

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

HER MAJESTY THE QUEEN

- and -

ALLAN JOSEPH LEGERE

TRIAL held before Honourable Mr. Justice
David M. Dickson and a Petit Jury at Burton, New
Brunswick, commencing on the 26th day of August,
A. D. 1991, at 10:00 in the forenoon.

APPEARANCES:

Graham J. Sleeth, Esq.,)
Anthony Allman, Esq., and) for the Crown.
John J. Walsh, Esq.,)

Weldon J. Furlotte, Esq., for the Accused.
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Proceedings of September 3 & 4, 1991

Dolores Brewer,
Court Reporter.

R. V. LEGERE - SEPTEMBER 3, 1991, 9:30 A.M.

1 COURT RESUMES - (Accused Present. Jury Called, all present.

THE COURT: Mr. Allman you have another witness?

MR. ALLMAN: Yes, My Lord. Good morning members of the jury. My first witness is Corporal Ron Godin.

5

CPL. RON GODIN, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. Would you state your name and occupation, please?

10 A. My name is Ronald Joseph Godin. That's spelled G-o-d-i-n. I'm a member of the Royal Canadian Mounted Police, a peace officer. I have been so employed since January of 1973.

Q. What particular area of the Royal Canadian Mounted Police do you work in?

15

A. I am presently attached to the forensic field of identification since August, 1980, and presently stationed at the Bathurst Forensic Identification Section in Bathurst, New Brunswick.

20 Q. So you have been in the identification field since August, 1980 you said?

A. That's correct.

Q. What, among other things, particularly as it relates to what you are going to be testifying to today, does the identification field do?

25

A. The recovery, development and comparison of fingerprint evidence, the comparison of physical evidence, plan drawing and photography.

Q. So among the things specifically are plan drawing and photography?

30

A. Yes.

1 Q. And did you have occasion to be involved in that capacity, that is to say as an identification officer in plan drawing and photography in relation to the death of Annie Flam?

5 A. I have.

MR. ALLMAN: Could I get this item marked for identification unless there is any - if there is no objections.

MR. FURLOTTE: No objections My Lord.

MR. ALLMAN: Could I get it marked as an exhibit, please.

10 THE COURT: What's the custom now? Do they call them P-1 or just exhibit 1? What have they done?

MR. ALLMAN: P-1, I believe, and then the defence start at D-1.

15 THE COURT: I thought they made a change here recently. I prefer the old way of doing it. So this will be exhibit P-1. What is this Mr. Allman?

MR. ALLMAN: It's an aerial photograph, My Lord, of the area of the Miramichi.

(Clerk marks aerial photograph exhibit P-1.)

20 THE COURT: What are you going to do with this Mr. Allman? Put it on an easel?

MR. ALLMAN: I have had a place prepared for it there My Lord. In addition we have got small individual photographs.

25 I am going to show you first, and then I'll put it up to show the jury, if you could just tell me, please, what exhibit P-1 represents?

30 A. Yes, My Lord, it represents an aerial view of the Chatham, Bushville, Douglastown, Nordin, Chatham Head, Newcastle, and South-Nelson area. And the river is the Miramichi River that runs through all the communities.

- 1 Q. Could I get your help and we'll put it up on the location where we are going to keep it. Do you have a pointer or an object of some kind that can indicate locations on that?
- 5 A. No, I don't.
- Q. Would you use that and turn around and indicate to us -- although I'm sure the jury can figure out for itself, what part of that is the Miramichi River.
- A. The body of water we see from the top right-hand
10 corner going through the center to the bottom left is the Miramichi River. The bridge that we see here crossing the river is the Centennial Bridge in the Chatham/Douglastown area.
- Q. The way it's pointed at the moment, is north pointing
15 upwards on that picture?
- A. North would be pointing -- If we look at the bridge going across here it would be sort of this direction here would be north towards the top.
- Q. The Centennial Bridge is running in almost exactly a
20 north/south direction?
- A. I would say, yes.
- Q. So the Centennial Bridge is the upper one of those two bridges and is there another bridge?
- A. There's another bridge right here which is called
25 the Morrissy Bridge in the Newcastle/Chatham Head area, is the second bridge.
- Q. So as you stand looking at it Newcastle is to the left of the Morrissy Bridge?
- A. That is correct.
- 30 Q. Chatham Head --
- A. Yes, would be the left of the Morrissy Bridge, yes.

- 1 Q. Chatham Head is to the right of the Morrissy Bridge?
A. That's correct.
- Q. And what's to the left of the Centennial Bridge?
A. Up in here would be the Chatham area.
- 5 Q. That's to the right.
A. And here we see the CFB Chatham, the airforce base.
- Q. Did you have occasion -- I take it you have flown
over this area yourself?
A. Yes. On many occasions I have.
- 10 Q. Did you have occasion to attend the residence of an
Annie and Nina Flam?
A. Yes, I have.
- Q. Subsequent to that place having been burnt.
A. Yes, I have, on the 29th day of May, 1989 at approxi-
15 mately 10:45 A.M.
- Q. Could you take -- just get it down for one moment.
I'm going to ask you to take this red-headed pin and
insert it in the aerial photograph at the location
of the Flam residence.
- 20 A. Yes, My Lord, this highway we see here, the road,
right of the bridge is Water Street, and where I am
inserting the pin is the Flam residence which is at
244 and 242 Water Street in Chatham, County of
Northumberland, New Brunswick.
- 25 MR. ALLMAN: I'm just wondering, My Lord, is that visible
to the members of the jury who are furthest away from
it? (Pause.) You indicated you went to the Flam
residence and you also said that one of the things
you do as an identification officer is draw plans.
- 30 A. That is correct.

1 Q. Did you have occasion to draw some plans of that residence?

A. I have.

MR. ALLMAN: Any objection to this being entered as exhibit?

5 Mr. Furlotte?

MR. FURLOTTE: No.

MR. ALLMAN: Two plans, one of the upper and one of the lower portion of the Flam residence.

10 THE COURT: The lower plan would be P-2 and the upper would be P-3.

(Clerk marks lower plan of Flam residence exhibit P-2 and upper plan of Flam residence exhibit P-3.)

MR. ALLMAN: My Lord because of the logistical problems and it is very difficult to find any one location that suits everybody, we have also had small renditions of that made for the jury and I think there's a copy for Mr. Furlotte and yourself, if that's acceptable. I don't think they need to be entered as exhibits. They're simply small reproduction of the exhibit itself.

20 THE COURT: Is this agreeable to you?

MR. FURLOTTE: I would have no objections to that My Lord.

MR. ALLMAN: Okay, I am not going to go into the main detail at the moment, Corporal, but can you just tell me, please, what P-2 and P-3 represent?

A. They represent the residence at 244 and 242 Water Street, County of Northumberland, Chatham, New Brunswick, the residence of Annie Flam and Nina Flam.

Q. P-2 represents what portion of that residence?

30 A. P-2 would be the bottom floor, ground level, and P-3 would be the upper level.

1 Q. I'll go through them in more detail in a moment but
in addition to that - to the sketches that you drew,
did you also have occasion to take a number of aerial
photographs?

5 A. Yes, I have.

Q. And do you have those with you?

A. I believe they are here in court today My Lord.

MR. ALLMAN: Subject to any objection I would ask that these
be entered as exhibits. I gather there is no
10 objection.

THE COURT: What is this?

MR. ALLMAN: These are a collection of 13 aerial photo-
graphs of the Flam residence and surrounding
localities.

15 THE COURT: They're all different?

MR. ALLMAN: They're all different photographs, yes. They
are all roughly the same area but all different
photographs.

20 THE COURT: Well, these will be - will we call them P-4,
1 to 13.

MR. ALLMAN: P-4, brackets 1 to 13.

THE COURT: Bracket 1 to 13.

(Clerk marks aerial photographs exhibit P-4(1 to 13)).

25 MR. ALLMAN: Could you take us through the photographs one
by one just indicating what each one depicts, starting
with P-4(1). You numbered them, I believe, for your
purposes F-1 and F-2.

A. That is correct.

30 Q. Starting then with photograph number 1.

A. Before I start describing the aerial photographs, My
Lord, I would like to point out that the first six

1 aerials were taken by myself on the 8th day of June,
1989 and the remainder of the aerial photographs were
taken by Sergeant Chaisson who is also a forensic
identification specialist at the Bathurst Forensic
5 Identification Section.

Q. Sergeant Chaisson is in court and I believe he's to
be the next witness.

A. That is correct.

Q. So you took the first six and we can go through the
10 others with Sergeant Chaisson. Okay, just take us
through the first six then.

A. Looking at the first aerial photograph, at the top
of the photograph we have a body of water, the dark
part, which is the Miramichi River. Looking up at
15 the photograph would be the direction north. The
building we see here just below the body of water is
the shopping center in Chatham, County of Gloucester,
New Brunswick, and the road or street that we see that
runs from left to right approximately in the center
20 of the photograph is Water Street. You will note
right of center we have a building here with a yellow
and red balloon on top of it. That's the Pizza Delight
restaurant on Water Street in Chatham.

Q. Which is the Pizza Delight?

A. The building here that has the red and yellow balloon
on top of it. Now, if you were to count 4 structures
to the left of the restaurant on the same side of the
road counting this building, 1, 2, 3, 4, the 4th
30 building to the left of the restaurant on the same
side, this here is the wooden structure residence of
Annie and Nina Flam which is at 244 and 242 Water
Street, Chatham.

1 Q. It's immediately to the left as you look at a green-colored roof?

A. That is correct, to the left of the green-colored roof.

5 Q. In fact if you look at it carefully can you see that it appears to be somewhat battered or burnt? I mean the Flam residence?

A. That is correct. The roof is damaged. You can see the damage to both sides of the roof.

10 Q. Anything else on picture 1 that we should know about or should we move to picture 2?

A. That is all for number 1. Number 2 is basically the same area but we are now looking in a southerly direction. I am now over the Miramichi River and

15 we are looking south. Again, the same shopping center at the bottom of your photograph, the parking lot, and, again, the street that runs from right to left in a sort of semi-circle shape is Water Street.

20 Again, to the left of the photograph on the south side of Water Street we can depict the restaurant, Pizza Delight, again with the reference point the balloon. Again, if you count four buildings to the right now, 1, 2, 3, 4, again we will note the Flam residence and the damages to the roof can also be

25 noted in better detail in this photograph.

Q. Okay, can we move to number 3 then?

A. Again, basically the same area, now looking in the westerly direction. The body of water to your right

30 is the Miramichi River. Now, if we go from the street to your top right that comes down and almost makes sort of an "S", again, it's Water Street and, again,

1 as a reference point right of center we can depict
the yellow and red balloon again on top of the Pizza
Delight restaurant. Again, as a matter of counting
four residences now to the top of the Pizza Delight
5 Restaurant will point out the Flam residence once
again. To the top left of the photograph you will
see several horizontal lines. This is the Miramichi
Exhibit grounds to the left of your photograph, top
left.

10 Q. If you look at the extreme left of the photograph
above those straight lines you can see what looks
like a little red roof.

A. That is correct.

Q. What's that?

15 A. That is the Miramichi Exhibition Centre.

Q. The building portion of it?

A. The building portion. That will be used as a
reference point in other aerial photographs My Lord.

20 Q. If you would just take that one back a moment, runnin
across the top, the very, very top, is that a road
there?

A. Yes. We can just barely see it to the top left.
This road is the highway that leads over the
Centennial Bridge. Just top left here.

25 Q. If you want to get your pointer out again and just
show us now on the large aerial which is exhibit 1
where you are talking about.

30 A. Again, looking at the aerial photograph #3 the road
that we see here, the top left, is actually the high-
way here that crosses the Centennial Bridge, so this
is the area right here.

- 1 Q. Can we move on to #4 then, please.
- A. As previously mentioned in aerial photograph #3, in #4 the Exhibition ground can be easily depicted at the bottom center. We are now looking in an easterly
- 5 direction. The body of water on the top left-hand corner the Miramichí River. Again, the shopping center can be seen on the left-hand side just below the body of water and, again, the Water Street, the street that curves from center left going in an up-
- 10 ward fashion is the Water Street and, again, if you look at the first intersection off the Water Street here, just a matter of counting 1, 2, 3, it looks like three buildings here, right of the intersection would be the Flam residence.
- 15 Q. Or I suppose you could go the other way because we can see the balloon, the red and yellow balloon on there --
- A. Again, yes.
- Q. -- and go from right to left four buildings.
- 20 A. And go four left of the balloon. You can do it that way too, yes. But it gives you an overall view of the Chatham area from an easterly -- looking at an easterly direction.
- Q. And the large - the central large red-roofed building
- 25 that is the one that you can see just a little bit of the corner in the previous number 3?
- A. That is correct, yes.
- Q. Number 5 then, please.
- 30 A. Again, showing the same area but from a different view point. The body of water at the bottom of the photograph is the Miramichi. The large building

1 just to the side of the Miramichi is the shopping
center previously mentioned. And the road that runs
from the right-hand side of the photograph going
towards the center is Water Street. Again, the
5 yellow and red balloon can be noted left of center
and, again, the Flam residence can be depicted four
structures to the right of the balloon. The grounds,
exhibition grounds, can be noted at the top of the
photograph with the red-roofed building, red and white
10 in color.

Q. Top right-hand corner can you -- what's that ramp
for?

A. The ramp there is the beginning of the Centennial
Bridge which crosses the Miramichi River.

15 Q. Okay, number 6 then, please.

A. Again, showing basically the same area from a
different altitude, a little bit higher. Again, the
body of water the Miramichi River. The shopping
center just above along the waterfront. Again, the
20 road that starts from the right of the photograph
going towards the center towards the left is the
Water Street and, again, the balloon can be used as
a reference point on the Pizza Delight restaurant and
again, four buildings, wooden structures, to the
25 right of that is the Flam residence. And, again, the
Miramichi exhibition grounds can be noted at the top
right of the photograph.

Q. Now, I understand the remaining numbers 7 to 13 were
30 the ones taken by the other officer, Chaisson?

A. Yes.

1 Q. If you could just leave those there and we will come
on to them when he is giving evidence.

So far what we have got from you is the aerial
plan - or the large aerial photograph, the smaller
5 aerial photographs that we have just gone through, and
the sketches that you drew of the interior of the
Flam residence. Did you do anything else at the Flam
residence that day?

A. Yes, My Lord, I managed to take the opportunity to
10 put the entire scene on video.

Q. And do you have that video cassette with you?

A. I have.

Q. Could you get that, please? My Lord, I am going to
ask to enter this as an exhibit and then I am going
15 to ask the officer to play the video subject to any
objection.

MR. FURLOTTE: No objection.

THE COURT: P-5. Video of Chatham area.

(Clerk marks video cassette exhibit P-5.)

20 MR. ALLMAN: My Lord while the clerk is doing that I'll
just explain the procedure that we are going to ask
him to employ. I am going to ask him to come and stand
here between counsels' tables so that it doesn't
obstruct anybody's view, play the video, and he's
25 got a laser pointer and I am going to ask him to comment
commentate, so to speak, on the video and move from
the video display using the laser to point over to the
two sketches so that the jury can relate from the
video to the sketch and the sketch to the video. For
30 that purpose we are going to turn the lights off.
We are going to put this light on so that you can see

1 those clearly, and we have provided Your Lordship
with a light because we have checked all this out
and we found it rather dark where you sit so we have
provided a light for you to view your sketch of that.
5 The light at the back will be left on but the lights
in this area will be turned off.

THE COURT: How long is the video?

MR. ALLMAN: 40 minutes I believe, is it Corporal?

A. I would figure at least that My Lord.

10 THE COURT: And some of it, I take it, is close-up of the
Flam residence?

MR. ALLMAN: It's all of the residence, yes.

THE COURT: It's all of the residence.

MR. ALLMAN: Yes. Okay, could you play the video, please.

15 (PLAYING OF VIDEO TO COURT AND JURY BEGINS.)

CPL. GODIN: Now, we have here the Flam residence located
at 244 and 242 Water Street, County of Northumberland
Chatham, New Brunswick. We now see here the front of
the residence, top floor. You will note the damages
20 to the roof, the window and the roof here in the front
Fire damage.

Here we see the east side of the residence. Now
the back. We see one door right here which is the
back door to 242 Water Street which is the Nina Flam
25 residence which is the same door we see right here.
Same door depicted here of the Nina Flam residence at
242 and as we pan from left to right this area we see
here is the Annie Flam residence. The window that we
30 see here is the window right here, and then the back
entrance, the red door, is located right here on the
plan drawing.

1 We are now looking at the east side of the
residence. The window that we see here is the
window located right here in the den area of the
Annie Flam residence. Now panning towards the top
5 portion, two windows. Now looking at the front of the
building which is the north side facing Water Street.
We have the confectionery store at the front. Now
looking at the roof just above 244 which is the Annie
Flam residence. You can see the damage to the roof,
10 and again to the window, and this portion here is the
window to Nina Flam's bedroom which is located here -
the window.

We are now going to the front entrance which is
located here of 244 Water Street. You will note the
15 red and white cooler directly in front of the door
and a green shelf with bottles of pop on the shelf
portion. A lot of debris on the floor and a rack of
chips and an upright cooler. This is all located
at this entrance right here. Now, we are looking -
20 as we are going through the front entrance we are
looking right. You can see here shelves with can
goods and the counter that we see here, the side of
it, is these two counters that we see here, side by
side, rectangular shapes. Again, the green shelf
25 can be noted and the red and white cooler. Now, again
this is to your left when you walk into the front -
through the front entrance. Now, the same red and
white cooler. Now, we will pan from left to right.
30 Now looking right as you go into the store. We have
here another upright cooler. Here we have a fridge
and shelves of different goods. A different view of

1 these shelves. These shelves are located on this
wall right here.

Here we have an entrance. You can just barely
see the archway that we see here. That's the archway
5 that we see right here. Now, panning from left to
right this is the front entrance and the upright
cooler next to it. Now we are panning towards the
front. The front window of the grocery store which
is the window that we see here on the plan drawing.

10 Now, we are looking at the east wall. Again,
there are the can goods. We can see the two counters
side by side and a TV on top of one of the counters.
And there's another counter that we see right here
and shelves with cigarette products, tobacco products
15 That wall is this one right here just behind the
counter.

Now, there's another archway here and you will
see - this is the same archway that we see here from
the store. The washer and then we can see part of the
20 kitchen area. Now, we will be panning from right to
left into the den area. This is the room that we
see right here - the den. You have the couch,
pictures on the wall, the light. This is the
different location shot of the same light and couch
25 panning from right to left. The window that we see
here is the same one previously mentioned right here,
and we have a wall unit right here on the north wall
which is this wall unit right here.

30 Now we're back in the hallway looking towards
the kitchen area. We have the washer and stove and
the counter which are the same ones here, washer,
counter and stove, along this wall here.

1 Now panning from right to left showing the
washer, counter, cupboards, stove. Now we are now
looking at the back wall of Annie Flam's residence.
The window that we see there is the same one as we
5 see here at the back of the residence and the door
that we see which we're coming up to, this door in
here, is the two back doors to the rear entrance of
Annie Flam's residence. The same door, now closed,
partly closed. Now panning from right to left. The
10 window that we see here now is the window -- It's
not depicted on this My Lord. The table, cupboards,
hutch and buffet.

 Now we are looking back towards the store
portion, the small corridor leading to the store
15 area. Again, the same view point, the store area.
Panning from right to left we have here an archway
that we see here. Now, this is the archway leading
to the staircase that we see right here. Now, I am
looking directly to the staircase area. You will
20 note that it's fairly dark. There's quite extensive
damage in this particular area of the residence. It's
quite black and charred. Now, the archway that we
see right here is the same one previously mentioned
leading to a staircase. I am just panning from the
25 top to the bottom of the same wall seen in the arch-
way and you can just barely see the steps. One
there; one here; here; there. The staircase leading
up to the second floor. What you see here is a fire-
30 man's hose.

 Again panning from the bottom to the top showing
the damages sustained to the wall and the structure.

1 Now, the same wall again, now from a different
viewpoint, panning from right to left. Now here we
can still see the staircase and here we have a
rectangular shape item which is a humidifier at the
5 top - the middle landing. There's another set of
stairs going up just around the corner here. This is
a humidifier. Again, panning from the top to the
bottom, again, of the stairs. Same humidifier on the
middle landing. Showing the staircase. And here
10 showing you an area to the left of the staircase and
next to the archway that we see here. This is the
area right here on the plan drawing. Now, the
humidifier previously mentioned is located right here
on the first landing in this area here.

15 Now we are panning up now towards the staircase.
Now we will be going to the second plan drawing which
is on the second floor. That shows the second set of
stairs that we see here going to the top landing and
the wall next to it. Now, right up here we are now
20 on the second floor which would be this area right
here on the second plan drawing.

 Now I'm on top of the landing on the second
floor looking down towards - down the staircase. We
see here the steps, the humidifier at the middle
25 landing and the staircase going down. Now we pan up
from there showing the damages to the structure. Now
the area we're looking at right now would be this
area right here. This wall - these three walls in
this staircase area. We are looking at the ceiling
30 area showing the extensive damage, panning from left
to right. Now we have - you can see two by fours

1 upright. This is sort of a storage area behind what
was a wall at one time, and this is the area right
here that we see, between the two walls. As you can
see, the walls are no longer there, damaged by fire.

5 You can see the archway here to this particular
closet.

Now panning from left to right along this wall
then we will be coming to another archway which will
be this archway right here leading to a bedroom at
10 the front of the residence of Nina Flam. The window
that we see here is actually facing Water Street.
You can see the window that we see here.

Now we are now in this bedroom and in here we
have a closet and you can see clothing in the closet.
15 This is the closet that we see here. We have a door
that is closed and again you can see the extensive
damage to the ceiling area. Now we can just barely
see the window to the bedroom at the front on the
residence. Panning down we can see a bookcase along
20 the wall here, built into the wall. Just below the
bookcase we have a bed. You can see the head posts
and the top surface of the bed with a lot of charred
debris on top of the bed. Now, as previously
mentioned, this is the bedroom here in the second
25 plan. See the same bookcase on the north wall, panni
left to right. You can see here the head post, along
and then we come to another archway. A night table.
Now, we have here the start of an archway. Now we
are looking out into the direction of a second bed-
30 room. We have an archway right here which is this
archway that we see here. This archway would be the

1 archway - the door to Nina Flam's bedroom.

You will note right of this archway here we have another archway behind that we see here. Now this is the same archway. We are now looking in the bathroom area. Now I am standing in this location here looking into the bathroom. You will see that there's a vanity, a shower, and there is the counter right here. The same one depicted here.

THE COURT: Which is the Nina Flam bedroom that you referred to?

A. The Nina Flam is the one right here. Now, we are just going to pan from right to left, My Lord. This archway to this archway, which is the bedroom at the northeast corner of the residence which is the Nina Flam bedroom - excuse me, Annie Flam.

The window that we see here is the window that we see here on the plan drawing on the east side of the residence. Again, showing the damages sustained to the ceiling, quite extensive in this area. Showing the floor and the amount of debris on the floor.

Now, we are coming to an area on the floor. I would like to bring your attention to this right here. I will be showing you a close-up. It shows the knee or the leg of the body of Annie Flam. The charred remains. Now again panning from that same area showing the debris and the damages sustained to the structure of the building.

Now we are now looking at the south wall of the bedroom of Annie Flam, again showing the extensive damage.

1 Now we are looking at the archway looking out.

 Now we are leaving 244 Water Street, panning from
left to right, to 242 Water Street which is the
residence of Nina Flam. The entrance that we see
5 here is the one that we see here on the first plan
drawing showing the entrance. Now looking in we can
see directly in front of us the staircase leading up
to the second floor. That staircase is the one right
here directly in front. Now panning from left to
10 right showing the archway to the bathroom, staircase,
closet, and now we are into the living room, dining
room and den area which is this area right here. We
have the living room, dining room and den. Now
panning from left to right we are looking at the
15 furniture in the living room, table, couch, another
table, mirror or the wall. Now this here is the west
wall which would be this wall here of the residence.

 Again panning to the right we are now coming to
a window in the living room. This would be the same
20 window here from a different viewpoint. These are
the windows at the front of the residence on the
north side facing Water Street of the living room
area. Now we are panning now towards the front
entrance, one of the doors to the front entrance.
25 Now we have the entrance here that leads to the store
area of Annie Flam residence. This is the only
access to the other residence on the ground floor.
Pictures on the wall. Same pictures now we're panning
left to right but looking towards the kitchen area,
30 and in here we see the staircase. We are now into

1 the kitchen area of Nina Flam residence which is this
area right here. This big area right here is the
kitchen area. We have here a stove and a fridge and
cupboards along this wall, and the sink. What we see
5 here are cupboards, sink. We have a doorway here that
leads to the washroom, which is right here. Now,
again, the same archway.

Now we are panning towards the back of the
residence. Now we have a window and the back
10 entrance. These two right here are the window and
the back entrance to Nina Flam's residence.

We have another door here that leads to the
den area. Same door. Now I am panning toward the
den at the back of the residence. A fridge, chairs
15 and table, and again the archway leading out into
the corridor leading to the staircase.

Now I am inside the den area now. A piano, lazy
boy, couch, pictures on the wall. This is the area
right here that we are looking at, the den area of
20 Nina Flam's residence. The window that we see here
at the back of the residence is the window that we
see right here along this wall. The same window.
We are now panning from right to left, sort of a
bookcase of some type, china cabinet and, again, an
25 archway leading into the kitchen and we can just
barely see the bathroom off the kitchen.

Panning to the north wall of the den area, one
of the doors leading into the dining area. Now we
30 are looking into the dining and living room area,
looking at the windows at the front of the building.

1 Dining room area. Panning from right to left
from the corridor at the front entrance, looking
straight up at the staircase, the same staircase
mentioned here. Now there's a landing in this area
5 here. Now I am on top of the landing. Now I am in
this area right here of Nina Flam's residence. Now
I am panning from left to right showing the part of
the staircase. Now I am looking straight down at the
staircase. Panning upwards, again showing the damage
10 sustained to the ceiling. Now this is directly above
the staircase in Nina Flam's residence. Now I am
panning from right to left towards an archway that
leads into the bathroom. You can see a vanity right
here and one of the archways that's at an angle. Now
15 this bathroom is located right here. The vanity that
we see is here; we have a shower and a toilet. This
is the shower. You can see still a fireman's hose.
And the toilet that we see here is shattered in
several pieces in this corner right here.

20 Basically the same area, the shattered toilet,
fireman's hose. Now we have part of the chimney that
has collapsed and fell on the floor, and then we can
see just the side of a window right at the back of
the residence. Now this area is located right here.
25 We have the washroom, then we have a bedroom with a
window. So the chimney that we saw is located right
here.

Now we are back at the top of the staircase now
30 panning from left to right looking at two archways,
one here and one here, looking into a bedroom. Now
this is the bedroom located right here. There's two

1 archways, one there and one there and then we have
this bedroom right here. The window that we see here
is the window right here in this bedroom, and we will
see the bed in a second, this bed right here. Here is
5 part of the bed down here. An awful lot of debris
on top of the bed. Little table next to the window.
Another table. And the door that we see here is the
door that leads to the bedroom. Same door now panning
from right to left down the corridor. Now this is the
10 corridor right here. I am standing here looking down
this corridor right here. As you will note there's
several book shelves. A lot of books along the side
wall here. And now we are looking at the back bed-
room. The window that we see here and the archway
15 is this bedroom that we see here. Your archway is
there and the window is here.

Now we have - now there is another book case
along this wall that we see here, just right next to
the archway. The wall. That's back on to the landing
20

Now we are looking inside the bedroom, the same
bedroom at the southwest corner of the residence. We
have here a set of bunk beds with a ladder. Again,
you will note the extensive damage caused by the fire
25 We are now looking at the top bunk and then the bottom
bunk, and the back window.

You will note here that the window to the left
is partly open as opposed to the one on the right
which is closed. This one here is partly open. A
30 lot of furniture that's overturned.

1 Now we are now panning toward the left towards
the archway, the entrance to the bedroom. Now this
is part of the archway that we see here and we can
see some books. A bookcase here and we have another -
5 the same books again, and then we have the other
corridor which is located right here. This is a
short corridor leading to this bedroom right here.
This is the bedroom we're talking about. The door.
Now just panning on the floor now. Now we can see
10 the chimney that collapsed, previously mentioned in
the view of the bathroom area. Now, as I mentioned,
this is open and we can see the chimney from the bed-
room and the washroom. Again, showing the damages to
the walls. Here we can see the headboard of the bed
15 and the bed. The bed cover and you will note the
amount of debris on top of the bed. These are the
posts here to the bed.

 Again, the windows that we see right here. The
same window that you could see across from the wash-
20 room area. Same windows from a different viewpoint,
showing you a closet here and there's another door
right here. Those are the same two closets shown
here. Door to the bedroom. Now I am standing at the
25 entrance to this back bedroom looking in a westerly
direction. Same bookcase along that wall, and the
bookcases along the other wall, the other corridor.
Now I am panning from right to left showing you the
same corridor from a different viewing angle with all
30 the books along the left-hand side here of the wall.

 You can see an archway here. The same archway.
Going through this archway here would take you to the
top landing. Now we see another door right here.

1 This is the door to Nina Flam's residence. The door
is located right here showing you the bedroom of Nina
Flam at the northwest corner of the residence. The
windows that we see here are facing Water Street,
5 north side, which are the same windows that we see
here in Nina Flam's residence, her bedroom.

THE COURT: You told me earlier the other one was Nina
Flam's. You meant Annie Flam?

A. Annie Flam on the --

10 THE COURT: The other side.

A. Yes. That was my mistake. We see here the foot-
board of the bed. We have a dresser here that's side-
ways at the entrance. We have a cedar chest just
below the window. A night table. Right of the bed.
15 Headboard. Another night table. Left of the bed.
And, again, you can see a lot of debris and damages
caused to the structure.

Now we are panning towards the archway or the
entrance to the bedroom. Here is part of the archway
20 here. The same archway here and here and this is the
door leading to the bedroom. We have a closet door
behind this door here. Another one. Another door
right here. Another dresser. And, again, a lot of
debris.

25 We are now looking at the same archway looking
down the staircase, back towards the front entrance.
The same front entrance to Nina Flam's residence. We
are now looking at Water Street. We are back outside
30 You can see 242 written next to the door. Showing th
two front windows to the living room area of Nina
Flam's residence. Looking up to the two windows of

1 Nina Flam's bedroom on the north side of the residence
and this part here, the damage - extensive damage on
window is Annie Flam's residence, top floor. And,
again, the front entrance to the Flam grocery store
5 on the north side.

That concludes the video My Lord.

(END OF VIDEO - 11:00 A.M.)

MR. ALLMAN: Corporal, now that the jury have had the
opportunity to view the video and get the picture so
10 to speak, could you go over, again, just a little bit
the two plan drawings and outline some of the points
on those. Perhaps just before you do there's a couple
of specific things I want to ask you. You mentioned
from time to time Annie Flam's residence and then you
15 mentioned Nina Flam's residence. What's the relation
ship between those two things? Are they, one, the
same, or are they different? How does that work?

A. From information obtained Annie and Nina are sisters-
in-law. They were two separate residences but the
20 only connecting part between the two is two doors or
two archways --

Q. Before we get into the doors, basically, and as you
look at those two plans, I am looking at them from
25 right to left, which part, the right-hand part or the
left-hand part, would be primarily Annie Flam's?

A. Annie Flam would be on the right-hand side here and
also on the right-hand side in the other plan drawing

Q. So the right-hand side of both exhibit P-2 and P-3?

30 A. Yes.

Q. And so I take it it follows that Nina Flam's residence
part would be primarily which?

A. Would be on the left side.

- 1 Q. And I'm excepting now the consideration of the part
that nobody lived in which was the store.
- A. That's correct.
- 5 Q. If you wanted to get from the ground floor of Annie
Flam's part of this building into Nina Flam's part of
this building what would you do?
- A. You would have to go through the grocery part of the
store, which is located here, and you would have to go
through the storage area, through this archway -
10 through this archway then into Nina Flam's residence.
- Q. Any other way that you can get from the ground floor
part of Annie's to the ground floor part of Nina's?
- A. The only way would be to go through from the front
door here, go in this way.
- 15 Q. That would mean actually exiting the building?
- A. That's correct.
- Q. So remaining in the building you can only get from
Annie's to Nina's in that route that you just
described through the storage area which is the --
20 It's marked as storage area. It's sort of in the
middle left of P-2.
- A. That is correct.
- Q. What about if Annie were upstairs and wanted to go
into Nina's upstairs or vice versa? How would they
25 do that without going outside?
- A. Well if we're looking at Annie's bedroom --
- Q. Okay, now just --
- A. She would have to go down the staircase, come out
30 through this archway, through the store, storage area
through here, up the staircase which is here, and go
up into Nina Flam's bedroom.

- 1 Q. Just go through that again slowly. On P-3 you talked about Annie's bedroom and that's the area that's got a marking that looks like a human figure in it?
- A. That is correct.
- 5 Q. You would exit out of the door on P-3.
- A. Out the door, down the staircase --
- Q. Down the stairs on P-3.
- A. P-3.
- Q. Now, into P-2.
- 10 A. We are now on the ground level. We have come down the staircase.
- Q. Come down the stairs that lead - that have the words 'storage area' at the bottom.
- A. Yes, which is underneath the staircase here.
- 15 Q. Out the door to the right as you look at it.
- A. Through the store, storage area, through two archways into Nina Flam's residence, up the staircase --
- Q. On P-2.
- 20 A. On P-2. Now we're on P-3. We're now at the top landing and we go straight through here to Nina's bedroom.
- Q. Which is the bedroom on the top left-hand corner as you look at P-3.
- A. Yes, on the northwest side of the structure.
- 25 Q. Is there any communication from Annie's to Nina's or Nina's to Annie's on the top, the second floor, direct? Is there any way of avoiding going down the stairs and up the stairs?
- A. No.
- 30 Q. I think you mentioned when we were talking about this earlier, are there any features, doorways, windows,

- 1 etc., that for some reason or other they didn't get
on to that plan just so we can make sure it is
absolutely accurate.
- A. Yes. These measurements were punched into a computer
5 and the measurements - the plan drawings we have here
were produced. There is a window that didn't show up
here for some reason in the kitchen area.
- Q. Okay, now that's on P-2, kitchen, east wall, right?
- A. Yes.
- 10 Q. There's a window there where you are pointing that
the computer didn't notice.
- A. That's right. And there's a doorway. You will note
in some of the pictures to be introduced later on into
evidence, and also it was shown on the video, there
15 is a door here, a white door, that the computer did
not --
- Q. So on P-2 just between the storage area and the
living room where what we see is a gap the computer
should have drawn a little line to represent a door.
- 20 A. A door right here, yes.
- Q. Perhaps with Your Lordship's permission I could ask
this witness to draw that door on and if need be the
jury can just draw their equivalent.
- 25 THE COURT: Yes.
- MR. ALLMAN: I don't know if they have all got a pen but
if not they will have to borrow mine. Would you just
do what the computer didn't manage to do and draw the
symbolic doorway on there.
- 30 A. I can't remember which way it opens now My Lord. I
can look at my notes.
- MR. ALLMAN: Yes, sure. You have drawn the door according
to your notes pointing from left to right as you -
downwards as you look at the plan.

1 A. Yes.

Q. Is there anything else - any other particular or salient features that you wanted to draw to our attention about the sketches or basically is that it?

5 A. There is one other little discrepancy I noticed we have here. Again, this area is quite extensively damaged as you saw in the video.

Q. You are looking at P-3.

A. This wall should continue here. This storage area
10 ends along this wall and as I mentioned in this bedroom we have a bookcase into the wall. Well the bookcase is along this wall here so this is not a storage area but it is the bookcase inside the wall. So this wall that we see here should join.

15 Q. Not that I think it's of any great deal of significance but we want to be accurate in everything.

A. But that's the only discrepancy.

Q. Could you take my pen again and draw a continuation
20 of that wall and, again, the jury can no doubt make the same correction on their copies.

Thank you very much Corporal Godin. Those are all the questions I have for this witness.

THE COURT: Are you standing Corporal Godin aside though?

25 MR. ALLMAN: Yes. This is probably a convenient moment to mention this My Lord. Corporal Godin is the first of a number of witnesses who we'll be putting on, putting off, putting on, putting off. Mr. Furlotte could either reserve his cross-examination until the
30 total end of this witness or he could cross-examine on each testimonial portion. I think probably the latter would be more convenient but it is certainly

1 it is Mr. Furlotte's wish, but he is aware that this
witness will be recalled.

THE COURT: Well, just as a guide or a help or an aid to
Mr. Furlotte, can you give some indication of what
5 later aspects Corporal Godin will be --

MR. ALLMAN: Mr. Furlotte is aware, I think, of both when
Corporal Godin will be returning in terms of number,
I think his next appearance is number 21, and in terms
of what he will be saying on that occasion and all
10 other occasions.

THE COURT: Well, if you don't have to guide Mr. Furlotte
would you guide me?

MR. ALLMAN: The next occasion is to introduce some more
photographs; photographs relating to this case but
15 not of the scene.

THE COURT: In connection with the Flam --

MR. ALLMAN: In connection with the Flam incident and those
photographs we will be showing to Your Lordship be-
fore we introduce them all. It will be necessary for
20 you to look at them and rule on some of them I
believe.

THE COURT: Before I ask Mr. Furlotte what he wants to do
I might just say to the jury, normally in a criminal
trial or a civil trial or any other trial when a
25 witness goes on the party calling that witness is
required to complete their examination of that wit-
ness and then the other side has the opportunity to
cross-examine and so on, and that's completed. In a
rather complex case like this where perhaps particula
30 in the case of some of the police witnesses or the
investigating officers they have had a part in

1 different - or in each of the, for instance here,
four counts involved, it is convenient to carry the
whole thing through in chronological order to have
them give part of their testimony and then call them
5 back later and at the appropriate time to complete
the chronological picture and that, of course, is
what Mr. Allman is seeking leave to do here, and I
am quite prepared in a case of this nature to grant
that permission. The defence counsel has the option
10 of either cross-examining the witness now on the
direct testimony that he has given - or the testimony
that he has given on direct examination so far, or
they can say no we will leave it until later until
he concludes all of his appearances and we will cross-
15 examine him on everything at that stage. If defence
counsel elect to cross-examine him now on the testimo
he has given to date he can't, of course, come back
and repeat that when he is called again. They can
only cross-examine him then on what his testimony is
20 at that time. This is just by way of explanation so
that you'll know.

Now, Mr. Furlotte, do you want to cross-examine
the witness now on this portion or do you want to
25 delay on that?

MR. FURLOTTE: I will wait until he is recalled at a later
time.

THE COURT: I think I should say I suppose that strictly
and technically if a witness appears more than twice
30 or three times, or four, or something like that, not
too many appear that frequently --

MR. ALLMAN: I think the most is. There are some that
appear three or four times.

1 THE COURT: But I suppose strictly at the end of the second
appearance he could cross-examine on the first and
second if defence counsel so elected.

Well, you are stood aside and there is also the
5 requirement that a witness, until he completes his
testimony, cannot discuss the case with anyone. So
you can't be guided by crown counsel as to what you
might have said better or said worse or - you know.
So you operate under that restriction.

10 MR. ALLMAN: That limitation, I take it, means that he can't
talk about the testimony he has already given. I take
it we can continue to talk about the testimony he has
yet to give.

THE COURT: I think so, but you can't be guiding him as to
15 improving on anything you may have felt he was
defective in. However, I am sure that the police
officers involved know their position in that regard.

Thank you very much Corporal Godin for now.

20 MR. ALLMAN: My next witness is Sergeant Dan Chaisson.

SGT. DAN CHAISSON, called as a witness, having been
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. Please state your name and occupation, please.

25 A. My name is Frank Daniel Chaisson, member in charge of
the R.C.M.P. Bathurst Forensic Identification Section,
Bathurst, New Brunswick.

Q. The jury has already heard from Corporal Godin the
nature of the duties that identification officers
30 perform. I take it your duties are basically of the
same kind?

A. That's correct, yes.

1 Q. In regards to this particular incident, the death of
Annie Flam, did you have occasion to take a number of
photographs and place them in a booklet?

A. Yes, I did.

5 MR. ALLMAN: I would ask to enter this.

MR. FURLOTTE: My Lord I would object to some of these
pictures going in as their being inflammatory so
maybe you could rule on it before --

10 MR. ALLMAN: That's fine. We'll review it in the absence
of the jury.

THE COURT: Yes. All right. This is a series of photo-
graphs of?

15 MR. ALLMAN: A series of photographs of the interior of the
Flam residence, 93 in all, and I understand that there
are some that Mr. Furlotte wants removed so we would
have to do that - discuss that in the absence of the
jury.

20 THE COURT: All right. So you will have a break now when we
don't. So will the jury go out, please. Do counsel
have any objection to the jury taking these photo-
graphs and things with them to the jury room. I'll
be bringing them back. I am not surrendering them to
the jury permanently or anything of that nature but
if while they are out they want to examine them.

25 MR. FURLOTTE: I have no objection.

THE COURT: No objection. So if you would like to take
those pictures along you will have a chance to look
at them further.

30 (Jury withdraws - 11:15 A.M.)

THE COURT: Okay, do you want me to have a look at the
pictures?

MR. FURLOTTE: Yes, My Lord. My Lord maybe I could have a

1 10 minute break also before we get into this.

MR. ALLMAN: Fine by me.

THE COURT: Presumably at that time, Mr. Furlotte, you would
be in a position to indicate which --

5 MR. FURLOTTE: Indicate which photographs, yes.

THE COURT: I think probably it would suffice if I went
over them. I must say that my -- As a matter of
fact, if you can give me a copy now I can be looking
at them during my break as well.

10 MR. ALLMAN: My guess is that the ones that Mr. Furlotte
is objecting to is mostly around the 40 area.

MR. FURLOTTE: Yes, My Lord.

THE COURT: So, we'll have a recess now, please. Let's
say 15 minutes.

15 MR. ALLMAN: When Corporal Godin is coming back he is going
to be introducing autopsy photographs. I mentioned
obliquely a little while ago that we would have to
review those with you also. Mr. Kearney suggests, and
it makes sense, that this would be a good time to do
20 all the photographs, the ones that are now to be
introduced and the ones that Godin will be introducing
a little later. So I will give you a copy of the
autopsy photographs that we want to introduce. These
are the autopsy photographs and if you want to look
25 at those at the same time.

(RECESS - 11:20 - 11:45 A.M.)

(Accused present. Voir dire session commenced.)

THE COURT: All right, we are in a voir dire session now
and, of course, anything that transpires here can't
30 be reported until after the trial is over.

1 MR. ALLMAN: We have had a very fruitful discussion during
the interval, My Lord, and we have come to a large
measure of agreement. Not total but large. If you
look at the photographs, first of all there are a
5 number of photographs of a jaw bone - just of the
jaw bone.

THE COURT: Where is that?

MR. ALLMAN: I think Your Lordship has that.

THE COURT: In the big one? The little one?

10 MR. ALLMAN: The one you have before you now. And we have
agreed that we will remove all photographs except
numbers 4 and 5 which one of our experts needs to
refer to. So 4 and 5 will be the only ones left in
there.

15 THE COURT: Right. Well, these are --

MR. ALLMAN: Photographs of the jaw bone of Annie Flam.

THE COURT: Taken, of course, after her death.

MR. ALLMAN: Yes.

20 THE COURT: And who will be testifying to this?

MR. ALLMAN: Corporal Godin who was to be number 21 was
coming back simply to introduce those photographs
and the autopsy photographs. As a result of the
agreement we have reached he will have to introduce
4 and 5, no others, and the autopsy photographs which
25 are in this bundle we're not going to seek to intro-
duce any of them. So what we are going to do first
thing this afternoon is recall Corporal Godin just to
put in numbers 4 and 5 in that booklet.

30 THE COURT: And any other agreement?

MR. ALLMAN: Now, with regard to the photographs of the
scene, which include some photographs of the body in

1 the position so to speak, and I think they are around
44 or something like that, starting with 41, we want
to introduce 41, 42, 43, 44 and I think those are the
ones the defence objects to.

5 THE COURT: Well, these were pictures taken --
MR. ALLMAN: Taken at the scene depicting --
THE COURT: By Corporal Godin at the scene.
MR. ALLMAN: No, by Sergeant Chaisson.
THE COURT: Sergeant Chaisson. The day of the fire?

10 MR. ALLMAN: The day of the fire at the scene depicting the
positioning basically in which the body was found.
THE COURT: One of these pictures, though, the body is lying
on a sheet.
MR. ALLMAN: Yes.

15 THE COURT: The body had been moved from the original
position I take it.
MR. ALLMAN: I take it from under the rubble.
THE COURT: Turned over.
SGT. CHAISSON: That's correct, My Lord, it was turned over

20 THE COURT: Well, Mr. Furlotte, what do you have to say
about that?
MR. FURLOTTE: Mr. Kearney will be addressing this matter
My Lord.
THE COURT: Mr. Kearney.

25 MR. KEARNEY: My Lord as I understand my learned friend he
is referring to photographs beginning with what
number?
MR. ALLMAN: Well, it's a matter for you what you are
objecting to but I took it to be 41, 42, 43 and 44.

30 THE COURT: Perhaps number 40 as well.
MR. ALLMAN: Perhaps 40.

1 THE COURT: Perhaps number 39 even, I don't know.

MR. KEARNEY: Well, My Lord, beginning with 39, as we see
it, through to 44, the objection of the Crown (sic)
is the tendency to be inflammatory and particularly
5 when we are dealing with -- of the defence, I'm
sorry, when we're dealing with the jury. My sub-
mission is that that 39 and 40 they show that there
was something appearing to be relating to a body under
the debris, and there is going to be testimony
10 brought forth to show how the debris was taken off
what appeared to be a person and removed exposing
a human being. Now, my submission My Lord is that
that is satisfactory for a jury to see - to understand
that there was a fire, that there is somebody there,
15 and the testimony viva voce will show the condition
of the person and, also My Lord, 39 and 40 show that
the person was well covered with burnt material and
does intend to be inflammatory. However, when you
go on to 41, 42, 43 and 44, particularly 44, we have
20 the gruesome pictures which tend to depict nothing
more than - what I am trying to say is that it would
have no more than the effect of inflaming the minds
of anyone, particularly the jury.

25 That is the objection of the crown - of the
defence - I apologize for that.

The point of any photograph as an exhibit is to
help the jury understand what has taken place in a
criminal trial and at no time should there be a
30 tendency to inflame the minds of a jury. So as long
as they understand that there was a fire, that there
was somebody underneath, which certainly 39 and 40

1 show, and with all the viva voce evidence, I don't
see how the rest of the pictures can help from the
point of view of being fair to the accused.

That's my objection My Lord.

5 THE COURT: Thank you very much.

MR. WALSH: My Lord with respect to these particular photo-
graphs, 39, 40, 41, 42 through to 44, we could
certainly agree with Mr. Kearney's argument with
respect to inflammatory nature of certain photographs
10 and that is why we have agreed not to introduce the
actual autopsy photos associated with Annie Flam.
However, when it comes to the series of photographs
taken by Sergeant Chaisson they do go to an issue
before the court. Number one, the position is the
15 body was found, particularly as you can see what
apparently appears to be underpants, the position of
the underpants in relation to the body. There is an
inference that could be drawn from the jury that in
fact perhaps Annie Flam was as well treated in the
20 same fashion as Nina Flam in terms of a sexual aspect
to it. That's an inference open to the jury. And
this is particularly important when the jury has to
consider well whether or not these underpants ended
in that position because of the way, for example,
25 that she was buried or the way in fact that she was
excavated from the rubble. So that's something the
jury is entitled to -- It's probative to that
particular issue. And, as well, the other issue that
30 the Crown is required to prove is that the Crown will
be alleging that Annie Flam received a broken jaw,
that the broken jaw was not as a result of a heat

1 fracture but it was a mechanical fracture caused by
a blow, and as a result that also goes to the fact
and to the issue that at least the jury should know
the position that this lady was found in, and the
5 manner in which she was found and what was done in
terms of excavating her from the particular rubble.
These all go to an issue.

I don't think there can be any question that any
photograph of a person who is deceased or who is
10 burnt or is injured is in large respects not some-
thing that one wants to look at, certainly, but it's
something that we must face the reality of and get
to the probative aspect and realize the point that
these matters go to proving a particular issue or
15 assisting the jury in resolving any issues before the
court.

Thank you My Lord.

THE COURT: Mr. Kearney anything that you want to reply to
regarding what Mr. Walsh has said?

20 MR. KEARNEY: Well, again, My Lord, is that I understand
but when we look at #44 we can see that the body was
turned over on to a blanket and I still submit that
that can all be explained viva voce going back to
some of the original pictures where the person is
25 seen under debris without going on and showing the
other photographs. The same thing is going to be
accomplished.

THE COURT: When I looked at the photographs during the
30 recess I came to the - or at least developed the
immediate reaction rather quickly that certainly the
autopsy photographs were rather gruesome and one

1 would wonder if they would illustrate for a jury any-
thing that couldn't be described as well orally or
vocally, and my reaction would have been, I think,
to have said well none of those pictures should
5 really be admitted. The pictures of the second book,
I'm not sure whether they were taken at the autopsy
or not but the one that included the photograph of
the jaw bones.

MR. WALSH: They were taken at a funeral parlor later My
10 Lord.

THE COURT: At a funeral parlor later. I wondered what
possible use they could serve and I was wondering
why a medical doctor couldn't perhaps describe as
well the significance of anything that showed in
15 those pictures. I didn't appreciate when I first saw
the pictures that the two of them were intended to
show that the jaw bone had been broken or so on.

I believe you have reached agreement that those
two pictures of the jaw bone would be admitted. I
20 wonder - still wonder if perhaps it couldn't be
described as well by a doctor. A doctor says yes,
the jaw bone was separated, and it was separated by
so much, and that was the condition. However, you
have agreed on that. You have agreed also to exclude
25 the other ones which I would have done anyway.

With regard to the other pictures, 43 and 44,
I am going to permit those pictures to go in evidence.
They are gruesome. A few years ago one court was
perhaps reluctant to admit pictures showing blood -
30 none of these do show blood incidentally - but great
pools of blood and all that sort of thing, but as

1 being too inflammatory. I think with the advent of
the type of movies we see today and the type of
television programs we see, I think the public
generally has been acclimatized to some pretty
5 gruesome stuff when you get chainsaw murders and
that sort of stuff being shown to children during
childrens' hour, and I think a court gives to the
crown considerably more freedom than it did - does
today. You know yesterday my wife wanted to see -
10 she had never seen 'Dances with Wolves' - 'Dance
with Wolves' is it, the movie, and which I saw last
March, and you know even these pictures which are
gruesome if you could stand 'Dances with Wolves' you
could stand these pictures, and they don't have that
15 impact.

I am going to permit those pictures. I am
satisfied that they do have a significance in so far
as position goes. Some of those pictures quite
obviously were taken after some fo the debris was
20 removed from over the body. One of the pictures was
even taken of course after the body had been turned
over on the sheet. They do seem to suggest that one
of the legs and perhaps a part of the other leg had
been burned off or destroyed. Is that the significance
25 of those - or at least that appears.

MR. ALLMAN: That's not the main point of the picture.

THE COURT: No, no, I quite agree with you there. However,
that's my ruling anyway. So now the other point I
30 might have made was even though in the autopsy
pictures I would have excluded the pictures of the
charred remains of the body, the last picture in that

1 group, #9 I think, was a pair of panties or some-
thing, when you agreed to exclude them are you ex-
cluding that one as well?

MR. ALLMAN: Yes. I don't think we need that.

5 THE COURT: All right. I would have -- well, I would have
been prepared to consider that had you been insisting
on its admittance.

So, can we have the jury back then, now. There's
no more comment on that point. When you remove,
10 gentlemen, make sure those pictures - one book will
be reduced just to the two pictures.

(Voir dire ends.)

(Jury called, all present.)

15 THE COURT: Now, you were going on with this witness.

DIRECT EXAMINATION CONTINUED:

Q. Now, I believe, Sergeant Chaisson, you had indicated
that you were with the Identification Section and
that you had occasion to take a number of photographs

20 A. That's correct, yes.

Q. First of all, you were present when the previous
witness, Corporal Godin, gave his evidence and I
think he indicated that the series of pictures that
are marked as P-4 with numbers that you took the ones
25 from F-7 to F-13.

A. Yes, that's correct.

Q. I am going to give you those photographs. I believe
the jury already got their copies. I would ask you
to go through them indicating what each picture
30 shows.

- 1 A. First of all, aerial photographs F-7 to F-13 were
taken by myself on the 19th of September, 1990 in
the R.C.M.P. helicopter in the presence of a Corporal
Mole from the R.C.M.P. of Fredericton area. And
5 photograph F-7 is an aerial photograph taken of the
Chatham area. It's taken in a southwesterly direction
and it shows the area where the residence of Annie
Flam and Nina Flam used to be. Now if you look at
the photograph F-7 and specifically in this area
10 right here in the corner of the photograph we have
Water Street which is a street which runs past this
red building on the bottom and comes up towards the
right side of the photograph, and we see what looks
like a sandy lot. This sandy lot is where the
15 residence of Annie and Nina Flam used to be located
which was seen in previous aerial photographs F-1 to
F-6.
- Q. By the time you took these photographs the damaged
building I take it had been demolished.
- 20 A. That's correct, yes.
- Q. If you proceed down from the left on that picture
from the sandy lot where the Flams used to be can we
see the Pizza Delight?
- 25 A. That's correct. If you come down to the left you can
see a building there with a green and yellow frontage
to it and there's a small - in fact a small Pizza
Delight sign right in the parking area.
- Q. I guess by the time you took these photographs they
30 had also taken down the red and yellow striped
balloon.
- A. Apparently so. Yes, that's correct.

1 Q. Okay, carry on and tell us anything else concerning that picture.

A. The photograph itself depicts the surrounding area of the Chatham area and the red-roofed building we see in the background is the exhibition grounds in the Chatham area which was also referred to in the previous photographs.

Aerial photograph F-8, again a photograph taken in the Chatham area. This photograph was taken in a northwestern direction and at the top of the photograph we see the gray area which is the Miramichi River and just below that we see what looks like a shopping mall which indeed it is the mall in the Chatham area, and as we leave the mall and come out on to Water Street, which is the street that runs on the top of the photograph, we can once again see the sandy lot located just in this area here next to the blue and green building.

15 Q. With the bluish-colored car parked on it?

A. That's correct. There is a vehicle parked on the lot. That, once again, is the same area that used to be the residence of Annie and Nina Flam. And, again, we're seeing the residential area of Chatham from a different view than photograph number 7.

20 Q. Up in the top left-hand corner there's a ramp which would lead you on to what?

A. That would be the Centennial Bridge which connects the Newcastle/Chatham area.

25 Q. Which you see on the photograph F-1, the higher up of the two bridges?

A. That's correct, the one right on top. Photograph

1 F-9, another aerial photograph taken of the Chatham
area. Once again we're looking in a northwestern
direction however we have backed up considerably to
cover a larger portion of the residential area in
5 the Chatham area. The mall previously referred to,
the shopping mall which we saw in photograph number
8, you can just barely see at the very top of the
photograph. It's just up here. And the Flam residence
or the sandy lot area which was the Flam residence,
10 would be in this area right here.

Q. The very top middle of the photograph?

A. That's correct, yes. And now we're viewing the area
in between the mall, the Flam residence and other
residential areas of the Chatham area.

15 Photograph F-10, another aerial photograph taken
of that area, and in photograph F-10 we have now gone
back to the southwestern view or position. You re-
ferred to the Centennial Bridge. We can now see a
portion of that Centennial Bridge crossing over the
20 Miramichi River plus this gives us a view of the
residential area plus oil storage tanks on the
opposite side of this bridge.

Q. Could you just stand up and circle with your pointer
25 the area that's shown on F-10 that's shown on the
big aerial photo. Where are we looking at?

A. It would be in this area right here.

Q. To the south --

A. You can see the bridge. We're looking more or less
30 this way at an angle.

Q. So the residence of Annie and Nina Flam would be
down off where?

1 A. If one was to continue it would be at the bottom
portion of this photograph here.

Photograph F-11, another aerial photograph. This
one was taken more in a westerly view than a south-
5 westerly view. It shows and depicts roughly the
same area as seen in photograph number 10 but you see
now a larger portion of the Centennial Bridge. We
can see the road that connects the South Nelson and
Chatham Head, Miramichi and Chatham area, plus we
10 see the same bulk storage tanks we saw in photo-
graph number 10, and the residential area that
surrounds it.

Q. Can you see, again, on that one the mall, the Pizza
Delight and the sandy lot where Annie Flam's place
15 used to be?

A. Yes. In this particular aerial photograph if we
come down just below the bridge we can see the mall
referred to in the other photographs, and then you
leave the mall, come out on that upper Water Street
20 area where it curves and the sandy lot is right
there near that green-roofed building, right here.

Q. Then just by reference to the large aerial plan, the
road runs along the river side underneath the
bridge. Where is that on the large aerial plan?

25 A. This would be this road right here. And you can
see where it curves like in the photograph and you
see the roof of the mall.

Q. If you go a bit - keep going on down that road.

A. This way here?

30 Q. Keep going, yes. Keep going. There is like a little
indentation there in the bank of the river. Is that

1 right? Yes, there. Can you just have a look at
F-11? My impression is it goes down as far or just
beyond that little indentation.

A. You are referring to this area right here?

5 Q. Yes.

A. Yes. In photograph F-11 it would be where we see the
smoke rising here. It would be that little inlet or
body of water in that corner right there, just below
the smoke.

10 Photograph number 12, another aerial photograph
taken of the Chatham area. This is taken, again, in
a southwesterly direction. Here in this photograph
we have come down an elevation and we can see much
clearer the sandy lot which I was referring to as the
15 residence of Annie and Nina Flam. We see the mall
and we can also see upper Water Street as it runs in
front of the mall. And the Pizza Delight can also be
seen just at the bottom of the photograph.

20 Q. And the exhibition up the top left - middle left, and
the ramp up to the Centennial right?

A. That's correct. The red-roofed building on the left
side of the photograph is the exhibition grounds and
then we can start seeing where the Centennial Bridge
ramp begins here.

25 And finally, aerial photograph number 13. This
photograph was taken - first of all taken in an
easterly direction and this photograph depicts an
area in the South Nelson-Chatham-Miramichi area. We
30 see this body of water as being the Miramichi River.
We also see the highway referred to previously, this
particular highway right here that runs all the way

1 down towards the coastline, down here, as being the same road that we saw in the large aerial photograph, and the residential area in this particular part of the Miramichi.

5 Q. Could you, again, turn around to the big aerial plan and take that picture with you. Can you as best you can trace the shoreline from where it starts on the small picture then trace it along on the big picture so we can see where we are proceeding.

10 A. I don't know if the jury can see but it's here at the bottom portion of the --

Q. Going up north.

A. Going up north.

15 Q. And on the small photograph we come to an indentation again.

A. This area here is actually in fact this area here in F-13. That point right there is this point.

Q. Then you proceed up a bit to what?

20 A. Then we come up to another bridge, the Morrissy Bridge, which crosses over into the Newcastle area from the Chatham Head area.

Q. And if you look at the small photograph there's a pylon. Where is that in relation to the Morrissy Bridge?

25 A. That's on the left side of the photograph. We can just barely see where the bridge would start. Right in this area here.

Q. Okay.

30 A. And at the end of the plan.

Q. And then after that you proceed up along that side of the river bank.

- 1 A. That's correct. You would actually follow along here
where the road is which in fact is this area here.
- Q. Looking again at F-13 I'll direct your attention to
a particular spot and maybe you can point it to the
5 jury.
- A. Yes.
- Q. In the lower right-hand corner a little ways in from
the shoreline there is a curving feature on the land-
scape. Can you just show the jury what we are
10 talking about?
- A. Yes.
- Q. What's that?
- A. In photograph F-13 just in from the water we see a
curving feature which appears to be a road but in
15 fact it's a railway track line. Railway line.
- Q. With the point -- Okay, you were doing it. You
are following the direction of the railroad track --
- A. As it goes inland.
- Q. It snakes up along the right-hand side of that
20 picture.
- A. That's correct, yes. And in fact you can see it here
as well as it runs inland.
- Q. Maybe you could just stand up again - I know it's a
bore - but stand up and follow the railroad track.
25
- A. Starts from the bottom, now leaving the highway, and
starts to run inland here, all through this area
here. That's the railway track that we see part of
in photograph F-13.
- 30 Q. It's following not by any means exactly parallel but
in general terms it is following the river's course
although it doesn't curve exactly the same.
- A. Yes. That's correct.

1 MR. ALLMAN: I have no other questions about those photo-
graphs.

THE COURT: Just one thing the jury might be wondering.
You mentioned Nelson and you mentioned Chatham Head.
5 I think you used those. Where is Nelson; where is
Chatham Head?

A. The actual community, My Lord, of Chatham Head is
just in this area off the Morrissy Bridge located
here. This area, my understanding of all this rural
10 and residential area here is referred to as Nelson-
Miramichi. It comes down through this gap here.
This is Chatham Head. This is actually Newcastle.
And as you proceed down the road you find yourself
in Chatham proper and then you're into a small area
15 known as Nordin and other areas like that once you
cross over the bridge.

THE COURT: There was reference to another area, Bushville,
yesterday. Where is Bushville?

A. My understanding of Bushville, My Lord, is between
20 the actual community of Chatham - or the Town of
Chatham, this area here, and Chatham Head.. It's in
this gap here. There's a golf course and so forth
here.

THE COURT: There was reference to South Chatham. Where
25 is South Chatham, or what is South Chatham?

A. I'm not sure My Lord. Part of Chatham. Southern
part of Chatham perhaps.

THE COURT: Thank you very much. Excuse me for intervening
30 but I thought these might be things that the jury
like myself might wonder about.

1 MR. ALLMAN: Anything that can be done to assist clarification we always appreciate My Lord.

I have a bundle of photographs. I understand that these are to be entered as an exhibit. That's
5 your copy I believe.

THE COURT: And these are entered by agreement?

MR. ALLMAN: Well, they are entered mostly by agreement and a number of them, subject to the court ruling was --

THE COURT: Yes. This would be a book of photographs,
10 P-6. There are what - 93 photographs.

MR. ALLMAN: I believe that's the correct number.

THE COURT: So we will call them P-6, 1 to 93.

(Clerk marks book of photographs exhibit P-6.)

MR. ALLMAN: I am showing you now, Sergeant, a bundle of
15 photographs that was just entered as an exhibit, P-6, numbers 1 to 93. What can you tell us about all those My Lord I have copies for the jury as usual.

A. Yes, P-6 is a booklet of photographs containing 93
20 photographs that I took on the 29th of May, 1989 in the Town of Chatham, County of Northumberland, Province of New Brunswick, and more specifically of the residence at 242 and 244 Water Street, the residences of Annie and Nina Flam.

Q. Okay, can you just take us through them one by one
25 and indicate what they show and if it's appropriate in your opinion to do so at any time cross-reference to the sketches P-2 and P-3.

A. First of all before I start, these photographs will
30 be a series of interior and exterior photographs of the dwelling, the one dwelling which consists of 242 and 244 Water Street. Photograph number 1, this is

1 the front view of the dwelling or the duplex that we
know as 242 and 244 Water Street in the Town of
Chatham. In this particular photograph we see the
front of the dwelling and we also see the east side
5 of the dwelling. Now, on the front of the dwelling
we can see that there's a store front on the left
side of the photograph which is the actual side that
Annie Flam used to occupy, the store and the area
above the store, and on the right side of the photo-
10 graph that is the area where Nina Flam used to live.
That is strictly a residential area.

Q. If you look at P-2, the store that's marked on P-2,
is that the area to the left of the Lotto 649 sign
as we look at the picture?

15 A. In photograph 1.

Q. Photograph 1, looking at sketch P-2.

A. I'm sorry, yes.

Q. This area marked 'store'.

A. That's correct. Where the area is marked 'store' on
20 P-2 that would be where the Pepsi-Cola sign is and
the 649 lotto is. It's that area there. In photo-
graph number 2 we're showing the east side of the
dwelling that we saw in previous photograph number 1.
That's the side where we see one little window and
25 there's a peak, but your attention in the photograph
number 2 is to the side of this building. We see just
on the edge of the photograph there's a building
here, and if we refer to photograph number 3, and
this is to be viewed like this in a vertical position
30 we see that same side of building that we saw in
photograph number 2. We can still see in the

1 shadowed area the east side of the Flam house but the
reason this particular photograph was taken is to draw
your attention to an area just where the cement and the
grass come together. There's something on the ground
5 there. And if you look at photograph number 4 you get
a close-up view of what that item I was trying to
photograph on the ground, and as it turned out it was
a rubber surgical glove, just beside the cement and
the grass.

10 In photograph number 5 --

THE COURT: I'm sorry, where is the surgical glove?

A. It's right there My Lord.

MR. ALLMAN: Right at the very middle of photograph --

A. Of photograph #4.

15 THE COURT: Oh yes. You indicated that to the jury?

A. Yes, I did, yes. In photograph number 5 this is a
rear photograph of the dwelling that we know as the
Flam residence. It shows, once again, the two sides.
We have on the side on the left of the photograph as
20 being Nina's side of the residence, and the side on
the right of the photograph as being Annie's side of
the residence. Now also in this backyard area we can
see the two rear entrances plus there's two clothes-
line stands that we can see right beside the door,
25 and your attention in photograph number 5 will be
drawn to the clothesline stand that we see right here
beside Annie's back door. And when you go to photo-
graph number 6, and that's to be viewed vertical like
30 this again, up and down position, we can see that
clothesline stand that I was referring to as being
the one beside Annie's back door in photograph number
5.

1 Now in photograph number 6 there's something on
the stairs that lead up to that clothesline stand and
if you turn the page to photograph number 7 you can
see that it's a ball - type of baseball cap with the
5 wording "Tropicana Tanning" written on the peak - or
on the cap.

 In photograph number 8 we're back on Water Street
in the front of the building. At this time we're
looking in a different direction. Before in photo-
10 graph number 1 we were looking in a northeastern
direction; now we're looking in a northwestern
direction. So now we can see the side of Annie
Flam's and the store area closer to us than the
side that Nina used to live on. In this photograph
15 you can also see the roof on Annie's side has suffered
some damage - structural damage, and also you can see
that there's an alleyway that leads just near the
7-Up sign towards the back of the residence. And
20 in photograph number 9, that photograph to be viewed
in a vertical position again, shows the alleyway
going towards the back. Also in photograph number 9
you see the small part of Annie's back door area.
We can see the small porch entry to the back and we
25 also see a small window there. That particular
window was broken at the time that this photograph
was taken.

 In photograph number 10 we're now going to go
into the store and we can see in photograph number
30 10, again viewed in a vertical position, the numbers
244, and we're going to go into the store as we turn
the page to photograph number 11. We're now standing
just inside the door and, again, you got to view this

1 in a vertical position, up and down. We're standing
inside the doorway. You saw some of these photographs
in the video. You can see there's a cooler to your
immediate right. There's also a cooler directly in
5 front of us. There's some chip racks on the right
as well in the photograph and there's a green soft
drink stand. You can just see that on the left side
of the photograph.

Q. If I can just interrupt you for a moment again.
10 We're now physically inside the bit that's marked
'store' on exhibit number 2?

A. That's correct, we're just inside the door.

Q. And this door with the peak over it is to the left
as you look at number 2, is that right?

15 A. It would be standing right here where this photo-
graph was taken. And what we're going to do now,
we're going to come in here and we're going to just
back up a little bit and take the next photograph,
which is photograph number 12. We're going to be
20 viewing the store in this direction here. And photo-
graph number 12, again, to be viewed in a vertical
position, up and down, you can see the same chip
stand we just saw when we came in the store in photo-
graph number 11. You can still see it on the left
25 side of the photograph but I have gone behind it a
little bit and I'm now looking into the store area.
And the main store area we see the counter area, we
see the can goods. You also see in this -- It's
quite hard to see but there's a six forty-nine
30 machine there. And as we go to photograph number
13 --

1 Q. Just let me stop you there for a moment. Which is
the six forty-nine machine? Like what color is it?

A. It's a bluish -- It's in the shadowed area of the
photograph but it would be a bluish item that can be
5 barely seen in the corner.

Q. About halfway up the middle by the right-hand side of
the picture.

A. In fact it's just above the white shelving that we
see. It's sitting on top of that.

10 Now in photograph 13 we have now gone just past
that six forty-nine machine and we're looking at the
main counter receiving area of the store. We see the
same can goods that we saw in photograph 12 in the
background. We see cigarettes on the shelves. And
15 in this particular photograph your attention is going
to be drawn as in the center there's two cartons of
Export cigarettes and they are noted right almost in
the center of the photograph, right there. You have
to look in the background, just past the shelves of
20 cigarettes, there's two cartons of Export cigarettes
there, where if you go to photograph number 14, hold
it vertically up and down, and you can see those two
cartons of Export cigarettes just up here in the
upper corner. Now the reason this photograph is
25 taken, if you come down from the cartons of Export
cigarettes you see a small step-on stool, and if
you turn the page to photograph number 15 we discover
that on the top of that step-on stool there was a
30 quantity of money that can be seen in photograph 15.

1 Now, if we go back just a moment to photograph
13 we saw in the main receiving area of photograph
number 13 there was a drawer, a wooden type of drawer
located just below the cigarettes. This wooden
5 drawer in photograph number 16 has now been isolated
or more closely depicted as being just below the
cigarettes. And when we opened that particular
drawer we saw what we saw in photograph number 17.
It had a quantity of money inside that wooden drawer.

10 Now, in photograph number 18, and I'll refer to
exhibit P-2, when I came into the store I came in
here and I am now standing right here in front of
those can goods that we saw a few moments ago and I
am photographing back out towards the way I just came
15 in, and you can see in the photograph the same chip
stand that we saw when we walked into the store in
photograph number 11. We can see behind the chip
stand there's boxes of Tide and so forth on the
shelves, but in this photograph your attention is
20 drawn to a green 7-Up soft drink stand that's just
to the left of that photograph. Right here My Lord.
A green 7-Up stand.

Q. The 7-Up symbol in red and white appears on there?

25 A. Yes, that's correct. And if you turn to photograph
number 19 you can now see that - and this is to be
viewed vertically now, up and down, you can see the
green 7-Up stand just on the other side of that
doorway. So in fact on the plan P-2 what I have done
30 I'm standing right here now, the 7-Up stand would be
right here and I'm standing right here. And in this
photograph you can see there's an entranceway here

1 and in fact if you look on the wallpaper on this wall
here it looks like there's some kind of little cupid
or something in the wallpaper the way the burnt design
is in photograph number 19.

5 Q. Would you just --

A. Right here. Looks like a little figurine on the
wall there.

Now, in photograph number 20, and again keeping
in mind I'm standing right here, I'm now photographing
10 what's in front of me. In other words I'm standing
in the archway we saw in photograph 19 just beside
the 7-Up stand and I'm now looking straight ahead
into the kitchen area. And also on photograph number
20 --

15 Q. On the sketch where are you standing and which way
are you looking?

A. I am standing right here; I am looking down here; and
you can see the washer. Where it says washer here
you can see that in photograph number 20 and you can
20 also see something right here, and this is part of
the den area and you can see it's an arm of a couch,
a loveseat or something that's situated right here.

So if you go up to photograph 21 now you get
a better look at the couch or the loveseat that was
25 seen in photograph number 20 and this is a small den
or a TV room or whatever.

In photograph 22, to be viewed vertically, I'm
going around that little den or little TV room and
you will note there's a television in that room and
30 just below the television on the TV stand there's a
brown box right there, right below the TV. A small
brown cardboard box. And if you turn the page to

1 photograph number 23 you can see that's a box con-
taining a quantity of money, twenty dollar bills,
change and so forth.

5 Now, photograph number 24 and in fact 25 and
26 I am now going to go into the kitchen area, just
past that little den and sitting room. The washer
that we saw in photograph number 20 now I'm just on
top of it. You can see the washer cover is up. You
can see the counter area, part of the stove. You see
10 two tables, one with looks like iron chairs and a
wooden table set. And in photograph number 25 I have
now positioned myself where you see those two little
metal chairs in the background of photograph number
24 if you view it vertically. I'm standing right in
15 front of that table and I'm looking back towards the
clothes washer with the cover up. You can see that
in photograph number 25. You see the stove and the
sink area and, again, the corner of the kitchen wood
table.

20 In photograph number 26 you can now see the
entranceway which I just came in. Again, you see
the clothes washer with the cover up. You can see
part of the store in fact where the green 7-Up stand
25 if you look through that doorway you can almost see
it in the background over there, plus the remaining
portion of the kitchen, the kitchen table and so
forth.

30 Now, in photograph number 27 we're going to
leave the kitchen area but before we do that we're
going to be in this area right here on P-2, the
bottom portion. And in the kitchen area there's the

1 washer and if you look right across there was a door
there that led into a little back porch and you can
see that door. If you view the photograph vertically
up and down you can see that little back door, the
5 back door going into the porch right there, plus you
can see the back entrance, the reddish door that we
saw in the previous photograph and we viewed the back
in photograph number 5. This is the same rear
entrance right down here that we saw in photograph
10 5. And this is the window that I referred to when I
said that there was an alleyway and this window was
broken. This is the window that had been broken in
the small porch area.

15 Now, photograph number 28 we have gone back to
that area in photograph 19. Would you turn back to
photograph 19 just for a second, and this is to be
viewed up and down, vertically, again. You see that
little - what I call a little cupid or a little thing
on the wall? Well, if you go back now - or move
20 ahead to photograph number 28 where we are now, again
view it up and down, you can see that little figurine
or whatever it is on the wallpaper. This particular
area is the area that leads upstairs. We're standing
right here now. This archway right here. And this
25 is going to lead to the upstairs level of the Flam
residence - of Annie's residence. And you can see
in photograph 28 that as we were walking through the
store before we didn't have any fire damage. We had
30 water damage, some heat damage, some smoke damage,
but now we're getting into an area that's black and
it's charred. We've had some fire damage here.

1 And you can see the stairs that lead upstairs in
photograph 28. There's a couple in the photograph.

In photograph 29 I have now moved and I am
standing pretty well in front of that little
5 figurine that we saw in photograph 28 and I'm looking
up the stairs, plus an area beside the stairs, and we
can see in the upper photograph 29 there was a
storage area here where the door had been closed and
when we opened it we saw that the contents inside in
10 fact were not even burnt. They had been protected
from fire. And we see pop bottles and so forth,
pepsi bottles on the ground.

Q. The unburnt area, just/^{so}we got this absolutely clear,
15 behind the door that you opened that's got what looks
like brown cardboard, newspapers and something blue
in it?

A. Exactly. The bluish I don't recall what it is. It
was some sort of a bag. But in photograph 30 you
20 can get a closer look at that little storage area
just underneath the stairs.

Q. And the point you're making, as I understand it, is
that those appear to be intact?

A. Everything appears intact, yes.

25 THE COURT: Was there a door closed on that? Had you
opened a door to take the picture?

A. I opened it My Lord.

MR. ALLMAN: I think in fact if you look - tell me if I'm
wrong, on 29 right down the middle from the top
30 there's like a white line.

A. Yes.

Q. What's that?

63DB

1 A. That's the door edge in an open position which, again,
would have been protected from the fire when it was
closed.

Q. If you look at 30 can you see a door handle on there?

5 A. I don't recall seeing a handle, no.

Q. I'll show you what I'm looking at and see if I might
be wrong in what it is.

A. I can't recall. It looks like a groove in the door
frame but I'm not sure.

10 Q. I'm sorry to interrupt you. Carry on - 29 and 30.

A. Okay. Viewing these photographs in an up and down
position, vertically, we're going to start up the
stairs, and the stairs that we see in photograph
number 30 are the same ones we can just see a bit of
15 in photograph 29 and in photograph 28. Now, Corporal
Godin previously referred to at the top of the first
flight of stairs as a humidifier and we see that
there in that photograph. That yellow square that we
have there is what used to be a humidifier.

20 In photograph 31 I have now continued up the
stairs and, again, view this one vertically up and
down and you can see now a better view of that
humidifier because now I've gone up the stairs and
I am standing at the top level of Annie Flam's
25 residence.

Q. Looking back down the way you just came I gather.

A. That's correct, yes. And you can see there's burning
here as well. We have charring and black area plus
30 we see a piece of the bannister, that little post
that's sticking out here. In photograph number 32

1 I am now standing beside that little post that we see
in photograph 31. Again, view this up and down, and
I'm looking into the bathroom area in photograph
number 32.

5 Q. Now perhaps you can take us on whichever plan is
appropriate and tell us where you are standing and
which way you are looking on 32.

A. So I've gone upstairs --

Q. You're on P-3.

10 A. The humidifier is right here and I'm standing right
here and I'm looking into what used to be the bath-
room right here. That's what you see in photograph
number 32. And in fact photographs 33 -- 33 you
view it looking straight on like this. That's what
15 was in that particular bathroom area at the time.
A great deal of debris and so forth.

Now on photograph 34 - and this one has to be
viewed vertically now, up and down, this is the
entranceway or the archway that leads into Annie
20 Flam's bedroom, and in P-3 Annie Flam's bedroom is
right here, so I'm standing right here looking into
the bedroom.

Q. Looking in through that entrance?

25 A. That's correct. Yes. Photograph number 35 I have
just stepped into the bedroom and I'm taking a general
photograph to show the darkened and charcoaled area
of the bedroom.

30 Photograph 36 has to be viewed up and down in a
vertical position and this particular photograph,
again, is taken in Annie Flam's bedroom and it shows
the amount of debris that has come down on to the

1 floor area. We have everything in there including
roof tiles and you can see they're all stacked up.
And that's even more clearly seen in photograph 37.
You can actually see the asphalt roofing tiles all
5 piled up in the middle. Now, in this photograph your
attention is drawn to an area almost in the middle of
the photograph and that's what you saw in the video
which looks like a bone sticking out. In fact that's
what it is right there in the middle of the photo-
10 graph.

THE COURT: What number is that?

A. Photograph number 37 My Lord.

MR. ALLMAN: My Lord perhaps we should just mention to the
15 jury that the next few photographs are rather up-
setting.

A. Now, from photograph 37 on to, finally, photograph
number 44 we removed layer by layer of debris, very
carefully, and that's what the series of photographs
depict. For example photograph 38 we can see now the
20 roofing tiles are no longer there. They have been
removed very slowly. Go on to the next photograph.
Photograph 39 we have removed yet another layer of
debris, gyproc, wallpaper and everything else, and as
we go down to number 40 to 41 and 42, finally we end
25 up with what was buried underneath the debris.

Q. In 39 what are you beginning to see right in the
middle of the picture there?

A. In photograph 39 in the middle of the photograph we're
30 starting to see what appears to be a right arm and
elbow, perhaps the right side, right hip and right
leg area. That particular bone that we first saw

1 when we started in photograph number 38 was the right
knee area and we can still see that in photograph 39.
And, again, in photograph 40 the knee becomes more
evident, the right arm is more evident, and finally,
5 like I say, in 42 the whole shape of the body can now
be seen.

Q. In 41 and 42 we can see what you are telling us is a
body, eh?

A. That's correct, yes.

10 Q. In what position is the body lying? On its back, its
front, its side?

A. The body is lying on its back. It's clad with only
a pair of underpants. At least that's all that's
present at the time.

15 Q. Is that how -- You were watching, I take it, as
they removed bits and --

A. I was removing it myself, very carefully. And in
photograph 43 we have a close-up of the final - just
before we turned the body over on a white sheet which
20 we can see in photograph number 44.

Q. Photograph number 44 then, which position is the
body in after it's been put on the sheet?

A. It's face down in this particular case.

25 Q. On that picture you can see just below the buttocks
a red and white object. Can you tell me what that
is?

A. Yes, that's the same pair of underpants that we can
just get a glimpse at in photograph #43 and the other
photographs.

30 Q. It's - and I don't think this is a leading question,
it's obvious that the underpants are not in the
position that underpants would normally be worn by

1 somebody. Can you tell us when you saw the body rolled
over and put on to the sheet what position the under-
pants were in?

A. The underpants in all these photographs have not been
5 disturbed. That's how they were found on the body.

In photograph number 45, again you got to view
this one up and down, this photograph was taken in
the bedroom of Annie Flam but it's looking up now
towards the roof area, and the purpose of this photo-
10 graph was to show the extreme damage to the structure
and how you can see the sky right through the roof
which when we looked in photograph number 1 - or
perhaps a better photograph would have been photograph
number 8, we could see that same structural damage
15 to the roof, how it went right through the ceiling.

Now, in photograph number 46, right beside
Annie Flam's bedroom there's another room over here.
That room right there.

Q. What's it marked on P-3 as? What does it say?

A. Bedroom. And this room is just next door to Annie
20 Flam's bedroom and if you look at photograph number
1 it's the room where you have the peaks there. This
particular window right here where the peak is.
25 That's that bedroom I'm referring to. And in that
bedroom we found a desk and that's what this photo-
graph shows, and photograph number 46 is the desk, and
when we opened the desk we found in one of the drawers
which we can see as being the left bottom drawer of
30 photograph number 46, what we saw in photograph number
47. There was a large quantity of money and bills and
so forth in paper envelopes in photograph 47.

1 Q. When you located the desk was the drawer in that open
condition or a closed condition?

A. It was in a closed condition and we indeed opened it.

5 In photograph number 48 again we're in that same
bedroom where the desk is and if you look at the
bottom of photograph number 48 or in the lower left-
hand corner you can still see a portion of that desk
that I'm referring to. We opened the drawers here
as well and in photographs 49 and 50 you can see a
10 jewelry box that has some coins in it and that yellow
purse that we see in photograph 50 was full of money
as well. And these drawers were closed. We opened
them as well.

15 Now, in photograph 51 we're going back down to
the store, in the main store area, and this next
series of photographs is going to show us the only
way to get over to Nina's side of the duplex from
inside. There's no cross-over on top. The only way
to cross over is from the bottom.

20 Q. You were in court when Corporal Godin was explaining
this morning the process of getting from Nina Flam's
to Annie's or vice versa, so this is what these are
intending to depict?

25 A. That's correct, yes. And if you look at photograph
number 18 just for a moment, in photograph 18 in the
background we saw some shelving which showed two Tide
boxes, Tide detergent boxes. When you go back to
photograph 51, and you view this one again in a vertical
30 up and down position, you can see those same two Tide
boxes right there on the shelf on the bottom, and to
the left of that shelving we see Hostess potato chip

1 cardboard boxes which we can see much closer in
photograph 52. You have to go by those Hostess
potato chip boxes, turn to your left of the photo-
graph 52 and what do you see - you would see the
5 door we see in photograph 53. This in fact is the
connecting door between Nina's part of the building,
the bottom portion, and the store area which is
Annie's part. And in photograph 54 when you peek
around the door that you see in photograph 53 you
10 see Nina's front door. We can see that.

Q. Which door is that on the plan P-2?

A. Looking at the Tide boxes that were right here, the
Hostess potato chip boxes are all lined up on this
wall, so you look down here and you see that door,
15 and when you peek around that door in 53 you can
see Nina's front door right there.

Q. Can you see that in 54?

A. I'm sorry, photograph 54 is where you see the front
door, yes.

Q. The brown door is Nina's front door?

A. Exactly, yes. Now, in photograph 55 we're back out
front on Water Street and now we're going to go
through Nina's part of the dwelling and, again, we
25 see the 242 upper Water Street, or Water Street, and
the front door area all exposed. Photograph 56,
again view that vertically up and down, we have now
come in through the front door and we're staring at
the stairway that leads upstairs to Nina's residence.
30 We see a clothes closet on the right side of the
photograph. The door that I just referred to in
photograph 54 would be right in this area near the
green carpet area right here. Also, in photograph

1 56 right behind the front door -- you see the door
handle here, right behind that door is where the
living room area starts of Nina's residence, and
that you can see in photograph 57. If you look in
5 the mirror -- In the photograph there's a corner
of a mirror. You can see that same front door in the
mirror reflected back out and that's the same door
that you see in photograph 56 on the side.

Q. And we are looking - we are standing now in which
10 room?

A. Okay, we have come in through this door. That's the
door we saw in photograph 56, and that's the same
door you can see in the mirror. The mirror is right
here and you can see part of the door handle here.

15 Q. It's marked living room?

A. That's correct. Now there's no fire damage here.
In this particular area we have more water damage and
smoke damage but there's no black charcoal burning
as we can see here. This is the living room. In
20 photograph 58 we see the other end of the couch that
we saw in photograph 57. We're going now towards the
dining room area and in photograph 59 we can see that
dining room area and the same couch and the chairs
that we just saw. As we go by the dining room, and
25 in photograph 60, we see the buffet and china area.
As we go by the dining room table we are now in
photograph 61 and we are into a family room or a den
area where we see the black lazy-boy and the television
and the lamps and so forth.

30 Q. Is that on P-2? The den area with the lazy-boy?

1 A. Exactly. We're just coming right through this door here.

Q. There's like double doors there, or at least they look like double doors on the plan.

5 A. They were in fact double doors. French doors I believe.

Photograph 62 - you can see the two double doors in photograph 62 just to the right of the photograph, and the lazy-boy chair plus the couch and so forth.
10 Again, there's no burning here. This is basically all water damage and smoke damage here.

Photograph 63 you see the same television in this family room or den that belongs to Nina - you can see the same television we saw in photograph
15 number 61, and also on photograph 63 we see the entrance or the accessway to the kitchen area of Nina Flam's kitchen.

Photograph 64 shows a close-up of that entrance-way. The same door you see in photograph 63 you can
20 see in photograph 64, plus the kitchen counter behind and another metal chair.

In photograph 65 we are now looking into the kitchen area of Nina Flam's.

25 Q. Can you just go back to 63 and 64. I got the impression some of the jury weren't quite clear about it. 63 you are standing in the den; you're looking through a doorway that's on the left; and you can see a metal curly-backed sort of chair in the kitchen.

30 A. That's correct.

Q. And on 64 you have moved up towards that door and now you can see the metal chair a lot clearer.

1 A. That's correct, and I'm standing right here with the
door open and you can see the counter area and so
forth. That's in 64. Well in 65 I am now standing
5 almost where the word 'kitchen' is written on the
plan here and I'm looking towards the rear entrance.
If you look at photograph 65 you can see the main
back door that leads outside and that's the same back
door that we previously saw in photograph number --

Q. 5.

10 A. Yes, that's correct, photograph number 5, and in
photograph number 5 it's the open door to the extreme
left of the photograph. That's the rear entrance.
Plus we see the brown door in photograph 65 that led
15 us to the family room or to the den area and back out
into the kitchen.

Q. And you can see that chair again too, eh?

A. Yes, that's correct, the same metal chair with the
plant is right there. Also in photograph 65 we have
20 a folding door right here along this side here.
That folding door leads to a small bathroom area which
we will see here in a few minutes in the kitchen area.

Photograph 66 I have now turned around and I am
standing roughly where that metal chair is where the
25 flower pot is and I'm looking on the other side of
Nina Flam's kitchen. We see the stove, the fridge,
the microwave, and so forth, and you see that
entranceway right here on this photograph, in 66.
This is the entranceway that will lead you back to
30 the hallway, to the stairway, to the clothes closet
that we saw when we came in through the front door.

1 Photograph 67, and that's to be viewed vertically
up and down, that shows a small bathroom with the
folding door that I just referred to in the kitchen
area. This is right here. Again, there's no fire
5 damage here. This is strictly water and smoke and
some heat damage. And in photograph 68 we have come
back out to the area we saw when we first entered the
front door of Nina Flam's residence. We have the
stairway, the same clothes closet, and this is the
10 archway I just referred to when we were in the
kitchen.

Q. Where are you standing on the plan when you take that
picture?

A. Photograph number 68?

15 Q. Yes.

A. I would be standing roughly right on the corner here
looking this way.

Q. That's like a corner that projects up above the word
20 'closet'. The word 'closet' is below it; the word
'living room' is up and to its left?

A. That's correct. And I am now looking -- I'm
photographing it so I can relate the same clothes
closet that I saw when I first came in here and you
25 can see the stairway.

In photograph 69 and photograph 70 I am showing
that stairway that leads upstairs into Nina Flam's
bedroom area. You can see the blue garbage can at
the foot of the first flight of stairs. This same
30 blue garbage can we see in photograph number 70.
Photograph number 71 I am now standing where that
blue garbage can was that we saw in photograph number

1 70 and I'm looking up the final flight of stairs
looking into the upstairs area of Nina Flam's
residence, and in fact when I look in photograph 71
I'm seeing the doorway or the archway that leads into
5 Nina's bedroom. And perhaps photograph 72, and that's
to be viewed up and down, you can see the exact same
doorway that goes right into Nina Flam's bedroom.
This is the second flight of stairs.

Q. That's which doorway on P-3?

10 A. P-3, you come up the stairs, be this area right here.
I'm looking in this area here. And photograph 73
shows exactly what it looks like when I was standing
in the doorway of Nina Flam's residence on that
particular morning. We see that there has been a
15 great deal of burning and water damage here as well.
Heat damage. There's a dresser almost right in the
way. And, again, you view this up and down. There's
a dresser that's been moved in the way. And on photo-
graph number 74 I have gone a little bit further in
20 the bedroom and you can see the same dresser that I
saw at the entranceway in photograph 73. Now in
photograph 74, you view this one horizontally, you
can see just behind that dresser there's a bed with
a great deal of debris and so forth on top of the
25 bed, plus you can see night tables on the right of
the photograph and there seems to be another dresser
or something to the right of the photograph - to the
left of the photograph.

30 In photograph number 75 I have gone into Nina's
bedroom now and I'm standing past that dresser we just
saw in photograph 73 and 74 and I'm looking back
towards the entranceway and the stairway that I just

1 came up.

Q. In 75 that's the front of the dresser, the back of
which you see in 74?

A. That's correct. And that's the doorway I just came
5 in and there's the stairway which would be just
leading down here. And, again, you can see a portion
of the headboard of that bed as well in photograph
75. Photograph number 76 I am photographing the same
bed. We're still in Nina's bedroom. You can still
10 see the portion of that dresser we just saw, plus in
photograph 76 there's an end table located just to
the right side of that bed. Also on photograph 76
you get to appreciate the amount of debris and stuff
that has fallen on top of that bed.

15 Photograph number 77 has to be viewed vertically
up and down. This photograph is taken of Nina's bed-
room as well and what this photograph shows is the
same little night table that we saw in photograph 76
but in the vertical format you get a portion of the
20 wall where the window is, the front - the north side
of the building, and you can see also that it's full
of debris, see the portion of the bed plus another
hope chest or cedar chest in that area right here.

25 Now, photograph number 78 is a photograph taken
in Nina's bedroom and this time this photograph
depicts the actual bed. You can see the debris on
top of the bed plus debris all around the bed and at
the foot of the bed, and we also see a green garbage
30 can there at the foot of the bed.

1 Photograph number 79 and photograph number 80
those have to be viewed up and down vertically, and
what they show is the pillow area and the blanket
area of Nina's bed after the first layer of debris
5 and boards and gyproc has been removed, and we can
see there's some blankets in that area plus there's
still a lot of other items on the bed itself. Photo-
graph number 80 I removed one of the pillows and you
can see that the sheets underneath the pillows have
10 not been burnt. They have been protected by the
debris, by the pillow, by the actual stuff that has
fallen down. In this photograph though you can't
see it in photograph number 80, there was some hairs
there which we removed at the time.

15 Photograph number 81 - and this photograph,
again, you view it vertically up and down with the
number 81 on the bottom right-hand corner to view
that, and this, again, is the same Nina's bed, the
same bed area, but the blanket has been moved back
20 a little bit and we can see the same sheets we saw
in photograph number 80, but also if you look right
near the blanket, right near the shadowed area, there
a small cord there. That little twine or cord has a
knot in it and that's what the purpose of this photo-
25 graph is is to show that, and that was removed.

Q. You are talking about which number now?

A. Number 81. In photograph 82, and this one can be
viewed vertically up and down as well, we are now
30 examining the blanket area, again the top of the bed,
removing it layer by layer, very slowly, and on top
of this blanket which we saw in photograph 79, we
find a burnt match right on that blanket.

1 Q. That's practically slap in the middle of that picture.

A. That's correct, yes.

Q. On the white patch between the red and yellow?

A. Yes. And that match was retained as well.

5 Now, photographs 83, 84, 85, 86, these are all
photographs of Nina Flam's bed. In fact they are of
the bed spring and mattress and what we are showing
here is we have removed all the layers. We're right
down to the mattress as you can see in photograph 84.
10 And also by looking at photograph 84 you see this
sort of a burn pattern. There's actually been burning
here. That's not as a result of heat damage or smoke
damage. There's burning. This black charring here.
And photograph 85 shows the same thing, and finally
15 in photograph 86 we have removed - we have lifted the
mattress off the bed spring, off the box spring, and
you can see that the burning had actually got into
the bottom portion of the box spring.

20 Q. Carry on.

A. Photograph number 87, this photograph once again is
taken in Nina Flam's bedroom, and in Nina Flam's
bedroom she has two closets and you can see them in
the photograph. In 87 this would be the first door
to the closet right here.

25 Q. That's the one to the right as you look at the picture

A. Exactly. And there's a second door right here. That
one is more shut. In fact it is shut. The second
door to the two closet areas which we can see in P-2
30 here. This is the closets right here. Now that
dresser right there has now been pulled out and you
can see it in photograph number 87 as being right in
the middle of the floor.

1 Photograph 88 that's the first closet we're
photographing now. That's the first one we saw at
the right of photograph 87, and we can see that inside
that closet there's a fair amount of burning. It's
5 all black and charcoally in there as well. And
photographs 89, 90 and 91, and you view those photo-
graphs up and down this way with the numbers in the
upper left-hand corner, we have gone into that closet
and we have scraped it out. We have dug it out com-
10 pletely. And what we found after we were finished
digging, we found that the burning was deep. There
was what we call a deep burning pattern right through
the two closets there. And 89 and 90 show that as
well as 91. On the other hand, photographs 92 and
15 93 they show the second closet in photograph 87, the
one with the door shut, and when we opened that and
we dug through that one we found that there was no
burning on the floor. The floor in fact had been
protected by falling debris and so forth but it
20 wasn't as badly damaged as the previous closet.

Q. Do I take it you can see that in 93? Has somebody
brushed away the debris in the corner of 93 to show
the floor underneath?

25 A. Yes, we did.

Q. That door when you got there was shut?

A. That's correct.

Q. You have opened it a little bit in 92 and rather
more in 93 to reveal the interior and the points you
were just making?
30

A. That's correct. In 92 you can see there's more heat
damage. Things had melted in there but there's been
no charcoaling or actual burning.

1 Q. If I could just go back a moment. Could you go back
to 73. Correct me if I'm wrong but 73 through to 93
all depict various views of the interior of what you
call Nina's bedroom and then of the closet in Nina's
5 bedroom, correct?

A. That's correct. Items and the room itself.

Q. And specifically of the bed.

A. Yes.

Q. You then proceeded to take it apart so to speak.

10 A. Yes, that's correct.

Q. On plan 3 can you point to the bed and the closets
that those photographs, 73 to 93, are intending to
depict? In fact do depict.

15 A. Yes, it would be this area here known as Nina's bed-
room. This is the same bed and these would be the
two closets we referred to.

Q. On P-3 that's the room that's the top left-hand room
as you look at the sketch?

20 A. That's correct, yes.

THE COURT: I wonder if we shouldn't stop there for lunch.

MR. ALLMAN: That would be a convenient time.

THE COURT: How --

25 MR. ALLMAN: I'll be very brief with this witness. I think
about five or ten more minutes at the most.

THE COURT: Then you are ready to go on with other witnesses

MR. ALLMAN: Subject to whether Mr. Furlotte intends to
cross-examine or not we will be, yes.

30 THE COURT: Yes, but I mean when he gets through if he
continues. I mean you are ready to proceed?

MR. ALLMAN: Yes, we will.

1 THE COURT: Well, I warn you as I did Corporal Godin. You
can't talk about this aspect of your testimony until
you are finished.

(Jury excused.)

5 (NOON RECESS - 1:05 - 2:15 P.M.)

COURT RESUMES: (Accused present. Jury called, all present.)

THE COURT: And you were going to complete the direct
examination of Sergeant Chaisson.

10 MR. ALLMAN: That's correct, My Lord.

DIRECT EXAMINATION CONTINUED:

Q. Sergeant Chaisson in the sketch which is P-3 there's
a drawing - an outline drawing of what appears to be
15 a representation of a human body and a rectangle
underneath. From your observations when you were
there what would that appear to represent?

A. From my observations when I was there, and we're
referring to the photographs numbered 40, 41 and 42
20 and so forth, that would be a representation of the
body that we discovered underneath the debris.

Q. Okay, so you have got the debris as the top layer.

A. That's correct.

Q. A body underneath. Then what's underneath the body?

25 A. There is the remaining portion of a bed or a mattress
and so forth.

Q. I am going to turn from the photographs to a differen
topic now with this witness. I would ask to enter
this item as an exhibit. I understand there is no
30 objection to it.

MR. FURLOTTE: That's correct My Lord.

1 THE COURT: This will be exhibit P-7.

MR. ALLMAN: A plastic pill box containing - I believe the evidence is going to be containing the remains of a match.

5 (Clerk marks container and contents exhibit P-7.)

MR. ALLMAN: I am showing you now a box that the Court Clerk just marked P-7. Can you look at the writing that was already on it, and the contents, and tell us what you know about that.

10 A. Yes. Item number P-7 is a plastic vial which contains a partly burnt match. It's dated the 30th of May, '89 with my initials, and there's the signature of R. Britt on it as well. This is the same partly burnt match that we saw in exhibit item P-6.

15 Q. I believe it's 82.

A. And photograph number 82. It's the one that we recovered from the top of the blanket of Nina Flam's bed.

20 Q. It made its way from the position we see it in 82 - picture 82 into there.

A. Into the plastic vial into the possession of Constabl Britt.

MR. ALLMAN: I would ask to enter this item as an exhibit. Again, I understand there is no objection.

25

MR. FURLOTTE: That's correct My Lord.

THE COURT: This is a --

MR. ALLMAN: This is a portion of knotted black tights - or nylons.

30 THE COURT: P-8 this would be.

(Clerk marks bag and contents exhibit P-8.)

- 1 MR. ALLMAN: I am showing you now an item which the court
clerk marked as P-8. Could you tell me anything you
know about that including any reference to any
markings that are on the container.
- 5 A. Item P-8 in the -- In our search for physical
evidence when we were in the bedroom of Nina Flam we
continued to go through the debris layer by layer
with the bed and then we progressed to the floor
area and exhibit P-6, photograph number 78 is a photo-
10 graph shows the bed of Nina Flam and it also shows the
headboard of the bed of Nina Flam. It was in the area
where the green garbage can is located in that photo-
graph in the floor area, mixed up in the debris area,
that this particular item was retrieved.
- 15 Q. This particular item is what?
- A. It is a black nylon pantyhose type stocking with a
knot in it. It has my initials on it and it is dated
the 30th of May, '89.
- 20 THE COURT: Wouldn't it be well, Mr. Allman, at sometime or
other we have to pass these items around to the jury
so they have a chance to look at them. As far as the
match goes I don't think that's any -- The jury
don't require to see the match. It's a match stick.
- 25 MR. ALLMAN: They can see it fairly well in the photograph.
- THE COURT: You can see it in the picture. But would it not
be a good idea to have the Sergeant Chaisson hold
up - take out and hold --
- MR. ALLMAN: Perhaps I'll ask him to take it out so that
30 they can observe the situation better. Could you
just do as His Lordship suggested, take it out and
show the jury the object that's inside.

- 1 A. I see the knot has been removed since we last secured it.
- Q. When you had it - found it on the floor there what was the condition?
- 5 A. I believe it was knotted. It was in the debris, mixed up with --
- Q. Do you want to just hold it up and show the jury so they can see.
- A. Actually, it's a nylon stocking.
- 10 THE COURT: Do I understand - you say a sock?
- A. Stocking, My Lord, yes.
- MR. ALLMAN: What we have there are two pieces. It was in two pieces when you saw it or two pieces in what condition?
- 15 A. It seems to be two pieces. When the knot was intact - It's quite conceivable that these two were the knotted pieces as such. When we picked it up it was as one unit but now I see it's been -- in the course of investigating it's been untied and so forth.
- 20 Q. I take it what you are brushing away is the charred debris from that.
- A. That's correct, yes.
- Q. I just want to go back to the photographs and clarify a couple of questions that perhaps didn't emerge at the time. First is if we could look at photograph number 5. They show the two rear doors of the Annie Flam and Nina Flam residences?
- 25 A. Yes, that's correct.
- 30 Q. Either from looking at them or from your own recollection or both can you tell us if there is any sort of lighting at either of those entrances? External lighting.

1 A. I can't recall if there is or not. Just viewing the
photograph there doesn't seem to be. If you look at
photograph number 6 you can see near Annie Flam's
there is an exterior light there. But I couldn't
5 recall about Nina's.

Q. Photograph number 6 is the one to the right as you
look at photograph 5.

A. That's correct. That's Annie Flam's rear entrance
there.

10 Q. And the other matter I wanted to ask you about is the
photograph number 44. The panties that you can see
on there, I'm not referring now to their position on
the body but to the condition of the panties. Do
you have any recollection of what state they were
15 in?

A. At the time that we turned the body over we were
actually looking at the back of the body to see if
there would be any damage or any injuries or wounds,
the panties were not touched, and in fact they were
20 in that state that we see them in the photograph.
They were stained and down behind the buttocks.

Q. Do you recall if they were intact or not?

A. I seem to recall that they were at least stuck to
the body. I am not sure if they were in one piece
25 or not.

MR. ALLMAN: Thank you. I should indicate that this
officer is going to be stood aside and recalled but
I spoke to Mr. Furlotte and I understand he wants to
cross-examine at this time on this portion of his
30 evidence.

THE COURT: All right.

1 CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Sergeant Chaisson as I go chronologically through
your testimony here today I believe in the photo-
graphs that you were referring to, and basically
5 number 4 of P-6, the book of 93 photographs, you
mentioned there was a surgical glove was found?

A. That's correct, yes.

Q. And that's right next door to the Flam residence.

A. That's correct, yes.

10 Q. Now, in your experience, Sergeant Chaisson, people
who commit break and enters sometimes they use
surgical gloves to hide their fingerprints?

A. Yes. That is correct.

15 Q. It is a tool of your break and enter artists so to
speak.

A. It can be used, yes.

Q. And I understand there was also a hair found inside
that surgical glove?

20 A. Possibly. I would have to check my notes, I can't
recall.

Q. Was that surgical glove checked for fingerprints on
the inside of the glove?

A. Yes, it was.

25 Q. Were any fingerprints found?

A. Nothing at all.

Q. Again, photographs 6 and 7 there is a picture of a
ball-type cap found.

A. Yes.

30 Q. Were there any hairs found inside that cap?

A. The actual hat was removed and placed in a bag so that
no contamination or nothing would fall out of it.

- 1 Now what happened to the hat once it reached our lab
in Sackville for the searching and retrieval of hair
I don't know. They might have found hair, I can't
comment.
- 5 Q. Photograph number 9 I believe you mentioned as you
look back in between there's a small window that you
mentioned was broken.
- A. Yes, that's correct.
- Q. How much of that window was broken?
- 10 A. It was just a circular hole in the window pane.
- Q. In the window pane.
- A. Yes.
- Q. So there was no way anybody could have entered
through that window?
- 15 A. No. In fact when we examined the interior of that
porch we found the stone which we can only assume
broke the window. There was a rock inside.
- Q. I notice a ladder up against the Flam residence also.
Would that be put there by firemen or do you have any
20 knowledge of that?
- A. It's quite possible. When we arrived there the
firemen had moved items inside the house and there
was hoses in and out of the house, and ladders as
well. That could very well be part of the Fire
25 Department's equipment.
- Q. Now, I notice as you went through the book of photo-
graphs in photographs numbered 14, 16 and 17 there
was -- 22 and 23, there was quite a bit of money
found in the Flam residence.
- 30 A. Yes, that's correct.

- 1 Q. Was it ever totaled up?
- A. I believe Constable Britt plus another member who was responsible for the gathering and cataloging of exhibits I believe he was responsible for the counting
- 5 of that. I myself didn't count it.
- Q. Do you know offhand how much was - roughly?
- A. No, I don't. I'm not aware.
- MR. ALLMAN: We will be calling Constable Britt.
- MR. FURLOTTE: I notice in many of the pictures in Annie
- 10 Flam's bedroom the whole roof had been burnt out and fell in on top of her bed and you uncovered her body layer by layer. How heavy a debris was taken off the body of Annie Flam?
- A. You are referring to how many inches or how --
- 15 Q. How many inches or feet or how much weight would have been up there?
- A. Actually, to give you an honest answer, it wasn't that much because as we removed first of all the roofing tiles the exposed bone and leg that we saw
- 20 in the photographs was even more visible, and as we just very gently brushed back the debris by hand and small brushes and so forth it wasn't that hard to move. It wasn't to the point where we had to use shovels or anything like that.
- 25 Q. I notice in photograph 35 there are a couple of shovels.
- A. Yes, that's correct.
- Q. But you are saying those shovels were not used.
- 30 A. They were not used, no. They were used in other parts of the room. For example there's a closet area in that particular room that was completely burnt.

1 The shovels were used in that area, but not to un-
cover the body.

Q. Now, in photograph 36 I take it that debris that the
picture is taken of that's over Annie Flam's bed?

5 A. In photograph 36 actually you see the sunshine
coming down. You see bars of light there. That
would be actually the area and yes, that's correct,
that's over the bed. I'm sorry, I had the wrong
photograph. It's this one here, yes, where the sun
10 is shining in through.

Q. Right. So there seems to be quite a fall-in in that
area from the roof?

A. Yes.

15 Q. Now, a great deal of that fall-in is - I would say
most of it in photograph 36 appears to be over Annie
Flam's head - the head portion.

A. Well in fact if you look at photograph 37 it's the
same photograph as 36. One is taken with a different
20 flash angle and in photograph 37 we get rid of the
rays of sunlight coming in. You can see the pro-
truding knee again, the bone. You can see most of
that burnt beam and so forth is on the floor. It's
actually missed the bed. It's below the knee. It's
25 on the bottom part of the photograph. Where the
remainder part of the body is above the knee portion
that we see sticking out. There is, I agree, some
items of debris on the body but the majority of it
is below. Below the knee.

30 Q. In photograph 37 would the head be more to the top
of the picture or to the bottom?

A. That's correct, yes. The head would be more to the
top of the picture. Perhaps in photograph 38 you

- 1 can see barely as we start to uncover the body where
the head is. In relationship to the knee it's
straight up.
- Q. I see in photograph 38 also that the left-hand side--
- 5 A. The right-hand --
- Q. On the left-hand side of the picture right about
here --
- A. Yes, that's correct.
- Q. There seems to be a pretty heavy piece of timber
10 laying there.
- A. Where is that, I'm sorry, I can't --
- Q. This one here.
- A. Yes. On the corner here?
- Q. On the corner. Would that have been removed from
15 the body? From on top of the body.
- A. I can't recall moving anything that heavy but it was
in the area.
- Q. It was in the area. Now, you mentioned the body was
20 only clad in underpants. Could Mrs. Flam have been
wearing a dress or nightgown that was burned off?
- A. No, because when we turned the body over, as seen in
photograph I believe it's number 44, if indeed she
had been wearing a nightdress or nightgown you can
25 see the flesh in photograph number 44 is not even
burnt because it has been protected by the mattress
and the debris and so forth. Portions of her gown,
had she been wearing one, would still be on that part
of the body, on the back side of the body. And as
30 you can see it's just flesh. There's no clothing or
fibers or nothing.

- 1 Q. I see also in photograph 43 there seems to be some
kind of material just off to her side - the right
side.
- A. Yes, that's correct.
- 5 Q. And another piece of material on top of her left
leg.
- A. Exactly, yes.
- Q. Would you know what that material is?
- A. That appeared to be part of a sheet or a piece of
10 blanket.
- Q. Sheet or blanket.
- A. Yes, it did. Just by the fiber in the weave and so
forth.
- Q. Could it have been part of a nightgown or a dress?
- 15 A. No, I don't believe it could have been.
- Q. Is there any reason why you don't - why don't you
believe it couldn't have been a nightgown?
- A. Well it certainly wasn't on the body. If you are
referring to it as being crumpled up in the corner
20 yes I suppose it could have been, but it wasn't over
the body or on the body.
- Q. I notice also in photograph 43 that Mrs. Flam's
panties seemed to be -- The photograph is her
lying on her back and her panties seem to be pulled
25 up.
- THE COURT: No, she's lying on her stomach.
- MR. FURLOTTE: She's lying on her back in 43.
- THE COURT: Oh, 43, I'm sorry.
- 30 MR. FURLOTTE: Photograph 43 she's lying on her back.
- A. Yes, I see that Mr. Furlotte.

- 1 Q. Her panties appear to be in a normal pulled-up fashion.
- A. Well if you look at photograph 44 --
- Q. No, I'm asking about 43.
- 5 A. Well to answer that question I have to refer to 44.
- Q. Okay, go ahead then.
- A. Because in photograph 44 where she's flipped over, if you follow the line - the panty line here that runs on the side here it's still in the same area. It's
- 10 just on the hip bone. So when you flip that hip over you can see it still appears to be in the upright position even though they are down in the back area here.
- Q. That's in 44.
- 15 A. Yes, that's correct.
- Q. Also, in 41 - photograph 41 the panties seem to be in a normal pulled-up position.
- A. They haven't been disturbed.
- Q. Haven't been disturbed. So in all the pictures, 41,
- 20 42 and 43, the panties seem to be in a normal pulled-up position.
- A. Certainly from a frontal view, yes.
- Q. Now, you mentioned also in your testimony that the
- 25 panties on Mrs. Flam were stained and stuck to her body, correct?
- A. They appeared that way so we didn't disturb them.
- Q. Now, the staining - before Mrs. Flam's body was
- 30 rolled over, had that staining and dried blood stuck somehow to the mattress? Could the panties have gotten in pulled-down position whenever you rolled her over or picked the body up to put the body on the stomach?

1 A. When we rolled the body from that on her back to her
stomach it did reveal the mattress below her and it
wasn't - she didn't stick to any part of the mattress
and the mattress in fact was protected. It wasn't
5 burnt. And there was red staining on that particular
part of the sheet. There was a sheet there as well.
And the mattress. And both stained areas were removed
and retained.

Q. That stained area would appear to be blood?

10 A. It appeared to be blood, yes.

Q. Photograph 44 there's still a lot of black and char-
coal along the back of the body even though it had
originally been lying on the back.

A. Yes, that's correct.

15 Q. So that black staining and charcoal that would have,
I assume, went on her body from the event of rolling
it over?

A. That's correct, yes.

20 Q. I notice in photograph 74 appears to the left of the
bed - and this is in Nina's bedroom --

A. Yes, that's correct.

Q. There is a jewelry box and a purse sitting on top of
the jewelry box.

25 A. In photograph 74?

Q. 74. Would that be a jewelry box sitting on top of
a little night table and a purse on top of it?

A. Are you referring to on top of the dresser here?

30 Q. On top of the dresser right here, right, up at the
upper left-hand corner.

A. I don't know. I can't make it out. It looks like a
little white box, I agree with you, but I'm not sure
what it is. In photograph 76 --

- 1 Q. Looks like a little white leather purse.
A. We see it better in photograph 76.
Q. On top of the jewelry box.
A. I don't see a jewelry box there.
- 5 Q. You don't see a jewelry box in 74. Okay. Let's try
number 76. Maybe it's not a jewelry box; maybe it's
the night table.
A. Oh, I'm sorry Mr. Furlotte, you're referring to this
drawer item right here?
- 10 Q. Yes.
A. That is a night table.
Q. That is a night table.
A. Yes, I'm sorry, that's a night table.
- 15 Q. It's not a matching night table but it is a night
table.
A. It is a night table. It's a small piece of furniture
yes. You can see the legs of it in 74 as well, yes.
- Q. Is that a purse on top of it?
A. I don't know. It's a little white something or
20 other, I'm not sure what it is.
- Q. Now, you did observe jewelry boxes in any of the
bedrooms?
A. Yes, in the bedroom adjacent to Annie Flam's bedroom
25 we did find one jewelry box in that room there on top
of a dresser.
- Q. And was the jewelry all intact in the box?
A. It seemed to be. There was some coins and so forth
in the box, yes. It was hard for us to tell if any-
30 thing was taken.
- Q. There was jewelry and money inside the jewelry box?
A. There was costume jewelry and coins in there, yes.

- 1 Q. Now, you mentioned in photograph 80 that - I believe it was photograph 80 that was somewhere around the pillow area in Nina Flam's bedroom.
- A. Yes, that's correct.
- 5 Q. And you mentioned that there was hairs found.
- A. That's correct. The photographs don't show it but that's in the area we found some hairs.
- Q. And do you know if those hairs were sent to the lab for analysis?
- 10 A. They certainly would have been, yes.
- Q. And what would be the purpose of sending those hairs to the lab for analysis?
- A. As a form of physical evidence in the hope that perhaps we could match them up with something.
- 15 Q. Match them up and try to eliminate them from being Nina Flam's?
- A. Yes, that's correct.
- Q. And if they weren't Nina Flam's then it might be safe to assume they were the intruder's?
- 20 A. Someone else in any case.
- Q. I understand there was a facial hair found in the -- The facial hair, was that found in Nina's bedroom or was that found in Annie's bedroom?
- A. I can't recall. I would have to check my notes.
- 25 THE COURT: Was there a reference to that on direct examination? I thought you would be able to help Mr. Furlotte with where it was found.
- MR. ALLMAN: I don't believe there was.
- 30 MR. FURLOTTE: I don't recall right offhand Sergeant which bedroom the facial hair was found in. Would it take you long to find it in your notes? Or maybe the Crown - do you recall?

1 MR. ALLMAN: I don't recall but what we can do - I don't
want to delay matters now - we will check it out and
recall the officer or advise counsel and put it in
as a fact, whatever he wishes. I just wouldn't want
5 to hold proceedings up, that's all.

THE COURT: Is that agreeable? Would it take you long to
find it?

A. I'm not sure My Lord. It might. Certainly the
exhibit man would be in more of a position to mention
10 it.

MR. ALLMAN: I spoke to the exhibit man, My Lord, and he
would have to check his notes too so I think that what
I suggested is the best way to do it.

15 THE COURT: Well, the crown has undertaken Mr. Furlotte to
find that out and provide you with the answer and
make Sergeant Chaisson available.

MR. ALLMAN: We will be calling Constable Britt and that's
one of the things that we can ask him.

20 MR. FURLOTTE: Who was assisting you in gathering this
type of evidence?

A. There was Corporal Godin, the previous witness. He
worked with me through the whole examination for
physical evidence, as well as Constable Britt who was
our exhibit man. If we recovered a certain item which
25 we felt should be retained it was turned over to him
and he would secure it in the appropriate container,
initial it and date it and so forth. So to answer
your question, three of us were working on it.

30 Q. Okay. So you don't recall whether you picked up the
facial hair yourself or whether it was one of the
other officers.

1 A. That's correct. It would be indicated on Constable
Britt's form as well as on the container or bag. He
would make a notation of who he received it from,
where it was found, like I said, and the date and time
5 and so forth.

Q. Okay, and I understand also from the evidence is that
there was a hair found stuck in Annie Flam's necklace
that she had.

A. Quite possible.

10 Q. Would you have gathered that one or would that be one
of the other officers?

A. No, that would have been at the postmortem or at the
autopsy they would have retrieved that one.

15 Q. Now Annie Flam did when you recovered her body she
still had a gold chain around her neck?

A. Yes, that's correct.

Q. It wasn't stolen.

A. It was there.

20 Q. Obviously it was still there. Now, the burnt match
you found, was that checked for fingerprints?

A. Something to that effect is not a very good receiver
of fingerprints and we didn't bother to check it.

25 Q. Now, in photograph 83 I see in the top right-hand
corner which, I don't know, it appears to me as if
it's a pair of gloves.

A. Yes.

Q. Can you identify what that is?

30 A. That's -- As we examine a scene of this nature
that's been contaminated by fire and smoke and so
forth we wear special overalls, boots, hats and
gloves, and this happens to be one of those pairs of
gloves that were inadvertently put in the photograph.

- 1 Q. So those gloves would have been used by a police officer rather than the intruder?
- A. That's correct, yes. They belong to us. In fact in photograph 86 you can see someone wearing those gloves
- 5 in the corner.
- Q. That's correct. Photograph 83, also, there is what appears to be a little bottle, maybe, with a blue cap on the floor at the base of the bed.
- A. Yes.
- 10 Q. Is that what it is or would that be something else?
- A. That could be a spool of thread. It could be anything. There was so much debris and stuff all over the floor.
- Q. So you don't know what that is?
- A. I don't know for sure what it is, no. In fact Mr.
- 15 Furlotte, again, in photograph 86 you can see that it's the cover off a small plastic bottle. It's all intact. On the bottom just below the bed.
- Q. Yes. Now, exhibit P-8, the black nylon that was found among the debris that was found in Nina's
- 20 bedroom?
- A. Yes, that's correct.
- Q. And it was just a foot nylon with a knot tied in it?
- A. Yes, that's correct.
- 25 Q. Which you don't know whether it has any significance or not?
- A. It was just peculiar that we were finding things with knots in them, like that piece of twine that we saw in the photograph and those particular nylons, so we retained them.
- 30 Q. Do you ever see your wife -- or are you married?
- A. Yes, I am.

- 1 Q. Have you ever seen your wife tie knots in her nylons
or pantyhose before she puts them away or --
- A. No.
- 5 Q. Now Sergeant I saw from your notes I got with the
police brief that the body of Annie Flam was badly
burnt and you state physically damaged. Aside from
being burnt what do you mean by physically damaged?
- A. The knee for example. The knee that was exposed was
right to the bone, tendon damage and so forth. That
10 remark would have referred to the - perhaps the outer
appearance that the body had suffered as a result of
the heat and fire and so forth.
- Q. And I understand you found some brown and white hairs
in Nina's room, and you found, I believe, 10 finger-
15 prints and 12 palm prints at Nina's except for two
in the store area.
- A. That's correct, yes.
- Q. Were those fingerprints and palm prints checked out
against Mr. Legere?
- 20 A. Yes, they were.
- Q. And did any of those fingerprints or palm prints
match Mr. Legere?
- A. No, they did not.
- 25 Q. Were those palm prints and fingerprints checked out
with any of the other - I have here 24 suspects?
- A. Yes, that's correct.
- Q. Were they checked out with all the other suspects?
- A. Yes, they were, yes.
- 30 Q. Did any of them match?
- A. No.

- 1 Q. Were those prints checked out with Nina's prints?
- A. I had originally requested elimination prints be
received from Nina Flam but as a result of her
injuries from the fire her hands were damaged to the
5 point where I could not obtain a set of fingerprints
from her, or palm prints.
- Q. Both hands?
- A. Both hands. So they were never compared.
- Q. Do you recall how many other suspects there were in
10 the Flam case besides Mr. Legere?
- A. Not offhand, no, I can't recall. I know we compared
a variety of individuals but to give you a specific
number I can't.
- Q. Could there be 30?
- 15 A. Possibly, yes. I would have to check my notes to be
more specific.
- Q. Sergeant Chaisson in your investigation when you were
viewing the scene were you able to notice any point
of entry by the culprit as to how the culprit may
20 have broken into the home?
- A. As part of our examination we checked all the windows
as well as all the doors and we found that all the
locks were functioning and all the windows were
25 properly in place except for that small broken window
in the back.
- Q. Which nobody could have gotten through.
- A. No. And there was a small -- The window upstairs
in the back bedroom of Nina's side was open. We
30 noticed that in the video this morning. It was open
a crack. Not in Nina's bedroom but in the back part
of the house.

- 1 Q. In the back part.
A. Yes.
Q. There was no ladder up against the house or anything?
A. Not at that time.
5 Q. For anybody to climb into that window.
A. Not through that space, no.
Q. And the only way to enter that would have been with
a ladder?
A. Or climbing on the roof, yes.
10 Q. Which window was that on your --
A. That would be on Nina's side on the south side of the
building in this area here where the bunk beds were.
It was a small opening of the window, just a space.
MR. FURLOTTE: I have no further questions.
15 THE COURT: Redirect examination.
MR. ALLMAN: Just a very brief reexamination My Lord.

REDIRECT EXAMINATION BY MR. ALLMAN:

- 20 Q. Sergeant Chaisson you mentioned about the surgical
glove to me and then to Mr. Furlotte. Do you know,
and if you don't just say so, whether there are any
medical offices or doctors' offices in the vicinity
of the Flam residence?
A. I don't know.
25 Q. In picture 74 there was some questions about a
jewelry box and I wasn't quite clear what he was
saying. Is there a jewelry box that you can see in
74 or 76?
A. In photograph 74 Mr. Furlotte was referring to the
30 end table we see at the side of the bed here. You
can see the legs. And in fact there's another photo-
graph which clearly shows it is a table. Photograph
78 you can actually see it is a complete small table.

- 1 Q. But is there a jewelry box or something on there?
- A. I don't recall seeing one but I -- I don't think so.
- Q. You mentioned about jewelry and it was put to you
that there were items of jewelry, I think it was
5 costume jewelry, found around, and you said it's hard
to know what was taken. Could you explain what you
meant by that?
- A. In photograph number - exhibit P-6, photograph number
49 and 48, there is, for example, there's a small
10 green type cash box that's open. There's coinage
and so forth inside. If there was anything missing
from that box, for example, rings and so forth, there
would be no way for us to know and that's what I meant
by that remark.
- 15 Q. If you don't know what was in there before you don't
know what's --
- A. That's correct. And when we were going through
Nina's bedroom there was all kinds of items on the
floor, chains and so forth. There could have been
20 something missing. There would be no way for us to
tell.
- Q. You were asked about other suspects and I think you
mentioned there may have been 30 or something like
that. How many years have you been with the
25 identification department?
- A. I have been in the R.C.M.P. for 23 years, 15 of those
have been with the Identification Section.
- Q. Again, if you could answer this, and if you can't
30 I understand it, from your experience when the police
commence investigating a murder what approach do they
take in terms of potential suspects?

1 A. They, of course, the investigators will submit names
to us of offenders they feel might be responsible for
this offence and if we have recovered any kind of
fingerprints or palm prints we can retrieve the
5 fingerprints of these particular names that they
submitted and we try to do a comparison.

Q. And what happens to the suspects, starting off with
30 or 50 or whatever number, as the investigation
progresses?

10 A. As far as we're concerned we'll, for example, retrieve
the fingerprints of suspect number "A", compare them
with the fingerprints we found at the scene, make a
notation of it and those prints go back into our
filing system.

15 Q. What I am getting at is this: suppose you got
suspect "A", and then you compare his prints and the
prints found at the scene and they don't match, so
what happens to "A"?

A. He's eliminated.

20 Q. And what happens then to B, to C, to D, to E, and all
the other suspects?

A. Well they're all compared in turn and if they are not
identified they're eliminated, as far as the finger-
prints go. I mean they may be concerned with some
25 other aspect of investigation.

Q. Yes. And on those other aspects, not just the
fingerprints but any other aspect, what are the
police looking for in relation to each suspect?

30 A. Any kind of physical evidence. Footwear, finger-
prints, hair, anything that can be of assistance.

MR. ALLMAN: I have no other questions.

1 THE COURT: Sergeant I have one question that the jury
might wish me to ask you and that is you referred to
a hole in the window. What photograph was that? Was
that 10?

5 A. Yes, My Lord, that was in the alley shot - photograph
number 9 in fact. We can see a portion -- When
you look down the alley you can see a portion of the
back porch of Annie Flam's residence and there's a
small window. The photograph doesn't really show it
10 that clear but in the pane of glass there's a hole in
it.

THE COURT: That's this little --

A. That's correct My Lord.

THE COURT: That little window.

15 A. That's correct, yes. And when we examined the inside
of that porch we did find a stone on the floor of the
porch.

THE COURT: But there was no door there?

20 A. No, there is no door.

THE COURT: That was a small window.

A. That's correct My Lord.

THE COURT: It wasn't a hole that you could reach through
and open a lock.

25 A. No.

THE COURT: And open the door up.

A. No.

THE COURT: And where did that window lead to?

A. That leads to the back --

30 THE COURT: Do you have it on your --

A. Yes, My Lord, it's right down here. There's the
window there. That would be the back porch area

1 which opposite from the window, exactly opposite,
 there's a rear entrance that leads to Annie Flam's
 residence.

THE COURT: Any questions arising out of mine?

5 MR. FURLOTTE: No, My Lord.

THE COURT: Thank you very much Sergeant. You are stood
 aside and you can't, of course, discuss this aspect
 of the evidence with anyone, including counsel for
 the crown, until all your evidence is complete.

10 A. Yes, My Lord.

MR. ALLMAN: I will recall Corporal Godin. He had been
 going to come later but we had had discussions and
 we need to call him now.

15 CORPORAL RON GODIN, recalled, having been previously
 sworn, continued his testimony as follows:

DIRECT EXAMINATION BY MR. ALLMAN CONTINUED:

Q. Corporal Godin you are still under oath; you under-
 stand that.

20 A. Yes.

Q. Did you have occasion to take some photographs re-
 lating to a particular portion of the body of Annie
 Flam?

A. Yes.

25 Q. Tell us about those photographs, when and where?

 I guess there is no objection to these being entered
 as an exhibit. I should perhaps just mention to the
 jury that these don't look very pleasant either.

(Clerk marks photographs exhibit P-9.)

30 Q. Corporal I am showing you now what's been marked as
 exhibit P-9. Tell me what you can, please, about those
 photographs - two photographs.

1 A. Yes, My Lord. On the 1st day of June, 1989 I had the
opportunity to meet with Mrs. Moira MacLaughlin who
is a forensic anthropologist of the University of
New Brunswick in Fredericton, New Brunswick. We had
5 the opportunity at this time to examine the body of
the deceased Annie Flam and as a result, and under
Mrs. MacLaughlin's directions, I took a few photo-
graphs of the victim's jaw.

10 Q. So these are the two photographs of the jaw of Annie
Flam taken on that date?

A. That is correct.

15 Q. That's all I want to ask about the photographs for
the moment. I want to just go back in time as it
relates to that aspect of matters. Did you have
occasion to attend the autopsy of Annie Flam?

A. Yes, I did.

20 Q. Did you from your own knowledge of autopsies and that
kind of thing form any assessment as to the condition
of her jaw?

A. Well, when we attend a forensic autopsy the usual
procedure is to have the body x-rayed prior to
examining the body and upon x-raying the body it was
discovered that the victim had a fractured jaw.

25 Q. Given that you -- When was the autopsy?

A. The day prior, the 31st of May, 1989 in Saint John.

Q. So you became aware at the autopsy that there was
reason to believe Annie Flam's jaw was fractured?

A. That's correct.

30 Q. Did you do anything as a result of that?

1 A. As a result of that the information was passed on to
the investigators later on that day. Through dis-
cussions it was agreed that a person with the
expertise, an anthropologist, should examine the
5 fracture more closely and make a conclusion as to the
origin of the fracture as to how it occurred.

Q. Did you make any observations at the scene where
Annie Flam's body had been found that may have any
relevance to the question of the broken jaw?

10 A. Yes. Upon discussing the fracture with Mrs.
MacLaughlin at Castle's Funeral Home in Saint John
her conclusions were at the time that the fracture
was caused due to external force.

THE COURT: You are calling her, are you?

15 MR. ALLMAN: I am calling her and I'm not putting this in
for the truth of the observation, merely that this
was passed on to this officer who rightly or wrongly
therefore believed that to be the case. I will be
calling her.

20 THE COURT: All right.

MR. ALLMAN: Based on that information you believed that
the jaw was fractured by external force?

A. Yes.

Q. So what did you do?

25 A. From examining the scene on the 29th and the 30th day
of May, 1989, I could not see at the time any objects
or anything that could have caused the fracture. So
after Mrs. MacLaughlin's conclusion I returned to the
scene in Chatham, New Brunswick and reexamined the
30 scene. Went through the debris to see if there would
be anything in the debris that could have caused this

- 1 fracture and I did not find anything amongst the debris in my opinion that could have caused the fracture through external force as mentioned by Mrs. MacLaughlin.
- 5 Q. In relation to where the body had been found and the debris on top of the body basically what did that debris consist of?
- A. Basically it was all charred material and a few layers of asphalt shingles.
- 10 Q. Mr. Furlotte I think was asking your predecessor, Sergeant Chaisson, to look at some photographs and I think he pointed out what he took to be a beam in photograph -- just a second, I don't want to misquote it. When you were looking at the material to consider
- 15 the possibility of whether any of the material might have caused the fracture to the jaw I understand you to say you thought not. On 38 - picture 38 over to the left there's a beam or what may be a beam about halfway down that side. Would that from your
- 20 observation have had the opportunity to do anything to Mrs. Flam?
- A. It's nowhere near where the head was. The head is --
- Q. Just show the jury where the head is.
- 25 A. We can see part of the knee that was protruding out of the debris. Part of her arm and her head is in this area here so you are looking at a couple of feet there, My Lord. The head would be here and the beam that's being referred to was along the side
- 30 here so you're looking at a couple of feet. I noted also that the construction was made out of two by four lumber and the piece of two by four that you see on the floor which are charred are quite light

1 because there is no more weight to it once it's all
charred, so they are fairly light. I couldn't find
anything around the debris that could have been heavy
enough to have caused the fracture.

5 MR. ALLMAN: I have no other questions of this witness and
so far as we're concerned this concludes the evidence
relating to the Flam matter. He will be recalled for
the other matters so if Mr. Furlotte wishes to cross-
examine him on the Flam aspect of this case this
10 would be an appropriate time to do so.

THE COURT: What is your wish Mr. Furlotte?

MR. FURLOTTE: I wish to cross-examine now My Lord.

THE COURT: You're going right back to the earlier evidence?

MR. FURLOTTE: Yes, I am.

15 THE COURT: Not just on this aspect.

MR. FURLOTTE: Not just on this.

THE COURT: I mean you would have to go back to the
original. All right, cross-examination then.

20 CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Now, I will start Corporal Godin with your last
testimony rather than the first time you were on
because maybe I won't even cross-examine you on the
first aspect.

25 You mentioned that you were at the autopsy?

A. That is correct.

Q. Which was performed by who?

A. Doctor MacKay.

Q. Doctor MacKay. And from the x-ray of Mrs. Flam's
30 jaw you realized it was broken?

A. That is correct.

- 1 Q. And I believe you testified that you wanted to get an expert opinion as to whether or not what could have caused that jaw to break.
- A. That is correct.
- 5 Q. And you got the opinion of Mrs. MacLaughlin.
- A. She was contacted by the investigators, yes.
- Q. And was it Doctor MacKay's original opinion that it was caused - could have been caused by heat fracture?
- A. That is correct.
- 10 Q. So you weren't satisfied with Doctor MacKay's opinion; you wanted to see if he may be wrong, is that correct?
- A. That is correct, yes.
- Q. Now, exhibit P-9, photographs 4 and 5, you were
15 present when Mrs. MacLaughlin -- Mrs. MacLaughlin was present I assume whenever you took these pictures?
- A. That is correct.
- Q. And all the flesh around that bone that was stripped away by Mrs. MacLaughlin?
- 20 A. Most of the flesh was stripped away by Doctor MacKay during the post --
- Q. By Doctor MacKay.
- A. Yes. But under the directions of Mrs. MacLaughlin
25 she wanted the area cleaned off more than what it was and she did clean it off in order for me to take these photographs, but most of the bones were pretty well like the way you see it but she just cleaned them off a bit with a scalpel.
- 30 Q. She cleaned them off. And I see the bottom picture the bones are separated quite a bit but that was manually separated by yourself and Mrs. MacLaughlin?

- 1 A. What we see here at the bottom is exactly what you see on top, it's just that it's a closer representation.
- Q. A closer representation.
- 5 A. Yes. The crack looks a lot greater in the bottom photograph.
- Q. And could have Doctor MacKay separated the bone as is seen here in these pictures 4 and 5?
- A. Oh yes, you could move it back and forth. It was completely fractured.
- 10 Q. Did you observe Doctor MacKay when he was stripping it down to the bone?
- A. Yes.
- Q. You were there present?
- 15 A. Yes.
- Q. And whenever it was originally stripped I suppose the skin down to the bone it was more of just a crack down the jaw bone and then Doctor MacKay separated it as we see there now?
- 20 A. That's correct, yes.
- Q. So it's not necessarily the blow to the jaw, if it was caused by a blow, which caused this separation or fracture to this extent? It would have been caused to this extent by Doctor MacKay?
- 25 A. I don't understand your question.
- Q. Well I believe a jaw fracture usually - I believe you think a jaw fracture as being a crack, the bone cracked, rather than broken right in two.
- A. Yes.
- 30 Q. Do you know whether or not this jaw bone was simply cracked or broken right in two as this is?

1 A. If I remember, looking at the x-rays with Doctor
MacKay there was a - well, it was offset. You could
definitely see there was a break. The two bones were
close together but they were offset so there was
5 definitely a break that could be seen on the x-ray.
From what I can recall the bones were fairly close
together. There was not a big gap between the two
bones but there was - they were out of line showing
that there was a definite fracture.

10 Q. Do you know whether or not when the body of Mrs. Flam
was being carried out -- were you present when it was
being carried out?

A. No, I wasn't.

15 Q. Now, you mentioned you went back. You were concerned
that maybe some of the debris had fell down and broke
her jaw so you went back to check the scene to see
if there was anything in the area.

A. Well, initially, when she did mention that the jaw
got broken through external force I remembered vividly
20 in my mind the scene. I had been there for two days
and I couldn't recall anything there that could have
caused the fracture so I just wanted to convince my-
self by going back again and looking at the debris
and especially looking up on top, looking at the
25 trusses, to see if there was anything there that
could have fallen on the body, and from what I could
see there was nothing in my opinion there that could
have caused the external damage. Because if you look
30 at the damages caused to the roof above Annie's bed-
room it looks extensive from the inside but if you
look at the outside the trusses are still intact but

- 1 the tongue and groove boards that are across the
trusses is what actually burnt and fell in with the
asphalt shingles, but the trusses were still intact
at the top of the peak.
- 5 Q. What was the finishing of the inside of the bedroom?
Was it gyproc or paneling?
- A. From going through the debris, from what I can recall,
it appeared to be I would say Sheetrock.
- Q. Sheetrock.
- 10 A. Yes.
- Q. Gyproc sheets.
- A. Yes.
- Q. Now, if a whole sheet of Sheetrock fell in, Sheetrock
is considerably heavy, is it not?
- 15 A. Yes it is, yes, in its entirety, yes.
- Q. Just about takes maybe two men to handle one sheet
of Sheetrock?
- A. Because it's very hard to handle.
- Q. Hard to handle and heavy.
- 20 A. Heavy? It appears heavy because it's hard to handle.
- Q. But it would weigh at least 50 pounds, one sheet of
Sheetrock?
- A. Probably a little bit more, yes.
- 25 Q. Now, you mentioned - I pointed out photograph 38
which appears to be a large piece of timber off to
one side and would have been a couple of feet from
the head area.
- A. You're still referring to this one right here?
- 30 Q. Yes, this one here that has the head right about
there.
- A. The head is right about there, yes, a couple of feet.

- 1 Q. Now, when you were removing the debris from Mrs. Flam's body you didn't realize you would have to go back a couple of days later to see if there was anything that possibly you uncovered her with that may
- 5 have broken some bones, did you?
- A. Can you rephrase that again?
- Q. At the time that you were removing the debris from the body of Mrs. Flam at that particular time you didn't realize that a couple of days later you would
- 10 have to go back and see if there was any debris that possibly fell on her which broke bones?
- A. No, I did not.
- Q. That didn't cross your mind?
- A. No.
- 15 Q. So is there any particular reason why you would remember whether or not you removed that piece of timber from the head area?
- These pictures were taken as the scene was found.
- Q. As the scene was found, right.
- 20 A. By Sergeant Chaisson. This scene had not been disturbed up to that point.
- Q. Well, come on now Sergeant. Photographs 35 and 36 show a considerable amount - and 37 show a considerable amount on top of the body and in photograph
- 25 38 the body is at least partially uncovered.
- A. Okay, I see what you're getting at, yes.
- Q. So it's possible - and I'm talking about possibilities here, I'm not talking about absolute possibilities or negligible aspects, it's possible that you could have
- 30 removed that piece of timber off the head area of Mrs. Flam.

1 A. What I am getting at, I had looked at all these big
pieces on the 1st, coming back to the scene, and you
would be amazed to see that these pieces of timber
are extremely light. They are almost featherweight
5 because all that is is just - if you can call it
charcoal put together. It was very, very light at
that point.

Q. They may not have been extremely light at the time
that they fell in, and once they fell in then they
10 continued to burn and then they are extremely light.
That's a distinct possibility.

A. For them to fall they have to burn.

Q. Well at least partially burn.

A. In my opinion it would be a fair amount before it
15 would actually fall through.

Q. Well, that piece didn't seem to burn all that much
before it fell through.

A. Pardon?

Q. That piece we're viewing in photograph 38 off to the
20 left that seems to be a good size chunk. It didn't
burn all the way through.

THE COURT: Which exact piece is it you are referring to?
I'm not just clear.

25 MR. FURLOTTE: On the left-hand side of photograph 38 right
at the base of the wall.

THE COURT: Horizontally?

MR. FURLOTTE: This piece right here.

A. See what we are dealing with here is a piece of two
30 by four and all we are seeing there is about a foot
of it so from what I'm seeing there, what we are
looking at as far as the piece of wood we're talking
about, would be extremely light.

- 1 Q. That piece of two by four would have --
- A. If you know what I'm getting at, what we are seeing there is very, very light. We're looking at a two by four and we are only seeing about a foot of it.
- 5 Q. But all the other studding seems to be in place on that wall so that two by four must have come from the roof.
- A. I would presume that it has come from the roof but we can't tell for sure.
- 10 Q. And it didn't finish burning?
- A. No, it did not. It looks more intact than what's on the wall here.
- Q. The only thing I'm saying, Sergeant, is that some other piece of two by four could have fell down, struck Mrs. Flam's jaw and then after it broke the jaw it could have continued on burning out into ashes. That's a possibility, is it not?
- 15 A. The thing is, what we have here, if a piece of wood would have fallen on the body first and having the asphalt shingles fall on top of it, that piece of wood would have not burnt any further than when it fell down. It would have been extinguished by the--
- 20 Q. You are not an expert in fires, are you?
- A. An expert in fires?
- 25 Q. Yes.
- MR. ALLMAN: With all due respect Mr. Furlotte has been asking a great many opinion questions of this witness and I haven't objected. He can't settle for the good ones and object to the bad ones.
- 30 MR. FURLOTTE: So what you are saying Corporal Godin, you are just using common sense to support your argument.

1 A. Basically I can't - I couldn't see anything at the
time and after to satisfy myself that an object could
have caused the jaw to fracture through external
force. I couldn't find anything there to satisfy
5 myself.

Q. What about the firemen when they were using their
hoses? Fire hoses have a lot of pressure?

A. That is correct.

Q. And those fire hoses could have moved some of the
10 debris that had fallen away from the body area?

A. Very possible, yes..

Q. I notice in your notes that you mention something
about unknown hair samples found, white and black in
color, on the top of Nina's bed.

15 A. That's correct, yes.

Q. Had you seized these hairs yourself, or one hair, or
how many were there?

A. I did not seize them personally. Constable Britt
took possession of them.

20 Q. He took possession of them?

A. Yes, correct.

Q. Did you seize any hairs from any particular area in
the residence?

25 A. No, I did not.

MR. FURLOTTE: I have no further questions.

THE COURT: Reexamination?

MR. ALLMAN: I have no reexamination My Lord. This witness
can be stood aside until his next attendance in
30 connection with other matters.

THE COURT: Thank you Corporal. What is your program for
the rest of the afternoon Mr. Allman?

1 MR. ALLMAN: We have ample witnesses I believe to keep us
going, My Lord, but perhaps if we took a 10 or 15
minute adjournment now and went until 4:30 we could
have achieved a reasonable day. But we can go longer
5 than that if you wish.

THE COURT: Well I don't want to go that much longer than
that. We will stop about half past four. Well, if
we could have a fifteen minute recess and try to keep
it to 15 minutes and then we'll come back and go at
10 it until 4:30.

(RECESS - 3:30 - 3:45 P.M.)

COURT RESUMES: (Accused present. Jury called, all present)

THE COURT: Now, another witness Mr. Allman.

15 MR. ALLMAN: The Crown would call Maureen English.

MAUREEN ENGLISH, called as a witness, having been
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

20 Q. What is your name and occupation, please?
A. My name is Maureen English. I'm the Night Super-
visor at the Hotel Dieu Hospital in Chatham.
Q. And Night Supervisor of what?
A. Nursing.
25 Q. Nursing. Are you yourself a qualified nurse?
A. Yes, I am.
Q. How long have you been in that occupation?
A. I have been a Registered Nurse for 25 years.
Q. On the 29th of May, 1989 were you working in that
30 capacity at the Hotel Dieu Hospital in Chatham?
A. Yes. Yes, I was.

- 1 Q. And did you have occasion at that time and place to
meet a lady identified to you as Nina Flam?
- A. Yes, I did.
- Q. Approximately what time of day would it have been when
5 Nina Flam was admitted to the hospital?
- A. About 12 minutes after 4 A.M.
- Q. Can you tell us, please, what occurred in relation to
Nina Flam, your observations of her physically and
treatment and so on?
- 10 A. Well, when Nina was brought in by ambulance she was
conscious and she had a lot of burns on her body.
She was covered with soot. She had a cast on her
right arm which had been applied a couple of weeks
ago because she had broke her wrist. She responded
15 to questions that we asked her but volunteered no
conversation. Like just direct answers to the
questions relating -- The questions that we asked
her were relating to discomfort that she may be
suffering.
- 20 Q. And you were asking those questions as to her con-
dition with a view to trying to relieve any pain or
suffering she was enduring?
- A. Right. Yes.
- 25 Q. What was her principal problem from your observation
that she was suffering from?
- A. The burns.
- Q. What about her breathing? How was that?
- A. Her breathing was okay. We did give her supplementary
30 oxygen but she was complaining of no chest discomfort
or any problems with her breathing but having been
exposed to smoke we supplemented her with oxygen.

- 1 Q. Initially when she entered into the hospital what part of the hospital is all this happening in?
- A. In the Emergency Department.
- Q. And who was present when she first arrived?
- 5 A. The night float was there, Mary King, and I came by a few minutes later with the burn supplies.
- Q. So could you just say that again. You arrived --
- A. I arrived a few minutes after Nina had gotten there with the burn supplies, the supplies from the Central
- 10 Supply Department with all the sterile sheets and whatnot to look after --
- Q. You had been notified that a burn patient was coming in and you had gotten the necessary types of equipment for that?
- 15 A. Right.
- Q. Did any other nurses come on the scene and get involved?
- A. Yes, one other nurse. I called Mrs. Palmer down to give us a hand because I anticipated another patient
- 20 to be arriving from the same incident.
- Q. And what about physicians - doctors? Did any doctors get involved in Nina's --
- A. Yes. Doctor Losier was on call that evening and we
- 25 called him and he came in - or that morning I should say.
- Q. What treatment or relief did you yourself administer to Nina Flam?
- A. We initially assessed her burns. We gave her -
- 30 started IVs. We wrapped most of her burns in sterile saline with - sheets soaked in sterile saline to alleviate further pain and further burning as the

1 tissue sometimes burns even though the fire has been
extinguished from it, and we just generally went on
with our routine nursing care with IVs. And in the
porcess of maintaining good fluid and electrolyte
5 balance we usually insert a Foley catheter and what-
not and it was during this --

Q. I'm going to stop you there. A catheter, what is a
catheter?

A. It's an indwelling catheter to drain the urine from
10 the body.

Q. Where is that inserted?

A. Inserted into the urethra.

Q. Did anything happen at that time?

A. Well, we were - I was having a conversation with her
15 and I was explaining the procedure to her when she--

Q. So she would know that you were going to insert an
object --

A. Going to do something.

Q. -- in that location?

A. That's right. Yes.

Q. Now, there's a legal rule that you're not allowed to
get into conversation that you had with Nina Flam but
did you in fact have conversation with her at this
25 period of time?

A. Yes, I did.

Q. And as a result of the conversation or subsequent to
the conversation what happened in regard to that?

A. Well, I couldn't proceed with the procedure that I
30 was going to do. I went out and I notified Doctor
Losier of my conversation and I immediately called
the Chatham Town Police.

- 1 Q. And what were you asking the Chatham Town Police to supply?
- A. I was asking them to supply a rape kit.
- Q. What else did you proceed to do in relation to Nina Flam?
- 5 A. At the time?
- Q. Yes.
- A. Well, there was just conversation and reassurance and things like that given to her and more comfort.
- 10 We started to wash a bit of soot off her face and different things like that.
- Q. Basically then, if I get the picture, you just administered to her comfort.
- A. Just nursing -- yes, right.
- 15 Q. Did you remain and continue looking after Nina Flam or did you have to leave for some reason?
- A. Well, as supervisor of the hospital I am responsible for everything that happens in the hospital and I have to answer a lot of different calls and different
- 20 questions and queries and I let Mrs. King and Mrs. Palmer, two capable nurses, go in with the patient and the doctor and the town constable that arrived with the rape kit and they proceeded.
- Q. Did you yourself have anything to do with - or indeed
- 25 observe anything being done in regard to this rape kit that you seen?
- A. No.
- Q. From a point of view of shock or ability to comprehend and converse with you how was Nina then?
- 30 A. She was very quiet but she answered the questions that were asked to her appropriately but with short answers. Just point-blank answers type of thing.

- 1 Q. When you talked with her I gather you now know that
her name was Nina or Nena?
- A. Yes.
- 5 Q. How did you get that information? Did you know her
or did she volunteer her name or --
- A. How did I know who she was?
- Q. Yes.
- A. Well, I don't know her personally but as a prominent
10 lady of the town everybody knows who she is so when
I knew she was coming up I knew that she was Nina and
not Annie.

MR. ALLMAN: Thank you.

THE COURT: Mr. Furlotte.

15 CROSS-EXAMINATION BY MR. FURLOTTE:

- Q. Mrs. English you say that after talking to Nina Flam
that you talked to Doctor Losier and then called
Chatham Town Police for a rape test?
- A. Yes.
- 20 Q. I assume Nina Flam told you she was raped.
- A. Yes, she did.
- Q. And did she mention what name her rapist called her?
- A. Yes, she did. She said that he called her Nena.
- Q. The rapist called her Nena?
- 25 A. Right.
- Q. Rather than Nina?
- A. Right.
- Q. And did she describe the rapist to you?
- A. The only thing that she said was that he was slight
30 and he wore a ski mask.
- Q. Slight and wore a ski mask. And I take it you
weren't present when the rape test kit was
administered?

- 1 A. No, I wasn't.
- Q. Have you ever been present when rape test kits are administered before?
- A. Yes, I have been.
- 5 Q. I understand there's instructions in a rape test kit.
- A. Yes, there are, and they usually follow them.
- Q. Do you usually follow instructions that are in the kit, usually?
- A. Yes.
- 10 Q. Anytime that you vary from it?
- A. Sometimes with children.
- Q. Sometimes with children you vary from it?
- A. Yes.
- 15 Q. Do you recall who was present when the rape test kit was taken?
- A. Yes. Doctor Losier was there and Constable Carnahan, Mary King and Marjo Palmer.
- MR. FURLOTTE: No further questions.
- 20 THE COURT: Reexamination?
- REDIRECT EXAMINATION BY MR. ALLMAN:
- Q. When you said that she told you that the rapist called her Nena and not Nina did you have any other conversation on that topic with her?
- 25 A. I said I -- I wasn't aware that people called her Nena and I asked her do some people call you Nena and she said yes, some people do, but that was the extent of - that was the extent of what she said, was just yes some people do.
- 30 Q. She told you that she had been raped you said. Did she give you any other details of any of the other activities of the person who allegedly raped her? What else he had done.

1 A. She said I was raped and I asked her when and she
said tonight by the intruder that set the fire.

MR. ALLMAN: I have no other questions of this witness, My
Lord, and she's not stood aside, she's completed.

5 THE COURT: Thank you Mrs. English. You are free to go.

MR. ALLMAN: Colleen Moran.

COLLEEN MORAN, called as a witness, having been duly
sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. ALLMAN:

Q. What's your name, please?

A. My name is Colleen Moran.

Q. And what's your occupation?

A. I'm a Laboratory Technologist at the Hotel Dieu
15 Hospital in Chatham.

Q. Could you keep your voice up? It's hard to hear over
the noises. You are a Laboratory Technician at the --

A. I'm a Laboratory Technologist at the Hotel Dieu
Hospital in Chatham.

20 Q. That's the same hospital the previous witness works
at?

A. Yes.

Q. What are your qualifications?

A. To become a Lab Technologist you mean? You study a
25 two year program and then you write exams - national
exams - and then you become qualified in five
different disciplines.

Q. What do those disciplines include specifically as it
relates to the matter that we are going to be con-
30 cerned with?

A. Okay. Small cellular detail identification.

- 1 Q. Would that include identifying sperm and semen samples?
- A. Yes.
- 5 Q. So that's part of the training that you pass exams in?
- A. Yes.
- Q. And I take it that you therefore must have passed an exam to become a technologist?
- A. Yes, I did, as well as further training on the job.
- 10 Q. When did you pass the exam to become a technologist?
- A. In 1982.
- Q. And have you been working as a technologist since 1982?
- A. Yes, I have.
- 15 Q. In addition to the initial training and the exam you passed do you continue to take ongoing training?
- A. Yes, we do.
- Q. And on-the-job training?
- A. Yes, as required as new tests are developed in our area.
- 20 Q. Are there different levels of technologists?
- A. Yes, there is.
- Q. Which are you?
- A. I'm a Lab Tech II.
- 25 Q. You proceeded from I up to II?
- A. II.
- Q. When did you become a Lab Tech II?
- A. About a year after I was a Lab Tech I.
- 30 Q. At present what particular functions do you perform as a lab technologist at the Hotel?

- 1 A. Okay. At the Hotel Dieu we have what is called a
general laboratory which we do several types of
testing, cell counting, cetyl chemistry, urine
analysis and semen analysis.
- 5 Q. And in respect to semen analysis what do you do so
far as that is concerned?
- A. We do fertility testing as well as postvasectomy
testing.
- Q. Postvasectomy testing to do what?
- 10 A. To try to find if there's even any sperm left.
- MR. ALLMAN: My Lord subject to any objection I would ask
that this lady be declared an expert entitled to give
opinion evidence on the topic of semen testing for
looking for sperm.
- 15 THE COURT: What particular types of questions are you
going to ask? I mean in a general way.
- MR. ALLMAN: I am going to be asking her about a sample
that she looked at and what, if anything, she found
in relation to that sample.
- 20 THE COURT: Any questions you want to put?
- MR. FURLOTTE: I have no questions.
- THE COURT: Well, I declare the witness an expert in the
field of what - semen testing.
- 25 MR. ALLMAN: Semen testing.
- THE COURT: Semen testing. You're a semen tester.
- MR. ALLMAN: Is that the right way of expressing it?
- A. No.
- Q. Well you tell me what the right way of expressing it
is.
- 30 A. I would just say microscopic analysis.
- MR. ALLMAN: Microscopic analysis of --
- A. Of body fluids.

1 Q. Including semen?

A. Yes.

THE COURT: That's it then, that's an expert.

MR. ALLMAN: My Lord I would ask that she be declared an
5 expert.

THE COURT: I might just explain to the jury, in a more
serious sense, the reason for this. Mr. Allman has
just made an application that this witness be declared
an expert in this particular field and the reason he
10 has to do that is that normally a witness can only
testify when on the witness stand about something he
or she has seen or observed or heard with their own -
his or her own eyes or ears. A witness isn't
normally allowed to give an opinion on something.
15 You can't ask any witness, you know, what is your
opinion about this or opinion about that. You can't
give opinion evidence. There is an exception to
that and that is where a person has a particular
expertise in some given field and it's material to a
20 case then the witness can, if qualified as an expert,
can be asked questions pertaining to that particular
field, and that's what obviously Mr. Allman intends
to do here. So the witness has been declared an
expert. In order to be declared an expert a prima
25 facie case has to be made out that a witness is in
fact an expert and is qualified to give an opinion.
This witness's evidence is no different from that of
any other witness because it will be up to you to
30 assess whether she knows what she's talking about,
whether she may be telling falsehoods or may be
falsifying her evidence, or giving opinions that

1 aren't justified. You have to make that assessment.
The mere fact that the witness is declared an expert
doesn't mean that everything a witness says is the
gospel truth. Quite frequently -- The same
5 applies in civil cases, and quite frequently in both
civil cases and in criminal cases you'll have two
experts testifying, both qualified as experts in a
particular field, testifying and giving completely
opposite opinions. For instance two pathologists or
10 two medical doctors might testify as to the cause of
death in a particular instance, and one might give
one opinion as to a cause of death and the other give
another opinion. In that case it is up to the jury
in the long run to decide which of those experts are
15 you willing to - which evidence are you going to
accept.

So I just say that by way of explanation. This
is not to suggest you don't know what you are talking
about.

20 MR. ALLMAN: Just before we get into the details about this
case you mentioned that one of the things you do is
postvasectomy analysis. What's the -- I think you
already indicated but I'm not sure, what's the purpose
of that? What are you looking for?

25 A. Postvasectomy the man has to submit a semen sample
to check and see if any sperm are still passing
through. So we have to take the sample and make
several slides and scan the slides totally to find
30 even one sperm like because that will show that he's
not --

Q. Not yet totally infertile.

A. Right, infertile.

- 1 Q. I want to come to the particular occasion we are talking about now, May the 29th, 1989. Did you receive something that morning from a Constable Derek Carnahan of Chatham P.D.?
- 5 A. Yes, I did.
- Q. About what time of day?
- A. I arrived at the hospital about 6:30 A.M. and Constable Carnahan was there as well as Maureen English, Doctor Losier and two other nurses, Mary
- 10 King and Marjo Palmer.
- Q. And what was it that you received from Constable Carnahan?
- A. He had the rape kit on the desk and it was already sealed and Doctor Losier asked that I would look at
- 15 the slides so he opened the kit and gave me a cardboard slide holder which contained two slides and asked me if I would look at them and --
- Q. And what was the purpose of looking at that object that Carnahan had provided to you?
- 20 A. Doctor Losier wanted to know if any sperm were present.
- Q. What did you proceed to do after you received that from Constable Carnahan?
- 25 A. I asked if he would accompany me to the lab and he followed me down. We went and opened the lab. It's not yet opened that time of day, and we went into the end room where the microscope is where we do our fine microscopic examinations and I asked him if these
- 30 slides were going to go on to Sackville for testing and he said yes.

- 1 Q. When you were told that there would have to be further testing done in Sackville what -- Excuse me, what by the way is Sackville now, or what did you understand it to be?
- 5 A. Sackville is - we just call Sackville is where our Crime Lab is.
- Q. Crime Lab.
- A. Yes.
- Q. So you were aware that these were going to be used
10 for further testing in Sackville Forensic - or Crime Lab?
- A. Um-hum.
- Q. Did that have any impact upon the test or procedures that you were going to follow in the hospital that
15 morning?
- A. Yes. Usually our regular procedure is to add saline, which is like a fine salt solution, to the slide and observe it and it makes the small matter
20 easier to identify. Since these slides were going somewhere else to be tested I could not alter the state of them in any way .
- Q. So what does the fact that you can't add or put them in saline mean?
- 25 A. Well, the slide is just -- The doctor takes the specimen, smears it on and it's dry, and it's very hard to see anything in that state on just a plain microscope that we have. You have to either stain the matter or add saline to make it more - make the
30 material more refractive.

- 1 Q. Given the choice between those two methods, the saline method which I gather is the one you would normally use in say a vasectomized male --
- A. Yes.
- 5 Q. And the method that you found yourself having to use, the dry slide method, which is the right one to use?
- A. Oh, the wet. The wet method is definitely better.
- Q. You were forced to use the dry for the reason you
10 just explained?
- A. Yes, I had to.
- Q. As a result of that then what was it that you were able to do with the dry --
- A. I just placed the slide on the microscope, scanned
15 it. I could see mucus-like material, I thought one skin cell. Those things like they look that way to me but I cannot say yes they are unless I can look at it in the wet way - the wet method.
- Q. Using the dry slide method, the method that you did
20 use, would you expect in fact to be able to test accurately for the presence of sperm and semen?
- A. No.
- Q. If a vasectomized male wants to know if he was safe
25 or not would you ever use the dry slide method?
- A. No, definitely not.
- Q. When you used this method, the dry slide method on this occasion, were you able to say whether there were or were not sperm present?
- 30 A. I could say that I didn't see any sperm present, that I could not find it, but it's not a definitive result. Like it's not conclusive.

- 1 Q. Not conclusive as to what?
- A. As to whether the sperm is there or not.
- Q. Had you had the opportunity which you were denied because the stuff had to go on to the lab, to use
- 5 the saline or the wet method, do you think that that would have enabled you or not to see sperm if in fact there was sperm to be seen?
- A. Yes, I could find it, yes.
- Q. After you had -- Your test, as I understand it,
- 10 then is simply to stick the slide under --
- A. The light.
- Q. -- a microscope and look and see what you can see.
- A. Um-hmm.
- Q. After you had concluded your observations did you
- 15 have conversation with Constable Derek Carnahan?
- A. I told him, I said I do not see any sperm there but I said it's very hard to tell with this slide and I said, you know, I cannot tell you that it's there or not. Like I don't find it but I can't tell you that.
- 20 Q. And it was your understanding that these matters were to proceed to Sackville for further testing?
- A. Yes. Definitely. Yes.
- MR. ALLMAN: I have no further questions.
- 25 THE COURT: Cross-examination Mr. Furlotte.

CROSS-EXAMINATION BY MR. FURLOTTE:

- Q. Am I to understand from your testimony Miss Moran that the dry test that you used will not detect sperm?
- 30 A. No, not -- not with what is available at our lab, no.

- 1 Q. Now, if the test you were going to use could not
detect sperm why bother conducting it?
- A. Well, just to look and see what matter I would find
like. Just to tell the doctor what I could find,
5 that's all.
- Q. And you are saying you told Constable Carnahan what
you are telling the court today that you couldn't
see anything but that didn't mean there wasn't any-
thing there?
- 10 A. I told him that I could not find the sperm with the
slide that way. I said I could not see them there
but that wasn't a conclusive report.
- Q. Are you sure you didn't tell him that there was no
sperm?
- 15 A. No, I didn't. I told him I could not find it.
- Q. Again, if you can't detect sperm with the dry test
why bother performing the test?
- A. When we are called in for a rape case we - I have
20 asked my supervisor about this before - we do just
what the doctor asks and let him decide whether he
is satisfied with like our testing as far as what
we are able to do there. And he asked me to look
at the slides so I did that, but I knew I wouldn't --
25 When I asked Derek if it was going to go on further
and he said yes those actual slides would go then I
couldn't touch them so I just scanned them to see
what was there.
- Q. When were you advised that you were going to be
30 called as a witness in this trial?
- A. When was I advised?
- Q. Yes.
- A. In April of this year.

1 Q. April of this year.

A. Yes.

Q. So as far as you knew beforehand the crown was not
going to bother calling you as a witness, is that
5 right?

A. No.

Q. As far as you knew you were being called as a witness
because the defence questioned your --

MR. ALLMAN: Well, I --

10 THE COURT: She has no idea why she is being called as a
witness Mr. Furlotte.

MR. ALLMAN: And I also don't think it matters.

THE COURT: No, it doesn't matter.

MR. FURLOTTE: Again, who was the doctor on duty that
15 morning?

A. Doctor Gerard Losier.

Q. Doctor Losier.

A. Yes.

Q. And do you recall whether or not you told him the
20 test was negative?

A. Yes. On my way out of the hospital that morning I
went back to Outpatients and told Doctor Losier. I
said no, I couldn't find anything.

25 Q. And did you check both slides?

A. Yes, I did.

Q. How many slides were there in all?

A. Just two were given to me.

MR. FURLOTTE: I have no further questions.

30 THE COURT: Any reexamination?

MR. ALLMAN: No, I have no reexamination and I'm finished
with this witness.

THE COURT: Thank you very much Ms. Moran. That's all for
you, thank you. It's 20 past 4, who do you have

- 1 present? Is Doctor Losier present?
- MR. ALLMAN: No, he isn't here today. Mr. Sleeth has the next witness. He can advise you of what it is he proposes to do now.
- 5 MR. SLEETH: My Lord the next witness we propose to call would be Constable Derek Carnahan. I would expect he would be about 5 - 10 minutes on direct.
- THE COURT: Okay, that will fit in nicely probably.
- MR. SLEETH: Thank you My Lord. Call Constable Derek
- 10 Carnahan.
- CONSTABLE DEREK CARNAHAN, called as a witness, having been duly sworn, testified as follows:
- DIRECT EXAMINATION BY MR. SLEETH:
- 15 Q. My Lord, jurors, would you please state your full name and your occupation for the jurors, witness?
- A. My full name is Derek Calvin Carnahan; my occupation is a police officer with the Town of Chatham, County of Northumberland, Province of New Brunswick.
- 20 Q. For how long have you been employed in that capacity, please, sir?
- A. I have been employed in the capacity as a police officer for the Town of Chatham since September, 1988.
- 25 Q. Were you so employed on the 29th of May, 1989?
- A. Yes, I was.
- MR. SLEETH: My Lord I have here an item which I would like to have marked for identification at this time. I will refer to it as simply a kit box at this moment.
- 30 THE COURT: Tin box.
- MR. SLEETH: Tin kit box My Lord.
- THE COURT: Is this being --

1 MR. SLEETH: Identification only at this point My Lord.

THE COURT: Oh, I see. What figure should we use here
Mr. Pugh? Why don't we just start "A".

(Clerk marks kit box "A" for Identification.)

5 MR. SLEETH: I should make that a little clearer possibly,
My Lord, box and contents. There are items within
it.

Constable could you tell me do you know a person
by the name of Gerard Losier, a doctor by that name?

10 A. Yes, I do.

Q. Do you know how far Doctor Losier's office would be
from the home of the Flams that we have been dis-
cussing here to this day?

A. There would be one building separating it.

15 Q. To the front of them, to the rear of them?

A. To the west side.

Q. Constable I am now showing you a tin kit box which
has been marked as "A" for Identification and I would
ask if you would take a look at that, please, and at
20 its contents. Thank you Constable. Now, are you
able to identify to the jurors what is "A" and the
contents?

A. Item number "A" and the contents is a tin orange-
25 colored lunch box we use as the rape kit for the
Town of Chatham, and the contents inside are an
instruction sheet that's followed by the doctors and
nurses in taking the samples, and also inside are
some tubes with swabs inside them.

30 Q. Now, the particular - you are referring to contents -
a sheet of instructions, are you familiar with that?
Are you able to identify that particular sheet of

- 1 instructions and if so how or why?
- A. Yes. This particular sheet of instructions I can
identify it as the one that was within the sealed
box when I arrived at the Hotel Dieu Hospital in
5 Chatham, County of Northumberland, Province of New
Brunswick at 5:15 A.M. on the 29th day of May, 1989.
- Q. Now, how is it specifically you are able to identify
that particular sheet? What is there on it that
makes you able to do that?
- 10 A. There's my markings, my writing, and myself - my name
down as the investigator.
- Q. Okay. Then you just finished saying you brought that
to the Hotel Dieu Hospital in Chatham, New Brunswick
around what time?
- 15 A. 5:15 A.M.
- Q. And in what condition was that box at the time that
you brought it up to that hospital?
- A. It was sealed.
- Q. And once you had arrived - brought it to that
20 hospital in its sealed condition who did you meet
upon arriving at the hospital, please?
- A. I met Doctor Losier and nurses Maureen English and
Mary King and Marjo Palmer.
- Q. Maureen English was in fact the witness who testified
25 just before you a moment ago?
- A. Yes.
- Q. Arriving there with that sealed kit and meeting the
medical staff what did you then do with the sealed
30 kit at that moment?
- A. I handed the sealed kit over to them.

1 Q. And what was then done in your presence that you saw?

A. In my presence they unsealed the kit and checked the contents to make sure everything was there.

5 Q. They checked it against what, please?

A. The sheet of instructions that's within the box.

Q. And then once they had done that what then took place?

A. Doctor Losier proceeded to take the samples, assisted
10 by nurses Palmer and King who also assisted me in marking the samples.

MR. SLEETH: I have three more bags, My Lord, containing what appear to be tubes which I would ask to be marked for identification at this time in sequence,
15 B, C, D.

THE COURT: B, C, D, each a tube containing something.

MR. SLEETH: Actually a plastic envelope, My Lord, containing a tube and contents.
(Clerk marks plastic bags and contents "B", "C" and "D" for Identification.)
20

MR. SLEETH: Constable I am now placing before you "B", "C" and "D" marked for identification, plastic bags containing what appear to be tubes. Would you start perhaps with "B" and examine "B", please, for us.
25 Do you recognize item "B" for Identification, sir?

A. Yes, I do.

Q. How can you tell us that you recognize it?

A. I recognize item "B" for identification by my writing P.S. 1 and my initials D.C.C. on a piece of white
30 tape on the tube.

- 1 Q. Okay, that's marking that's on the tube inside that bag.
- A. Inside this bag, yes.
- Q. And what does P.S. signify to you marked on that,
- 5 please, sir?
- A. I understood it signifies the pelvic swab.
- Q. From what person, please?
- A. From that of Nina Flam.
- Q. Taken by whom?
- 10 A. Doctor Losier assisted by nursing staff.
- Q. And once that had been taken from this person what was done with it? The swab.
- A. It was -- The swab was placed into a cylinder tube and sealed and handed to me with a piece of white
- 15 hospital tape which I marked what it was and initialed it and placed it into the rape kit box.
- Q. Okay. Just put that down for a moment, please, and if you would now pick up "C" for identification. Take your time with it Constable. All right, now are you
- 20 able to recognize and tell these jurors why, if at all, you can recognize "C" for identification present in your hands?
- A. I can recognize "C" as another swab inside of a tube, a piece of hospital tape with the letters P.S. and
- 25 number 2 and my initials that are on a piece of tape that's on the tube inside the plastic bag.
- Q. And P.S. would indicate what to us again?
- A. Pelvic swab.
- Q. From whom, please?
- 30 A. Nina Flam.

- 1 Q. By whom, please?
- A. Doctor Losier and nursing staff.
- Q. And those two swabs were removed from what kit, please, before use?
- 5 A. The rape kit.
- Q. And the last one, "D", please. You have examined it. Now, Constable, if you are able to recognize it and if so would you please relate to the jurors how it is you are able to recognize that tube?
- 10 A. Item number "D" is also a tube with a swab inside of it and on the tube is a piece of hospital tape with the letters P.S., the number 3, and my initials D.C.C. That's on the hospital tape that's on the tube within the plastic bag.
- 15 Q. Put on by you at that location at the hospital with the others?
- A. Yes.
- Q. All removed from the kit bag earlier?
- A. Yes.
- 20 Q. Now, I want you to just take one more moment if you would, please, looking at "B", "C" and "D", the tubes, and the contents they appear to be sticks of some sort?
- A. Yes.
- 25 Q. And the tips of them?
- A. The sticks are without - they are missing the tips of them.
- Q. In what condition were the sticks then in those tubes when they were turned over to you at the time you marked them when they were sealed?
- 30 A. They were whole.

- 1 Q. And by whole you mean the tips were?
- A. The tips were on the swab.
- Q. Could you tell me, please, Constable, in back of you
5 everyone has seen this large map of the Chatham -
Newcastle area, you can see it for yourself, and
various witnesses have earlier identified on the
upper right-hand side near that red dot a bridge, and
there's another one, the Morrissy Bridge. The
Centennial Bridge, I believe, and the Morrissy
10 Bridge.
- A. Yes, the bridge by the red pin is the Centennial
Bridge.
- Q. You have worked in that area for some considerable
15 period of time. Approximately what distance are
we talking about from the bridge - between the two
bridges if you were driving?
- A. The distance, an approximate, but it would be six to
eight kilometers.
- Q. Okay. Constable, what did you do with the items
20 "A", that's the kit bag and contents, along with
"B", "C" and "D" once you had received them from the
medical staff?
- A. I sealed the contents. I sealed the box itself.
- Q. And "B", "C" and "D"?
- 25 A. It was within the box.
- Q. And what did you do with them?
- A. After sealing the box I placed the date and the time
and my initials on the tape that was provided by the
30 hospital staff.
- Q. And then once you had completed all these markings
so that you could if need be identify them later on,
what did you then do with those objects all of which

- 1 you have identified now before us?
- A. I turned them over to Constable Britt of the
Newcastle Detachment of the R.C.M.P.
- Q. Constable Britt is present in this courtroom today?
- 5 A. Yes.
- Q. Which row?
- A. He would be in the second row.
- MR. SLEETH: Thank you.
- THE COURT: Cross-examination Mr. Furlotte.

10

CROSS-EXAMINATION BY MR. FURLOTTE:

- Q. Could I have the instructions of the rape kit,
please? It will just take a minute, My Lord. I
would like to read this. (Pause.)
- 15 Constable Carnahan were you present also when
the doctor used the rape kit on Nina Flam?
- A. I was within the room, yes.
- Q. And as he used the swabs he would then hand it to
you and who would put it in the plastic bag?
- 20 A. The nurses. The nursing staff put it inside the
tube, between them and the doctor, and I just made
sure the tube was sealed and placed the tape with
the markings on it.
- Q. And there was three pelvic swabs that were used by
25 the doctor?
- A. Yes.
- Q. And handed back to you?
- A. Yes.
- Q. And Mrs. Moran, what did she check at the lab? Was
30 it one of those - or a couple of those swabs or
something like this?

- 1 A. No. She checked the card with two slides on it.
Q. Two slides on it.
A. Yes.
Q. She didn't touch these three swabs at all, the pelvic
5 swabs that you mentioned?
A. No, sir.
Q. Items marked "B", "C" and "D"?
A. No, sir.
Q. Those remained intact until you gave them to who?
10 A. Constable Britt.
Q. Now, I notice in the instruction sheet that --
MR. SLEETH: Objection, My Lord, at this stage. My Lord
I would object to any cross-examination - detailed
15 cross-examination on the contents of that particular
item where I was very careful since it's only marked
for identification to only have it identified. If
my learned friend wants to go into details of those
instructions I have no worries about that but the
20 item "A" should be put, and contents, including that
sheet, should go into evidence. If he's willing to
accept it in evidence now at this time that would be
fine. Save us a lot of time.
THE COURT: Isn't Mr. Sleeth right Mr. Furlotte?
25 MR. FURLOTTE: I have the right to cross-examine on any-
thing that's marked for identification.
THE COURT: That's in evidence as an exhibit, don't you?
What type of question are you going to ask? What
are you going to examine him on?
30 MR. FURLOTTE: I was going to examine him on the rape test
kit says that there's five swabs in here, three of
them for pelvic swabs, one anal swab and one oral
swab. I want to ask this witness how many swabs he

- 1 received back from the doctor.
- THE COURT: All right, go ahead.
- MR. FURLOTTE: How many swabs did you receive back from
Doctor Losier? Did you receive an anal swab?
- 5 A. I believe so, yes.
- Q. Did you receive an oral swab?
- A. I also believe I did, yes.
- Q. Would you have it in your notes?
- A. Not in my notes but I believe they're inside the kit.
- 10 Q. Would you open the kit, please?
- A. Inside the kit is oral swab 1, and also anal swab 1.
- Q. Is there a sixth swab in there or what's in the other
plastic vial?
- A. That's a saline solution or something. I'm not sure
15 what that is.
- Q. Is there a swab inside that?
- A. I believe it's a swab, yes.
- Q. Were those swabs used by Doctor Losier? Do you have
any way of telling?
- 20 A. Well, I can tell the anal swab 1 was used as I have
marked it as so, especially with my initials. And
the oral swab 1 was used by Doctor Losier as I have
marked it as so with my initials.
- 25 Q. And the third one?
- A. And the third one I see where I marked my initials on
it and I believe I marked 'saline' or something on it
but it's not original because I - it's not the same
tape, that sticker that was on that.
- 30 Q. That one didn't come with the rape test kit?
- A. I can't say if it did or not.

1 Q. I see it states the kit contains the following items:
5 swabs.

A. Yes.

Q. And there are actually 6 in there, is that right?

5 A. Well the 5 swabs are all identical in length and size
and same color caps, and the swabs also inside are
identical except the three that are here are missing
their tips and the two that are in here have the tips
on.

10 Q. But we seem to have an odd-ball swab.

MR. SLEETH: My Lord I'm going to object to the constant
reference to a swab. The witness, I believe, has
referred to a tube marked 'saline' of some sort, that
all.

15 MR. FURLOTTE: I believe there's a swab in it, is there not
Constable?

A. I could be corrected but it looks like a swab to me.

Q. Me see. Yes, it definitely looks like a swab
Constable.

20 THE COURT: Well now, you're not giving evidence.

MR. FURLOTTE: Do you know how that swab got in there?

THE COURT: You say it looks to you, witness, like a swab?

A. Yes.

25 MR. FURLOTTE: Do you know how that swab got in that rape
test kit?

A. No, I don't.

Q. Constable Carnahan you had a conversation with Nina
Flam that morning?

30 A. Yes, I did.

Q. And did she mention anything to you about her
assailant?

A. Yes, she did.

1 Q. Did she describe him?

A. Yes, she did.

Q. And what was her description?

A. Description was slight build. His speech had no
5 accent to it. He wore a stocking mask with the face
cut out. He wasn't an older man she said, and he
carried a large sharp knife.

THE COURT: I'm sorry, he was an older man or wasn't?

A. Wasn't, My Lord.

10 THE COURT: He wasn't.

MR. FURLOTTE: Did she also state that he didn't have any
gloves on?

A. And also, yes, no gloves on.

Q. Are you sure she said he didn't have any accent or
15 that he did have an accent?

A. I'm positive she said he had no accent to his speech.

Q. Did she tell you what time that she was attacked?

A. Between the hours of 11:30 P.M. and midnight the
20 night before, which would have been the 28th of May,
1989.

Q. Now, after Mrs. Moran conducted - the lab technician who
conducted the test to see if there was any sperm on
the slides what did she report to you?

A. She explained out to me about what she could find and
25 couldn't find and when she explained it out to me and
told me it was that she could see no sperm.

Q. Do you understand why you put it in your report that
she advised simply that there was no sperm on the
30 slides rather than put it in your report the
explanation that Mrs. Moran gave in court here?

A. To me it's the same thing.

1 Q. To you it was the same thing?

A. Yes.

MR. FURLOTTE: No further questions.

THE COURT: Thank you very much. Reexamination Mr. Sleeth?

5

REDIRECT EXAMINATION BY MR. SLEETH:

Q. Constable, during cross-examination for the first time
you were asked about conversations with Nina Flam and
things said to you by Nina Flam and you indicated that
10 she said this assault took place sometime between
11:30 and what hour, please?

A. 11:30 P.M. and midnight - 12 o'clock.

Q. Did she tell you what the assailant said to her at
the time? Her attacker.

15 A. The attacker said first he wanted to know where the
money was and then he said that he was going to kill
her.

Q. Did she tell you also what was done to her?

A. Yes. A pillow was placed over her face; her hands
20 were tied; her feet were tied; and a bare hand - or
hands went around her throat.

Q. In an attempt to do what?

A. Strangle her.

MR. SLEETH: Thank you.

25 THE COURT: Thank you very much constable.

MR. SLEETH: I would ask this witness be stood aside My
Lord. There will be further questions on other
aspects of this witness. This deals with one element.

THE COURT: You are still on the witness stand strictly,
30 you're being called back, but you are not allowed to
discuss with crown counsel or with anyone any aspect

1 of the circumstances that you have testified to
already.

Now, that is as far as we can go today I think.

MR. SLEETH: My Lord could there be some direction from the
5 Court about the items which are marked for identifica-
tion? I know that the rule is normally if they were
only for identification that they remain with the
R.C.M.P. but perhaps there should be some indication
from the bench on this to be sure I'm not mis-
10 understanding.

THE COURT: The first thing is did everything go back in
the kit box that came out of it?

MR. SLEETH: Yes, My Lord.

THE COURT: The instruction sheet. So nobody is carrying
15 anything away.

Why doesn't Mr. Pugh look after this stuff, or
does the crown want to retain it?

MR. SLEETH: If it please the Court, My Lord, I think it
20 might be a little more convenient unless Mr. Pugh --
My Lord and Mr. Pugh have strong feelings about it
we would like Constable Britt to keep it for a little
while. He is the last continuity man.

THE COURT: All right, that's fine. He's been the officer
25 in charge of it up until now.

MR. SLEETH: He's our Fort Knox My Lord.

THE COURT: All right, well that makes more sense.

MR. ALLMAN: Mr. Furlotte just mentioned to me, I think I
30 understood him right, that he saw no reason why it
all couldn't go in as an exhibit now, the box and
contents. At least I think that's what he means.

1 MR. FURLOTTE: And then the other people for continuity
can testify as to it later.

MR. ALLMAN: Well, we would follow them up.

THE COURT: Well that would simplify things certainly.

5 MR. SLEETH: My Lord does that include, as well, "B", "C"
and "D"?

THE COURT: That includes the tubes with the swabs as well,
"B", "C", "D"?

MR. FURLOTTE: I would rather have them left out for now.

10 MR. ALLMAN: Then I think that's going to get confusing
then if some of it is in and some of it isn't.

THE COURT: Why don't we make the kit box P-10 and that puts
it in. Why not make the kit box P-10 and put it in?

15 MR. ALLMAN: My Lord the only thing is I have a witness
that I want to see --

MR. FURLOTTE: Well if you had other stuff to put in
between, maybe not. Keep them together.

20 THE COURT: All right, you get Constable Britt to look
after that stuff. Would you give that to counsel and
they can turn it over.

Well, that's everything for now. What are your
plans for tomorrow, Mr. Allman, just looking ahead
here? We have made good progress today I would
gather because we have --

25 MR. ALLMAN: Yes, indeed we have, My Lord. We will be
calling a number of people tomorrow.

THE COURT: 10 - 11 I suppose.

30 MR. ALLMAN: Yes, 10 or 11, possibly even more. We will be
completing up the aspect involving this kit, calling
another nurse, the doctor, and then various people
to do with continuity and then we will see where we
are. We will certainly have enough to keep us going

1 all day tomorrow.

THE COURT: But we had discussed before what you were going to do on Thursday, but you will have a full day though tomorrow.

5 MR. ALLMAN: We will have a full day tomorrow and a full day Thursday.

THE COURT: Well, members of the jury, we seem to be making progress, and I warn you, again, please don't discuss the case with anyone or let anybody try to
10 tell you anything about it. I don't know whether jurors ever get letters through the mail telling them what they should do or not. Sometimes judges do but not very often. If you do receive any sort of communication like that do as I instructed you
15 before. Let me know through the clerk or through the constable and we'll have the matter investigated, if you receive any sort of intimidating, or otherwise, letter or anything else. Any form of interference at all.

20 So we will start again at 9:30 in the morning. We were held up a little this morning. Defence counsel I think wanted a chance to discuss the matter or consult with their client and --

25 MR. ALLMAN: Just on that topic, My Lord, I spoke with Mr. Furlotte this morning and we have spoken or we're making arrangements with the Sheriff's Department to insure that Mr. Legere is here at 9 o'clock every morning, promptly, so that there will be a good half
30 hour and we should be able to start at 9:30 promptly.

THE COURT: Does that satisfy you Mr. Furlotte, that arrangement?

1 MR. FURLOTTE: Yes.

THE COURT: Well, we will see then, and I instruct the
sheriff to see that that is carried out and that
means we can get away at 9:30 promptly, except in an
5 emergency.

(Jury excused.)

THE COURT: I am going to ask Mr. Pugh if he also would
look after - or put in the exhibit room or whatever,
those copies, but keep them segregated from the
10 original exhibits but keep these available so that
they are available. You will be wanting the jury to
refer to them again, presumably, and we will keep
them as floating copies.

Nothing else? We will be back at 9:30.

15 (COURT ADJOURNS - 5:00 P.M.)

SEPTEMBER 4, 1991 - 9:30 A.M. - COURT RESUMES.

(Accused in prisoner's dock. Jury called, all
present.)

20 THE COURT: Now, you had another witness Mr. Allman.

MR. ALLMAN: Yes, I do, My Lord. Good morning members of
the jury. My next witness is Marjo Palmer.

MARJO PALMER, called as a witness, having been duly
25 sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name, please?

A. Marjo Palmer.

Q. Mrs. Palmer I gather you no longer live in New
30 Brunswick?

A. No, I now live in Ottawa.

Q. And what's your occupation?

A. I'm a registered nurse.

1 Q. On the 29th of May, 1989 were you employed as a
Registered Nurse and working in the Emergency Room
at the Hotel Dieu Hospital in Chatham?

A. Yes.

5 Q. Did you have occasion that morning to come in contact
with and have involvement with a lady called Nina
Flam?

A. Yes, I did.

10 Q. About what time of the morning would it be that you
and Nina Flam became involved together?

A. I was notified at 4 o'clock on the 29th by Maureen
English that a burn patient was coming in and when
I arrived in Outpatients at 4 o'clock she was already
there.

15 Q. Can you tell us what you saw and what you did when
you came in contact with Nina Flam?

A. When I arrived she was lying on a stretcher and she
was covered in a white sheet. All I could see at
20 first was her face. It was black, very - covered in
soot. Her nostrils and mouth were all covered in
soot. When we lifted off the sheet I noticed that
she had burns both arms, both legs, to her back. I
suggested to Maureen that we wrap her up in some
sterile saline sheets which we did. That took about
25 15 or 20 minutes.

Q. Sterile saline sheets that's because of the burns, is
it?

A. Yes. It's to stop the burns from progressing and for
30 relief of pain. We took some vitals on her, blood
pressure, temperature, that sort of thing, and about
4:30 Doctor Losier arrived to examine her.

- 1 Q. Was she given an intravenous at all?
- A. There was several attempts to start an intravenous. She did get one in her left arm by her elbow. We couldn't use her right arm because she had a cast.
- 5 She said that she had broken her wrist about a week earlier.
- Q. What about the left?
- A. The left hand was notably bruised and swollen. I also noted that she had a bruised and raised area
- 10 under her right eye and her left eye was quite bloody.
- Q. Okay, so you made those observations and she had complained of the injury to the left - was it wrist you said?
- 15 A. Left wrist, yes.
- Q. And the bruises and blood on the face.
- A. Right.
- Q. Then you said Doctor Losier arrived.
- A. Doctor Losier arrived and examined her. We rolled
- 20 her off on to her left side to look at the burns on her back. When we asked her if she was in any pain she said that her back was hurting.
- Q. Now, I take it that during the course of this time and indeed during the course of the time that you and
- 25 she were together you would have had conversations with her.
- A. Yes, I did.
- Q. I don't want to get into - I'm not allowed to get
- 30 into the conversation that you might have had with her but from the conversation that you had with her and other medical personnel had with her was any other kind of procedure, apart from purely medical

- 1 procedures, taken in respect of Nina Flam?
- A. Yes. We did do a rape kit on Nina Flam. When
Constable Carnahan arrived he brought the rape kit
with him.
- 5 Q. What's the process? What do you do in taking samples
for a rape kit?
- A. In Nina's case first of all we moved her physically
into another room. Present were Doctor Losier,
myself, another nurse, Mary King, and the policeman,
10 Constable Carnahan. We took three pelvic swabs.
They were done in order and as Doctor Losier took
the swab I would be hanging on to the test tube so
that it is not contaminated from the inside so that
he is able to put the swab directly into the container
15 without touching the inside of the container, and
then I passed it over to Constable Carnahan and he
numbered each pelvic swab as I passed them to him.
- Q. What do you use to take the - to obtain the substance?
- A. It's like a Q-tip. It's a cotton swab.
- 20 Q. The sort of thing you use to clean a child's ears?
- A. Yes. Just a longer version, yes.
- Q. And you recall Doctor Losier -- Who actually takes
and obtains the swabs?
- A. Doctor Losier does.
- 25 Q. And then I think you said he puts it into the tube?
- A. Right. We'll put the cap on it and pass it over to
Constable Carnahan to label it.
- Q. In addition to the three pelvic swabs were any other
swabs taken that you can recall?
- 30 A. Yes, there was one anal swab taken and there was one
oral swab taken.

- 1 Q. Is that a normal thing or an unnormal thing to do?
- A. No, that's the normal routine for a rape kit, and also hair samples as well.
- Q. Do you remember any other swabs?
- 5 A. No.
- Q. And I think you indicated that the process would be that as one swab is taken by the doctor, inserted into the vial, then it's handed to Carnahan.
- A. Right.
- 10 Q. Did you see Carnahan making - writing notes on there?
- A. No, I didn't notice that.
- Q. What's the object of handing it to Carnahan, do you know?
- A. Well, that's to prove that we haven't further
- 15 tampered with it. It's up to him to label it and protect the evidence I would assume.
- Q. And the reason why you would be holding on to the bottom of the tube is what?
- A. That's just so that Doctor Losier has a clearer field
- 20 to maintain the sterility of the sample so that it doesn't come in contact with the outside of the container to pick up any bacteria. It's strictly a sample of where the swab was taken from.
- Q. In the course of taking pelvic or vaginal swabs I
- 25 take it you would have the opportunity to observe the pelvic or vaginal area.
- A. Yes, I did.
- Q. Did you make any observations about that area?
- A. Yes, I noticed that it was - the outside of the
- 30 pelvic area and vagina area was extremely bruised, very swollen, and also burnt.

- 1 Q. When the samples were being taken where physically
would Doctor Losier, yourself, and Constable Carnahan
be in relation to each other?
- A. Well we're all in the same room. Nina would be
5 lying on a stretcher with her feet up in stirrups
and both Doctor Losier and I would be down at the
pelvic region and Constable Carnahan was just up at
Nina's head, and I just passed them across to him.
- Q. Did you have to move or go anywhere in order to make
10 sure --
- A. No.
- Q. -- that Carnahan got what he got?
- A. No.
- Q. Did you make any observations about Mrs. Flam's neck
15 area? You mentioned the bruising and the blood on
the face. We're going to think about the neck now.
- A. Yes. She did have two red welts on the right side
of her neck and they seemed to be almost from
pressure.
- 20 Q. And did you make any observations about her hands or
wrist area other than the fact that she mentioned
that her left wrist hurt?
- A. Well, like I say, the left wrist was swollen and
bruised.
- 25 Q. When the medical treatment and the rape test
procedures had been completed did you remain with
Nina Flam or did you go about other business?
- A. No, I stayed with Nina the whole time. I took her
30 as well to Fredericton in the ambulance.
- Q. She was transferred to Fredericton by ambulance after,
was she?
- A. Yes.

1 Q. And you accompanied her?

A. Yes.

MR. ALLMAN: Thank you.

THE COURT: Cross-examination Mr. Furlotte.

5

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Mrs. Palmer I understand Nina Flam also vomited a few times while she was at the hospital?

A. Yes, she did.

10 Q. Do you recall how many times?

A. I believe twice.

Q. Do you recall how many times you may have been in attendance when a rape test kit was conducted in the hospital?

15 A. In Chatham that was the first one I have seen but I have seen other rape kits done back in Ontario.

Q. Back in Ontario. I believe you stated that you recall five swabs being taken?

A. Yes.

20 Q. 3 in the pelvic area?

A. 3 pelvic swabs, one anal and one oral.

Q. Mrs. Palmer I understand you had brief conversation with Nina Flam about the assailant?

A. Yes, I did.

25 Q. And she described him to you?

A. Yes, somewhat. When we were waiting for the police to arrive, when she had said that she had been raped we just sort of had to wait for them to arrive, and I started to ask her some questions because I was
30 concerned that she might not make it and I asked her if she had seen the person. She said it was a he.

- 1 She said that he was wearing a mask and he was a slight built man. And she also described the mask.
- Q. And did she also tell you that the intruder or that her assailant was not wearing any jewelry?
- 5 A. I asked her about jewelry. She didn't remember any.
- Q. Did she tell you what time the attack took place?
- A. I asked her when she had last seen Annie and she said that she thought between 11 and 11:30 when Annie was closing the store and that was really the
- 10 only time reference she gave me.
- THE COURT: I'm sorry, the time again?
- A. Between 11 and 11:30 P.M.
- MR. FURLOTTE: I understand, also, when Doctor Losier attempted to do the anal swab that she told Doctor
- 15 Losier that the intruder did not go in there?
- A. Right. When she had said that she had been raped I asked her whether she had vaginal - whether he penetrated her vagina and she said yes to that, and orally she had said yes too, and also rectally she
- 20 had said yes too, to me when I asked, and then when Doctor Losier took the swab from the anal area she said that he did not go in there.
- Q. When I asked you about whether or not she told you the intruder wore any jewelry or not what was your
- 25 answer again?
- A. She said that she didn't see any jewelry.
- Q. She didn't see any jewelry?
- A. Yes.
- 30 Q. Did she also tell you that the guy didn't wear any gloves?
- A. She told me that, yes, that he did not wear gloves.
- MR. FURLOTTE: No further questions.

1 THE COURT: Reexamination?

MR. ALLMAN: Yes, My Lord.

REDIRECT EXAMINATION BY MR. ALLMAN:

5 Q. With regard to the time, 11 to 11:30, Mr. Furlotte was asking you if she told you what time the attack occurred. What did you understand the 11 to 11:30 reference to be about?

A. I asked her if she had seen Annie and she said the
10 last time she had seen Annie was between 11 and 11:30 when Annie was closing the store.

Q. Mr. Furlotte asked you some questions about the type of sexual activity that she was telling you had occurred and I got a little confused about that.
15 Originally, where did you understand from Nina that she had been penetrated?

A. Vaginally.

Q. The question of anal penetration arose under what circumstances?

20 A. I was just asking questions to find out where she had been assaulted.

Q. And she indicated that she had not been assaulted anally?

A. When I asked her she said yes, she had been assaulted
25 anally, but when the swab was taken she said no.

Q. Originally, when she said she had been penetrated anally - or assaulted anally, were there any male persons present then?

A. No.

30 Q. When she said that she hadn't been penetrated anally was there a male person present then?

A. Yes.

1 Q. That would be who?

A. That would be Doctor Losier and Constable Carnahan.

Q. Apart from penetration where, if at all, did she indicate there had been any ejaculation?

5 A. Vaginally.

Q. Anywhere else?

A. No.

Q. You mentioned that --

10 THE COURT: You may be getting into new areas there that you are not entitled to reexamine on.

MR. ALLMAN: I spoke to Mr. Furlotte in this regard, My Lord, and indicated to him that if he proposed to ask this witness questions about some of the things that Nina Flam said I would not object on the under-
15 standing that he didn't object if I asked her questions about the other things Nina Flam said.

THE COURT: I don't know what your understandings are with Mr. Furlotte but go ahead.

20 MR. ALLMAN: Did you gather from Mrs. Flam how, if at all, the intruder addressed her?

A. Yes. I asked her if she knew the person and she responded that 'He called me Nena instead of Nina.'

Q. Any further conversation on that topic or is that
25 basically it?

A. No, that was the only.

MR. ALLMAN: Those are all the questions I have on re-examination My Lord.

30 THE COURT: Just a couple of little questions in clarification. You said at first she had indicated that there had been penetration rectally and then later you used the expression 'anally'. What word is it?

1 A. It's anal or rectal. It's --

THE COURT: Rectal.

A. Yes.

THE COURT: But was it your impression that Ms. Flam would
5 understand what those terms meant?

A. I said rectal the first time and she seemed to under-
stand what that meant.

THE COURT: There was another 2 or 3 questions the jury
might feel that I should ask this witness. You may
10 intend to clear the matter up with further witnesses,
if you are going to do that I don't want to do it Mr.
Allman, but --

MR. ALLMAN: Perhaps if Your Lordship would indicate the
question and I could indicate whether we propose to
15 clear them up or not.

THE COURT: Well, the concern what is a pelvic swab. Is
that out on the side of the hip here somewhere on the
pelvis bone?

MR. ALLMAN: I will be calling Doctor Losier as my next
20 witness.

THE COURT: What is an anal swab?

MR. ALLMAN: Again, I'll be calling Doctor Losier and he
is the person who actually took the swabs so he can
25 clarify that.

THE COURT: All right, well you are going to clear that up.
Any questions arising out of the very limited questio
I asked. I might explain to the jury that a presidin
judge in a criminal trial doesn't normally take any
30 part in the presentation of the case, either for the
crown or for the defence. It is not my business to
prosecute or to defend an action. I will be asking

1 a very, very limited number of questions of any
witness through the trial. I may, on occasion, ask
a couple of questions, as I have done with earlier
witnesses and as I do now, normally to clear up
5 matters that I feel might have created a conflict or
a question in your mind.

It used to be that in coroners' inquests, for
instance, in this province where a coroner's jury
was inquiring into the cause of death of some person,
10 not in a criminal trial but in a coroner's inquest,
juries would very frequently ask questions themselves
of witnesses. Sometimes jury members were permitted
even in criminal trials to ask questions of witnesses
but that's a practice that is frowned on under our
15 system. I have never encouraged or permitted it my-
self and I think it's improper really. The presentati
of the case is in the hands of the crown and the
defence counsel. If they overlook something or slip
up on something that's their problem and it's not
20 your problem or mine to be trying to fill in gaps
that we feel exist. But where there is some matter
of interpretation or something, or description of
what some word means, or phrase means, I may inter-
vene now and again and ask a question.

25 Thank you very much. You're back to Ontario.

MR. LEGERE: Your Honour as a final protest I would like to be
excused from this morning's proceedings. I have
already asked my lawyer but he doesn't want to say
30 nothing so I want to state it on my own behalf.
The presumption of innocence and the right to a fair
trial and for a proper defence are entrenched in the

1 Charter of Rights as stressed by the decision by the
New Brunswick Court of Appeal. Mr. Furlotte told
this Court that he isn't prepared and Mr. Kearney
cannot absorb this case in four days. I have six
5 jurors over there who formed an opinion of my guilt
and one that has admitted to reading 'Terror' which
was banned by the New Brunswick Court of Appeal. And
those six shouldn't be on my panel because I have to
prove to them that I'm innocent. And I also feel
10 that because of some of your decisions you should
dismiss yourself from the case.

Could I please be excused for this morning?

I don't feel I'm getting a fair shake.

15 THE COURT: Would counsel want to -- My answer is that
we are going on immediately with the next witness.

Do counsel want an opportunity to speak to --

MR. FURLOTTE: I think we should have an adjournment to
speak to our client.

20 MR. KEARNEY: I would say so, My Lord. Five minutes just
to -- this is new to me.

MR. LEGERE: I talked to Mr. Furlotte about it. He advised
against it but I had to speak up.

25 THE COURT: Well, we will take a recess for five or ten
minutes and we will continue when you are ready with
the next witness.

(Jury excused.)

(RECESS - 10 - 10:25 A.M.)

30 THE COURT: Mr. Kearney? We're in a voir dire session now
for a few minutes.

MR. KEARNEY: I suggest, My Lord, that we can proceed with
the witnesses. I have spoken with our client, Mr.
Legere, and I think that we can proceed normally

1 without any more interruptions. Thank you.

THE COURT: All right. I was going to make a couple of
remarks but -- Mr. Allman do you have --

MR. ALLMAN: I would like to make some submissions on that
5 My Lord. Two things. First of all the crown views
what happened very seriously. Mr. Legere has been
warned repeatedly by Your Lordship that he is not
supposed to address you. It is still worse to
address a jury. What he did this morning was a
10 tactical maneuver. It was designed to say things to
the jury that shouldn't have been said to the jury.
I note that the statement that he won't- we can safely
go on, was made by counsel, not by Mr. Legere, and I
think it would be appropriate to have Mr. Legere
15 state to Your Lordship that he will not repeat that
process.

We are very concerned for this reason. What he
said puts very great pressure on the jury to in
effect bend over backwards and prove their impartiality
20 which he alleged they are not capable of doing. We
think that's a very serious matter. I would respect-
fully submit that Mr. Legere should in fact be ex-
cluded from the courtroom at least for some period
of time to get across the point that Your Lordship
25 has the power, and you have made orders to this effect
before, and that if somebody wilfully and flagrantly
for his own reasons disobeys those orders that's not
going to be tolerated. So we would suggest that Mr.
Legere should be excluded, at least for some time to
30 come, at least until such time as he is personally
prepared to say that he won't --

1 MR. LEGERE: Who's going to do the work Mr. Allman?

MR. ALLMAN: To say that he won't repeat that conduct.

The other thing we would ask is this. Whether Your
Lordship allows Mr. Legere to remain now or to return
5 later, we would ask you to direct the jury in very
strong terms that what Mr. Legere said should not be
considered by them, either against him because it
might annoy them, or for him because it might cause
them to feel that there is some pressure on them to
10 prove their impartiality. To show that Mr. Legere is
wrong when he says they can't be impartial. All
they have got to be is impartial. They don't have
to demonstrate it in any fashion.

MR. LEGERE: Do you want me to reply Your Honour?

15 THE COURT: Mr. Kearney do you wish to reply?

MR. KEARNEY: Well, My Lord, before the adjournment I
addressed the Court that I would speak to Mr. Legere,
and I did, and when we come back into court I didn't
realize Mr. Allman was going to address the Court in
20 the manner in which he did. I assured the Court that
in order to -- I'm thinking about this problem
all the time and I addressed the Court that there
wouldn't be any other outbursts in the foreseeable
future and I told Mr. Legere I was going to see him
25 again after we get going here today. In other words
I have this in mind, and I'm watching it, and I'm
well aware of the law on this matter, and the
problems that are entailed, as well as Mr. Allman,
and I appreciate what he says. And I can only do
30 my best in that regard. That's why I mention to the
Court that we should proceed as normally, you know,
with the next witness and I'll do my best as I have

1 just done prior to the recess and during the recess.
That's about all I can say My Lord.

MR. ALLMAN: Just for clarification, I am certainly not
suggesting Mr. Kearney and indeed Mr. Furlotte aren't
5 doing their best. I never made any criticism of their
conduct at all.

MR. KEARNEY: I know you didn't.

THE COURT: Mr. Kearney may I just address this remark to
you and perhaps to Mr. Furlotte as well, and that is
10 you have explained to the Accused the effect of
Section 650 of the Criminal Code. It says, 650(1)
says: "An accused, other than a corporation, shall
be present in court during the whole of his trial."
(2) "The court may cause the accused to be removed
15 and to be kept out of court where he misconducts
himself by interrupting the proceedings so that to
continue the proceedings in his presence would not
be feasible."

He has been apprised of that before and --

20 MR. FURLOTTE: Oh yes, My Lord, and you have advised him
and I have advised him so he knows.

THE COURT: And we have, and there's one thing the accused
must appreciate and that is that I cannot engage in
25 any conversation with him during the course of the
trial. If the result of the trial were unfavorable
to him well it could be suggested as a ground of
appeal that I provoked him into making some comment
or some statement. An accused in a trial has the
30 right to speak - when represented by counsel that is,
has the right to speak on what - 3 occasions I
suppose. One is when he or she - I am speaking

1 generally, not of this particular trial, when he or
she pleads guilty or not guilty when arraigned.
That's one time. It may be that on a voir dire which
may concern the admissibility of evidence an accused
5 may be called as a witness and not in the presence
of the jury and he may rebut evidence which supports
the admissibility of a witness, or he may not. We
had a voir dire here. The accused had the opportunity
to be called as a witness and testify and that wasn't
10 done at the time. That's not a decision I make; it
is a decision defence attorneys make. The third is
when the defence is asked if they have witnesses to
call, and sometimes that privilege is exercised,
sometimes it isn't. I am not going to comment
15 further. Those are the three occasions, really, when
an accused can speak, and an accused has no right
whatever to make any comments in court. And what Mr.
Allman says is absolutely right. He says this is a
tactical thing. Well, I take a favorable view. I
20 try to. I realize that an accused in a trial like
this is - must be terribly frustrated. He's imprisoned
on another conviction now. Circumstances have led
to his being confined in the way he has. I have
the greatest sympathy for an accused person in these
25 circumstances and I am going to bend over backwards
to take account of that. You know Mr. Allman says
now I should put the accused out. Well I'm not going
to put him out at this stage, but I am going to say,
and I think I have made it clear before, that I am
30 not going to tolerate interference with this action,
and we will have to get along without the accused

1 being present if that's the only way we can make this
trial proceed.

This is a serious thing this morning. You know.
I don't know - what should I do. When an accused
5 starts to talk like this this morning should I stop
right there and say, you know, send the jury out,
call a recess or something, or should I let him say
what he wants to say. Well, that's a quick judgment
decision that I have to make, but certainly any other
10 intervention there will be a recess called
immediately and the jury will be excluded. I'll
have to make the decision then where we go from there.

I have explained before the two options the
accused has. One is to sit in the courtroom and
15 hear what goes on and when his turn comes to speak
he may speak if he wishes to exercise that privilege,
and he obeys the rules of procedure of the court.
The other alternative is he sits in the cell out back
there and he listens to what the rest of us are
20 doing here, or he watches it on a television or a
loud speaker, and whether that takes two weeks, six
months, or whatever period it takes.

While we're in a voir dire session here we'll
25 go on with -- I'm not going to make an order as
you suggest Mr. Allman at this point but I have re-
gard for what you say and your point is fairly well
taken.

MR. ALLMAN: I would remind Your Lordship of the second
30 point. We would appreciate some sort of caution to
the jury not to hold it against Mr. Legere or allow
it to influence --

1 THE COURT: Well, I will but, you know, I have run into
this sort of thing in other trials and I find that
juries aren't -- juries make allowance for accused
persons too and I doubt really if it has very much
5 effect on a jury. It could do if it's carried on,
you know, or continuously carried on. I'll say
something to them when they come back but it will be
short and brief. I will tell them to ignore it.

10 While we're in a voir dire I want to comment on
one other thing. There's a story in one of this
morning's papers about an action that has been
brought on behalf of the accused in the Federal Court
of Canada in which it's alleged that he didn't have
the opportunity to consult counsel and so on in the
15 Renous Institution and so on. Well that's - I don't
know whether I would have published it or not had I
been the publisher of the New Brunswick Telegraph
Journal, that is the newspaper, but I want to point
out that last week one day, I think it was the 26th
20 or something, I forget the day, a Notice of Application
was filed with the Court on behalf of the accused for
a Stay of Proceedings in this whole matter on a
number of grounds, and one of the grounds was the
25 inability to - or the little difficulties that the
accused has had in consulting with counsel privately
and so on at Renous and certain obstacles that were
put in his path, and how he was treated there and so
on. The Statement of Claim in that action is part
30 of the affidavits that have been filed in this action.
That application, I think counsel agreed, would be
heard on Friday next, or whatever day you wanted,

1 Friday afternoon probably, next week, not this week
but next week. That is a matter before the court now
on this voir dire and it would be highly contemptuous,
I want to point out, for any newspaper or any media
5 to refer further to that action in the Federal Court
because it is a matter - it's a subject that's before
this court on this voir dire, and it will auto-
matically become - not because I say so but because
the section of the Criminal Code that I have referred
10 to already says it can't be referred to under the
criminal law of the country.

I do urge members of the media - I don't know
how to handle, really, the problem. I don't like
to call the media together and lecture to them on
15 the thing because I probably won't be talking to the
right people, but I do urge the media to - media
representatives to encourage their employers, the
radio corporations or television corporations or
newspaper corporations, to consult their lawyers and
20 take advice as to what is contemptuous and what
isn't.

The other day, Friday - Saturday, in one of the
provincial newspapers there was an article which in-
25 cluded reference to some person saying - telling
the - being interviewed by the newspaper reporter and
saying that DNA evidence is a lot of crap. Now, that
is totally contemptuous for a newspaper to publish
that type of interview. Totally and utterly con-
30 temptuous. You know you may say - counsel may say
what am I going to do about it? Do I - should I
instigate something? Well strictly the problem is

1 with the Attorney-General I suppose. I suppose I
can demand that some action be taken. I don't want
to create a lot of red herrings on the side. I would
hope that the newspaper involved would consult with
5 its lawyer and get advice on the matter and appreciate
that that type of thing -- I don't hold the
reporter to blame necessarily. He may be relying on
somebody in his editor's office to vet his report on
the trial or on interviews of that nature.

10 You know for anyone to write to a newspaper,
an accused or any other person connected with a
trial, during a trial, and for the newspaper to
report those letters or to publish or report those
letters is totally and utterly contemptuous, and I
15 do urge the media to be careful on this matter.

Well, that is all I want to say right at the
present time. There was reference in the paper the
other day to the fact that we had adjourned from
Thursday to Tuesday with no reason given. Well, I
20 did give to the jury and gave in open court here the
reason for the adjournment. The reason for the
adjournment was that the crown didn't have more
witnesses available because the crown had anticipated
as defence counsel had equally done I suppose, that the
25 jury selection process would take more than the two
days that it did. That's not a serious thing to be
suggesting that. There was a suggestion in a news-
paper article that the media couldn't publish the
nature of restrictions that had been put on them.
30 I didn't do that purposely in front of the jury; I
did it at a voir dire session. I made an order under

1 the bench rule regarding video photographing, and I
made the restriction - I imposed the restriction that
camera or picture taking could not take place either
by video or still camera on this level of this court-
5 house, and what I was trying to avoid was media
people sticking a camera in the face of the accused
when he is brought out of a van into the building,
sticking a microphone with a recorder into his face.
Anything that he says is totally - it would be
10 totally contemptuous to publish that, and the media
have been in contempt when they have published that
because it's an interference with the job that the
jury have to do in this trial. It's trying to usurp
the function of the jury and decide these matters and
15 present something that the jury doesn't hear in court,
and that is in contempt of court.

I feel, and I have always felt, most strongly
that accused people should not be - or people who are
on trial should not be subject to cameras being
20 thrust in their face. They have no way out.

In one of the adjoining provinces the TV people
seem to get away with murder. I have pointed out
before I think in one case in a courthouse the
25 cameras chased an accused through the corridors and
they chased and the poor fellow ran through, and he
ran through an unlocked door with the camera chasing
after him and he found himself in the judge's chambers
I have no sympathy for the judge because if he was
30 stupid enough to permit those cameras to chase through
the corridors of his courtroom he was deserving of
that fate I would say.

1 I had a trial in the province here where a
young man in his late teens was on trial for murder.
The television camera people abused it terribly
taking pictures of him. I had to have a fence
5 built from the jail to the courthouse which buildings
adjoin each other so that they couldn't take pictures
of him being led back and forth at every recess.
There were no facilities in the courthouse at that
time to keep the accused there. I had a fence built
10 so they couldn't and by gosh the next day I looked
out the window and here was a television cameraman
standing on the shoulder of another cameraman holding
the camera up and taking the picture down over the
fence. And what did I do? I made a prohibition
15 against coming on the courthouse property at all.
Then they climbed up on a veranda across the street
and took pictures down. So it's a difficult thing
to control. But an accused person, as Mr. Legere
himself has pointed out, is innocent until proven
20 guilty and it is my feeling that a person on trial,
an accused person, is entitled to all the dignity of
being an innocent person insofar as the charges in
this court are concerned, and I am determined that
that dignity will be maintained, and one of the ways
25 in which I propose to maintain that dignity is to
ensure that someone isn't going to try to make an ass
of him - try to make an ass of him I'm saying - by
sticking microphones in his face and cameras in his
30 face here on these precincts - and the precincts of
this building.

1 Well now that's all I am going to say. You
are ready to go on with your other witnesses. I
think we will probably go right through now until
12:30. We won't bother with another recess.

5 Would you bring the jury in?

(Jury called. All present.)

THE COURT: The crown I believe are prepared to go on with
other witnesses. I just want to say to the jury that
I would ask you to ignore what happened earlier this
10 morning. I am sure you are prepared to do that and
it is not going to destroy or affect or hurt your
objectivity one way or another, and just ignore it.

Now, Mr. Allman.

15 MR. ALLMAN: Thank you My Lord. Doctor Gerard B. Losier.

DOCTOR GERARD LOSIER, called as a witness, having
been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What's your name, please?

20 A. Doctor Gerard Barry Losier.

Q. And what's your occupation?

A. I'm general practitioner in general medicine.

Q. Where do you practice?

A. Chatham, New Brunswick.

25 Q. How long have you been practicing in Chatham?

A. 10 years.

Q. How long have you been qualified as a general
practitioner?

A. 10 years.

30 Q. Does your general practice include acting as the
attendant physician in the Emergency Room specifically
at the Hotel Dieu Hospital in Chatham?

1 A. Yes, it does.

MR. ALLMAN: My Lord I would ask that this witness be
declared an expert in the field of general medicine
and in emergency medicine, and I understand there's
5 no objection.

THE COURT: Any questions?

MR. FURLOTTE: There's no questions.

THE COURT: All right. I declare the witness an expert in
the field of general practice of medicine.

10 MR. ALLMAN: Just as a matter of interest, where on the
29th of May, 1989 was your surgery?

A. In regard - you mean my office?

Q. Yes.

A. It's at the corner of Water and Lobban Avenue.

15 Q. In Chatham?

A. Yes.

Q. Were you acquainted with the grocery store and
residence of Nina and Annie Flam?

A. Yes, I am.

20 Q. How far away would your office be from that place?

A. It's the second building lot next to my office.

Q. How long would it take to walk from your place to
their place?

A. 10 seconds.

25 Q. There's been evidence in this case that a surgical
glove was found in close proximity to the Flam
residence shortly after the fire and the incident
there on the 29th. Do you have any comment on that
or anything that you could tell us about?

30 A. It's possible.

1 Q. What?

A. It's possible to find a surgical glove in that vicinity.

5 Q. How would that happen? I mean do you have surgical gloves in your place?

A. In my office, sir, we use surgical gloves regularly and someone may have taken gloves. There's been things stolen out of the office on many occasions, pills, keys, etc.

10 Q. Were you the attending physician in the Emergency Room at the Hotel Dieu Hospital in the morning of the 29th of May, 1989?

A. Yes, I was. I was the doctor on call that evening from the 28th to the 29th.

15 Q. Did you have occasion in that capacity to see, observe and treat Nina Flam?

A. Yes, I did.

Q. Could you begin - about what time would you have first come in contact with her?

20 A. It would be shortly after 4 o'clock in the morning I was notified at home that Annie Flam - this building was on fire and that they were bringing Nina to the hospital and that I should come right in to assess her because she was quite badly burnt.

25 Q. Could you tell us, first of all, your initial observations - in fact all your observations about Nina Flam's condition.

30 A. Well she had been obviously burned. At the time I had gotten there there was some carbonaceous type of burn deposits over her skin, her face, and some burns over her general body area, second and third degree.

1 Q. What's carbonaceous?

A. That's products that you get from burnt skin. You
get a black sooty type material after things are
burned and from the smoke and whatnot that accumulate
5 on the body, the clothing, and the oropharynx, the
mouth, you see black soot. Basically it's the
products -- A simple example would be the smoke
that comes out of a chimney.

Q. You say that she was burnt on what parts of her
10 anatomy?

A. There was burns around her face, her truncal area.
There was some carbonaceous material in her mouth,
oropharynx. She was burned truncal area, both front
and back. That would include her chest, her upper
15 and lower back, and also her abdomen, her upper legs,
her pelvic area, and there were some burns on her
arm.

Q. You mentioned something about second and third degree
20 burns. What does that mean?

A. In the classification of burns a first degree burn
would be a sunburn with no blistering. A second
degree burn is a burn from whatever source that
causes blistering. That means that the skin has been
25 damaged and responds as a blister. A third degree
burn would be a burn that the extent of the burn
is such that the tissue is burnt full thickness and
requires skin grafting to repair it.

Q. In addition to observing the burns that you have just
30 described did you observe any other features about
Mrs. Flam - Nina Flam?

1 A. She had a fair amount of bruising around her left side of her face; around her neck there was swelling and bruising; and also there was bruising and swelling around her arm and also bruising in her pelvic area.

5 Q. Let's go through those slowly just one at a time. There was bruising to the face.

A. Yes, there was.

Q. Left face I think you said.

A. Left angulus jaw and left face.

10 Q. Consistent with what sort of cause?

A. Could be consistent with trauma of any cause.

Q. You mentioned that there was something - I think you said something in the neck. Tell me again what that was.

15 A. Yes, there was. There was swelling and bruising around the neck.

Q. And what would that be consistent with?

A. Could be --

20 MR. FURLOTTE: I would object. I would think you might be asking for speculation in this matter.

MR. ALLMAN: This is a classic example of what a doctor can say.

THE COURT: What was your question?

25 MR. ALLMAN: I'm asking what the injuries he observed to the neck would be consistent with. I am not asking him to get into a specific. I'm asking him to --

THE COURT: Well, that's fair enough.

MR. ALLMAN: Consistent with what? The neck.

30 A. Consistent with some sort of restraint.

Q. And you mentioned something you observed on the arm did you say? What was that?

- 1 A. Consistent with some sort of trauma or restraint.
- Q. Bruises again you said?
- A. Bruising and swelling.
- Q. Whereabouts on the arm, do you know?
- 5 A. The wrist and the lower arm from the forearm down to the wrist. In that vicinity.
- Q. And then you indicated I think bruising on the pelvic area?
- A. Yes, there was.
- 10 Q. Using the medical expressions specifically, what organs of her anatomy did you find to be bruised?
- A. The labia majora which is the outer closing area for the vagina. That area was quite bruised and edematous and burned even.
- 15 Q. Edematous means what?
- A. Swollen.
- Q. And, again, I'm not asking you for a specific cause but what type of injury - what type of cause is that consistent with?
- 20 A. The bruising from trauma I would think.
- Q. And what in layman's language is trauma? You have used that in relation to the various bruises. What's trauma?
- 25 A. Trauma is any source of impact. A punch. Anything.
- Q. In terms from a medical point of view what were the more serious injuries?
- A. Her most serious injury was her burn.
- 30 Q. And just very briefly because it is not directly on point I think, what was the nature of the treatment that you administered to her?

1 A. We had put some oxygen on her, some sterile dressings.
Started intravenous fluids and basically in a burn the
management is fluid maintenance. These people lose
a vast amount of fluid in a very quick time and what
5 you have to do is get lots of fluid into them to
stabilize them to keep up with the fluid loss from
the burn. We started an IV. We put a catheter in
to monitor fluid intact and we made arrangements to
have her transferred to a burn unit because of the
10 extent of her burns.

Q. Transferred to the burn unit where?

A. Fredericton.

Q. Now, in addition to what you have been referring to
so far which I take it are purely medical procedures,
15 was there any other procedure that you performed in
relation to Nina Flam?

A. We performed examination with a rape kit.

Q. I am showing you now an item that's been marked "B".

20 THE COURT: "A".

MR. ALLMAN: I am going first of all to show you an item
that has been marked by the clerk as "A" for identifica-
tion. Does that bear any markings of yours on it?

A. No, it doesn't.

25 Q. Do you recall seeing -- you mentioned a rape --
What was it that was performed on Nina Flam?

A. A rape examination by a rape kit.

Q. How does that object that I am showing you now com-
pare to the rape kit or container of the rape kit
30 that you saw that evening?

A. That is a kit that we used on Mrs. Flam.

- 1 Q. I opened the box and contained in there is a form
headed "Chatham Town Police Sexual Assault Kit".
Do you recognize that?
- A. Yes, I do.
- 5 Q. What is that?
- A. That is - it's an itemized account of what the kit
contains and what should be done for examination of
rape victims.
- Q. What use did you put that document to when you were
10 dealing with Nina Flam?
- A. We took the contents of the kit and used them as
stated in the document here.
- Q. I am going to show you now an item that has been
marked "B". Again, does that contain any writing or
15 anything of any kind put on it by you?
- A. No, it doesn't.
- Q. What do you recognize item "B"?
- A. That is a swab. I believe it's a vaginal swab.
20 What these swabs are, they're Q-tips but I believe
in this case that no Q-tip appears to be on that.
I believe that's a vaginal swab.
- Q. And "C"? Again, is there any writing of yours on
it?
- 25 A. No, there's no writing of mine on it. That's, again,
a swab and it would be in the nature of a vaginal
swab but there's no Q-tip on that. The Q-tip has
been removed.
- Q. And "D"?
- 30 A. The same type of specimen, probably a vaginal swab,
and the Q-tip has been removed.
- Q. How many vaginal swabs --
- A. 3.

1 Q. -- did you take from Nina Flam?

A. 3.

Q. Do you know the expression 'pelvic swab'?

A. Pelvic swabs are used as basically a broad
5 categorization for swabs taken from the vagina in
this situation. Pelvic swabs can be done in other
cases. You can do them for infection but in this
case pelvic swabs would mean they were from the
vagina.

10 Q. In this case all the three swabs that you took that
you call vaginal swabs would be taken from what
portion of Nina Flam's anatomy?

A. The vagina.

15 Q. I don't want to go into too much detail but
essentially what's the process? What do you do?

A. We insert a metal speculum. I use sterile technic
myself. I wear gloves. We cover the patient up.
We then under sterile technic do the swabs. The
20 inside of those containers are sterile so they cannot
be contaminated. Then usually the nurse would hold
the bottom canister of the container and I would pass
the swab which is attached to the red stopper and put
it into the container and then it would be sealed and
it would not touch any possible source of contamination.

25 Q. Why does the nurse hold the bottom?

A. Because that way I can hold the speculum and direct
my swab into the vagina much more easily.

30 Q. What about when you are coming - after you have in-
serted the swab and obtained the specimen when you
are proceeding to put that into the solution inside -
the sterile solution inside the vial? Why would the
nurse hold the vial then?

- 1 A. Because she is going to take that and pass it on and
I am going to go back and do other swabs and I'm
still sterile.
- Q. And with regard to the three vaginal swabs that you
5 took on this occasion would that be the process that
you took or would it be something different?
- A. No, absolutely the process.
- Q. I am showing you now another similar vial, a long
vial with a red top to it. Can you tell us anything
10 about that?
- A. This is an oral swab, it's marked on the side, and
this is obviously taken from her mouth, and what's
present on it is the carbonaceous material that I
was telling you about, the soot that she had from
15 smoke inhalation.
- Q. I gather from what you are saying you did in fact
take an oral, that is to say a mouth, swab?
- A. That is it, yes.
- Q. Is the process any different apart from the location?
20
- A. No.
- Q. Incidentally, the words - you said it indicated that
was an oral swab. What are that written on?
- A. That's on surgical tape which is general tape that
25 we use in the hospital to stick on all the containers
as a label.
- Q. I am showing you now another vial, again a long vial
with a red head. Could you look at that and tell us
anything about that one?
- 30 A. This vial says 'anal swab'. The Q-tip and the felt
tip are attached and it has a brownish material on
it.

1 Q. Did you in fact take an anal swab from Nina Flam?

A. Yes, I did.

Q. Is the process any different from the others except for the location?

5 A. No.

Q. I am showing you now a third vial. This one is smaller than the others and has a green top. Could you look at that and give us any information that you can about that item?

10 A. This is a hematology tube which is a vacuum tube and in many instances what we do in the hospital if there are inadequate tubes present in any kit we will take our own sterile tubes and the simplest thing is to take a hematology or a blood tube that they use for
15 taking blood because they're all sterile inside, and what we do under sterile technique is take the cap off and then put whatever specimen we want inside the tube, it being sterile.

20 Q. Do you know what, if any, specimen is contained inside that tube?

A. Well, this contains just two Q-tips which would be sterile Q-tips. They don't belong to this bottle but according to the protocol on the rape kit from
25 the Chatham Police Department there are supposed to be swabs from the body - general body area, so if you follow the list down I believe that this represents those swabs.

30 Q. Let's look at the list and maybe you could just indicate from the list what it is you are talking about.

1 A. The list says to the physician: "Please obtain the following exhibits: Pelvic swabs (3); anal swabs (1); oral swabs (1); and suspected seminal fluid on the body (1) swab."

5 Q. Did you in fact to the best of your recollection have any occasion to use a 6th swab to take a specimen from on the body?

A. I believe that was the green-stoppered tube.

10 Q. And in relation to all those items that you took you described the process under which you are doing the swab taking, the nurse is holding the bottom of the vial and then hands it over to the police officer. Was there any variation from that procedure in respect of any of those swabs?

15 A. No.

MR. ALLMAN: Thank you.

THE COURT: Cross-examination.

CROSS-EXAMINATION BY MR. FURLOTTE:

20 Q. Doctor Losier you mentioned about surgical gloves, it's possible somebody would what - steal one out of your office? Is that the way you put it?

A. I said it's possible. I never said they did. I said it's possible.

25 Q. Now, the surgical gloves that you use yourself in the office, are they disposed of?

A. We have three examining rooms at our office. There are opened surgical boxes with a hundred gloves in every office. Anybody could easily take a glove.

30 Q. So anybody who does break and enters could get some surgical gloves from your office?

- 1 A. They wouldn't have to break and enter. Anybody who is in the office and I'm not there at that particular time could easily take gloves and stick them in their pocket.
- 5 Q. I take it you have never had Mr. Legere go into your office for treatment?
- A. I have had Mr. Legere in my office for treatment.
- Q. Recently?
- A. Not recently but I have in the past.
- 10 Q. How long in the past?
- A. I cannot remember the exact date but I know I have seen him in the office.
- Q. Would it be before 1986?
- A. Yes, it would.
- 15 Q. Before 1985?
- A. I would say more around 1985 and perhaps even in '86.
- Q. Did you give any hair samples to the police so that they could check your hair samples with the hair that was found in the surgical glove?
- 20 A. No.
- Q. Let me put it this way, Doctor. The glove that was found outside next door to the Flam residence it probably wasn't a glove that you used yourself.
- 25 A. I'm not saying that. What I am saying is that our technique for disposal of used gloves from our office is that I burn them all in my own garbage can. Where that surgical glove came from in Mrs. Flam's yard I have no idea. The question was put to me could a surgical glove have come from my office
- 30 and I said it's not impossible. We do not leave surgical gloves outside of our office to be picked up by the garbage collectors. They are all taken

- 1 from inside the office to a garbage can at my
residence where they are burned.
- Q. Where they are burned. And I see in your report
that there was a vaginal smear done at the hospital
5 lab.
- A. That's correct.
- Q. And your report states that it was negative for
spermatozoa.
- A. What it states is that it was negative as done at
10 the Chatham lab.
- Q. Yes. Now that smear that was done at the Chatham
lab was that taken from one of the vaginal swabs that
you used or a different test altogether?
- A. No, that was taken from a swab that probably was
15 discarded. We do swabs and then rub them on the
slides and then discard the swabs.
- Q. Okay. So that wouldn't have necessarily have been -
that wouldn't have been from one of the swabs that
was placed into the red stopper tubes?
- 20 A. That would have been swabs that were taken from the
vagina but not necessarily kept.
- Q. I see in your report that Nina Flam vomited twice in
Outpatients?
- A. That's correct.
- 25 MR. FURLOTTE: No further questions.
- THE COURT: Thank you Mr. Furlotte. Mr. Allman?
- MR. ALLMAN: I have no reexamination.
- THE COURT: Thank you very much Doctor Losier. Is Doctor
30 Losier stood aside or --
- MR. ALLMAN: He's not required again.
- THE COURT: He's all through.
- MR. ALLMAN: Yes.

1 MR. WALSH: My Lord I have another witness. Constable
Pierre LeFebvre.

CST. PIERRE LEFEBVRE, called as a witness, having
5 been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. Would you give the court your name and occupation,
please?

A. My name is Constable Pierre LeFebvre. I'm a peace
10 officer, a member of the Royal Canadian Mounted
Police since 1981, presently posted in Newcastle,
and I have been so since February, 1989.

Q. Would you tell the court, please, officer, in your
own words what you know or what involvement you had
15 with this particular aspect of this matter beginning
with the date, the time and the place?

A. Yes, My Lord. On the 29th of May, 1989 in the Town
of Chatham, County of Northumberland, Province of
New Brunswick, I was assigned to take custody of
20 a body that was found on Water Street in the Town of
Chatham so at 6 minutes past 6 in the afternoon I
took custody of the body that was identified to me
as the body of Annie Flam.

Q. Where was the body when you first took custody of
25 it?

A. I took custody of the body as it was removed from the
building.

Q. I show you exhibit P-6 which would be, members of the
jury, the booklet of 93 photographs, and I would ask
30 you to please look at photograph 43 or 44 and tell
me whether or not that is a body that you took custody
of on that date?

1 A. Yes, it was, My Lord.

Q. Would you describe for the court, please, and the
members of the jury how the body was removed from
the premises and what, if anything, happened to it
5 from then on?

A. The body was placed in a disposable body bag. A
white disposable body bag. It was carried downstairs
where an ambulance was waiting at the front door.
The body was put on a stretcher, inside the body bag,
10 and it was tied on to the stretcher, and then it was
transported to the Hotel Dieu Hospital in Chatham.

Q. And did you accompany the body to the Hotel Dieu
Hospital?

A. I followed the ambulance from the scene to the
15 hospital. We arrived at the hospital at approximately
15 minutes after 6 P.M.

Q. Could you tell the members of the jury, please, how
the body was actually handled? In what fashion?

A. Well, the R.C.M.P. members that were present at the
20 scene carried - put the body of the deceased in the
disposable body bag and the body was, I believe, put
on a stretcher and carried down the stairway in that
fashion and then the body was then transferred on to
the ambulance stretcher, placed inside the ambulance
25 and was taken to the hospital that way with me
following behind the ambulance.

Q. Continue, please.

A. So at approximately 15 minutes after 6 that same
30 night a Doctor by the name of Doctor Christensen, I
believe, officially pronounced the victim dead and
approximately 6:30 I personally locked the body in-

1 side the hospital's crypt. I secured the door with
a padlock which I kept the only key and I affixed a
seal on the padlock on the key opening to make sure
the padlock wouldn't be tampered with.

5 Q. Then what, if anything, did you do?

A. That was the end of my involvement at that particular
date. On the 30th of May the body remained in the
hospital vault and on the 31st of May, 1989 at
approximately 6 o'clock in the morning I attended
10 the Chatham Hotel Dieu Hospital where I personally
removed the seal on the padlock, removed the body --
Removed the padlock from the door of the vault and
the body was taken from there for autopsy purposes
in Saint John, New Brunswick.

15 Q. How was it taken from that vault to Saint John?

A. The body was removed by myself and by the funeral
home, Adams Funeral Home attendant, and was lifted -
put on a stretcher and wheeled to the funeral home
vehicle and from then on it was taken to the Saint
20 John Regional Hospital.

Q. Did you accompany the body to Saint John?

A. Yes, I did.

Q. In your own vehicle or with the --

25 A. I believe I followed the funeral home vehicle to the
hospital in Saint John.

Q. Did anyone accompany you to Saint John?

A. Yes, My Lord. I was accompanied by Doctor Hayward
who is a dentist.

30 Q. And without getting into what Doctor Hayward told
you what was the purpose of having Doctor Hayward go
with you?

- 1 A. Doctor Hayward's purpose was to identify the body of the deceased.
- Q. And would you continue, please? What, if anything, happened next?
- 5 A. We arrived at the Saint John Regional Hospital at approximately 9 o'clock on the 31st of May, 1989 and the body was removed from the funeral vehicle and was wheeled to the autopsy room at the Saint John Regional Hospital where the autopsy started in the presence of myself, Doctor Hayward, Corporal Godin of Bathurst R.C.M.P. Ident Section, and also a Doctor MacKay, the pathologist, and his assistant.
- 10 Q. Did you stay there and observe the autopsy as it was being performed?
- 15 A. Yes, I did, My Lord.
- Q. Continue, please. What, if anything --
- A. Well Doctor MacKay proceeded to do his autopsy and I received exhibits - I received some items removed from the body by Doctor MacKay. At 12:30 that afternoon on the 31st of May, 1989 I received three vials of blood from Doctor MacKay.
- 20 Q. Would you tell the jury, please, and the judge where these three vials of blood came from?
- 25 A. The three vials of blood came from the body of the deceased person.
- Q. And who took them? Took the blood.
- A. Doctor MacKay took the blood.
- Q. Were you present?
- 30 A. Yes, I was.
- Q. Did you observe this being done?
- A. Yes, I did.

1 MR. WALSH: My Lord if I may have this bag marked for
identification, please.

THE COURT: That will be "E".

(Clerk marks bag and 2 vials contained therein

5 "E" for Identification.)

MR. WALSH: I will show you this package Officer. It has
been marked "E" for Identification. Would you just
look at that package and tell me whether or not you
can identify anything in that bag?

10 A. I can identify two vials of blood bearing the date of
31st of May, 1989, time being 12:30, and my initials
affixed to a sticker which is affixed to each single
one of these two vials of blood.

Q. You indicated that you received three vials?

15 A. Yes, I did.

Q. Those two of those three?

A. That's correct.

Q. What, if anything, did you do with these - in
particular these two vials of blood?

20 A. After I received them from Doctor MacKay I wrote
down my - I signed my initials, wrote down the time
and the date, and then I wrapped them up in brown
paper towel and placed the package inside a white
envelope.

25 Q. And what, if anything, did you do after that?

A. The autopsy was over at that time and I returned to
Newcastle Detachment with those exhibits.

Q. And in whose possession did these exhibits remain?

30 A. I returned -- They remained in my possession until
25 after 8 on the 31st of May, 1989 at which time I
turned them over to Constable Britt.

- 1 Q. Constable Britt is a member of what police force?
A. He is a member of the R.C.M.P. in Newcastle.
Q. And why would you turn it over to Constable Britt?
A. Because Constable Britt was assigned as being the
5 person that would look after all exhibits related to
the occurrence.
Q. Did you have any other particular involvement in this
matter?
A. No, I did not, My Lord.
10 Q. I have a final question for you Officer. I asked
you earlier with respect to how the body was handled.
I'm particularly interested in knowing -- when I
asked you how the body was handled I'm particularly ^{interes} /
in knowing whether or not you had any problems with
15 it, whether or not it was ever dropped, whether or
not you ever bumped it, anything of that particular
nature. I want to know exactly the manner in which
it was being treated.
A. Well, the body was treated as if it was a live
20 person. While it was in my custody it wasn't mis-
handled or dropped or bumped in any fashion.
MR. WALSH: Thank you. I have no further questions My
Lord, thank you.
25 THE COURT: Mr. Furlotte.

CROSS-EXAMINATION BY MR. FURLOTTE:

- Q. Constable LeFebvre I understand you removed some
jewelry from the body of Annie Flam?
A. Yes, I did.
30 Q. What was that jewelry?
A. I don't recall what the jewelry was, however, I have
it listed on my exhibit report which I have with me.

- 1 Q. Do you have your exhibit report with you?
A. Yes I do, My Lord.
Q. Would you mind checking that, please.
A. I removed two gold necklaces from the victim's neck
5 which I placed in a small plastic container.
Q. Any rings?
A. No, I did not remove any rings from the victim.
Q. So the only jewelry you have listed is two gold --
A. Two necklaces.
10 Q. Two gold chains. Necklaces.
A. That's correct.
Q. Did you remove anything else from the scene? Hairs
or anything?
A. I did not remove anything from the scene. I removed
15 a pair of soiled undergarments and I received other
exhibits from Doctor MacKay, one being one vaginal
swab, one anal swab, some scalp hair and some pubic
hair.
Q. Now, you were present when Doctor MacKay did the
20 autopsy?
A. Yes, I was My Lord.
Q. And you were aware that there was a fractured jaw?
A. That was pointed to me, yes.
Q. And Doctor MacKay advised that it was a possible heat
25 fracture?
A. That was one possibility Doctor MacKay raised, yes.
Q. Also, I see in your report the cause of the fractured
jaw was unknown, in your report?
A. Well, the definite cause was unknown.
30 Q. And there was no anal or vaginal rupture?
A. No, there was not.

1 Q. And there was no evidence of strangulation and there
was no apparent blow to the head?

A. Not from what Doctor MacKay told me.

MR. FURLOTTE: I have no further questions.

5 THE COURT: Reexamination?

MR. WALSH: No, My Lord.

THE COURT: Thank you very much Constable. This witness --

MR. WALSH: -- is being stood aside My Lord.

10 THE COURT: Stood aside. And you are under the restriction
that you can't discuss this aspect of your testimony
with anyone, including crown counsel, until all the
trial is over.

15 MR. WALSH: My Lord before calling our next witness I would
like to point out a number of things. First of all,
one of the witnesses would be Doctor Paul Christensen
The defence has agreed that in fact he pronounced the
body that was transported by Constable LeFebvre, that
he pronounced that body dead. That is an admission
20 from the defence for the purposes of the record.
That morning in the hospital. And the other admission
is that the body that Constable LeFebvre was in fact
transporting was that of Annie Flam.

25 THE COURT: Mr. Furlotte Mr. Walsh has correctly stated
your agreement on those points?

MR. FURLOTTE: That is correct, My Lord. Defence admits
those statements of facts, however, with Doctor Clint
Hayward the Crown is still going to make him available
for cross-examination.

30 THE COURT: He was the dentist?

MR. FURLOTTE: He's the dentist.

THE COURT: Are you calling him now?

1 MR. WALSH: He won't be called now, My Lord, he'll be called
later in the week. The purpose of actually calling
him was to do an identification of the body of Annie
Flam by her dental work. Mr. Furlotte has admitted
5 that the body is Annie Flam's so the purpose for the
crown actually calling him is no longer necessary,
however, Mr. Furlotte does want the Doctor present
for cross-examination and we are certainly prepared
to make him available for that purpose.

10 THE COURT: Thank you. I might tell the jury at this point
that when an indictment is preferred which lists the
charges, it's this document here and you will see
this later in the trial, it simply lists the different
counts of charges, and then an indictment is required
15 to show the witness list of the witnesses that the
crown proposes to call. There are 243 witnesses.
Actually there are less than that because there are
some who will be recalled once, twice, three times as
the crown indicates, but the crown may decide well
20 it's not necessary to call - we don't have to call a
certain witness. Perhaps something - it may be
agreed or it may be proven through some other witness
and they may not want to call that witness, but they
are still obliged to produce that witness in case the
25 defence wants to cross-examine. Frequently the
defence will say well we don't require to cross-
examine a witness but if the defence considers it
important for their case to cross-examine that witness
the crown is still obliged to call. And that is what
30 happens here in the case of Doctor Hayward.

This is just by way of explanation.

Now you have another - who is your next witness?

1 MR. WALSH: Constable Robin Britt, My Lord.

CONSTABLE ROBIN BRITT, called as a witness, having
been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

5

Q. Constable, there's a table there in front of you
that's most convenient for you - for your items.

Would you give the Court your name, please, and
your occupation?

10

A. My name is Constable Robin Britt, a peace officer,
a member of the Royal Canadian Mounted Police,
presently stationed on the Campobello Island. I
have been so employed for the last 5½ years.

15

Q. Would you tell the Court, please, what, if any,
involvement you had in this particular matter and
that is this aspect of this particular trial beginning
with the date, the time and the place?

20

A. Yes. It was on May 29th, 1989 I received a call home
As a result of that call I proceeded to the Chatham
Town Police.

25

Q. Where were you stationed at that time?

30

A. At the Newcastle Detachment with the R.C.M.P. I
proceeded to the Chatham Town Police office which is
situated in the Town of Chatham, County of Northumber-
land, Province of New Brunswick, and I was advised
the detail as the exhibit custodian at the crime
scene.

35

Q. Would you please explain to the jury what an exhibit
custodian is and why one is assigned to an investi-
gation?

40

A. It consists of assisting the investigators in
collecting evidence at the scene or any piece of
evidence that might be required for court, making

1 arrangements to go to the Crime Detection Lab and
keep possession of it until it comes to trial, and
ensure continuity of it.

Q. Did you in fact have occasion as exhibit custodian to
5 take possession of any items related to this matter?

A. Yes, I did.

Q. I am going to show you an item that has been marked
"E" for Identification. Would you look at that item,
please, and tell me whether or not you can identify
10 it and, if so, what if anything you did with it?

A. Yes, I can recognize it. A white envelope bearing my
initials "RB" which stands for Robin Britt; the date -
89-05-81; the time - 20:25 hours, which would be 8:25
P.M.; Newcastle, and I had put 46-B which would be
15 the item number for this particular exhibit.

Q. You put what?

A. 46 dash B which would be the number pertaining to this
exhibit.

Q. Did you receive anything else besides the white
20 envelope?

A. There was three vials of blood inside of it.

Q. And did you do anything with those particular vials
of blood?

A. Yes. They were turned over to Raymond Robichaud.
25

Q. Did you do anything to the vials of blood themselves
before you turned them over in terms of putting any
markings on them or anything of that nature?

A. No, I did not. They were turned over to Raymond
Robichaud at the Crime Detection Lab in Sackville,
30 New Brunswick on the 1st of June, 1989.

Q. Who did you receive that item from?

- 1 A. I received it from Constable Pierre LeFebvre.
- Q. He is the officer who testified just previous, before you?
- A. Yes.
- 5 Q. And what, if anything, did you do with that item between the time you received it from Constable LeFebvre up until the time that you turned it over to Mr. Robichaud?
- A. It was secured in an overnight locker at the R.C.M.P.
- 10 Detachment in Newcastle, New Brunswick.
- Q. Who has access to that locker?
- A. Only myself.
- Q. And Mr. Robichaud works where?
- A. The Crime Detection Laboratory in Sackville, New
- 15 Brunswick in I believe the Toxicology Section.
- Q. When did you next see this particular item after you turned it over to Mr. Robichaud?
- A. Today.
- Q. I am going to refer you to two items that have been
- 20 marked as exhibits on this particular trial. One has been marked exhibit P-7 which purports to be a pill bottle with a burnt match inside. Can you tell the court whether or not you ever had occasion to come in contact with that?
- 25 A. Yes. On May 30th, 1989 at the Flam residence, more particularly into the bedroom of Nina Flam, was found a partly burnt match. It was found on top of her blanket in her bedroom.
- Q. Were you present?
- 30 A. Yes, I was.

- 1 Q. And who did you receive that from?
- A. From Sergeant Chiasson of the Bathurst Identification Section.
- Q. And what, if anything, did you do with the -- You
5 received the item inside, is that correct?
- A. Yes.
- Q. What, if anything, did you do with that item?
- A. Once I received it I gave it an item number which
10 would be 14, a case number pertaining to this particular investigation which would be 89-1904 which is a file number that are assigned for every case, and the exhibit report would be 89-257. I put the date and I signed R. Britt.
- Q. Where did the pill bottle come from?
- 15 A. The Identification member, Sergeant Chiasson.
- Q. Now, I will show you an item that has been entered as an exhibit as exhibit P-8. Would you look at that for me, please, and tell the jury if you can identify
20 it?
- A. Yes, I do recognize it as there is my name, the time and the date and in this bag was contained, when I received it from Sergeant Chiasson, was a black knotted nylon stocking which was found in between
25 Nina Flam's bed and the first closet if I recall correctly. As soon as I received it, again, I used the formal R.C.M.P. exhibit tag, put the date ~ 89-05-30, signed my name, R. Britt, and the time I received it, 12:31.
- 30 Q. And what, if anything, did you do with that item after you received it from Sergeant Chiasson?
- A. I kept it in my possession. It was secured overnight into the R.C.M.P. overnight locker under lock which

1 I only have one key and it was kept in my possession,
and on the 31st of May, 1989 it was turned over to
Gary Verrett at the Crime Detection Lab in Sackville,
New Brunswick, and he is with the Hair and Fiber
5 Section.

Q. And did you ever have occasion to see it after you
turned it over? Did you ever receive that item --

A. Yes, I did.

Q. When?

10 A. It came back on the 28th of June, 1989 via registered
mail 585.

Q. Via registered mail and you said 585. Would you
explain to the jury what the number means and how
the R.C.M.P. use registered mail associated with
15 items?

A. That number would have originated from the post
office in Sackville, New Brunswick and it was in a
box and they would assign a number pertaining to that,
and the lab could refer to that saying 585 registered
20 mail number would contain particular items which were
sent back to my attention.

Q. Is that a normal thing that could happen for items
that have been deposited at the Crime Lab to be
returned to the officer by registered mail?
25

A. Yes.

Q. And after you received it back in whose possession
did it --

A. I kept it in my possession until today. Well today
it was introduced. Sorry, I should say yesterday.
30

Q. You were in court in fact and handed over the item?

A. Yes, yesterday.

- 1 Q. I am going to show you this particular item. It's
marked "A" for Identification. It purports to be a
rape kit box. Would you look at that for me, please,
and tell the jury if you ever seen it and if you have
5 what, if anything, you have done with it?
- A. Yes, I do recognize this what pertains to be a rape
kit in an orange-colored box. I recognize it as I
received it on the 29th of May, 1989 at the Chatham
Town Police office. That was at 8:18 hours which
10 would be 8:15 A.M. in the morning. I put my initial,
R.B., which stands for Robin Britt, and I had re-
ceived it from Constable Derek Carnahan.
- Q. And what condition was that box in at the time you
received it from Constable Carnahan?
- 15 A. It was different than today. There was a seal all
around the box and there was also, I should mention,
there was a tape across here.
- Q. Is there a tape still there?
- A. Yes, it is.
- 20 Q. And what kind of tape are you referring to?
- A. Seems to be a white tape that are used into a
hospital.
- Q. You say the box was sealed. Did you open it when you
received it from Constable Carnahan?
- 25 A. No, I did not.
- Q. Were you aware of what it contained?
- A. Yes, I was aware.
- Q. And to your knowledge at that time what did it
contain?
- 30 A. It was a sexual assault kit number 2 which is marked
on the box here in a yellow sticker attached to the
box.

1 Q. And what, if anything, did you do with that particular
box after you received it from Constable Carnahan?

A. Once again, it was secured in the overnight locker
at the R.C.M.P. and on the 31st of May, 1989 it was
5 turned over to Gary Verrett of the Hair and Fiber
Section of the Crime Detection Lab in Sackville, New
Brunswick.

Q. This overnight locker, who has access to it?

A. Only myself.

10 Q. And who turned it over to Gary Verrett?

A. I did turn it over to him personally.

Q. Did you at any time open that box between the time
you received it from Constable Carnahan until the
time you turned it over to Gary Verrett?

15 A. No, I did not.

Q. Did you ever have occasion to see this box after you
turned it over to Gary Verrett?

A. Yes. It came back through registered mail, 585, on
the 28th of June, 1989.

20 Q. And could you tell the jury, please, what condition
the box was in at that time and whether it was
different from the time that you had initially had
it?

25 A. The difference I noticed from that time, as you can
see around there's a seal, and the front had been
broke since the first time I had seen it. Once it
came back to me the seal had been broke.

Q. And did you have occasion to open it up when you re-
ceived it?

30 A. Yes, I did.

- 1 Q. Would you open it up now, please, and tell the jury whether or not you recognize any of those items? Essentially what we are trying to determine is what was in the box when you received it?
- 5 A. Okay. There is a sheet here marked Chatham Town Police, Sexual Assault Kit, name of victim: Nina Flam; date: 29-5-89; Investigator: D.C. Carnahan; Attending Physician: Doctor Losier; Hospital: Hotel Dieu, Chatham; and date and time received: 06 hours, 10 which would be 3:06 A.M., on the 89-05-29.
- Q. When you opened the box after receiving it by registered mail what was in the box? Was that one of the items?
- 15 A. It was this item here which there is 4 sheets of instructions.
- Q. What, if any, other items were in the box when you received it back by registered mail?
- A. There was one green tube which appeared to be a swab in it in a water or a saline solution.
- 20 Q. You are referring to the tube with the green stopper?
- A. Yes.
- Q. Doctor Losier referred to as a blood tube.
- A. Yes.
- 25 Q. Was that in the box when you received it back by registered mail?
- A. Yes, it was.
- Q. Continue, please.
- 30 A. Then there is another swab here which is marked on a white tape, I believe to be hospital tape, oral swab, and with initial D.C.C. Attached to it there is an R.C.M.P. lab tag.

- 1 Q. Was that tag attached at the time that you received the box back?
- A. Yes, it was.
- Q. As with the green stopper?
- 5 A. Yes, it was.
- Q. The tube. Was that in fact in the box when you received it? This last item.
- A. Yes, it was.
- Q. Continue, please.
- 10 A. There was a third item in this box, or I should say 4th item, another swab with marked on it on a white piece of tape 'anal swab'. It was initialled D.C.C. and attached to it another R.C.M.P. lab tag.
- Q. Was that in the box when you received it back from the lab?
- 15 A. Yes, it was.
- Q. Continue, please. Were there other items in the box?
- A. Not except some papers to protect the evidence.
- Q. Did you keep this box in your possession after that time?
- 20 A. Yes, I did.
- Q. And those contents?
- A. Yes, I did.
- Q. Where did you keep them and what did you do with them?
- 25 A. They were kept at the Newcastle Detachment under lock which I only had the keys and they were always under my control.
- Q. And who brought that item to the court?
- A. I did.
- 30 Q. Did you have occasion, Officer, to receive anything else associated with that particular rape kit?

- 1 A. Yes, I did.
- Q. I am going to show you this item that's been marked "B" for identification. Would you look at that for me, please, and tell me if you recognize it?
- 5 A. Yes, I do recognize it. It's a swab marked PS-1 and I had the opportunity to receive this swab in a sealed box, which would be this box here, on the 7th of July, 1989 and I had received this box, sealed, from Sandy Lumgair which she is a civil member with
- 10 the Crime Detection Lab in Sackville, New Brunswick. I received it there personally that day and it was later then secured into the freezer at the Moncton General Investigation Section in Moncton, New Brunswick.
- 15 Q. Okay. Would you just explain to the jury what the General Investigation Section is and what it was that you actually put that item in?
- A. The General Investigation Sections are members to
- 20 assist Detachments in major cases which in this case would be the murder, and on that particular date, the 7th of July, 1989, this sealed box contained other items and they had to be kept in a freezer in order to be further sent down for further tests in Ottawa.
- Q. So did you open that box when you received it?
- 25 A. No, I did not.
- Q. And you received that box from who?
- A. Sandy Lumgair.
- Q. And who is Sandy Lumgair?
- 30 A. She is a civil member of the Royal Canadian Mounted Police and she is with the Serology Section in Sackville, New Brunswick.

- 1 Q. And did you in fact put that box in a freezer?
A. Yes, I did.
- Q. At the General Investigation Section?
A. Yes, in Moncton, New Brunswick.
- 5 Q. And what kind of control did you have over the item after you put it in the freezer?
A. I had the key of the freezer and once it was locked I had the opportunity to place a green tape over the lock device of the freezer and I had attached to it
10 an R.C.M.P. exhibit tag with my initial, date - 89-07-07, and the time it was secured into the freezer.
- Q. And who else had access to that freezer other than yourself?
A. Nobody else.
- 15 Q. Now, Officer, when did you next come in contact with this - when did you next see this item?
A. The next time I come into contact with the Identification "B" was on the 10th of August, 1989 which at that time I had to break open this box and remove
20 item number 1-H.
- Q. What is item 1-H?
A. This 1-H would come from the lunch box we've had which was an exhibit, and that number had been given
25 by a lab person.
- Q. Is that the item that's been marked "B" for Identification?
A. Yes.
- Q. Is that what you are referring to?
A. Yes.
- 30 Q. You took that out of this box?
A. Yes.

- 1 Q. And what did you do with the item in your hand, "B"
for Identification?
- A. As soon as I took it I put my initial, R.B., the date
89-08-10, the time - 10:30 hours, which would be
5 10:30 A.M., Moncton, New Brunswick. And later that
day I went to Ottawa at the Central Forensic Lab and
turned it over to Mr. Les Macey.
- Q. And the Central Forensic Lab, you are referring to
the R.C.M.P. Central Forensic Lab in Ottawa, Ontario?
- 10 A. Yes, that's correct.
- Q. And who is Les Macey?
- A. He is a civilian member of the R.C.M.P., Royal
Canadian Mounted Police, and he's with the Serology
Section.
- 15 Q. Did you ever have occasion -- You handed that over
personally?
- A. Yes, I did.
- Q. And did you ever have occasion to see that particular
item after you gave it to Mr. Macey?
- 20 A. Yes. It came back to me in this brown envelope which
was sealed, and it was sent to the attention - I
received it personally from Corporal Gaetan Germain,
now Sergeant Gaetan Germain, and I received it on the
25 28th of August, 1989 at the Newcastle R.C.M.P.
- Q. What part of the -- Was the envelope opened or
any part --
- A. No, the envelope was sealed and this item was inside
the envelope and it was stapled on top here.
- 30 Q. And did you open that particular envelope at the time
that you received it from now Sergeant Gaetan
Germain?
- A. No, not at that particular time.

- 1 Q. Okay. Did you ever have occasion -- I take it
that you did open that envelope at some point?
- A. Yes, I did.
- Q. When?
- 5 A. On the 21st of August, 1991.
- Q. And what was the purpose of opening the envelope at
that time?
- A. To ascertain - to show to other witnesses and to
ascertain that particular item was in fact in this
10 bag.
- Q. In whose custody did that envelope with the item in
it remain from the time you received it from Sergeant
Germain up until the time -- Who brought it to
court?
- 15 A. I did.
- Q. Up until this time.
- A. Yes, it was in my possession.
- MR. WALSH: My Lord perhaps some direction. It wasn't my
intention to actually have the box or the envelope
20 marked as an identification item. I was more con-
cerned with the actual item we're attempting to enter
as an exhibit. Unless the court so wishes I could
start doing that.
- THE COURT: You mean --
- 25 MR. WALSH: Having the actual envelope and the box marked
for identification.
- THE COURT: Well, I -- It's really a matter for --
How do the defence feel? Do the defence wish it?
- 30 MR. FURLOTTE: I don't see where the box would have any
value to the court.

1 THE COURT: I don't think we need -- You can preserve
it so that if any question comes up later it can be
produced.

MR. WALSH: Thank you My Lord. I am going to show you
5 this item that's been marked "C" for identification.
Could you tell the jury, please, whether or not you
recognize that?

A. Yes, I do.

Q. When did you first come in contact with that
10 particular item?

A. It was, once again, on the 7th of July, 1989. This
particular swab, which would be exhibit 1-I for the
R.C.M.P. exhibit, was sealed into this particular box
and I had received it from Sandy Lumgair.

15 Q. That's the box you referred to with respect to the
other item?

A. Yes. As previously mentioned, once I received it it
was went and sealed into the freezer at the Moncton
General Investigation Section, Moncton, New Brunswick.

20 Q. So I am clear, that particular item was in the box
that was in the freezer that you kept in your control?

A. Yes, correct.

Q. As testified before. Fine. When did you see this
25 item? When did you ever have occasion to take it out
of the box?

A. It was on October 25th, 1989 at 8:30 I -- Could I
refer to my notes with this particular item?

MR. WALSH: With Your Lordship's permission.

30 THE COURT: These were made at the time?

A. Yes, they were.

1 THE COURT: Go ahead.

A. Okay, it was on - as I mentioned, on October 25th,
1989. This item was retrieved from this box from
the freezer at the Moncton General Investigation
5 Section in Moncton, New Brunswick.

MR. WALSH: For what purpose?

A. My understanding from the investigators --

Q. Okay, I don't want to get into that but what did you
do with that item?

10 A. It was brought down to the Central Forensic Crime
Detection Laboratory in Ottawa, Ontario and it was
turned over personally by myself to Doctor John Bowen
of the Serology Section.

Q. And Doctor John Bowen is associated with what kind of
15 scientific testing?

A. D.N.A.

Q. And did you ever have occasion to see this particular
item after you gave it to -- Did you give it in
fact to Doctor Bowen personally?

20 A. Yes, I did.

Q. Did you ever have occasion to see this item after you
gave it to Doctor Bowen?

A. Yes. I received it personally from Doctor John Bowen
at the Moncton Subdivision Office on March 25th, 1981.

25 Q. '81?

A. '91. Sorry.

Q. And what did you do with the item after you received
it from him?

30 A. It was kept into my possession.

Q. And who else would have access to that item during
the time it was in your possession?

A. Nobody else except me.

1 Q. And who brought it to this courthouse?

A. I did.

Q. I show you this item marked "D" for identification.
Would you look at that for me, please, and tell the
5 jury whether or not you can identify it.

A. Yes, I do. As previously mentioned it's one swab
referred as I-J for the R.C.M.P. exhibit number and,
once again, this item was retrieved from the freezer
- or I should say before, it was received personally
10 from Mrs. Sandy Lungair on the 7th of July and it was
contained in this box also.

Q. I take it then you are saying that that item was with
the other two items you have just testified to?

A. That's correct.

15 Q. And did you ever have occasion to remove that item
from that box?

A. Yes. It was on October 25th, 1989 at 8:30 it was
removed from the freezer from this box and further
turned over on the 25th of October, 1989 at the
20 Central Forensic Laboratory in Ottawa, Ontario.

Q. To who?

A. To Doctor John Bowen of the Serology Section, D.N.A.

Q. And was this item delivered at the same time as the
item marked - the previous item marked "C" for
25 identification?

A. Yes.

Q. And did you ever have occasion to see this particular
item after the time you turned it over to Doctor Bowen?

30 A. Yes. It came back to me. I received it personally
from Doctor Bowen on March 25th, 1991 at the Moncton
Subdivision Office.

- 1 Q. And in whose possession did the item stay from that time?
- A. In my possession only.
- Q. And who actually brought that item to this court?
- 5 A. I did.
- Q. And did anyone else have access to that item since that time that you received it back from Doctor Bowen?
- A. No.
- Q. Thank you. I have one final question, Constable Britt
- 10 It's as a result of a question put yesterday by Mr. Furlotte My Lord. He had asked and we gave assurances that we would find out about this facial hair that Mr. Furlotte inquired about. Could you perhaps enlighten the jury and Mr. Furlotte about this particular facial
- 15 hair? Are you aware of one?
- A. Yes, I am.
- Q. Would you tell the jury where this arises from?
- A. The particular hair mentioned by Mr. Furlotte yesterday would come from item number 7.
- 20 Q. That's a police identification item number?
- A. Yes.
- Q. That's got nothing to do with any court numbers?
- A. No.
- Q. Fine.
- 25 A. Which would be a cut portion of a stained mattress cover taken from Annie Flam's bedroom. The same was cut by Sergeant Chiasson, turned over to myself, and it was brought down to the Crime Detection Lab in
- 30 Sackville, New Brunswick on the 31st of May, 1989, turned over to Kathy Murphy of Chemistry Section and subsequently turned over to Gary Verrett of the Hair and Fiber Section at a later date.

1 MR. WALSH: I have no further questions, My Lord, thank you.

THE COURT: Cross-examination.

CROSS-EXAMINATION BY MR. FURLOTTE:

5 Q. Constable Britt I show you item marked "B" for identification again, and you said you first received that on July 7th, 1989 from Sandy Lungair?

A. That's correct.

Q. And does that have an identification mark for police purposes? Exhibit or --

10 A. There's an exhibit number which was given by the lab personnel which would be 1-H.

Q. 1-H?

A. Yes. You can see it here.

15 Q. And I believe you said that you next saw that item on what - August 10th, was it?

A. That's correct, when I retrieved it from the freezer at the Moncton General Investigation Section, Moncton, New Brunswick.

20 Q. And you brought that also to Ottawa?

A. On the same day, August 10th, '89.

Q. And when did you receive this back again, or maybe you have to look at this.

25 A. I received it back, it was in this brown envelope previously mentioned, personally from Corporal Gaetan Germain, and now Sergeant Germain. It was sealed and I received it on August 28, 1989 at 1500 hours which would be 3 P.M.

30 Q. Do you know whether or not these three vials would have been in the rape test kit whenever you sent this to the police lab in Sackville?

- 1 A. I would not have been able to say if they would have
been in it but I would imagine they was.
- Q. That would have been standard procedure?
- A. Standard procedure. But the lunch can was sealed when
5 I received it.
- Q. Now, aside from the facial hair that was marked for
police identification purposes number 7, were there
any other hairs that you had picked up at the scene
of the Flam residence?
- 10 A. Yes, there was some.
- Q. Hair marked number 4 for police identification, do you
recall where you found that or where that was found?
- A. I would have to check with my notes.
- Q. Would you please check with your notes.
- 15 A. Item number 4?
- Q. Item number 4.
- A. Yes, item number 4 would be one surgical glove and it
was turned inside out and it was found in behind
Nina Flam's apartment on the 29th of May, 1989.
- 20 Q. And what happened to that item?
- A. It was sent over to the Crime Detection Lab in
Sackville, New Brunswick on the 31st of May, 1989 and
turned over to Gary Verrett of the Hair and Fiber
Section.
- 25 Q. And how about item number 10?
- A. Item number 10, which would be one sterile plastic
bottle containing brown-black hair, and those were
found underneath a partly burnt pillow on Nina Flam's
mattress.
- 30 Q. And what eventually happened to that hair?
- A. Those were seized on the 30th of May, 1989 by Sergeant
Chiasson, turned over to myself on the 30th of May,

- 1 1989, and subsequently turned over to Gary Verrett
of the Hair and Fiber Section in the Crime Detection
Lab in Sackville, New Brunswick on the 31st of May,
1989.
- 5 Q. And item 46-C, what can you tell me about that item?
A. Yes, they were two necklaces removed from the victim,
Annie Flam, at the autopsy on the 31st of May, 1989.
- Q. And what happened to that item?
A. I received those items personally from Constable
10 LeFebvre which was a previous witness. I received
those two necklaces on the 31st of May, 1989 at 20:25
hours which would be 8:25 P.M. at night, and they were
subsequently turned over on the 1st of June, 1989 to
15 Gary Verrett of the Hair and Fiber Section at the
Crime Detection Lab in Sackville, New Brunswick.
- Q. Now, on a rape test kit that you received in your
possession that was taken from which victim that you
know of?
A. Excuse me?
20 Q. The rape test kit that was in your possession.
A. Which would be Identification "A"?
Q. Identification "A". That kit was taken from which
victim?
25 A. Can I see the box back, please? I do believe the
name is placed on the box. Yes, it's put there "Nina
Flam, 89-05-29". That writing was not placed by me.
- Q. Constable, I also notice that you pronounced the name
Nena Flam and not Nina Flam.
30 A. Nena or Nina.
Q. So I take it, Constable, even when the police are
discussing this case some refer to her as Nena besides
yourself?
A. I didn't really - never paid attention.

- 1 Q. You never paid attention. Did you count up all the money that was found in the Flam residence?
- A. Most of it was counted.
- Q. How much money was found?
- 5 A. I wouldn't have an exact figure but it would be fair to say between three thousand and five thousand dollars.
- Q. I understand you were at the scene along with Corporal Godin and Sergeant Chiasson?
- 10 A. That's correct.
- Q. And when they located this money there wasn't too much difficulty in finding the money?
- A. No.
- Q. It was in obvious places where money might be kept?
- 15 A. Some of it were in drawers.
- Q. Some were in drawers and one of them in a cash drawer in the store area?
- A. That's correct.
- Q. Which I believe maybe I noticed from one of the pictures that there may have been like a little lock on the little tumbler that you could lock the drawer.
- 20 A. I couldn't recall.
- Q. Exhibit P-6, photograph 16.
- A. Number 16?
- 25 Q. Number 16. Right on the top right-hand corner of that drawer does that look like a little lock tumbler?
- A. Yeah, it appears to be a lock. I wouldn't be able to say if it's a lock tumbler. It appears to be operated by a key but there is no key at present time.
- 30 Q. So that didn't have to be broken into either, did it, when you opened it?
- A. I don't believe it was broken into.

- 1 Q. So the money was in there unlocked?
A. If I recall correctly yes it was.
Q. The only padlock tumbler on there, it might be obvious
that that would be a money drawer at first sight?
5 A. Sorry?
Q. At first sight of such a drawer it might be obvious
that that would be a money drawer?
A. You can put --
Q. Something where valuables may be kept.
10 A. Yes, there is a possibility.
Q. Do you recall how much money was in that drawer?
A. No, I wouldn't.
Q. I understand you have in your possession, too, item
number 125, the video cassette of Nina Flam under
15 hypnosis?
MR. WALSH: Objection My Lord. I think this might be an
appropriate matter that although -- I think it would
be an appropriate matter that perhaps we could discuss
in the absence of the jury. The crown certainly
20 doesn't want to keep anything from the jury but I
think there are certain legal rules that we have to
comply with here which Mr. Furlotte would have give us
notice on that particular matter and we could have
addressed it in its proper fashion. So I would ask
25 that this perhaps might be an appropriate time to do
that.
MR. FURLOTTE: My Lord I have no intentions of asking this
witness what is on the video.
30 THE COURT: Well, I think we should discuss it perhaps in
the absence of the jury and in any event it's 20 past
12. We have gone quite a long time without a break
and I think we'll break now for lunch. The witness

1 will be stood aside until after lunch. You are not
to discuss the case with anyone, of course, until all
your evidence is completed, Constable, which you
appreciate. So we will adjourn until 2 o'clock.

5 We will continue to sit here for a few minutes and
discuss this matter so that we will be prepared when
the jury comes back to proceed in whatever direction
we are going.

(Jury excused.)

10 (Voir dire session commenced.)

THE COURT: Now, perhaps this is a voir dire session again,
of course, and there is a restriction on what is dis-
cussed and considered at this sitting.

15 Mr. Furlotte what type of question did you want
to ask this witness now? Would you reiterate what
you have in mind?

MR. FURLOTTE: Well, My Lord, as to the video cassettes I
understand there were two different sessions of
20 hypnosis taken on Nina Flam, that he has assess and
custodian of the video cassettes and audio cassettes
of the hypnosis. I think as you well realize the
case law is so far that evidence from a witness under
hypnosis is not admissible in court. I would like to
25 ask this witness as to whether or not he listened to
the tapes, the audios, the quality of them. I think
it's important that the - at least the defence will
be arguing that if the evidence of Nina Flam now seems
to be somewhat contrary or different from her original
30 statements to the police that it may be that there
was suggestions placed to her under hypnosis which now
when she is out of hypnosis she would come into court

1 with a different story than what she gave the police
when she wasn't under hypnosis.

THE COURT: I'm not sure that I just understand the back-
ground here. Do I understand that Miss Flam was on
5 some occasions subjected to hypnosis?

MR. FURLOTTE: Yes.

THE COURT: And was questioned by somebody or other? The
police presumably. And videoed.

MR. FURLOTTE: On two occasions she was under hypnosis and
10 I have videos which I have been given copies of the
videos from the crown. They're each roughly about two
hours long. The audio quality is extremely poor. You
can't hear because of the noisy background, whether be
it static or whatever. The audio is very difficult to
15 comprehend, to understand. As a matter of fact you
get so tired of listening to that noise after awhile
you don't even want to finish watching the video. I
also notice that there are two audio cassette tapes
20 that were taken aside from the videos and I would like
to know if those qualities are any better. Also, I
believe that if in the end there's contradictions or
at least strong contradictions as to statements Nina
Flam gave in her original testimony to the police and
25 the written statements shortly after the events to
what she is going to testify in court today, that I
believe the jury would have the right to know that she
had been hypnotized on a couple of different occasions
thereafter, what kind of suggestive ideas were put
30 into her head, maybe, I'm not saying there were - I
don't know, while she was under hypnosis that she might
give that kind of testimony after in court today which

1 she reasonably and strongly believed to be true as her
memory but yet may be put into her subconscious. I
don't know. All I know is the evidence is clear that
peoples' testimony while under hypnosis is not
5 admissible in court. The crown couldn't come and say
well she's able to recall a lot more under hypnosis
therefore we want to show the video or put her under
hypnosis and give her testimony that way. That would
not be admissible I believe. Like I say, if there is
10 a strong contradiction in her testimony from when she
first give it to the police to what she is going to
testify in court here this week I believe the jury has
the right to know that she was hypnotized and that
there was possible suggestions put to her under
15 hypnosis.

THE COURT: Well, are you going to call evidence to show
that being put under hypnosis may have the effect of
making - implanting ideas in a witness's mind?

MR. FURLOTTE: It all depends on the testimony of Nina Flam.
20 I may have to do that.

THE COURT: Hadn't we better hear that first? Hear her
evidence to see if it does conflict and this question
can be raised then.

MR. FURLOTTE: Yes, but it's while this witness is on the
25 stand, I'm entitled to cross-examine him and if there
is certain evidence I should be getting out of him
while he's on the stand rather than wait until Nina
Flam takes the stand and I have lost the ability to
cross-examine this witness, I feel that out of
30 anticipation of arguments which either goes towards
evidence or go towards the weight of certain evidence
I believe I have to be allowed --

1 THE COURT: Where do you feel this witness would have been
involved? You say he had a video. He retained a
video?

MR. FURLOTTE: Yes.

5 THE COURT: He received it as a potential exhibit or what-
ever, but he had no part in the examination I gather.
That's not suggested.

MR. FURLOTTE: I don't know if this witness has viewed the
videos or not.

10 THE COURT: Mr. Walsh this was your witness. Can you tell
us the background of the thing here?

MR. WALSH: First of all, My Lord, I would like to make one
point, and the fact is that Mr. Furlotte put the
crown, particularly myself, in a very difficult
15 position. He mentioned the word 'hypnosis'. What was
I supposed to do? Either put a bag over my head or
object. He's got it before the jury. I would in
future, My Lord, respectively request that Mr.
Furlotte at least abide by some of the rules associater
20 with what a jury is supposed to hear and not hear
before Your Lordship gets an opportunity to rule on
it. Now that I have said that I will go on to the
next aspect and that is the matter of the hypnosis.

25 Nina Flam was put under hypnosis as an aid to
the investigation. What was occurring here is that
there was another murder had been committed. They were
attempting to obtain any information they possibly
could and hypnosis was an aid to the investigation.
30 My understanding is generally speaking, yes, hypnosis-
induced testimony is not brought before the court.

1 Perhaps Mr. Furlotte would like to ask us why, and I
would think it's associated with respect to the fact
that the person has got to actually be able to recall
from her own memory - largely the evidence from her
5 own memory of the evidence.

This kind of evidence - hearsay evidence is
generally inadmissible. Hypnotically-induced
evidence is generally inadmissible and together they
are totally inadmissible. What Mr. Furlotte is
10 attempting to do here I don't really understand.
He doesn't have anyone --

THE COURT: Well Mr. Furlotte has suggested that a witness
under hypnosis might be inclined to accept as fact
something that she didn't originally believe to be
15 fact and which would change her mind and change her
story and which might account for a change in evidence
she might give at the trial over what she said
earlier in some statement which she gave to the crown
and which the crown provided to the defence. Isn't
20 that Mr. Furlotte's point? That's your --

MR. FURLOTTE: Yes, that's one of the --

MR. WALSH: But on what basis? I mean Mr. Furlotte, unless
he's going to testify to that fact, I don't see what
25 basis he has for going on that particular point. To
give you an example, My Lord, if Nina Flam is on the
stand and she's to be - assume Mr. Furlotte was to go
so far as to suggest he could cross-examine her on
this hypnotically-induced statement, on what basis?
30 You know. Under the Evidence Act you can put state-
ments to witnesses but if a person doesn't adopt that
statement and hypnotically-induced testimony - I mean
it's hypnotically induced, so on what basis would he

1 be able to use any of this testimony? In any event
that's something for Nina Flam, not this particular
witness.

THE COURT: Mr. Walsh what part would this witness have had
5 in the hypnosis procedure? His part was merely --

MR. WALSH: I think if he did, I can't remember if he did
have custody of those hypnosis tapes or not, but what
occurred is that she would be brought to I believe
it's a psychologist and she would be questioned by
10 the psychologist. He would hypnotize her and then he
would question her as an aid to the investigation.
And I just don't understand how this type of evidence
can be used.

15 So the police officers are not involved in the
actual questioning. I hope to make that clear. The
psychologist is. It's taped. If the Court wishes to
make it the subject of a voir dire then that
certainly is available to the Court but we do not,
20 from the Crown's point of view, see how this
particular aspect is relevant to these particular
procedures. It can't be used in direct, according to
Mr. Furlotte, and I don't see how it could be used to
cross-examine, particularly the person who made it or
25 anyone else for that matter. Certainly the point
that - if he wants to raise that question about
hypnotically induced testimony I think it's going to
have to come from someone who can give an opinion to
the court.

30 THE COURT: Well, let's just look ahead here a little.
Supposing when Ms. Flam testifies Mr. Furlotte on
cross-examination decides to ask her were you at any

1 time hypnotized. Did you undergo hypnosis and an
interrogation by the investigating authorities.
What's going to be your position then? Assuming this
is - assuming her account of what happened varies from
5 what she said originally in some material way what will
be your reaction at that time?

MR. WALSH: Well, on what basis would hypnotically-induced
testimony come before the Court? He is attempting to
cross-examine her on something, or attempting to refer
10 to something that my understanding is it can't be used
in court. It was an aid to the investigation. There
are a number of things that can't -- The polygraph,
for example, can't be used in court. Would that
entitle, for example, Mr. Furlotte, to ask if you've
15 undergone a polygraph. Certainly not. And with
hypnotically-induced testimony I think it's in the
same area. Unless someone can point to the fact that
that can be used what is the actual relevance of
putting it to any witness in any fashion or in any
20 form?

THE COURT: If he were not allowed to cross-examine Ms.
Flam on that point, and the defence were to feel that
hypnosis had played some part, it would be open to
25 the defence to call witnesses, an expert witness in
hypnosis, to suggest that ideas could be planted and
that perhaps her questions were prompted by the
hypnosis process. Do you agree with that?

MR. WALSH: I think that it's a subject that would be --
30 If Mr. Furlotte obviously wanted to call that kind of
evidence it's a subject for a voir dire at the
appropriate time. At this particular point in time,
My Lord, we are dealing with essentially an exhibit

1 custodian and I don't see the relevance particularly
right at this point in time. If he wishes to do as
Your Lordship has indicated then I think that's a
subject for a voir dire in which the Court can look
5 at what is involved and listen to any opinions that
are declared to be qualified and make your decision
there, but certainly not at this time with this
witness.

THE COURT: Do you have any short answer, Mr. Furlotte, or
10 any short comments you want to make in reply?

MR. FURLOTTE: Well, My Lord, the only short comment I have
to make is the Crown is comparing this with polygraph
evidence which the results are not admissible in court
but strictly the law - the Supreme Court of Canada
15 only says that the results of polygraph tests are not
admissible in court. It doesn't say that any
questioning about the polygraph test, whether it was
taken or not, is not admissible.

MR. WALSH: That My Lord, it's my understanding, is com-
20 pletely wrong. There is no comment allowed from my
understanding of polygraph evidence. In fact I be-
lieve it was the subject of a mistrial in a trial in
Saint John as a result of a cross-examination of a
witness who finally said that he took a polygraph and
25 that created a mistrial. That is, in my humble
opinion, not correct.

THE COURT: Well, I could settle that question by referring
to another trial that I presided over but I am not
going to bother with that just at the present. Here
30 is my -- Sit down Mr. Furlotte. You are through?
Anything else to say? Nothing else you wanted to say
on this point?

1 MR. FURLOTTE: Well, My Lord, maybe for the purpose of this,
I could ask Constable Britt if he has either viewed
the tapes and/or listened to the audio tapes to see
if there is any difference in quality which is one of
5 the things I would like to establish, and as far as
for the other thing it may be that I could set the
rest of my cross-examination aside from this witness
until after Nina Flam testifies. Constable Britt is
being recalled so I would not be prevented from cross-
10 examining him further on his testimony so far.

THE COURT: Yes. Well, sit down and I'll give my decision.
My decision is this. I am not going to permit cross-
examination of this witness at this point on the
question of hypnosis. If Nina Flam's evidence varies
15 tomorrow from what she may have said earlier or if
there is some suggestion that it has varied and if
there is some suggestion it's due to hypnosis, or if
there is some reason for one side or the other to
establish that she was subjected to hypnosis and that
20 that may have affected her - and we'll have a voir
dire on that question during her testimony and decide
that point. Certainly I don't want to get into the
question of hypnosis if it can be shown -- I
25 would say generally that the strategy of the defence,
if there is a suggestion that her evidence might have
been influenced, the strategy of the defence would be
to call an expert witness to show that hypnosis might
affect a witness's recollection in which event pre-
30 sumably the crown would have the right of reply. But
these are not questions on which I'm ruling. I'm
simply saying now. So we are not going to -- I am

1 not going to permit it with this witness at this
stage. Now this witness is one of the witnesses
being stood aside and if subject to any voir dire
on hypnosis in the course of the Flam testimony it
5 becomes apparent that this witness knows something,
and I can't conceive what he would know, but you
talk about the quality of the audio and the quality
of the visual recordings, or videos, I can't see what
difference that could possibly make really because
10 the contents of those tapes is certainly not
admissible in any way. I think Mr. Walsh's point was
properly taken and I think Mr. Furlotte you shouldn't
have come out with the jury, you know, injecting this
sort of dramatic suggestion of hypnosis here without
15 asking for a voir dire before you did it.

Let me go back to something that happened on
Thursday. We had a voir dire on whether, Mr. Furlotte,
you could ask Corporal Dickson whether he was related
to the accused. We discussed this. We went into the
20 question on a voir dire. Over the crown's objection
I ruled that yes you could ask if he were related to
the accused, and that was the permission that was
granted. We called the jury back, Mr. Furlotte, and
you went into your cross-examination and when you got
25 to that point you didn't put that question to the
witness, you put the question to the witness are you
aware of the rumour that you are related to the
accused, which is a totally different thing. If I
had been on my toes I would have prevented any
30 answer. I wasn't - I can't follow everything, I'm
only human, I make mistakes, but had I been on my

1 toes I would have said right at that point sorry, that'
not the question. You ask the question which you are
permitted to ask. So you didn't observe the rules
on that Mr. Furlotte. I'm not saying this too
5 critically but I want to point this out. And it's the
same with the reference to hypnosis. You know, it's,
I suppose, a great strategical ploy to sort of throw
these things into the jury before somebody can catch
them. Well, anyway, we are going to recess now. That
10 is the end of the voir dire. We will recess until
2 o'clock.

MR. WALSH: My Lord is he finished his cross-examination?

THE COURT: Do you have other cross --

MR. FURLOTTE: Yes, I have.

15 THE COURT: But you will stay clear of the hypnosis.

MR. FURLOTTE: Yes.

THE COURT: This witness will be called back. Well I made
the point earlier if it becomes relevant that he should
be asked about hypnosis he can be questioned.

20 (VOIR DIRE ENDS.)

(NOON RECESS - 12:40 - 2 P.M.)

COURT RESUMES - 2 P.M. Accused Present.

THE COURT: Mr. Allman, you had something to --

25 MR. ALLMAN: Just one very brief matter My Lord. It relates
to the media. Your Lordship ruled just before the
lunch break that the question about the hypnosis shouldn'
have been asked in the presence of the jury and then
in a voir dire you ruled that in fact it shouldn't
30 have been asked at all at this stage. We would
respectfully submit that means it's a ruling made on
a voir dire and the press should not report that

1 question since the question shouldn't have been asked
and was ruled out on the voir dire it's improper to
refer to it. We would just ask you to clarify that
to the media.

5 THE COURT: Well, I will direct that any reference to
hypnosis be eliminated from any media report. If
a report - I heard a radio newscast at noon and I
thought the matter was very well handled on that
particular thing. There was no reference to that.
10 And I would hope that the media members would act
accordingly.

There is nothing else before we --

MR. ALLMAN: No, that's the only thing My Lord.

15 THE COURT: And we have to finish with this witness. You
have some more cross-examination Mr. Furlotte of this
witness when the jury comes back?

MR. FURLOTTE: Yes, I'm not finished with this witness.

(Jury in. Jury called, all present.)

20 THE COURT: Now, Mr. Furlotte has more cross-examination of
this witness. Go ahead Mr. Furlotte.

CROSS-EXAMINATION BY MR. FURLOTTE CONTINUED:

Q. Constable Britt do you have I believe it was a purse
of Nina Flam's? Do you know whether or not that was
25 put in as an exhibit to yourself?

A. I couldn't recall. I would have to check with my
notes.

Q. Would you check your notes?

A. I don't believe I would have that here at the present
30 time.

1 Q. When you counted up the money do you know whether or
not there was \$60.00 included from a purse of Nina
Flam?

A. Again, I would have to concur with my notes and I do
5 believe they are locked.

Q. You were with Corporal Godin and Sergeant Chiasson
on the day that they took pictures and searched
around for evidence?

A. Yes, that's correct.

10 Q. Do you recall seeing a purse of Nina Flam on that
day?

A. I do not recall it.

Q. Item number 86 on your - police item number 86 on your
exhibit list.

15 A. With the Court's permission may I refer to those notes?

THE COURT: Yes. These numbers don't mean very much to us
Mr. Furlotte.

MR. FURLOTTE: Well, I would like for him to check his
exhibit list and tell the court what it is.

20 THE COURT: All right.

A. I do not have that item with me as listed.

MR. FURLOTTE: You don't have that item that's listed?

A. Which means it would have been returned.

25 Q. Do you recall having in your possession an empty
bottle of pepsi? 300 milliliter of pepsi?

A. Yes, I do recall.

Q. Which it was believed at one time that Allan Legere's
fingerprints would be on that bottle.

30 A. If I recall, that's correct.

Q. Was that pepsi bottle found in the Bathurst area?

A. I couldn't recall for that.

- 1 Q. Do you recall who gave you that bottle?
A. I do believe Corporal Tomassin.
Q. Who?
A. Corporal Tomassin. He's with the Dog Section in
5 Moncton.
Q. He was with the Dog Section in Moncton?
A. Yes.
Q. Do you know whether or not that bottle was checked
for fingerprints?
10 A. Yes, it was.
Q. Do you know whether or not Allan Legere's fingerprints
were on that bottle?
A. There were no prints found on the bottle if I recall
correctly.
15 Q. Do you know what has happened to that bottle since?
A. Yeah, I do believe it's been disposed of.
Q. It's been disposed of. Were there any fingerprints
on that bottle?
A. I would have to refer to some notes which I don't
20 have them at the time to give you an affirmative answer
or not.
MR. FURLOTTE: My Lord maybe if I could reserve the right
to continue cross-examination of this witness when he
is recalled on any matters to which he has testified
25 to today.
THE COURT: That would be fair enough Mr. Walsh?
MR. WALSH: Yes, My Lord, I can't see any problems with
that. He's being recalled.
30 THE COURT: I don't want to get back into the same ground
again, you understand that Mr. Furlotte. If there
are other matters that you want -- These notes of

1 yours, are they -- you have them locked up you said?

A. Yes.

THE COURT: Somewhere.

A. I would have to check to make sure. I wouldn't be
5 able to find them right now.

THE COURT: But I mean where would they be? In Newcastle?

A. They would be with the police report.

THE COURT: I think in fairness to the witness that when
 cross-examination continues that the witness should
10 be given some indication, in any event, of what type
 of articles he may be asked about so that he can have
 his particular notes here. I suppose that, for
 instance, if a bottle is found and they check it and
 they find no fingerprints on it then they say well
15 that's useless to prove anything and they throw it
 away, and perhaps he also throws his notes away too,
 I don't know.

MR. FURLOTTE: The only thing I am concerned about, My Lord,
 is as you well know Mr. Legere was a suspect and if
20 they believed that this pepsi bottle come from a
 suspect of some crime or another and they checked it
 for fingerprints Mr. Legere's wasn't there but there
 were other fingerprints there which would tend to
 exclude Mr. Legere so --
25

THE COURT: Well, this witness has said --

MR. FURLOTTE: So I basically want information from
 Constable Britt as to where the pepsi bottle was
 seized and if any prints were found on it and whose
 prints there may have been if there were prints.
30

THE COURT: Are there other areas you want him to check his
 notes for?

1 MR. FURLOTTE: Not on the pepsi bottle.

THE COURT: What other matters?

MR. FURLOTTE: There may be other matters. I'll go through
the exhibit list here for a minute My Lord.

5 THE COURT: You make a note of these things.

MR. FURLOTTE: That will be all for this witness My Lord.
That will be all I will be requesting of him.

THE COURT: All right. Well, you bring as many of your
notes -- Your notes may be spread all over the
10 country by now, I don't know, but bring as many of
your notes as you can lay your hands on when you come
back Constable, if you would, in case questions come
up about anything else. I'm talking about your notes
pertaining to your investigation in this case.

15 So this is agreeable with the Crown that this
witness be stood aside and --

MR. WALSH: Oh yes My Lord.

THE COURT: So you are excused and you should not discuss
the case with anyone until you are called back, or at
20 least discuss your evidence so far.

MR. SLEETH: My Lord if it please the Court, we had in-
dicated earlier that at times it might be necessary
I be elsewhere. I would ask if you could excuse me,
briefly, from the courtroom for the next couple of
25 witnesses. Thank you.

MR. WALSH: My Lord my next witness would be Les Macey.

LES MACEY, called as a witness, having been duly
sworn, testified as follows:

30 DIRECT EXAMINATION BY MR. WALSH:

Q. Would you give the Court your name, please, and your
occupation?

- 1 A. Hugh Leslie Macey. Surname is spelled M-a-c-e-y.
I am a civilian member of the Royal Canadian Mounted
Police. I am the Assistant Lab Manager at the
Forensic Laboratory in Halifax.
- 5 Q. Would you tell the Court and the jury, please, your
involvement in this particular matter in this
particular aspect beginning with the date, the time
and the place?
- A. Yes, on August 10th, 1989 I received items from
10 Constable Britt at the Central Forensic Laboratory in
Ottawa where at the time I was a Section Head of the
Serology Section.
- Q. I am going to show you this item here that has been
marked "B" for identification. Would you look at it
15 for me, please, and tell the jury if you recognize it.
- A. Yes. Item "B" for identification is a swab contained
in a tube which I received from Constable Britt on the
10th of August, 1989.
- Q. And is the tube or what's in the tube any different
20 now than when you received it from Constable Britt?
- A. Yes. I did remove a certain amount of the cotton
gauze on the end of the tip end for the purposes of
my examination so some of that - most of that gauze
is missing from the swab that was there when I re-
25 ceived it from Constable Britt.
- Q. What, if anything, did you do with the tube and the
contents of the tube after you received it?
- A. Initially the tube was marked with my initials, the
30 case number and the date I received it, and stored in
a locked exhibit locker. Subsequently I conducted an
examination which did involve removal of the cotton

1 tip of the swab and a procedure referred to as the
ELIZA procedure.

Q. It's not necessary to get into that but continue.

A. Subsequently, following the completion of my examina-
5 tion I packed this item up in a shipping envelope and
returned it to Sergeant Germain.

Q. Do you remember anything about that particular
envelope?

A. Yes. It's a padded shipping envelope. It bears my
10 return address and it was shipped via registered mail
from the Central Forensic Laboratory on the 21st of
August, 1989.

Q. Did you have any other connection with that particular
item after you shipped it or sent it by registered
15 mail?

A. No, I didn't.

Q. And who did you send it by registered mail to?

A. To Sergeant Germain.

Q. When did you next see that particular item Mr. Macey?

20 A. This morning.

MR. WALSH: I have no further questions My Lord.

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Mr. Macey for what particular reason did you receive
25 item "B"?

A. The request was that I examine the swab to determine
what, if any, ABO blood grouping substances could be
identified on the tip of the swab.

Q. And did you do that?

30 A. Yes, there was a procedure carried out which I think
I briefly referred to, ELIZA procedure.

1 MR. FURLOTTE: My Lord I think I had better ask for the
jury to be excused at this time because I have some-
thing to submit to the Court which you may rule ought
or ought not to be heard in front of the jury.

5 THE COURT: All right, we will ask the jury to go out for a
few minutes.

(Jury excused - 2:25 P.M.)

MR. FURLOTTE: My Lord I see that Mr. Macey is on the latest
witness list here by the crown but I don't recall
10 reading through Mr. Macey's testimony prior when I
got the police briefs or any of his lab reports, and
I guess if the crown can point me out right away as
to where in the police briefs that Mr. Macey's
testimony was to be given and where they have pro-
15 vided me with a copy of his lab reports, otherwise I
think I would be asking for an adjournment in order to
study the evidence that this witness was supposed to
have handled and what the results were.

MR. WALSH: I could address that question My Lord.

20 THE COURT: All right.

MR. WALSH: First of all, Mr. Macey was called simply to
show the Court where we are going with -- We have
three - we purport to be three vaginal swabs of Nina
25 Flam. Two of them were subsequently used in DNA
typing. One of them was initially examined by Sandy
Lumgair of the Serology Section and she will testify
to the court what she found on that particular swab.
What had occurred is that that particular swab was
30 later sent to Ottawa to Mr. Macey for this ELIZA
technology.

THE COURT: That's this one? This same one?

1 MR. WALSH: This one here. The ELIZA technology, if Mr.
Furlotte remembers the two months of voir dire that
we held this spring, this ELIZA technology was all -
it was testified to as to exactly the fact that the
5 police officers testified as to these items in the
summer of 1989, sending one item up there to Ottawa
for ELIZA technology and getting an inconclusive
result in the sense that the - again, I'm certainly
not an expert, but the types - one was masking the
10 other so that the test results, and I can be corrected
by Mr. Macey, he couldn't tell. It's inconclusive.
It's a neutral fact. So the ELIZA technology is of
no benefit to the jury in the crown's opinion, but he
was called simply - he's in the chain of continuity
15 for the swab that Miss Lungair is going to testify
contained a particular substance. Mr. Furlotte should
have been aware of the fact that the ELIZA technology
was attempted because we had police officers testify
this spring all about that and about all the decisions
20 that led up to taking it to Ottawa, what the results
were, everything with that. Mr. Macey is here simply
for continuity.

THE COURT: Well I recall that testimony about the ELIZA
testing. I can't quite recall, with all deference,
25 Mr. Macey, you have a face that one couldn't forget
but did you testify at the --

A. No, I didn't, no.

MR. WALSH: No. What happened is instead of actually calling
30 him the police officers simply testified as to what
Mr. Macey's report was. What the results of that
report were. I believe it came through Sergeant
Germain or Corporal Mole or one of those police officers

1 THE COURT: And I take it that in the abstracts of evidence
or reports given to the defence some time ago,
December or later, there was no reference to the
ELIZA tests on this --

5 MR. WALSH: I'm not sure. Mind you there is so much
material, but I would have to go through it, My Lord,
but I am aware of the fact that Mr. Furlotte - it
was brought out in open court. I assume that his
report there was brought out in open court as to what
10 the results of that test were. As I say, Mr. Macey
is simply here for --

THE COURT: Well, if Mr. Furlotte wants to continue his
cross-examination into these reports what is your
attitude about that?

15 MR. WALSH: I have no - oh, certainly. I would simply ask
that Mr. Macey be declared an expert in the ELIZA
technology procedure.

THE COURT: In the field of serology, which should be
described to the jury in any event.

20 MR. WALSH: In any event. I have no problem but the only
thing from the crown's point of view we saw no reason
to lead evidence of a neutral fact. It was an in-
conclusive result. And but we needed him for the
continuity of what Miss Lumgair is going to say is on
25 it is the only reason.

THE COURT: Well, Mr. Furlotte, there was, of course,
reference back during the earlier voir dire to the
ELIZA tests even though --

30 MR. FURLOTTE: Yes, My Lord, and as I recall Mr. Ryan had
basically been responsible for that voir dire and the
admission of some of the bodily substances.

1 THE COURT: Well do you want to cross-examine --

MR. FURLOTTE: I have to confess that maybe everything that
Mr. Macey has to say and maybe his lab report is in
the police briefs that I was given but as I believe
5 I attempted to explain to the Court earlier that even
though I had the benefit of all the police briefs
there's so much there that there's no way I can keep
track of it in my head and I'm just looking for
assistance from the crown that if there's anything in
10 the police briefs about Mr. Macey's testimony then I
would like to be able to go back and read that before-
hand.

MR. WALSH: May I suggest, My Lord, he has the opportunity
to ask the person himself instead of the report, if
15 he wishes, on voir dire. I suggest this: he could
ask Mr. Macey about the results of that test and make
up his own mind whether or not he wants to elicit this
information in front of the jury.

THE COURT: Well, why not do that now? Cross-examine the
20 witness here. Have the witness sworn on the voir
dire. You ask him what you want to find out and then
decide whether you want to go into this on cross-
examination.

MR. FURLOTTE: Well, before I would do that, My Lord, I
25 would like to know whether or not I have a copy of
his lab report and if the crown could answer if I was
provided with that then I would like to look at the
report before I ask him any questions.

MR. ALLMAN: Well, I will address that issue very briefly.
30 Certainly I can't say at this moment that Mr. Furlotte
was or was not provided with it. We attempted to

1 provide him with absolutely everything and we pro-
vided him with the original discovery and then from
time to time as new matters would come up we would
continue to provide him with discovery on an ongoing
5 basis, and upon every occasion when I or Mr. Walsh have
sent him further material we have always said if there
is something that we are missing you check your records
and let us know. So that's the situation. But if he
is in a difficulty it's very simple. We can adjourn
10 this gentleman until tomorrow, he can have the report
and he can peruse it this evening.

THE COURT: Well, why don't we do this. We seem to really
be making a mountain out of a molehill here.

MR. FURLOTTE: It may be a molehill but I don't know that
15 until I know what this witness has to offer.

THE COURT: The suggestion seems to be that he carried out
the ELISA test and it was inconclusive and that he
wasn't able to find anything which doesn't help any-
body one way or the other it seems to me. However,
20 why don't we stand this witness aside and he is an
R.C.M.P. employee and tomorrow we will have him re-
called tomorrow to complete --

MR. FURLOTTE: And I can see whether I want to continue
25 cross-examination tomorrow.

THE COURT: And you see. And I would ask the crown in the
meantime if you could assist Mr. Furlotte by checking
your -- Do you have any way of checking what you
have given --

MR. WALSH: Yes, in fact that's taking place right now.
30 They're going through his brief to see if he should
have them.

1 THE COURT: Well, see if you can get that material to Mr.
Furlotte by this evening or late afternoon.

MR. WALSH: We certainly will My Lord.

THE COURT: Mr. Furlotte you may have to check your own
5 material. Perhaps Mr. Kearney can help you.

MR. WALSH: I wonder if the witness has the report with
him. He wasn't required to bring it.

A. Yes, I do.

MR. FURLOTTE: Maybe if I could take a brief look at it it
10 might save time.

THE COURT: This would be the same report that was pro-
vided --

A. Yes, this is the only report I have issued.

THE COURT: Yes, go ahead.

15 MR. FURLOTTE: For the record, My Lord, I don't recall
reading that report before but under the circumstances
maybe since I didn't have time to look into this
beforehand maybe I could ask Mr. Macey a question
before the jury returns.

20 THE COURT: You mean now on the voir dire?

MR. FURLOTTE: Yes.

THE COURT: Mr. Pugh could we have the witness sworn on the
voir dire, please.

25 LES MACEY, called as a witness on the voir dire,
having been duly sworn, testified as follows:

EXAMINATION BY MR. FURLOTTE:

Q. Mr. Macey I notice it was one of these items marked
104 which was saliva supposedly from Nina Flam?

30 A. That's correct.

Q. And you were able to get at least a partial blood
grouping off that?

- 1 A. Yes. I was able to identify blood group substance 'A'
in that saliva sample.
- Q. Is that normal that you could get a blood group from
saliva?
- 5 A. Yes. In a --
- Q. Quite common.
- A. Yes. About 80% of the population secretes their
blood group in their body fluids as well as their
blood and saliva is one of those body fluids you would
10 expect to find it in.
- Q. How common is it to be able to get blood groupings
from say semen?
- A. Semen is the same frequency. A person who secretes,
for instance in their saliva, would also secrete in
15 semen or vaginal secretions for that matter.
- Q. What about even a person who wouldn't secrete in
saliva, would it also be in semen?
- A. The same pattern holds for the semen as holds for the
saliva, yes.
- 20 Q. So if there was semen on the swabs and the smear as
120 and 1-H, you would have expected to get some kind
of blood grouping.
- A. That depends on a number of environmental effects or
25 factors as well. Factors such as the condition of
the material on the swab could have deteriorated to
the point where it was not able to be detected or
there was not enough semen there or whatever on the
swab initially in order to be able to be within the
30 range of sensitivity of the test.
- Q. If there was enough there to detect semen would there
usually be enough to detect blood grouping?

1 A. No, not necessarily.

Q. Not necessarily. Were you able to detect semen on the swab if there was no blood - if you couldn't do a blood grouping?

5 A. No. I didn't carry out an examination to see if semen was present on the swab. It was given to me with the information that semen had already been identified on that swab.

MR. FURLOTTE: Okay, My Lord, the Defence's position is that
10 we could call the jury back and I will not be cross-examining this witness nor will there be any need to recall him.

THE COURT: All right. I might just say for the record for
15 the purpose of the voir dire I would assume that the witness is an expert in the field of serology. We didn't go through that.

So we will have the jury brought back in.

(VOIR DIRE ENDS)

(Jury returns. Jury called, all present.)

20 THE COURT: You have a few more questions in cross-examination of this witness?

MR. FURLOTTE: I have no more questions.

THE COURT: Reexamination?

25 MR. WALSH: No, My Lord, thank you.

THE COURT: Now, this witness is being --

MR. WALSH: That's it for him.

THE COURT: So you are excused.

MR. WALSH: My Lord I would like to call Sergeant Gaetan
30 Germain.

1 SERGEANT GAETAN GERMAIN, called as a witness, having
been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. Would you give the court, please, your name and your
5 occupation?

A. My name is Joseph Gaetan Yves Germain. I am a member
of the Royal Canadian Police since 1972. I'm presently
stationed in Caraquet, County of Gloucester, Province
of New Brunswick.

10 Q. You are in fact the Detachment Commander there?

A. Yes, I am.

Q. Would you tell the Court, please, what, if any, in-
volvement you had in this particular matter? Were you
ever involved in the Flam homicide investigation?

15 A. Yes, I was. Prior to my posting to Caraquet I was
stationed with the General Investigation Section in
Moncton, New Brunswick, and as a member of that Section
I was assigned to the Flam murder investigation in
Chatham as of 29th of May, 1989. I was one of the
20 investigators of the case.

Q. For the crown's purposes, Sergeant Germain, I wish to
question you with respect to this envelope that has
been previously identified by Constable Britt as
having received that envelope from you. Would you
25 look at it, please, and tell me if you do recognize
it and, if so, under what circumstances you would have
handled it?

A. I recognize my initial on the brown envelope and the
30 smaller envelope also with the date, the 25th of
August, 1989 at 09:45 A.M. I put my initials in
there, G.G., which means Gaetan Germain. I received
it via registered mail from the address that there

- 1 is on the envelope which is the Central Forensic Lab,
attention H.L. Macey. I secured this envelope, when
I received it, I secured it in my locker at the
General Investigation Section Office in Moncton.
- 5 Q. Would anyone have access to that?
A. I was the only one with the key to the lock.
Q. Did you do anything in terms of trying to open the
envelope?
A. What I did is I opened the envelope here on the top.
- 10 Q. Okay, would you just show the jury, please.
A. There is one envelope that is taped on the top of the
- on this big envelope and I opened the top portion of
the envelope and inside this there was a report from
Mr. Macey. The envelope was sealed and I --
- 15 Q. What about the brown envelope - the dark brown?
A. This envelope here was sealed and I left it like that.
I put that in my locker and on the 28th of August,
1989 at fifteen hundred hours I turned this over to
Constable Robin Britt at Newcastle. The envelope was
20 still sealed when I returned it to him.
Q. Did you at any time open the brown portion of this
envelope? I should say the dark brown portion of
this envelope?
A. No, I never opened it.
- 25 Q. In terms of that particular item did you have any
other involvement in that?
A. No, that's all.
Q. When did you next see this particular envelope?
A. I saw it this morning in court.
- 30 MR. WALSH: I have no further questions, My Lord, thank you.
Again, in connection with what we had discussed

1 earlier this morning in front of the jury in terms of
whether these packages or boxes should be entered I
take it Mr. Furlotte is still of the opinion that we
don't have to actually enter those particular items
5 into evidence.

MR. FURLOTTE: That is correct, My Lord, and I have no
questions of this witness.

THE COURT: Thank you very much Sergeant Germain. You are
not subject to recall; you're finished.

10 MR. WALSH: My Lord I have another witness. I call Gary
Verrett.

GARY VERRETT, called as a witness, having been duly
sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. WALSH:

Q. Would you give the court your name, please, and your
occupation?

A. My name is Gary Giles Verrett. I am a civilian member
of the Royal Canadian Mounted Police presently
20 employed in the Biology Section of the Central
Forensic Laboratory in Ottawa, Ontario.

Q. Prior to your being placed in that position where were
you?

A. I was employed as a Hair and Fiber Specialist in the
25 Hair and Fiber Section of the R.C.M.P. Forensic
Laboratory in Sackville, New Brunswick.

Q. Mr. Verrett I am going to ask you a number of questions
associated with some items that will assist the jury
in terms of its handling. First of all I'll show you
30 what's been marked on this particular trial as exhibit
P-8. Would you look at that particular item, please,
and tell me whether or not you can identify it.

- 1 A. Yes. Item P-8, identified by my initials, case number and the date, was received personally from Constable Robin Britt on the 31st of May, 1989 at the --
- 5 Q. When you say received, you received it personally?
A. That's correct.
Q. And would you tell the jury, please, what that item was when you received it and what, if any, condition it's in now and what, if anything, you did with it?
- 10 A. It consists of one knotted black nylon stocking.
Q. You say knotted; what, if anything, did you do with that particular knot?
A. For purposes of my examinations I took the knot apart and I performed some examinations on this particular
- 15 item.
Q. You untied the knot?
A. That's correct.
Q. And then what, if anything, did you do with this particular exhibit?
- 20 A. It was secured in my personal exhibit locker to which I have the only key until such time as I turned it over to Sandy Lungair of the Serology Section on June 1st, 1989.
Q. I will show you this item that has been marked "A" for
- 25 identification. It purports to be a rape kit box. Would you look at that for me, please, and tell the jury whether you can identify it?
A. Yes. This item bears my markings once again, my
- 30 initials, case number and date. It was received personally from Constable Robin Britt on the 31st of May, 1989.

- 1 Q. And what kind of condition was that box in at the time that you received it?
- A. This box was in a sealed condition. There was a piece of red tape here over the side of the box.
- 5 Q. And what, if anything, did you do with that box?
- A. I opened the box and labeled a number of items that were present in this box.
- Q. How did you go about opening it?
- A. I broke the seal.
- 10 Q. I see. And you testified that you labeled a number of the items that are in there. What would you actually do? Would you explain to the jury?
- A. Basically I go through the items and assign them a number to which I can refer to.
- 15 THE COURT: You can put that table up if you would like.
- A. As I stated earlier, I would open the box and assign a number to which I could refer to later in my report so the investigator could cross-reference.
- Q. Would you open that box, please, and tell me whether
20 or not you recognize any of the items that are inside?
- A. The box contains three items along with a sexual assault kit report.
- Q. Do you recognize any of those items?
- A. Yes, I do. They bear my markings on the red exhibit
25 tag.
- Q. Who affixed the red exhibit tag?
- A. I did.
- Q. Would you hold one of them up and show the jury what
30 you mean by red exhibit tag. And were they in this particular kit box or this box at the time that you received it?
- A. Yes, they were.

- 1 Q. Was this paper document in the box as well at the time you received it?
- A. Yes, it was.
- Q. Were there any other items in that box?
- 5 A. Yes, there were other items in that box.
- Q. I will show you, Mr. Verrett, what has been identified as "B" for identification. Would you look at that for me, please, and tell the jury whether you can identify it?
- 10 A. Item "B" for identification bears a red exhibit tag that has my markings on it, the case number, the date I received it, my initials and the number I assigned to this item.
- Q. Did you assign a number to that item?
- 15 A. Yes, I did.
- Q. What number did you assign to that item?
- A. Number 1-H.
- Q. What, if anything, did you do with this particular item marked 1-H?
- 20 A. After I finished marking it I stored it in my personal exhibit locker and turned it over to Sandy Lungair of the Serology Section on June 1st, 1989.
- Q. And when did you next see this particular item?
- A. Just moments ago.
- 25 Q. I will show you what has been identified as number "C" - letter "C". Would you look at that for me, please, and tell me whether you can identify it?
- A. Yes, item marked "C" once again has a red exhibit tag on it which bears my markings. I labeled this item
- 30 1-I and it was received along with the other items in this sealed box on the 31st of May, 1989.

- 1 Q. What, if anything, did you do with item 1-I?
- A. It was given personally to Sandy Lumgair of the Serology Section on June 1st, 1989.
- Q. By whom?
- 5 A. By myself.
- Q. And where was it in between?
- A. It was in my personal exhibit locker.
- Q. When did you next see this particular item after you gave it to Miss Lumgair?
- 10 A. Moments ago.
- Q. I show you an item that's been marked for identification on this trial as "D".
- A. Item "D" bears a red tag that has my markings on it. I assigned the number 1-J. It was received along with
- 15 the other items in this sealed lunch box on the 31st of May, 1989. It was kept in my personal exhibit locker to which I have the only key and turned over to Mrs. Sandy Lumgair of the Serology Section on June 1st, 1989.
- 20 Q. And when was the next time you saw this particular item?
- A. Moments ago.
- Q. My understanding then of your testimony is that the
- 25 items "B", "C", and "D" were contained in what has been marked as "A", this rape kit box, at the time that you received it from Constable Britt, is that correct?
- A. That's correct.
- 30 MR. WALSH: I have no further questions My Lord, thank you.

1

CROSS-EXAMINATION BY MR. FURLLOTTE:

Q. Mr. Verrett aside from these items, items "A", "B", "C" and "D", that Mr. Walsh has referred to, had you received other items to test in the Flam case?

5

A. Yes, I did.

Q. And some of those items were hair samples?

A. That's correct.

10

Q. I would refer to item number 4 which was in the police identification list, item number 4, which was a hair found in a surgical glove. Do you recall that hair?

A. Yes, I do.

Q. And do you recall what color that hair was?

A. I recall it to be medium brown in color.

15

Q. Medium brown in color. And was that hair checked with hair from Mr. Legere?

A. Yes, it was.

Q. And what was the results of that examination?

20

MR. WALSH: My Lord if I may at this point to assist the jury, perhaps since Mr. Verrett is going to be asked his opinion and he's certainly a hair specialist, I realize that, and I think it might be an appropriate time, if I may suggest, that he be so declared with the consent of Mr. Furlotte.

25

THE COURT: Yes. Well I think if we are going to ask opinions. In the field of Serology?

MR. WALSH: No, My Lord, hair comparison.

30

THE COURT: Hair and fiber. First of all, I would like the jury to have some explanation of what an expert in hair and fiber comparison does. Why is he an expert and why am I not an expert in hair and fiber. Will you answer that question just so the jury will under-

1 stand. What can you do, in other words, that I can't
do about hair and fiber?

A. In the Hair and Fiber Section we examine exhibit
items, items submitted by law enforcement agencies
5 for the presence of any hairs or fibers, and we may
then after examination perform an identification or
a comparison on these particular items if any are
found on any items at all. The way we do this is we
use a microscope which permits us to look at the
10 characteristics in the hair or fiber that we're
looking at. And often we are asked to perform a
forensic hair comparison and what we do is we com-
pare a questioned hair to a known reference hair
15 hairs on microscope slides. We have a microscope
that permits us to look at the questioned hair on
one side and the reference sample on the other side
so that while looking in the ocular of the microscope
we have both samples side by side. So basically the
20 different characteristics that we're looking at are
the length of the hair, the color, the diameter, the
size, the shape, distribution, the density of the
pigmentation on the hairs, the scales, the cuticle,
25 the root, the tip and so on. There are approximately
15 different characteristics that we look at in hair
comparisons. Then we are able to state if a
questioned hair is consistent with having originated
from a known source. This does not mean that that
30 hair came from that source. Microscopic hair com-
parisons are not positive evidence. They are simply
a means of eliminating questioned hairs, and when we

1 state that a hair is consistent with we are saying
that it exhibits - it shows the same microscopic
characteristics as those found in the known reference
sample.

5 THE COURT: That's adequate I think. No questions in
elaboration of this aspect of it?

MR. WALSH: Most certainly not My Lord.

THE COURT: No. Go ahead Mr. Furlotte.

MR. FURLOTTE: And at the time you were working in the
10 Hair and Fiber Section in the R.C.M.P. Lab in
Sackville?

A. That's correct.

Q. And how long had you been working with them as a
hair and fiber expert?

15 A. I did four years of hair and fiber work and then I
was relocated to the Ottawa Lab in April of 1990.

Q. Now, again Mr. Verrett, back to the hair samples
that I was questioning about the hair that was found
in a surgical glove.

20 A. Yes.

Q. You said it was brown in color. Light brown - medium
brown.

A. If I might check my work notes to be specific on
that My Lord.

25 Q. Yes, please, if the crown has no objection.

A. Yes, the hair off the surgical glove I described it
as medium brown in color.

Q. Medium brown in color. And did you check that hair
with hair samples you had from Mr. Legere?

30 A. Yes, I did.

Q. And what were the results of that test?

- 1 A. I found that hair to be not consistent with the known sample reportedly from Mr. Legere.
- Q. So it would have been from somebody other than Mr. Legere?
- 5 A. Correct.
- Q. Did you check that hair sample with - I guess I should say all the other suspects in the Flam case?
- A. I checked that particular hair to several other suspects. I don't know if --
- 10 Q. How many? Do you recall?
- A. As a rough figure I would say 10 - 15 maybe. Like that's a ballpark figure.
- Q. Is it safe to say that you wouldn't have checked it with 24 individuals?
- 15 A. I don't know off the top of my head. I would have to go back to refresh my memory on that.
- Q. Let's take a hair sample - I believe you checked item number 7. I believe that was a facial hair found on the bed of Annie Flam.
- 20 A. Correct. Exhibit, my number 7, from it I removed a facial hair - human facial hair.
- Q. Human facial hair.
- A. Yes.
- Q. And did you check that hair with hairs from Mr.
- 25 Legere?
- A. Yes, I did.
- Q. And what was the results of that?
- A. It was not consistent with the known sample.
- Q. So that would have been somebody other than Mr.
- 30 Legere?
- A. Correct.

- 1 Q. And could you tell the Court what color that hair was?
- A. The questioned hair?
- Q. Yes, the facial hair.
- 5 A. I have it as being white/blond.
- Q. White/blondish?
- A. Yes.
- Q. Exhibit number 10 I believe was another hair that was found on the bed of Nina Flam around the pillow area.
- 10 A. Correct.
- Q. And what color was that hair?
- A. Medium to dark brown I have in my notes.
- Q. And did you check that hair with Mr. Legere's hair?
- A. Yes, I did.
- 15 Q. And what were the results?
- A. Not consistent with the known sample.
- Q. So that would have come from someone other than Mr. Legere?
- A. Correct.
- 20 THE COURT: I'm sorry, I missed that. Where did that come from?
- MR. FURLOTTE: From someone other than Mr. Legere.
- THE COURT: No, I mean where was that found?
- 25 A. I received it in a brown vial that had a white lid.
- MR. FURLOTTE: But from the pillow area of Nina Flam's bed, is that correct Mr. Verrett, according to your notes?
- A. Just a brown vial with a white lid. I have no recollection as to where it was taken.
- 30 THE COURT: But the crown agree that that's where it came from? The pillow area.
- MR. WALSH: I'm at a disadvantage My Lord. I wasn't aware

1 he was going to refer to that particular item but I
have it listed as one sterile plastic bottle con-
taining brown/black hair. Is that item 10 he's re-
ferring to?

5 MR. FURLOTTE: I believe if you go back to Mr. Britt's
testimony - we may have gotten it out of cross-
examination of Mr. Britt, I ought to have.

MR. WALSH: I'm not being -- I just -- I think it's the
first time I have heard of it in the courtroom inas-
10 much as I don't believe he's mentioned it to Constable
Britt but I will stand corrected on that.

THE COURT: But there was evidence from somebody earlier,
wasn't there, that there was a hair found near the
pillow on one of the beds.

15 MR. FURLOTTE: The pillow, yes.

THE COURT: This is Nina Flam.

MR. FURLOTTE: Nina Flam.

THE COURT: You are satisfied Mr. --

20 MR. FURLOTTE: I'm satisfied. I believe I asked that to
Constable Britt on cross-examination.

THE COURT: That this hair was - what this hair --

MR. FURLOTTE: Of this number 10 being found near the
pillow area.

25 THE COURT: All right, let's assume you're correct.

MR. FURLOTTE: If I'm wrong I am sure I will be corrected
later My Lord.

THE COURT: You said this was not consistent with the
accused?

30 A. That's correct, My Lord.

MR. FURLOTTE: And one other hair, Mr. Verrett. You have it
as exhibit 46-C I believe. 46-C, yes. I believe

- 1 that was found in one of the gold chains that was
taken off the body of Annie Flam.
- A. I have it as two necklaces.
- Q. It would have come from --
- 5 A. Come from, yes, from this particular exhibit, yes.
- Q. Which I believe earlier Constable LeFebvre gave
testimony to that that was item number 46, or
Constable Britt gave that. So you would have taken
a hair from one of the gold chains that you received?
- 10 A. Correct.
- Q. Item number 46. And what color was that hair?
- A. It was orange-brown in color.
- Q. Orange-brown. And was that checked with hair
samples from Mr. Legere?
- 15 A. Yes, it was.
- Q. And what were the results of that test?
- A. It was found to be nonconsistent.
- Q. Nonconsistent.
- A. That's right.
- 20 Q. That would have been somebody other than Mr. Legere.
- A. Correct.
- Q. And I believe you also run a comparison of those hair
samples with Nina Flam and Annie Flam?
- A. Correct.
- 25 Q. And what were the results of those tests?
- A. It was compared only to the person it came from and
it was found to be not consistent.
- Q. Not consistent with Nina Flam or Annie Flam?
- A. This would be Annie Flam.
- 30 Q. Did you check them to see if they were consistent with
Nina Flam?
- A. No, I did not.

- 1 Q. Any particular reason why not?
- A. I believe based on the information that I received was that it was removed from a particular person and I was asked to compare the hair to that particular person.
- 5 Q. To that particular person.
- A. Yes.
- Q. And I believe in your analysis of those hairs that were found, number 4, 7, 10 and 46-C, that were light brown in color or brown in color, brown and white in color, blond in color, they come from Caucasians?
- 10 A. They were consistent with Caucasians.
- Q. Consistent with Caucasians. Did you check all those hairs with other suspects?
- 15 A. I did check them with other suspects, yes I did.
- Q. Were you able to match any of those hairs, either the one found in the surgical glove, the facial hair found on Annie Flam's bed, or the hair found in Annie Flam's necklace, or the hair found on Nina Flam's bed? Did any of those hairs compare or were they similar to any other suspect?
- 20 A. They were not consistent with any other suspect.
- Q. Aside from the facial hair that was found were there other fragments of human hair found on the -- The facial hair was found on the bed of Annie Flam.
- 25 A. I believe so, yes.
- Q. Was there other hair fragments besides that one facial hair found on the bed of Annie Flam?
- 30 A. Which item would that be?
- Q. Be item number 7.

- 1 A. I have one other hair fragment removed from item 7.
Q. Was that also checked with Mr. Legere and --
A. I believe this was too short a fragment to perform
any type of comparison.
- 5 Q. One other question, Mr. Verrett. The hair samples
that you found in the necklace, the facial hair in
Annie Flam's bed, the hair found in the surgical
glove, and the hair found in Nina Flam's bed, were
they all consistent with one another?
- 10 A. No, I wouldn't say they were.
Q. Did you check that?
A. Yes, I did.
Q. Which ones differed?
A. Well basically the two - the one off the glove and
15 the one off the 46-C are short hairs and, as I recall,
they were medium brown or orangey brown. The one off
of the item number 10 was 20 centimeters in length
and was medium to dark brown, therefore, they have
sufficient different characteristics that I couldn't
20 say that they could have come from one particular
source.
Q. Could they have come from the same person?
A. It's still possible but the characteristics do not
support that.
- 25 Q. The length of a hair - I mean your scalp hair has a
lot of different lengths, do they not, so you couldn't
go just by length just because they were different
lengths?
A. Well, as I stated earlier, one was 20 centimeters in
30 length, the other two were smaller hair fragments.
I don't have enough characteristics on the smaller
hair fragments to be able to do a one on one com-
parison basically with the longer hair that was

1 found off item 10 so I couldn't state right now that
they have characteristics that show that they could
have come from the same individual.

Q. But it is possible they did?

5 A. Yes, it is possible.

MR. FURLOTTE: I have no further questions of this witness.

THE COURT: Reexamination?

MR. WALSH: Just a couple My Lord.

10 REDIRECT EXAMINATION BY MR. WALSH:

Q. You say it's possible that all these different hairs
could have come from the same individual but the
evidence that you have up and to this point in time
would suggest that they came from the same individual
15 or came from different individuals?

A. It would suggest to me that they came from different
sources but I can't discount the possibility that they
could have come from one particular source.

Q. Perhaps if you would just to round out the picture
20 for the jury, Mr. Verrett, would you explain to the
jury the characteristics of hair, particularly as
associated with hair loss and hair transfer? Would
you explain that to them, please?

A. Hair is a biological material that's constantly being
25 replaced on one's head and one's body, pubic area,
and so on. Hair goes through different growth phases.
Once it has reached the end of its growth phase it
falls out. The root dies, the hair falls out, and
another hair would grow in that particular follicle.
30 So there's always a constant change going along. In
average, on one particular person we can lose up to
50 to a 100 hairs a day off our scalp. That's

1 basically by our grooming habits, wearing a hat,
sleeping on a pillow, washing our hair, and so on.
Basically hair can be deposited at several areas and
it's readily transferred.

5 Q. You say readily transferred. What kinds of ways?
When you say transferred you mean to go from one
place to the next?

A. Well I mean transferred from its original source on
to, for example, a person's jacket, on the floor, on
10 a carpet, in a car, and so on. A towel.

Q. Would, for example, the hair that Mr. Furlotte re-
ferred to as being a hair found on Annie's bed, item
number 4 I think he has referred to it as, could you
tell the jury, perhaps answer this question, is it
15 possible to say when or how that hair got in that
place?

A. No, it's not possible.

Q. And it could have come from anyone working in the
building?

20 A. Yes, potentially it could have.

MR. WALSH: I have nothing further, thank you.

THE COURT: Thank you very much. This witness is to be
stood aside Mr. Walsh?

MR. WALSH: Yes, that's correct My Lord.

25 THE COURT: Mr. Verrett you shouldn't discuss this aspect
of your testimony with anyone, including crown
counsel, until all of your testimony is finished.

A. Yes, My Lord, thank you.

30 THE COURT: Why don't we take our afternoon break and come
back at 3:30.

(RECESS - 3:15 - 3:35 P.M.)

1 COURT RESUMES. (Accused present. Jury called, all present.)
THE COURT: Okay, Mr. Allman, another witness.
MR. ALLMAN: Thank you, My Lord. Sandy Lumgair.

5 SANDY LUMGAIR, called as a witness, having been duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. Could you state your name and occupation, please?

A. My name is Sandra Lynn Lumgair and I'm in charge of
10 the Serology Section at the Forensic Laboratory in
Sackville, New Brunswick.

Q. What does serology mean?

A. My work involves the examination of exhibits for the
presence of human blood, the identification of that
15 blood according to various blood group proteins, the
examination of exhibits for seminal fluid, more
rarely other bodily fluids such as saliva or fecal
matter. We're also occasionally involved in the
family identification of material.

20 Q. How long have you been engaged in the - as a
serologist?

A. I joined the Force as a civilian member on the 29th
of January, 1976. Following 14 months as an under-
study learning the procedures and theory involved
25 with serology I began my work as an examiner.

Q. So that would be when? 1976 did you say?

A. Yes, and I was qualified in '77.

Q. That doesn't seem possible, but I take it you have
technical qualifications, that you passed exams and
30 that type of thing?

A. During my understudy or prior to that?

Q. Either.

1 A. Yes.

Q. Have you been declared an expert witness entitled to give opinion evidence in the field of serology in other courts on previous occasions?

5 A. Yes, I have.

MR. ALLMAN: My Lord I understand there is no objection to this witness being declared an expert in the field of serology.

MR. FURLOTTE: That's correct My Lord.

10 THE COURT: We will make you one even if you aren't.

MR. ALLMAN: I am showing you first an item that has been marked as an exhibit, exhibit P-8. I would advise you not to open it. I'll just put it here for you to look at. It's a bit dirty. Do you want to just
15 look at it a second or two and tell us what, if anything, you can state about that item.

A. Court exhibit P-8 contained two pieces of nylon material which I received on the 1st of June, 1989 at the Forensic Laboratory in Sackville from Gary
20 Verrett.

Q. And you were present in court when Mr. Verrett testified that he received it in a knotted form and untied it?

25 A. No, I wasn't present, sir.

Q. Well, there was evidence to that effect. And what did you do with those two bits of nylon after you received it?

A. I was asked to examine those two articles - or this
30 article for the presence of human blood and for seminal fluid. I did not find either material present.

1 Q. Neither blood nor seminal fluid?

A. No.

THE COURT: Seminal fluid --

A. Yes, sir.

5 THE COURT: Mr. Allman --

MR. ALLMAN: Yes, perhaps I should clarify that. What is
seminal fluid?

A. Seminal fluid is the male reproductive material which
consists of seminal plasma or liquid and spermatozoa,
10 the cell portion of the seminal fluid.

Q. I know we are supposed to credit the jury with
ignorance of these things though just in case I'll
ask you, when does seminal fluid appear?

A. Most commonly upon ejaculation.

15 Q. I am showing you now an item that's been marked "B"
for identification. Can you examine that, please,
and tell us whether you have seen that before and,
if so, when?

A. Court exhibit "B" --

20 Q. It's not an exhibit, it's for identification.

A. Excuse me. Item "B" is a swab - or was a swab which
I received on the 1st of June, 1989 at the Forensic
Laboratory from Gary Verrett.

25 Q. Are there markings on it that confirm that to you?

A. Yes, sir, there are. The plastic bag - I placed the
swab in the plastic bag. It bears my case number,
the date of receipt, my initials, the exhibit number
itself. I placed this label on the side. On the tube
30 proper there is, again, the file number, the date of
receipt, my initials, the exhibit number, and I also
attached a red R.C.M.P. lab sticker.

1 Q. I understand that these items get all sorts of numbers from all sorts of people. From the red sticker that is identified as being exhibit number what?

5 A. 1-H. I-R -- 1-H.

Q. And what did you proceed to do with that item after you had received it from Mr. Verrett?

A. I was asked to examine this article for the presence of seminal fluid.

10 Q. How do you go about doing that?

A. There is a number of steps to the procedure that can be followed. In this particular case I removed a small portion of the cotton tip swab that was contained originally in the tube, placed that on a slide, teased the threads of the swab material apart, added some distilled water, examined the preparation under phase contrast microscopy looking for spermatozoa.

20 Q. The method that you used, is that one of the normal and customary methods of looking for spermatozoa in a substance?

A. Yes, sir, that is definitive proof for the presence of seminal fluid.

25 Q. And when you perform that test would -- Let me just pause there for one moment. At this point, My Lord, I'm going to ask that this item be entered as an exhibit so that she can comment upon it.

THE COURT: That's identification "B". Item "B". It's my impression that the continuity of possession has been sufficiently shown although, Mr. Furlotte, if you have any representations to make in that regard --

1 MR. FURLOTTE: No, I haven't, My Lord.

THE COURT: I can't just recall offhand. I can't follow it through. I think I could if I took a minute, from my notes, but I --

5 MR. ALLMAN: I believe we have established the chain of continuity through to this witness.

THE COURT: Would you, Mr. Allman, just review very briefly how this one came in, or perhaps Mr. Walsh.

MR. WALSH: Yes, My Lord.

10 MR. ALLMAN: Mr. Walsh has the exhibit sheets in front of him. That's the easiest way to do it.

MR. WALSH: It would have gone from Doctor Losier to Constable Carnahan, to Constable Robin Britt.

THE COURT: Who took it to Halifax - or to Sackville.

15 MR. WALSH: To Sackville to civilian member Gary Verrett.

THE COURT: Who turned it over to --

MR. WALSH: Who turned it over to civilian member Sandy Lumgair. And the only question I would expect would be what Sandy Lumgair did with that particular item after she finished with it, but up until this point in time --

20

THE COURT: Well, her evidence is going to be what she did with it and that presumably is the crown's point, is it?

25

MR. ALLMAN: That's what I wanted to ask.

THE COURT: You don't care what happened to it after that, do you?

MR. ALLMAN: I care what happened to it afterwards as well but it's sufficient for those purposes to be --

30

THE COURT: Yes, but the basis you want to lay is what happened to it up to that point.

1 MR. ALLMAN: Until now so that she can comment on it.

THE COURT: Was anything else done with that particular
specimen?

MR. ALLMAN: In a sense, yes.

5 THE COURT: But does expert evidence turn on examination
subsequently?

MR. ALLMAN: Not hers.

THE COURT: Well, I might explain to the jury here, you have
probably wondered why the witnesses have been going
10 through a somewhat tedious account of how an envelope
was turned over to somebody and posted by registered
mail to somebody else, and how this was turned, and
somebody took it from Newcastle to Sackville and
turned it over. You may wonder what bearing has this
15 got. Well, if evidence is going to be given that
this contains seminal fluid, for instance, or sperm
or whatever, and the crown is to contend later that
that's of some significance, the Court has to be
satisfied before admitting it that there has been
20 continuity of possession. In other words, everybody
under the sun hasn't had access to this and could have
substituted somebody else's sperm or some substance
other than sperm, or blood, or hairs or whatever the
case may be. In other words could it have been
25 tampered with. And the Court has to be satisfied
within the bounds that the law prescribes that care
has been taken with the matter and that it can be
accounted for, and that the item that was examined
30 in Sackville by this witness was in fact the substance
that started out from Doctor Losier at his treatment
in Chatham on May the 27th (sic). This is why some
of these items were marked for identification rather

1 than introduced as an exhibit originally. And I
find as a matter of fact here - as a finding of fact
in law here that it has been established that there
has been continuity of possession and that there is
5 no evidence of tampering and I am satisfied that this
exhibit should be admitted.

So item "B" will become exhibit P-10.

(Clerk marks bag and contents exhibit P-10.)

MR. ALLMAN: I am going to show you what has now become
10 exhibit P-10 and ask you to just repeat, so we know
exactly what it is we're talking about, what you did
in order to perform a test upon that item.

A. Repetition of what I just explained?

Q. You indicated something about taking bits off,
15 teasing things apart, or something.

A. Inside the tube there was a cotton-tipped swab. I
removed - I cut off a small portion of the cotton
batting, whatever, placed that on a microscope slide,
added some distilled water, teased the threads apart
20 so that any material that was attached to the threads
or absorbed by the threads could float freely into
the water, and examined that microscopically.

Q. And you indicated the procedure that you used for
25 that and that you were looking for what?

A. Spermatozoa.

Q. And what was the result of your examination?

A. I did find spermatozoa to be present in the material
which I removed from court exhibit P-10.

Q. And, again, I think you sort of indicated this but
30 just for those of us who are not too up on these
things, what is the relationship of spermatozoa to
semen?

- 1 A. Spermatozoa are the cellular constituents of seminal fluid. They are the actual reproductive cells which carry the genetic information of the male.
- Q. After you had completed your test upon exhibit 10
5 what did you do with it?
- A. On court exhibit P-10?
- Q. Yes.
- A. I retained this exhibit in my sole possession until such time as I turned it over to Constable Robin
10 Britt at the Forensic Laboratory in Sackville on the 7th of July, 1989.
- Q. I am going to show you now an item that's been marked for identification, identification "C". Can you tell me anything about that, please?
- 15 A. Court exhibit "C" is a second - or was a second cotton-tipped swab which I received on the 1st of June, 1989 from Gary Verrett of the Forensic Laboratory.
- Q. Did you do anything with -- Well, I'll just ask you one other thing. Item "C" contains an exhibit
20 number, that is to say a non-court exhibit number.
- A. 1-I.
- Q. Did you perform any tests upon item "C" for identification?
- A. No, I did not, sir.
- 25 Q. What did you ultimately do with "C" for identification?
- A. Item "C" I retained in my sole possession until such time as I turned it over to Constable Robin Britt at the Forensic Laboratory on the 7th of July, 1989.
- 30 Q. I show you now "D" for court identification which contains a non-court exhibit number of what?
- A. 1-J.

1 Q. What can you tell us about "C" for identification,
your number 1-J?

A. Court exhibit "D" was a third swab which I had re-
ceived on the 1st of June, 1989 from Gary Verrett at
5 the Forensic Laboratory in Sackville. I did not
examine this exhibit. I retained it in my sole
possession until I turned it over to Constable Robin
Britt at the Forensic Laboratory on the 7th of July,
1989.

10 Q. If I understand right, and I'm going to summarize
what I understand your evidence to be and tell me if
I am wrong, you received "B", "C" and "D". "B" is
now an exhibit but it's easier to call them "B", "C"
and "D" for the moment. You received "B", "C" and
15 "D"?

A. Yes.

Q. And you performed tests looking for spermatozoa on
"B" alone?

A. Yes, sir.

20 Q. Why did you not also perform tests on "C" and "D"?

A. As I understood it, as I had been told, the three
swabs were reportedly removed from the same area,
point of origin as you will. If I found seminal
fluid on one that was sufficient for my purposes.
25 It was also indicated at the time that there might
be a possible examination at a later point for DNA
analysis in which case I did not want to use any
more material than absolutely necessary.

30 MR. ALLMAN: Thank you. I have no further questions at
this time.

THE COURT: Mr. Furlotte.

1 CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Miss Lumgair you said you performed tests on "B" alone and not the other two swabs, "C" and "D".

A. That's correct.

5 Q. What about police exhibit items number 46-D and 46-E?

A. Yes, sir.

Q. Could you tell the court what those items were?

A. Yes, I can. May I refer to my notes, please, sir?

10 I am going to refer to notes that I made at the time of my examination. They are notes that were made in my own handwriting which have not been altered since that time.

 Court exhibits 46-D and E were also two swabs that I had received. These were reportedly from the
15 dead victim, Annie Flam, the first being of vaginal origin, the second being of anal origin. I was asked to examine both of those for the presence of seminal fluid. I did not find seminal fluid on either.

Q. But they were examined?

20 A. Yes.

Q. And there was no seminal fluid?

A. That's correct.

Q. Did you attempt to get any blood groupings off any of the swabs?

25 A. Me? No, sir.

Q. Do you -- is it customary for you to do that? To perform those tests?

A. I have not had the time to learn the ELIZA procedure which would allow me to do that, therefore, it has
30 been forwarded to Ottawa where they have the capability already. That is where it has been done.

- 1 Q. So you have never done that in your lab before?
A. Me personally? No, sir, I have not.
- Q. Have you checked any other items for blood groupings?
A. Yes, I did.
- 5 Q. What would you call that test?
A. Which test? Checking items for blood?
Q. Yes.
A. Well, there's a number of procedures involved.
- Q. Is that also referred to as the ELIZA test?
10 A. There is an ELIZA test, yes, but no, the ELIZA is a procedure that is currently used for determining the ABO blood grouping of certain body fluids and it's also being used, or will be used in the future for P30, seminal fluid identification. A great many
15 other uses for ELIZA --
- Q. But you do use that test for say on blood samples?
A. No, sir, I do not.
- Q. You do not?
A. No.
- 20 Q. Exhibit 46-B3 --
A. Yes.
Q. -- which I believe was - was that a vial of blood from Annie Flam?
A. Reportedly from Annie Flam, yes, sir.
- 25 Q. And what test did you perform on that?
A. I did four blood groupings on that.
Q. And exhibit 6 and 7, they were what - cloths?
A. One was a piece of sheet and one was a piece of
30 mattress.
Q. And what test did you perform on that?

1 A. I was asked to examine both of those articles for
the presence of human blood as well as for the
presence of seminal fluid. I did not find seminal
fluid. There was human blood on both materials. On
5 the sheet I did find a PGM - or I was able to do a
PGM, one of the enzymes, and that was the same as the
PGM found in the human blood from Annie Flam which in-
dicated that they could have come from the same
source. I tried to type the blood that had been on
10 the piece of mattress in all of the systems a number
of times, unsuccessfully.

Q. When I read your report under the purpose, paragraph
number 2, it states: "To examine exhibits 2, 5, 6,
7, 12, 15A, 15B, 16A and 16B for the presence of
16 human blood and to type any blood found in the above
blood group systems."

A. That's correct.

Q. How is that different from the ELIZA test? How is
that test different?
20

A. Entirely different. As I said before, I can't --

Q. Is it because one is seminal fluid and the other is r
sults from blood stains or --

A. No, not necessarily, sir. Not necessarily. I
mentioned earlier that I have not had time to learn
26 the ELIZA procedure. What I say is not necessarily
entirely accurate. At the present time the ELIZA
procedure can be used for the typing in the ABO,
Lewis and the antigenics of some body fluids. It is
30 not used for blood.

MR. FURLOTTE: I have no further questions.

MR.

1 MR. ALLMAN: I have no reexamination. May this witness be
stood aside?

THE COURT: Yes, you are stood aside. You shouldn't, of
course, discuss this aspect of your testimony with
5 anyone until after all your testimony is complete.

MR. ALLMAN: My next witness, My Lord, is J. R. Robichaud.

JOSEPH RAYMOND ROBICHAUD, called as a witness, having
been duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. ALLMAN:

Q. Could you state your name and occupation, please?

A. My full name is Joseph Raymond Robichaud. I am
employed as a civilian member with the Royal Canadian
Mounted Police. I am stationed at the forensic
15 laboratory in Sackville, New Brunswick. I am a
member of the Toxicology Section.

Q. For the benefit of the jury in case any of them don't
know, what does toxicology mean?

A. Toxicology is the science that pertains to the study
20 or the examinations of various body fluids or other
materials for the presence of drugs and for poisons
that may be present.

Q. How long have you been employed in that capacity?

A. I have been employed as a civilian member for the
25 past 15 years at which point - or upon entering the
laboratory I began and successfully completed an under-
study program, 14 months in duration, in various
aspects of toxicological examinations. I successful-
ly completed this understudy program and was qualified
30 as a specialist on the 1st of November, 1977.

Q. Have you given evidence in court in your capacity as
a toxicologist?

1 A. Yes, I have. I have given evidence in the Province
of New Brunswick at Coroners' Inquests, in Provincial
Court and at Court of Queen's Bench.

MR. ALLMAN: My Lord I understand there is no objection to
5 Mr. Robichaud being declared an expert in the field
of toxicology.

MR. FURLOTTE: That's correct My Lord.

THE COURT: I so declare.

MR. ALLMAN: I just show you now an item that has been
10 marked "E" for identification. Would you take a
look at that, please, and tell us what you can about
it and its contents?

A. These exhibits which are in this plastic bag marked
15 item "E" as court exhibit were received personally
from Constable Robin Britt on the 1st of June, 1989
at the laboratory in Sackville, New Brunswick.

Q. Received by yourself?

A. Received by myself.

Q. And the contents of that envelope consist of - that
20 plastic envelope consist of what?

A. It consists of two vials of blood.

Q. What, if anything, did you do with those two vials
of blood?

A. These vials were submitted to various examinations.
25 The first one that was performed was for the presence
of carbon monoxide. I also examined for the presence
of cyanide, and then I did an examination for the
presence of drugs.

Q. Did you do that with both the vials or just one?
30

A. On both of them.

1 Q. In the course of doing that I presume that both of those vials contained a substance within them?

A. These vials were reportedly containing blood which reportedly came from Annie Flam.

5 Q. When you had completed your tests on these two vials was there any blood left in the first and blood left in the second or what was the situation?

A. One of the vials, vial marked number 1, was empty when I transferred it to Jean Claude Landry of the
10 Alcohol Section of the R.C.M.P. Forensic Lab.

Q. What had caused vial number 1 to be empty?

A. It was used up in my examinations.

MR. ALLMAN: My Lord we have a minor logistical problem here in that those two items are contained in the
15 one exhibit thing and the second of them goes on to Jean Claude Landry. I am just wondering whether it is necessary to call Jean Claude Landry as to continuity or could we have them entered as exhibits on our undertaking that the next witness we will call
20 will be Jean Claude Landry. I just don't want to put this witness on, take him off, and put him back on again.

THE COURT: Well, again, was it you, Mr. Walsh, who covered
25 the succession of possession of these items? This came from Doctor Losier?

MR. WALSH: No, this would have come if you remember My
Lord, and members of the jury, Constable LeFebvre attended at the autopsy in Saint John, he was
30 present when Doctor MacKay took three vials of blood purportedly from Annie Flam, and he transferred those three vials of blood to Constable Robin Britt who

1 transferred them to civilian member Mr. Robichaud.
That is my understanding of the testimony to this
point in time and at this point, and I would think
that would complete the chain of the continuity
5 subject to what my learned colleague has indicated
that one of the vials was transferred to the Alcohol
Section, and that would be a simple continuity point.

THE COURT: Was it examined after it was transferred to
the --

10 MR. ALLMAN: The empty vial which is in there was, I under-
stand, not examined; the second vial was sent on to
be examined by J.C. Landry of Alcohol and he will be
my next witness.

15 THE COURT: Do you wish the other witness to complete this
call Mr. Furlotte? It's your privilege.

MR. FURLOTTE: I don't see any problem with Mr. Allman's
request My Lord.

THE COURT: Well you are requesting that this be entered
in as --

20 MR. ALLMAN: I am requesting that that object containing
the two vials, numbers 1 and 2, be entered at this
time as an exhibit.

THE COURT: Has this been marked for identification?

25 MR. ALLMAN: It has been marked "E" for identification.

THE COURT: So "E" becomes P-11.

(Clerk marks Ident "E", plastic bag with 2 vials,
Exhibit #P-11.)

30 MR. ALLMAN: As I say, that contains two vials which are
marked 1 and 2 so I guess it's E-11 sub (1) and E-11
sub (2).

THE COURT: E-11(1) and (2). All right.

- 1 MR. ALLMAN: I am showing you the item now marked court
exhibit P-11 and with regard to those items you
indicate that you performed tests looking for what?
- A. I performed tests to look for the presence of carbon
5 monoxide. Carbon monoxide is a gas. It is produced
in the combustion process of various organic
materials including wood or carpet or let's say
gasoline or other materials that burn.
- Q. What about a house fire?
- 10 A. Including a house fire.
- Q. And what was the -- I don't propose to ask this
witness to go into the technical details unless my
learned friend wants me to as to what procedures he
performed. I'm just going to get to the bottom
15 line. You performed a number of tests. What was
the result of those tests in terms of looking for
carbon monoxide?
- A. For the examination for the presence of carbon
monoxide there was a normal or background level.
20 There was no appreciable carbon monoxide present
in the blood that I examined. Now appreciable is
I mean that the normal or background level - it's
normal in every person that is alive. The blood in
25 a normal living person, the hemoglobin which is the
oxygen-carrying agents in the body, are broken down
over a period of time and there is a slight amount
of carbon monoxide produced and this is in the order
of 1 to 4% in all persons that are alive. In a
30 person that has been exposed to any amount of carbon
monoxide the level quickly rises at which point a
level in the order of 15 to 35% can be considered
toxic.

- 1 Q. Sorry, you were dropping your voice there and I
couldn't catch it. What were the levels that's
considered toxic?
- A. The levels that are considered toxic are anything
5 in the order of 15 to 35%. Levels that are con-
sidered lethal can be anything in the order of 45 or
50% or greater and considered life-threatening or
lethal.
- Q. Lethal is another word for life-threatening I take
10 it?
- A. For life-threatening or for death.
- Q. Toxic is another word for?
- A. Toxic is where side effects which may appear include
15 muscle weakness, it could include headaches, it
could include flushing of the skin, disorientation.
- Q. And in the case of this particular blood that you
analyzed did the levels approach either toxic or
lethal?
- A. No. The level was within the normal therapeutic or
20 background level.
- Q. In a living breathing person exposed to carbon
monoxide gas how does the carbon monoxide get into
the system?
- A. The carbon monoxide when a person is alive is brought
25 in or breathed in through the lungs. It is then -
it then quickly binds with the hemoglobin at which
point it forms carboxyhemoglobin and at that point
the carboxyhemoglobin does not permit oxygen to bind
30 to that protein and therefore that hemoglobin protein
is useless for carrying oxygen, and if sufficient
amounts of these hemoglobin proteins are bound to

- 1 carbon monoxide it is at this time that the symptoms
of say - or death can occur.
- Q. Correct me if I am wrong but it's absorbed in that
fashion when the person breathes?
- 5 A. Yes, the person has to be alive.
- Q. That was the next question I was going to ask. What
about a dead, non-breathing person? Is there a
process by which the carbon monoxide gets into their
system?
- 10 A. No, it is not absorbed.
- Q. You also indicated, I think, that you were looking
for some other substances besides carbon monoxide.
What was that?
- 15 A. I looked for the presence of cyanide and cyanide is
a substance which, again, can be present in the
burning process involved, as you mentioned, as a
burning house or other combustible materials. It
is present in certain materials such as perhaps
mattresses or carpets or various types of carpets.
- 20 I can't give you specific names but it may be present
in household items or various items found in the
home. When this material burns or is involved in
the combustion process the cyanide is released from
that material and floats freely in the air. If a
25 person is involved or is in the midst of that smoke
or that burning process then the cyanide would be
inhaled along with any carbon monoxide that may be
present and this cyanide would then bind to the hemo-
globin molecule or the hemoglobin protein and again
30 prevent oxygen from being carried by that protein.

- 1 Q. In your analysis of these particular items what levels, if any, of cyanide did you find present?
- A. The level of cyanide that I found in the vials of blood that I examined was, again, normal background.
- 5 Q. Would it approach in any way either toxic or lethal?
- A. It would not.
- Q. Is there a process -- You indicated it was absorbed by breathing I gather?
- A. Yes, it is.
- 10 Q. Is there a process for which a dead, non-breathing person would absorb cyanide?
- A. No.
- Q. Did you do any tests looking for any other drugs?
- A. Yes. I did an examination for the presence of drugs and this examination was found to be negative or no drugs were detected in the exhibits that I examined.
- 15 MR. ALLMAN: Thank you. I have no further questions.

CROSS-EXAMINATION BY MR. FURLOTTE:

- 20 Q. Mr. Robichaud I also understand that you have conducted tests for common drugs?
- A. Well, common drugs or drugs.
- Q. Or drugs.
- A. Yes.
- 25 Q. And what was the results of those tests?
- A. Those were negative. No common drugs were detected.
- Q. No common drugs were used. Now, I also see in your report that you mention there's a lot of drugs that are not included as common drugs and you list some of them.
- 30 A. Yes, that is correct. I may list them --

1 Q. Would you list them again, please?

A. We do not -- when we perform an examination for the presence of drugs we do not examine for antibiotics. Antibiotics would be agents, pharmaceutical
5 preparations, that would be used to cure some sort of infection for example. We don't examine for the presence of metals. Metals could include anything from lead to cadmium to all sorts of metals. We don't examine for the presence of hormones which a
10 person may receive to correct let's say biological deficiencies. We don't examine for the presence - or in this particular case I should say, I did not examine for the presence of lysergides. Now lysergides is the family of drugs that includes LSD or
15 lysergic acid diethylamide. I did not examine for the presence of cannabinoids. Cannabinoids, again, is the family of drugs which includes or which people would know as marihuana, or cannabis marihuana. And I did not examine for the presence of cardiac
20 glycosides. Now these agents would be used to - such as Digoxin which would be used by persons suffering from perhaps certain heart diseases. We do not examine for that.

25 Q. So basically when you say you checked for common drugs what are some of the common drugs that it would include?

A. Common drugs that it would include would be, for example, nicotine and caffeine which everyone is, I'm sure, familiar with. It would include drugs such
30 as antidepressants. It would include the benzodiazepine family which would include such drugs as Valium and Librium and Serax and Halcion. It would

1 include barbiturates. It would include opiates such
as codeine and morphine. It would also include a Beta
blocker such as Inderal which is propranolol. It
would include antihistamines such as Gravol or
5 diphenhydramine which is the generic name for that.
It would also include -- One moment.

MR. FURLOTTE: I think that would be sufficient for my
purposes Mr. Robichaud. I have no further questions.

THE COURT: Reexamination?

10 MR. ALLMAN: No, My Lord. May this witness be stood aside?

THE COURT: Stood aside, yes. You hadn't indicated that
but he will be called again?

MR. ALLMAN: He will be recalled again.

15 THE COURT: So you are stood aside Mr. Robichaud and you
shouldn't discuss this aspect of your testimony with
anyone, including crown counsel, until all of your
testimony is completed.

MR. ALLMAN: My next witness, and I don't think he'll be
20 very long, about the same length as the last witness,
is Jean Claude Landry.

JEAN CLAUDE LANDRY, called as a witness, having been
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

25 Q. Would you state your name and occupation to the
court, please?

A. My name is Jean Claude Landry. I am a civilian
member employed by the Royal Canadian Mounted Police
as an Alcohol Specialist at the R.C.M.P. Forensic
30 Lab in Sackville, New Brunswick.

Q. How long have you been employed as an Alcohol
Specialist?

1 A. I joined the Royal Canadian Mounted Police January
5th, 1982 where I successfully completed an under-
study program in the Alcohol Section of the Forensic
Lab.

5 Q. In that capacity what sort of functions do you
perform?

A. My duties include doing analysis of body fluids in
order to determine, if any, the presence of alcohol,
as well as other similar volatiles.

10 Q. Body fluids would include blood?

A. Would include blood, urine, vitreous humor which is
liquid from the eye.

Q. So that's one of the things you have been doing since
you joined the Alcohol Section?

15 A. That's right.

Q. And have you been declared an expert in the courts
before, entitled to give opinion evidence in the
area of alcohol testing?

20 A. I was allowed to give opinion evidence as well as
my findings on analyses that I performed as I'm also
designated as an analyst by the Attorney-General of
the Province of New Brunswick.

25 MR. ALLMAN: I understand there's no objection to Jean
Claude Landry being declared an expert in the field
of analysis of human blood for alcohol and opinion
evidence thereon.

MR. FURLOTTE: That is correct, My Lord.

30 THE COURT: I declare him such an expert. If you were in
private practice you could charge double fees.

MR. ALLMAN: I would show you now what has become exhibit
P-11, two vials of blood, allegedly two vials of

1 blood purporting to come from Annie Flam. Can you
tell me anything about those items, please?

A. Yes, on the 14th day of July, 1989 I received a
white envelope brought personally from Raymond
5 Robichaud.

Q. The previous witness?

A. Previous witness. The white envelope contained two
vials of blood, one of whom was empty and the other
one was reported to contain blood taken from Annie
10 Flam.

Q. And with regard to the one that was not empty and
still contained some contents what did you proceed
to do with that?

A. I analyzed it to see if it contained any alcohol or
15 similar volatiles.

MR. ALLMAN: Again, I don't propose to go through the
technical process unless Mr. Furlotte wishes me to
do so. I simply propose to come to the bottom line.
What, if any, alcohol did you find to be present in
20 the blood that you analyzed?

A. There was no alcohol found to be present in the
exhibit that I analyzed.

Q. Did you find anything else? You indicated that
alcohol wasn't the only thing you might have been
25 looking for. Did you find anything else?

A. I found a trace amount of acetaldehyde. A trace
amount meaning a very small amount. I believe the
concentration was 3 milligrams percent, milligrams
of acetaldehyde per 100 milliliters of blood.
30

Q. What is acetaldehyde?

1 A. Acetaldehyde is a volatile liquid that can be
naturally produced by the body. It can -- It's
normally present in a very small amount in the body.
It can also be present in a higher concentration,
5 especially if there was alcohol present because
alcohol or ethanol alcohol breaks down into acetalde-
hyde which in turn breaks down into acetic acid and
carbon dioxide so it's a breakdown product of
alcohol.

10 Q. Irrespective of alcohol -- You indicated you found
no alcohol. Irrespective of alcohol did I understand
you to say that acetaldehyde is a naturally-occurring
substance in the human body in small amounts?

15 A. That's correct, in very small amounts. It can also
be found in cigarette smoke or --

Q. What about the amount that you found in this
particular sample? How would you describe that?

20 A. The amount that I found was 3 milligrams percent.
It's considered a trace amount. It's not a large
amount. To indicate the source I don't know really
what the source could be.

MR. ALLMAN: Thank you.

THE COURT: Cross-examination Mr. Furlotte.

25 CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Mr. Landry, however you pronounce it - sorry, I'm
not an educated man --

THE COURT: Acetaldehyde, is it?

MR. FURLOTTE: Would you pronounce that again, please?

30 A. Acetaldehyde.

- 1 Q. Now, you said that the body normally produces small amounts and some can be found in cigarette smoke. Is that substance also in some drugs that a person might take?
- 5 A. I'm not sure. I couldn't really tell. I doubt that it would be used as a solvent for some drugs because in larger amounts it can be toxic to the body. Actually, for individuals that are alcoholics and you want to prevent them from drinking they can be
- 10 prescribed a substance which causes the alcohol to be broken down into acetaldehyde and elevated amounts of acetaldehyde renders the individual sick so it would prevent the individual from drinking.
- 15 Q. So you mentioned one method would be through cigarette smoke. Any other methods?
- A. There is scientific literature indicates that there's acetaldehyde present in cigarette smoke in fairly large quantities.
- 20 Q. But you don't know of anything else?
- A. To my knowledge, no. Those are the three main ways of introduction in the body. Naturally produced or if there is alcohol it's a breakdown product of alcohol or probably by cigarette smoke.
- 25 Q. Now testing the blood for alcohol content, what effect would time have on when you conducted your test as to whenever the alcohol went in the blood as to when you take the test?
- A. It's possible that with time some alcohol could be
- 30 lost, especially if there is very long periods of time that elapsed since the taking of the blood sample and the analysis.

- 1 Q. And I suppose the obvious question is what do you consider a long period of time?
- A. I don't know. In excess of --
- Q. A month?
- 5 A. -- 3 months, or 4 or 5 months, a year, couple of years.
- Q. That would be a long time. But what would be the shortest period, let's put it that way?
- A. Actually, it depends on how large - on how big the
10 quantity of alcohol was present in the vial, and actually the larger the amount of alcohol that was present the more likely - or the more it would tend to lose, and as well on how full the vial was. Like
15 the less there is in the vial like alcohol can evaporate into vapor and can escape around the stopper. So if the vial is really full it's going to lose less and if it's more towards the empty you might lose more.
- Q. What about other possible drugs that may have been
20 in the blood that maybe you were looking for?
- A. Okay. Like when I say I look for the presence of alcohol I mean ethanol alcohol which is alcohol from the liquor stores. I also look for methanol alcohol
25 which is found in gasline antifreeze or it's methylhydrate, wood alcohol. I also look for rubbing alcohol which is the isopropyl alcohol. I look for acetone which can be found on untreated diabetics. Ethyl acetate which can be found in glue or nail
30 polish remover. These are the most common ones that I would normally look for.

1

MR. FURLOTTE: That's fine. No further questions.

MR. ALLMAN: No re-examination. May this witness be
excused? He is not stood aside.

5

THE COURT: I think if I were a jury member hearing your
evidence and I smoked I would give up cigarettes
immediately. You are excused, thank you.

(Discussion re adjournment.)

10

THE COURT: So we will adjourn now and, again, I warn the
jury please don't discuss the case with people unduly.
If you heard it on television don't believe every-
think you hear. You have been in court. You are
in a much better position to know what has been done
than anybody on the outside.

15

(ADJOURNED - 4:30 P.M.)

TO

SEPTEMBER 5, 1991, 9:30.)

20

25

30