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

PROCEEDINGS held at the Burton Court House, Burton, New Brunswick, on the 26th day of July, A. D. 1991, before Honourable Mr. Justice David M. Dickson.

APPEARANCES:

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

Weldon J. Furlotte, Esq., for the Accused.

VERNA PETERSON
COURT REPORTER

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. . . . . .

THE COURT: Well, now, let me just start out here. I've asked Miss Peterson to be present here and take notes of what occurs at this. I'm not sure just what sort of a meeting this is today here in the court room but I think it's probably in the nature of a pre-trial hearing under Section 625.1 of the Criminal Code.

It came about in this way, that I think it was two days ago Mr. Ryan - well, let's go back to the beginning. We finished the voir dire on this matter, or at least the taking of the evidence on the voir dire, on July 6th, and the trial was then adjourned until Monday, August 26th at the Oromocto High School for a sitting which would look after the jury selection, the idea being that the jury selection - after the jury selection were completed we would move back here

to the Burton Court House and continue the trial. I might say that at that time Mr. Ryan had indicated on behalf of the defence that he had a couple of applications that he wanted to make and which he expected to make before the August 26th sitting. He would, or defence counsel would have their mind made up on what they wanted to do about those, he indicated, by the end of June. He would then notify the Court and opposing counsel of the intentions of defence counsel in that regard by letter in a tentative fashion, and then as I recall, by about mid-July he would have his applications or defence counsel would have their applications prepared and would present them to the Court and around the end of July or early August if there were applications they would be heard. I held myself in readiness and have done all through the summer, as a matter of fact, sort of half expecting to hear something from somebody. I haven't heard anything. Two days ago - I should say three days ago, on the 23rd, I had a letter from the accused, a long letter, in which he enclosed a letter he had written to Mr. Ryan, I believe on July 11th, I'm not certain of the - well, sometime thereabouts anyway, and in which he has expressed great dissatisfaction with Mr. Ryan. He had tried to get in touch with him and Ryan hadn't returned his phone calls and so on, and he kept - the letter keeps referring, as does the covering letter which he sent to me, which I think was dated, if I recall, July - it was dated July 11th. The letter to Ryan had been dated July 2nd, actually. The letter to me was dated

July 11th, it was posted on July 18th, and it was received by me on July 23rd, as I noted on the envelope at the time. The letter also, to me, complained about the matter of Mr. Ryan. It kept referring to some application he was supposed to make about the federal issue or some such thing, it's called, and I gather the federal issue had something to do with certain allegedly oppressive treatment that he was receiving at the Renous Institution with handcuffs or something, and I'm not sure what it was all about, but anyway, that seemed to be one of the quarrels he had with Ryan, that he wasn't getting ahead with that, and then it had been my intention at that point to get in touch with either Mr. Furlotte or Mr. Ryan and see what was happening. Simultaneously I found a note in my basket from Mr. Ryan that he had been trying to get in touch with me. This was, I think, three days ago.

I called Ryan's office, he wasn't there at the time. It was about five o'clock on what, Tuesday of this week or Wednesday - Tuesday, I think it was, or perhaps it was Wednesday. I called Ryan's home and he hadn't arrived home and I was due to join my wife and other friends at Grand Lake that afternoon. I went there. I forget now whether I tried to call Ryan back - no, I guess I didn't, but anyway, the next morning I went to the Burton Court House here from Grand Lake and I called Ryan from here, and I finally got hold of him a couple of hours later. He called me back here at the court house where I was doing some other work, and he said that he was -

well, he explained that he had a health problem and other problems and that he was going to find it necessary to withdraw from this case, and generally I think I may say that he said he was going to have to withdraw from whatever else he's doing in the way of law. I said, "Is your difficulty connected with this case in particular", and he said no, that he was having difficulty with everything that he was associated with. I don't want to get into that any further but anyway he said enough to me to - and he quite acknowledged that he had not been replying to Mr. Legere as he should have done, and I told him that I had received this correspondence from the accused and he said he was quite aware of it, and I said, "Have you talked to Mr. Furlotte, your senior counsel, about this", and he said yes, he had discussed it with Mr. Furlotte earlier this week, I believe. I said, "Well, if you drop out Mr. Furlotte presumably will have to get someone to assist him or to help him out with this case", because as I pointed out at an early stage defence counsel can't - it would be foolhardy to try to handle a case like this alone, and he said he had had some discussion. He mentioned some name or other, a name had come up or something, and I said, "Well, look, this is not my responsibility". He did say this as well, he asked me if I would call Mr. McGinley, the Director of Legal Aid. He said that there was - it wasn't settled whether legal aid would be available for a replacement counsel or not and would I call McGinley and assure him, as I understood Ryan, assure him

that it would be necessary. I said, "O.K., I'll do that". I said, "I am not releasing you at this stage from your duty as counsel, you're still one of the counsel for the accused on the record and I'm not going to tell you at this point that you're released", although I said, "I'm in sympathy with your position and I fully appreciate that you're not going to be able to carry on, but I want to see where it goes from here".

I called McGinley that afternoon - this is what, two days ago, I think. I called McGinley and said - and he had been talking to Ryan, as Ryan had told me, and I understood from McGinley that there wasn't really any difficulty about the question of legal aid being paid to a replacement. I take it, I'm not sure whether I got this from Mr. McGinley or Mr. Ryan or from somewhere else - I got from somewhere that the barristers' council are giving the Legal Aid people quite a blast over the monies that are being expended on this particular case which is having the effect of depriving counsel in other legitimate cases, also legitimate cases, in the province of the monies that they might normally expect and that McGinley perhaps wanted some assurance from the Court that it was necessary to have counsel. However, that's by the way. McGinley didn't indicate to me that there was any difficulty about it. Either he or Ryan had said, perhaps, that they had asked Mr. Furlotte for a letter affirming the desire to engage someone else, and I said, "Well, look, don't let this hang this matter up if you are requiring some letter", and I said, "You're

approving it in principle, right, and time is of the essence here, somebody's got to get cracking on this case, it comes to trial in a month and one day", as it was yesterday or the day before, "and action has got to happen on this right away so let's not get bogged down in red tape on this thing", and he said he saw no problem with that and he undertook to call Mr. Furlotte, which I believe -

MR. FURLOTTE: He did.

THE COURT: Yes, he did call, and I believe confirmed perhaps that - or I suppose he would confirm that legal aid certainly would be available. I may say that I asked him two questions. I said, "What do legal aid lawyers - what are they paid these days", and he told me the general rates, he didn't tell me what any particular lawyer was getting or what any particular lawyer or lawyers have been paid, but I wanted to know the rates. I also said, "Are there difficulties in getting lawyers today", and he said he didn't feel there were really, there are enough starving young lawyers around who would jump at the chance to earn the type of money they would earn in a job like this, but anyway, what happened from there?

I think Mr. Turnbull that afternoon, later that afternoon, said that Mr. Furlotte had been trying to get in touch with me that afternoon or there was a message in my basket, anyway, that Mr. Furlotte was calling, and I said I would call him. I may say that I was engaged over this in an injunction application which was an emergency thing in Fredericton which involved a construction

site and a riot or revolution or something, and I was in a position to devote my whole attention to this, but I said the following morning, which was yesterday morning, I would call Mr. Furlotte when I got to the office, or did I come here? I don't know, I guess I was working here, reported in here in the morning. When I got to the office, in any event, Mr. Furlotte had tried to call again, and this was at ten o'clock when my other injunction hearing was to take place and I told those people to wait and I would call Mr. Furlotte, which I did at ten o'clock yesterday morning, and Mr. Furlotte said that he would - it was with regard to the Ryan withdrawal from the case and he would like me to consider an application for an adjournment, and I said I would be pleased to discuss the matter with him in the presence of counsel for the prosecution. I think Mr. Furlotte told me that Mr. Allman was on holiday at his residence in Moncton or at any rate was available and that he would contact him, and I said, "Well, look, I will meet you in Moncton tomorrow morning", that is this morning, Friday morning, at ten o'clock, "and we'll meet at the Assumption Building. I'm going to be at Grand Lake, it's easier for me to come to Moncton on Friday morning and meet with you people there and come back again than it is for two of you to come all the way to Fredericton", and I was quite prepared to do that.

Mr. Furlotte said he would like to have Mr. Legere, the accused, present. I said I saw no necessity for that and it wasn't necessary, as far

as I'm concerned. It would be a preliminary discussion of this matter of an adjournment as far as I was concerned. So that was arranged, anyway, and Mr. Furlotte then was to advise Mr. Allman that I would meet them in Moncton.

I went about my injunction hearing and I think it wound up faster than it was expected to have done and when I got through I found that Mr. Allman was trying to get a call through to me and I called him back and he said he had heard from Mr. Furlotte that he would feel happier if the accused were present at Moncton for the hearing. He felt the Charter of Rights and some court decisions or other having a bearing on the right of the accused to be present at certain hearings or certain important matters would suggest that the safe course, from his point of view, at any rate, might be to have the accused present, and I said, "Well, all right, if that's the way you want it let's do it, but we'll do it at Burton, we won't do it at Moncton, we have the facilities here to handle the situation". I then said we'll do it today at two o'clock, two o'clock this afternoon, now, and you tell Mr. Furlotte and he presumably will be prepared to come to Burton because I think Mr. Furlotte had suggested, perhaps, a hearing here in the first instance, or at Fredericton, so I instructed the sheriff to arrange for the presence in Burton of the accused.

It was then what, getting along into the afternoon as I recall, or at any rate in the afternoon when I had finished my other hearing and other work I started off for Grand Lake again and

as I was about to leave my home at Fredericton after having picked up something somebody called me on the phone and said, "Have you seen the Moncton newspaper this afternoon", and they told me generally what was in it. I might say that my caller passed various remarks about the competence of the Court to deal with certain situations. I called my news vendor in Fredericton and said, "Save me a copy of the Moncton paper when it comes in, I'd like to see it". He said he would. He said it would be in at five o'clock. At five o'clock I went on my bicycle to the news vendors and bought a copy of the Moncton paper. He made exactly the same comment as the other people did, a rather disparaging comment about the courts and so on. I looked at the article, I read it, and I drove to Grand Lake. I kicked myself in the ass all the way to Grand Lake for being so gullible as to buy the idea that the accused - that the taxpayers of the province should be put to the expense of bringing the accused to Burton today for a hearing in this matter, and I debated in my mind whether I should cancel his attendance, and I considered it for quite a while. It was well after five o'clock, I didn't know whether I could get in touch with the sheriff, the arrangements had been made with the Mounted Police and all the other sundry people involved in this exercise, and I decided the best thing to do was let the arrangements go through and have the accused brought here, and if it appeared from what I am to hear from counsel that it is desirable to have his

presence, then I can arrange that at the - I'll play it by ear and can arrange that if necessary, he is available.

There are two or three other small matters that I welcome the opportunity to discuss with counsel today, anyway, very brief matters.

Now, our real purpose in being here is that Mr. Ryan is off the job. Mr. Furlotte, I believe you've requested in a general way that I consider an application by the accused or on behalf of the accused for an adjournment from the August 26th date.

MR. FURLOTTE: Yes, My Lord.

THE COURT: That's primarily why we're here, I guess.

MR. FURLOTTE: Yes, My Lord.

THE COURT: So will you convince me that I should - well, you at least make out something on the merits to show why you should - sit down, if you like, this is just an informal meeting we're having here today. I might say for the record that I did ask the Clerk, Mr. Pugh, to attend. He is here and I had in mind, actually, that I might ask him to keep notes of what transpired as had been done in the earlier pre-hearing conference. I then felt perhaps it's well to - because there have been earlier hearings in this whole thing, to have the court reporter present and have her transcribe it. I asked that the court constable be present here and there is present for the record one of the R.C.M.P. officers who presumably is accompanying the accused here to the court house today, in any event.

Mr. Furlotte, what do you want to say here?

Let me say this, too, just - the notices to the jurors, 350 of them, have gone out. I have copies here of the form of the notice which I will give to you, which I intended to give to counsel anyway. There are instructions, certain special instructions which I will allude to a little later this afternoon before we finish, and I'll be giving those to you, but those have gone out, they're in the mail, presumably most of them have been received by now. Some of them will take three or four days.

The other thing is the arrangements have been made in full for the hearing at the Oromocto High School in the auditorium on August 26th at ten o'clock. The school is no longer available after that week. It's used for school purposes. I just report those two factual circumstances.

Now, what was your -

MR. FURLOTTE: Maybe I should explain first how Mr. Ryan and I had planned together to divide up the functions of preparing Mr. Legere's defence. Mr. Ryan had basically five functions. One was to make an application to Federal Court to have the Federal Court Judge order that the administration staff at the Atlantic Institute protect solicitor-client privileged information. Mr. Ryan and I both experienced a great deal of difficulty in having private communications with Mr. Legere in order to prepare for trial. The institution had ready access to all the documents that I gave to Mr. Legere, being the police briefs on the trials together with written formats that I had plannned in strategizing defence and what issues and

evidence that we needed for the different motions I intended to bring before the Court, so we needed to protect that privacy and that was the basis for the Federal Court application. I understand Mr. Legere is experiencing extreme restrictions on his movement while in the institution but that was not the basis for our application although we were going to raise the issue along with it.

The second function that Mr. Ryan had to perform was to prepare a motion for a stay of proceedings and also a motion for a severance of counts. I did not expect the motion for the severance of counts to be all that difficult or take all that much time, but I expected the motion for a stay of proceedings, there was an enormous amount of work to be performed in that and it's necessary for us to gather together a lot of the newspaper articles and we were going to basically restrict it to newspaper articles, it would have been too much of a chore to attempt to get tapes from radio and T.V. broadcasts, but we had to go through all the newspapers to bring to the Court's attention the different areas of the evidence that was going to be brought before this Court, that that evidence was published and how that evidence was obtained by the media; i.e., through different police officers.

Along with that, Mr. Ryan was to obtain expert witnesses for one area of - or argument in the motion for a stay of proceedings.

Aside from the Federal Court application and those two motions just mentioned for a stay of

proceedings and a severance of counts, Mr. Ryan was to basically handle all the civilian witnesses that are going to come before this Court in preparation for cross-examination of all the civilian witnesses. I was going to handle the police witnesses.

The last function that Mr. Ryan was going to have to accomplish was that I wanted to call defence witnesses for Mr. Legere and there would have been a fair portion of those defence witnesses that Mr. Ryan would have had to go and interview, prepare a summons, and prepare for that line of Mr. Legere's defence. It's hard for me to say at this time how many defence witnesses I had planned to call but I suspect there will be at least six and maybe twelve, of which I expected Mr. Ryan to handle half that load.

Personally, I don't see how any lawyer getting into this case at this time which will take Mr. Ryan's place and perform these functions - I can't see any possible way of that lawyer doing it in less than two months if he is working full time on that, and it may take him three.

When I was advised by Mr. Ryan on July 22nd that he'd be no longer able to continue this defence of Mr. Legere because of medical reasons I immediately contacted Mr. - or I had Mr. Ryan contact Mr. McGinley and explain the situation to Mr. McGinley. Mr. Ryan advised me that Mr. McGinley probably and would approve of another lawyer to take his place at that time but he also suggested that Mr. Ryan advise you to call him and

recommend it also, I suspect to save some of the flak that he's been getting from the Barristers' Society.

I have contacted one solicitor in anticipation or in hopes that I might be able to get somebody to replace Mr. Ryan, his name is Daniel Watters, in Fredericton. I might add at this time the first time I sought out to obtain co-counsel it took me a month to find somebody who would take the case. Most of the lawyers would not have taken a case like this for less than a hundred dollars an hour. As a matter of fact, one of them said, "I wouldn't touch that case unless I was paid a quarter of a million dollars up front and then a hundred dollars an hour for all the time consumed", because they just don't know what to expect.

Mr. Watters advised me that yes, he would consider the case but his workload at this time, he is booked solid until the middle of September and there's no way he could - at least that he doesn't think that he could start working on this case until the middle of September, and that would put him - what he suggested when I told him what I expected out of him and about how long it would take him to prepare for the case, he suggested that he probably wouldn't be able to start this trial until January.

I might be able to find another lawyer who has less of a workload and would be able to start somewhat earlier. I contacted Myron Mitton who is at this time suspended from practicing law because of health reasons but he is only suspended until

he can provide the Barristers' Society with a letter or a medical report from doctors giving him a clean bill of health. Mr. Mitton was at one time in his career, I suppose, unable to continue his practice because of medical reasons. I contacted Mr. Mitton and he wanted the weekend to think it over whether or not he would even consider it, but that would be depending again whether he would decide that he would do it, and again, how long it would take the Barristers' Society to approve him for reinstatement.

Mr. Mitton is a well-experienced counsel and I think he would be an asset to Mr. Legere, or at least to myself, but that's the only other solicitor I contacted at this time because before I can go to too many lawyers and ask what they are willing to do I have to be able to tell them what is expected of them, and without knowing what the Court's decision is today I felt it might be a waste of my time in trying to contact too many solicitors.

For the record, I believe Mr. Legere, or at least in most cases, all accused people, and when I speak of Mr. Legere I just speak of all accused individuals, they are generally entitled to the solicitor of their choice and not just any solicitor that would be thrown upon them who is readily available because either they just got out of law school and have no experience or no practice to rearrange before they can start working on Mr. Legere's case. I would definitely, and I looked for - when I began looking for co-counsel I wanted a solicitor with criminal

experience and I also wanted a solicitor with jury experience.

Hopefully I will not fall into the same boat as Mr. Ryan in the future and I will be able to carry my functions through completely and be able to address the jury, but I can assure this Court that there has been a considerable strain on myself in this case. I guess maybe I thought I was able to function at the beginning and put myself out at full tilt, a hundred per cent, for four, five, six months, but to continue on for a year, I don't know how long I'll be before the stress takes its toll on myself. I can't do it by myself.

THE COURT: If you'd taken my advice in the first place we would have been finished two months ago, wouldn't we?

MR. FURLOTTE: What was your advice in the first place?

THE COURT: Start on January 6th and try the case and get the case over with. No reason in the world why it couldn't have been done, not a reason.

MR. FURLOTTE: Well, I will make the same statement today as I made then, if the Court is only going to give a month to a solicitor to prepare for Mr. Legere's trial I would not want any part of it.

THE COURT: All right. Now -

MR. FURLOTTE: My Lord, I would like to state for the record that as an Officer of the Court my first and primary concern is for the administration of justice. I tell all my clients that first and foremost I am going to protect the administration of justice. You happen to fall within our administration of justice and there coincidentally

I am also protecting your rights. Mr. Legere, as any accused, deserves a fair trial, but in this particular case I would like to stress that first and foremost, even above Mr. Legere, an accused, the people of New Brunswick deserve a fair trial in this case, and when this trial is over, hopefully, the people of New Brunswick will be satisfied that Mr. Legere not only got a fair trial but they will well accept any decision by a jury. There is no way I can prepare in one month everything that was expected of Mr. Ryan to accomplish, what was hoped of Mr. Ryan to accomplish. I would not even be able to get within the next month the motion for a stay of proceedings before the Court, because there is that much work involved in it. That would be about all I would be able to hope to accomplish between now and then.

I still have - of course, it would have been helpful to know sooner whether or not you were allowing DNA evidence in because I'm still working on DNA evidence and I have to go to Ottawa or have arranged to go to Ottawa for a week to check out the general data base and do as much as I can in a week. I expect that I'm only going to be able to put a dent in it but I may be able to find at least some beneficial points into challenging DNA evidence within that week. There's also other aspects of DNA evidence that I have to prepare for in trial, and I suppose at this time I could say whether or not if I knew if DNA evidence was going in it could - it would sure change my strategy as to how to prepare for Mr. Legere's

trial in that it would take considerably less time, but not knowing anything I'm just strictly in limbo at this time, but for the record I'd have to say that there's no possible way I could be prepared for Mr. Legere's trial, with or without additional counsel, by August 26th, and depending as to when we would be ready for trial it would depend on how soon co-counsel can get on the job and assist me in this matter. I'm ready for any -

THE COURT: Well, have you done murder trials, Mr. Furlotte? Have you ever done a murder trial before a jury before?

MR. FURLOTTE: I've had two murder trials before.

THE COURT: Did you have co-counsel with you?

MR. FURLOTTE: I have never had co-counsel with me but I have never had a case like this either.

THE COURT: Why is this case different? I mean forgetting about DNA, why is this case different?

MR. FURLOTTE: Because of the length of the trial, as you suggested yourself on December 5th, that it would be better for co-counsel in case something happens to one of them, as incidentally has happpened in this case before we're even ready for trial, but it would be nice to have co-counsel be able to take over from myself.

THE COURT: Well, you didn't plan on having co-counsel at all with you, and as a matter of fact, even when I brought it up and impressed on you the necessity or the desirability of having co-counsel, you talked about a student, you asked if it would be all right if you had a law student with you, and I said no.

MR. FURLOTTE: Yes, because I knew how difficult it would be to find co-counsel, and the law students as I suggested, maybe Mr. Allman did, I didn't realize the - I knew this was going to be a difficult case and a lot of work because I was advised before I even took it and accepted for Mr. Legere, I was advised from two different prosecutors -

THE COURT: Well, you chased after this retainer.

MR. FURLOTTE: Pardon?

THE COURT: You chased after this retainer, you sought this retainer yourself, did you not?

MR. FURLOTTE: What do you mean, I chased after this retainer?

THE COURT: Well, you sought this retainer, this was your idea to go after this retainer is my information.

MR. FURLOTTE: Well, I don't know where you're getting your information.

THE COURT: Well, is this right or wrong?

MR. FURLOTTE: I was asked by Mr. Hughes if I would consider taking Mr. Legere's case. I said well -

THE COURT: Did you speak to Hughes first?

MR. FURLOTTE: I spoke to Mr. Hughes -

THE COURT: - first.

MR. FURLOTTE: No, I spoke to Mr. Hughes on another matter. I spoke to Mr. Hughes on another matter with Allard Vienneau that I had wanted to question Mr. Legere as a potential witness in the Vienneau case, and at that time Mr. Hughes advised me that he was not going to handle Mr. Legere's charges if he was charged with murder and asked me if I would be interested in it. I said, "Well, I'll only" - I said that I'd be willing to discuss it with Mr. Legere but that would be it, I'm not saying that

I would take his case, so Mr. Hughes said he would recommend myself to Mr. Legere along with some other lawyers, which he did, and that's how I got involved in this case. If you call that chasing this retainer, then -

THE COURT: Well, didn't your client want to fire you after that and didn't Hughes or someone have to intervene to get you held on in the case?

MR. FURLOTTE: No, not to my knowledge.

THE COURT: Well, this is all by the way, anyway, it's not important. Did you have anything else you wanted to add to what you were saying, I mean on this point of the adjournment, before I call on Mr. Allman?

MR. FURLOTTE: My Lord, for the record, I'd love to get off this case, but I've taken a duty and I've taken a commitment to defend Mr. Legere and I intend to do it the best that I can, but I don't need this. Neither does any solicitor, I suppose.

THE COURT: Mr. Allman? Who is speaking, Mr. Allman or Mr. Sleeth?

MR. SLEETH: Mr. Allman, My Lord.

MR. ALLMAN: First of all, My Lord, I'd like to just touch on one point that you mentioned, and that is the presence of Mr. Legere. I'd just like it indicated for the record Mr. Legere, I understand, is in the building, and there's been no request by his counsel that he be present and I therefore assume that Mr. Furlotte is satisfied with the arrangement we have at present; that is to say that the discussion takes place between counsel.

MR. FURLOTTE: Well, I'm not satisfied with this. I've

made my point known and I thought it's Mr. Legere's rights to be present at any adjournment requesting - or any hearing requesting an adjournment.

MR. ALLMAN: Well, I'd like to speak very briefly on that, then, because I don't want to get into a situation where later on I'm accused of subverting Mr. Legere's rights, and I did do some looking up on the law on this in the 24 hours we've had available. The law seems to be this, and I'm quoting mostly from Ewaschuk, Part 16, 2070:

> "An accused must not be excluded where the case is somehow advanced, e.g., during argument by counsel or when a vital interest is involved. In that case the judge's jurisdiction may be exceeded and lost so fundamental is the presence of an accused during his trial. However, the exclusion of an accused from his trial will not necessarily result in loss of jurisdiction where the Court of Appeal is satisfied" -

Excuse me,

> "The accused is not prejudiced by his exclusion from the court. Moreover, the presence of the accused is not absolute for each step of a trial; e.g., when the trial judge considers the dismissal of a juror for health reasons. The exclusion or absence of an accused from his trial is not fatal where what takes place during his absence does not affect his vital interests so as to diminish his rights under Section 650, thus a discussion in chambers between the judge and lawyers will not necessarily result in loss of jurisdiction."

The Crown's position basically is that it's a matter in Your Lordship's hands. We certainly have no objection to Mr. Legere being present. I guess we have to leave that up to Your Lordship if you feel it's -

THE COURT: Let me ask you this, Mr. Furlotte, if Mr. Legere were present here during this hearing or during this meeting would he want you to add anything that you haven't already said, and what

is it that he would want you to add? You've discussed this with him, I gather?

MR. FURLOTTE: Well, I've discussed basically just the basics, you know, the reasons why I needed another solicitor, and I can't think of anything that he would want me to add, although something may come to his mind that I didn't mention.

THE COURT: Well, the newspaper report yesterday says that he spoke through a Miss Gaunce or Mrs. Gaunce or Madam Gaunce or something of Sussex. "Legere complained through Gaunce" - I'm reading from the newspaper account - "he hasn't heard" - well, he complained through Gaunce certain things he hadn't heard since Ryan - this is not the part I was looking for. "Legere said Ryan was supposed to prepare pre-trial motions to argue for severing the four murder counts which if successful would mean four separate trials would be held and for a stay of proceedings on the basis the abundance of publicity Legere has garnered in the media would preclude a fair trial. Legere said nothing was done on the issues and now six months of trial preparation have been wasted. Furlotte requested a new Legal Aid lawyer but was denied one by the Director of Legal Aid in Moncton, Legere claimed. The decision was reversed after the Director spoke personally to Ryan, he said, but Legere complained that no lawyer could possibly do him justice without first clearing his slate of cases due to the time-consuming nature of the coming trial and that would leave only a day's" - there's a mis-print here obviously, a few days or something, I suppose it said - "for him to examine the piles of paper evidence and the 240 expected witnesses.

Legere also noted that the pre-trial publicity which caused thirteen sex-related charges laid against former Fredericton Crown Prosecutor Bill Kearney to be thrown out of court on Monday should apply to him", and then it goes on to talk about the charges against Kearney and so on.

"Legere said pre-trial publicity in the media has ruined his potential for a fair trial and the Kearney legal logic should apply to his case as well."

Now, bear in mind I am quite cognizant that this is the newspaper reporter's words, or some of it, and others may be Miss Gaunce's words and other words may be of Mr. Legere.

Then the story goes on, "Legere would go south. Convicted killer Allan Legere promises he'll never return to New Brunswick if he's allowed to move to Colombia".

This second story would seem to knock the underpinning totally from any application for a stay of proceedings on the ground of undue publicity. You know, I can't help but take note of these things. I read the newspapers, I know what the public want. It's no wonder that the public are passing comments to me that the whole thing is a joke, it's becoming a joke almost, but anyway, what I'm asking now, I want to get back to this point, is there anything that Mr. Legere would want you to say now in support of your contention that there should be an adjournment that you haven't said already?

MR. FURLOTTE: I know what I don't want him to say and that's everything that he said in the newspaper.

MR. ALLMAN: Might I make a suggestion?

THE COURT: Yes.

MR. ALLMAN: Perhaps if Your Lordship's concern is, as I suspect it is, that you don't want to be addressed by Mr. Furlotte and Mr. Legere as happened on other occasions because Mr. Legere wants to get involved personally, perhaps Mr. Legere could be allowed in but on the understanding that anything that's to be said is to be said to his lawyer. It puts the Court in an impossible situation if you have to deal with representations from Mr. Furlotte followed by comments, additions, etc., from Mr. Legere. The understanding would be that if he started to make his own submissions or his own comments, then he would be removed.

THE COURT: Well, I have no intention, as I've made clear to counsel before, of either in a court sitting or in a meeting of this nature of entering into any discussion with an accused person. It's totally wrong, and actually, I don't require his presence at the time being. If as this meeting develops I find it necessary to bring him in, I'll have him brought in. I'm cognizant of the points you've made, Mr. Allman, and I feel that at this point in any event it's not a case where it would be necessary to have the accused present for discussion.

MR. ALLMAN: Very well, My Lord, I'll turn to the main point of this discussion which as I take it is the situation that arises out of Mr. Ryan's departure. I'd like to make a few points first of all on the inconvenience that any adjournment would cause. My understanding is the jury notices have gone out, Your Lordship indicated that earlier. My understanding is there's a

problem with the school being available. In addition, we have been advising and talking to all our witnesses, they've all been advised that August 26th was the starting date, they've all been advised of approximately when - I say all, I should say most, the police maybe not, but generally speaking we've been advising them of what we thought was the likely progress of the case. They've made arrangements, I take it, on that basis. For example, we will tell the witness that the trial starts August 26th but we don't think we'll be needing you probably until the end of September so hold yourself available from late September all through October. That sort of information has been given to virtually all the civilian and many of the expert witnesses.

What Mr. Furlotte is suggesting, I'm not quite clear. We really don't know what adjournment he needs. We have no guarantee that he'll be able to get co-counsel, we don't know who the co-counsel will be, we don't know how busy that co-counsel will be, we don't know how long it's going to take that co-counsel to get involved. If a brief adjournment would be of assistance, I can certainly see that and I wouldn't want to oppose that, but what Mr. Furlotte is suggesting, I think essentially is an open-ended adjournment. He mentioned January, starting in January; in other words, a full month adjournment, but what happens if come mid-September, late September, he hasn't been able to get co-counsel? Will we be faced with a further request for an adjournment?

I would like also to point out that however he and Mr. Ryan may have divided this matter up between them, essentially what has happened here is that Mr. Legere is now deprived of the services of junior counsel. The primary responsibility is and should be Mr. Furlotte's. He appears to have given Mr. Ryan a great deal to do, but that must have been an arrangement between them. There is no reason, in my submission, why he can't get somebody who maybe can't do as much as Mr. Ryan did but who is nevertheless able to assist him in the way in which in England, for instance, a junior barrister would assist a senior barrister; that is to say, taking a substantially less than primary role in this.

One suggestion that I might make, and it's only a suggestion, is this. The jury selection is August 26th. There's no necessity for co-counsel, I would have thought, to be present at that. If Your Lordship then considered adjourning the actual taking of evidence till, say, two weeks after that, that would only involve a total two-week delay. It would give six weeks between now and the date of actually calling evidence. I would have thought that would be sufficient time, (a), to secure the services of some co-counsel, and (b), for him, if he works hard, to get sufficient knowledge of this case that he could act as a junior. He doesn't, for instance, need to know anything about the DNA. Mr. Furlotte, it's perfectly obvious from the voir dire, is intimately involved in the DNA, knows everything about it, and it would be folly, I suppose, for anybody to attempt to take over the role from him,

but I would have thought in that period of time he should be able to find counsel, if he's ever going to find counsel, and we just don't know that - to find counsel and for that counsel to get sufficiently briefed to be of real assistance to Mr. Furlotte.

Mr. Furlotte made a couple of points I just wanted to comment on. He said the accused is entitled to a solicitor of his choice. That's certainly true if he can find a solicitor who wants the job. The Court can't make him accept a certain solicitor, but the Court can't make certain solicitors accept the accused either, and that may well be a problem, I don't know whether that can be overcome or not, but essentially that's the Crown's position, that a lengthy adjournment, an open-ended, in essence, adjournment, would not be in the interests of justice, but we would not be opposed to a brief adjournment along the lines I indicated.

THE COURT: Anything you want to say by way of reply on that, or comment on that, those statements?

MR. FURLOTTE: Well, My Lord, basically it's just until I know the Court's position I don't even know what kind of a solicitor that I have to go out and look for, and I don't know, I guess if I'm not given enough time to find at least a reasonably experienced criminal lawyer, then as Mr. Allman says, junior counsel, heck, anybody will do, but even that might be quite a chore in finding somebody to accept. I don't know, I feel almost guilty in some sense towards Mr. Legere because my solicitor of choice in the first place didn't turn out so I almost feel kind of responsible for

that, especially since, I mean, for the record Mr. Legere was not all that enthused about my hiring Mr. Ryan in the first place, but I talked Mr. Legere into it, and for me to go and make another - I won't say mistake, I don't think it was a mistake my hiring Mr. Ryan and it's an unfortunate situation that he's into, but if I get caught in a predicament like that I may be the one under attack the next time.

THE COURT: Well, I rather get the impression, and I don't think there's anything wrong with me saying that between us that there's not going to be very much that you're going to do in the course of the trial that Mr. Legere isn't going to be unhappy about, isn't that about right?

MR. FURLOTTE: Well, I'm getting it from all sides.

THE COURT: I appreciate your difficulty and I want to compliment you on most of the ways that you've handled the matter so far. I think you've done a good job. May I ask this, Mr. Mitton is an interesting suggestion and I know something of Mr. Mitton's work because he's appeared before me in the courts before. Was he disbarred or something or -

MR. FURLOTTE: He was suspended for medical reasons. He had a nervous breakdown and he was suspended until -

THE COURT: I know nothing about it, I haven't seen him for years and years and I know nothing about it. As a matter of fact, his brother, Irvine, he's been away from law for a long time. He was a fellow with a good deal of criminal experience. I don't know whether he could be tempted back into the thing or not but -

MR. FURLOTTE: Myron acted as a Crown Prosecutor, too, for a while.

MR. ALLMAN: I was just thinking that - he said he acted as a Crown Prosecutor; I was thinking that shouldn't be held against him.

THE COURT: Oh, I see. Well, let me say this just on that point. I think actually you could do an awful lot - it's not for me to say who it should be. If you were to say, look, I'm not going to get anybody - I want to reiterate what I said very early on, that I wouldn't want to undertake a trial of this nature without having someone to help me. Now, that can go all the way from a very competent, experienced criminal lawyer who would be a good person right down to somebody who's going to act as bumboy for you, or bumgirl, I suppose you have to say today, to look after your exhibits and look after your papers and to help you in court and so on, a very junior solicitor, perhaps with limited experience even. That would be better than nothing, really, but the more competent person, the more experienced person you get, the better you are. I would think that Mitton would be an excellent fellow, and I want to say that I don't know what sort of difficulties I'd be running into with the Barristers' Society on this but if you want to have someone like - if the matter hasn't been resolved or weren't resolved before the Barristers' Society I would have no objection to someone like Mitton sitting beside you helping you even though he weren't entitled to speak to the Court, and I don't know what Crown counsel's attitude toward that would be or not.

MR. FURLOTTE: Well, if he's not re-admitted to the bar probably the Barristers' Society and Legal Aid won't pay him, so it's nothing to do with -

THE COURT: Perhaps the Court has ways of putting pressure on Legal Aid, I don't know. I don't want to get involved in that. I'm not strictly supposed to even know that people are on legal aid.

MR. FURLOTTE: No. I believe if Mr. Mitton makes an application to be reinstated that the Barristers' Society will reinstate him, but it's how long will it take them to do it. That is something I don't know, and maybe if you could have some influence in getting them to have an emergency meeting -

THE COURT: I can only say that if this were crucial to the thing I would certainly be prepared to do whatever I can. I don't know, perhaps they won't listen to me. Nobody else listens to me, I don't know why the Barristers' Council should, but do Crown counsel have any comment to make on this aspect of the matter?

MR. ALLMAN: No. No, it's a matter I'd prefer to avoid.

THE COURT: Yes, but Mitton is a fellow who would certainly have no - I don't know what he's doing now. Is he in the Moncton area?

MR. FURLOTTE: He's working as a manager for, actually, Irving Oil, I guess, someplace in Aulac.

THE COURT: Well, if this trial went on for three months or if it didn't go on for three months, if he were to start immediately and he were to be given three months, or any lawyer were to be given three months employment, he's going to earn fifteen or twenty or twenty-five or thirty or thirty-five thousand dollars over that period, with the

$250.00 daily that he's going to be paid for his court appearances sitting five days a week and for the fifty or sixty dollars an hour in his case, in Mitton's case, it would be sixty dollars presumably, or $62.00 an hour for his preparation time, and he's going to do four or five hours of that a day six days a week, so you know, over a three-month period that builds up into a thirty-five thousand dollar fee. Now, I know that Mitton isn't going to make that sort of money -

MR. FURLOTTE: No, but it's a question does he want to give up that job. That's what he wants to consider over the weekend, does he want to give up the job he has and then not have that job to go back to after.

THE COURT: What is he working at now?

MR. FURLOTTE: He's working as a manager of the Irving Big Stop in Aulac, New Brunswick, just before you get to the Nova Scotia border, that big Irving service centre and restaurant, and he's manager there.

THE COURT: Well, maybe if he needs help in getting reinstated when he's - maybe he wants to go on and practice law when he's through, I don't know. I would hope that he would do but -

MR. FURLOTTE: Well, that's what he wants to consider over the weekend, because I didn't even tell him that - you know, I just approached him to see if that was a possibility.

THE COURT: I wouldn't think that he'd have difficulty, if he wanted to go back to his Irving job that he'd have difficulty when he got through. However, I'm not urging him on you, I'm just saying that I think that would resolve an awful

lot of problems if you could get a man like that. There are others, you know, down the scale. He's a fellow with experience. Perhaps he has certain other qualities. Perhaps his health isn't all that good that he could devote the number of hours to it that you'd like to see and so on but mind you, I think there are certain aspects of this thing, about the preparation, that I totally don't agree with, and I don't agree with Mr. Legere, obviously, from this statement that is attributed to him, has the impression that junior counsel has to interview 240 expected witnesses. There's no way that defence counsel should have to interview 240 expected witnesses or - there might be two or three or four witnesses but -

MR. FURLOTTE: Well, I would disagree with Mr. Legere on that also, My Lord, but -

THE COURT: Well, you do, but I mean I have my own practical way. I would say that any defence counsel who starts out to interview 240 expected witnesses, particularly when he has the precis or whatever you call it, the briefs or the synopsis of what they're going to say, you know, he doesn't really know what he's doing, and -

MR. FURLOTTE: The number is far from that, granted.

THE COURT: Well, look, my ruling on the matter of the adjournment is that I am not prepared to consider an application for adjournment. This date was fixed in July, it was fixed even before that. It was fixed tentatively on February 5th, I believe, at the pre-trial hearing at that time we first talked about it, or in this range anyway, and then very shortly after that, certainly as early as April 22nd, I think it was, we talked about the

August 26th. Three hundred and fifty jury notices have gone out for that day and there's no way that I'm - the country would be in a furor if I were to be changing and tampering with dates at this point and I'm not going to do it, we're going to have to get ahead, and we're going to start on August 26th with the jury selection. Hopefully it can be wound up in a day or a couple of days, and I'm not going to agree with your suggestion at this point, Mr. Allman. I'm not going to agree that we're going to have any break there. Presumably your early witnesses, the Crown's early witnesses, are going to be people who have already been heard, or some of them, at any rate, people who have already been heard on the voir dire; some of them, at any rate, laying a general foundation. What they have to say isn't going to be any great surprise to anybody.

I'm in sympathy with you, Mr. Furlotte, up to a point, in sticking to this, but you know, this thing has been dragging on, the start of this, for eight months now from the start, and I realize that - perhaps you should have realized - I'm not being critical of you necessarily, you were relying on Ryan to carry out certain things, but I find it a little difficult to understand why in early July you wouldn't have appreciated that Ryan wasn't on top of the thing and wasn't doing it, because you're senior counsel and it was your responsibility and has been to guide him and ensure that he is.

MR. FURLOTTE: Well, actually Mr. Ryan is senior counsel, he's been a lawyer longer than I have.

THE COURT: Yes, this may be, but your plumbing

experience counts some, you know. You told the voir dire -

MR. FURLOTTE: I don't think I should have had to hire a private detective to make sure that Mr. Ryan was doing his work.

THE COURT: That is true but this was a pretty crucial thing and perhaps you should have.

MR. FURLOTTE: I think it's sufficient that I take his word for it, and I'll let it stand at that.

THE COURT: Well, you've made reference to these applications for the severance of the counts. We did have some discussion on that, I forget now whether it was at a - I think we've discussed it on a couple of occasions, actually, at one of the pre-trial hearings.

MR. FURLOTTE: You said that could be made any time, even after the trial starts.

THE COURT: Yes, and I've pointed out it can be done at any time and even the Court of its own volition can order a severance of counts and order a trial to proceed on one count of the indictment alone if the Court any point in the trial feels that the matter is too complicated to deal with all four counts together. I think I have pointed out in our earlier discussion on that, too, that courts tend to leave it up to the Crown to decide how many counts or what counts they want to lay in an indictment, and it's only where it becomes too utterly confusing for a jury that there will be severance.

I don't want to anticipate what the arguments of the Crown might be here but quite obviously one of their chief things would be - well, they have dealt with this, actually, before, I think. You

did, Mr. Allman, and I don't intend to get into this now but in any event the preparation of an application for severance isn't going to take very much time, it's something that can be dealt with in an hour at any point in the trial. It can be done a week after jury selection or two months after jury selection.

The other thing of the stay of proceedings, as far as I'm concerned I'm not going to - I'll entertain the application, you can give notice, Mr. Furlotte, or the Crown can give notice any time they want to of any application they want to make, and I don't intend to deal with applications before the 26th, and I intend to have the jury selection completed and then I will deal with the other matters.

On this question of the stay of proceedings, I've said something earlier today, you know, how - really, how can one rely on undue publicity in a case like this when you see the publicity building up from day to day, this Legere would go to Morocco or wherever - Colombia, would go south. You know, it just knocks the underpinning out from any application, really, for a stay of proceeding on that ground.

One of the Supreme Court of Canada cases, Vermette, I think it is, makes clear that a Court shouldn't consider any application based or which involves difficulty in selecting a jury until after the attempt has been made to get a jury, and I must say that I have no doubt whatever of our ability to select a jury in this case. I'm going to have something to say about that just in a minute but if, as this trial - if it goes along,

if it's gone along for two or three weeks, if we feel that it's necessary to have a week's or a few days adjournment, perhaps the jury might welcome it. Something I'm not going to do is when the jury immediately they're selected - I'm not going to say, now, go home for a week, because I think the jury once selected should be got into the trial and become part of the trial, and it's my duty to make the jury here realize the importance of their part in the thing, their importance in not discussing the case with others, of not allowing other people to bring pressure on them, and the only way I feel I can do that is to get them involved in the trial and get them listening to witnesses and get them to appreciate their role in this thing and their duty of acting in an unbiased, unprejudiced way.

You know, there's no one on the jury list or jury panel now, I'm sure - I don't know who are on the panel, I haven't seen the list. It will be going out to counsel a week or a couple of weeks, whatever the thing is, but I would - you know, given the background of this whole case there would be nobody on the panel who hasn't had the strongest suspicion that Mr. Legere is probably guilty of one or other or most or all of these murders, perhaps others. You know, the publicity does this, the whole circumstance, but this is something that Mr. Legere has created very largely himself, you know, when he escapes from penitentiary and stays at large when four murders of a most gruesome type occur, whether he is responsible for them or not, he allows the impression to be built up that he is responsible

for them, and you know, there is a reign of terror as the book says or whatever. People are terrorized, a whole community is terrorized, and this is a natural thing, and it's a natural outcome that people are going to say yes, sure, this is the fellow who must be responsible for these. This is totally different, in my view, from saying that that juror, even having entertained those suspicions, and perhaps very strong suspicions, isn't able to say look, I can act in an unbiased fashion on this and decide this case fairly. That doesn't mean they're going to acquit. If he's convinced on the evidence that the accused is guilty of one count or all counts, he'll find him guilty, presumably. If he's not convinced, I'm sure that jurors are quite competent regardless of their suspicions before of finding an accused not guilty.

I can give you two examples of that. Our friend Mr. Lewis who died of cancer in Renous here three or four months ago, I tried him for murder in the second trial for murder when he was retried after one of the other judges made a hash of the first trial when he was convicted of murder. In the middle of my charge to the jury he broke out of the jury box (sic). I had five R.C.M.P. there in plain clothes and it took five minutes to wrestle him to the ground and get manacles on him. I sent the jury out, I called counsel in. They came into chambers and his counsel, who was a Fredericton lawyer, said to me, "Well, there's no question about the result of this, the jury are going to convict him", and I said, "Don't be too sure about this". He was acquitted of murder. It

was a case where he was so totally guilty of the murder that he was charged with and had been convicted of in the first trial, although wrongly because of errors the judge had made, but he was acquitted of murder and convicted of manslaughter, and that is one example I give you of jurors acting fairly. I would say they bent over backward in that case to accommodate an accused person.

A second example occurred in Moncton, what, a month ago. A fellow from a family whose name has long been associated with crime in this province, I know because I sentenced one of the other members to be hung sixteen years ago, and he wasn't hung, of course, but that fellow was tried in Moncton. All counsel know who I'm talking about, the case. He was charged with murder, I believe. He was convicted by the jury of manslaughter. His counsel in the course of his address to the jury said, "You shouldn't be influenced by the fact that his surname is what it is". He obviously felt the fellow would be penalized, and there was a jury that didn't, and I might just comment also that it was a case - I've inquired about it and found out - it was a case where no challenges for cause on the ground of indifference or bias were made in the selection of the jury. I don't know whether they took the first twelve names that came up or the first twenty, but there was a case, and again there is a case that shows how jurors can be unbiased and impartial, but this is by the way here, what I'm saying.

I did have that letter from the accused, I

hadn't quite decided how I was going to deal with it. I'm not going to correspond with the accused. I might have got the Clerk to respond to it. However, the matter has been dealt with, Mr. Legere has gone public in the newspapers and so on. Would you, Mr. Furlotte, acknowledge on my behalf to the accused that I did receive the letter and I'm not going to be writing him or dealing with him? Tell him that I have it. I probably would have sent you a copy. I don't know whether you got a copy of the letter.

MR. FURLOTTE: I do not have a copy.

THE COURT: I would have sent a copy to you and perhaps to both counsel, I don't know. I don't even feel comfortable when I get a letter like that of sending it to other than his own counsel because perhaps it's not something that the opposing counsel should even know about, that there may be quarrels going on between an accused and one of his counsel or something. However, the matter can be dealt with by your acknowledging that I received the letter.

There were a couple of other things here that I wanted to - the brief on the selection of the jury, you sent me a brief on that, Mr. Allman.

MR. ALLMAN: Yes, My Lord.

THE COURT: I don't know whether you have anything to add to it, Mr. Furlotte, if there is anything -

MR. FURLOTTE: I don't intend to submit a brief on law in regards to the matter, I think Mr. Allman covered it quite well, but as Mr. Allman stated in your letter, which I have a copy of, and I have a copy of the brief, I will have my own comments on what questions should be put to the jury -

THE COURT: Yes. Well, I will be asking during the selection process if they have any -

MR. FURLOTTE: My Lord, the only thing I could state at this time, I think it would be beneficial to myself before I submit the questions that I want to ask the jury is I think I would need to know whether or not the DNA evidence is going to be admitted, because after proceedings started here in Burton there was a two-hour talk show on Saint John radio as to whether or not Mr. Legere could get a fair trial for callers to call in, and DNA evidence was discussed on that talk show as to how absolutely proof it was, that it was better than fingerprint evidence, and since the public has been subjected to this kind of exposure to DNA evidence I think I might want to be able to ask a question as to whether or not -

THE COURT: Well, the public has. The only thing is you say that it was on a Saint John radio station. I must say I've been looking out for every possible conceivable type of publicity that might have any bearing on this trial so that I could keep on top of the situation and I wasn't even aware of this talk show.

MR. FURLOTTE: Oh, none of us can keep track of it, that's the problem.

THE COURT: No, you can't, but I mean it's unlikely that that particular show would have reached anyone -

MR. FURLOTTE: I mean ATV has Mr. Legere as a commercial to their news broadcasts. I mean that's how -

THE COURT: There's another thing - oh, yes, there's one of the ads I see on television every now and again, what is it, the inmate in the penitentiary who is holding somebody hostage or something is

bought off and they even call him Hal, I think his name is, do you know the ad I'm talking about, which I don't think it has any bearing on this trial but I would be as happy if it weren't on there every time because it offends me every time I see it.

I read your brief very quickly and I didn't digest it totally. I've read all the cases before, I was familiar with them. You did suggest that perhaps - I think the essence of your letter was that perhaps the two questions suggested by the Court of Appeal or suggested by someone in the Keegstra case and which the Court of Appeal out there said should have been put to the jurors should perhaps be put to the jurors here. I don't buy that notion totally because I think the situation here is somewhat different than Keegstra and while perhaps the second question should be put, perhaps the first question should be twisted around a little or -

MR. ALLMAN: Yes. Well, I gave those only as examples. I'm certainly not wedded to that precise text. I was just trying to get a general point across.

THE COURT: Yes. I sort of got from your thing that perhaps it would be a safe thing to put those two exact questions as prescribed by -

MR. ALLMAN: No, no, I didn't mean those exact questions. I meant something like those questions adapted to the fact circumstances of this case.

THE COURT: I agree with that and I would hope that we could be accommodated. My purpose, as I explained in our earlier discussion during the voir dire, would be to try to boil the jurors down or get them confined to those who might properly be

challenged on the ground of lack of indifference so that the accused or the Crown, even, aren't wasting peremptory challenges to get rid of those people, because as I pointed out before, and I can't emphasize this too much, when somebody makes a challenge on the ground of lack of indifference you're accusing that juror of being unfair. Then you've got to get rid of that juror. If the juror is found not to be biased the person exercising the challenge has almost got to use up a peremptory challenge, and the Crown are limited to four peremptory challenges, it does have its stand-to's. The accused is limited to twelve peremptory challenges, so the more the Court can do to try to find out who should be challenged or who could properly be challenged, the better it's going to be for everybody involved.

Mr. Legere in his letter to me refers to another book which I have read not knowing that there was any reference to Mr. Legere in the book but I soon discovered there was, and that is the -

MR. FURLOTTE: "Jackals of the Night".

THE COURT: - "Jackals of the Night", by a chap in Saint John. I didn't find anything terribly offensive about it and I don't suppose there would be ten people in the City of Fredericton who would read it. I only read it because one of my brother judges happened to be friendly with the author or knows the author and said, "Have your read it", and he doesn't even spell Miramichi correctly through the whole book.

MR. FURLOTTE: You know, personally I don't think there's any more damage in "Jackals of the Night" than there is in the newspapers but -

THE COURT: No, no, but I mean I raise this but there's no -

MR. FURLOTTE: Then again the book, "Terror", is probably no worse than the newspapers either.

THE COURT: I don't know, I haven't read it. I've seen the book in the newsstand somewhere a year ago or two years ago or something. Let me see what else I have here that I wanted to speak about. If there are further applications here, either severance or stay of proceedings or whatever, either side are free to advise me of that. I'm not going to hear them before August 26th. I will give you some indication, though, of when - I'll be hearing them after the jury selection is over. If there were a severance thing we'd probably take an hour on the day after jury selection. We'd resolve into a voir dire and take an hour or two, hear representations and decide that point.

On the other one of stay of proceedings I would fix a time for it, but I'm not going to hold up the whole trial for two or three days immediately while we do that. We may get ahead with witnesses and then come back to that and put aside a half-day or whatever time is necessary for it.

Did you in a brief, Mr. Allman, or did I read it in the voir dire discussions we had where you said the Crown were prepared to acknowledge that there was great publicity given to the murders and to the escape and so on? Where did you do that?

MR. ALLMAN: In the brief on challenge for cause I mentioned that the Supreme Court of Canada in Sherrat said that the argument about the potential for jurors having been biased by

publicity merely requires an air of reality and I said that we were prepared to concede that there had been sufficient pre-trial publicity for there to be an air of reality so it wouldn't be necessary for Mr. Furlotte to start bringing in all the newspaper clippings and the videos and so on to satisfy you that there had been a lot of publicity. We will accept there's been a lot of publicity, but I went on to say I don't think that prevents us getting a jury.

THE COURT: Yes, well, I think, Mr. Furlotte, you should be guided a little by what Mr. Allman has written in his brief and what he has said now, and I think I - well, I must say that, you know, from my own knowledge I'm aware of - I suppose I'm not supposed to take cognizance of anything that doesn't happen in the court room but I'm a citizen of New Brunswick and I'm aware of the publicity and aware of the whole thing, so I think you'd be wasting your time, particularly in view of the undertaking that Mr. Allman's been given, to devote hours and hours and days and days to getting together newspaper material on this stuff.

MR. FURLOTTE: And you're ready to accept that as a fact also?

THE COURT: I'm prepared to accept it. If you want to - well, I don't know whether you should - perhaps you should get some stuff together or a typical - I don't think it's necessary to do anything, really. We're all aware that there was a great deal of publicity and we're all aware that there was a reign of terror on the Miramichi.

MR. FURLOTTE: I think I have about fifty pounds of

newspaper clippings to support that fact but to put them in chronological order -

THE COURT: If you want to bring them along, but all I'm saying is don't between now and August 26th be wasting days and days of your time on something like that because it's just misplaced effort if you do that.

MR. ALLMAN: Be pushing on an open door so far as I'm concerned.

THE COURT: Yes, that's a good expression, or a revolving door. Another point is on the voir dire, the questions that came up as to admissibility of evidence on the voir dire. I haven't come to any final decision on these things and I said earlier that I would reconvene the voir dire immediately after jury selection and I would give my answer at that time on the thing, and I don't think I'm going to depart from that, but I think if you look at Volume 14 of the transcript to date at the bottom of Page 242 and the top of Page 243, I forget precisely what I did say there but what I intended to say and was saying was the only safe course for either party to - the only safe assumption for either party to make would be that in any case where there has been a voir dire on the admissibility of evidence, whether the voir dire is before trial or during the trial, the only safe assumption or safe course is for both parties to assume that the evidence which is sought to be admitted will be admitted, and I think you should proceed on that assumption here. I'm not making a ruling on it at that time. I will say this, that if it had been - if it were patently obvious that the Crown were absolutely

without foundation or merit in respect of any of their evidence I would have so said during the voir dire itself, and I can't say that their applications were patently out of order.

I have reviewed some of the evidence and the briefs and so on. I've looked at some of the law. I could perhaps even go so far as to say now that I haven't been convinced up to this point that the evidence should be rejected, but again I want to make it clear that I'm not doing two things, I'm not making a ruling on it and I'm not also suggesting that there was any burden on anybody to show that it was inadmissible. The burden is on the Crown to show that it is admissible, but I haven't been convinced that the law would suggest it should be thrown out at this point, and I don't intend to, but you should - both parties should go on the assumption that that evidence will be admitted.

I can say this, that if the DNA - I certainly lean to the view that the DNA evidence is admissible and that it will be up to the jury to decide what weight they attach to it. I will say this, I think quite firmly, and that is that if the DNA evidence is admissible I would not follow what Mr. Justice O'Flanagan did in the Bourguignon case, I would not put the restriction on the type of evidence given that he did up there, but my ruling will be made August 26th or when the jury selection has been completed.

There was one thing I made a note of a few days ago because I happened to notice it when we were preparing the - or when I was going over with the Sheriff the summons to the juror, and I did

notice that Section 39.1 of the Jury Act says:

> "Any
>
> (a) accused person who elects trial by judge and jury,
>
> (b) person acting on behalf of the accused person with or without the accused person's consent or knowledge, or
>
> (c) counsel for the defence or prosecution, or agent of that counsel,
>
> who, anytime during the period after the jury panel from which the jurors will be selected has been drawn until the trial has been terminated, knowingly, directly or indirectly, speaks to, corresponds with or in any manner communicates with any member of the jury panel, except as provided in Part XVII of the Criminal Code of Canada, chapter C-34 of the Revised Statutes, commits an offence and is liable on summary conviction to a fine of not more than one thousand dollars",

and default is liable to imprisonment and so on.

You'll remember at one of the pre-hearing conferences, I think it was the first one or perhaps the second one, the first one in Newcastle where the suggestion had been made that - I believe, Mr. Furlotte, you had raised it, that it might be necessary to contact jurors, and I pointed it out most forcibly at the time and I later put it in my minutes of that pre-hearing conference pointing out that - I most forcibly pointed out that it would be totally and utterly wrong to contact any juror. I wasn't aware - I knew it was wrong, I wasn't aware that it was covered in the Jury Act, or if I was aware I'd forgotten it, but I do point it out now for what it's worth because I would have cited that section then. I'm going to leave with you before we go a copy of the summons. I did say in our final discussion at the voir dire - I did say that

probably the Sheriff would be sending out some letter or general instructions with the summons to jurors, and I said that before the form of that were settled on I would contact the counsel and receive any suggestions you had on it. When I looked at the Act and I considered the matter I didn't feel that it was necessary to contact counsel, the responsibility was mine, I think, to weed down the number of jurors. I looked at the Act where you dismiss people who are overage and so on and so on. I think I have done a correct job. I had one of my confreres look over it to see if he could see anything wrong with it. He made one suggestion and that was where the summons had said, "You are required to attend as a juror", or otherwise subject yourself to penalty or something like that, he said, "Why don't you put in this", which I did: "The Jury Act provides that a person summoned as a juror who does not appear and does not have sufficient excuse may be found guilty of contempt of court and fined up to $1,000.00", and I said that's a good idea to put that in there and then when some of these people who don't turn up are fined perhaps five hundred or seven hundred and fifty or a thousand dollars they can't complain that they haven't seen it on paper. I'm not saying that will be the level of the fines that I'll impose but they're going to be - they'll be heavier than - if it's necessary they'll be heavier than they are, but I would ask you to look over the instruction sheet that the Sheriff - he's also put on a thing showing how to get to the high school auditorium. At first I called it the high school

theatre and I thought probably we'd better use the word auditorium.

I might say that the normal summons that goes out to jurors with one line of English, one line of French alternating, if I received one of those I would tell them to go take a jump in the lake, I wouldn't show up, they're so confusing, and regardless whether I were English-speaking or French-speaking. They just don't make sense. You know, the traffic summons all go out this way, too. Mr. Sleeth, if you have any influence with your department, pass that on, please, or either one of you, you're both Crown Prosecutors. I think it's abominable, these things, so I segregated the French from the English, I made a joint summons in which the name of the juror appears once and the name of the Sheriff is signed once at the bottom and that goes out, and I believe that you will probably find this will be adopted as the form. It conforms, I guess, reasonably with what is prescribed by the Jury Act. The Clerk will see that you each get a copy of those.

I don't know that it's necessary to put out minutes of this meeting or not. Perhaps I will prepare some sort of abbreviated minutes and put them out if I feel there's anything worth putting out.

I want to say this with regard to my reluctance and refusal, as a matter of fact, to entertain an application for adjournment from August 26th, and to the withdrawl of Mr. Ryan from the case, I know this puts extra work on you, Mr. Furlotte. I don't think that you'll find it overbearing. I hope that you will be able to get

someone in to help you. If you can't get an experienced lawyer like Mitton you should endeavour to get a more junior type, and I'm sure there are dozens of them out there who would welcome the opportunity to earn the type of money they could earn over the next three months, and while they wouldn't be of as much help to you during the trial as someone like Mitton might be or a more experienced lawyer, they would be of a great deal of help to you and they would be of a great deal of assistance. If you don't intend to appoint anyone, let me know before the thing starts and I will have somebody appointed, an amicus curiae, as it's called, who will be a friend of the Court and will help me in helping you.

MR. ALLMAN: I think perhaps at the moment it's an amicus or an amica curiae.

THE COURT: Oh, is that the feminine?

MR. ALLMAN: Yes.

THE COURT: Oh, well, we'll use that.

MR. ALLMAN: Mustn't be sexist these days.

THE COURT: I'm sure you will get someone to help you. Just in continuation of what I was saying a minute ago, Mr. Furlotte, this puts you under certain pressures, you know, pressures you've been under through the trial.

MR. FURLOTTE: Well, actually that takes a lot of pressure off of me.

THE COURT: Well, I want to thank you and I want to thank all counsel for the cooperation that I have received through the trial and I appreciate it very much and I hope that it will continue until the whole matter is finished one way or another,

however it is finished, but I am determined that the trial will progress through. There may be unforeseen difficulties that arise. I'm going to do my best to ensure that a fair, unbiased jury is selected which will be healthy enough to get through the whole trial without having five or six of them what, become pregnant or whatever before it's over and have to be excused. We can't let the number drop below ten, as counsel are aware, but I'm determined to get the trial through.

(ADJOURNED AT 4:00 p.m.)

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

AFFIDAVIT

1. THAT I am a stenographer duly appointed under the Recording of Evidence by Sound Recording Machine Act.

2. THAT this transcript is a true and correct transcription 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 City
of Fredericton in the
Province of New Brunswick
this 14th day of
August , 1991.

BEFORE ME:

Virginia Nicholas
A Commissioner of Oaths
Being a Solicitor

Verna Peterson

SCHEDULE "A" E. Nicholas August 14, 1991

RECORDING OF EVIDENCE BY SOUND RECORDING MACHINE ACT

CERTIFICATE

I, Verna Peterson, of Fredericton, New Brunswick, certify that the sound recording tapes labelled #1 and #2, R. v. Allan Legere, July 26/91, initialled by me and enclosed in this envelope are the record of the evidence (or a portion thereof) recorded on a sound recording machine pursuant to Section 2 of the Recording of Evidence by Sound Recording Machine Act at the hearing held in the above proceeding on the 26th day of July, at Fredericton, New Brunswick, and that I was the person in charge of the sound recording machine at the time the evidence and proceedings were recorded.

DATED AT FREDERICTON, N.B., the 26th day of July, 1991.

Verna Peterson