

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

BETWEEN:

HER MAJESTY THE QUEEN

- and -

ALLAN JOSEPH LEGERE

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

APPEARANCES:

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

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

VOLUME II - Pages 256 to 475 incl.

August 28 and 29, 1991.

VERNA PETERSON  
COURT REPORTER

1  
0 (COURT RESUMES AT 9:30 a.m., AUGUST 28, 1991.)  
(ACCUSED IN DOCK)

THE COURT: This is the adjourned hearing from yesterday  
and we're resolved into a voir dire session  
5 without the jury and with the jury excluded from  
the court room. As you recall from yesterday,  
they have been told to come at 1:30 this afternoon  
and we will then proceed with the hearing proper  
or the trial proper. What will happen at that  
10 time, of course, is I'll be giving my introductory  
remarks or instructions to the jury. Crown  
counsel then, Mr. Allman, I believe, will be  
asked to give his opening address to the jury and  
we'll proceed with the calling of the first  
15 witnesses.

Counsel had indicated yesterday that there  
were a number of matters they wanted to discuss  
at a voir dire sitting and I have - counsel have  
met with me this morning and gone over a number of  
20 matters. Mr. Allman, you had a number of points  
you wanted to raise first, perhaps you could raise  
them in order.

I want to point out that this is a voir dire  
session and nothing that transpires here may be  
25 reported outside the court room or in the media  
until after the whole trial is completed.

MR. ALLMAN: Yes, My Lord, there were a couple of purely  
routine logistical questions I wanted to mention.  
One was this, we would respectfully suggest - and  
30 by we I mean all counsel including Mr. Furlotte -  
that you might consider on Fridays having a  
lengthy morning session, lengthier than usual, and  
then adjourning Friday afternoon. Two reasons for  
suggesting this, the first is that in considera-

## Voir Dire

tion of the jury, I notice from the jury list that  
some of them are going to have to travel an hour  
5 or so to get here and an hour or so to get back.  
If we're sitting 9:30 till 4:30 or thereabouts  
every day of the week they're not going to have  
any opportunity to do their businesses, the  
various things they have to do, except on  
10 Saturdays when a lot of things are closed so it  
would probably be convenient to them. It would  
also be convenient to counsel. We have witnesses  
whom we have to meet and interview and if we're  
going to be doing that on Sunday that leaves very  
15 little time for certainly the Crown and probably  
also the defence to do their - you know, we have  
private matters of our own that we have to attend  
to as well, so if we could consider that we're  
only talking about missing a couple of hours, two,  
20 two and a half hours a week, and I feel it would  
be a real assistance.

THE COURT: Well, on that point, I gather there's no dispute with  
other counsel or Mr. Furlotte particularly, and  
there certainly isn't as far as the Court is  
25 concerned, and I would suggest that we follow your  
suggestion and perhaps rather than try to get a  
full day in on Friday we have what they call in  
the school system a long session, or they used to  
a hundred years ago when I went to school, so  
30 perhaps we could stop at one o'clock or something  
like that on Friday. I'm quite sympathetic to the  
position of counsel, particularly, because if they  
have to see witnesses on weekends and so on it  
crowds it up very much for them. Next week is  
35 Labour Day, of course, we won't be sitting on

Voir Dire

Labour Day, but otherwise we will be going right  
through. Thanksgiving comes along there somewhere  
5 in October, I think.

MR. ALLMAN: I believe so. The other logistical matter I  
wanted to mention is this, Your Lordship at one  
point indicated, I think very early on in this  
trial, that you would normally expect all counsel,  
10 all Crowns, all defence, to be present. We would  
ask your permission, and we'll be asking it every  
time we want to do this, for on occasions one of  
either Mr. Sleeth or Mr. Walsh to be absent. I'll  
be present all the time, so will Mr. Furlotte, but  
15 if co-counsel, and that includes co-counsel for  
Mr. Furlotte if and when he obtains co-counsel,  
could be absent from time to time there are  
matters, interviewing witnesses and other matters,  
that it will be of help if they can be out doing  
20 while we're on our feet in court. Your Lordship  
mentioned at one point that you did want a  
continuous flow to this case and so do we all.  
I think such permission would assist in a  
continuous flow of the case but we would ask for  
25 permission every time before - I might get up in  
the morning and say, can Mr. Sleeth be absent this  
morning, something of that kind.

THE COURT: Yes, well, I have no objection to being  
flexible in that regard. I think counsel know why  
30 I suggested that originally and of course I  
emphasize again that the only person really who is  
qualified to address a jury at the close of the  
case are - close of the trial - is some counsel  
who has been present throughout, so in excusing  
35 people from any appreciable portion of the trial

Voir Dire

you're excluding the possibility of them  
conducting that address.

5 MR. ALLMAN: I think those are the only two logistical  
matters. We did mention the question of  
photographs but I think perhaps we can resolve  
that when that question arises. We mentioned that  
we'd made a change in the witness order and Your  
10 Lordship and Mr. Furlotte are aware of that. The  
other matters that I know of are these. I under-  
stand Your Lordship is going to give your rulings  
on the various matters that were the subject of  
the voir dires earlier so we'll be awaiting that,  
15 and Mr. Furlotte, I understand, has a motion to  
sever. We'll have to deal with that and Mr.  
Sleeth is going to deal with that, that's a topic  
on which he is apprised. Another matter that we  
will have to raise is this, there are one or two  
20 contentious areas apart from the voir dire topics  
we've already dealt with. Mr. Furlotte has been  
good enough to mention to me what they were and  
we'd like some sort of preliminary ruling on that  
because I need to know whether I can mention them  
25 in my opening address, so we can do that after the  
topic of severance. The other matter is that Mr.  
Furlotte served me with a notice of motion for a  
stay of proceedings but I'm not in a position to  
deal with that today. I only received the notice  
30 on Monday. I received this morning a number of  
authorities that Mr. Furlotte proposes to rely  
upon. Part of that motion is basically a  
completely different topic that I don't know very  
much about and I need to make inquiries about that  
35 and I don't think I could be ready for that motion

5

Voir Dire

before the end of next week, so possibly we  
could do that - provisionally we could put that  
5 down to be done a week this Friday morning. I  
think those are all the matters that I'm aware of.

THE COURT: Yes, thank you very much, then, Mr. Allman.  
The questions - you said the controversial matters  
that concern your opening remarks to the jury, you  
10 suggested those be dealt with along with sever-  
ance, did you?

MR. ALLMAN: No, after severance.

THE COURT: Oh, after severance, yes. Well, now, Mr.  
Furlotte, there have been a couple of things  
15 mentioned. Severance - you did indicate to me  
that you would be applying this morning for a  
ruling on severance, or for severance really,  
and I believe Crown counsel indicated they  
would be prepared to state their views on that  
20 at the time, so do you want to proceed with that  
now?

MR. FURLOTTE: Yes, My Lord. My Lord, to deal with the  
motion for the severance of counts I have not  
prepared any formal motion because I think  
25 the law is quite clear that there is a discretion  
on the Crown to join more than one count of  
murder in an indictment. However, it ought not  
be to the prejudice or the detriment of the  
accused. My Lord, we maintain that there should  
30 be a severance in all these counts of murder  
except for the Daughneys, the Daughneys should be  
tried together since the - I won't say murders,  
but at least the killings appear to have occurred  
at the same time and as one circumstance of  
35 events.

Voir Dire

5 I'd like to bring to the Court's attention  
that there's been quite a time span between the  
murders - or at least the alleged murder in the  
Flam incident and the one in Mr. Smith. One is in  
May, the other is in November.

10 There's been much publicity in this case and  
in that publicity I think it's quite clear that  
the law, laws of evidence prevent the character of  
an accused person being brought into evidence.  
Unfortunately in this case everybody has some wild  
15 idea about the character of Mr. Legere, be it true  
or be it not true. Even if the character surmised  
by the media of Mr. Legere, which was also put in  
a book called "Terror", which evidently there's at  
least one member of the jury who has read the  
book, "Terror". In normal circumstances character  
20 evidence is not allowed in court even if it's true  
because it would prejudice the accused. In this  
case the media has run rampant with their views of  
Mr. Legere, their ideas that he's anywhere from  
just a violent person to a serial killer. There's  
25 been comments as to his being a psychopath. I  
don't know how we can escape that in the trial,  
but nevertheless, the more often - by having these  
all tried together Mr. Legere's character is going  
to be under constant attack for each and every  
30 case, and I'm concerned about the added effect  
that it's going to have at the end. There's a  
potential risk factor that the jury is going to be  
considering. If they were only considering one  
murder charge, one set of facts, there may be  
35 reasonable doubt, but if they're going to consider

7

## Voir Dire

5 that - I'm not going to say that doubt will be removed, but there's no way they're going to be able to separate the evidence from one trial to another and not consider any character evidence was introduced for the purposes of one trial, and there's no way the jury can separate those.

10 I think the Crown will admit that in this case, in all the charges of murder against Mr. Legere, the evidence is all circumstantial, there's no direct evidence whatsoever, and for a jury to sit down and decide an issue on circumstantial evidence, I would submit, My Lord, that  
15 the more the Crown can bring in to, say, accuse an accused person of some type of wrongdoing, even if it's not just of the bare fact of murder or killing of an individual, this compiles a great prejudice against an accused person, so when  
20 the jury is considering - if they're considering a man on trial of many crimes they are looking at a risk factor. For one crime alone they might be able to maintain a reasonable doubt attitude that the Crown could - we can accept they have to prove  
25 the case beyond a reasonable doubt, but when it comes to the higher the risk of acquitting a person, say a serial killer which the Crown is claiming, the greater that risk, then I would submit, My Lord, that the standard of proof that  
30 is going to be needed to convict Mr. Legere is going to be much less than that beyond a reasonable doubt, and it's very likely that if a serial killer is being tried and being tried for all the offences at one time, that risk factor  
35 because they don't want to take the risk of



8

Voir Dire

5 acquitting a serial killer who may go back and  
do it all over again, the standard of proof  
lessens somewhat, and I think it's - the Court  
must defend the criminal justice system and  
defend that standard of proof beyond a reasonable  
doubt.

10 THE COURT: Just one comment there, and that is this  
expression serial killer, that's an expression  
used by the media, I haven't heard it used in  
court here.

15 MR. FURLOTTE: That's an expression used by the media and  
by bringing these charges all at once against Mr.  
Legere. The Court is implying that Mr. Legere is  
a serial killer.

20 THE COURT: Well, I'm cautioning all counsel that they  
shouldn't in front of the jury be using the  
expression serial killer. I don't think the Crown  
have done it yet and -

25 MR. FURLOTTE: Well, I mean, everybody has read the  
newspaper and everybody knows what everybody is  
thinking, and you and I, there's no way we can  
stand here and deny the fact that most of the  
jurors are going to consider Mr. Legere, that  
he's being convicted as a serial killer and not  
just as a killer.

30 Last but not least, My Lord, Mr. Legere  
advises me that it is highly likely in at least  
one of the cases that he is going to have to take  
the witness stand because he feels that if I  
cannot, and he doesn't think that I'm going to be  
able to rebut certain evidence against him without  
his having to take the witness stand. In that  
35 event, if Mr. Legere had to take the witness stand

Voir Dire

5 to defend himself in one of the cases, he would  
be severely prejudiced in that he would be under  
cross-examination for all the charges of murder  
against him, because although the jury doesn't  
understand that a - I suppose, an accused person  
does not have to take the witness stand, he does  
not have to defend himself, there are times that  
10 it may be opportune to him to do so, and if he's  
allowed to be cross-examined under - for cases of  
which he for one reason or another does not want  
to take the witness stand or against my advice he  
ought not to take the witness stand, the Crown  
15 would be allowed to pose questions to him about  
those offences also and if he cannot give an  
answer for some particular reason to a Crown's  
question it would almost - there would be some  
implication maybe that the jury might take of  
20 guilt because he's unable to answer a question.  
I don't think it's fair to an accused person to  
force him to take the witness stand in any case  
and that alone, I believe, would be sufficient  
grounds for a severance of counts, but regardless  
25 of that, My Lord, I think the circumstances of the  
whole case, because it's all circumstantial  
evidence, that that also is grounds for severance  
of counts. If the Crown had direct evidence it  
wouldn't be all that bad for each or any of the  
30 cases, but they don't have direct evidence for any  
of the cases and circumstances are such that if  
the Crown is allowed to present its case total  
that it is likely that if Mr. Legere was tried  
separately on each count he would be acquitted on  
35 I believe at least one of them, and I believe on

10

## Voir Dire

all three, but I think definitely on at least  
one, especially my position is the Flam case the  
5 Crown has absolutely nothing except DNA evidence  
and on the voir dire as Your Lordship remembers,  
the Crown's witness testified that they don't  
think it's proper for a person to be convicted on  
DNA evidence alone, but under the circumstances  
10 if the Flam case is tried with the Daughney case  
and the Smith case, I have little faith that the  
jury would ignore all the other evidence from  
Smith and Daughney and still bring in a conviction  
under Flam, and for those reasons, My Lord, I  
15 believe Mr. Legere would be severely prejudiced  
if all these cases were tried together and the  
Crown has no legitimate reason for having them  
tried together except for the possibility of  
shortening the trial by approximately two weeks  
20 to re-present DNA evidence on the Daughney case,  
and I would submit, My Lord, that when an accused  
is to be tried and to be given a fair trial by an  
impartial jury and not to be unduly prejudiced  
that the cost of an extra two weeks of trial is  
25 not a consideration that the Court ought to take.

THE COURT: Just before you finish, Mr. Furlotte, may I  
ask you this? I'm familiar with cases where a  
number of accused are being tried jointly and  
applications have been made and granted for  
30 severance of their trials on the ground that one  
of the accused might be taking the stand to  
testify in his own defence whereas the others  
might - another accused jointly being tried would  
not want to take the stand, and that has been - I  
35 believe there are cases that suggest sometimes in

## Voir Dire

a case like that an order for severance is made  
of trials. Are you aware of any cases where an  
5 accused charged with various counts in an indict-  
ment has been permitted to sever the counts on the  
ground that he might want to take the stand on one  
count but not on another? I just can't think of  
any case. I can't think of one arising.

10 MR. FURLOTTE: No, My Lord, I'm not aware of any of those  
particular cases but I hardly think the Crown has  
attempted to try different murder charges which  
are all circumstantial evidence in the past. The  
Crown has pulled - is pulling a lot of firsts in  
15 this case, be it the preferred indictment denying  
Mr. Legere the opportunity of a preliminary  
hearing, be it DNA evidence. The only evidence, I  
believe, that they're trying to tie Mr. Legere in  
with the Smith case is again new scientific  
20 evidence which is again going to have to be the  
subject of a voir dire, which I do not believe  
that was ever introduced into Canada before. It's  
not DNA evidence but it's still another type of  
scientific evidence which personally I don't think  
25 there's much basis for its introduction but the  
Crown believes there is. There's so many firsts  
and 37 expert witnesses in this trial. I believe  
one of the grounds for a severance of counts is to  
show that it would be extremely trying on a jury  
30 to have everything tried together, that there's a  
good possibility that they wouldn't be able to  
remember all of the evidence that was put before  
the court so that they could draw a fair assess-  
ment. I can honestly state that I've been working  
35 very steadily on this case since I've been

12

Voir Dire

retained on December 5th and I have the benefit  
of all the police briefs, I have the benefit of  
5 all my notes, I have the benefit of numerous -  
the lab reports, and I cannot keep it straight in  
my mind. For my sanity I'd love this separated  
so I'd know what in the heck I'm doing. How the  
jury is going to handle this is beyond me and I  
10 would have to say it's basically impossible for  
them to do it.

THE COURT: Thank you very much, Mr. Furlotte. Now, Mr.  
Sleeth?

MR. SLEETH: My Lord, perhaps at the outset I should note  
15 that I'm rather astonished by my learned friend's  
lack of faith in our jurors as expressed by him.  
I believe they're going to be perfectly capable  
if properly instructed at the end of this trial  
to deal with the various issues that are going to  
20 be put before them. Secondly I would call to his  
attention the fact that he's absolutely incorrect  
when he says that this would be the first time  
there has ever been a situation where there have  
been more than one count of murder presented in  
25 the same indictment.

There's a decision, My Lord, R. vs. Haase,  
a 1965 decision of the British Columbia Court of  
Appeal to be found in 50 Western Weekly Reporter,  
New Series, at Page 321, and also referred to in  
30 Volume 2 of 1965 Canadian Criminal Cases at  
Page 56, subsequently confirmed by the Supreme  
Court of Canada in 1965, 2 Canadian Criminal  
Cases, 123. Joinder of two counts on a murder  
indictment was approved.

35

## Voir Dire

My Lord, my learned friend made much of the so-called prejudice that he said would exist for his client because of the way this particular indictment is framed. The statutory provisions are there, the Criminal Code permits this kind of - this joinder, and they are - the theory surrounding a prohibition against mutiple proceedings is well known to civil law, for instance, and I would submit that the theory that exists in the civil law is equally applicable here in the criminal. First, there is the interest of the public at large in the determination of disputes and the finality and conclusiveness of judicial decisions. Second, and this would no doubt interest my learned friend, there is the interest of the individual in being protected from vexatious and harassing multiplication of suits.

Now, my learned friend and all of us have gone through quite an ordeal in the last few days trying to select a jury. If there were severance, My Lord, I ask then what would be the situation, what would be the prejudice against the accused that would build up, which would accumulate in the form virtually of a snowball as there were a series of different murder charges brought against this man, a series of different trials with new jurors being asked were they able to dissuade their mind from the things that have been said in prior trials.

My Lord, in the well-known case here of R. vs. McNamara, the Ontario Court of Appeal, and the decision is contained at 56 Canadian Criminal Cases, 2nd Series, at Page 193, the Ontario Court

Voir Dire

of Appeal pointed out that when we deal with  
 severance our only issue is not simply one of  
 5 absolute necessity. The accused must establish  
 on a balance of probabilities that the ends of  
 justice require such severance. Now, is there an  
 embarrassment to the accused created by virtue of  
 a trial on these varying counts, and I submit, My  
 10 Lord, that in this particular case, because of the  
Haase judgment, there is no special embarrassment  
 to be set, a so-called precedent case set for.  
 There is an approved principle here and my learned  
 friend has not in fact established the necessary  
 15 foundation to believe that on a balance of  
 probabilities the difficulty would arise.

I'd note, My Lord, as well, that there's no  
 great issue here of enormous complexity.  
 Ultimately there will be three counts in which  
 20 the key but not only evidence will be forensic  
 evidence, and there will be an additional count  
 which will follow with additional evidence,  
 circumstantial, but circumstantial evidence, My  
 Lord, is not a basis to turn around by itself and  
 25 declare there should be severance.

Circumstantial evidence, My Lord, is  
 presented in our courts on a daily basis. It is  
 employed constantly and has been accepted by our  
 courts of all levels in order to justify  
 30 convictions. The real issue, My Lord, I submit  
 that my learned friend should have addressed  
 himself to may well have been the issue of  
 similar fact evidence. There again, My Lord, I  
 would submit that the law is reasonably clear.

15

Voir Dire

5 There is a factual nexus, a factual legal  
nexus, in these cases. The issue is one that  
is not unduly complex and it is one that falls  
directly within the principles in similar fact  
where, for instance, in his text on similar fact,  
My Lord, the Australian author, J.R.S. Forbes,  
the text is entitled, "Similar Facts", published  
10 by the Law Book Company Limited in 1987, and the  
author in paragraph 9.19 puts it very simply:

"The difficulty does not arise if the  
evidence on charge A is also admissible",  
15 and he puts in brackets after that, "cross-  
admissible",

" - on charge B. There are various  
20 reasons why this may be so, one is if the  
evidence on one charge is admissible  
similar fact evidence on the other as  
was held to be the case in Boardman and  
Sutton, then there is no conflict with  
25 the theory of Makin on the everyday  
event of a joint trial."

In paragraph 9.23 he notes that it suffices  
30 for joinder that the charges arise out of the same  
facts or, "that they constitute a series of  
offences of the same or of a similar character",  
35 and notes further that, "the courts have not  
interpreted these words strictly. All that is  
necessary is that the offences should exhibit such  
40 similar features that they can conveniently be  
tried together in the general interests of  
45 justice". He notes further in Chapter 9, which  
is procedural aspects on similar fact starting at  
50 Page 215, "A case for severance only arises when  
evidence on the several counts is not legally  
cross-admissible".

55

In this case, My Lord, the balancing of  
opposing considerations as well arises, and I'd



## Voir Dire

submit the balance of opposing considerations here  
will set forth that we have a difficulty. The  
5 ends of justice includes the administration of  
justice generally, not only the interests of the  
accused. For a source to that, My Lord, I would  
refer you to the decision in R. vs. Racco, No. 1,  
1975, 29 Criminal Reports, New Series, at Page 303  
10 and also to be found in 23 Canadian Criminal  
Cases, 2nd Series, at Page 201, where Judge  
Graburn noted, "The phrase ends of justice  
embraces both the interests of the accused and the  
interests of the administration of justice gener-  
15 ally". He went further, the same judge, My Lord,  
in a later decision three years later, R. vs.  
Freedman, 1978, 2 Criminal Reports, 3rd Series,  
at Page 345, and he stated at Page 352, "While  
the costs of the administration of justice is  
20 always secondary", and I would underline and  
agree, secondary, "to the question of justice and  
fairness to the accused person it is not a matter  
to be totally disregarded on applications for  
severance".

25 This case, My Lord, will be an enormously  
expensive case. This secondary consideration is  
not one to be cast aside as lightly as my learned  
friend would indicate it deserves to be.

30 My Lord, the facts which the Crown will be  
submitting to you will disclose, I submit, in  
light of the concept of similar fact evidence -  
and there's one thing I should hasten to add,  
perhaps, at this point, and I do it because of  
recognition of some important details. I  
35 realize that I am arguing, I'm touching - will

17

Voir Dire

5 be coming into the area of similar fact, and I'm  
presently addressing the judge who sat on Alward  
and Mooney and canvassed the law of similar fact  
there. I'm addressing the trial judge who sat on  
Ambrose and Hutchinson and addressed similar fact  
there, and I know from personal experience My Lord  
was the judge on Dionne #2. Similar fact evidence  
10 was also addressed there as well. These are  
subjects well known to My Lord and I do not  
propose to spend a long time dealing with similar  
fact as a result of your known knowledge in this  
area, but with the four counts that are present  
15 before this Court, My Lord, we will be dealing  
with situations where all four of the victims met  
their deaths at their homes in the Newcastle-  
Chatham area of the Miramichi. All the victims  
lived within short miles of one another. The  
20 first victim, Annie Flam, was murdered sometime  
after 10:30 p.m. on Sunday night on the 28th of  
May in her home at Chatham. She was 75 years old,  
My Lord, and the autopsy will reveal that her jaw  
was broken by blunt force. During the same  
25 evening, Nina Flam who lived with her was raped  
and beaten.

My Lord, the building in which they lived,  
and I'll come back to the significance of this  
when we reach the Daughneys - the building in  
30 which they lived was set ablaze by setting sepa-  
rate fires in closets without using any accelerant  
such as gasoline. The fires were set at different  
times, and the evidence which the Crown will be  
presenting to you and to the jury, My Lord, will  
35 show that an assailant who was in that house

Voir Dire

5 remained in the building to the very last minute,  
even to the point of shoving Nina Flam into the  
flames, and remained in that building for a  
considerable time; also that there was an attempt  
made to strangle Nina Flam by an assailant using  
one hand - one hand.

10 The next two victims, My Lord, two sisters,  
Linda Lou Daughney and Donna Daughney, murdered at  
their home in Newcastle which is no great distance  
away, sometime again after 10:30 p.m., both these  
persons were battered. There was physical assault  
at the Flam residence. A knife was present at the  
15 scene and a knife was in fact used on Donna  
Daughney to slash her face and throat. At the  
Flam residence a knife had been observed. These  
knife wounds inflicted on Donna Daughney were to  
her face and to the throat, were not life-threat-  
20 ening but were clearly deliberate will be the  
testimony of the pathologist, and they leave open  
an inference of some kind of torture, but there  
was a fire set here, My Lord, once more at  
different places, in closets, once more without  
25 the use of accelerants, and at different times,  
and the evidence will further show that the last  
fire was set only a short time before the arrival  
of firemen at the Daughney home.

30 Finally, My Lord, the case of Father Smith  
murdered in his residence near his church in  
Chatham Head, New Brunswick. Now, he too was  
battered, as was the case with the Daughneys. His  
ribs were broken as was the case with Donna  
Daughney. He received slashes to the face that  
35 were not life-threatening but deliberately pain

19

Voir Dire

rendering, as happened with Donna Daughney, and we will recall as well that in the Flam incident a knife was present, and the autopsy will show the fracturing of the cornu of the hyoid, a finding which the pathologist will be stating is consistent with one-handed manual strangulation as was attempted on Nina Flam at the very outset back in May, 1989, on May 28, 1989.

10 My Lord, we have then a series, I submit, of similar facts, hallmark characteristics fitting within Boardman, all of them features that stand out within the requirements of a decision such as Boardman and in subsequent decisions of our own Supreme Court of Canada. The evidence of these similar facts, My Lord, may be set up for a series of reasons, to establish identity - it can also be put up, My Lord, to establish other features such as to rebut possible defences. In Olah, Brooks, Gomes and Fong, a 1979 decision of the Saskatchewan Court of Appeal contained in 7 Criminal Reports, 3rd Series, at Page 273, the Court noted that, "An accused person need set up no defence" - I'm quoting from Page 291, My Lord:

25 "An accused person need set up no defence other than a general denial of the crime alleged. The plea of not guilty may be equivalent to saying, 'Let the prosecution prove its case, if it can', and having said so much, the accused may take refuge in silence. In such a case it may appear (for instance) that the facts and circumstance of the particular offence are consistent with innocent intention",

35 which could be argued later on,

40 "Whereas further evidence, which incidentally shows that the accused has committed one or more other offences, may tend to prove that they are consistent only with a guilty intent. The prosecution could not be said, in their Lordships' opinion, to be 'crediting the accused with a fancy defence'..."

45

20

Voir Dire

5 And the Crown is entitled to submit it at this stage.

My learned friend is correct when he says - and he was citing the first wing of the Makin rule in the very famous decision, My Lord, Makin vs. Attorney General for New South Wales.  
10 It's contained in 1894 Appeal Cases at Page 57, a Privy Council decision, judgment by Lord Herschell at Page 65. Lord Herschell put it somewhat more elegantly. He stated:

15 "It is undoubtedly not competent for the prosecution to adduce evidence tending to shew that the accused has been guilty of criminal acts other than those covered by the indictment for the purpose of leading to the  
20 conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried."

25 He did not provide you with the second wing, and the second wing, My Lord, is the one that has been applied consistently on different occasions by the Supreme Court of Canada and by courts across this country and indeed around the world,  
30 from Australia to the United Kingdom. " On the other hand", said Lord Herschel:

35 "The mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental or  
40 to rebut a defence which would otherwise be open to the accused."

Since the decision of the Privy Council in Makin, My Lord, our Supreme Court in 1982 in a  
45 series of cases dealt further with the issue of similar facts. In 1982, for instance, in Sweitzer vs. The Queen, reported in 1982, 1 Supreme Court Reports, 949, 29 Criminal Reports,

Voir Dire

3rd Series, at Page 97, His Lordship stated - the Court stated at Page 952 and 953 of the Supreme Court Report:

5

10

15

20

25

30

35

40

45

"Similar fact evidence has been adduced to prove intent, to prove a system, to prove a plan, to show malice, to rebut the defence for accident or mistake, to prove identity, to rebut the defence of innocent association, and for other similar related purposes. This list is not complete."

A similar rule exists, My Lord, under the Federal Rules of Evidence for United States Courts and Magistrates. It may not be unimportant to note this in this day of Charter where people talk, but in our sister state to the south evidence of other crimes - Rule 404(b) of the Federal Rules of Evidence for United States Courts and Magistrates:

"Evidence of other crimes, wrongs or acts is not admissible to prove character of a person or to show he acted in conformity therewith. It may be admissible, however, for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident."

My Lord will recall that in the Makin judgment the situation involved the uncovering of bodies of children buried in back yards, and long after Makin the British Court of Criminal Appeal in a case which has been frequently decided in later ones such as Boardman noted in cases R. vs. Robinson, 1953, 37 Criminal Appeal Reports, Page 95, and I am referring to Pages 106 and 107, and the Court was referring specifically to juries.

If the jury are precluded by some rule of law from taking the view that something is a coincidence which is against all the probabilities if the accused is innocent, then it would seem to be a doctrine of law which prevents a jury from using what looks like ordinary common sense."

22

Voir Dire

5 Authors since that time have pointed out, for  
instance, that in the case of Makin any one of us  
might coincidentally, accidentally, get a  
succession of houses with bad drains or dry rot,  
but houses with babies buried in the back yard are  
quite rare. As a result this was rare enough for  
10 coincidence to be rejected as the explanation of  
the Makins' predicament, and in a later case, more  
celebrated, perhaps, of R. vs. Straffen, contained  
in 1952, 2 Queen's Bench Reports, Page 91, and 36  
Criminal Appeal Reports and 1952, 2 All English  
Reports at Page 657, authorities have noted that  
15 it would be quite unbelievable bad luck for  
Straffen, who was a strangler of little girls for  
no apparent reason and left their bodies  
unmolested and unhidden, another such eccentric be  
in the neighbourhood when the same thing happened.

20 Here, My Lord, we have a situation where  
there are a series of similar facts which I have  
related now to the Court. These similar facts, My  
Lord, I submit, meet the hallmark tests which have  
been applied since, long since the Makin judgment,  
25 have been presented to you on innumerable  
occasions in the past, but just to quickly review  
we find attempted one-handed strangulation, Flam  
and Smith. We find arson in Flam and Daughney. I  
should note that there will also be evidence  
30 showing a tying of the victims in the Flam and  
Daughney matters. We'll show an interest in  
jewellery in the Flam matter and a theft of  
jewellery in the Daughney matter and a discovery  
of jewellery from the Daughney residence shortly  
35 after the Smith murder. We find sexual assault

23

Voir Dire

5 taking place in the Flam and Daughney residences  
which leads to the discovery of the DNA. We find  
violent physical beatings at all four locations.  
We find the presence of a knife at the Flam  
location, a use of a knife at the Daughney loca-  
tion and at the Smith location.

10 All victims, My Lord, without exception, meet  
the category of being basically defenceless.  
Annie Flam was a tiny, elderly woman. Nina Flam  
is not a young woman, she's an elderly woman. The  
Daughney women were two middle-aged ladies and  
Father Smith was an old man, an elderly man.

15 There was considerable time spent at the  
crime scene on all occasions, My Lord. There was  
a forcible entry at the Flam residence and a  
forcible entry at the Smith residence. There was  
an unscrewed light bulb outside the Daughney  
20 residence and an unscrewed light bulb outside the  
Smith residence. Fires were set separately  
without using accelerants and at different times  
in both the Flam and Daughney residences.

25 My Lord, I would submit there is such an  
interweaving here of facts and that my learned  
friend is entirely incorrect, by the way, in  
saying one cannot use so-called circumstantial  
evidence. There is such an interweaving of facts  
here, and of similar facts, that all the standard  
30 tests which have been argued before you on so many  
cases and on so many occasions have all been met.  
There is therefore cross-admissibility.

35 Since there is cross-admissibility in line  
with the jurisprudence, the authorities, the cases  
and the theory, there is no basis established on a



Voir Dire

balance of probabilities by my learned friend  
which would justify severance. That, with the  
5 greatest respect, My Lord, is the standard  
position that would have been taken if it were not  
for one further feature unique to this particular  
case. That is that when we deal with the DNA  
evidence of which you have heard a great deal over  
10 six weeks of voir dire, not two weeks - the DNA  
evidence which you heard is all on one gel, or at  
least there is DNA evidence involving the compared  
samples from Allan Legere with that found, with  
DNA found at the Flam scene and at the Daughney  
15 scene.

It would be extremely difficult, I would  
submit, to try and address a jury if there were  
any kind of severance. It would be extremely  
difficult to present this evidence. These are so  
20 thoroughly intermingled and so inter-meshed  
scientifically as well as legally, My Lord, that  
severance of the Daughneys is impossible. Sever-  
ance, I would submit with the greatest respect, of  
Daughney and Flam is equally impossible, extremely  
25 difficult, would add to the difficulties of the  
trial court in addressing the jurors, would not  
work any favour to the accused, and I repeat this,  
My Lord, in all sincerity, that one ultimate  
possibility here, if severance would allowed, the  
30 Attorney General is entitled to continue the  
pursuit of Mr. Legere. There would be then a  
snowballing effect. My learned friend is inviting  
manifest prejudice at some future stage. I can  
little see how that would aid an accused, and I  
35 see an additional problem which is clearly against

25

Voir Dire

5 the administration of justice, because it would  
send a very dangerous message to a certain type  
of individual who was outside this building, and  
it would be this. Once you've committed act A and  
B, why stop? Eventually, as long as you've done  
enough horrifying things, somewhere along the line  
you're going to get off with D, E, F, G, because  
10 it will be impossible if severance is allowed to  
ever bring you to trial because the prejudice  
that would have been caused, supposedly, by all  
the press reports would have built to the point  
where you could not proceed.

15 My Lord, I conclude by asserting again my  
learned friend is, (a), incorrect in saying it's  
only circumstantial evidence here; (b), he is  
incorrect in saying the circumstantial evidence  
is not enough to permit the continuation of a  
20 joint trial here; (c), he is incorrect in that  
he has not established on the balance of probab-  
ilities a basis for severance; (d), he is  
incorrect, he has not even addressed the issue of  
similar fact evidence and the cross-admissibility  
25 here. On all those bases, My Lord, I submit you  
have the authority exercising your judicial  
discretion and considering that legal background  
to refuse to sever. Thank you.

THE COURT: Mr. Sleeth, you haven't addressed the point  
30 raised by Mr. Furlotte to the effect that if Mr.  
Legere were to wish to take the stand in respect  
of one of the counts he would unduly expose  
himself to cross-examination in respect of the  
other murders, or alleged murders. Do you have  
35 any comment to make on that?

26

Voir Dire

MR. SLEETH: My only comment on that, My Lord, would be  
that there would be no great difference if there  
5 was a severance. I'm not talking about the actual  
evidence itself. If there was a trial on charge X  
after a completion of trial on three grounds, and  
Mr. Legere then - on whatever - Mr. Legere took  
the stand to testify on trial X, he could then  
10 be cross-examined about other incidents - not his  
testimony, but other incidents in which he may  
have been involved. He could be asked about other  
circumstances related to the other matters that  
have been dealt with on another occasion, and  
15 there would at that time be no advantage to Mr.  
Legere. Mr. Legere would be faced with the same  
difficulty, My Lord, at that time.

THE COURT: Thank you very much. Mr. Furlotte, anything  
by way of reply?

20 MR. FURLOTTE: My Lord, Mr. Sleeth seems to think that if  
there's a severance of counts here that it would  
greatly prejudice Mr. Legere. However, it's my  
belief if they were tried one at a time and you -  
of course, the Crown is going on the assumption  
25 that Mr. Legere is going to be convicted. My  
position is that I believe if they were severed  
Mr. Legere would be acquitted on whichever one the  
Crown wishes to bring to court first.

Again, if we look - or, rather, getting back  
30 to Mr. Sleeth's position that Mr. Legere would be  
prejudiced because of the hard time we had to pick  
the jury, if Mr. Legere is acquitted of the first  
murder charge, I think the jury or the public out  
there would have second considerations as to their  
35 opinions as to whether or not Mr. Legere is guilty

Voir Dire

for the rest of them. As you will probably note  
 if you go through your notes, out of the twelve  
 5 jurors there are seven jurors who had formed an  
 opinion beforehand and which they, either rightly  
 or wrongly, believe that they can set their  
 prejudice aside. Now, I maintain that the opinion  
 they formed beforehand was that Mr. Legere was  
 10 guilty, so they were in court yesterday while  
 being processed under the assumption that Mr.  
 Legere was guilty, but one way or another they  
 were talked into believing that they could set  
 their prejudice aside. Now, I think it's clear  
 15 that the Charter of Rights says that a person is  
 to be presumed innocent till proven guilty and  
 be tried by an impartial tribunal. I think it's  
 contrary and flies in the face of logic to say  
 on one hand I am prejudiced, I believe Mr. Legere  
 20 is guilty, but on the other hand, oh, yes, I can  
 set my prejudice aside. That's like if I was  
 prejudiced against the blacks, Indians, Jews, or  
 any other nationality and I had to try one of  
 those individuals I'd say, oh, yeah, I can set  
 25 my prejudice aside. I don't think it comes about  
 that easy. We have seven of these people on the  
 jury.

If Mr. Legere was tried on one count and he  
 was acquitted, I'm sure that the next time we  
 30 would have twelve people on the jury who could  
 honestly come to court and say, no, I do not  
 presume Mr. Legere guilty, so therefore I think  
 Mr. Legere would benefit enormously by having  
 these cases tried separately. Based on the bare  
 35 facts of all this widespread publicity, it's his

Voir Dire

only chance.

5 If you force Mr. Legere to be tried on all  
counts at the same time you are probably removing  
from Mr. Legere the opportunity to take the stand  
in defence of himself in one of the cases, and I  
don't think that the Crown ought to be able to try  
10 all cases at one time for the opportunity of  
preventing Mr. Legere to take the stand in defence  
of himself. I think it's well-known and highly  
publicized that Mr. Legere, if he has some  
evidence to offer in order to take the stand to  
15 rebut it, he feels free in taking the stand in  
defence of himself. It is not a ploy on his part  
just to have the severance of counts. Mr. Legere,  
I think it's well-known that in any of his  
previous trials that I think he's taken the stand  
in every darned one of them. I don't think  
20 there's one case that he went to court with that  
he's never taken the stand, but in this case if  
you try all together, and I think the Crown might  
be aware of it, that this way that they would be  
forcing him to take the stand in one of the cases  
25 which he normally might not, and it could be a  
tactic on the Crown or maybe they haven't even  
thought of it, I don't know, but regardless, it  
severely prejudices Mr. Legere's chance at full  
answer and defence, and under those grounds I  
30 think these cases ought to be tried separately.

Mr. Legere, I think it's - it was nice to  
see Mr. Sleeth stand up and present a good argu-  
ment against this motion, in defence of this  
motion, and it's nice when people have time to  
35 prepare full answer and defence, an opportunity he

29

Voir Dire

has which I would submit, My Lord, that I'm going  
to be severely restricted throughout this trial  
5 of doing. Don't take all chances away from Mr.  
Legere.

THE COURT: What about Mr. Sleeth's comment or  
suggestion, Mr. Furlotte, that if Mr. Legere were  
tried separately, say he were tried first on the  
10 Daughney counts and he took the stand, would he  
not be asked a question like, "Didn't you kill  
Annie Flam five months ago"? Isn't that question  
going to be put to him, and isn't he likely to  
answer?

15 MR. FURLOTTE: And I would object on that, My Lord, that  
it would be totally irrelevant.

THE COURT: Irrelevant? How?

MR. FURLOTTE: If a person's character in the past, if  
Mr. Legere could not - there's no evidence that  
20 can come in to Legere's criminal record, I don't  
know how in the heck we're ever going to get out  
of it. There's not supposed to be any evidence  
as to his character; I don't know how in the heck  
we're going to get out of it. I mean, he's  
25 prejudiced, the man can't breathe without having  
the rights to what we normally called a fair  
trial - everything that is not admitted in court  
is going to be in this trial, and I don't know as  
a solicitor how to stay out of it because every-  
30 body knows anyway so what's the damn point in  
objecting? I mean everybody knows Mr. Legere is  
a convicted killer, they all know his criminal  
record, it's been printed in the newspaper God  
knows how many times. I can tell you right now  
35 this case is way beyond my ability to handle and

30

Voir Dire

5 it's not my fault, it's the way the circumstances  
unravelled since these crimes have been committed  
and before Mr. Legere was charged and Mr. Legere  
has been so prejudiced that I don't know how to  
deal with it and the little pieces that I hope to  
be able to salvage, the Crown is attempting to  
stop those also. I'd love to throw my hands up  
10 and give up and walk out this door because it's  
beyond me.

THE COURT: Thank you, Mr. Furlotte. Now, incidentally,  
this matter of severance has come up. There has  
been no formal motion made earlier but it was  
15 indicated at a very early stage, I think probably  
December 5th, and if not December 5th, certainly  
at one of our early pre-trial hearings in  
January, 1991, this year. It was indicated that  
there might well be an application for severance.  
20 I did express some views on it at that time. I  
did, in fact, look into quite a bit of the law  
involved in anticipation that particularly, I  
think, at our February 8th sitting or whatever the  
date was, I may be wrong, that there would be an  
25 application at that time, but I would like an  
opportunity to think about this for a few  
minutes, the rest of the morning, anyway, and  
perhaps this afternoon before we call the jury in  
I'll give my decision on this point.

30 MR. SLEETH: My Lord, would you wish further argument at  
that time or -

THE COURT: Oh, no, I've heard enough. Have you said  
everything you wanted to say?

MR. SLEETH: I was just going to note, My Lord, one thing  
35 which by oversight I did not mention although I

31

Voir Dire

did have it in my notes, and it was this -

THE COURT: Just hold on a minute so Mr. Furlotte can  
5 hear what you're having to say. Yes, Mr. Sleeth,  
Mr. Furlotte, is asking me to make another point.  
O.K.

MR. SLEETH: Yes, My Lord, we would anticipate - we've  
already given a notice to the Court and to Mr.  
10 Furlotte that we'd be calling somewhere in excess  
of 200 witnesses. The severance, if a severance  
were granted, would not reduce the number of  
witnesses who would be called nor the length of  
their testimony. There would be enormous duplica-  
15 tion. For instance, if the Flam case were  
severed the expert witnesses on DNA would still  
have to be called with respect to the two Daughney  
murders. If the Daughney murders singly or both  
were removed, DNA evidence would still be called  
20 with respect to Flam, and in the event that a  
Smith murder was severed the Crown would still be  
calling on the trial for the murder of the  
Daughneys most of the evidence that would normally  
be called to establish the death of Father Smith,  
25 the case of Father Smith, because the trial of  
Allan Legere from that particular territory  
following the death of Father Smith and the  
discovery in Montreal of jewellery which was  
pawned would also interlink most of the witnesses  
30 who would be involved with the Father Smith inci-  
dent. There would be no time saved, no stress on  
witnesses saved or no appreciable time saved, no  
appreciable stress on witnesses saved, there would  
be enormous duplication of effort.

35 My learned friend pointed out in his final



## Voir Dire

address or his remarks a few moments before me the  
difficulty with collecting jurors. We can well  
5 remember those, My Lord, but one of the things I  
most recall from that was that the jurors who  
indicated they'd had an opinion were able to show  
subsequently that they would be prepared and they  
were capable of arriving at a fair conclusion once  
10 they'd heard the evidence and been properly  
directed. The assembly of jurors, though, we had  
to call some 500 or 600 persons simply to estab-  
lish the panel that we have here at the present  
for this one matter. I shudder to think of the  
15 cost, and it's secondary, I agree, My Lord, but  
not unimportant, the cost that would be involved  
in trying to do this thing all over again were  
there severance, and it would be to no real avail.  
The evidence is cross-admissible. My learned  
20 friend says he would object to the question that  
Your Lordship offered as an example, and I would  
submit he could object all he wished, My Lord.  
The evidence here, I submit, meets the similar  
fact rules for tests, it's therefore cross-  
25 admissible as far as dealing with a joint trial.  
It would also be admissible as similar fact  
evidence in a severed trial, and this would be  
equally damaging, My Lord. Thank you.

THE COURT: Thank you very much. Do you, Mr. Furlotte,  
30 want a further opportunity to reply to any of  
that?

MR. FURLOTTE: Well, the only thing I can say is that I  
would oppose a lot of the - if Mr. Sleeth believes  
that a lot of this so-called similar fact evidence  
35 would be admissible whether they were severed or

Voir Dire

5 not I would oppose his position and I think that  
again would be a matter for a voir dire, but I do  
not believe that most of the evidence would have  
to be duplicated. The only evidence that I see  
from the Flam case to any of the other cases that  
would have to be duplicated would be the DNA  
evidence, and as far as for - because the  
10 evidence from the Flam and Daughney case was run  
on the same gel there's no problem in blanking out  
the lanes from either case if you're going to -  
and it doesn't even have to be mentioned. They  
don't have to know what the other exhibits were,  
15 the jury, so that does not create a problem.

THE COURT: Thank you very much, Mr. Furlotte. One other  
question just before we finish this topic, and  
that is, Mr. Sleeth, it's my understanding the  
Crown have represented before that DNA typing is  
20 not involved in the Smith count except in a nega-  
tive way in that a hair or something found on  
Father Smith's leg was tested along with other  
items but with negative results.

MR. SLEETH: That would be correct, My Lord, yes.

25 THE COURT: Is the Crown intending, I wonder, to adduce  
evidence in respect of that hair? Perhaps that's  
more Mr. Walsh's department, is it?

MR. WALSH; No, My Lord, if I may, on that particular  
aspect, the Crown does not intend to call or lead  
30 the actual autorads into evidence. Obviously that  
evidence can come out, the negative aspect of that  
particular evidence or whatever Mr. Furlotte wants  
to make of it will come out, but the actual intro-  
duction of autorads and the bodily substances that  
35 are associated therewith, the Crown sees no reason

## Voir Dire

to do that whereas the end result can be brought  
out, so there will be no case. The only  
5 additional point on the DNA evidence, as has been  
alluded to, is that the evidence of the Daughneys  
and Flams are contained within one gel, and Your  
Lordship, in six weeks you saw how that particular  
evidence is presented and how it's tested and how  
10 it's demonstrated, and they are irretrievably  
connected in the sense that they are in the same  
particular gel.

THE COURT: Well, thank you very much, then. This after-  
noon before the jury is brought in I'll give a  
15 decision on this point.

The rulings re your opening address, Mr.  
Allman, you had some points you wanted to bring up  
now about your opening address?

MR. ALLMAN: Yes. I wrote a letter to Mr. Furlotte on  
20 July 29th and I'm just going to read a little -

THE COURT: On severance presumably you're prepared to -

MR. ALLMAN: On severance I take it we're finished.

THE COURT: Yes, we're finished, but I mean it's not  
going to embarrass you unduly if I don't give my  
25 decision on that until shortly before you are  
scheduled to give your opening address?

MR. ALLMAN: No. I can take pages out, if necessary.  
On the topic of the matters that I wanted to  
raise, I wrote to Mr. Furlotte on July 29th,  
30 I'll read you the letter so you understand where  
we're getting from. "As I mentioned to you on  
July 26th, I would like you to tell me what  
aspects of the Crown's case you regard as  
inadmissible excluding, of course, those matters  
35 on which we are awaiting a ruling from the voir

35

Voir Dire

5           dire and therefore which you would object to being  
          mentioned in my opening speech to the jury. If  
          there are any, it would be my intention to ask the  
          judge to rule on them after the jury is selected  
          but before my speech so I know what I can properly  
          put to the jury. Accordingly I would appreciate  
          an early answer to this."

10           Mr. Furlotte didn't write back but he did  
          advise me orally that there were two matters,  
          outside the DNA, of course, that were causing him  
          concern. One matter relates to the technical  
          evidence on the Smith case. I'm going to tell  
15           Your Lordship what the nature of the evidence is  
          and what I understand Mr. Furlotte's objection to  
          be.

          We will be calling evidence that a pair of  
          boots was found close to the abandoned vehicle of  
20           Father Smith in Bathurst and that the prints of  
          those boots match prints found in the blood at  
          Father Smith's house. I don't think Mr. Furlotte  
          is objecting to that.

THE COURT: You mean in the blood pattern on the floor?

25           MR. ALLMAN: Yes, blood on the floor. Now, I may be  
          wrong, because he didn't actually explain it  
          absolutely to me, but I don't think there can be  
          any objection to that, that's routine, comparing  
          a print found at a scene -

30           THE COURT: That's merely physical evidence.

          MR. ALLMAN: Yes, that's very routine. The new evidence,  
          the new type of evidence which Mr. Furlotte  
          mentioned and which I think is what he's concerned  
          and been objecting about is this, that we want to  
35           call experts who will say that they examined the

36

Voir Dire

interior of those boots and they compared them to  
Mr. Legere's feet prints and they want to describe  
5 the similarities, so in other words we would link  
the boots to the scene and Mr. Legere to the  
boots. If I'm right about that and that is what  
Mr. Furlotte is objecting to, what we would  
propose to do is this; I won't refer in my opening  
10 to that portion of the evidence, the linking of  
Mr. Legere to the boots. I would only voir dire  
that at the appropriate time. The only part I  
would want to refer to, though, is the finding of  
the boots, linking them back to the scene, so if  
15 that's acceptable to Mr. Furlotte that's what I  
would do.

THE COURT: Well, I would suggest that course be followed  
anyway.

MR. ALLMAN: That's what I propose to -

20 THE COURT: You don't have to talk in great detail about  
matching the accused to the boots?

MR. ALLMAN: No, I won't go into that at all, but I just  
wanted to know if that's what Mr. Furlotte was  
talking about.

25 MR. FURLOTTE: Yes, that was it.

MR. ALLMAN: O.K., then, that's what we'll do about that.

THE COURT: I must say on the face of it I don't see any  
great difficulty about the type of evidence that  
you propose to give. You're going to call an  
30 expert to show that he examined the feet or the  
boots or what?

MR. ALLMAN: Well, if Your Lordship wants to hear a  
little about it I'll tell you what happens.

THE COURT: I'm not going to rule on this point now and -

35 MR. ALLMAN: No, no, I appreciate that, but just for your

37

Voir Dire

benefit. A case of Mr. Legere's footprint  
impression was taken, you put your foot in a  
5 plaster case, and then the experts will say that  
everybody's feet, you know, you have peculiar  
ridges, bunions, characteristics, you may have a  
protruding nail, all sorts of things like that,  
and if you've worn a pair of shoes or boots long  
10 enough you will leave imprints inside those boots,  
and they purport to be able to compare the imprint  
in the boot as it were, say, my shoes, with the  
imprint my feet would leave if I've worn this  
particular pair of shoes for a while, and to say,  
15 rather like fingerprints, there's all these  
points, including accidental characteristics, and  
there are no dissimilarities. What they don't go  
on to say, which they do say in fingerprints, is  
that no two feet are the same. They have some  
20 comments on that about how feet do differ one from  
the other, but they don't go to the length of  
saying as fingerprint people do, these character-  
istics are unique. That basically is what we'd be  
asking them to say and that is -

25 THE COURT: I think you'll find that in a 1975 case I  
allowed evidence of that nature in The Queen vs.  
Ambrose and Hutchinson. I don't think it was even  
the subject of appeal, either the New Brunswick  
Court of Appeal or the Supreme Court of Canada.

30 MR. ALLMAN: We know of Ambrose and Hutchinson and there  
is another case, another Canadian case, we'll be  
quoting to you at the appropriate time, and  
American cases which we'll be quoting. If Mr.  
Furlotte has an objection -

35 THE COURT: If objection is taken I'll hear argument on

## Voir Dire

it, of course, but it's the equivalent of fingerprint evidence, isn't it?

5 MR. ALLMAN: With that one qualification, that a fingerprint examiner goes that further step and says no two fingerprints are the same. Our experts, I do not think, will say no two feet are the same. Feet do differ a lot one from the other but they  
10 haven't examined every foot in the world, so that's what I expect is going to be the topic we will discuss, but I won't get into that part of the feet evidence in my opening, just the boots to the scene.

15 THE COURT: No, well, you shouldn't do that, no.

MR. ALLMAN: The other matter that Mr. Furlotte mentioned that he was concerned about was this, there are two witnesses that we want to call, a Mr. Ken Black and a Mr. Hawkes, and I can just read or  
20 indicate to Your Lordship what those witnesses will say. Ken Black -

THE COURT: This was in connection with which count?

MR. ALLMAN: This is in connection with the Daughneys. I'm not going to read the whole of Mr. Black's  
25 statement, I'm just going to read the relevant portions of it. This is what he told the police. "I used to work at the Fitness Warehouse" - that's in Newcastle - "from October or November, 1985, when it opened until about November, '86. Donna and Linda Daughney had a membership at the club.  
30 Allan Legere also had a membership. He was observed helping Donna with some of her exercises and also giving her advice. He used to talk about her build, she was built for comfort. He was  
35 fantasizing about her, about how good she would be

39

Voir Dire

in bed, how he would like to get a hold of her."

5 The other witness, Mr. Hawkes, and again I'm  
not going to read the whole of his evidence. He  
also used to go -

THE COURT: Well, Black was an employee there, was he?

MR. ALLMAN: I think he was another person who used to go  
10 there and keep fit. Hawkes basically is in the  
same situation, he used to go there. He encoun-  
ered Mr. Legere here and the Daughneys, and  
according to him, and now I am reading from his  
statement: "Legere had quite an interest in  
15 Donna, I know this because of the comments he used  
to make in her regard. He seemed to be interested  
in her sexually. I know this because he used to  
make the following sexist remarks. While Donna  
was exercising on a machine she would have her  
legs up. Legere would make the comment, 'Wouldn't  
20 you like to chew the ass off that. Boys, I would  
like to bury my face into that'. He also said  
that in order to get at her he would have to get  
the little one out of the way", meaning Donna's  
sister, that's Linda, "because they, according to  
25 him, were like Mutt and Jeff".

I'm not sure what Mr. Furlotte's objection is  
though I think I have some idea, but the Crown's  
position on these two statements is this, we're  
going to be calling evidence that Mr. Legere was  
30 acquainted with the Flam sisters. This evidence  
shows that he was acquainted with the Daughney  
sisters. That's a relevant circumstantial fact.  
It's a coincidence, maybe, and then again maybe  
it isn't, but all these three women who died had  
35 a relationship - I use that word very loosely -



## Voir Dire

with Mr. Legere, so it's relevant to that. It's  
also relevant, given the sexual assault aspects of  
5 this, that Mr. Legere was expressing a sexual  
interest in one of the victims prior to - a couple  
of years prior to, in fact - the murders, the  
killings. It's also relevant that Mr. Legere said  
that in order to get at Donna he would have to get  
10 the little one, the sister, out of the way, and we  
know that the little one - the Crown's case is the  
little one was got out of the way.

It's relevant, it's probative evidence. Now,  
I don't know whether Mr. Furlotte is saying the  
15 evidence should be excluded in its entirety or  
whether what he is objecting to is simply the  
perhaps rather vulgar way it was expressed.

The Crown's position is I suppose we could  
call these witnesses and instead of them saying -  
20 instead of asking them what exactly did he say and  
getting the reply, "Take a look at her ass, she's  
built for comfort", we could simply have them  
confine themselves to a generality like, "he  
expressed a sexual interest and attraction in  
25 her".

THE COURT: Let's call a spade a spade.

MR. ALLMAN: That's basically the Crown's position. If  
the evidence is admissible, and we submit it is,  
the idea that anybody in this day and age is going  
30 to be prejudiced by a man looking at a woman and  
saying, "Look at her ass, she's built for  
comfort", it's embarrassing, perhaps, in a court  
but I don't think that men and women in this day  
and age will be shocked or horrified by the  
35 thought that a man expressed a - made a sexy

41

Voir Dire

comment on a woman's appearance, or in this day  
and age, vice versa, probably, women probably  
5 make comments on men. The idea that a jury might  
convict Mr. Legere because he made a vulgar remark  
about Donna Daughney is, in the Crown's submis-  
sion, absurd. We would submit the evidence is  
admissible and it should be admissible in its  
10 uncensored form if it is admissible.

THE COURT: For the purpose of your remarks to the jury  
today you don't have to go into this detail.

MR. ALLMAN: I wouldn't use the - in my opening to the  
jury I can quote it to you if you want, but what  
15 I would say to them is that we'll be calling  
evidence to the effect that Mr. Legere displayed  
sexual interest in or was sexually attracted to  
Donna Daughney sometime prior to this incident  
and that that relates to the fact that he also  
20 had an acquaintance, not a sexual acquaintance,  
with the Flams.

THE COURT: You don't have to get into lurid details or  
specifics.

MR. ALLMAN: I won't use the language or anything of that  
25 kind, but it may be that Mr. Furlotte is taking  
the position it's not just the right language I  
object to, it's the entire topic, so -

THE COURT: Can you give Mr. Allman any guidance, Mr.  
Furlotte, as to what your position is?

MR. FURLOTTE: Yes, My Lord, I wish to give the Court  
30 guidance also. The Crown says the evidence of  
Kenneth Black and Mr. Hawkes is relevant and  
probative. I would say it might be relevant and  
it definitely is not very probative, and my basic  
35 argument would be that the prejudice to Mr. Legere

## Voir Dire

would definitely outweigh the probative value.

As Mr. Allman admits, most men and a lot of women  
5 make sexist comments towards the opposite sex. If  
the Crown and if the Court is hellbound and  
determined to have this go into evidence -

THE COURT: I don't get hellbound about anything, I don't  
get hellbound about anything.

10 MR. FURLOTTE: O.K., but I will feel, then, it is my  
right and my prerogative on cross-examination of  
each and every witness to ask them if they have  
ever made sexist comments about the opposite sex,  
and it may be very embarrassing for some of the  
15 police officers or some of the other witnesses to  
admit that, yes, I make sexist comments or I have  
made in the past sexist comments similar to what  
they want to put into evidence. It is such a  
trivial matter, but in the circumstances of this  
20 case, even if it - I'm not saying that this is  
true that Mr. Legere made these comments, but even  
if it was true that these witnesses are not coming  
to court and lying or exaggerating or their  
imagination has run away with them - even if this  
25 evidence is true it has such little probative  
weight but the potential for prejudice is enor-  
mous, and if the Court is going to allow it, then  
I'll advise the Crown and they can advise all  
their witnesses that I'm going to ask every  
30 witness the same question as to whether or not  
they have ever made any sexist comments about the  
opposite sex, and when they say yes, I'm going to  
ask them, well, did you go out and rape that  
person and kill them, and if it's relevant for the  
35 Crown to ask it, it will be relevant for me to ask

Voir Dire

it in cross-examination.

THE COURT: Well, that's a matter we can deal with at the  
5 time. May I suggest this, Mr. Allman, that for  
the purpose of - quite obviously we may need -  
when this question comes up at the trial with the  
witnesses present we may need a short voir dire or  
something to determine what questions you will be  
10 allowed to ask. Could you not for the purpose of  
your address to the jury sort of slough over this  
without - how is it going to harm your review of  
what you intend to prove by perhaps excluding  
reference to the - simply say that conversations  
15 were held in which the accused displayed an  
interest in the two victims.

MR. ALLMAN: Yes, if I can say that we'll be calling  
evidence indicating that the accused in years  
prior to this was interested in and acquainted  
20 with the two Daughney sisters that would suffice  
for the purpose of the opening, though this issue  
will have to be decided at some point in more  
detail.

MR. FURLOTTE: Well, My Lord, I'd like that issue decided  
25 early so that - I don't want the Crown saving  
these two witnesses for the end because if that  
examination evidence is going to be allowed I want  
to be able to cross-examine the Crown's witnesses  
right from the beginning as to what their atti-  
30 tudes are towards the opposite sex. Maybe some of  
them even prefer the same sex, I don't know.

MR. ALLMAN: That seems a legitimate point to me that  
maybe the issue should be resolved now rather than  
left in that context, given that if Your Lordship  
35 is minded to do that, and perhaps you could again

## Voir Dire

advise us when we come back this afternoon, I would have a couple of points to make on what Mr. Furlotte said about this. First of all he used the expression, and defence counsel do this all the time, that if the prejudicial effect outweighs the probative value so you should exclude it. That is not the test, you don't do a simple balancing and see if there's a little bit of difference between the scales. The test as I understand it is it's only if the prejudicial effect substantially outweighs the probative value that that is a ground for exclusion.

The second point, Mr. Furlotte's suggestion that he would want to ask every witness, have you ever made sexist remarks about somebody else, the difference is this, the question is relevant to here because it indicates motive, it may indicate motive, and it indicates a relationship between an alleged murderer and his alleged victim. Whether any individual witnesses ever made a sexist remark about somebody is not relevant. I'm probably prepared to admit that every single person may have made that.

The third point I want to make about that is this, we can resolve all this problem quite simply. Mr. Furlotte won't have to ask all these questions of the witnesses and we won't get into the language used if Mr. Furlotte is prepared to agree as a fact that Mr. Legere had in 1986 displayed an interest in and attraction for Donna Daughney and indicated that he would like to get at her, that the other lady was in the way, or we could come to some agreement about this, but I

58

Voir Dire

thirty. We're in a voir dire now, we will  
continue in a voir dire very briefly until I give  
5 decision on this severance matter at one-thirty,  
then we'll have the jury brought in and we'll  
proceed from there.

10

(ADJOURNED TO 1:30 p.m.)

15

20

25

30

35

Voir Dire

take it that he won't agree to that, this is a contentious issue.

5 THE COURT: Well, I'm not going to resolve this today. These two witnesses would be called - you're dealing firstly, as I understand your order of procedure, with Flam?

MR. ALLMAN: Yes, they're pretty late.

10 THE COURT: They're pretty late on, so you will have an opportunity to discuss this matter with Mr. Furlotte.

MR. FURLOTTE: Well, I'd like it resolved before we start the trial.

15 MR. ALLMAN: He's the one that wants a result now.

MR. FURLOTTE: I mean for me to argue to the jury that they shouldn't be putting very much weight -

20 THE COURT: Every police witness or other witness called in this trial is not going to be examined by - allowed to be examined as to whether he has made sexist remarks about somebody else. I'm not a human rights commission, I'm not a university professor who'll sit here determining these things, but you want to start to ask every witness who is called whether he's made sexist remarks?

MR. FURLOTTE: Yes, My Lord, because I believe it would be -

30 THE COURT: Well, that's just a lot of nonsense, I am not going to waste the time of the Court here discussing it any further.

MR. FURLOTTE: Well, My Lord, for the record I'd just like to state that for me to put to the jury how little weight they ought to be putting on that kind of a comment, then it it is beneficial to the

35

Voir Dire

accused to show that everybody makes those  
comments and -

5 THE COURT: We're not going to waste the time of the  
jury, I assure you, gentlemen, in examining and  
trying every witness here on whether he or she is  
sexist or whatever.

MR. ALLMAN: Could I just clarify the situation then, My  
10 Lord? Do I take it that I am entitled to mention  
to the jury in my opening in a general way?

THE COURT: In a very general, non-specific way.

MR. ALLMAN: That's all I proposed to do.

THE COURT: Those were the only points you had, Mr.  
15 Allman?

MR. ALLMAN: Yes, they're the only things that Mr.  
Furlotte mentioned to me that he was concerned  
about other than the DNA evidence, and of course  
the other voir dire rulings which you're going to  
20 be making sometime this morning, I take it.

THE COURT: Well, now, we'll go on to the next point. I  
wanted to say something about the media. I gather  
there are media representatives present here, I'm  
not sure just who they are, but there are two sets  
25 of rules regarding access by news media to the  
court buildings and the court room, there are two  
sets of rules that are in effect. One was put out  
by the Attorney General's department or the  
Minister of Justice's department, I'm not sure  
30 which it was, about October, 1989, and the media  
had been, as I understand, putting great pressure  
on the Attorney General of the province at that  
time and other Attorney Generals to come up with  
some sort of policy with regard to access to court  
35 rooms and use of tape recorders and so on, and the



Voir Dire

Minister, although he was aware that the Court of  
Queen's Bench had the matter under consideration  
5 at the time, put out a set of regulations. It was  
intended to apply only to the provincial court  
houses and not to the court rooms themselves  
because the Minister took the attitude quite  
properly that the Courts govern the procedures in  
10 the court rooms themselves. The copy of that, I  
don't know where you'll find it. I was given a  
copy, I made enquiry, there's one in the Justice  
Building in Fredericton, but the - I'm not going  
into that any further anyway.

15 The regulations pertaining to this trial and  
to this court house and to this court house  
property are embodied in a bench rule which was  
adopted by the judges of the Court of Queen's  
Bench on February 20, 1990. Copies are available  
20 or I've had a number run off. I've got four or  
five copies here I can make available through the  
Clerk and I would ask the Clerk to pin or staple  
or something a copy of it to the outside door or  
near the door, or if there's a bulletin board here  
25 in the court house please have one put up there,  
but the bench rule that was adopted at this time  
governs the making of video and audio recordings  
in court rooms. Video recording for the purpose  
of the bench ruling includes any type of photo-  
30 graph, whether moving or still, and regardless of  
the type of camera by which taken but does not  
include any audio recording made in conjunction  
with a video recording.

Now, the basic provision of the matter is  
35 this, under Section 2:

Voir Dire

5 "Subject to Sections 3 and 4 no person shall make a video recording or an audio recording in any court room used or normally used by the Court" -

10 Court meaning Court of Queen's Bench, which is what this Court is -

"or in any court house in which such a court room is located."

15 In other words, the basic rule is no person shall make a video recording or an audio recording, an audio recording being an audio recording made by a video machine or by a tape recorder or a handheld audio recorder.

20 Now, then Sections 3 and 4 go on to provide for certain situations. 3(a) says:

25 "An audio recording of court proceedings may be made by a court reporter assigned to audio record or to report the proceedings",

30 and it may be used only for the purpose of preparing a transcript and so on. This is applicable only to persons like the chief reporter who's present here today.

35 Another subsection of Paragraph 3 says:

40 "Unless expressly prohibited by the judge presiding over any proceeding an audio recording of court proceedings may be made by a bona fide representative of a news medium but any such audio recording shall be used only to verify or supplement notes made for the purpose of preparation of material for broadcast or publication and shall not, either in whole or in part, be itself used for broadcast, for audio reproduction or retaping."

50 In other words, there's nothing to permit a member, a bona fide representative of a news medium from in this court room or in this court house - well, it could only happen in the court house because it can only be of court proceedings, but a news medium representative may make an audio recording at any time; in other words you can

60

## Voir Dire

5 bring a tape recorder in and make it, but the  
recording you use can be used only for those  
10 limited purposes, "only to verify or supplement  
notes given for the purpose of preparation of  
material for broadcast or publication and shall  
15 not either in whole or in part be itself used for  
broadcast, audio reproduction or retaping". The  
judge nevertheless is given permission to refuse  
20 that or to further restrict that and to prohibit  
that audio recording, and subsection (c) says:  
"A prohibition may be directed under clause (b)  
25 where the judge presiding considers it required  
by the interests of justice". Well, I have no  
intention of prohibiting that type of audio  
30 recording here but I do caution members of the  
media that if you do make audio recordings with  
35 tape machines you must use them for that  
restricted purpose, and then this is not too  
40 important but this is what Paragraph 4 says,  
to which Paragraph 2 was also made subject:  
"A video recording may be made of any marriage  
45 ceremony performed in a court room or in a court  
house", and so on. That's of no interest to us.

50 Another provision is, "By prior arrangement  
with the Clerk of the Judicial District a video  
recording", as either a still - under the defini-  
55 tion of video recording, a still photograph or a  
video photograph, moving photograph - "may be made  
60 by a representative of a news medium of any court  
room when not in use for court purposes for the  
purpose of providing background photographs for  
65 use in a news medium". That is done by prior  
arrangement with the Clerk of the Court and is not  
70 permissible without that arrangement being made.

## Voir Dire

Such an arrangement was made back in the Oromocto High School, I think on the first day we sat, and I instructed the Sheriff - I may have done it incorrectly, I didn't do it through the Clerk - I instructed the Sheriff to make provision for the media to take photographs of the court room there for background purposes if they wished to do, and I believe they took advantage of that. I stipulated there that it could only be done when no one was present in the court room. I did see one on the T.V. cameras. Mr. Sears, you seemed to have been the only person that made it.

I think there has been an opportunity given earlier to most, certainly, of the local media to take pictures of this court room if they wanted, I don't know whether they have availed themselves of that, but if media want to take video pictures of this court room you may do it on one occasion, it can't be a continuing thing, but I'd ask you to do it, say, when we finish this afternoon or during lunch hour today, and arrange that with Mr. Pugh. It will be with no persons present in the court room.

"When authorized by the Chief Justice a video recording may be made of any ceremonial proceeding in a court room in which the Court may engage; viz., a swearing-in ceremony or the like."

If I were the Chief Justice I wouldn't permit it, myself, but it has been permitted and he seems to favour it.

There's another Paragraph 5:

"The judge presiding at a particular court proceeding may by verbal order or direction extend the area affected by the prohibition contained in Section 2 to the precincts or grounds of the property at which the court room or court house is

51

Voir Dire

5 located where in her or his view the  
interests of justice so require during  
the course of that particular  
proceeding."

10 And by virtue of that paragraph of the rule I'm  
going to direct and order that the area of the  
prohibition be extended from this court room and  
15 this court house to the area on this level of the  
court house building. In other words, there are  
to be no video pictures or camera pictures taken  
20 or audio recordings made or recording machines  
used on this level up here, in other words, from  
the parking lot in front of the court house around  
the side or at the back parking lot.

25 Cameras may be used down on the entranceway  
coming in and in the parking lot down below, but  
that will also be subject to a restriction that I  
will rely on the media to follow, and that is I do  
not want photographs, video, or still - moving or  
30 still taken of the jurors when they approach or  
arrive at the building. I don't want pictures  
taken and I forbid the taking of pictures of the  
jurors as they arrive and approach or enter the  
building here. It's never been part of our system  
35 of justice, in this province certainly, that  
jurors should be subjected to being photographed  
and appearing on news media.

I've seen some of the T.V. coverage of this  
trial. I haven't gone out of my way to look for  
40 it but I have noticed it a couple of times when  
watching the news broadcasts on television, and I  
think it's rather regrettable that some members of  
the media would bully and harass the accused in  
this case when he is brought to a court house  
45 building and to try to tempt him or force him into

5 making statements which are not really in his  
best interest to make, and all for the sake of  
getting a cheap T.V. shot or a cheap news shot  
or a cheap quote for the newspaper, and I must  
say, too, that I'm rather astounded that some of  
the stations and some of the newspapers are not  
being a little more careful about the type of  
10 material they have used.

I think I've made a comment before if I were  
the publisher of The Moncton Times-Transcript I  
think I would ask myself - if I'm following the  
advice of their corporate solicitor I think I'd  
15 have to ask myself if I shouldn't be getting a new  
solicitor, a new lawyer, and the same could apply  
to the CBC station at Fredericton, the T.V.  
station, and others.

20 However, I want to cooperate with the press  
in every way I can. You know, when we met here on  
April 22nd last, I don't know about the present  
members of the media, whether they were present or  
not here, but we were having difficulty with the  
acoustics in this court room, they hadn't been  
25 perfected at that time, and the jury wasn't  
present, of course, there was no jury, and I  
invited the media to sit up here so that they  
could follow what was going on that first day of  
the April 22nd hearing and the media took advan-  
30 tage of that, they came up and they sat in the  
jury seats. I didn't at that time take the  
precaution of having the accused removed from the  
court room or taken out of the court room before I  
retired. I was to learn immediately later that  
35 the minute I left the court room someone ran with

Voir Dire

5 a recording machine over and stuck it in the face  
of the accused wanting his comments. Now, that is  
a total abuse, you know, of a privilege that I  
gave, and you may wonder sometimes why, perhaps,  
Courts or perhaps some members of Courts are  
critical of the media in this regard, but that is  
an example of it.

10 I'm not going to have anything more to say.  
There are four or five copies of that there. Mr.  
Pugh, would you when we adjourn see that one copy  
is fixed to the wall out here and you can either  
have more copies run off of those - I'm sorry they  
15 aren't in better shape but I've had difficulty  
even finding them.

Well, now, there was just one other matter  
left for this morning and that was I had indicated  
earlier that I would give my decision at this  
20 time, or at least after the jury were selected, on  
the result of the voir dire hearing that we  
held earlier, and my decision is going to be very  
brief. I started two weeks ago to prepare a  
decision and I prepared some 15 pages and then I  
25 asked myself, "Why am I doing this, it's the  
bottom line that is of importance", and my ruling  
is this, that all of the matters of body substance  
which the Crown seeks to have admitted in evidence  
are in my view view admissible in evidence and  
30 evidence of them may be adduced by the Crown.

Another item was the matter - I don't think I  
need specify what those were, they're set out in  
the brief which Mr. Walsh had prepared. They're  
reviewed on page whatever it is of that brief, and  
35 of course, in the conclusion page on Page 34 they

## Voir Dire

are summarized, and as far as the grounds on which they're admissible are concerned I'm simply going to say that I concur in the reasons given in the conclusion in that brief, or the reasons suggested, which I adopt. I think that brief was well-prepared, I think the arguments were well-advanced, and I accept the arguments of the Crown.

Another matter which was the subject of the voir dire was the conversations with the accused at the R.C.M.P. Headquarters building in Newcastle on November 24th, was it, 26th - whatever the date was, on the day of his re-arrest, and up until the time that he was taken to the interview room, I believe it was at about 7:35 a.m. or something of that type, and those conversations are in my view all admissible and evidence may be given of them. The accused had been asked at 6:15 or something like that by one of the police officers - had been advised that he was entitled to counsel and he had indicated that he would be wanting counsel. The matter of counsel wasn't pursued until after the accused had met with other R.C.M.P. officers in the interview room and the matter was followed up then and in due course counsel was obtained, but whether counsel was obtained immediately on the first suggestion being made that it would be required had no bearing on whether or not the statements were made or would have been made by the accused.

The conversations, the statements that he made about being in Montreal and so on, poured out of him. They were made freely and voluntarily. He would have said them, I'm totally satisfied,



55

0

Voir Dire

5

10

15

20

25

30

regardless whether there had been any warning given, and also it's my finding that for the purpose of the voir dire ruling - it's my finding that these statements that were made after the warning was given about entitlement to counsel were merely a reiteration of statements made to the same or other police officers earlier that morning between the time of his apprehension and the time when that warning was given. That covers the statements, the body substance.

In the case of the DNA evidence I am satisfied that the DNA evidence, the DNA typing evidence, is of probative value, that its worth as probative evidence outweighs very substantially any detrimental or prejudicial effect it could have and that it is admissible. I'm not going for the purpose of this ruling to recite again as is frequently done in the States, in the courts in the United States, and has been done a couple of times in courts in Canada; one was in the Bourguignon case Mr. Justice Flanagan made a ruling of this nature and he found it was admissible there. He put a restriction there on the type of description that the experts could use in court in defining certain probabilities and he said they shouldn't use the actual numerical fractions or percentages which the experts had deduced and that they could only say something was very rare or was a remote possibility and words of a general nature.

I can see no advantage - I say this with all deference to Mr. Justice Flanagan in Ontario, I can see no purpose accomplished by that whatever.

Voir Dire

5 Certainly if I were an expert and I were saying  
that a certain likelihood was a very remote like-  
lihood, the first question I would be asked by  
counsel on the other side would be, "Now, what do  
you mean by very remote, put that in terms of  
percentages", so you're just going to work around  
in circles on that point.

10 I am not saying that a jury will accept the  
evidence. The evidence will be put to the jury,  
or if the Crown so decides; it will be up to the  
jury to decide what probative value that evidence  
has, whether they're going to accept it or whether  
15 they're not.

In the more recent case of - I don't think  
I've got it here with me, actually, but what is  
the name, Mr. Walsh, you would recall the name?

MR. WALSH: Is that the B.C. case, My Lord?

20 THE COURT: The B.C. case.

MR. WALSH: Voyne Baptiste.

THE COURT: Baptiste, Baptiste was the name, and the  
judge - again I can't recall just offhand his  
name, he - not during the trial or at the close of  
25 the voir dire - he made his ruling at the close of  
the voir dire in a rather summary fashion, I  
gather, very much as I'm doing now, and then some  
months after the trial was concluded he filed his  
reasons, and I think I'm correct in saying this,  
30 Mr. Walsh, you're familiar with that decision?

MR. WALSH: Yes, that's correct, My Lord.

THE COURT: And some months later, after spending a good  
deal of time on the matter, he reviewed the whole  
matter of DNA and wrote a very excellent judgment,  
35 I would say, dealing with the topic, and I adopt

57

## Voir Dire

5 everything he says in that judgment for the  
purpose of this one, but I'm not going to go all  
through a description of what DNA is and what DNA  
typing is all about. It can be found in the  
literature. As a matter of fact, all you have to  
do is read "The Moncton Times-Transcript", because  
they had a full page on it.

10 Those are the rulings on the voir dire. I do  
reserve the right to myself if I see fit to exer-  
cise it to reduce to writing or typing the notes  
that I've made or partially completed on this  
matter which elaborate only in a slight degree on  
15 what I've said already. They do review the  
factual situation as revealed by the voir dire and  
so on. I'm not convinced that anything is going  
to be accomplished by reading those notes at any  
subsequent stage of this trial or even in filing  
20 them, but I may change my mind on that and for the  
sake of the record either file them in the Court  
and provide copies to counsel or I may see fit to  
read them into the record at a voir dire hearing.

25 Counsel have no questions concerning those  
rulings?

MR. FURLOTTE: Did I understand you were or were not  
going to give a written report on the DNA  
evidence?

THE COURT: A written report? No.

30 MR. FURLOTTE: You're not going to?

THE COURT: No. I'm reserving the - if I should change  
my mind I may prepare something on it but it will  
be largely a reiteration of what the judge said in  
the Baptiste case. Nothing else to be brought up  
35 this morning? So we'll adjourn then until one-

1

0

(COURT RESUMED AT 1:30 p.m., AUGUST 28, 1991)

(Accused in dock.)

THE COURT: Well, we're sitting in open court at the  
5 moment, we keep bouncing back and forth here, and  
I wonder if I could have the appearances, please.  
For the Crown is Mr. -

MR. ALLMAN: Tony Allman appearing with Graham Sleeth and  
Jack Walsh, My Lord.

10 THE COURT: And Mr. Furlotte?

MR. FURLOTTE: Weldon Furlotte, and along with Mr.  
William Kearney representing Mr. Allan Legere.

THE COURT: Mr. Kearney, you've joined the defence team,  
and welcome to the court sittings. I should  
15 perhaps for the record point out that Mr. Michael  
Ryan had been co-counsel for the defence earlier,  
including the voir dire sessions. About a month  
ago, I believe, I had a letter from the accused  
advising that he wasn't satisfied with Mr. Ryan's  
20 performance as counsel and I simultaneously had a  
communication from Mr. Ryan indicating that his  
health didn't permit him to continue on as  
counsel. I discussed this with Mr. Ryan at the  
time and with all counsel involved. As a matter  
25 of fact, we met here in another sort of pre-  
hearing meeting on July 26th, I think it was, or  
thereabouts, and Mr. Ryan was then excused from  
further attendance and released as counsel in the  
case. As far as I'm concerned it was on the  
30 ground of his ill health and inability to carry on  
with the case.

We're still in open court here. Someone in  
the media raised a couple of points. One is  
whether pictures taken earlier up on this level,

2

in other words out on the parking lot and in the  
driveway beside, could still be used, and the  
5 answer to that is yes, they still can be used, but  
no new pictures in that area.

There was another problem, I believe, about  
the acoustics here. I think it may be a little  
difficult to hear. Are the acoustics better there  
10 now? Sheriff, can you hear me all right?

SHERIFF: Yes, it's fine right now.

THE COURT: I'm sorry about the problems here. There is  
a certain noise comes through the ventilation  
system. If it's turned off, of course, it becomes  
15 terribly warm and hot in here. Was there another  
point one of the media people had to raise?

CLERK: The ruling on the voir dire, My Lord, whether  
they could mention your ruling.

THE COURT: Oh, whether the ruling on the voir dire could  
20 be mentioned. Strictly it can't because that was  
part of the voir dire and I don't suppose it  
becomes pertinent, really, until the evidence is  
tendered at the trial, but I have no objection if  
counsel have no objection to my ruling on the voir  
25 dire being publicized.

MR. ALLMAN: My position is that I intend to make  
reference to the contents of what you've ruled  
admissible, so it's going to - in my opening.

THE COURT: It becomes academic, then, doesn't it?

30 MR. ALLMAN: Yes.

THE COURT: So permission is granted to the media,  
notwithstanding the general rules of non-publicity  
of what occurs at a voir dire. Permission is  
granted to publicize what my finding or ruling was  
35 on the voir dire.

## Voir Dire

Now, we'll resolve into a voir dire here and nothing that transpires now may be published  
5 until in a few minutes we come out of the voir dire, and the purpose of the voir dire now is to give my ruling or make my ruling on the matter of severance.

Section 591 of the Criminal Code provides  
10 that any number of counts may be joined in the same indictment, although under Section 589 no count for an offence other than murder may be combined in the same indictment with a count for murder. That Section 589, of course, presupposes  
15 that there can be separate counts for murder included in the same indictment.

The Court doesn't normally interfere lightly with a decision made by the Crown to decide for  
20 itself what counts should be included in a particular indictment, although if, of course, it can be shown that the ends of justice require severance, then it will be severed. The Crown here have maintained that there is a thread of similarity running through these various events.  
25 They refer to the cost factor, the number of witnesses, the convenience of the public, the similar fact situation, their reliance on similar fact situations and a tie-in between the various events for the reasons that have been expounded  
30 this morning, and in particular the similar thread of the DNA typing running through at least three of the counts other than Smith.

I am not convinced that the ends of justice  
35 require severance at this stage and I'm going to reject the motion for severance and direct that

## Voir Dire

the trial proceed on the four counts. I do point  
out that a trial judge has the authority at any  
5 stage of the trial to - if he feels that the ends  
of justice require even at a later stage that  
there be severance he can do it. For instance, if  
when all the evidence is in in this trial, if I  
were to find that, look, this thing is so totally  
10 confused dealing with four different murders or  
alleged murders and three different incidents it  
would be too confusing to instruct a jury  
adequately and to make them understand, then I  
would have the prerogative or the authority to  
15 sever even at that stage and to have the jury  
consider one count alone, for instance one of the  
murder counts, and disregard the others, and new  
trials would be held on the others, so that possi-  
bility remains. I am not convinced at this stage  
20 that those difficulties are posed.

I haven't heard the evidence, of course.  
I've had an indication from a statement by Crown  
counsel on the voir dire as to what type of  
evidence they're going to be adducing and I'm not  
25 satisfied that any great difficulty is going to be  
created. I can envisage a charge to the jury when  
all the evidence is in which would be a very  
lengthy one, which is neither convenient to the  
judge or perhaps even to the jury, but that's  
30 something we have to meet from time to time, so  
the application is not granted.

There was nothing else on the voir dire? Was  
there something else?

MR. ALLMAN: I don't know if it's part of the voir dire,  
35 My Lord, I did indicate earlier just I wanted to

5

put the Crown's position for the record on Mr. Kearney's joining the defence team. We did express our concern about the possibility, given  
5 Mr. Kearney was an agent of the Attorney General during the time when we were preparing our case, about a possible real or apparent conflict of interest. Mr. Kearney has assured Your Lordship, and I heard him do so, that there is no such  
10 possibility, but I just wanted to indicate we had made that concern known to Your Lordship.

THE COURT: Yes, well, that is on the record in the voir dire and counsel had indicated yesterday there was a possibility that Mr. Kearney might be coming in  
15 and there were certain reservations, and which are understandable because Mr. Kearney was a former employee of the Attorney General's Department, as I understand, and after this case was launched or this prosecution was launched, and I undertook to  
20 all counsel involved to meet with Mr. Kearney in their presence, which I did at one o'clock today. Mr. Kearney came and I have spoken to him about it in the presence of other counsel, he assures me there's no conflict, that he had no part whatever  
25 in preparing this prosecution or in advising in respect of it and is not involved in it in any way, so I can see no conflict.

I can only say that I think Mr. Furlotte and the defence are fortunate to have a counsel of Mr.  
30 Kearney's competence and ability and experience to work along with them in this case, and it will certainly make the job of everyone that much easier.

For one person to carry on the defence of any  
35 trial involving a charge of murder is a very



6

difficult task, and particularly when you compound  
that by having four charges of murder, or three  
incidents of murder, alleged murder, it makes it  
5 very, very difficult for one person to do it, and  
particularly when you compound that again by  
adding all this DNA typing business on top of it,  
and I have the greatest sympathy for defence  
counsel, particularly, and even for Crown counsel  
10 here in mastering all this in a relatively short  
period of time.

I did suggest that Mr. Kearney be here in  
attendance this afternoon rather than delay for a  
day or so so that he would have the benefit of my  
15 instructions to the jury and also - which he has  
heard before, I'm sure, in other cases, and the  
benefit of Mr. Allman's introductory remarks to  
the jury which will give him his first briefing.

Well, we're out of the voir dire now, anyway,  
20 and so are we ready to have the jury brought in?

(Jury called - all present.)

THE COURT: Well, ladies and gentlemen of the jury, I  
25 want to continue or at least expand slightly on  
the remarks that I started to you yesterday.  
I might say that we have met at 9:30 this morning  
and we've reviewed various largely administrative  
matters connected with the trial so we haven't  
30 been wasting our time, we've been sitting  
constantly before you arrived.

You have been selected as the judges of fact  
by the accused and by the prosecution in this case  
and it's your duty carefully, calmly, and  
35 dispassionately to consider and weigh the evidence

7

## The Court

without the slightest trace of sympathy or  
prejudice for or against any party to this trial.  
It's important not only that justice be done but  
5 also that it be seen to be done. It's important  
that all concerned with the trial, counsel, the  
witnesses, the people in the court room and in the  
community, be convinced that there has been a fair  
trial when it has been completed, and therefore as  
10 I said yesterday, how you conduct yourselves in  
and out of the court room during every hour of the  
days while this trial is going on is important to  
you and to the administration of justice.

You must not discuss the case with anyone nor  
15 let anyone tell you anything about it outside this  
court room. If anyone tries, politely refuse to  
listen, and if he or she insists, please report it  
to me. The law imposes severe penalties on anyone  
who attempts to or does communicate with a juror  
20 respecting a matter on trial. I warn you especi-  
ally in respect to your own families and your  
friends since they very naturally will be curious  
to hear about the case, and what is more, I advise  
you not to discuss the case, certainly any more  
25 than you have to, even among yourselves, because  
there's a great danger of coming to a premature  
conclusion. Your role should be one of patient,  
careful listening to the evidence. The time,  
really, to discuss the case is when you have  
30 retired to consider your verdict at the end of all  
the evidence. At that time you will have heard  
all the evidence, the arguments of counsel, and my  
direction to you on the law, and you will be in a  
much better position to exchange views and to  
35 arrive at a fair conclusion.

## The Court

If you have heard or read anything about this case, and I'm sure you have, it's your duty to  
5 banish that information from your mind. You must put everything out of your mind that you've heard about this case before and you start from scratch now. You must decide whether the accused is innocent or guilty in respect of any of the  
10 counts in the indictment against him solely from the evidence you hear in this court room during the trial of the accused.

I'd like to give you an outline of the procedure that's usually followed in a criminal  
15 trial. Some of you may have sat on criminal trials before, on juries in trials. Most of you probably, or perhaps all of you, haven't, so this may be your first experience. Our system of justice is known as the adversary system, which  
20 means that the presentation and examination of the witnesses is substantially in the control of the Crown attorneys and counsel for the defence, and subject to certain rules which I shall enforce you and I as impartial judges will sit and listen to  
25 what the parties, their witnesses, and counsel have to say.

The case will begin very shortly, when I conclude, with the Crown attorney, Mr. Allman, one of the Crown attorneys, outlining to you the  
30 evidence that the Crown intends to present. The sole purpose of this is to assist you to understand the evidence and the case for the Crown. What Mr. Allman says or what any other Crown attorney may say when outlining to you the evi-  
35 dence the Crown intends to present is not proof of

## The Court

anything, it's only a statement of what the Crown hopes to prove.

5           Having outlined his case the Crown attorney will then call the Crown's witnesses, or at least make a start on it today. He will ask them questions in what is known as his examination in chief, by which is meant that he cannot suggest  
10           the answers in controversial matters, although he may do it in unimportant details.

          When the Crown attorney has finished the examination in chief of a Crown witness, then counsel for the defence may cross-examine that  
15           Crown witness, and in cross-examination questions can be asked to test the memory of the witness and the accuracy of his or her evidence. The purpose of cross-examination by counsel for the defence is to test the truth, to aid the witness in recalling  
20           other facts he or she may have forgotten, and also to bring out evidence in favour of the defence.

          When counsel for the defence has concluded his cross-examination of a Crown witness, then the Crown attorney is entitled to ask the Crown  
25           witness further questions, but only to explain fresh matters which may have been brought out in cross-examination by counsel for the defence. He can't embark at that point on a whole review of everything that he's asked before, his questions  
30           at that point must be confined solely to new matters that have arisen in cross-examination and perhaps which he couldn't have anticipated earlier.

          After all of the witnesses for the Crown have  
35           testified or given their evidence and the case for

10

The Court

the Crown is completed, then counsel for the  
defence will be asked if the defence wishes to  
5 call any evidence, and the counsel for the  
defence is given an opportunity to address you and  
to review the evidence that he intends to present,  
if he intends to call any witnesses. If he does  
address you at that stage the sole purpose is to  
10 assist you, of course, to understand any  
witnesses, the evidence of any witnesses the  
defence may be calling. What counsel for the  
defence himself may say when outlining to you the  
evidence he intends to present is not proof of  
15 anything but only a statement of what he hopes to  
prove.

If witnesses are called by the defence, then  
the defence counsel examines them in what is  
called examination in chief, he can't ask leading  
20 questions which suggest - a leading question is  
one which suggests what the answer should be.  
When he has completed his examination in chief of  
a defence witness, then the Crown attorney may  
cross-examine any defence witness and he may ask  
25 leading questions in cross-examination, and then  
as in the case of Crown witnesses the defence  
attorney or defence counsel would have the oppor-  
tunity of re-examination which would be confined  
only to dealing with new matters that have arisen  
30 in cross-examination and not a review of every-  
thing that's been said before.

As the case proceeds you will note that from  
time to time I'll be called upon to rule on the  
admissibility of evidence tendered by the parties.  
35 We have a well-developed body of law which guides

us as to what evidence is admissible and what  
evidence is inadmissible, and you and counsel must  
5 be guided by my ruling in that regard. On some  
occasions I may rule in your presence, on others I  
may ask you to retire to the jury room while we  
consider matters in your absence, and there will  
be points through the trial, perhaps for fairly  
10 long and prolonged periods when you may be asked  
to remove yourself or go to the jury room or to  
one of the other rooms in the court house here and  
wait until you're called back into here. If it  
looks as though there's going to be a fairly long  
15 voir dire, as we call these sessions, I would  
endeavour, perhaps, to have you go home and come  
back that afternoon or the next day or something  
like that rather than have you sit in this small  
room with no windows in here any more than is  
20 necessary, but I do say this, that if you're  
asked to stay out of the court room for a period,  
however brief or however long, please don't specu-  
late on what is happening here in your absence.  
We'll be dealing with matters and you can be  
25 assured that you will hear everything that it's  
proper for you to hear and you won't be hearing  
anything that it's improper for you to hear, but  
please don't speculate and see.

When all of the evidence is in, then counsel  
30 for the Crown and for the accused will be  
entitled, are entitled, to address you before you  
consider your verdict, and they will put forward  
what they - they'll review the evidence that they  
feel is important and perhaps the law that they  
35 feel is important to their respective clients, and

## The Court

they will be advancing their arguments, and then when they've completed that I will be delivering what is known as the judge's address to the jury  
5 in which I will be instructing you as to the law applicable in the case. I'm not going to endeavour to tell you now what the law is, it would be premature to do that, but at the appropriate time I will be instructing you, and one of  
10 the important things I will be telling you with regard to your functions as a jury is that you are the judges of fact. You must accept the law from me as to what the law is and how it's applicable  
15 to the fact but you are the people who decide the facts and I have nothing to say about that.

With regard to the law, I will confine my remarks only to this one point at this stage. The accused here is charged with four counts of  
20 murder, first degree murder as it's described, and the question may come up in your mind as to what are they talking about when they're talking about first degree murder. I'm not going to try to explain it to you in any detail, I'm only going to  
25 say this at this point, murder itself is the intentional killing - this is a very rough description I'm giving you - it's an intentional killing of another person. If you go out and hit someone with your motor car and kill him and  
30 there's no intent to kill another person, you're committing, perhaps, homicide - you're committing homicide, or manslaughter, or you may be committing criminal negligence causing death or you may be committing drunken driving or whatever they  
35 call it causing death, but there's no intention to

## The Court

commit a death and there's no murder involved,  
but if you go out and intend to kill a person, and  
5 regardless whether you just make up your mind on  
the spur of the moment or not, if you intend to  
kill that person then that would amount to  
murder. It may be second degree murder or it may  
be first degree murder.

10 First degree murder, and again I'm giving you  
just a very general description, is - there are  
various types of first degree murder. If you kill  
and intend to kill and murder a policeman or a  
prison warden or certain other persons in certain  
15 categories, that automatically is first degree  
murder. We're not concerned with that definition  
of first degree murder here because there's no  
suggestion that any of the persons allegedly  
killed were in fact police officers or wardens and  
20 so on. The main type of first degree murder is  
murder which is planned and deliberate. If you go  
out and see someone you don't like and in a fit of  
anger or something shoot him with a gun you are  
intending to kill him or her, but there's no  
25 planning or deliberation to it, and that would be  
second degree murder, but if you plan and deliber-  
ate the death of another person and then go out  
and commit it, you are committing first degree  
murder. In other words, if it's planned and  
30 deliberate.

There are other types of first degree murder.  
If you commit a murder, in other words you inten-  
tionally kill someone, or you - if you kill  
someone while committing certain types of  
35 offences, sexual offences or aggravated sexual



## The Court

offences, or while you're committing a theft or burglary and certain other limited types of things, that may amount to first degree murder. The Crown here will be indicating to you in a general way what types of first degree murder they may be relying upon here in prosecuting this accused or charging this accused with first degree murder, but I'm not going to enlarge on it, I'm just trying to give you a general picture of what is first degree, what the law is talking about when it talks about first degree murder.

There are just a few other points I want to make. I suggest that sometime within the next day or so, you don't have to do it today, you can think about it for a little while, or perhaps tomorrow or the next day, you should choose from among yourselves one of your number who will act as foreman or foreperson or forewoman or whatever the word is now. I invented a word, chairper, which I think is a good description. Foreman is a sexist term now, so is forewoman, and foreperson is - I call the chairman of the jury or the foreman a chairper, which means chairperson, it's short for chairperson. Maybe this word will find its way into the English language, I don't know, but anyway, choose one of your number, whatever you're called, as your chairper and that person will have no more authority or no more to say among your numbers on your jury than any other member of the jury, but he or she will act as sort of the manager and help you to organize your affairs and so on and decide who drinks coffee and who drinks tea and so on in the jury room, and

## The Court

when you have selected a jury would you please  
have the chairper advise the Clerk of the identity  
5 of that person and that would be the one that  
would be the one who would be dealt with.

There are just a few general things I'd like  
to refer to. On our hours of sitting, our times  
of sitting, we will be sitting consistently day in  
10 and day out until this trial is concluded. I've  
made this estimate of eight or ten weeks to  
conclude it. Hopefully by very early November we  
will be finished, and I hope that we can do that  
without interruptions. Normally we would sit  
15 Monday through Friday. Counsel have represented  
to me that it would be proper and appropriate  
perhaps on Friday to have what I think in school  
parlance they called a long session. In other  
words, if we sat till say - we'd start at 9:30  
20 each day and go on till about 4:30 in the after-  
noon. I'm in your hands as far as hours go. If  
you want to start later or earlier we can do that  
but on my experience I would say that 9:30 is a  
good starting point in the morning, we'll go on  
25 till about 4:30 in the afternoon, and we would  
have from half-past twelve till two o'clock in  
the daytime. On Fridays we'll go till about one  
o'clock and that will give you a little longer  
break on Friday afternoons. There's a holiday  
30 next Monday, Labour Day, we will not, of course,  
sit on Labour Day, nor will we sit on Thanksgiving  
Day when it comes along in October.

This is not the type of trial where you would  
be required to be impounded throughout the whole  
35 trial, or sequestered, as they say, locked up, in

## The Court

other words, in a hotel somewhere at night. When we leave here in the afternoon you're free to separate and to go your own ways. At noon, 5 though, I will require that you stay together in sort of a loose custody. You're free to talk to other persons if you want to but I would ask you to stay together in the control of Mr. Sears here 10 who is the constable who will be in charge of you, and I think arrangements have been made that you will go down to one of the local - a restaurant in the area where you will together have lunch, and you won't be mingling with other persons and so on 15 and you won't be exposed to the dangers of talking to other people and so on, so you're going to see quite a bit of each other over the next eight or ten months. You'll be not only sick of the sound of my voice but sick of the sight of each other, 20 probably, before it's over. However, you'll have to bear with both things, I guess.

I'm going to ask Sheriff Fraser and Mr. Sears to meet with you after we're through this afternoon and to discuss with you the matter of where 25 you want to assemble each day. I don't like the idea of your coming individually on your own here to the court house. Where there are going to be a great many witnesses around in the yard and so on there's difficulty to get in through the back door 30 which I'm going to ask you to use and into the jury room, the back door of the jury room. My proposal to the Sheriff has been that you people or as many of you as possible perhaps assemble at a spot which he will decide upon and discuss with 35 you and you would be brought the remaining

## The Court

distance by van and you would all arrive together. The van would be driven in, you would be brought  
5 into the court house and not exposed to meeting other people and so on. I think you will find this is a satisfactory thing.

A couple of the jurors, I believe, are from Sunbury County, and perhaps more, three, from  
10 Queens County and Sunbury and so on, so you would be perhaps coming from a different direction. The Sheriff will have to work out whether you would be picked up along the way or whether you would come directly to the court house here. He can work  
15 something out, but when you do come to the court house whether you come in a van all together or whether you come, some of you, individually, I do ask you to use the back door of the court house at this level. It will be locked but there will be  
20 someone on there who will be available to let you in, and go directly to the jury room and please don't mingle or talk with anyone around the court house here.

One word, I'm not sure it's necessary for me  
25 to say anything about this, but I've talked about it being an offence for anyone to try to intimidate or influence a jury outside the court room. The same thing applies inside the jury room. If you have reason to believe - you will be paying  
30 attention to the witnesses, to counsel, what they have to say and what I have to say, and probably no other persons in the court room, but if you're aware of any member of the public sitting out here in the public gallery trying to intimidate you by  
35 staring at you or winking or in any other way

The Court

trying to communicate with you, that is a serious  
matter which I will put a stop to immediately, so  
5 please don't hesitate to let me know. I don't  
think there's a likelihood in the world of this  
arising but there are always nuts out there some-  
where and you can't tell who's going to try some-  
thing, but let me know if you're aware of that and  
10 I will -

We won't be sitting in the evenings at all.  
When you've put in a full day here that's quite  
enough and I'm not going to require anybody to  
come back in the evenings nor will we be sitting  
15 on Saturdays or holidays or Sundays or any other  
time.

You may wonder about whether you should keep  
notes or not. This will be a complex - the  
general rule or principle is that jurors are  
20 discouraged from keeping notes. Sometimes if one  
juror keeps notes and the others don't, then that  
juror sort of becomes the oracle for the rest of  
the jury and everything he or she has written down  
becomes what was said and becomes the oracle, or  
25 he or she becomes the oracle. I would discourage  
you from doing it, although I'm not going to say  
that you can't keep some notes if you want to, or  
you may feel at the end of a day when you go home  
you may want to sit down and make notes - "I heard  
30 a certain witness today and he or she impressed me  
or didn't impress me or he was lying or she was  
lying". Write down your notes or write down some-  
thing that would direct your attention. If you  
want to try to recollect later what a witness said  
35 you might have some little thing there, but I

## The Court

believe actually Mr. Sears has available a number  
of notebooks and pencils out here which you can  
5 use to keep notes in, but don't leave them lying  
around. I would discourage you from bringing them  
into court with you. I think you're probably  
going to find that you won't want to keep notes.  
I know you'll wonder at times, how am I going to  
10 remember what every one of these 240 witnesses  
said, but counsel will be reviewing the highlights  
of the evidence when the evidence is completed, I  
will be reviewing the highlights of the evidence,  
or what I recall as being them. I'll be keeping  
15 notes through, very full notes, and at that time  
if you want to be reminded of anything that has  
been said through the trial we can even have  
portions of it read back or played back or what-  
ever from the thing.

20 There will be quite a bit of the evidence  
here, I would imagine, that will be given by  
slides which will be projected on a projector  
which is over here. You're going to be surrounded  
completely, probably, by charts with all sorts of  
25 diagrams and sketches that you may understand and  
perhaps you won't understand, I don't know, but  
you're going to be subjected to that type of  
thing. I don't mean subjected, you're going to  
be exposed to that type of thing, and I'm not  
30 going to try to describe everything that will  
occur.

I like to make a trial as interesting as  
possible to a jury and we will be stopping from  
time to time while I describe why a thing is being  
35 done in a certain way or why a witness may be

## The Court

qualified as an expert witness or something like  
that. I'll be explaining things to you from time  
to time so that you will know what's going on.

5

I'd like to say another thing, and that is  
that my philosophy in any criminal trial, regard-  
less of whether it's murder or anything else, is  
I'm not going to sit through a trial with a long  
face on me. I realize that a trial that involves  
the liberty of a subject, the liberty of an  
accused who may be on charge, that involves the  
death of persons, that involves the feelings of  
relatives of deceased persons, that involves the  
general public who have very strong feelings about  
persons who are guilty of the perpetration of  
crimes; these are all very serious matters and I  
treat them as serious, but if something funny is  
said by a witness in a court room I'm going to  
laugh, you people can laugh, the public can laugh.  
I'm not going to sit here for ten weeks with a  
long morbid face on me, I just want you to know  
what my philosophy is, but if quips are made or  
there are humorous incidents through the trial,  
I don't want you to feel that I'm taking it  
lightly or that I feel that the matter should be  
treated any more lightly than it should be. A  
trial must be run in a dignified fashion but I'm  
not going to become myself a victim to morbidity  
and I hope that you're not through the trial.  
Life is too short, you know, to get tied up  
totally in that type of thing.

10

15

20

25

30

35

I think that exhausts everything that I want  
to say at this point. If any juror has any  
difficulty in hearing any of the evidence or in

21

The Court

5           seeing any of the exhibits that may be put on  
charts or anything here on easels in front of you,  
please speak up and we'll have that situation  
corrected.

10           Through each session, morning and afternoon,  
what we normally do is halfway through have a  
recess of fifteen minutes or so when you'd have a  
chance to have a soft drink or a cup of coffee or  
a doughnut or whatever else Mr. Sears provides  
here, and he's quite a generous provider, I might  
say.

15           If any juror wishes to be excused, I mean  
wishes a halt in the thing to retire to the jury  
room for a minute in an emergency or something,  
don't hesitate to speak up if that's the case and  
we'll adjourn and recess briefly while that  
happens.

20           It's now our duty to hear the evidence, and  
as I said at the beginning, it's your duty and  
mine to listen objectively, without prejudice and  
without sympathy, and if we listen in this manner  
then our task will be fulfilled.

25           That concludes my remarks. Now we'll proceed  
to listen to Mr. Allman's address to you on the  
Crown's case. When he has concluded we'll have a  
recess for ten minutes or so and then the Crown  
will be asked to call its first witness.

30           You're all ready, Mr. Allman?

MR. ALLMAN: Yes, My Lord.

THE COURT: Thank you.

35



22

0

Mr. Allman

MR. ALLMAN: Yes, My Lord. Good afternoon, members of  
the jury. I'd like to begin by making some intro-  
ductions. My name is Anthony Allman, the gentle-  
man on my immediate left is Mr. Graham Sleeth, on  
5 his left is Jack Walsh. We represent the Crown  
Prosecutors involved in this case. Sitting at the  
defence counsel's table is Mr. Weldon Furlotte to  
my right. With him is his co-counsel, Mr. Bill  
10 Kearney. Most criminal cases involve one Crown  
Counsel and one defence counsel. There are a  
larger number than usual in this case because  
there are four alleged murders arising out of  
three alleged incidents. There are, as you've  
15 already been advised, in excess of 240 witness  
appearances, there's a good deal of technical  
evidence, and for those reasons it's necessary to  
have more than the usual number of counsel. So  
that you understand how this works, Crown Counsel  
20 among us, we've divided up the responsibilities  
between us. I'll be examining some witnesses, Mr.  
Mr. Sleeth some, Mr. Walsh some.

The judge told you a moment ago that the  
purpose of this opening speech that I'm going to  
25 make now is to give you an outline of what  
evidence the Crown expects and hopes to be  
calling. It's not the evidence itself, that  
you'll hear from the witnesses in the witness box  
and from the objects and demonstrative bits of  
30 evidence that the lawyers will be calling, but  
that doesn't mean you shouldn't pay attention to  
this speech.

The reason why you make an opening speech in

Mr. Allman

most cases and the reason in particular in this case is as follows. It's useful to give the jury a sort of itinerary, a route map of where you are, where you're going to be, where you have been, in the course of the weeks ahead. We're going to be making a journey together and I want you to know in advance something about the route that we're going to be taking. If this isn't done it's very difficult when we introduce a new piece of evidence for you to understand where it fits. Some of the evidence we're going to introduce in and of itself perhaps doesn't have much meaning. If you know in advance, which you will at the end of this opening, where all the bits of evidence fit, then when it's actually called through a witness you'll understand what the purpose behind it is.

I want to make some general observations about the way Crown's evidence is going to be dealt with. First of all, all these charges that we're going to be dealing with are based primarily on what the lawyers call circumstantial evidence. I'm not going to go into a legal explanation of that, the judge may do that and he's the judge of the law. It's sufficient for the moment if you understand that the Crown intends to prove its case here by proving a whole variety of circumstances which do not in and of themselves, considered individually, necessarily prove Mr. Legere's guilt. It's only when you consider them all in combination fitting and locking together that their strength and their meaning becomes apparent. We do not have in this case what the

24

Mr. Allman

5 lawyers call an eyewitness, somebody you can call  
who'll say, "I saw this happen and I can tell you  
what happened". There's nothing very unusual  
about that; crimes are frequently committed in the  
absence of eyewitnesses for obvious reasons.  
Every day in every court in this country and other  
countries cases based upon circumstantial evidence  
10 are proceeding satisfactorily through the courts  
and I see no reason to suppose this won't be the  
same.

I like to use analogies, and if you think  
about circumstantial evidence cases they're rather  
15 like jigsaw puzzles or Lego building blocks. If  
you pick up a piece of a jigsaw puzzle and you  
look at it, it doesn't mean a thing. It's only  
when you put it together with maybe hundreds of  
other jigsaw puzzle pieces that now you can see  
20 where that jigsaw puzzle piece fitted. If your  
children have Lego games, one Lego block doesn't  
mean a thing. It's only when you put them all  
together that you can construct a building. One  
of the usual arguments against circumstantial  
25 evidence cases is the defence takes a piece of  
evidence and says, "That doesn't prove anything,  
that doesn't prove anything", and in and of  
itself that's true. The Crown - and I want you to  
get this clear right from the beginning - the  
30 Crown isn't saying that bit of evidence proves it.  
We are saying it's the combination that gives you  
the whole jigsaw puzzle, the whole Lego building.

When you look at these various bits of  
evidence, as you might expect they're of varying  
35 importance. Some of them are of great importance

25

Mr. Allman

5 to the Crown's case. Some of them are basically just routine matters, some of them fit in between those two levels. It follows that quite a lot of our time will be spent on matters that may seem routine and of no great significance and yet the Crown calls several witnesses to deal with this point.

10 Just by way of example, we're going to be calling a whole load of police officers, and all they're going to say is I stood outside the Daughney or the Smith or the Flam residence for several hours to make sure nobody went in there.

15 We may have to call ten or twelve policemen to say that.

We're going to be calling evidence about some spectacles, eyeglasses, and we're going to have to call seven or eight witnesses and quite a lot of bits of documentary evidence about that, but they are pieces of the jigsaw puzzle, they do fit in to the whole picture.

20

You must understand something about courts. In a court of law generally speaking nothing exists until it's proved. You may think that something is obvious, but it isn't; we have to prove it. The Crown has the burden of proof. The defence has the right, and it's a right it's exercising in this case, to require the Crown to prove every point and every part of its case, major or minor, significant or otherwise. They have that right and we're going to comply with that right, so don't be surprised if not all the evidence is exciting or dramatic.

25

30

35

Mr. Allman

I want to explain next a little bit about the sequence of our proceedings. We considered  
5 various approaches and ultimately we settled on the simplest one which is to just begin at the beginning, work through as things happened, and finish up at the end. I want to give you some dates so that you've got the time frames that  
10 we're going to be talking about. These are the principal dates.

We begin with May 3, 1989. On that date the accused, Allan Joseph Legere, was being escorted to hospital in Moncton from the Atlantic Institution at Renous. On that day he escaped. There-  
15 after he was at liberty, and we'll be calling evidence about that.

The next is the date from May 3rd, the date of the escape, to May 28th. We will be calling  
20 evidence about Mr. Legere's location, whereabouts and activities from May 3rd to May 28th.

The next date is May 28th to 29th, the date the Crown alleges was the date of the killing of Annie Flam. We'll call evidence about that  
25 killing.

The next dates are the period from May 29th, after the discovery of Mrs. Flam's death - May 29 to October 13, 1989. We'll be calling evidence relating to Mr. Legere's whereabouts and activities during that time frame.  
30

The next date is the 13th to the 14th of October, 1989, the date of the alleged killing of the Daughney sisters, and we'll be calling evidence about those killings.

35 The next is the period the 14th of October,

27

Mr. Allman

1989, to the 15th, 16th of November, 1989. We  
will call evidence relating to the accused's  
5 location and activities during that time frame.

The next is the 15th to the 16th of November,  
1989, the date of the alleged killing of James  
Smith, and we'll call evidence about that killing.

The next time frame is November 16th to the  
10 24th, 1989. We'll be calling evidence as to the  
accused's whereabouts and activities during that  
time which will connect back to all of these  
alleged offences.

On November 24th the accused was recaptured.  
15 We'll be calling evidence about that including  
things that the accused had upon him, on his  
person, things that he said to the police on  
recapture and objects or things that were taken  
from him at that time, so that's November 24th.

20 Finally, we'll be calling evidence relating  
to scientific tests. These were tests comparing  
physical features of the accused with evidence  
found at the various crime scenes. These tests  
were completed only after Mr. Legere's arrest and  
25 therefore they logically conclude in terms of  
timing the Crown's case.

Briefly review where we've got so far; we are  
calling circumstantial evidence, multiple pieces  
of evidence of varying degrees of significance,  
30 and we're calling them sequentially, in other  
words, in order.

I want to turn now and review in outline the  
content of the evidence that the Crown intends to  
call. I emphasize that it is an outline. I'm not  
35 going to attempt to cover every area of evidence.

Mr. Allman

5 It's possible, even probable, that we will call  
evidence through witnesses that I won't mention in  
my opening, and when that happens you'll pay  
exactly the same attention to that evidence as to  
all the other evidence. It's simply not possible  
to deal with everything in this opening. I  
normally try and make my opening speeches no more  
10 than half an hour, but that of course is dealing  
with a normal case of one incident, and this isn't  
a normal case and it isn't one incident, so I  
don't really apologize for the fact that I'm going  
to be a bit longer than normal.

15 There are some aspects of all four charges  
which will basically be dealt with in the same  
way. Accordingly I can deal with these in a broad  
comprehensive fashion before I start getting into  
any details about the individual cases.

20 If you read the indictment - you heard the  
indictment read and if you look at it you will see  
that on each of the four counts there is an  
allegation that a certain person, Annie Flam,  
Linda Daughney, Donna Daughney, James Smith, was  
25 murdered on a certain date and at a certain place,  
I have given you the dates already. In respect  
therefore of each victim we have to prove the  
date, the place, and the cause of death. Accord-  
ingly, in respect of each victim we will call  
30 evidence from people who saw the victim alive at  
a certain time. We will call evidence of people  
finding that body in a certain residence and the  
body being pronounced dead by a doctor, of the  
body being identified by somebody who knew the  
35 person, and in that way we will establish the

Mr. Allman

5 date, the place, and the identity - the date of  
death, the place of death, and the identity of the  
deceased.

10 We allege murder in each case. We therefore  
have to prove the cause of death. We have to  
prove that the death was a homicide, which broadly  
speaking means death caused by another person as  
opposed to suicide or accident. We want to prove  
and we will seek to prove that the homicide was a  
murder. The judge already briefly, and in much  
more detail later, will explain to you the law on  
homicide, on the meaning of murder. It's  
15 sufficient for the moment to say that the Crown's  
evidence that each killing was a murder rests  
primarily though not solely upon medical evidence  
as to how each victim died, and I'm going to  
review that very briefly.

20 In respect of Annie Flam, the first deceased,  
the evidence will be that she died as a result of  
a blow or blows to the head rendering her helpless  
or unconscious. As a result of the pain or fear  
she vomited and swallowed, or the technical word  
25 is aspirated, the vomit causing death by asphyxia.  
In short, she suffocated as a result of a blow or  
blows to the face. Annie Flam was hit so hard by  
a blunt object that her jaw was fractured by the  
blow. Afterwards a fire was set in the residence,  
30 but the medical evidence says that the fire didn't  
kill her, she was already dead basically as a  
result of the blow or blows to the face.

35 In respect of Linda Daughney the principal  
physical pathological finding was that she was hit  
in the face causing fractures of the nose and the



Mr. Allman

5 jaw. Thereafter a fire was set in the house while she was lying there incapacitated by the pain and the shock, and perhaps somewhat the carbon monoxide from the fire. She, too, was asphyxiated. In other words, she was suffocated primarily due to the blunt blows to the face and the resultant pain and shock.

10 In respect of Donna Daughney, and I should perhaps mention that Linda and Donna died at the same place at the same time - in respect of Donna Daughney, again the basic cause of death was the same, a blow or blows to the face and head causing 15 fractures of the jaw and nose. The result was shock and pain followed by swallowing blood and stomach contents. In her case there were also multiple superficial injuries and the stab wound to the left side of the neck, but the primary 20 cause of death was the blows to the face, the resultant fracture, and the resultant shock which followed from that.

Finally, in respect of James Smith, again the basic cause of death was multiple blunt trauma. 25 His nose was fractured and there were multiple contusions and lacerations of the face, thirteen of his ribs were fractured, and there was evidence of strangulation. There were also again marks that did not inflict death, apparently inflicted 30 by a knife or sharp instrument. The effect of the blows to the face and the lacerations and so on was to cause asphyxia; in other words, death due to lack of oxygen.

We believe those medical findings will 35 justify your deciding that each of these four

31

Mr. Allman

5 people died as a result of a violent assault by  
another individual, but the degree of violence  
plus other evidence relating to fires being set in  
the Flam and Daughney houses, the assailant  
leaving the victims in the house where the fires  
had been set, knowing or intending that if they  
were not already dead they would die in the fire,  
10 shows that the assailant intended to kill these  
victims or at least cause them grievous bodily  
harm.

15 So far we've been discussing the evidence  
relative to each victim intended to establish that  
the person in question was indeed murdered on or  
about the date and at or near the place alleged in  
the indictment. I expect that this aspect of the  
case will not be very controversial. I don't know  
how much dispute there's going to be about this  
20 portion of the case, it may be that we'll have no  
great difficulty satisfying you on those points  
because there may not be much dispute about it.  
The area I expect - now, I may be wrong - which  
will be the principal one in dispute is the  
25 allegation in respect of each charge in this  
indictment that the person responsible was the  
accused, Allan Joseph Legere. I think that's what  
this case is really going to be all about, and I  
therefore propose now to turn and outline in  
30 rather more detail the evidence the Crown hopes  
and expects to call which will link the accused  
with each of these charges.

35 With regard to time, as already pointed out  
the accused escaped on May 3, 1989, and was  
recaptured on November 24, 1989. All these

Mr. Allman

5 deaths occurred during that period. This does  
not of itself prove that he committed these  
offences. It does, however, establish opportunity  
to commit them. That's time.

10 With regard to place, we will be calling  
evidence including an aerial photograph, I expect,  
that shows that all the killings occurred in a  
very small geographical area on the Miramichi.  
From the Flam residence to the Smith residence is  
approximately four miles. From the Smith  
15 residence to the Daughney residence is about one  
more mile, so we're talking five miles in all.  
There will be various other incidents that we'll  
be calling evidence about and they all happened in  
that small geographical area, or perhaps another  
half a mile or so down the road.

20 At the same time as calling evidence about  
where these things happened we'll also be calling  
evidence to show that the accused was a native of  
that area. He would know the geographical area  
very well and he would be familiar with the people  
who lived in that area, and we'll come back to  
25 that in more specific later, but all these things  
happened in an area known to the accused, to  
people known to the accused, at a time when the  
accused was at liberty.

30 As I said, on May 3rd the accused escaped and  
vanished. Thereafter he was at liberty. We will  
call evidence that when he escaped he was wearing  
jeans, a parka, and white running shoes.

35 On May 10th, that is some seven days after  
the escape, one Mary - and he escaped in Moncton.  
On May 10th, seven days later, a lady called Mary

Mr. Allman

Susan Gregan heard a noise outside her house in Chatham on the Miramichi. She looked out and she  
5 glimpsed a head. She thought on impulse that it was Mr. Legere but her view was very, very restricted and we place no great reliance upon that, her view was also very short. She phoned the police and the face disappeared. Later on,  
10 when she was checking, she realized that some of her jewellery was missing.

Now, here I'm going to jump around a little bit, and I have to do this occasionally from time to time. This will fit in later because much  
15 later on, in November, after the Smith death, we will be calling evidence that Mr. Legere made his way to Montreal and in Montreal he sold a number of items, among them an Egyptian pendant and a diamond cluster ring which, when they were later  
20 shown to Mrs. Gregan, she identified as being hers. If you accept that, therefore, that would indicate that on May 10th, seven days after he escaped in Moncton, Mr. Legere was in the Chatham area, and that's the only significance of that  
25 point.

He escaped on May 3rd and approximately two weeks after that, so around May 17th, a lady named Cathy Mercure who lives in Chatham looked out of her window and recognized Mr. Legere. She  
30 knew Mr. Legere because Mr. Legere was an acquaintance of her husband and he had been to her house and they sat and talked together and so on. If you accept that evidence it will indicate that Mr. Legere was again in the region approximately  
35 fourteen days after the escape. You remember I

34

Mr. Allman

5           said we'd deal with the activities and location  
of Mr. Legere in the period between his escape and  
the first of the alleged murders.

10           I turn now, then, to the alleged first  
murder. Annie Flam, the alleged victim, was 75  
years old. She and her sister, Nina, ran a small  
grocery store and they lived over the shop.  
15           Obviously, being a local grocery store they were  
known to the residents of the area, and in  
particular they were known to one resident, Mr.  
Legere. We'll be calling evidence from a man  
named Smith who used, some years before, to go out  
20           with the daughter of Nina Flam. Mr. Smith also  
knew Allan Legere and he can tell you that Allan  
Legere was sometime in the past aware of the  
existence of the Flams, Annie and Nina, and of  
Nancy's relationship to Mr. Smith, the boyfriend,  
and we'll see where that fits in later.

25           On the evening in question, May 28th, Annie  
served a customer at about 10:30 p.m. and at  
about 11:00 the neighbour from across the street  
saw Annie closing up shop. Around 10:40 Annie and  
30           her sister, Nina, had a chat, and thus we estab-  
lish, we believe, that Annie was alive between  
10:30 and 11:00 p.m. that night. Annie and Nina  
had separate bedrooms so after that chat they  
separated.

35           Around 11:30 a waitress at the next-door  
Pizza Delight, it's really practically next-door  
to the Flam residence, had occasion to go outside  
and she saw a person in the alley. The only thing  
she noticed about him was that he had on white  
running shoes.

35

Mr. Allman

5                   Around 3:50 in the morning a passerby called Harry Preston saw fire and smoke coming from the Flam house. He called the police and of course thereafter the police and the other officials attended. Inside the house they found the body, the dead body, of Annie Flam, and the still living but seriously injured body of Nina Flam.

10                   The principal human witness - I mean that as opposed to technical evidence - the principal human witness about what occurred in that house between 11:00 p.m. and 3:50 a.m. is Nina Flam, who survived. She'll tell you that after she'd had her chat with Annie around 10:40 she went to her room and fell asleep. She woke to find a male intruder in her room, and she'll describe the acts and the conversation of that man.

15                   One of the things she noticed was that the man apparently knew her and her sister, Annie. When he spoke to her he used the word Nina, or Mrs. Bernie, which was another name she was known by, he talked about Annie by name, and you remember I said that Mr. Legere would be acquainted with Annie and Nina Flam. That doesn't prove he murdered them, it's just a relevant piece of the jigsaw puzzle. He talked about her daughter, Nancy, and inquired if she was still going out with Mr. Smith, which is basically the point I already made. He asked if Nina was still working. She had in fact used to work but she'd quit a couple of years before. Again it all suggests somebody who knew Nina Flam. He made - the intruder, that is, made remarks about being away, something to do with not having been around

20

25

30

35

Mr. Allman

5 for a while, and interpreting these things is  
going to be a matter for you but there will be  
evidence that Mr. Legere had been away, out of  
the scene, so to speak, for a while. That doesn't  
prove he did it. The fact that the man who  
10 attacked Nina Flam had been away for a while and  
that Mr. Legere had been away for a while doesn't  
prove by itself he did it. It's the same pattern,  
jigsaw puzzle is fitting together.

15 The assailant tied Nina up with nylons. He  
told her that he was going to start a fire and she  
pretended to be dead. She could hear sounds as of  
fires being set, and in fact expert evidence will  
be called that fires were set. She will describe  
how he assaulted her by hitting her in the head,  
and you remember that all the victims died  
basically of blows to the head. During the  
20 assault he threatened her with a knife and you'll  
remember that there's evidence of a sharp object  
being used to inflict injuries on one of the  
Daughneys and on James Smith.

25 These facts, of course, as I say, don't prove  
by themselves that Mr. Legere was the assailant  
but they are consistent with his having been the  
assailant, the acquaintance with the Flams from  
previous years, the remark about being away, and  
of course you must consider them in context with  
30 the other matters that we'll be going into  
including the technical evidence that I'll come  
onto later pointing to the evidence of identity  
of the assailant as in fact being Mr. Legere, and  
if it's said, look, the fact that Mr. Legere knew  
35 the Flams doesn't prove he did it, remember the

37

Mr. Allman

Crown never said it did prove it.

5 Nina Flam cannot identify her attacker. He  
wore a balaclava, a ski mask type of thing, the  
effect of which was to cover his whole face and  
his head. He also took precautions during the  
attack to prevent her seeing him, specifically,  
10 much of the time her face was covered with a  
pillow, but she did have the chance to make some  
observations about him, the principal one being  
that his pubic hair was light-brown, and you'll  
hear evidence about observations made of Mr.  
Legere at the time he was arrested, and the  
15 description of his pubic hair as being light-  
brown, lighter than his head hair. Again it's a  
question for you how much weight you put on that  
matter.

20 Annie Flam was sexually assaulted - I'm  
sorry, Nina Flam was sexually assaulted. In  
addition, so far as Annie Flam was concerned, she  
was basically naked from the waist down, her  
panties were rolled down or her lower garments  
were rolled down. Annie Flam, then, was dead but  
25 Nina was alive and she gave some information to  
the police and she was taken to hospital.

30 At the hospital a rape test kit was used to  
take specimens from her body to examine for  
evidence. One sample was taken and tested right  
at the hospital in Newcastle, and I only mention  
this because on that test no sperm was found, but  
you'll be hearing from the technician who took  
that test, a lady called Colleen Moran, to the  
effect that that doesn't mean a great deal because  
35 the test she used wasn't a very specific test,



Mr. Allman

there are other and better tests, and the fact  
that she didn't find any sperm doesn't mean there  
5 wasn't sperm there to be found. In point of fact,  
other samples that were taken were taken to the  
forensic laboratory in Sackville where sperm was  
found to be present. These were taken from the  
body of Nina Flam. When it was found that sperm  
10 was present in Nina Flam's vagina they were taken  
on to the R.C.M.P. Lab in Ottawa for further tests  
which you will be hearing about.

I've already mentioned that the scene of the  
incident was examined by the police and objects  
15 were found. We'll be calling experts to describe  
the fires that were set at the Flam residence, and  
there were a number of unusual features about the  
fires. The first was that they were set. They  
weren't accidental, they were deliberately set.  
20 The main location of the fires was inside closets.  
The material used to set the fires was material  
that was readily available inside the closets.  
There was no evidence of any kind of accelerant  
like gasoline. The fire in Annie's room had been  
25 set quite a long time before the fire in Nina's  
room was set.

The other evidence about the Flam case is the  
scientific evidence about a subject called DNA,  
and I'm going to deal with that separately as a  
30 whole piece later.

Approximately three days after Annie's death  
a man called Joe Ivory who lived near to the Flams  
returned home at night and disturbed a subject  
prowling around his back door. The subject was a  
35 man wearing white running shoes. Mr. Ivory chased

Mr. Allman

him a short distance in the car but then he lost  
him because the man ducked behind another  
5 residence, and it was nighttime and Mr. Ivory  
couldn't follow him. In the spot where the man  
disappeared some workmen were building a deck and  
there was a hole in the ground for the deck to get  
built on. When the workers came in the daytime to  
10 resume their work they found a pair of eyeglasses,  
and the inference is that the person fleeing from  
Joe Ivory fell into the hole and dropped his  
glasses and couldn't find them in the dark, and  
you'll see where that fits in shortly.

15 Where it fits in is this, and as I already  
told you, it's going to take a little bit of time,  
this evidence, but there will be evidence to the  
effect that those glasses had a prescription  
identical to eyeglasses described earlier for Mr.  
20 Legere, and the inference the Crown will ask you  
to draw is that it was Mr. Legere who was the  
proowler in white sneakers disturbed near the Flam  
residence some three or so days after Annie's  
death. There will also be evidence that when Mr.  
25 Legere got to Montreal shortly after the death of  
James Smith one of the first things he did was go  
and buy himself some new eyeglasses.

We're going to move on now from the period  
between the Flam death, which is where the Joe  
30 Ivory incident happened, to the death of the  
Daughney sisters. We'll be calling evidence of  
people who saw them alive and evidence of people  
who found their bodies in the house in which they  
resided to establish the date, place and cause of  
35 death as I've already gone over.

Mr. Allman

There will be evidence that just as in the Flam case fires were set in the Daughney residence. The fires were separate as in the Flam case. They were set in closets, they used items to be found in those closets. There were no accelerants, and one fire was set substantially earlier than was the other fire. The fire in one sister's room substantially preceded that in the other sister's. Thus, in both the Flam and Daughney incidents the evidence indicates that the assailant lit a fire in one sister's room but he stayed on till the last possible minute after the second fire had been lit later.

When the bodies of the Daughneys were taken by the police they used a special laser instrument, and using this instrument they detected a body stain on the interior of Linda's upper right thigh and a body stain on the stomach of Donna Daughney. These were removed using a swab. Both were sent for testing to see if it was semen, which it was, and then sent on to the laboratory in Ottawa where DNA testing was performed, which again I'll be going into in more detail later.

Apart from DNA evidence, the evidence in the Daughney case is this. I've already told you that Allan Legere was acquainted with the Flams. He was also acquainted with the Daughneys. In or around 1985, 1986, Mr. Legere used to go to a health club called The Fitness Warehouse in Newcastle, and so did the Daughney sisters. We will be calling evidence to establish that Mr. Legere was interested in one of the Daughneys,

Mr. Allman

made comments about one of the Daughneys. I'm  
not going to go into that in detail at this time,  
5 you'll hear that from the witnesses, but it's  
sufficient for the moment to say that that  
evidence, if accepted, establishes at the very  
least this, that all three of the female deceased,  
10 Annie Flam, Linda Daughney, Donna Daughney, and  
the one survivor, Nina Flam, had an acquaintanceship  
or a relationship of some kind with Allan  
Legere. That doesn't prove he did it, it's just  
one more of the coincidence factors that you have  
to fit in or attempt to fit in to this jigsaw  
15 puzzle.

The other bit of evidence that relates to the  
Daughneys apart from DNA is this. If you  
remember, I mentioned that Mary Susan Gregan had  
some jewellery taken a few days after Mr. Legere  
20 escaped and that that jewellery was sold by Mr.  
Legere in Montreal at the end of all this, after  
the Smith death. At the same time that he sold  
that jewellery he sold various other items of  
jewellery.

25 The Daughney sisters were life-long friends  
of neighbours of theirs called the Geikies, life-  
long friends like almost relatives. The jewellery  
sold by Mr. Legere in Montreal was shown to the  
Geikies, particularly, not surprising, I suppose,  
30 to the female members of the Geikie family. There  
was a distinctive, a very distinctive, ruby type  
red ring with a large stone which all the ladies  
of the Geikie family were sure was Donna  
Daughney's. They'd discussed that ring with Donna  
35 Daughney, where it had come from, where it was

Mr. Allman

going to go to. It wasn't just a ring they had  
casually noticed, they had really noticed that  
5 ring, and they described it as being very  
distinctive. The bottom line to it is and they  
will say that in their opinion that ring which Mr.  
Legere sold was Donna Daughney's. In addition,  
another ring, a cluster type ring, was identified  
10 by the Geikies as identical to one of Donna's,  
although in that case since it wasn't as  
distinctive a ring they can't go that further step  
and say we're sure it was Donna's because maybe  
somebody else out there bought one, but it's an  
15 odd coincidence that another ring identical to  
Donna's was sold by Mr. Legere in Montreal.

If you accept that those rings were in fact  
Donna's, that links Mr. Legere to the incident of  
their death. Again the fact, if fact it be, that  
20 he was subsequently in possession of their rings  
some weeks after their death doesn't of itself  
prove he killed them, but it's a factor that links  
him to them and which you connect or can connect  
with the various other points that I'm mentioning  
25 now that the evidence will produce, including of  
course especially, though not limited to, the DNA.

There are a number of other similarities  
between the Daughney incident and the Flam  
incident, I'm not going to go into those now.

30 I'm going to move on now from the Daughney  
incident to the period after the Daughney  
incident leading up to the Smith death. The next  
bit of evidence is a little bit complicated and  
I'll try and take it slowly and simply. On the  
35 day the Daughneys died - now, whether they were

Mr. Allman

5 already dead or not we don't know for sure - on  
the day the Daughneys died earlier in the morning  
a man was seen on the street outside the Daughney  
residence. Two weeks after that somebody shot at  
or near an R.C.M.P. officer. A composite drawing  
of the shooter was made by the R.C.M.P. with the  
help of a person who was believed to be a witness.  
10 Later on still the person who had seen the man  
outside the Daughney residence the day the  
Daughneys died also had occasion to see the  
composite drawing of the man who shot at the  
R.C.M.P., at or near the R.C.M.P., a couple of  
15 weeks later, and he felt that the man he had seen  
on the street that morning closely resembled the  
man somebody else said had shot at or near the  
Mountie. So what? The way that fits in is this,  
after his arrest Mr. Legere talked to a number of  
20 R.C.M.P. officers. One of the things he mentioned  
was - in fact, he was quite proud of this, I  
think - that during his time at large he had shot  
at or near an R.C.M.P. officer. He made the point  
that he could have shot the R.C.M.P. officer and  
25 killed him but he didn't, he shot away from him.  
The point therefore of this train of argument is  
that the man outside the Daughney residence  
looked like the man who shot at the R.C.M.P.  
officer two weeks later and Mr. Legere admitted  
30 having taken a shot at or near an R.C.M.P.  
officer. That's a somewhat complicated chain of  
reasoning, and again, even if you accept from all  
that that Mr. Legere was the man on the street  
that morning, it doesn't of itself prove that he  
35 killed the Daughneys, but it's relevant if you

Mr. Allman

5 accept that it was Mr. Legere on the street  
outside that morning when you fit it with all the  
other factors that we are discussing and going to  
be discussing. Of course, you may not be satis-  
fied on that point, you may feel it was another  
individual entirely who just happened to be there,  
it's not an offence to be on that street. That's  
10 the sort of thing you're going to have to assess.

What happened in the time after that morning  
until the Smith incident? One thing that happened  
was this. On October 29th, now that's quite some  
time down the road, a gentleman called Antoine  
15 Guitard was staying at a Chatham motel, everything  
happens in Chatham or Newcastle. He discovered  
that somebody had stolen two rifles, ammunition,  
a knife and a sheath, from a locked box in the  
back of his pick-up truck. When Mr. Legere was  
20 recaptured he was in possession of a sawed-off  
rifle and we will be calling evidence to the  
effect that that rifle was one of the ones stolen  
from Mr. Guitard. The relevance of that is that  
if you accept it, it puts Mr. Legere in the  
25 vicinity in Chatham on October 29th, in possession  
of a firearm, and it also links up to the timing  
of the shooting at or near an R.C.M.P. officer.  
The overall result, then, is to confirm Mr.  
Legere's presence in that area between the death  
30 of the Daughneys and the death of Father Smith.

I mentioned a little earlier the evidence  
about the shooting at the dog man, that occurred -  
I should say, at or near - that occurred on  
October 28th, and I'm not going to go into that  
35 in detail at this time.

45

Mr. Allman

In addition to the rifle that was stolen from Mr. Guitard, a knife and a sheath were stolen.

5 I'm going to leave that because I'll come to the knife and the sheath again in a moment.

There is also evidence relating to another incident, not directly in point but you'll see its relevance later. There was a person called

10 Fernand Savoie. Fernand Savoie lived at a local boarding establishment called the Governor's Mansion. That's just down the road from all - I'm not sure the exact distance but not a very long distance away from all these incidents. He

15 started living there in November, 1988, and he stayed there until December 12, 1989, so he lived there all the time that these incidents were occurring. He was living there because although he comes from near Buctouche he was working as an

20 electrician in Newcastle temporarily. Around October 7th, '89, Mr. Savoie put in his glove compartment in his truck the new vehicle registration and insurance cards. Unknown to him at the time, shortly after that those items were stolen

25 by somebody. One reason why that is relevant is this. I told you already that after Father Smith's death Mr. Legere made his way to Montreal. He stayed at the Queen Elizabeth Hotel in Montreal, he lived there under the name Fernand

30 Savoie, he used identification in the name of Fernand Savoie. Identification in the name of Fernand Savoie was found upon Mr. Legere when he was arrested. We suggest that that indicates Mr. Legere was the person who took the registration or

35 the identification from Fernand Savoie's vehicle



46

Mr. Allman

on or around October 7, 1989, and again he's in the vicinity.

5 All these things will indicate, we believe, that Mr. Legere basically was in, on, and around the Miramichi from about seven days after his escape throughout all the time frame that we've just been talking about.

10 On November 15th some police officers, dog masters, called Barter and Kohut, were called to what was believed to be a sighting of Mr. Legere and they tracked whoever it was they were chasing in the woods again in the general area of these offences. We will be introducing a photo-  
15 graph that will describe - a big aerial photograph, and you'll see how all these locations fit together. They chased somebody in that general area, it's not very far from Father Smith's.

20 On November 15th again at about five-thirty in the evening a boy named Peter McCafferty went to the rectory. Now, Father Smith was a priest. Peter McCafferty went to the rectory where Father Smith lived, it was something to do with a mass  
25 card of his mother, and he met and talked briefly to Father Smith so we know that Father Smith was alive at around that time and so far as we know that boy, McCafferty, was the last person to see him alive.

30 Around 7:15 p.m. on November 16th, that's more than 24 hours later, Father Smith was supposed to be going over, I think it was seven  
35 o'clock, to officiate at mass, and he didn't show up and the congregation got worried and you can imagine what happened, they went over to the

Mr. Allman

5           rectory, it was right beside the church, and ultimately their concern led to the discovery inside the rectory of Father Smith's body. He had clearly been the victim of a very severe assault and there was evidence of attempted or successful theft from the house.

10           The congregation, the concerned congregation, went over around 7:15. The police attended and you'll be hearing what the police found when they got in there. One thing they found, incidentally, it's not of major importance but it's a point, somebody unscrewed the rear light at the porch, and at the Daughney's somebody had unscrewed the rear light at the porch.

15           The police started making inquiries and they discovered that around 6:45 p.m., in other words, half an hour or so before the discovery of the body, somebody had driven Father Smith's car from the rectory garage - 6:45, the body found at 7:15. The inference was that Father Smith was dead and that somebody, probably his killer, was stealing the car.

20           The stolen car links up with this incident in a number of ways. About 9:52 that night, the very same night, the car was found abandoned in the parking lot at Keddy's Motel in Bathurst. Keddy's is within easy walking distance of the Via Rail station at Bathurst. We'll call evidence that Mr. Legere, who so far as we know and from what we can tell so far had been in the Miramichi all those months, caught a train in the Bathurst railway station which left for Montreal at 8:28 p.m. that very same night. We'll call the clerk who recalls

25

30

35

Mr. Allman

5 selling him the ticket and we'll call police  
witnesses from Levis, Quebec, who met Mr. Legere  
on the train but due to an error didn't stop him.  
We'll be calling evidence about him checking into  
the Queen Elizabeth Hotel on the 17th, and we'll  
be calling evidence that he told the police about  
his trip to Montreal, so I think we'll be able to  
10 satisfy you without any doubt, reasonable or  
unreasonable, that Mr. Legere caught that train  
at about 8:28 p.m. which left for Montreal from  
Bathurst.

15 Given the distances from Newcastle, the Smith  
residence, to Bathurst, how long it would take to  
drive that in a car, and the distance from Keddy's  
which is easy walking distance, it would be  
feasible for the person who drove the car out of  
Father Smith's garage at 6:45 to catch the 8:28  
20 train from Bathurst. The fact that Mr. Legere  
caught the 8:28 train from Bathurst doesn't prove  
he killed Father Smith, but you have to ask  
yourself is it a coincidence or a causal  
connection that puts him in Bathurst after those  
25 months on the Miramichi the same night Father  
Smith died and his killer, or somebody, drove his  
car to Bathurst; is that a coincidence or not?

30 From the finding of the car in Keddy's  
parking lot some other lines of inquiry also  
flowed. One is this, inside the car was found a  
sheath and a knife. Now, I don't know if you  
remember but Mr. Guitard had had a sheath and a  
knife stolen at the same time as the rifles,  
some time previously. The point about all this,  
35 therefore, is that Mr. Guitard considered that the

Mr. Allman

knife and sheath found in Father Smith's car were  
very similar to, if not identical to, the ones  
5 stolen from him on October 29th. If you accept  
that, then that links Mr. Legere to the knife and  
sheath, and the knife and sheath link him to the  
car. Also found in the car was a jacket and the  
jacket smelt of burning wood, which may have some  
10 connection to Mr. Legere living in the woods for  
some time, I don't know about that, that's for  
you.

The next way the car fits in is this; close  
to the car they found a pair of Greb boots,  
15 working boots. Each contained inside the boot the  
unusual item of a plastic bread bag serving as in  
effect a liner. Because they were found near to  
the car it was felt that they might have a  
connection to this case, to the car, and thus to  
20 the killing. In fact, at the rectory a good deal  
of blood was spilled, and an identification  
witness will be called to describe how boot prints  
were found in the bloodstains at the rectory. You  
may think that obviously the killer walked around  
25 the place and in so doing he left marks of his  
boots in the blood that he'd spilled. They there-  
fore took the boots found near the car and  
compared them with the marks found at the scene of  
the death and they found what they call a positive  
30 match; that is to say, they were the same in a  
number of respects and there were no similarities  
(sic). That goes quite a way to confirm that the  
killer was indeed the person who had driven the  
Smith vehicle to Bathurst that night, and there  
35 may be other evidence on that point that I won't

50

Mr. Allman

5 go into. Suffice it to say for the moment that that links, we believe, the killer to the car and the car to the scene of the death, and you couple that with the fact that Mr. Legere was in Bathurst that very same evening at virtually the exact right time.

10 The next way the finding of the car fits in is this. I told you that Mr. Legere took the train on the evening of the 16th from Bathurst to Montreal. There's only one train track to Montreal from Bathurst and obviously it goes over bridges and streams and so on. The next year, on 15 July 8, 1990, in the morning, two CN Rail inspectors, rail bridge inspectors called Serge Delarosbil and Richard Walker were inspecting a bridge on that self-same railway line. The train Mr. Legere took on the 16th of November must have 20 passed over that bridge. During their inspection they found an NBTel card and a Visa credit card in the name of Reverend James Smith. They didn't connect that with the murder, they did however report it to the officials, and after various 25 messages that you can probably figure out for yourselves police officers arrived on the scene. They took the credit cards, the NBTel and the Visa card, from the bridge inspectors and the bridge inspectors showed the police where they had found 30 these cards and the police started to look for themselves and they found another card, an American Express card, in the name of the Reverend James Smith.

35 Now, there are a couple of things about the location of this discovery. It's a remote spot in

51

Mr. Allman

5 the woods of the Matapedia Valley. It's not  
really accessible to vehicle traffic, it's not  
really sensibly accessible to pedestrians. The  
only practical way of getting to this spot is over  
the railway. The second thing you should know  
about the location is this, the bridge goes over a  
30-foot drop and there's a stream, I think, at the  
10 bottom. During the winter CN plows come along and  
they clear the tracks of the snow and I suppose of  
some loose gravel, too. The cards weren't found  
on the tracks, they were found on an abutment just  
below the tracks. The logical and rational  
15 conclusion from all this, says the Crown, is that  
somebody discarded those cards from a train,  
either out the window or down the toilet or some-  
thing. By a remarkable chance they didn't fall as  
presumably they were supposed to do to the river  
20 below, they lodged on the abutment just below the  
bridge. There they laid during the winter as the  
plows came along and covered them up with snow and  
gravel, and when the snow melted and the bridge  
inspectors came along in May, there they were  
25 waiting to be discovered, and again, logically  
at all lengths. The killer, we suggest, took  
those items from Father Smith, he drove to  
Bathurst. He took the train, which we know Mr.  
Legere took a train that night.

30 At some time, possibly that night, we  
suggest at that night, he took the train from  
Bathurst to Montreal. En route this individual  
realized that the cards were not merely useless,  
they were dangerous, they connected him with the  
35 deceased, so he threw them away in the hopes and

52

Mr. Allman

the expectation that they'd never be found, but  
fate intervened and they were found. If you  
5 accept all this, what does it mean? Well, there  
are two alternatives. One is that it was Mr.  
Legere who threw those cards away as he was  
fleeing to Montreal the night after Father Smith  
died and in the hours after Father Smith's death  
10 was discovered. The other is that somebody else  
took the Bathurst to Montreal train and it's just  
a coincidence that Mr. Legere took the same  
journey the day Father Smith's body was  
discovered, and again you see how I pointed out  
15 earlier that this case consists of circumstances  
that you're going to have to look at and say, are  
these coincidences or do they connect, and connect  
by guilt.

The next stage deals with what Mr. Legere did  
20 after he arrived in Montreal on the morning of the  
17th. He did several things and we suggest  
they're all significant, some of them I've already  
mentioned a little bit. The first thing that we  
know that he did was he checked into the Q.E.  
25 Hotel, Queen Elizabeth Hotel, using the name and  
identification documents stolen from Fernand  
Savoie early in October when Savoie was working in  
Newcastle at the Governor's Mansion. I've already  
mentioned and I'm going to repeat again that one  
30 of the first things he did after he checked in was  
to go and buy new eyeglasses at an optometrist's  
near the hotel, and if you remember, one of the  
things we've mentioned was we believe Mr. Legere  
lost glasses in that hole near Joe Ivory's place  
35 just after the Flam murder, and you may think that

Mr. Allman

links up. If he had been on the Miramichi all those months he wasn't going to be able to pop  
5 into an optometrist's and buy himself some new glasses. Now he's in Montreal, he's in a big city, he's not known, one of the first things he does is he goes out and buys himself new glasses.

10 That was November 17th. On November 20th he went and sold the rings and other things, the property which we believe will be identified as that of Mary Gregan, and still more significantly, the property of Donna Daughney.

15 While he was at the Queen Elizabeth Hotel he was in his room from time to time and maids went in there to do the things maids do, clean up and so on. They noticed a number of things about Mr. Legere. They noticed that he was wearing construction or work boots. They noticed that  
20 they were new or comparatively new construction or work boots. It's for you to decide if that fits in with the fact that old boots were found abandoned near the car.

25 When Mr. Legere was in the Queen Elizabeth Hotel, as I say, he wore the boots. Basically what struck them, I think, was that he was always wearing boots. Whether that's an unusual thing in the Queen Elizabeth Hotel I don't know. Again, that's the sort of thing you're going to have to  
30 assess for yourself. That's what he did in Montreal, the activities at the Queen Elizabeth Hotel, the rings, the new glasses.

35 We move now to November 23rd. Remember that he had arrived in Montreal November 17th, bought the glasses November 17th, and sold the jewellery



Mr. Allman

November 20th. On November 23rd at about 9:50 in  
the evening one Ron Gomke, a taxi driver in Saint  
5 John, New Brunswick, picked up a fare. The fare  
turned out to be Mr. Legere. He took Gomke  
prisoner at gunpoint and demanded to be taken to  
Moncton. En route, during a snowstorm, the taxi  
that Gomke was driving went into a ditch and an  
10 off-duty female police officer named Mercer picked  
up Mr. Gomke, the taxi driver, and Allan Legere.  
He took her prisoner, too, and her car. After  
various incidents they finished up at a service  
station near Sussex, Mr. Legere took the car keys  
15 and went out to gas up. Unknown to him the lady  
had a second set of keys. She used them so that  
she and Mr. Gomke could escape, and escape they  
did to Sussex R.C.M.P.

Meanwhile Mr. Legere, now minus a vehicle,  
20 took another person prisoner, a trucker called  
Golding, and forced him to drive off to Newcastle  
in his tractor. While this is all going on, of  
course, the Sussex R.C.M.P. are getting alerted  
and you can figure what goes on after that.

25 We will be calling those three people, Gomke,  
Mercer, and Golding, to tell you about their  
conversations with Mr. Legere during the hours  
they were with him. Much of that conversation was  
rambling and of no great consequence. You may  
30 think, but not surprisingly, these people were  
scared, and that may affect their memories, but  
with those qualifications he did say some things  
that they believe they remember that may have some  
significance. He mentioned about being in prison  
35 and escaping, and we will be calling evidence that

55

Mr. Allman

he was in prison and did escape. He mentioned  
about going to Montreal and getting new glasses .  
5 there, which we've said we'll call evidence about.  
He mentioned living in a tent until it got too  
cold, that may have some connection to the smoky  
jacket. He told the female R.C.M.P. officer,  
Mercer, something to the effect that he had broken  
10 into a house looking for money but when he got  
inside he realized it was the house of a priest.  
He said something to her about telling the priest  
that he was committing a sin in holding Bingo at  
the church.

15 MR. LEGERE: Hold on.

MR. ALLMAN: He told her something about robbing a priest  
but he said he didn't kill the priest. Now, I  
want to make something very clear here. Because  
the conversation was disjointed from time to time  
20 and because she was nervous this witness can't  
necessarily tell you what particular incident Mr.  
Legere was talking about, when these incidents are  
supposed to have occurred or where they're  
supposed to have occurred, and it will be for you  
25 to decide whether these were references to Father  
Smith or references to some other incident. I  
want to be perfectly fair. I am not saying that  
he told her that he had gone gone into Father  
Smith's, he made remarks about a priest, and it  
30 will be for you to assess where those remarks fit  
in, because she isn't exactly sure for the reasons  
I've already explained.

When he was talking to Mr. Golding, the  
trucker, he again mentioned hiding in the woods in  
35 Newcastle till it got cold, I believe he mentioned

56

Mr. Allman

lighting fires, and he also told Mr. Golding that  
he, Legere, was a suspect in three or four  
5 murders. Now, Golding wasn't by any means sure  
that it was Legere, and he asked him if he had in  
fact done these murders and Mr. Legere didn't  
admit nor did he deny his involvement. He simply  
said that it didn't matter if he did do them or  
10 not because the cops would frame him anyway, and  
it will be for you, I'm just leaving it to you,  
and if the evidence comes out this way it will be  
for you to assess what if any significance to give  
to that conversation.

15 Golding's vehicle was in motion all this  
time and it was spotted by police officers  
travelling towards Newcastle. Two R.C.M.P.  
officers, Barter, whom we've already mentioned,  
and another officer called Lutwick, set up a  
20 roadblock. The tractor stopped, Mr. Golding leapt  
out saying, "He's got a gun". The police ordered  
the other person in the truck, who turned out to  
be Mr. Legere, to get out. He threw out a sawed-  
off rifle and he got out of the vehicle. From  
25 that time on he was in the custody of the police,  
first Barter and Lutwick, then other officers, and  
you will hear about what activities went on  
between him and the police and what he said to the  
police. I'm not going to go into it in detail,  
30 I'm just going to touch on some principal points.

Among the items found upon his person were a  
Queen Elizabeth Hotel receipt, a hotel key, an  
eyeglass case, identification in the name of  
Father Savoie (sic). I think by now you can see  
35 where each of those items link up to something

57

Mr. Allman

I've already mentioned.

5 The rifle which he threw out was shown to  
Mr. Guitard and Mr. Guitard indicated that he  
believed that to be his rifle, which would put Mr.  
Legere in the vicinity back in October.

10 At the R.C.M.P. Detachment in Newcastle and  
prior to that he talked to a number of police  
officers. Among the things he mentioned were that  
he had been involved in a shooting at or near an  
R.C.M.P. officer. He said that the cops shot  
first and that he, Mr. Legere, could have shot him  
but he shot in the air instead. You remember how  
15 that links back to the shooting, the composite of  
the shooting, the man seen on the road outside the  
Daughney residence. He talked about his trip to  
Montreal, about being checked on the train, about  
nearly getting caught but the police made an  
20 error, they looked on the wrong arm, which  
confirms if confirmation be needed that he was on  
that train. He talked about escaping and being  
chased by a dog, police dog. He talked about his  
time in the woods. He talked about going to  
25 Montreal and getting a shave and a haircut there.  
All these remarks basically simply go to confirm  
the accuracy of other earlier evidence to the  
effect that Mr. Legere was in the woods in the  
Newcastle area during these months that we are  
30 concerned with but that on the night after Father  
Smith's body was discovered he for some reason  
went to Montreal and we know or we believe we  
know what he did in Montreal.

35 One other thing about Mr. Legere is this, he  
was observed by a police officer who knew him well

58

Mr. Allman

5 when he was arrested. That police officer noticed  
that his pubic hair was light-brown, lighter than  
his hair. You'll remember that Annie Flam (sic)  
had indicated that her attacker's pubic hair was  
light-brown.

10 The police also observed, and remember he  
knew Mr. Legere well, that the months while he had  
been away had produced a very substantial change  
in Mr. Legere's appearance, he would hardly recog-  
nize him, he said, and there's going to be similar  
evidence from another person who knew Mr. Legere  
before he escaped and who saw him very shortly  
15 after his escape to the effect that his appear-  
-ance, his physical bulk, had made a remarkable  
change during those summer months, and that may  
have something to do - you'll want to consider  
that when we're dealing with various matters of  
20 identification.

After they had arrested Mr. Legere the police  
took some of his hair, some pubic hair and some  
head hair, and they had already in fact got some  
of his hair from an earlier time. In addition to  
25 the hair, when Mr. Legere was sitting in the  
Detachment he blew his nose on a piece of toilet  
tissue, and when he blew his nose a police  
officer, a very alert officer, observed that  
besides the mucus there was also blood. He knew  
30 that that might have forensic significance so he  
took the opportunity to seize the bloody tissue.  
The bloody tissue and the hair, all the hair  
we've talked about, will be the subject of the  
forensic evidence that I now propose to turn to.

35

59

Mr. Allman

5           What we're going to be talking about here is  
something called DNA, and I want to tell you this  
is a very important part of the Crown's case, the  
principal part of the Crown's case, as it relates  
to the three female deaths and only the females.  
The Crown has no DNA evidence against Mr. Legere  
in the Smith death. Now, I think you'll under-  
stand why later, but in respect to the females  
10           it's very important evidence. I want to give you  
an outline on this topic of what I expect the  
evidence to be but later we'll be calling experts.  
They will explain it much better than I could ever  
hope to do and they will use visual aids like  
15           slides and charts and so on.

          I'm just going to touch on the highlights so  
that you know those sort of words we're talking  
about, to get you comfortable with the words, and  
to give you the bottom line. DNA is short for  
20           deoxyribonucleic acid, which is quite a mouthful  
but you shouldn't be overawed by that because  
every time you take aspirin you swallow acetyl-  
salicylic acid and every time you buy stuff in the  
supermarket it's got monosodium glutamate in it,  
25           it's just a long chemical word, but everybody uses  
the expression DNA for short. Don't let the long  
words put you off.

          DNA is the basic building block of life,  
30           it's the blueprint of the body. Human bodies, and  
indeed animal and vegetable ones, if it comes to  
that, consist of cells. Your skin, your hair, the  
roots of your hair, your blood, your semen, every-  
thing is made up of cells, millions of cells, each  
35           of which contains a nucleus, a compartment within

60

Mr. Allman

5 which are 46 chromosomes, each containing a single  
DNA molecule. Each cell has the DNA molecules  
arranged in these chromosomes and the DNA in each  
of those millions of cells is the same, and here's  
where that gets so useful and interesting. It  
enables scientists to compare different things  
with each other because the DNA in my blood  
10 is the same as the DNA in my skin. You can  
compare a specimen of blood with a specimen of  
skin, a specimen of hair with a specimen of semen.  
You're not limited to comparing blood to blood,  
hair to hair, skin to skin, semen to semen; any  
15 bit of the body of the kind that I've explained  
can be compared to another different sort of bit.

You inherit your DNA on conception. The  
fertilized egg contains DNA inherited from your  
father's single fertilizing sperm and your  
20 mother's single egg. The original cell thus  
conceived continues to divide so that each cell in  
your body replicates or copies the DNA from that  
original union of your father's sperm and your  
mother's egg, and basically they stay the same  
25 from conception to death. The general scientific  
fact that DNA exists and is the body's basic  
blueprint is, I think, universally accepted  
scientifically, and I think it's also a  
universally accepted scientific principle of  
30 genetic inheritance that the DNA of each indi-  
vidual is unique except in the case of identical  
twins for reasons which will be explained later.  
That's the theory. The application of DNA typing  
is based upon that theory and its application is  
35 widespread. You'll hear from the experts that

Mr. Allman

5 it's used in matters involving animals and it's  
used in matters involving plants. It's used in  
human paternity testing. It has many medical  
10 applications, it's used in identifying virtually  
all the genetic diseases; for example, the  
genetic defect that causes muscular dystrophy,  
cystic fibrosis, Huntington's disease. It's  
15 applied in cancer research and it's applied in  
cancer treatment. I believe there may be evidence  
that it was used in Operation Desert Storm to  
match up bits of bodies that had been separated  
and couldn't be linked together. It's used in  
20 tests on fetuses to see if the fetus is going to  
inherit or is liable to inherit a disease from the  
parents. It is used medically, therefore, as a  
generally accepted topic upon which doctors rely  
to make literally life and death decisions.

20 The forensic, that means the criminal, use of  
DNA is just one more application of the same basic  
theory. It derives from the same theoretical  
basis and it uses the same broad general tech-  
25 niques as the medical use that I've just gone  
through, and I want to tell you how the forensic  
approach came about. I've told you that the  
accepted theory is that no two people have the  
same DNA, but the technology we have at the  
30 present doesn't allow the scientists to look at  
the entire DNA chain contained in all 46 chromo-  
somes of the cell. The DNA molecules in each  
cell have literally billions of chemical combina-  
tions. How do we get around that? In 1985 a  
British scientist called Alec Jeffreys determined  
35 that by examining certain sections of chemical



Mr. Allman

combinations in a DNA scientists could in fact  
differentiate between individuals. There's a long  
5 word coming here - these sections of the DNA are  
called highly polymorphic, which just means  
they're bits that differ greatly among indi-  
viduals, and not a long word, you'll hear that the  
regions of the DNA are also called variable number  
10 of tandem repeats, which the quickie for that is  
VNTR's. I'm using these long words so that you'll  
know what's coming and understand that they will  
be explained simply.

The scientists will tell you that as between  
15 individuals most of the chemical combinations in  
our DNA are the same. We all have legs, we all  
have arms, we all have heads, but there are these  
sections, the VNTR or highly polymorphic sections,  
that they've determined are not so common, so you  
20 might find a certain chemical combination only in,  
for example, one in 100 people, and then another  
little bit of the chemical in perhaps one in 80  
and another in one in 50 and so on and so on.  
I'll be dealing shortly with the statistical  
25 aspect of this.

Anyway, this British scientist, Jeffreys,  
utilized these sections of our DNA that differ a  
lot between people for identification purposes.  
Using the techniques that these experts are going  
30 to explain to you it becomes possible to compare  
DNA found in a specimen, let us say semen found  
at a crime scene, with DNA, let us say root hair  
or blood taken from a suspect. Jeffreys called  
this genetic fingerprinting.

35 First, as in ordinary fingerprinting, you

Mr. Allman

compare a print found at the scene with a print  
taken from the suspect, so in this forensic  
5 technique you compare DNA found at the scene with  
DNA taken from the suspect, so you can see what a  
very apt expression genetic fingerprinting is.  
Incidentally, I understand that the first use of  
DNA evidence was by this man, Jeffreys, and it was  
10 used to solve a crime in England. When Jeffreys  
developed this forensic labs all over the world  
began setting themselves up to adapt this finding  
of Jeffreys for investigative and court room use  
in their respective countries.

15 In North America two of the major organiza-  
tions in this effort, as you might expect, are the  
FBI, which is the federal police force for the  
U.S., and the R.C.M.P., which is the Canadian  
police force federally. Those two police forces  
20 worked and continue to work cooperatively to  
develop and introduce their program to American  
and Canadian society, and we'll be calling  
evidence about just how prevalent forensic use of  
DNA has been and is becoming since Jeffreys'  
25 initial observations back in 1985, and there may  
be evidence in an attempt to refute this, too,  
it's going to be the subject of argument.

DNA evidence, following from what I've said  
so far, can be viewed in two aspects; number one  
30 biological, number two statistical, and again I'm  
going through this as quickly as I can, it will be  
gone through in detail by the experts.

The biological aspect involves the actual  
tests in laboratories and when the scientists look  
35 for those very different sections of DNA that I've

Mr. Allman

5 already mentioned it's the process that was used  
in the present case to try and determine if the  
DNA in the semen found on Nina Flam and the semen  
found on Linda and Donna Daughney did or did not  
match the DNA in the hair samples and blood from  
Allan Legere. The test's got another name, it's  
called restriction fragment length polymorphism,  
10 and it's RFLP for short. The experts, using these  
diagrams and charts, will describe what DNA is,  
its shape, where it's found, what functions it  
performs, they'll explain how they type it, which  
means test it. They'll describe the various steps  
15 involved and, very importantly, the intricate and  
painstaking safeguards that they take to try and  
ensure true results. Very briefly I expect them  
to explain to you that they extract DNA from a  
sample; sample of semen, sample of hair, whatever.  
20 They quantify it to determine how much DNA is in  
that sample that can be tested. Although there is  
DNA in every cell the technology requires DNA from  
some thousands of cells if you're going to type  
it, so the size of the genetic material, or I  
25 suppose more accurately the number of cells  
contained in the substance, for example the  
amount of semen left at the crime scene, to some  
extent determines whether there are going to be  
enough of these polymorphic very different  
30 sections of DNA for the scientists to work on.

After they've quantified it they cut it up,  
they digest or cut it up, and the long word here  
is restriction endonuclease, and the short term  
for that is chemical scissors because they use a  
35 chemical to cut it up into different lengths.

65

Mr. Allman

After it's been cut up into different lengths they  
sort it into different sizes. There's a technique  
5 for doing this, they run the DNA through something  
called an agarose gel, on account of it does in  
fact look a bit or resembles a bit jelly. They  
run it through this agarose gel using an electric  
current and the long word here is electrophoresis.  
10 After they've got the cut up bits into their  
different sizes they transfer the DNA from the gel  
to a nylon membrane and they call that Southern  
blotting. A radioactive piece of DNA is then  
applied to the membrane. A radioactive piece of  
15 DNA is called a probe and attaching the probe to  
the membrane is called hybridization.

You'll hear that they photographed the  
membrane on an X-Ray film to look at the same  
section, the particular polymorphic very different  
20 section, of each of the samples that these probes  
are designed to locate. Again I'm sorry, there's  
a long word, it's called autoradiography. Using  
this picture which they call an autorad the  
scientists can look at the same area of the DNA  
25 from each of the samples, the samples found at  
the scene, the samples taken from the accused.  
They look at them to see if any of the samples  
match. What they're actually looking for are what  
they call bands, one inherited from your mother,  
30 one from your father. These bands are pieces of  
cut up DNA from each sample, the suspect's and  
the scene, that this probe that they sent in  
there attached to, and they represent the very  
polymorphic, very different sections of DNA being  
35 studied. The radioactive probe - the probe is

Mr. Allman

radioactive and that causes these bands to appear and light up the sections of DNA being studied, and you'll actually see these autorads and what they look a bit like, bearing in mind that some of them are fairly faint. They look a bit like the bar codes that you see on things you buy in the supermarket when you're checking out.

5  
10  
15  
20  
25  
The scientists read these pictures or autorads, comparing the same section of DNA from each sample with the same section of DNA from the other sample, the sample found at the scene, the sample taken from the suspect, and they can come to one of three possible conclusions in each case. The first conclusion they can come to is exclusion, the samples don't match. That means absolutely that they didn't come from the same person, the semen at the scene didn't come from the person whose hair or whatever was tested, and in fact DNA is used and they'll you that it's used extensively and has been used on a number of occasions to eliminate suspects. It's an absolute exclusion, if they say it couldn't have come from that person it couldn't have come, that's what they say.

30  
The second conclusion is inconclusive. For any number of technical reasons, biological reasons, maybe not enough DNA, they can't tell you if the bands match or not, and if that's the case, if it's inconclusive, they don't use that test when they make their calculations later on, so if it's excluded it isn't this person. If it's inconclusive the test isn't used in the calculations respecting that person.

35  
The last conclusion they can come to is

Mr. Allman

5 inclusion; in other words, the bands match and  
the samples are consistent with coming from the  
same individual.

10 After probe number one the scientists will  
chemically wash that probe off the membrane and  
then they'll send in another probe. They'll apply  
another probe to the membrane attaching to another  
section of the DNA samples, and they can repeat  
that process a number of times, and each time they  
can draw the same three conclusions; exclusive,  
inconclusive or inclusion, and the same process  
again, if it's exclusion that isn't the person.  
15 If it's inclusion we don't use that calculation -  
inconclusive, sorry, we don't use that calculation  
and it's only if it's inclusion, they match, that  
that is factored into the calculations.

20 They repeat the process then a number of  
times and at each time they look at a different  
section of one of these highly polymorphic  
sections of DNA. They number of times they can  
do this, send in a probe, depends largely on how  
much DNA they have been able to extract from the  
25 samples, so if there wasn't much sample found,  
let's say, at the crime scene, then they'd be able  
to send in only one probe. If there's more sample  
found at the crime scene they can send in more  
probes. The more sample, the more probes you can  
30 send in. That's what they did in this case,  
comparing items in the fashion I've described.

35 When it comes to apply all this science to  
these particular tests in this particular case  
the typing tests revealed among other things the  
following. Of the two vaginal swabs taken from

Mr. Allman

5 Nina Flam, the survivor of the Flam incident, one  
contained more DNA than the other simply because  
there was more semen on that one than there was on  
the other. On the swab with the smallest amount  
of DNA the scientists could only send in and only  
able to look at one section of the DNA and compare  
it with the DNA extracted from the root hair and  
10 blood of Mr. Legere. The patterns at that one  
area matched, the other sections they looked at,  
for the reasons I've explained, were inconclusive.  
There were no exclusions. On the swab with the  
larger amount of DNA taken from the vagina of Nina  
15 Flam, because there was more of it they could make  
the same sort of comparisons at four sections.  
The band patterns matched with the band patterns  
at the four sections taken from Mr. Legere, hair  
and blood. One section was inconclusive so it  
20 wasn't factored in, and there were no exclusions.

Of the two semen swabs taken from the  
Daughneys, one from the body of Donna and one from  
the body of Linda, Donna's had a lesser amount of  
DNA because there wasn't so much substance but it  
25 did match Mr. Legere's banding pattern in this  
case at two sections, and at the same two sections  
taken from the body swab taken from Linda. The  
swab taken from Linda, the one with more DNA  
extracted from it, was sufficient to enable the  
30 scientists this time to make five comparisons at  
five sections. The band patterns matched with the  
band patterns at the same five sections of Mr.  
Legere's DNA. One was inconclusive so it wasn't  
calculated in and there were no exclusions.

Mr. Allman

What does all that mean? Well, that's where we move from the biological to the statistical.

5 The statistical evidence you will hear, I expect, is to the effect that when samples match you can only draw two conclusions from that, one of these two conclusions. One is that the samples from the individuals - I'm sorry, the samples come from the

10 same individual. My hair should match my blood. The other conclusion is that the DNA from the unknown sample, the sample found at the scene, is from somebody else who just coincidentally happened to have the same pattern as the sample

15 taken from the suspect, in this case just happened to have the same DNA profile as Mr. Legere happens to have.

The scientists the Crown will call are going to explain to you how they calculate this probability of DNA patterns matching at a number of

20 different sections between samples. You'll hear evidence, I expect, as to how they build what they call a data base, that's a collection of DNA from many individuals. In this case, the individuals

25 are Caucasians in Canada, and they'll explain why they use a Caucasian data base. You'll hear how they determine the frequency with which you expect to find a certain band at a particular section of DNA, the scientific term is binning.

30 You will hear how they determine the frequency of finding a combination of two particular bands in one of these particular sections of DNA, and there's a scientific term here called the Hardy-Weinberg equation which is the calculation of the

35 frequency for each section of DNA matched. You



Mr. Allman

will hear how they calculate the probability of several of these sections of DNA matching between any two samples. This involves using a mathematical formula called the product rule. To use the example I mentioned before, if the scientist determines, using binning and Hardy-Weinberg, that the frequency at one matched section is one in 80, at another that it's one in 100, at another that it's one in 50, then it's the elementary mathematical product rule tells us that the probability of matching at all three places is one in 100 times one in 80 times one in 50 which is one in 400,000. These numbers are used to give meaning - as an illustration only, I'm not talking about this particular case now, these numbers are illustrations only.

I do then want to come on to this particular case. The scientists made this kind of calculation in this case. They will tell you with respect to the one section match between the small amount of DNA extracted from the semen on one of Nina Flam's vaginal swabs compared with Mr. Legere's DNA where they could only do the one probe that the probability of somebody else happening to have this pattern is one in 68 male Caucasians, but with respect to the four section match between the DNA extracted from the other vaginal swab taken from Nina Flam and the DNA taken from Mr. Legere's hair and blood samples where there was more of it so they could do a four comparison, scientists will tell you there that the probability of that particular four section pattern of bands coming from somebody

71

Mr. Allman

5 other than Mr. Legere is between one in 3.1 million male Caucasians and one in 17 million male Caucasians.

10 The scientists will in fact testify that their best estimate which falls between those two extremes is that only one in 5.2 million male Caucasians have the same pattern as the accused and the matching semen found in the vagina of Nina Flam. They will also tell you, the scientists, that their figures are conservative because of their method of calculation.

15 The scientists will testify as well with respect to the two section match between the smaller amount of DNA taken from the semen on Donna Daughney's body swab, the DNA from the semen on Linda's body swab, and the DNA taken from Mr. Legere that the probability of somebody else  
20 having that pattern is one in 7,400 male Caucasians. Incidentally, that finding also demonstrates that the semen found on Donna and Linda are consistent with coming from the same person.

25 However, with respect to the five section match between the DNA extracted from the body swab taken from Linda, which is the one that had more semen, and the DNA taken from Mr. Legere's hair and blood samples, the scientists will tell you  
30 that the probability of that particular five section pattern of bands coming from someone other than Mr. Legere is between one in 175 million male Caucasians and one in 1.3 billion male Caucasians. In fact, the scientists will testify that the best  
35 estimate which falls between those extremes is one

Mr. Allman

in 310 million male Caucasians would have the same  
banding pattern as the accused's and the DNA from  
5 the matching semen found on the body swab taken  
from Linda Daughney, and again they will tell you  
that their method - in their opinion those numbers  
are conservative because of the methods they use.

10 In either the Flam or the Daughney compari-  
sons we expect you to see that the bottom line is  
that these matches are extremely rare. The  
purpose of the numbers that the scientists will  
put before you is to demonstrate just how rare a  
phenomenon it is for the unknown sample, in this  
15 case the semen left at the crime scene, to match  
the known sample, in this case the hair and blood  
of Mr. Legere, particularly when the comparison is  
made across four or five different polymorphic  
sections of DNA. In order to deal with this we'll  
20 have to call evidence from molecular geneticists,  
biochemists, population geneticists involved in  
forensic, medical and research fields, because  
remember that I told you DNA typing is used in  
many other things besides the courts.

25 As you can imagine, describing this area of  
science and statistics is not like describing  
how to repair a bicycle. The scientists are going  
to make every effort so that we as lay people have  
a general understanding of the theory, the  
30 technique, the statistics and the meaning to be  
derived from this evidence, but it's a complex  
subject. On the other hand, we've all probably  
had to go to a doctor and have a doctor describe a  
disease, a diagnosis, surgery, something of that  
35 kind, in simple enough terms to enable us as lay

Mr. Allman

people to make a meaningful and informed decision. We don't need to be doctors ourselves, we never  
5 will be, but we're entitled to expect the doctor to give us the kind of information that enables us to make an informed decision. Even though we don't understand every intricacy of what is being described we may well find ourselves able to rely  
10 upon it. The experts we'll be calling are going to try and explain to us sufficient about this so that you can determine whether you feel you can rely upon their evidence and to enable you to determine how much importance to place upon their  
15 findings. In this regard we ask only that you use the collective common sense of the twelve of you. You are not, you never will be, scientists. Scientists are not gods and they're not always right, but like any other scientific application,  
20 as lay people we listen to the explanation and what they have to tell us and we say to ourselves, can I rely upon that.

It's the Crown's position from a simple common sense point of view that this DNA evidence  
25 I've just gone through alone or in conjunction with the other evidence I've gone through represents in fact positive evidence of the most persuasive kind identifying the accused as the attacker of Nina Flam and as the killer of Annie Flam. Likewise it's the Crown's position that  
30 the DNA evidence alone or in conjunction with the other evidence to be presented represents positive evidence as to the killer of the sisters, Linda and Donna Daughney.

Mr. Allman

5 I'm going to close as soon as I can and I'm  
coming towards the end. I'm telling you that so  
you'll have relief in sight.

10 I want to come back to where I began. What  
you're going to have to do in this case is to  
decide whether a combination of circumstances  
arise from chance or do they arise because they  
all connect, and connect with Mr. Legere. You  
shouldn't look at these facts one by one in isola-  
tion, you should consider them all together.

15 In looking at the female victims you should  
consider all the things I've gone through if  
they're established through the witnesses which  
point towards Mr. Legere apart from the DNA, and  
then you should consider the odds that the experts  
will give you based upon the DNA. The non-DNA  
evidence points in the same direction as the DNA  
20 which so forcibly points towards Mr. Legere.  
Combined and supporting the one to the other, the  
Crown's submission is that the evidence is  
extremely persuasive, of the most persuasive kind.  
That's in respect of all three female victims you  
25 must link the DNA, we submit, with the other  
evidence.

30 I want to do two things very briefly. The  
first is to deal just in passing with the topic of  
first degree murder. Now, this is a question of  
law, you take the law from the judge, he'll give  
you the law at the end of this case, but he  
mentioned very briefly about first degree murder  
already. There were a number of kinds of first  
degree murder. Among them are included planned  
35 and deliberate murder, as the judge told you,

75

Mr. Allman

murder committed in conjunction with sexual  
assault, and murder committed in conjunction with  
5 unlawful confinement, keeping somebody against  
their will. We expect you to hear evidence in  
these cases of all that kind and we expect that  
that is the kind of evidence that will enable you,  
if you find that Mr. Legere was in fact the  
10 murderer, to say these were first degree murders.  
I'm not going to go into that in any more detail  
now because it's so much involving the legal  
questions.

I want to conclude by listing very briefly  
15 the facts that the Crown - or some of the facts,  
not all of them. If the Crown establishes them  
through the witnesses we consider or believe that  
you must have to say these are either mere coinci-  
dences or they are not mere coincidences, they're  
20 pointers to guilt. All the offences occurred  
during Mr. Legere's period at liberty. All the  
offences occurred in a small geographical area  
from which he came and in which he was hiding  
during that time. Mr. Legere was acquainted with  
25 all four females, the Flams and the Daughneys.  
All four victims were beaten, knife marks were  
found on the faces of some of the victims and a  
knife was involved in Nina Flam's case. Fires  
were set in similar fashions and locations at the  
30 Flam and Daughney houses. A rear light bulb was  
unscrewed at the Daughney and the Smith house.  
Mr. Legere escaped wearing white running shoes and  
we have numerous views of a man in white running  
shoes that summer. Nina Flam's attacker had light  
35 brown pubic hair. Donna Daughney's jewellery was

Mr. Allman

5 sold by Mr. Legere. A man was seen outside the  
Daughney's street that morning resembling the man  
who shot at the police or near the police, and Mr.  
Legere admits having been involved with shooting  
at or near the police.

10 There was evidence of semen being found on  
Nina Flam and on both the Daughneys. Annie Flam  
was found wearing only panties which were pulled  
down. The DNA evidence shows what the odds are,  
the probabilities of the semen that was found on  
the women having been produced by somebody other  
than Mr. Legere as being - I gave you the figures  
15 a moment ago, I don't know what adjective you can  
use to describe those figures.

Father Smith's car was driven from Newcastle  
to Bathurst the evening of the killing. Mr.  
Legere caught a train from Bathurst to Montreal  
20 the self-same evening. Boots found near the car  
indicate that the killer drove that car from  
Smith's residence. The train that Mr. Legere took  
to Montreal went over a bridge. Credit cards  
belonging to Father Smith were later found under  
25 that self-same bridge.

The Crown's allegation in each case there-  
fore is that this evidence should satisfy you that  
Mr. Legere was a party to each murder. I used the  
expression, a party, and I used it deliberately.  
30 The Crown is not alleging and doesn't need to  
allege that Mr. Legere acted alone. Let me put it  
another way, the Crown is not obliged to prove a  
negative, namely that nobody else had any involve-  
ment in any of these things. Whether Mr. Legere  
35 had help from outsiders during his time at liberty

Mr. Allman

we don't know and the Crown submits it doesn't  
matter, because the question you have to ask is  
5 not was somebody else involved in some way but was  
Mr. Legere a party to these offences. I am  
emphatically not saying that somebody else was  
involved; I am saying that that isn't the question  
you have to consider. From the Crown's perspec-  
10 tive the question is was Mr. Legere involved.  
It's impossible for the Crown to prove a negative,  
how can we prove that nobody was there? You can  
prove that somebody was there but proving that  
somebody wasn't there is a - that nobody else was  
15 there, is a very difficult thing to do, so it's  
possible that during this trial you'll hear other  
names mentioned as having been suspects and you  
may hear evidence, a piece of evidence of one kind  
or another, that suggests that somebody else may  
20 have had some involvement in something. Obviously  
after a murder there are a great many suspects, I  
suppose potentially everybody is a suspect in the  
process of one weeding out, getting rid of one  
suspect, getting rid of another. The fact, if  
25 fact it is, that there were other suspects than  
Mr. Legere is neither surprising nor meaningful.  
The question that is meaningful, and it's the  
question you have to determine, is was Allan  
Legere a guilty party to count one, to count two,  
30 to count three, to count four.

If you have a reasonable doubt you should  
acquit, but if you find that the multiplicity of  
combined and mutually supporting circumstances  
are, as the Crown submits they are, virtually  
35 overwhelming, certainly sufficient in the Crown's



78

Mr. Allman

5 submission to satisfy you beyond a reasonable  
doubt of his guilt on any one or all of these  
charges, it's equally your duty to convict.

10 You all took an oath yesterday and you all  
went through a process that jurors don't always  
go through of being challenged for cause. You all  
swore that you could try this case impartially  
without prejudice or sympathy any way, and that's  
all that the Crown asks of you, that you look at  
the facts we will present rationally and free from  
sympathy or prejudice of any kind and deliver the  
15 verdict that your conscience requires you to give  
based upon that evidence and that evidence only.

Thank you very much, members of the jury.

20 THE COURT: Thank you very much, Mr. Allman. Now, the  
next step normally would be to ask the Crown to  
call its first witness if it's prepared to do  
that. We started at half-past one here this  
afternoon, and it's now ten minutes past four.  
There are some matters I would like the Sheriff  
to take up with the jury as soon as you've retired  
to the jury room and that's going to take a few  
25 minutes discussion with you or some minutes  
discussion with you to settle the matter of trans-  
portation and where you rendezvous and so on, and  
I think it would be - the Crown would not object,  
I gather, to not proceeding with a witness this  
30 afternoon.

MR. ALLMAN: No.

35 THE COURT: So I think rather than try to extend this day  
any longer, you've had a full afternoon, the rest  
of us have had a full day, you had a full day  
yesterday, a very full day, and I think it would

## The Court

appropriate if we adjourned now for the day.

5 Just a couple of little things I want to  
mention to you; one is the Sheriff will be going  
with you, and Mr. Sears here, to the jury room.  
They will not be discussing any aspect of the case  
with you, it will purely be administrative  
arrangements and so on, so don't seek any guidance  
10 from them on anything else. Mr. Sears can tell  
you whether he can supply tea or coffee or sugar  
or whatever, that's the extent of his authority.

One other thing, you know, in murder trials  
it used to be that juries were locked up and  
15 newspapers were provided them, and this is in the  
days before I started, there weren't even radios  
then or television sets, and someone, the constables  
or the Sheriff, always cut the clippings  
pertaining to a trial out of the newspapers so  
20 that when you read the Gleaner to see what had  
happened through the day you couldn't read anything  
about the case, and then of course as the  
years went along it was the custom of courts and  
the duty of courts to warn jurors not to read  
25 anything in the newspaper. If you were watching  
television or you were listening to the radio  
you ignored anything about the case. Well, that  
isn't a very practical thing today and I'm not  
even going to bother to warn you not to read  
30 because very possibly the first thing you'll be  
looking for in tomorrow morning's Telegraph will  
be to see what sort of account has been given of  
today's proceedings, I don't know, but I want to  
caution you about it. Take what you read with a  
35 grain of salt. There may be errors in it as I've

## The Court

noticed in most of the newspaper reports of what's happened in this trial so far. I'm not  
5 criticizing the newspapers or reporters or media for that, it's only human to err, and they make errors. The things that they may consider important and want to report on may not be of importance to you or to me or to any of us really  
10 connected with the trial, it may be what they think their readers want to read, so accept anything that you see in the paper or that you see on television or that you hear on the radio with a grain of salt and say, well, that's somebody else's interpretation of what's important or  
15 what's readable or whatever.

Remember, as I've warned you before or advised you before, the evidence that you're going to decide this case on is the evidence you hear  
20 here in the court room and not what you read in the newspaper or see on the television screens.

No other matter that counsel have to bring up?

MR. KEARNEY: Well, My Lord, I know I'm the new kid on  
25 the block but Mr. Allman in his conclusion referred to facts, and in an address to the jury at this stage that's a complete no-no, and I wanted perhaps a caution to be given to the jury that anything he said was not even close to being  
30 facts and that their facts are to be drawn from the evidence they hear as they go through this proceeding, but I particularly noticed that, and any time that counsel refer to evidence in the next month or two as facts, they'll be hearing  
35 from me on objections. That word can't be used

81

in a criminal trial.

THE COURT: Yes. Mr. Allman?

MR. ALLMAN: If could just speak very briefly to that,

5           Your Lordship already cautioned the jury and I  
repeated that caution that they will draw their  
conclusions from the evidence that is given in  
the witness box and that what I say in my opening  
and, indeed, what any lawyer says at any time,  
10           isn't facts, so I believe they're adequately  
warned of that. I certainly have no objection to  
you mentioning to them again.

THE COURT: Yes. Well, I will simply reiterate what Mr.

15           Allman said at the start of his remarks today, and  
that is what he says and I guess what I warned you  
about earlier, what counsel say is not evidence of  
any kind, and what you've heard, please don't go  
away from here this afternoon and say, well, we  
believe everything that Mr. Allman says so there-  
20           fore we draw certain conclusions. What Mr. Allman  
has said, and he is the first to acknowledge it,  
is not evidence of any kind. He has simply been  
outlining to you today the evidence that the Crown  
hopes to produce in this case, and if he fails, if  
25           the Crown fails to produce this evidence, well,  
there's simply no evidence for you which would  
support the Crown's case. I think that's clear to  
all of you, you understand that? Mr. Kearney,  
that explains it satisfactorily.

30           MR. KEARNEY: Thank you.

THE COURT: The Sheriff will have to decide where you're  
going to rendezvous and so on, but is 9:30 in the  
morning fair enough to start here again? That may  
require you to meet in Fredericton at, say,  
35           quarter to nine or whenever. Now, would the jury

82

be taken out, please, first?

(JURY WITHDRAWS.)

5

MR. FURLOTTE: My Lord, if I may give you a copy of the  
defendant's brief on the motion for the stay of  
proceedings and notification -

10

THE COURT: Yes. I don't know what you're talking about  
when you say a motion for a stay of proceedings.  
This is the first I think I've heard of it, is it?  
Well, I started to hear about it on December 5th  
last year, but I mean even up until our meetings  
at noon today there was no further - you said  
15 that you were making an application for severance  
today, which you did this morning, of course,  
but -

MR. FURLOTTE: This is just a copy of the notice which  
Mr. Allman agreed that I could give to you prior.

20

THE COURT: This is another application which you're  
making? Which you will be making, or -

MR. FURLOTTE: When you will set a time.

THE COURT: Oh, I see.

25

MR. ALLMAN: Do I understand you said there was a brief  
in there as well or -

MR. FURLOTTE: No, no, there's no brief.

MR. ALLMAN: What I've got is a notice of motion,  
accompanying documents, and a number of  
authorities.

30

THE COURT: This is a notice of motion that you will be  
making tomorrow? I mean I won't necessarily hear  
it tomorrow, I don't know what it is. I don't  
know what it's all about, to tell the truth, but  
you will be telling me - well, you're telling me  
35 now and you will be reiterating orally tomorrow

83

morning -

MR. FURLOTTE: I can mention it tomorrow again.

THE COURT: Yes, that you will be making an application.

5 This is not something you expect me to hear at  
9:30 tomorrow morning?

MR. FURLOTTE: Oh, no, Mr. Allman I believe has already  
advised you that he wouldn't be ready to answer  
until next week.

10 THE COURT: Well, I heard him make reference to some  
impending application today and I heard nothing  
more about it and I presumed that I would hear  
something about it but - well, leave that with  
me.

15 MR. ALLMAN: If Mr. Furlotte wants to leave those docu-  
ments with me, and he's given me copies, gave  
them to me on Monday. There's one matter in there  
that I need to some do inquiring about because it  
relates to Correctional Services of Canada, and I  
20 have no knowledge or information about it. I  
think it would take me until at least next  
Friday to be in a position to answer that -

THE COURT: Yes, a week from this Friday?

MR. ALLMAN: Yes, and I would suggest provisionally, and  
25 we'll review it from time to time provisionally  
that we hear this - if it's acceptable to Your  
Lordship, we hear this Friday morning, a week this  
Friday morning.

THE COURT: I say O.K., without knowing what it's all  
30 about, even.

MR. ALLMAN: Mr. Furlotte could leave it with you over-  
night.

THE COURT: This is an application for a stay of proceed-  
ings, I understand?

35 MR. ALLMAN: Yes.

84

MR. FURLOTTE: It's a motion, not an application.

THE COURT: Yes. I might say that we are now in a voir  
dire session, the jury are absent and we're in a  
5 voir dire and I must place the prohibition on  
publication of reference to this matter until it  
is discussed in open court.

MR. FURLOTTE: Yes.

THE COURT: So you're leaving that with me and I'll read  
10 that and I'll bring it up again in -

MR. FURLOTTE: And there's copies of the case law which I  
expect I would be referring to.

THE COURT: All right, so nothing else remains for -  
15 Sheriff, I wonder if when we adjourn here if I  
could speak with you for a minute briefly before  
you go in with the jury.

(ADJOURNED TO 9:30 a.m., AUGUST 29, 1991.)

20

25

30

35

1

0

(COURT RESUMED AT 10:35 a.m., AUGUST 29, 1991.)

(Accused in dock.)

THE COURT: Now, we'll have the jury brought in, Mr. Sears, please.

5

(Jury called - all present.)

THE COURT: Thank you. Now, the Crown, I believe, are ready to call a witness. Oh, just before you start, we'll have Mr. Sears sworn in at this point as a constable. He has been carrying out  
10 duties in connection with the jury and I think we should get this over with.

CLERK: Les Sears, do you swear that you will keep the members of this jury in some private and convenient place, that you will not allow any person to  
15 speak to them or any of them and that you will not speak to them yourself except to ask them whether they are agreed upon their verdict, so help you, God?

MR. SEARS: I will.

20

(Leslie Sears sworn as Constable.)

THE COURT: I'm just not sure how appropriate that particular oath is. That's the oath, I think, that's normally administered before the jury  
25 retires and you're going to have to talk to them about more things than that, aren't you?

MR. SEARS: I would imagine, My Lord, yes.

THE COURT: Well, you're free to do it, anyway. Mr. Sears knows his job, he's a professional and -  
30 now you have your first witness to call, Mr. Allman?

MR. ALLMAN: Yes, My Lord. Good morning, members of the jury. I'm sorry to hear that one of you wasn't very well, I hope whoever it is is feeling



2

Robert Winters - Direct

better. My first witness is Robert Winters.

THE COURT: I would like to say to the jury that I under-  
5 stand one of your members hasn't been feeling too  
well, perhaps, this morning, and if there's any  
problem at any time during the trial, even on  
short notice, if anyone wants to be relieved just  
speak up and we'll send you all out for a few  
10 minutes or however long it takes. Don't hesitate  
to speak up if you feel indisposed or want to go  
outside.

ROBERT WINTERS, called as a witness, being duly  
15 sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name and occupation?  
A. My name is Robert Winters, correctional officer.  
Q. What's a correctional officer?  
20 A. Security guard at the federal penitentiaries.  
Q. How long have you been employed in that capacity?  
A. Approximately five years.  
Q. Where do you presently reside?  
A. Bowden, Alberta.  
25 Q. On May 3, 1989, from what you tell us you would  
have been employed as a correctional officer at  
that time?  
A. That's correct.  
Q. What institution were you working in on that date?  
30 A. Atlantic Institution.  
Q. That's in Renous, New Brunswick?  
A. That's correct.  
Q. Do you know Allan Joseph Legere, the accused in  
this case?  
35 A. Yes, I do.

3

Robert Winters - Direct

Q. I understand it's not necessary for the witness to  
identify Mr. Legere, identification is admitted.  
5 When did you first become acquainted with Mr.  
Legere?

A. January that year when I reported in to work at  
Renous.

Q. Where was Mr. Legere in January, 1989?

10 A. He was in P.C., confinement, protective custody.

Q. In the Atlantic Institution?

A. Right.

Q. On May 3rd what, if anything, did you have to do  
with Mr. Legere?

15 A. I was to take him to Moncton for a medical,  
medical temporary absence.

Q. When did you do that, what time of day?

A. It was around eight o'clock, eight-fifteen, that  
we left the institution for Moncton.

20 Q. In the morning?

MR. ALLMAN: My Lord, with my learned friend's permission  
I'm going to lead a little bit here on what I  
think is non-controversial, and if I get into  
controversial areas you can certainly stop me.

25 THE COURT: That's fine.

Q. I take it you did in fact escort Mr. Legere to  
the Georges Dumont Hospital in Moncton?

A. Yes.

Q. Was there any other prison officers with you?

30 A. Yes, I had my partner there was C.O.2 Hazlett, and  
the driver, Doug Sweezey.

Q. When you got to the Georges Dumont Hospital and  
entered into the actual hospital itself what if  
anything did Mr. Legere want to do?

35 A. He wanted to go to the washroom.

4

Robert Winters - Direct

Q. And did you escort him to a washroom?

A. Yes, I did.

5 Q. When you got to the washroom door what happened as between you and Mr. Legere?

A. He went in and used the washroom, I presume. I stood outside the door after checking it and everything.

10 Q. When he went into the washroom what was his condition from a point of view of restraints?

A. He had his body belt and handcuffs on and the leg shackles on.

15 Q. What are these things, the body belt and the leg shackles and so on, made of?

A. Steel, metal. They're a shiny chain about - oh, maybe about that long, they're on the ankles, handcuffs or shackles for his ankles.

Q. And what about the body?

20 A. And the body belt is a chain that wraps around his waist, approximately eight-inch chain from the chain to the wrist.

Q. When he went into the washroom, then, I gather he had that equipment on?

25 A. Yes.

Q. What's the next thing that you knew?

A. That about approximately three minutes later that he came out with these things off.

30 Q. And what did he do after he came out with these things off?

A. He turned to me, put his hand and what I felt was a shank or a knife under my nose and told me not to chase him.

Q. And what did he do after that?

35 A. He took off running.

5

Robert Winters - Direct

Q. And I'm going to shorten this by leading questions  
for the moment. Did Mr. Legere succeed in making  
5 his escape?

A. Yes, he did.

Q. After he escaped inside the hospital did you see  
him outside at all?

A. Yes, I chased him outside and up the embankment by  
10 the old hospital, the old parking lot.

Q. Did he get away from you there?

A. Yes.

Q. In the ordinary course of events if Mr. Legere  
had - had his medical examination been completed  
15 what were you supposed to do with him?

A. We were supposed to take him right back to the  
institution.

Q. Did you?

A. No.

20 Q. Why not?

A. He escaped from me.

Q. At the time that Mr. Legere escaped how was he  
dressed?

A. He was dressed in green institutional pants, a  
25 T-shirt, green institutional parka, and white  
running shoes.

Q. You told us that you didn't see Mr. Legere again  
that day after he escaped. When was the next time  
after May 3rd that you did see Mr. Legere?

30 A. When they picked him up and brought him back to  
the institution there at the end of November.

Q. November of the same year or another year?

A. Of the same year.

35 Q. When Mr. Legere came back to the institution at  
the end of November did you make any observations

6

Robert Winters - Direct

as to his physical condition then compared with his physical condition at the time he'd escaped?

- 5 A. Yes, he had changed his appearance considerably.
- Q. When you saw him on the November occasion what was it, if anything, that you said to yourself looking at him?
- A. That I probably would never have recognized him.
- 10 Q. Why was that?
- A. Well, he had lost so much weight, his hair seemed to be shorter, he had shaved his beard off.
- MR. ALLMAN: Thank you.

15 CROSS-EXAMINATION BY MR. FURLOTTE:

- Q. Mr. Winters, you mentioned that when Mr. Legere went into the washroom he had a body belt on, handcuffs and leg shackles?
- A. Yes.
- 20 Q. What did he have on when he came out of the washroom?
- A. In regards to the restraining equipment?
- Q. In regards to the restraining equipment.
- A. He didn't have anything on.
- 25 Q. He didn't have anything on, so the body belt, the handcuffs and the leg shackles were all found later on?
- A. That's correct.
- Q. In the washroom?
- 30 A. Yes.
- Q. And what about the parka he had on?
- A. We found that up in the parking lot.
- Q. And you said he had handcuffs on that was secured to the body belt?
- 35 A. Yes, they are.

7

Robert Winters - Cross

Q. And you call it a body belt, was that a waist chain?

5 A. It's a waist chain that goes around and we lock it, we have a padlock on the back side of his -

Q. And I believe you said there was about an eight-inch chain from the waist chain to the handcuffs?

A. Approximately, yes.

10 Q. And that waist chain was also found after he escaped?

A. Yes.

Q. Now, you mentioned when Mr. Legere was returned to the Atlantic Institute that he appeared much smaller and he lost a lot of weight?

15 A. That's correct.

Q. How much did Mr. Legere weigh when he escaped?

A. I believe around 190, 200 pounds.

Q. Two hundred pounds, and he was a pretty big, husky man?

20

A. Yes.

Q. Do you know how tall Mr. Legere is?

A. I believe he's around five-eleven, something like that.

25 Q. You wouldn't have described Mr. Legere as slight at the time of his escape?

A. What do you mean, thin?

Q. Slight build?

A. No, he was in good muscular shape.

30 MR. FURLOTTE: No further questions.

THE COURT: Any re-examination, Mr. Allman?

REDIRECT EXAMINATION BY MR. ALLMAN:

Q. When you were talking about Mr. Legere as being -  
35 I think the word you used was - or my learned

5 used was big and husky. Are you referring to any particular portion, the upper, the lower, or the whole body or what?

A. He just appeared to me that he was -

10 MR. FURLOTTE: My Lord, I believe the Crown covered that in direct examination when they asked what his appearance was when he escaped and what his appearance was when he returned to the institution. It's an area that was already covered.

THE COURT: I think your objection is well taken.

15 MR. ALLMAN: I think Mr. Furlotte went into it in some more detail and I was simply seeking to clarify a matter that Mr. Furlotte went into, but I'm not going to press the matter.

THE COURT: No, the witness, I think, has already answered, actually. I take it you're not prepared to comment any further on that?

20 A. No, I'm O.K. right there.

THE COURT: All right, fine. That's the end, thank you. As far as the release of witnesses goes, unless counsel want them to remain I think we'll make a blanket order that witnesses may retire and go  
25 their own way once they've concluded their evidence. That will not apply, of course, to witnesses who are subject to recall at some later stage of the proceedings, so you're free to go, Mr. Winters. Thank you very much for coming.  
30 Witnesses are free to stay and listen to the rest of the proceedings if they wish.

MR. ALLMAN: My Lord, Mr. Furlotte has mentioned a matter to me which I think he wants to raise in the presence of the jury. I think it should be raised  
35 in the absence of the jury. Perhaps we could run

Voir Dire

it by you and see what you think.

THE COURT: You mean with the jury present or -

5 MR. ALLMAN: No, I'd like you to hear it and then decide  
whether it's a matter that you should hear or a  
matter that the jury should also hear.

THE COURT: Oh, well, can you sort of condense it, Mr.  
Furlotte, at the present time?

10 MR. FURLOTTE: Well, My Lord, basically I wish -

MR. ALLMAN: I'd sooner he didn't because if he condenses  
it the jury get to hear it.

THE COURT: Well, how am I going to hear it unless he  
tells me?

15 MR. ALLMAN: We send the jury out, he tells you what he  
wants to say, then you rule whether he can say  
it in the presence of the jury.

THE COURT: Oh, what you're doing, then, is requesting  
that the jury go out now?

20 MR. ALLMAN: Yes.

THE COURT: Would you retire just for a few minutes?  
We'll bring you back in a few minutes, probably.

(JURY WITHDRAWS.)

25

THE COURT: Well, we're in a voir dire session again now  
with the jury out and you have some point, Mr.  
Furlotte, you wanted to raise?

30 MR. FURLOTTE: Well, My Lord, I wanted to make another  
motion for an adjournment and I didn't feel that  
that's a matter that could not be heard in front  
of the jury. Basically I feel that if Mr. Legere  
has grounds for a motion for an adjournment or -  
yes, grounds on the motion for an adjournment due  
35 to the fact that the defence is not prepared for



10

Voir Dire

trial, I believe the jury has a right to know  
whether or not the defence is fully prepared  
5 whenever they have to weigh the evidence at the  
end of the trial. I think it's one thing that  
they ought to be able to take into consideration  
when weighing the evidence and therefore if they  
don't know that I am going through a trial  
10 unprepared, then they don't know how much weight  
to put on the evidence.

THE COURT: Well, you're making an application to me now  
for an adjournment, are you?

MR. FURLOTTE: And I'd like to do it in front of the jury  
15 and Mr. Allman feels that -

THE COURT: Well, make it to me now.

MR. FURLOTTE: You're saying it's a matter that the jury  
should not be aware of?

THE COURT: Well, I'd like to hear your reasons. If  
20 there's some explanation I have to give to the  
jury later, I will give it to them.

MR. FURLOTTE: Well, My Lord, basically the reasons are  
the same as on July 26th when I brought a motion  
before you for an adjournment, that Mr. Ryan was  
25 unable to continue with this case for health  
reasons, that Mr. Ryan and myself had divided the  
workload up between us, that I was going to handle  
the DNA aspect of the trial, I was also going to  
handle the cross-examination of police witnesses.  
30 Mr. Ryan had basically five functions. He was to  
prepare a Federal Court application, he was to  
handle the motion for a stay of proceedings, and  
he was to handle the motion for a severance of  
counts. Besides that, Mr. Ryan was to handle and  
35 prepare for cross-examination all civilian

11

Voir Dire

witnesses. The last thing that Mr. Ryan was to  
accomplish was we were going to plan on calling  
5 defence witnesses, somewhere in the range of maybe  
a dozen witnesses which he would have had to go  
out and interview those witnesses and prepare  
those witnesses and the defence. Unfortunately,  
Mr. Ryan took ill and after himself being on the  
10 case for approximately six months there was six  
months wasted, I suppose, in the sense that Mr.  
Legere is concerned, that six months went by the  
wayside where a solicitor was supposed to be  
working on his behalf and unable to do so, so  
15 therefore that portion of the trial is - I can't  
say it's totally unprepared today because since  
that time I have been able to - I have been  
forced to drop the areas that I was to be working  
in and that was part of the DNA, I had planned to  
20 go to Ottawa for a week to search the R.C.M.P.  
data base. I was unable to do that because I had  
to take on more important functions that Mr. Ryan  
was supposed to handle, and those being the  
application to the Federal Court, the motion for  
25 a stay of proceedings which at that time when I  
spoke to you on July 26th I thought it would take  
about two weeks. It actually took me about three  
weeks to prepare it, and then the motion for the  
severance of counts which you can judge today was  
30 not very well presented to the Court yesterday,  
because I simply didn't have time to do it.

Aside from that -

THE COURT: I think you did it perfectly well. You said  
everything that you possibly could have said about  
35 severance. What more could you have said about

12

Voir Dire

severance?

MR. FURLOTTE: I don't know since I didn't have time to  
5 do very much research on it.

THE COURT: Well, I can tell you I've heard numerous  
severance applications before in my career and I  
can't think of any argument that might have been  
used that you didn't argue. In fact, you devel-  
10 oped a couple of new and ingenious arguments that  
I hadn't heard before.

MR. FURLOTTE: Well, bully for me, then. Aside from  
that, we are starting a trial with a lot of  
civilian witnesses, and I didn't have time to get  
15 into the - to prepare for the cross-examination of  
civilian witnesses that Mr. Ryan was supposed to  
do, and I know Mr. Kearney is on stream now and I  
went to Moncton last night and I gathered up the  
extra copy of police briefs that Mr. Ryan had in  
20 his possession, I've delivered them to Mr. Kearney  
this morning. Hopefully he's going to spend all  
the long weekend going through those to familiar-  
ize himself with the case, but there's no way that  
he has time to begin preparation for cross-exam-  
25 ination of the civilian witnesses.

Basically, for the record, we are not  
prepared for trial, and therefore there's no way  
that I can give Mr. Legere full answer and defence  
by myself. This trial, it's a lot more work  
30 involved in it than what I had originally thought  
when I took on the case, and at that time I  
believe I informed the Court on December 5, 1989,  
that - I was informed at that time it would  
probably take about six months to prepare for  
35 trial. We're beyond that six months. Neverthe-

13

## Voir Dire

less there's a heck of a lot more work involved in  
this case than I realized and probably even the  
5 Crown realized. Under those circumstances, and  
I'd just like to remind the Court where on  
December 5th you thought at that time and the  
Crown thought at that time that it was absolutely  
necessary for me to have co-counsel, that I could  
10 not handle this all by myself, and I will confirm  
your suspicions that I cannot handle this all by  
myself and it's just beyond me, so I would ask the  
Court for an adjournment to give Mr. Kearney time  
to -

15 THE COURT: You want to adjourn until next January, is it  
I understand?

MR. FURLOTTE: I advised the Court on July 26th that I  
felt it would take at least two months for  
co-counsel to work on his side, at least two  
20 months full preparation, and maybe three for  
that person, and I asked for the adjournment on  
the 26th. I believe you knew I was going to be  
requesting the adjournment on the 26th before we  
actually appeared in court. It's all in the  
25 transcript as that record and I just don't know  
why the adjournment was refused on that date, but  
for the record, I believe you mentioned you hoped  
that I could catch up on what Mr. Ryan was doing  
in the next month and be prepared for trial when  
30 it starts, and I want it for the record that I  
have not been able to do that and I have not even  
been able to come close to what Mr. Ryan was  
supposed to accomplish. Basically for the  
record, we are not fully prepared for trial, and  
35 in my opinion it would take at least two months

14

Voir Dire

5 for Mr. Kearney, and maybe three, and it would  
take at least another month now for me to catch up  
on what I was supposed to do, because I had to  
drop what I was doing in order to pick up the more  
items of priority that Mr. Ryan was supposed to  
accomplish.

THE COURT: Mr. Allman?

10 MR. ALLMAN: My Lord, there are two separate issues, and  
I want to divide them. The first issue is the  
merits of the application for the adjournment  
itself. The adjournment, as Mr. Furlotte frankly  
states, is the same application that he made on  
15 July 26th. Nothing additional has been added to  
it and therefore I don't propose to get into the  
merits. He repeated his position today and I  
would simply repeat the position that we adopted  
back in July.

20 I do have one suggestion to make, and it's  
only a suggestion. As Your Lordship knows, this  
week has gone rather quicker than we thought and  
we don't have an abundance of witnesses available.  
In addition, Mr. Furlotte served me with a notice  
25 of motion regarding abuse which I'm going to have  
to do a certain amount of legal research on, plus  
I have to interview a couple of witnesses about  
it. Saturday, Sunday and Monday are off anyway.  
What I was going to suggest just as a thought is  
30 this, perhaps if we want to we could adjourn now.  
We could come back next Friday to argue the abuse  
point. We could resume the trial proper depending  
on your ruling on the abuse point on a week on  
Monday. That would give Mr. Kearney, including  
35 today, eleven days. Now, I know that's not as

## Voir Dire

much as Mr. Furlotte would like, but it's some-  
thing, and I know Mr. Kearney's a quick study,  
5 he's an ex-Crown Prosecutor so they all are, but  
I just throw that out for an idea. I would  
certainly be opposed to a two or three-month  
adjournment at this stage.

The second issue is Mr. Furlotte's wish to  
10 restate this application in the presence of the  
jury. In my submission the question of whether an  
adjournment should or should not be granted is a  
legal question, it's a question for the judge.  
It's of no concern to the jury. The jury is  
15 concerned with the evidence, the facts, and the  
objects produced. Counsel's problems are not the  
jury's concern, so I would ask you to make a  
ruling on the adjournment either to refuse it or  
to grant it till Monday, a week Monday, on the  
20 basis I indicated and not to get into that matter  
in the presence of the jury.

THE COURT: Mr. Allman, may I ask you this. You had -  
when we concluded yesterday afternoon I met with  
all counsel. There was no indication at that time  
25 of any motion of this type being made. You indi-  
cated in the presence of counsel for the defence  
that you had six civilian witnesses, one of whom  
I suppose was Mr. Winters, whom you were prepared  
to call today. There were two R.C.M.P. witnesses  
30 listed early on and you had not anticipated that  
the jury selection would be completed and you  
indicated they might not be ready until Tuesday,  
and the arrangement was made at that time that we  
would go ahead, hear the six civilian witnesses  
35 today and tomorrow if necessary, although I

16

Voir Dire

5 believe Mr. Furlotte even indicated that he might  
not have too much cross-examination of some or all  
of those witnesses and they might be concluded  
even within three hours, I think was the  
expression used.

MR. ALLMAN: That's all perfectly correct, subject to one  
minor correction, two of them are police officers,  
10 but not -

THE COURT: But you have these people -

MR. ALLMAN: They're all here, we can proceed with those.  
Incidentally, and while we're on that topic, Mr.  
Kearney doesn't have to be here today. I don't  
15 suppose he's going to take any part in dealing  
with those witnesses.

THE COURT: Defence counsel, when were they made aware of  
the nature of the testimony of these witnesses who  
are being called that you have lined up now?

20 MR. ALLMAN: With regard to the remaining five witnesses,  
I except Mr. Winters because he's already dealt  
with, my understanding, and I could be corrected  
on this, is that their statements and their will-  
says were in the briefs delivered to Mr. Furlotte  
25 on December 5th.

THE COURT: December 5th what year?

MR. ALLMAN: 1990.

THE COURT: 1990, that's seven months ago, eight months.

MR. ALLMAN: Nine.

30 THE COURT: Nine months.

MR. ALLMAN: But you know, I do understand Mr. Furlotte's  
problem, that's why I mentioned the compromise  
suggestion as a possibility of doing something  
like adjourning till a week on Monday and dispos-  
35 ing of the abuse argument in the meantime, but

17

Voir Dire

5 from our technical position, I've got six  
witnesses here today, we can deal with them. I  
could get a couple more tomorrow if you wanted and  
I don't want it to be suggested that we're not  
ready. We are ready.

10 THE COURT: What is the nature of the evidence that these  
witnesses will - these other five witnesses that  
you have, are they all short like Winters?

15 MR. ALLMAN: From the Crown's perspective they're all  
short. They're all the people who discovered the  
fire in the Flam residence and got involved in the  
immediate aftermath, getting Nina Flam out and  
that kind of thing. From the Crown's perspective  
they're going to be short. Mr. Furlotte has been  
good enough to agree that he's going to try and  
give me some indication of how long he thinks he  
will be with each witness because of scheduling  
20 problems, and he told me that regarding four of  
them he expects to have only a question or two to  
ask of them, so four of them will be short. One  
of them, Corporal Dickson, Mr. Furlotte mentioned  
to me that there were some questions that he would  
25 want to ask Corporal Dickson which have nothing to  
do with our line of inquiry to Corporal Dickson.  
Those questions, I think, would have to be  
reviewed by you before to see if they could be  
asked in the presence of the jury, so he might  
30 take a little longer because of that complication.

THE COURT: You mean a voir dire would be required in his  
case?

35 MR. ALLMAN: Yes, the questions that Mr. Furlotte wants  
to ask of that witness, some of them at any rate,  
we feel might be improper, and at that stage, so



18

Voir Dire

5 we'd call him, we'd give his examination in chief, Mr. Furlotte would ask any regular questions, if I can use that expression, and then when he indicated that he wanted to come onto this line of questioning that we feel might not be appropriate we'd have to resolve into a voir dire and determine if he's right or if I'm right about those questions.

10

THE COURT: Do you have any comment to make on any of these points, Mr. Furlotte, without reiterating what you've said before?

15 MR. FURLOTTE: Well, basically the witnesses that Mr. Allman has scheduled for today, you know, as a quick study of the witness list and the evidence that they have to offer, I don't think there would be any prejudice to the accused if they were to be heard today. I don't think they're witnesses that any solicitor, defence solicitor, would need a lot of preparation for. The evidence that they'd have to offer is not damaging to the accused, so therefore I would have no objections to the Crown finishing the witnesses that they have lined up for today.

20

25

THE COURT: Well, let's proceed with these witnesses today and I will make a ruling at the conclusion of their evidence as to where we go from here. I don't think this is an appropriate matter to be discussed in front of the jury. I'm not going to have a long hassle over this in front of them. Would you bring the jury back, please?

30

Just before you do, with regard to the Corporal Dickson of the municipal police force, is it -

35

19

Voir Dire

MR. ALLMAN: Yes.

THE COURT: If we have a voir dire on him - well, we'll  
5 play this by ear. I was going to say we could  
perhaps bring him back later to conclude but we  
better try to get rid of him today if we can. How  
long do you see, assuming that Mr. Furlotte, as he  
says, will not have too much cross-examination  
10 perhaps of these particular witnesses, in any  
event, how long is this likely to take, Mr.  
Allman?

MR. ALLMAN: Well, I've got one more witness before we  
come to the slightly controversial Corporal  
15 Dickson, which is Harry Preston, and I don't  
think Mr. Preston will be more than 20 minutes,  
half an hour, and then Corporal Dickson, from my  
point of view, will again - Mr. Furlotte is  
suggesting that maybe I could put Corporal  
20 Dickson to the end of the day. I don't mind.

THE COURT: Why not do that, why not call your other ones  
and get them out of the way?

MR. ALLMAN: Yes. Then there will be a minor change in  
the witness list order that Your Lordship's got.

THE COURT: Yes. Well, as far as I'm concerned there's  
25 no compulsion on the Crown to call witnesses in  
the chronological order listed. You've undoubt-  
edly given some thought to it to try to maintain  
your chronological description of the events, but  
30 I have no objection to your departing from that at  
any time.

MR. ALLMAN: Thank you very much. In that case we'll  
proceed with all the other witnesses and then  
we'll come to Corporal Dickson at the appropriate  
35 time.

20

Harry Preston - Direct

(Jury called - all present.)

5 THE COURT: Now we'll go on with the second witness.

HARRY PRESTON, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

- 10 Q. Could you state your name, please?  
A. Harry Preston.  
Q. And whereabouts do you live, Mr. Preston?  
A. Newcastle.  
Q. Newcastle here in New Brunswick?  
15 A. Yes.  
Q. I want you to take your mind back, please, to the 29th of May, 1989. Tell us what you were doing in the morning of that day.  
A. I was coming home from a girl -  
20 Q. Could you keep your voice up a little bit, please?  
A. I was driving home at ten to four and I seen the smoke come out around the roof of Mrs. Flam's building.  
Q. I'm going to stop you there and we'll take this  
25 thing a little more slowly. You were driving home at about ten to four in the morning?  
A. Yes.  
Q. O.K., so what street would you be driving on?  
A. Main, I -  
30 Q. In what town?  
A. In Chatham.  
Q. That's in Northumberland County, New Brunswick?  
A. Yes.  
Q. And you mentioned something, you said it was  
35 called Flam's Store?

21

Harry Preston - Direct

- A. Yes.
- Q. What's - or what was Flam's Store?
- 5 A. It was a grocery store.
- Q. Do you know who ran that store?
- A. Mrs. Flam ran it, as far as I know.
- Q. Do you know what her first name was?
- A. Annie, I believe.
- 10 Q. Had you ever been in that store?
- A. Yes.
- Q. How long, to your knowledge, had that Flam's Store been run by Annie Flam at that location?
- A. All my life, as far as I know.
- 15 Q. And how old are you?
- A. Forty years.
- Q. What sort of store is it?
- A. Just a kind of a little convenience store.
- Q. So as you drove by what was it you observed in relation to the store?
- 20 A. I seen the smoke coming out the eaves.
- Q. The eaves would be where?
- A. The top of the roof.
- Q. The street that you drive by, which side of the Flam store is that, front, back side?
- 25 A. Front side.
- Q. When you saw smoke coming out of the eaves what did you proceed to do?
- A. I went up the street and I stopped and I tried to get in the door and I couldn't.
- 30 Q. Which door did you try to get in?
- A. The front door.
- Q. And how did you try?
- A. I just tried to haul the screen door open and it was locked.
- 35

22

Harry Preston - Direct

Q. When you couldn't get in the front door what did you do?

5 A. I got back in my vehicle, I went to look for a phone booth, and I seen the police car driving through town so I followed him down to the police station and reported it.

10 Q. How far away from the Flam store was it when you encountered this police car?

A. About a quarter of a mile.

Q. And you said that you'd initially been driving by at ten to four in the morning. How long a period of time had passed before you met up with the police car?

15

A. About five minutes, probably.

Q. Who did you encounter in the police car?

A. Bill Dickson.

Q. You knew this Mr. Dickson, did you?

20

A. Yes.

Q. What's his position, what's his job?

A. He's a police officer.

Q. Police officer?

A. Yes.

25

Q. In that area?

A. Yes.

Q. I take it, then, that you had a conversation with Corporal Dickson?

30 A. I just reported the fire to him and that was pretty well all that was said.

Q. After you'd reported the fire to Corporal Dickson what did he do and what did you do?

35 A. He got the firemen, or his partner ran in and got the firemen, and I followed him back up to the building and we got out and they were there ahead

23

Harry Preston - Direct

of me, we went to the back door -

5 Q. I'm sorry, you've got a rather deep and rather low voice. Could you just say all that again slower and louder?

A. I followed him up to the building and the police officers were there when I got there again so one policeman went to the front door and the other  
10 went to the rear, so I went to the rear door with the policeman and he -

Q. You went to the rear door on this occasion?

A. Yes.

Q. With this policeman?

15 A. Yes.

Q. Was this Corporal Dickson or another policeman?

A. It was another policeman.

Q. And what happened when you and the other policeman went to the rear door?

20 A. He booted the door in and we went in the building and -

Q. So you'd entered into the building, you and the policeman, through the rear door?

A. Yes.

25 Q. Tell us what happened after you got into the building.

A. It was full of smoke and stuff and it was hard to see so we looked around and we found an older lady in the room downstairs and we helped her out to  
30 the police car.

Q. Let me stop you there. The older lady that you encountered when you had gone in through the back door, which room did you encounter her in, do you know?

35 A. I couldn't tell you, sir.

24

Harry Preston - Direct

- Q. Which floor was it on?
- A. On the bottom floor.
- 5 Q. Was this Annie Flam or some other lady?
- A. It was some other lady, I guess.
- Q. Did you know the other lady?
- A. No, sir, I didn't.
- Q. What condition was the lady that you encountered
- 10 in?
- A. Well, it was really hard to say because she was  
tore up and stuff and her clothes were tore up.
- Q. Apart from observing that her clothes were tore up  
did you have a chance to make any other observa-
- 15 tions as to her physical condition or not?
- A. No.
- Q. So what happened after you and the police officer  
encountered this lady?
- A. Well, we went to the front and the fire truck was
- 20 there and then I more or less just stood back then  
with the crowd, across the street.
- Q. So basically after encountering the lady in the  
house did that really end your involvement,  
active involvement?
- 25 A. Yes.
- Q. When you were driving down the street and you  
noticed the smoke you said it was coming from the  
eaves. Was there any particular part of the  
eaves?
- 30 A. Right at the peak on the downtown part of the  
house.
- Q. If you were standing across the street looking at  
the front of the Flam store, O.K., just visualize  
that, where would the smoke be coming from, your
- 35 left, your right, the middle?

25

Harry Preston - Direct

A. It would be coming from my left on the top.

Q. The top left as you're standing across from it.

5 In the time that you were driving down before you noticed the smoke and then in the time that you were around after that did you observe anybody else in the neighbourhood?

A. No, sir, I didn't.

10 Q. Which direction had you been coming from?

A. I had been coming from downtown.

Q. In relation to the Centennial Bridge, is it?

A. Yes, I was going towards -

15 Q. Were you going away from or towards the Centennial Bridge?

A. I was going towards it.

Q. Towards the Centennial?

A. Yes.

MR. ALLMAN: Thank you.

20 THE COURT: Cross-examination, Mr. Furlotte?

MR. FURLOTTE: No questions.

THE COURT: Thank you, Mr. Preston, you're free to go if you wish. Thank you very much. Another witness?

25 MR. ALLMAN: My Lord, for reasons you know I'm going to put the next two witnesses a little bit - my next witness is Tony Lloyd.

TONY LLOYD, called as a witness, being duly sworn, testified as follows:

30 DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name, please?

A. Anthony Michael Lloyd.

Q. What town do you live in, Mr. Lloyd?

A. Chatham.

35 Q. That's in Northumberland County, New Brunswick?



26

Tony Lloyd - Direct

- A. Yes, sir.
- Q. And did you live there on the 29th of May, 1989?
- 5 A. Yes, sir.
- Q. What's your occupation?
- A. I'm a firefighter.
- Q. And were you a firefighter on the 29th of May, 1989?
- 10 A. Yes, sir.
- Q. Tell us what happened that day that relates to the matter we're now discussing.
- A. On May 29, 1989, I was working at the Chatham Fire Department and at approximately 4:05 a.m. Constable Danny Pugh came running in the fire station stating that there was -
- 15 Q. Let me just stop you there. O.K., what was Mr. Pugh concerned about, or Constable Pugh concerned about?
- 20 A. That there was a fire at Annie Flam's store.
- Q. Did you know where Annie Flam's store was?
- A. Yes, sir.
- Q. Where was it?
- A. On Water Street.
- 25 Q. How far away is that from the Chatham Fire Department?
- A. It's probably quarter of a mile to her store.
- Q. I gather from what you say you were already familiar with Annie Flam's store?
- 30 A. Yes.
- Q. What sort of store was it?
- A. It was a grocery store.
- Q. Do you know how long Annie Flam had been running that store at that location?
- 35 A. As long as I can remember, sir.

27

Tony Lloyd - Direct

Q. Do you know if anybody else had anything to do with that store?

5 A. I believe Annie's sister was in that same building. There was a house adjoining that store.

Q. When you got the report from Constable Pugh what did you proceed to do?

10 A. I was upstairs at the time, I went downstairs, I called in a standby operator, which is procedure. I paged other firefighters to respond to the fire and I left with red one, our #1 fire truck.

15 Q. Your told us it was only a quarter of a mile, I take it that it would take you no great time to get there.

A. No, sir.

Q. When you got there what did you see?

A. There was smoke coming out of the eaves of the building.

20 Q. Any particular spot or -

A. Basically it was just the roof area, the eaves. I didn't pinpoint any location.

Q. Tell us what happened after that.

25 A. I noticed that Corporal Dickson was standing on the steps with a lady which I figure - I found out when I landed that it was Mrs. Flam, Nina, I believe is her name, and there was - excuse me - he was standing on the steps and Constable Pugh pulled up with the police car in front of me when  
30 I stopped. I got out and I asked if anybody else was inside and he said that Annie was to be found in a bedroom upstairs and that I would need a B.A. in order to get into the upstairs area.

35 Q. For the benefit of those of us who are not firefighters what's a B.A.? Not a degree, I take it?

28

Tony Lloyd - Direct

- A. No, it's a breathing apparatus, self-contained breathing apparatus.
- 5 Q. So you needed a breathing apparatus to get up to the bedroom where you believed Annie Flam was to be?
- A. Yes.
- Q. So what did you do then?
- 10 A. Put on the B.A. and Constable Pugh informed me that he had the back door into the building open and I went back with him and he said he would go with me as far as he could because of the smoke.
- Q. What was the problem with him going with you?
- 15 Did he have a B.A.?
- A. No, he didn't, he was just in his uniform.
- Q. So you with your B.A. and the other gentleman without the B.A., what did you do?
- A. We went in the back door and he directed me to the
- 20 stairs that was going upstairs. He said he'd stay there as long as he could. I went up the stairs and when I got to the top of the stairs it was total blackness, I couldn't see where I was going, so I was crawling and I found a door on the left
- 25 when I went up. Then I went in and it was a bathroom, so I - or excuse me, on the right. I came back to the stairwell and asked him, I said, "Did you say the bedroom was on the right", and he said yes, and I also regrouped and started the search
- 30 again. I then proceeded - checked the bathroom area out and proceeded. I kept running into walls, I did not know the layout of the building upstairs, I couldn't see. By this time another firefighter had joined me and I told him to stay
- 35 at the stairs because I didn't know, again, the

29

Tony Lloyd - Direct

layout of the building, and I wanted to check the  
bedroom, find the bedroom and check for Mrs. Flam.  
5 I then proceeded to a bedroom. He came with me,  
we both checked the bedroom. We couldn't find  
anybody in the bedroom under the beds or anywhere.

Q. You told us a bit earlier that as you're going  
through the bathroom, these bedrooms and the  
10 landing, how far in front of your face can you  
see?

A. I can't see, there's no possible way to see in  
them.

Q. So how are you looking for things?

15 A. With your hands, your feet, whichever you can at  
the time, whatever you can use.

Q. But you mentioned that you looked in a bedroom,  
and using then, I take it, your hands, feet,  
whatever, you didn't find what you were looking  
20 for?

A. Yes.

Q. Just go on from there.

A. While we were in the bedroom the door closed and  
the other firefighter and I both got stuck in  
25 there for a time and we searched the room again  
for the second time because we were concerned  
looking for the victim. We found the window and  
I knew it was our exit if we had to get out, but  
then at the same moment he found the door. We  
30 went out and I said - I could feel the heat, it  
was getting hotter and hotter, I couldn't touch  
the walls, and I said, "It's no place for us to  
be right now without any lines". We couldn't see  
any fire at the time but -

35 Q. And you were upstairs at this time?

30

Tony Lloyd - Direct

A. Yes, sir. We couldn't go down any of the halls  
coming out, going to the stairwell. We couldn't  
5 get down the halls because of tables and books and  
the storage stuff that they had in the halls  
areas, so I said, "We can't find anybody, we'd  
better go down". We went down the stairwell which  
I thought was the same stairwell but apparently it  
10 was the front stairwell and basically rolled out  
the front door that the other firefighters had now  
arrived on the scene and proceeded to open that  
door.

Q. Do I gather from what you're saying that it was  
15 only when you realized you were coming out the  
front door that you'd realized you'd gone down the  
other stairs?

A. Yes. Yes.

Q. So after you'd gone down and come out the front  
20 door what did you do then?

A. I then, as procedure, I'm responsible for the  
fire truck so I then took over control of the fire  
truck, took off my B.A., and continued - or took  
control of laying lines and getting water supplied  
25 to the fire.

Q. Now, then, we're into a phase when you're not in  
the house and you're looking after firefighting,  
do I have that right?

A. Yes, sir.

30 Q. What did you notice about the fire while you were  
in the process of trying to put it out?

A. The fire, it had - when we came to the point that  
you get reports from your officers that it's time  
to ventilate, that the fire is burning and you  
35 just can't get at it, that it's time to get the

31

Tony Lloyd - Direct

smoke out of there so you can find the fire -

Q. Is that what to vent means?

5 A. To vent is to open up the roof to let all that smoke, all the poison gasses type thing so that your firefighters can do the job, so we decided to vent the roof and we put up the ladders and at that time the fire came up through the roof so it  
10 already vented itself.

Q. Which part of the building, which side of the building, did the fire come up through when you got around to this venting process?

A. When it came to venting it was on the store side  
15 of the building that the fire came up through.

Q. Was the fire - was the situation the same throughout the building in terms of this fire or was it different in one part from another part?

A. As the fire progressed it seemed to be in the  
20 store side and I had not seen any fire on the other side, the house side of the - in my encounters.

Q. I gather from what you told us a moment ago that through the difficulties you had you never did in fact succeed in finding the person you were  
25 looking for inside the upstairs part of the building?

A. No, sir, I didn't.

Q. Did you see if anybody else found that person?

30 A. Later on as again I was at the controls of the fire truck and later on I was informed that a victim had been found in the bedroom upstairs.

Q. But I gather you didn't actually see that yourself?

35 A. Later on, after I asked one of the police

32

Tony Lloyd - Cross

officers if I could go up with him to have a look  
and find out - to just verify in my mind that I  
5 didn't overlook this bedroom where I didn't - and  
that was it.

MR. ALLMAN: I understand why you would want to do that.

Thank you.

THE COURT: Cross-examination, Mr. Furlotte?

10

CROSS-EXAMINATION BY MR. FURLOTTE:

- Q. Mr. Lloyd, when you said you went upstairs looking  
for Annie Flam's bedroom, who was it that went  
with you?
- 15 A. Pardon me, sir?
- Q. Who was it that went with you?
- A. When I went upstairs?
- Q. Yes.
- A. The police officer came to the stairs, he didn't  
20 go upstairs with me, I went up myself.
- Q. You went up yourself?
- A. Yes, sir, and later on another firefighter joined  
me in the search.
- Q. O.K., and who told you where the bedroom was?
- 25 A. The police officer, Constable Danny Pugh, told me  
that -
- Q. James Pugh?
- A. Yes, sir.
- Q. Who is Danny, was there somebody there with you  
30 named Danny?
- A. Danny?
- Q. Yes.
- A. Constable Danny Pugh.
- Q. Danny Pugh?
- 35 A. Yes, sir.

33

Frederick Petrie - Direct

MR. FURLOTTE: I have no further questions.

MR. ALLMAN: No re-examination, and I'm advising all the  
5 witnesses, or through the coordinator, that they  
can leave unless otherwise indicated.

THE COURT: Thank you, Mr. Lloyd, and you're free to go  
if you wish. Now, another witness?

10 FREDERICK PETRIE, called as a witness, being  
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name?  
A. Frederick Petrie.  
15 Q. What town do you live in, Mr. Petrie?  
A. Chatham, New Brunswick.  
Q. Were you living there on the 29th of May, 1989?  
A. Yes, I was.  
Q. What is your occupation?  
20 A. I'm the Assistant Director of the Chatham Area  
Ambulance Service.  
Q. On the 29th of May, 1989, did you have occasion  
to do anything in your capacity as an ambulance  
person?  
25 A. Yes, I did.  
Q. Tell us about that.  
A. We received a call approximately six minutes  
after four in the morning advising us that there  
was a fire at Annie Flam's store. We responded.  
30 Q. Let me stop you a moment. Did you need any more  
information than that? I mean did you know where  
Annie Flam's store was?  
A. Yes, I did.  
Q. Where was it?  
35 A. It's on Upper Water Street near the corner of



34

Frederick Petrie - Direct

Lobban Avenue.

- 5 Q. How long, to your knowledge, had Annie Flam been running that store at that location?
- A. Well, I've known about the store being there since I was about seven or eight years of age so that's about thirty-some years.
- 10 Q. Do you know if anybody else had any involvement in that store besides Annie Flam?
- A. Her husband before her.
- Q. When you received the call at 4:06 what did you proceed to do?
- 15 A. I got my partner up and the two of us got dressed and responded and we left the building at about nine minutes after four and arrived at the scene at about ten minutes after four.
- Q. What did you find when you got to the scene?
- A. When we arrived at the scene we found Nina Flam sitting in the back seat of the Chatham Town Police car and -
- 20 Q. Who's Nina Flam? Did you know then who she was?
- A. I knew her by face only, not really well, you know. I knew who she was but that's about it.
- 25 Q. Who was she?
- A. She's a sister-in-law, I believe, of Annie's.
- Q. So you arrived on the scene and you found this lady, Nina Flam, in the back seat of a Chatham police car?
- 30 A. Chatham police car, and she had something wrapped around her, I can't remember now whether it was a police jacket or a blanket, but it was something along that line and you could tell just from the way it was positioned that obviously she was still
- 35 in, you know, her nightclothes, this sort of

35

Frederick Petrie - Direct

- 5 thing, so a quick check by us showed that she was having some breathing difficulties and that she obviously had some burns, so we put her on the stretcher, gave her some oxygen, and transported her to the hospital.
- Q. The burns that you observed were on what part of her body?
- 10 A. We couldn't really see any, we just knew they were there from as we were examining through the clothing we were getting, you know, response.
- Q. Response from her?
- A. From her, yes.
- 15 Q. What was the situation about the house?
- A. The building was on fire. Didn't really notice too much of that because we kind of concentrate our efforts to the patient when we get to a scene, you know.
- 20 Q. So you put her on a stretcher, I think you said, and gave her some -
- A. Gave her oxygen.
- Q. Oxygen to assist her in breathing?
- A. Right.
- 25 Q. And you took her where?
- A. And we took her up to Hotel Dieu Hospital and we arrived there somewhere in the vicinity of quarter after four, somewhere before that, I believe.
- Q. After you got to the hospital where did Nina go?
- 30 A. We took her immediately to the outpatients department and turned her over to the nurses there.
- Q. After that what did you proceed to do?
- A. We then returned to our ambulance building for a minute or two and got a few - you know, straight-
- 35

36

Frederick Petrie - Direct

ened up our stretcher and then headed back down to  
the fire scene to stand by at the scene in case  
5 there were any injuries to any firefighters or  
bystanders or whatever.

Q. Were there?

A. No.

Q. Did you have anything else to do?

10 A. No, we didn't.

Q. Now, after you had finished at the fire scene what  
was the next thing you did?

A. 7:00 a.m. I returned to the building and as the  
Assistant Director I then had to get - I was  
15 directed to call in a crew to transport Nina Flam  
to the Dr. Everett Chalmers Hospital in  
Fredericton.

Q. Going back for a moment, you told us that when you  
first encountered Nina Flam and then you dealt  
20 with her thereafter, I think you mentioned that  
she appeared to be wearing some sort of garment.  
What was it?

A. Yes, she had - like I say, it was either a coat or  
a blanket, I'm not sure which. I believe it was a  
25 policeman's coat, actually, and it was just -

Q. Were you able, either at the scene or in the  
course of the journey, to see if she was wearing  
any of her own clothing?

A. No, when we got her in the vehicle - as soon as we  
30 got her in the ambulance we covered her with a  
blanket and then allowed the coat to be removed  
and handed back to the police officer.

Q. You mentioned that you felt that she was suffering  
from burns because when you touched her she  
35 responded.

37

Cst. Daniel Pugh - Direct

A. Right.

Q. Were you able at any time either at the scene or  
5 in the course of transporting her to see any part  
of her body?

A. No. No.

MR. ALLMAN: Thank you.

THE COURT: Cross-examination, Mr. Furlotte?

10 MR. FURLOTTE: I have no questions.

THE COURT: Thank you very much, Mr. Petrie, you're free  
to go.

15 CONSTABLE DANIEL PUGH, called as a witness, being  
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

Q. Would you please state your full name and your  
occupation for the jurors, witness?

A. My name is Daniel James Pugh. I'm employed as a  
20 peace officer with the Town of Chatham, County of  
Northumberland, Province of New Brunswick.

Q. And for how long have you been engaged in that  
employment, please?

A. I have been a peace officer for a period of  
25 approximately six years.

Q. Constable, I'm going to ask you to take your mind  
back to the 29th of May of 1989, and there are  
certain matters and certain involvements you had  
on that date which I know you wish to relate to  
30 the jurors beginning with a place and a time.  
Would you commence to do so now?

A. Sure. On the 29th day of May, 1989, at approxi-  
mately 4:04 in the morning I was exiting the  
Chatham Police office to enter a vehicle with  
35 Corporal Dickson and we were to go on patrol

Cst. Pugh - Direct

5 together. A gentleman pulled in to the rear of  
our police vehicle and informed us that Annie  
Flam's building was on fire. Being closest to the  
door I re-entered the police office which is  
adjoined to the fire department and I went to the  
bottom of a foot of a stairwell and I yelled to  
10 Tony Lloyd that there was a fire at Annie Flam's  
and that Corporal Dickson and I were proceeding  
there at that point. We responded immediately to  
Annie Flam's which is a short distance from our  
office and arrived approximately two minutes later  
which was about 4:06. We both got out of the  
15 vehicle. We were to the front of the building and  
the doors were locked in the front of the  
building. I ran around to the rear of the build-  
ing and there was a small white fence or a picket  
fence that was a bit too high for me to climb so I  
20 tore a few pickets off and went through the fence,  
and I went to a back door and there was two doors  
there, an exterior type door that was open and an  
interior door that was closed and locked. I  
radioed Corporal Dickson who was at the front of  
25 the building and advised him that the door was  
locked and asked for authority to take the door  
down, and he said go ahead. I took a couple of  
steps back and kicked the door and was able to  
gain entry.

30 Q. Once you had gained entry what did you find and  
what did you see?

A. Darkness and a lot of smoke.

Q. How much smoke, when you say a lot?

A. It was a very considerable amount of smoke.

35 Q. How did it affect you as you entered?

39

Cst. Pugh - Direct

A. As I entered?

Q. Yes.

5 A. It was very noticeable, it was not - you know, it wasn't like a cigarette, it was very noticeable to me.

Q. O.K., could you please speak up, because you're contending with these ventilators and everyone has to hear you.

10 A. Certainly. I reached and found a light switch in this room and turned it on and it dimly lit the room. I proceeded through what appeared to be a kitchen area and I turned left to the foot of a stairwell and as I came around the corner I  
15 observed a lady lying at the foot of the stairwell on the stairs. I bent down and attempted to pick her up and did so and made my way for the front of the building which I knew where Duke Street was  
20 which would be the exit way, the closest exit way at that point. As I picked the lady up I said, "Where's Annie". I asked her a couple of times, "Where's Annie", and she was conscious but not giving me any real indication of anything.

25 Q. Why would you have used those words, why would you ask her, "Where's Annie", this woman?

A. Well, for the simple fact that we were at Annie Flam's store and although I had been in the store in my life I had never been in through the housing  
30 area of that building, so I wanted to get some indication of where Annie may be at that time so I could try and re-enter and get her out.

Q. So you asked this person who you found, then?

A. Right, and she didn't give me any confirmation,  
35 any response other than she simply gestured with

Cst. Pugh - Direct

her right hand and raised it, which I presumed was  
an indication that she was upstairs. I got to the  
5 front door and I couldn't see very well and the  
smoke was starting to bother me. Corporal Dickson  
was outside on the front step and he was yelling  
at me, "Use the bolt, use the bolt", and I had  
unlocked a normal door but there was a bolt lock  
10 on that as well so I unlocked the bolt lock and  
the screen door and exited the building with Mrs.  
Flam on my left side. As I came out onto the  
steps Corporal Dickson took her from me and I  
paused for a moment and may have went to my knees  
15 there outside of the door for a moment to get some  
oxygen. I went back in and tried to get up the  
stairwell where the lady had been lying. I went  
up onto a landing and up a couple of more steps  
and the heat was very intense and there was a lot  
20 of smoke so I came back down, I took another  
breath outside. I went back up and I wasn't able  
to get up as far the stairs a second time. As I  
came out the second time there was - Tony Lloyd  
had arrived and he was putting on a Scott Air Pack  
25 or he had a Scott Air Pack on. Tony and I went to  
the rear of the building where I had kicked the  
door and this is where we went in, and I tried to  
maintain a voice contact with the firefighter  
until such time that his other crew had arrived.  
30 Q. Why would you do that, please, Constable? Why did  
you?  
A. Well, I was concerned because of the amount of  
smoke and the heat that was in that building and  
he was in there by himself and I had no radio  
35 contact with him at that point so I would take a

Cst. Pugh - Direct

- 5 breath and run in and yell to him to make sure he was all right and go back out, and this went on a couple of different times and another fireman arrived and I left the building.
- Q. O.K., and then how much longer did you remain at that scene?
- 10 A. I remained at the scene until approximately nine, nine-thirty in the morning, somewhere in that vicinity. Immediately after I left and the fire department arrived on the scene I just stepped back and there's an adjoining building, there's a series of buildings very close together, and I
- 15 went to the next buildings and started waking up - I knew there were several small apartments there that were close so I started waking people up and getting them out of their buildings.
- Q. And that would have taken you about how long?
- 20 A. Twenty minutes to twenty-five minutes.
- Q. And then once that had been completed how much longer did you remain at the scene?
- A. I remained there until probably another three to four hours after that.
- 25 Q. O.K., what sort of site security or perimeter did he set up at that time?
- A. At that time we set up nothing. The fire department were on the scene and they were doing their business and we weren't aware until some time
- 30 later of the situation that we were dealing with and this - you know, I just stood back, I was off to the side and into a neighbour's house there and just to try to stay out of the way of the fire department who were doing their job.
- 35 Q. Several times earlier in your testimony,



42

Cst. Pugh - Direct

- 5 Constable, you described how you would be in the building briefly and then leave. How long were you actually able to remain there in all that smoke at any given time?
- A. It probably would have been varying. At first it was maybe up to the point of just roughly 45 seconds to a minute, probably, and by the end when the second fireman had arrived it would be like it was just in, yell to the firefighter, and back out for air again.
- 10 Q. It was that bad?
- A. Yes.
- 15 Q. Now, the person that you first met and encountered and to whom you spoke asking where is Annie, did you recognize that person?
- A. No, I did not.
- Q. Do you know her name now?
- 20 A. Yes, I do now, I know her name.
- Q. She was whom, please?
- A. Nina Flam.
- Q. And in what condition was she in when you found her, clothing and physically?
- 25 A. Like I said, there was a thick degree of smoke and it was very warm, and to be perfectly honest to the Court I didn't want to waste a lot of time looking at her, I wanted out, but from what observations I did make when I picked her up I noted that her skin was bare to the back of her
- 30 because I reached and picked her up like this initially (indicating), and the skin was warm to the touch, it was hot, you know, and she had some type of a garment on, whether it would
- 35 be a nightdress or a nightie, something along

43

Cst. Pugh - Direct

those lines, and it was either burned or torn to some degree.

5 Q. You described also earlier - what condition was the front door in when you and Corporal Dickson first arrived?

A. I don't recall exactly which one of us checked the door. There was two doors adjacent, one for a residential area and one for the store, which was  
10 the door that I was familiar with from being in that store before, and I don't specifically remember who checked that door but I can only surmise that one of us did and this is why I went  
15 to the rear of the building.

Q. The front door was locked, secured?

A. Correct.

Q. And the back door?

A. The back door was also secured.

20 Q. Did you have any occasion to examine the windows at any time that evening?

A. I did, at approximately five-thirty, maybe quarter to six in the morning, Corporal Dickson as a result of a conversation that we had, I went  
25 around that building and I observed where the windows and doors were to the best of my ability at that point, and everything appeared to be secure to me, although I didn't physically go up and shake windows or anything but it appeared  
30 externally that things were secure.

Q. What was the lighting condition outside at the time you conducted that last check of the building?

A. It was dawn, you know, I didn't need a flashlight  
35 or anything like that.

44

MR. SLEETH: Thank you very much, Constable.

THE COURT: Cross-examination, Mr. Furlotte?

MR. FURLOTTE: I have no questions of this witness.

5 THE COURT: Thank you very much, Constable Pugh, you're  
free to go. Thank you. Now, you have another  
witness?

MR. ALLMAN: The next witness would be Corporal Dickson,  
Mr. Sleeth will be handling him, and that's the  
10 matter that we mentioned to Your Lordship that we  
need to talk about.

THE COURT: You wanted to talk about certain questions  
you might ask him, and did you want the jury  
excluded now?

15 MR. SLEETH: Yes, My Lord, I would make that motion now.

THE COURT: Could I ask, then, the jury to retire again  
for a few minutes while we consider briefly  
certain matters in your absence.

20 (JURY WITHDRAWS.)

THE COURT: Now, Mr. Sleeth?

MR. SLEETH: My Lord, it's my understanding Mr. Furlotte  
has two questions he's particularly interested in  
25 putting to Mr. Dickson and I think Mr. Furlotte  
should present those questions to this Court for  
a determination at this time. The Crown has a  
position on both, but let him state them.

THE COURT: Just tell me in advance, though, Mr.  
30 Furlotte, what type of evidence generally is  
Corporal Dickson going to -

MR. SLEETH: Oh, Corporal Dickson's testimony generally,  
My Lord, will be sights seen. As you heard  
earlier from the previous witnesses, he arrived  
35 in company with the immediately preceding witness,

45

Voir Dire

Constable Pugh, and he was the one who was on the  
outside of the building at the time that Constable  
Pugh finally managed to exit, bringing the burned  
5 body of Nina Flam with him and placed her in the  
cruiser. He will be testifying also -

THE COURT: The burned person, Nina Flam. She's not the  
body - well, her.

MR. SLEETH: Yes, her, sorry, yes, he placed her  
10 physically inside the police cruiser. He will  
also be testifying that earlier on he had checked  
that particular door, that front door, at  
something like three o'clock, roughly, in the  
morning. He's continuing more the actual scene of  
15 the fire, the first arriving persons. He was one  
of them.

THE COURT: Yes, but then his involvement doesn't go much  
beyond the receiving Nina Flam from Constable  
Pugh?

20 MR. SLEETH: No, no.

THE COURT: Through the front door?

MR. SLEETH: Well put, My Lord, yes.

THE COURT: Well, then you want to cross-examine the  
corporal on certain -

25 MR. FURLOTTE: My Lord, this so-called dilemma came about  
because Mr. Legere has reason to believe that  
Corporal Billy Dickson is his half-brother, and  
Corporal Dickson was the first one on the scene  
and evidence that he was the last one at the scene  
30 before the fire was noticed, and Mr. Legere wanted  
me to request from Mr. Dickson that - and he  
wanted me to do this last weekend before - not  
even in court, to see Mr. Dickson, and I was  
unable to get a hold of Mr. Dickson to ask him if  
35 he would submit to a DNA analysis so that his

46

Voir Dire

profile could be checked against Mr. Legere's  
profile. I wanted to ask these questions to Mr.  
Dickson before in court, before he came to court,  
5 rather than on the examination. If he was willing  
to submit to a DNA analysis, then I wouldn't even  
ask him these questions in court and I'd wait for  
the results of the DNA analysis, and depending on  
what they were, then I would - originally I would  
10 have had this witness set aside for cross-examina-  
tion. Depending on what the results of the DNA  
analysis was I would have either cross-examined  
him on that or not have recalled him, and it's not  
something I wanted to bring before the Court but  
15 the Crown Prosecutor felt that I should ask these  
questions in court rather than them ask Mr.  
Dickson first whether he'd consent to it.

THE COURT: Well, you had the synopsis of Dickson's  
evidence nine months ago?

20 MR. FURLOTTE: Pardon?

THE COURT: You had the synopsis of Dickson's evidence  
nine months ago?

MR. FURLOTTE: Oh, yes. Yes.

THE COURT: December 5, 1990?

25 MR. FURLOTTE: Yes.

THE COURT: Well, you're seeking leave now to ask Dickson  
what in cross-examination?

MR. FURLOTTE: Well, if they don't want to do it out of  
court, then I feel it's - from the information Mr.  
30 Legere gives me I must ask these questions in  
court to find out whether or not he's related to  
Mr. Legere.

THE COURT: That's fair enough, to ask him that if you  
want to.

35 MR. FURLOTTE: That's fair enough, and because as you

47

know the DNA evidence coming in at the end -

THE COURT: Never mind the argument, what questions do you want to ask him?

5 MR. FURLOTTE: I want to ask him if he knows whether or not he's - if he's a half-brother to Mr. Legere.

THE COURT: All right, that's fair enough.

MR. FURLOTTE: And ask him if he would consent to giving a DNA analysis.

10 THE COURT: No, I'm not going to permit that question. Any other questions you want to ask him?

MR. FURLOTTE: No, that's it.

THE COURT: All right, call the witness, please, or well, have the jury back.

15 MR. SLEETH: Well, My Lord, just one thing, if I may. I wonder what the basis is for the - the foundation for even the question, whether or not he's related to the accused, Mr. Legere.

20 THE COURT: Well, I can't see what the basis is and I can't see what significance it is, but I'll permit that to be asked.

MR. SLEETH: I respectfully submit, then, My Lord, and I put it to you that that's virtually a scandalous question being put to the witness.

25 THE COURT: Oh, I don't know. I don't mind being asked if I'm related to Mr. Dickson, too. Our names are the same and he may be asked - he may want to ask him, "Are you related to the judge because you spell your name the same way", but I don't - if  
30 Mr. Furlotte wants to ask him if he's related to me or Mr. Legere or to anybody else, I don't - it's not really relevant but -

MR. SLEETH: I believe it's totally irrelevant, My Lord, but I have my answer about my request of you.

35 THE COURT: Yes, all right, then. Now we'll be calling

48

Cpl. William Dickson - Direct

the jury.

5

(JURY CALLED - ALL PRESENT.)

THE COURT: Now, you have another witness, Mr. Sleeth?

10

CORPORAL WILLIAM DICKSON, called as a witness,  
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

Q. Corporal, would you please for the purpose of the  
record state your full name and your occupation?

A. William Dickson, I'm a peace officer for the Town  
of Chatham.

15

Q. How long have you been engaged with that type of  
work?

A. Approximately 21 years.

Q. Always in the Chatham area?

A. Yes.

20

Q. Perhaps you might take a few moments, Corporal,  
and tell us, how far would Newcastle be from  
Chatham?

A. I think it's about five miles.

Q. And Chatham Head?

25

A. Probably three and a half.

Q. O.K., and how would one get from Chatham over to  
Newcastle?

A. Well, there's two ways you can go. You can go  
across Centennial Bridge and follow the river on  
the other side or you can go right straight up the  
Chatham side through Chatham Head and swing across  
the bridge there into Newcastle.

30

Q. What about the population of that area generally,  
Chatham, what -

35

49

Cpl. Dickson - Direct

A. It's approximately 6,500 people.

Q. Do you know the accused, Allan Legere?

5 A. Yes, I know him.

Q. For how long would you have known him?

A. Probably fifteen years or so.

Q. Would you have known where he would have been  
living while living in the Chatham area, approxi-  
10 mately?

A. One time he was living at Ellis Street. I think  
he moved around a little bit after that, I'm not  
sure.

Q. Corporal, I'd like to take you back in time to the  
15 29th of May of 1989. I know there are certain  
events which took place on that date which you  
wish to relate to these jurors. Please, then, in  
your own words beginning with a time and a place  
start with your narrative of your involvement with  
20 this matter.

A. Well, I was on patrol in my police car on the 29th  
of May, it was in the early morning hours, and as  
a requirement of our duties is also to check  
downtown businesses, so I had the occasion to  
25 check Mrs. Flam's business, or store, and the door  
was secure and the windows were all in it. I  
walked up to another business while my police car  
was parked at Mrs. Flam's and I checked the door  
of that and I come back down and I looked in the  
30 window of Annie Flam's store because there was a  
sign in there but I couldn't make out what was on  
it because it was - I think it was a light coming  
off of the pop machine, there was a sign there  
but I couldn't make out what it read, so I got  
35 back in my patrol car and I wrote the time down.



50

Cpl. Dickson - Direct

I checked my watch, it was eight minutes after  
three. Then I resumed patrols and approximately  
5 3:55 hours I received a complaint of a prowler in  
the south end of town and I was informed by  
Constable Pugh that he would travel with me to  
that complaint so I went back to the police  
station to pick him up, it was approximately 4:00  
10 a.m. then. At this time there was a half-ton came  
up behind the police car and a guy got out and ran  
up to the police vehicle and informed us that  
there was smoke, a lot of smoke, coming out of  
Annie Flam's house or store, so Constable Pugh  
15 immediately ran in and informed the fire depart-  
ment and he was back out in ten seconds, maybe.  
Then we proceeded up to Mrs. Flam's, or to Flam's  
Grocery. It took us approximately a minute and a  
half to two minutes to get there.

20 Q. It would be about how far from your police station  
to this Annie Flam's store?

A. Maybe a half-mile.

Q. You would have proceeded along what streets?

A. I went up Princess Street and turned right onto  
25 Duke. Now, Princess from the police station is  
about 200 yards, two to three hundred yards. I  
swung right onto Duke, and when you go up Duke  
Street you can go right straight up to Flam's.  
You have to go through a few intersections and  
30 that but it's the same straight street.

Q. O.K., and this was 3:55, four o'clock in the  
morning, am I right on that?

A. Yes, around four o'clock, yes.

Q. O.K., so you arrived there and what did you see  
35 once you had arrived?

51

Cpl. Dickson - Direct

5 A. Well, I saw smoke coming out of the upstairs of  
the house, it was kind of rolling out underneath  
the eaves, so Constable Pugh and I immediately  
went to the front door. I tried the handle on the  
screen door and it was locked, you couldn't get it  
open, so we banged on the door for a few seconds.  
Danny ran around back and he also informed me the  
10 door was locked there so I told him to take it  
down, meaning to kick it in, which he did, I heard  
the crash a couple of seconds later, and I  
informed him there was also probably a light  
switch there somewhere. I was talking to him on  
15 my two-way radio, he also had one, too.

Q. Could you please speak up, Corporal?

A. O.K. Approximately 30 seconds later I was still  
standing at the front door trying to see in and  
Constable Pugh appeared at the inside of the front  
20 door with a female and he was holding on to her,  
so he had some difficulty opening the door,  
finally got the door open, then the outside one,  
and Constable Pugh passed Nina Flam to me, or he  
just let her go because he appeared to be overcome  
with smoke. Nina appeared to be in a state of  
25 shock or incoherent because she was kind of afraid  
of me.

Q. This is the first time you've mentioned the name  
Nina. Who is this Nina?

30 A. Nina Flam.

Q. Yes?

A. Yes, I know her.

Q. The person, now, that was being brought out by  
Constable Pugh was Nina Flam?

35 A. Yes, it was, yes.

52

Cpl. Dickson - Direct

Q. Please continue.

5 A. She had a hold of the railing on the outside step and I told her, you know, to let it go, it's O.K., it's the police, and she whispered to me in a very low voice, said to me in a very low voice, "Give me your jacket".

Q. What did you do then?

10 A. I took my jacket off and put it around her, around her buttocks, the front part of her. I could see she was - her face was black and that and she had on a light-coloured nightgown and it was torn in different places, so I picked her up underneath  
15 her buttocks and I felt that she had no panties on because it was bare skin, and I took her over to the police car and got the back door open, just set her in there. Then a neighbour come running out of the house and I told him to call an ambulance and then I asked her, "Is Annie still in the  
20 store", and she didn't respond at first. I asked her again and she just - she said yes.

Q. And when you say Annie you mean Annie Flam?

A. Annie Flam, yes.

25 Q. O.K., what happened after that?

A. So I went back in the door, I met Danny Pugh at the front door again, and we went back inside into the main part, like the front room, and I was singing out Annie's name. It was kind of hard to  
30 see because there was a lot of smoke, and I also noticed three or four small fires like in the - it would be in one corner and another one over here maybe four or five feet away, another one in another corner. That was burning but I didn't pay  
35 any attention to it right at that time because I

53

Cpl. Dickson - Direct

thought it was just a fire is what we had.

5 Q. Would you again speak up, please, Corporal, it's very hard to hear you. An ambulance arrived, you said that earlier, I believe?

A. Yes, an ambulance arrived a couple of minutes later.

10 Q. And what did the ambulance do? What did they do then with Nina Flam?

A. I went out and spoke to Freddie Petrie there and I assisted him on getting Nina on the stretcher.

15 Q. Did you have any further involvement, then, with Nina Flam or in relation to Nina Flam that evening?

A. Not personally with her, no.

Q. Do you know where she was taken to by the ambulance?

A. She was taken to the Hotel Dieu Hospital.

20 Q. And subsequently were you at any time in contact with the Hotel Dieu Hospital?

A. Yes, at approximately 4:50 hours on the same date I received a telephone call from the Outpatients requesting a rape kit.

25 Q. What did you do?

A. Where I was on portable I told them I'd call them back right away so they hung up and I went in and used the neighbour's phone, I called them back, and they said, "We need a rape kit because this woman has been raped", so I called down to the police station and got a hold of Constable Carnahan, and gave him instructions to take a rape kit up to the Outpatients.

30 Q. What's the full name of Constable Carnahan, please?

35

54

Cpl. Dickson - Cross

A. Derek.

MR. SLEETH: Thank you.

5 THE COURT: Cross-examination, Mr. Furlotte?

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Corporal Dickson, what time did you go on duty the night of May 29, 1989?

10 A. Would you ask me that again, please?

Q. What was your shift time that evening?

A. Oh, I worked from 10:00 p.m. till 8:00 a.m. in the morning.

Q. And were you in a police cruiser all night?

15 A. No, I probably was out for a walk for a while. Yes, I was, yes. We have to walk around, too.

Q. O.K., and I believe you mentioned you checked the Flam store somewhere a little after three o'clock in the morning or -

20 A. 3:08, yes.

Q. 3:05, were you in the police cruiser at that time. or were you just walking?

A. Yes, I was in the police cruiser.

25 Q. So you stopped the police cruiser purposely to check the Flam store?

A. Yes.

Q. And do you do that at all the stores in Chatham?

30 A. All the outlying ones. Like, we have a business district right downtown so we do a foot patrol there, but like Flam's and the next one I checked was Gerard Losier's, so I just walked from Flam's up to Gerard's which was only about 50 yards, but we do use the police cruiser to check all the -

35 Q. Do you usually check the store more than once through the shift?

55

Cpl. Dickson - Cross

A. Oh, I don't, I just usually check it once.

Q. You just check them once. Now, when the firemen  
5 were looking for Annie Flam did you - were you  
able to tell anybody where Annie Flam's bedroom  
was?

A. Not really, because I didn't really know the  
10 layout of the house because it's just kind of like  
a maze in there sometimes. I know I was in the  
store part before. There was more little rooms  
going off of it, I didn't even know where they  
went.

Q. Now, through your shift did you notice any  
15 strange occurrences, either people or cars or -

A. No, I only seen one car probably about 2:30 and  
it was going up the front street, the main street,  
and it had a loud muffler, and I was going to stop  
and I remember - like, I was going to stop it if  
20 it come down the street I was on because I was on  
foot patrol then.

Q. It had a noisy muffler?

A. Yes.

Q. And what time was that?

A. It was probably somewhere around two o'clock.  
25

Q. Around two o'clock, and is that the only time you  
noticed that car around Chatham that morning?

A. Yes, I never seen it after that.

Q. You never seen it after that. Now, before today,  
30 Corporal Dickson, or yesterday, have you ever been  
told or heard the rumour that you might be Allan  
Legere's half-brother?

A. No, I haven't, no.

MR. FURLOTTE: No further questions.

35 THE COURT: Are you my half-brother?

56

A. I don't know.

THE COURT: Any re-examination?

MR. SLEETH: No, My Lord.

5 THE COURT: You're excused, Corporal. Thank you.

MR. ALLMAN: My Lord, it's ten after twelve and that's  
all the witnesses we have available this morning.

THE COURT: Yes.

MR. ALLMAN: Your Lordship was going to indicate, I  
10 think, when the jury had gone out, or sometime -

THE COURT: Yes, well, now I think what I'm going to do  
is - it's quarter after twelve - I think I'll ask  
the jury to go out just for a few minutes here, if  
you wouldn't mind, and then we'll be sending you  
15 off to lunch and then I'll be telling you at that  
time - I'll tell you before you go to lunch where  
we go from here. There's a possibility, I might  
say - there are some other matters I have to  
consider but there's a possibility that you may  
20 not be required again this week. The quicker  
selection of the jury than had been anticipated  
by counsel has led to a scheduling of witness  
difficulty and we may have to give you a longer  
weekend than it would have been in the ordinary  
25 event, so would you go out just for a few minutes  
and we'll have you back.

(JURY WITHDRAWS.)

30 THE COURT: We're in a voir dire session again here now  
and nothing, of course, that transpires can be  
reported until after the whole trial is over  
unless it's repeated in front of the jury.

You've completed six of the first eight  
35 witnesses there. The other two R.C.M.P. officers

57

Voir Dire

were not available until next week?

MR. ALLMAN: Not available till Tuesday, and we would  
5 like to make them our next witnesses. They are  
identification -

THE COURT: They are likely to be longer or -

MR. ALLMAN: I would think they would take a day between  
them, might even be a day and a half between them.

10 THE COURT: And then you go on into, just looking at your  
list, these people, English, Palmer, Dr. Losier,  
Constable Carnahan, who will be stood aside after  
a certain - and Colleen Moran, Nina Flam?

MR. ALLMAN: Well, if I could just interrupt Your Lord-  
15 ship so we know where we are, the batch from  
Maureen English down to Colleen Moran are nurses,  
doctors, and one police officer. They'll deal  
with the things that were done to Nina Flam at the  
hospital when she arrived there. They form a  
20 coherent batch. We could in fact call Maureen  
English and Marjo Palmer tomorrow but I would  
prefer not to because as I say those witnesses  
numbers 9 to 13 on our list form a distinct  
portion of the evidence in themselves. Also we  
25 would like anyway to put Corporal Godin and  
Sergeant Chiasson on before we get into that  
aspect of things, so really from the Crown's  
perspective, I know we're wasting a bit of time  
and I apologize for it, but as Your Lordship  
30 pointed out, we did go more quickly this week than  
we ever really thought possible. We would like,  
I think, probably to adjourn essentially until -  
well, Tuesday morning if that's Your Lordship's  
ruling, or whatever.

35 THE COURT: Well, for purpose of argument here - or not



58

Voir Dire

argument, purpose of discussion, assume that we  
started again on Tuesday morning, Tuesday you  
5 would devote to the two police officers, probably?

MR. ALLMAN: Yes, and we have some of the others here  
just in case.

THE COURT: And you'd have them here in case, but these  
ones you've just named, English through to Moran,  
10 that's what, a half-day or -

MR. ALLMAN: Well, I would think a half-day. Mr.  
Furlotte advised me that he didn't think he had  
many questions for any of those witnesses.

THE COURT: And then Mrs. Flam comes on, Nina Flam?

MR. ALLMAN: Yes, what we're thinking about that is this,  
15 if we could devote two days to Corporal Godin,  
Sergeant Chiasson, and those witnesses from 9 to  
13, Nina Flam is in a category of her own. It's  
going to be a very painful ordeal for her to have  
20 to come and to have to give evidence, and Mr.  
Furlotte was very kind and said that he would  
like, and certainly we'd like, to have Mrs. Flam  
start at 9:30 in the morning and hopefully be  
finished at the end of a day. We wouldn't like  
25 to make her come down, have some of her evidence  
one day, go home or go to a hotel and come back  
the next day, so that's the time frame I have in  
mind, two days for witnesses 2,3,9 to 13.

THE COURT: Then, in the normal course, if we started  
30 Tuesday, Wednesday, you're talking about her on  
Thursday of next week.

MR. ALLMAN: That's correct.

THE COURT: And you see no difficulty about getting  
through her in one day or perhaps - depending on  
35 her - she's how old?

59

## Voir Dire

MR. WALSH: She's 66, My Lord. I hope that won't be reported or she will -

5 MR. ALLMAN: No, we're in a voir dire so they won't report that.

THE COURT: No, no, well, this isn't subject to reporting at this point. No, I was wondering what her age was, if she were elderly. The other woman was -  
10 well, there was no evidence of her age, was there?

MR. ALLMAN: Annie?

THE COURT: Yes, there was no evidence of her age?

MR. ALLMAN: No.

THE COURT: But she was older?

15 MR. ALLMAN: Yes.

THE COURT: Now, where do you go after that?

MR. ALLMAN: Straight on through the witness list.

THE COURT: In other words, you would have some of those police officers standing by so that if you  
20 finished with Mrs. Flam earlier on Thursday she would - you could go right on with a police officer or two and then carry on. Are they very long, those police officers?

MR. ALLMAN: I don't think so, no. After Nina Flam we're  
25 into quite a long period of what I would regard as fairly routine evidence, really, down to Dr. McKay.

THE COURT: But what are these connected with? Are these all connected with the Flam incident?

30 MR. ALLMAN: Yes.

THE COURT: And police investigations and so on?

MR. ALLMAN: Yes, and they're all easy people to get a hold of, they're police officers, lab technicians, doctors - well, doctors might be hard to get a  
35 hold of but I don't expect any difficulties in the

60

Voir Dire

period immediately -

THE COURT: But right at the present time you have a very  
5 simple week of witnesses. I don't know about the  
police officers, the nature of their evidence.  
What are they going to talk about essentially?

MR. ALLMAN: Mostly continuity and production of  
exhibits.

10 THE COURT: Dealing with Flam?

MR. ALLMAN: With the Flam.

THE COURT: Well, that gives me some assistance here.

Where do you stop with the Flam incident? What  
happens after that on your witness list?

15 MR. ALLMAN: The end of the Flam, I think, is John Smith,  
#32.

THE COURT: And some of these are civilian witnesses like  
Landry, MacLaughlin, so on?

MR. ALLMAN: Yes. Well, no, Landry is a technician from  
20 the crime lab.

THE COURT: Oh, yes, and then where do you start after -

MR. ALLMAN: Well, as I indicated to the jury, basically  
we do before the Flam incident, the Flam incident,  
the time after the Flam incident, between the Flam  
25 and the Daughney incidents, so after that we'll be  
moving into activities that we allege took place  
between the death of Mrs. Flam and the death of  
the Daughneys.

THE COURT: But that next series of witnesses are all  
30 people who are going to testify to precise little  
factual situations that occurred here or there or  
whatever, seeing somebody or not seeing somebody?

MR. ALLMAN: That's right.

THE COURT: Well, sit down, Mr. Allman, for a minute.  
35 I've got to deal with this request of Mr.

## Voir Dire

Furlotte's for an adjournment of a couple of months. I don't want to review everything that's  
5 been done in this trial from December 5th last. I did allude to some of the steps in my introductory remarks at some stage or another, perhaps it was to the jury panel, I think. I felt they should be acquainted with where we were going and  
10 why certain delays had occurred and why, perhaps, the public might not feel that the trial were getting ahead as quickly as possible, but I am going back over some of this right now, and I'm going to review some of the discussions that we've  
15 had along on this matter because it's pertinent to this question of preparation for trial and the question of whether we should be delaying in hearing the evidence in this case or not.

December 5th last year at Newcastle the  
20 accused was due to come before one of the Provincial Court judges. The Attorney General had decided immediately prior to that, apparently, that a direct indictment would be preferred and there would be no preliminary hearing, and I can  
25 quite appreciate why he would take that decision in the circumstances, and particularly with the importance of the DNA aspect and the difficulty of covering all that in a preliminary hearing, and so on. He preferred through his agent a direct  
30 indictment, and I was instructed by my - asked by my Chief Justice if I were available to take on this trial and I said I was and I was told, well, it's a six-month proposition, we'll be through by mid-summer and that will be the end of it, and on  
35 December 5th I went to Newcastle, I sat in the

## Voir Dire

5 Court of Queen's Bench. The matter was adjourned  
in the Provincial Court, the court room was  
transformed into a hearing of the Court of Queen's  
Bench, the indictment was preferred by the agents  
for the Crown at that point, and Mr. Furlotte  
represented the accused there. I believe he had  
been engaged only very briefly before that. The  
10 accused, as was represented to me, had been repre-  
sented earlier by a Fredericton solicitor who had  
got out of the - or who was released or got out or  
wished out of it or something.

15 An application was made at that time for a  
change of venue. It was suggested that Newcastle  
wasn't an appropriate locus for the trial because  
it's a small, closely knit area along the  
Miramichi, I think the evidence is it's five  
miles, was it, or two miles, I didn't catch that  
20 this morning. From Chatham to Newcastle is a very  
short distance, anyway, about five miles, and most  
of the population of that judicial district is in  
that area and most of the people in that area  
would know these shopkeepers, these parish  
25 priests, and these people who were the victims of  
these crimes that were committed. These were  
murders, there's no question about that. When I  
say they're murders I'm not implicating in that  
statement the fact that the accused was the one  
30 who committed them, that's for the jury to decide,  
but there's no question but what a jury is going  
to determine here that somebody committed murders  
on these four individuals who died.

35 I had a meeting immediately, a pre-trial  
hearing of counsel, and tried to figure out when

## Voir Dire

the trial itself should commence. I suggested it should commence, or was hopeful that it would  
5 commence in about a month's time, in early  
January. Counsel, Mr. Furlotte, indicated that he couldn't possibly be prepared by then, he had other commitments, which was understandable. I  
10 think he said he had a number of murder trials or something, or seven different criminal trials, at any event, at that time. I think most of them did dissolve in the end, as I suggested they would do at that preliminary hearing that day.

The point was brought up by Crown counsel and  
15 by defence counsel that this DNA problem was involved. This is a new technology, it was new then to Canadian courts. There have been a couple of cases where DNA has been used since. In, I think, March of this year the Bourguignon case was  
20 tried in Ontario before Mr. Justice Flanagan and a jury and that case was tried then. As a matter of fact, I think the same defence witness, if I'm not mistaken, who appeared on the voir dire here was the defence witness in the Bourguignon case. Am I  
25 right there, Mr. Furlotte?

MR. FURLOTTE: Yes.

THE COURT: Yes, I am. About that time, or in January or  
February, along there somewhere, there was also a  
30 trial in British Columbia, the Baptiste case out there. I referred to that the other day during one of the voir dires, and I think there were two witnesses on the DNA out there. It wasn't gone into in the same depth as it was, certainly, at our trial, nor were they quite the same issues  
35 involved. The two key DNA witnesses, I believe,

## Voir Dire

were people who did appear here at the voir dire  
and are included on the witness list for the rest  
5 of this trial, but what I'm getting at is it  
became obvious to me, and I had impressed upon me  
the fact that for anyone to try to learn something  
about DNA was going to take an appreciable period.  
It was suggested it would take six months of  
10 training to prepare defence counsel - I think I  
may speak loosely when I say six months, I think  
that was a period mentioned - that we shouldn't  
really start the trial until this fall, until  
September sometime, there should be about a nine  
15 or ten months, almost a year's hoist to give a  
chance to prepare for DNA.

Now, there was no such period required in  
the Bourguignon case or in the Baptiste case  
and I'm sure there haven't been in any of the  
20 numerous American cases. Lawyers in preparing  
for DNA cross-examination, examinations and  
evidence, the use of DNA evidence in court, don't  
have to become scientists and obtain scientist's  
degrees, they have to obtain a sufficient know-  
25 ledge of what the subject is about. Anyway, we  
had some discussions over this.

I said at that time, well, let's start in  
February, let's take two months for it. I think  
the Crown felt that that would be rushing it a  
30 bit, and particularly in view of the DNA thing.  
It was pointed out along the way, I think Mr.  
Furlotte said, look, there are over 200, or  
whatever the figure was then, 240, perhaps,  
witnesses who are going to be called, I'm going  
35 to have to interview every one of those witnesses

and this is going to take months and months.

I said, "Balls, you don't have to interview  
5 witnesses, no one interviews witnesses", and you  
don't interview witnesses particularly when a  
precis, or what do you call it -

MR. ALLMAN: A will-say.

THE COURT: Oh, a statement, anyway, of -

10 MR. ALLMAN: And a statement, what we provided were a  
will-say, which is a precis, and a statement.

THE COURT: Oh, well, statements and will-says. Oh, a  
will-say, you mean the witness will say so and  
so?

15 MR. ALLMAN: Yes.

THE COURT: Well, it's an indication, anyway, a statement  
that the Crown provided in the case of, I believe,  
all witnesses. I think there were one or two  
exceptions where the statements or will-says  
20 weren't available at that time, and those were  
provided to defence counsel at that time, and I  
didn't envy his job because they were contained in  
carton after carton of the material that was  
provided there in the court room at Newcastle,  
25 but in any event, on December 5th defence counsel  
did have an indication of the evidence of all the  
witnesses. For instance, these five or six  
witnesses, I presume, who testified this morning,  
there was probably a paragraph or so saying what  
30 each one of these were going to say. Am I  
correct, Mr. Allman? I haven't seen any of these  
statements and -

MR. ALLMAN: In respect of all the witnesses this morning  
what was provided was a will-say, which is a  
35 precis, and a copy of a statement signed by them



given to the police.

THE COURT: Now, I pointed out at that time - I have  
5 never been privy to these will-says or these  
statements, I have no idea what any of these  
witnesses other than the ones we've heard already  
in the voir will say, but I pointed out, look,  
there would be three-quarters or 80% of the  
10 witnesses included on that list who would be  
giving little statements the same as these  
witnesses are here this morning. Why would one  
ever want to cross-examine most of them, but  
however, it's not my job to tell defence counsel  
15 or Crown counsel either what questions they should  
ask or how much they should cross-examine and so  
on.

The question of assistance for defence  
counsel came up and I brought it up myself, and  
20 I said, "Mr. Furlotte, you can't expect to take on  
a murder trial of any sort without someone to help  
you in court, without assistant counsel". He  
asked if he might have a student, a law student or  
someone to assist him, and I said, no, from my  
25 point of view - I think my reply was, "Look, I  
can't compel you to have anybody if you don't want  
it, but I would say you would be very ill-advised  
to have a law student, you should have a lawyer  
who can assist, who can cross-examine or examine  
30 witnesses in court and take some of the pressures  
off yourself. Certainly even a student or a  
clerk would be of some assistance because you  
could keep track of the evidence that witnesses  
are giving and that sort of thing", and Mr.  
35 Furlotte was receptive to that notion and I said,

## Voir Dire

"You should start to look immediately for them".  
I cautioned at that time counsel on both sides  
5 about if there are expert witnesses, scientists  
being called, give them lots of notice, because  
scientists, perhaps particularly American  
scientists, will so often say, "Well, we want a  
year's notice", or six months notice or nine  
10 months notice, "because we're so heavily committed",  
and this is true of some of the expert  
witnesses in this case who are heavily committed  
to all sorts of duties. They're leaders in their  
field in the world as was quite obvious from their  
15 evidence at the voir dire.

Well, anyway, it was agreed that - also at  
that time defence counsel spoke of different  
applications. A motion for severance was going to  
be made, and this might take a long time to  
20 prepare. I pointed out that you could prepare a  
motion for severance in a half an hour or an hour,  
or if not in that, then in two hours, and it could  
be dealt with. There's nothing mystical about an  
application for severance. I indicated at that  
25 time what my attitude would be toward an applica-  
tion for severance and it wasn't a great deal  
different than what I had to say yesterday when I  
gave my ruling on the matter.

There was talk about a stay of proceedings.  
30 A great time was made over the fact that the  
indictment had been preferred directly and the  
accused had been deprived of the right of knowing  
what the witnesses were going to say through  
hearing their evidence at a preliminary hearing  
35 and so on. This was despite the fact that these

Voir Dire

will-says and statements had been provided for  
all of the 240 witnesses, or some may have  
5 followed along later when they were added, or  
two or three or something like that, but there was  
no prejudice there.

Then I read in the newspaper that defence  
counsel is carrying on a Gallup Poll among all the  
10 lawyers in New Brunswick to see whether there  
could be a fair trial or not. Now, God knows how  
many hours of defence counsel's work has been  
spent, and I was given a pile of papers this thick  
here yesterday on an application that's pending,  
15 and half that stuff - or I shouldn't say half that  
but a portion of it pertains to the replies that  
were received to that Gallup Poll. There were  
seven or eight replies received out of 791 things.  
Well, that was the most ill-conceived, nonsensical  
20 waste of time that I could possibly conceive.  
However, I suppose if counsel is being paid to do  
it at a fairly good rate, why not.

Anyway, we had other pre-trial hearings and I  
tried to guide counsel along. I think at one  
25 stage defence counsel said well - I forget how it  
came up, the jury, all the members - I had indica-  
ted, well, we might have to - I think I was  
thinking at that time in terms of perhaps 250  
jurors, and defence counsel said, well, he would  
30 have to interview all of those 250 to see whether  
they were prejudiced or not. I pointed out that  
it would be totally and utterly in error, it would  
be an offence under the law for anyone connected  
with the case to interview anyone on the jury  
35 list, and that put an end to that, but I've tried

## Voir Dire

to be helpful, to guide counsel along in this matter.

5           Finally Mr. Furlotte advised that Mr. Ryan had been engaged as defence counsel, as assistant defence counsel, and that's fine, I was quite agreeable. It wasn't for me to be agreeable or otherwise, I was quite pleased with it. Mr. Ryan had experience in criminal work. He hadn't been a member of the bar for a long period but he was certainly competent of helping and I'm sure did help during some of the period, anyway, when he was associated with the thing, and he sat in on our meetings at that point.

10           Then it was decided - I may be skipping points here - it was decided, anyway, I think in February, that - I said, "All right, we'll start our voir dire", and we anticipated that a voir dire might take about a month. The voir dire was to determine whether five or six batches of hair taken as body samples would be admitted and whether certain conversations would be admitted in evidence, whether the DNA evidence would be applicable or not and subject to what restrictions or conditions might be applied to it, and it was anticipated that hopefully a month might look after that voir dire. I said, "Well, look, why couldn't you do a voir dire of that nature in two weeks, surely it can be done in two weeks".

15           Anyway, April 22nd was set for the voir dire. Before that there was a date fixed, I think it was the February date, was it, when an opportunity was to be given to make any applications for a stay of proceedings, for severance, any preliminary

## Voir Dire

5 motions before trial was to be made on a certain  
date. I think that was the February 6th sitting.  
We sat at that time, no motions were made as I  
recall. Certainly no motions for a stay of  
proceedings and no motions for severance. I  
pointed out at that time this doesn't preclude the  
possibility of these motions being made later, but  
10 I regret very much that they couldn't be got out  
of the way now because now is the time, in  
February, for these motions to be made.

We sat on April 26th, and before that I  
indicated to counsel, again in a pre-trial  
15 hearing, that, "Let's do this voir dire on  
April 26th, this gives December, January,  
February, March, it gives four months up to the  
voir dire for preparation for DNA". Preparation  
for the other stuff, the body sample evidence and  
20 so on, you could do this in two days. Defence  
counsel could do it in two days or three days, or  
if I'm wrong, you do it in a week. There's  
nothing magical about it. You know, here in the  
Provincial Court Room next-door and which normally  
25 sits here they're trying theft cases that are just  
as involved as any one of these particular murder  
counts might be, and they prepare for them in a  
matter of a couple of days or three days, defence  
counsel sometimes.

30 The first jury trial I ever represented a  
defendant in I was called at eight o'clock in the  
morning to see if I would go to the town of  
Gagetown and defend a man for stealing a drag line  
down at Minto. I said, "What day does the court  
35 sit or is the trial", and he said, "Today", and I

5 said, "What time", and he said "Ten o'clock", and  
we went down and there was a jury trial. We sat  
for two days, my client got off. I was prepared  
on the way down for the trial. The accused asked  
me when I picked him up at my office at nine  
o'clock, "Can I take my girlfriend with me", and I  
said, "Yes, where is she". "She works at the Sun  
10 Grill". We went to the Sun Grill, we got her.  
They necked in the back seat while he instructed  
me about the lawsuit in the hour it took to go to  
Gagetown.

15 I don't mean to be too light about this  
but the point I'm making is that, you know, I've  
pointed out before, in criminal trials what sort  
of defences do you have? Well, you interview a  
defendant, you find out what sort of defences  
exist. There are alibi defences in which an  
20 explanation is given to show that an accused  
couldn't possibly be involved. You show that  
people like Corporal William Dickson killed Mrs.  
Flam rather than somebody else, if you could ever  
expect anyone to believe that sort of thing, or  
25 the other type of defence is where you rely on  
the inability of the Crown to prove beyond a  
reasonable doubt - to carry out beyond a reason-  
able doubt the burden it has of satisfying you as  
to what the situation is. Now, those basically  
30 are the defences that have to be matched.

When I say that this might be no different  
than a theft case in the Provincial Court here, it  
is different -

MR. LEGERE: Oh, Jesus Christ.

35 THE COURT: - because there are four counts involved here

and there are a lot of witnesses involved, but a  
lot of witnesses, a lot of what type of witnesses,  
5 the type of witnesses we heard here this morning.

MR. LEGERE: Look, Michael Ryan got off the case, he's  
telling you he's not ready, where does that leave  
me? I agree with you it gives him lots of time  
but if they're not prepared where does that leave  
10 me?

THE COURT: Oh, Mr. Furlotte and Mr. Kearney, this  
situation has arisen earlier and I have indicated  
to counsel and everyone understands that I'm not  
going to engage in any conversation with the  
15 accused and I have -

MR. LEGERE: Be fair. Christ, I can't do that myself.

MR. KEARNEY: I understand, My Lord. I'll talk to you  
later, Mr. Legere.

MR. LEGERE: No, I'm talking to him now.

20 THE COURT: Do you want a recess, gentlemen, while you go  
out and -

MR. KEARNEY: Just one minute, My Lord.

MR. LEGERE: I can't rely on two lawyers. Mr. Kearney's  
got lots of experience, I wish I would have had  
25 him at the start, but Michael Ryan admitted  
July 22nd that he didn't -

THE COURT: We'll stop here, we're going to have a  
recess for a minute. We'll have the accused  
taken out -

30 MR. LEGERE: If Mr. Furlotte's telling you he's not  
prepared, where does that leave me?

THE COURT: I want counsel to explain to -

MR. LEGERE: I may as well not even be in the court room  
because I've got two lawyers going through the  
35 motions. Where does that leave me?

73

## Voir Dire

MR. KEARNEY: Yes, My Lord, we'll do that.

THE COURT: I want counsel to explain during the recess,  
5 we'll recess for ten minutes -

MR. LEGERE: It doesn't matter. You're doing everything  
against me, anyway. You may as well do whatever  
you want now.

THE COURT: I want you gentlemen to explain to the  
10 accused as was explained to him during the voir  
dire -

MR. LEGERE: You were notified by registered mail that my  
counsel wasn't prepared and you agree with it.

THE COURT: The accused has two alternatives, he sits in  
15 the court room, he follows the rules like the rest  
of us, he listens and he speaks when his turn  
comes to speak if he wishes -

MR. LEGERE: Sit like a dummy, sit there like a dummy and  
we'll let you sit in the court room.

THE COURT: The alternative is he sits out there in that  
20 cell room and he listens to these proceedings -

MR. LEGERE: I'm just a little bit too fuckin' smart for  
your liking, that's all.

THE COURT: - through a loudspeaker or through a visual  
25 camera, and those are available.

MR. KEARNEY: Yes, I understand that.

MR. LEGERE: Can use every fuckin' tactic in the book.

THE COURT: Would you take ten minutes and explain this?

MR. KEARNEY: Yes, My Lord. Thank you.

MR. LEGERE: There's a Charter of Rights there, you  
30 better listen to it. I'm fuckin' tired of this  
shit. If I'm being treated fair I'll sit there  
without a word, but when I see I'm getting shit  
I'll speak up.

THE COURT: Well, we'll take ten minutes, and will you -  
35



74

Voir Dire

Mr. Sears, why don't you take the jury to lunch  
now and we'll take thirty minutes here. Is this  
5 agreeable?

MR. WALSH: Yes, My Lord.

THE COURT: We'll take thirty minutes and you take the  
jury to lunch and then we'll meet again here.  
Perhaps I could see counsel just briefly before  
10 we start just to ensure that we're ready to go  
ahead at that time.

(COURT ADJOURNS AT 12:45 a.m.)

15 (COURT RESUMES AT 2:00 p.m.)

( ACCUSED IN DOCK. )

THE COURT: We're still in the voir dire sitting, of  
course, and Mr. Allman has outlined what the  
20 next witnesses on his list will be testifying to  
and how long they will take and so on, and my  
direction is that we will be adjourning now. I'll  
have the jury brought in and we will adjourn  
until Tuesday morning at 9:30 and we'll continue  
25 with the next witnesses, #9, 10, so on, on the  
list at that time.

MR. ALLMAN: There's been one very minor variation while  
Your Lordship was in there when Mr. Furlotte and  
I were discussing. I think we would prefer to put  
30 the discussion of the abuse argument until a  
Friday week, in other words two weeks from  
tomorrow, so we'll get a full four days of jury  
evidence next week and a full four days of jury  
evidence the week after that.

35 MR. FURLOTTE: My Lord, for the record, I could be ready

75

Voir Dire

Friday but Mr. Allman feels he needs more time.

THE COURT: Yes. Well, there are matters involved in  
5 that, I gather, that will require his gathering  
information from -

MR. FURLOTTE: He has to do some investigation into some  
of these claims, yes.

THE COURT: Yes. I would think that a week from now  
10 would have been pressing it a little as far as  
Mr. Allman was concerned, but anyway, let's try  
to get four full days of witnesses next week and  
four full days of witnesses the following week  
and then devote perhaps that Friday week, the two  
15 weeks from tomorrow, devote that to it, so we  
won't be requiring the jury back tomorrow. We  
won't be sitting until Tuesday morning. If I have  
any other - I was earlier reviewing the events  
that had occurred up till now. If I feel it  
20 necessary to continue that or to elaborate on it  
I'll do it by memorandum filed and I will provide  
counsel with copies. That is if I feel it's  
necessary.

25 No other matters to be discussed before the  
jury comes back?

(JURY CALLED - ALL PRESENT.)

THE COURT: Now, members of the jury, we have been  
30 discussing other matters in your absence and as  
you can appreciate, the faster selection of a jury  
this week has confused a little for the Crown the  
scheduling of witnesses, and I've had discussions  
with counsel and what we feel we should do now is  
35 adjourn from now until the first of the week.

There are two police officers who will be a bit longer witnesses who I understand from the Crown will be called on Tuesday. I say the first of the week, I mean Tuesday morning. Monday is Labour Day, of course, and Tuesday at 9:30 we'll start. Then there are a succession of about a couple of dozen other witnesses who will be heard before the week's end, and we'll go right through until Friday, one o'clock or whatever, next week. You do realize that there are difficulties arise in cases, an illness here, an illness there, and so on, which throws schedules out, but I would anticipate that next week will be a full week and we will be hitting our stride at that time, so I'm sorry to have - I was faced with the dilemma earlier of at one o'clock of saying go home and come back on Tuesday. We weren't quite certain of our program at that time. I felt the safest thing to do was have you sent off for your lunch and then come back and we'd tell you what the answer is, so I'm sorry if I've held you up from getting to your own homes but that was unavoidable, so I want to caution you again. People will be inquiring what is going on and so on and please don't communicate with others at all.

There is - if it hasn't been already there is a notice in most jury rooms in the province which point out that it is an offence for jurors to discuss with anyone outside the jury anything that goes on inside the jury room or during the jury proceedings when the jury are together at any point in the trial. Juries are always warned at the completion of a trial about that provision in the Code which makes it an offence, but I think

77

it's appropriate in a case of this nature which  
is operating over a long protracted period - I  
think it's appropriate that I should point that  
5 out now.

I don't know whether I mentioned yesterday  
or not, I've given certain instructions to the  
press here. I may have mentioned it or I may not  
have done, I have imposed on the media the  
10 restriction that they are not to take photographs  
of the jury either with video or still cameras, so  
you're deprived of the opportunity of appearing on  
the screen. I don't know whether it will please  
you or not.

15 Just before we adjourn I want to point out to  
the media that Section 648 of the Criminal Code  
says, "Where permission to separate is given to  
members of a jury no information regarding any  
portion of the trial at which the jury is not  
20 present shall be published after the permission is  
granted in any newspaper or broadcast before the  
jury retires to consider its verdict", and  
everyone who fails to comply with that subsection  
is guilty of an offence. I point that out so that  
25 people will be aware. That's Section 648 of the  
Criminal Code. So would you people, then, depart  
and we'll see you on Tuesday morning at 9:45.

Are the arrangements satisfactory about  
rendezvousing wherever you are rendezvousing and  
30 so on? It's agreeable? Fine. Have a good week-  
end.

(JURY WITHDRAWS.)

35 THE COURT: Counsel have nothing more to raise at this

78

point so will you adjourn the Court, Mr. Pugh,  
please, until 9:30, I said 9:45.

5

(COURT ADJOURNED TO 9:30 a.m., SEPTEMBER 3, 1991.)

10

15

20

25

30

35