

( Vol 114.)  
Arrangement

s/m/124/90

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

B E T W E E N:

HER MAJESTY THE QUEEN,

- and -

ALLAN JOSEPH LEGERE.

HELD AT: Newcastle, New Brunswick before The Honourable  
Mr. Justice David Dickson.

DATE OF HEARING: December 5, 1990.

APPEARANCES:

Anthony Allman, Esq., and  
John J. Walsh, Esq., for Her Majesty the Queen.

Weldon Furlotte, Esq., for the accused.

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Indictment before the Court at this time.

Who is representing the Crown?

MR. ALLMAN: My lord, Tony Allman appearing on behalf of Her Majesty the Queen together with my learned friend Mr. Walsh.

COURT: Mr. -- Mr. Allman, is it?

MR. ALLMAN: Yes, it is, my lord.

COURT: Yeah. And -- and did you say -- what -- what else did you say?

MR. ALLMAN: I'm -- I'm -- together with me is my learned friend, Jack Walsh.

COURT: Mr. Walsh, right. You confirm that you are preferring an Indictment of some sort?

MR. ALLMAN: Yes, my lord. Perhaps just prior to doing so I could indicate at this time Mr. Legere is represented by Mr. Weldon Furlotte who's sitting here.

COURT: Well I -- I -- I'll --

MR. ALLMAN: I have an Indictment to prefer and I would move to do that.

COURT: We'll -- we'll look at your Indictment first because there may not be anything for Mr. Furlong (sic) to do.

This -- this is the Indictment you're preferring.

MR. ALLMAN: I would move to prefer that Indictment, yes, my lord.

COURT: And this complies with -- what section is it of the --

MR. ALLMAN: Section 577, subsection (c).

COURT: 577. Well the only requirement is that it'd be consented to by the Attorney General or by the Deputy Attorney General I believe. This is the Attorney General's signature presumably on this Indictment.

MR. ALLMAN: Yes, it is, my lord.

COURT: Well now this involves as defendant the -- the -- Mr. Allan Joseph Legere -- and Mr. Legere is present? Where is Mr. Legere? You're Mr. Legere. And Mr. Legere is represented by counsel I take it?

MR. FURLOTTE: Yes, Weldon Furlotte representing Mr. Legere.

COURT: Mr. Weldon Furlotte for Mr. Legere. I'll give you the Indictment. Oh, may I just see it for one moment.

Now the -- you're making a motion for arraignment are you, Mr. Allman?

MR. ALLMAN: I am, my lord.

COURT: Are you -- do you -- do you wish before the arraignment and the taking of the plea, Mr. Furlotte, do you wish to consult with your client at all?

MR. FURLOTTE: I have consulted this matter with my client.

COURT: And you're prepared that the arraignment go ahead.

So would you, Madame Clerk, then proceed with the arraignment please of the accused.

CLERK: Yes, my lord.

COURT: There are what -- four counts in the Indictment, so there'd be a separate plea taken on each count.

CLERK: Mr. Legere, will you please stand.

And you are in fact Allan Joseph Legere, is that correct?

MR. LEGERE: Yes.

CLERK: Yes. Allan Joseph Legere you stand charged that you on or about the 28th day of May, 1989, at or near the Town of Chatham, in the County of Northumberland and Province of New Brunswick, did commit first degree murder on the person of ANNIE FLAM, contrary to Section 235(1) of the Criminal Code of Canada and amendments thereto.

Upon this count in the Indictment, how do you plead, guilty or not guilty?

MR. LEGERE: I'm not entering any plea unless I have a preliminary hearing.

COURT: I'm -- I'm sorry, would you repeat that please?

MR. LEGERE: I said I'm not entering any plea until I have a preliminary hearing.

COURT: Alright, write down not guilty please.

CLERK: Yes, my lord.

Count number 2 in the Indictment reads that you, Allan Joseph Legere, on or about the 13th day of October, 1989, at or near the Town of Newcastle, in the County of Northumberland in the Province of New Brunswick, did commit first degree murder on the person of DONNA DAUGHNEY, contrary to Section 235(1) of the Criminal Code of Canada and amendments thereto.

Upon this count in the Indictment, how do you plead, guilty or not guilty?

- MR. LEGERE: No -- no plea entered because I can't have a preliminary hearing or until after the preliminary hearing.
- COURT: Just -- Mr. Furlotte, have you discussed this aspect over --
- MR. FURLOTTE: Yes, I have, my lord.
- COURT: Have you? And --
- MR. FURLOTTE: And I agree with Mr. Legere.
- COURT: Yeah, but you agree in the circumstances that I should direct the Clerk to enter a plea of not guilty.
- MR. FURLOTTE: Oh yes, I understand that, my lord.
- COURT: Yes.
- MR. FURLOTTE: You have no choice.
- COURT: So please, as in the first count, enter a plea of not guilty.
- CLERK: Yes, my lord. Count number --
- COURT: You -- well I won't address myself --
- MR. LEGERE: Yeah, I understand.

COURT: You -- you understand, Mr. Legere,  
right.

CLERK: Count number 3 in the Indictment reads  
that you, Allan Joseph Legere, on or  
about the 13th day of October, 1989, at  
the Town of Newcastle in the County of  
Northumberland in the Province of New  
Brunswick, did commit first degree  
murder on the person of LINDA DAUGHNEY,  
contrary to Section 235(1) of the  
Criminal Code of Canada and amendments  
thereto.

Upon this count in the Indictment,  
how do you plead, guilty or not guilty?

MR. LEGERE: I refuse to enter a plea 'til I have a  
preliminary hearing.

COURT: And this would be treated as a plea --  
as a plea of not guilty again.

CLERK: Yes, my lord. Count number 4 in the  
Indictment reads that you, Allan Joseph  
Legere, on or about the 15th day of  
November, 1989, at Chatham Head in the  
County of Northumberland in the Province  
of New Brunswick, did commit first  
degree murder on the person of FATHER  
JAMES SMITH, contrary to Section 235(1)  
of the Criminal Code of Canada and  
amendments thereto.

Upon this count in the Indictment,  
how do you plead, guilty or not guilty?

MR. LEGERE: I refuse to enter a plea 'til I have a preliminary hearing.

COURT: And the same, not guilty plea.

CLERK: Yes, my lord.

Harken to your plea as the Court has recorded them, four pleas of not guilty have been entered on each count in the Indictment.

COURT: Thank you. And sit down, Mr. Legere, please.

Now the -- there is in the case of a specially preferred or directly preferred Indictment, there is a presumption that a trial by Judge and Jury is required. I would point out to the accused, as I'm sure counsel -- his counsel is aware, that there is a procedure under Section 565 of the Code whereby an accused can elect -- can re-elect trial to Judge Alone with the consent of the Prosecutors but there is in that section a procedure prescribed and I guess all I do is bring it to the attention of counsel.

The -- there's one observation that I have to make and that is, Mr. Allman or Mr. Walsh, there's -- there's no list of witnesses, Crown witnesses, on the back of the Indictment.

MR. ALLMAN: My lord, there's a reason for that. The first reason is simple, there is not



physical room to put it on the  
Indictment. The second is that we  
intended to indicate this in open Court,  
we're going to provide Mr. Furlotte with  
those three boxes. Those three boxes  
contain --

COURT: Well no, I don't want to know what they  
-- what are they?

MR. ALLMAN: They contain a brief to the Defendant of  
all the --

COURT: Well I --

MR. ALLMAN: What -- what I was about to indicate --

COURT: Yeah, but that -- that -- it's not  
proper for you to be dealing with that  
in this Court, is it?

MR. ALLMAN: Well I believe it is, my lord, for this  
reason. When we're dealing with a  
direct Indictment, there have been a  
number of cases that indicate that  
that's appropriate if adequate  
disclosure is made to the Defence.

COURT: Can you cite any case where the Crown  
has ever been permitted to make a speech  
about its disclosure to the Defence  
counsel in open Court before the --

MR. ALLMAN: I can't, my lord, but then that's not a  
customary -- these -- these are recent  
developments arising --

COURT: Well there have been lots of cases --

MR. ALLMAN Out of the Charter.

COURT: Where there's been direct Indictments. I'm not suggesting that you shouldn't, as a matter of fact it's highly necessary probably for you to be making disclosure to Mr. Furlotte, especially where there was no preliminary hearing, but I don't think really it's a proper matter to be dealt with --

MR. ALLMAN: Well the reason why I waited is because your lordship mentioned the absence of a witness list. It seems to us that it is premature to do so at this time because after Mr. Furlotte has had the opportunity to go through the material we have provided him, then the witness list may well be drastically varied.

Just by way of example, there are in one case ten witnesses all who deal with nothing other than continuity of the scene, whether we will be required to call all those or not I don't know.

COURT: Well shouldn't -- shouldn't you list those on the back of the Indictment -- or whether it's prepared, not today or tomorrow, but shouldn't you list them and if their attendance isn't necessary later, then you don't call them. And --

MR. ALLMAN: If you're not -- if your lordship don't accept that, we'll certainly --

COURT: I would think so. But I -- I -- the -- the practice used to be invariably that the back of the Indictment, as you know, contain the list of the Crown witnesses some of whom might be waived later by Defence counsel, but we sort of got away unfortunately from that practice, but I -- I think you should prepare that list just as soon as you possibly can and then --

MR. ALLMAN: I'll undertake to prepare the list in a very short time and --

COURT: And -- and make sure that the Court has a copy and that Mr. Furlotte has a copy.

MR. ALLMAN: It will be done.

COURT: As far as the other material on the disclosure goes, well that's a matter between you and Mr. Furlotte. If he wants to complain later when you start to call witnesses when the trial comes on that you haven't made disclosure of something, then the Court will have to consider whether you've made sufficient disclosure, but before that, I don't want to know what --

MR. ALLMAN: (Inaudible) disclosure.

COURT: Particularly what disclosure you might -- but Mr. Furlotte, you're gonna have to have somebody help carry away all the disclosure items I guess, aren't you?

MR. FURLOTTE: My lord, first of all, maybe I'd like to put the Attorney General on notice that it is my intention to take a motion before the Court, not today but in the future, to quash the preferred Indictment as the Crown has violated Mr. Legere's right under Section 7 of the Charter to a fair trial.

COURT: Well that we can consider --

MR. FURLOTTE: I -- I must --

COURT: In a few minutes here any preliminary motions and -- and subsequent that could be heard later.

MR. FURLOTTE: Maybe -- maybe depending on whether my motion is successful or not the Crown may not wish to disclose the information to me at this time.

COURT: Yeah. The other matter is -- before I fix a trial date, which would be the next item on the agenda of this morning's sitting, is -- are there any preliminary motions?

I do understand that there was some suggestion in this case -- mind you I get all my information from the newspapers, the newspapers they suggest that perhaps there was going to be an application for change of venue. Is anyone making an application for a change of venue or is the case to be tried in Newcastle? I propose to fix a

trial date this morning and you're --  
are you making any application, Mr.  
Furlotte?

MR. FURLOTTE: My lord, as previously indicated, I will  
be making different preliminary motions,  
one will be a motion to have the direct  
Indictment quashed and fight for Mr.  
Legere's right to have a preliminary  
hearing. There will definitely be a  
motion for a change of venue --

COURT: Well that -- that may be the -- if there  
is to be a motion for change of venue,  
that would be decided first before your  
other motion is entertained. Do you say  
you intend to make a motion for change  
of venue?

MR. FURLOTTE: Yes, I do.

COURT: And are you doing that now?

MR. FURLOTTE: Oh God, no. I -- I haven't had time to  
go through any of the evidence as to be  
able to present --

COURT: The evidence has nothing to do with  
venue. Why do you want to go through  
evidence to -- what -- what has the  
evidence got to do with venue?

MR. FURLOTTE: I have a bunch -- I have a lot of other  
evidence that I have to go through to  
support my motion for change of venue.

COURT: Are you --

MR. FURLOTTE: It will be necessary for me to argue all  
the publicity that Mr. Legere was

subjected to while waiting even for charges to be laid.

COURT: Do you want the case to be tried in Newcastle or do you want it to be tried somewhere else?

MR. FURLOTTE: I am at this point stating that there's --

COURT: And I'll -- I'll ask the Crown the same thing.

MR. FURLOTTE: I am at this point stating that there's --

COURT: I'm not trying to put you on the spot. I --

MR. FURLOTTE: There's no way I would consent for the trial taking place in Newcastle.

COURT: You what? You would?

MR. FURLOTTE: There's no way I would consent to the --

COURT: There is no way.

MR. FURLOTTE: Trial taking place in Newcastle.

COURT: Well --

MR. FURLOTTE: And if the Crown would consent to a change of venue --

COURT: Yeah, may I -- may I hear the Crown on the matter.

MR. WALSH: My lord, the Crown would not oppose an application by the Defence for change of venue.

COURT: Well the -- I'm not sure whether the Defence is making an application for change of venue or not.

MR. WALSH: If he is, we do not oppose it.

COURT: Can I treat your -- what you've said as an application for change of venue, Mr. Furlotte?

MR. FURLOTTE: Only if you're going to grant it, my lord, otherwise I would need time to prepare to argue.

COURT: What have you got to say in -- what have you got to say in support of your application very briefly.

MR. FURLOTTE: In support of my application very briefly I'm not prepared to make that application today if I have to present evidence to argue for it.

COURT: You don't have to present any evidence. I think your argument need only be very slim I might say as well.

MR. FURLOTTE: Well my argument is briefly that because of the wide spread publicity that Mr. Legere has been subjected to in the past year and a half in the -- in the newspapers, television, radio, the fact that certain evidence has been revealed -- been revealed by the police to the news media to spread this smear campaign on Mr. Legere, there is no possible way that Mr. Legere could get a fair trial in the Newcastle area.

COURT: Well I -- I -- some of your language is a little extreme surely, isn't it, about smear campaigns and so on. I mean I'm

not, however -- well -- without that, what -- what is the Crown's view? You say you don't oppose it. Do you have any further statement, Mr. Walsh?

MR. WALSH: No, my lord, unless the Court wishes -- wishes me to make a further statement. We do not oppose the application of the -- of the Defence.

COURT: Well may I ask you this, Mr. Walsh. Wouldn't it make a great deal of sense to -- to -- to have a change of venue to change it to some other venue from here?

MR. WALSH: We quite agree, my lord.

COURT: I don't -- you know, one can't help but -- sit down just for a minute, Mr. Furlotte. I'm aware, as any other member of the public is aware, that -- of the -- of the impact that some of these events with which the trial is concerned, quite regardless of guilt or innocence, has had on this community and it would seem to me it would be perhaps rather difficult, particularly with four counts and four different instance involved in the Indictment and then the trial, to get a jury panel together from which 12 jurors could be selected in an area like this with the relationships.

Again I believe I'm -- might take note that one of the accused (sic) here was a -- was a religious man or a



religious officer, a priest, who would have far spread connections I suppose with congregations and so on. I would think it'd be very difficult to get a jury in a case like this. And surely it is a case where the venue should be moved somewhere else.

Then we come to the question, of course, of where -- where should it go. Do you have any representations, Mr. Furlotte, to make on that matter? Have you --

MR. FURLOTTE: Well in spite of my belief that Mr. Legere couldn't get a fair trial anywhere in New Brunswick, I guess my preference would definitely be Moncton, from where I'm from, so I could have readily access to my facilities -- office facilities, and I understand it's going to be a rather lengthy trial, some prediction of four or five months if that's --

COURT: Well it's not going to be four or five months long unless I'm sadly mistaken. I've never heard of a case being four -- yes, I did hear one case in Fredericton being six months long or something, but you know, the suggestion that a case like this would go on for six months is -- is -- can't be correct, surely. I can't imagine a case taking more than a

few weeks. Mind you I don't have the benefit of knowing how many witnesses the Crown has in mind or the nature of their evidence and so on. And I realize probably there'll be fairly lengthy voir dires.

Has the Crown have any -- any -- any comment they wish to make on -- it wishes to make on the possible venue for the trial?

MR. WALSH: No, my lord, we have no particular preference.

COURT: It seems to me -- the trial is -- will be in English and there's no change of any other language of trial being selected, so that rather reduces the whole matter to about four judicial districts, doesn't it, Moncton, Fredericton, Saint John and Woodstock. I don't -- I think the others are almost automatically eliminated.

The -- I've entertained these applications before, I've refused -- I might say, Mr. Furlotte, and gentlemen for the Crown, I'm thoroughly convinced, and I will decide that there will be a change of venue; it's just a question of where it should go to.

Some of the factors, as I had occasion once before to point out, this was 15 or 16 years ago, an area should

be avoided where there might be particular hostility toward the accused, the ease of selection of a jury competent in the language of trial, the minimum possible travelling distance to the home areas of prospective witnesses, the lodging facilities for those connected with the trial and perhaps, especially police officers and other witnesses who may have to hold over because of scheduling problems, minimum disruption with the public and with other facilities located in the area of the courtroom to be used, the adequacy of the courtroom itself and its facilities including a jury room, holding room for the accused, space for counsel and so on, and facilities for securing the accused during the course of the trial.

You mentioned, Mr. Furlotte, the question of the adverse publicity perhaps anywhere in the Province. Certainly in other cases that has been recognized, I know two cases which involved some notoriety some years ago where I refused applications for change of venue on the ground that, while in the venue set, where the Indictments had been preferred, the -- there had been great notoriety of the trial and there

had been right through the Province but it had been equally through, it was impossible to go anywhere in the Province where there wasn't the same notoriety. So I said well the only place to do it is where the charges -- the Indictments have been preferred and in the -- in both cases I might say the Supreme Court of Canada -- the Provincial Court of Appeal and Supreme Court of Canada upheld the -- those decisions. That was back in the '70's when there was a great rash of applications for change of venue.

In this case when you begin to think of where it should go, there'd be no reason -- Saint John or Woodstock would hold no advantage over Moncton or Fredericton, they're just farther away and they're farther away from Newcastle or this area, the Newcastle-Chatham area, where presumably a fair number of witnesses will be -- would be from. Am I correct in assuming --

MR. ALLMAN: Yes.

COURT: There would be quite a number of witnesses. Well there's no need of making witnesses travel that extra 65 miles to Woodstock from Fredericton or -- or the extra 75 miles to Saint John. And Moncton has no courtroom. They --

back in the -- about 25 years ago a number of governments or a number of government starting 25 years ago, successive governments in this Province, adopted the unfortunate policy of putting courtrooms in shopping centres and office buildings and where -- where trials can cause a maximum disruption with the commercial life and so on of the people occupying those buildings instead of building proper courthouses which would be isolated in some degree.

Moncton they had a good courtroom. They've used the jury room now for another purpose and there's no adequate jury room in the Moncton courtroom. And Memramcook, I've tried trials in Memramcook before which was used after the Westmorland County Courthouse burned at Dorchester, but Memramcook isn't -- I don't think that's even available now as a courtroom.

And really it reduces the venue to the Fredericton district and probably that's appropriate because it is the Nisi Prius -- or the Nisi Prius sittings of the Court are held in Fredericton and have traditionally been held there and there are facilities there. I'm not going to suggest at this point what courtroom would be available to use

there, but I'm sure that there are facilities available. And I'm sure the other conditions are met.

So I'm going to make an Order -- counsel -- do counsel wish to speak to it any further? I'm going to make an Order that the venue of this trial be changed to the judicial district of Fredericton. The precise place of trial will be -- we'll notify counsel. Of course, we will be having a series of pre-trial -- pre-hearing conferences before the trial commences in any event.

I do point this out too that while some particular courthouse might be allocated for the trial itself, it may be necessary to go to some other location for the jury selection process for the initial day of the trial because there aren't -- I -- I would imagine here that one would have to summons a large number of jurors on the panel, and most courtrooms you can't get a large number of panels in. I think Mr. Justice Creaghan in one trial a few years ago in Fredericton had the first day of trial in the playhouse there. I know in one trial here about 14 or -- 13 or 14 years ago I had the -- there were eight accused in a trial and we went to the town hall down here and we

had the first day of the trial at the town hall because we had something like 200 persons panelled -- called for the jury panel. But anyway those are matters to be settled later.

Now the -- the other -- there is another point and that is that under -- with regard to the change of venue under Section 599, there is a provision that the -- the -- oh I'm sorry, the Court or Judge may in an Order made upon an application by the Prosecutor prescribe conditions and so on. The application here strictly hasn't been made by the Prosecutor.

With respect to the payment of additional expenses caused to the accused as a result of the change of venue, well I suppose at this point, Mr. Furlotte, it's not apparent that there will be extra expense connected with the accused, but this is a matter that can be taken up with the Court during the course of the trial if -- if the Court can assist in that regard.

I would instruct the Clerk to deliver to the Clerk at -- in the Fredericton judicial district the -- the Indictment and any other papers before the Court, I'm not aware that there will

be any but if there are any, they should  
be --

CLERK: Yes.

COURT: Well now the other preliminary motions,  
you've indicated you may have a motion  
with regard to the setting aside the  
Indictment. Perhaps we can leave that  
to discussion at a pre- -- as soon as  
this hearing is over and then about 15  
minutes time, I would like counsel to  
meet with me in the Judge's chambers  
downstairs with the Clerk present as  
well to discuss some of the  
administrative arrangements with regard  
to the trial, some of the timings and  
that sort of thing. And we can perhaps  
then consider when would be an  
appropriate time to make any other  
preliminary motions. There are -- do  
you envisage any other preliminary  
motions, Mr. Furlotte?

MR. FURLOTTE: I also --

COURT: I -- I know that you haven't been given  
an opportunity perhaps to consider this  
very long.

MR. FURLOTTE: Depending on whether or not I'm  
successful in having the direct  
Indictment quashed, I may have another  
motion after that, but besides that  
other possible motion, there will be a



COURT: motion I suspect after I go through the evidence for a severance of the charges. Well we can talk about that at the pre-hearing conference and we'll make some adequate provision for it.

And the -- the accused will of course be -- well -- the first -- the next item would be the fixing of a date for a trial. I realize that there may be preliminary matters to be gone through, I don't know what the intention of the Crown would be with regard to seeking the consideration of any preliminary matters or submissions before the trial actually commence, I -- I am not a person who favours that being done. I say get the trial under way, if there are matters of voir dres and that sort of thing, let them take place during the trial itself, particularly having regard to the nature of this trial. Do -- do -- do you, Mr. Allman, disagree with me on that?

MR. ALLMAN: With respect I think in this case, my lord, it probably will be necessary and --

COURT: Will be?

MR. ALLMAN: To -- to voir dire a number of matters before these things go to the jury. The nature of the evidence is such --

COURT: Oh, oh, I quite agree --

MR. ALLMAN: That it has to be dealt with.

COURT: Yes, I meant --

MR. ALLMAN: That's what you meant?

COURT: That is not the point.

MR. ALLMAN: I'm sorry --

COURT: The point I was making is whether they should be decided separately, and a separate hearing be held before the trial proper commences.

MR. ALLMAN: No. No, no.

COURT: I don't lean in favour of doing that. I --

MR. ALLMAN: We contemplated a date for the trial being set, whatever it might be, and then the initial portion of the trial will be voir dices and then --

COURT: Well --

MR. ALLMAN: Depending upon what your lordship rules on --

COURT: Well normally one would lay a foundation of some sort before --

MR. ALLMAN: Exactly.

COURT: The voir dices and -- and the jury perhaps would be excused for some time.

MR. ALLMAN: That's what we have in mind.

COURT: Yeah. Well now as far as -- as -- as dates go, I know that -- it seems to me that this trial should be gotten under way as soon as possible. I see no reason why it shouldn't commence within a month. I know that this will work a

hardship -- I don't know whether it has done or will do on the Crown as much as it will do on you, Mr. Furlotte or -- I say you because any lawyer -- any defence counsel who is taken out of his normal practice for -- for a protracted period, I saw some suggestion in the newspapers about a year, well that's -- you can forget about that, that's incorrect and wrong, and this couldn't possibly take a year or at least that aspect of it couldn't, perhaps the follow-up and appeals or something but I -- I -- I have in mind January the 14th as the date to commence the trial and fix the trial for --

MR. FURLOTTE: You have when in mind?

COURT: January the 14th, Monday, January the 14th.

MR. FURLOTTE: Well, my lord --

COURT: Now it may be necessary as matters develop when we have a pre-trial conference, a second one say shortly, in a weeks time or something like that, it may be necessary to allow more time for preliminary matters but --

MR. FURLOTTE: My lord, I have not had time to go through any of the evidence, I have had no disclosure yet, but I have been informed by the Crown that they suspect it might take me four to five months to

prepare for trial, that's without any preliminary motions. There is a mass -- mass of evidence that I have to go through. I also have to clean up -- I am also informed that I have to drop my practice and spend all my time on Mr. Legere just to be prepared for trial in four or five months without any preliminary motions.

COURT: Well there is no question of this trial -- the commencement being delayed for four or five months, Mr. Furlotte.

MR. FURLOTTE: Well on that aspect, my lord --

COURT: And--

MR. FURLOTTE: I do not wish to take part in this trial because Mr. Legere cannot get a fair trial if it is. If his defence counsel is not given time to prepare for trial, I don't want any part of it. I will not be used that -- in that manner.

COURT: What are you suggesting?

MR. FURLOTTE: I'm suggesting that I have time to go through the evidence, I have time to prepare a full answer and defence for Mr. Legere and when I'm ready for trial, we'll set a date. The Crown, the police, have had a year and a half to do their investigation to prepare for trial, they talked about laying charges over one year ago against Mr. Legere; they've delayed it so that they could

take the time to prepare for trial, I cannot compete with a whole police force, one man in one month. And if it means --

COURT: Well you -- you talk about --

MR. FURLOTTE: My being disbarred for refusing to represent Mr. Legere --

COURT: You talk about -- you talk about other commitments for other trials, what -- presumably you're going to give up those trials or have someone else do them?

MR. FURLOTTE: I --

COURT: There's no way you can do both, you know.

MR. FURLOTTE: I know. I have six judge and jury trials scheduled 'til the end of February and I may be able to get other counsel to take some of them but definitely not all of them. But aside, if I didn't have a darn thing to do, if I could just walk away from my practice and spend all my time on Mr. Legere's case, I can tell you right now I'm -- I'm positive there's no way I could even be ready for trial in five months.

Because this is just the evidence that I have to go through, I have to interview all the witnesses the police interviewed and Mr. Legere -- it's bad enough that he's had all the adverse publicity, but if you're not gonna give

a solicitor time to prepare for his trial, then you may as well just hang him right now.

COURT: I won't -- look, I -- Mr. Furlotte, that type of language isn't really called for in Court. Are you telling me I may as well hang him now? What are you telling me?

MR. FURLOTTE: Well he may as well go commit suicide, no wonder he's --

COURT: What sort of language is that for a barrister to use in Court?

MR. FURLOTTE: Well I just happen to be upset.

COURT: Well you know --

MR. FURLOTTE: And -- and I believe deservedly so.

COURT: Well you must keep yourself a little -- under a little better control than that please.

I want to say this too and I -- I intended to say it before; there is no way that a single counsel, acting for an accused, could carry on a trial like this. I'm totally satisfied and I -- one -- one of the things -- matters I want to discuss in -- in a pre-hearing conference is the possibility or the likelihood of other counsel being engaged to assist you in this. You can't do this yourself, Mr. Furlotte.

MR. FURLOTTE: Well I have to discuss that matter with Legal Aid again --

COURT: Well I don't want to know anything about Legal Aid. I'm not supposed to know who's represented by Legal Aid or not but if that is necessary, I -- you have the assurance of the Court that the Court will co-operate fully with you in that regard.

You were going to speak, Mr. Allman?

MR. ALLMAN: I was wondering if I might be given the opportunity to make some comments, my lord, I hope it will assist the Court. Our -- our feeling is that there's a happy medium. We certainly appreciate your lordship's desire to proceed with all due expedition in this matter, and of course, we do too want to get this case on as quickly as possible. I can't, on the other hand, help feel there is some merit in Mr. Furlotte's basic points. I do know that there's a mass of material out there. I know that it involves -- Mr. Furlotte is probably going to have to --to go and find and then engage and then discuss with expert witnesses on various aspects of this case, all of which does take time.

My view -- there's also the logistical problem that we expect, although I haven't given you a witness list, but we will provide that, but we

expect to be calling approximately 200 witnesses. The logistics of getting all of those people here, and they come from all parts of Canada and from the United States, it's considerably -- I -- I think that a month, with all due respect, would be a little short even for the Crown and I certainly understand Mr. Furlotte's (inaudible). On the other hand, I think suggestions of five to twelve months, particularly if co-counsel are engaged, is more than required. Our feeling is something in the region of two to three months would suffice us and ought to suffice Mr. Furlotte.

COURT: Well I'm going to fix the date Monday, February the 4th at 10:00 o'clock in the morning as the date for trial, that is, two months from now. And the accused is remanded until that time for --

MR. LEGERE: Your honour, can I -- can I not speak at all?

COURT: You're -- do you --

MR. LEGERE: I just have something to say to you.

COURT: Do you want to discuss this with Mr. -- with Mr. Furlotte?

MR. LEGERE: I'd rather speak to you if you don't mind, only briefly.

COURT: Well Mr. --



MR. LEGERE: Mr. Walsh has been given a year to study up on D.N.A. and he's well experienced, they're two well experienced Prosecutors. Mr. Furlotte hasn't got a clue about D.N.A. nor does any other Canadian lawyer. So how do you expect him or anybody else to defend me in two months time whenever the experts in this case say it's got to be done in laboratories and scientific laboratories and they know what they're doing, that's why they want to rush it through now and get me convicted. And all you're doing is aiding them, if you don't mind me saying so, by speeding up the trial.

COURT: Thank you very much.

MR. FURLOTTE: My lord, may I make a motion to withdraw from this case? I don't feel comfortable enough to handle this case within the short period of time that you're granting for trial.

COURT: No, I will not give you any permission to withdraw from this case at this point.

MR. LEGERE: You know what they're doing, don't you God damn no worry.

COURT: I will meet with counsel in about 15 minutes in Mr. Justice -- in the Judge's chambers downstairs and --

MR. FURLOTTE: My lord, I request any meetings between counsel and -- and yourself take place in front of the accused.

COURT: In front of what?

MR. FURLOTTE: In front of the accused.

COURT: Well the accused will be available here, I'll discuss that with counsel downstairs and there is no right of an accused to be present at a pre-trial conference --

MR. FURLOTTE: Are you considering this a pre-trial conference before I had any --

COURT: Pre-hearing conference.

MR. FURLOTTE: Disclosure on this case?

COURT: Pardon?

MR. FURLOTTE: You're going to consider this a pre-trial conference before I had any disclosure --

COURT: Mr. Furlotte, have you ever attended a pre-trial conference before? You must surely have done.

MR. FURLOTTE: Well I've attended many --

COURT: They are required in every case --

MR. FURLOTTE: Pre-trial conferences --

COURT: Pardon?

MR. FURLOTTE: I've attended many pre-trial conferences but never like this.

COURT: Well what do you think happens at pre-trial conferences and --

MR. LEGERE: Don't expect me to go along with it, 'cause I'm not, they'll drag me in and

drag me out. (Inaudible) days time, so  
I don't give a fuck.

COURT: Are there any more -- any other matters  
to be dealt with now?

MR. LEGERE: All we need now is Frank McKenna here  
and big fat --

COURT: Would you adjourn the --

MR. LEGERE: (Inaudible).

COURT: Court please.

CLERK: Yes, my lord.

CRIER: Please stand, Court is now adjourned.

(The Clerk adjourned the Court.)

COURT ADJOURNED AT 10:20 A.M..

\*(COURT: This adjourned sitting has been called  
as an extension of the earlier sitting  
for a limited purpose, which I shall  
mention in a moment. But first, I might  
report for the record that, since the  
earlier sitting this morning, counsel  
and I have been meeting in what I  
consider a very profitable pre-trial  
hearing of that type provided for under  
the Criminal Code. We have not at that  
hearing concerned ourselves with any  
substantive issues affecting the matters  
before the Court, but have considered a  
wide variety of matters concerning the  
administration and programming of the  
trial.)

COURT: Earlier I fixed as the opening date of  
the trial the date February the 4th, I

believe it was. As a result of our discussion, it becomes apparent that we can't proceed at that time with the calling of witnesses, and very likely the trial proper wouldn't get under way until let's say early April at the earliest. And I think counsel are agreed on that fact.

We will be sitting at -- in the Fredericton judicial district on the date originally fixed, which would be February the 4th. Preliminary motions, which either side want to make at that time, will be heard and will be dealt with or at least argued at that time, and then we'll have to see what disposition is made of those and so on.

The only reason strictly why we -- why I've asked the Clerk to reassemble the Court at this time was to provide some way in which we could make aware to the -- many witnesses apparently projected as potential witnesses in the case by the Crown who may be under the impression that they would be required shortly after February the 4th, we want them to know that they won't be required until after say the 1st of April. So if that affects their planning of winter vacations or work programs or holidays

or -- their own personal plans, they can guide themselves accordingly.

That -- there is -- I've had a word to say to counsel in reminding them that they are officers of the Court and shouldn't enter into interviews with the media which would prejudice the conduct of the trial. And of course then I got hoisted on my own petard because the only way to get this advice out was not through counsel talking to the media and hoping it would -- this information would become disseminated in that way, but by reconvening the Court and having me say what, now, what I have said here.

I do hope that insofar as media interviews go that if there are, I'm not sure there are representatives of the media here, that they will not put pressure on counsel or officers of the Court or anyone else for interviews which might prejudice the -- the trial.

I recall back in 19 -- the early 1950's I -- my firm, when I was practising law, represented Time Magazine which had its headquarters in Chicago was it, or New York -- Chicago, in connection with a contempt by that magazine in reporting certain incidents involving a murder trial that was going on in -- in the Nisi Prius sitting of

York County at the time. It involved, if I recall correctly the -- an accused who's name was Nehemiah Hudlin, but that's by the way, but the up shot of the thing was it cost Time Magazine fifty thousand dollars, or perhaps it was a hundred thousand, but translated into -- present day terms that means a quarter of a million dollars or half a million dollars. So media must be very careful in what they report in matters of this nature. I'm not saying this by way of threat to media at all, I simply point it out for the benefit of the media themselves because sometimes, you know, after 40 years an awful lot of people have forgotten what happened to Time Magazine back in the early 1950's.

Counsel have no other matters they wish to raise?

MR. ALLMAN: No, my lord.

COURT: The accused has been present here, he -- so we will adjourn then sine die I guess.

CLERK: Yes, my lord.

COURT: I -- I will just say this, that should it become necessary at any time between now and February the 4th to -- to reconvene the Court to deal with preliminary motions or anything else that -- that will be done and the

accused, of course, will be present at any open Court sittings.

So would you then adjourn the -- no -- nothing -- counsel have nothing else to -- there's no -- no.

Would you adjourn.

COURT ADJOURNED AT 12:41 P.M.

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\*(This portion was inadvertently not recorded, but is based on the Judge's notes.)

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RECORDING OF EVIDENCE BY SOUND RECORDING MACHINE ACT

CERTIFICATE

I, Cynthia Brown of Lebanon, N.H.,  
 certify that the sound recording tapes labelled: The Brown  
-vs- Allen Joseph Ligon  
 Case #: \_\_\_\_\_, initialled by me and enclosed in this  
 envelope are the record of the evidence recorded on a sound  
 recording machine pursuant to Section 2 of the Recording of  
 Evidence Act at the Arraignment held in the above pro-  
 ceeding on Wednesday, December 5, 1990,  
 at Newcastle, and that I was the person in charge  
 of the sound recording machine at the time the evidence and pro-  
 ceedings were recorded.

DATED at Newcastle, County of  
New Hampshire and Province of New Brunswick, this 5th  
 day of December, A.D. 1990.

Cynthia Brown  
Court Stenographer

N/M/124/90

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

BETWEEN: HER MAJESTY THE QUEEN  
- and -  
ALLAN JOSEPH LEGERE

AFFIDAVIT

1. That I, Cynthia Breau, am a stenographer duly appointed under the Recording of Evidence by Sound Recording Machine Act.
2. That this transcript is a true and correct transcript of the record of these proceedings made under Section 2 and certified pursuant to Section 3 of the Act.
3. That a true copy of the certificate made pursuant to Section 3(1) of the Act and accompanying the record at the time of its transcription is appended hereto as Schedule "A" to this affidavit.

SWORN TO at the Town  
of Newcastle, in the  
County of Northumberland,  
Province of New Brunswick,  
this 28th day of December  
A.D. 1990, BEFORE ME:

*Deborah Grant*

)  
) *Cynthia Breau*  
)

COMMISSIONER OF OATHS BEING  
A REGISTRAR OF DEEDS