on earth would I call his secretary and ask these questions.

The answer is very simple. They want to produce impression of me as kind of not in itself, a person with ... you know, if not obviously insane, but a person who ... very close to that. This is the main purpose of the whole thing, to produce this kind of impression because unless you produce impression of insanity, there is no way you can justify all the outrageous thing they did to me and this is why every lawyer who wanted to defend me wanted to defend me only on one issue: insanity and this is why all the evidence was tailored in such a way that insanity would go, you know, like that.

We'll talk about it a little bit later but at that time, so we are in March of 1989 and whatever you assume,

assume for a second that the whole thing is true, I though don't know, we might assume that the threat was made on March 21st because there is nothing on March 28th, there is no record of anything, nothing at all. So we have no choice but to assume if threat was made, it was March 21st, though again, Haines testified here. I didn't have any meeting with him that day, neither I had a meeting with him on March 28th. So assume that this happened. Now they take it seriously. If you take it seriously, then what? Call the police. Instead of that, they waited for full one week. Then instead of calling the police, they established twenty-four hour surveillance.

I put aside, you know, all the legal part of it. I do not believe they had any right to invade my privacy the way they did. They had no right to pay more than ten thousand dollars (10,000 \$) of taxpayers money for all this, but what is here quite obvious to me, that it just doesn't much (inaud.). If you are scared, if you really, you know, have reason to believe that there is a danger and again, if you recall, Barnaby here testified that he did call, did go to the police. I planned to subpoena police from 25th to confirm or not to confirm it but whatever he did, it looks strange.

If he did tell them that I threatened to kidnap and kill the rector, they should be a record in the police and there should be some kind of investigation done by the police.

Instead we have here all of a sudden, one week later, we have a very strange surveillance, first of all, twenty-four hours on my house. If you recall, the guards who came here testified that first of all, they couldn't possibly see the houses. The main entrance is on one street. The garage go onto another street. The main entrance is Trent Avenue, the garage goes on Ashley. You cannot see both of them. There is no way and it looks like they didn't really care about it.

In one of the reports, you see that he lost me at the red light and he couldn't care less. He returned back. This is not the way you survey someone who is ... at least you should believe is dangerous.

One of the guards testified here that he advised his superiors that you cannot see both entrances, well there was no reaction to that either.

Now take into consideration also that for some reasons again, not on 28th of March, but later on, on 1st April, surveillance started at the house of Mr. Haines and again if you recall, Barnaby testified that it was surveillance on Swamy's house.

Well maybe it is an honest thing that he didn't recollect well. I don't know. Maybe it is just an attempt - I will talk about it more in detail later - to present to you the most possible contradictory testimony because if you have seen that you have testimony that is so contradictory that taking into consideration that definitely each witness is briefed by Mr. Freedman. I hope we are not that naive to think that each witness comes here without having preliminary talk with Mr. Freedman or even Mr. Freedman and the crown, but at least I'm sure they have a talk with Mr. Freedman and I'm sure they discuss at least the main point of their testimony.

Now to come to such a blatant contradiction as to, you know, major issues, whether I was going to get the rector and I'm buying a gun, whether I'm going to kidnap and kill the rector and the latest which I enjoyed so much from Swamy, that I'm buying a rifle and going hunting. I think this is a pearl of imagination but I hope, I hope that they just underestimate the power of ordinary people.

I believe that ordinary people is pretty capable to understand when just dishonorable game of memory is being played and this is what Concordia is doing, because the problem with them is the following. On the one hand, they need to justify all what they did to me, all this surveillance, attempts to have me fired, hiring bodyguards again and if you remember, the witness testified here that in August of 1992, there was a bodyguard too. They never admitted it but one witness testified to that end and I saw a bodyguard there, yes. There was a bodyguard in August, at the time the contempt of court motion was filed.

They knew very well what they were doing. Now, and to reconcile it with all public statements of the rector who said "Fabrikant never threatened anyone, Fabrikant never transgressed the law."

If you remember, in all press conferences, when he was asked why he didn't do anything, each time he said "Fabrikant never threatened anyone". Now of course, hearing judge like Mr. Martin, you shouldn't be worried to come here and to testify but in any case, suppose it would have happened that the rector would have to come here and to testify and he would be asked "OK, did Fabrikant threatened you" and he would have said "No he didn't", "Did Mr. Haines advise you that Fabrikant threatened you" he would say "No, I don't recall that". Now we show to the rector March 21st when he was escorted by two guards, "Was there a threat then?" What do you think his answer would be? "I have no recollection of that" and if Fabrikant at that time would try to say "This witness is adverse", Mr. Martin would say "No, this is how human memory works. This is absolutely normal. Witness is honest" but anyway, you see, you have all the shades from threaten to kidnap and kill rector to no threats ever made and you need some kind of in between and this is what those witnesses were doing here.

They were providing for the rector the way out, so they were giving you something in between. So when the rector would come here and "No, Fabrikant never threatened me", you couldn't say he's lying because well Swamy testified that I was going with rifle and hunting. McKenzie testified that I was going to get rector and probably I was buying a gun and so on and so forth, so you have all the shades there and no terrible thing happened. The rector no longer looks like a liar.

Assume for a second, if all the witness would tell the same thing, either that I did threaten or that I didn't, if all of them were saying that I did, then the rector would look stupid. How come you didn't know?

If they say that I didn't, then how do you justify all these bodyguards hiring and all this stuff. So they want to have it both ways and this is what they did. So design is quite clear. I don't know whether it looks a

smart design to you. To me, it is so clear and so stupid that I hope everyone will appreciate it in exactly the same way.

Now let us look at ... returning back to surveillance. You will see that for some reason, surveillance goes twenty-four (24) hours until 1st April, on me. Then April 2nd, it is twenty-three hours (23), God knows why. Then April 3rd, 4th, 5th, 6th, 7th, it is fifteen (15) hours. Then again it goes to twenty-four.

Now when Barnaby was asked "How come did you ... why did you reduce the number of hours on certain days" and he started to tell you that that was the day when I called allegedly Haines and I told him that I had a conversation with my wife and she told me that threats are no good and it's better to try to make peaceful (sic) and so on and so forth which Haines falsified in such a way that if I talked to my wife about violence and that violence is no good.

If you read what's really in the documents, that yes, I did make threats, that those threats were either to go public or to go to court. That was all the threats were made and if I ever talked to someone that I made threats, in my head, that was the threat I had in mind and this is why I was so surprised when he said "Remember what you said in presence of me and McKenzie" and I don't remember by now what it was. Probably I said something because I said that it was just a figure of speech but the point is that at no time, when I was talking to him, in my head, it was that I threatened with violence and it looks strange to me, when in January, during conversation, again if you recall, he testified that when I told him that the situation is out of hand and you should tell rector about it and again he asked me "I'm going to tell him if it is a dangerous message".

Why the hell should it be a dangerous message? The situation is out of hand because vice-rector didn't answer to my letter. That's what it is and nothing else and there he totally lied completely that ... look at that the first telephone conversation, he testified that he reminded to me something which I said in presence of him and McKenzie but at that time, he already allegedly knew that I threatened to kill rector.

Why wouldn't he remind me that? He didn't and in his January 1990 conversation, he says that he mentioned to me that I threatened to kill and kidnap rector. This is the most outrageous part of it, that it looks like either they fabricated the document. Again I cannot get any cooperation, neither from Mr. Belleau nor from the Court to study the documents as to when they were written or they prepared the whole thing in advance as if they knew that one day they would need it.

I don't know but this stuff is ... definitely was prepared in advance for maybe some kind of a court proceeding. They started creating legend of being dangerous from the moment I came to the rector and I said that I was going to go public or go to court and none of them deny that I did say that and they started to create the legend of me being dangerous.

Now you see, at least from the surveillance, he, Barnaby testified that the number of hours were reduced after I allegedly said to Haines that I'm no longer going to do

any threats, I will try to do it peacefully, everything will be fine.

Well this conversation, according to Haines, took place April 6th. Now reduction of hours, we see April 3rd. It became fifteen hours, 4th, 5th, 6th, 7th. Quite opposite. After that conversation, they increased to twenty-four hours. So there is no logic. There is absolutely nothing there.

In terms of surveillance of house of Kenniff and ... and Haines, there is no reason if you follow someone twenty-four hours, why on earth do you need to put another security guard near his house.

You remember I asked on several occasions: if you think that person is dangerous and he's going that direction and a person dangerous, it means he will do something there because the other car is following him, so there is no danger. Why is there need of double protection. You never got any answer to that.

On the other hand, both testified that inside the university the guards didn't follow me. Well if I'm dangerous, then isn't it obvious they should follow me inside the university because rector is not out on the street. He's inside the university and all the list of people to be protected, the list of people looks like follows: it is Osman, Swamy, both Sankars, Hoa, Haines, McKenzie, Kenniff.

Now Osman is right there, next door. Absolutely unprotected. What is the point to follow me twenty-four hours if here is my office and here is Osman's office and I can go there just like that. Does it make sense?

Swamy is also just across the corridor and bodyguard is waiting outside near my car when I return back. Does this make any sense. It doesn't.

What is the point to do surveillance of Kenniff's house if Kenniff is not protected inside the university? It's absurd.

Now what are the real reasons? At least the way I see it because I can only give the plausible explanation as to what really happened there.

BY THE COURT:

So as I do not interrupt you giving your plausible reasons, we'll ... we'll adjourn until hopefully two thirty (14 h 30).

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE COURT TAKES THE BENCH

THE MEMBERS OF THE JURY ARE PRESENT

BY THE ACCUSED:

Before we start, there is a number of tapes which Mr. Ouellette has taken from me and I do not remember exactly what dates I gave him and he refuses to return it. Now what can be done about it, if anything?

BY THE COURT:

For the minute, would you please continue with your argument.

BY THE ACCUSED:

And when are we going to address it?

BY THE COURT:

Would you please continue for the moment with your argument.

BY THE ACCUSED:

Would you please just answer a question if I'm asking something?

BY THE COURT:

Would you please continue for the moment with your argument. That is all you need to hear from me.

BY THE ACCUSED:

Well I need to hear from you when we're going to address it?

BY THE COURT:

Do you propose to continue with your argument or do you not?

BY THE ACCUSED:

I propose to continue.

BY THE COURT:

Good.

BY THE ACCUSED:

I feel that you need an excuse to finish my arguing too.

BY THE COURT:

Then you continue with your argument.

BY THE ACCUSED:

I find this is a good opportunity.

Now I believe that I was stopped at the time and I said that there is some plausible explanation as to what really happened then.

Well there is no doubt that rector understood that situation is serious, that thirty-five (35) publications in the world-class journals is not something which can be dismissed that easily, so he decided to do some kind of preemptive action and they decided to play some kind of a spectacle just in case of me being dangerous and on the one hand, because there is no doubt that though they claim that it has been done in a very discreet manner, it was not done in a discreet manner at all.

For example, Swamy here testified that he knew that I was followed and since Swamy knew, I could just imagine how many more people knew. Now if you recall testimony of someone whose name was Hill and he also testified on the one hand, if you recall, he testified that he didn't know anything about threats, he didn't know anything about anything, but if you look at his report, then we'll see something totally different.

In his report, it says black on white, I refer to, what is it, D-21. Here's his report.

"Upon arrival I met Dr. McKenzie and she informed of a person inside senate room that looks suspicious carrying a large attach, case. This was the same person that had previously caused problems to the university administrators last year."

So clearly he was aware about something last year. It means at least 1990. So it was not a secret for Mr. Hill. Who is Mr. Hill? Why is he privy to that kind of information and not only Mr. Hill but I believe everybody

else.

Probably the only person who didn't know that I was followed was myself because I learned about it here. Now why have they decided to give this information to me here? Again I can only give plausible explanation. One, it might be that it was Mr. Martin's fault that he allowed me to see the file because I remember how angry he was then, that he immediately declared the witness hostile.

It might be another thing and another thing is the following: they might have wanted to show me: you see, you were followed in 1989. You wouldn't dare to reveal it to the jury because that would mean that you were dangerous all the time" and I think maybe this explanation is better of why the documents were there because your realize very well that having judge like this, they can present any document they want or not to present any document they want.

They can say "We don't have those documents" like it happened with ... do you remember, there was question of telephone conversations and Concordia University here testified "there is nothing there. It has disappeared." Now luckily there are some honest people on this planet and this is what has been delivered to me from Concordia University.

My phone conversation with people at Concordia University are well and alive. Here they are. Not only they are well and alive, they are well and alive. You see they made copy exactly just, you know, the message. Everything was recorded. They didn't ... you know, there was not a single thing they didn't record about me.

BY THE COURT:

Excuse me, you're referring to what exhibit number?

BY THE ACCUSED:

Well you didn't allow this to ...

BY THE COURT:

Then you'll disregard of course anything that he refers to that isn't produced as an exhibit.

BY THE ACCUSED:

Well it should be produced because it was allowed.

BY THE COURT:

I'm not going to argue with you about it. That's what I said.

BY THE ACCUSED:

It was allowed to be produced but Concordia University said they ...

BY THE COURT:

And please do not refer to it if it hasn't been produced.

BY THE ACCUSED:

Well I'm just telling the jury what happened, that this stuff is there. Concordia University lied that they don't have it. The documents are right there and they have it and they refused to produce it and it was clear to me that it is there, but we have judge who's just on the side of Concordia, so there is nothing that can be done about it.

At least being, you know, caught red handed, at least you should have the decency to allow it to be produced now, since it was allowed to be produced at the time when it was requested.

Now if you go further into this security file, if you

remember, I asked question: how come seventeen hundred kilometers (1,700) were charged when I didn't move anywhere. The reports of guards indicated that mostly I was at home and Mr. Martin at that time asked me what relevance it could possibly have.

Well here it goes, the relevance of that question. There is no doubt in my mind that if what Mr. Haines testified here that it was total surprise for him when he came home and he found that there is someone there guarding his house. If this is true, then it was just Mr. Barnaby giving good business to his old friend, Mr. Broderick and if this was the case, then here are the seventeen hundred kilometers.

Mr. Barnaby wouldn't question a good friend. Maybe he shared the money which they received, who knows. So sometimes when you see this kind of stuff and you need to find some kind of smart explanation, explanation is very simple. Mr. Barnaby used the opportunity to grab some money from the university and give it to good friend and probably good friend reciprocate somehow, that's all because there is absolutely no logic.

If you look at the dates where surveillance was, it doesn't make any sense. There is nothing happened (sic) between March 28th and April 1st. There is no reason why for example, if they started surveilling me on March 28th, well then if it was necessary to surveil rector's house, then it should be done at the same date.

If there was no need to surveil, then something must have happened during surveillance but if we look at the surveillance report, nothing happened.

I just was home or I was driving with my children to the library or I was driving with my children to the supermarket or I was driving to the ... to the university. There was nothing else there.

So there was nothing threatening during the surveillance so on the face of it, there is absolutely no reason to justify somehow the surveillance of either house of Kenniff or house of Haines. Besides that, Haines himself said that he never felt threatened.

So the only reason I could possibly imagine for that is that he just wanted to give his friend to make some money. (sic)

To end with this file, there is something else here which there is no way to explain and this is medical certificate that I was sick on ... issued on November 28th 1990 for three (3) weeks.

Now if you recall, I tried to ask both Barnaby and Bujold and even his secretary: how come this stuff is in the security file? What it has to do with security. Now the explanation is very simple.

They knew very well what kind of illness it was. They were torturing me to such an extent that finally I was totally debilitated. I came to doctor and he just saw me and he gave me right away, without asking question. So this is how I looked at that time and this is why it is here because then they understood that this is their job, this is what they did to me. There is no other explanation for that. They knew very well what they were doing. Now in 1988, during the time when Seshadri Sankar tried to have me fired, that was the first time I decided to record the conversations.

I didn't do it for any other purposes as to self-protection. I didn't really think that it would be necessary in a criminal trial but I was pretty sure that one day, I might need it. It was recorded in 1988 and I didn't reveal it until 1992 when I felt that I'm in danger and I need to reveal this information. This is when electronic mail appeared and all those conversations were revealed.

Sankar here testified that he doesn't remember and he was confronted with exact statement and exact statement reads as follows:

"I will be able to have this position for one more year, one more year until 31st of May 1989 at which time it will be eliminated. This particular position will be terminated."

Period. This is what he told me in March of 1988. I tried to get support from faculty members and if you remember Hoa testified here and again he did not remember many things and again he was confronted with conversation which I recorded and again it was recorded for my protection. I did not reveal this conversation until 1992, again when I felt that I'm in danger.

And during that conversation in particular, I asked him:

"I wrote two (2) papers to which I hope you remember my contribution was major. Would you not deny this, would you?"

Hoa: Yes, yes.

Fabrikant: Would you agree that T.S. Sankar's contribution was zero?

Hoa: I wouldn't say that but ...

Fabrikant: OK, could you specify what his contribution was?

Hoa: He paid you. (laughing)

Fabrikant: He paid me?

Hoa: Yes. (laughing)

Fabrikant: Yes, this is exactly what I'm saying he paid me, that's all his contribution, that's all.

Hoa: Yes."

And on another occasion, I also indicated to him that I'm a peaceful person. I don't want to fight with anyone. I would be glad to go somewhere else. I just cannot get any position anywhere and I told him:

"So you put my back against the wall. Whenever I can not 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 and if you could explain to some of them at least that it is not in anyone's interested (sic), not in mine, not in theirs to get exposed the whole thing.

Hoa: I know, I know.

Fabrikant: I hope you will not be committing a perjury if you're called to testify, would you?

Hoa: Sorry, what do you mean?

Fabrikant: I mean if you're called to testify and they put you a question about the papers I've written, what was the contribution of T.S.?

Hoa: He didn't contribute except for the fact that he paid you. (laughing)

Fabrikant: Would you repeat this?

Hoa: But I mean there is no need to go through all this stuff.

Fabrikant: I hope so. I would love not to. I'm a very peaceful person and I would love not to go to court."

I'm reading you this part of the conversation to indicate to you that image of kind of a bullying person which many witnesses here tried to produce just doesn't support ... is not supported by facts.

If you be allowed (sic) and I'm pretty sure this is not the last trial, because this decision to cut off my defence, it just cannot stand. It is total lawlessness so there is no doubt there will be another trial and probably I would be able to present all this stuff in full but in the meantime, what I want to convey to you that all my life, I tried to settle peacefully.

Whenever it was possible, whenever there was any opportunity to negotiate, I tried to do it. The problem was that I was dealing with people who just kind of did not understand that if I say OK, let's negotiate, let's discuss, they understand this as a sign of weakness.

So if he wants to negotiate, he's weak and we can bend him. No? They totally misunderstood me. If I want to negotiate, it's fine but don't try to bend me. There is no way and also I ... during that testimony, I also pointed out that at the end of conversation, I repeated it again. I said to him that I just thought that someone would have enough wisdom to understand that in allowed fight, (sic) everyone will be losing.

"Hoa: I know, I know.

Fabrikant: There will be no winners there.

Hoa: That's right.

Fabrikant: Everyone will be a loser.

Hoa: Don't talk about fight.

Fabrikant: Don't put me in this position."

Well it was conversation which was to a great extent, how to say it, I forgot this word in English, how do you say it when someone foresees future? Anyway, all right. I ask for interpreter because sometimes it would be good to have one here in case when I do not have a precise word. It would be ...

BY THE COURT:

You're doing fine.

BY THE ACCUSED:

Well let me decide. I need certain words, I need ...

BY THE COURT:

You're doing fine.

BY THE ACCUSED:

... translation.

BY THE COURT:

Continue.

BY THE ACCUSED:

I repeat once again, let me decide it. I need certain words to be translated.

BY THE COURT:

Mr. Fabrikant, you're doing perfectly well and I'm the one who decides that. Now continue with your argument.

BY THE ACCUSED:

So you refuse me.

So this conversation shows clearly that all this stuff that I harass somebody, that I tried to intimidate somebody, that I am a difficult person to work with, I think this is a clear indication that this is just not so. All my life, I tried to use some reason in everything. I tried to argue, to understand that this is fair, yes, this corresponds to certain rules, certain regulations, this is not fair and all my life I resented just brutal force and I still do and this is why I called Martin little old crook because this is what he was displaying here. Just brutal force and total lawlessness.

Now in 1989, the end of meetings with Haines, when it was clear to me, I want to show you the note which was deposited under D-8 and I explained to you why I asked it to be deposited.

That was the note which Haines and McKenzie agreed that one will send to another some kind of tough note and I will read it and so on and so forth and when I read the note, it was clear to me that OK, I will refresh your memory with the note itself.

"That our meeting of April 15th 1989 with Dr. Warren Steiner, a psychiatrist, he advised us to record everything pertaining to Dr. Fabrikant. The following text which summarizes strategy is worked out by (inaud.) therefore dealing at Dr. Fabrikant at this time, is in compliance with that suggestion.

We agreed that you will send me a tough note remembering that Fabrikant will read it. His request through me will not be answered and if he wants an investigation, he should contact the appropriate people.

The purpose of your tough note is to discourage Fabrikant from continually giving me orders and me being caught in the middle. Fabrikant had been using me as a mediator. I told him at the beginning that I do this reluctantly and for a short time to help out in this difficult situation.

Last week, at the meeting with Osman, Swamy, McKenzie and myself, it was agreed that I will not continue in this role. Another purpose of your letter is to give notice to Fabrikant that my previous role as mediator is terminated. I will act as facilitator. This, I have done with Fabrikant in the past but he fails to accept that understanding of my role. This memo from you will now give me support to indicate to Fabrikant that I must accept his directives.

I believe this summarizes where things stand now. Thank you for being so prompt in sending me the memo. As requested by you, I have now

received a memo in support of our position from Dean Swamy."

And that was the memo which McKenzie sent to Haines and which was shown to me.

"I'm in receipt of your fax note of yesterday in which you outline a series of questions for which Dr. Fabrikant has asked you to seek answers from the faculty of engineering and computer science.

Although the note doesn't call for any action on the part of this office, I do believe it calls for comment, if not outright instruction.

As was determined last week, you will talk as a facilitator for discussion which we hoped would take place between Fabrikant and his colleagues. You will not talk as an advocate or as an investigator. They are official and will establish procedures, notably the code of conduct in academic.

Thus, I would expect that any request of this nature contained in your note would not be conveyed by you to any unit within the university but instead would be made in writing by Dr. Fabrikant himself."

So effectively this is the note which was shown to me and it was clear to me that they're playing game. This was April 6th and since then, I never met Mr. Haines because it was clear to me that this is useful (sic), that this is ... he was just playing game with me; you know the actors. Regretfully you have theater in many places and that was one of the places.

You may not believe it but in the Court of Appeal, when I was waiting, on the wall there was picture and inscription on that was: "Ne fais pas le theatre avec la justice". Don't make a theater with justice and I was just amazed. Was it prepared to my coming there or it was always there but it was, you know, right on the point.

Judge said that it has always been there, it's amazing. So at that point, that was the end of it but before that, if you recall, Haines testified that at the beginning, there was an attempt of Haines and McKenzie to find face saving solution if you recall.

That was his testimony. I tried to elicit from him what this face saving solution exactly was and this face saving solution was, if you recall, he was very reluctant to reveal what this face saving solution was but effectively this was the following because it was clear that department personnel committee did not adhere to the collective agreement because teaching and supervision of graduate students wasn't there.

It was not the reason to deny promotion. It is just the research which count for promotion to Research Professor so I offered them a face saving solution that they would go back to the department and they would say: all right, you didn't have all the information. Fabrikant has a graduate student who is soon to graduate. Maybe you forget about it.

You know, it was again kind of a theater so you might say: well we didn't know that. Now we are prepared to renew the whole thing and well that was the agreement at that time, but Swamy probably decided that he doesn't want because it was the ... it was Swamy who effectively decided all. It was not Osman. Osman was just a puppet of Swamy.

Whatever Swamy said, he was prepared to do and in exchange, he had pretty good life. He didn't have to do any teaching, he didn't do any research and if you look at evaluation, he was in the department personnel committee so if you ask who was rated outstanding to excellent, of course Osman, it was outstanding to excellent.

So they went to Swamy and Osman and they didn't want to reopen the case. Probably they ... they thought that they could use force in this case and when I was offered to, as they say here: OK write down it yourself (sic) and we'll do the investigation.

At the same time, Haines told me that there is case in University de Montr,al. Someone also claimed that his work was stolen by somebody else and didn't want to include somebody else in his papers and write for investigation. Instead of investigation, the person got fired. Did you get the message?

I got the message so he wanted to convey to me the message that yes, they advise me to write but if I do write, most probably I will be fired. So I decided all right, I was still kind of peaceful person at that time and decided all right, let it be like this.

Maybe somehow somewhere we will come to agreement to certain terms so next step, what we see is that in the winter of 1989-1990, all of a sudden, you will find that department personnel committee decided to recommend my promotion.

Nothing really happened between. I didn't get anymore graduate students, I didn't get that much teaching experience but they decided to recommend my promotion and in their recommendation, it was extremely positive. Look what this time they write about me.

"His performance is regarded to be of high quality. His publications are numerous and published in reputable journals.

His book Application of Potential Theory in Mechanics is regarded highly by recognized experts in the field. The candidate has successful ... has been successful in obtaining research grants. Confidential letters solicited from external referees seem to be in total agreement with one another in recommending candidate's suitability for promotion.

DPC evaluated candidate's teaching performance on the basis of evidence presented and judged to be very good."

And so on and so forth. So now they do have evidence of teaching, everything is fine. They can recommend me for promotion.

Now what happened between 1989-1990? Again one can only guess but as far as I know these people, my plausible explanation is that they decided, you know, stick didn't

work, maybe carrot will. (sic)

So they decided to give me carrot and definitely they expected, OK, so they recommend me for promotion to Research Professor and I will run immediately including say Sankar in my article as co-author which I didn't and if you look at faculty personnel committee, you couldn't imagine how good I am.

While he was already ... OK, he joined Concordia from...

"While he was already an accomplished researcher at that time, the work he has completed at Concordia has earned him an international reputation.

This is confirmed by the letters received from outside referees from which we quote below."

And below goes quotations and quotations were received from the universities, from United States, from Australia, from ... I believe some from Europe too but mainly it was United States, from Harvard, from University of Texas, from Penn State University, from very reputable universities. Now:

"Dr. Fabrikant is a well-known authority in analytical modeling and fracture mechanics. He's one of the most prolific researchers and can be considered to be one of the top ten international researchers in this area. His work is very well recognized and respected by researchers working in this area of the (inaudible) all around the world.

Dr. Fabrikant is a well-established scientist with international reputation. His research record is very strong and goes back over twenty (20) years. The scope of his research is astounding. His solutions are both simple and remarkably accurate.

Even before his immigration to Canada, he already had an outstanding record. Since his arrival to the west, he has progressed immensely. He has successfully done full, independent and innovative research. He's also characterized by successful cooperation with his colleagues."

These people didn't know that this cooperation was fictitious.

"Dr. Fabrikant's scholarly contributions are of considerable practical interest.

In addition to many publications in reputable journals, Dr. Fabrikant has also contributed one chapter to advances in applied mechanics published by Academic Press and written a book entitled Application of Potention Theory in Mechanics.

Again the information in the file indicates that his teaching performance is very good."

Now quotation from external referees:

"In terms of both quantity and quality of his

work, I recommend very strongly that Fabrikant be promoted to Research Professor. He's very well qualified to be promoted to the rank of full professor at our university. I was unhesitant in recommending him for promotion."

And so on and one has written:

"I'm surprised that he doesn't hold the rank the professor, considering his immense research production and wide range of fields in which he works."

Now it is difficult to state without good knowledge, but those two (2) recommendations as you know went to the vice-rector and it was just ignored because according to the procedure, if we go into the collective agreement, when department recommends and faculty recommends, vice-rector is supposed to convene - there is a special university committee for promotions to Professor and this committee consists of all the deans plus vice-rector plus I believe a couple of regular members and they decide whether to recommend promotion or not. Vice-rector didn't do that. She didn't refuse, she didn't promote, she did nothing, she ignored it.

Now my impression that the whole thing was again some kind of a theater, they wanted to kind of test. At least this is my impression from ... from distance.

They gave me this carrot and they wanted to see whether I would run and include for example Sishadri Sankar in my paper. Since I didn't, well they just ignored the whole thing as if nothing happened and this is kind of the most insulting situation.

You cannot imagine anything more insulting than that because one thing is, OK, they judged, they found some reason: you are not promoted, that's fine or they judge you're good, you're promoted but just to ignore it as if you ... you just don't ... you don't exist, this is what Sheinin did and my impression, that it was done intentionally to desequilibrate me.

It was all what they were doing if you look into their actions. It was mainly kind of psychological experiment. OK, we'll do this, then we'll smash him and we'll see what he will do. He's still standing? OK, we'll smash him again and we'll see then what he's doing and all the story which was told here by witnesses here, effectively it is pattern of the same type of behavior.

It is carrot, it is stick, it is carrot, it is stick and each time, they see OK, how do I react. There would be certain moments when I become violent. Well ...

Now please have in mind that this was written by the same four (4) people in February 1990 who in 1991 has (sic) written something totally opposite. Now I want to make it in comparison so that you could see how little regard they have for the so-called common sense.

Let's see. I will jump from one document to another in order to demonstrate to you what kind of people they are when they manage to write what they did.

For example, they write in their so-called reasoned report on my reappointment, November 18th 1991. They

write for example:

"Over the past several years, Dr. Fabrikant has constantly made allegations and harassment to many members of the university community."

Over past several years! Several years mean at least two (2). Now if for the past two years, I harassed number of members of the community, how come just a year before that, they wrote to me that I'm so good that I have to be promoted.

Have in mind that this stuff, they have decided to call professional competence. This is yet another trick. Now since they couldn't say anything about quality of my research or quality of my teaching, then they decided to pretend to be how to say it, mentally retarded should I say, to mix up two terms: professional competence or incompetence and professional conduct or misconduct. They pretended they do not understand the difference and if there is no difference, because here they write a very smart thing so:

"While the professional competence of professor not only includes his/her capacity to teach and to carry out research activity, it also has bearing on his/her ethical and moral conduct, his/her professionalism as academic educator, his/her role model for students to emulate and his/her ability to gain respect from students, colleagues and public."

Well if this is all professional competence, then what is professional conduct but again let's see if there is something in professional conduct which might be so reproachable. So they write:

"Over the past several years, Dr. Fabrikant has constantly made allegations, harassment to many members of the university community. The details of this are outlined as follows."

And here are the details:

"A letter from the then chairman of the department of mechanical engineering to the then vice-rector, academic, both of whom indicated certain questionable and implied individual behavior patterns of Dr. Fabrikant."

And they gave an exhibit and exhibit is the one which I read to you where Sankar said that in questions of reappointment and promotion, it is academic excellence which should count.

It is not who we like or who we don't like and the problem there was effectively that as I told that all I did, I said to a teacher of French courses that she shouldn't smoke. Regretfully for me, she had powerful friends. That's all about it, so there is really not much to say about the whole incident, so the incident would not be even there but the problem was that she had powerful friends and I at that time said what... well she's wrong,

she's wrong. I couldn't say that I was wrong. She was wrong. She shouldn't smoke in the class but the problem was that they wanted me to say I was wrong and there was no way I could do that because I was right. So this is the first thing and it happened in somewhere 1982 or 1983. Now assume for a second that I was totally professionally incompetent in 1983. That's fine. Why did they extend my contracts? Why they recommend me for promotion? Why in 1989 they considered me excellent to outstanding? All this didn't prevent them before. All of a sudden, in 1991, they found out "Ah gosh, you had some problems with somebody. Now we remember that". They didn't remember this all these years and they knew that it was not a secret.

Now let's go to the next example. Correspondence related to Dr. Fabrikant and manager, purchasing services. This is item 2. If you think item 3 is something else, it's again additional correspondence related to said letter in item 2.

So it looks like they made it item 2, item 3 as if here I've harassed someone and here I harassed somebody else. Now in item 2 and in item 3, I harassed the same person: manager of purchasing services.

Now it happened in I believe 1988 and it didn't prevent them since this happened in 1988, my harassment of this poor manager of purchasing services, it didn't prevent them to give me the merit award which was twenty-five (25) top people in the department were eligible and placed me between excellent to outstanding. This did not prevent them to recommend me for promotion.

They didn't prevent it, this is events of 1988, this didn't not prevent them from recommending me into tenure track position. Now in 1991, for some reason, it became intolerable. Now just guess why. Guess why, we will discuss it later.

Next item:

"Many persons inside and outside the university have been subjected to harassment, threats, blackmail and allegations by Dr. Fabrikant. Many of the above persons can testify to this statement."

Not a single name, not a single name. Not only that, but from outside university, if you read the recommendation for promotion, they have at least ten (10) very important people who consider me a top class researcher. So at least ten (10) people from outside community testify to quite opposite, that I'm very very good.

Now who says that I'm bad? You just guessed. There is absolutely not a single name but impression it creates that look how it is made. (sic)
It's very interesting thing.

"Over the past several years, Fabrikant has constantly made allegations to many members of the university community."

And here it goes who exactly. Now the first one is this letter about the teacher who smoked effectively and I was

right there.

Second and third is how I purchased printer. What it has to do with anything and fourth is again, if you think it is something specific, no, not at all. It is again:

"Many persons inside and outside the university have been subjected to harassment, threats, blackmail, allegations. Many of them can testify to that statement."

OK let them get them and testify. No, because there is nobody there and look what it is. It is harassment, threats, blackmail, allegations. You have it all and if this really happened, then how on earth and it happened not yesterday I understand, it happened for ... here you see, over past several years.

Now why this stuff didn't bother them over several years, why it didn't bother them again to give me the merit award, to recommend for promotion. It didn't bother them. It didn't happen yesterday, if it did happen of course, but it didn't bother them.

This is how the report is made and this goes on. I will discuss it in more detail but I want to go in chronological order. I just jumped from this recommendation to this one to show what kind of sharp contradiction is there between them, but to go chronologically, we are in 1990 and they recommended me for promotion and 1990 is the year when Actions Structurantes program is coming to an end and at this time, the position has to be integrated.

During that time, during that time, they negotiated a new collective agreement. If you look at the testimony of Haines, in winter of 1990, he discussed it with vice-rector Sheinin and she told allegedly him (sic) that she's not interested in reappointing me and it is all in the works.

So effectively from winter of 1990, they did prepare their work to have me fired. Now how can this be done if my contract stipulates black on white that if my performance is good and governmental approval is there, the program is approved and my performance is good, I have to be integrated into regular tenure track position and this is black on white in my contract.

How to renege on the contract and they have smart lawyers for that. To renege on the contract, they know very well there is one way.

According to Canadian law, collective agreement supercedes any individual contract. So if collective agreement contradicts something which is in individual contract, individual contract is no longer valid.

So collective agreement was weapon for them to enable them to terminate my employment and they have union which is totally prepared to cooperate. Union is cue. (sic) Now they decided to do a simple thing: to negotiate a new collective agreement and in this new collective agreement they introduced several things which, if signed before I'm integrated into the tenure track position, would in effect totally renege all the university obligations with respect to this contract.

They did the following thing. In one article, they introduced just innocently looking line, that research ...

first of all, they introduced research people into the bargaining unit. So if research people are in the bargaining unit, so all what is there is applicable to them and they introduced here a line which said that:

"Research appointment usually should not exceed five years."

Innocently looking line, but if you look at it more attentively, then the fact that I had contract until 1992 didn't save me because I was over five (5) years on research appointment and if I'm over five years, theoretically speaking, they can terminate my employment. It was done in such a smart way because I was not the only one. There were two (2) more people, if you recall, Rakheja and Ahmed on the same position. So they couldn't introduce in collective agreement something which would for example terminate my employment. Then it would terminate their employment and they didn't want to fire them. So they introduced a phrase which reads like this:

"That these research appointments normally do not exceed five years."

So they can always say: Fabrikant is abnormal. We want to terminate his employment. Rakheja? Well he's over five years but this is fine. We don't have to terminate him. So this was one thing which made me a great concern when I read the project of this new collective agreement and the second is that it ... in another article, that research appointments here should be applying for a new position together with everybody else. This was in article 12.

So you see, two things they did. First it was no longer automatic. Approval could be received but according to collective agreement the position has to be advertised in the newspapers and whoever wants to apply has the right to apply and if everybody has the right to apply, then well I'm one of the applicants.

They're not obliged to choose me. They can choose somebody else. They can always say this guy is better. They can always find a reason why he is better or they can say that this is a lady and we have affirmative action, whatever.

It's ... it's always possible to find a reason so those two things, that no longer than five years which would terminate my employment in terms of research and necessity to advertise the position rather than just to integrate me into the position which I got very very concerned with.

I had no doubts that this was done intentionally because this article has never been applied. I checked it. They just wanted to scare me at that time. This part of article never been used, position was not advertised and next year, in other Actions Structurantes program, it was also not advertised.

So it was done intentionally to put me into kind of panic, to say that whatever was in my contract is being eliminated by the union who is supposed to protect me.

That was the most outrageous part of it.

The union who was supposed to protect me instead was obviously betraying and giving up all the things, all the guarantees which I had in my contract and if you recall Randsepp testified here that I've met with him and I pointed out all this stuff to him because that was a very very nervous time for me because this collective agreement was already voted somewhere in October and was ready for signing and I was still not integrated and as lawyers pointed out to me, that as soon as this collective agreement is signed, the university has all the legal rights not to respect my contract anymore and that was an extremely difficult time for me.

It was clear to me that in legal terms, they completely overpowered me. When I tried to go to lawyers, you see here a letter from Grey. It was clear to me too that first of all, you know when I heard Grey is going to handle my case, I was you know high in the sky. Everyone knows this great lawyer, fighter for human rights, for freedoms, for justice.

BY THE COURT:

Is all this in the record? Is there an exhibit?

BY THE ACCUSED:

Yes, yes.

BY THE COURT:

What number is the exhibit?

BY THE ACCUSED:

Well it is the same number, it's one of the letters here.

BY THE COURT:

In which exhibit?

BY THE ACCUSED:

Well it's the same exhibit, it's just one of the letters here. You got very concerned. God forbid I damage reputation of Grey hey?

BY THE COURT:

Not at all. I'm just asking ...

BY THE ACCUSED:

You were not concerned when I was telling everything else.

BY THE COURT:

I'm just asking you what ...

BY THE ACCUSED:

All of a sudden, you got concerned.

BY THE COURT:

... what exhibit number it is? Are you able to tell me what exhibit number it is?

BY THE ACCUSED:

Sure, it is the same. I'm ... I'm talking all the time about the same exhibit, that is not different. It is exhibit which was brought by ... no this is not the beginning. It was brought by Pat Freed.

BY THE COURT:

OK.

BY THE ACCUSED:

Why should be ... you be so concerned with that?

BY THE COURT:

If you're talking about an exhibit that was one of the ones produced by Mrs. Freed, then ...

BY THE ACCUSED:

Yes.

BY THE COURT:
Just a second. D-7.

BY THE ACCUSED:
Yes.

BY THE COURT:
Is that correct? D-7?

BY THE ACCUSED:
I don't know. There is nothing here. Maybe I just lost the ... the previous page or what, I don't know. This is the beginning of ... it was another... is it important, the number?

BY THE COURT:
All I wish to ... all I wish to be sure of is that what you're talking about is filed.

BY THE ACCUSED:
Well, but what is interested (sic), that you became interested about it only at the moment I mentioned name of Grey. Yes, yes, this is the one, yes, yes, yes.

BY THE COURT:
Fine.

BY THE ACCUSED:
Yes, it is D-7. Is it just a coincidence that you have become concerned with that when I mentioned name of Grey?

BY THE COURT:
I'm not here to answer your questions. Go ahead with your argument.

BY THE ACCUSED:
All right. So what is considered that this is just a coincidence.

BY THE COURT:
If... if the letter is in the file, you may refer to it, yes.

BY THE ACCUSED:
Then this is just a coincidence and as soon as, as you see from the file, there is a very interesting coincidence there. The day Grey has filed his mise en demeure I mean the first letter informing vice-rector Sheinin that he's representing me and he wishes the university to give me my position, very interesting, just by sheer coincidence, the same day, I have received from vice-rector Sheinin registered mail letter saying that I'm harassing her, that I'm issuing well threats and so on and so forth.

I want to read you this letter because ...

BY THE COURT:
Well I think we'll save that letter for tomorrow morning.

BY THE ACCUSED:
All right.

BY THE COURT:
So we'll adjourn, ladies and gentlemen, until tomorrow morning, nine thirty. (9 h 30).

ADJOURNMENT

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PROVINCE OF QUEBEC

DISTRICT OF MONTREAL

STAGE: TRIAL

CASE NO. 01-017372-928

PRESIDING: THE HONORABLE JUDGE FRASER MARTIN, J.S.C.

NAMES OF PARTIES: HER MAJESTY THE QUEEN
Complainant

-vs-

VALERY FABRIKANT
Accused

NAMES OF ATTORNEYS: MAITRE JEAN LECOIRS
ATTORNEY FOR THE CROWN

MR. VALERY FABRIKANT - ACCUSED
REPRESENTING HIMSELF

MAITRE GABRIEL BOUTROS
AMICUS CURIAE

DATE OF THE HEARING: AUGUST 5th 1993

OFFICIAL COURT REPORTER: MS. MAUREEN ROWE

CLERK OF THE COURT: MS. CECILE PREVOST

FICHER NO.: 2529

THE COURT TAKES THE BENCH

THE MEMBERS OF THE JURY ARE PRESENT

BY MR. VALERY FABRIKANT - ACCUSED
REPRESENTING HIMSELF

Ladies and gentlemen, since with this judge, we never know until what time he will be in agreement with plead (sic) because any moment he might say that I'm no longer about to plead, I want to bring to your attention one letter received from vice-rector, August 27th 1992 which says:

"Dear Dr. Fabrikant,
This is to note the receipt of your letters of August 4th and August 17th 1992. You should have received an acknowledgment of your August 4th 1992.
Yours sincerely,
Rose Sheinin"

And a number of titles. Now why is this letter that important? Of the date, August 27th 1992, she writes to me as if nothing ever happened. Three (3) days earlier, she acknowledges reception of my letter. It sounds nice, isn't it?

And the letter was mailed September 1st. It looks like it was four (4) days she was thinking to send or not to send the letter.

Now what is the meaning of that letter? Why was it necessary to send this letter to me dated August 27th on September 1st? Because since I'm not changing and she's not here to testify, because of lawlessness of this trial, but it would be definitely nice question to ask her, what she meant by that letter and I can only again speculate as to the meaning of that letter but if you join to this letter the letter of dismissal which is dated September 9th, though all the newspapers reported that I was fired August 24th on the day of the shooting, you might start wondering why did university pay my salary until September 9th and why is it that nice letter of August 27th (sic) and explanation is very simple.

University knew very well what they did and how they provoked me and the only salvage (sic) for them at that time, as they saw it, that I declare myself insane and that were (sic) clear signals to me that we are prepared to pay you salary which at that time was sixty-five thousand dollars (65,000 \$). It was still fifteen thousand (15,000 \$) less than average salary but it was a good salary. Average salary of Associate Professor at that time was eighty thousand (80,000 \$) at engineering and they thought that I will bite this carrot, that I declare myself insane and they would just continue to pay

my salary because in collective agreement, there is a special article: if somebody is sick, he cannot be fired and insanity is illness and the same documents are available in Q files. There is also direct indications, kind of invitation there to ... what is stated there effectively is that if Fabrikant is declared insane, then we have ... we have no right to fire him. We have to pay him his salary for as long as he is disabled because insanity is considered long-term disability.

In addition to that, it was by that time approximately that crown offered me insanity without even going to trial. Of course, Mr. Lecours would never admit that. He will say this never happened. Of course not!

I give it to you as an indication for you to realize that it is not that Concordia University is that powerful, that all this fraud after trial took place, I mean tampering with evidence by police, creating all this false picture and false evidence. It was much more than Concordia University.

In order for you to appreciate why was it that important, it is similar to the situation which took place, you know more than twenty (20) years ago at Mt. Cashel. The orphanage where children were abused, sexually abused, physically abused by who? By priests. People who were supposed to be example for everybody else and authorities there did all they could to suppress the evidence, to shut up those who complained towards any investigation possible. Nothing has been done until twenty years later and God knows why twenty years later, it did happen because I wouldn't be surprised if it would come suppressed forever and of course, you may ask: what kind of powerful institution is Mt. Cashel Orphanage. It's not a powerful institution and neither is Concordia. I'm not that naive to think that Concordia is almighty, is all powerful. Not at all.

The problem is that there, Mt. Cashel Orphanage was kind of imbodiment of church and church is good. You couldn't say church is bad and it take a lot of courage that finally something was said and church apologized.

Well I don't know if I will be alive when finally truth about Concordia will come out and someone somewhere will apologize but I'm sure this will happen one day. There is no doubt about it and what is going on now is the same situation.

We are accustomed to think that University is kind of place of higher learning where people are striving to better understand the world. We cannot imagine that it is just a bunch of crooks. We don't give a damn about you, you don't give a damn about anything. They only care about lining their pockets.

This picture absolutely doesn't fit our imagination because if this is the picture, then what is government doing, funding all these institutions. This is very far reaching implication if you start thinking like this and this is the main reason why they needed me insane so badly because if I'm insane, then everything is fine. There is no questions to ask, there is no need for any explanation.

Insane person is insane. Insane person can do anything, any action because it doesn't need any explanation. This is what insane people do and university is all right. Not

only university is all right but then all the fact which would be presented to you, they will look kind of natural.

OK, he said something "If you want to get what you need, you have to go and shoot a lot of people", this is what insane person could say. If they tell you I will do it American way and gesture like this, this fits insane person.

If someone calls someone and tells "I know where your children are and I know how they are dressed", it's perfectly fits (sic) the picture. So everything is fine, person was insane. It happen sometimes. It happens that even person might be a bright scientist but he might be insane and insane person does what insane person does and I would not be surprised if someone would even tell you such thing: Fabrikant, he's insane but he's so smart that he knows how to pretend normal. I wouldn't be surprised to such (sic) explanation too.

Well this is ridiculous. If person is insane, this is the definition of insanity: no matter how smart he is, his insanity will be out. There is no way and if person is so smart that he knows how to hide his insanity, then most probably, he's not insane after all.

Well I told you this just in case because as I told you, it's important thought and with this judge, you never know when your pleading will be stopped as soon as you say ... if I thought that my defence would be stopped that abruptly, I also would have made some precautions. I didn't. I really have no idea how on earth, with clear conscience he would be able to decide this matter without having me testifying because the major thing is my testimony and I'm not allowed to testify.

I believe you are aware of that. I'm not allowed to tell you what happened on August 24th and whatever goes with the testimony. Now part of my defence was, it was not totally my defence, but part of my defence was that I was provoked and all those events which I'm describing to you were aggravation which, even Judge had to admit, accumulates with time and might at a certain point, when certain event take place (sic) on August 24th, depending on what Hogben did when he wasn't in my office, could have sparked what ... what transpired after that and in this case, I would be guilty, not murder first-degree, not murder of second-degree but just involuntary manslaughter.

The most outrageous part of this trial is that I'm not allowed to tell you this and I would not be surprised that after I finish my pleading, the judge would tell you "disregard all this, because no matter how he was abused at the university, since we do not know what happened on August 24th, this doesn't constitute provocation."

Well I leave it up to you to decide if it is fair, how to say it, punishment should I say that one should have risk to be convicted of say first-degree murder just because he called a judge a little old crook.

There is another offence which is called contempt of court and for this, another punishment is foreseen in the criminal code and this punishment is not that light at all because last time, he convicted me to six (6) months in jail. The fact that I say I couldn't care less what he does doesn't make it less punishment.

OK, I can tell you I couldn't care less if I'm convicted for life either but again, this doesn't mean that I should be convicted of something which I didn't do. Those are two different stories. My personal attitude towards punishment has nothing to do with justice and what judge confuses here willingly because what he did, as they say, I've read an expression, shocks judicial conscience.

Well nobody, not just in Canada but to the best of my understanding, in the whole planet of this, nobody ever did such a thing as to cut off defence, just because ... it's ... it's unthinkable. This is fundamental right of every person to be able to present all the facts and if this person misbehaves or even commits a criminal offence, still it has nothing to do with charges on him.

For example, if here I am and all of a sudden, I kill somebody in the courtroom here, this doesn't mean it will stop my trial or it will in any way affect the charges which are now over me. If I kill somebody while in courtroom, I will be charged with another murder. There will be another trial and this other trial will have to be ruled in exactly the same way.

If I slap somebody, assault somebody here in the courtroom, again this doesn't mean that it should affect my trial here. If I assault somebody, this is another crime. I should be charged with an assault and there should be another trial for assault. This is what justice is all about.

Now to mix up those two things is the same unconscionable (sic) if you know, for example, me as a professor, suppose student tells me "You're a jerk", "Ha Ha, you tell me jerk? Here, it's fail for you". It's the same thing.

I cannot possibly do that. He told me I'm jerk, I can complain about him to appropriate body but if he did his exam perfectly, he has to get A+. Those two things cannot be mixed for every decent, honest person. They just cannot be mixed up and in this situation, you are invited to make a judgment, not just on incomplete data but with data, the most important data missing and in this case, I do believe that you should just refuse to make that decision because there is no way that people with conscience can make decisions on incomplete data and all what requires (sic) for that, if just one of you have the courage to disagree with everybody else, that would be sufficient to declare a mistrial and this is I believe the only honest way for the jury to react to the situation, because if it is a mistrial, I tried to make a motion for mistrial in front of the judge because his decision is totally illegal. He just refuse to hear it.

I would understood (sic) OK, I want to make a motion. Here is your motion, I reject it. Fine, but he's so lawless that he refuses even to hear the motion and this is ... this is complete lawlessness. It's never heard of lawlessness.

So I believe that in this case, the only honest reaction from the jury is to declare a mistrial, to agree to disagree because you just do not have the facts. The most important facts are missing. They're not there and without having those facts, you cannot possibly make appropriate decisions and I repeat once again, it doesn't require eleven (11) of you. Just if one of you feels that

something very wrong is being done, this is the right way to proceed.

I wish to assure you that I personally would not gain anything of such decision because you cannot imagine how tired I am. I'm here since March every day and I'm almost exhausted and of course, it would be physically better for me to go somewhere in jail, where I will have swimming pool, where I have access to a computer, where I will have, you know, all the normal facilities.

I have contract to write a third scientific book and if I have a computer, I would be able to do that and to the honor of my publisher, I must tell you that they still want to see my third book published.

So personally I would win, I mean I will be in better condition if you convict me, whatever the conviction is and I will go on with my life, but from the point of view of matter of principle and elementary justice, what I invite you to do is to demonstrate that ordinary people of this country cannot possibly support that kind of outrageous lawlessness, namely just to cut off the defence, not to allow accused to testify.

Judge has ... gave his reasoning for cutting of my defence, that he just cannot continue like this because it is so disorderly that he cannot continue. I would like to submit that it has never been disorderly in the first place. When I told him that he was a little old crook, it was my turn to speak. I didn't interrupt him and it was in quite orderly manner done, (sic) though of course, he doesn't like what I said but this is different thing, but the trial was proceeding quite orderly.

I didn't interrupt judge, I didn't do anything which would make anyone think or conclude the trial couldn't proceed and more than that, if he felt that I'm that kind of person who couldn't be allowed to speak, then he shouldn't allow me this pleading either. He did.

Now if he allowed me to speak in pleading, what would be the problem to allow me to testify. It is the same thing, it's just ... I'm just standing there and saying things which was necessary to say. He preferred not to do it. This is lawlessness. This should not be allowed. This should not be condoned.

Now my plan of presentation still is I want to present you the documents which were submitted. I know that at the end of it, the judge will tell you disregard all this because no matter how he was insulted, it is not a defence.

Well one thing you probably are aware, that whatever judge gives you instruction, you are not really obliged to follow those instructions. You are ...

BY THE HONORABLE JUDGE FRASER MARTIN, J.S.C.:

I'm sorry, I'll interrupt at this point and tell you that on questions of law, you are obliged to follow my instructions and Mr. Fabrikant should not upset that and is out of place in saying that.

Would you stop telling the jury that they're not required to follow the judge's instructions and ...

BY THE ACCUSED:

Well let me ...

BY THE COURT:

... please also stop prosecuting me and get back to what you're supposed to be doing.

BY THE ACCUSED:

I'm not prosecuting you. If it looks this, this is not my fault.

Now what I was telling there is that they will not be punished in any way if they do not follow your instructions and this is ...

BY THE COURT:

You are not permitted to ask the jury to disregard the judge's instructions and you will stop doing that.

BY THE ACCUSED:

Well I didn't see any place where it says that I'm permitted or not permitted to tell the jury to disregard judge's instructions.

BY THE COURT:

And ... and if you would look at the last pages of the case of R. vs Morgantaler, you will find the words of Chief Justice Dixon where he pointed out very clearly, when a similar plea was made by a lawyer in Ontario, the words were: Mr. So and so should not have done that.

BY THE ACCUSED:

Well this ...

BY THE COURT:

There you are, there's your authority.

BY THE ACCUSED:

Well this is exactly the authority I would like to cite it because what you are citing is just part of the authority. There's the ... the whole story is not like this. The whole story was that Morgantaler was ...

BY THE COURT:

Mr. Fabrikant, you will not place in front of the jury any argument to the effect that they are not required to follow the judge's instructions.

If you insist in doing that, you run the risk of being stopped.

BY THE ACCUSED:

Well let me finish with this jurisprudence which you mentioned.

BY THE COURT:

I'm not going to argue the point with you.

BY THE ACCUSED:

Well you mentioned the jurisprudence. I believe I'm entitled to explain the whole story about jurisprudence.

There is nothing wrong. Would you please give credit to intelligence of the jury that if I say something which is wrong, you just tell them please disregard it. How about that!

BY THE COURT:

That is ... that is what I propose to do.

BY THE ACCUSED:

So ...

BY THE COURT:

And that is what I propose to do with a lot of what you've said so far.

BY THE ACCUSED:

So you ...

BY THE COURT:

But I do not ... I'm not obliged to sit here and listen to you incite the jury to disregard the judge's instructions. That is not the law of this country and that's not the way it's going to be and if you insist ...

BY THE ACCUSED:

So you will

BY THE COURT:

If you insist, then you run the risk of having this plea ended. Now would you move on to something else and do not do that.

BY THE ACCUSED:

This is exactly what I told you. So as soon as judge doesn't like what I'm saying, then he immediately goes that you will be stopped. This is lawlessness.

BY THE COURT:

I said move on to something else. You may not incite the jury to disregard the judge's instructions.

BY THE ACCUSED:

I'm not inciting anything. Jury has their own minds and they are as smart as you, as I, as everybody else and they are entitled to know full case of Morgantaler because that was exactly the case where jury completely disregarded judge's remarks and returned verdict of not guilty, though judge directed them to return verdict guilty (sic) and jury should know that this happened and none of jury was arrested and none of jury was accused of anything because they were in their right to do so.

BY THE COURT:

You may not directly or indirectly incite the jury not to follow instructions. This is the last time of asking.

Move on to something else.

BY THE ACCUSED:

All what was there was that Chief Justice said that lawyer should not have said that, period but it ... even lawyer wasn't cited for anything. Even lawyer as such was not disciplined per se.

BY THE COURT:

Do you propose to stop talking about this and move on to something else.

BY THE ACCUSED:

Well ...

BY THE COURT:

Or do you not?

BY THE ACCUSED:

... if you're informing the jury about something, jury should know the whole story, not part of it.

BY THE COURT:

That ... that was perfectly clear, what was intended in that case. Now move on to something else.

BY THE ACCUSED:

Now I finished yesterday with the letter of Grey who I retained by that time because I saw, as I mentioned to you, that there was some legal, should I call it subversion made and with the help of the union by administration and this subversion effectively was made in such a way that my contract, the main provisions of my contract could have been legally denied if they delay my integration into the position and collective agreement takes force, is signed and put into force.

Two things were there. One was that research appointment cannot last more than five (5) years or usually does not exceed five years and since I was more than five years, they could terminate my contract and second thing was there, that from then on, people on research appointment are not automatically integrated into the tenure

track position as it was stipulated in my contract but have to apply together with everybody else from the outside and if position is advertized and this person goes like everybody else from the outside, administration has always the possibility to say "this guy is better and we're talking him".

Though the whole thing was in total contradiction with the whole idea of Actions Structurantes because I want to explain you what Actions Structurantes program was about. It was governmental program designed to give funding to the university, to prepare people who would be specialists in certain particular fields.

One of the field of interest was transportation and the money were given to prepare specialists in transportation and five (5) years was given for that and if the research center which is created is successful in creating people who are qualified in transportation, then government was prepared to continue funding, so effectively the whole idea was: there are not enough specialists in this field and this is why government was prepared to do this funding.

Now it does make sense if person has been there for five years, if person has produced good work and there is not enough specialists in transportation, then definitely this person who already worked there for five years should take the place and this is how it was intended at the ministry level and this is how it was intended in our contract and all of a sudden, all this is broken and it was broken even on the ministry level.

Somehow Concordia has managed to convince university ... sorry, Concordia has managed to convince the ministry that ministry would no longer demand that either, so that was the situation in which every person could panic because it was clear to me that all this aimed at me and I had no doubt as to why, because I before that make threats of exposing the whole thing and despite what I was saying that I ... I'm peaceful person, I don't want to do anything, these people were paranoid.

They definitely wanted to get rid of me by every possible mean and what is regretful that the lawyers who are supposed to help in fact, God knows what and how are the means to convince those lawyers to betray interest of their clients, but this is what I encountered in 1990. First of all, when I have discovered that Julius Grey, the prominent lawyer, fighter for freedom, you know how he projects himself on television, that he's fighting always for hot causes and he's so great.

I was just, you know, on seventh heaven when he said "OK, yes, I will represent you against Concordia" and he gave me fantastic deal: three thousand dollars (3,000 \$) no matter how much time this will take. It would not exceed three thousand dollars. Fantastic! Such a remarkable lawyer is prepared to do the job. There was something there which you know looked too good to be true.

First of all, each time I was there, secretary would come and put on his desk a paper from Concordia, just to convince me that he's fighting with Concordia all the time, so I can trust him.

Then as usually it goes, lawyer promises one thing. Then when you sign contract with that lawyer, it comes out that what was promised for some reason is not being done

because at the very beginning, we discussed with him that something urgent needs to be done.

He himself agreed that as soon as this collective agreement goes into effect, there is little what could be done (sic) legally so something had to be done urgently. Now he writes this letter and he tells me that the next day, if he doesn't get response, he will file the legal action.

The same day, I'm getting the letter from vice-rector Sheinin. It is exactly the same date as Grey's letter goes to Sheinin. Exactly the same day, I get the letter from Sheinin.

Now this is what is written to her:

"We represent Mr. Valery Fabrikant who has already sent you a mise-en-demeure. It is essential that his request be granted before the new collective agreement takes effect."

So he underlines it here and he understood it.

"We therefore wish for favorable answer before three p.m. (15 h 00) today."

Fantastic!

"Please take notice that legal action will follow at once, at once, unless this favorable reply is received and the university will be liable for damages as if Professor Fabrikant (inaud.) of ten (10) years without prejudice to his other remedies."

Fantastic reply, you cannot request more than that. What happened next was less than fantastic. Letter was sent. Time is passing, he is doing nothing.

I'm asking him how come. You wrote yourself that it is urgent thing, that it needs to be done before collective agreement is served but by that time, collective agreement was already voted and approved. So after agreement is voted and approved, it can be signed any moment and after it is signed, period, nothing can be done and he started telling me different story.

I see ... after, right after I signed the contract, you know, I see completely different lawyer. Before that he was all, you know, smiles, all ... he's at my service.

BY THE COURT:

You're testifying. You're not even arguing and you may not do that.

BY THE ACCUSED:

Well I need ... I agree with you.

BY THE COURT:

Good, then stop it.

BY THE ACCUSED:

But this ...

BY THE COURT:

It's very simple, it's very simple, if you agree with me, stop testifying and argue on the facts of the case as they are in the record and as they've been put before the jury.

BY THE ACCUSED:

All right, but this is just underlining of how lawless you are.

BY THE COURT:

I don't care what it is. You know what the parameters are and you've been over them for a long time now.

BY THE ACCUSED:

Well I know what parameters are but you should be ashamed putting in that parameters because I cannot just show to the jury: here's the letter of Grey without giving them at least some kind of explanation as to what is behind that letter. There ... this is total lawlessness. This is exactly what I'm saying, that you put me in a position that OK, this letter is in evidence.

BY THE COURT:

As matters stand now, it's totally irrelevant.

BY THE ACCUSED:

Ha ha, this is for the jury to decide whether it is relevant or not relevant, no matter what you say because after all, we are ...

BY THE COURT:

In any event, you will cease and desist from testifying. Now go on with your argument, staying to the evidence as it's been presented.

BY THE ACCUSED:

Yes, anyways since I'm not allowed to go into detail, I believe at least I could say that I had no choice but to fire him because it was clear to me he was working for Concordia, not for me.

Now the letter which came from Sheinin was of the following content. Effectively it ... the text was:

"This letter comes after a meeting with John Relton, code administrator of Concordia University. I discovered with him the options available to me as vice-rector, academic, to deal with your behavior with respect to me and the members of my immediate staff. This behavior began last January and has continued on and off throughout these many months. I therefore believe at this point that it is necessary to establish a working relationship so that we both are completely clear as to what is expected and what is acceptable. I consider that your many and continued telephone calls to the various members of my office border on harassment to them and me. Specifically the frequency of these telephone calls, the tone which you use, your warnings that you intend to taperecord the conversations, etc. are totally unacceptable. The veiled threats conveyed through my staff and through Mr. Brendon Haines must stop immediately. I must emphasize that I consider such behavior unacceptable and indicate that it will no longer be tolerated."

Now here I refer you to the evidence which was produced here with respect to what was written. First I called as many secretaries as I could. None of them confirmed that

any veiled threats were ever made. Mr. Haines also denied that he conveyed to Sheinin any veiled or unveiled threats, anything.

As far as the telephone calls is concerned, all the telephone calls have been recorded by the secretaries. Yesterday I showed you those telephone calls. The complete list of the telephone calls is in one of the exhibit. I don't want to spend time. You will see it. All the telephone calls are recorded. They kept it on file. Why? God knows. They were hoping probably that in one of those phone calls, there will be some kind ... at least something which they can interpret as threat or harassment or whatever.

As you know yesterday, judge did not allow me to deposit those, the text of the telephone calls, but if you read them, you would see that I was absolutely polite and correct and never it was anything, even resembling that tone or anything.

As far as my warning that I intend to tape-record, that was only one thing because it was clear to me that they are stalking me. So I just needed for my own protection to make sure this phone call was made and this is what was said, not anything else and probably this is what saved me from much worse aggravation which could have happened because since I knew that I'm recording that, then it is difficult to go to court for example and commit a perjury, to say that Fabrikant has threatened me, Fabrikant did this, Fabrikant did that.

That was the only reason for all this stuff and in this case, I didn't even try to do it, that you know, subreptitiously I ... I advised in the open that I wish to record it and the reason for recording is just that I want to be sure that it is not distorted, what I said. There was nothing else. There is nothing improper in it because it was clear to me that I'm dealing with extremely hostile people. This is the only way to do it.

Now so as you see in this letter, the whole context of this letter, she knew it was false, she knew it was not true. Nevertheless she couldn't care less for the truth. She just wrote it.

Now the purpose of this letter was very simple. The game which they wanted me to get into would have been Grey is trying to pretending (sic) to defend me in court. They are producing in court the documents stating that I'm intolerable person and you may be sure that there would be a judge in court, Mr. Martin is not alone and not an exception at all, who would say "Yes, you know, this person couldn't be tolerated" and Grey would have told me: "You know, I did my best, I did all I could but you see, you did it yourself. You harassed people there and effectively you are at fault". That was the spectacle they wanted to play with me. I recognized the spectacle when I saw it.

Now she also mentions here that this behavior began last January. Now I want to show you what happened last January in terms of behavior, whether there was any reason for her to say that there was some kind of misbehavior of mine in January.

What happened at that time, I have received in December 1989 a letter of reappointment which said the following:

"15th December 1989

Dear Dr. Fabrikant,

This letter is to inform you that upon recommendation of your dean, I hereby offer you an appointment as Research Associate Professor of mechanical engineering for the period of 1st of June 1990 to the 31st of May 1992 under Actions Structurantes program.

Conditions of employment are the same as those contained in vice-rector's letter to you dated 18th of May 1988.

Would you kindly inform whether you accept this offer of appointment."

Now on the face of it, it looks quite all right, except that there is not a word here about integration. If you notice here, the offer of appointment was from period 1st June 1990 to 31st May 1992 and it was under the disguise that well, we just want to make sure that if government approve it too late, then you will still have your job and you will still have your paycheque and it sounds all right and I understood it perfectly well. This is fine with me.

So the only thing, since there was a confrontation before in the department, I just wanted to make sure that there is nothing underneath it. I just had guts feeling that there is something and the events after that showed that yes, indeed there was something underneath that because this offer of appointment, though it looks like it is for two years, until 1992, they had at that time in planning to sign a new collective agreement which would make this contract absolutely invalid.

At that time, I didn't know that but I suspect a foul play and second thing, what they did, that for a new position, I would have to apply equally with everybody else so that was the idea behind all this.

Therefore, since I felt that something is not kosher there, I wrote to her a letter just asking for clarification and this is the letter.

"Dear Dr. Sheinin,

Thank you for your letter of 15th December. I should be grateful if you kindly clarify several points related to the offer.

First, according to vice-rector's letter dated 18th May, my position is to be converted provided that certain conditions are met to a regular one from June 1st 1990.

I understand that the university doesn't know yet whether those conditions are met but I would like to get a description of the procedure of conversion and the relevant dates."

There is nothing insulting there, there is nothing harassing. I just asked for clarification as to when she plans the position to be converted. Also:

"Your letter states that the conditions of employment are the same. As previously I had only half of regular teaching load. It's my understanding that this no longer be the case. Is it

so?

I should also be grateful for clarifying of my eligibility for sabbatical leave."

Is there anything insulting, harassing there? I just asked for clarification.

December 21st. Month passes, there is no answer. That was the time when I called Brendon Haines because at that time, I didn't know that he was that kind of person he was, (sic) that he would distribute that kind of false information about me and I asked him if he could somehow facilitate the whole thing, because I didn't get the answer and I'm entitled to know when and how the position will be integrated and as I told him, that it looks like situation is out of hand. You remember that stuff? He immediately said "Yes, I will tell this to the rector if it is a dangerous message."

This is, you know, such an obvious entrapment. You couldn't make it more obvious. It was ordinary conversation and he never mentioned any killing or murdering of the rector at that time, though he prepared documents as if he did.

Now on January 21st, I had written again very polite letter:

"I would like to bring to your attention that my letter of 21st December in which I asked for some clarification has not yet been answered. Since the deadline for my response to the contract offer approaches and I'm not sure whether the answer can be received before the deadline, I should be grateful if you kindly extend the deadline for a month or for ten (10) days after the answer to my letter of 21st December is received, whichever date comes last.
Thank you in advance."

Is this any kind of harassment? I wrote to her a letter. More than month has passed, she doesn't respond. I respectfully remind you, would you please respond. Now you will see ... you will see the letter of 21st January where there is more than one ... one page. I would not spend your time reading this letter but she managed to write the whole page without answering a single of my questions. None of the questions was answered. This is exactly the same what witnesses here usually do. You ask them question, the answer is something else. This is what is done here.

Now in response, I've written a letter which effectively was cause of the whole concern because it came back to me as if, in this letter, I threatened the vice-rector and the phrase which was ... well here, I just again ask in more detail so would you please answer yes or no to this, would you please answer yes or no to this, would you please answer yes or no to this and all I said at the end was the following:

"Should you disagree with any of the statements above, feel free to contact me directly or through your assistant.
I should be happy to discuss any matter of com-

mon concern. I'm sure that goodwill and constructive negotiations can always produce a mutually acceptable solution, while a disrespectful or confrontational approach may only lead to destruction."

My gosh, I dared to say that. Well never in my mind, I thought that the word destruction would be interpreted that I threatened anyone, at least to the best of my knowledge of English language, this did not constitute any threat or anything.

I will read this phrase to you once again:

"I'm sure that goodwill and constructive negotiations can always produce a mutually acceptable solution."

What's wrong with that? I just invited her to ... to meet with me, to explain the whole thing. I do not want anything and after I say:

"While disrespectful or confrontational approach can only lead to destruction."

Well this phrase came back to me in ... in those rumors, "Oh I heard you threatened vice-rector?" What the hell, how come I threatened vice-rector and they quoted to me this phrase. Well when I looked at it, I don't know, I might be ill-tempered but it is definitely not threatening in any way because when I was writing this letter, I was angry. There is no doubt about it because I asked certain questions and to me, it was disrespectful when vice-rector responded ... doesn't respond to the question.

So that's ... that's as much as what happened in January. Now this also would explain to you this particular letter and all those rumors which I've heard because I ... at that time, I had no idea of threatening rector, of threatening to kill a lot of people. All what was in my mind, that I have allegedly threatened vice-rector in this letter and I ... I did what I could to alleviate this impression.

If you see here, later on, on ... when after she just ignored the recommendation for my promotion, I have decided to make yet another peaceful gesture, you know, to ... to signal: let's discuss things. We are kind of in a civilized society. If you have some problems, if you have some misunderstandings or misconception about me, let us get together, let us discuss it.

Now this is the letter of June 26th:

"Please find enclosed some recently received material which was not yet available at the time of submission of my promotional file. It includes the latest course evaluation which in addition to previous ones give my relative standing as compared to other professors at mechanical engineering department."

Which effectively is ... this is the course evaluation which was shown to you where students rated me on average

in the top ten percent (10 %) and as far as being recommended to other and overall rating, I was in the top point five percent (.5 %), top point five percent. This is what I submitted to her.

"A copy of professor Novel - he's one of the world leading specialists in the field of review of my book. Also enclosed is notification of acceptance of my second book for publication in England.

I hope the additional material will help you to reach the right decision. I take this opportunity to apologize for the tone of my previous letter."

I mean this letter from January because I've been informed that she took exception to this letter and I decided: all right, if she feels that way, I'm prepared to apologize for the tone of the letter.

"I should be grateful for an appointment to meet with you later on. I shall try to explain why the previous letter was written that way and I hope that this explanation will help you to accept my apology.

Thank you in advance."

Now you cannot be more considerate than that so I ... first of all, I gave way out as if for example, she might say that well, this is not enough material so I brought to her my latest course evaluation which was top. I brought a letter informing that publisher in England has agreed to publish my second book. I brought to her opinion of professor who is top specialist on my first book and he wrote quite an extensive review. If you see, it's three (3) pages and just the first words - I'm not going to go into detail. The phrases which are general, he says:

"This is a very remarkable book, elegant and useful, very illuminating. Remarkably accurate formula. Invaluable to workers in the field. Interesting challenges posed. The work has been like a breath of fresh air and so on."

Even person who is not specialist in the field would understand that some remarkable results have been achieved and I thought that if she's sincere, then there would be nothing wrong if she make an appointment with me. We could meet and discuss things in ... in a civilized man- </pre></body></html>

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I didn't get any response until July 5th and here, she just ignored whatever I said in the letter of ... she doesn't even bother to acknowledge reception of this letter, as if it never happened.

What she writes here is:

"It is my understanding of the terms and conditions of approval of any project under the Actions Structurantes program that after initial period of governmental funding, the university is committed, subject to favorable evaluation of the project by the government to integrate it and identified number of professorial position into university, complement of full-time faculty position.

When that happens, the incumbent holding such position will be considered for entering into probationary position under the terms of the collective agreement."

Now here this phrase is, if you look it, it's very dangerous phrase. First of all, when that happens, it means governmental approval. The letter is dated July 5th. She was just lying here. Governmental approval was received June 7th and she perfectly knew about it and I knew that she knew about it.

So she writes "when that happens". It already did happen a month ago. What she writes here again:

"The incumbent holding such position will be considered for entering."

Not integrated, considered for entering into probationary position under the terms of collective agreement. Now here what she meant was very pure and simple because by that time, I knew about new collective agreement and under the terms of collective agreement, I would have to apply for the position together with everybody else. So effectively it was total renegeing of the contract as such but it made in a very, you know, smart way. You have to read it very attentively to understand what really is written here and after that, she writes:

"Individuals who hold academic positions at Concordia University, who are not members of bargaining unit, are not eligible for consideration for tenure and promotion under the terms of collective agreement.

It is for this reason that your most recent request could not be honored."

So here she says you are not eligible for promotion because you're not member of bargaining unit, though my contract says black on white that quite opposite, that though I'm not member of bargaining unit, I'm eligible for promotion.

Now this is done again intentionally to just provoke. In your contract is written this and I will write to you something totally opposite. Now react.

You understand that even person with very, you know, high self-control would have difficulty to not react, but I still, I believe, was very polite and well judge by yourself. My next letter, August 22nd:

"In my previous letter of June 26th, I've asked for an appointment with you. I have as yet no answer to this request. Please respond. In your letter of July 5th, you stated that I'm not eligible for promotion while my contract - a copy was forwarded with my previous letter - states explicitly that I'm eligible for promotion. Moreover, Dr. Rakheja who also has an appointment under Actions Structurantes program was promoted last year. Please clarify this discrepancy. I have been informed that governmental approval of the work has been sent to you personally on June 7th 1990. Kindly inform me about the procedure and timing of my integration into the regular tenure track position. Thank you in advance."

Does this look like I'm harassing her? I think that by no stretch of imagination, one could say that there is anything harassing in this letter. I caught her lying though, that she received it on June 7th but I didn't call her a liar, I didn't even bring it up here that in your letter of July 5th, you wrote to me that when this happens ... I didn't say anything about it. It was very very, I believe, polite letter. Besides I indicated to her that Rakheja was promoted. So how come Rakheja could be promoted and I couldn't be promoted? Is there something wrong with that? Now if you think that she responded to this letter in any way, think again. It would not be Sheinin if she responded to the questions I raised. It's again a letter about something else, September 4th:

"This is in response to your letter of August 22nd. In my letter to you of July 5th, I explained very clearly that you are not eligible for consideration for promotion to full professor. By currently constituted procedures enshrined ...

How do you like the word enshrined.

"... in the collective agreement."

It is enshrined there, so I'm not eligible.

"I also indicated that I would attempt to develop a process for considering possible promotion for individuals who are not members of the bargaining unit of Concordia University in general and in particular for those like yourself who are on a limited term appointment as Research Professor."

Now she needs to develop a process. Process is developed, it is in my contract, it's written black on white. This is what is called prostitution of words which bureaucrats very often use.

She explained to me very clearly that I'm not eligible. There is not a word that in my contract, it's stated black on white that I'm eligible. So for normal person, one would expect: yes, I saw your contract, yes it is written there that you are eligible but I have this and this and this consideration that your contract is not valid because of something. That would be the normal response. She just ignored the whole thing, as if I'd never written to her, if I'd never given her the contract which says that.

This, there is no doubt that the whole thing is designed, just by design I believe, that it was consulted by a psychiatrist how to desequilibrate a person. Just write to him something else and that's what it would be.

Well she was not successful then. On September 6th, I still tried to get some sense out of her.

"I'm in receipt of your letter of September 4th. I wish to reiterate once again that my contract states quite clearly that I'm to be treated by administration in the matters concerning evaluations and promotion in exactly the same manner as if I were a regular faculty member which means that exactly the same procedure had to be applied.

If you interpret my contract differently, I should be grateful for giving the reason why."

So you couldn't say it clearer. If you do not respect the contract, at least explain why and so on. Again very polite letter and if you think that she responded anything, think again. This was her response, twenty-four (24) days later. She was not in a hurry.

"Your letter of September 7th ...

It was September 6th, but all right.

"... was received. There is little more that I can add to the letters already written in response to your earlier letters and telephone calls.

Almost all of the issues raised once again have been dealt with."

So this is classical thing, what they do everywhere in bureaucracy. First of all, they write to you something irrelevant. Then when you ask for clarification, they say "Well I already answered to you all this, so there is nothing else I can tell you" and you are closed, that's it, finished. There is nothing you can do.

It is the same thing what has been done when I asked for conditions of my detention which they do not allow me to prepare my defence. First of all, it was Judge Paul who said "Denied" with no explanation. Then it was Judge Biron who said "Judge Paul already dealt with it" and he denied it, that's it. So there is nothing to discuss and

then was Judge Martin who said "Two judges already looked into the matter and they already decided, so there's no point for me look into that". Fantastic, isn't it? This is how bureaucracy works.

So first you have denial with no reasons, then everybody else just refers to this denial and everything is fine. This is what lawlessness is all about.

Now having received all that and having tried several other lawyers who just milked me for money, for example Grey charged me seven hundred and fifty (750 \$) dollars just for this small letter that he sent. Another lawyer, Jacques Marchessault, he just was vicious. He saw how desperate I was.

First of all, he got from me five hundred dollars (500 \$).

BY THE COURT:

Mr. Fabrikant ...

BY THE ACCUSED:

Yes, I'm testifying, yes.

BY THE COURT:

... you're testifying again.

BY THE ACCUSED:

I don't know, how is it possible to tolerate the situation where I cannot convey to the jury what really happened.

BY THE COURT:

Try.

BY THE ACCUSED:

It is ... this doesn't even happen in the Soviet Union, you know. This kind of style did not happen even there, where accused is just barred to testify. Well it never happened in any country.

BY THE COURT:

Have you any further argument to make?

BY THE ACCUSED:

Yes.

BY THE COURT:

Good.

BY THE ACCUSED:

Now, this was the position. You can imagine a sense of total helplessness of there is no legal recourse, there is no way to discuss rationally with vice-rector because all the letters are responded in such a, you know, provocational way that there is really nothing you can do about it and I was in total distress at that time. No doubt.

When I came, you remember Haines testified here that when I came to him and he dictated to me that I'm sorry, that I caused a lot of trouble and I did this and I won't do it again and you remember all this stuff. At least he was honest enough to say as paraphrased by me, but the real truth was that he wrote all this and I was just sitting there and I was so desperate, he told me "I will try to negotiate with Sheinin". Well that was good enough to me if he told me "OK, confirm that you're wrong" Bang, I would say yes, I did, so desperate I was at that time and as soon as he wrote that, you remember he testified that he telephoned to the vice-rector office and said to the secretary there that here is Fabrikant. He's sitting near me and he says a) that he's sorry that he did this and he

did that and he's apologizing and he'll never do it again and he's seeking help and I was sitting there, you know, though as desperate as I was, it was clear some kind of framing and nothing else there, because I never said what ... what he wrote and he clearly wanted to have a witness to that, that ... as if I did say that. So in case I sue them, they would have evidence, you see. This is what Fabrikant said. He really did a lot of wrong things and what was in my mind at that time, what I thought, it was that unfortunate letter of January when I was talking about destruction which was interpreted as a threat. That was the only thing in my mind, that was the only thing which I said, all right, if ... if she interprets this letter that way, I'm prepared to apologize. So why I've written this. This is not my first language, English. I didn't mean to threaten anyone. That what was in my head at that time, because I had no idea about everything else, but what was clear to me, since all those rumors that I threatened vice-rector, that they are trying to portray me as a dangerous person.

That stuff was clear to me, the tactics and when he wrote all this and telephoned there, I felt that it is something, just some kind of a plot and they're just taking me for a fool.

So I went home, I took a tape recorder, I returned back and I continued conversation with him, repeating the whole thing as to what happened really in that period of time, so that I would have at least the record that it didn't happen the way he described it, that I never confessed to any wrongdoing or anything, that it was he who wrote all this stuff and this is the tape which again our unbiased judge didn't allow me to play to you because this tape would show you several things.

First of all, how I was entrapped by Haines. It was ...

BY THE COURT:

Mr. Fabrikant, if evidence wasn't permitted in, you're not permitted to discuss it.

BY THE ACCUSED:

Well let's just make it this way. After I finish, you will tell the jury to disregard it.

BY THE COURT:

No, let's not make it.

BY THE ACCUSED:

That will be faster.

BY THE COURT:

No, let's not make it that way. Please do not discuss evidence that is not in the record.

BY THE ACCUSED:

Well make judgment by yourself. It's important, it is relevant, I'm not allowed to tell you what was in there. This is a fail trial!

Now what happened after that, well you could judge by yourself. Each day was you know like a torture because each day, effectively it was ... I was waiting, OK now the collective agreement will be signed and they will do what they prepared to do and this expectation is psychologically so tortures (sic) that believe me, it would be much better if I was just beaten physically than what happened then and when finally, I got chance to talk to Swamy, again he didn't want to convey to you the content of the conversation, but they felt that I'm in duress,

that I'm crushed and I'm prepared to accept anything. You remember, when he testified here, he mentioned that I even offered him that I'm prepared not even tenure track, (sic) just leave me the term appointment until I can go ... can retire, you know.

I was desperate at that time, well for two (2) reasons. One reason was that since science for me, it is not just way of making money, science is my life and I told Swamy at that time "If you want to fire me, fire me legally. Do not do in that disgraceful way you're doing it now because I consider this as an attempted murder because to me, life without science doesn't make sense. It's ... I'm not making money with science. I never asked you for any increase in my salary. I'm still fifteen thousand (15,000) below average and I don't ask you for a penny."

He denied it here when he was ... that I told him that but he mentioned, though he immediately retracted that, that I did offer him that I'm prepared, you know, on any conditions, just let me be there because I understood I was dealing with people who have no respect for the law, for the rules, for fairness, nothing. People with no moral qualities whatsoever, but I knew that I was doing extremely important work and it was absolutely important for me to be able to continue.

I'm not saying also that the situation, as you know, my previous salary, was seven thousand and twelve thousand then sixteen thousand and during that time, I had to support my family and I was in ... in a lot of debt too. So without work, it would be totally, you know, impossible situation. My wife doesn't have a profession, so she couldn't support family either and I had two (2) small children which were at that time what, five (5) years old and eight (8) years old.

So it was a desperate desperate situation and when Swamy told me, OK, he will recommend tenure track but my tenure will be delayed three (3) years. Oh, I jumped, all right, fine.

So that was fantastic, you know, after all what this bandit did to me, I said all right because it was clear to me that they have all the legal ways to ... to just dispose of me and no lawyer even would help me if I had the right to challenge them, but they did it in such a, you know, way that as soon as collective agreement is signed, they could have fired me, they could advertise the position and hire somebody else and all my previous work would be for nothing.

Before that, I think that what really saved me, that before that, I spoke to Seshadri Sankar and I told him that I have a tape and if they try to fire me, the tape would be played and I think this is the main reason why all these people at the meeting of October. (sic) I'll get the date right.

By the way, if you remember, I told you that I will put the letter of Hogben in the press and as you see, all the wrinkles are still there. They didn't disappear during these five months. (5) If you wish, you can touch it. You remember, Desjardins testified that it was just under press, it was scrambled but all the wrinkles are disappeared. (sic) They didn't disappear, they're right there.

BY THE COURT:

OK, we'll break at this point for fifteen, twenty

minutes.

THE JURY LEAVES THE COURTROOM

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE MEMBERS OF THE JURY ARE PRESENT

BY THE ACCUSED:

I've missed one important point. On October 12th 1990, I wrote a letter to vice-rector Sheinin concerning the new collective agreement so the purpose of this letter was to bring it to her attention my concern because the way, at least my understanding was administration was treating, that it was just, you know, articles in collective agreement which were not against me in any way, they were not pointed at me, they had nothing to do with me and so on so I wanted to ask her that those articles, whether they are intended against me or not, they are against me. So I wrote to her a letter, October 12th 1990:

"I would like to bring to your attention that article 12.05 of the new collective agreement is in contradiction with conditions of my contract.

The new collective agreement requires that persons holding research appointment apply for a tenure track position, article 12.02 while my contract states clearly that I'm to be appointed to the tenure track position, provided that my performance was satisfactory, plus the evaluation of the program and subject availability of funds.

As you know, all these conditions are met but I still have not got my appointment. According to the law, collective agreement supersedes all other contractual obligations. This might jeopardize the university's ability to fulfill the conditions of my contract."

So I write here, not in such a way that you contemplate to damage me, I write it in such a polite way that those articles are there, they ... you might not know that they might damage me, you know, I pretend not to understand that I just want to create impression that she's in a goodwill person (sic), that it is something which might be beyond her knowledge, you know. I'm trying to be as polite as I can.

So I write here:

"This might jeopardize univeristy ability to fulfill the conditions of my contract. It would be advisable that you proceed with my appointment now before the new collective agreement is ratified.

I would also be satisfied if you kindly inform me in writing that you have reached an agreement with Kufer (sic) that all the conditions of my contract will be respected after ratification of collective agreement. In this case,

I would be prepared to wait for my appointment as long as needed.

I'm sorry to have to write to you again but I feel that this important circumstance might have been overlooked.

I should be grateful for your response. Thank you."

Now, so I pretend here that, you know, they put those articles there inadvertently. They never thought to hire me, just you know, something which might harm me but they might not know about it, so I'm bringing it to her attention. One could not be more polite than that.

Now simultaneously with the letter about my harassment, alleged to her and her personnel and veiled threats, which I showed before that no justification, no witness testified to it, nothing. At the same day, she wrote to me October 18th 1990:

"This is in response to your letter of October 12th. Thank you for the commentary on article 12.02 in the new collective agreement. I cannot agree that your current contract with Concordia University suggests that you are to be appointed to the tenure track position."

How do you like that? In my contract, it's written black on white and she writes to me: "I cannot agree that your current contract suggests that", it's just not there.

Just you know, it is white and she says no, this is black, that's it.

It is written in my contract, black on white, that I'm to be appointed and she writes to me, no, it is not written in your contract, period and again, if you think that she would somehow explain why it is not there, why she thinks so, no way.

She continues:

"As I indicated to you in an earlier letter, the conditions of Actions Structurantes program under which you were hired as a researcher provides under very specific and rigorous conditions for the integration of professorial position into a professorial complement of participating university, it also entails a mechanism whereby ...

If you understand the word, that's fine, but I don't. It's just a number of words which means absolutely nothing.

"It also entails a mechanism whereby at the appropriate time, each and all individuals involved will be considered for entry into probationary tenure track position. This process is now under way. When it is completed in your own case, you will be appropriately advised on the outcome.

I should emphasize that entry into probationary professorial position doesn't automatically confirm tenure."

And that's it, so you have to understand any way you want this letter. Whether she agrees that my contract ... well she disagreed definitely that my contract stipulates that but why and how and what, no explanation. Lawlessness, lawlessness and sense of total powerlessness. There is nothing you can do.

So in response to both letter, I've written:

"I'm in receipt of your two letters. The timing of your warning letter seems to be strange. I have not called your office in months."

And indeed, I didn't call her office since August.

"I do communicate in writing only."

Because there, she wanted me to communicate only in writing. I did communicate in writing only, because it was clear to me that what they wanted me to put in a position that I'm harassing someone. I make call, they do not respond, I call again, they do not respond again, I call again, so they involved me in this game and I ... very soon I understood what game they're playing and I no longer called the office. So:

"I do communicate in writing only. So why at this time do you need to be so concerned about it? Why didn't you issue a letter in June when all the calls were made?

My calls were never harassing. I had sometimes to repeat them but only because your staff usually promised to call back and usually did not.

I have also explained that the recordings I made, only for the purpose of self-protection in the case of letter like yours. These recordings are the best proof that there was nothing improper done. At no time have I made any threats. All I said was that I was going to defend myself. If this sounds like a threat to you, please explain why.

In view of the above, I would be grateful if you either proceed with your accusations so that I officially clear my name or will entirely withdraw your letter of warning as unfounded.

The hearing should be public and open to media and I should be allowed to call and question witnesses."

So here, I offer her: if she feels that she was harassed, file a complaint, I'm prepared to defend myself.

"I would like to clarify once again that I have several times apologized for the tone of my ill-tempered letter, not for its content."

So again, I'm under the naive impression that the whole thing stems from this January letter about destruction. I had no idea of the whole, you know, hoopla which was

there starting with 1989 surveillance. It never crossed my mind, the whole thing.

"I still stand by the statement that every problem can and should be solved by negotiation and not by force. You may wish to try it."

So again, I'm offering her normal civilized attitude to whatever is there, let us discuss it, let's make an appointment, let's talk. I never got that appointment.

"I would be happy to discuss various mutually acceptable options. I'm a world-class scientist and it is about time you start treating me like one.

In your second letter, you state that my contract doesn't say that I shall be appointed to tenure track position. My contract says that I shall be appointed to full-time faculty at the rank of Associate Professor. So what is the meaning of my contract? What position I'm supposed to be appointed?"

So I ask very simple question. OK, explain it to me. Where I'm supposed to be appointed? How should I read my contract? Thank you in advance. So I offered her in this letter two things: first you feel you're harassed, do as it is ... should be done. There is code of conduct, non-academic, file your complaint and I'm prepared to defend myself that I didn't harass you.

And the second thing, I again reiterated that let us discuss thing. Do not try to use just force against me. It's no good. It will not bring good result and third, I asked her to explain why she feels that I should not be appointed. What do you think she answered? You guess it.

"There is nothing that I can add to what is in my last letter."

Period, the matter is closed. Can we discuss anything this way? That's it.

"Dear Dr. Fabrikant,
Thank you for your letter of October 25th.
There is nothing that I can add to that, to what is in my last letter."

The matter is closed, there is nothing to discuss. Lawlessness. This is what lawlessness is all about, lawlessness at its best.

Now we go to ... in chronological order to this meeting which took place October 31st 1990 in the posh club ... Oh no, before we go to that, there is something else I want to show you.

You probably recall those two pieces of paper which were shown to witnesses, one in English and one in French. Now the English version stated that all three should be integrated, period and witnesses here testified including Swamy, well there is no way I can, you know, confirm or deny what they testified but at least they testified that they signed this version in which it was written that all

three of us are to be integrated, while to the Ministry went this version and all of them claim that their signatures, that this version was never shown to them, that it was done on the vice-rector's level and well, it is difficult for me to believe that they were not informed that it was total perjury or how to say it, falsification of document by vice-rector.

Maybe it was. It's difficult to say. I hope at the next trial, we'll find it out but where we are now, we can only guess what happened and in this French version of the document, it says that negotiations are in process, that ... for Fabrikant, whether this position will be given to him, but nevertheless it says that if he gets this position, he will have exactly the same condition as Rakheja and Ahmed.

I bring this to your attention because later on we will see whether I got exactly the same position as Rakheja and Ahmed which I never did. So even what is promised in French version is never realized.

Now at the meeting of October 31st, in Montreal, Athletic Association, we have heard a number of witnesses and all their information is pretty contradictory, non conclusive and we can guess what really happened there but it ... if summarized from this file called confidential, which vice-rector kept separately from her other files and from testimony mainly by Relton who at least was less than everybody else, playing you know this dead memory syndrome. Though he was very, how to say it, every five (5) minutes he contradicted himself.

If you recall, when there was question of threats, first of all he said that - I'm a little bit jumping because now I'm discussing his testimony, because when he was asked question of meeting of 1991, then he said that it was a nasty meeting, that they, the members of the DPC demanded protection. They claimed they were scared. When they were repeatedly asked what exactly they were scared of, they couldn't give any example, not a single example. Then if you recall, I jumped to 1990 and we found out that in 1990, those threats were repeated, threats of ... what, of North America something and threats about children I believe. He repeated. Then I asked him, if you remember, "OK, so if those threats were in 1990, then how come in 1991 the people, DPC, who were there, what they didn't remember that those threats were there and when you were asking them what is your reason for being scared and they couldn't answer anything, how could that be?" and when he felt that he got caught, he said if you recall: "I'm ... no, no, I'm not sure those things were said there. Maybe they were, maybe they weren't, I'm not sure". Then each of those threats if you recall, was kind of forth and back (sic) between 1990 and 1991 and there was no way to find out which one was and which wasn't and if it was at all.

Now this is not such kind of things which person does or doesn't remember. The whole thing is why it was such a contradiction because he knew very well that it was all invention and since he knew very well that it was an invention, then it's difficult to say where this invention appeared and where it is appropriate to repeat invention or not to repeat it and the most point (sic) was that all the people there, they knew that it is invention so what

was the point for them to repeat what they invented themselves to one another. It doesn't make sense.

For example, if I invented some kind of lie about somebody else and I know that I invented it and you know that I invented it and for example we met together and we want to discuss that this person is for example dangerous and we know that we invented all this stuff, so there is no point for us to repeat it to one to another the stuff which we both know that we invented.

Therefore this is the only real explanation I can give to the whole thing, whether these threats were repeated or were not repeated because effectively, all who were there, they knew very well everything.

There is no doubt they knew about me being under twenty-four surveillance since Swamy knew it and he told me that all the mechanical engineering people there like his family, definitely he told it to his family so they knew all this stuff. There is no doubt about it and this is the main reason why the whole comedy was played.

Now what was really happening there was the following. The main concern was they knew that I very hardly tolerate all this situation where I was used and instead of at least being thanked for thirty-five (35) publications instead they tried to kick me out and it is not just trying to kick me out, they knew very well that I had nowhere to go. I didn't hide this fact.

I have here just the latest applications which I made to various universities in States, Australia, New Zealand, everywhere. I was desperately trying to get out and of course, Mr. Martin immediately will intervene. You cannot introduce it.

Well, I cannot introduce it but I think that it's again unfair that I cannot show to you that I did my best to get away from them.

So their position was different at that time for one reason only. Sheinin had nothing to lose. I didn't have any publications with her, so I couldn't accuse her personally in anything if I'm fired while those people, DPC there, they knew very well that if I'm there, I explicitly told them that as long as you do not try to fire me, I see no point to ... to any whistle-blowing and I meant that.

So they knew that as long as I'm there, everything is quiet. This is why, when Sheinin, according to Relton, offered DPC to evaluate me on the basis of my so-called behavior, they said quite correctly that behavior has nothing to do with academic qualifications and well, this is what it is.

Behavior has nothing to do with academic qualifications and according to collective agreement, appointment and reappointment is supposed to be done according to qualifications, period.

There is not a word in collective agreement about behavior. It is just absolutely not there and this is what they told her, but underlining reasons for their telling her that was of course not that these people were kind of concerned with my well-being, that they wanted to do good to me or they wanted to be fair or they wanted to be just. Not at all.

These people have no conscience, never had it. Their concern was at that time very simple. They knew that if they

fire me, then everything will be out. If I'm there, they knew very well, especially since I agreed for three-year postponement of tenure, they felt themselves saved at least for three (3) more years because it never crossed their mind that I might blow whistle before I get tenure and definitely they had in mind that after three years, they'll find a way to postpone my tenure once again, so they calculated it pretty well that they're safe, they will continue delaying my tenure and that's effectively what they were interested in, to continue what they did all the time.

So that was the main reason for disagreement. There was nothing else there. Sheinin felt that I should be fired because she ... it looks like dishonest people feel honest people, you know, at a distance. She felt that sooner or later, I will blow it up anyway. That was her understanding. If you read her memo to ... to Kenniff, she writes that:

"Whatever problems we had with Fabrikant, well they will ... it is my gut feeling that they will continue."

She didn't elaborate what problem she had but it is not difficult to understand what the problem was, I mean the real problem.

So since at that meeting, the situation was that department personnel committee and later Swamy also made recommendation for reappointment, she felt like she's left alone to fight a battle. She didn't want to fight this battle so I got the reappointment though my tenure was delayed for three years and well there is no doubt in anyone's mind that I didn't agree to that on my own. It was again extorted from me under duress.

As soon as I got this offer and I understood who I was dealing with and since in the offer, it was the same phrase that my future research should be directed to bla, bla, bla, Concave Center and whether it is directed or not directed, it is they who decide, so to be safe, I've written letter on December 9th 1990 addressed to Osman as the chairman which was quoted here but I wanted to bring it to your attention once again:

"Please find enclosed my research program for 1990 / 1993. Since the offer of probationary appointment indicates specifically that my research would support the research focus of Concave Research Center, I would like to have your confirmation the proposed program does support the research focus ...

Whatever it is. I never knew what research focus of their center was.

"... prior to accepting the offer. I should be grateful to receive your approval of the program.
Thank you in advance."

And I gave it to Osman and I did send it Swamy, though he claims that he never received it and to Sankar too. I

didn't get any written approval to that but Osman assured me that everything is fine, they're not going to catch me on this, they're positively disposed towards me and I decided all right, maybe these people mean what they say so I accepted the offer but if you remember, Swamy here testified that since request was made in writing, I should have received response in writing.

I didn't and since I didn't and oral approval was made, I believe I have all the rights to assume that offer is ... the program is approved and if program is approved and if I'm following my program, there is no way they can say, because I have written specifically which problems I'm going to solve and I did exactly that. So there was no way for them to deny that the condition of appointment is fulfilled.

Well soon thereafter, I had a heart attack and they knew that because when someone has a heart attack, first of all I told about it to Ahmed, though he denied it here and you just cannot hide it because your face becomes green and you hardly can walk and you feel like you're dying and this is extremely terrified feeling (sic) and since I never smoke, I never drank, I ... I was always in good shape, there was no doubt in my mind that these people were just killing me.

To have a heart attack at the age of fifty-two (52) without having, you know, any ... any indication as to why it might happen in terms of the lifestyle or anything, there is no doubt that this debilitating stress which I was subjected to gave these results, there is no doubt about it.

It was the most devastating to me since I was in gymnastics. I could make headstands. I still can do it, now that I'm recovered, though I'm fifty-three (53). You can imagine what kind of psychological blow it was and I thought that these people would have at least some conscience and they would start behave (sic) some kind of, if not compassionately, all right, these people do not understand what word compassion is but at least, not to try to provoke a second heart attack in me. I think this is not too much to ask for.

By that time, I have received in June of 1991, I have received a letter from Dr. Mag, (sic) in France. He is a well-known scientist in ... in the similar field. He worked for Laboratoire Central de Ponts et Chaussées (sic) which is central laboratory for roads and bridges and this is exactly the field what is needed, transportation.

Roads and bridges is essential part of transportation and he asked to me from National Research Council of France which is equivalent to the major financing, science financing governmental body in Canada, Enserp (sic) it is the same body and they have very prestigious scientific award which is called "Poste rouge" which is accompanied by hundred thousands francs, for four (4) months, scientific award.

Well I informed Osman about it and at the beginning, he told me "Oh, that's great. Collaboration with France, we are French speaking province, it's fantastic. It's ... it's so prestigious for our university. It's remarkable. We will fight with vice-rector even if she ... she refuses".

It sounded nice but if you don't know these people, you would not be able to imagine why it sounded so nice. Again it was kind of invitation. OK, here you have something, you want a carrot, you have to deliver. So they waited for a while for me to bring something in exchange. I didn't. Then I got an answer. Their answer is the following:

"Your memo dated June 26th 1991. The request for leave with pay to visit the laboratory for material and structures of civil engineering."

It's no longer laboratory of roads and bridges. It's laboratory of civil engineering and it is not scientific award. It is just visit for four months.

"Further to my telephone conversation with you on July 9th on the above subject, I regret that I cannot recommend a leave with full pay to take up what appears to be a salaried position at another institution."

He pretends to be stupid, not to understand that this is scientific award. He pretends that this is salaried position at another institution. How do you like that!

"It would seem that the summer period would be a more suitable time for this visit since letter of invitation doesn't seem to suggest any urgency."

Well I've wrote (sic) to Dr. Mag,'s, in response to his letter. His letter was that:

"The National Research Council of France has awarded you "Poste Rouge" for your four months during September / December 1991. You will receive official notification directly from them."

Now when I wrote to him that regretfully, I cannot be there and maybe I could come in August, at least for one month, he responded to me:

"I regret that you could not come in September. It is possible to ... it is not possible to come in August. Papers are not ready. Furthermore I'm in holiday."

And when I asked him whether it could be postponed, as Osman suggests here, he responded to me:

"Unfortunately this "Poste Rouge" for 1991 cannot be postponed to 1992. If you want, I can try the next year to make another demand."

So it could not be postponed. Now about going without pay, the whole stipend, when transferred from francs to dollars, was less than my salary. Now to refuse my salary here and go there to receive this stipend, it is not scientific award, it is scientific punishment. To leave

two family, two apartments, to eat in restaurants, it's just ... you know, it's not possible. This is why award is being made with certain amount of money so that person would not suffer financially when he goes to another country and if you remember, here I asked him about McQuinn who received Gumblet (sic) award in Germany with a hundred thousand marks. How did he go and he responded he go ... he went without salary. Well if we had another judge, we would ask for confirmation of that and I can guarantee you, he didn't go without salary there because nobody goes to such a prestigious scientific award being deprived of your own salary. You are going there, it is an honor. It's not ... it is honor to ... not just to you, it is honor to the university too, but National Research Council of France decided that I'm worth it. Well anyways since this hard stuff didn't work, then I couldn't go.

The next step was, since I was at that time, eleven (11) years of continuous service and collective agreement stipulates black on white that non tenured members with ten (10) years or more can apply for sabbatical leave. Again sabbatical leave is not something which is given to faculty members as kind of who want to avoid teaching. Not at all.

Sabbatical leave is given as a possibility for a professor to do teaching somewhere else for example, to exchange scientific knowledge, to enrich himself at another institution, to enrich another institution with his experience.

It is not leave in the sense that person is being paid for doing absolutely nothing, because after this leave, you have to file a report what you have done during that leave and this leave, to be justified, you have to say before you are given this leave, what exactly do you plan to do and in my case, it was quite a huge plan which I submitted for ... for this sabbatical leave.

So I didn't ask for a leave as kind of just to have time off and do nothing, the way it was presented in the reasoned report of DPC which we will discuss later.

So I applied for this position, for this sabbatical leave and I have filed pretty long program, including writing on my book with full program of what this book will be about.

So in my mind, it was pretty well justified. So the response which I got was of the same nature as usually. I'm writing about one thing and they respond about something else. I do believe that they have a psychiatrist for consultation how to desequilibrate a person.

If you look at the response, the way it was, you will have no doubt that no person in his right mind would respond the way the response was made.

So I applied on the basis of article 26.16 which says that non tenured people with ten (10) years or more can apply for sabbatical. This is the response:

"Dear Professor Fabrikant,
This is to inform you that your application for sabbatical leave for a period of 1st June 1992 to 31st May 1993 has been denied."

The same as Judge Paul here. Denied, there is no need for explanation.

"As per article 26.2 of collective agreement, only tenured faculty members are eligible for such leave."

I didn't apply on the basis of article 26.2. I applied under article 26.16 which says that non tenured people also have the right for sabbatical. This is the response. How do you like that?

Whether you like it or not, this is the response. Here is your weakness as Mr. Martin says and here is your response and you have to live with it.

Now it is the same thing, for example, if you apply for a pension, saying that you're an invalid and they will tell you in response "only people after sixty-five (65) are eligible for pension". What would you do?

Would you find it insulting? Well I think you would and the purpose of this was exactly the same and when later on I got copy of letter of Swamy to Sheinin, the text was exactly the same. So:

"Tell Fabrikant that in article 26.2, only tenured members are eligible for such leave."

Period. Now I tried to argue again, but I didn't apply under article 26.2. I applied on article 26.16. Would you please read it. There is no way to argue, because I knew very well that the answer would be "I have nothing to add to my previous letter. I have already explained everything. How do you like that? That's it.

Now that time, I kind of had it enough and there was a little explosion then. I have written a letter, not to her, but to the newspaper, the university newspaper and they published it and the letter was effectively with the text that we don't seem to be able to communicate. I write to you on one thing and you respond about something else. So maybe if I make this letter public, you will get ashamed and maybe you will respond to the subject, if I'm fit according to article 26.16. Then give me this sabbatical. If I don't fit, then explain why I don't fit. Do not refer to some other article.

Well if you think I got any response, think again. I didn't get any.

In the meantime, another problem came on the horizon and that problem was the famous letter of October 2nd 1991 which sparked the whole, how to say it, heresy of me and which was totally denounced by every senior member of the department. Look what terrible thing I've written. It's letter of October 2nd.

"Dear Dr. Osman,

I have recently received small seven thousand grant (7,000 \$) from the university.

This amount is much smaller than the one requested and no research assistant can be hired so I shall have to do the huge research program myself. It would be extremely helpful in this regard if I could use this money to purchase the release from teaching duties for the next

semester.

Kindly let me know if you could support this request and if yes, what is the procedure to follow.

Thank you in advance."

So it was innocent request for information. There was nothing there. I didn't demand anything. I just asked whether this is possible, nothing else and request was made because I knew that T.S. Sankar has had it on several occasions.

He just paid from his grant somebody else and somebody else taught the class and I thought that since it was allowed for him, who didn't do any research, then probably it might be allowed for me too. Anyway, I didn't demand anything.

In response, I got the phone call that you should retract your letter because if you don't retract your letter, I will recommend termination of your contract. You should devote yourself to teaching and so on and so forth.

I told him "I'm devoted to teaching since 1962" and I told him also "Who are you to lecture me on teaching. You don't do any teaching yourself for years and years and years" and that was of course intolerable. How could I possibly tell him that.

So on October 9th, I have received from him a letter from Osman, that:

"Purchase of release from teaching duties is illegal and not permitted under any circumstances. For this reason, I'm requesting you to give in writing before October 15th a detailed report for your future teaching goals and your plan to enhance and develop the undergraduate and graduate curriculum in the department of mechanical engineering in your area of expertise."

Fine, I looked into the documents. He said that purchase of release from teaching duties is illegal. So naive me, I was thinking that common logic would prevail so I wrote to him on October 14th and this is the memo which created the most anger so-called, among the department members. I wrote to him:

"One may argue that the grant received should be spent according to submitted budget. This makes sense when amount received equals to amount requested as it happen with my grant from NASA and it doesn't make sense when the amount received is less than half of the amount requested as it happened with the grant in question. In this situation, every grant recipient has to think how to make the best use of the money received.

First of all, I have checked if there was any Concordia policy document regulating allowable expenses of this grant. There is none."

So I checked what is allowed, what is not allowed. There was no policy there.

Then I looked into similar documents of Enserp (sic) and FCAR. It means Federal Granting Agency and Quebec Granting Agency, if they allowed purchase of release from teaching duties. The results were:

"The Enserp document states explicitly that grand recipient is not bound neither by proposal not by the budget and may be one or both freely.

FCAR documents list the expense of purchase for time release from teaching duties, "d,gagement d'enseignement" as an allowable expense.

And I give here reference, chapter 2, article 47. So it is not illegal, it is perfectly legal expense according to Quebec grants.

"I have been informed that T.S. Sankar paid to another person from his grant for teaching the course assigned to T.S. Sankar. You would not believe that T.S. Sankar could do something illegal or immoral, would you?

My colleague from Taft (sic) University regularly uses his grant to purchase release from teaching duties and he told me that this was a widely used practice in United States universities.

Our collective agreement also declared legal the purchase of release time. Course remission by association ...

And I refer to article 16.14 which said that one can purchase release from teaching duty, it is not illegal.

"And it makes this legal for any member with prior consent of chair or the dean and my letter of October 2nd did just that. Your consent was requested.

Your response stated that purchasing of release from teaching duties is illegal and not permitted under any circumstances is misleading. It contradicts to the facts stated above and it has to be officially withdrawn and an apology is in order."

My gosh, I, who am I to demand chairman of department to apologize? Can it be tolerated? Of course not.

"In the second paragraph of your letter, you write: for this reason, I'm requesting you to give a detailed report on your future teaching goals linking this to reappointment procedure.

Your letter doesn't give any logical connection between my letter of October 2nd and the reappointment procedure. During our telephone conversation, you have told me that my letter proves that I hate teaching."

This is wrong.

"Using this logic, you should accuse anyone applying for Stacy (sic) or any other similar fellowship, anyone applying for sabbatical leave, anyone taking doctoral seminars as a teaching load ..."

Here I make reference to himself because instead of doing teaching, he took doctoral seminar as a teaching load. So I said that if you want to accuse someone of trying to avoid teaching duty, then taking doctoral seminar as teaching duty, this is exactly what you are doing.

"The normal logic has always considered the release from teaching duties as an honor, as a recognition by the university of the importance of someone's research or other services."

And this is exactly the case. For example if someone receives let's say Stacy award which one of the members of the department, Habashi (sic) received such award some years ago, he was released from teaching for two (2) years because his research was considered to be of such importance that he could devote all his time to the teaching ... to the ... to the research. So since release from teaching duty is an honor, then all what I asked for is if I deserve such an honor, and if yes, then how we should proceed. That's all.

"There was nothing improper in my letter of October 2nd and I still stand behind every word in it. One cannot be very successful in doing a job which he or she hates. I love teaching and it consistently shows in the student evaluation.

The latest DPC evaluation is of the same opinion. Here is the relevant quotation".

Now I give quotation of their own of my teaching and research.

"DPC of the department of mechanical engineering strongly recommends to the FPC as well as vice-rector, academic, that Professor Fabrikant be awarded the highest possible extra point as specified in collective agreement, after comparison with other engineering and university faculty performances. The DPC believes that Professor Fabrikant deserves the final point of value of three zero."

And this is what I got three zero. (3-0)

"I was voted the best teacher back in the U.S.S.R. and you may be assured that the quality of my teaching performance will never deteriorate."

And after that I respond to his question concerning, you know this curriculum enhancement, all this stuff which they raised here that I never participated in, that teaching is not just classroom teaching, that one has to

develop laboratories, that one has to develop general curriculum, that one has to do this and one has to do that and since judge has ... took away his eye glasses, I understand that intermission is in order, hey?

BY THE COURT:

So we'll adjourn until two fifteen (14 h 15).

SUSPENSION OF THE HEARING

THE COURT LEAVES THE COURTROOM

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

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<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">THE HEARING IS RESUMED

THE COURT TAKES THE BENCH

THE MEMBERS OF THE JURY ARE PRESENT

BY THE ACCUSED:

I was addressing my memo of October 14th which was basis for the so-called special closed meeting of senior members of department of mechanical engineering. That was the meeting at which they denounced me in abstentia. They never bothered to not just to call me but it was made in a secret way so that nobody ... well at least I never knew that the meeting took place in the first place. This is how members of mechanical engineering understood elementary civilized behavior.

If they are unhappy about something, they should call that person and tell it to him directly, not hiding behind anonymity.

The memo which was discussed there, I described to you the first part. The first part was indication that there was nothing illegal in my query about purchase of release from teaching duty. I indicated here that release from teaching is considered and has always been considered at the university as an honor, as recognition of contribution to general knowledge because at the university, one thing you do, you teach a certain group of students. It might be fifteen (15), it might be fifty (50) students. It might be even four (4) students but you teach specific group of students.

When you are doing some important research which contributes to general knowledge, it is considered as if you're teaching well if not the whole mankind but depending on the importance of your research, that you are teaching potentially thousands of people because you are obtaining some results which are so new and so important that not just fifteen or fifty people would be interested but thousands of people would be interested.

So effectively, it is considered the same teaching but much greater audience and this is why it's considered an honor.

Now in the second part of this memo, I have responded to his question concerning if you recall several witnesses here. One after another said "OK, he was good teacher in class" but teaching is not just in the classroom. There is also need to develop laboratory. There is also need to develop curricular, there is need to overview the whole course, how one course is connected with the other, what is their interaction, how good they are and so on and so forth.

So I did that job and here's what I reported to ... to the chairman of department at that time. I wrote:

"Article 14 of collective agreement doesn't require any report on future teaching goals but

since you've requested it, here it is.
After twelve (12) years of continuous service with practically no vacations, I plan to go on sabbatical leave during which I intend to start writing my third book and continue developing of new graduate course, contact mechanics."

This course was developed.

"In the more distant future, two (2) more graduate courses are to be developed. The first one will be a course of linear fracture mechanics with emphasis on mathematical apparatus involved which will be complementary to the existing course, fracture."

So I'm making connection of the new courses with those which already exist.

"The second one will be a specialized course of mechanics overall and contact addressed to the needs of Concave graduate students with emphasis on rail wheel and tire/road interaction."

So here I inform him that yet another special course will be developed which has never been introduced, not just in this university. To the best of my knowledge, nowhere in Canada, this kind of course is being taught and this course is addressed specifically to Concave students because it's transportation. Rail wheel, tire and road interaction, this is transportation.

"A laboratory for modelling this interaction would be very helpful but this realization depends of the availability of funds.
I'm of opinion that an upgrading and updating is needed for existing course of applied elasticity."

So this is review of existing course which I'm suggesting.

"Right now, it is based on the book by T. Mashenka (sic) and therefore on the results at that time. It should be modified by including recent results in the field, especially in three-dimensional elasticity, mixed ... mixed problems, etc."

Well here I suggest to update one course because it's based on books for 30's, not from 40's, 50's or 60's, from 30's so this is how behind the course was in terms of recent achievements.

"A similar upgrading would be recommended to the course on modelling of physical phenomena which I would rename mathematical physics and would demonstrate various analogies between electro-magnetics, accoustics, heat transfer, diffusion, fluid mechanics, etc.
The majority of students think about these dis-

ciplines being very different from one another and it seems extremely important to show just how many sometimes unexpected similarities exist."

So I'm suggesting yet another course here which would develop some kind of philosophical understanding of laws of nature among students, that they wouldn't think that different courses are so different that there is no connection between them. They are unified somewhere on top. All this phenomena can be described from one more generalized point of view. Further I suggest:

"Some updating is needed in engineering, mathematics courses, for example introduction of tensor analysis seems to be very useful. In the field of under-graduate teaching, my main concern is that our methodology have not changed significantly in centuries, the same chalk and blackboard."

So here I'm talking of the way teaching is being done, that it is generally teacher comes, there is blackboard, there is chalk and this is how it has been in centuries and I was suggesting to ... to do something about it, that in our century there is a possibility to do more than that.

What I was suggesting is the following:

"It seems useful to introduced more hands-on science. For example in teaching of statics and dynamics, it would be more instructive to have physical models corresponding to various problems which students could see and touch and play with by changing parameters, dimensions, loading, etc. Of course physical models are expensive so yet another approach might be useful."

So what I'm suggesting here is that just not blackboard and chalk but the students could touch all this stuff, could see physical phenomena as such, not just on the paper and since the whole thing is expensive, what I'm suggesting is to have it on a computer so that they would have the possibility of modelling something on the screen because some physical modelling is expensive, just to make it like this, so it can be done on the screen. So they ... on the one hand, it is not something real in the sense that it is not a machine or mechanism but it can be created on the screen and it can be played with and it is much cheaper and it creates the same effect. So that's what I was suggesting here. Here I say that:

"Quite some time ago, I have created one such computer graphics model for studies of reinforced vibrations with damping. Not only all the parameters and initial conditions could be prescribed arbitrarily but any of the parameters could be changed interactively in the process of vibrations.

Nobody was interested in using the model then so I dropped it. I still believe that that approach will prove useful. Other interesting ideas might come up in the process of discussion with other faculty members."

So I suggested the whole plan of development of new courses, of upgrading existing courses, of creating laboratories of a totally new type. I don't think that that kind of laboratory exist anywhere in Canada and I don't think now it exists anywhere but I think it is a good idea still.

I also suggested another thing here that:

"Back in the U.S.S.R, my engineering class was between thirty and forty percent (40 %) female students and about twenty percen (20 %) of faculty in the Soviet Union is female.

Here the situation is alarmingly abnormal. I think that one of the reason is the perception that engineering is the men's club. We need to change it and our activity should start not at the university level but at high school. We should arrange meetings with high school students with participation of female graduate students who could tell their own stories to the children and to convince them that engineering is both interesting and accessible. Significant increase in female under-graduate and graduate students population will inevitably result in increase of the proportion of female faculty members."

So this is how I answered the question about my future plan in the so-called curricular development and well I really see nothing wrong with that memo, but this is not the way it was seen by the so-called senior members. Now let's see what happened at ... at the meeting.

First of all, what I have written about Sankar, I just knew that yes, he did get the remission of course and yes, he used somebody else to teach the course and I ... I'm not that sure he deserved that honor because he didn't do any research, but Sankar wrote an angry letter saying that this is lies, this is slander and he complains to the code of conduct, Mr. Relton, the administrator.

Well that was fine with me. If he complains to the code of conduct, that's fine. The funny thing is that this complain never realized because he knew very well that I was right but at that time, he displayed how insensed he was.

Now the meeting took place October 25th. For some reason not in the department, but in the dean's office, 9074. If you recall, I asked several people here why was it there, nobody could give really a good explanation but I think a good explanation is that it was so secret, they wanted to keep it very secret and I wouldn't be surprised if Swamy was present there, but of course, it is not here. No indication.

Now if we look at the minutes, first of all, there is no names here. Recording secretary was nominated, seconded

and elected unanimously. Who is this secretary? God knows.

"It was agreed unanimously that only formal motions be recorded and that all other discussion be off the record, unless specifically requested."

Now everything is secret, nobody knows who said what.

"The chair explained that the meeting would discuss only the memo of Dr. Fabrikant dated October 14th which has been anonymously circulated."

Now this is the memo which I read to you was to be discussed. If you find anything reproachable in this memo, well it would be nice and it had been anonymously circulated. How on earth can you circulate memo signed by me anonymously. It is signed by me. Then it's obvious that I'm the one who circulated it. It was circulated anonymously. The people just didn't know, you know, what ... what to pick on.

"The chair and members of DPC sought advice of senior faculty on the ethical aspect regarding circulation of Dr. Fabrikant's memo dated October 14th without identification of sender."

How else could one identify the sender if it is signed by me. My signature is there, my name is there. How else can it be identified better than that.

"Dr. T.S. Sankar's memo to chair dated October 24th stating that statements made about him in Dr. Fabrikant's memo are slanders."

Fine. Motion 1:

"With respect to Dr. Fabrikant's memo of October 14th, the charges related to Dr. Sankar should be referred to university code administrator."

Fine, this is exactly what I wanted. Submit it to university code administrator, let's discuss whether I'm right or wrong. Never been submitted.

"Moved and seconded."

No indication of who moved, who seconded, no names. This is how bandits behave. When they do something dishonest, no names. Motion 2:

"Senior faculty members of department of mechanical engineering deplore that a confidential letter was circulated without identification as to who circulated it."

Again, well here I don't think any comments is needed. It was not anonymous at all. My signature was there. Motion 3. Motion 3 is the most interesting. If you recall, I

asked several witnesses to comment on that motion and first I will read this motion to you once again. Then we'll try to recall how each witness commented on that.
Motion 3:

"Whereas the success of mechanical engineering department has traditionally been built around harmonious relationship between its various members and the chair, whereas we strongly disagree with many of the arguments and intentions expressed in Dr. Fabrikant's letter of October 14th."

Which one, arguments and intentions. Now arguments about facts which I made here, that purchase of release of teaching is allowed officially in many official documents; well they disagree with that is stated. What exactly they disagree with. If you disagree with my suggestions to modify certain courses, to develop new courses, to increase female participation in engineering, well say it. We disagree with many. What are they? Nobody knows.

"Whereas we perceive this spirit of Dr. Fabrikant's abovementioned letter as being idle arguments intended to justify his shirking of academic responsibility, especially with reference to purchasing release of teaching time and his eligibility of sabbatical."

Now, what is wrong with that. If I argue that yes, I'm eligible for sabbatical, what crime is this. Now purchase of release of teaching time, the only thing I said, so that there was nothing wrong for me to enquire about it. Nothing else. I never demanded it, I never insisted on that. If you see the text of my letter, there is nothing there.
All I said there, well I enquired about it. There is nothing criminal about it, because it is allowed in many cases officially, period.

"Whereas we perceived Dr. Fabrikant's attitude as expressed in his abovementioned letter to be detrimental again to abovementioned spirit ... abovementioned letter to abovementioned spirit of harmonious relationship between department members."

Now, you remember, I called member after member after member after member and each, I asked whether I did anything wrong to them, whether I in any way impede their work, if I in any way insulted them, if I did anything whatsoever to them and each answered no and mainly I couldn't possibly do it. I had alibi. I ... all I did to them was Hi, that's about it. So you cannot damage someone by just saying Hi.
Still it is detrimental to harmonious relationship between department members. On what? I made them quarrel with each other? No, I don't think so. I didn't quarrel with any of them either.
The only quarrel what I had at this stage was with the

chairman of the department. Well you have quarrel with chairman sometimes.

"Therefore we strongly urge the department and the university to stand up to such practices and to take appropriate action."

This is ... this is what I couldn't understand. Now if you recall, I asked witnesses about meaning of that and you got two (2) different answers. Rakheja said that he knew and understood that it means that effectively they request university administration to terminate my employment.

Now what I did so terribly wrong, if you read the memo they discussed, I think it is not just an innocent memo. I think it is very positive and the suggestions which I made are very good. To the best of my knowledge, contact mechanics is now in the program of the university. I don't know who is teaching is tough. They don't have a single specialist in the field but it is there.

As far as other suggestions of mine, I don't think any of them was implemented though. They never said they were not good. If you ... if you read, their reasoned report just ignored this part.

And other people said here, if you remember, there was Svoboda testifying here, if I recall correct, Vatishtas, they said that this is innocent phrase. It just mean that chairman has to talk to you. You remember their explanation? Well I leave it up to you, what you believe, what kind of explanation you believe.

Also they were asked with respect to that, if they know that this motion will be attached to the ... the recommendation of DPC to terminate my employment and it looks only Rakheja said that yes, he did know.

Everybody pretended, "No, we had no idea, we were never informed". Well again, I have no way to say what is true but I have really hard time to believe that they didn't know what they were doing. I think they did know and no one in his right mind would think that department and the university just meant that chairman of the department would talk to me. If they need a chairman of department to talk to me, they could talk to me. They never did.

When I viewed this stuff, there was, you know, to me it looked totally incomprehensible. How people could do such a thing. How could they sign this kind of stuff without even talking to me, without ... I read to you those letters. There is nothing wrong in those letters.

Now if we wish to find out what was the real reason for the whole thing because clearly, this is not the real reason. There is nothing wrong with the letters which they discussed. It doesn't contain anything reproachable, even in the wildest dreams.

Now what is the real reason? Because since people did it, there must be some real reason for that. The real reason for that, we can find if we look at what happened before. You remember Swamy testified here that somewhere at the beginning of September, I came to his office and I asked for access to my file.

The real reason again: they were paranoidal, they thought that since I'm searching for documents, it means that I decided to blow them up. That was not the reason for me.

For me, the reason at that time was since I had a heart attack which my doctor told me I didn't die only because I was very strong physically, I always was been (sic) in gymnastics and the ... the picture he showed me that there are two (2) arteries here, two major arteries. One was clogged a hundred percent and he was surprised how I stayed alive.

So I got ... I tried to comprehend these people. I was eager to understand why did they do this to me and I thought maybe in ... in my file somewhere, I'll find the answer. Maybe they had some justification for that, for what they did to me. That was the only reason for me to enquire about my file and maybe you could take a look at the latest, I believe it was 52, D-52.

What was given to me is incorrect reproduction. It's three (3) letters which are the same while they were supposed to be different. This is the last one hey? Yes, I think this is the one, yes.

Well it is correct, what I was given was just three letters of September 30th copied and that's all, not ... not different so it would be nice if this D-51 be repeated, a copy of it because what I have is not what it is supposed to be.

On September 11th, I've written a letter to Swamy that:

"I have requested recently access to my file. I was shown only the material dated from 1990. According to 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."

And my impressin was that since I'm entitled, all what was required for him to call me and say "Here's your file. Look at it". No, this is not what happened. I didn't get any response so September 22nd, I write to him again:

"This is to remind you that I still have no answer to my letter of September 11th. Your response will be greatly appreciated."

Then as usually, in best traditions of Swamy and company:

"I apologize for delay in replying to your letter of September 11th. The reason is that this has been forwarded to the university legal counsel for an opinion and we have not received the reply. I'm afraid I cannot give you a precise date for when you can expect a response but as soon as I received it, you will ... I will respond to your request."

So this is the typical thing. We are doing it as soon as possible. We just cannot tell you when. I believe if you dealt with any of governmental official, I believe you had that kind of answer yourself many times. We'll do it as soon as possible, we just cannot tell you when and this was the answer I got.

Then I got legal. I told him that maximum, what is allowed is twenty (20) days, so if your legal counsel doesn't respond to you, that's too bad. I need the answer and I got the answer and the answer was funny, that all I had to do is to address Secretary General. Now if you recall here, he testified that after he received my letter, he called Secretary General and if he called Secretary General, could you imagine that he called Secretary General and tells her: Fabrikant is looking for his file, access to ... according to access to information act. What should I do?

Would you imagine that she, who is responsible in the university for access to information file, would you imagine that she would tell him: OK, I reserve the legal opinion and I'll let you know later on, because this is what he written (sic) to me, that he asked for legal opinion.

And this is allowed, this is all all right and if you recall, when I tried to pressure him on this question, we had the best judge in this planet who immediately told me "Move to the next subject". I hope you recall that.

The witness had a good protection.

Now this is the real reason behind the whole thing. These people, you know, there is ... thank you, there is a Russian proverb which in Russian sounds like this: "Navore chap kagarit" (sic) which exact translation is that "thief has his hat on fire". I don't know if exact translation tells you the meaning but the best I could get, well I couldn't get from Russian interpreter but I had another source and I got from another source English equivalent which sounds approximately like this: "Guilty conscience needs no accuser" or another option, that "the one who committed crime thinks that everybody knows about it".

Well it's more or less close, the meaning of this proverb. Swamy knew very well that he is a bogus scientist who published obscene number of scientific articles and several of them, with me and since he felt that his hat was on fire and every crook feels that way usually, because they know what they did, so he got extremely worried and since he got extremely worried, then this is the consequences.

It is not my request. If I didn't make this request, there would have been something else. They would find the reason. As long as they decided that I'm no longer peaceful, though if they just called me and asked me why you're looking for those files, I would have explained it to them and there would be no misunderstanding but their understanding as crooks was that I have decided to expose them and since I've decided to expose them, they decided to do exactly what Sheinin asked them to do a year ago. If you recall in 1990, all Sheinin requested them to do is to write something about my behavior and evaluate me, not from the point of view of my academic achievements, but from the point of view of my behavior.

That time, they didn't agree, in 1991 they did and behavior, they wrote but they made it in a very interesting way. They pretended not to understand what the meaning of professional competence is. So they invented the meaning of professional competence.

From there on, professional competence is not what you

know, is not what ... how you teach, it is something else. It's for example "How did you purchase your printer? Did you quarrel with manager of purchasing services when you purchased your printer or not" and if you did quarrel, you are professionally incompetent, period. That was effectively the logic of their reasoned report. Now they never bothered ... well they knew very well that I was right when I quarrelled with manager of purchasing services in the first place, because if you look at the documents of that time, you will see that after all, the university has admitted ... here are all the letters which they ... for some reason they introduced here how I quarrelled with Mr. Stefano who was manager of purchasing services. The whole quarrel was, if you read those letters ... I will just shortly describe their content to you.

I was purchasing printer for the university, not for myself, for the university and I asked them to provide warranty for the printer, the same warranty as any competitor does, one-year warranty. They provided only three months but since I learned about it too late, I said all right, OK but they were several dates late in their delivery. Since they didn't deliver on the due date, I said well you didn't deliver on the due date. Therefore you have to take it back and I believe I was right.

If they deliver it on certain date and since I didn't know that competitors were better, I would have taken the printer but since they didn't deliver on the due date, I believe I had the right to refuse acceptance of this and I also offered them: if you match the competitor, I'm prepared to accept it. Just give one-year warranty and it was not for me.

I didn't get any personal gain of that and I thought that university administration would support me because I'm demanding better warranty. What is wrong with that. I was dead wrong.

Not only I didn't get any support. They get a number of letters here that university is on credit fault, that this company is no longer serving university. Would you believe that? The university had millions of dollars of business with that company.

Now the whole printer was eight thousand (8,000 \$). Would the company lose such a lucrative client because some Fabrikant doesn't pay eight thousand dollars when they're dealing in millions? Of course not. It was just playing game with letters and this company wants to punish university.

There are a number of competitors which are much better and there is no doubt in my mind that the only reason administration supported this particular company was ... were at least not business consideration. There was something else behind it, there is no doubt and finally you will see here that on November 21st 1988, vice-rector, services, has agreed to all my requirements and here is the condition:

"Further to our meeting on November 8th 1988 concerning laser printer, it is agreed that you will take possession of the printer, university will repair the printer at no charge to you. Should the printer break down within

the next twelve (12) months, the cost of any repairs will be born by the university."

And as additional carrot, they offered me: treasury will authorize two thousand over expenditure for fiscal 1988 /1989 on your research account.

So university admitted that I was right in all my requirements but that was not of any valuable importance to members of DPC. Let's see what they have written in their report, but before that, maybe it is of some interest to see where they were sitting.

They claimed that they had eight (8) meetings. Total of about thirty (30) hours of considerations, so seriously they took discussion of my contract extension, whether I should be or shouldn't be given this.

Now the first time they met, I believe, October 17th and they ... what is interesting here:

"The committee discussed reappointment of Drs. Ahmed, Goa (sic), Latinovic. Recommendations were made as stated in the recent report."

So three (3) people were like this, there is no problem. They made it in maybe fifteen (15) twenty (20) minutes because the whole meeting lasted according to this three (3) hours and the rest is Fabrikant.

Now three people, extension of the contract, no problem, very quickly. There is nothing there. Now what is going on with Fabrikant? What we read here is first of all Osman read to the DPC exchange of the letter and especially letter dated October 14th which I read to you completely.

"Also chairman of department reviewed previous dossier of Dr. Fabrikant and Dr. Fabrikant's contract starting June 1990 and the chairman of department noted the contract of Fabrikant stated that Fabrikant was requested to direct his future research activities to support the research purpose of Concave Research Center."

Everything seems to be fine. Now and also that:

"DPC will call special meeting of senior member."

Fine. Now next meeting is October 25th. Do you think where this meeting took place? (sic) In 9077. This is where dean sits, 9077. Why on earth would they be sitting where the dean was sitting unless dean in present there and well, it is not indicated here that dean was there but you can imagine. Why on earth the meeting of this DPC would take place exactly inside the dean's office where he sits usually? Unless he's there and directing them what to do and the main thing, what was decided in this meeting that let us reconsider what professional competence is and reconsider they did. So from now on, professional competence is not your professional knowledge. It is not how you teach, it is everything else. It is how you behave, if they don't like of course how you behave and it took them according to

this, from seven thirty (19 h 30) until ten p.m. (22 h 00) and after that, and after that, on October 28th, it is also a very funny meeting, funny in the way this time it is in Osman's office.

So the first one was October 25th, it was exactly the date where the so-called senior members met in the dean's office and it seems to me like right after that meeting, members of DPC and the dean sat in his office and drafted the general idea: how to make it look as reasoned report because it is supposed to be reasoned, the report so there must be reason to it.

Now here they made motions and they were ... they were voting this motion by secret ballot. Motion 1:

"Dr. Fabrikant be recommended for two-year appointment from June 1st 1992 to May 31st 1994. Motion was defeated unanimously."

Now what is funny about it? When someone present a motion he was supposed to support it. Not only ... you see, in academic affairs, you remember one of the witnesses testified that when motion is presented, someone has to present the motion and the person who presents the motion is supposed to be for the motion, otherwise he cannot present it.

It doesn't make any sense and there should be also a seconder, the person who also supports the motion so if motion was voted, there must be at least two people for the motion, because one was supposed to propose the motion and the other one was supposed to second the motion so it couldn't be defeated unanimously.

They were playing some kind of, you know, games and ... and I don't know what because it was four (4) people who were so close to each other that they didn't need that kind of formality. That was a spectacle. I don't know what was the purpose of the spectacle. To demonstrate to me how determined they are? I don't know.

The second motion was:

"Fabrikant be recommended for one-year appointment."

And again, motion defeated unanimously. Now who on earth proposed the motion if it was defeated unanimously and the third motion:

"Fabrikant not be reappointed."

And this motion passed unanimously. Well this, I can understand that it passed unanimously but motion to be defeated unanimously, it should not be voted in the first place.

Now after that it is meeting of October 30th. If you recall two witnesses testified here that they have caught me eavesdropping at eleven thirty p.m. (23 h 30), they were still meeting. At eleven thirty p.m. at they say four (4) meters but if you recall, Sankar has confirmed that where I was was the corner of the corridor.

Do you have your ... your photographs with you? If I can remind you, it is booklet of Desjardins and the picture No. 2 and where they caught me eavesdropping, it was this

picture. This is the last one. After this goes corridor and here is my office, just next door. So I was actually near my office and I wasn't standing there for more than one second, so definitely they watched under the door and they knew very well that I had a lecture which just ended at eleven p.m. and I will be in the department for a while after the lecture because I had a meeting with graduate students and definitely, they knew that from time to time, I'm just looking at faces of students which I taught some years ago. Well there is nothing wrong with that. If I needed to be eavesdropping, take a look. There is another picture here, more close. There is yet another picture just near the door. So if I needed this as an excuse, I could have watched those pictures.

There is no way you can hear something from that distance. It is not four meters, it is five and a half (5 1/2) because I measured after that and it's five and a half meters. This way you can accuse me of eavesdropping somebody sitting in this office or somebody sitting in this office or there is office on the opposite side so you cannot be in the corridor after all, because when you're in the corridor, there are doors, doors, doors. So you're always eavesdropping then.

Anyway, I believe that if even ... if even I didn't stand, they would have caught me anyway because I had to get out of my office and through this corridor out. They always could open the door and say "Ah here you are. You're eavesdropping" because there is no doubt, they needed to create some kind of conflict in the department because otherwise, the rest wouldn't stick.

That was the picture they wanted to create. They needed some kind of conflict in the department. There was no need to call security. I didn't do anything, I did not insult anyone. I did not deny. Yes, I'm there and here is my office. I have the right to be there. I'm member of the department after all and I just had my lecture finished. What you are doing at eleven thirty (23 h 30) p.m. there, I don't know but I was there for a very good reason and they ... and they have called security and what is interesting, security seemed to be quite aware of the whole thing, because it appeared right away and they claimed that they were afraid of me, but nevertheless, if you recall, Relton here testified that he was amazed. If they were afraid of me and I wanted to leave, just let him go.

No, first they tried to prevent me from going, then they, three of them, you know, like three bandits, one here, one here and one from the back, followed me through the elevator down to the garage.

What was the point? To scare me. I see no other reason, because if you can imagine what might be any other reason. (sic) Use your imagination but to me, it was ... there was no doubt. It was an intimidation and kind of provocation. They thought that I might you know explode, say them something which they can misinterpret later on. I was smart enough, I didn't speak to them at all. I didn't say a single solitary word during that.

If you remember also, Leam (sic) who testified here, you remember the one who pretended to be half an idiot. He couldn't remember, he started shouting, he really pretended not to remember anything. He pretended that he

doesn't know this, he doesn't know that and he testified that when I quoted to him his statement to the security:

"As we were during the DPC meeting, we noticed that someone's standing outside the door."

Now how on earth could you notice someone standing outside the door if the door is closed, unless you are looking under the door because there is a gap like this under the door, so you could see somebody's legs so this is why it was somebody. They didn't know who it was.

Well they could guess that there could be nobody in the department except me because I was the only one who had lecture at that time.

"Dr. Sankar opened the door and we discovered that Dr. Fabrikant was standing in the corridor, about four (4) meters from room H.929."

So as stupid as it looks, he wrote the truth, that they first noticed me standing, then they opened the door. When I asked him "How come you wrote like this, how could you see through the door?", if you remember, he responded "Well I just copied from Dr. Osman and it was, you know, I was in a hurry, I didn't think what I was writing." All right, let's see maybe Dr. Osman was thinking what he was writing. Let's read his, what he's written. He written in a little bit different way:

"As we were in the meeting of Department personnel committee, we noticed some standing (sic) outside the door in the corridor."

The same thing, we're ... we were there and we noticed somebody standing.

"When Dr. Sankar opened the door, Dr. Fabrikant was standing in the corridor, approximately four (4) meters from the door."

Now assume for a second that Dr. Leam copied. It's not exact copy. It's paraphrased, the meaning is the same but it is not copy but the funniest thing is that the timing of Dr. Leam is zero hours ten minutes (00 h 10). The timing of Osman is two hours fifteen minutes (2 h 15). So he couldn't possibly have copied from him. He wrote it later so this just didn't exist at the time dean wrote it unless he put a wrong time, but if we believe the time which is written there, he couldn't possibly copy it. Well this is the kind of people we have at the university, from outstanding to excellent people.

BY THE COURT:

I think at this point we'll adjourn for ten minutes.

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

BY THE COURT:

Mr. Fabrikant, you have now been some two (2) days addressing the jury.

When this trial commenced, the crown led evidence among other things of four (4) homicides which occurred on the 24th of ... of August last year. You have addressed anything but.

I would suggest to you that the time has come, indeed has long passed, that you address the crown's case if you have anything indeed.

BY THE ACCUSED:

Don't you worry, I ... this will come and I will address in due time.

BY THE COURT:

Good.

SUSPENSION OF THE HEARING

THE HEARING IS RESUMED

THE COURT TAKES THE BENCH

THE MEMBERS OF THE JURY ARE PRESENT

BY THE ACCUSED:

To the best of my understanding, still question of French translation of all the exhibits has not been settled. Is that correct?

BY THE COURT:

What do you mean, it's not been settled?

BY THE ACCUSED:

Well majority of French exhibits are not translated into English.

BY THE COURT:

Well you better make an indication of what hasn't been translated.

BY THE ACCUSED:

All right.

BY THE COURT:

Please don't do it just now. Continue your argument and

...

BY THE ACCUSED:

So if ... if we believe Swamy who testified here that he never discussed the content of the report and that he received it only when it was ready, namely November 18th, then for some reason he called me that he received it November 17th in the evening and if you look at the date of the report, it is November 18th but this is minor thing. Now let's see how reasoned the reasoned report is.

Department personnel committee was supposed to investigate to evaluate my professional competence and potential for fulfilling academic responsibility.

Now to the best of my understanding, this is the formulation which has always been in the collective agreement, that professional competence has always been there and when they, for example, made their recommendation, they were supposed to evaluate my professional competence too and if we go into that recommendation, it was all positive and it was as those witnesses testified here: OK, then we recommended him for research. Now he's teaching professor.

Well it was recommendation for tenure track position, for teaching position so they were supposed to evaluate me according to this teaching position. They did both recom-

mend it. Not only recommend it, Osman even written (sic) black on white that years served in this Actions Structures should be counted for promotion, for tenure, for whatever is there. He wrote it himself and all my professional competence was there, was positive, teaching positive, research positive, everything is fine. Now if you look at the evaluation in April of 1991, again high marks, the top mark in the department and also recommendation to faculty and to vice-rector to award the highest possible extra points. So everything seemed to be fine until April 1991. Now we are in November of 1991, something happened. As Morrissette said, something happened in between. Now let's see what happened in between. Now my theory is that the only thing what happened in between is that I ... in September I have requested access to my files and these paranoid crooks decided that something, now it is dangerous. Now we need to get rid of him. Here we go. Now the logic of theirs is:

"While professional competence of a professor not only includes his/her capacity to teach and to carry out research activities, it also has bearing on his/her ethical and moral conduct, his/her professionalism as an academic educator, his/her role model for students to emulate and his/her ability to gain respect from students, colleagues and public. Peer judgment is the tool with which these qualities are assessed and the lack of these qualities, especially if they interfere with performance of members of the university and with the department in achieving its objective, cannot be tolerated and must be seriously taken into consideration in evaluating professional competence."

Now this is ... again there is Russian expression which translates into prostitution of words. I don't know what is the good English equivalent but this is effectively what it is. It is, you know, crooked way to substitute meaning of one term by something else which has nothing to do with it. Professional competence and professional conduct are two different entities and I think every person with normal common sense understands the difference and understands what is professional competence and what is professional conduct or misconduct. Professional competence is what related to profession, namely if it is a professor, it is his teaching and his research, period. Professional behavior, it is yes, how he behaves with students, how he behaves with colleagues, how he behaves with anybody else. This is professional conduct or misconduct and I repeat once again, this was the problem, if you recall, at the meeting between vice-rector and DPC, when vice-rector tried to substitute one term for another and DPC rejected that, saying that in collective agreement, behavior is just not there. Therefore we can only evaluate professional competence, that's all. Now, here they took it into advisement and now they are

in exactly the same position, what vice-rector wanted them to do a year ago. So from there on, here are examples of professional incompetence. Here they write:

"Over the past several years, Dr. Fabrikant has constantly made allegations and harassment to many members of the university community. The details of this are outlined as follows."

Now not to repeat what I said yesterday because yesterday if you recall, I referred to this phrase and I showed you four (4) five (5) issues there which were all ... three of them, one is that teacher smoked in the court ... in the classroom. Two others (2) is purchasing of the printer. In all cases, I was right, not them and again, it has nothing to do with professional competence or non competence.

It is conduct, yes but since I was right, it was right conduct too and item 4 is the most remarkable. If you recall:

"Many persons inside and outside university have been subjected to harassment, threats, blackmail and allegations"

And at that time, I quote to you the world-class specialists around the world giving me very high marks and this was quoted by the same four people who signed this document.

Now in addition to above, so this is what it is there.

"In addition to above, Dr. Fabrikant constantly showed bad judgment."

Constantly showed. So first of all, they say constantly showed bad judgment. Now if it is constantly, it has to be proven that it was constantly, but example they gave, this letter of October 2nd which I read to you. So here's how they described it. So after you ... you have listened to the content of the letter, this is their description:

"Dr. Fabrikant wrote a letter dated October 2nd to the chairman of the department in which he requested to purchase release from teaching duties, using a grant he recently received from the university.

Upon receipt of Dr. Fabrikant's letter, chairman of the department telephoned Dr. Fabrikant and advised him to withdraw the letter since it would reflect bad on his part.

Dr. Fabrikant replied "Are you trying to scare me? I'm not scared. I wrote a letter and I want a written reply". Later he insisted and again and again for apology and continued to challenge interpretation of the chairman."

Well yes, if you recall, I requested apology and yes, I challenged the interpretation of the chairman. So what! Chairman is not God. I can challenge his interpretation. Now, and this is constantly bad judgment. This is the

only example of bad judgment they could get.
Now after that, they continue:

"Fabrikant, with his continued arguments to purchase release from teaching, wrote a memo on October 14th. This memo contained unfounded accusation of faculty member paying another person from his grant to teach course assigned to him.

Further, the memo was circulated to some members of department without any identification of the circulator."

Memo was signed by me. How it could be circulated without identification.

"Part of this anonymously circulated material included confidential memo of the chairman to Fabrikant."

If it was from him to me, it is not confidential. If I want to make it public, I make it public.

"Because of the nature of the content of the memo from Fabrikant and the circumstances under which the memo was circulated, chairman convened a meeting of senior faculty members to discuss the content of Fabrikant's memo."

And after that goes exhibits, so all this was attached, these minutes of the department meeting was attached here. Now after that, goes:

"DPC's observations of the pattern of behavior outlined above ...

Now what pattern of behavior outlined above? That I disagreed with manager of purchasing department, that I made a remark to a teacher who smoked in the classroom about ten years ago and that I wrote a letter in which I enquired about purchasing release from teaching duties. This is a huge crime?

"... and because of this pattern of behavior was confirmed by a part of the motion passed at the meeting which states ...

and after that goes quotation from this meeting. So one, it is self-serving evidence, what is called in judicial term. They first created this self-serving stuff of the senior members and after that they use it and they use it. (sic)

"We perceive Dr. Fabrikant's attitude as expressed in his letter to be detrimental to the spirit of harmonious relationship between department members.
Therefore we strongly urge the department and the university to stand up to such practices and to make the appropriate actions."

And again, if you recall on the previous page, many respected people from outside university, inside were disturbed. Here it goes again:

"Many respected and important people from outside the university have also been disturbed by Fabrikant's behavior."

And in view of all this, they write that:

"Dr. Fabrikant has maintained that he held professorial position in the Soviet Union, that he was unable to get any official documents to support his claim due political situation that prevailed this all ... there all these years.
Considering his lack of professional competence describe above ...

Considering his lack of professional competence described above? What did they describe above? That I argued with manager of purchasing, that I made a remark to teacher who smoked and that I requested information on release from teaching duties.
Because of that lack of professional competence, they now have doubt whether I have PhD degree in the first place because person with PhD of course wouldn't quarrel with teacher who smoked. Person with PhD of course would not insist on greater warranty for the printer, so they have valid reason to challenge whether I have PhD degree in the first place, so:

"Considering his lack of professional competence described above, it is of paramount importance ... paramount importance to provide proof of his professorial position in the U.S.S.R. and his academic credentials, especially ... especially his PhD degree."

Now just ... just several ... you know, in 1989, I was excellent to outstanding. In 1990, they quoted all these world-class specialists attesting me to be world-class researcher. Now they doubt whether I have PhD degree in the first place.
If one can go more ridiculous that that, well ...
When I read all this stuff, I thought, you know, four (4) full professors, there is no limit how low a human being can go. They ... it's their signature. I would have understood, you know, if it was somebody else who signed all those, you know, reports that I'm great, that I'm good, that I'm good teacher, that I'm respected, that I'm this and that and the same four people, you know, without blinking eye, signed something so ridiculous, so outrageous because by that time, they knew that I not only published numerous papers, even if I didn't have any Phd, just by sheer publications which I made there and the book, I could have got any degree from any university and they claim that I need to present especially PhD degree certificate.

So this is the conclusion of the reasoned report that I'm professionally incompetent. Now this is not the end of

it. There is second part now. So professional incompetence is established.

"Potential for fulfilling academic responsibilities."

Well strictly speaking, if someone is professionally incompetent, though there is nothing to discuss, he's definitely not able to fulfill his academic responsibility. No, think again.

They still have two pages, no, one page but what is interesting, what they do on the second page, because first page is professional competence. The second page: potential for fulfilling academic responsibilities. If you look at the text, there is no way you can establish what is what because on this page, they repeat exactly the same thing.

Let me just read it to you:

"After considerable deliberation on Dr. Fabrikant's teaching, research and other activities as it would be for any other professor holding probationary appointment, DPC focused on Dr. Fabrikant's potential for fulfilling academic responsibilities.

As per article 16 of collective agreement, in particular to teaching, now there were considerable deliberation on teaching, research and other activities."

Where are they? Where is the result? Where is written single word? OK, his teaching is good, no, his teaching is bad. There is nothing.

There isn't a single word about his research. His research is good, his research is bad, his research is so so, not a single word. All what is there, we did deliberate on that and if you remember, Swamy testified here when I asked him, "OK did DPC answer this question about teaching, research and other activities" and he answered "Well here is the phrase: after considerable deliberation of Fabrikant's teaching, research and other activities, I mean they did." Well where is that evaluation? Nowhere. They just claimed that they did.

Now after that, again goes:

"Since his initial probationary appointment, Dr. Fabrikant has demonstrated lack of interest in carrying out his teaching responsibility, including engagement in promotion and enhancement of ongoing process of curricular development in the department."

Now do you remember, I read to you from my memo all these ... my suggestions for ongoing process of curricular development. I made quite a lot of suggestions there. They... they never read it. It never happened. I didn't write about it.

Now and again:

"Continuous attempts to evade teaching responsibilities as listed below:

a) Continuous arguments for eligibility for sabbatical leave, although he was ... he's been told repeatedly he's not eligible."

Now, so this is attempt to avoid teaching? If I argue that I'm eligible for sabbatical, it is an attempt to avoid teaching.

"Demand for teaching load reduction to concentrate only on research despite chairman's continuous reminder to him that his teaching responsibility. (sic)

The chairman repeatedly emphasized to him that teaching is very important responsibility of a professor and he should not consider teaching as hindrance to his academic pursuits."

Now this is just part of what chairman told me. He didn't tell me that in response, I asked him: "Do you do any teaching yourself for years and years on?" and the answer was no of course, because he didn't do any teaching but he managed to instruct me how important teaching is. Well my teaching evaluations speak for themselves because if you do not pay attention to how you do your teaching, your teaching will not be good and students are the first ones to notice it because students evaluation is very very important tool and most efficient.

There is no way you can buy it, unless students see that you are really doing good job. They would not give you high marks, no way. You cannot do it by smiles or you cannot do it by grades.

Well first of all, because teaching evaluation is being done before exams, so nobody knows what the grades are or will be and again, now again repetition here:

"On October 2nd, Fabrikant wrote a memo to chairman requesting to purchase release from teaching his courses with his grant. Upon receipt of this memo, chairman told him that this is unacceptable."

But this phrase is ... is a jewel.

"If it were possible, every professor in the department could purchase release time from their courses even with money from their own pockets."

This is true, this is exactly what he told me, that every professor, if it was possible, every professor would be happy to pay from his own pocket just not to teach. Then I asked him: "All right, so do you mean that every professor in department hates teaching so much that he's prepared to pay from his own pockets? I at least prepared to pay from the grant but not from my own pocket" so this part of conversation is not there, but this part is there, that:

"If it were possible, every professor in the department would purchase release time from their courses even with money from their own po-

ckets."

Now if every professor hates teaching so much, how could they possibly denounce me if they're prepared to pay from their own pocket and after that, he writes again:

"In reply, Dr. Fabrikant to the chairman was:
"Are you trying to scare me? I'm not scared. I wrote a letter and want a written reply".

Do you remember the same phrase from the previous. (sic) They just didn't know what to write so they here repeated again the same thing they written in the first part and this is theoretically something that they had to write about my potential for fulfilling academic responsibility.

Well someone's potential is to be judged on his past work. If he worked in the past well, then his potential for fulfilling is good. If in the past, the person worked badly, then there is no potential and there is no way he could fulfill his responsibilities.

Now, after that, again quotation from ... you remember there was quotation from the senior members' meeting here, they have it again.

"At a meeting on October 25th, the senior faculty members of the department made a motion which contained the following statement:
We perceived the spirit of Dr. Fabrikant's abovementioned letter ...

Again, letter of October 14th:

"... as being idle argument intending to justify his shirking of academic responsibilities especially with reference to purchase release of teaching and his eligibility for sabbatical.

Based on the above considerations and after eight (8) meetings and after thirty (30) hours of extensive deliberations, DPC made and voted by secret ballot the following motion:

Motion 1:

Dr. Fabrikant be recommended for two-year appoint. Motion was defeated unanimously."

So it's again the repetition of the same thing and this has been signed.

Now when they came to this kind of stuff, one shouldn't be surprised to express concern, that is this stuff is shown to any normal person, to express concern, how normal person would react to that?

I'm not surprised that they were concerned. I would be concerned too if I signed this kind of, how to say it politely, document. So they needed some kind of confrontation since this was the document they wanted to present and well, they knew that I will be late in the evening in the department and there will be nobody else in the department, so no witnesses, they can do whatever they want and well luckily there ... there was no physical assault at least but assault it was and they

used this assault to call meeting of the intervention team and at this intervention team meeting, for some reason, if you recall, Mrs. Horwood was present and we couldn't get from anywhere what was the reason for Mrs. Horwood present there. (sic)

Now the only explanation which could be, if you recall again her testimony, she could not say anything, that I ever threatened her, that I ever did anything which could be interpreted in any threatening way. The only reason for her being there was all these DPC members wanted to show to the administration that it is not they only who are concerned or scared or whatever, how you call it. You have secretary who is concerned and Mrs. Horwood was always there to oblige.

She was concerned, she was prepared to say whatever the boss wanted her to say. She was ready to say, no problem and no questions asked.

There is no other explanation for her being there. There was no secretary of Swamy there, there was no secretary of any other big shot there. There was Mrs. Horwood there and she ... she was present at every meeting there. Well of course, I was not aware of all that, but here we are. She was there and she definitely played certain role. Now what happened during that meeting?

Again, if we go to testimony of Relton, it was a nasty meeting where members of the department personnel committee demanded that administration suspend me as danger to university and if you recall, the intervention team repeatedly asked them "OK, who he ever threatened" and according to Relton, they couldn't answer anything.

Well how it matches again this claim later on that I allegedly came to Osman and make this North American gesture or something. Well if I did that, I believe Osman would have mentioned it but to the best of my understanding, if I recall correct, Relton didn't remember any threats whatsoever.

Then when we went to 1990 meeting, you remember some threats were mentioned there. Then we went back to 1991 and I asked him: "How come if it was mentioned in 1990, then it should have been mentioned in 1991" and he got totally lost, but whatever it is, the only explanation there is that if it was or wasn't mentioned, everyone who were present knew that there is nothing behind it, that it is all invention. Therefore it is the same as if it was or wasn't mentioned and what was there, why it was nasty, because at that time, effectively the quarrel was in the following. At least, this is my interpretation. The quarrel was the following: administration of course wanted me out and this time, DPC also wanted me out because in their paranoid mind, it was clear that I'm going to blow whistle since I demanded where is documents.

They understood that since I demanded documents, something is behind that. It never crossed their mind that the only reason I demanded that, I just wanted to see some kind of justification for their cruelty. They almost killed me.

The fact that I survived, it was just, you know, sheer lucky (sic) that I was in good physical shape all the same, that my heart managed with a totally blocked major artery, still it managed to continue and I wanted just to

see, you know. I couldn't believe that people could be that cruel. I wanted to see some justification for that. Why did they do all this?

I thought that maybe I'll find in my file something which I just don't know, maybe some misunderstanding, maybe some ... you know, whatever. There must be some justification for such behavior because in my mind, it was totally cruel.

They knew that they subjected me to psychological torture. They knew that I was debilitated at the end of 1990. I was debilitated to such extent that I just took sick leave. I just couldn't function anymore and they understood it very well and after that, they knew very well that I had a heart attack.

I made operation and I have recovered but still, I was wondering what was the reason for the whole thing. They in their mind, at least, this is my understanding, decided that I have made my decision to blow them up, therefore they decided to have me terminated but they wanted administration to do it.

Administration wanted them to do it. Nobody wanted to take responsibility. This is what the whole quarrel was about. This is why they were quarrelling.

It was not ... you see, I asked on several occasions Relton and everybody else "If you are scared, if you are seriously scared by handing me this kind of reasoned report, well ask yourself whether your report is reasoned after all" and if you remember, every witness said "Well we were not there for that".

Nobody ever questioned members of DPC. How on earth could you come to such a conclusion, that my contract should be terminated.

So the main disagreement there was, it was obvious that the main disagreement was on one thing. Each wanted that the other side get rid of me, not to take the responsibility for that. Members of intervention team definitely represented administration, I mean rector, vice-rector. DPC represented themselves, so DPC wanted administration to take the lead and to declare me danger to the university.

Then DPC will be out and the whole responsibility is on the rector and the rector of course didn't want that. Why would he need that if he already knows that DPC has made their recommendation against me.

So rector told "OK, you started the game, you continue. It's your game now. I told you in 1990 what to do. You didn't agree. Now you started the game, you keep it and the only thing we can give you, OK, you want bodyguards, we'll give you bodyguards but it is your responsibility, not ours."

So this was the reason for nastiness because DPC wanted administration to do the dirty job and administration wanted DPC to do the dirty part of the job. That was the whole disagreement. It was not discussion of what is honest, what dishonest it was, just disagreement of who will do the dirtiest part of the job and administration definitely wanted DPC to do the job.

Did they have any grounds, I mean real grounds to be concerned? Well so far, no evidence has been presented to that end, that they had any real grounds to be concerned. Now if you recall, there were several meetings. We never

could grasp why was there need for several meetings, what they discussed, why did they spend so much time on that but one thing is quite clear and this thing is, if they were really concerned, they would have asked themselves the question, OK let's see what ... for example, dean who claims here that he just wanted, all right, (sic). It will come, there is a regular process. Department makes its decision, then it comes to the faculty. Faculty will consider, make its decision.

So there is no problem there but if you are seriously concerned with your safety, then maybe it makes sense to take a look what the reasons are and maybe if there are no reasons, why to create the problem in the first place. Why to create the problem how to hand Fabrikant this reasoned report. They never discussed it.

Now why they never discussed it? Well very simple. They thought that when I will read it, I will have a second heart attack. That's all. That was the purpose of the whole thing.

You see, there are different ways to kill people. One is with gun. Another way to kill people is legally, quietly, no questions asked and this is the way they proceeded.

This is the only reason. There is no other reasonable explanation why did they need to hand me this kind of report.

Now in order to somehow create public opinion, because it couldn't be done in secret, if you recall, there was a meeting on November 5th of secretarial staff. Now what was their need for that?

BY THE COURT:

Well before you get into that, I think we'll stop at this point.

BY THE ACCUSED:

All right.

BY THE COURT:

So we'll adjourn until tomorrow, tomorrow morning, nine thirty (9 h 30).

THE MEMBERS OF THE JURY LEAVE THE COURTROOM

BY THE COURT:

Mr. Boutros, I would appreciate if you would take a look at that question of documents that haven't been translated and let me know where we stand.

BY MAITRE BOUTROS:

They are with the translator right now.

BY THE COURT:

Fine.

ADJOURNMENT

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C A N A D A

PROVINCE DE QUEBEC

COUR SUPERIEURE
(Chambre criminelle)

DISTRICT DE MONTREAL

NO: 500-01-017372-928

DEVANT L'HON. M. LE JUGE FRASER MARTIN, J.C.Q.

SA MAJESTE LA REINE,

plaignante

-C-

VALERY FABRIKANT,

pr, venu

PROCES

COMPARUTION:

Me JEAN LECOURE,
Procureur de la Couronne

LE 6 AOUT 1993.

Jocelyne DeMontigny,
St,nographe judiciaire.

500-01-017372-928

ARGUMENT - MR. FABRIKANT

3

IN THE YEAR OF OUR LORD
NINETEEN NINETY-THREE (1993), on the sixth (6th)
day of the month of August.

IN PRESENCE OF THE JURY

MR. FABRIKANT:

Do I understand correctly that --

LA COUR:

Très bien; tant et aussi longtemps que ça fonctionne.

It's apparently functioning properly.

MR. FABRIKANT:

Well -- that's what I was asking for usually there is only
one light and now I see two lights and I'm not sure.

THE COURT:

Yes, so do I, so do I; same problem.

MR. FABRIKANT:

All right. We finished yesterday at the note that at the
first meeting of intervention team with members and D.P.C.
and doctor Mackenzie and Mrs. Horwood, for some reason,
were present there and my conjecture was that the only
reason she was present there, that there was a need to
convey that some ordinary people, namely secretaries are
concerned for their safety and since no honest person
could say it, Mrs. Horwood was probably the only one who
would agree to say anything their bosses wanted her to say
and I cannot find any other reason for her being there
because that was definitely not the place for the
secretaries to be.

And there is no doubt that probably she was a driving
force at the meeting of November 5th of meeting of
secretaries.

If you recall, Mr. Chang testified here that she called
him, asking him to attend that meeting and when Mr. Chang
was asked, why him, he said, well, because I always listen
to the secretaries and when he was asked, okay, what about

her immediate boss, he refused to listen to her or what; why you? And at that point, if you recall, as usually when witness is in difficulty, there is judge here to stop me and to order me to go to another subject.

So, if you recall again his testimony, he was told by Mrs. Horwood that Department Personnel Committee has made the decision not to recommend extension of my contract and, at least, the way he told it, that the secretaries are concerned and they want to get together and share their concerns.

If you recall at the time also, Mr. Chang confirmed that all the secretaries at this meeting when there was a need to explain the purpose of this meeting, all the secretaries were explained that the reason for such meeting is that Fabrikant is to be terminated and there is a concern how he will react when he knows about the news. When Mr. Chang was confronted how come, Mrs. Horwood who was not supposed to reveal this confidential information neither to him nor to anybody else, how come all this confidential information become -- became available to everyone? If you recall, he just sat down and took his heart, something happened to his heart. Well, he is perfectly healthy and the only reason for him he just understood that he made a big, big flop and he didn't know how to get out of it. But, again, he just underestimated our judge. He helped him a lot at that time, so he got out of it, if you remember how it happened.

But the whole thing, you realized it yourself, was not just illegal from the point of view that this information was supposed to be confidential and not to be released even to doctor Chang, though he is a member of the Department, Mrs. Horwood, since she typed probably these documents, was aware of that, but my understanding is that she was not supposed to reveal this information either. And in general, the information which we got from Ms A... who testified here, if you recall, she said that secretaries were not really concerned -- that nobody expressed any concern or any facts or anything at all which could indicate that I threatened any of them -- nobody could even say that I raised my voice at any of them at any time.

At the same time, if you recall, Mr. Chang said that secretary of Sankar even started crying how she was scared for Sankar. Well, as you know, I was not allowed to call that secretary and to ask her what exactly was the reason for her concern, but again, Mr. Chang is not the best person to be trusted in this regard, taking into consideration the whole testimony of his -- how he explained the reason why he was there and how he took his heart when it was revealed that he got the information which he was not supposed to have in the first place and so on.

It was also clear that he confirmed that secretaries from Annex B where he is located, none of them expressed any concern but, nevertheless, he decided to establish a panic button for the secretary.

Now, we are all normal people, but I think that if I am a secretary and I don't really know a person very well because in Annex B, if I was there maybe twice or three times in my lifetime, she doesn't know me and if professor Chang, a respectable professor considers that panic button

is necessary, well every normal person gets worried and this is normal.

Would you if some person who you don't know and some person who you do know, you do respect, comes to you and says, you know what I put panic button in your desk and if Fabrikant comes and if something happens, so this panic button goes to the second floor and there is always there a very strong man who will come and help you, well, how would you feel about it?

Of course you would feel concerned because it never crossed your mind that it was just despicable and dishonourable getting to discredit, to diffame, to denigrate my character, there was nothing else there.

They couldn't present any facts, anything and it was kind of self-serving evidence what they created because after it is done, then, they can say, of course, we were concerned. You see, we installed panic button, so it means that we were concerned.

Now, ask them the facts why they were concerned. Again, they will answer, do you see panic button? Well, would we be installing panic button if we had no reason to be concerned? Of course not. So, because this is how it is done. First of all, something is created and then, what is created is being used to enforce the lie.

The exhibit which I want to show another one, it is D-23, just the next day after the so-called incident in the department, there was a memo issued by Victor Francesca, "Subject: special surveillance". Text:

"Effective immediately, extra patrols are to be discreetly -- "

pay attention to the word, discreetly:

" -- made at the following locations: B-302, doctor T. S. Sankar, H-929-9, doctor Hossman, H-907-7, Emana Swamen. The patrol should be approximately one and a half and one and three quarters hours depart. Keep in mind that the above-mentioned may request assistance at any time, please respond immediately. The information that I can release is that this case involves a troubled faculty member."

Trouble faculty member.

"The above-mentioned professors may be targets of threats. Myself and Michel Bujold are to be contacted immediately, as soon as there is any kind of involvement in this case."

Now, if you look at this text, my name is not there and one might think, okay, they wanted to do it discreetly not to discredit my reputation; ah, ah, think again. There was definitely a picture of me. I think the intention made the copy so bad that one might think, ah, you cannot recognize that this is Fabrikant, but I believe that the original was pretty good, so that it looks like it is a big portrait.

And so, there was no need to give more information and when every security guard, I understand, received this kind of confidential and discreet information, you may imagine what reaction they have and what reaction it had at the university. This was distributed on October 31st. Now, what happened? You know what happened. Members of D. P. C. assaulted me, I didn't say any word to them.

They do not, even in their reports, they do not say that I used any abusive language, that I made any gesture at them, that I did anything which would -- might make them concerned. So, why was the need for that? There is no other explanation why was there need for that. To discredit me whenever it would be possible. And possible targets, T. S. Sankar who is not even member of D. P. C., Hossman, who he is. So, why me who theoretically has nothing to do with the whole thing, he is Dean of the Faculty, he did not participate on this stage theoretically. But, since the name is there and the only assumption is that the names were put there from the position of the same (inaudible) forget it, which means that guilty conscience needs no accusers, that those people who participated and committed the whole thing, they felt that they deserved something like that. They felt it.

That's the only reason because it is obvious that Dean there actively participated in the whole thing and this is the only reason why he requested a body-guard, because he thought, you know, every criminal this is what the word means, feels that the whole world knows about his crime, therefore he takes appropriate measures and this is why, despite the fact that it was Department Personnel Committee decision. The security guard, later on, or body-guard more correct, because in the invoice they are body-guards, were placed at the Dean's office, not in somebody else's office and the only reason just the thought, gosh, maybe Fabrikant knows what I did. I see no other explanation for that.

So, this is measures that they did take and the spectacle of November 1st ended up. If you'll recall on November 1st, I came to a senate meeting where, according to evidence which was presented here and, again, evidence was somewhat different, but more or less what transpired was that security guards were called and they put security guards -- at least a secretary general interpreted more or less correct -- three security guards: one behind me and one on the two sides of the hall, and I was sitting there definitely without any suspicion why they are there and everyone would be turning his head and asking, what is going on, security guards are never at senate meeting. And again, according to the same report, Mr. Yelle -- Mr. Yelle, in his report, testifies that that was the same person that had previously caused problems to the university administrators last year.

Now, on earth he is supposed to know what happened last year and last year, if it is '91 it must have been 1990 and to the best of my understanding, in 1990 none of the witnesses testified that I made any threats. To the best of my recollection, the testimony was the threats were made in 1989, not in 1990, but probably we just don't know how many of those rumours were circulated. Maybe there was something there.

And he wrote here also that:

"Due to circumstances I carried out the surveillance on that individual by staying close and watching his every move. I followed him to the front of the administration parking lot. It's at that time that the M.U.C. arrived and I informed the constables of the situation and asked

the police verify the person and he looked suspicious, carrying a large (inaudible) attach,-caisse and because of the threats he had made in the past."

Now, how he is supposed to know about threats allegedly made in the past. So, definitely it was common knowledge. It was distributed. It was made to be distributed because the purpose of the whole thing was to distribute this information as fast as possible to discredit me. That was the whole idea behind it. And if you recall, in the police report, he said to the policeman that previously I threatened to shoot the whole senate.

Now, this is something new. None of the witnesses here testified that I threatened to shoot the whole senate. When he was asked, did you say so to the police, he said, no, I never told them so.

Now, the policeman to invent such a thing -- I think the majority of policemen don't even know the name of the senate. I am not sure they are aware of what are the administrative bodies of the university, just ordinary people. Do they know how administrative body of a university is called, whether it is a senate, whether it is a parliament, whether it is just a chamber, whether it is just council of administration? You have to be pretty familiar with that. Policemen couldn't possibly invent it.

So, there is no doubt and in this case, I do trust that policeman has recorded it correctly what he was told and you can judge of honesty decency of Mr. Yelle by yourself when he denied that he ever told this to the policeman and you realize yourself that policemen couldn't possibly proceed with arrestation and search unless they were told that threats were made because, in this case, I must tell you I cannot blame policemen for anything; they did absolutely the right thing.

If someone complains that there were threats and there might be a weapon, they should do that. This is why I never filed any complaints against policemen because I thought that they acted properly except, of course, when I asked them to go to some place where nobody sees us and they make search and they disagreed and made the search in full view of the university.

This I could not accept but, again, maybe this is their rule that maybe a person is armed, they cannot take chances to go somewhere else because when you go somewhere else, this person might take weapon and start shooting.

So, I could understand them, if those were the rules, those were the rules, so I cannot really blame policemen in this particular case.

But the university, there is no doubt did it intentionally again to have it as an argument against me instead of apologizing and saying, we are sorry, whichever normal person would do when they know that there are no facts, no arguments, nothing to support the whole thing. Instead, as you know, they used it later on in their -- as a proof that I am a danger. It is not proof that university abused me, but rather the proof that I am a danger.

And if you look at D-27, it is the letter which was written by, again, members of D. P. C. For some reason, the letter was written to the secretary general who does not have any administrative power. Why was it written to

her? If you recall, I asked Mr. Lane here and again do not judge him from his behaviour, he is absolutely a normal person and he is very smart person. The way he behaved here, it's nothing. He is absolutely normal person, I assure you. And when he was asked, why to secretary general, if you recall, well, I didn't write the letter, I don't know, I just signed it.

Well, this is effectively his nature. When I complained to him in '88 that Sankar is extorting papers from me, his only response was, and what does the Chairman say, and that was it. So, whatever Chairman says, he will go along. This is the kind of person he is. This is, you know, there are spineless people who are prepared to do whatever boss says, they will do it.

So, what was in this letter, if you recall. This letter was requesting the university administration to declare me danger and suspend from the university as threat to the university. Now, what was their argumentation? The following:

"In the light of the following incidences and information described below all involving doctor Fabrikant; first, information received from the secretary general on Friday evening, November 1st 1991 regarding the incident at the senate meeting on Friday afternoon November 1st 1991."

Now, you see, the fact that they maliciously arrested me and searched in full view of the university. Now, it goes against me. This is the proof that I am dangerous.

"Second; the incidents on Wednesday, October 30th, when doctor Fabrikant was caught evesdropping on the D.P.C. deliberation and his encounters with the university security."

Now, what happened, dangerous on October 30th, you know yourself, I was assaulted by members of D.P.C. and again, they use it that I am the dangerous one.

"And the third, apparent lack of security measures involved in doctor Fabrikant, an example of which was discussed by D. P. C. Committee on November 1st '91 with special intervention team."

Now, we never know what example was discussed because no witness testified here what kind of example was given, what lack of security they were talking about. If you recall, the best testimony we had from the witness who the least claimed bad memory, it was Relton. And if you recall again, he said that, first of all, all members of D.P.C. were asked if anyone was threatened, if anything happened and none could come up with any answer.

Then, he got mixed up when we went to 1990 and he said that in 1990, when vice-rector called a meeting of D.P.C., they mentioned some children, they mentioned some threats against director and so on. Then, when he was confronted, okay, how come if D.P.C. were there, they definitely knew it, how come at that meeting it was not mentioned and he said, you know, it got completely mixed up.

So, difficult to say what it was, but what we can assume as example most probably, it's one of those threats which were allegedly made in '89, God kows, but again, apparent lack of security measures, what exactly they mean here,

nobody knows.

And after that, so, three reasons were formulated. First, malicious arrest at the senate meeting, I should be declared dangerous. Not to apologize to me, but I should be declared dangerous for that. It's absolutely mind boggling. The incident on Wednesday, October 30th, again, when I was assaulted, this is reason to declare me dangerous and something else which is not specified here. Now, the Department Personnel Committee is very concerned about safety measures undertaken by the university, especially in view of the fact that a copy of D.P.C. recommendation to the faculty Personnel Committee regarding Fabrikant's reappointment will soon be received by doctor Fabrikant.

Well, again, here the only comment is if they were really concerned for the safety anyone could have told them, guys, look what you have written. What you have written is a nonsense, so either make it make sense or do not claim that you are afraid. You are afraid just because you wrote such a nonsense that ordinary person, normal person might become violent when he reads this kind of stuff. Nobody told them that, to the best of my understanding.

I asked every witness if they tried to explain this stuff to the members of D. P. C. that all they are concerned was because their behaviour was outrageous. There was nothing else there.

So, after that, they continued:

"D. P.C. is alarmed that security measure taken so far by university do not guarantee full security members of D.P.C. as well as to certain members of the department."

Now, who are the certain members of the department? If you recall, I asked everyone who I managed to call here if he had any concerns about me and none of them said they had. Even S... Shankar, if you remember, I asked him did he have any concerns and at first he said, no. Then he said he remembered asking him, okay, there was this incident at the Department Personnel Committee meeting in the evening of October 30th 1991 and he said, well, next day I had forgotten about it. Well, if he had forgotten about it, then it means that you are not that much concerned.

Now, on November 7th, nothing really happened, he has become again concerned. At least, his signature is there that he is concerned. We can believe him, we cannot believe him, but signature is here that he is concerned. What happened in-between? Nothing. I never -- he didn't tell that I called him, he didn't tell that I threatened him, he didn't tell anything we didn't have any contact whatsoever.

So, anyway, they are concerned:

"Therefore, because of the threat pattern of doctor Fabrikant's behaviour over last two years of which you are fully aware."

This is very interesting phrase. I will repeat it once again:

"Therefore, because of the threat pattern -- "

So, he is talking about some kind of a threat pattern. It means either they were aware of all those rumours about

rector, about children, about North America, and again, for the last two years, this is some kind of strange because all those events, at least as we have established here, it was '89, not 1990 and not 1991. Still, this is what is written there, over last two years, of which you are fully aware.

So, D.P.C. implied that secretary general is fully aware of some events. What those events were, we never got any information on that if there were any.

"The recent incidents mentioned above, the D.P.C. in its meeting of Monday, November 4th, was unanimous in his decision to request Concordia University to invoke article 2907 of collective agreement which states, director may suspend the member(inaudible) out salary because the member poses an immediate and continuing threat to the university. If the university, due to legal or other limitations is unable to invoke article 2907 immediately, the D.P.C. requests that Fabrikant's office be moved immediately outside the office so the Department of mechanical engineer including Concave Centre and B annex. And D.P.C. holds university responsible for any physical or mental harm to any member of D.P.C., Faculty member and staff of the Department of Mechanical Engineering."

Now, let us see what is the real translation of this paper. If you recall, my interpretation of what transpired during meeting of November 1st was they were -- it was a nasty meeting because they were quarreling who is going to do the dirty job because both administration and D.P.C. were concerned that I will blow whistle since I requested access to information. So, they wanted me out, but each wanted another one to do the dirty job.

Now, D.P.C. didn't want to do it, administration definitely didn't want to do it either because, well, nobody likes to do dirty jobs in the first place, but the difference was that D.P.C. was at this point personally interested in the whole thing because if you recall, one of them, Hoa, had several publications with me to which he didn't contribute anything and he knew that. So, again, we have a situation which is characterized in russian (inaudible) it. There was another member, Sankar, whose brother was involved and who, himself, used all possible means to extort papers from me. So, we have again (inaudible) burning hat.

Hossman, though we didn't have any publications of joint nature, but he knew that I knew that he submitted at least two requests for money from Quebec government and it was fraudulent requests because the second request was exact copy of the first one. So, they just made it by cut and paste method.

If you remember, I tried to show it to you and Mr. Martin who is doing his best, God forbidden not to tarnish reputation of any crook at the university, he didn't allow me to show it to you, but each person was personally interested because they knew that all the staff will come out, at least they feared.

At that time, I did not really intend, as I've told you, my intentions were different. I just wanted to clarify for myself because I failed to understand the behaviour of these people. I failed to understand why they wouldn't

just say, thank you and forget the whole thing or even just forget the whole thing without saying, thank you, but not to harass me for not including them any more in my publications. This I could not understand, this kind of attitude over robber who doesn't know the limits, who does not understand that there is certain limit to every robbery. You rob a certain amount, okay, keep it and relax. Do not try to grab more if person doesn't want any more. That was the only purpose of mine at that time. So, this is the reason for this letter and as you see, they knew very well that I was coming to the senate meeting. This is why they prepared the whole thing because I called the senate office and asked them what time the meeting was scheduled at and since, as you know, I was under surveillance probably all the time, definitely this was reported to everybody else since I called -- I never call anonymous. When I call, I always say, okay, here is Fabrikant and I want to know this, this and this. Definitely, they knew that I was coming and they prepared all that.

And I think that even if I came not with a big suitcase, they would find a reason to arrest me that they might say, well, in small suitcase, something was bulging or just my behaviour was suspicious.

Well, when you want to assault someone, you will find a reason to do so because I think that even if I was not standing in the corridor, I had to pass from my office to the exit they could have caught me there anyway because the door was opened so quickly and they just run out of the office. So, it was obvious they were waiting for my appearance and there was for me no other way. I couldn't just miss that point where I was standing, even if I wasn't standing there.

After that, so as you see how this sloppy joke was done, but they were playing game even themselves, exciting each other about danger. Probably they thought it is kind of interesting game of russian roulette or what, I don't know. After that, we see two more meetings, on November 7th and November 8th and I had an agenda of that meeting and if you recall in this agenda, there are interesting aspects written. One of them -- well, first of all, who is going to present the decision to Fabrikant and they decided that it will be S... and Relton.

Now, why S... if you recall when I asked him, if you knew about some threats, why did you never, you know, put a question square to me. Did you do it, did you not do it? If you did it, why did you do it and he explained that he could not communicate with me because he gave me certain advice and I didn't follow that advice.

Well, I don't have to follow every advice, what he did, but this doesn't mean that he could not pose to me a question because questions should be posed anyway. If he hears that someone made a threat, his duty as the Dean to call that person and ask him. Did you do it and if you did it, why you did it, regardless whether he can or cannot communicate it. He is the administrator and if you recall, he told that Hossman came to him and complained about some hand gesture.

Well, normal administrator in this situation should call the person in question and put question square to that person, did you do it and if you did it, why you did it

and it doesn't matter whether he could or couldn't communicate it. This is just what he is paid for because if someone really made a threat, he has to inquire whether the incident took place, in what circumstances, what it means and whether it was really a threat or it was just a misunderstanding of something. And he admitted here he never did it.

My guess he never did it for one reason only, because no such event took place. This is why he couldn't call me and confront me. There was nothing to confront with in the first place. That was the only reason.

And what is interesting at that meeting, present: S..., Brandon Hanes, Catheryn MacKenzie, Suzan Belson, Relton and Turbide and in agenda, it is necessary, one agenda item:

"It's necessary to find out who he ever threatened, why, when, how."

Doesn't it sound funny, in view of (inaudible) Hanes right there trying to find out who Fabrikant ever threatened? Well, he knows the answer. He is the one who allegedly heard that I said that I'm going to kill and kidnap rector. So, what is the point to ask question of whoever threatened, he knows the answer. And the second person present there is MacKenzie and again, there is no point to ask whoever he threatened. Allegedly, I threatened to kill a lot of people in front of her. So, she is there. Doesn't it look funny?

And S... is there too and he knows about the so-called hand gesture something. So, also you could say, well, Hossman -- I allegedly threatened Hossman. So, there is nothing really to investigate and if you recall Mrs. B... was sitting there and when she was asked, okay, were any threats mentioned there? She said, no. Well, let us trust her no. Well, if no, let us ask ourselves question, how come -- how come no if Hanes knows about it, knew about it, why didn't he stand up and say, well, I know the threat. If MacKenzie were there, who prevented her to stand up, I know the threats.

And if you recall, Mrs. B... at that point decided, well, we need to do something to go to the bottom of it, you remember her words. We need to find out what's really happened, what took place, what didn't take place and when she was asked, okay, did you do it? She said, no, I was too busy. So, who did do it? And she said, if you recall, well, we thought that maybe -- what is her name -- Ms Abib is going to do that.

Well, why is there a need to involve Ms Abib if you have all the people who, at first, had knowledge there about the alleged threats. It is all there.

And at that meeting, again they decided -- the other issue there is even more funny -- to offer me help; (a) a psychiatrist, (b) L... Now, it looks very interesting, like we hit you over the head and here is a bandaid for you. Well, don't hit me over the head and maybe I won't need your bandaid in the first place. Why do you need to hit me over the head?

And this has affected what their meeting was all about; who will hit me over the head with this decision of D.P.C. and then, they would offer me help of psychiatrist and the L... What could be more absurd.

You know, sometimes when I'm reading this, it's either

totally rotten and malicious people or they were just insane or maybe both, I don't know, but the whole thing doesn't make any sense. People are meeting November 1st, November 5th, November 7th, November 8th. All those meetings seriously discussing what to do, how to bring this information to Fabrikant and nobody asks very simple question, do we need to bring this information to Fabrikant in the first place; maybe we don't need it and then, there is nothing to talk about and there is nothing to be concerned with because concern was how I would react to this decision.

So, for every normal person, wouldn't it look logical, okay, let us discuss this decision in the first place, let us see if this decision makes sense. Let us see if this decision is fair. Let us see if this decision is necessary and if it is answer to all these questions is yes, then, right, go ahead because you don't have to keep person -- a bad person just because you are concerned how he is going to react. This is a different thing.

But if there are no valid reasons whatsoever for your decision, then let us discuss the decision first and we would not be concerned with this. It's totally absurd. Now, after that goes lunch at Aldus which again, we know little about, except that at least my recollection is that one of the witnesses said that Mr. Relton was supposed to meet with me and to discuss this incident at the senate meeting. Now, about this incident at the senate meeting, if you recall, the only explanation which was given, again I was not allowed to play the tape because I understood that that meeting was important and I recorded it, but there was clear contradiction between what was said then and what doctor MacKenzie said later on because at that meeting she said, for example, the following: at that point, Fabrikant said to me at least twice, twice, not once, twice. She never confirmed it here but, then, she said, at least twice, that now he understood what North America society was like and that he was very disappointed in expectation after all he has been through and in order to get in America what he wanted is to go in and shoot a lot of people and that was what he intended to do and allegedly, I told it to her twice.

Now, here she testified -- well, first of all, there was I also played it to her, there was a meeting of hearing board and at that meeting she changed her testimony completely. She said that she absolutely is not sure whether I said that this was what I was going to do and when she testified here, she said also that she wasn't sure that I said that and she was -- she was unable to confirm that it was said twice. She said it was said once.

Now, during the same conversation Relton asked her explicitly just that single comment, then Fabrikant said what he said and just the single comment prompted you to call police to arrest him and she said, well, no the general conversation was disturbing in terms of language. He said he was raped in the Department, he was forced to include other people as co-authors and he didn't expect to be treated that way.

Again, nothing else; she insisted, okay, anything else? And she said, no. When she was asked here, okay, how come you knew of alleged threats which I said to Relton, how

come you didn't mention anything to that meeting? Well, she said she didn't want Mr. Hanes to be involved. Well, take it as it is, but if you combine this staff, if the fact that she was sitting on all those meetings, without altering a word about my alleged threats and when she came to the senate meeting, she all of a sudden remembered threats and called the police.

When she was asked, why didn't you -- if you had any suspicion, why didn't you just ask Fabrikant to show what he has there? She didn't have anything to answer to that.

She also admitted that she was sitting just beside me. So, if person is afraid, would she sit besides? If person is really afraid, she would get out of the room and let the guards do the job. She is not that brave person, I think and nobody would be. If it was a serious consideration, what is the point to risk someone's life, if that was the case?

And, most of all, the logic which totally escapes me, okay, I had problem with Department Personnel Committee, why would I go and shoot senate? It's absurd. It doesn't make any sense. There was nobody in the senate from D.P.C.

The fact that S... testified here that Hossman was a member of the senate, I think he was wrong, I think Hossman became member of the senate since summer of '92. He was not member of the senate at that time. But, if you think that this is all what happened there, think again.

There was still a meeting on November 14th and at this meeting we have again very interesting remarks made by -- who was it -- Abid Wilson. The subject of the meeting was: why are we meeting? Very good question. I would love to know what they answered to that question because if this question again is posed correct, why are we meeting, why do we need all this stuff, shouldn't we examine, first, whether D.P.C. has valid reasons not to recommend extension of the contract in the first place? Well, that would be a good answer to the question why we are meeting, but it was not their answer to the meeting. The next was an update what has been happening. Security measures, what is in place, what needs to be done in present concerns.

Now, security measures that was reported that one body-guard was at Concave and one body-guard was at the Dean's office. And again you may ask yourself question, why the Dean. Dean, supposedly, has nothing to do with D.P.C. recommendation.

Well, I already gave explanation why the Dean, because Dean indeed participated in full in the whole thing because he was the one who was probably most afraid because his reputation as member of, I believe, seven -- not member -- fellow of seen learned societies. If you recall, I once explained to you, to be a member of society, you don't have to do anything, just pay the dues and you are a member.

To become fellow of a society, you have to do theoretically a whole lot of work. You should become very famous in your field, you should become, you know, at least maybe in top 20 people in your field. You become a fellow with society. Now, he was fellow of about seen learned societies.

Now -- and, of course, what do they look at; they look at number of publications and number of publications is staggering, but nobody looks really which name in those publications goes last mainly. And where it goes first, it is either his graduate student who he can manipulate any way he wants or people from the Soviet Union who desperately needed something. Sankar also got several papers from me in which his name goes first. This is what scientific prostitution is all about.

Now, at that meeting, what else happened? They clearly wanted to play a spectacle, S... and Relton, why Relton was there. To me, it was explained because if you recall Relton testified here that on November 3rd, I have submitted two complaints to him. One about incident in the Department and the other complaint was complaint about malicious arrest at the senate.

Well, I'm still peaceful person, even after all that happened, if you recall, in my complaint I've written, if the matter comes to the Hearing Board, then I would like it to be public. So, what it meant, that I effectively said, if you can't settle it peacefully, I'm prepared to settle it peacefully. Let the university apologize, I have no interest to sue them for damages for money or anything, let them just apologize and admit that they did a wrong thing, that they should not have done that. They had no reason to do that.

And as far as those members also, I've said, let them apologize and I would consider the matter closed and he told me -- the finest thing that he told me that he will be there with the Dean because Dean also can make kind of informal settlement of this complaint.

But, when I came there, it was meeting not for my complaints; it was a meeting to show me the D.P.C. decision so that I could read it in their presence, two of them. And if you recall, the whole thing was they were concerned how I would react.

Now, S... testified here that I reacted quite calmly to all this stuff. Well, I had a tape of that conversation too and, again, I think it would have been very important for you to hear exactly what's said and not just what's said, but how it was said because then, it would be absolutely clear to you that I was not a trouble member as they claimed it, that I was absolutely normal person and my reaction was absolutely normal.

It was not really calm because you cannot be calm when you see this kind of -- how to say it -- nonsense written on the paper, but on the other hand, yes, I behaved perfectly civilized. I did. They hoped, I think, they hoped that I will author some threats or start shouting or whatever, I don't know, because some people might do that because it was so shocking. You cannot imagine how shocking it was.

Just imagine, to see not just what they've written that they intentionally confused professional competence with professional conduct and in my professional conduct again, as I've mentioned to you yesterday, there was absolutely nothing reproachable and I learned for the first time that there was meeting of the so-called senior members and, of course, that was shocking too.

Now, for you to understand why it was meeting of senior members and who are the senior members. Senior members

are the people who already have tenure. Now, these people who have tenure are exactly the people who decide whether to give or not to give tenure to those who don't have it yet.

So, it was a very clear signal to me. So, this is the meeting of people who will decide in the future to give or not to give you tenure. That was the essence of that meeting, and to show to me that all these people, all of them are against me. So, to not even, you know, have any hope that these people will give you tenure and it is clear that everyone would, you know, panic and say, hurra, just don't beat me any more, I'll do whatever you want.

Probably that would be the situation if it was before I had a heart attack. After you smell death, you no longer behave like this. You understand that we are all mortal sooner or later, we'll all be there and it just doesn't make sense to bend in front of crooks. It just doesn't make sense. And this is why I reacted not calmly, but I reacted like every normal person would react.

I just told them that this is a stupid thing, that I would like to have it published because it is totally absurd. I just told them that this is the second stupidest thing they did so far, the first one being having me arrested and this was the second stupidest thing.

At that time, Relton told me, started telling me that, well, we still have the opportunity of non confrontational approach and so on and so forth, because before that meeting, I didn't know.

I called Relton concerning this complaint and I've told him that I am not a fighting person. If there is a way to settle matter in non confrontational way, I'm open for suggestions. And he started talking to me, well, I found one lawyer who can be a mediator and maybe we could find a non confrontational approach to which I told him. After I've read all this, I don't see any way for non confrontational approach.

That was important part in the conversation and it is regretful that you do not hear it and it is regretful that I know that when it is all finished judge will tell you to disregard whatever I said because this is not evidence. This is the worst lawlessness of my situation, that I cannot testify, I cannot present you any evidence. So, whatever I say, the judge would tell you, disregard all this; this is not evidence.

And I again say that it is up to your conscience to disregard or not to disregard because after all, you are the judges of the fact. Judge is judge of the Law. You are the judges of the fact and you are deciding the matter according to your conscience.

Now, after that meeting, since I wanted to do it in a civilized manner, which I always did, wherever it was possible to do in civilized way, I did it. I did all my efforts to do everything possible in civilized manner. It did not, regretfully, get civilized response, but my actions, to the very end, were the best effort to settle something in a civilized manner.

This is what I've written to S... in response to the so-called "Reasoned report of D.P.C.", I've written the following:

"Dear doctor S...:
Regretfully, the content of the D.P.C. reasoned report is not consistent with the requirements of collective agreement, article 1401 and 1402 which require evaluation of my professional competence in teaching and research. The relevant section of the report is devoted to the history of my purchasing of a printer and the like, which has nothing to do with my professional competence. The same can be said about second section of the report, potential fulfilling academic responsibilities. Its content is also completely non academic."

So, I state here that all the report talks about my behaviour, not about my professional activity or professional competence or anything like that.

"On the other hand, the proper academic evaluation of my work has been done quite recently, April-July '91, at all levels of this university and the final of 3.0 -- see attached documents 1 and 2 -- I attach those documents of evaluations in April.

Document 1 was signed by the same four members of D.P.C. and they have found my work in teaching, research and service to be excellent at that time. No explanation to such extraordinary discrepancy between the recent report and document 1 was given so far. I strongly believe that the D.P.C. reasoned report should be rejected as irrelevant. This does not mean --"

So, after that I write my understanding of personal misconduct and how it should be treated. I write:

"This does not mean that personal qualities of professor are irrelevant and that a bad person should be tolerated in this university, not at all, but this aspect is not in the D.P.C. jurisdiction."

So, all I am saying here, if I misbehave, this is not D.P.C. jurisdiction.

"This is the demand of the code of conduct non academic. It allows suspension of any even tenured member for serious personal misconduct. I would encourage anyone who feels that my personal qualities are detrimental to the Department or university to file an official complaint with the code administrator, Mr. Relton."

So, here I specify that if they are unhappy about my behaviour, that's fine with me, there are proper ways for that, it is code of conduct, Mr. Relton filed a complaint, I am coming and defending. This is civilized behaviour. At least this was my understanding of civilized behaviour. After that goes second section, academic matters, since D.P.C. didn't say a word about academic matters, I wrote about it. This is what I've written.

The collective agreement, article 1402 mentions fulfilment of any special requirement in the contract. My contract stipulates that my research should be directed towards the focus of Concave Research Centre. So, here I discuss specifically whether it is special condition that my research be devoted to Concave Research Centre was fulfilled and I write the following:

"Attached document 3 indicates written approval of my research for '89-90."

This is program of my research with S... Sankar, you remember I showed it to you, he approved it in writing. Document 4, this is the request which I made December 9th 1990 to Hossmand and with copies to S.... and Sankar to approve my research for 1993. They never responded in writing but already it was approved. So, I write here. "Document 4 was already approved by both doctor Hossman and Sankar for the year 1993. After receiving a grant from NASA, a temporary change in the subject of research was reported to and approved by doctor S. Sankar."

So, this, I refer to the letter in which I informed Sankar that I received grant from NASA. The grant was small but it was a feasibility study which, if successful, could result in huge work of about \$300,000.00, so from my point of view it was worth for some time to devote full attention to this and, if successful, because after all NASA is also transportation. It is cosmic transportation, but it is transportation and it is not outside preview of Concave Research Centre because I think that cosmic transportation is future of major transportation. So, I think it is a great honour to have a grant from NASA. NASA has the best minds working for them and if they decided that they want a piece of my mind, I think it should be appreciated as a great honour rather than something detrimental to me or to university or to Concave. At least, that was my understanding and Sankar, at that time, congratulated me with this grant because it was definitely a prestigious thing to get. At least, to the best of my knowledge, at that time nobody at the university has any grants from NASA.

"I have also been awarded in 1991 by Natial Research of France, a prestigious scientific exchange award, poste rouge, which I was not allowed to accept."

See collage of three messages in document 6 and I attached the notification of award and the letter exchange, which I cannot go and that award could not be moved to summer.

"See also part C on page 4 of D.P.C. report where the whole matter is intentionally misinterpreted."

I refer there that they, in their report, misinterpreted that since I have taken this grant from NASA I do not want any more to do the research for Concave. It was quite opposite. S... Sankar agreed that this is a good step what I did, at least at that time.

"All other aspects of my academic achievements are given in previously submitted dossiers."

So, before I have given them complete report. I have emphasized here because I knew that they are going to try to peak on whether I was or wasn't contributed to Concave. So, I emphasize on this part that I did, that I made a program of research. I did exactly what in the program was and if there is a deviation, it was approved by director of Concave. So, everything is fine and they could check it with S. Sankar whether this was correct. Now, non academic matters; here I give a rebuttal to what is written in D.P.C. report. I write the following:
"Though the personal allegations made by D.P.C. are irrelevant to the appointment as such, I take this

opportunity to clarify their falsehood.
General remark; in the preamble the D.P.C. spends much space to prove that I am a new professor in order to discount my previous achievements. On the other hand, it goes back to '83 to count all incidents in quotation-marks."

If you read, in preamble they write that Fabrikant is new professor, he has no right for any previous service and so on and so forth and I write here, okay if I am a new professor, why do you count my old faults then? If I am new, then count me like new as if I didn't do anything wrong in the past. But whatever you feel I did wrong in the past you do count, but my service to the university, you don't count. And after that, I write:

"Exhibit 1 refers to the incident where the teacher in my French class smoked in the classroom and I asked her to stop. I was right in my request and I was vindicated when the university in the out of court settlement has agreed to pay for my French classes elsewhere and my promotion was followed right after that incident is yet another indication that I was right.
Second; in the purchase of the printer, I was also right. The best proof of it is the final agreement with the university where all my reasonable conditions are met. Document 7."

I attached this final settlement with the university.
"I did not purchase printer for myself. I have purchased it for the university and I demanded the condition which every competitor of H... & Soper -- "

This is the company from which I purchased it:
" -- was glad to meet and I was amazed that instead of support from the university officials, I encountered strong opposition. University had many meetings of business with that company while orders were much more competitive.
Three; all the above was well-known to the Department. It did not prevent them to recommend me for merit award -
- "
and I attached document supporting that.
" -- and for promotion in '89".
and I attached those documents too.
" -- as well as a recommendation for tenure t...
position."

and I attached the recommendation they made.
"Paragraph 4, page 3 of D.P.C. report states many respected and important people from outside university has also been disturbed by Fabrikant's behaviour. No proof was provided, on the contrary documents 9 and 10 contain quite favourable opinions and I can produce many more, if requested."

So, here I say that international specialist in various university has written very favourable opinions about me, so they didn't present a single name who is unfavourable.
"Four; my memo of October 2nd, exhibit 7, was a harmless inquiry whether the purchase of (inaudible) time was

possible since I knew that doctor T. S. Sankar did it. Doctor Hossman phoned me and demanded me to withdraw the letter and threatened to recommend termination of my contract if I didn't. This was a provokation and I responded accordingly. In my memo of October 14th, I did not continue demanding release from teaching duty. All what I did there was explanation that there was nothing wrong with my previous inquiry. My memo was not distributed anonymously, my signature was there. The confidential letter was addressed to me so I had the right to distribute it."

and after that:

"I am most shocked at exhibit number 10."

This here I refer to the meeting of the so-called senior members:

"First of all, I was convicted in abstentia, which goes against natural or any other system of justice and I underline here the phrase. Honest things should be done in the open, not secretly. One of the motion correctly refers the matter to the Code administrator. The fact that no official complaint has been filed so far neither by T. S. Sankar nor by the Department is the strongest indication that my information was true. I challenge once again anyone who feels that I did something wrong to file an official complaint. This would give me the opportunity to defend myself. The trial, by rumours and in (inaudible) to which I have been subjected for a long time should end."

This was a very important phrase.

LA COUR:

Mr. Fabrikant, what exhibit number are you referring to?

MR. FABRIKANT:

It is the same.

LA COUR:

No; what you're reading from?

MR. FABRIKANT:

It is the same, D-7.

LA COUR:

D-7.

MR. FABRIKANT:

It's all documents in D-7. This is very important phrase:

"That trial by rumours and i.... to which I have been subjected for a long time should end."

I refer here to the rumours which, you know, they are coming back to me. The only thing thought which did come back to me at that time, i mean from 1990, this unfortunate letter of January 1990 where I said something about destruction in my letter to the vice-rector and I naively thought that this is the whole thing what they, you know, are driving at to portray me kind of a dangerous person. You understand that I had no idea at that time that they surveyed me from '89, you know.

All this stuff was absolutely unknown to me, but it was clear to me that, you know, when you enter office and the secretary looks at you with frightened face; I saw it that the secretary looked at me with frightened face and I couldn't you know, comprehend why is she sitting frightened.

Should I know all this stuff, how they did it, you know, I would have understood, but I am a normal person, I

understand the reaction, that I see the reaction when I enter, for example, the Rector's office is abnormal. The secretary looks at me like she is frightened and I couldn't understand the reason for that and you understand the situation. I couldn't come to her and say, look, you look frightened, did I do something? Of course, she will tell me, no, you didn't.

It was obvious to me that they were trying to portray me as some kind of, you know, troubled, insane, whatever, but if you come to somebody and say, look I'm not insane. She would be surprised, why are you telling me that, you know. It was totally idiotic situation, totally defenceless situation where they distribute rumours. There is no accusation, nobody accuses nobody confronted me with anything ever and in this situation, this is the worst of the situation.

So, this is why on the one hand, I was glad that they arrested me because, at least, some accusations surfaced and I could face it and I could defend myself, but before that, there was nothing there and this is the worst situation. This is, you know, when someone is being submitted to malicious label, there is no defence against it because there are no authors, you cannot find the source; it's just a rumour and it ruins you. It ruins you completely because later on, when I started distributing my electronic mail and I didn't get, you know... people were coming to me and privately were saying, yes, you are right, yes, you are doing a great thing, but not a single person dared to say something loudly and now, at this trial, at least part of information surfaced.

Now, I understand that probably they were private all this and they believed all these rumours and probably that was the reason why they didn't dare to say in the open that they support me because nobody could, you know, imagine that this kind of grand spectacle would be played for years by the university administration.

LA COUR:

We'll adjourn at this point for 15 minutes. I'll repeat with the jury present what I said to you yesterday afternoon when the jury had left. You stand -- the Crown has presented evidence of four homicides at Concordia University in August of 1992.

The jury is not going to be asked in any sense to resolve or come to any conclusion about your disputes with Concordia University over the years, that is not what this trial is all about. I have told you this since the beginning.

So, if you propose to relate all of this to the events of the 24th of August, I would suggest that you give it some thought and that you bring us to that. You have been going now for almost two and a half days.

So, we will adjourn for 15 minutes.

MR. FABRIKANT:

Well, let me respond you the same thing I responded you when jury were not there because, at least, this is the fair thing to do. It is totally unfair to throw something like this, stand up and go. Let me respond.

I respond to you the same thing what I responded to you yesterday. Believe me, I'm better than anybody else aware that I am here on trial for four murders. I know this

perfectly well and believe, I am coming to this and I am trying to do -- to relate it as much as I can in the lowless situation where I am not allowed to testify. So, believe me, I have it all in mind and I am going there.

LA COUR:

I would suggest that you get there (inaudible) back.

MR. FABRIKANT:

I am going there as fast as I can. If you find that this is unacceptable, you can cancel my address. You did (inaudible), you can do one more, but I will go --

LA COUR:

I would suggest you come to the point as quickly as possible.

MR. FABRIKANT:

You do not do any suggestions because I don't pay any attention. I am going the way I can as fast as I can.

LA COUR:

I would suggest that you decline from testifying along the way.

MR. FABRIKANT:

Well, it was minor deviation and if you recall, I mentioned it myself, that I ventured into it inadvertently and I mentioned it myself, that judge will tell you to disregard it.

LA COUR:

Yes. Well, let's see whether -- let's see whether we can get to the point.

MR. FABRIKANT:

I am doing -- I am doing my best not to testify and, again, there is no danger, you will tell them to disregard it. So, please, keep all your remarks to yourself because I am going as fast as I can and whatever you say would not change my pace or intention of plan of my presentation to the jury. I will present what I plan to present. If you are unhappy with that, you have only one recourse, to cancel my presentation. There is nothing else. Whatever you say would not convince me that beat.

LA COUR:

Fine. Well, we will cross that bridge, as I have said before, when we come to it.

THE JURY IS RETIRED

--- Suspension

--- Upon resuming

IN PRESENCE OF THE JURY

MR. FABRIKANT:

I mentioned here in this letter to S... that the most shocking was the minutes of the so-called senior members, not because -- while I understood perfectly well that intention was to have me scared because those were the people who decide tenure. Question of tenure at the university is being decided not by D.P.C., not by the chairman, but the general meeting of the so-called senior members or those who already have tenure. They get together, they vote. So, if they are against you, practically there is no chance you can get tenure because it is --well, at least not in my experience, happened at, let us say, Faculty or Rector overruled, opinion of the

whole department because it is considered improper. By default, it is considered that Department are decent and honest people and their decision should be trusted. So, that was effectively the situation and that was effectively what they wanted to convey to me that unless I get on my knees, this is what I am going to get, that all senior members are there, they are against me and according to the rule of the university, tenure consideration is mandatory, in the sense that if you do get tenure, you continue. If you don't get tenure, you are out, so you cannot just continue on contracts in the university. Either you are in or you are out. if you are in, you are in with tenure or certain time has passed, you are to be considered for tenure, you were not given tenure, it means that you are out.

So, the idea was very clear, you know, this is how to compare it if you remember in Godfather, there is a scene when someone wakes up with most of somebody's ... head cut off in his bed. Well, that was approximately the message what they were sending to me with this decision of D.P.C. What was remarkable there that those people who signed it, I never quarreled with them, I never had any problem with them, I never had any relationship in the first place of it was totally -- I couldn't comprehend it. How people could be that cruel, they knew I had a heart attack, they knew all my situation, they knew I couldn't get job anywhere else. Nevertheless, they just signed it. and, of course, the most shocking was signature of R... If you recall, he testified here that kind of -- again, he tried to pretend not to remember what was when that I distributed electronic mail in 1990, that I made my allegations in 1990 and this is why he didn't get his appointment in time.

He is a smart guy, he is not that stupid and he, you know, pretended here. He knew very well what happened, when, he knew very well that electronic mail didn't appear until February 1992. There was nothing in 1990, except that we are all concerned with what was going on, we knew all that governmental approval has been received by June 7th. It was already September, October and nothing was done. We were not integrated and we had a discussion and if you recall, I tried to trigger his memory on the one hand. On the other hand, if you recall, I tried to show that we were not just friends, but he was in close confidence with me, in terms of information given, in this conversation and I considered him friend too.

So, the fact that I recorded this conversation, I never intended to use it and I told him that unless I get -- it is here, right there -- he tells me:

"Apart from S... Tom Sankar and myself, nobody has this information, this is well known.

Fabrikant: Well, I hve told you I am not going to raise this information, unless and until I get at least authorization from you first. Second, I hope, regardless your authorization I will never have to use it any way in my life; this is essentially my hope, you understand, because I am a peaceful person, I have no intention.

R... No, I don't mind, out of moral we do have a certain moral obligation towards the ethics. I would probably do it."

And I kept my word and I did not release this information until I saw his signature on this document. Then, I felt that this stuff is no longer valid, that since he was able to sign this document demanding that I be fired, without saying a word to me, without warning me, without even after the fact, at least you know, taking care to explain to me why he did what he did, after that I felt that I am no longer bound by all that.

And, if you wish, because it is important to me to demonstrate to you that, first of all, at that time in 1990, I didn't accuse anyone, I didn't distribute anything, otherwise he would not be able to convey to me information he did because, for example, later on he says: "Okay, look, if this information is ever to be released, it is going to be released in a court, not here or there, okay, simple as that.

Fabrikant: and not by me essentially, I hope.

R... No; we'll do it together in court."

Well, in present context, it sounds kind of ironic, but this is what was said then. Then, he gave me information about B... contracts of Sankar with Bombardier which, again, he wouldn't give just to anyone. He before said that it is information which only Sankar and he knows and he told me that a number of the contracts with Bombardier and I asked all of them are B... and he says, yes, B... means that he gets contracts with company, uses students to --

THE COURT:

Listen, all of this is ruled out of order and it's out of order now.

MR. FABRIKANT:

Well, it is not out of order because I am demonstrating how friendly we were and this is why -- how it has affected my mind when I saw his signature.

THE COURT:

No, you're not; it's out of order. Move on to something else.

MR. FABRIKANT:

Well, you are trying to defend again crooks at Concordia. This is the only reason why it is out of order. If you can give any better explanation why it is out of order, then I would be happy to hear that.

THE COURT:

I have told you to pass over that and move on to something else. Something else is the next thing I told him, that why would S... support the whole thing and he told me, you know, it's politics. W... has a whole lot of meetings and one --

THE COURT:

Mr. Fabrikant, you are talking about the same subject as you move on to your next point. I am suggesting -- I am telling you that the whole question of your allegations concerning contracts is so far away from this whole matter that you are not permitted -- you were not permitted to make evidence on it and you are not permitted to argue on it. So, move to the next subject.

MR. FABRIKANT:

I am not arguing on the subject of fraud at Concordia; I am arguing on the subject that how close friends we were and how his signature affected me and I am sorry if this conversation be heard on that, but this has nothing to do

and Concordia University will survive if those words are pronounced.

THE COURT:

That argument was made before and it was ruled out of order; move on to the next subject.

MR. FABRIKANT:

Okay; next subject was co-authorship and here I asked him about B... trying to write, it will be yours (inaudible) co-authorship:

"R... Unfortunately not; the work is the same as the contract. This chapter I was invited to submit a chapter on the

contract work. In the community as it is seen, I am the one who is doing the work because the publications are basically on my name and I have been associating myself with Dynamics Committee where I have brought up a number of these things and through that contact I have been recognized as the guy who is doing the work and they invited me, however --

THE COURT:

Are you reading from something that's in the evidence?

MR. FABRIKANT:

Well, it was in the evidence definitely.

THE COURT:

What?

MR. FABRIKANT:

If you recall, I --

THE COURT:

What exhibit are you reading from?

MR. FABRIKANT:

It is not in exhibit; it was what I refresh in memory of R... when he testified.

THE COURT:

That was -- what you are reading from was never put to R... when he testified.

MR. FABRIKANT:

You forgot. I did put it to him when he testified.

THE COURT:

Not on those -- not on the question of contracts and not on the question of papers because I've told you that the question of R... papers and the authorship of R... papers was not pertinent to these proceedings.

MR. FABRIKANT:

Well, you forgot, I put it to him too and I also read to him the other part and I asked him, do we have to include both of them and he said, no, just S... and I asked him, his name goes first or second? He said, no, he goes second. I don't do that any more. I don't do that any more; second or third, but not first, if I am writing. If a student is writing, then, okay, fine, do whatever you want to do. So, if student writing the scientific article, then Sankar's name might go first.

And also, the question I raised with him was supervision of graduate students and the so-called "course supervision" and I told him:

"Well, I had a graduate student too. Who do you think read his thesis and who corrected it?

R... Of course, you did, I know. So, if they, S. Sankar have a joint supervision, second guy is always going to do it. I have done it too."

THE COURT:

Mr. Fabrikant, I interrupt you again. You presented to me a series of six questions that you wished to cover with R..., seven questions. The first six of these questions: the question of his papers, whether with Amed or anybody else and that was point number 5, and the other, point number 6 was the supervision of graduate students and all of these actors were ruled out, if my memory serves me correctly, on the basis of relevance.

MR. FABRIKANT:

You don't remember well. I put it to him not on the subject of joint supervision, on the subject of our relationship in 1990. That was the reason of that and I really do not understand why are you so concerned. You can always say to jury, disregard it.

THE COURT:

I am not concerned at all, save for the passage of time.

MR. FABRIKANT:

So, just bear with me. Well, passage of time, you are now passing time by looking there. I would have finished a long time ago. The only reason you are doing it is just to, God forbid, a bad word which we said about S... Sankar. How is it possible that S... Sankar would be named a crook, which he is.

THE COURT:

I can find nothing in my notes which supports the argument you're making now. I would propose you move on.

MR. FABRIKANT:

Well, then, you will tell the jury to disregard it; how about that.

THE COURT:

Would you, please, move on to the next point.

MR. FABRIKANT:

Well, this I remember very well that I --

THE COURT:

Move on. Move on to the next point.

MR. FABRIKANT:

Next point is that I need to make some argument there because this question, I remember, I quoted to him. Here, I refer that I had a graduate student too. What I mean here is that I had a graduate student with T. S. Sankar and it was exactly the same thing. I did the whole job, T. S. Sankar never looked into the work. And this is how it was done there.

Now, as far as chronology and events, it is probably time to look into exhibit of body-guards. It is interesting to see at the dates those body-guards were hired.

If you look at exhibit D-3, we see that body-guards were hired from November 5th at two places: one, Dean's office and the other is Concave Research Centre and it goes on, 5, 6, 7, 8, 9, 10, Saturday and Sunday, 11, 12, 13, 14, 15. After that it goes, 16, 17, Saturday and Sunday, 18, 19, 20, 21, 22, again 23, 24 is Saturday and Sunday, 25, 26, 27, 28, 29. So, the security guard was posted from November 5th to November 29th.

November, if you look at the decision of Faculty Personnel Committee, it was taken November 28th. So, their logic probably was, okay, now a decision is to recommend Fabrikant for contracts so we'll no longer need body-guards; 29th was the last day of body-guards. But,

probably, and again there is only guess, since this went to the Vice-rector and since the recommendation was one year, probably they wanted to demonstrate something more than that because we see that there was body-guard in December too and in December, it is from December 9th to December 13th and 9 to 13, it is the time when Vice-rector was to make her decision as to the contract.

So, one way or the other, the conclusion is if they were serious about possible violence, then it is clear that they hired body-guard exactly at the dates where the decision was taken at Department and Faculty level and there, they resumed body-guard at the time when the decision was made at the Vice-rector's level.

Now, the decision itself, let us see what it contained now it is on the Faculty level. What they're at here is the following:

"The F.P.C. had request from doctor Fabrikant to meet with the Committee was brought to the attention of Committee by the Dean. It was agreed that doctor Fabrikant could meet with the Committee on November 25th at 3:00 p.m. The deadline for submission by him of any additional material was originally set at 5:00 p.m., November 22nd and extended to 10:00 a.m. of November 25th. F.P.C. met at 10:00 a.m. on November 25th to consider D.P.C. report and the (inaudible) submitted by the candidate, so it would be well prepared to discuss with the case of Fabrikant.

At 3:00 p.m. on the same day, doctor Fabrikant made a presentation to (inaudible) as to why he should get a two year reappointment. They said that D.P.C. should have been concerned with an appraisal of his teaching research and service to the community and not with questions regarding his behaviour or other incidents such as his request to buy teaching time. He also discussed the content of his letter dated November 24th."

This is the letter which I read to you, November 24th.

"During his presentation, doctor Fabrikant stated that he was unaware of the meeting of senior member of the Department of Mechanical Engineering Department and that he wasn't asked to appear before the meeting. He then asked doctor V... what his views were concerning that meeting. Doctor V... didn't answer that question."

I asked him how does he consider it appropriate to have a meeting without not just me being called but, at least, to let me know that such meeting took place in total secrecy. He didn't respond anything.

Because of doctor Fabrikant command and because of the fact that he was present at the meeting by senior members of Mechanical Engineering Department, doctor V... felt that even though he didn't perceive that he was in conflict of interest, he should withdraw from the committee and the committee agreed to his withdrawal.

Now, they claim here to make it short, that they met November 25th, 26th, 27. By gosh, again, three days of meetings; would you believe that when, usually, they spend not more than 15 minutes on each candidate. Now, here they spent three days.

Now, let us see how successfully they spent those days.

Here is their conclusions. First, having fully reviewed the case, the F.P.C. notes the following:

"First, the D.P.C. report does not include any evaluation of the fulfilment of the condition of employment stated in the letter of December 4th 1990, namely that his future research activity should be directed to support research focus at Concave Research Centre. It does not provide any information on the relevance of his research work to goals of Concave."

Fine; so D.P.C. didn't do this part of the work.

"Second; there is no evaluation of his research contribution, including publication, graduate student supervision, et caetera."

So, D.P.C. didn't do this job either.

"There is no evaluation of classroom teaching from D.P.C."
Very good admission.

"Four; there is no evaluation of service to the community, except initials related to "professional conduct."

So, Faculty Personnel Committee understood that this is not professional competence, it is professional conduct, which is a different story.

"In view of this, the F.P.C. had to examine more thoroughly that the (inaudible) submitted by candidate and notes the following."

Now, here, the only remark is they were absolutely right stating that in the so-called reasoned report which contained about 50 pages and they spent about 30 hours that this report didn't contain a single solitary thing which would be relevant to the evaluation, namely it didn't contain teaching, it didn't contain evaluation of research, it didn't contain evaluation of service to the community and special condition, satisfaction was also not verified.

Now, for every normal person, that would be a very troublesome situation. How come Department Personnel Committee consisting of four outstanding to excellent, as they rated themselves, people, did not understand or didn't want to understand that what is in collective agreement written is that they were supposed to do evaluation of my teaching, of my research, of my service to community and special condition of my contract. And they didn't do any of those and they spent 30 hours for that and they wrote about 50 pages of material plus 10 or 15 exhibits. So, it looks impressive. The report itself, if you look at it, it's about that thick.

Now, for every normal Dean, that would be signal of big trouble, something is very very wrong in the Department. If four senior professors, excellent to outstanding, do not understand or do not want to understand or do not follow or do not want to follow, the main law of university, namely collective agreement, that they should be a very serious talk with them why did they do it because after they discovered all this stuff, assume for a second that, yes, we believe what S... said here that he didn't discuss anything with D.P.C., that it was not of his business he wanted to see the results and then, he will see what he can do.

Now, he definitely received the results, he saw what he

did. Now, at this stage, shouldn't he say that something is wrong, what is it we are doing, this is total illegality and we are hiring body-guard because you guys just didn't do your job. You didn't do evaluation at all and we are hiring body-guard and we are paying taxpayers' money for that, again about \$10,000.00. Why do we need all that.

First of all, if you did your job properly, we wouldn't have all those meetings, we wouldn't have all these troubles and there would be no need of anything. No, he didn't do that and wait what Faculty Personnel committee did if you think that this is just absurd, not that fast. Now, here is what Faculty Personnel Committee did. So, first, they stayed and the D.P.C. didn't do its work at all, nothing, zero, 50 pages and not a single word relevant. That's nice.

Now, let us see what Faculty Personnel Committee decided: "First, based on information submitted by doctor Fabrikant, it is unclear to the F.P.C whether or not its fundamental research was supported, has supported the research of Concave and if so, to what extent. In view of doctor Fabrikant's letter of July 10th 1991 to professor Sankar where he states, I shall have to abandon for the time being the pursuit of all other topics of research, the F.P.C. questions the commitment of doctor Fabrikant's objectives of Concave."

Now, I think that in my letter it was quite clear that I didn't abandon, that I got, first of all, my program was approved by Sankar and when I decided to abandon for the time being, it was approved by Sankar again. And all they had to do, if you remember, S... here testified, those people are not specialists in vehicle dynamics. Well, neither is Sankar, but this is beyond the point. Still, he is considered to be a specialist. He is director of Concave Centre, so by his position he is supposed to be, no matter what way, even if he isn't, he has to be one. So, what they had to do is to call Sankar to come and to say, okay, professor Sankar, did Fabrikant inform you about it? And if Sankar confirmed, yes, he did, did you approve it and if he said, yes, I did, then that all what was required because members of Faculty Personnel Committee are not specialists. There is no way for them to decide whether my research is relevant or not relevant. They are in different fields, they are electrical people mainly. So, they don't know anything about it.

Now, question is: why they didn't do it. It looks very simple. Call Sankar and they met three times, so they had more than enough time. Call S... Sankar and ask him, did you approve Fabrikant's program? Did you approve his evaluation due to NASA grant? And if he says, yes, fine. If he said, no, write it that we called S... Sankar, we asked him question, he denied, he said that he never approved. That would be fine with me, but this is not the way to proceed. It is unclear to them.

So, it is -- first they criticize D.P.C., after that they did exactly the same thing D.P.C. did. Again, they didn't do the evaluation. They were supposed to do it and it was very simple thing to do. And why they didn't do it, I'll explain it a little bit later.

Two; F.P.C. is impressed with doctor Fabrikant's personal

research contributions. Committee also notes that the list of recent publications submitted by him are all single author. Well, I stopped scientific prostitution, of course, all my publications were single author. They were single authored all the time, except that I had to include somebody else too.

This is commendable, however, in the context of being a member of research centre, the F.P.C. would have expected evidence of a closer relationship with other members of the research centre and some joint research activities in the area of student supervision, the F.P.C. knows that he is supervising one master student and one doctoral student. However, in the D.P.C. recommendation of his promotion dated February 5, 1990, and appended to his November 24 submission, he was supervising one master and two doctoral students. It is not clear what happened to the other doctoral student. The F.P.C. would normally have expected a researcher of his calibre, it sounds nice, researcher of his calibre, they consider me researcher of high calibre, to have supervised to completion more graduate students.

Now, here, first of all, they knew very well that there is no such thing as collective work in Concave. All collective work in Concave was somebody is doing job, plus Sankar or graduate student doing his job, his supervisor and Sankar. That was the only thing. If you look into any scientific journal, you will mainly see articles, three authors.

Now, I can bet that in 90 per cent these three authors are the following: first is the person who did the work. It's not always that his name goes first, but one of them is the person who did the work. Second is his supervisor which in many cases of honest supervisor is also person who did substantial work and maybe merit being included. In different cases it is, yes, in different cases it is no.

In majority cases, I think it is no because it is the graduate student who does the work. For example, in my case, my graduate students published themselves; my name was not there though you believe I did supervise.

So, mainly, it is three names: graduate student, his supervisor and head of the department. This is how it is, this is what scientific prostitution is all about.

Now, they're not clear -- so, this is the answer to why there is no closer relationship with other members because there is no such thing. There is either some people who just join together for one reason, because you should be aware that grants and money usually are associated with publications, with a number of those publications.

So, there are also such an opportunity like I and John, we are friends. I write five papers, John writes five papers. I include John, John includes me. Now, we have ten papers. We are great scientists, aren't we? So, this is the second kind of -- I wouldn't call it prostitution because it is different kind of fraud, but this is prevalent too because this is a very easy way to increase the number of your publication.

Nobody is looking whether the publication is single author, two authors, three authors; publication is publication. So, since I didn't do any of those, and this is the explanation why it was single author.

Now, as far as the second doctoral student is concerned, all right, it is not clear what happened to the other doctoral student. Well, why don't you ask me what happened to him. I am right there on the same floor. They are meeting three days. What prevented them to call me and to ask what happened to the other student. I would have answered to them that the other student I didn't have money for them and to have student, you need money because student needs to pay tuition, student needs to exist. You need to support him. I didn't have that money and as soon as the student found somebody who did have the money, he went to another professor. It is as simple as that. He found someone in McGill who had money.

This is the problem with the graduate students, that if you want to have graduate students, you need to have money to support him, as simple s that. They never bothered to </pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">ask me. The point for them to make that, you see, he had two graduate students doctoral, now he has one, something is wrong with Fabrikant. What is wrong? We don't want to ask because when he gives explanation and explanation is that there is nothing wrong with Fabrikant, then it's too bad, then we would not be able to criticize him, but it is not clear. This is a nice thing.

Now, third; the two course evaluations that he submitted to the D.P.C. and the additional one submitted to the F.P.C. of November 25th indicate that his performance in the classroom for (inaudible) dynamics course, it is very good (inaudible); not yet.

However, the F.P.C. has noted that in the D.P.C. reasoned report that Fabrikant has not contributed to the promotion and enhancement on the ongoing process of curriculae development of the department. I hope this phrase is already, you know, repeated so many times that it might create some negative reaction, but since I was criticized on that, if you recall, I read you yesterday about two pages of my contribution to the so-called curriculae development when I suggested new courses and I suggested new approach to teaching, when I suggested to attract more female students and so on and so forth. This is exactly what it is called and they just didn't bother to look into that, that I did it and they didn't bother to ask me either.

In normal situation, if you see that something is not done, you are meeting three times, why don't you call me and ask this question. You maybe overlooked something. If you want to make a fair decision, call me, ask me the question, maybe I will explain whether I did or didn't do the work and if I didn't why I didn't, but in this case, I did. But again, that was not in their agenda. They needed to find something to criticize.

The F.P.C. also knows that he has not taught advanced undergraduate courses in mechanical engineering. Well, I didn't because I wasn't assigned those courses. So what! If I am world class scientist according to their own recommendations and the recommendations of at least ten professors from around the world, would I be able to teach advanced undergraduate courses? Well, just try me. The fact that I didn't teach it there doesn't mean that I'm unable or it doesn't mean that I would have any problem.

First of all, my teaching evaluation is very good, so there is no reason whatsoever to doubt that I would be able to teach them, no reason whatsoever. Still, they noted but they noted for the conclusion, let us come to the conclusion.

There is item 4; although there is evidence in the dossier as to some external professional activities, there is no indication of positive contribution to the life of department of mechanical engineering. The F.P.C. is very much concerned with adversarial condition that seems to have developed between Fabrikant and the majority of Faculty members of mechanical engineering department.

Now, they are concerned with adversarial condition which developed between me and majority of Faculty in the department. Well, I am concerned too, what can I do if people who never said to me and I to them more than, hi, all of a sudden become adversarial to me, there is not much I can do. I did nothing wrong to these people, if they are adversarial, well, what can I do about it. Now, and here is, look, it is

emphasized, you know, in bold face, very important phrase, listen to it. "Is this (inaudible) for the effect of this situation on doctor Fabrikant's professional career on the one hand and on the healthy functioning of the department on the other". My gosh, little Fabrikant who just said high and bye to those people, how on earth can he influence functioning of the whole department. By that time, I didn't distribute any electronic mail, I didn't do any criticism, I didn't do anything at that time. How could it paralyze functioning of the whole department? But the first part is important. "This b.... for the effect of the situation on doctor Fabrikant's professional career".

So, this is what they wanted me to see and again, to get scared. They wanted to emphasize once again. Look, all the tenured members are against you and they are the people who decide question of tenure, so get on your knees.

The F.P.C. collegiality is an important aspect in the life of any academic unit. Now, if we look at the collective agreement, there is not a word of collegiality anywhere. It is not a requirement at all.

Requirement is quite opposite. It is considered that academic freedom is more important and difference of opinion and freedom to express the difference of opinion, at least on the paper it is there. It is more important than so-called collegiality because again, theoretically, it is considered that scientists are supposed to have a different opinion because this is what m... signs, difference of opinion. If everyone agrees with everybody else, there would be no motion. The movement is effectively when someone disagrees, there is even a joke on the subject, how great discovery is made; everybody knows that it is impossible and there is one who doesn't know that and this is the one who makes the discovery. So, there is nothing wrong in difference of opinions as far as usual university policy is concerned.

Now, conclusion; by secret ballot, the F.P.C. unanimously approved a motion recommending that doctor Fabrikant be given a one year reappointment, with the following conditions to be fulfilled before consideration is given to tenure or any future reappointment; here comes the hand twisting. So, here are the conditions: one year; in one year you have to do this, this and this otherwise you are out. My gosh, if I am so good, why is sicu a severe condition, one year and you are out. They didn't claim that I did anything wrong. They had some doubts about something. They didn't want to clarify those (inaudible), this is their problem. They have to assume that if they have doubts, it is in my favour those doubts.

Now, here are the conditions: that he show evidence of having fulfilled the condition of his appointment, namely that his future research activity should be directed to support the research focus of Concave Research Centre.

Now, you understand why they didn't bother to call Sankar and to ask him whether I did fulfil because otherwise, they would not be able to put it in this so-called their reasoned report. Now, they claim that they don't know whether I did or didn't fulfil it.

Second; that he shows evidence of active participation in ongoing research activities of Concave Research Centre including supervision of graduate students. What did I do all the time? I supervised graduate students. There is no reason for this condition. This condition kind of claims as if I didn't do it. I did. What is the point to this condition.

Now, third condition; that he demonstrate the ability to teach and advanced and under-graduate mechanical engineering courses. Well, I have taught advanced graduate courses, so is my head capable of understanding advanced under-graduate? You bet. I have submitted to the chairman list of about 16 courses which I am prepared to teach and at least one third of them were the so-called advanced under-graduate courses, again to demonstrate the ability. What? Did I demonstrate something that I am incapable of doing?

And fourth, which is the most ridiculous, that he show evidence of active participation in the life of the Department, such as curriculum development as well as evidence of collegiality. Now, curriculum development, I've written there, it was there, they just didn't want to see it. As far as collegiality is concerned, it is just not in collective agreement. They have officially to follow the collective agreement.

Now, here is translation of what is written there.

The translation is as follows: despite that we understand that D.P.C., what is written is totally irrelevant material, we still want you to get on your knee to understand that since senior members are against you, then can always vote you out, so get on your knee.

Now, this evidence of having fulfilled an active participation in Concave, if you translate it in English, it is one thing and one thing only, start including S... Sankar in your article, then you will be considered because if S... Sankar is co-author, there is no way they can say that this is not supporting Concave Research Centre because he is the director, he knows what should be published, what shouldn't be published. If he is co-author, sure, nobody can say that this does not support Concave Research Centre, but since he is not, well, we can always say that you are outside the Concave Research Centre.

And ability to teach advanced under-graduate courses; this is total absurd from the point of view that it is not supported by any way or anything, so they needed somehow to make it again a threat, threat of extortion. So, we give you one year, if you don't do this, this, this, so there will be no even consideration for reappointment. This is how they formulated it.

Now -- and probably, probably what I think that when I received this and I expressed to one of them my total disagreement with those decisions and the way I understood is just as attempt of extortion they hired body-guards again. Now, I received a letter from vice-rector dated 12th December. So, this is why body-guards were until December 13th, which repeats all those conditions, exactly the same thing. She just repeated what was in Faculty Personnel Committee. Now, in this stage, I have written to her a letter asking her, let us discuss it. Faculty Personnel Committee didn't have any reason to do so. They had no grounds whatsoever to recommend either one year instead of two years, they had no grounds to put it as a condition that God forbid, I don't fulfil, there will be no more consideration. And, of course, I didn't get any answer.

So, in this case, I wrote to her a letter of the following text because it was clear to me that it would be just repetition of 1990 and I didn't want it, so I decided just to write like this:

"I hereby accept the reappointment offered in your letter of

December 12th. All the conditions stated in the letter has already been fulfilled."

Well, what I said, that as far as Concave Research Centre, I did it already; as far as supervision of graduate students, I did it already; as far as advanced under-graduate, I have my teaching experience from 1962. I taught all the courses in Russia, so I believe I have fulfilled this condition too. So, I wrote that all those conditions has been fulfilled and as far as collegiality is concerned, I felt that I was collegial, it was they who were not collegial. They denounced me in abstensia; I didn't do anything wrong to any of them, so I felt that I did not display on collegiality, they did it. And I have written here:

"So, I have fulfilled all these conditions in my past work and my future work will continue to be exactly the same."

I wrote this, "my future work will continue to be exactly the same". I was hoping that she will understand that, this time, there is no way they will bend me. I emphasize here that whatever I did before, I will continue doing exactly the same work. They will not intimidate me, there will be nothing, no change. Whatever I did, I will do it. I did good work, I will continue doing good work and there will be no intimidation. That's what I mean by the phrase "my future work will continue to be exactly the same and I thought she understood what I meant here.

Als, I've written:

"I would like to bring it to your attention that no conditions of timing of tenure consideration can be put in the contract since according to collective agreement, tenure consideration is mandatory."

So, this was my objection to the statement there, which said that there will be no tenure consideration until I fulfil those conditions. This, they couldn't put there. Tenure consideration is mandatory. Time comes, you have to be considered, period. There is no exclusion or exception to that.

She pretended not to understand the nature of my letter and she wrote this will acknowledge receipt of your letter accepting our offer of appointment as associate professor in Department of Mechanical Engineering for the period 1st June 1992 to 31st May '93. She pretended not to understand, no reaction, no response to whatever I said before.

Later on, I requested explanation for the reason why my sabbatical request was denied with no real explanation given. If you recall, I applied for sabbatical on the basis of article 2616 and I will refuse on the basis of article 2602. This is what she wrote to me and this is superb, let me read it to you:

"I have submitted you various most recent letter concerning your request for sabbatical leave to the legal council of Concordia University for analysis. (inaudible) their advanced advice (inaudible). So, I have reviewed their application for sabbatical leave as well as the relevant objective of university as encompassed in Article 2601 of collective agreement."

So, this is the usual way of every administrator. I submitted it to the legal council and if you want to blame anyone, it is the legal council, legal council who advised me. There is no

way to know what legal council really advised, but it gives some legitimacy of what follows, but what follows is just (inaudible). If you would be able to understand this phrase, I think you would get a price for kind of genius. This is the phrase:

"You should have understood that my reference to article 2616, which state that non tenured members of Faculty shall be eligible for sabbatical leave on the provision of this article. The letter being Article 2602. This states the tenured member of Faculty shall be eligible upon application for consideration for sabbatical leave."

Anyone understood anything? This is again what is in russian called prostitution of words, absolute nonsense. There is no meaning to that really once again. "You should have understood", so I should have understood that my reference to Article 2616, her reference to 2616. She never referenced to 2616, she referenced to 2602. Now, continue:

"You should have understood that my reference to Article 2616 which states that non tenured members of Faculty shall be eligible for sabbatical leave on the provision of this article."

She repeats text of that article which is correct. And after that goes something totally absolutely incomprehensive:"The

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Article 2602." This part escapes me completely. So, what she probably wanted to claim at Article 2616 refers to Article 2602. And this article states that tenured member of Faculty shall be eligible upon application for consideration for sabbatical leave; not for sabbatical leave, but for consideration for sabbatical leave. And after that, she displays all her humour:

"Your application for sabbatical leave has been considered, it has also been rejected."

How about reasons? And there is this point (inaudible). I underline this humour of an administrator. So, you are not eligible for sabbatical; you are eligible for consideration of sabbatical. So, you have been considered and it has been rejected and all the purpose of the letter was, she was supposed to explain why it was rejected and you realize that to respond to that letter was no point because if I asked her at that point, okay, why did you reject, could you explain this, she would say, well, I explained everything in my letter January 23 and I have nothing to add to that.

THE COURT:

Okay; we'll adjourn at this point. I understand that we will be going outside at lunchtime today, so get back when you can but we'll make an elastic 2:15, so if you're a little later, it's fine.

THE JURY IS RETIRED

--- Suspension
--- Upon resuming

IN PRESENCE OF THE JURY

MR. FABRIKANT:

I finished by reading to you the pearl of Concordia bureaucracy. If you remember the ending was the application for sabbatical leave had been considered, it has also been rejected, no reason why.

Though, if you look at the collective agreement, there is specific article in collective agreement that, if Faculty member wants detailed explanation why is request of sabbatical has been refused, Vice-rector is obliged to provide it. They just have no respect for collective agreement whatsoever. Now, in terms of this sabbatical, I needed some proof that, yes, I have ten years of continued service. So, naive me, I asked the Faculty Personnel office, would you, please, provide me with official letter stating that the number of years I have at Concordia University of continued services such and such. I didn't even dictate them, okay, what it is. Just tell me what you consider is the number of year of continued service. This is what I received from them. They have written to me:

"The following is employment history of associate professor Valery Fabrikant at Concordia University."

and it goes: "December 20, 1979 to April 30th, '80, so on and so forth. Besides that, they didn't make it correct here. From June 3rd 1992 research assistant professor, not a member of C.U.F.A. governed by policy B50 research employee. So, they didn't want to write here that this was an academic appointment from 1982, they considered academic appointment research assistant professor.

So, anyway, there is nothing here which would say, how many years altogether I have. It's just from here to there such position from here to here, such position from here to here, such position; no response.

And harassing me -- I started harassing them and this is my harassment. I write a letter February 24th:

"Dear Mrs. F...

Since you have not honoured my original request to provide me with document stating the total number of years of continuing service in the same sense as this term is used in Article 2616 of collective agreement, I hereby reiterate my request. The following sentence should be included in your document. The total number of years of continued service of doctor Fabrikant attained by January 1st 1992 is -- and space left for them to fill it. Thank you in advance."

I didn't even call them, you see, because I know that every phone call is recorded and they want to make me harasser, so I just wrote to them polite letter, would you, please, provide me -- period. Do you think I got an answer? Now, this is what I got in response:

"In response to your letter of February 24th 1992, we would like to inform you of the position of Faculty Personnel Office. We issued a standard employment history pursuant to your request of February 13th and have no intention of modifying it to incorporate the wording that you desire with respect to years of continuous service. The employment history issued by this office has been verified and is accurate."

I didn't challenge if it is accurate, not accurate; I just asked, would you provide me how many years of continuous

service I have. No way. Because to lie that I don't have ten years, they couldn't, but on the other hand, to write years, you do have ten years, this is kind of obligation, okay then, you are supposed to give me sabbatical.

Now, at a certain point in time, you see, every human-being, you probably heard Shakespeare's statement, you know, this famous word "to be or not to be, that is the question" and I think almost everybody knows this expression, but if you ask what exactly Hamlet is talking about when he says "to be or not to be", what is it he is discussing with himself, what to be and what not to be. Once I made a kind of experiment, out of ten people, ten couldn't say what Hamlet was talking about though everyone knew this phrase, "to be or not to be, that is the question". Now, Hamlet was talking about there of the following. What should a human-being do to surrender to all these crooks of the world, who rule this world or to start fighting them and maybe to die in this fight and he responds to this question, you know how he responds, he responds "to be".

Well, I am very far away from thinking myself to be Hamlet, but every human-being at a certain point makes such a decision to be or not to be, to bend your head over all those crooks who rule or to say once again, now, I am a human-being, this is the truth and if you want to do something to me, do it. I couldn't care less. That was the point.

So, I start -- first of all I tried to use media to publish this information about all this fraud and extortion at Concordia and, of course, nobody wanted to publish it. So, the only way for me was electronic mail which was available. So, first, my mailing was somewhere in February and in response, I got the following letter from Vice-rector, but I got very interesting why I am reading it to you, because I didn't get one letter, I got two letters, both dated February 13th 1992, very interesting letter. One is the following, number one:

"Dear doctor Fabrikant:

Your letter addressed to the University Community dated 9th February 1992 which you transmitted to approximately 40 individuals via the university's electronic mail has been brought to my attention. I must advise you that it is a misuse of university property to communicate in this manner your dispute with Concordia University Faculty Association on what is essentially an internal matter largely related to the administration of C.U.F.A."

Well, first of all, it is university property, but I checked, there is no policy as to how electronic mail could be used or how it could not be used. There is no document on this subject, therefore I could use it the way I please it. There was absolutely nothing wrong in the way I used electronic mail, taking into consideration that my first line in the electronic mail was the following: "if you don't like to read it, just delete it. You don't have to read it or inform me that you don't want to receive it and I delete your name from my mailing list." So, I did not force anyone to read my mail in the first place. Everyone who sent to me message that they don't want to receive it were immediately deleted and I must tell you that a number of those people were less than two per cent of the whole mailing list.

"Now, I must also advise you that you have made some very serious allegations against your colleagues, which is unsubstantiated, expose you to further action against yourself

either by the affected persons or by the university." Now, the allegations which were there were first I wrote there that I included Sankar in 35 publications, I included S... in four, their contribution was zero. I informed people receiving this mail that S... has received one that he is author of the book, it was written by T... Ramon, not by him. I have informed in this letter also that S... Sankar got two contracts from Transport Canada in total amount of about \$800,000.00 and the whole work is being performed by students at Concave and he is just pocketing the money.

The contracts were given to his private company and I had the proof of it. I had this proof here, I was just not allowed to show it to you. If you remember I demonstrated to you, this was the report on (inaudible) tanker stability for which government has paid \$288,000.00.

THE COURT:

Please, do not get into points that were ruled out and ruled inapplicable.

MR. FABRIKANT:

I am just reminding what was during the trial. I just remind what --

THE COURT:

Well, I think you shouldn't. When you make reference to your electronic mail, fair so far, but --

MR. FABRIKANT:

Well, this is what I expected. As soon as S... Sanker and his crooked activities mentioned, here is our judge. I could speak about anything but, God forbid to touch S... Sankar. He has powerful defendants.

Now, after that, it was:

"I shall forward a copy of this letter to all the individuals who, as far as I am able to ascertain, have received your transmission. Yours sincerely, R...

Vice-rector Academic.

Copy: Kenneth S..."

and the list of people who allegedly received it from me. Of course, this list is incomplete. And letter dated exactly the same day, February 13th 1992 "Dear doctor

Fabrikant: I

was pleased to read -- " where on earth could she read about it --

" -- I was pleased to read of your success in being awarded a research grant on the topic of interaction between arbitrary point force in a flat electrical crack and I would like to offer you my congratulation of this achievement. Indeed, such recognition by your peers must make you very proud and rightly so. Please accept my best wishes for the future. Sincerely yours, R... S..."

and here it goes, PhD Doctor S... doctor ... fellow of Royal Society of Canada; how do you like so many titles, fantastic. Now, both dated February 13th, now how to interpret all this beautiful stuff.

First is a threat:

"that your allegation if I'll substantiate it will expose you to further action against yourself either by affected persons or by the university."

Then:

"Congratulations, you must be very proud and rightly so and accept my best wishes for the future."

Now, is it a riddle, is it a puzzle, is it what or it is clear

what it is. Now, let us translate it in normal English what it is. It is the following: Here is the stick, think about it. Here is a carrot, think about it. So, what would you choose, carrot or stick? Well, she just didn't know me. I responded to her that carrot and stick is for animals, not for human-beings and I resent it, carrot and stick and carrot and stick just makes me angry, nothing else. If she wants really to do something, let her do some justice, but carrot and stick never worked with me and never will. She never learned that.

I will now show you another exhibit. I will run through some of them pretty quickly. They are not in chronological order, but they are important to address and I explain why each was deposited. One is minute of Department Personnel Committee April 15th '89. This one contains recommendation for merit award. So, first of all, you see there that it covers period June 1st '85 to May 31st '89.

So, it is evaluation of four years and what was evaluated there, the following: composition of candidates assigned duties, academic activities beyond the candidate's assigned duty. So, if candidate did something more than he was assigned to.

Overall breath of candidate academic activities, sustained performance over period of evaluation. Now, the rating was adopted the following: outstanding, excellent, good, satisfactory. Now, the categories evaluated were the following: teaching performance, research performance in terms of reviewed journal publications, research performance in terms of research grounds, research performance in terms of graduate students, activities and services within an external to the University community at large. Now, I underline number 5 here.

In all five, I was evaluated and the evaluation, if you recall, was outstanding to excellent. Now, how on earth, these people, I ask you once again, evaluating in all these categories, having in mind that I harassed in '88, somebody that I harassed in '83, somebody that I harassed outside people and inside people all over for a number of years and on the subject, the activities and services that were external to the University community at large, external. It was outstanding to excellent at that time. They, for a second, forgot probably.

Next, exhibit also very interesting. If you recall Mr. H... here testified that he was sitting on November 1st but he just, you know, gave work to this one, give floor to this one, this one was talking, this one was talking. He didn't remember anything who was talking of what and he, effectively withdraw himself from the whole thing. He didn't want to participate in that, therefore he resigned his responsibility. Now, we have letter of November 6th, he writes the following: "I wish to underline Catherine --" it's doctor MacKenzie: "Catherine: I wish to underline my concerns requesting that the appropriate officials and Montreal Urban Police be contacted. There have been three recent incidents which can be interpreted as potentially menacing."

My gosh, what are the potentially menacing:

"The incident in D.P.C. meeting October 30th, 11:30 at night." Again, the same thing, it's potentially menacing.

"Call for police at the Senate meeting last Friday November 1st."

Again potentially menacing. They made a malicious arrest.

They searched me in full view of the university and it is potentially menacing for that and the third is the most fantastic:

"An unexpected visit at Concave Centre on Tuesday, November 5th 1991."

An unexpected visit; why should it be expected or non expected. Why a member of a university, moreover a member of Concave if he visits Concave should what, announce it in advance? This is the place where he belongs. Why should it be announced, but the finest thing is, at least to the recollection of the guard who was there because my recollection is that I didn't visit it November 5th, but what the guard, I hear, testified if you recall, he said that I came there, I left my car at the parking lot and went to the chattel bus. That probably was what they consider unexpected visit to Concave Centre.

Now, one must be either complete idiot or totally dishonourable person to do such a thing, to write something and to sign it, unexpected visit at the Concave Centre and I wish to understand if he was so withdrawn, how on earth could he know that I had visited Concave Centre. Well, I didn't visit; I was nearby probably at November 5th 1991. This is the most rebarkable part of it. How could he possibly know that?

Now, another interesting exhibit is, if you recall, this is a kind of a jump in time, but since we are talking about Mr. H... I think it makes it more or less logical to talk about it. I refer to letter 7th July 1992, director's secretary -- this is addressed to H... from Mrs. Abib:

"Director's secretary has brought to my attention the request from doctor Fabrikant, Department of Mechanical Engineering, that doctor K... signed a form entitled "Recommandation pour l'obtention d'un permis de port d'arme ... autorisation restreinte pour le tir ... cible" on his behalf, copy enclosed. The university is considering lodging an objection to the issuance of such a permit with service de permis. I would appreciate your informing in writing as to whether you have any knowledge or information which would serve to support such an objection, this could include any reference to possession or acquisition of a gun, reference to action contemplated vis-...-vis any individuals or offices at the university or any other pertinent information which doctor Fabrikant has mentioned to you. Your prompt response will be appreciated."

Now, I wish to remind you that this was consequence of their meeting of June 23rd 1992, June 23rd. It took her -- they were so worried about me getting a gun that it took her two weeks to write this letter. Every normal person might think that if it was a serious concern, one would grab the phone and say, G... do you know anything? Would you like to supply us information, we need to write a letter to the police that he wouldn't get the permit. Now, two weeks and if you remember that his testimony it was even more ridiculous. He told you here that inside mail in the university which really takes one day, took about 18 days to get to him -- now, and he writes to her, confidential. Why should it be confidential? Anyway, confidential, Maureen Abib from G... July 30th. He received it on the 25th, he was in a hurry to respond. He knows such a thing that I thretened to kidnap and kill the rector and I am getting gun. For every normal person that should mean just

grab his things and run to the police, not even start writing anything like this, just run to the police and tell them. He threatened to kill the Rector, what the hell you are doing, how come he is getting a gun.

It took him five days to write this, so he is writing, I just read it:

"Sometimes late in 1988 or early January 1989 doctor Catherine MacKenzie, executive assistant to the Rector asked me to facilitate a possible resolution to some issues raised by doctor Fabrikant. In order to proceed, I needed to interview doctor Fabrikant and other key parties concerned. This was consistent with the approach I have taken to ensure the acceptance of my role. I needed to find out if all parties wanted to resolve the problems in an informal manner. (inaudible) lose were about in a manner which would allow people to have their needs met.

I interviewed doctor Fabrikant on several occasions, both in person and over the telephone. What follows is my account of what I understood to have taken place as it relates to your request in your memo. I have relied on some notes that I have in my memory" -- no, no -- "I relied on some notes that I have and my memory, several years have now past and what follows is the best of my ability to recall those events. On February 2, 1989, doctor Fabrikant told me that there were two avenues towards the resolution of the problem: a peaceful one and finding a solution on the outside. He indicated that outside means going to the Rector of C.U.F.A. and to the courts."

Well, there is nothing wrong to that, every normal person considers two regular avenues, either you settle the matter inside or if it doesn't settle inside, then you go outside.

"On February 15th 1989, I met with Dean S... to gather more information and to bring him up to date. Part of that report included an objective on my part to encourage doctor Fabrikant to negotiate using a problem solving approach. In a meeting with doctor Sankar junior and a telephone conversation with doctor Hossman, I discovered that doctor Fabrikant had allegedly said that when people in United States have this sort of problem, they tend to get a gun and shoot people. This statement was later supported by others and repeated in similar fashion by doctor Fabrikant in a subsequent meeting March 20, 1989, with doctor MacKenzie and myself."

Now, let us try to recall his testimony. If you remember, he mentioned the phone conversation of April 6th in which he allegedly mentioned to me this kind of threat which I made allegedly in presence of MacKenzie and himself and when I ask him, what was the threat, he couldn't remember. Well, it is in his memory if this is what it was, all he had to do is to say, well, this is it, why he couldn't remember that, because when person lies, he doesn't remember what exactly he lied about. This is the problem. This is why people are usually asked to repeat twice and in majority of cases, when people lie second time, they would say something different; that's a well-known thing.

Now, and if you know that MacKenzie said something that what I've said, it was during my conversation with her and G... H... was not present. So, it just doesn't add one to another.

"Sometimes in late March 1989, (March 28th), in an interview in my office, doctor Fabrikant asked me to confirm the location of room numbers of the Rector in Bishop Court. I asked him why he was asking. He mentioned his frustration in getting any solution to his problem and that he knew the only -- the one way to get fast results and that was by taking hostages and shooting the Rector. He also told me that he had the means to do so, I know the lay-out of Bishop Court and I have a gun. I immediately reported the contents of this statement to doctor MacKenzie."

Now, let us see. What we have so far on March 20th allegedly threat, but Rector was escorted with his, you know, guards beside him on March 21st and there was complaint from both H... and MacKenzie on March 21st. Now, was that the threat, but it was not threat against the Rector at that time if it was March 21st, it was just general threat to shoot people.

Again, March 21st, I didn't have any meeting with him at all. Now, when he was asked here he said that March 21st I called the office and you remember all this story I asked what room number, where the Rector is and where the room is located. You remember, it is all in the phone, the directory, there is no need to ask anyone where, who is where.

Now, let us go to the second one. So, it is March 28th. I think that he put the date because probably he knew that surveillance started on March 28th, not because any threats were made, probably he had some information about it because there is no other way, I didn't have any meeting with him on March 28th, if you remember he testified himself that there was no meeting on that date.

But what is interesting here, okay, let us assume that this is what happened, that I told him that I know -- well, it's kind of strange. First of all, I asked him the location of the room. Then, he said, I know the lay-out of Bishop Court and I have a gun, so what is the point to ask him if I already know lay-out of Bishop Court.

Now, let us take it as it is, so what we have here is threat to kidnap and kill Rector, not at his residence. Bishop Court is the building where the Rector's office is located at Sir George Campus. Now, if this is what was said, for every normal person that would mean, put a body-guard at Bishop Court. Isn't that clear? If this was the threat, I know lay-out of Bishop Court, I plan to take him hostage, I plan to kill him. Then, put a body-guard in Bishop Court. For every normal person, that would mean that.

No; as you know, they did something else. They put surveillance on my house, they put surveillance later on on March 31st on Rector's house; on April 1st on G... H... house.

Well, I didn't threaten anyone's house. I believe I threatened quite clear, Bishop Court. So, protect Bishop Court; why don't you protect Bishop Court? No. Quite opposite. We know that the instruction was not even to follow me inside university. What did they want? That I really go to Bishop Court and shoot the Rector? That was intentionally made to have Rector unprotected?

If you remember the instructions were quite clear; whenever I go to the university, they are not supposed to follow me. Even like that, it was explicitly there; they are not

supposed to follow me.

So, if I go to Bishop Court with a gun, they are not supposed to follow me, so I can take Rector hostage, I can shoot him, that's all right, but residence of Rector is protected. There is someone standing there.

Now, it is -- if you try to invent something, you know, as a limit of ridiculousness. I don't think you could invent something more ridiculous than that. But, probably when they did the whole thing, already they never thought that it would be right in that kind of circumstances or maybe they thought about it, I don't know, but it looks totally ridiculous.

"On April 5th, doctor MacKenzie and I met with doctor Warren Steiner, the psychiatrist of the University Health Services. He advised us to inform doctor Fabrikant that his behaviour wasn't acceptable, that he should stop threatening violence, indeed he should seek professional help."

Well, fantastic. Now, why this advice of psychiatrist has never been followed? Let us ask ourselves why. G... H... himself never denied it, nothing like that has been done. Now, why? One answer is because there was nothing to talk about. They could deceive anyone, but they couldn't come to me and say something which never happened.

"On April 6th 1989, doctor Fabrikant phoned me and told me that he had had a conversation with his wife in which they had concluded that it was not a good idea to talk about violence and he should stop it. I told him that my legal obligations, based on the advice from Steiner, that if you should threaten people, I was obliged to inform those threatened and that (inaudible). Here he responded by saying that he hadn't threatened anyone and that all his statements were figures of speech only."

Now, this doesn't match one to another. If I initially told him that I already spoke to my wife that I advertise violence, how could I just, two lines later, say, I never did it. To the best -- to the best of your ability, as much as you know me, at least you couldn't deny that I am a logical person, that I would not do such a thing.

What I was telling him, try to substitute that I had a conversation with my wife about threats which I made and threats were very simple that I go public and that I go to courts. That what I was talking about when I used the word "threats" and I never used the word "violence". Then, the whole conversation would make sense if you substitute the word violence by the word threats, then the whole conversation would make sense because what was the conversation that my understanding was I did understand, but since I threatened them to go public, of course, they would not rest until they will get out -- me out of the university, so I just wanted to say, now, okay, relax, I am not going out, I am not going to blow whistle and you just leave me alone.

That was, effectively, the conversation which we had and if you look at it in this context, then it makes sense, otherwise it's self-contradictory.

"Now, on January 23rd 1990, doctor Fabrikant phoned to tell me -- "

By the way, if you look at his notes -- I don't know if I have it here and let me find it -- he said -- claimed on his hand-

written note -- in his hand-written notes, he written it differently. He has written that he reminded me of something which I've said in presence of him and MacKenzie and I said that that was figure of speech. When he was asked here what exactly was said in presence of him and MacKenzie, he couldn't say it.

Yes, here it is; that he reminded me what I said in presence of him and MacKenzie and I said that was a figure of speech. Now, and when

-- when he testified here and I asked him what did I say in presence of him and MacKenzie, he couldn't remember.

Now:

"On January 23rd 1990, Fabrikant phoned to tell me that things were getting out of hand. He wanted me to inform the Rector. I told him that I would inform the Rector if this remark was intended to be a dangerous message."

Well, this is clear kind of entrapment. I think it's for everyone, it's obvious. If I am telling him, well, things are out of hand, Vice-rector does not respond, why should this be any dangerous message or not dangerous message. It's just things are out of hand, Vice-rector should respond, period.

"I reminded him that he had said nearly a year ago to take hostages and shoot the Rector. I (inaudible) reminded him that I'm obliged to inform the Rector those he threatens and authorities. He responded by saying his recollection of past events and my recollection were different. He denied making any threats of that nature."

Well --

"At the meeting with J. Relton on August 27th 1990, I was told that it was now too late to deal with the alleged previous threats, that too much time had elapsed and that most recent issue do not warrant a letter of reprimand, it could lead to dismissal. Mr. Relton said that management needs to be briefed so that any future incident will not go unnoticed."

Now, there is really not that much time elapsed, in the first place; second, if this did happen, do you remember that no security was made at Bishop Court. There was absolutely no body-guard anywhere inside university.

Now, when he learned about -- assuming that this took place, when he learned about me getting a gun, he didn't do a single solitary thing, he didn't. Not only he didn't run to the police, he didn't even bother to respond quickly and we can only trust him that internal mail went that long.

Have in mind also another thing, that Mr. H... was present at all those meetings: November 1st, November 7th, 8th, 12th, 14th, 20th. All those meetings, he was present there and they discussed what were the threats and if you remember, he wrote himself an agenda. Let us find out who he ever threatened. Now, if this was the truth, why the hell should he write it in his own agenda for the meeting, who he has ever threatened, if he knows all this stuff. He knows the stuff first hand.

"On September 3rd 1990, talked to Fabrikant, told me the following: that he was sorry for all the trouble he was causing, that he had made mistakes because he was stressed. He regretted what took place. He got upset, he did and said things that were self-defeating."

I never knew this word "self-defeating".
"Because of the above, he was now seeking help so that this would not happen again. He was prepared to meet with doctor S... explain the background and the reason for his behaviour."

Now, if you recall in his own notes, he was at least honest enough to say, "as paraphrased by me". So, at least -- well, it was not really honest because it was not paraphrased by him, it was just written by him, but it is -- he written there that as paraphrased by me.

Now, in this letter, he doesn't say paraphrased, he doesn't say that it was written by him. He claims that it was I who told him so; read it again:

"On September 3rd 1990 doctor Fabrikant told me the following."

It's no longer paraphrased, it's no longer what he has written and in my presence, you remember, phoned the secretary telling, okay, here is Fabrikant and here is what he is saying. So, now, it's no longer that. It is, I told him.

"On October 9th 1990, at the request of doctor Fabrikant, I reported the above to doctor S... I have not spoken to doctor Fabrikant since October 1990."

Now, here, one comment is in order, that he saw and it was obvious that only person in total deray could sit there and say, okay, you ant to write this, okay, write this, I am prepared to admit anything. The person was in despair and they used it in the most dishonest and dishonourable way because I saw that there is totally defenseless, total. You cannot get a lawyer, the lawyer is bragged by Concordia that they did change the collective agreement the way they want so they don't have any longer respect of the contract and no way to get any job anywhere. How do they make it this again, a different story? How is it possible that a person with my research record, with my teaching evaluation, apply to United States, to Australia, to New Zealand and nowhere, no position, not in the lousiest university. You know, the Rye University who accept people even without PhD degree, that I would have been able to get any job anywhere, something is very, very wrong in the whole system, if this is what happens.

It means that they do not really are what person knows or what person can do. The only thing what is there, if you are marked "trouble-maker", period, you are dead. You may be Einstein, nobody will get you any job, if you are trouble-maker.

"I haven't spoken to doctor Fabrikant since October 1990, except on February 10th, when Angela Wilson asked me to phone doctor Fabrikant to discuss his eligibility to lodge an appeal to Appeals Committee on promotion to professor, I am secretary. I now no longer have an institutional responsibility for facilitating the resolving of distractive or disfunctional conflict in the university. I trust that the above answers your request."

It's signed G... H... Now, assume that Mrs. Abib has received it somewhere, 1st August, 2nd August. We know that they have sent a letter 14th of July. Now, this letter must have been

translated somewhere. I didn't find a translation, but there must be one. Is it somewhere on the file? It is D-17, D-17, letter of -- it must have been translated. Maybe I have it here and then, let me check. Yes, here it is:

"Dear constable chef:

It has come to my attention that doctor Valery Fabrikant of Department of Mechanical Engineering of Concordia University has been asking administrators of the university to complete a recommandation pour obtention d'un permis de port d'arme ... autorisation restreinte pour le tir ... la cible.

No university administrator will complete such a form for two reasons."

Now, let us see what those reasons are:

"Firstly, the Board of Governors of the University passed a resolution on October 16th 1991 supporting most rigid gun control legislation and prohibiting the carrying of firearms on the university premises, with the exception of police officer and licensed security officer. As such, it would be contradictory for university representative to sign a reference for a carrying permit for firearm."

How do you like that logic. They made decision that firearm should not be inside the university; fine, they have the right to do so, but how can they dictate to their employees, whether they can or cannot be members of a shooting club. If someone wants to practice shooting, I believe this is his own business and university has no business to intervene with that.

"Secondly; doctor Fabrikant has been involved in a long standing dispute with the university. In the last year, he has lodged four grievances against the university under our collective agreement. As well, he filed two complaints under our Code of conduct non academic. In addition, he has made serious allegations against his colleague with respect to fraud and has accused various university administrators, including the Rector of a cover-up and conspiracy."

Now, what kind of crime is that. Person lodged complaint; so what. Person lodged -- accused colleagues of fraud, then what. It means that he is going to go and shoot them? It's absurd.

"In closing, the university has serious concern with respect to doctor Fabrikant obtaining and carrying permit for a firearm. If you can provide assistance in this matter, please do not hesitate to contact Mr. Brown Friedman at the phone number 848-4797."

It's signed "Charles Bertrand."

Now, you remember that Bertrand testified here that on June 23rd, he signed a request for the rector to suspend me as danger to the university because I threatened secretarial staff. All right; why not to write it here? Here, Frabrikant on June 23rd threatened secretarial staff. That would be some specific thing, this is what police was looking for. Why he didn't write it here.

He had thought that I am danger to the university, he wanted to suspend me from the university. Now, he writes to the police. Now, write about it. If you are honest person and if this did happen, write about it, inform police about it. No, he didn't.

Now, assume for a second that it was a meeting on which MacKenzie was present, now -- and there, at that meeting, if you recall, they decided to find out who I ever threatened. Well, why didn't MacKenzie just sitting there said, you threatened whoever in my presence, we don't have to search, here I am, I am witness, I am prepared to testify for the police. This is what happened. I had him arrested November 1st at the Senate meeting, so I know first hand and everybody else knew that she was the one who initiated arrest. So, (inaudible) okay, look you had Fabrikant arrested November 1st at the Senate meeting. You must have had good reasons to do so, tell us what it was, if they didn't know yet. I don't believe they did know, but if they didn't, shouldn't they, at that meeting, June 23rd, ask MacKenzie, you arrested Fabrikant, what was it? What was the reason? Tell us, we need to tell police about it. Well, it's just not here. Why it is not here? Ask yourselves this question. Now, assume for a second that this somehow makes -- well if that makes sense, fine, but assume that as taken, everything is all right, there was no spectacle made, no comedy bouf., all right. Here we are, July 7th, letter was written; July 30th, it has been responded. Now, Ms Abib has received it. She writes it. Gosh, she should jump.

If she didn't know that, of course, but again, I assume she didn't know anything about it. She should jump. She should say, look, here it is. He threatened to kidnap and shoot the Rector. So, this is what we need, let's write another letter. No, no other letter has been ever written. Now, ask yourself why. If this is all true. I know the letter has been never written.

The more we look at that, I think that the more questions we have and those questions have to be answered one day.

The problem is that when I was at Concordia University, it was Rector's cover-up. Now, it is cover-up on much higher level because we just cannot afford the same way that society, what is called society, I don't know how stupid it sounds, but the same way as 20 years go society could not afford to say that there is a lot of dishonest and dishonourable people in the church. The same way society, for some reason, cannot say the same thing about the university right now.

What we see, for example, we have seen the newspapers, even just two or three days after the shooting K... has announced, despite the fact that we looked through all Fabrikant's allegations, we will investigate it again. Well, if you've already looked and you are sure you are right, what is the point to investigate. If you want to investigate still, fantastic, do it. Do you think they did it? No. Then, in February of '93 you could have written the newspapers again and this time it was even more impressive and it was repeated by all media already on television.

Now, we are creating Committee from outside respectable people, we were allocating \$300,000.00 for their badges to verify Fabrikant's allegations; fantastic. Do you think this committee is there? No. There is no committee, but be prepared, there will be soon another announcement. As soon as this trial is finished, I predict you, K... will go again on media and say, now trial is finished, now we are going to investigate and I wish to assure you maybe 20 years from now the same way as (inaudible) thing was finally brought to light 20 years after the events. Maybe 20 years from now, it finally will be investigated.

But as far as we see such a powerful supporter in all means and all means I mean, so it is not just the judge. It is not just the university who, if you recall, sent here various witnesses who provided you with very interesting information. I am giving you just examples.

If you remember, Mr. Yelle came here and he fired it to you that he heard that Fabrikant was refused firearm permit in '91, have in mind, in '91 and he is going to use his wife to get guns. In '91 Fabrikant never got refused, he didn't apply for anything yet and he already knew that in '91.

Now, there was another lady here. If you remember Ms B... and I asked her the same question. I could never imagine what the answer would be. I asked her: did anyone ever complain on me and if you remember response: oh yes, I had a student who complained that you raped her. And before that, if you remember, Ms Turbide testified also, but that time it was different testimony.

That time, she testified that in 1992, 1st April, when this infamous article in the Gazette appeared, of the reporter who, again, our fairest judge did not allow me to call to testify, of course in your absence.

She testified here that that lady as soon as this article appeared, phoned Vice-rector and told -- well, again from her, this time it was not rape, it was something like relationship or whatever, I don't remember exactly the word she used. And if you recall, she testified that she advised that that lady saw a psychiatrist, Mr. Steiner.

As soon as we discovered from the testimony of Ms B... that that was the same lady, of course, if this lady ever existed since I remember the testimony of Turbide that that lady was referred to see a psychiatrist.

You realize that this is not a regular referral if the lady comes and complains, she is usually not referred to see psychiatrist. If she is referred to see a psychiatrist, it means that something in the complaint is in the domaine of psychiatry.

Now, I asked that witness here, Ms B..., is this lady a mental patient and, of course, this question was disallowed, you remember that. And, of course, all what is needed and I wasn't even allowed to ask whether the student was at least in the field of mechanics, why? Because the best way is to give you a suspicion that I might have relationship with my own students. It's totally incomprehensible.

You saw for yourself that students came here on their own to testify about me after having read so much, so dirty, so incredibly hostile and false information and they were still prepared to come and to testify.

Now, if I did something like that, would they ever come to testify?

And I wanted to find who it was and I wanted to call her and to let her -- if that lady exists, of course, let her story, because I think it is time to learn that there is another side of every medal and rape as repugnant as it is, also have the other side.

I agree with you that in 99.9 per cent it's all true, but there is .1 per cent of dishonesty and dishonourable people who use it, taking into consideration that it is something which is word of one person against word of another person and there is nothing you can do if that person comes and says those, what you can do. There is no way you can defend yourself and we have to be aware of that and at Parthenais I

must tell you, I have seen several people of this obviously, their other side of the medal. Right now, there is one gentleman there who is accused of raping of his own wife. Now, if you saw the gentleman, he is that high, that big; it's incredible. That person -- I asked him, okay, did you beat her, did you --

THE COURT:

Mr. Fabrikant -- Mr. Fabrikant, just stick to the evidence.

MR. FABRIKANT:

I am sticking to the evidence.

THE COURT:

You're not sticking to the evidence.

MR. FABRIKANT:

It is.

THE COURT:

No.

MR. FABRIKANT:

I'm arguing.

THE COURT:

Yes, but you can't simply do anything under the guise of arguing.

MR. FABRIKANT:

I am not doing anything.

THE COURT:

Stick to the evidence in this case.

MR. FABRIKANT:

I am trying to make a point.

THE COURT:

No; stick to the evidence in this case.

MR. FABRIKANT:

There are cases where someone is accused unfairly, that's all and I am allowed to give examples.

THE COURT:

You have made that point now.

MR. FABRIKANT:

Let me decide.

THE COURT:

Would you, please, desist from giving living examples, okay.

MR. FABRIKANT:

Let me decide whether I make the point or not.

THE COURT:

I am telling you, you may not make that point any further, at least not in the manner you are doing.

MR. FABRIKANT:

What is wrong in my manner? I am telling the truth.

THE COURT:

You have heard. You have heard what I've said. Now, would you continue either with something else or --

MR. FABRIKANT:

Well, I don't think you have any right to tell me how to give my argument.

THE COURT:

I am telling you that you will not refer to any case at Parthenais or anybody you've spoken to at Parthenais.

MR. FABRIKANT:

Why not; could you explain?

THE COURT:

Because I have told you not to and that's all you need to know for the purposes of your argument, you may not do it, okay.

MR. FABRIKANT:

Why?

THE COURT:

Now, continue.

MR. FABRIKANT:

That is ridiculous. All right. So, the second -- yes, I wanted to (inaudible), but if I cannot refer to Parthenais, I can refer to the newspapers. As you probably know, at the time this tragedy took place, the newspapers were trying to dig every possible dirt on me and, believe, the lady if existed, she would definitely ring all the editorial to say that she knows something bad about me and the report, there is definitely report. It was everything there, at least this part wasn't there.

Now, for example, just -- I have given you several examples: "Concordia University staff were so frightened of Valery Fabrikant, they had locks put on their doors."

Now, every office has a lock, regardless there is Fabrikant there or not; nobody puts lock because Fabrikant is there. Every door has a lock in every office. Now, do you think that Carolyn A... who wrote this, is stupid not to understand it? Of course, she did. It was just maliciousness, nothing else, to write down that colleagues put locks in their doors because they were afraid of me.

Go into university, go into any office, any office building, you will see that every office has a lock, whether there is Fabrikant there or no Fabrikant there, every office has a lock because it has to have a lock. It is private office, it is locked when owner of the office is not there. This is how it is written. Now, let us read more:

"Vice-rector S... said she warned Fabrikant in Fall of 1990 to stop threatening her or she'll file formal complaint."

Now, this is a reference probably to the letter of October 18th where she warned me to stop threatening her. If you recall, I invited her to file a formal complaint. She didn't. Now, and here we read again:

"She spent weeks trying to persuade people who have been threatened to file a formal complaint. No one did. They said they were frightened."

Now, I called here, if you remember -- well, as many Faculty members as I could before my defence was stopped; not a single person said that they were frightened. Who did Mrs. S... try to persuade to file a complaint? So far, we didn't find a single person who would say, yes, I was frightened of Fabrikant. This is how this yellow reporters work.

Now, why didn't S... herself file a complaint? Reporter never asks. Or they write something like that:

"Mark Lepine and the man responsible for Concordia killing have done this: they have brought the etics over the crack than the sqaled morals of the mass murder into places where we seek to better understand the world. Even the most sophisticated scientists have no machines to measure such guilt."

Now, he compares me with Mark Lepine. There is nothing in common and I never brought the sqaled morals of crack then at the university. It has always been there. I was trying to fight it.

Now, here we have also everything, whatever they could uncover, not only on me, een on my wife.

"Fabrikant's wife, M... T... has also involved a law suit against Royal Air Morocco for damaged suitcase. They claimed \$1,000.00."

You cannot escape, whatever it was there, it was published. If I had a problem with the landlord for heater in the stove not burning, it's right here. They didn't miss a single solitary thing. Now, let us have something more.

THE COURT:

Well, before we have something more, I think we'll take 10, 15 minutes.

THE JURY IS RETIRED

--- Suspension

--- Upon resuming

IN PRESENCE OF THE JURY

MR. FABRIKANT:

There is another quotation:

" ... S... consulted a psychiatrist about whether Fabrikant last winter. She was afraid. He had threatened her, told a colleague he knew where to find his children and harassed dozens of Concordia officials with his nasty whispered phone calls."

Now, you may consider my voice nasty, but it is never whispered. The whole purpose of choice of words to create hatred, you know, to twist facts any way the reporter wants. We tried to find here, if you recall, who was the colleague whose children I talked about. We didn't find any because there is none.

Now, dozens of officials of Concordia were harassed, dozens; no. We didn't find any who were harassed. We found what; Gaudet, secretary general said that I have filed too many requests with her. Well, if you recall, it was not really my fault because all the documents could have just been given to me. When I asked S... just to give me the documents, this is what he should have done. Instead, he created a whole bureaucracy of letter exchange. Finally, I had to go to her and she had to go to S... to get the file, then I had to go to her and look at the file.

Now, if you could explain to me what is the point of all this, unless people has absolutely nothing else to do, there is no other explanation or another explanation to make Fabrikant look like a person who harasses somebody because there was no reason for any of those. All what was required is I asked S... to show me the file. He should tell me, okay, come, here it is. No letter exchanged, no harassment.

So, harassment is very easy to create. You just start abusing someone and this someone, whether he wants it or not, will become a harasser because, for example, someone wants something from an official, officials tells, you, all right, I will get back to you as soon as possible. Now, day passes, two days pass, suppose you have something leaking. You call again, you know, I told you I will get back to you as soon as possible. Well, you start asking, okay, as soon as possible is when? I called you yesterday, I called you the day before yesterday and again repeat, I will get back to you as soon as possible.

Now, who is harasser in this case? The person who treats you like this with these very fine words as soon as possible, while effectively in real English it means, never, because when they tell you as soon as possible without giving the date when, it is the same thing as never.

This is how a person becomes a harasser.

Another description:

"The look was typical for a door small man with tired eyes and twisted mouth."

Now, sometimes they write at least half truth. His career at Concordia was marked by one of the best teaching record in the university. This part is probably true:

"But he was told yesterday that he would not be granted tenure."

This is how they described the reasons for shooting. Now, I do not believe that reporter is really serious. He didn't know that there was no tenure consideration in August of 1992. Where did they get it? Let us look at how this information is being organized by Concordia University. "University lawyers and admin... okay:

"The shooting came hours after Fabrikant was told by the university that he would not be granted tenure, said Roger Jadd, lawyer for two professors sued by Fabrikant."

This is who was interested to create impression. He knew very well that he was originator and architect of the shooting in the first place. This is why he wanted to create impression that shooting was before because just hours before I was told I would not be granted tenure. He knew very well there was no tenure consideration on August 24th or anywhere before that.

Now, the same thing:

"There are a lot of complaints made by my clients and other members of the Faculty who I want named to the Concordia administration, but this man that this man might be dangerous, said Roger Jadd, but it seems so far that those threats or accusations were not taken too seriously."

Now, did we find any evidence of those threats or anything?

So far we didn't find any solid evidence of that. But another thing is very interesting. Jadd says here:

"His client told him that they feared Fabrikant would harm someone."

This is an interesting citation. This creates the impression that they -- it could be that there is such thing in psychiatry, that at least one psychiatrist told me the following theory, that if person is abused, that what might happen is the following. If you had watched corrida, you know what corrida is, that bull and there are a number of man picadors and they put each a pic into his back to make the bull infuriated and they tease him and they burn him. They put another pic on him, they put another pic on him and bull becomes finally more and more and more enraged and what sometimes happen during this corrida, that bull jumps on someone who is just nearby. It might be picadore, it might be even someone who is just nearby, because bull is so enraged that he has no control of what he is doing.

It is a speculation, but maybe they wanted to discharge me on somebody else and the whole thing was created in this idea in mind because, effectively, more or less this is what happened because it is difficult to explain what happened, but this phrase is very interesting:

"Jadd said his client told him they feared Fabrikant would harm someone."

And a good translation is that they thought it would be nice if Fabrikant killed somebody else, so he is in jail and they are safe.

Jadd said members of the Engineering Department of Concordia had repeatedly asked the university to do something about problems they were having with Fabrikant, but it didn't act.

Now, if you look at those requests we have seen those requests. Those requests were such that they were supported by such facts that I was caught evesdropping at the corridor. The second fact was that I was arrested by the police and the third fact, if you remember we couldn't figure out what it was, some kind of lack of security for somebody. That was their requests for the university administration to declare me danger.

Now, in order to create hatred, everything goes. For example, one reporter decided to compute how much this trial cost and it came to \$328,000.00 something dollars. Now, everyone thinks, my gosh, what are we doing.

Now, first of all, you may be sure that this is not at all the final because what they did here to compute to so that reader would think, okay, of course, Judge Martin did the right thing, we paid too much, it has to stop. So, just the monetary consideration. Nobody thinks that no one taxes were increased because of Fabrikant's trial.

The second thing -- several things is so ridiculous. For example, he counts how much it cost to keep me at Parthenais. Each day, \$111.00. Okay, what he suggests? To let me free and not to pay this \$111.00 or he thinks that if I am being in jail, it will be free there. It would be also the same \$111.00, so the only way to cut this expense, you have to kill me. There is no other way, either to kill or let me go free, otherwise, there is no way this money has to be paid.

it goes to ridiculous, but very interesting way how they do. For example, according to constables at Palais de Justice, Fabrikant has made \$3,000.00 on long distance calls to United States and Europe.

For your information, the telephone, they give me sometimes cannot make even collect calls. I can only call in Montreal and every constable knows that; do you?

Now, but to do it the smart way, what the reporter does.

Look, every effort to get confirmation from Legal Aid (inaudible) response. So, reporters seems to be honest. He tried to verify this figure; he couldn't, Legal Aid didn't, you know, say it, but still the figure is there and person looks and thinks, gosh, this is a lousy murderer, how come he is allowed \$3,000.00 of public money to spend on his phone calls to Europe. It never crosses their mind that I didn't have such a possibility ever, except for two phone calls somewhere in the winter, which were made for just public consumption to say, ah, Fabrikant has access to telephone long distance.

But the most interesting probably is the philosophical part of it. The logic is the following:

"Now, whatever Fabrikant does, it cannot be good. If even he is clever in examination of witnesses, look how it could be put in words. Judge was driven to near destruction by Fabrikant, maddening clever examination of witnesses."

Maddeningly clever; so it is not clever, just maddeningly clever because Fabrikant must be crazy, he cannot be just normal person.

"And his exploitation of court-room procedure for to its outer limits. Fabrikant has made a fool of one ballistic expert and made short work of Concordia Rector Patrick Kenneth. He has availed himself to every allowance given to every general house lawyer governing the widest procedure or latitude of the process."

Now, the widest procedure or latitude of the process is right now that I am not even allowed to testify. You cannot go wider than that and as far as money is concerned, you may be assured that this \$300,000.00 is not the last expense because there will be yet another trial, there is no doubt about it.

THE COURT:

You're becoming repetitive.

MR. FABRIKANT:

All right.

"This is simplified further by his refusal to hire a lawyer, thereby conscripting the judge to the unwanted role of defence attorney."

How do you like that. Judge ... is my defence attorney. My impression was the judge has always been second Crown, but reporters feel the judge was an attorney. Now, my refusal to hire, I was desperate to get a lawyer. If you recall, I had just recently two of them right here.

Now, one of them, at least, was, you know, when they volunteer because they want publicity, they promise you everything, they will do whatever you need, they will do it. As soon as they come here, I hope you remember how pale he was when I was asking him, there is a witness here in the box, he is obviously faking his memory, say it. He tells me, I cannot say it in front of jury. Why can't you say it in front of jury? No, I cannot. That was his response, Mr. Richard. And when I insisted, he said, well, okay, he quits, he cannot do that.

He cannot say in front of jury that Fabrikant is right and witness is something no good because witness is from Concordia, how can he say that witness is either faking his memory or witness is wrong. No, no way.

Another thing was with Mr. Ouellet. He was kind of, you know, all previous lawyers at least, when you tell them that they are not doing their job, they quietly go away and that was it. This one tried to threaten me, if you try to fire me, I will file a motion that you be either shut up or just expelled from the court-room and this is what he did. You wouldn't believe that.

Not only he did so, he gave me even text of that motion to silence me or to have me expelled from the court-room. The next motion of his was to exclude public from the hearing. Why did he need that? God knows, but it's not difficult to assume why he needed to exclude public because without public, judge could do anything and he still does every lawless thing he wants, but without public it would be much easier because nobody would ever report it.

And after the public is excluded, he would proceed, we wouldn't say in defence; he would say that his client is insane.

THE COURT:

Mr. Fabrikant, are you summing up because these are the words that the Code uses.

MR. FABRIKANT:

Yes, I am summing up.

THE COURT:

You are not summing up at all; you are on your p... again --

MR. FABRIKANT:

No.

THE COURT:

-- and you're supposed to be referring to evidence that the jury has to consider. All that you've referred to from the time you came in at 4:00 o'clock this afternoon and, indeed, often on before, is evidence that isn't even in the record.

MR. FABRIKANT:

Okay.

THE COURT:

Now, let's stick with the record.

MR. FABRIKANT:

Well, it is with the record.

THE COURT:

It's not in the record. These are the rules and I know you don't like that, but --

MR. FABRIKANT:

The fact that two lawyers were here is not in the record.

THE COURT:

The fact of two lawyers were here is in the record. The circumstances of why they left or whatever is not to be considered when the question of your guilt is being determined, no.

MR. FABRIKANT:

Well, theoretically, yes, it is not to be considered.

THE COURT:

That's right, so, fine.

MR. FABRIKANT:

Theoretically, but practically --

THE COURT:

It's not to be considered, it doesn't form part of your argument.

MR. FABRIKANT:

But, practically, we are all human-beings and practically if it was that simple, you would not be that concerned, for example, if I tell the jury that they don't have to listen to your directions, for example. You go there and say, okay, let him say it, I will say differently. No; you are very concerned if I say that, correct? So, the same thing here --

THE COURT:

I am concerned that you say because it is not for you to instruct the jury on the long, it is for me and that's not -- it's not for you to usurp my position, just as it's not for me to usurp yours and I told you before, like in the old -- like in the old protestant hymn, you and your small corner and I in mine. Now, let's just stick to that.

MR. FABRIKANT:

But this is not the point. The point is that we are all human-beings. If the jury sees one lawyer comes and goes, another lawyer comes and goes, jury definitely have a question, what really happened. Is it Fabrikant who is crazy and does not understand what he wants or it is the lawyer who has no guts to really defend Fabrikant, to really say what is the truth and this is important.

THE COURT:

It's not. It's not pertinent to where you are now and you have already -- you have, you, at your request, at your specific request, when ma@tre Richard left, I said not a word. On the other question, you chose to announce the departure of ma@tre Ouellet in front of the jury.

Now, if you did, you did, but what is the point of going over it now?

MR. FABRIKANT:

Well, the point is --

THE COURT:

It's not in any pertinent to the proof and I would suggest you get back to the pertinence.

MR. FABRIKANT:

It is pertinent. Let me explain you what the point I am trying to make, that I had been treated like kind of public enemy number 1 by practically everybody, including me there, including lawyer, including the judge and this is very pertinent because the point I'm arguing now that I am not having fair trial, if it is not clear too. I believe it is clear to you what the point I am arguing now.

THE COURT:

You can -- you can make the point that you're not having a fair trial in due course, but that you're not having a fair trial is not something on which this trial stands to be decided unless, of course, you're trying by a more obduce route to invite the jury again not to follow the rulings that the judge makes or the directions of the judge makes and that I've already told you is improper and that you may not do.

MR. FABRIKANT:

Well, if you didn't interrupt me, I wouldn't go into that direction at all. The only reason I mentioned that because you interrupted me and believe me, we will go much faster if you just allow me to say what I have to say because with all the due respect I must submit to you that I recently read in the Criminal Code that inability to present defence, he is a defence too. It is substantive defence; how about that.

THE COURT:

That is nonsense, in the context of what -- of your situation and I am not going to discuss with you why your defence was stopped; you know perfectly well why your defence was stopped.

MR. FABRIKANT:

Well, I know because you are lawless, there is no way you can stop my defence because I insulted you. If I insulted you, this is contempt of court and you have your own recourses, but person cannot possibly judged, let us say that he is guilty of first degree murder because he insulted a judge. Those are two different things.

THE COURT:

Mr. Fabrikant, yo are wrong. That is a very simplistic approach. I told you and I've told you again whether in the presence of the jury or outside the presence of the jury, that your right to a full and complete defence is contingent upon one thing and that is that you respect the rules of court, within that framework because the rules of court are a very, very wide concept.

The rules of court entail a respect for the court as a whole, the jury and me and everyone else and if I rule that a piece of evidence is not admissible, if I rule that you may not present a certain piece of evidence, then as you are well aware, that part of the judicial system is protected by all

sorts of safety nets, not the least of which is the Court of Appeal.

Now, I've told you, if you were not prepared to work within the framework of the rules you lose the privilege of presenting your defence or the right, if you wish of presenting your defence. It's that simple. I've told you it was not an unqualified right. There you are. So, don't blame me. If you want to know who is responsible for that, you only have to recall who made the comments that were made last week.

MR. FABRIKANT:

Well, blame is not the right word. You just did the lawless thing that's all I am saying. I don't believe that in a history of this country nobody ever insulted a judge. I think that some people even used four letter words when they talked to the judge, I never did that and I don't think that their defence was stopped because of that.

THE COURT:

Mr. Fabrikant, we are passed that now. Get back to the proof and get back to your argument.

MR. FABRIKANT:

Yes, that's what I am trying to do. So, if you would allow me kindly to.

THE COURT:

If you stay within the proof, I won't interrupt you.

MR. FABRIKANT:

I stay within the proof because, at least, the way I see it and if I am wrong you will have the opportunity after I finish to tell it to the jury, that I am not.

THE COURT:

That's not the way it works.

MR. FABRIKANT:

Well, I think this is how it should work at least.

THE COURT:

Yes, you may, but that's not how it works.

MR. FABRIKANT:

All right. Now, there is question here which is raised and I believe it is important question. Here it says:

" -- that all the while there is no doubt that Fabrikant killed and wounded people. He is charged with killing and trying to kill. By his own admission in open court the trial would be over in five minutes if that were all it had to establish. My question is: why can't it be satisfied with that simple objective?"

Well, this is the question, I think is very important; is the fact that, yes, I did kill four people is satisfactory enough to convict me? If the answer is, yes, then, yes, there is no need to have any trial whatsoever because I never denied it. If the answer is that we have to know all the details and, in particular, for example, if this murder was planned or it wasn't planned; this is the difference between first degree murder and second degree murder and this is important to find out.

And so far, to the best of my understanding, Crown did not present any evidence of neither planning nor deliberation, nothing, not a single iota of that.

The second thing which has to be discovered is whether the murder was the result of free wheel, it means that this is what I wanted to do at that time or it was beyond my control.

And in the case it was beyond my control, there are two options there. It might be a manslaughter. If I was provoked to such an extent that normal person, normal, you know, qualifications would also lose control in similar situation, then it is not even murderer of second degree; it is a manslaughter.

So, there is something to clear up here. There is many things to discuss and to find out and to prove beyond reasonable doubt what it was and this was the whole thing what my defence was about. Frankly speaking, what I wanted to present here as defence was that if I produced to you all the evidence, all the facts then you might find it every person, you know, normal, regular person being put in my position would do approximately the same thing and there is a case though different, of a woman who was battered by her husband and who shot him in the back when he was leaving the room and, according to self-defence, it is not a self-defence. Self-defence is when somebody's life is immediately threatened and that person takes somebody else's life, this is called self-defence.

In this case, this woman didn't have her life immediately threatened because her husband though he threatened her, he was leaving the room and she shot him in the back of the head when he was leaving the room. So, definitely her life was not in immediate danger.

But this defence was called, battered woman syndrom and she was acquitted.

Though there were questions raised; she could have left him a long time ago and go live somewhere else. She could have done many other things, but psychiatrist argued that this is not how it works, that battered woman just doesn't feel that way, that her perception is different, that her perception is that she has no way out, that her life is in danger, despite the fact that it is not the husband who is just standing with a gun pulled to her head, but mere threat combined with previous assaults create such a mental state in that woman that she feels that her life is in immediate danger and she needs to defend herself. And judge was courageous enough to allow this defence. This defence has never been presented before and it was successful and the woman was acquitted.

Now, why did this defence succeed? Because, of course, it is understandable that society is very negative towards husband (inaudible) his wife and, definitely, society would not tolerate that woman who was heavily abused would go to jail, let's say, first degree murder because she suffered already enough and that was the right decision to do.

At the beginning, I informed Mr. Martin that I believe that we have a case of battered person syndrom because all would I have encountered that Concordia University that I almost died in '91, that they continued to mistreat me, so that I would get, you know, the heart attack and what happened after that, that this is very similar circumstances and he told me he would not allow this kind of defence.

I think that this is a wrong decision. I think that he should allow me to present at least the facts and let the jury to decide whether in a similar circumstances any other person would act in the same manner. Regretfully the situation now is such that I cannot even testify and I cannot even tell what really happened on or before August 24th. We just didn't come to that when my defence was stopped. But one thing I hope I have proven to you, that this author

here is wrong, that there is something to establish, namely what led to this shooting at Concordia, what were the circumstances and depending on those circumstances, verdict might be different.

At least three different verdicts: manslaughter, second degree murder, first degree murder.

If my defence be allowed, acquittal would be also a possible verdict, but this defence was not allowed and I don't think this was a correct decision.

Now, the next question here is --

THE COURT:

Well, perhaps you broach the next question we'll adjourn until Monday, so as not to interrupt you as you broached. Monday morning, 9:30. I wish you a good week-end.

THE JURY IS RETIRED

Je, soussign,e, Jocelyne DeMontigny, st,nographe judiciaire, certifie sous mon serment d'office que les pages qui pr,cđdent contiennent la transcription des paroles recueillies au moyen de l'enregistrement m,canique dans la cause ci-haut mentionn,e, au meilleur de la qualit, de l'enregistrement.

Jocelyne DeMontigny,
St,nographe judiciaire.

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PROVINCE OF QUEBEC

DISTRICT: MONTREAL CITY: MONTREAL

CASE NO: 500-01-017372-928

TRIAL

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

THE QUEEN

vs

VALERY FABRIKANT

APPEARANCES: Me JEAN LECOIRS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: August 9th, 1993
(9:43 to 12:06)

GS: 1346A FILE: 2323

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CONTINUATION AUGUST 10TH, 1993

(THE JUDGE TAKES THE BENCH)
(THE JURY TAKES THE BENCH)
(DISPENSE WITH THE CALLING OF THE JURY)
(ALL ARE PRESENT)
BY MR. VALERY FABRIKANT
THE ACCUSED REPRESENTING HIMSELF:
Ladies and gentlemen, last time we finished finding out
that the journalists are trying to find any way to stir
hatred towards me, including such means like counting how

much this trial costs, including such computation like that my stay at Parthenais costs one hundred and eleven dollars (\$111.00) something every day. That really might have an impression it is I who get this one hundred and eleven dollars (\$111.00) in my pocket, or I'm getting that much of services for that amount. Effectively this money goes to, I believe, mainly to salaries of...

BY THE COURT:

Mr. Fabrikant, we're in the fourth day of...

BY THE ACCUSED:

Yes.

BY THE COURT:

... your plea, would you please leave these questions alone. They have nothing to do with the case which the jury has to decide.

BY THE ACCUSED:

They have to do. I'm arguing the point that I am not having a fair trial. It's very much have to do that... Now, if I and people like I are not there, all these people would be unemployed, so you couldn't say that those money are wasted.

On the other hand, none of the journalists think that this little booklet cost taxpayers three hundred thousand dollars (\$300,000), and none of them is worried about it, and none of them asks any questions. And those money went to line the pockets of the...

BY THE COURT:

If you are not going to address the facts...

BY THE ACCUSED:

(Inaudible).

BY THE COURT:

... you run the risk of having this stopped.

BY THE ACCUSED:

I am addressing facts.

BY THE COURT:

Then you address the facts. These are not the facts of the case. Ladies and gentlemen, you will ignore this...

BY THE ACCUSED:

Well, of course, I...

BY THE COURT:

... diatribe which at this particular point is aimed at the journalists. But the purpose of this is for Mr. Fabrikant to sum up the facts of the case and to put his arguments to you as to why the Crown hasn't established the case against him, not to use the dock as a pulpit to air his current complaints.

BY THE ACCUSED:

I'm not airing my current complaints. And you pretend not to understand what I'm talking about. I'm talking about my trial, my inability to present whole defense. The way, the prejudice way I was treated in the media which definitely jeopardized the possibility of having a fair trial. This is all relevant points, and I'm going to make them.

BY THE COURT:

These are not relevant points which the jury has to decide, and you are not going to make them.

BY THE ACCUSED:

All right. Now, another thing which was raised is the following. That when the Judge decided to question

Fabrikant's sanity, I thought it was a way out. There's been ample evidence that Fabrikant did not appreciate the nature of this deed. The fact that he comprehends that his trial is all about is irrelevant whatever the Pinel psychiatrists say. What is pertinent is whether he feels justified in taking life because of injustices he suffered at work.

First of all, there is no evidence whatsoever that I do not appreciate the nature what I did. I have stated on several occasions my deepest regrets and sorrow of what happened, and the wording which, for example, is put into my mouth, that I feel justified in taking life is total absurd. No taking of life could be justified. This is just a wrong word.

The only thing I am trying to establish here is not whether I was justified. Murder is never justified. This is the wrong word. Even killing me is not justified, according to the law... I have taken for a "ride". So we cannot speak about justification of killing somebody.

What I'm talking about, about circumstances, about deliberate and malicious manipulations which people at Concordia did to put me in a position to provoke me to such an extent that I lost control to such a degree as you saw it in the facts. This is what the issue here, not that I'm trying to justify that they mistreated me and therefore I had the right to kill somebody. This is total absurd, and it has never been any of my statements or it has never been an implication of that in anything I said or did.

And after that, again, anyone who can justify murder over loss of job, or promotion, or theft of ideas, can be said to have lost his mind. Well, again, it's implication that the whole thing took place because I feared lose of job, or theft of ideas, or promotion. Again, it is total absurd.

You know from the facts of this trial that I didn't get a promotion. They tried to fire me several times. They tried to provoke me any way they could, as long as it was just either a job, or theft of ideas, or promotion. I never reacted in any way. You have full evidence of that.

If you recall Swamy testified here, that when they gave me the information the Department Personnel told me they decided to recommend termination of my contract, I didn't even raise my voice. I did not react in any aggressive way. And it is malicious propaganda to create impression that tragedy at Concordia was a result either loss of job, or theft of ideas, or lack of promotion, or sabbatical. I am not that kind of person who could be provoked into violence just because of those things. This is total absurd.

And, again, if I continue, there is an argument what justice should do, and what could he have done. The (inaudible) would not have put up with Fabrikant for long, because he would have identified him for what he is. And unless there was a conventional case of self-defense, he would have ended it then and there. Now I wonder how he would have ended it then and there.

First of all, you have to find out whether there was an element of self-defense, and in order to find this out you need to hear the testimony. You need to hear the witnesses. You need to know what happened. And so far the main part of it is hidden from you because there is absolutely no evidence of ninety-two ('92) which I could present.

All the witnesses which were here, the majority of them testified up to ninety-one ('91). There was a little, little bit evidence of ninety-two ('92), but majority of it, it was just not presented to you. And if (inaudible) would be able to make his decision without all this valuable information, well, he is not supposed to be responsible for anything. He can do whatever he wants. Luckily for us, we don't have anything. We are supposed to have system of justice which does not make decisions until all the facts are known. So his cry for (inaudible), well, I hope it is a longer cry.

And I don't think that if it was his brother, or his father, or his other relatives being accused of murder, I don't think he would argue that let us finish it in here and now. He would rather say, okay, let's hear his story first and find out why this happened. But this is a different thing.

And we can find also mission of... primary mission of the Court, according to him, is... the first function is as a human waste disposal unit. When quest for complete justice becomes old, then the Court abandoned this primary function and failed to serve the needs of society. And this sounds very ominous. If Court is just a human waste disposal unit, it would be much cheaper to use big, big toilets, put human beings there, flush them down. That's it. Cheap and quickly. And what is interesting is that this is allowed to be published and this kind of hatred allowed to be there.

What I'm trying to say here is the following, when another person, namely Dubois, was on trial and editor named Larendeau has published a hate paper, he was accused of criminal contempt of Court, because he jeopardized the trial for Mr. Dubois. (Inaudible) nobody ever. How about Mr. Martin? Is it criminal contempt of Court to say something like that?

BY THE COURT:

You are right out of order...

BY THE ACCUSED:

Oh, yes.

BY THE COURT:

... in your decision to commence the day with a criticism of various articles that have been published.

BY THE ACCUSED:

It is not out of order. I'm discussing the points of evidence, and I'm discussing how...

BY THE COURT:

You're not discussing the points of evidence at all, Mr. Fabrikant.

BY THE ACCUSED:

... how these points of evidence were presented in the press.

BY THE COURT:

The press did not prosecute you. Mr. Lecours did, and the jury were instructed from the beginning that they

would make their decision, and I'm confident they will, on the basis of the evidence they've heard within these four walls.

BY THE ACCUSED:

All...

BY THE COURT:

If you wish in that context to refer to articles of the press, you're not able to do so. You're right out order in doing that.

BY THE ACCUSED:

I'm not in this context. I'm in quite different context. During our life people, and they do read newspapers. And if it were that simple that just tell the jury, forget about it, and they do, then you wouldn't be that concerned when I said the jury doesn't have to follow your instructions. You were very, very concerned, God forbid I say so, why wouldn't you settle it that simple. Okay. I say jury don't have to follow your instructions. They have to follow their conscience, and you just say, okay...

BY THE COURT:

I told you...

BY THE ACCUSED:

... let them say so. I will say...

BY THE COURT:

I told you, you...

BY THE ACCUSED:

... that's it.

BY THE COURT:

You have the right to discuss the facts of the case. You do not have the right to instruct the jury on law, and I'm not going to let you do so.

BY THE ACCUSED:

I'm not instructing there on law. I'm just...

BY THE COURT:

Yes, you are, Mr. Fabrikant.

BY THE ACCUSED:

I am just...

BY THE COURT:

Because when you tell the jury to ignore the instructions they receive from the Judge, that's precisely what you're doing.

BY THE ACCUSED:

No, this is not instruction in law. This is instruction on how I think they have the right to behave. There is nothing in the law which says the jury are obliged to follow your instructions, so it is not instruction in law at all.

BY THE COURT:

I am sorry, you are wrong.

BY THE ACCUSED:

Well...

BY THE COURT:

You are wrong.

BY THE ACCUSED:

I'm not wrong.

BY THE COURT:

So you will please...

BY THE ACCUSED:

So how come Mr. Morgentaler's jury did ignore direction of the Judge, and they returned acquittal (inaudible) that was according to the law.

BY THE COURT:

I told you the Chief Justice of Canada expressed his opinion that it was wrong of counsel.

BY THE ACCUSED:

Who cares what Chief Justice said about counsel. What I'm talking about, the jury did return the verdict, and that verdict stands. That's what counts.

BY THE COURT:

You have just accurately summed up why you're in the position you're in now. You care nothing for this whole system, and you have no respect for any dimension of it. Now, would you please address yourself to the facts, otherwise I'm going to have to conclude that this has gone on long enough.

BY THE ACCUSED:

Well, I am addressing the facts.

BY THE COURT:

Three days plus, we're reaching the outer limits.

BY THE ACCUSED:

This is exactly what I'm trying to address now, because this is exactly the question which is the next. So, no jury doubts that he himself has admitted that he killed his colleagues. Surely that is enough for conviction. The question of mitigation can be heard before sentencing. Then we can determine if his complaint against Concordia has merit and...

BY THE COURT:

Mr. Fabrikant, would you stop reading from newspaper articles and argue on the basis of the facts. This is the last time I'm going to ask you.

BY THE ACCUSED:

Well, I am arguing, because this is question and I am responding to it from the facts.

BY THE COURT:

That is not a question. You will not read from newspaper articles. Now, will you please address the facts that were put before the jury in this room, and if you have any argument to make on those, make it.

BY THE ACCUSED:

I am addressing...

BY THE COURT:

You are not addressing, and you will stop reading from the newspaper article, otherwise this will finish.

BY THE ACCUSED:

Well, all right, I can make it from my memory here, that... particular, because this is what the editor exactly writes, that...

BY THE COURT:

Mr. Fabrikant, what is relevant is not what the editor wrote. What is relevant are the facts...

BY THE ACCUSED:

Well, yes.

BY THE COURT:

... that were proved here. What the editor wrote, I couldn't care less about. It's not in the evidence, and the jury will disregard it.

BY THE ACCUSED:

The jury will not disregard it.

BY THE COURT:

And you will not refer... and you will not... and you will not refer to it.

BY THE ACCUSED:

You just allowed me to show to the jury the maliciousness of the press.

BY THE COURT:

I certainly do. That is not the issue.

BY THE ACCUSED:

Well, one thing I feel I have the right to say here. You remember Mr. Purdur testifying here, and he said that he wanted to see if Osman was there. And he went not through the secretary which would be the normal way to do so, and he went through the other corridor.

BY THE COURT:

You're referring to Mr. Subramaniam.

BY THE ACCUSED:

Well, they call it (Inaudible) Purdur. I don't know what is his real name, whatever. And I asked him, "Did you tell the reporter that I was looking for Osman and I was knocking repeated at his door". And he said, no, I didn't say that. And it is written here in black and white, he appeared nervous, was shaking, and was (inaudible) at graduate student, (Inaudible) Purdur. The gunman was waiting for Professor Sam Osman, Chairman of Mechanical Engineering Department, and he knocked repeatedly on his door.

Now, is it relevant or isn't it relevant how maliciously it was presented. When I asked him, "Did you say so", he said, "No, I didn't". But if every normal person reads that, it creates an impresssion of, first of all, obviously a mentally sick person who is doing God knows what. But if you look at the facts, apart from there is no need for anyone to knock on anyone's door. If you recall, Osman had his telephone number. If I wanted to know if he's in there, all I needed just to dial his number. That's all.

Second, I could come to his secretary, and the door was always open. It would be visible if he is in there or not. Instead I would go to another door which is always locked and knock at that door. Why on earth would I do that? It was done for one reason, to create a false story. And these false stories are all over.

If I look what has been published, it has been done intentionally, and I need to show it, and I'm not allowed to show it, because it is not just Mr. Purdur who tried to create wrong impression among public as to what happened at Concordia. It is definitely police, too. If you look at their report, they also claim in the newspapers that they had evidence that I was lurking on the ninth floor, in every department. I was looking for presumed victims, and so on and so forth. There was no evidence of that presented here. Nothing at all.

If you look at Mr. Purdur, how strange he was. He could have called and checked if Osman was there. He could have gone to the secretary and looked through if Osman was there. He went to see the door which usually is locked. And definitely it would be stupid for him to continue testifying that he saw me knocking at that door. So he said that he just saw me there. Why on earth would I be there?

And, okay, he went there. He didn't see Osman. He was interested where is Osman. So natural then to go back, to go through the secretary and check if Osman was there. He didn't do that. You remember his testimony, it means that he wasn't really interested. He just needed to somehow get out of the stupid interview which he did. There is nothing else there.

Now, if you look at the evidence again, you remember the testimony of Mr. Sangollo. They needed to create an impression of something which was premeditated, either premeditated or... totally insane.

You also recall testimony of Mr. H,bert who said that he knew very well that shooting started in my office after conversation with Hogben. Now, and I asked Mr. Derek, if you remember, why did Sangollo present a different story, and he said he didn't know.

And when Sangollo was here, if you recall, he just didn't remember anything. But if you look at the description which they gave at the first conference, this is quite obviously, first of all, you see that the description was like this. Gunman enters administration office apparently hunting Dean Swamy. How on earth did they know that I was hunting Swamy? There was absolutely no evidence, and still there was not presented a shed of evidence here that I was hunting Swamy. No witness, including Swamy, testified that when I was in 907, I made even attempt to open his door. I didn't. You also remember that Swamy himself testified I never threatened him.

On the other hand, you remember also at least three members of his staff testifying that Swamy personally told them that I threatened to kill him. Now, do you think that those people were lying? No, I don't think so. That was deliberate manoeuvre of Swamy to somehow justify this malicious trampling of my character, of my reputation. He knew very well I didn't do anything dangerous. I never threatened him or anybody else. But he needed to justify this hiring of bodyguard, so he was telling these secretaries that I threatened to kill him. And those secretaries came here and said that.

And when... it was not without confusion, though. If you remember one of the secretaries came here and testified that Swamy told it to her three months ago. Then it was two weeks ago. Then she couldn't really remember when it was. Then she said that she wasn't really sure whether Swamy told her so. But on her police statement it is black and white. It's not only Swamy told her that I threatened to kill him, but also he was very angry with her that one day I was there inside the office.

So he is trying to create the impression from everybody that his life was in danger, so that everybody would start hating me. Because it is quite natural, if somebody threatens somebody's life, that somebody should be kicked out of the university. And they didn't have any other option. And this is just a continuation of harassment of Concordia what the police did.

They described it the following, that gunman entered office of Ziogas and wounded him in torso. Then gunman changed direction and walked calmly towards Dean Swamy office. Michael Douglass, professor of Civil Engineering was waiting outside Swamy's office in Engineering and

Computer Science Department. Gunman opened fire on Douglass and killed him. Gunman then decided to walk to another office, 929-24. It happened to be my office, and police pretended not to know that. And when he got there, the gunman found Michael Hogben, associate professor, standing in the office. He shot and killed him.

Now, how on earth can I go to my office? All of a sudden, after killing two people, all of a sudden I decided to go to my office. And in my office, how did Hogben get inside? Offices usually are locked. I found Hogben and I killed him. And after that my next victim was Aaron Jaan Saber.

The whole picture is so ridiculous, so outrageously out of context with whatever evidence they had. It is not enormous mistake in any way. Because if you look just at the list of 9-1-1 calls, just at the timing and placing of those calls, it would be clear to you when it started and how it started. At three-twelve (15:12)... first, there was a phone call from Aaron Saber at fifteen eleven (15:11). At fifteen-twelve (15:12) there was call from Mrs. Horwood. And only at fifteen-fourteen (15:14) was call from Electrical Engineering. So it's absolutely obvious how it went.

Testimony of Mr. Horwood or Altimas. They testify, you know, so obviously. They say that at twelve... sorry, at about fourteen forty-five (14:45), they saw Hogben with me, coming into my office. So it doesn't make sense. It's obvious. And after that they testified they heard some shots from my office.

And after that there is testimony of Latinovic, who saw me exiting from the office and shooting Saber. He cannot make that kind of mistake honestly. The only reason this has been done because if the shooting took place after about twenty-five (25) minutes to half an hour conversation in my office, every normal person would conclude that something transpired from that office. Something caused the shooting. And that would be a completely different story.

They never mentioned that 929-24 is my office. Because if they did mention it, every reader would be wondering how come this gunman went to somebody else's office first, then came to his office and finally found somebody there? So the only reason for that, they wanted to create impression either of insanity or of premeditation. None of which is correct. And the purpose of it to whitewash Concordia and what they did.

You also can see title, Concordia didn't try to understand why his wife was scared, and he says I was intended victim of gunman who shot five people. Now, what reason did he have to say that he was the intended gunman? He testified here. He couldn't pronounce a single word, or present a single fact which would support that I did any way threaten or make anything which might him think that he was the target. None of the facts presented support it either. And all this was established for one reason again, to create an impression of some kind of revengeful shooting, which again, it was not the case at all.

So all this is very well-calculated obviously to stir emotions so that I would not be able to have fair trial,

that I would not be able to explain what really happened, rather to create an impression in several papers which was written that it came hours after somebody told me that I'm denied tenure.

Again to create an impression that it is a deranged person who does not understand that because of lost job, you cannot just go and shoot people. And I agree one hundred percent (100%), and that was malicious persecution on the part of the other media.

And the way they describe, for example, that last fall the battle with Fabrikant was particularly rough, Swamy had a security guard posted in his office. But after a couple of weeks he felt he didn't need him any more. Now, what was ferocious battle with Fabrikant in fall of ninety-one ('91)? You know all the facts. I didn't fight with anyone in the fall of ninety-one ('91). All what happened in ninety-one ('91), I was assaulted in the department, if you recall. After that I was maliciously arrested at the Senate meeting, and after that they tried to have me fired. What kind of battle I had with Swamy at the time? None. Zero. If you look again at testimony of Swamy, he said that when he presented to me all these documents, I behaved in a perfectly civilized manner. And I just wrote my rebuttal every normal person would do. And I read to you this rebuttal. And I hope you agree with me that there was nothing in this rebuttal which was not even impolite. It was very civilized polite rebuttal that I totally disagreed with what Department Personnel intended to do. In addition to that, there was a very important phrase there, that...

BY THE COURT:

We've been through this, Mr. Fabrikant. Let's not go through it again. You're repeating yourself.

BY THE ACCUSED:

I'am not going through. I'm standing up therefore I have to remind something.

BY THE COURT:

You summed that. You don't have to remind them. Move along.

BY THE ACCUSED:

Well, this I will do the way I proceed.

BY THE COURT:

You will not...

BY THE ACCUSED:

If you don't like it, then stop me.

BY THE COURT:

You will not repeat yourself. Move on. We have heard this.

BY THE ACCUSED:

I will do it the way I can. And please keep your remarks to yourself. I will do exactly as I plan to do.

BY THE COURT:

Well, if you propose to repeat what you said last Wednesday, Thursday and Friday, I propose to stop you. So please go on.

BY THE ACCUSED:

I am not. But I am reminding something, and this is what summation is all about. Yes. There will be some reminder of what has been said. This is what summation

is all about. And if you don't like it, you may stop it...

BY THE COURT:

I will if I have to, believe me.

BY THE ACCUSED:

Well, so, I couldn't care less. Just keep your remarks to yourself. Just stop me if you don't like it. Okay? I will continue the way I feel is right. And you do your lawless things as much as you can. I couldn't care less.

BY THE COURT:

Would you note ten-sixteen (10:16), please, in the procs-verbal, and let me have the last remarks of Mr. Fabrikant at ten-sixteen (10:16) entered.

BY THE ACCUSED:

I can repeat it myself if you want it.

In the course of my defense there were several irregularities in terms of the information. As you know, Crown is obliged to reveal all information to Defense. There were several cases of blatant abuse of this obligation of the Crown. One which I believe was very important and probably it's "calculating" evidence. It was a map of Lagac,. The Crown tried to deceive me in giving me another map from another report. I never received the real map of report of Lagac,.

BY THE COURT:

I interrupt you again. This entire matter is a matter that at the time required it to be decided by me, the question of whether the Crown had provided the information that they were required to provide. If I made a wrong decision on that point that, of course, is something that may eventually, if necessary, be argued before a Court of Appeal. But it need not concern you, and it is not part of your deliberations, and will not become part of your deliberations.

BY THE ACCUSED:

Well, it does concern...

BY THE COURT:

No, you're not going to argue with me on this point. If you give me one more word of argument, I will end this.

BY THE ACCUSED:

Well, there is a defense of inability to present defense. Usually this defense gears on the fact that witnesses have died. There is something wrong on the part of police, or persecution. And in this case...

BY THE COURT:

It is not for the jury to decide that question. Leave it alone. You are out of order.

BY THE ACCUSED:

Well, this is a special case...

BY THE COURT:

Thank you very much. Your address to the jury has just ended.

Would you remove Mr. Fabrikant from the courtroom. We'll adjourn for fifteen (15) minutes.

(THE JUDGE LEAVES THE BENCH)

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

SHORT RECESS (10:21)

(10:59 TO 11:24 ALREADY TRANSCRIBED)

11:24

(ALL ARE PRESENT)

BY THE ACCUSED:

Before you address the jury, I believe I have the right to make some remarks.

BY THE COURT:

You have only the right to make any remarks if you wish to object to what Mr. Lecours said, in which case I'll invite the jury to retire.

So I wonder if you would retire, please, for the moment.

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

(OUT OF THE PRESENCE OF THE JURY)

BY THE ACCUSED:

Well, he totally distorted the evidence. First of all, starting from the factual that I was promoted to research professor. I never was promoted to research professor, and continuing to the rest what he described there. He did not present a single shred of evidence of premeditation. And I believe that you should address the subject with the jury, because I don't think that first degree murder even should go to the jury, because there is no evidence whatsoever of premeditation.

BY THE COURT:

Of course there is.

BY THE ACCUSED:

Okay.

BY THE COURT:

I don't know what the jury will do with it, but there's certainly evidence the jury could find.

BY THE ACCUSED:

What kind of evidence? What he presented... let me repeat what he said. It's totally absurd. First, evidence is that university is the place of learning, therefore there if someone there is with gun then he plans to shoot. Could there be anything more absurd than that logic?

Second, there was evidence presented here that they offered me three years salary. Crown is here not to get conviction. Crown is here to get justice. Now why on earth would I plan to kill anyone? At least, if I did plan to kill anyone I would have got the money first. He didn't mention that. And I'm not allowed to address the jury.

Now, the next thing is, it was also shown here that if I had a quarrel it was with Swamy, with Sankar, with Osman, nobody prevented me, if I planned to kill, to kill these people. There was absolutely no need to kill somebody else if I planned it. Besides that, I was in the dean's office. I knew the dean was there.

So there was no problem to get security guard at the gunpoint and ask him to open the door, even if the dean was locked. There was no problem to kill the dean if I planned to kill the dean. Why on earth would I plan to kill Saber? It's absurd. There is no evidence even whether I brought the guns, or whether the guns were in my office. There's no evidence even if the ammunition is mine.

If you recall, Mr. H,bert testified here in a pretty... how to say it politely...

BY THE COURT:

It never stopped you before.

BY THE ACCUSED:

Well, it never stopped me before when I was talking to you, but when it is Mr. H,bert, I feel we should choose words. But anyway, he understands what I mean. He testified here that he came in the evening to pick up the briefcase of mine, and spent until two a.m. (2:00) counting those bullets. Then all of a sudden he discovered that he came on September twenty-second (22nd), and then only took the briefcase. And this explains why the briefcase is not there in the first place.

Now, if you are talking about evidence, again, Mr. Lawn testified that he saw body of Hogben face down. All of a sudden we saw a letter, and he his face up, and holding it with three fingers. And this is again, that's nothing but a police set-up.

So in terms of premeditation, there is neither motive, not a reason, nor anything else. There is no even evidence whether Hogben came to me, or I called him. It has to be done beyond reasonable doubt. There is absolutely no evidence even how did it happen that Hogben was in my office in the first place.

And all this stuff has to be proven beyond reasonable doubt. And Crown, once again, has to present evidence in an objective way. Now, an objective way, let us go first to the case when I was shooting Dr. Saber. A witness testified that I was shooting with my hands at my sides like this. Who on earth, if he intends to kill someone shoots like this? It's obvious the person is not in control of what he is doing. Nobody shoots... it's not a cowboy film, to shoot from a hip. And that is witness testified. And again this was not mentioned to the jury, and I'm not allowed to address the jury. This is lawlessness.

Now, it goes after that, again if I planned to shoot Swamy, why on earth would I go to the office of Ziogas first? It is obvious that this person is not in control of what he is doing. And at the office of Ziogas, again, the fight which took place... I had two more guns in my pocket, as evidence shows later on. Then what was the point to exchange some kind of pushing? Besides, when he pushed me, evidence shows that I didn't even resist. I just went wherever I was pushed.

So, again, it is clear indication that not only I didn't intend to shoot anyone. Quite opposite, I behaved kind of non-resisting at all, as if I wanted someone to stop me, at least. It is not that someone can push me that easily.

And the only reason why Schwelb left, most probably, since I cannot testify, because he saw me pulling yet another gun. Then he decided to go away. And again, if you go to 907 after that, I couldn't possibly target Professor Douglass. His office is not there. He was there by accident. So what kind of absurd is this that it was premeditated murder? There is absolutely neither evidence, nor motive, nor anything else.

He said to the jury again in misleading way that killing somebody because you lose a job is motive. It is not an excuse. Nobody fired me at that time. So either it has

to be established what really happened, then we could come to some real motive of action.

But in any case, this doesn't make sense what the Crown said. There is not a shred of evidence that I could have planned murder of either Hogben, which doesn't make any sense. Why would I plan to murder him? He was just a messenger between those big bandits and myself. So there is no point for me to plan murdering him, and even less point to plan murdering the other people.

As far as attempted murder is concerned, again, there is no evidence whatsoever that it was an attempted murder. If you look at the evidence, and evidence is quite clear, if you look at the bullets, if you believe, of course, those bullets, then you don't have to decide that none of those bullets could have possibly hit Mrs. Horwood. First of all, if you recall we have two totally contradicting testimonies. One of Mrs. Horwood, another of Mrs. Altimas.

According to Mrs. Horwood's testimony, Mrs. Altimas came to her and said: "Have you heard, Fabrikant has gun". According to her testimony, she went out of her office and both were coming towards me. And I started shooting at that corridor.

Now, again, if you believe that testimony that I was looking at her and shooting at her, then she couldn't have possibly be hit in the back, because she was hit in the back. If I was looking at her and she was looking at me, she couldn't have her back also facing me at the same time. According to her testimony, she was hit when she entered the office. Then in this case she should have been with her side towards me.

And, again, if you look at the evidence, she was shot in the back. When at least she was with her back towards me. Because the trace of the bullet she had drawn, the only position is to be shot from the back. Now, if you look at the picture where the bullets went, then you will see that one bullet went through the wall. This bullet could not possibly hit her. Yes. Now...

BY THE COURT:

I mean, if you're objecting to what the Crown has said, this is the time I suppose to do it. But if you're trying to present the argument that you wanted to present to the jury, you're too late to do that. It might have been more to your advantage to have presented what you're presenting this morning, instead of spending the time insulting the press and me.

BY THE ACCUSED:

Well, you didn't let me. Therefore I have no choice...

BY THE COURT:

I told you... I'm tired of you. I stopped you and warned you on many occasions, Fabrikant. Don't you ever forget that.

BY THE ACCUSED:

Well, Martin...

BY THE COURT:

Don't you ever forget that.

BY THE ACCUSED:

You are lawless. There is nothing else.

BY THE COURT:

Have you anything to say about the Crown's argument?

BY THE ACCUSED:

Yes, this is what I am doing. And this is what I believe you should convey to the jury.

Now, the first bullet as you see here, it comes through the door. It couldn't possibly hit Mrs. ...

BY THE COURT:

Don't try to conscript me as your advocate.

BY THE ACCUSED:

You are not my advocate.

BY THE COURT:

I'm not your advocate at all. Believe me.

BY THE ACCUSED:

You are supposed to be judge, and you are supposed to be objective, and you are supposed to convey to the jury both evidence presented by the Crown, and by the Defense. And I'm standing up the defense, which you did not allow me to present to the jury, but since you have to sum up the defense for the jury, I am asking you to convey to the jury this information. It's up to you whether you will convey it or not.

BY THE COURT:

It certainly is.

BY THE ACCUSED:

But my duty is to ask you to do so. And this is what I am doing.

So if you look at the first bullet it couldn't possibly hit. It is in the door that high. It could not possibly hit her.

You should also inform the jury that the evidence was that the bullet entered here, and the Defense contends that only absolute genius or a crook could decide to dig at the floor for the bullet. It couldn't possibly happen. It could happen only one way. If the person who was shooting was standing there and he heard where the bullet went. There is no way this guy was so genius, the bullet entered here, and here was looking for bullets on the floor. It could happen only in one way. If he was the one who shot it or someone who shot it was there, and listened where bullet clicked. And this I will also oblige to be conveyed to the jury that this is a (inaudible).

Now, this is the first bullet. Second bullet that we see went here at the door. The height of this bullet is something like this. This bullet couldn't possibly hit at the thigh, and she is less high than I. This is not the bullet that hit her either.

The third bullet is even higher. It is here. Now, I am asking which bullet could possibly hit Miss Horwood? Shouldn't this evidence be presented to the jury? None of those three bullets could have possibly hit her. Now, you decide whether this evidence should be presented to the jury, but I believe it should.

If you are talking about the next appearance at the office of the chairman. Then again you will see here that the bullet was so high that she couldn't possibly feel the heat of that bullet. It was somewhere on the top shelf the bullet ended. Yes. There it is. You see how high is the bullet. If you assume that this is that high, where the handle is, it is much higher. This is where the bullet went.

If you look at the evidence presented by Professor Abdou,

he even said that I shot in the air. He was there. That was his impression, and that effectively how it was. So this is how we go with attempted murder.

In addition to that, I believe you should mention to the jury that not only there was evidence of three salaries offered, presented here, which definitely precludes any premeditation in terms of murder. Three salaries is about two hundred thousand dollars (\$200,000). Now, if someone offered you two hundred thousand dollars (\$200,000), why on earth would you plan to kill somebody?

Additional evidence which was presented here is that I had contract to write a book. Then again it also precludes, or at least says something that I did not plan to kill anyone.

According to testimony by Altimas it is totally different. Her testimony was that she was coming and Miss Horwood was exiting her office. Well, how on earth could such two different testimony be there? Most probably none of them is correct, because none of the bullets matched the situation that any of them would be hit. The way they described them, the way bullets went, it would be Miss Altimas who was supposed to be hit, because she was at the place where the bullets went.

Now, I believe it is necessary to say to the jury that the evidence presented by the police, namely the letter of Hogben, was definitely planned to take into consideration the fact of police forging evidence, if it was forged on the case definitely with these three bullets, which none of them could hit Miss Horwood. If it was forged obviously on the fact that fourth bullet was shot in the wall in my office. Not a single witness testified hearing the four bullets, and Crown didn't address it either.

There is evidence, again, that in 907 where Dr. Douglass was shot, there is evidence that he fell on the floor. And nature of wound is such that the brain stem was hit. In this situation a person cannot move. There is no way can be blood on the door or anywhere else. The whole door full of blood is just pushing emotions. There is nothing else there. So I believe this also should be told to the jury.

To convey to them that evidence was changed intentionally to create an impression of either insane person, or to create the impression of, at least in the case of Horwood that it was indeed attempted murder, because if... just assuming since I cannot testify, assuming that I never been to that corridor, then it means I didn't go to her, and I didn't try to kill her. One thing is if I'm in that corridor, then impression is that I went to look for her to shoot her. If I am... in somewhere different position, then the situation is different.

Now, I have numerous testimony which I was not allowed to present that on twenty-four (24), for example, I was on the computer, I was preparing... I have the evidence that I was preparing for the contempt of Court hearing. I have even documents which are prepared on twenty-four (24). You didn't allow me to present it. But this is definite alibi that I couldn't possibly plan murder of that day if I planned to be next day at the contempt of Court hearing. And I have those documents, and they are dated. And I have a computer print-out give the time

when I was there. So I couldn't possibly do that. I also have the Budget rental...

BY THE COURT:

I'm not interested in what you have.

BY THE ACCUSED:

All right.

BY THE COURT:

I'm not interested in what you didn't present. You're the one...

BY THE ACCUSED:

Well, I was just trying...

BY THE COURT:

You are the one who is responsible for the fact that...

BY THE ACCUSED:

All right.

BY THE COURT:

... your defense was closed.

BY THE ACCUSED:

All right. Fine. I understand.

BY THE COURT:

Not I. I don't have to listen to that.

BY THE ACCUSED:

I understand that... this can only touch persons with conscience. In this case, it is definitely useless. But the information which was presented, for example, Budget rental. This information was presented. And if you recall the Crown, at that time, said it is irrelevant. And right after that it grabbed the contract, and even deposited it as its own exhibit.

Now, the fact that I rented car, definitely what should be brought to the attention to the jury, that one does not rent a car to drive inside Montreal. I have my own car for that. So definitely car was rented to go outside of Montreal. And something happened which prevented me from doing so.

So the fact that I returned the car before that, before expiration date, is indication of only one thing, that the car was rented at the university's expense, and I felt it improper to keep the car since I obviously could not go. That was the only reason the car was returned. And I believe that this also should be put on to the jury.

In general, the whole testimony... now one more thing, 9-1-1 tape. Again, he took from 9-1-1 tape only the parts which he implies indicates premeditation. If person on the phone says I killed somebody, does it mean that it was premeditated? It means that person is in a state of a shock and he wants to convey to someone what he did. That's all. There is nothing more to it. And, again, I believe it should be explained to the jury that this is not an indication of admission of premeditation in any way. Every normal person is shocked when he realizes that he shot somebody.

And if he more or less cared you should have quoted also from the same tape that later on I say: "I'm a scientist, I'm not a murderer", which means again that the mind cannot reconcile those things. It is very far away from premeditated murder.

There is also a part... yeah, the next thing from 9-1-1, the... I don't remember his name, asked me, "How do you feel?" And I responded, "You cannot feel good when you killed several people". Is this an indication that it

was premeditated stuff? This has to be put to the jury. You cannot put to the jury just one-sided story. This is unfair.

There is also part which was not even given to the jury. And it wasn't given to the jury, and I believe it should be conveyed to the jury, not because of any kind of omission. It was not an honest mistake. It was the third part of the conversation. You couldn't miss it. You could miss last part, but you couldn't miss some middle part of the conversation.

And the only reason it wasn't given to the jury, because I say there that it is scientific fraud, yes, but I said it is much more than just scientific fraud. And second, I named there Sankar as perpetrator of that fraud, and that was the only reason I believe this part was not given to the jury.

Now, I believe also what should be put to the jury, that definitely at the time of this conversation I was in shock, because I didn't remember it. If you recall... if I remembered the conversation, I would have said right away, something is missing there. Instead I was just looking the timing was not correct. That's the only thing which alerted me. And until the end I still did not remember what is missing, what is not missing. And this means that I was not in my normal state during that conversation, either. I think that should be put to the jury, too.

So the main things which should be put to the jury is the following. I would like to summarize it. That, first of all, there is absolutely no evidence as to how the gun appeared in my office. There is absolutely no evidence whether Hogben came to me on his own, or he was invited. There is absolutely no motives taken into consideration that they offered me three years salary, and I had a book contract. And I had a conference presentation on August twenty-fourth (24th) exactly.

And the fact that I returned this grant to Miss Maisonneuve doesn't prove anything. It was August twenty-fourth (24th), and my presentation was August twenty-fourth (24th). So it's obvious there was no point to go anywhere. I wasn't going anywhere.

The next thing which should be put to the jury was that my behaviour clearly did not indicate any intention whatsoever, because if someone intend to kill certain group of people, supposed, then question is, what was the point to have all those bullets which were left anyway in the office. It doesn't match. The whole fact, they do not match the picture.

Now, according to evidence, after shots were fired in my office, it took about two minutes for me to emerge from the office. If someone plans to kills somebody, he wouldn't wait in his office until everybody shuts up his door and runs away. He would do it quickly. And witnesses say that it took at least about two minutes, from the moment of shooting, or at least whatever you call it.

During that time Dr. Saber was on the phone. He put back his phone. He went to the secretary. He discussed with them what happened. He returned back. He sat in his place. He started writing complaint. So some time has

passed. Definitely it does not mean that it was some plan which was to be executed. After that, when I appeared in the office of Dr. Saber, no one in his right mind would shoot from the hip. It doesn't make sense. After that, all the witnesses were saying that I was walking very slowly with handgun in the view. Now, if someone plans to kill somebody, he wouldn't put the gun so everybody see the gun, so that everybody could run away. And someone doesn't walk slowly. If you walk slowly, and everyone sees that you have a gun in your hand, then everyone will run away. The whole thing doesn't make sense. It does not look like anything premeditated or even intended. The slow walk is an indication of some kind of probably internal fight that... on one... I don't know if it is possible to say like this, subconscious will drive him to go, and there was some other force which trying to slow it down. But definitely the behaviour is not an ordinary behaviour of a person who plans to get certain targets. The slow moving and pistol in the full view, this is not how some plot is being executed. And it was the same way all over. When I went from 915 to 907, again, everybody says that I was moving slowly. They were saying calmly, but calmly, it's just most probably was kind of... it's difficult to say what it was, but definitely it was not calm. It was something else. A person doesn't go calmly, at least I'm not that calm person, even when I cursing the Judge, I'm not calm. You may imagine that to murder someone you are not going to be calm. It means that I was in a somewhat different state.

And the witness, again, he quoted here, witness, "Chakouri" testified that... at my look he knew that I'm looking for somebody specific. How on earth you can find in some look that I'm looking for somebody specific? And taking into consideration that this specific after that was Dr. Douglass, least of all it could be on my mind or anybody else's mind, looking in the dean's office for Dr. Douglass, his office is not there. Again, it's total absurd.

But if you look at the newspapers where the same Chicouri testified. He testified that I was moving like a robot. And probably that would be the more correct description of what happened there. Not anything intentional, not anything even desirable.

So I think that it should be pointed out to the jury the position of Defense is not only that there is absolutely no evidence of premeditation. Quite oppositely, there is evidence of total randomness and something which happened definitely beyond control of a person who acts, because the whole act, the way slow it is done, the way the gun was in the hand, the fighting itself which took place.

If it was the normal situation, and suppose I came there to shot Hogben, and I had two more guns, what was the point for me to drop this gun? I could just pull another gun and tell Schwelb go away. And it looked like I didn't, because at that time, I probably didn't remember that I had my gun. And for some reason later on... well, it is difficult, it is really difficult unless you want to be totally biased, there is a lot of things which have to be investigated, why happened this or that.

It is obvious that there was some fight between... I don't know what, but in the brain, definitely there was some contradictory orders, maybe from two different centers, well, from conscience, and subconscious. And at the time of fighting I just did not remember that I had my guns. And at the end of fighting, again, subconsciously I pulled yet another gun. So it looked like subconscious overpowered, and I remembered that I had another gun. As far as revolver is concerned...

BY THE COURT:

There is no point expecting me to put all of this to the jury.

BY THE ACCUSED:

Well, you should put, because you didn't allow me to put it myself.

BY THE COURT:

You are the author of your own misfortune.

BY THE ACCUSED:

Well, let us not discuss this, it is waste of time.

BY THE COURT:

Yes, yes. So let us not discuss what you otherwise would have said, because that, too, is a waste of time.

BY THE ACCUSED:

No, it is not waste of time. This is what you are obliged to bring to the jury. You are obliged to bring to the jury a balanced picture, not just what the Crown says. You have to bring to the jury the view of Defense equally as the view of the Crown.

BY THE COURT:

I didn't hear you express any view to the jury this morning. I heard other things, and I told you at one point to get on with it as I've told you since the beginning, and you chose to insult me.

BY THE ACCUSED:

Well...

BY THE COURT:

You chose to ignore what you were told to do, and I've told you since January last that this whole process can't work unless you at least conform to what you're asked to do. So don't blame me if you were stopped this morning. It's not my problem.

BY THE ACCUSED:

Warned is not the right word. You just were afraid that I will say what I say. You allowed Mr. (Inaudible) three days as long as they were reading documents. As soon as I came to the business, you immediately stopped, because I would have said...

BY THE COURT:

Well, you're going to have to take that complaint elsewhere, I suppose, aren't you?

BY THE ACCUSED:

A lot of embarrassing things for the Crown and for the police. And that's why you stopped me. There is no doubt about it. Now, if you feel that you do not have to bring to the jury all these contradictions, I leave it on your conscience. These people are laughing. They know you don't have any.

BY THE COURT:

You're finished now, are you?

BY THE ACCUSED:

Yes.

BY THE COURT:

Good. Have you any comments you wish to make?

BY THE CROWN:

No, My Lord.

BY THE COURT:

Fine. Okay. I don't think I'll start at twelve-o-three (12:03). I'll start at two-fifteen (14:15). And I will... I don't think I'll finish in any event this afternoon. But I would purposely not, as I have not asked anybody to bring with them what they may need in the event that these deliberations carry on longer than tomorrow. So I would anticipate starting this afternoon and going through till four-thirty (16:30), and then I'll adjourn.

I haven't timed this. I've really no idea how long it will take. But there are a number of things that I have to touch on, so it will take the time it takes. Bear in mind the length of the trial. It should be finished certainly tomorrow morning, early.

BY THE ACCUSED:

Well, shouldn't you inform us about main things of your address?

BY THE COURT:

I already have.

BY THE ACCUSED:

Well, what you have, it was just general stuff.

BY THE COURT:

That's so.

BY THE ACCUSED:

I would like to have it in more details before you address the jury.

BY THE COURT:

Then you will surely contain your enthusiasm until this afternoon at two-fifteen (14:00), and then you will hear it.

LUNCH 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.S.C.
(AND AN ENGLISH JURY)

THE QUEEN

vs

VALERY FABRIKANT

APPEARANCES: Me JEAN LECOIRS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: August 9th, 1993
(14:25 to 16:34)

GS: 1346B FILE: 2323

I N D E X

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JUDGE'S ADDRESS TO THE JURY

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CONTINUATION AUGUST 10TH, 1993

(THE JUDGE TAKES THE BENCH)
(THE JURY TAKES THE BENCH)
(DISPENSE WITH THE CALLING OF THE JURY)
(ALL ARE PRESENT)

BY THE COURT:

Ladies and gentlemen, we've now arrived at that stage in the proceedings where if one looks at the books, you see that the Judge charges the jury. Now, there's nothing wrong with that word "charge". It's a little archaic.

However, it often reminds me of Lord Cardigan leading the light brigade into oblivion at Balaclava. Since the last thing I would like to do is lead you into oblivion, perhaps we should settle for calling it the Judge's summing up. And that's perhaps more accurate because I'm not about to take a tremendous amount of time in order to explain to you what I have to explain to you.

As a child growing up in Scotland, I used to go with great apprehension to the Presbyterian Church on a Sunday morning, if for no other reason than I knew that I was going to have to sit through a thirty (30) minute sermon. Now, I'm afraid I can't promise you that this will be over in thirty (30) minutes, because it won't. In fact, I shan't finish today. You, in any event, do not have with you what you would need if your deliberations were to go over into another day. But I will finish early tomorrow. And I would ask you to bring with you, as you did the last time, your things for overnight, in the event that your deliberations carry you through into Wednesday.

Perhaps before starting, the best thing I can do is give you in capsule form what you're going to have to decide in this case. It doesn't dispense you in any sense from the obligation of having to listen to the balance of the charge. Not at all. But perhaps if you keep in mind the three points that I want to make, it will help your appreciation of what I'm saying.

First and foremost, you have to decide whether the Crown has proved each element of each count beyond a reasonable doubt. Secondly, you will in the course of your deliberations have to pay particular attention to those parts of the proof which bear on the distinction between first degree murder and second degree murder. And thirdly, in this case, you have heard, because discussions have taken place in front of you, much concerning the word "defenses". You have heard the word "provocation". You have heard in particular the "battered person syndrome", which is another brand of self-defense. I tell you at the outset, that none of these defenses apply in this case. The questions are solely the first, which I gave you, and the second, which I gave you, namely whether the Crown has proved each element of the offence, each element of each count on the indictment, beyond a reasonable doubt, and secondly, whether this is the case in the event that you come to the conclusion that murder has been proved, as to whether the murder is first degree or second.

So you can put from your mind any question of provocation, any question of extensions of battered woman syndrome or whatever. These are defenses recognized by law, and for the reason that I'm about to explain, I've determined that these defenses do not apply in the present case.

Now, our role up till now has been for me to listen to the evidence, as well as you, and for me to make decisions with regard to admissibility. Now, my role is to explain to you the law of this country as it relates to the evidence, in order to assist you in coming to your conclusions. So in that context, I would ask you to put aside any notions that you might have of the relevant

legal principles, and take the law as I give it to you. The reason for that is two-fold or I suppose, three-fold. First of all, as the Judge in the case I'm supposed to know what the law is. But more importantly what I say about the law is recorded. And if I misdirect you, then there are safety nets which can come into play, not the least of which is the Court of Appeal. So that if I were to misdirect you upon the law, then the Court of Appeal always has the opportunity on studying the record to take the appropriate remedial action.

If, on the the other hand, you were to go into your jury room and decide that the law was something other from what I said then necessarily an injustice would result for one party or the other because, of course, your deliberations are in secret. There's no record of them, and indeed you are obliged not to discuss your deliberations with anyone. So that in a nutshell is why you must take the law as I give it to you.

You've been sitting here for a number of months now. It's presumptuous of me to outline to you the importance of the duty that you are now about to undertake. It will even suffice to say that you will be balancing two principles. First, no person should be found guilty of a crime which he or she has not committed, against the duty to guarantee the rights of the community and protect the safety and security of the community as such.

What does this mean you must eventually do once these instructions are finished? You and you alone must determine the weight which is to be attached to the evidence which was made before you, and you and you alone must distill from that evidence what the facts are which are pertinent to the case and which, on which you need to rely in order to come to your decision.

These facts, in turn, once you've determined them, must be examined in relation to and in the light of the essential elements of the infractions, which are charged against the accused in the indictment. And this is the process which will permit you to determine whether the Crown has proved each and every element of each count beyond a reasonable doubt.

At the beginning of the trial I explained to you what evidence was. And obviously with the experience you've had, I hardly need repeat that in detail. The point I made in the beginning, and that I make again, is that the evidence is more than the testimony of witnesses, but rather is the whole body of evidence which was filed in the Court record. It may comprise documents, it may comprise photographs, exhibits, a tape recording, various pieces of cartridge casings, and bullets recovered from the scene, plans. All of this is the raw material which you have at your disposal, together with the testimony of the witnesses, in order to determine what the facts are as they relate to this case.

Now, necessarily, there will be evidence which I mention, and evidence which I don't mention. Pieces of evidence, testimony that struck me as important, may not strike you as important, and vice-versa. Therefore, you need not and must not feel constrained to consider any evidence important because of the sole reason that I say that it is. The evidence may have struck me in one manner and it might have struck you in another. And you as the judges

of the facts are perfectly free to consider what you think is important in the evidence irrespective of what view I may express upon it.

In a similar fashion, any opinion which I might express on the credibility of witnesses is not binding upon you. You have, both with regard to the importance of evidence, and with regard to the credibility of witnesses the right and the duty to make your own decisions.

I took, during the trial, notes. They fill two and a half volumes. But you should remember that simply because I took notes doesn't make my recollection of the facts any better than yours. First of all, I'm not a stenographer. Secondly, I had a number of other things which I was required to do in directing the trial at the same time as taking notes. Therefore, if you find any difference between my recollection of the facts, whether from my notes or from my own memory and your own, please follow your own rather than mine.

A charge like this requires that I start somewhere and end somewhere. Because something is at the beginning, or in the middle, or at the end, is not in any sense indicative of its importance. I have put in what I thought was important on the whole, and I have tried to capsule it in such a fashion as to make life as simple as possible. I think it's all important. You may think that some parts are not. But as to its placement within the body of the charge, the importance has nothing to do with that.

I gave you a few pointers with regard to credibility of witnesses in the course of my opening explanation, back in April. What it comes down to is that you may believe all of what a witness says, part of what a witness says, or none of what a witness says. And when I say witness, that applies not only to eyewitnesses, but also to experts. I will have more to say shortly with regard to experts.

But if I could give you any indication as to how to approach question of credibility of witnesses, it's not a legal rule at all, but rather one that relates to common sense, your experience in life. And in taking these two factors, I think you'll find that you have the best guide for the assessment of the credibility to be attached to a witness' testimony.

If I could pursue that a little further, might I offer you, and you're in no way bound by these, and they're by no way these points that I'm about to make are by no means inclusive of everything that goes into the assessment of a witness' testimony. I would suggest that you might use as one consideration the ability or opportunity of a witness to observe.

And if we take an example right out of the air, there was testimony from Morris, Robert Morris, and there was testimony from Mrs. Horwood, that at a given point in time, the accused and Hogben passed through the office area towards the accused's office.

Now, you had a good example there because Morris didn't know who Hogben was, whereas Mrs. Horwood did. You have the proximity of these witnesses to the two people who passed in front of them, and therefore their chance to observe.

Another factor which bears more upon the demeanour of the

witness is his or her appearance and manner while testifying before you. Did the witness appear to be frank in what he said? Did he appear to be making an effort to answer the questions squarely, or did he appear to be making an effort to sidestep the questions and answer what was not really put to him? And that requires a double effort on your part. It requires an effort to assess from the point of view of the witness, and also assess from the point of view of the question. Because the questioner takes the position that the question wasn't answered, does not necessarily mean that that is so. And you saw on a day to day basis numerous examples of that throughout the trial.

It is up to you, not me, to decide whether from your point of view the answer that was given related to the question that was put. Now obviously you're not going to do that with all the thousands of questions that were put from the beginning of the trial to the end. But where the testimony of a witness bears upon something that relates to one of the essential elements of the infraction charged, that is where you might in the course of your deliberations enter into that sort of discussion amongst yourselves.

The witness' power of recollection. You will recall that a number of witnesses were questioned on minute points which in some instances go back several years. Therefore I would suggest that in assessing a witness' power of recollection as a guide to how to assess his evidence how much importance to attach to his evidence, you should take, I think, a liberal view, unless of course you're of the opinion that the witness was trying to evade the question, or was trying not to answer it, or worse, was trying to mislead you and me.

The power of recollection is a funny thing, and of course when you go two, three, four years back into your lives, there will be some things and in particular some aspects of some things which will be more vivid to you than others. So I would suggest it is with many other witnesses. Some people have an amazing power of recollection. Some do not. And the first task is to try to decide this question of good faith. Was the witness trying to avoid answering, or was the witness honestly having difficulty with the question.

You may, and it's a perfectly legitimate view to adopt, you may feel that if a witness systematically was unable to recall what happened with regard to a number of things which should have made an impression on the witness' mind, you may conclude that the witness either was being less than frank, or that the witness' power of recollection is so faulty that it would be dangerous to rely upon the testimony of the witness as such.

You saw this debate or the debate on this point take form on many, many occasions and in the course of applications that were made to me to declare witnesses hostile. You could probably recite what the rule is with regard to a hostile witness, as I put it forth now. That the position when a witness cannot recall is not so much that the witness is hostile, but a perfectly understandable one that a witness ought to be able to recall at least some of what took place if there's any importance to it. And there's a certain amount of validity to that.

The power of recollection, the witnesses' power of recollection is an important factor in your assessing the credibility of the witnesses. Fourth, any interest that the witness appears to have, any bias or prejudice which the witness may have demonstrated.

Now, from your point of view, you are looking at this from a perfectly objective position. What may appear to someone as being indicative of a bias or a prejudice may not appear so to you. And the best you can do is attempt to assess it from as objective a position as you can.

Five, and it's really related to four, the sincerity of the witness while the witness was testifying.

Six. Was there an inconsistency in the testimony of one witness as opposed to that of another? Was there any inconsistency in the witness' testimony with regard to his... I was going to say examination, or cross-examination, but in many instances at least in the course of the defense that didn't happen but it certainly is a factor if you consider the cross-examination of Crown witnesses. Was there anything the witness said in direct examination which seemed to you to... about which he seemed to be less certain in the course of cross-examination. Not only that, to which he said absolutely the contrary. That is another factor, if you find it to be the case, that you should take into account in deciding how much importance you attach to a witness' testimony.

And the seventh factor I have is the reasonableness of his or her testimony when considered against the framework of all the evidence. The witness may be correct in his recollection, or he may be honestly mistaken, in particular with regard to a specific item of evidence.

In addition, the witness may be deliberately lying. You may have to ask yourselves whether that is the case in some instances. If you conclude that a witness deliberately lied to you, then that, I would suggest to you, is a factor that would be more likely to affect his general credibility on all of his testimony than if it was simply an error with regard to a particular point. Now, you're not obliged to accept any part of the witness' evidence for the simple reason that it was not denied or that the contrary was not proved. It's up to you to assess the witness' evidence and decide what you wish to... what you deem it safe to accept with regard to that witness' testimony. Assess the evidence as a whole, cumulatively, and please don't be carried away by the fact that a number of witnesses testify on any given point.

A trial is not a numbers game. Indeed, it's very unlikely, indeed, that four, or five, or six witnesses, questioned on a particular point will exhibit exactly the same recollection of that point. I would suggest to you, and you're not bound by that suggestion, that if testimony were to dovetail in the sense of being exactly the same, one would have reason to say has this been cooked up, has this been discussed before, and that, of course, would be a factor which you would want to consider.

So when I say a trial is not a numbers game, what that

simply means is that while nineteen (19) witnesses may say white, and one witness said green, if you feel that the witness who said green is worthy of more credibility, appears to you to be more believable than the nineteen (19) others, then by all means accept the testimony of the one who says green. Obviously the reverse may be true.

Another thing which you should be careful of is the manner in which you approach questions which were put by whomever which elicited from the witness in a reply of no, or a denial. Be careful to avoid being influenced by the colourfulness of the question.

I may pose a question to a witness for example which says: Is it not the fact that on Saturday last, at nine-forty (9:40) when it was raining, you walked across the intersection of St-Laurent and Notre-Dame wearing a green shirt, yellow bloomers and pink boots? The witness said no. It is not so.

Now you might be tempted to say, boy, if all of these elements are factored into the question, the questioner must surely have some basis for putting the question that way. It is not, remember, the questioner, who testifies, it is the witness and if the witness denies that he was there, then, for whatever it is worth, that is the witness' answer, and you must not attempt to incorporate elements of the question into an answer that has been denied. If, of course, the witness says, yes, then the reverse is true. The witness then is taken to be acknowledging all of the factors which have been put into the question.

I said to you at the beginning that there were two principles upon which Canadian Criminal Law is founded. One is the presumption of innocence, and the other is the duty of the Crown to prove an accusation beyond a reasonable doubt. And I have said to you that on these two precepts hang all our Criminal Law and procedure. I repeat that.

As a lead-in to the presumption of innocence let me point out that the burden of proof, the burden of proof rests upon the Crown, and never shifts. There is never any burden on an accused to prove his innocence, and the Crown must prove the guilt of the accused beyond a reasonable doubt before he can be convicted. If you have a reasonable doubt as to whether the accused committed one or more of the offences charged, then in relation to the offence with which you entertain a... in relation to which you entertain a reasonable doubt, it is your duty to acquit.

The presumption of innocence is a fundamental principle of our criminal law. Every person charged with an offence is presumed innocent and remains so until the jury is satisfied that the Crown has established his guilt beyond a reasonable doubt. Therefore an accused must be presumed innocent throughout your deliberations. Consider all the evidence in the light of the law as I shall explain it to you in relation to the offences charged. It is only when you are satisfied beyond a reasonable doubt that the Crown has proved each essential element of each of the offences charged that you may find the accused guilty.

Now, what is this principle of proof beyond a reasonable

doubt? A reasonable doubt, purely and simply, is a doubt which adds up to a real doubt. It's a doubt based on your own power of reason. It's not an imaginary doubt or an irrational or whimsical doubt, such as one which a person might invent in order to escape having to come to a decision.

A reasonable doubt may arise from the evidence. It may arise from a conflict in the evidence, or it may arise from a lack of evidence. It must be a doubt which prevents you from saying I am morally certain that the accused committed the crime with which he is charged. On the other hand, if you are morally certain or if you prefer, feel sure, that the accused committed the offence or offences then you have no reasonable doubt.

Reasonable doubt is a doubt of a serious person who, basing himself solely on the evidence is not satisfied the Crown has proved the guilt of the accused, and renders a verdict secure in the fact that his conscience will never trouble or reproach him.

So to summarize that, the question which you have to put is, has the Crown convinced me of the accused's guilt? Am I morally certain? If yes, then you must find the accused guilty in relation to each count, and of course you examine each count separately.

If you cannot reply yes then in relation to the count with which you are dealing, a reasonable doubt exists, then you must acquit. Do not, I repeat, do not set up the standard of absolute certainty or mathematical certainty. It is rarely possible in life to prove something with mathematical certainty.

Now, again, let me express caution. I said to you that I would discuss the offences set out in the indictment by giving you the law on the subject and synthesizing the law into the essential elements of the infraction, whether we be talking about murder, or whether we be talking about confinement, or whether we be talking about attempted murder. It is these essential elements which must be proved beyond a reasonable doubt.

That standard of reasonable doubt does not apply to every item or element of evidence which you will have to consider. And in a like manner, Juror No. A may be satisfied that a particular element has been proved beyond a reasonable doubt, because of one, two and three factors. Whereas Juror No. C may come to precisely the same conclusion that the item has been proved, that the element has been proved beyond a reasonable doubt, but this time, for one, two, seven, and nine factors.

The important point is that you all be convinced that each element of the infraction has been proved beyond a reasonable doubt. And it doesn't much matter which part of the proof Juror No. 1 relies on to come to that conclusion, as opposed to what elements of proof Juror No. 12, for example, relies upon.

Let me say a word about direct and circumstantial evidence. Direct and circumstantial evidence exists in virtually every criminal case. Often circumstantial evidence complements direct evidence, sometimes the opposite. But where circumstantial evidence alone is involved, you must exercise some caution. Perhaps the best example I can give you of this is the following. Let us suppose that in the fridge in the kitchen there is

one bowl of raspberries. And let us suppose that in the house there is one grandchild or child. I should be careful not to attribute my age to you all. And let us suppose that the caution is given: Don't touch the raspberries. Now, if on looking around the edge of the kitchen door after hearing a noise, we see the child with the fridge door open, reaching into the pot of raspberries and removing one, that is direct evidence of the child committing the heinous crime of taking the raspberries.

If, however, you have gone to another part of the house to do whatever, and you hear, hello, and on turning around you see the child with hands covered with raspberries, mouth covered raspberries, and T-shirt covered with raspberries, you may come to the same inference, because you know that there are no other raspberries in the house, that the only ones were in the fridge. The child was told not to go into the fridge to take the raspberries, therefore you may be relatively safe in the conclusion, even though you did not see with your own eyes the child take the raspberries that he did. That is an example of circumstantial evidence and you have not had to conjecture in order to come to your conclusion, but rather you have been able to make an inference.

A word about eyewitnesses. I don't think the usual caution concerning eyewitnesses needs to be stressed in this case. Very often eyewitnesses identify someone with whom they have had no previous dealings. An eyewitness can be a very convincing witness indeed, because very frequently he truly believes what he has seen and is convinced that the person who he has identified is indeed the accused.

Thus it is frequently necessary to treat eyewitness evidence with caution. And I say this because very frequently decisions will depend largely on whether or not the eyewitness correctly identified the accused. In this case, identity has not been put in question.

Furthermore, there are a number of eyewitnesses involved. The fact that there are a number is significant, and the fact that they knew the accused very well indeed. Many of them having worked with him is another factor which makes eyewitness evidence, in this case, much more reliable.

There are no contradictions in the testimony of the eyewitnesses as to the identity of the accused, and a number of them were able to identify him quite clearly. Therefore, the usual factors, such as time, distance, lighting, obstruction, eyesight, memory, which are traditionally used to measure eyewitness testimony don't come into play in this particular case. In addition, there is a lot of other evidence quite independent of that of eyewitnesses which bears upon the actions of the accused.

A word about expert evidence. A number of witnesses gave expert evidence, namely, Houle, Desjardins, Gravel, Proulx, Dr. Pothel and Dion. Expert evidence is different from ordinary evidence in that it is generally a question of mixed fact and opinion. One is qualified to give expert evidence because of special skills which he or she may have acquired, whether in crime scene

preservation, forensic pathology, or ballistics, and I touch the areas that were primarily the ones which concern us in this case. I might add also, Houle, the designer.

General rule, and you know the general rule, the witness is not normally allowed to give his opinion. He generally testifies as to what he saw, or what he heard. The exception is the expert who may give opinion evidence in the area of his expertise. It's for the jury to decide the weight which they propose to attach to an expert's testimony. You are not by the mere fact that he is declared an expert, obliged to accept it. Consider it as carefully as the testimony of all the other witnesses. It is a three-step process which you should go through, consider the qualification, examine the training and experience of the expert, and ask yourselves, was he or she impartial?

Secondly, examine the assumptions upon which he relied. The more the expert relies on facts that were not proved, then the less weight you should give to his opinion. If there is no evidence of any facts, then you must attach no weight to his opinion.

Where an expert bases his opinions on statements made to him or to literature then, first of all, you will by now easily realize that to that extent his testimony is founded upon hearsay, and hearsay we know is not normally admissible. But the rule is not so strict in the case of an expert. You examine, therefore, the source of the hearsay in order to decide its weight.

While hearsay can never be regarded as true, if it is supported by other sworn testimony which you accept then you would give to it greater weight insofar as it relates to the expert's opinion.

Thirdly, examine the expert's opinion as a whole together with the process which he used to arrive at it. This is where his skill, his knowledge, and his experience come into play, and they're important. If you're satisfied with his qualifications, his impartiality, and find that the evidence supports his assumptions, then do not reject his opinion without good reason. If, on the other hand, you feel that an expert's opinion should not be accepted, you're perfectly free to reject it.

I said a number of things a little earlier dealing with the question of credibility, and one related to what a witness said in examination, for example, on one hand... on direct examination on one hand, and cross-examination on the other. The first cousin of this is the question of prior inconsistent statements of which you saw a number of examples during the trial, not many.

Again, this is something which goes to credibility. As I explained to you what the witness' testimony is is what he says from the witness box. If it is shown that he said something else previously, then that is simply a slide rule, if you like, by which you might measure the witness' credibility, but you must be careful not to substitute what he previously said for his testimony given before you. That is the orthodox rule, and I don't need to qualify it. The orthodox rule is the only one which could apply in this particular case.

I think we'll stop at this point for fifteen (15) minutes, and then I'll go on. I have two or three other

preliminary matters to cover with you, and then we will get into the consideration of the law of murder in this country. So we'll adjourn for a few minutes.

(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 JURY)

(ALL ARE PRESENT)

BY THE COURT:

A word about motive and intention. In our law motive and intention are not the same thing. To do something intentionally means to do it on purpose, meaning to do it. Motive, on the other hand, is a person with reason for doing the thing. Motive may be the mother of intention, or it may not be, and it need not be.

For example, let us suppose that a man impulsively decides to throw a stone through a window, and throws a stone through the window. There is in that example no question of motive. He is nevertheless guilty of causing damage to property if the facts are proved.

Let us suppose that one finds the same man in a bank saddled with debts, wondering where the next dollar is coming from, and in that situation perpetrates a robbery of one of the tellers. In that example there is a motive, the motive is to obtain money in order to pay for the necessities in life. Leave sympathy out of the question. It's not a factor.

Motive need not be proved. For example, in the situation of the man breaking the window, the question of motive was not there, and couldn't be there, and needn't be there in order for him to be guilty of causing damage to property.

For the bank robbery it turns out that in the example I gave you there was motive. If the decision had been impulsive and had not be supported by any need then, of course, there would be no motive. So motive need not be proved. It's not an essential element of the offence, while intention, on the other hand, must be proved beyond a reasonable doubt.

Motive, however, is nevertheless relevant to guilt. The fact that a person had a motive might help prove beyond a reasonable doubt that he or she did commit the offence. And conversely, the fact that a person had no motive might raise a reasonable doubt that the Crown has proved its case.

You will give the evidence of motive, or lack of motive, a consideration and the weight which you think it deserves. Evidence of motive alone is insufficient to prove guilt, quite obviously. Similarly, absence of motive is only a factor which may persuade you one way or another whether the accused is guilty or not.

And a last point, tape recordings. In this case the Crown filed a recording of the 9-1-1 tape which was recorded at the times indicated on the afternoon of August the twenty-fourth (24th). You heard testimony as to how that tape was put together, how the tape had been taken care of, and how the "montage" was put together. You heard evidence with regard to the identity of the voices and, of course, you heard the tape. It is, first

of all, for you to decide whether these recordings are accurate and authentic. Consider the evidence of how they were made, kept when you decide whether they are accurate and authentic. You are aware that there are a number of minutes which are missing from that tape. That missing six minutes was not put in by either party, and you must therefore take the tape as it presently exists. It would be dangerous, indeed, to speculate as to what (inaudible) is on the missing minutes of the tape itself. You must be satisfied, however, that the recording which was filed in evidence is accurate. You must be satisfied that it is authentic before you are allowed to accept it as evidence.

You heard various witnesses testify as to their voices. The question of the identification of these voices is for you to decide in the light of the testimony of the various witnesses. Again, be satisfied with the identification before you use the tape. Be satisfied that the voices were correctly identified by the witnesses. The transcript which you have of the tape recording is not evidence. It was given to you to facilitate your listening to the tape. But in the end, all it is is the opinion of the person who made it, as to the words which the tape contains.

So when you are looking at the evidence, when you're directing your attention to the tape, listen to the tape, you will then be in a position to make your own decision, both on the words and on the identity of the speakers, in the light of the testimony which the various speakers gave.

That concludes the general part of my charge, my summing up, and I pass now to the offence charged in the first four counts of the indictment. You will have the indictment in the course of your deliberations. Remember that the indictment is what the Crown charges against the accused. It is not in itself evidence, and you must not consider it as such.

The various counts are... the various first four counts are identical. I'll read only the first one.

"On or about August the twenty-fourth (24th), nineteen ninety-two (1992), in Montreal, District of Montreal, did cause the death of Micheal Hogben, committing thereby a first degree murder, an indicatable offence provided for in Section 235 of the Criminal Code."

You will note from a study of the indictment that the accused is charged with murder in the first degree. And you will see that as I go along, I will commence my explanations with murder in the second degree, and work from there to an explanation of murder in the first degree.

I do this because in our country the substantive offence with which the accused is charged is murder, it has classifications in the Criminal Code. But you will see that there is one simple line in the Code that all murder which is not first degree murder is second degree murder. So that is why I will commence with the elements of second degree murder and progress to the additional element which gives to a second degree murder, or

elevates, if you like, a second degree murder to the class of first degree murder.

In the course of my explanation, I will probably... I will have recourse to examples. And that example may cause me to distinguish, on one hand, between first degree murder, second degree murder and manslaughter. Let me warn you immediately that manslaughter is not a verdict which is available to you in this case.

I will, however, refer to it with a short explanation in order to permit a full understanding of the law. So the offences with which the accused has been charged, derive from the indictment and from the law which is set out in the Criminal Code. And I've read to you the relevant, the first count of the indictment. Two, three and four being identical.

Let me now go over with you the relevant sections of the Criminal Code. They really fall into an explanation more than anything else, and I'm not... you may write them down if you wish, but I'm not sure that you have to for a proper understanding of...

I said I would explain to you the law of murder, and that is right. That's what I propose to do. But taking a life in this country and in our law is called homicide.

And Section 222 reads as follows, in part:

"A person commits homicide when directly or indirectly by any means he causes the death of a human being.

(2): Homicide is culpable or not culpable.

(3): Homicide that is not culpable is not an offence.

(4): Culpable homicide is murder, manslaughter or infanticide."

(5) and then sub-paragraph (a) of (5), which is the only part that is relevant:

"(5)(a): A person commits culpable homicide when he causes the death of a human being by means of an unlawful act."

Section 229, in part:

"Culpable homicide is murder.

(a): Where the person who causes the death of a human being, (1): means to cause his death, or (2): means to cause him bodily harm that he knows is likely to cause his death and is reckless whether death ensues or not."

Section 231:

"Murder is first degree murder or second degree murder.

(2) Murder is first degree murder when it is planned and deliberate.

And (7) repeats the rule I just mentioned:

"All murder that is not first degree murder is second degree murder."

And Section 235, which you see on the indictment:

"Everyone who commits first degree murder or second degree murder is

guilty of an indictable offence."

So in order to get ourselves from the word "homicide" progressively to the word "murder", homicide, we see from what I've just read to you is causing death of another human being. There are two types, culpable and non-culpable. And culpable simply means blameworthy or that to which blame attaches.

To constitute culpable homicide it must be caused by an unlawful act, therefore, in order to constitute blameworthy homicide, it must be caused by an unlawful act. Example, if in a hospital a doctor proceeds to an operation and in the course of that operation, despite the doctor's best efforts, the patient dies, that is homicide in the sense that the doctor has caused the death of another human being, but it is not culpable, or blameworthy homicide.

The Code classifies culpable homicide as either murder, manslaughter, or infanticide. Here we are concerned simply with murder. And murder, in turn, is either first degree murder or second degree murder. The accused in this case is charged with first degree murder because the Crown contends that the homicides in question were planned and deliberate.

It sometimes is not a good idea to give examples, but I will attempt to give you an example as remote as I can from the circumstances of this case, in order to permit you to see the sort of distinction I'm making. And let's situate this example in any metro station you choose to make.

Let us presume that X has harboured for a long time a grudge against Y, and has decided to kill him. He follows him for a number of days, establishes his pattern of movements and notes that at approximately nine o'clock (9:00) on each morning he goes into the Berry-UQAM metro station. He decides to kill him, and to this end follows him into the metro station, moves up behind him and at the operative moment when the train appears, pushes him in front of the train, and accomplishes his purpose.

That you will see, when we discuss the various elements, would constitute a prime example of first degree murder, because it has the element of planning and deliberation to which I referred. Let us suppose that A finds himself in the same metro station, and for some reason or other, prior to the arrival of the train, gets into an argument with the individual standing next to him. But for one reason or another push becomes a shove and the first individual decides at that point that he dislikes the second individual so much that he's going to put an end to it, and to this end, takes him by the seat of the pants just as the train arrives, and right in front of the train.

That in my example would fall into the category of a second degree murder because you will find it has all the elements of a murder, save and except those elements of planning and deliberation which the first example had. Now, I don't mean to imply that the law sets out any clear period of time for planning and deliberation. Much is a question of fact. But absent a clear period of time the element of planning and deliberation, - and I underline and - must be there. And to complete the example, if the same two individuals

argue on the platform and again push comes to shove and Mr. A decides to give Mr. B a sharp whack on the end of the jaw, does so, and Mr. B falls down and in so doing bangs his head on the platform and dies as a consequence, that is a situation where one faces manslaughter because in punching him there was no intention to kill.

Now, with that example I will, as I said, explain murder, and then the additional ingredients of planning and deliberation which elevate murder, which is otherwise second degree murder to first degree murder. Therefore, when I say I'll commence with murder, I am commencing with second degree murder. And here are the elements, the essential elements of second degree murder, each one of which must be proved beyond a reasonable doubt.

One, the identity of the accused as the offender. Two, the time and place as set out in the indictment. The third element which the Crown must prove is that the accused caused the death of Hogben, Saber, Ziogas and Douglass, beyond a reasonable doubt. Consider each one separately. It's easy enough to recall because there are four counts in the indictment. Four, that the accused caused each death by means of an unlawful act. And five, that the accused either meant or intended, if you like, to cause the death of each individual or, in the alternative, meant to cause them bodily harm that he knew was likely to cause death and was reckless about whether or not death ensued.

Now, what I have decided to do is take each of these elements, and I'll repeat the element again, and then repeat each element in relation to each of the four victims, indicating to you and giving you a very brief summary of the evidence of the persons who can testify as to each of these questions.

I take nothing for granted. I take the position that nothing is admitted, and so must you. No matter how academic this exercise might seem to be to you, I feel that I should properly go through the evidence and relate it to each element because I think this is what you must do in order to feel comfortable with whatever decision you come to.

The first element I mentioned which the Crown must prove beyond a reasonable doubt is the identity of the accused as the offender. And, first of all, in the case of Michael Hogben, what is the evidence? First of all, there's the testimony of Morris who was in the office talking to Miss Altimas and Mrs. Horwood, looking at photographs.

Around fourteen-forty (14:40), the accused and someone with a moustache headed in the direction of the accused's office, the accused leading. He heard a couple of bangs around three p.m. (15:00) and a moan. He moved to the position of another desk. He can't tell you why in particular he moved, but he moved, and saw Valery Fabrikant in the hall proceeding down the hall at a normal pace. He put it as twenty (20) to twenty-five (25) minutes which went by between the time Hogben and Fabrikant passed and the shots were heard. And he said, according to my notes, the shots were in fairly rapid succession. He said, also, that after the first series of shots, and after seeing Fabrikant in the hall, he heard other shots and a scream.

On the first element, in relation to Hogben, you have the testimony of Mrs. Horwood. Again, in 929, looking at photographs when, according to her, Fabrikant entered with Michael Hogben. She recalls that Hogben smiled to her, and she states that they went into Fabrikant's office.

Now, element number one with respect to Saber. You have the testimony of Morris, who saw Saber alive and ostensibly well after the first shots when he appeared at 927 to ask what it was. As I said, he saw Fabrikant in the hall walking at normal pace, just before he heard the other shots and the scream.

You have the testimony of Peter Lawn, who is a Master's student who was meeting with Saber since approximately two-thirty (14:30) in Saber's office, 929.19. He stated that Saber was on the phone to his wife when a noise was heard, that Saber went to complain, came back, got back on to the phone, commenced to prepare to write an electronic memo, told his wife he would call back when the accused appeared, revolver in right hand, pistol in left. He fired twice and left. He said nothing. Both guns pointed at Saber. And you heard him state that Saber said: "Don't point these things at me".

Lawn then went to Fabrikant's office, saw Hogben lying face down, which is not in the position in which you see him in the photographs, with his head in the direction of the secretary's area and his feet towards the large conference room.

In relation to element number one with regard to Saber, you've also got the testimony of Latinovic who was talking to a student when he heard a noise which he characterized as blasts. He went into the corridor, saw Saber exit his office to inquire as to the noise. He then went back into his office. Shortly thereafter opened the door, saw Fabrikant in the hall with a gun. He saw him go into Saber's office, heard what he put as a shot, a scream followed by a second shot. He saw Fabrikant come out, and at that point locked himself in his office with a student.

Element number one, as far as Ziogas is concerned, you have the testimony of Schwelb who was in Ziogas' office talking to him, office 915-7 when according to him Fabrikant entered, raised his arm, and fired. According to Schwelb, Fabrikant fired two or three times. Schwelb initially stunned, recovered. There was an altercation. He stated that he saw a wound in the middle of the forehead. That there were two or three shots in quick succession that after the first shot, Ziogas got up, and that the second shot was fired into his body. He saw the gun on the floor. He stated that it fell and stayed there. He jumped on Fabrikant and was holding Fabrikant's vest. He dragged him out of the office, and the altercation continued down the corridor, 915-50.

The first element with regard to Professor Douglass. You have the testimony of Kim Adams, Cecilia Benavente, Kamal Nevad and John Hall. Kim Adams worked in 915-6. At the operative time she was in the area of 915, to where her phone calls had previously been directed. She returned at approximately three p.m. (15:00), was on the phone in 915, to which her calls had been forwarded, saw Schwelb chasing a person, and heard someone say: "Ziogas has

been shot, call 9-1-1".

A short time later she saw Fabrikant coming toward her slowly from the area of 915-50. And according to her, he took a gun from his pocket. He walked past her towards 907. And there were behind him two professors, Corasami and another. She opened the door of 915. Fabrikant waved the gun and went through the door saying, get out of either my way, or the way. She stated he seemed calm, unhurried, and had no glasses.

With regard to Professor Douglass, the next one I mentioned, was Cecilia Benavente, who stated that prior to the incident, Fabrikant had passed through the office twice prior to his third visit. I will return to that later, when we come to consider the elements of planning and deliberation.

For the purposes of element number one; - the identity of the accused as the offender this part of her testimony is relevant. She said he passed the third time with the gun. The gun went off two or three times. Heard words, and her recollection of the words she heard were: "Let's talk about this. Hold on a minute". Heard three shots from the board room, whereupon Fabrikant exited towards the dean's office.

The witness, you will recall, was questioned on a number of other things. Now, admittedly, these other elements didn't take place on the twenty-fourth (24th). The vivid memory she had of what she observed on the twenty-fourth (24th) didn't characterize her testimony, as far as I can recall, with regard to the other events. And, of course, you should weigh this using the criteria that I, perhaps if you wish, using the criteria which I indicated to you in assessing her general credibility.

Nevad was in 907, he recalls that Dr. Ziogas' secretary and a professor, who the second time he was heard, turned out to be (Inaudible) arrived, stated that Ziogas had been shot. He saw Fabrikant arrive from the corridor, gun in hand. He stated that Fabrikant approached 915 and he heard three shots.

BY THE ACCUSED:

You're completely mixed up.

BY THE COURT:

Would you please be quiet.

Mr. Hall was in office 907-15. He heard three bangs and came out of the office. He saw a person stop - cock a pistol. He saw a person he identified as Fabrikant go up the corridor towards Swamy's office, turn around and walk back. He stated that he saw a gun in his hand. At that point he went into office 907-14 to call Security, and while so doing, heard three more shots. The second series of shots, he stated, were fired when he was trying to call Security.

Your recollection as to the testimony of these witness may vary from mine. And as I said to you earlier, if it does, please do not rely on my recollection. But in substance, I mention these particular individuals, because that is the testimony which you should discuss in order to satisfy yourself that the first element, the identity of the accused as the offender has been satisfied.

The second element, the time and the place, should cause you no difficulty. I don't think the date or the time is

in any sense the subject of contradictory evidence. And I do not think that you need tarry long over that particular element.

Element three, that the accused caused the death of Hogben, Saber, Ziogas, and Douglass. In looking at the question of whether the accused caused the death of these persons, really you need to ask yourself one question, would each of the victims have died had not they been shot.

Re Hogben, you have, first of all, the autopsy report of Dr. Pothel. According to Pothel, Hogben had been shot three times, and that there was... once in the head, twice in the body, and that there was no evidence of close range firing.

In the course of his autopsy, Pothel extracted two bullets which in turn were forwarded to Ballistics and examined by Dion. These are respectfully Exhibits P-56 and P-57. Dion's report, P-76, identifies these bullets as having been fired from the Smith and Wesson, which you will recall was removed from Fabrikant by Nantel, following the arrest of the latter.

Dion was recognized as an expert in ballistics. He explained to you how he was able to identify these bullets as having been shot from a particular weapon. And he pointed out to you, if I may briefly paraphrase his evidence, that the projectile, being of a metal softer than the machined steel, which the barrel of the gun is made with, picks up the signature or machining marks on the lands and grooves of the weapon, the bullet picks these up as it's projected up the barrel and out. And by means of a comparison microscope he was able to identify these bullets as coming from the gun in question. I won't repeat that explanation again, but that in substance was the explanation which he gave.

Nantel, as I stated, was called to the scene around fifteen thirty-five (15:35). He's a member of the Technical Squad. He took up station in the hallway on 929-91, and it was he who searched the accused and found in his left-hand pocket the Smith and Wesson, together with a 7.65 millimeter magazine which fits the Bursa pistol, according to the testimony of Dion.

I would note the presence of that magazine because that may be a factor which is helpful, or which will be helpful to you in considering the question of planning and deliberation. On examining the drum of the Smith and Wesson, he found four empty casings in the drum, and the fifth, it being a five shot pistol, ready to fire.

You will also perhaps wish to consider the testimony of H,bert, with regard to the ammunition which he stated he found in Fabrikant's office. He stated that he searched that office, found a briefcase and munitions, and these munitions are respectively P-33, P-34, P-35 and P-36. P-33 was a box of bullets which fitted the Smith and Wesson, and he found of the box of fifty (50), five to be missing.

You have the testimony of Morris, concerning the accused and Hogben entering his office, which we have already dealt with in another context, you have the testimony of Mrs. Horwood, to the same effect, and you have the testimony of Susan Altimas facing the accused and Hogben in the office.

That completes element three with regard to Professor Hogben. I remain to cover the same element with regard to the other three, and perhaps this would be the appropriate time to break, and I'll do that when we resume tomorrow.

I wonder if you would be kind enough to bring with you your suitcases. Don't forget that tomorrow, in the event that the deliberations have to carry over. So that will complete matters for today, and I'll see you all at nine-thirty (9:30) tomorrow morning.

(THE JUDGE LEAVES THE COURTROOM)

(MEMBERS OF THE JURY LEAVE THE COURTOOM)

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.S.C.
(AND AN ENGLISH JURY)

THE QUEEN

vs

VALERY FABRIKANT

APPEARANCES: Me JEAN LECOIRS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: August 10th, 1993

GS: 1347 FILE: 2322

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CONTINUATION AUGUST 11TH, 1993

(THE JUDGE TAKES THE BENCH)
(THE JURY TAKES THE BENCH)
(DISPENSE WITH THE CALLING OF THE JURY)
(ALL ARE PRESENT)

BY THE COURT:

Yesterday when we adjourned, ladies and gentlemen, I was dealing with the third element of murder, or second degree murder, more particularly, that the accused caused

the death of respectively Hogben, Saber, Ziogas and Douglass. And I have dealt with the evidence bearing upon Michael Hogben. I now pass to the evidence bearing upon Professor Saber.

You have, first of all, the pathological report of Dr. Pothel and his opinion as to the cause of death. In relation to the report of Dr. Pothel, you will note that he observed three wounds in relation to Dr. Saber, one to the head, one to the thorax, and one to the torso. On the English translation you will note what is obviously a typographical error as to when the autopsy was carried out. It was carried out on the Wednesday, not Monday. And sure enough the original French version confirms that.

In relation to Dr. Saber, one projectile was recovered from the head. It is P-62. And in Dion's report, P-78, you will note that that projectile, in the opinion of Dion, was fired from the Bursa pistol. You will recall that the Bursa pistol was found in Dr. Saber's office. In relation to the finding of the photograph, I refer you to the testimony of Mr. Soucy. You will recall that Soucy, accompanied by Lagac,, went by elevator to the eighth floor and then up to the ninth. They were followed by two others. They went first to 907, to the 907-4 area, from which point they proceeded to Dr. Ziogas' office, 915-7. The victim was on the floor, and according to Soucy, appeared to be wounded in the abdomen and the forehead.

The weapon itself, the Bursa, was on the floor. He took the weapon, removed the magazine, checked the breech by pulling back the slide, and placed both gun and magazine in a cardboard box. And you will see it photographed in your series of photographs, in that cardboard box.

You will note, and I will return to it later, that the pistol had one magazine with it in Dr. Ziogas' office.

A second magazine was recovered from the accused following his arrest by Nantel.

In relation to the same element insofar as it relates to Dr. Saber, you have the testimony of Normand H,bert concerning the ammunition. I referred to Mr. H,bert's testimony before, and basically the boxes of ammunition are P-33, P-34, P-35 and P-36.

What concerns you in relation to the Bursa is P-35, because if you accept H,bert's testimony that he indeed seized the ammunition that day and counted it, you will find that the box of twenty-five (25) 7.65 bullets which had been opened, had sixteen (16) bullets missing. Each magazine has a capacity of eight.

Now, I should draw to your attention that in the course of examination of Bujold, the accused brought out that he... that Bujold gave Detective-Sergeant H,bert access to the accused's office on the twenty-second (22nd) of September, nineteen ninety-two (1992), according to Bujold, to remove briefcase and ammunition. This, of course, does not dovetail with the testimony of Detect-Sergeant H,bert, who claims to have gone into the office and removed the ammunition on the twenty-fourth (24th) of August.

You will have to assess the testimony of both of these people. Detective-Sergeant H,bert's testimony bears

directly upon what he says he did on the day in question. I will return to it later when I sum up the theories of the parties but Mr. Fabrikant's contention is that the police actively participated in the manufacturing of evidence, or the falsifying of evidence on the scene. And he points in support of that proposition to Bujold's testimony that it was not until the twenty-second (22nd) of September that H, bert set out to obtain the ammunition.

You may come to some conclusion with regard to that, by looking at various ballistics reports, but effectively what you should do is simply assess the testimony of both with a view to seeing whether one or the other is either in error, or not telling the truth.

You might also bear in mind that what Bujold is saying is what his recollection is of what he was told. As I recollect his testimony your recollection may be different, but as I recollect his testimony he was not present with Sergeant H, bert on the twenty-second (22nd) in the accused's office, and did not see him remove ammunition on that date.

In addition to the testimony of Sergeant H, bert, bearing upon element number three as it relates to Saber, namely that the accused caused his death, you have the further testimony of Champagne who is a police officer with the Tactical Squad and who rechecked the Bursa in Ziogas' office, where it was subsequently photographed.

More particularly, you have in addition the testimony of Robert Morris as to what he saw and what he heard from his position in the secretarial area of 927. You have the testimony of Peter Lawn who was present when the accused appeared. Lawn, in particular, recalls Saber saying when the accused entered: "Don't point these at me".

And I referred yesterday to the testimony of Latinovic who, as you recall, was in his office with a student, and who in looking in the hall, saw Fabrikant walk from his office with a gun into the corridor. Latinovic saw one gun. He turned right into Saber's office. There was a shot, a scream, a second shot, and he saw Fabrikant come out and go into the secretary's area.

That is the evidence bearing on the third element insofar as it relates to Mr. Saber. Or when I say that is the evidence, that is the evidence that struck me. There may be obviously other evidence which you may wish to consider.

With regard to Dr. Ziogas there is, first of all, the medical-legal opinion of Dr. Pothel. Now, in the course of his autopsy, Dr. Pothel reported evidence of a bullet wound to the abdomen, a scar on the forehead. You'll find that at page 3 of his report... which at the same page he says he is unable to relate to a wound caused by a bullet, because over a month had elapsed before that autopsy was performed. You will, however, recall the testimony of Schwelb and Soucy as to what they saw, and you will assess whether or not you accept it.

With regard to Dr. Ziogas, Dr. Pothel was able to find one bullet in the body, which is P-65, which he extracted and sent to Ballistics. According to the opinion of Dion, and this is P-81, that bullet was fired from the Bursa pistol which you will recall was found on the floor

of Dr. Ziogas' office.

There is quite obviously the testimony of Schwelb and Soucy. Schwelb was in Dr. Ziogas' office when the accused entered. And according to Schwelb, he raised his arm and shot Dr. Ziogas. Schwelb states that he saw a wound in the middle of the forehead. He said two or three shots were fired in quick succession. I went through his testimony yesterday and I don't think there's any need to repeat it today. Similarly, there is the testimony of Soucy to which I previously alluded this morning, and I pointed out that he noted the victim to be wounded in the abdomen and the forehead.

On the same third element, as far as it relates to Dr. Douglass, you have, first of all, the report of Dr. Pothel who succeeded in extracting from Dr. Douglass' body two bullets, P-69 and P-70. These were forwarded to Dion for the purposes of an expertise, and in his opinion, and you'll see his opinion in P-83, these were fired by the "Meb" pistol. The Meb, you will recall, was taken from the accused and Abdou managed to fall upon it while in Osman's office, later in the unfolding of events and the pistol was brought into the hall 927-91, where it was dropped by Abdou on the instructions of the police. And that is the point where it was, first of all, photographed and then recovered, or recovered and then photographed. It was in that hall. And you have photographs in P-8, the first part of that series of photographs of the Meb pistol.

In addition, you have, in particular, the testimony of Benavente, Cecilia Benavente, who was a receptionist working in the office suite, in the dean's office suite on the twenty-fourth (24th) of August last. You will recall that she stated that at approximately two-fifteen (14:15), the accused passed through 907 and exited via 907-10, which you will see on your plan, that he passed a second time following the same route, and that the third time he arrived with a gun.

There was also the testimony of Nevad. There was the testimony of Chouri which I'll come to later, and there was the testimony of Hall, which I reviewed for you yesterday.

That completes element number three with respect to each of the victims.

Element number four I'm able to deal with globally as one, because there's no need to deal with it in relation to each of the victims. Element number four, you'll recall, is that the death of the victims was caused by means of an unlawful act.

Now, if after your deliberations, or during your deliberations, you are satisfied with Pothel's opinion as to the cause of death, namely that death was caused by bullets fired by the guns which Dion linked them to, then I tell you, as a matter of law, that death was caused by an unlawful act, in that it is an unlawful act to shoot at someone. I'm not... because it's not for me to do, I'm not deciding who did the shooting. But if you find that Fabrikant did indeed shoot, and that the shooting of the victims caused their death, then you must find that the Crown has proved the fourth element, namely that death was caused by an unlawful act.

I pass now to element number five which was simply this,

that the accused intended or meant to cause death, or that he meant to cause bodily harm which he knew was likely to cause death, and was reckless as to whether death ensued or not.

You see. the Crown can prove this element of intent in two ways. It can prove it by convincing you beyond a reasonable doubt, purely and simply, that the accused intended to cause death. Or, if you are unable to come to that conclusion, that the accused intended to cause death. The Crown may also prove this element by satisfying you that the accused meant to cause bodily harm which he knew was likely to cause death and was reckless as to whether death ensued or not.

Now, how does one go about proving intention? At first sight that looks a little difficult to do because it is not every day that one announces their intention to commit a crime on the loudspeaker at the Forum before the opening Saturday night game. That's certainly for sure. You might say, yes, it must be difficult to determine intention, because intention after all is a state of mind, and how do you see inside someone's mind. Well, there is one very good common sense rule. It's not a rule of law. It's a rule of common sense. You're not bound by it. You're not bound to adopt it. But it is one that may certainly help you deal with this question. It's a common sense rule that a person, normally speaking, intends the natural consequences of his acts. Let me give you an example. A man walking along a street at night finds himself in front of a jeweller's display window. He draws from his pocket a hammer, and with that hammer breaks the window. Now, without going any further about observing simply that facet of his actions, one would probably conclude that from taking the hammer and striking the window with the hammer, he intended to break the window.

If you visualize the same situation in St-Sauveur on a Saturday night with someone returning from the ski hill with skis over his shoulder, and somebody says something as he walks past the jeweller's shop, and unfortunately he turns and the skis over his shoulder go through the window of the store. In that scenario one would be, of course, hard put to conclude that he had intended to break the window.

Therefore, in deciding the question of intention you are entitled as a matter of common sense to draw the inference that a sane and sober person intends the natural consequences of his act. Now, a sane and sober person, there is no suggestion at all that the accused was anything but sober on the day in question.

And as far as sanity is concerned, there is a presumption in our law of sanity unless the contrary is shown. The law presumes a person to be sane, therefore in the absence of any proof to the contrary you are bound by that presumption. If you decide that the victims' deaths would be a natural consequence of Fabrikant's action, in pointing guns at them and firing at close range, you may conclude that he intended to kill them.

I said there were two ways to arrive at the question of intention. You're obviously not obliged to come to that conclusion. You will consider all the circumstances in deciding whether intention has been proved. And before

so finding be satisfied that this intent is the only reasonable inference which can be drawn from the facts proven. Here you see is an example of an inference being drawn, which I spoke about yesterday when I gave you the example of the raspberries in the fridge.

Where you are relying upon facts to draw an inference, you should satisfy yourselves that it is the only reasonable inference to be drawn. Now it may be that you will have no difficulty with that. It may be that you will. I don't know. If you end up with a reasonable doubt as to whether actual intention has been established, then you must go on and consider whether the Crown has proved intention the second way, namely, that the accused meant to cause bodily harm, which he knew was likely to cause death and he was reckless about whether or not it ensued.

Now, in going through that, you follow the first step. The same procedure as before. Did he intend to cause bodily harm? And you examine his acts in order to permit yourselves to come to that conclusion.

BY THE ACCUSED:

The jury don't have any facts. You didn't allow me to do this.

BY THE COURT:

Would you please be quiet. I resent these interruptions but, of course, the facts you have in a number of instances are the testimony of Mr. Lawn in one case, and the testimony of Dr. Schwelb, in another. And you have a number of other facts in all of the other instances, which would permit you to examine this matter.

BY THE ACCUSED:

It should be mine...

BY THE COURT:

Would you be quiet. Now, if you don't be quiet, you'll be quietened.

So in looking at the alternative method, did he intend to cause bodily harm, the same procedure as before. The first step in this second scenario is to examine what he did and decide whether he intended to cause bodily harm. If causing bodily harm is a natural consequence of the accused's act, then you may find that the bodily harm was intended.

Secondly, if the accused knew that bodily harm would be likely to cause death, then that is the second step.

Now, knowledge is like intention. You would decide on the basis of all of the facts that you know, whether an accused ought to know that in pointing a gun of a certain calibre at somebody and firing at him, he intended to cause bodily harm.

And the third aspect of the second route is, was the accused reckless about whether his conduct caused death. Reckless, purely and simply, means careless of the consequences of one's action, heedless. If a person knows that bodily harm he is inflicting is likely to cause death, but does it anyway, he is reckless. Now, as I said, the Crown need only prove intention by one of these two routes.

The evidence you have, of course, is the fact that two people were in Fabrikant's office, with regard to Hogben, and one came out. And it wasn't Hogben. You have the evidence of several people who saw Fabrikant walk out and

go into Saber's office. You have the evidence of Lawn. You have the evidence of Latinovic. You have the evidence of what Lawn saw. You have the physical findings by the police in the various offices. You have, perhaps more importantly, the destination of the bullets that were recovered from the bodies. And if you look at the autopsy reports, you will see that Hogben took three shots, one to the head, two to the body. Saber, one to the head, two to the body.

BY THE ACCUSED:

You are wrong, again.

BY THE COURT:

Ziogas, one to the abdomen, with a wound to the head. In fact, two wounds to the head, looking at pages 3 and 10, on the autopsy report. And Douglass, two bullets to the head, the right parietal, and the face. He also took, he also had injuries to the right wrist and the right hand. In determining the intention of the accused, you might also take into consideration the calibre of the firearms. These were not pellet guns.

That basically brings me to an end of my consideration of the five factors which constitute second degree murder and, of course, the best way, I think, for you to attack the evidence is to test out whether the Crown has satisfied you, first of all, with regard to each and every one of these elements.

If the Crown has failed to satisfy you with regard to even one of these elements, then insofar as that element relates to one or other of the counts or all of them, you are obliged to find the accused not guilty with regard either to that one count or to all of the counts.

If, on the other hand, you are satisfied that the Crown has established each of these elements then your job is not finished and you must go on to decide whether or not the Crown has proved first degree murder.

Now, I would simply make allusion to two other things. You have sat here for weeks and weeks and listened to a plethora of evidence that was admitted on the basis of the facts that one day it might have become pertinent to a defense called provocation.

I told you yesterday and I repeat, that evidence cannot support a defense of provocation because essential additional evidence was not made relating to provocation and therefore it is not open either for me to instruct you on the question of provocation or therefore for you even to get into it.

In the absence of proof sufficient to justify provocation, or in the absence of proof of insanity, let me tell you that loss of control or loss of one's temper is not and never can be a valid excuse for murder.

I would also refer you to the 9-1-1 tape, which I would ask you to listen to, and you will find in there a statement by the accused to the operator relating to murder. If you are satisfied that the accused made that statement you may consider that as an admission. And I might say that an admission may be and may be considered as one of the strongest forms of proof.

Now, I said that after going through the evidence as it relates to the five elements of second degree murder, your job is not finished unless, of course, you come to the conclusion that with regard to each and every one of

the counts the Crown has failed to satisfy you with regard to one of these elements. If, on the other hand, you come to the conclusion that the Crown has satisfied you, then you will go on to consider first degree murder. You will recall that there are two types of murder in our law, first and second, first degree murder and second degree murder. And I read the provision of the Code to you yesterday that said that all murder that is not first degree is second degree.

What I've gone through are the elements of second degree murder. Where, such is in this case, the charge is first degree murder, the Crown must prove an additional element. Let me read to you again 231(2). The first part of 231 is the bit I just referred to:

"Murder is first degree or second degree murder."

(2), 231(2):

"Murder is first degree when it is planned and deliberate."

Therefore you must be satisfied beyond a reasonable doubt that the murder was planned and deliberate before you may reach a verdict of guilty of first degree murder.

Planned and deliberate are two different words, and they have two different meanings. The word "planned" give it its ordinary meaning in ordinary parlance, i.e., arranged beforehand. A person plans, if he forms a design or a scheme for doing something. You will recall the example I gave you yesterday of the subway station, and the individual who follows someone, working out in his mind that at a given moment he will push him in front of a train and he carries through in the execution of that plan. That is an example of planning. Planning is not the same as intentional. Again I gave you an example yesterday. You will recall that a person can intend to kill without having planned it.

The word "deliberate" also means more than intentional. Planned and deliberate means carefully thought out, not hasty, not rash. A person commits deliberate murder when he thinks about the consequences before committing the murder, when he thinks, for example, of performing it out of revenge, or to get even, or to punish.

I spoke to you yesterday about motive, and it may be useful to look at evidence of motive because it may assist you in coming to the conclusion, if you get to that point, as to whether or not the murder, one or the other of them, or all of them, were planned and deliberate.

I told you that motive is not an essential ingredient of the offence of murder. But it may assist you in coming to the conclusion that the Crown has established it's case beyond a reasonable doubt. It may assist you in coming to the conclusion that a murder was planned and deliberate. And conversely, the absence of motive may assist you in concluding that the murder, first of all, was not planned and deliberate, or secondly that there was no intention to kill or whatever. Motive may be of assistance to you and you may use it in that context. You have listened to weeks of evidence which bear upon the accused's relationship with his colleagues, and with the university. That may permit you to come to some conclusion as to his character, as to whether or not he

has confrontation, or whether, as he contends, confrontation was brought about by others. It may permit you to conclude as to whether or not he is the sort of person who is resentful of authority, whether it's exercised at the faculty level, administrative level, or by the Union itself.

That evidence may permit you to come to some conclusion as to his level of frustration in the circumstances. All of these, either singly or taken together may permit you to come to some conclusion as to whether or not he had any motive to kill. Remember, in justice, whether real or imaginary, it doesn't really matter, murder is not an admissible way to remedy the situation in either case.

If one has differences with another, in our society the recourse is always legal, whether pursuant to a labour arbitration mechanism, whether in the case of the university, pursuant to the disciplinary code, or whether pursuant to the Civil Law.

Other factors that you may wish to consider in dealing with the question of motive is the question of earlier threats. I would be, and this is strictly a personal opinion of mine, which you're not bound by, I would be very careful in factoring into your consideration the question of earlier threats.

First of all, the evidence of these threats was extremely difficult to see nailed down. Different people had different recollections. Nobody had recorded very much, and forever the question was who told what to who and when. Were they made? Perhaps they were, perhaps they were not.

The evidence of the threats themselves is even contradictory. And even if you conclude, and you may if you wish, even if you conclude that they were made, the question next becomes how serious were they? Were they simply figures of speech, as Relton said at one point in relation to one of his conversations. In what context were they made? Was it bravado? Was it in the heat of an argument?

And of course, whether they were or whether they were not, as far as you know, at least in the years nineteen eighty-nine (1989), ninety ('90) and ninety-one ('91), there was no follow through. So that from that point of view, I would be extremely careful with the question of earlier threats.

Insofar as what you might conclude from the evidence dealing with the attempt to obtain a carrying permit for a weapon in June and July of nineteen ninety-two (1992), you may consider that. But, again, I would be inclined to think that if it were me, I would find that a little remote upon which to base any firm conclusion as to motive. On the other hand, you may regard that as yet another annoyance which exacerbated the situation.

Motive may not necessarily relate to each and every one of the individuals. For example, when you look at the question of Douglass and Ziogas, there's very little evidence indeed that brought one or the other into the picture before the twenty-fourth (24th) of August last year.

With regard to Saber there was the question of the cooling of his relations with the accused and his name

certainly figured in the various meetings that took place in nineteen ninety (1990) and nineteen ninety-one (1991). You might wish to consider, again, in relation to the question of motive, Fabrikant's relations with Hogben. In that regard you heard testimony of how Proppe who was approached by Hogben as to whether or not the university might be prepared to come to some sort of settlement with the accused. And, indeed, you will recall that Proppe testified that he had been mandated by the rector to speak to Hogben in this regard, and that indeed they met two times.

At the first meeting there was a question of two years' salary. Hogben then advised Proppe that Fabrikant's position was... the first figure I have, from my recollection, is ten years, although there was mention of twelve (12) years later. Hogben recommended that the university sweeten the offer and Proppe spoke of the possibility of including a sabbatical year and gave Hogben authority to explore this.

Proppe testified that the associated question of pending claims had yet to be worked out. But interestingly he testified that he had been informed by Hogben that the accused's demand was now thirteen (13) years. It follows from that, if you accept it... if you accept it, that the accused must have had the substance of these meetings before his meeting with Hogben on August the twenty-fourth (24th), that is, if Proppe is accurate.

With regard to the relations between the accused and Hogben, again, in looking at the question of motive, you will recall the testimony of Karpman, the professional officer of the Union. He recalls a meeting between Hogben and the accused on the sixth (6th) of August, ninety-two ('92), a meeting which he was asked to attend because of a concern over the accused's behaviour, as Karpman put it, that he would not pose a risk to Hogben or anyone else.

He related it as a stormy meeting in which the accused called Hogben a pig. He said that the accused was belligerent and recalls the look in the accused's eyes which he categorized with the following words "tremendous anger", almost a murderous rage. In relation to that meeting he stated that the question of settlement was discussed and that Fabrikant's position was a settlement of twelve (12) years.

Again, dealing with the question of motive, insofar as it relates to Hogben, you have the testimony of Mrs. Rimkus, and that deals with four occasions, namely the nineteenth (19th), the twentieth (20th), and the twenty-first (21st) of August, Wednesday, Thursday, Friday, and then the twenty-fourth (24th), which was the Monday which concerns us.

In talking of the accused's visit to the office on August the nineteenth (19th), when he requested a copy of the Collective Agreement, she recalls, if you accept her testimony, that there was discussion over the injunction against the university. And she said what struck her was the look of hate towards Hogben in the accused's eyes. She observed Hogben at the same time to step back. She obviously cannot speak for Hogben or why she stepped back or why he stepped back, but she reported what she observed.

On August the twentieth (20th), the accused called requesting to see documents. According to Mrs. Rimkus he was vague about what he wanted to see. And she was told not to admit him to the office unless someone else was present. She related that on August the twenty-first (21st) when he arrived, true to these instructions she left the office and went into the Modern Languages office where the accused eventually found her by taking an adjacent staircase.

On August the twenty-fourth (24th) in the morning, she received a call from the accused asking where Hogben could be found. She mentioned that he was following French lessons, gave Fabrikant the times, though not the room number. And later on receiving a call from Hogben, passed this information on to him. She was then instructed by Hogben, who she characterized as appearing agitated and emphatic on the phone, to leave the office and go home if the accused appeared.

All of these factors, and I'm sure there's more, but I give these as examples, are elements that you might want to consider in determining whether or not there was any motive, be it dislike, hate, revenge, or anything else. In looking at the question of planning and deliberation beyond whether there was a motive and whether the motive is of any assistance to you, you have the testimony of a number of people.

There is the testimony of madame Maisonneuve concerning the return of the thousand dollars (\$1,000) in relation to the conference in Israel which was supposed to take place between the twenty-second (22nd) of August and the twenty-ninth (29th) of August. She recalls that on the twenty-fourth (24th) at approximately twelve-thirty (12:30) that voucher was returned. She testified that she had no idea when the accused decided not to go.

And there was another facet of her testimony which you might like to consider. She was asked if the dean was in. Now, the accused... from the accused's point of view, the decision generally not to participate in the conference in Israel may lead you to a number of conclusions, and in the absence of any testimony on that regard, please do not speculate.

Pelletier, a witness called by the accused, talked about a car rented between the nineteenth (19th) of August and the twenty-sixth (26th) of August. It was returned on the twenty-second (22nd). The fact that a car was rented, and a trip was contemplated, might well be evidence which would support the proposition that on a long term basis, at least, there was no planning and deliberation of the acts which followed. That is one factor which you must consider.

On the other hand, I said to you yesterday that planning and deliberation is not something that is susceptible of being gauged or decided within a set time framework.

There are circumstances you can easily imagine where planning and deliberation could probably be accomplished within a period of half an hour, or even less. Much depends on the circumstances.

There is also evidence in the testimony of Subramaniam. But there is one element in Subramaniam's testimony that you may find troubling, and that is the question of time

when he observed what he observed. He was never asked whether it was at lunch-time or whether it was in the course of the morning, or whether it was, indeed, in the course of the afternoon, that he saw what he saw. And I would, at least not that I recall, you may recall his testimony in a different sense, but I do not recall his ever being asked the time.

He said he was in the department office on the ninth floor near the photo machine. He's a graduate student in Mechanical Engineering. And he saw Fabrikant walking from the door of his office up and down the hall. And the hall I'm referring to is 929-91, that leads at the end to Osman's office. His words were: "I saw you several times doing that", at least according to my notes. He did not see any gun. He says he saw the accused coming from Osman's door, which was closed. And his testimony here was that he cannot say if the accused had knocked at Osman's door. As I said, the time was not mentioned. The only conclusion I would suggest that you can come to is that it was before the shooting.

Now, other elements; the presence of - guns and ammunition in Fabrikant's office. Before you come to that conclusion you would, of course, have to accept the testimony that, of Detective-Sergeant H,bert, that that is where he found them, and that he found them there on the twenty-fourth (24th).

The accused, not in your presence, but yesterday following the Crown's representations, said to me that I should, and I will, point out to the jury that the Crown had not established how these guns and ammunition came to be in his office. Perhaps not. That is a factor which perhaps you should consider, although the Crown does not have to.

On a consideration of all of the facts, you would be entitled to rely on the presumption that if one has in one's office guns and ammunition, and if one uses them, then normally one would ask oneself, who could be the person who brought them there? That has little to do with the using them as such, but what it relates to, of course, is the question of planning and deliberation. Another factor which you might consider in relation to planning and deliberation was the time element between the first shots, which the Crown contends killed Hogben and the shooting of Saber. There are two witnesses whose testimony bears upon this. Lawn, who was with Saber, who heard the first shots which were ostensibly the ones emanating from Fabrikant's office. He and Saber speculated briefly as to the cause.

Saber had been on the phone, was on the phone, put the phone down, went to the secretary, which involved going out of his office and across the hall, returned, told his wife that he would call her back, and commenced to write a memo on his computer. Lawn, you will recall, said that the computer was already in the memo mode... in the editor mode, excuse me. Now, when asked about the time which elapsed, he eventually said twenty-four (24) seconds between the first shots and the appearance of Fabrikant.

Morris, on the other hand, stated that after the first bangs, he talked to Altimas for one or two minutes, and as to the space between the shots, his words were, and

from my own notes, "two minutes would be the least I would figure that".

What you are going to have to ask yourselves was, were these weapons loaded in advance, or were they loaded after Hogben was shot? There were three weapons involved, five rounds for the .38, seven rounds for the magazine of the Meb, and sixteen (16) rounds for the two magazines for the Bursa.

Was there time after the shooting of Hogben to load the other magazines? Now, you have a space of between twenty-four (24) seconds according to Lawn, and two minutes according to Morris. Please don't experiment, or please don't speculate, but attempt to appreciate the question of time as a result of these two testimonies. This question may be useful to you in dealing with the question of planning and deliberation.

Another element which you may wish to consider was the manner in which the accused proceeded from office to office. First, to Saber's. We'll leave the corridor, 927-90, for the moment. But that was the second scene, according to the proof established by the Crown. Excuse me, the third scene, according to the proof established by the Crown. The first being Fabrikant's office. The second being Saber's office. The third being that hall, 927-90. The fourth being Ziogas' office, and the fifth being the dean's suite, where Douglass was shot.

According to Chouri, he was in the dean's office talking to the secretary. Two men arrived running, asking respectively that police and security be called. And at that point, Chouri saw Fabrikant approach. And as he got closer, saw a gun in his hand. He was wearing no glasses, and he was walking slowly and calmly. He said slowly and calmly. He also said not like a robot. Scary eyes that gave Chouri the impression of him not seeing anyone. But he was going for a particular target, not trying to kill everyone.

You will have to assess that testimony and decide whether you accept it, and decide whether it helps in permitting you to conclude that that manner of proceeding was that of a man with a mission, or whether it was not.

It may also be of use to you to consider the testimony of Benavente concerning the two other visits to the dean's suite before he arrived the third time. It may also be of assistance for you to consider Pothel's testimony as to the nature of the wounds to the head and the body. And the general drift of the conversation to 9-1-1 which was to the effect that "I've committed some murders and I want to tell the world why".

Now, two last points before we pass to the question of attempted murder. If you come to the conclusion that the accused planned the killings and deliberated the killings, the question of the point in time when he decided to start shooting is not particularly relevant. Perhaps the time was determined as a consequence of his shooting of Hogben. Perhaps the time was determined as a consequence of his conversation with Hogben. But if he had already decided to murder people, to shoot people, the identity of the target doesn't matter, nor does the moment of the putting of his plan into execution.

The question of the target. Whom did he intend to kill? I tell you as a matter of policy in Criminal Law, the

identity and the character of the victim is an irrelevant consideration. The requirement of planning and deliberation is a requirement relating to the intention to take a human life, and not the identity of the victim. Therefore, one may be guilty of first degree murder, although the planning and deliberation did not relate to the person who actually was killed.

It is sufficient if it was proved that the accused planned and deliberated to kill one of a class of persons, even though he did not know that the particular victim would be present at the time when he intended to carry out the plan about which he had deliberated. Therefore, if in carrying out his plan, the accused killed someone, it remains first degree murder provided, of course, provided always, you've come to the conclusion that he planned and deliberated the killing of human beings.

Okay. I think we'll take a break at this point, and that leaves me with the last three counts in the indictment to cover, which I will do when we return.

(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 JURY)

(ALL ARE PRESENT)

BY THE COURT:

I pass now, ladies and gentlemen, to count number five in the indictment, which reads as follows:

"On or about August the twenty-fourth (24th), in Montreal, District of Montreal, did attempt to cause the death of Elizabeth Horwood, committing thereby an attempted murder, an indictable offence, provided for in Section 239 of the Criminal Code."

You will note from the indictment that the charge is attempted murder, or an attempt to commit a murder. Now, this morning and, or yesterday afternoon and this morning, I explained to you in detail what constitutes murder in Canadian Criminal Law. I won't repeat myself. You have my directives with regard to what is murder. Let us now look at what is an attempt with particular reference to attempted murder which is reserved a particular paragraph in the Code itself. Article 239, suitably short, it reads as follows:

"Everyone who attempts by any means to commit murder is guilty of an indictable offence."

And I will also read you Articles 24(1) and 24(2), which deal generally with attempts and which is pertinent to what we are going to look at.

24(1):

"Everyone who having an intent to commit an offence does or omits to do anything for the purpose of carrying out his intention is guilty of an attempt to commit the offence whether or not it was

possible under the circumstances to
commit the offence."

24(2):

"The question of whether an act or omission by a person who has an intent to commit an offence is or is not mere preparation to commit the offence and too remote to constitute an attempt to commit the offence is a question of law."

239 and 24(1) and (2), therefore, deal with attempts. Let me give you the essential elements of attempted murder. First, identity of the accused as the offender. Secondly, time and place. Thirdly, that the accused intended to commit murder. Fourth, that the accused did something for the purpose of carrying out his intention. These are the four elements which the Crown must establish beyond a reasonable doubt before you may find an accused guilty of attempted murder.

Now, the identity of the accused as the offender. There is, first of all, the testimony of Mrs. Horwood. Mrs. Horwood, after speaking to Morris and Altimas, returned to her office and was at her office when Susan Altimas arrived. And according to Mrs. Horwood, she said: "It's Fabrikant, he's got a gun". At this point, according to Mrs. Horwood's testimony, she had come to the door of her office giving in to the corridor 921-90. She continues, or her testimony was to the effect that Fabrikant appeared in the corridor, shot at her. She believes three shots were fired, and that she was struck in the thigh.

The question of distance is difficult. You will recall Dion's experiment with a view to attempting to locate the shooter from the pattern of the ejection of the spent casings, and Dion's conclusion was that there was no way by the pattern of ejection to establish the location of the shooter.

Following being struck, she went into Osman's office, called 9-1-1. The security officer who was Daniel Martin, arrived. Abdou arrived. Susan Altimas. And she said then the accused returned. She screamed. There was a shot, and her testimony was that she felt heat on her arm. She and Altimas then managed to exit. And that, in substance, is what Mrs. Horwood has to say.

Susan Altimas, according to her testimony, was in 927 when Dr. Saber arrived following the first shots, or following the noises might be a better way to put it, in Fabrikant's office. Saber left.

According to Morris, he and Altimas discussed for what he put about a minute and a half. Susan Altimas then went to warn Elizabeth Horwood. She said Dr. Fabrikant arrived. She yelled to Elizabeth Horwood, and she put herself and Fabrikant side by side. Fabrikant began shooting at which point she jumped behind the kitchen door.

There is also the testimony of Daniel Martin which relates to the second part of the scenario, because there was a second part to the scenario, that which occurred in Osman's office. He ended up, after going to Saber's office, he ended up in Osman's office. Mrs. Horwood was on the phone. Another woman came to help. He heard a

scream, turned a hundred and eighty (180) degrees and saw a man coming in and firing in the direction of Horwood. Altimas then succeeded in getting Horwood out. And finally there is the testimony of Professor Abdou. Abdou was in his office, 929-4, which gives on to the hall 929-90, with a student. He heard screams in the hall. When he looked out in the hall, there was no one there, but he saw shells. He went to Horwood's office. The door to 929-9 was closed. He returned to 929-2, which was the kitchen, met Altimas and followed her to Osman's office. Fabrikant arrived and fired in the direction where Horwood and Susan Altimas were, whereupon Altimas and Elizabeth Horwood succeeded in leaving via the door.

These are the testimonies which you will have to analyze. With regard to the first point, the identity of the accused as the offender and, of course, with regard to point three, which bears upon the intent of the accused to commit murder.

So the first point that the Crown must establish, the first element which the Crown must establish beyond a reasonable doubt was that the accused was the shooter, and effectively you have the testimony of Horwood, Altimas, with regard to the first incident, and Horwood, Altimas, Martin and Abdou, with regard to the second shot. The time and place I don't think will give you any difficulty.

That the accused intended to commit murder, I will not repeat what I said previously about how you go about determining intent. The same principles apply. You have the testimony of Horwood, with regard to the pointing of the weapon, and in the first instance, being struck by a bullet following the weapon being fired. Equally you have the eyewitness testimony of Altimas.

As I said, intent involves the same considerations as before, and you may find some comfort and assistance from the common sense rule that normally a sane and sober person intends the natural consequences of his act.

When it comes the time to resume the arguments of both parties, which the law requires me to do, I will draw to your attention that the location of the bullets, where they struck, how they struck, is a factor which you may take into account in attempting to devine the intention of the shooter.

Balanced against that is the fact that Mrs. Horwood was struck in the leg and was injured. Having regard for the location of the shot, you will have to look to all of the facts, including the other bullets fired in that hall in order to determine whether the Crown has satisfied you that there was intention to kill. And specific intention to kill is, of course, the third ingredient, the third essential ingredient of attempted murder.

And the fourth ingredient I gave you was that the accused did something for the purpose of carrying out his intention. And I read you previously 24(2).

"The question of whether an act..."

I'll edit it as I go:

"... by a person who has an intent to commit the offence is or is not near preparation, and is too remote to constitute an attempt, is a

question of law."

Now, that is easily solved, because if the Crown has proven that the accused fired at Horwood, then I direct you as a matter of law that this constitutes doing something for the purpose of carrying out the intention.

Now, that presupposes that you will also have found that there was the intention to commit murder.

So the Crown has proved that the accused fired at Horwood, and if you're satisfied that he intended to kill her, then the firing of the gun in her direction constitutes as a matter of law, which you don't have to debate, the doing of something for the purpose of carrying out that intention.

That brings me to the last two counts in the indictment which are effectively identical, save for the name of the victim.

"On or about August the twenty-fourth (24th), nineteen ninety-two (1992) at Montreal, District of Montreal, did without lawful authority confine, imprison, or forcibly seize Abdou, committing thereby an indictable offence provided for in Section 279(2) of the Canadian Criminal Code."

And exactly the same thing in count number seven, save and except that this time it relates to Daniel Martin.

Article 279(2) of the Code provides as follows:

"Everyone who without lawful authority confines, imprisons, or forcibly seizes another person is guilty of an indictable offence."

Your elements are five, and they are the following. And as ever, each of these elements must be proved by the Crown beyond a reasonable doubt. One, identity of Fabrikant as the offender. Two, time and place. Three, that the accused totally, physically and totally, excuse me that the accused physically and totally restrained the victims. Four, that the accused acted without lawful authority in so doing. And fifthly, that the accused intended to confine, imprison or seize the victims.

As to the identity of the offender, you have the testimony of Abdou, Martin, Horwood, as far as the first part of the scenario is concerned, and of course, the 9-1-1 tape. Time and place should give you no difficulty. The third element, that the accused physically and totally restrained the victims. Physical restraint occurs when a person is simply deprived of his freedom to go where he pleases. It is not necessary for the Crown to prove that Valery Fabrikant used physical force. You have the tape itself, and you have the testimony of Daniel Martin and George Abdou in relation to what transpired in that room. The role played by the gun as to the positioning of Martin.

The holding of a gun to a person to prevent them from leaving, in this instance, Osman's office, if you're satisfied that that's what happened, constitutes physical restraint. Therefore, if you are satisfied that Fabrikant did this, you may conclude that he physically restrained Daniel Martin and George Abdou. The other element is total restraint. And that requires

you to determine whether they were completely deprived of their freedom to leave. The office is perhaps a good example, because you might deprive someone of one's freedom to leave by one door, leaving them open to leave by another door. In this instance you simply have to decide whether they were completely deprived of their freedom to leave Osman's office.

The fourth element, that the accused acted without lawful authority. Lawful authority means just that, authority granted by law. For example, a police officer, in certain circumstances, has power to make an arrest. A police officer, in certain circumstances, has power to demand the production of a licence, of registration to your automobile. You should have no difficulty with that problem with that element. There is no evidence at all that Valery Fabrikant had lawful authority to restrain Abdou or Martin.

And intent must be approached in the same manner as before. I would suggest that you, again, use the common sense rule that a sane and sober person normally intends the natural consequences of his acts.

And that brings the explanation of the various counts in the indictment to an end. The law, or the Code, now requires that I summarize for you briefly the, what we used to call the theories of the parties, which we might call the positions of the parties. I will do so without making any comment on whether I agree, disagree, or anything else, and you will interpret these summaries in the light of what I've said in the course of my charge, no doubt.

It is not easy for me to summarize the theory of the Defense, because of the manner in which the Defense was presented, and the manner in which the argument was presented. I will do what I can with it. And I'll start with the Crown, and I'll conclude with the Defense.

The Crown's position, purely and simply, is that the accused planned and deliberated the killing of a number of his former colleagues, faculty association and university officials. To this end, he took to the university the means to put his plan into execution in the form of three weapons and some one hundred and twenty-five (125) rounds of ammunition.

Whomever may have been his preferred targets at the outset is immaterial the point being that he planned and deliberated the killing of human beings. That in the course of a meeting with Dr. Hogben, the President of the Faculty Association, whom he had sought out in the course of the day, he put his plan into execution. He then killed selectively Professor Saber, Ziogas and Douglass. He attempted to kill Mrs. Horwood, whom he detested as an extension of Osman, who fortunately did not cross the accused's path that fateful afternoon.

The same may be said for Swamy, whose whereabouts the accused had also inquired after in the course of the day. Finally the Crown's position is that it matters not what precipitated his decision in point of time, nor the identity of those in fact killed, for they belong to the same target group against whom the accused had set out. The Crown's subsidiary position is that even in the event that you do not find that the killings were planned and deliberate, that nevertheless each and every one of the

elements of second degree murder has been established with regard to each of the victims.

The theory of the Defense generally is that the Crown has failed to prove the essential elements of the offences, that the Crown evidence is unreliable, and that the scene was tampered with. As to the tampering of the scene, the Defense particularly refers to the movement of Hogben's body, and underlines that it is palpably impossible, that given the movement of the body, the letter which he purportedly was touching could possibly have remained in his hand.

The accused further takes the view that particularly in relation to Dr. Douglass, the scene was tampered with inasmuch as blood was added to the doors in order to make the scene look more gory. He takes the position that the police and Corcordia officials conspired in order to paint him in the worst possible light, and points to Sangollo's news conference the following day as being evidence of the fact that the police, with full knowledge of what had transpired, nevertheless put it about that the whole affair had commenced in Ziogas' office, rather than in that of the accused.

The accused's position is that he had no motive to plan to murder anyone. Having before him an offer of three years termination, which was a rather handsome golden handshake by any standards. He maintains that he could not have planned and deliberated the whole affair, having initially intended to be at a conference in Israel, and that he only returned the one thousand dollars (\$1,000) because his plans changed at the last minute.

He takes the position that, no, the proof does not demonstrate the planning of any deliberate murder. He takes the position that the Crown has not explained the presence of the guns and ammunition in his office on August twenty-fourth (24th), nor for that matter the presence of Hogben as part of a plan. There is, he says, no evidence that he brought the guns.

He puts in question H, bert's testimony with regard to the recovery of the ammunition on the twenty-fourth (24th) of August, relying on Bujold who gave access to H, bert on September the twenty-second (22nd).

He indicates that his behaviour does not indicate an intention to kill. Why, he suggests, would he leave a stock of ammunition in his office as he went on a shooting spree, rather than carry it with him?

Relying on Morris' testimony, with regard to the two minutes which elapsed between the shooting of Hogben and Saber, he raises the question of why take two minutes to cross the hall if he was embarking upon a planned shooting rampage.

He underlines that the evidence showed that he walked slowly, calmly, as Chouri said, and that had he been putting into operation a plan he would have walked quickly. It is not, he says, the ordinary behaviour for someone who is going after pre-selected targets.

He maintains that he could not have attempted to hit Horwood, particularly having regard for the location of the various bullets which struck various doors and walls in the hall in question. He puts in question, again, the police interference with the scene, having regard, in particular, for the bullet that penetrated half-way up

one of the door frames, "Lin's", I think. It might be someone else's, but which the police dug out from underneath by removing a portion of the floor of the skirting.

He says that in the face of the falsification of evidence by the police it would be extremely dangerous to base oneself on any of the evidence which he contends the police invented in order to come to any conclusion about planning and deliberation.

That is how I would summarize basically the positions of the parties. And that brings me virtually to the end. Just a word to say about your duties in the jury room, and this isn't new to you, because you've been through this before, one earlier phase, but I'll repeat the highlights.

It is your duty, first of all, to consult and deliberate with one another with a view to reaching true verdicts based only on the evidence which you've heard and which you've seen. You will have with you the various exhibits. I make it a policy not to put the guns and the ammunition together. If you require the ammunition, or if you need it at any point, you've only to send me a note and I'll make arrangements for you to inspect it. But perhaps for the moment you would hold the boxes of ammunition, and if you feel that you require to inspect it, and perhaps you should at one point. Perhaps you should at one point. Would you please let me know when you're ready to do so, and take the ammunition in, carry out whatever inspection you have to make and then return it.

The verdicts, as I've said, will be based on your assessment of the evidence as a whole and upon the laws. I've explained it to you. Don't take a rigid approach. Try to discuss together and, of course, your foreman... I think he's the same one. Is that it? He's not in any greater position of authority than anybody else, but what he has to do is make sure that everybody gets a chance to express their opinion and that is perhaps the best way to proceed. Keep an open mind and listen to what everybody else says, and don't be afraid to admit you're wrong, if you feel you are, and at the same time, remember that you all individually have a duty to see things in your own light, and to put forward your point of view.

You will not have to select a president, since he's already been selected. And before I go any further, I should point out to you the verdicts which are available in this case, if you'll take a note of them.

I'll give you count number one, and then numbers counts two, three and four are exactly the same as count number one. Re count number one:

- 1) Guilty of first degree murder.
- 2) Not guilty of first degree murder, but guilty of second degree murder.
- 3) Not guilty.

You have that? Exactly the same for count two, exactly the same for count three, and exactly the same for count four.

Count five, either guilty, or not guilty.

Count six, either guilty, or not guilty.

Count seven, either guilty, or not guilty.

Now, since this is a criminal trial, you must be unanimous as I mentioned earlier as to each charge against the accused. It is necessary that each of you agrees on each of the verdicts that you see fit to return. As I said before, you are entitled however to arrive at your verdict by different routes as long as each and every one of you is satisfied that the Crown has established the essential elements of the offence. These never change. As long as you're satisfied beyond a reasonable doubt that the Crown has established each of the elements of the offence.

I've said to you it's your right as jurors to disagree, but I know you'll do your best to come to an agreement. The trial has involved considerable time, disruption of your lives and the lives of the witnesses, and I'm certain that no other jury could deal with the matter better than you can.

After you retire I'll discuss my charge with the Crown Prosecutor and the accused. They may have some matters that they wish me to add. I don't know. This is perfectly proper. If I decide to do so, or if I've overlooked something, I'll call you back. And if I do, I ask you not to give any special emphasis to what I say on that occasion.

In considering your verdicts you must not in any way concern yourself with the consequences of them. That is completely irrelevant to your deliberations and your responsibilities in determining the guilt or innocence of the accused. If there's anything about which you're not clear I'll be available to answer your questions. If you have questions, would your president please put them in writing and give them to one of the constables who will give the question to me and we'll come back into Court and I'll do my best to assist you.

As far as times are concerned, if you finish your deliberations today, then all well and good. Beyond that I'm entirely in your hands in the sense that you may, taking breaks, as you wish, go through the afternoon and early evening until seven (19:00), and then if you have to, go to the hotel at seven (19:00), have dinner there, come back tomorrow morning and continue and/or you may go out to dinner at five-thirty (17:30), six (18:00), come back around quarter to seven (18:45), seven (19:00) and continue till nine o'clock (21:00). I leave the choice entirely up to you.

From this point on, my order permitting the jury to separate is cancelled, and you will be required to remain together until verdicts are reached. It remains only to say thank you very much and good luck.

You may withdraw now. I'll send the exhibits to you as soon as I have listened to what's to be said by the parties.

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

(OUT OF THE PRESENCE OF THE JURY)

BY THE ACCUSED:

Well, I have the remarks and an elementary conscience cannot...

BY THE COURT:

Be quiet.

BY THE ACCUSED:

... cannot allow the jury to come an verdict without

listening to my side of the story.

BY THE COURT:

You be quiet.

BY THE ACCUSED:

I'm saying that.

BY THE COURT:

You be quiet.

BY THE ACCUSED:

The jury should hear my side of the story. The jury didn't. You completely distorted the whole thing.

BY THE CROWN:

As far as the Crown goes, My Lord, I have no comments to make.

BY THE COURT:

The Crown has no comments.

BY THE ACCUSED:

Of course not because it was the second Crown. Why would one Crown contradict another Crown?

BY THE COURT:

I gather you have comments.

BY THE ACCUSED:

That's my first comment.

BY THE COURT:

Fine.

BY THE ACCUSED:

Why would one Crown contradict another Crown? You did even a better job than this Crown, because you spoke much longer. Now, you managed to distort the evidence, first of all. How did you manage to confuse it in such a way, I don't know, but you managed even that.

First of all, Morris never testified that he moved to another table. Then he saw me in the hall, and then he heard shots at the Saber's office. It was totally opposite. She... he... first Saber poked in. He discussed with him, then a couple of minutes they discussed together. Then he heard shots and then he ran out because he couldn't possibly see me in the hallway from the place where he was. Saber's office is not visible. He could only see me, and this is what he testified, when he was already out of the department at significant distance from the department. Then he said that he turned his head back and he saw me in the corridor. So, it's totally wrong.

Now, a very important point which you did not mention in the testimony of Mr. Lawn, that I was shooting with hands on the hips. This is extremely important part as to indication of intention. No person intending to kill would shoot from a hip.

Now, Benavente, she did not testify that Fabrikant exited towards dean's office. You also didn't mention that there is an obvious contradiction between testimony of Benavente, who said that Douglass was shot inside the office. The testimony, for example, of Hall, who said that he saw him outside. And the information on pathology, that person with damaged brain stem cannot possibly move.

Nevad, you told saw me shooting in 915. This is total absurd. Nevad was in 907. He didn't see me shooting. Now, H,bert, you mentioned that he counted five bullets were missing. I don't think it was five. But this is minor part (inaudible). What is important that you

didn't mention that Bujold... testified. Not only he testified that H, bert came to take the ammunition, he also presented the log where it was written the timing of Mr. H, bert coming. He also testified that H, bert, himself, informed him what he has taken.

And one more thing, which is not minor at all, there is additional proof that he didn't take ammunition, because every ammunition was photographed. This ammunition wasn't. So this is the best proof, who of them is correct.

Now, about Saber, you managed to completely distort everything. You said that Saber had three wounds. He had two. The pistol found, you said, in Saber's office, then you said pistol was found in Ziogas' office. You managed to mix up in such a remarkable manner, you know, if one wants to mix up that way, I think it couldn't be done, you know, in a more... Such a thing that who was wounded, how and where what was found is that, in so many months, could be at least remembered.

Now, intention, what you presented as fact is such an absurd. For example, intention, if I didn't have a pellet gun, then this indicates intention. This is total absurd. Judge should not, you know, argue in such a ridiculous way. Intention should be proven, intention. And in my case, it should be indicated clearly that there is no targeted group. As such there was no reason for targeted group, that... okay, I will address it a little bit later.

Next was, resentful of authority. This is yet another absurd statement taking into consideration the numerous evidence presented, on the one hand, that I was always able and willing to compromise, and on the other hand, numerous evidence that it was just abuse of process by authority, not resentfulness of mine.

Again, in terms of intention, Saber, you said, was present at various meetings in nineteen ninety (1990) and ninety-one ('91). Where did you get this evidence? His name never mentioned in any of those meetings. In ninety ('90) he was there. Could you name one meeting in nineteen ninety (1990) where Saber was there? Why do you mislead the jurors? Or you seriously didn't know that?

Now, the next discussion. Rimkus on August nineteen (19), you said there was discussion between me and Hogben. Again, it's wrong. She said that Hogben on several occasions told me that he knows that I filed an injunction. I didn't respond a word to him. You cannot say this was a discussion. He was trying to start conversation. I didn't respond anything. This is not a discussion. She did, though, testify that I looked at him, and he, according to her testimony, stepped back. We can take it if it did happen, or didn't happen. But even if it did happen, the conclusion might be quite different.

Now, again, you testified... you said that she testified on August twenty (20), I was vague in terms of what I required. When she testified here, I clarified with her whether I was vague. I just said that I needed documents concerning lawsuits between members of Union, with the Union. I couldn't be more specific, because I just didn't know what they are, but I wasn't vague at all, and she admitted it here that my question was as precise as

it could be in the circumstances. Now, your using the word vague creates in jury impression that my call or my visit had some ulterior motives, which there is no evidence of that.

Again, on August twenty-fourth (24th), I didn't ask where Hogben can be found. I asked where French courses were, and she concluded herself for some reason that I knew that Hogben was taking courses, but I didn't mention name of Hogben but, again, whether I did or didn't, this is irrelevant. What is important here, what Defense contends is important, that Hogben in conversation with her said that if she sees me at a distance, she should run away, no matter what part of the day. And when she asked him: "Okay, could you explain it to me", he was in a hurry. He hanged up on her. He didn't bother to explain her why she should run away. And jury should ask themselves question, why was he so adamant. Probably he did something extreme, and maybe this was the reason why he was so adamant. And this is position of the Defense which was never conveyed to the jury.

Now, you also presented testimony of Maisonneuve has to be considered as planning, premeditation. What could be more absurd than that? You said that I cancelled the trip at the last minute. Not at all. My presentation was August twenty-fourth (24th). I returned it August twenty-fourth (24th). It doesn't mean that I cancelled it at the last minute. Because it is in Israel and you cannot go there, you know, in fifteen (15) minutes, or even in five hours there. So I didn't cancel it at the last minute.

There was the testimony that there was a contempt of Court action filed against me, if you recall, Friedman testified about it. And I think it would be fair to tell to the jury position of Defense, that that was the reason that since hearing was on the twenty-fifth (25th), that was the reason why I couldn't go. This should be conveyed to the jury.

Now, can I ask, was the dean in? Again, as indication of planning of a murder. Again, it is partial information. The jury should be informed that the answer was, yes, the dean was there. And if I planned to kill the dean, I could have done so. There was no problem whatsoever. It can be done in several ways. It could be done by, as I said, getting security guard and forcing him to open the door, if it was locked.

Second, I could have told Hogben, okay, let us discuss it together with Swamy. And we could just went there together, and I could shoot both there, if I planned to shoot. So there was numerous ways to execute this if I planned this, and this has to be told to the jury.

Now, Purdur again, you totally, totally distorted his testimony. Where he saw me coming and going it was not the corridor where Osman's door was. It was the main corridor which leads out of the department where the coffee machine is. So it is a way which goes to my office, and from my office out of the department. It has nothing to do with Osman's door. You said that...

If you are talking about his testimony, the jury should be reminded the whole ridiculousness of his testimony, that he went to the corner to see if Osman was there, and then he saw me near Osman's door. And he saw me there

only once, and not coming and going to Osman's door. This is total distorting of his testimony. Now, timing, when I said that there was a certain time between shots fired in my office and when I appeared from the office. I never said that the jury should consider whether the time was spent on charging weapons or not spent on charging weapons. All I was saying to be conveyed to the jury is if someone plans to kill somebody, he wouldn't wait two minutes until everybody understands that shots were fired and either ran away or lock their doors. That was my contention. It was never conveyed to the jury. And I think it is quite an obvious proof that no murders were planned or deliberated. Again, and in this the whole expression to the jury like if he decided to shoot people, then no matter who he shot, it is first degree murder. How could you say such a thing? You should instruct the jury, first of all, that it should be proven that he decided to shoot people. The presence of guns in the office does not mean anything. I could bring it there just to scare somebody. And at least this position, which I indicated at beginning, should be told to the jury. There was no reason whatsoever on twenty-fourth (24th) to shoot anyone. So the phrase used by you, if he decided to shoot people like it has been established, there is absolutely nothing in the evidence which would indicate that I decided to shoot people. This weapon may be in my office for days and days, so what...

Testimony of Abdou. Abdou testified that I fired in the air. Look at the transcript of... or in his statement. And you, again, did misinform the jury that Abdou testified that I fired in direction of Horwood. This is all intentional of distortion.

Now, about bullets, it was said in such a way that none of juror could possibly understand what I was talking about. That the bullets' location is the way you said it, does not correspond to something. The jury should be shown precisely what I mean, where those bullets are, and how they couldn't possibly hit Mrs. Horword from the point of view of the location of those bullets.

Again, mentioning that one of the bullets were recovered at the floor level in such a way that you did it, nobody could understand what you are talking about, and what the consequences are because you didn't mention my contention that only person who shot those bullets could have possibly known that those bullets can be recovered at the floor level.

Now, the main thing, when you explained to the jury... whatever was explained in terms of position of Defense, it was either distorted or incomplete. For example, you did mention that I was offered three years salary. But you did not say explicitly what it meant. It meant that no one in his right mind would plan to kill somebody when he's offered three years salary, even if he plans to do so, he would get the money first, then execute his plan. It doesn't make any sense in any way. I also mentioned that I had a book contract to write. And again, you didn't bother to mention that.

As far as car rental contract is concerned. Again, you presented it in such a way that my return it on the twenty-second (22nd) indicated some kind of intention to

kill or something, which I explained could not possibly be explained like this, because what you should have said to the jury, that the car rental for a person who has already a car, and car was rented on university expense, cannot possibly be rented to use inside the city. So definitely the plan was to go outside... And since the outside which was meant to go to, finally to New York City on twenty-fourth (24th). And definitely twenty-second (22nd) was the last day when I still could go, so the twenty-fourth (24th) I'd be in Israel. Therefore, since on the twenty-second (22nd), since I didn't go, I felt that I am obligated to return the car, because car was rented at the university expense. And the jury should be explained all that. Instead you presented it in such a way as if car rental and car return before the due date was an indication of some kind of intent.

As far as attempted murder is concerned, you didn't even bother to mention contradiction between the theories or testimony of Altimas and Horwood. They are totally contradictory. They could not possibly and none of them match to the reality, because if you take the testimony of Horwood then Altimas was in the corridor together with her, walking towards me, and I was shooting, and bullets were there where Altimas was. So she must have been hit. All this has to be presented to the jury.

If you take opposite, then again it doesn't make sense that Horwood started being at the beginning of the corridor, started shouting to... sorry, Altimas being at the beginning of the corridor and started shouting to Horwood, well, whatever she did, and Horwood appeared and I started shooting. Again, it doesn't make sense, because she was hit in the back. So your testimony that she saw me shooting at her, she couldn't be in that position since she was hit in the back. And this also has to be explained to the jury and attempted murder, in any case, it should look like there was an attempt to kill someone. In this particular case it is obvious that there was no attempt at all to kill, because if attempt was made there was no problem to kill. The distance was so small that you just cannot miss from such distance. Now, the main thing... there is so you made so many mistakes and those mistakes were definitely not... I could maybe accept that in case of how many wounds Saber had, you probably didn't bother to look or that Nevad saw me shooting in 915. Again, you didn't bother to look at the testimony. But the rest, what I mentioned is definitely and deliberately just distortion of facts, because each fact you present in such one-sided way that it's abhorrent.

For example, testimony that Hogben was so anxious and adamant that Rimkus would go home as soon as she sees me. Now how do you reconcile that with Hogben coming to my office? Shouldn't this question be asked and answered? If he was sincerely so adamant that Rimkus, who I never threatened, just seeing me at a distance, get in her car and go home. The same Hogben, who saw me again, according to testimony, at least twice, looking at him with murderous look, would come to my office himself, and not just come to my office, but if you believe, bring also a letter telling me something that I shouldn't do this, or I shouldn't do that.

All this absurd has to be brought to the attention of the jury. Because if Hogben was really that adamant, and he wrote his letter on August twenty-first (21st), and it is dangerous to see me, then every normal person mail such a letter, not deliver it personally.

Not only that, the fact that Mr. Lawn saw the body face down with no letter there, it should be somehow pointed out this stuff to the jury that letter was planted. And if the letter is planted, then what was the purpose of that? And purpose is quite clear, to detract attention from the real reason of what happened, because it creates impression that I was shown a letter, and my bad temper and I started shooting him, which is total absurd.

Jury should be told that since I did not react in any way, even to threat of being fired, or I didn't react in any aggressive way when I was arrested. I didn't react in any aggressive way when they insulted me in the department, why on earth would I react to some kind of a letter. It must have been something much more serious, namely that my life was threatened. That is the only conclusion which normal person could come to, because there is no way you can just ignore what happened in that office. You also mentioned that you do not allow defense of provocation, because the evidence didn't come. Well, this is hypocrisy. You should have said that evidence was not allowed to come, not that evidence didn't come. The evidence is there. So I believe that you should recall the jury and do all those corrections.

BY THE COURT:

Thank you. So I think I'll leave my charge as it is. Madam, you can send the exhibits to the jury with the exception of the boxes of ammunition.

BY THE ACCUSED:

Shouldn't you at least explain something?

BY THE COURT:

I'm not explaining a thing to you, Mr. Fabrikant.

BY THE ACCUSED:

Well, if I say that you are a fat pig, would pig be insulted? What do you think? Twelve thirty-six (12:36).

BY THE COURT:

Pardon? If you would say what?

BY THE ACCUSED:

If I said that you are a fat pig, would pigs be insulted?

BY THE COURT:

It's perfectly obvious that's a contempt in the face of the Court. I find you guilty of contempt of Court for that last remark, and I sentence you to nine months in prison to be served consecutively to the periods that you are already serving. Take him out.

(THE ACCUSED IS REMOVED FROM THE COURTROOM)

(THE JUDGE LEAVES THE BENCH)

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 FRASER MARTIN, J.C.S.
(AND AN ENGLISH JURY)

THE QUEEN

vs

VALERY FABRIKANT

APPEARANCES: Me JEAN LECOIRS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: August 11th, 1993
(12:02 to 12:26)

GS: 1348B FILE: 2321

I N D E X

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REPRESENTATIONS

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12:02 TO 12:26

BY THE COURT:

In view of the verdicts that were recorded, there remains the question of sentence to be discussed regarding Counts 5, 6, and 7. Are you prepared, Mr. Lecours, to proceed in that regard this afternoon?

BY THE CROWN:

I will leave it up to your discretion, My Lord. I would be ready right now.

BY THE COURT:

You would be ready right now.

Mr. Fabrikant, are you prepared in relation to 5, 6, and 7, to...

BY THE ACCUSED:

I'm prepared.

BY THE COURT:

... say whatever you have to say on the question of sentence.

BY THE ACCUSED:

I am perfectly prepared.

BY THE COURT:

Fine. Go ahead, Mr. Lecours.

BY THE CROWN:

I told you, My Lord, I leave that to your discretion. Considering the first four Counts, the mandatory sentence.

BY THE COURT:

Have you anything to say with regard to sentencing on Counts Five, Six, and Seven?

BY THE ACCUSED:

Well, I believe I have something to say not just on sentencing...

BY THE COURT:

For the moment, I'm dealing with sentencing. I will ask you if you have something to say before sentence is pronounced.

BY THE ACCUSED:

All right. So about the rest you'll still ask what I have to say. Is my understanding correct?

BY THE COURT:

Your understanding is correct.

BY THE ACCUSED:

Okay. Then about sentencing, about Five, Six, and Seven, I tell you very simply, I couldn't care less. Are you satisfied?

BY THE COURT:

It's not a question of my satisfaction. But I've noted that you couldn't care less.

BY THE ACCUSED:

Beautiful. This verdict wouldn't stand...

BY THE COURT:

Have you anything to say, Mr. Fabrikant, before sentence is pronounced upon you?

BY THE ACCUSED:

Oh, yes. Well first, as I mentioned before, I think it is total shame that eleven (11) citizens of this country disregarded totally the normal tradition of fundamental justice which allows defendant to present full defense, and allows defendant to testify himself, and allows to make a summation.

There were witnesses here to total lawlessness which was displayed by, I don't know how to call this person there, but he is sitting there with the Judge. Total lawlessness with respect to every aspect of the procedure, starting with elementary things which I was not allowed, just elementary conditions to prepare my defense, that I didn't have such elementary things like a desk, a table, normal lighting. Of course, yellow journalists would write that all I was complaining about is bad sandwiches, and lack of a laser printer. But

regretfully this is one of greatest flaws of this country that you need free press. You regretfully have only yellow. And it is yellow because it is controlled. I don't find power.

Now, the abuses in law continued not just in the preparation stage. During trial all the so-called important witnesses were not allowed. Someone is always more equal than other. I was not allowed witnesses who was, for example, a Parliamentary member. I was not allowed witnesses who God forbid was President of (inaudible) or representative of the Ministry, or again, Deputy Boudrias, or Deputy... I forgot her name. Our Deputy, I tried to call her, too.

Many witnesses which didn't want to come, or other reasons, to testify. They had their lawyer presented here, which was totally illegal and... Mr. Martin admitted it later that it was illegal thing to do. But he did not testify.

Just simple lawyer who was not something great, but who did the dirtiest job and blood of August twenty-fourth (24th) is definitely on her hands, too, Caroline (inaudible). I think she is happy because I encountered her in February and I showed her all the documents, and she agreed with me that, yes, there is a lot of fraud. Later on, on April first (1st), she wrote article totally opposite to the facts which were given to her. If it is not a shame of her profession, then what is a shame? And later on the same reporters who create the so-called public opinion write such phrases like everyone fears me and they put additional locks to their offices. The locks was always there. And I didn't try to break any locks in my life. And evidence here presented showed that nobody was afraid of me.

On the other hand, the testimony here showed that, for example, if those people were concerned in the fall of ninety-one ('91), how I would react if they demonstrated to me their decision to have me fired, now should not the same people be concerned how I would react if they make a death threat to me.

When they presented to me this contempt of Court motion, would you believe that at that time they didn't ask themselves the question, how I would react to that. I believe they did. And I have no doubt that those four victims, and I'm the fifth one, were sacrificed intentionally so that the big crooks, be well and alive. It was definitely planned and delivered, but not on my part.

It is still question why Hogben participated in all that so actively. I hope that one day we will have the answer to that. But even from the testimony which took place here, you would see, for example, that Karpman testified he never saw Hogben with his legs on the table.

And nevertheless when I was there, he put his legs on the table. He knows that in Europe, and he is from Europe, this is the worst insult possible. He definitely at each meeting tried to provoke me. But, of course, this is not the provocation which might lead to shooting. The last provocation was he threatened my life, and I was not allowed to testify about it.

And I was not allowed to testify about it, because definitely nobody wants to know that former Chief Justice

Gold was involved in the whole affair, and I have all the proof of that, that he, I have been told, has arranged that I be sentenced to a year in jail, no matter what. And as you see from this particular trial, this fact was very, very realistic, because the lawlessness which took place here, effectively it is just a repetition of what took place in Concordia. And the fact that I took the threat seriously is an indication that I looked at things very, very realistically.

And this is why Mr. Martin, when it came to the point when I would need to testify, or I would need to do the summation, and he was sure that in summation I will mention the facts, and names, and the evidence, and he stopped both my testimony and he stopped my summation. He distorted my summation to such an extent that I'm not surprised that the jury came to the decision they came. But still I am surprised that the jury didn't have the courage to say to the Judge, no, in this country you are not allowed to do such things. We cannot condemn someone to life in jail without parole which is, taking into consideration my age, is almost a death sentence.

Just because I have insulted Judge, I told him that he was a little low crook. Well, I'm prepared to apologize. I should have said that he is a big, and distasteful, and abhorring one. That was my mistake. I apologize for that. What else could I say, that I was afraid that pigs would be insulted if I compare him with those pigs.

Well, probably they would. I don't know.

But the main issue here is, and I think this question should be answered, whether insulting a judge is equivalent to disallowing someone to present evidence which totally, at least, exculpate him from the premeditated murder. Because I had documents which were prepared on August twenty-fourth (24th) to go on twenty-fifth (25th), because I still decided that I will go there, on twenty-fifth (25th) to the hearing of contempt of Court. And I had those documents, and they are made on computer. They have date and time on it. So you cannot discard this evidence.

I had evidence which I could not, again, present.

Professor Mackay visited me just maybe fifteen (15), twenty (20) minutes before Hogben, and I asked him whether he will come to testify next day. So I believe this would also eliminate premeditation.

I also mentioned on several occasions that no one in his right mind plans to kill somebody when he is offered three years salary. At least every ordinary person, if even he plans to kill somebody, he would take the money first. So this is yet another indication that I didn't plan to kill anyone.

One reporter asked me a totally idiotic question, as reporters usually do, whether I killed Douglass because I was without my eyeglasses, and I thought it was Swamy. What can I say? I wish reporters had more brains. But, again, this is not in my power to change their brain content.

I didn't prepare any speech, but I feel so much... how to say it, it's a shame. If you don't feel that today is shameful day for this country, if you could convict me the way I was, that is too bad. And the main reason I went through this trial, or at least I tried to go

through this trial, because I wanted to point out how this happened, so that this would not happen to somebody else. I was not allowed to do it.

There is huge, huge injustice in this world. And I didn't suspect when I was like you, I just thought this world is a nice world. Everything is fine. We have police who protects us. We have judges who render just decisions. But after I have been for a while at Parthenais, I have discovered a whole world of such tremendous injustice that it's mind boggling.

First of all, I have discovered that the main criminals, they are not inside Parthenais. They are outside.

Inside Parthenais, those unfortunate who didn't have money to buy a good lawyer and to bribe the judge. Those who do have, they did so. They're outside. So those who are inside is just those who could not do that, those unfortunate.

And I also encountered such abuse by lawyers of their clients, which is totally incredible. Lawyers who are supposed to defend their clients effectively serve as confidants who transmit all the information to Crown, and Crown can use in the most dishonest way they possibly can.

And, of course, you might think, okay, so what is wrong? There is a criminal there, and if lawyer helps that crime be punished, well, there is theoretically nothing wrong with that. But the problem is that this is not what happens. What really happens is totally different thing. I give you just one example. A person hits somebody, and that somebody died after that. And his lawyer was coming to him and offering him fantastic deal, plead manslaughter. And this lawyer, I asked this guy, did he show you the autopsy report? No. But the lawyer says, let us do it quickly before Crown changes his mind.

I suspected that it was something there. So I told him, get the autopsy report first, and I insisted on that. And I was right. When the autopsy report came, the person died of overdose of some drugs. He was not killed by this hit. There was no manslaughter of any kind. And his lawyer lied to him that the report was not ready month and a half after the crime. When the report came, the date was there that it was ready just a couple of days later.

So this is what lawyers are doing to their clients. I don't know if you approve that. I think it's totally wrong. If you would just imagine one second that this is your brother, or your father, or your other relative who is in similar situation. I think that you would decide differently.

The same way here. This is what is in human nature. A human being is abused, and it happens, for example, when he questions witnesses and judge, when witness is in difficult position, he immediately stops and doesn't allow to question more. It happens next time when an accused wants to produce some documents and judge does not allow that. And it goes on, and on, and on. And abuse builds.

Now, when... I understand that this stuff at least is in judge's discretion. But when I tried to refresh one's memory with my tape recording, and this is something which I have a perfect right to do, and I even showed to

Mr. Martin the jurisprudence relevant to that. He didn't have that discretion. He should have allowed me to do so. Instead he said to Swamy: "Okay, you can go. You are free". He understood very well that Swamy was one of the most important witnesses. And this is how explosion comes.

Human beings tolerate, tolerate, tolerate injustice, until injustice is such that... you can imagine. I presented to him the jurisprudence saying that I have the right to do it, and I expected him either to say, no, you don't have the right because of this, this and this, or to agree with me. Instead he just ignored the jurisprudence. And that was already... if you include what happened before, something which precipitates the explosion. And I told him that he was a little low crook.

This is how human being is. And every, I believe, normal human being is in exactly the same way. You tolerate, tolerate, tolerate, until there is certain limit, in this particular case, limit of lawlessness.

In my particular case in Concordia, it was much more than that. If you listen to the testimony here, you could realize that I did not react in any way when they tried to fire me. I did not react in any way when they maliciously arrested me. I did not react in any way at further, you know, accusations and letters, and everything. And believe me, if I exploded on August twenty-fourth (24th), it was something so serious that my life was in danger. And I hope at next trial I will be able to tell the story finally in full. Thank you.

(12:26 -- END OF REQUESTED TRANSCRIPTION)

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 LECOIRS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: August 11th, 1993
(11:58 to 12:02)

GS: 1348A FILE: 2321

I N D E X

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VERDICT

3

(THE JUDGE TAKES THE BENCH)
(THE JURY TAKES THE BENCH)
(DISPENSE WITH THE CALLING OF THE JURY)
(ALL ARE PRESENT)

BY THE CROWN:

I have received the following note:

"Mr. Justice Martin, we have
reached a unanimous decision on all
seven counts in the indictment."

I produce that note for the purposes of the record, and

I would ask you, madam, to take the verdict, please, to receive the verdict.

EXHIBIT J-11: verdict of the jury

BY THE GREFFIER:

Ladies and gentlemen, who will speak in your name?

BY JUROR #5:

I will.

BY THE GREFFIER:

Are all the members of the jury in agreement of the verdict?

BY JUROR #5:

Yes, they are.

BY THE GREFFIER:

What is your verdict on count number one?

BY JUROR #5:

In the first count of the indictment, guilty of first degree murder.

BY THE GREFFIER:

On count number two?

BY JUROR #5:

On count number two, guilty of first degree murder.

BY THE GREFFIER:

On count number three?

BY JUROR #5:

Count number three, guilty of first degree murder.

BY THE GREFFIER:

On count number four?

BY JUROR #5:

On count number four, guilty of first degree murder.

BY THE GREFFIER:

On count number five?

BY JUROR #5:

On count number five, guilty.

BY THE GREFFIER:

On count number six?

BY JUROR #5:

On count number six, guilty.

BY THE GREFFIER:

On count number seven?

BY JUROR #5:

On count number seven, guilty.

BY THE GREFFIER:

Thank you, sir.

BY THE COURT:

Thank you very much, ladies and gentlemen. Madam, I wonder if you would record the verdicts please.

Ladies and gentlemen, the rendering of your verdicts and the recording of your verdicts brings to a close a long and I suppose sometimes laborious piece of work that you've been called upon to do in this trial.

I don't really have the words to thank you for the amount of time, the disruption of your lives, and the effort that you have put into this. I know that for many of you, for all of you, and in particular for some of you, there have been great, great difficulties during this long period and I can tell you that this country owes you a tremendous debt of gratitude.

You are now discharged. You are free to go. I wonder if you would withdraw to your jury room, and this ends your participation in this facet of the trial. Thank you very

much.

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

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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