

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

BETWEEN:

HER MAJESTY THE QUEEN

- and -

ALLAN JOSEPH LEGERE

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

APPEARANCES:

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

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

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September 12 & 13, 1991.

MARCIA McLELLAN
COURT STENOGRAPHER

R. v. Legere - September 12, 1991, 9:30 A.M.

COURT RESUMES - (Accused present.)

1 MR. ALLMAN: My Lord, just before the Jury comes in, there
is one brief matter. I wanted to give to Your
Lordship copies of the photographs that we propose
to put in evidence of the autopsy of Linda Daughney,
5 Donna Daughney, and of James Smith.

I spoke to Mr. Furlotte awhile ago about this.
He indicated he thought he would probably have no
objection to the photographs, but we thought it was
appropriate in any event and whatever Mr. Furlotte's
10 position might be to submit them to you for your
chance to view them and perhaps it is an appropriate
time to give us your ruling on them.

There is one picture that is shown in the Linda
15 Daughney autopsy, photograph number 6. It is in
there, but we are going to remove it from our own
volition. We decided we don't really need that. That
is a photograph of internal organs. We are going to
remove that. Donna Daughney, we are going to ask
20 that all of them go in. The reason we are giving you
all of them at this time, My Lord, is because we feel
there are significant similarities, I think the
expression that was used was a signature in respect
to the injuries, to all the facial injuries to all
25 these victims which we feel that it is necessary for
the jury to see. A witness can say the injuries were
similar, but similar is a very vague word. We feel
they should actually see the similarities.

30 THE COURT: For instance in the -- well you will be
tendering at some early stage, I presume, the
Daughney photographs.

1 MR. ALLMAN: The reason why we are doing it now is this.
We will be coming quite possibly to tendering the
Daughney autopsy photographs today. They are linked,
for the reason I explained, with the Smith photographs
5 and that's why we gave you the entire package.

THE COURT: When will you first be referring to these
photographs?

MR. ALLMAN: When we come to the -- My Lord, the number is
81, Leo Roy, but in fact we are going to make a move
10 and he is going to come in as number 73, between
Basil Blanchard, who has all ready given evidence,
and Brandt Adams. What we are going to do this
morning we are going to be calling number 66, 67, 68,
69, 70, 71. 66 through to 71. Then Dr. Blanchard
15 who is all ready dealt with. Then we are going to
insert Leo Roy, who is number 63, then Brandt Adams,
and so on. So the pictures come in after Ernest
MacLean and before Brandt Adams. So that is sometime
this morning probably.

20 THE COURT: Yes. Well, you can think about that
Mr. Furlotte during recess.

MR. FURLOTTE: Yes, My Lord.

THE COURT: Well, now we will have the Jury in.

MR. FURLOTTE: My Lord, maybe before the Jury comes in.

25 THE COURT: Just hold them for a moment, please.

MR. FURLOTTE: My Lord, again it has been brought to my
attention by Mr. Legere that he was watching T.V.
last night on the evening news and at 11:00 P.M. on
A.T.V. Jeff Britt was announcing news and got a report
30 from one of the Court Reporters I guess. And they

1 described that given into evidence yesterday were
amongst the book of photographs, 79 photographs, there
was -- described photos depicting charred bodies of
both Linda and Donna Daughney giving graphic photos
5 of the bodies which were not in the book of photographs
put into evidence yesterday and there are no such
photographs that are going to be put into evidence
today or at any time during this trial. And, again, it
is just a clear misunderstanding or somehow the press
10 is anticipating the evidence that is going to be
going into court before it actually goes. I don't
know where they are getting their information. I
don't know whether it is just misinterpretation here
in court or they are getting their information from
15 somebody off the street, from God knows who. But
they are attempting at least to broadcast evidence
that is going in before it actually goes in and
unfortunately evidence which is not even going to go
in. Again, I can't help but emphasize again the Jury
20 ought to be cautioned.

Again, I voice my objection that the Jury should
be instructed in my opinion not to listen to news
broadcasts because as stated earlier this is going to
be a long trial and at the end of the trial they are
25 not going to be able to depict what they heard in
court and what they heard on the news.

THE COURT: Thank you very much, Mr. Furlotte. I think,
as a matter of fact, I may have seen the broadcast
last night that you are talking about. I didn't see
30 it at 11:30; I saw it after the baseball game and the
hockey game.

1 MR. FURLOTTE: -- 12:00 o'clock and they left that portion
out.

THE COURT: It was about 12:30 I suppose. It was the
same newscast. I may have noticed it and may not have,
5 I perhaps did notice some reference there, but I am
just not certain. It didn't register very strongly on
me, anyway, as being a discrepancy, although it may
have been.

MR. FURLOTTE: You are not sitting on a Jury, My Lord.

10 THE COURT: I might say that the Clerk, Mr. Pugh, this
morning spoke to me and said the media had asked him
if it would be possible to arrange to see the photo-
graphs. They have seen the video on the screen and I
have told Mr. Pugh to arrange with the media, if they
15 so desire, to meet with him during a recess, or lunch
hour, or sometime whenever is convenient with all of
them, to look through the book of photographs so that
they will -- they are not to take any photographs, or
they are not to be reproduced in any way, but I think
20 this would overcome perhaps some of the difficulties.
The media would have an opportunity to look at the
photographs and see precisely what they are.

In preparing those news stories, you know, based
on mere tendering of exhibits like that in Court, they
25 perhaps have to do a little guesswork as to what the
photographs -- the photographs have been described
mind you in detail. There was no reference to bodies
showing in the photographs. There was one silhouette
on the floor and it was suggested that that had been
30 the location of a body on the carpet in one of the

1 bedrooms. I think that will solve itself. I will be
reminding the Jury from time to time, Mr. Furlotte.
I would imagine they are so tired at night by the
time they get home that they are not going to be
5 watching too many late newscasts anyway and they are
up early in the morning.

The Jury have requested that we permit them to
get away at a good hour in the afternoon. I think
the hour perhaps that they suggested may have been
10 quarter to 5:00. I think we should aim actually at
trying to get the Jury out of here at 4:30 if we can
in the afternoon. They have to travel to a meeting
place, or a dispersal point in the van and then they
have to -- a lot of them have to drive a very fair
15 distance home and I don't know what -- some of them
presumably don't get home until half past 6:00 or so,
and some of them have small children that they have
to prepare supper for. I know there is a great
temptation at the end of the day. Perhaps when the
20 Crown have witnesses here who have been here for a
day or so, or they don't want to stay overnight and
want to get back, there is a great temptation to ask
if they can hear. But I think we have to put the
Jury's priorities first except in dire emergency. I
25 know this poses problems for the Crown.

MR. ALLMAN: We understand that perfectly, My Lord. I
don't think in fact we have actually kept them beyond
quarter to 5:00 maybe more than one day in this trial
so far.

30 THE COURT: No, it hasn't been bad. A couple of days we
may have accommodated them. All right, the Jury now.

(Jury called. All present)

THE COURT: Now, you have another witness, Mr. Allman?

MR. ALLMAN: Yes, My Lord, Danny Sullivan.

MR. DAN SULLIVAN, called as a witness, having been
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name, please?

A. Dan Sullivan.

Q. Where do you live?

A. Newcastle, New Brunswick.

Q. How long have you lived there?

A. Oh, six years.

Q. On the 14th of October, 1989, did you have any
connection with the Newcastle fire department?

A. Yes, I was serving as a volunteer member.

Q. Can you tell us what if anything happened that
morning as relates to the matter involving the
Daughney sisters?

A. That morning myself and my girlfriend were on our way
to C.F.B. Chatham to attend a scuba course and as we
were driving down Davidson taking a shortcut to the
bridge from Tim Horton's I noticed a house under
renovation at the bottom of the street.

Q. When you got to the end of that street what street do
you turn onto?

A. Onto Mitchell Street.

Q. And the house that was being renovated where would that
be in relation to the corner of those two streets?

A. That was at the --

Q. I will show you a picture. Just a moment. P-32
number 4 this picture is called. Now just take a

1 to -- aerial photographs are sometimes tricky. Take a
moment to familiarize yourself with where you are.
Okay, now you tell me and then we will show the Jury
where it is that you are going down?

5 A. As we come off of -- well Tim Horton's is over here so
we come down this street onto Davidson and as we
approached the bottom next to Mitchell it was on the
opposite side of the road towards the river.

Q. Can you point to me with your pen to which house it is?

10 A. This house right here.

Q. Now do the same for the Jury. Like turn it to the
Jury. Point the street you are going down.

A. And we were travelling down this street, which is
Davidson. As we approached there I could see this
15 house right on this corner, at the lower corner, under
renovation, and then we turned onto --

Q. About what time of day would it be when you and your
girlfriend were driving there in that spot?

A. Approximately 7:35.

20 Q. What if anything attracted your attention to that
house?

A. The fact that it was under renovation.

Q. Okay.

A. And I do renovations myself so -- I was in the
25 passenger's seat and I decided to scrutinize their
workmanship. So as I was looking at the lines of the
siding to see if they were matching up and how well
they were doing it, I was looking at the northwest
corner first and I lined that siding up. And then as
30 we were driving by on Mitchell, I looked down the

1 eastside to check those lines up, that they coordinated
with the eastside and the northside of the house. And
as I looked down the eastside, I noticed smoke puffing
out from underneath the soffits.

5 Q. I am going to show you a photograph. This is one of a
bundle in P33. I am going to ask you to look at the
moment numbers 1 to 2 which I understand the evidence
is was taken from the -- opposite the house you have
been referring to. Does that look accurate to you?

10 A. Yes.

Q. Okay, when you look at 1 and 2 where is it that you
see what you see?

15 A. Well this is where I began pretty well on this --
number 1 is pretty well where I began to notice the
renovation job. And then I noticed the sign, the
'Better Renovation' sign. Being competitors I thought
well I will check out their workmanship. Then as we
turned this corner I lined these lines of the two
houses up to see that the siding lines were matching.

20 Q. Just show the Jury what you mean.

A. Like the lines on the front were matching the lines on
the side so that they were level.

Q. And then what?

25 A. And then we proceeded by the front of the house and
then I proceeded to match up the lines on the other
wall with the front of the house.

Q. So now we would be --

A. Yes.

Q. Which photograph shows where we are now?

30 A. Photograph 7.

1406

1 Q. And you are going through the same matching process?

A. And I am going through the same matching process
with the lines of the siding. And then as I connect
the lines at the corner and then run them down the
5 side of the house, at the back end of the house here
I saw smoke puffing and rolling out from underneath
the soffit.

Q. That is the -- as you look at the picture number 7
that is the end of the house?

10 A. Yes, that is the east, the east corner.

Q. Okay and you say this smoke was billowing out and
rolling out from underneath the eaves?

A. It wasn't actually billowing; it was puffing, okay.

15 Q. I will leave those there just in case you need to
refer to it again. As a volunteer firefighter what
did that cause you to do?

A. A fire alarm went off in my head and I said -- I
stopped the truck and said -- and then I thought no
let's go to the firehall. No, stop the truck. Go
20 back because we had already gone by it a little bit so
I went back and I verified that it was smoke puffing.
And I saw the chimney in the vicinity so I thought
maybe it was a little chilly that morning. Maybe they
had a smoke on and it got away on them or something.
25 So we then proceeded to the firehall.

Q. How far away is the firehall?

A. Oh, about two-thirds of a kilometre.

30 Q. So you proceeded to the firehall and I take it at the
firehall you had conversation with people there and
made arrangements about what you had seen?

A. Yes.

1407

- 1 Q. And then what did you do?
- A. Then I went out to the garage and grabbed an engine and my personal gear and I proceeded to the house.
- Q. When you got to the house what did you find?
- 5 A. Well the house.
- Q. And what was the situation in regard to the smoke?
- A. It was still puffing and I proceeded to set the engine up for pumping.
- Q. Okay, next what happens?
- 10 A. Pardon?
- Q. The next thing that happens after the engine was prepared.
- A. Okay, Constable Charlie Barter arrived on the scene.
- Q. And then what did you and he do?
- 15 A. We -- he asked me what he should do, whether there was anybody in there, and I didn't know. And he said, "Well should I go in? Should I kick the door in?" And I told him to proceed to the back of the house and I would meet him there and not to do anything.
- 20 Q. And so you told Mr. Barter not to do anything?
- A. Yes, not to go in or try to enter the house.
- Q. Which door was it that he was going to go to?
- A. The rear door.
- 25 Q. Is the rear door depicted in any of the photographs in the bundle that you are looking at?
- A. Yes, it's depicted in 4, 5, and 6.
- Q. What did you do after you had that conversation with Charlie Barter?
- 30 A. I went over my engine again and I had the hoses off. And I got my lines charged and I got the pump

1 recirculating the water and checked all the gauges
and made sure that everything was okay.

Q. I take it this is all the sort of stuff that you have
to do before you can start dealing with a fire?

5 A. Yes.

Q. And when you made sure that everything was ready, if
there was in fact a fire there, where did you go to
next?

A. I proceeded to the rear door.

10 Q. What was Mr. Barter doing when you got to the rear
door?

A. He was on the landing.

Q. The steps?

A. The steps and the platform.

15 Q. Was he doing anything?

A. I believe he had -- the white door was open.

Q. The white door. That is the screen door?

A. The screen door. The storm door.

Q. What about the other door you can see in that picture?

20 A. The other door appeared to be shut.

Q. The other door was shut. So what did you do when you
got to that scene?

A. Well we had a little conversation and I said, "Well
let's check it and see if it is hot before we go in."

25 Q. What were you going to check to see if it was hot?

A. Yes.

Q. What were you checking?

A. The door. I grabbed the knob with my right hand and
with my left hand I felt the surface of the door
30 almost simultaneously.

Q. And was it hot?

1409

- 1 A. I didn't have time to ascertain whether it was hot.
Q. Why not?
A. I fell through the door.
Q. Why did you fall through the door?
- 5 A. There was -- I don't know. There was no resistance there.
Q. You mentioned a little while ago about suggesting to Mr. Barter kicking the door down. Was there anything of that kind necessary?
- 10 A. No, not when I got there.
Q. Just again so the Jury has got it quite clear in their own mind. You put your hand on the knob.
A. I put my hand on the knob and my --
Q. And your hand on the --
- 15 A. And my hand on the door.
Q. To see if it was hot?
A. Exactly.
Q. And what happened?
- 20 A. It just -- it burst open as soon as I put just the least amount of pressure and I landed inside in the kitchen floor on my hands and knees.
Q. After you landed on the kitchen floor on your hands and knees what did you see?
- 25 A. Well I ducked first because I thought there might be a danger of an explosion. And then I got back up and I looked around and the kitchen area was full of smoke and the smoke alarm was bellowing.
Q. So did you go further into the building or did you go out again?
- 30 A. No, I did not.

- 1 Q. Why was that?
- A. I did not go further in because I was not prepared to go further into smoke.
- Q. I take it you need some sort of oxygen or backpack
- 5 before you can venture into smoke?
- A. You need breathing apparatus, yes.
- Q. So you didn't have that with you?
- A. No.
- Q. What did you do then?
- 10 A. I closed the door.
- Q. And then what?
- A. As I was closing the door I looked at the jam and I noticed a vertical split in the jam.
- Q. Would you look at photographs I think it is 21 and --
- 15 20 and 21? How does that compare with what you saw?
- A. Exactly what I saw, 21.
- Q. So as far as you are aware had you done anything that could have caused that?
- A. No, sir.
- 20 Q. Okay, after you had made that observation, basically what else did you have to do?
- A. I closed the door and I believe Charlie said something, "Well what do we do now?" I said, "Hell, I don't know. There is nothing I can do and there is nothing you can
- 25 do. You can't go running in there because we could become victims ourselves." So I then proceeded back out to the front area of the house where I met fire officer David Foran was arriving at the scene at that time.
- 30 Q. Just to leave for a moment and to cut matters short. I take it other fire people arrived on the scene?

1 A. Yes, several minutes later.

Q. Would some of them have been equipped with breathing apparatus?

A. Yes, they were.

5 Q. Did you actually -- apart from falling into the house in the fashion you have described did you later on ever go into the house anymore?

A. Yes, I did. I believe I did go in and look at the ground floor area after it was over.

10 Q. You didn't go upstairs?

A. No, I did not.

Q. But I take it some of the people with breathing apparatus did go in?

A. Yes.

15 Q. Just to check. Mr. Walsh isn't sure if I asked you this. I think I did still. What time did you say it was when you and your girlfriend were driving along there?

A. Approximately 7:35 October 14th.

20 Q. And I think you already said in the morning?

A. Yes, A.M.

MR. ALLMAN: I have no other questions.

THE COURT: Mr. Furlotte?

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

25 THE COURT: You are excused then. This witness isn't subject to recall.

MR. ALLMAN: No, this witness is not subject to recall.

THE COURT: Thank you very much, Mr. Sullivan, and you are excused or you can stay and listen if you like.

30 MR. ALLMAN: Constable Charles Barter.

1 CONSTABLE CHARLES BARTER, called as a witness, having
been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name and occupation please?

5 A. My name is Charles William Barter. I am employed by
the Town of Newcastle with the Newcastle police force
as a constable.

Q. Were you so employed on the 14th of October 1989?

A. Yes, I was.

10 Q. Can you tell us what happened that day as relates to
this matter that is now before the court beginning
with the time and the circumstances that got you
involved?

15 A. At approximately 7:42 A.M. I received a call about a
house fire at 136 Mitchell Street. Due to this call
I made a patrol from the office area, which is
approximately a couple of blocks away, and I got at
the scene there about a minute later, 7:43 A.M., and
I pulled in behind a fire pumper truck that was driven
20 by Dan Sullivan.

Q. That is the previous witness?

A. That is the previous witness, yes.

25 Q. The house that you pulled in behind Mr. Sullivan is
that shown in any of the pictures that I am showing
to you now in the bundle that's P33?

A. Yes, it would be this blue house under renovations.

30 Q. I will leave that there because we may come to some
more pictures. What happened after you pulled in
behind Mr. Sullivan?

A. When I pulled in behind Mr. Sullivan he was unravelling

1 firehose from his truck. I got out of the police car.
I started to walk around the house. I noticed the
windows were closed. The doors were closed. I come to
the backdoor area and the house appeared to be full of
6 smoke through the windows. There was people gathering
in the street. At this point I said, "Does anybody
know if there is anybody in the house? Anybody living
there?" Some male voice stated that there should be
a couple of girls in there. So I immediately got on the
10 radio and got back to dispatch advising they should get
some people over right away as quick as possible with
Scott airpacks so they could go in the house. I went
to the backdoor and I opened the storm door portion.

Q. I am going to stop you there because we are just going
15 to dot all the i's and cross all the t's. The storm
door -- the backdoor and the storm door is that shown
in --

A. This would be this picture 5 here. It would be this
door that is open here.

20 Q. When you went to there the storm door which is open on
picture 5 was it open?

A. No, that was closed.

Q. And I gather you opened it?

A. I did, yes.

26 Q. After you opened it what was the condition or
situation of the inside wood door?

A. The door itself appeared closed, locked as such type of
thing.

Q. Okay. So what happened after that?

30 A. I thought about opening the door and then I decided

1 against it because of opening the door I thought I
 might get a rush of oxygen and cause a back draft
 which is basically fresh oxygen going into a super
 heated area which would cause an explosion. So I left
5 that area. Went around to where Dan Sullivan was and
 I said, "Can I kick that door in or will it cause an
 explosion? What should I do?" And he said, "Go
 around to the back. I will be there in a second as
 soon as I finish with this hose." So I proceeded to
10 the back area of the house again, which is the south
 end. He eventually come and joined me within seconds
 and he -- we had a conversation. He had grabbed the
 door and he fell through the door.

 Q. From your observation did there appear to be any
15 difficulty or problem with Mr. Sullivan in terms of
 getting the door open?

 A. No, there wasn't.

 Q. How easy or difficult was it to open that door that
 you could see?

20 A. There was no problem. He just like basically fell
 through it.

 Q. After Mr. Sullivan fell through then what happened?

 A. He fell through so quick that I didn't have time to
25 get down. If there had of been an explosion, I would
 have been caught. So I didn't have time to go down
 because I was expecting him to put his shoulder to
 the door, or kick the door, or something to this
 effect. After this, due to the density of the smoke,
30 there was no way that we could enter the building and
 I was back radio again to dispatch about some

1 firefighters with Scott airpacks, who did arrive within
minutes. They proceeded into the house. I was
standing around the backstep area and I walked
around the front, in front of the house, which would
5 be the north end and there was a fireman up on a
ladder and they were breaking a window out at this
point in the front of the house.

Q. Would you be able to know which window it was they
were breaking?

10 A. Yes, I would.

Q. Okay let's -- I think probably picture 1 or 2 --

A. The first one here. Picture 2 is a bigger one. You
can see the window on the left side of the house. It
would be the east side, the upper window.

15 Q. The upper window on the left on picture 2?

A. Yes.

Q. So you witnessed the firemen breaking that?

A. Yes, I did.

Q. Okay.

20 A. I proceeded from there around the back again and the
firefighters were inside. At approximately 7:40
the first body was brought out and they put her to
the east side of the backstep.

Q. That would be whereabouts, again, on any of the
25 pictures?

A. Okay, in picture number 5 it would be the east side.
You can see there is some piling and debris over in
this area here.

Q. If you look at maybe picture 4. We can see the back
30 steps. We can see the shed. We can see the ladder
and the pile of working equipment there or working

- 1 items. Whereabouts in relation to those items would
the first body have been put?
- A. It would be the opposite side to the step towards the
house's area, towards the fence area here. She was
5 laid down there and I noted that she had a couple of
T-shirts or sweaters on, a small pair of socks. She
appeared to have soot and fallout all over her.
- Q. Any other clothing apart from the two sweaters or
T-shirts?
- 10 A. There was nothing else. She was naked.
- Q. And I interrupted you. You said that you observed that
she was -- there was soot or something of that kind.
- A. Soot or fallout. This is -- been the debris inside of
the house.
- 15 Q. Whereabouts on the body did you observe that?
- A. On the lower portion. From there I noticed she had
blackened eyes. My observations at that time I was --
in my mind there was an accidental fire. I --
- Q. Can I just clarify that? You mentioned that she --
20 that part of her was sooty. I take it that is a black
colour?
- A. Yes.
- Q. Is that what you mean by blackened eyes or is that
something different?
- 25 A. No, this is something different.
- Q. What do you mean then by blackened eyes?
- A. I noticed she had blackened eyes. Now, I was with
firefighter Roy Geikie there at the time and there
was people gathering in the street. And the eyes were
30 swollen. Now I didn't know if this was due to the
heat in the house or whatever was going on in the

1 house.

Q. But your observation was they were blackened and swollen.

A. Uh-huh.

5 Q. Not just soot.

A. So I had conversation with firefighter Roy Geikie where there was people gathering in the street. There was a sheet laying on the ground, a pink insulation covering type of thing. Kind of reddish plastic.

10 And we decided to cover the body quickly as there was people in the street.

Q. This would be for decency's sake I take it?

A. Yes. Firefighters were back in the house again and approximately 7:59 they brought another body down which
15 the ambulance attendants, Ernie MacLean and Reg Stewart, had brought their stretcher and put the body on the stretcher in the kitchen portion of the house. Now I didn't see this body at all. The bodies were then loaded into the ambulance. I was having conversation
20 with firefighter Roy Geikie at the time. We were running all over the place. Sergeant Williamson and Constable Les Saunders they landed at the scene. They were my relief for the morning. I filled them in as to what procedures were taken as to what we had and
25 just as I was speaking with them dispatch radioed over that somebody should come over to dispatch. One of the officers who made a patrol, Constable Saunders, came back and stated that I should make a patrol to the Mirimichi Hospital due to the fact that one of
30 the bodies --

1 Q. We don't want to go into what the officer told you on
this particular occasion. As a result of his comments
or his instructions where did you go?

A. As a result of his instructions, I left the area and
5 went to the Mirimichi Hospital, outpatient's depart-
ment.

Q. What particular part of the Mirimichi Hospital did you
go to?

A. I went through outpatient department into what they
10 had -- where the morgue is.

Q. Tell me what you saw in the morgue?

A. When I arrived at the morgue Ernie MacLean was in
that area with the two deceased which later turned
out to be Donna and Linda Daughney. I examined the
15 bodies visually and I noted that both individuals had
black eyes, fat lips, appearance of broken noses, jaws,
possibly other marks. Like just visually could tell
that they had been viciously beaten or whatever. I
noted --

20 Q. Any marks that wouldn't be of a beating nature?

A. I noted Donna Daughney she had what appeared to be a
penetration on the left side of her neck and she also
had what appeared to be a cut mark on the right side,
cheek area.

25 Q. Approximately what time would it have been? You told
us it was 7:42 when you got the first call. Now we
have got you to the morgue. What time would it be
when you got to the morgue?

A. It was approximately 8:10 a.m. when I arrived at the
30 morgue on the 14th.

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- 1 Q. Who is the next person to arrive at the morgue?
- A. Doctor Blanchard also arrived at the morgue as I was examining the bodies.
- Q. And he has already given evidence as to his observations.
- 5 A. Yes.
- Q. Do you recall when he did that?
- A. Uh-huh.
- Q. What did you do after that?
- A. When I was examining the body -- both bodies had been
10 covered by the ambulance attendants. They had sheets on them. I had taken the sheets off and I noticed the body of Donna Daughney had also just had a T-shirt on and nothing else.
- Q. Did anybody else arrive for matters involving the
15 bodies?
- A. Yes, while I was staying with the bodies, at approximately 9:30 A.M. that morning Brandt Adams, who is with Adams Funeral Home, he arrived at the morgue.
- Q. What was his purpose in being there? I am not going
20 to ask you what he did, just what it was he came for.
- A. He came for the bodies. He also came -- while he was there for the bodies, he identified the bodies to me.
- Q. Did you continue to remain with the bodies, keeping
25 continuity of them, until somebody else arrived?
- A. Yes, I did.
- Q. Who was the somebody else?
- A. There was a few people that came and went. Did you want to know about that?
- 30 Q. No, I don't think we need to go into the details. Whom ultimately did you relinquish the bodies to?

1 A. At 2:40 P.M. in the afternoon I put the bodies in the coolers and locked them in there and I had turned the keys over to Constable Pierre LeFevbre of the Royal Canadian Mounted Police.

5 Q. Actually at the morgue the bodies are put in the cooler?

A. Yes.

Q. What did you give to Constable LeFevbre?

A. I gave him the keys to the locks on the lockers.

10 Q. When you opened the screen door how did you do that?

A. I just pushed the knob in and opened the door.

Q. Any problem or difficulty with that?

A. No.

15 Q. From your observation could anything you had to do with the screen door have caused any damage to the screen door?

A. No.

Q. Did you have anything to do with the wooden door that could have caused any damage to it?

20 A. No, I never touched this door.

Q. The first body that was brought out and actually put outside, in what fashion was that handled?

A. The firefighters were carrying her and they laid her down on the ground.

25 Q. How were they carrying it?

A. One by the front and one by the feet area.

Q. What about the other? I gather you didn't actually see that other than on a stretcher.

30 A. I only seen her from the outside step area being put on the stretcher in the kitchen area due to the fact that there was people in the street.

MR. ALLMAN: Thank you.

1 THE COURT: Cross-examination, Mr. Furlotte.

CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Constable Barter, how long have you been a police officer of Newcastle Town Police?

5 A. Approximately four and a half years.

Q. So you would have been a police officer all during the summer of 1989?

A. Yes.

Q. And all through the year of 1989?

10 A. Yes.

Q. The morning of October 14th, 1989, was there any other reported break and enters in the Newcastle area?

A. In that morning?

Q. That morning.

15 A. No.

Q. How about that whole summer?

A. We had quite a few break and enters.

Q. Was there a lot of break and enters during the summer?

20 A. Yes, we had quite a few.

Q. Care to venture on any kind of a number?

A. I couldn't really say. We have quite a few in the summertimes in the Newcastle area.

25 Q. Do you know whether or not there was a motorcycle gang meeting in the Newcastle area the summer of '89?

A. I cannot recall that.

Q. Did the Newcastle Town Police take part in the investigation of the Daughney incident?

30 A. After it was turned over to the Royal Canadian Mounted Police we did some footwork for them, yes.

1 Q. Footwork for them. Do you know whether or not there was
any attempt to identify a bicycle found around the
scene of the Daughneys?

A. I heard mention of it but I have no idea.

5 Q. You didn't take part in it yourself?

A. Myself, no.

MR. ALLMAN: I would be obliged if Mr. Furlotte would ask
this witness what he did or what he knows of his own
knowledge. This is all information he might get from
10 somebody else.

Q. Could you tell me what you know of your own knowledge,
if the Crown wants it that blunt or restricted, I should
say?

A. As far as the bicycle goes I know nothing of it.

16 Q. What about anything else as to the Daughney investigation?
Do you know anything else?

A. Just what I saw that morning and that was my basic
involvement.

Q. That was your basic involvement that morning. And you
20 don't know of any other reported incidents of break
and enters, of property thefts of October 14th?

A. I have no knowledge of that.

MR. FURLOTTE: I have no further questions.

MR. ALLMAN: I have no re-examination.

25 THE COURT: Thank you very much, constable. That is all for
you. Thank you.

MR. ALLMAN: Reginald Falconer.

30

1 MR. REGINALD FALCONER, called as a witness, having
been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

- Q. Mr. Falconer, what is your full name?
- 5 A. Reginald Ira Falconer.
- Q. Where do you live, Mr. Falconer?
- A. 250 McArthur Street, Newcastle.
- Q. How long have you lived in Newcastle?
- A. Mostly all my life.
- 10 Q. On October 14th, 1989, did you have any connection with
the Newcastle Fire Department?
- A. Yes, I did.
- Q. What was that?
- A. I am a volunteer fireman and I had a fire call some-
15 where between 7:00 or 8:00 o'clock on October 14th,
1989.
- Q. Mr. Falconer, I am going to interrupt you. Your voice
is rather low and quiet. Can you consciously try and
speak up good and loud?
- 20 A. Okay.
- Q. Try and get the colleagues at the back to hear you.
- A. I am a volunteer fireman. We had a fire call on
October 14th, 1989. We proceeded to the fire station
where we proceeded to get ready to go to 136 Mitchell
25 Street.
- Q. And I take it you did go there?
- A. We did go there, yes.
- Q. And there is 136 Mitchell. I don't think there is any
dispute about this. 136 Mitchell - the house that is
30 shown in the photographs in P33 beginning with 1, 2,
3, 4, 5, 6 --

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1 A. Yes.

Q. --7.

A. Yes.

Q. Okay, when you got there what did you find?

5 A. When I arrived on the scene I was informed by
firefighter Foran there was a possibility of two girls
in the house, for me to get right in there and get
them out.

Q. Okay, how did you go about doing that?

10 A. I entered the southside of the house, the back doorstep
on the southside of the house.

Q. Is it shown in one of those pictures?

A. Shown in number 5. At that time the backdoor was
open when I entered and there was very -- there was
15 smoke in the kitchen area, but the visibility was
there. I proceeded up the stairs. Picture here of
the stairs somewhere.

Q. Starting with 37 and probably the best one --

A. Would be 42 eh?

20 Q. Okay, how does that look like --

A. I proceeded --

Q. Given that the stairs -- I guess it was smokey when you
were there?

A. Once I proceeded up the stairs when I pretty well
25 reached the top of the stairs the smoke was -- the
visibility was -- there was no visibility. Couldn't
see nothing. Smoke was very heavy. Once I got to the
top of the stairs, I went against the -- I believe it
would be the west wall in the house. Turned to my
30 right.

- 1 Q. Let me just interrupt you again for one moment,
Mr. Falconer. Is there a procedure for fire people
when they are going into a house that they don't know
in smoke to get around in a certain way?
- 5 A. I usually go to the wall that is on my lefthand side.
I keep my left hand on the wall and I proceed around
the building like that.
- Q. I thought you said a moment ago that when you got to
the top of the stairs you turned to your right.
- 10 A. I turned to my right, but I put my left hand on the
wall. Turned to my right.
- Q. So you go to the right.
- A. Yes.
- Q. And you put your left hand on the wall. Why are you
15 doing that?
- A. We got no visibility. We can't see. We don't know
where we are. Nothing is -- everything is -- we
don't know what we are doing.
- Q. Once you've got in that position, which direction do
20 you then proceed to go?
- A. I would keep following the left, the wall with my
hand -- on the left hand going right I would imagine,
yes.
- Q. So you would be moving to the right?
- 25 A. To the right.
- Q. With your left hand on the wall all the time?
- A. Yes.
- Q. And, again, I take it that's --
- A. That's procedure I use.
- 30 Q. Procedure. So you have some idea where you are.
- A. So I can get back out again.

- 1 Q. Right. By the way were you wearing breathing equipment at this time?
- A. Yes, breathing equipment and firefighting gear.
- Q. How smokey was it when you got to the top of the stairs?
- 5 A. In the hallways there was no visibility.
- Q. I have got two kinds of pointer here. That one extends; this one is a neat little gadget that you can do that. Whichever you think is better.
- 10 A. I come up the stairs I believe right here.
- Q. The stairs point to the direction that the arrow points.
- A. The stairs are going down there I believe. The arrow is pointing down the stairs.
- 15 Q. Okay.
- A. I went up the stairs. I went against here and along that wall right there, and here in this room. I searched this room completely. I found no bodies in that room. I come back out and I proceeded along this room right here. I searched the bathroom. I found no
- 20 bodies. I come back out, along this wall here. In this room here I searched this room in here.
- Q. That's the room at the bottom righthand corner, yes.
- A. Right here I upset a closet. I come against the
- 25 closet and I tried to see if there was anybody behind it and I found it was top heavy and upset. I proceeded over the top of the closet after it upset and I come out here, along here. I come in this room here, along here. Come by the closet here.
- 30 Q. Now that is the closet in the room on the left at the

- 1 very bottom of the plan, right?
- A. Yes.
- Q. What about the closet there?
- A. I noticed there had been a fire there. I also noticed
6 there had been a fire over in this area, too, when I
was there.
- Q. What was it that made you say to yourself there has
been a fire here?
- A. I seen the shoes and stuff all seemed to be melted,
10 whatnot. Stuff seemed to be melted in that closet.
- Q. Where would this be in the closet? What part of the
closet?
- A. The floor of the closet. Okay, then I proceeded along
here and I -- there was a firefighter at the window
15 on the ladder. I believe there was a bit of a dresser
or something there and I moved it to try and get the
window open. And I couldn't open it so I proceeded on
to try and find bodies and the gentleman was following
me.
- 20 Q. You are still looking for bodies?
- A. Pardon?
- Q. You were still looking for bodies?
- A. I was still looking for bodies. I hadn't found none
and I was -- supposedly there was two in there. I
25 proceeded along here and right at that point right
there I hit the bed and I could see a big fluffy white
blanket up on the bed, it seemed to be. And I
proceeded down the bed. I had a big light in one
hand and the visibility wasn't too bad in this room at
30 this time. I could see with the light. I could see

1 partial things. When I proceeded down the bed I was
showing my left hand in and I had my right hand on the
big light. I spotted a body right down there on the
floor.

5 Q. Okay, you are pointing to the area between the bed.
What does it say up above that?

A. Bed. I think it's a dresser isn't it?

Q. Cedar chest.

A. Cedar chest, yes.

10 Q. Had you spotted a body on the bed?

A. No, I didn't.

Q. So as far as you were concerned all you had seen on
the bed was this?

A. Big fluffy white blanket.

15 Q. Puffy object or --

A. It was a quilted blanket like I think it was.

Q. Quilted blanket.

A. Yes, I believe that is what it was.

20 Q. You find a body. What position is the body that you
are talking --

A. It was laying down on the floor and I think the head
was kind of up against that wall, or up against this
chest there or something, I think.

25 Q. You are pointing to the area between the lefthand side
of the cedar chest and the wall, somewhere around
there.

A. Yes.

Q. And the feet would be --

30 A. And I believe possibly one leg might have been up
there. I don't know. I just forget now. Possibly.
I don't know. I just forget now. I can't remember.

1 Q. I am going to ask you to look at picture 63. You can
see in that a bed on the left and a chest on the right,
area of clean, that is light floor surrounded by an
area of darker floor. How does that compare the
5 situation of the body?

A. It seems to be the way I found the body as in 63,
picture 63.

Q. At this stage when you located this first body did you
get any chance to make any observations about it at
10 all?

A. No, I just -- we are not told the body is dead or
anything. Our idea is just to go in and try to get
people out alive.

Q. Quite.

15 A. And I still didn't know whether she was dead. So I
grabbed her under the armpits and I started -- I got
out the door with her. I called to my partner,
"I have a body." And I started out then. We usually
follow the route that we come in on because I -- at
20 that time I didn't know. I could have gone downstairs
there. I proceeded out here with her and when I got
about here my partner took hold of the legs and we
proceeded around here to get out with her. At that
time I must have come right to that wall and I saw --
25 I said well I've got to backtrack to find my way out
of here. So I come back around here. And when I
got to here I realized I could go down the stairs
there. I took the body down the stairs there. At the
bottom of the stairs a few other firemen -- visibility
30 was -- you could see at the bottom of the stairs and

1 the firemen had been in that far waiting for -- and
they proceeded to take the body out and I assisted
them out. By this time now we would be downstairs
here and they mostly took the body out here and I
5 assisted maybe about a foot or something until they
got to here.

Q. You did that. Did you actually go outside into the
grounds with the body?

A. I think I went to the doorway, but there was three of
10 us going out the door at the same time thing and I
backed off and --

Q. So at that location or somewhere around there you
have not got the body in your arms anymore?

A. No-no.

15 Q. What did you do after that?

A. Okay, after that I proceed back in the building. I
kind of looked over a few areas here to see what was
going on and where the smoke was coming from. And
then I --

20 Q. Could you tell?

A. No, not much. I couldn't really tell what was going on
there. So I proceeded back to here. Somewhere about
here I met the boys coming with the other body. Then
I proceeded back upstairs.

25 Q. So you took one body and you saw the other coming out?

A. Yes.

Q. Then you go back upstairs?

A. Yes.

30 Q. Tell us what you do and what you see on your second
trip upstairs?

- 1 A. Okay. Now I went back upstairs here and at this point here I could see fire in this bedroom here in that area right there.
- Q. That's the bedroom at the top on that picture, the
- 5 sketch.
- A. Yes, that would be I believe Linda's bedroom from what I seen from the previous witnesses here.
- Q. Okay so we've got you in the bedroom. It would be the south bedroom.
- 10 A. Okay, I'm upstairs. I seen fire here and --
- Q. Okay, when you said that you were -- show me as best you can where the fire that you see in that bedroom is located?
- A. It's right about here someplace. Then I proceeded into
- 15 the bedroom.
- Q. So you come to the top of the stairs.
- A. Uh-huh.
- Q. You look in the bedroom?
- A. Uh-huh.
- 20 Q. And still at the top of the stairs you can see this fire?
- A. Yes.
- Q. And you --
- A. I could just see flame.
- 25 Q. Coming from the area where you were flashing your laser light then.
- A. Right there.
- Q. What did you do after you had seen it coming from there?
- 30 A. I proceeded into there and tried to extinguish the fire

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1 I had no hose with me. I tried to extinguish the fire
by -- there was a bit of a door there and I tried to
close it. I thought seal the fire and -- usually
that will put a fire out if it's not getting oxygen.
5 But I couldn't. It just got quite bad so I proceeded
to get out of there again. And I got out of there.
Back downstairs. Grabbed -- there was a firehose
here. I took it in. Upstairs again and back in and
I fought this fire here.

10 Q. That is the one you already talked about in the closet
area of that bedroom.

A. Yes.

Q. Okay.

A. I fought that. And then I -- I had to start digging
15 the floor because the fire was down like in the floor.
I had to start tearing the floor and stuff up. That's
where in the pictures before you seen where this floor
area was tore out. I tore that out. I still had
fire in the floor there and I worked on getting it out
20 and I pretty well got it out, but I had to tear the
floor and stuff apart and shove the ceiling down
through into the kitchen and the washer and dryer room
there. And I extinguished the fire there in that area.

Q. Fine.

25 A. Then I just worked on ventilation, getting the smoke
out of the house. I went down in the basement I
believe at some time and shut the furnace off. The
furnace I believe was still running -- or shut a water-
tap off or something.

30 Q. Okay, did you do anymore firefighting?

- 1 A. Not really a lot. The boys outside had pretty well
the ladders up to the eaves and the soffits and they
were working on that.
- Q. Of course you weren't the only firemen there by this
5 time?
- A. No-no, the whole crew was there.
- Q. Were you still there later on when the fire smoke had
lessened?
- A. Yes, I was around.
- 10 Q. Did you notice or make any observations while you were
in the house at that stage when it is less smokey?
- A. I was pretty well beat by then. I just noticed it was-
- Q. When you went in where was the -- was there one place
where there was more smoke than another or was it
15 pretty well the same everywhere?
- A. The hallway outside. The bathroom area wasn't too-
too bad.
- Q. The bathroom wasn't too too bad.
- A. No and there was smoke in this room but not extravagant
20 Like the hallway was bad.
- Q. The hallway was bad.
- A. Was bad. This bedroom here --
- Q. The one to the bottom.
- A. Yes. It wasn't that bad that I -- from right about
25 here.
- Q. The area between the closet and the bed.
- A. And right about there I could see that body there with
big light that I had.
- Q. What about the other room, the top bedroom, the south
30 bedroom? How was the smoke in there?

- 1 A. It would be the south bedroom there would it?
- Q. Yes.
- A. Yes, okay. It was bad. There was no visibility. You
couldn't see nothing.
- 5 Q. The body that you carried out that was found on the
floor, from your observations or from contact you had
with the body, how did it appear to be clad?
- A. How did it appear -- pardon?
- Q. What clothes did it look as though it had on?
- 10 A. I really couldn't tell if it had clothes on or didn't.
I thought maybe at one time it might have had a shirt
or something on, but I was quite busy and --
- MR. ALLMAN: Yes, I can imagine you were. Thank you.

THE COURT: Cross-examination, Mr. Furlotte.

15

CROSS-EXAMINATION BY MR. FURLOTTE:

- Q. Mr. Falconer, I understand that -- how were you
dressed when you were up there besides the breathing
apparatus?
- A. I had a big heavy firemen coat on, big heavy hip
20 waders on, and a breathing apparatus, hard hat shield,
things that come down around you face to keep from
getting burnt and stuff like that.
- Q. And you mentioned there was a lot of smoke up there,
upstairs?
- 25 A. In the hallway there was extreme smoke in the hallway.
No visibility at all in the hallway.
- Q. And how hot would it have been?
- A. To me I was quite hot due to the fact I had so much
30 gear on and the adrenaline was flowing very hard.
- Q. And what about the room temperature from the fire

- 1 itself? Could you tell if it was --
- A. I had been in a lot hotter spots.
- Q. A lot hotter.
- A. An awful lot hotter spots.
- 5 Q. Now do you know which person you took out?
- A. From the previous witnesses what I have been told it was Linda.
- Q. Linda.
- A. I don't know the girl.
- 10 Q. At the time you didn't know who it was?
- A. No, I didn't.
- Q. And I notice you kept saying you were taking out the body, but you didn't know if Linda was still alive or dead at that time?
- 15 A. No. I was pretty sure when I got a hold of her she was dead, but that wasn't for me to say.
- Q. When you were taking Linda out did you fall downstairs with her?
- A. When I started down the stairs backwards I got partway
- 20 down and then I fell and I had her in my arms. She stayed right with me and then I fell the rest of the way and at the bottom I --
- Q. And then somebody helped you out after that with her?
- A. They assisted the body off of the top of me.
- 25 MR. FURLOTTE: I have no further questions.
- MR. ALLMAN: I have no re-examination.
- THE COURT: Thank you very much, Mr. Falconer, and you are free to go. You are excused.
- MR. ALLMAN: Roy Geikie.
- 30

1 JOSEPH ROY GEIKIE, called as a witness, having been
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name, please?

5 A. Joseph Roy Geikie.

Q. Where do you live Mr. Geikie? What city or town?

A. Newcastle.

Q. And how long have you lived there?

A. All my life.

10 Q. October 14th, 1989, what if any connection did you
have with the Newcastle Fire Department?

A. I received a pager call.

Q. Did you work for them?

A. Oh, yes. Yes, I am employed with the Town.

15 Q. I kind of gathered you did because of the uniform
but I just wanted to make sure.

A. Yes, I am employed with the Town of Newcastle as a
firefighter, permanently employed.

20 Q. What happened that morning that relates to this
matter that is now before the court?

A. I received a pager call at home approximately 7:35
the morning of October 14th stating we had a house
fire at Davidson Lane - Mitchell Street area.

Q. What did you do as a result of being paged?

25 A. I arrived in my vehicle. I am an officer in the
department and usually, not always, but sometimes
arrive on the scene with no firefighting gear on,
and proceeded to that area with no gear in my own
private vehicle. I parked just across the road from
30 the Daughney house.

- 1 Q. Given the fact that you had no gear on, I take it
it would limit what you can do?
- A. Just normal everyday clothing, yes. No entry to the
building or anything.
- 5 Q. So what was it that you did, proceeded to do when you
got there?
- A. Fire truck -- one fire truck was on the scene,
truck 4 pumper which would be the one Dan Sullivan
was driving and they were -- lines off of it at this
10 time and I helped a firefighter raise a ladder to
the front of the building. I proceeded around back
and Constable Barter was there. Him and I had
conversation and I noticed another fellow, a
neighbour, Bernard Geikie, and we had conversation.
15 David Foran was on the scene and we were kind of
busy running back and forth and we were checking
with him to see if there was anybody in the building.
- Q. In that regard did you ever go into the building at
this time?
- 20 A. No more than just at the doorway.
- Q. Did you see anything that came out of the building?
- A. Yes, I was there.
- Q. Tell us about that.
- A. Yes, Constable Barter and myself, David Foran were
25 there when the first body came out.
- Q. Which door did it come out of?
- A. The back door at the steps.
- Q. How was it being transported out of that door and
onto the steps?
- 30 A. There was two firefighters, one on each end, carrying

- 1 the remains out the front door -- back door.
- Q. Where did they take the body to?
- A. Myself and I believe Constable Barter assisted the
firefighters. We went off the steps, off the landing
5 and off the steps and down to the left.
- Q. If you look at picture 4, can you give me an idea
of where the body was eventually placed?
- A. Yes, we placed the body approximately this area here.
- Q. You are pointing on picture 4. There is like a fence
10 between the shed and the house.
- A. Yes.
- Q. There are two upright posts.
- A. Yes.
- Q. And you were pointing to the general area of the
15 right of those two posts, the one that is more to the
right.
- A. Well just off the steps and just off to one side.
- Q. Between the steps and those two posts.
- A. Yes.
- 20 Q. What observations did you make about this body at
this time?
- A. I never noticed -- I noticed that it wasn't wearing
hardly any clothing, just like a top, and the top
was pulled up to this general area.
- 25 Q. You are pointing to an area just below the breasts.
- A. Yes, just like a blue top.
- Q. What about from just below the breasts on down?
- A. There was nothing. She was naked.
- Q. What colour was the naked part of the body?
- 30 A. It was darker than -- like when they were carrying her

- 1 they must have moved the top up a bit because there
was a white section here, a lighter section, normal
body colour, and below it was charred. I don't think
burnt I am just saying darker like covered with smoke.
- 5 Q. From your observations as a fireman what could cause
that dark colour?
- A. Fallout and after a fire had occurred you are going
to have that kind of stuff.
- Q. Fallout.
- 10 A. Fallout from a fire.
- Q. What is fallout?
- A. Smoke, carbon particles after a fire has -- or during
a fire that doesn't completely all burn.
- Q. So looking at the body you have got the rolled up
15 top garmet, whatever it was.
- A. Yes.
- Q. And a strip of white.
- A. Yes.
- Q. And then the darker portion from there on down.
- 20 A. Yes.
- Q. What about the face? What observations did you make
about the face?
- A. The face was bruised and swollen. The eyes -- both
eyes were blackened and they looked like they were
25 closed and quite puffy. And there was blood around
the eyes. The face looked like it was swollen.
- Q. Did you notice those injuries immediately or later
someplace else?
- 30 A. I noticed those injuries on the first body kind of --
as soon as they come out of the building with it because

- 1 I was looking to see who it was. I knew both them
people and I couldn't recognize who it was at that
time.
- Q. Now let me just get that clear. You knew -- who did
5 you know?
- A. I knew Linda and Donna very well.
- Q. You would be aware then I take it that this was their
residence?
- A. Oh, yes, definitely.
- 10 Q. When the first body was brought out and you looked at
it in the area between the steps and the porch, could
you tell who it was?
- A. No, I could not.
- Q. You said that body was semi naked.
- 15 A. Yes.
- Q. It was rather more than semi actually. It was put on
the grass or --
- A. Yes, grass. Grassy area.
- Q. Did it remain in that exposed condition or was some-
20 thing done about that?
- A. No. Constable Barter and myself threw some red
plastic in the area from -- it must have been the
covering. We assumed it was the covering off the
insulation, whatever. It was a piece of red plastic.
25 And there was quite a few people around and we
covered the remains over.
- Q. I realize you are not a physician but how did that
body appear in terms of life?
- A. Lifeless.
- 30 Q. What is the next thing that happens after that?

1 A. Well after that then we were advised -- like I had a
Walkie-Talkie at the time and we were talking back and
forth at the firehall. Constable Barter had conver-
sations. We realized that the ambulance was on
5 route and we were just awaiting the arrival of the
ambulance.

Q. Did the ambulance in fact arrive?

A. Yes, it did.

Q. Now at this stage we've just got the one body. Do you
10 know anything about any other body?

A. Yes, just in around the same time they were coming
down the stairs with the second body. It's hard to
tell who said what but in the event of conversations
between --

15 Q. We won't get into the conversations then. But the
second body was brought down?

A. Yes, and was left in the kitchen area and they got
a cover or something and they covered the body because
they knew we were going to bring her out.

20 Q. Is the second body being transported in the same way
as the first or differently? Was there a stretcher
with the first one?

A. Yes, one was a stretcher and one was a standup -- I
25 don't know what you call it - a proper stretcher and
the other one was like a hand stretcher or a -- I
don't know. It's different. One has wheels and the
other one is just like the hand stretcher that you
sit lower on the ground.

30 Q. And using those procedures where did the bodies go
next?

- 1 A. The ambulance attendants rolled the one that had the wheels inside the house and picked up Donna and brought her out, put her in the ambulance, and we assisted with the second removal on a smaller stretcher.
- 5 Q. And from there where did they go?
- A. They went to the Mirimichi Hospital.
- Q. You have already described the situation of the face of the first body.
- A. Yes.
- 10 Q. And that you couldn't identify it. Were you later on able to identify or find out who it was?
- A. Well at the morgue I had noticed the difference in the sizes and I said if one had to be one or the other, then the smaller one was Linda.
- 15 Q. What about the second body? Did you make any observations of that body at the scene?
- A. I never seen the second body at the scene.
- Q. Did you make any observations of the second body at the morgue?
- 20 A. Yes, it was --
- Q. Just tell us very briefly about that?
- A. The face area was swollen, partially clad, and eyes looked like they were swollen and blackened.
- Q. Could you recognize the second body initially?
- 25 A. No, just that it was most likely Donna due to the larger size.
- MR. ALLMAN: Thank you.
- THE COURT: Any cross-examination, Mr. Furlotte?

30

CROSS-EXAMINATION BY MR. FURLOTTE:

1 Q. Mr. Geikie, you mentioned that you knew Linda and Donna very well beforehand.

A. Yes.

5 Q. Yet when the first body was taken out you weren't able to recognize her?

A. Not to safely say that it was Linda, no.

Q. Did you at any time realize which was the first body that was taken out?

10 A. I was there for the first body that was taken out.

Q. Pardon?

A. I was there for the first body that was taken out.

Q. You were there for the first one.

A. Yes.

15 Q. Did you at anytime thereafter realize whether it was Linda or Donna taken out first?

A. Oh, yes, it was Linda that was taken out first.

Q. And when did you realize that it was Linda that was taken out first?

20 A. Well she had a blue top on and --

Q. She had a blue top.

A. Yes, the dark blue.

Q. Did I understand you to say that you never saw the second body at the scene?

25 A. Oh, yes, I seen the second body but not like look right at her or anything.

Q. Not -- you didn't look at her directly.

A. She was inside the house; I was outside.

MR. FURLOTTE: I have no further questions.

30 THE COURT: Re-examination?

MR. ALLMAN: No, My Lord.

THE COURT: Thank you very much, Mr. Geikie. You may be excused, if you wish.

MR. ALLMAN: James Matheson.

1 RICHARD MATHESON, called as a witness, having been
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ALLMAN:

Q. What is your name, please?

5 A. Richard James Matheson.

Q. What town do you live in?

A. I reside at 104 Stothart Drive in Newcastle.

Q. How long have you lived in Newcastle?

A. All my life.

10 Q. On October 14th, 1989, what if any connection did you
have with the Newcastle Fire Department?

A. I was a volunteer in the Newcastle Fire Department on
October 14th, 1989, and I responded to a fire on the
morning of the 14th.

15 Q. About what time would you have responded to that fire?

A. Between 7:30 A.M. and 8:00 A.M.

Q. When you got to the scene what was the situation?

A. Well the situation is we arrived in an equipment van
with full breathing apparatus, myself and three other
20 firefighters. We parked across the Mitchell Street
north of the Daughney residence, which we didn't know
at the time. It was 136 Mitchell we responded to. And
we proceeded running down the driveway. I was
following firefighter Falconer to the south entrance of
25 the home at the backdoor of the Daughney residence.

Q. Mr. Falconer was a previous witness was he?

A. Yes, sir.

Q. And the entrance that you would be following him to is
30 that shown on either or both of photographs 5, 6, and
7?

- 1 A. That is correct.
- Q. You would be proceeding to get to this down where?
- A. We were coming down the driveway running south.
- Q. The one that you can see in picture 5?
- 5 A. That's right.
- Q. Take us on from there, please.
- A. When we got to the backdoor firefighter Falconer was ahead of me. We took instructions from Captain -- Fire Captain David Foran who was at the backdoor of
- 10 the residence. He mentioned that there was a possibility of bodies could be in the building. So we proceeded through the door, up the stairway, through the kitchen.
- Q. Who was there first?
- 15 A. Falconer, firefighter Falconer.
- Q. So you are behind him?
- A. Yes, sir.
- Q. Up the stairs. Then what?
- A. We get to the top of the stairs and went directly to
- 20 a wall. There was dense smoke. You couldn't see. We went to our right and entered a bedroom, what we refer to as bedroom one, but it was the southeast corner of the building. Did our search of the room. Come to find out later it was Linda Daughney's bedroom.
- 25 We left that room and came out to the bannister in the hallway. We couldn't see very well. We had our heavy duty flashlights on. And proceeded south along the bannister to the bathroom. We did a quick visual
- 30 doorway to the bathroom and proceeded along the outside

1 wall of the home, along the top of the bannister, and
went into another bedroom of the northwest corner,
or bedroom number two, which we come to find out later
was an unoccupied bedroom. There was no bedclothing or
5 clothes in the closet or anything like that. We did
a quick search of that room. Upon leaving that room I
stumbled across a closet that firefighter Falconer
had misplaced or displaced in the room. I had a little
trouble getting out of that room.

10 Q. A closet or what sort of object that he misplaced?

A. It's a portable standup closet.

Q. We are not talking about a fixed built in closet then?

A. No, just a portable closet. I chucked that across the
room and got out and went along the north wall
15 proceeding east and we came to bedroom number three.

We went in this bedroom and did the same search. I
was following firefighter Falconer. And proceeded
left along the bedroom and came across dressers and
what have you and a closet and I -- Falconer was still
20 ahead of me and we came against the north wall. There
was a window. There I noticed a firefighter trying
to get our life line, our firehose to fight fire. We
went into this building without a firehose. So that
was upmost of importance to us to get some sort of
25 of life line into the building somehow and this was
where they finally tracked us down in this particular
room.

Q. Okay.

A. Falconer was going ahead of me. I lost him at this
30 time. There was a bed beside me. There was closet to

1 my left, the window, and a bed on my righthand side,
which would be the northeast corner of the room.

Q. I don't know if you were watching Mr. Falconer when he
was giving evidence, but did you see him using this
5 device?

A. Yes, I did.

Q. So you know how to use it, too.

A. I do.

Q. He was indicating that he came to the room at the
10 bottom lefthand corner on P29.

A. Right here?

Q. Yes. How does that recall with your memory of what
happened?

A. That would be correct. That would be the room to the --
15 the last bedroom we came into at the top of the stairs
and to our left.

Q. Because it is a little confusing, if you look at that
its north is to the bottom.

A. Right, that's correct. It would be the street right
20 here.

Q. The window that you are talking about where you can
see the other fireman outside would be where?

A. Right in this area right there.

Q. Okay, between closet and --

25 A. And bed.

Q. And I gather from what you said a moment ago
Mr. Falconer was a bit ahead of you?

A. I lost Reg at the window and he came along the bedroom
30 here in this area and went to this area of the room
here.

1 Q. What is the next thing that happens?

A. Well, I broke the window to get the firehose into the room. I wanted -- I got about 8 or 10 feet of hose into the room. Just as I was doing that, firefighter
5 Falconer in this area here -- or I knew he was in that vicinity of the room. He was about 45 degrees away from me. By then we had an average feel for the rooms. They weren't very big bedrooms, maybe 8 by 10 or something like that. And I knew he
10 wasn't that far away so if he got in trouble or if I needed assistance, I knew we would come to one another's aid very quickly. He is saying out that he had a body so I immediately dropped the firehose. It was a charged line. It wasn't -- we didn't put
15 any water in the room or anything. But I dropped the hose and went to his assistance.

Q. And where was he when you went to his assistance?

A. Right about the doorway I got up to Reg here.

Q. And what did he have with him, if anything?

A. He had a body which -- yes, it was a body, and he
20 was backing out of the room with the body. He had her cradled and the ankles of the feet were dragging. The heels were dragging. I picked up the heels. We got into this area here and it wasn't too long and
25 Reg went downstairs with the body.

Q. Did you go downstairs with him?

A. No, sir, I stayed upstairs. I still wanted to
continue to search. I realized that I had a charged
30 hose line in this room here and I wanted to go back in and get the remainder of the hose into the room.

- 1 Q. Just going back for one moment. You said the body was
cradled in Mr. Falconer's arms. What part of the body,
if you can tell, would be touching Mr. Falconer's
front?
- 5 A. I believe the back. If I had the ankles and he had
it in a clenched position, then he would have the back
of the head next to his chest. I am assuming that.
- Q. I take it that you and he would be clad in firemen's
equipment?
- 10 A. Yes, we had full protective gear on.
- Q. So after he goes down the stairs with the body, where
do you go?
- A. I go back into the bedroom immediately to the window.
When I am at the window another firefighter came into
15 the room. At this time while we were doing our search
of the entire structure upstairs, there were two
firefighters or backup people were right at the top
of the stairs ready to assist us. They realized we
were in there without a fire hose, which is something
20 you don't normally do. But when we were told we were
searching for bodies, it was of utmost importance to
get around that building as quickly as you could. So
as Reg got down the stairs probably with another
firefighter I went over to the window and behind me a
25 firefighter appeared. It was firefighter Glen Tozer.
- Q. Okay.
- A. He told me that -- "Did you check this room completely?"
I said "no". He said, "Well, I think there is some-
thing or someone on the bed."
30
- Q. All right.

1 A. I said, "Are you sure?" I knew then it was firefighter
Tozer because there was only four us had put protective
gear on in our equipment van. Tozer said, "There is
somebody on the bed." I said, "Are you sure it's not
5 the hose you are tripping over here or anything like
that?" He said, "I know there is somebody on the
bed." So I went and I felt the bed. I had to reach
the northeast corner. It was a double bed so it was
easy for firefighter Falconer when he does his sweep
10 of a bed to miss a body quickly because it was against
the east wall. Head was in the northeast corner. So
I reached way over onto the bed before I could finally
feel a form and I felt a hip and I went down and I did
the bottom torso area and I come back up.

15 Q. Clothed or naked hip?

A. Pardon me?

Q. A clothed or a naked hip?

A. Clothed hip -- or not a clothed hip, but it had a puff
or a comforter covering the body completely -- just
20 about completely covering the body. I yelled and
screamed and shook the body.

Q. Any response?

A. No, sir, there was no response.

Q. After you felt what you took to be the hip, what did you
25 do?

A. I came back up to the upper body area and just gave it a
little shake and then I still wasn't getting any
response. I had to -- I wanted to remove the body
as quickly as I could so what I did is I knelt on the
30 bed. I crawled on the bed and knelt on the bed and I

1 couldn't really remove the body because it was almost
like the clothing -- it was tucked into bed so I had
to take the clothing back, haul the clothing back off.

Q. Tucked in. How do you mean tucked in?

5 A. Well like it had a sheet and a comforter. All I thought
at the time was a comforter. I was to find out later
it was -- you know proper bedclothing or -- she was
laying with her head facing the northeast corner and
the comforter or puff, it seemed like it was tucked.

10 It was difficult to remove. I had to, you know,
physically quickly remove it.

Q. I think I get the picture. Despite the difficulties
then what did you proceed to do?

15 A. Well while I am kneeling on the bed I took her torso
and I flipped it over into my left arm, brought her up
like so and I got her in a clinch. I proceeded to
back off the bed, but the body, the heels hitting the
floor, and some of the bedclothing being bunched up at
the side of the bed --

20 Q. Removing the body then I gather you would also remove
also inadvertently some of the bedclothes?

A. Some of the clothing, yes, sir.

Q. Then what?

25 A. And then I had a pretty good feel for the room and
after I had previously broken out the window to get
our life -- our charged hose line into the room, a lot
of the smoke left. It ventilated the room so you
could see. Pretty good visibility. We could make one
30 another out maybe two or three feet away. I proceeded
out to the -- now familiar with the doorway and where

1 top of the stairs was. I went to the top of the
stairs with the body. I am not sure if I was
assisted, but I had her in a good firm clinched
position and her head, soaked head or whatever, was
5 up against my face mask right here. I had a pretty
good clinch. And I went out onto the top of the
stairs.

Q. Let me just interrupt you there for one moment and
we will go back. So far as you could tell what
10 position was the body lying in on the bed when it
was tucked in before you started?

A. Face down. It was face down and I think the face
was facing east in the northeast corner.

Q. Sorry I interrupted you. You got to the top of the
15 stairs with the body firmly tucked in. Take us on
from there.

A. At the top of the stairs I passed the body to two
firefighters and they immediately went downstairs
with the body with me right behind them. We got
20 to the bottom of the stairs and started towards the--

Q. Look at the next one over.

A. Here we go. And started towards the back door of
this area here where we were stopped.

Q. So you are going through the kitchen?

25 A. Went to the kitchen area and we're stopped at the
back door and we brought the body -- we were told
that we are waiting for the gurney to come back, or
the ambulance, or whatever. We came back in front
30 of the sink area here. We laid the body on the
floor and the floor was a little wet and things.

1 Q. At this time or indeed prior to this had you been
able to make any observations about the condition
of the body from a point of view of clothing? I
don't mean bedclothing. I mean clothing that
5 people wear.

A. Not until we got down to the bottom floor in the
kitchen area. Approximately covered level you can
see quite clearly. You can see it was just normal --
once we got down and got her on the floor and down
10 below the smoke I noticed that it was naked. The
body was naked from the waist down. I wasn't sure
at this time if it was a male or a female until the
body was naked, the waist down, and saw her private
area.

15 Q. What was the colour of the body, the naked part of
the body?

A. Lily white.

Q. Lily white. Any idea what could have caused that?
You told us there was smoke in this area.

20 A. Pardon me?

Q. Any idea what could have caused that given that there
was smoke in the area?

A. Could have caused her body to be so white?

Q. Yes.

25 A. Just she's a Caucasian female I assume.

Q. I think you are misunderstanding the point. Let me go
back a moment. When you first found the body, what
portion of it would be exposed to the air?

A. Only the head or the neck area.

30 Q. After you had got the body down and you placed it in
the kitchen, did you basically do very much else, or
what else did you do?

1 A. Well, I tried to comfort the body. I kept her head
off the floor and I had her cradled in my left hand,
her head.

Q. Were you aware at this time whether she was alive or
5 dead?

A. No, sir, I wasn't. I just assume everybody is alive
until somebody else makes that decision. But it was
a limp -- we had a limp form very heavy to move.

Q. When you had first gone into the building did you --
10 what did you see in terms of smoke as you were going
through that building?

A. It wasn't too bad downstairs in the kitchen area.
Before we ran up the stairs I noticed on my right the
flash of fire in the -- would be the laundry room, or
15 in behind the fridge area.

Q. Coming from where?

A. Coming from where?

Q. Yes.

A. Well it was coming from the ceiling area.

20 Q. When you get upstairs what is the condition of smoke
in the landing?

A. Dense, very black and smoke and the smoke detector was
going.

Q. What about in the -- well let's go around the way
25 you did, the southeast bedroom.

A. Right here?

Q. Yes.

A. It was very black. I did do a complete search of
this room because firefighter Falconer is like a
30 jackrabbit trying to catch up to this guy. He's a

1 good firefighter and he gets around a room very
quickly. I just went in and kind of went to the right
and I met him on his way out. He bowled me over and
he said "let's go". So we come out and find this
5 railing here and come south down the hall and initially
we go around. But any bedroom we go into I found it,
you know, it was heavy black smoke.

Q. What about the heat?

A. The heat it was intense, but it was very hot but it
10 wasn't -- we could stand up the whole time. We've
been in situations and trained in situations where
the heat is so bad we have to get down on our hands
and knees and crawl, but we were never exposed to that
in this building.

15 Q. Did you go back in later on and look at any of these
spots that you had been through?

A. Pardon me?

Q. Did you go back into the house later on and look at
-- view any of the places you had been to when you
20 were doing the things you told us about?

A. Well after the house was ventilated and the fire was
put out, I had the opportunity twice to go back into
the home. The first time is when we took the body,
apparently Donna's body, out through here onto a
25 waiting gurney at the bottom of the steps. I had an
opportunity to back into the house and go upstairs
and assist firefighter Falconer in the southeast
bedroom. Once I realized he had backup and he had
men with him, I went downstairs into the kitchen area,
30 into this area here which would be under the south-
east bedroom and I assisted -- I think it was

1 firefighter Young or Tozer -- to pull the ceiling
in the laundry room and also to physically remove the
fridge from that corner of the kitchen. After my
tank had expired, I went outside and I took off my
6 bunker gear. We were all a little bit worked up after
what had happened and stuff and our reliefs were
coming with their protective clothing on. I was
approached by the Captain of the fire scene, Captain
David Foran, to --

10 Q. I think we don't need to get into the next because
this is what people are going to tell you to do.
The last time you were dealing with the body you were
telling us that you were in the kitchen with the
body cradling it and comforting it because you didn't
15 know whether the person was alive or dead. What
happened with the body after that?

A. I requested a sheet. I am not sure if it came from
the livingroom area. I thought at the time it was
a tablecloth off the kitchen -- come to find out it
20 wasn't. But I got a sheet and I put it over the
body with the head exposed.

Q. Where was the body when you last saw it? Was it still
in the kitchen or did it go out of the kitchen?

25 A. I assisted the removal of the body to the awaiting
ambulance gurney outside the back step. That is the
last I saw of the body at the time.

Q. You describe the condition of the body. What about
the face? Did you make any observations of the face?

30 A. Not really, sir. I noticed that the back of the head
was all matted. It was very wet and I noticed blood on

1 my glove, but I could have easily flipped the face
and looked at it but I wouldn't. I have respect for
the body.

MR. ALLMAN: Thank you.

5 THE COURT: Any cross-examination, Mr. Furlotte?

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

THE COURT: Thank you very much, Mr. Matheson.

MR. ALLMAN: My Lord, that is a portion of witnesses that
so to speak fell together. It is five past 11:00.

10 It might be a convenient time to break.

THE COURT: Yes, well we will have a recess now if you
would.

(JURY RETIRES)

MR. ALLMAN: I just want to indicate to Your Lordship
15 that due to the speed we went this morning, we will
be getting to the question of at least the Daughney
autopsy photos very soon after the break.

THE COURT: Yes. Mr. Furlotte, you have had these earlier
I presume.

20 MR. FURLOTTE: Yes, My Lord.

THE COURT: When we come back after the recess you can
decide whether they can go in by agreement.

MR. ALLMAN: As I have said, we have already decided
irrespective of any request of Mr. Furlotte, that we
25 were going to remove the picture of the lungs.

THE COURT: That was number 6 was it?

MR. ALLMAN: 6, I think.

THE COURT: Well let's concentrate -- on which -- on
30 both Daughney?

1 MR. ALLMAN: We want to put in both bundles of photographs,
Donna and Linda, but there is one photograph we would
remove anyway and that is the photograph interior of
the lungs.

5 THE COURT: The Smith photographs you are not seeking --
you won't be seeking --

MR. ALLMAN: We will be eventually.

THE COURT: Not now.

MR. ALLMAN: We wanted you to see them now because our
10 submission will be that the Jury will have to see the
photographs to see the similarities.

THE COURT: Well, we will recess now and come back.

Now might be a convenient time for Mr. Pugh to get
together with the media.

15 (COURT RECESSED AT 11:05 - 11:40)

COURT RESUMES - (Accused present.)

THE COURT: Mr. Furlotte, did you have any observations
to make on these photographs? We are just concerned
now with Linda Daughney and the Donna Daughney, or do
20 you want to consider Smith as well?

MR. ALLMAN: Well, Mr. Sleeth is going to argue the
photographic evidence he prepared for that in
anticipation. I think we want them all dealt with now.

MR. SLEETH: Ultimately ruling on all of them, My Lord.

25 THE COURT: Well, let me make this observation first. I
quite agree, and I probably wouldn't have allowed the
number 6 in the Linda Daughney one which is more of a
surgical photograph, but I understand the Crown are
quite content to have that removed anyway. I don't
30 see anything wrong really. I am just giving my

1 impressions here subject to whatever argument might
be -- I don't see anything wrong with the Donna
Daughney photographs insofar as their admissibility
is concerned. The Smith photographs, there was one
5 which I felt perhaps -- that was number 21.

MR. FURLOTTE: I didn't realize he gave me the Smith one.

MR. ALLMAN: I said I was giving the Smith one because we
wanted --

THE COURT: Number 21 in the Smith group I take it that
10 is part of an intestine is it? What is it?

MR. SLEETH: That is a defensive wound, My Lord, on a
finger I believe.

THE COURT: Oh, I see. I'm sorry I was misreading. I
don't see the objection. I thought that was some
15 internal body part.

MR. SLEETH: No, it's not, My Lord.

THE COURT: No. I see now the finger. Did you have any
observations to make, Mr. Furlotte, on any of these?

MR. FURLOTTE: My Lord, I didn't realize we were dealing
20 with the Smith ones right now. I guess --

THE COURT: Are you actually, Mr. Sleeth, going to -- do
you want a ruling on Smith now?

MR. SLEETH: Yes, My Lord.

THE COURT: Yes, but are you going to use those? Are you
25 going to be tendering them?

MR. SLEETH: Well later, My Lord, but we would be seeking
a ruling with respect to their acceptability for the
court.

THE COURT: Well let's delay on that until Mr. Furlotte has
30 had a chance to review those photographs a little

1 later.

MR. SLEETH: Perhaps then we could, My Lord, with respect
to the Daughney matters. I would like to hear what-
ever objection there is my learned friend has. I
5 would note, however, that one of the reasons why we
will be arguing for the admissibility as well as the
-- both the Daughney series of photographs, the
Daughney series, is because of the relationship
particularly with certain cut marks on faces with the
10 photographs that are to be seen on the Smith series of
photographs.

THE COURT: Yes, but you are not going to use those other
ones just yet?

MR. SLEETH: Not just yet.

15 THE COURT: Perhaps by this afternoon Mr. Furlotte might
have had a chance --

MR. SLEETH: Not until later, My Lord.

THE COURT: Or I will tell you what we can do. Tomorrow
morning when we meet at 9:30 on a voir dire perhaps
20 we could devote a minute or two right at the start of
that to discussing the Smith ones. But now for
Daughney. Do you have any observations to make on
the Daughney autopsy photographs, Mr. Furlotte?

MR. FURLOTTE: Yes, My Lord. Most of the Daughney
25 pictures, some are duplications and I feel -- you know
one picture sometimes and ought to be sufficient to
depict the wounds that the Daughneys suffered. Also,
my biggest objection to the Daughney pictures is I
think the Crown is taking unnecessary advantage of
30 promoting inflammatory pictures in that before these

1 pictures are taken the blood should be washed off the
victims so that the Jury can actually see the wounds
that they did sustain rather than it being grossly
exaggerated. They say a picture is worth a thousand
5 words, but all the blood on these victims if it was
washed off I would say those thousand words might be
reduced to a hundred words. For this reason I say
that most of these pictures in the Daughney file are
grossly inflammatory because the blood has not been
10 washed off. If you will notice in the Smith case
there is only a couple of pictures that the blood --
I believe the first 6 -- the blood is left on and
then after that they had the pictures taken with all
the blood washed off so it could really and reliably
15 depict the wounds that was suffered by Mr. Smith. I
feel at this time that the pictures of the Daughneys
I would object to their admission because it's not
a true depiction of the injuries that were suffered.
It not only misleads the Jury, which I suppose the
20 Crown might argue that well the doctors, or the
police, or anybody can explain what the injuries
looked like underneath all that blood, but I don't
think that is sufficient. We should have real
evidence, reliable evidence, and not evidence that
25 is grossly exaggerated as such. I don't know whether
the pictures were taken after the blood was removed,
the victims bodies were washed, but I am sure they
weren't -- they weren't buried in that state. I am
sure the bodies were washed up and I don't know
30 whether the Crown has pictures after they are washed up

1 but whether they do or don't I think -- if they do,
I guess I won't be able to object to those being
admitted but if they don't, then I think they should
suffer the consequences of poor police investigation
5 and procedure in presenting the photographs in court.

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

MR. SLEETH: My Lord, I would take it then that amongst
other things which my learned friend is conceding by
making no comment on, he is not trying to argue that
10 these photographs do not accurately depict the
persons. His complaint is the so-called shock or
inflammatory theory that he is trying to present.

THE COURT: Well, he still has the prerogative of cross-
examining the pathologist or whatever to establish
15 that the bodies have been tampered with, or blood
has been added, or red poured on or taken off.

MR. SLEETH: Well, we could certainly do that at a later
time, My Lord, but my understanding as well is he is
not making that argument in the -- in this particular
20 motion.

My Lord, I would submit first of all that the law
in Canada has been strikingly set forth and it is
referred to as well and related in such texts as
Canadian Criminal Evidence by MacWilliams, 1974, at
25 page 78, where the author in dealing with photographs
as various forms of evidence notes that they might
cause in a Jury and a Judge to abhorrence, or
shock, and inflame against an accused but in itself
this has not been a ground for rejecting the
30 admission.

1 The Supreme Court of Canada, My Lord, has dealt
specifically with the issue of photographs presented
of showing injuries. The case I would refer My Lord
to is the case of Draper and Jacklyn, contained in
5 1970 Supreme Court Reports, page 92, and I am
referring specifically to page 102. There the court
noted, and I think it quite important, it followed
an earlier decision by another court. The court
said, with approval:

10 "The circumstances in which the body of this
poor woman found were gruesome and the
photographs record these shocking circumstances,
but I think that the Jury themselves would
separate the purposes for which the photo-
graphs are in evidence from any impression
they may have on first seeing them. As the
case proceeds, the photographs will be
regarded by them in the ordinary and proper
15 way as matters of evidence to be considered
only in relation to the matters which they
prove."

 These particular photographs, My Lord, will be
of assistance to a pathologist who will be testifying,
Dr. John MacKay, who is on the witness list. I am
20 sorry I remember off the top of my head his particular
number, but he will be testifying I suspect by
Monday, sometime on Monday. He is the person who
performed the autopsy. He will be able to link
observations he made of these persons in the
25 condition which he found them to the photographs which
will be before the court to explain the severity of
the injuries which these persons all suffered.

 My Lord, there are decisions which have been
dealt with by the New Brunswick Courts such as
30 Bannister and Ash, all of which have made the point,
My Lord, that photographs which do properly depict
and which will be of assistance to the Jury are
admissible even if there may be some shock to these

1 particular photographs. We are dealing here, My Lord,
with a series of murders and it is important to be
able to establish, which we will be attempting to
show through the pathologist, virtual signature
5 features to these killings. The batterings in each
case were alluded to earlier in the severance
argument. You find batterings about the head. We
find slashings upon the faces. These are displayed
very clearly in the photographs here. My learned
10 friend was absolutely correct when he said that a
picture is often worth a thousand words. For that
reason alone I would submit that it can be of
enormous assistance to the pathologist.

The Ash decision, My Lord, which was a decision
15 of this Court of Appeal, of our Court of Appeal,
is contained in 50 New Brunswick Reports, page 82,
and it is also to be found in 39 Canadian Criminal
Cases commencing at page 193. This involved a murder
matter and what was introduced was an x-ray photograph.
20 It showed injuries that had been done to the arm of
the victim and it was held that this was perfectly
admissible.

The court also later on, this court in the case
of Bannister, which is contained in 66 Canadian
25 Criminal Cases commencing at page 38 permitted the
photographs of the charred remains of a human body
found in the ruins of a lake house to go into
evidence. It was held that while they were gruesome;
they may have had some shock value in actual fact
30 they probably depicted what was there and were
admissible.

1 The Nova Scotia Court of Appeal, My Lord, in
1968 in the leading case of Creemer and Cormier,
contained in -- it's a 1968 judgment contained in
1 Criminal Reports, new series, commencing at page
5 146, also dealt with the introduction of supposedly
inflammatory photographs. There, there was a coloured
photograph of one Linda Inez Sybley taken by an
R.C.M.P. officer of the same morning she had been
allegedly raped. It showed her in a pose, which was
10 related to have been -- likely to be inflammatory.
The court still held that it was proper to admit the
photograph on the basis that it fairly depicted the
condition of the victim at the time.

15 There is I would note, My Lord, following the
report in the C.R.N.S. series, Criminal Reports new
series, a lengthy annotation by the leading defence
counsel I believe at that time in Canada, Arthur
Maloney. It is a very extensive report contained by
20 him and he basically comes down to the issue that
where these photographs properly depict and are likely
to shed light upon material facts that the photographs,
even if they have some theoretically inflammatory
aspect, or more importantly if they are merely gruesome
25 that in itself is not a basis on which one can turn
around and deny the introduction of the photographs.

THE COURT: Could you run through the photographs and just
vaguely indicate the purpose of each or what the Crown
does want to use that particular photograph for?

30 MR. SLEETH: Yes, My Lord.

THE COURT: This is a voir dire I remind everyone present
and can't be reported.

1 MR. SLEETH: Okay, I will start with, My Lord, Donna
Daughney which --

THE COURT: I mean just briefly.

MR. SLEETH: Very briefly, My Lord, I certainly don't want--
5 the best person to testify on the additional features,
My Lord, will be obviously be Dr. MacKay when he
testifies before you.

Photograph number 1, My Lord, shows bruising as
you can see as I understand it on the buttocks and
10 marks of scrapings on the lower back.

Photograph number 2, My Lord, demonstrates heat
burn around the abdomen and also demonstrates the
damage to the area around the eye, also the battering
around the mouth, My Lord. And also there would
15 appear to be a cut on the right shoulder.

THE COURT: Why is the right arm in a plastic bag there?
However, that's not --

MR. SLEETH: Okay, that is done, My Lord, as a routine
matter apparently before taking -- at the morgue in
20 order to preserve the hands, were later on finger-
printed. You can see if you turn to photograph
number 3 the same thing is done with the left hand
My Lord.

That photograph number 3 while I am there, My
25 Lord, also displays once more you can see on the right
hand mid right portion of the body the heat scalding
burning portion on the abdomen and there is also
markings on the legs which I believe Dr. MacKay will
be referring to.

30 Photograph number 4 is again what appears to

1 possibly, as I recall, be a cut of some sort on the
upper right shoulder of the victim.

Photographs 5 and 6, My Lord - 5 in particular
shows a slash or a penetration wound into the throat.

5 Photograph 6 shows bruising around the throat,
damaging around the throat together with a repeat from
a different angle of the penetration would shown in
number 6.

10 Photograph 7 and 8, My Lord. Photograph 7 in
particular shows an incision on the leftside of the
cheek which would have been done by an edged
instrument. It would not have been death causing;
it would, however, have been painful and there is
significance to that.

15 Photograph 8, My Lord, shows the same with the
full face shown. It also shows the injuries around
the eyes consistent with the battering which is going
to be related by the doctor.

20 Photograph number 9, My Lord, shows at a slightly
different angle the things that are shown in photograph
number 7 and also gives a better view of not only the
slashing, the S-like slashing just below the eye,
which is also shown in photograph number 7, but also
places a better geographical location with the
25 puncture wound which is shown on the throat.

Photograph number 10, My Lord, shows what appears-
bruising on the forehead which I believe would be
consistent with some sort of dragging or pounding.

30 I submit all these will -- I would submit further,
My Lord, while we are dealing with those photographs

1 and generally with all of them, we are now in a day and
age where we move past the situation that once reigned,
My Lord. I would think frankly that most adults in
this country have probably seen much worse on our
5 television screen and on our movie screens.

Turning then to the photographs of Linda Daughney,
My Lord, at the autopsy. You will not again in
response to your first question to me, photograph 2
the covering of the hand for later purposes, photograph
10 number 1 is again to show injuries to the buttocks
area which will be related to by Dr. MacKay and also
you can see as you go further up the body what appears
to be some bruising on the middle back.

Photograph number 2 shows in addition to the
15 partial view of the side of the fact which gives some
indication of the battering, some burning which would
have been caused -- scald and caused by the heat.

Photograph number 3, My Lord, is a clear
indicator of the injuries sustained by the victim and
20 will be linked directly by the doctor with his
testimony. You will also see an indicator as well some
portion of burn marks on the face which links it once
more with the testimony we will be giving.

Photograph number 4 indicates left breast and the
25 doctor will be testifying as to the reasons why he
believes the bruising that is to be seen there was
brought about.

Finally photograph number 5, My Lord, shows the
30 side, the right side, the profile of the victim. Also
shows an earring which is set in there and indicates

1 the mottled area that you see on the face that is
 caused by the fire.

 THE COURT: Yes. Well that covers everything you want to
 say?

5 MR. SLEETH: That is what I have to say. It's very
 general, My Lord, and the briefest possible form
 about the photographs and why we submit them.

 I finally conclude, My Lord, by noting once more
 that the courts have indicated repeatedly that the
10 mere fact that these photographs, which I admit they
 are unpleasant, but they do fairly depict the
 actual condition of the victims at the time the
 autopsy is performed. They link directly with medical
 testimony that is going to be given and some of the
15 authorities have pointed out, for instance, that the
 courts blithely appear to accept x-ray evidence. There
 is no reason in principle why the acceptance of these
 photographs also cannot be allowed. They fairly show
 the condition which will link directly to two things:
20 the signature referred to earlier, the signature
 detail that is to be found with all victims. The
 nature and the savagery of all the victims and
 particular a number of these slashes also link and
 make it possible for a medical expert to explain more
25 properly to the Jurors, who themselves are not
 medical experts, the nature of his testimony.

 Thank you.

 THE COURT: Thank you very much. Anything in the way of
 reply to that, Mr. Furlotte?

30 MR. FURLOTTE: My Lord, the only thing I would like to

1 reiterate what I said earlier about -- I believe the
blood could have been washed.

THE COURT: Well, that's not necessary. Just in reply.

I don't want you to go back and start over again.

5 Maybe you have said everything that can be said now.

MR. FURLOTTE: The only other thing is I feel that some-
times there is multiple pictures taken and one should
have been sufficient and one could have been
sufficient and that the more often the Jury would see
10 that then the greater inflammatory effect it would
have.

THE COURT: Well, my ruling is this. With the exception of
the photograph 6 which I would not have allowed and
which the Crown don't actually seek to have put in,
15 I would rule that the others are all admissible in the
case of both Linda Daughney and Donna Daughney. They
are unpleasant photographs, but I think people
serving on -- Jurors today have been exposed to this
type of thing and I -- on the point of duplication, I
20 examined the photographs here to see if perhaps there
were duplication but I am satisfied that each photo-
graph does really cover almost a distinct point so
I wouldn't disallow any of them on the ground of
-- on that ground. There are some of the photographs
25 I would imagine perhaps that blood stains still remain
on the face, but I don't think, again, that would
in the circumstances exclude the photographs. Without
Mr. Furlotte's consent you can't put these in at this
point until you have at least established them through
30 some witness. You can have them marked for identifi-
cation if you want to.

1 MR. FURLOTTE: This is going to be done, My Lord. What
we were seeking at this moment though was a ruling
on things such as the inflammatory aspect. Thank you,
My Lord, for your ruling on the voir dire. May we
5 have a moment to determine for sure that when we come
to the stage where we are posing to introduce the
photographs, if at that time there is no other reason
that may surface for their exclusion, we would want to
be sure that photograph number 6 in our pack does not
10 go to the Jury.

MR. ALLMAN: Could I take back Your Lordship's copies of
all of those?

MR. SLEETH: My Lord, I am advised that number 6 has been
removed from the packets which we would propose to
15 offer the Jury if otherwise admissible.

MR. ALLMAN: Should I take these all or leave them with
Your Lordship?

THE COURT: When are you going to use these?

MR. ALLMAN: In just a couple of witnesses.

20 THE COURT: All right. I may have marked on the
outside of that.

MR. SLEETH: I will keep them separate to make sure that
they --

25 THE COURT: I guess I didn't. No, I didn't mark anything
on it.

MR. ALLMAN: Just to clarify that to the Clerk the one
that removed is number 6 from Linda.

THE COURT: Well are we all set to bring the Jury, ready
to bring the Jury back?
30

MR. ALLMAN: Yes, My Lord.

1 (Jury called. All present)

THE COURT: Now, another witness, Mr. Walsh?

MR. WALSH: Yes, My Lord, I would call Ernest MacLean.

ERNEST MACLEAN, called as a witness, having been
5 duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. Would you give the court your name, please, and your
occupation?

A. Ernest Edward MacLean, Chatham Head, New Brunswick,
10 ambulance driver for Mirimichi Ambulance Service.

Q. And were you so employed in 1989?

A. Yes, I was.

Q. And would you tell the Jury, please, in your own
words, beginning with the date, your involvement in
15 this particular matter?

A. On October 14th, 1989, at 7:45 in the morning I
received a call asking -- informing me there was a
fire on Mitchell Street and asking to stand by. At
7:54 that same morning, I received a call telling me
20 that there was a fire -- informing me there was a
fire at 136 Mitchell Street and asking me to respond.
Reggie Stewart and myself responded to the call.

Q. Reggie Stewart being another ambulance attendant?

A. No, being the orderly at the hospital.

25 Q. Oh, I see.

A. He was just handy so I took him with me at the time.
We arrived at the scene at 7:54. We were informed
then there was a body at the back of the house.
30 Reporting to the back of the house, I was then
informed they had found another body in the house. A

1 fireman -- the fireman asked for a sheet so I handed
him a sheet which he took into the house. He returned
out with the body wrapped in the sheet. By that time
we had our first body on the stretcher. When they
5 returned out they put the second body on the stretcher
which was completely covered over. After loading the
two patients in the ambulance, or the two bodies in
the ambulance, we left the scene.

Q. Okay, what time did you leave the scene?

10 A. At 8:05.

Q. Before we go any further, you have mentioned two
bodies.

A. Yes.

Q. You loaded both of them into the ambulance.

15 A. Both bodies into the ambulance.

Q. Where was the first body that you loaded into the
ambulance? Where did you find it when you first
arrived at the scene and what did you do with it?

20 A. At the back of the house we took a sheet and we
wrapped -- we put it over the body which the body was
already covered over anyway.

Q. What did you do with the covering that was already
over it?

25 A. We left it on.

Q. Okay.

A. Left it on.

Q. Was the body on the ground?

A. On the ground.

30 Q. And what did you do with it after you put the sheet on
it?

- 1 A. We just kind of tucked the sheet underneath the body, cradled -- I would say we cradled the body because normally we cradle a body to pick off of the ground and lay it on the stretcher.
- 5 Q. And you put the stretcher in the ambulance?
A. Stretcher in the ambulance.
Q. And the second body?
A. The same thing. When the fireman put the body on the stretcher, we put both bodies in at approximately the
10 same time.
Q. Where did the fireman put the body on the stretcher? Whereabouts in relation to the property?
A. It was right by the back door.
Q. Did you notice anything about either one of the bodies
15 at that time?
A. At that time I didn't see either one. They were completely covered over.
Q. What did you do with the two bodies that was loaded in the ambulance?
20 A. We just -- we left the scene at 8:05 and we took them to the hospital, which we took them into the morgue, arriving at the hospital at 8:09.
Q. That is the Mirimichi Hospital?
A. Mirimichi Hospital.
25 Q. In Newcastle?
A. Yes.
Q. And what did you do when you arrived at the Newcastle Hospital?
A. In the morgue I pulled the sheets down just enough
30 for to see the faces and notice the faces -- that

1 both eyes was black and swollen closed. Finding this
here I covered the faces back up again and --

Q. With the same sheet?

A. With the same sheet and notified the police for them
5 to come up to the hospital.

Q. Okay, did you stay with the bodies?

A. I stayed with the bodies.

Q. Until when?

A. Until Constable Barter arrived, which was just a
10 couple of minutes later. When he arrived I pulled
the sheet down over the -- off the face again, showed
him what I had found or the reason why I had called
him, and then I stepped back. In the room at the
time was Reggie Stewart, Joan Paisley who was
15 supervising at the hospital.

Q. She is a nurse?

A. Yes, she is a nurse.

Q. And yourself?

A. And myself. That is all that was in the room.

20 Q. Did anyone else arrive to your knowledge after that?

A. No, not until Constable Barter arrived and Dr. Blanchard

MR. WALSH: I have no further questions. Thank you,
My Lord.

MR. FURLOTTE: I have no questions.

25 THE COURT: Thank you very much, Mr. MacLean. You are
excused.

MR. WALSH: I'd call Corporal Leo Roy, My Lord. Corporal
Roy is number 81 on your indictment list. We are
30 going to call him in advance or Brandt Adams.

1 CORPORAL ROY, called as a witness, having been duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

- 5 Q. Would you give the court your name, please, and your
occupation?
- A. My name is Joseph Leo Roy. I am a peace officer, a
member of the Royal Canadian Mounted Police. I have
been a member of the R.C.M.P. for the last nineteen
10 years and I have been a member of the forensic
identification section for the last twelve years.
- Q. Would you tell the court, please, in relation to the
Daughney matter what if anything you did or observed
beginning with the date, the time, and the place?
- 15 A. Yes, sir, on the 14th of October, 1989, I met with
Constable Pierre LeFebvre and a Mr. Lorne Jay at the
R.C.M.P. detachment at Moncton, Westmorland County,
New Brunswick.
- Q. Constable Pierre LeFebvre I understand is an R.C.M.P.
officer is that correct?
- 20 A. Yes, he is.
- Q. And who is Lorne Jay? Who did you know Lorne Jay to
be?
- A. He was the driver of the -- or the funeral director.
- 26 Q. What was the purpose of your meeting, without going
into the details of any conversation?
- A. To take two female bodies to Halifax, Nova Scotia, for
the purpose of laser examination.
- 30 Q. Just briefly just so the Jury understands without
getting into any details, would you just tell them at
briefest, what is a laser examination?

- 1 A. Sometimes we will use a laser in order to examine a body for fingerprints or other foreign material that might be on a body whereas we couldn't detect otherwise. We need a laser light in order to detect.
- 5 Q. You mean detect otherwise with the eyes?
- A. With the eyes, yes.
- Q. And that was the purpose of your meeting was to attend, to go there to Halifax?
- A. Yes, sir.
- 10 Q. And was someone else to conduct this examination, this laser light examination?
- A. Yes, sir, Corporal Locke from the R.C.M.P. at the crime detection laboratory in Halifax.
- Q. Corporal Locke is a witness on the indictment list,
- 15 My Lord. Continue, please, officer.
- A. As I said approximately 4:30 P.M. on the 14th we left Moncton en route to Halifax, Nova Scotia.
- Q. Who left?
- A. All three, myself, Constable LeFebvre, and Mr. Jay.
- 20 Q. How were you travelling?
- A. Mr. Jay was driving the funeral stationwagon, Constable LeFebvre and I were in my police vehicle, and we followed the funeral director to Halifax.
- Q. Continue, please. What happened next?
- 25 A. We arrived in Halifax at approximately 8:00 P.M. where we were met by Corporal Locke at the forensic lab in Halifax. Shortly after that and after we were met by Corporal Locke we started the examination on the two
- 30 bodies.
- Q. Were you present during this particular examination?

- 1 A. Yes, I was present the whole time.
- Q. And who else was present?
- A. Constable LeFebvre and Corporal Locke.
- Q. And what if anything did you observe during the
5 examination?
- A. During the examination with the laser light I
observed several fibres and hairs on both bodies and
also some staining that we couldn't see with the naked
eye. We could only see under the laser light.
- 10 Q. And where did you observe this staining with the
laser light? What parts of the body do you remember?
- A. On one body it was on the inner -- the upper inner
thigh.
- Q. That is on the outside of the leg?
- 15 A. On the inside of the leg.
- Q. Okay, would you just stand up and point where you are
referring to?
- A. On the inside of the leg right here.
- Q. And on the other body?
- 20 A. It was in the middle chest area.
- Q. Continue. What if any other observations did you
make?
- A. I marked these areas with a pencil in order to
remember where exactly they were when we got to the
25 autopsy.
- Q. Would you explain to the Jury what you mean by 'you
marked the areas with pencil'? Is this markings put
right on the body?
- A. Yes.
- 30 Q. And how would you actually do it? Would you describe
please?

- 1 A. I just took a pencil and marked four marks in around
the area where the stains were observed.
- Q. And that was for what purpose?
- A. In order to locate the areas where the stains were
5 seen as you couldn't see them with the naked eye.
- Q. Locate them when?
- A. When the autopsy would be performed later in
Saint John.
- Q. Was anything done to remove any part of that stain
10 while you were conducting the laser light examination?
- A. No, sir, it was not.
- Q. Continue please.
- A. I observed Constable LeFebvre take several hairs and
fibres from the bodies at the time in Halifax.
15 Subsequent to that we brought the bodies to the
Halifax City Police Department where they have a
lockup in their garage. The stationwagon from Adams
Funeral Home was locked up in this lockup and
Constable LeFebvre retained the only key.
- 20 Q. And why did you go there?
- A. We needed to secure the bodies for the night as we
spent the night in Halifax.
- Q. And then what happened?
- A. 8:00 o'clock the next morning, that would be on the
25 15th of October, 1989, we went back to the city police
lockup where we retrieved the vehicle with the bodies
and proceeded to Saint John Regional Hospital,
Saint John, New Brunswick.
- Q. For what purpose?
- 30 A. For purpose of conducting autopsies.

- 1 Q. And how did you proceed from Halifax to Saint John?
A. In the same --
- Q. How were the bodies transported?
A. In the same manner that they were transported to
5 Halifax. Mr. Jay was driving the two bodies and
Constable LeFebvre and myself were following behind.
- Q. And what -- you arrived in Saint John obviously.
What happened when you got to Saint John?
A. Approximately 1:30 P.M. we arrived in Saint John where
10 we met with Doctor MacKay at the Saint John Regional
Hospital.
- Q. He is the forensic pathologist who has testified
earlier in this trial?
A. Yes, sir, he is.
- 15 Q. Okay, continue.
A. We started an autopsy -- if I may check my notes. I
can't recall exactly who it was.
- Q. Are they in your own handwriting?
A. Yes.
- 20 Q. And taken at the time?
A. Shortly thereafter.
- MR. WALSH: With Your Lordship's permission.
- A. The first autopsy was performed on Donna Daughney.
- Q. Did you know these ladies before this or were they
25 identified to you?
A. They were identified to me. I didn't know the ladies.
- Q. The first one was on Donna?
A. On Donna Daughney.
- Q. Did you stay throughout the autopsy?
30 A. Yes, I did.

1 Q. What if any function did you have at the autopsy?

A. I was there to take photographs of both bodies and the bruises and other photographs as directed by Doctor MacKay.

5 Q. Okay, what would you actually do? Would you describe to the Jury? Do you take them at the end of the autopsy, in the middle of the autopsy, at the beginning, or when?

A. It was during the autopsy. It was before the autopsy.
10 I take a full body picture on the front and back during the autopsy before the body was washed, during the autopsy after it was washed, and right through the autopsy I would be taking photographs.

15 Q. And did you perform this function during the autopsy of Donna Daughney?

A. Yes, I did.

Q. Continue please. What if anything else occurred during that particular autopsy that you want to relay if anything?

20 A. I also observed Constable LeFebvre take several swabs from Doctor MacKay and other related exhibits that he kept and marked and kept.

Q. Okay, you say you saw him take swabs from Doctor MacKay. Where were these swabs related to?

25 A. The swab taken from Donna Daughney was taken on her -- on the inside of her upper right thigh, vaginal swabs I believe, and other related --

30 Q. I see. And the stain that you mentioned that you had noted under the laser light examination in Halifax what if anything was done with that stain when you arrived at the autopsy with respect to Donna Daughney

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1 in Saint John?

A. This is the area where the swab was taken by
Doctor MacKay and given to Constable LeFebvre.

Q. Okay, continue please.

5 A. The area where I had marked a swab was taken from that
area and given to Constable LeFebvre. The autopsy
on the 15th -- there was only one autopsy performed on
the 15th. We finished around approximately 8:00 P.M.
and left the other body for the next day. On the 16th
10 at approximately 8:30 in the morning we returned to
the Saint John Regional Hospital where the autopsy
on Linda Daughney was performed by Doctor MacKay.

Q. And, again, this person was identified to you as
Linda Daughney. You didn't know her from before?

15 A. That is correct.

Q. I see. Would you tell us what function you performed
at that particular autopsy?

A. I performed the same functions as for the Donna
Daughney. I was there to take photographs during the
20 autopsy right through the autopsy.

Q. Under whose direction?

A. Doctor MacKay.

Q. And what if anything else did you do or observe being
done?

25 A. Again I observed Doctor MacKay taking swabs from the
body of Linda Daughney and specifically swabs from the
chest area in the area where I had marked and he
turned these over to Constable LeFebvre for safe
keeping.

30 Q. This is the stain that you observed with the laser

1 light examination in Halifax?

A. That is correct.

Q. Doctor MacKay swabbed that and gave it to Constable
LeFebvre?

5 A. That is correct.

Q. Do you have any of the photographs which you took in
Saint John? Have you brought them to court today?

A. Yes, sir, I have.

10 Q. I show you this booklet here. Would you look at it for
me please and tell the Jury if you recognize what is
in there?

A. Yes, this is a booklet of photographs of Donna Daughney
which I took on the 15th of October, 1989, at the
Saint John Regional Hospital. The booklet contains
15 ten photographs.

Q. And that was taken at the autopsy?

A. Yes, sir, it was.

Q. Under the direction of Doctor MacKay?

A. Yes, sir, it was.

20 Q. Are those all the photographs that you would have
taken of Donna Daughney?

A. No, there were more.

Q. These are only a few of those?

A. Yes.

25 Q. Do these photographs accurately depict what you were
observing or attempting to show with these photographs?

A. Yes, sir, they do.

30 MR. WALSH: My Lord, at this time I move to have the
booklet of photographs purporting to be of Donna
Daughney numbered 1 through to 10 inclusive entered as
a Crown exhibit.

1 THE COURT: That would be exhibit --

THE CLERK: P34, My Lord.

THE COURT: P34, yes. P34(1)-(10).

(Exhibit P34 (1) - (10): Booklet of Photographs)

5 MR. WALSH: I was just going to ask you if perhaps you
wanted to say a few words to the Jury before I
distributed these photographs.

THE COURT: Mr. Walsh will be giving copies of this
exhibit to you containing these 10 photographs. I
10 want to say that I have observed them, or looked at
them, during a voir dire. Pictures of dead persons
are never pleasant and these are particularly perhaps
gruesome would be the word for it. I just warn you in
advance. I feel that it is proper for the Jury to
15 see photographs adduced because as someone has said,
a picture is worth a thousand words.

Q. I am going to ask you if you would, Corporal Roy,
would you take the Jury through those photographs and
explain to them what you were attempting to show?

20 A. Yes, photograph number 1 shows the body of -- the back
of the body of Donna Daughney as I saw it at the
Saint John Regional Hospital in the autopsy room.

Q. Had you done anything with the body from the time that
you actually came across it in Moncton up until the
25 time that this photograph was taken? Had you or
anyone with you done anything to that body other
than the laser light examination?

A. Other than the laser examination, no.

30 Q. Were any of the clothes removed from the body?

A. No, there wasn't.

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- 1 Q. And what if anything are you attempting to show there
other than a view of the back?
- A. Yes, this shows the overall view of the back. We can
also see around the buttocks area bruises on the right
5 buttock. On the left -- on the inside left leg we
also see a discoloured area which I assume was a bruise.
- Q. You were taking these pictures under the direction of
Doctor MacKay is that correct?
- A. Yes, sir, I was.
- 10 Q. Who are those people in the background?
- A. Doctor MacKay and his assistant.
- Q. Continue please.
- A. Also on the right leg we can see around the knee area
a couple of more bruises and around the right foot
15 is also some bruises. In photograph number 2 is the
frontal part of the body.
- Q. Now, I take it she would have been moved, from one
photo to the other?
- A. Yes, and the clothes were taken off by this time. On
20 the frontal part of the -- on photograph number 2
around the abdomen there is a portion of skin that is
gone. On her right knee we can see some more bruising.
I bring your attention to her right shoulder. You see
a small cut on her right shoulder.
- 25 Q. Before you go on. Plastic bags appear both in
photograph 1 and 2. There is plastic bags over the
woman's hands and lower -- her forearms. Would you
explain to the Jury why those bags are in that place?
- 30 A. Those bags were there when I first saw the body. They
usually placed on a victim for the purpose of

1 examining the person's -- the victim's hands or nail
scrapings or other foreign material that might be lost
otherwise.

Q. For forensic identification they protect that part of
5 the body?

A. Yes.

Q. Continue please.

A. Photograph number 3, again, the lower portion of the
body. On her left knee we can see some bruising and
10 just below the knee, again, some bruising. On her
right ankle there is another bruise we can see just
above the ankle.

Photograph number 4 is a closeup of the cut that
we could see on her right shoulder and also with a
15 scale in the photograph to show the length.

Q. That is a closeup of the mark on the right shoulder in
photograph 2, is that correct?

A. That's correct.

Q. Continue please.

A. Photograph number 5 is a photograph of a puncture on
20 the leftside of the neck and also included in this
photograph is a scale.

Photograph number 6 is a photo showing the
marks and the scars--not the scars but the bruising on
25 the right side of the neck. Also included is the
scale.

Q. What if any marks are you attempting to show there?

A. Either cut marks with a sharp object or -- they look
30 to me as they were cuts.

Q. Okay.

A. They are not deep but they are superficial cuts.

1 Photograph number 7 shows again a superficial cut
on the left cheek, again, with a scale.

 Photograph number 8 - we can see, again, the
cut shown in photograph number 7. On the left cheek
5 and also on the right cheek another superficial cut
right in -- going down from below the eye towards the
chin area. Also, on her right chin, there seems to
be a puncture wound as well.

Q. Is that puncture wound that you are referring to
10 in photograph number 8 visible in number 6?

A. Yes, it is. Right at the left bottom corner of
photograph number 6 we can also see this puncture
wound.

Q. Continue please.

15 A. Photograph number 9, again we can see the superficial
cut on her left cheek. There is also kind of a half-
moon cut just below this cut, again, which seems
superficial and also we can see again the puncture
wound on the leftside of her neck.

20 Photograph number 10 shows the bruising which
appeared to be fresh on her forehead, again, with a
scale.

Q. Did you have occasion to follow the same procedure
with respect to photographs in relation to the lady,
25 Linda Daughney?

A. Yes, sir, I have.

Q. And you brought those photographs to court with you?

A. Yes, sir, I have.

30 Q. Would you look at this for me, please, and tell the
Jury if you can recognize it?

1 A. Yes, this is booklet of photographs containing 5
photographs of Linda Daughney taken at the Saint John
Regional Hospital on the 16th of October, 1989.

Q. Do those photographs accurately depict what you were
5 attempting to show?

A. Yes, they do.

Q. Are these the only photographs that you would have
taken?

A. No, they are not.

10 Q. These are a selected few of those?

A. Yes, sir.

Q. And these were taken under the direction of Doctor
MacKay?

A. That's right.

15 MR. WALSH: My Lord, at this time I would move that the
booklet of photographs 1 through 5 inclusive be
entered as a Crown exhibit.

THE COURT: That would be P35(1) - (5).

(EXHIBIT P35(1)-(5): Booklet of Photographs)

20 MR. WALSH: My Lord, with your permission, I will
distribute them to the Jury. They are identical copie

THE COURT: Yes. I make the same observations to the Jury
with regard to these photographs that I did with the
earlier ones.

25 Q. Corporal, would you take the Jury through these
photographs, please, and assist them in trying to
explain to them what you were attempting to show?

A. Yes, referring to Exhibit P35, photograph number 1,
again, is an overall view of the back of Linda
30 Daughney taken at the Saint John Regional Hospital.

1 These were taken, as I mentioned, on the 16th of
 October, 1989.

 Photograph number 1 shows some bruising on her
 back. On the right side of her back is a small bruise
5 and also on her legs around the ankle area.

Q. What is on her buttocks there? There appears to be
 some --

A. It appears to be grass.

Q. Continue please.

10 A. Photograph number 2 shows the front area of Linda
 Daughney's body. We can see in this photograph from
 her abdomen down to her feet the body is charred.
 There is some sort of soot on the body.

Q. Again, there is plastic bags on the hands.

15 A. For the same reason as for Donna Daughney.

Q. You explained earlier that at the laser light
 examination you had noticed a stain on the body of this
 woman and that there was a stain taken at the autopsy.
 Could you just point, please, for me where that
20 approximate location on the body that stain was taken
 from?

A. We can see on the body in the chest area there is a
 darker area. It was in that vicinity, yes.

MR. WALSH: My Lord?

25 THE COURT: Yes.

Q. Is that correct, officer?

A. That's correct.

Q. Would you continue, please?

30 A. Photograph number 3 is a photo of the front of her
 face. Here again we can see a red substance, which I

1 believe to be blood and also there were dark areas
showing in the photos which I believe was soot from
the fire.

Q. That's a frontal view of this woman?

5 A. Yes.

Photograph number 4 is a photo showing the right --
the left, sorry, breast area.

Q. Is there any marking in particular that you were
attempting to show under the direction of Dr. MacKay?

10 A. Yes, there seems to be -- on the lower part of the
breast there seems to be a half moon type bruising.

Q. Consistent with what or do you know?

THE COURT: Well, isn't that better left to the fellow --

MR. WALSH: Fine, My Lord.

15 A. Again, on photograph number 4 the area to the left of
the scale would be the area where stains were
observed.

Q. Fine. Photograph 5?

20 A. Photograph 5 is a photo of her right ear. In this
photo we can see there is an earring right at the
centre of the photograph in her earlobe and also I
observed that she had her ears pierced twice. There
were two perforations in the ear.

Q. One in each ear?

25 A. In both ears. There were two perforations in both
ears.

Q. Two in the right ear and two in the left?

A. Two in the right ear and two in the left ear.

Q. And how many earrings were in the perforations?

30 A. There was only one earring at this time.

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- 1 Q. Out of the four holes?
A. Out of the four holes, yes.
Q. There was only one?
A. Yes.
- 5 Q. Could you tell the Jury anything about the shape of that particular earring you remember?
A. It was a heartshape, I believe, earring.
Q. I just want to -- I think I overlooked to do it when we were going through the Daughney photos. Would you
10 point out to me, please, where the stain that you noticed at the laser examination which was removed at the autopsy, where that would be in relation to this lady's body, please?
A. In the inside of her right thigh. In this area here.
- 15 Q. Photograph 3 you are referring to?
A. Photograph number 3, yes.
Q. Am I pointing in the correct spot?
A. That's correct.
- MR. WALSH: My Lord?
20 THE COURT: Yes.
Q. Did you have any other involvement in this particular matter, officer?
A. No, sir, not at this point.
- MR. WALSH: I have no further questions, My Lord. Thank
25 you.
THE COURT: Were you going to be very long in cross-examination, Mr. Furlotte, or perhaps you have none?
MR. FURLOTTE: No, My Lord. I am only going to be a
30 minute.

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1 CROSS-EXAMINATION BY MR. FURLOTTE:

Q. Corporal Roy, aside from the pictures that you took at the autopsy did you take any pictures if any of the bodies when the blood had been washed off?

5 A. Yes, I have.

Q. And how does the bodies look compared say when the blood is all on them and after the blood is washed off? Less gross?

A. It doesn't make any difference to me.

10 Q. It doesn't make any difference, no, but you are used to it by now?

A. Yes.

Q. But for somebody who is not used to looking at these pictures I suspect with all the blood on it it would
15 be much more inflammatory?

MR. WALSH: Objection. That is an improper question, My Lord.

THE COURT: Inflammatory is pretty hard to define really.

20 Q. So because it doesn't make any difference to you -- had you submitted all these pictures to the Crown or just the ones that are in the book?

A. I believe I submitted my pictures to the investigators and they were submitted to the Crown.

25 Q. You don't know what happened to them after that. I have no further questions.

MR. WALSH: I just have a couple to clarify a point.

REDIRECT EXAMINATION BY MR. WALSH:

30 Q. The photos that you have shown the Jury. Were there photos that you took that were more grotesque than what we have shown here?

1 A. No.

Q. What kind of body parts would you have photographed?

A. I would have to look into my other photographs and my negatives to --

5 Q. Okay. Which is the more realistic photo: the ones that you took before the body is washed or after the body is washed?

MR. FURLOTTE: My Lord, this is not a new area that the defence raised.

10 THE COURT: Well I don't think --

MR. WALSH: Fine, My Lord. Mr. Furlotte's implication it didn't seem to have any point to it other than an implication that I wanted to clarify.

15 THE COURT: Well I think we will drop it there. There was one question I wanted to ask, a very small question. These stains that you referred to that the laser treatment; not treatment, but laser inspection revealed, were they visible with the ordinary eye without the laser assistance?

20 A. No, My Lord, they weren't. You could only see them under the laser light.

THE COURT: So you take the body to Halifax in the belief that stains might show and you go completely with the laser do you?

25 A. That is correct.

THE COURT: How does the laser work?

A. I am not familiar with the workings of the laser.

30 THE COURT: No, but I mean is it in the form of a flashlight that you shine over or --

A. Yes, My Lord, it is a wand which emits a very strong

1 beam of light and we have to wear goggles in order not
to hurt the eye and we go over all parts of the body
in order -- the main reason was to look for finger-
prints and the second reason was to look for foreign
5 material that might be found on the body.

THE COURT: But when you come to these stains how does it
show up -- how does the stain show up?

A. It fluoresces.

THE COURT: It fluoresces. It is a different colour or
10 lights up or something does it?

A. Yes, that is correct, My Lord.

THE COURT: You don't know at that point what it is. It is
just a stain or some foreign material.

A. Some foreign material will fluoresce under laser light;
15 others will not. In this instance we did get a
fluorescent view of it.

THE COURT: Any questions arising out of those from the
Crown or the --

MR. WALSH: As I explained, Corporal Locke will be here I
20 believe next week and he will give an explanation.

THE COURT: You are through then with this witness.

MR. WALSH: Stand aside, My Lord.

THE COURT: Corporal Roy stand aside, sir. You shouldn't
25 discuss this portion of your testimony with anyone
until all your testimony is finished.

CORPORAL ROY: Thank you, My Lord.

THE COURT: We will recess. It is quarter to 1:00. Take
the Jury out please.

(Jury Retires.)

30 THE COURT: In the interest of perhaps getting reality

1 into media reports, this aspect of the case I would
ask Mr. Push again to make available to -- well not
make available -- make available to the media members
the opportunity to examine these photographs. I rely
5 on the good judgement of media representatives, of
course, as to how to report what the photographs
depict. I am sure you not going to want to go into
too much detail on it. Perhaps that can be done
right away during the recess, that is if the media
10 wish to avail themselves.

Did they do this --

THE CLERK: They are waiting to a little later --

THE COURT: Do them altogether. Whatever you can work out.

15 Have they got a place to do that? Well you can use
more than one copy of the set. You can use the
Jury's copies if you like but they are to be collected
up and used and not to be distributed or copied or
reproduced or anything of that nature. Okay?

NOON RECESS - (12:45 - 2:00 p.m.)

20

COURT RESUMES - (Accused present.)

THE COURT: Now we will have the -- is there some question
first?

MR. WALSH: Yes, My Lord, my next witness will be

25

Mr. Brandt Adams. Mr. Adams is the funeral director
in Newcastle, but he also is a neighbour of -- was a
neighbour of the Daughney's. His initial involvement
dealt with identifying Linda or Donna Daughney. My
understanding, and again this will be from Mr. Adams,
30 but my understanding is that he wouldn't be able to
make an absolutely positive identification from just

1 looking at the -- he wasn't able to make an absolute
identification looking at their particular faces
because of the nature of the injuries. He explained
that he could differentiate between them in terms
5 of their size. The Crown felt that it would be
important under the circumstances since because of
that particular circumstance it would be important
to at least introduce into evidence photographs of
these two women without any injuries prior to this
10 particular incident.

THE COURT: Well you can ask him what they looked like or
show him the photographs.

MR. WALSH: No, My Lord, but the reason -- I will show you
the photographs in any event. The reason for that
15 particular photograph was for the Jury. They can
make their observations themselves. As well it
does -- without knowing what they looked like before
it is difficult to have anything in which to compare
to the injuries now to determine the extent of the
20 actual damage that was done to these people. We felt
that this was important for them to see what these
people were like before.

THE COURT: I can appreciate that. Yes, I can appreciate
it.

25 MR. WALSH: And that's the reason we -- I intend to do that
through Mr. Adams. I explained this to Mr. Furlotte.
I understand he has been given photographs of these
individuals before and he suggested that we should
voir dire that particular issue so I am doing it at
30 this time.

1 THE COURT: I don't see very much problem with it,
Mr. Furlotte. Do you see any problem?

MR. FURLOTTE: Well, My Lord, Mr. Walsh is right. He
explained it to me but unfortunately at the same time
5 he explained it to you. I was just asked whether or
not I objected to these pictures going in and I didn't
know the reason why they wanted them in so I said I
would object to them on the grounds of relevancy. I
didn't have a clue what reason they wanted them to go
10 in.

THE COURT: Well, you are satisfied that there is reason.

MR. FURLOTTE: But if -- well if the only purpose -- I
don't know. Am I to understand that the identification
of the bodies are to be made from these photographs,
15 that the Jury has to compare the other photographs
with these photographs to identify as to whether or
not the bodies are in fact Linda Daughney and Donna
Daughney?

THE COURT: I don't think that is the point. Are you
20 proving the identity of the bodies in any other way?

MR. WALSH: Well, My Lord, the identification --

THE COURT: You know I would almost think that the people
were directed to the Daughney's house. You had
someone this morning that knew them well and knew
25 where they lived and knew he was going to the Daughney
house. They carried two bodies out.

MR. WALSH: Yes, I don't -- really I don't see that being
any issue. All I am pointing out is that Mr. Adams
could not, based on what he observed -- was not able
30 to say based on the actual facial features was able to
say a hundred percent that that was them. He believes

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any issue. All I am pointing out is that Mr. Adams
could not, based on what he observed -- was not able
30 to say based on the actual facial features was able to
say a hundred percent that that was them. He believes

1 they are who they are and he more or less differentiated
between their sizes. In addition it is important, My
Lord, for the Jury to have some reference point
upon which to judge the damages that were inflicted on
5 these particular women.

THE COURT: That is legitimate but all you have to do to
put these photographs in as you ask him, you show
him the photographs presumably and say do you know who
that is and he says one is whoever it is --

10 MR. WALSH: Yes, that is correct. And he will I under-
stand testify that that is an accurate photograph of
these ladies prior to the incident.

THE COURT: If you want to register an objection or
express an objection at that time you can, Mr. Furlott

15 MR. FURLOTTE: I still don't see the relevancy. I find it
extremely hard to believe that this is the only way
the Crown can prove identity. Again, I will say that
one of the Crown's claims is that some kind of
tactical maneuver --

20 THE COURT: Well they are not seeking -- as Mr. Walsh
explains they are not seeking to prove identity with
these photographs. It is to prove the comparison of
appearance before and after the assault on these
people in their homes, in their bedrooms, or wherever
25 it took place in their home.

MR. FURLOTTE: Well, I don't think the defence will be
contesting that these people looked like this the
day before, I say on October 12th or 13th. So what
they looked like beforehand I think is irrelevant.
30

1 THE COURT: If you raise the objection, I think I will be
ruling against you on that one. I do feel it is
relevant.

MR. WALSH: My Lord, just one point so it's not Mr. Furlotte
5 doesn't leave the impression that perhaps we are trying
to run things by him without actually showing him.
Those photographs were delivered by my colleague, I
understand, either last week or early this week. Given
to him. He hasn't said a word about them. I just
10 assumed, first of all, that he had no objection to
them and secondly he understood why we were doing what
we were doing. I apologize for that. If we give
him something, we would appreciate it if he would at
least come to us and tell us --

15 MR. FURLOTTE: I apologize to the Crown, My Lord, for not
being a mind reader. It's unfortunate.

MR. WALSH: I won't say anymore, My Lord.

THE COURT: All right. Now, the Jury back please.

(Jury called. All present.)

20 THE COURT: Have you got another witness, Mr. Walsh?

MR. WALSH: Yes, My Lord. I'd call Mr. Brandt Adams.

DAVID BRANDT ADAMS, called as a witness, having
been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

25 Q. Would you give the court your name, please, and would
you spell your first name?

A. It's David Brandt Adams. Brandt is spelled B-r-a-n-d-t

Q. What is your occupation, Mr. Adams?

30 A. I am a licensed funeral director and I live at
102 Pleasant Street in the Town of Newcastle,
New Brunswick.

- 1 Q. And are you familiar with the residence of Linda and
Donna Daughney?
- A. Yes, I am.
- Q. And where would your -- I take it your residence is
5 near there?
- A. Yes. I live at 102 Pleasant Street which is right
over the funeral home.
- Q. And how far would that be from Linda and Donna
Daughney?
- 10 A. Approximately 500 feet.
- Q. I see. And did you know Linda and Donna Daughney?
- A. Yes, I did.
- Q. For how long?
- A. For 14 years.
- 15 Q. And could you -- first of all, Mr. Adams, I am going
to show you a booklet that contains 2 photographs.
Would you look at these photographs, please, and tell
me whether or not you can recognize them?
- A. Yes.
- 20 Q. And who are they of?
- A. The one on the left is Donna and the one on the right
is Linda.
- Q. And that is as you look at it?
- A. Uh-huh.
- 25 Q. And do these photographs -- do the pictures shown in
these photographs accurately represent what these
ladies would look like prior -- shortly or prior to
October 14th or at least in the year October of 1989?
- 30 A. Yes, they do.

1 MR. WALSH: My Lord, at this time I am going to move that
these be entered as an exhibit.

THE COURT: Do you have any questions on these particular
exhibits, Mr. Furlotte?

5 MR. FURLOTTE: No, My Lord.

THE COURT: They will be Exhibit 36(1) and (2). Let's
make one P36, would be Donna on the left, and P37
would be Linda Daughney on the right.

(EXHIBIT P36: Photograph of Donna Daughney)

10 (EXHIBIT P37: Photograph of Linda Daughney)

THE CLERK: P36 and P37, My Lord?

THE COURT: Yes.

MR. WALSH: My Lord, with your permission I have some
copies for the Jury.

15 THE COURT: All right. Oh, I think, Mr. Walsh, you had
given me one already.

Q. Would you just hold those photographs up so that the
Jury can see them, Mr. Adams and would you point to
the one that is Donna?

20 A. Donna is the one here on this side.

Q. That would be the left as you look at the booklet?

A. Yes.

And Linda was the other one on the right.

25 Q. Okay, fine. Thank you. What was your involvement in
this particular matter, Mr. Adams? How did you
become involved in this?

A. Somewheres between 7:30 and 8:00 on the morning of
October 14th, 1989, I received a phone call from a
neighbour of the Daughneys.

30 Q. I am going to ask you to speak up a bit. You have a
low voice.

1 A. Okay. On the morning of October 14th of 1989 between
the hour of 7:30 and 8:00 o'clock I received a phone
call from a neighbour of the Daughney girls informing
me of a fire at the residence. So I quickly got
5 dressed and ran to the house, which was approximately
500 feet from where my residence is. When I arrived
there I discovered, or I had noticed that there was
smoke coming from the house.

Q. Was there anybody at the premises at the time you
10 arrived?

A. Yes, at the time the Newcastle Fire Department was
there with one vehicle and firefighter Dan Sullivan
was there as well as police officer Charlie Barter.

Q. Did you enter the premises?

15 A. No, I didn't.

Q. Did you notice anything or anyone other than those
individuals?

A. There were other people there but right now I can't
recall who they were.

20 Q. What if any bodies did you notice?

A. There was one at the rear of the residence.

Q. Laying where?

A. Okay, from the direction that I was coming from it
would be actually on the -- I was on the driveway
25 side of the house, which is on the lefthand side of
the building, and the remains was towards the rear
of that building.

Q. I will show you the booklet of photographs marked
30 P33. It is the large booklet. If you could just
flip through the first few photographs and find one

- 1 that would help you show the Jury where this body was
 -- where you observed the body lying.
- A. Well, excuse me, I would say if you look at number 10
 that would be the angle that I would be coming from.
- 6 Q. You would be going towards what is shown in that
 picture?
- A. Yes, that's right.
- Q. Okay, would you turn it around for the Jury please?
 Take that pen so you won't have to use your finger.
10 Hold the booklet up and just point where you would
 have observed the body.
- A. Again this is taken from the front of the entrance
 going into the driveway, but the angle that I am
 coming out is more from over this way. So I can see
15 back in this area here more.
- Q. For the record you are referring towards the area of
 the back of the steps?
- A. That's right, yes.
- Q. And where would the body be in relation?
- 20 A. Just on the back side of the bottom of the step.
- Q. This photograph number 5 -- 4 or 5 assist you in
 showing more accurately?
- A. Yes. If you looked at number 4 it's at the bottom of
 the step and a little bit more to the eastside of the
25 property line in this area here someplace.
- Q. I will just hold it up so the Judge can see it. This
 is the area you are referring to here?
- A. Yes, in that area.
- 30 THE COURT: Well you mean not on the driveway side - on the
 other side.
- A. That's right.

1 Q. And what, if anything, was covering the body when you first observed it?

A. There was a piece of plastic that was covering -- I presumed it was plastic. There was too many things
5 happened at one time and things like that you don't take a whole lot of notice to. Anyway, there was a piece of plastic there covering what I presumed was the body and it was a red colour in nature.

Q. And did you have occasion to actually view the body at
10 that time?

A. No, I didn't.

Q. Did you have occasion to see any other body while you were there?

A. Later on I went back out of the driveway and around
15 the fence on the eastern side of the -- on the easterly side of the building. In the meantime I was assisting the fire department with their work.

Q. How were you helping them?

A. Helping them carry the hoses or ladders or whatever,
20 but I was also showing them, or explaining to them how the house was laid out to a point of my knowledge of the house. I went around on the easterly side of the house on the other side of the fence and that is where I stayed until the second body was taken out.

Q. Where did you see this body? Where was this body
25 when you first saw it?

A. Coming out of the back door of the house.

Q. And where was it put?

A. It was put on the stretcher and they went around the
30 corner and I lost sight of it, but I presumed it was put in the ambulance.

1 Q. And what about the body that was lying on the ground?

A. It was also around the corner and into the ambulance.

Q. I see. And did you have occasion to have anything further to do in relation to those bodies?

5 A. Later on in the morning, and I am not too sure of the timing either, but it would be approximately within an hour of that time, I was asked to go to the Mirimichi Hospital and at the Mirimichi Hospital I went directly to the morgue area.

10 Q. Who was at the morgue when you went?

A. There was Constable Charlie Barter, and Ernie MacLean, and the supervisor at the hospital.

Q. Supervisor of nursing?

A. Yes.

15 Q. And what was your purpose of being there at that time?

A. At that time they presumed that they were going to have to take the remains for autopsies and they were requiring my services to transport the remains from there to wherever we had to take the remains to.

20 Q. And did you do anything at that particular time in terms of observing the bodies themselves?

A. Yes, I did. I observed the two bodies and Constable Barter asked me if I knew them. I said I did. And he said, "Can you identify them?" And I said, "I don't know for sure." But he said, "Well, see what you can do."

25

Q. So what did you do for the purpose of trying to identify?

30 A. Well I looked at the two of them and then from my own experience and knowledge of the two girls I was able to identify them in that fashion.

- 1 Q. What fashion would that be? What were you using for
your --
- A. Well to start with Donna was a heavier girl than what
Linda was so I was using that. And then their
5 facial features was heavier -- like Donna's facial
features were more full than what Linda's were and I
was using that for my identification. As well as
Donna is taller than what Linda was as well.
- Q. Would you be able to tell the difference yourself?
10 Were you able to tell the difference yourself at that
time by just looking at their faces?
- A. Yes, I did.
- Q. I will show you Exhibit P35. Would you look at that
for me, please, and tell me which one of the people
15 is that person?
- A. The P35 - number 3?
- Q. Yes, I'm sorry. Photograph number 3.
- A. Okay, the P35 was the one that I presumed was Linda.
- Q. And P34, number 8?
- 20 A. P34, number 8, was the one I presumed was Donna.
- Q. Did you have occasion to do anything else in relation
to those bodies at that time?
- A. At that time I suggested to one of the police officers
that was there at the time. I said, "If the remains
25 are going for an autopsy --
- Q. Speak up.
- A. "If the remains are going for an autopsy that the hands
should be covered with something to preserve any
prints or anything like that that was on the hands at
30 the time." So we covered both hands of both girls with

1 plastic.

Q. I take it that you have had experience with taking bodies for autopsies before is that correct?

A. Yes.

5 Q. Is that a normal thing to do?

A. Under those circumstances it is.

Q. And I show you P34 of the body of Donna Daughney. Is that the plastic that you --

A. Yes.

10 Q. And P35, photograph 2, is that the plastic?

A. Yes.

Q. Did you take the bodies yourself or what did you do?

A. I assisted the hospital orderly and one of my employees to place them onto our stretchers and we loaded them
15 into my vehicle and then they proceeded onto Halifax.

Q. Did you go with the bodies yourself?

A. No, I didn't.

Q. And who was present at the time that you were loading them on?

20 A. There was one of my employees, Lorne Jay, and there was Constable Pierre LeFebvre from the R.C.M.P., Newcastle, and I am not too sure who else was there but I know those two people were there for sure.

25 Q. Could you assist the Jury in any way, Mr. Adams, by telling them you knew these girls for how long?

A. Approximately 14 years.

30 Q. Could you tell the Jury anything about what you actually observed yourself in relation to, for example, their -- how should I put this -- their habits in terms of how they dressed, or -- that is probably

1508

- 1 best way I can put it. Their habits in terms of how they would dress.
- A. Things like that I wouldn't take all that much notice of it. Like if you are talking about jewellery, or
6 clothing, or something like that, I just wouldn't pay all that much attention to them. But I know that they were the type of girls that had good clothing and --
- Q. In terms of jewellery I am more interested in. You
10 mentioned jewellery. That is what I was trying to get at.
- A. The jewellery - I know that Donna, for instance, wore nice jewellery. Again, I didn't pay a whole lot of attention to it because it is not my type of thing
15 anyway so -- but she did wear a lot of rings.
- Q. Who did?
- A. Donna.
- Q. Did you notice whether or not she wore any other kind of jewellery, Donna?
- 20 A. Well she would wear earrings and necklaces and things like that, but again I don't pay a whole lot of attention to it.
- Q. What about Linda?
- A. Linda was the same but maybe not quite as much, but
25 she did have a lot of good jewellery and rings and things like that.
- Q. And could you tell the Jury, please, anything about what kind of people they were in terms of how sociable they were, or would they have a lot of
30 friends, a few friends? Would they go out a lot?

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1 Would they be around a lot? Things of that nature.

A. They would be around the neighbourhood a fair amount
and they visited neighbours, but again to certain
neighbours. They didn't go to everybody's house all
6 the time, but I mean they have been to my place. They
were very personable people. Like they were very
close to themselves and they kept a lot of their
business to themselves as well. But they did have some
very close friends and those would be the places
10 where they would frequent.

THE COURT: On that point. Did they work? Were they
employed?

A. Donna would occasionally.

Q. Would they have -- these neighbours and that do you
15 know whether or not -- did they always visit outside
their home, or did they ever have these neighbours or
friends you were talking about visit inside to the
house?

A. No, a lot of times they would go to one of their
20 neighbours in particular. They would go to that house
and the others in the surrounding areas.

Q. What neighbour in particular would they visit?

A. The Bernard Geikie residence. They would be there a
lot.

25 Q. Do you know his wife's name?

A. Mary. And they would also go to the Howard Geikie
residence which was right next door again. Those were
the ones that I knew that they went to quite often.
Now the others I am not too sure of how frequently they
30 would go, but I am sure that every one of the neighbours

- 1 saw them every day.
- Q. Would the Geikies to your own experience and knowledge
would they visit the Daughneys at their home?
- A. Very -- occasionally but not as seldom as what they
5 would go the other way.
- Q. Have you ever had occasion to be in the home yourself?
- A. On a few occasions I was, yes.
- Q. Would you visit very often?
- A. No.
- 10 MR. WALSH: I have no further questions. Thank you.
- CROSS-EXAMINATION BY MR. FURLOTTE:
- Q. Mr. Adams, it appears that you knew quite a bit about
the Daughney sisters.
- A. A fair amount.
- 15 Q. Almost as if you kept watch on their homes.
- A. It's a small neighbourhood and people are very close
in that neighbourhood.
- Q. How about for boyfriends?
- A. I couldn't tell you that.
- 20 Q. Did Donna or Linda have boyfriends?
- A. I couldn't tell you that for sure. I wouldn't say
that they did.
- Q. You wouldn't say that they did. You wouldn't say that
they didn't either.
- 25 A. From my experience or my knowledge of the two girls,
from that I am just judging that they wouldn't have
any.
- Q. So you don't know.
- A. I am not going to swear on a stack of Bibles they
30 don't have because I wasn't that close to their very

1 personal life and they were the type of people that
were very private in their ways and they didn't tell
a lot of their business around either.

Q. You don't know if Linda was seeing anybody?

6 A. I couldn't tell you for sure.

Q. And you don't know if Donna was seeing anybody?

A. No.

MR. FURLOTTE: No further questions.

THE COURT: Re-examination?

10 MR. WALSH: No, My Lord.

THE COURT: Thank you very much, Mr. Adams. That is all
for you. You are excused.

MR. WALSH: I'd call Constable Pierre LeFebvre.

15 THE COURT: You are still under oath, constable. You
were sworn earlier weren't you?

CST. LEFEBVRE: Yes, My Lord.

CONSTABLE PIERRE LEFEBVRE, recalled as a witness,
having previously been sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

20 Q. Just to refresh everyone's memory. You are Constable
Pierre LeFebvre. You are a member of the Royal
Canadian Mounted Police and in October, 1989, you
were stationed at the Newcastle detachment. Is that
correct?

25 A. That is correct.

Q. Would you tell the court -- you had involvement in
both the Flam, Daughney, and Smith matters is that
correct?

30 A. Yes, I did, My Lord.

Q. Would you tell the court, please, in your own words

1 your involvement in relation to the matter of Linda
and Donna Daughney beginning with the date, the time,
and the place?

A. The 14th of October, 1989, in Newcastle, New Brunswick,
5 I was assigned a task to take custody of the bodies
of Donna and Linda Daughney for the purpose of
taking the two bodies to Halifax for laser examination
and then to attend the Saint John Regional Hospital
for autopsies. On the 14th of October, 1989, at
10 2:40 in the afternoon I attended the Mirimichi
Hospital and I was handed the keys to the morgue
from Constable Barter of the Newcastle Town Police.
I unlocked the morgue and I took custody of the two
female bodies. I then at 2:55 left the Mirimichi
15 Hospital with the bodies of the Daughney sisters
and proceeded to Moncton where I met with Corporal
Leo Roy of the Moncton R.C.M.P. Ident. Section. On
my way to Moncton I was accompanied by Mr. Lorne Jay
of the Adams Funeral Home with whom I drove to
20 Moncton. Once in Moncton I switched cars. I went
with Corporal Roy and we proceeded to Halifax following
Mr. Jay's vehicle.

Q. Could you explain to the Jury what was your job?
What was your particular job that you --

25 A. My job was to take custody of the bodies and make
sure that I would keep continuity and I would preserve
continuity of the bodies.

Q. Fine. Continue please.

30 A. Approximately 8:00 o'clock on the 14th of October,
1989, we arrived at the Halifax Crime Detection Lab

1 forensic lab and two bodies were removed from the
Adams Funeral Home vehicle and taken inside the
building for laser examination. And were present
during the laser examination: myself, Corporal Roy,
5 and I forget the name of the other --

Q. This is the laser light examiner?

A. That is correct, yes. And the laser examination
lasted from 8:00 o'clock -- 8:00 p.m. until 11:00 p.m.
during which time I seized exhibits from the two
10 bodies; namely, hair and fibres.

Q. And these hair and fibres were made -- why did you
seize them? What if anything did the laser light do
that would enable you to do that?

A. Well we seized -- we first of all seized hair and
15 fibres that were visible at the naked eye and then
we seized hair and fibres that were not visible at
the naked eye but were visible under laser light
condition. And I was simply instructed by Corporal
Roy to seize certain hair and fibres from the bodies
20 of the two victims.

Q. Apart from those things that you seized did you make
any observations?

A. Yes, I did. I observed Corporal Roy making -- I
25 observed some stains under laser light, some stains
that were enhanced under laser light that would
normally would not see under normal light conditions.
And I observed Corporal Roy marking with a pen around
these stains on the bodies.

30 Q. Do you remember the location of these stains in
relation to the bodies?

1 A. I remembered the location. I remember Corporal Roy
making a mark on the chest area on one of the victims
and making a marking on an inner leg on another one
of the victims; however, I could not tell you who the
6 victim was that belonged to that particular marking.

Q. I see. While you were there was there any attempt
to remove these particular stains at the examination
in Halifax?

A. No, My Lord.

10 Q. Continue please.

A. At 11:00 o'clock the laser -- at 11:00 o'clock p.m.
the laser examination was terminated and then we
proceeded to the Halifax Town Police and at 11:55 that
night secured the two bodies inside a locked compound
15 at the Halifax Town Police. I was given a key and
padlock and I remained sole custodian of that key
until the following morning. On the 15th of October,
1989, at approximately 8:00 o'clock in the morning
we returned to the Halifax Town Police compound. I
20 unlocked this specific compound and where the two
bodies were in sight in the funeral coach. And then
we proceeded to the Saint John Regional Hospital for
the purpose of the autopsies. We arrived at
Saint John Regional Hospital at approximately 1:00
25 o'clock that afternoon the 15th of October. We
proceeded -- we unloaded the two bodies. Donna
Daughney's body was taken directly to the autopsy
room and Linda's body was secured in the Saint John
Regional Hospital's morgue and at 1:00 o'clock
30 Doctor MacKay proceeded to do the autopsy on Donna's

1 body and present in the autopsy room was myself and
Corporal Roy and Doctor MacKay's assistant.

Q. And what if any function did you play during the
autopsy? Why would you be there during the autopsy?

5 A. During the autopsy, which lasted from 1:00 o'clock
until approximately 6:00 o'clock, I seized myself
numerous exhibits and I was also handed over exhibits
from Doctor MacKay.

MR. WALSH: My Lord, I have an item here I wish to have
10 marked for identification.

THE COURT: W is it?

THE CLERK: W, My Lord.

THE COURT: W.

(W for IDENT.)

15 Q. I will show you what has been marked W for Identifi-
cation. Would you look at that please and tell me
whether or not you can identify it?

A. Yes, My Lord, I can identify it from my signature.

20 Q. Would you tell the Jury please under what circum-
stances you would have seen this particular item?

A. Yes, My Lord. At 16:29, 4:30 in the afternoon, on the
15th of October I received two vaginal swabs from
Doctor MacKay. I marked the container with my
initials, the date, and the time, and this is the
25 container in question.

Q. And this would have been from the body of what
purported victim? Which purported --

A. That would be from the body of Donna Daughney.

30 Q. And what if anything did you do with this particular
item when you received it from Doctor MacKay?

1 A. Took it in my custody and kept it secure until such
time it was turned over to Constable Davis of the
Newcastle detachment.

THE COURT: Is it in a tube there, Mr. Walsh?

5 MR. WALSH: Yes, My Lord, it's a tube.

Q. Explain the circumstances, please?

A. That tube came from a sealed rape test -- rape kit
that I took with me for the purpose of the autopsy.

Q. Just so we are clear. What is inside the tube?

10 A. Inside the tubes are two swabs, one of them having
the furry end missing.

Q. When you received that both ends --

A. Both ends were attached.

Q. Tip on them?

15 A. Yes, they all -- both of them had a tip on.

Q. In the condition they are now one has a tip missing?

A. That's correct.

MR. WALSH: I have another item, My Lord, for identification

THE COURT: X --

20 THE CLERK: Yes, My Lord.

(X FOR IDENT.)

Q. And the last item just so I am clear. The last item
you kept in your possession?

25 A. I kept it in my possession until such time I turned
it over to Constable Davis.

Q. When did you turn it over to Constable Davis?

A. The 17th of October between 1:00 in the afternoon and
5:00 in the afternoon.

30 Q. And when did you see this item next?

A. This afternoon -- or last night.

1 Q. Whose possession was it last night?

A. Constable Charlebois'.

Q. This particular item here that is marked X would you
look at it, please, and tell me whether or not you
5 can identify it?

A. Yes, My Lord, it is the same type of container with
my markings on it, my initials, the date - 15th of
October - and the time - 3:17 in the afternoon. And
it is a swab which I received from Doctor MacKay. It
10 is a body swab and the tip of it is missing.

Q. And which of the bodies was this particular --

A. Donna Daughney's body.

Q. Do you know what part of her body?

A. I don't recall what part of the body but I am sure I
15 have it recorded in my notes which I made at the time.

Q. Do you have your notes with you?

A. Yes, I do, My Lord.

THE COURT: Fine.

MR. WALSH: With your permission?

20 A. I am sorry, My Lord, I don't have that information. I
received that swab from Doctor MacKay. Unfortunately
I cannot tell you exactly where he took that body
swab, from which part of the body it was taken.

Q. But it was from the body that you have identified
25 as Donna Daughney?

A. Yes, My Lord.

Q. And what if anything did you do with this item after
that?

A. Kept it in my possession until such time as I turned
30 it over to Constable Davis on the 17th of October.

1 Q. Would you describe for the Jury what is inside this particular -- what is this item? There is two -- just explain.

A. That's a plastic container, plastic tube containing
6 a piece of swab with the end of it, the tip missing.

MR. WALSH: Another item to be marked, My Lord, for identification.

THE COURT: Y.

(Y for IDENT.)

10 Q. I show you the item which has been marked Y for Identification. Would you look at that for me, please, and tell me whether or not you can identify it?

A. Yes, My Lord, I can identify a vial, a glass vial, which bears my signature, the date of the 15th of
15 October, 1989; time of 6:00 in the afternoon. And that glass vial is contained in a plastic container. I can identify the -- and the vial is empty but I can identify the vial.

Q. What is the vial?

20 A. The vial is a blood sample which I received from Doctor MacKay on the 15th of October at 6:00 in the afternoon.

Q. And related to what body?

A. That is related to the body of Donna Daughney.

25 Q. So blood sample taken from Donna Daughney?

A. That is correct.

MR. WALSH: I have another item for identification.

THE COURT: Z.

(Z for IDENT.)

30

1 Q. I show you this item which has been marked Z for
Identification. Would you look at it for me, please,
and tell me whether or not you can identify it?

A. Yes, My Lord. This is a plastic container containing
5 2 vaginal swabs which I received from Doctor MacKay
on the 16th of October, 1989, at 10:20 in the morning
and this would pertain to the autopsy of Linda
Daughney. Out of those two swabs one of them has got
the tip missing.

10 Q. And at the time that you received them did both of
them have tips on them?

A. At the time I received them both of them had tips on
them.

15 Q. And what did you do with the item after you received
it?

A. Kept it in my custody until I turned it over to
Constable Davis on the 17th of October.

Q. I will show you this item -- excuse me -- I will have
this marked for identification, please.

20 THE COURT: AA we will start. Double A.

THE CLERK: Yes, My Lord.

(AA for IDENT.)

Q. I show you the item marked AA for Identification.
25 Would you look at it for me, please, and tell me
whether or not you can identify it?

A. Yes, My Lord, it's the same kind of plastic container
bearing my initials and it's a body swab which I
received from Doctor MacKay on the 16th of
30 October, 1989, at 4 minutes after 10:00 in the
morning. And this was -- it contains a swab with the

1 tip of it missing.

Q. At the time that you received it was there a tip on
it?

A. Yes, it did, My Lord.

5 Q. And this relates to what --

A. This relates to the body of Linda Daughney.

Q. And do you know what part of the body that particular
swab was taken from?

A. Once again, My Lord, I am not sure.

10 MR. WALSH: I have another item, My Lord, for identificatio

THE COURT: BB.

(BB for IDENT.)

Q. I show you this particular item that is marked BB for
Identification. Would you look at it for me, please,
15 and tell me whether you can identify it?

A. I can identify a vial, a glass vial, which bears my
signature, dated the 16th of October, 1989, at 12:30
in the afternoon. And this particular vial is a
blood sample which I received from Doctor MacKay at
20 that time and the blood sample was taken from the
body of Linda Daughney.

Q. And what if anything did you do with that particular
item from the time that you received it?

A. Kept it in my custody until such time I turned it over
25 to Constable Davis on the 17th of October.

MR. WALSH: I have another item for identification.

(CC for IDENT.)

Q. I show you an item that has been marked CC for
Identification. Would you look at it for me, please,
30 and tell me if you can identify it?

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1 A. Yes, My Lord. It's an earring. It's a heart-shaped earring which I removed from the body of Linda Daughney on the 16th of October, 1989, at 10:25 in the morning.

5 Q. What part of the body did you remove that earring from?

A. From one of her ears.

Q. Were there any other earrings in her ears?

A. No, My Lord.

10 MR. WALSH: If I may just have a second, My Lord? I have a civilian member here that is bringing exhibits to the court.

Q. Perhaps, officer, we could continue while I await a couple of other items. Would you tell the -- you were at both the autopsies is that correct?

15 A. Yes, I was.

Q. And the items that I've identified so far you kept those -- you have identified so far you kept those in your possession until you turned them over to whom?

20 A. To Constable Davis at the Newcastle R.C.M.P.

MR. WALSH: May I have this item marked for identification?
(DD for IDENT.)

Q. I show you an item that has been marked DD for Identification. Would you look at it for me, please, and tell the Jury whether you can identify it?

25 A. Yes, My Lord, it's a blood sample contained in the vial, the glass vial, which bears my initials, the date of the 16th of October, 1989, the time 12:30 in the afternoon. This is a blood sample which I
30 received from Doctor MacKay that was taken from the

1 body of Linda Daughney.

Q. I take it you identified another blood sample. Was there a number of vials of blood taken from each of the women?

5 A. The 15th of October Doctor MacKay handed to me 7 vials of blood from the body of Donna Daughney and on the 16th of October Doctor MacKay handed to me 3 vials of blood which were obtained from the body of Linda Daughney.

10 Q. And this is another one of the vials of blood from Linda Daughney?

A. That is correct.

Q. And you've had this in your possession until when?

15 A. Until the following day at which time I turned it over to Constable Davis.

MR. WALSH: I have another item for identification, My Lord (EE for IDENT.)

20 Q. I show you an item which has been marked EE for Identification. Would you look at it and tell us whether you can identify it?

25 A. Yes, My Lord. This is another blood sample contained in a glass vial which bears my signature, the date of the 16th of October, '89, and the time 12:30. This is a blood -- another blood sample which I received from Doctor MacKay, a sample which was taken from the body of Linda Daughney..

Q. And you kept that in your possession?

30 A. Until the 17th of October when I turned it over to Constable Davis.

THE COURT: Do these vials all have the same quantity of blood in them?

1 A. They appear to me like having the same quantity of
blood, My Lord, at the time. Not any more.

Q. You are saying that the quantity is different today
than when you received it?

5 A. That's correct.

Q. There is more today or less?

A. There is less.

MR. WALSH: Another item, My Lord.

(FF for IDENT.)

10 Q. I show you an item that has been marked FF for
Identification. Would you look at that for me, please?

A. That's a vial of blood which I received from Doctor
MacKay on the 15th of October, 1989, at 6:00 o'clock
p.m. This blood was taken from the body of Donna
15 Daughney.

Q. This is one of those 7 vials that you mentioned before?

A. That's correct.

Q. And what if anything did you do with this item after
you received it from Doctor MacKay?

20 A. Kept it in my custody until it was turned over to
Constable Davis.

Q. And in conjunction with His Lordship's question
before can you tell us if it has the same quantity
of blood in the vial as when you received it?

25 A. In this particular case I cannot tell.

MR. WALSH: This will be the final item.

(GG for IDENT.)

30 Q. I will show you the item marked GG for Identification.
Would you look at it for me, please, and tell me
whether you can identify it?

1 A. This is a vial containing some blood. It's a glass
vial bearing my signature dated the 15th of October
'89. This vial I received from Doctor MacKay. This is
blood that was removed from the body of Donna Daughney.

5 Q. This would be another of those 7 vials that you
previously testified to?

A. That's correct.

Q. And are you able to tell whether the quantity in the
tube now is the same as the quantity when you received
10 it?

A. It appears to me that there is less blood than there
was originally.

MR. WALSH: May I have a moment, My Lord, please? My Lord
we want to ensure that we have covered all the items
15 here and in order to do so it would be necessary for
us to take a five-minute recess just to double check
that we have covered and we have produced all the
items we have to produce to this witness, just to
ensure that we have produced them all.

20 THE COURT: Well, I think we might take a short mid after-
noon break. We will try to keep it for 15 minutes. I
have conveyed to counsel, ladies and gentlemen of the
Jury, the suggestion that we must depart from here
at 4:30 in the afternoon. Perhaps a dire emergency
25 might make us depart from that rule, but there won't
be many of them. Is there anything -- does the
Jury want to take any of those pictures? Well, if you
do want to take any of the pictures, you can.

(Jury retires.)

30 (RECESS - 3:05 p.m. - 3:30 p.m.)

1 COURT RESUMES - (Jury called. All Present.)
(Accused present.)

THE COURT: You had a few more questions, Mr. Walsh?

MR. WALSH: Thank you for the time, My Lord. I apologize
5 for any delay. We were just ensuring that we had shown
the officer all of the items that we wanted to show him.
We have confirmed that and have no further questions.
Thank you.

THE COURT: Cross-examination, Mr. Furlotte?

10 MR. FURLOTTE: My Lord, I informed the Crown and it agrees
that I will cross-examine Constable LeFebvre whenever
he returns either later in this case or in the Smith
case.

THE COURT: Mr. Walsh, is this witness due to recall in
15 connection with the Daughney matter?

MR. WALSH: In connection with the Daughney matter? I
don't believe so, My Lord. Perhaps the officer --

THE COURT: I don't see his name on the --

MR. WALSH: I was just looking through there. I know he
20 is due to be --

THE COURT: I don't see the name on the list at all.

MR. FURLOTTE: I don't even see him again.

MR. WALSH: Well he is due to be recalled, My Lord, that's
25 for sure. If there is -- I will have to double check
the list, but we do have him noted as a recall.

THE COURT: I have just gone through the list now and I
don't see it appearing there, no.

MR. WALSH: Yes. If he is to be recalled, I will double
30 check the list when there was -- as it was printed
out. I can tell you that if he is to be recalled, I

1 know for sure that he was to be recalled at the
beginning of the Smith matter. He exercised the same
functions with respect to the Father Smith matter as I
outlined earlier in his testimony. So he is to be
5 recalled for that for sure. I don't believe there is
another occasion.

MR. FURLOTTE: I don't see his name on the list, My Lord,
but I understand he is to be recalled.

MR. WALSH: And we have actually put the fact that he is
10 to be recalled.

THE COURT: Well, anyway, you are postponing your cross-
examination.

MR. FURLOTTE: Yes.

THE COURT: Perhaps, Mr. Walsh, could you just tell us
15 where is the dividing line between Daughney and
Smith in numbers?

MR. WALSH: Between the Daughney and the Smith?

THE COURT: Yes.

MR. WALSH: The Smith matter or that particular aspect of
20 it will commence probably around 121, in a chrono-
logical event. I wish to point out, My Lord, that we
will be referring back to any number of these later
on.

THE COURT: I realize that, but I just wanted a general
25 idea.

MR. WALSH: Chronologically about 121 would be the line.

THE COURT: So you are still on the witness stand and you
shouldn't discuss any of these matters with counsel,
of course, as you understand Corporal LeFebvre until
30 all your testimony is finished. Thank you. You are
not taking away any exhibits with you?

1 MR. WALSH: My Lord, Doctor MacKay was not available
today. He was here yesterday. He is not available
today. We wish to have him testify on Monday. At
this time I would like to call Constable Greg Davis.
5 He would be witness number 85.

CONSTABLE GREGORY DAVIS, called as a witness, having
been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. Would you give the court your name, please?

10 A. Gregory Wayne Davis.

Q. And your --

A. I am a peace officer employed with the Royal Canadian
Mounted Police presently station at Newcastle detach-
ment and have been so stationed since February of 1989.

15 Q. And what if any involvement, or what if any role did
you play with respect to the Daughney homicide
investigation?

A. I was assigned to be the exhibit custodian for the
Daughney homicide.

20 Q. And in that particular regard did you take possession
of any particular item?

A. Yes, I did.

MR. WALSH: I am looking for S for Identification.

25 Q. I show you an item that has been marked S for
Identification on this particular hearing. Would you
look at that particular item and tell me whether you
can identify it?

30 A. With My Lord's permission if I could refer to my
continuity notes? Yes, it is one sealed plastic
container containing one back of an earring. It has

1 signature, date and time on it, as being the 14th of
October, 1989, at 1857 hours, or 6:57 p.m.

Q. And from whom did you receive that particular item?

A. I received that from Sergeant Chaisson.

5 Q. That is Sergeant Dan Chaisson who testified previously?

A. Yes.

Q. And what if anything did you do with that item from the
time that you received it from him?

A. I kept that in my custody since that time.

10 Q. And who brought it to court?

A. I did.

MR. WALSH: My Lord, if that item could be entered as an
exhibit at this time. Continuity I believe has been
proven.

15 THE COURT: Which earring is that?

THE CLERK: S for Identification, My Lord.

THE COURT: It will be P38 won't it? So S becomes P38.

(EXHIBIT P38: back of a pierced earring)

(Previously S for Ident.)

20 THE COURT: Can you tell us, Mr. Walsh, which earring was
that?

MR. WALSH: That is the back of a pierced earring that was
found I understand, and I stand to be corrected by my
learned friends, in the Daughney's backyard near
25 boxes of vinyl siding.

Q. I show you an item marked P for Identification
previously purported to be a knotted nylon. Can you
tell us what that is, please?

30 A. It is one sealed plastic bag containing a nylon
stocking with a knot. It is identified as being

1529

- 1 my initials with the date and time as being the
15th of October, 1989, at 12:07 p.m.
- Q. And who did you receive that from?
- A. I received that from Sergeant Chaisson.
- 5 Q. Daniel Chaisson?
- A. Yes.
- Q. And what if anything did you do with that item when
you received it?
- A. I turned that item over to Mr. Verrett on the 19th of
10 October, 1989, at 10:00 o'clock in the morning.
- Q. Mr. Verrett is a civilian member, Gary Verrett?
- A. Yes.
- Q. And where would you have turned that over?
- A. At the crime detection laboratory of Sackville.
- 16 Q. Did you have occasion to see that item after you
turned it over to Mr. Verrett?
- A. Yes, it was returned to me on the 17th of May, 1990,
at 1:30 hours at the crime detection laboratory in
Sackville. I picked it up personally.
- 20 Q. From whom?
- A. From Sandy Lungair.
- Q. And Sandy Lungair is a civilian member of the R.C.M.P.
as well?
- A. Yes, she is.
- 26 Q. And in whose possession has that item been since that
time?
- A. My possession only.
- Q. I refer you to an item that has been marked V for
Identification, V as in Victor. Would you look at
30 that, please, and tell me whether you can identify it?

- 1 A. It is one sealed plastic bag containing one nylon
stocking, blue in colour, which has been knotted
several times.
- Q. And from whom did you receive that particular item?
- 6 A. I received that, again, from Sergeant Chaisson on the
15th of October, 1989, at 5:53 p.m.
- Q. And what if anything did you do with that item after
that time?
- A. I turned that item over to Gary Verrett at the crime
10 detection laboratory of Sackville on the 19th of
October, 1989, at 10:00 o'clock in the morning.
- Q. And did you have occasion to see that item after
that?
- A. Yes, it was returned to me on the 17th of May, 1990,
15 and that was at the crime detection laboratory,
Sackville, from Sandy Lungair.
- Q. And who brought it to court?
- A. I did.
- Q. I show you an item that has been marked U for Identi-
20 fication. Would you tell the Jury what you know of
that item?
- A. It's a sealed plastic bag containing one piece of
nylon stocking. Received from Sergeant Chaisson at
25 12:07 p.m. on the 15th of October, 1989, and it
was turned over to Gary Verrett on the 19th of October,
1989, at 10:00 o'clock in the morning at the CDL,
Sackville.
- Q. And did you have occasion to see that item after that
time?
- 30 A. Yes, it was returned to me on the 17th of May, 1990,

1 at 1:30 p.m. from Sandy Lungair at the crime detection
laboratory, Sackville.

Q. I show you an item that has been marked O for
Identification. Would you look at that for me, please,
5 and tell me whether or not you can identify it?

A. Yes, it is one sealed bag containing one earring,
gold in colour, with a white insert. It was received
from Corporal Godin on the 14th of October, 1989, at
3:03 p.m. and it has been in my custody ever since.

10 Q. And you in fact brought that to the court with you?

A. Yes.

Q. And that's Corporal Ron Godin?

A. Yes.

Q. Of the R.C.M.P.?

15 A. Yes.

MR. WALSH: My Lord, at this time I move to have this
item entered as an exhibit. I believe continuity
has been proved.

THE COURT: That would be P39.

20 (EXHIBIT P39: Sealed bag containing earring)

MR. WALSH: Do you wish a brief description, My Lord, of
the background?

THE COURT: Yes, just for the record.

25 MR. WALSH: It's one earring, gold colour, with white
insert. It was found in the Daughney's backyard in
the driveway area.

THE COURT: Was that found at the 'X' or in between the
'X' and the end of the driveway, according to the
evidence?

30 MR. WALSH: We believe of our memory it's the one just in

1 front of the 'X', across from the 'X'. Not the one
right after the 'X'. We stand to be corrected, My
Lord, on that particular aspect.

Q. I'll show you -- is it alright to continue, My Lord?

5 I will show you P for Identification, please. Could
you look at it and tell me whether or not you can
identify it?

A. It's one sealed plastic bag containing one cannister
containing one heart-shaped earring.

10 Q. And under what circumstances did you come in contact
with that?

A. On the 14th of October, 1989, at 7:02 p.m. I received
that personally from Corporal Ron Godin and it has
been in my possession since that time.

15 Q. And you in fact brought it to court?

A. Yes.

MR. WALSH: My Lord, that item I understand can be proven
up, continuity has been proven up, and I would move
to have it entered as an exhibit.

20 THE COURT: That was what letter?

MR. WALSH: The identification number was P, My Lord.

THE COURT: P.

MR. WALSH: Yes, and that is one heart-shaped earring
found in the backyard of the Daughney property near
25 boxes of vinyl siding.

THE COURT: So it would be P40.

(EXHIBIT P40: Sealed plastic bag containing cannister
containing one heart-shaped earring)

30 Q. I show you Q for Identification. Could you look at
that and tell me whether or not you can recognize

1 that item?

A. It's one sealed plastic bag containing a blue cord with a knot. It has my initials, the date and time as being the 15th of October, 1989, at 1:19 p.m.

5 It was received from Corporal Godin.

Q. That is Ron Godin?

A. Yes and it was turned over to civilian member Gary Verrett at the crime detection laboratory at Sackville on the 19th of October, 1989, at 10:00 o'clock in the morning.

10 Q. Did you have occasion to see it after that time?

A. Yes, it was returned to me on the 17th of May, 1990, at 1:30 p.m. at the crime detection laboratory, Sackville, from Sandy Lungair.

15 Q. I show you an item marked R for Identification. Would you look at that please and tell the Jury whether you can identify that?

A. It is one sealed plastic bag containing a knotted fibre. It has my initials on it, the date and time as being the 17th of October, 1989, at 11:35 a.m. It was received from Corporal Godin and it was turned over to civilian member Gary Verrett at the crime detection laboratory in Sackville on the 19th of October, 1989, at 10:00 o'clock in the morning.

25 Q. Did you have occasion to see that item after that fact?

A. Yes, it was returned to me from Gary Verrett on the 19th of January, 1990, at 1:00 p.m. in the afternoon and that was at Newcastle detachment.

30 Q. You brought that item to court with you?

1 A. Yes.

Q. I show you an item that has been marked W for Identification. Would you look at it please and tell me whether or not you can identify it?

5 A. Yes, it's one clear plastic bag containing two vaginal swabs in a container marked E001691 number 23.

Q. And from whom did you receive that item?

A. I received that from Constable LeFebvre on the 17th of October, 1989, at 1:18 p.m. and it was turned over
10 to Sandy Lumgair at the crime detection laboratory of Sackville on the 17th of October, 1989, at 5:33 hours p.m.

Q. And did you take possession of that item after that?

A. No, I did not.

15 Q. I show you an item that has been marked X for Identification. Would you tell the Jury whether you can identify it?

A. Yes, it has my initials on it. I received it from
20 Constable LeFebvre on the 17th of October, 1989, at 1:19 p.m. and I turned it over to Sandy Lumgair at the crime detection laboratory of Sackville on the 17th of October, 1989, at 5:33 hours.

Q. Did you have occasion to see it after that?

A. No, I did not.

25 Q. I should say you never took possession of that item after that fact?

A. No.

Q. I show you an item that has been marked Y for
30 Identification. Would you look at that for me?

A. Yes, it is a clear plastic bag containing one vial of

1 fluid that appears to be blood.

Q. And under what circumstances did you come in contact
with that item?

5 A. I received that from Constable LeFebvre on the 17th
of October, 1989, at 1:15 p.m. and that item was
turned over to Sandy Lumgair at Newcastle detachment
on the 17th of October, 1989, at 5:33 p.m. on the
afternoon.

10 Q. And did you have occasion to take possession of that
item after that fact?

A. No.

Q. I show you an item that has been marked FF for
Identification. Would you look at that for me,
please, and tell me whether you can identify it?

15 A. Yes, also, it is a clear plastic bag which contains
a vial of blood. It was obtained from Constable
LeFebvre on the 17th of October, 1989, at 1:15 p.m.
and it was turned over to Sandy Lumgair at Newcastle
detachment on the 17th of October, 1989, at 5:33 hours
20 in the afternoon.

Q. I show you an item that has been marked GG for
Identification. Would you tell the Jury whether you
recognize that?

25 A. Yes, that is also a partially full vial of blood. It
was received from Constable LeFebvre on the 17th of
October, 1989, at 1:15 p.m. It was turned over to
Sandy Lumgair on the 17th of October, 1989, at 5:33
p.m. at the Newcastle detachment.

30 Q. Did you have occasion to take possession of that after
that time?

1 A. No, I did not.

Q. I show you an item that has been marked Z for Identification, or zed, depending on where you are from I suppose. Do you recognize that?

5 A. Yes, I can identify that by my signature. It is one clear plastic bag containing two vaginal swabs in the container. It was received from Constable LeFebvre on the 17th of October, 1989, at 4:45 p.m. in the afternoon and it was turned over to Sandy Lumgair at
10 Newcastle detachment on the 17th of October, 1989, at 5:33 p.m.

Q. Did you have occasion to take possession of that item after that time?

A. No.

16 Q. I show you an item that has been marked AA for Identification. Do you recognize that item?

A. That's one clear plastic bag containing a body stain swab. I can identify it by my initials on the label. It was received from Constable LeFebvre on the 17th
20 of October, 1989, at 4:46 p.m. It was turned over to Sandy Lumgair at Newcastle detachment on the 17th of October, 1989, at 5:33 p.m.

Q. Did you have occasion to take possession of that item after that time?

26 A. No.

Q. I show you an item that has been marked BB for Identification. Tell me whether or not you can identify that?

30 A. It's a clear plastic bag containing one vial partially full of red substance that appears to be blood. Also another clear vial with another empty test tube inside of that. I can identify it as having my initials on

1 it. It was received from Constable LeFebvre on the
17th of October, 1989, at 4:49 p.m. It was turned
over to Sandy Lumgair on the 17th of October, 1989,
at 5:33 p.m. at Newcastle detachment.

5 Q. Did you have occasion to take possession of that item
after that time?

A. No, I did not.

Q. I show you an item that has been marked DD for
Identification.

10 A. That is also a partially full vial of blood. It was
received from Constable LeFebvre on the 17th of
October, 1989, at 4:49 p.m. It was turned over to
Sandy Lumgair at Newcastle detachment on the 17th of
October, 1989, at 5:33 p.m.

15 Q. Did you have occasion to take possession of that
item after that time?

A. No.

Q. I show you an item that has been marked EE for
Identification. Can you identify that for the Jury
20 please?

A. That as well is a partially full vial of what purports
to be blood. I received that from Constable LeFebvre
on the 17th of October, 1989, at 4:49 p.m. and I
turned it over to Sandy Lumgair at Newcastle detach-
25 ment on the 17th of October, 1989, at 5:33 p.m.

Q. Did you have occasion to take possession of that item
after that time?

A. No, I did not.

30 Q. And I will show you an item that is marked CC for
Identification. Do you recognize that item?

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1 A. It's a dark plastic bottle containing a heart-shaped
gold earring. It was received from Constable
LeFebvre on the 17th of October, 1989, at 4:58 p.m.
It was turned over to Gary Verrett at the crime
5 detection laboratory of Sackville on the 19th of
October, 1989, at 10:00 a.m. in the morning.

Q. Did you have occasion to take possession of that at
any time after?

A. Yes, it was returned to me via the mail on the 19th
10 of January, 1990, and I received that at 1:00 o'clock
in the afternoon.

Q. So how does that appear to be from the time you turned
it over until the time that you received it?

A. It appears to be the same as it has my initials marked
15 on it.

MR. WALSH: I have an item here, My Lord, I wish to have
marked for identification.

THE COURT: HH.

(HH FOR IDENTIFICATION)

20 Q. I show you an item that has been marked HH for
Identification. Would you look at it, please, and
tell me whether or not you can identify it?

A. Yes, I can identify it by my initials, the date, and
time which is the 18th of October, 1989, at 9:45 a.m.
25 I received this personally from Constable Page.

Q. Excuse me. Constable Page is whom?

A. He is a member of the Royal Canadian Mounted Police.

Q. What is in the bag, without --

A. A white box which contains two test tubes which
30 purports to be blood.

1 Q. And what if anything did you do with the box when
you received it from Constable Page?

A. I turned it over to Sandy Lungair of the crime
detection laboratory in Sackville on the 19th of
5 October, 1989, at 11:05 a.m. in the morning.

Q. And did you have occasion to take possession of that
particular matter -- item after that time?

A. No.

Q. What was in the box? Did you open the box?

10 A. No.

Q. What were you relying on to the contents?

A. I was advised --

Q. From someone else?

A. Yes.

15 Q. But you never in fact opened the box yourself?

A. No.

Q. And did it stay in your possession until the time you
turned it over?

A. Yes.

20 Q. The times that you would have these items in your
possession, would anyone else have access to those
items other than yourself?

A. No.

25 MR. WALSH: I have no further questions, My Lord.

THE COURT: Cross-examination, Mr. Furlotte?

MR. FURLOTTE: Again, My Lord, I will set aside my
cross-examination of this witness until he is recalled
again at number 105. I believe the Crown would like
to get through a few more witnesses so we will
30 accommodate him also.

1 THE COURT: Well that is still while on the Daughney matter
So you shouldn't discuss this with anyone until your
evidence is all complete.

A. Just to clarify one point there, My Lord. The last
5 question that Mr. Walsh had asked me if anybody else
had access to those. While they were in the bond
room at Newcastle detachment, the N.C.O. would have
a key for an emergency purpose should he have to enter
the bond room.

10 MR. WALSH: Is that a --
Could I have a further question on that, My Lord?

THE COURT: Yes.

Q. Just to clarify, would you explain to the Jury the
normal procedure associated with custody of items in
15 your detachment for example?

A. I am assigned as being the bonds keeper at Newcastle
detachment. I am given a key to the exhibit bond room
and in case of emergency the N.C.O. I see who is
Staff Sergeant Lamont would have a second key to enter
20 the bond room.

Q. Would any of the items that you put in the bond room,
-- would any of the items anywhere appear to have been
in any way altered, opened, changed form the time that
you put them in until the time that you would have
25 taken them out?

A. No.

MR. WALSH: Thank you.

THE COURT: Okay, then you are excused, subject to that
qualification.

30 MR. WALSH: Constable Michel Page, My Lord.

1 CONSTABLE MICHEL PAGE, called as a witness, having
been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. Would you give the court your name, please?

5 A. I am Joseph Pierre Michel Page.

Q. And your occupation?

A. I am a member of the R.C.M.P. and a peace officer since
1979. My current posting is with the general
investigation section in Bathurst, New Brunswick.

10 Q. Could you tell the court, please, in your own words
and the Jury in your own words what involvement you
had in this particular matter?

A. During the fall of 1989 I was temporarily transferred
to Newcastle, New Brunswick, from Bathurst to take
15 part in the investigation of the Daughney murders.

Q. And would you tell the Jury, please, this particular
aspect -- the reason you are testifying? What is it
you did in relation to that?

A. At approximately 1:15 a.m. on the 18th day of October,
20 1989, I took an individual by the name of Lewis Murphy
to the Mirimichi Hospital situated at Newcastle,
New Brunswick. The purpose of that visit was to have
blood samples taken from this -- Mr. Murphy, excuse
me, who had previously given his written consent to
25 provide these samples to the R.C.M.P.

Q. How agreeable was Mr. Murphy to giving this particular-

A. He was very cooperative.

Q. And what was the purpose of taking blood from him?

A. The purpose was to collect his blood and possibly
30 have it analysed in the future and possibly compare to

1 other evidence that was collected during the autopsies
of Linda and Donna Daughney.

Q. And what was Mr. Murphy at that time in --

A. At that time he was a suspect.

5 Q. And to do that what would you actually do to take that
blood? What procedure did you follow?

A. Well as I stated previously I took Mr. Murphy to the
hospital. On arriving there were some conversations
with the head nurse and as a result of that we were
10 shown to a treatment room where we had to await the
arrival of the medical laboratory technician. I had
brought along with me a blood collecting kit issued
by the R.C.M.P. and approximately 1:24, the morning
of the 18th of October, 1989, I opened that box. It
15 was a cardboard box and inside of it there was another
box made of Styrofoam which was sealed. At 1:24 I
broke the seal and checked the contents of the box.
There were two empty glass vials and a syringe.

Q. Was this particular box, the two vials, and the
20 syringe kit, was this used to take Mr. Murphy's blood?

A. That is correct, My Lord.

Q. And who was the technician who took his blood?

A. The technician was a lady by the name of Marsha Cook.

Q. She is present in court today?

26 A. Yes, she is, My Lord.

Q. And were you present during the whole time?

A. Yes, I was.

Q. And would you explain, please, the procedure of how
30 the blood -- the blood was taken from the person with
the syringe I take it?

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- 1 A. That is correct.
- Q. And where do you come into it?
- A. Well the blood was taken in my presence by Mrs. Cook.
It was taken from one of Mr. Murphy's arms and that
5 was affected at approximately 1:45 a.m. on the 18th
of October, 1989. Subsequent to that two vials of
blood coming from Mr. Murphy were turned over to me
by Mrs. Cook at approximately 1:47.
- Q. And where did the two vials come from?
- 10 A. Those were the same vials I had taken out of my
blood collecting kit.
- Q. And where did the blood come from that was in the
vials when you received them?
- A. From Mr. Murphy.
- 15 Q. And what did you do with the two vials?
- A. Upon receiving these two vials I wrote my name,
initials, date and time, being the letters: M.P.
Page '89 10 18 0147 hours.
- Q. And what did you do with these vials?
- 20 A. I put these two vials back in the Styrofoam box that
I had. Placed the Styrofoam box inside the
cardboard box and the box was taken back to
Newcastle detachment.
- Q. And what if anything did you do with it?
- 25 A. Once I got to Newcastle detachment, I placed the
particular box inside the detachment refrigerator
and since there weren't any lock on the refrigerator
what I did I used what we call an exhibit sticker
which I placed half of it on the door, half of it on
30 the frame of the refrigerator and an inscription on it

1 advising for the members not to open the fridge because
 there were exhibits in it.

 Q. Did you have occasion to see the item after that?

 A. Yes, I did.

6 Q. Later that day at approximately 9:45 p.m. I returned to
 the refrigerator and the seal was still intact. I
 broke the seal, opened the refrigerator, and retrieved
 the box and I checked the contents of that particular
 box. The two vials of blood were still in it and at
10 that time I turned the box over to Constable Greg Davis
 who testified before me today.

 Q. When you put the seal on the refrigerator did you put
 any writing in your hand on the seal?

 A. Yes, I did, My Lord.

15 Q. And was the seal still intact?

 A. Yes, it was.

 Q. I will show you this particular item here. It is
 marked HH for Identification. Without opening the bag
 would you just look at it please and tell the Jury
20 whether you can recognize it?

 A. Yes, I recognize my handwriting on this particular
 box. I see my initials, the date, and the time -
 being the letters M.P. '89 10 18 0124 hours. This
25 appears to be the same box I took with me to the
 Mirimichi Hospital the morning of the 18th of October,
 '89.

 Q. And when did you next see that particular box after
 you turned it over to Constable Davis?

30 A. I saw it again yesterday afternoon and I had the chance
 to look inside the box.

- 1 Q. Whose possession was it in yesterday?
A. It was in the possession of Constable Ron Charlebois.
I examined that particular box in his presence
yesterday afternoon.
- 5 Q. And you opened the box?
A. Yes, I did.
Q. And what did you find in the box?
A. Inside the box I found the other Styrofoam box and
inside it I found the two vials of blood that I had
10 received from Mrs. Marsha Cook on the 18th of
October, '89.
Q. Did you put any identifying marks on the vials at the
time that you had obtained them from Miss Cook?
A. Yes, I had.
- 15 Q. What identifying marks did you put on the vials?
A. I had put my name, my initials, the date and the time
being: the letters M.P. Page '89 10 18 0147 hours.
Q. Did you put any numbers?
A. On one of the vials I had placed number 1 and on the
20 other vial I had placed number 2.
Q. And when you looked at it yesterday was there anything
different what was in the box you saw yesterday and
the one that you had given to Constable Davis?
A. Yes, My Lord. One of the glass vials was still
25 intact and the other was damaged, broken, and it had
been placed by someone into another plastic container
which was sealed. Inside it was the broken vial,
along with a dark red substance that appeared to be
30 blood.

1 Q. Was there any leakage inside the box?

A. Yes, there was, My Lord.

Q. Leakage of what appeared to you to be blood?

A. That is correct.

5 MR. WALSH: My Lord, at this time I have Mrs. Lumgair here
from serology. She suggested that with any kind of
substance when it is broken in that fashion it is not
advisable to open it up. These items have been
tested. They have labels on them. They have assured
10 me and I just want to rest everybody assured these are
in plastic bags. There is no problem with them, but
to be safe she suggested not to open this particular
box that has been broke. That is only a precautionary
measure and they do it in all particular cases.

15 I would ask for your permission not to --

THE COURT: Will the evidence be that they were tested
before the vial became broken?

MR. WALSH: From my understanding that is correct. My
understanding is these vials later went for DNA
20 typing and all I can do -- Constable Davis has
testified that he didn't open the box and I can just
follow the continuity along and we will see what
happens from there in terms of what it is. I just
don't want this officer to open the box. I don't
26 know Mr. Furlotte's position on it.

THE COURT: Are you through with this -- have you anything
else?

MR. WALSH: No, My Lord, that is all my questions.

30 THE COURT: What about cross-examination, Mr. Furlotte?

MR. FURLOTTE: My Lord, before beginning cross-examination,

1 I was advised by Mr. Allman that we should have a
voir dire on whether I should be able to cross-
examination on certain aspects of this witness'
testimony.

5 THE COURT: Do you want to do that now? We will ask the
Jury -- it is quarter past 4:00 now. We won't keep
you too much later this afternoon, but we will ask you
to go out now and wait a few minutes.

MR. WALSH: My Lord, if I could suggest something? The
10 voir dire may take a little time. If we could stand
this witness aside and put Miss Cook for continuity
purposes. Unless you intend to cross-examine her,
we could do that.

MR. FURLOTTE: Hang on a second here.

15 MR. WALSH: We just might be able to get another witness
and the Jury can get away by 4:30.

MR. FURLOTTE: I do not have any cross-examination of
Miss Cook. At least I don't expect any at this time.

THE COURT: Of whom?

20 MR. WALSH: Miss Cook. She would be the technician that
took the blood.

THE COURT: Oh, yes. Well her evidence would be very --

MR. WALSH: Very brief.

THE COURT: Very short and brief.

25 MR. WALSH: Yes, My Lord.

THE COURT: Where does she come from?

MR. WALSH: She is from Chatham -- Newcastle area.

THE COURT: Newcastle. Oh, yes, she is the hospital
technician.

30 MR. WALSH: Yes, that is correct.

1 THE COURT: Well could we, Mr. Furlotte, put her on?

MR. FURLOTTE: I have no problem with that.

THE COURT: -- and stand this witness aside. You shouldn't discuss this, of course.

6 CST. PAGE: Very well, My Lord. Thank you.

MARSHA COOK, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

Q. Miss Cook, will you please state your full name and
10 your occupation for the jurors, please?

A. Marsha Ann Cook and I am a laboratory technologist.

Q. Could you keep your voice up as loud as you can make it? You have a very soft one.

THE COURT: Are you married, Miss Cook or Mrs. Cook?

15 A. Yes, I am.

THE COURT: Pretend you are yelling at your husband because all those people there have to hear you right down to the very end.

A. Okay.

20 THE COURT: As well as everybody else here.

Q. You heard the testimony a few moments ago by Constable Page?

A. Yes.

Q. Could you tell us just briefly what medical technologists or technician does?
25

A. We take blood and we also analyse it along with other body fluids.

Q. For how long have you been engaged in that type of work?

30 A. A little over four years.

- 1 Q. And you are with what hospital, please?
- A. The Mirimichi Hospital in Newcastle.
- Q. And do you recall having Constable Page appear at that
hospital appear at that hospital one evening as
5 testified earlier by him, along with another person?
- A. Yes.
- Q. And can you describe what you recall occurred at
that time? Constable Page mentioned that he did
certain things. Do you remember those things?
- 10 A. Yes, I went into the room and there was two officers
present along with Mr. Murphy. One of the officers
presented me with a kit that everything in it that I
needed to take the blood and so I proceeded to take
the blood. And when I was finished they asked me to
15 write the patient's name on the tube and my initials
and I did that and then I gave it back to the officer.
- Q. You gave what back to the officer, please?
- A. The two vials of blood.
- Q. And did you see what the officer did with those two
20 vials once he received them from you?
- A. No.
- Q. Did you see where he put them?
- A. No.
- Q. In order to take the blood was there a special
25 process that you had to go through in examining vials
and the like before you took the blood?
- A. Yes, we always examine our needles to make sure they
are sterile.
- Q. Yes.
- 30 A. And that the tubes that there is nothing in them, that

1550

1 they are intact.

Q. And the tubes that were passed to you by the officer met those tests?

A. Yes.

5 Q. And what did you do with the patient himself prior to actually using a needle on the individual?

A. I swabbed his arm with the swab that was in the kit.

Q. In the kit?

A. Yes.

10 Q. Okay, you remember a kit being presented to you?

A. Yes.

Q. By one of the officers?

A. Yes.

Q. Who testified a minute before you, Constable Page?

15 A. Yes, I believe that is who it was.

MR. SLEETH: Thank you very much.

THE COURT: No, just a minute now. We might have some more questions.

A. Sorry.

20 MR. FURLOTTE: I have no questions.

THE COURT: No cross. I didn't mean to impute that you shout at your husband. I can't quite imagine that.

25 Okay, thank you. You are all through. The next thing would be -- you have another witness I know you would like to get in perhaps. She is going to be longer isn't she?

MR. WALSH: We can't --

THE COURT: You can't do her today.

30 MR. WALSH: We have other witnesses, My Lord, but it is not reasonable to try to put one on at this particular time, not under the timeframe.

1 THE COURT: Well I think we will stop there and as a matter
of fact perhaps tomorrow morning we could start out
with the voir dire on this matter while it is fresh
in our mind.

5 MR. ALLMAN: Tomorrow wasn't going to be any witnesses
day.

THE COURT: Pardon?

MR. ALLMAN: Tomorrow they weren't -- we weren't plannin
on calling any witnesses tomorrow if Your Lordship
10 recalls.

THE COURT: Well that is right but I was assuming at the
same time is it capable of resolution simply by
discussion or is it necessary to have the witnesses?

MR. ALLMAN: The matters that we have to deal with
15 tomorrow? I am sorry I am not following what Your
Lordship is asking.

THE COURT: No, I am saying -- it was suggested --
Mr. Furlotte I think or someone else suggested there
should be a voir dire on what questions he could ask
20 the earlier witness on cross-examination. I was
wondering could we resolve that by discussion tomorrow
morning first thing before we embark on our other
matters?

MR. FURLOTTE: And have Constable Page return Monday
25 morning.

MR. WALSH: It probably would be best, My Lord, to have
Constable Page present when we do argue the question
in case it is necessary to ask Constable Page --

30 THE COURT: Well we will do that. You will have him back
on Monday.

MR. WALSH: Oh, yes, My Lord.

1 THE COURT: We will let that go until Monday. So we
will send the jury home at this time. I meant to say
this morning and I sort of got the message partly
out to you that you are not going to be required
6 tomorrow. I will put it this way. You are required,
but you can stay home. You probably won't be receivin
any messages to come here. In other words, we will
see you again on Monday. The reason I am being a
little obscure about this is you are going to be
10 working tomorrow and you will be paid your jury fees
for tomorrow because you are on call strictly, but
we will see you on Monday unless we call you before.
You know what I am saying to you. We have other
matters that have to be considered in your absence
15 and rather than keep you outside here all day, or
perhaps most of the day, or even all morning, for
a long period anyway in the jury room, I think it
is preferable that you stay home and we will fill in
the day here. It is Friday, anyway, and we had
20 talked about finishing a little earlier on Friday.
Please don't conjecture about what we are doing in
your absence because we will let you know anything
about what you should know. I do warn you, of
course, don't by any means come near this courthouse.
25 I am relying on you to stay absolutely away from
this courthouse. I am sure you will stay away
anyway. You will be away Friday, Saturday, and
Sunday, three days, and please again observe my
admonition not to talk about the case to anyone.
30 People will want to talk to you about it, or learn

1 THE COURT: Well I see no reason why you should if your
other co-counsel can carry this without you do you
think?

MR. WALSH: Yes, I thought about it hard and long, My Lord,
5 and I think I will --

THE COURT: There is nothing else? I perhaps should have
made it clear yesterday. Mr. Kearney, you of course
are not free to divulge anything you have learned from
the accused, or from his other counsel, or anything
10 you have learned from that source while acting for the
accused earlier. You are not free to divulge that to
any other person at all. I am sure you are aware of
that and will practice that restriction, that is,
without their leave of course.

15 In the matter of an office or a place to park
yourself when you are not in court here. I don't
know what you are doing now, but presumably you can --
is there another place in the building? Mr. Furlotte
probably doesn't want you to have access to his
20 office understandably.

MR. FURLOTTE: I don't keep any material in there except
my coat and I don't think --

THE COURT: Well can he hang his coat in there?

MR. FURLOTTE: Oh, I have no problems with that, My Lord.
25

THE COURT: Well I mean you people can work this out. I
just wanted to say that if you think, Mr. Furlotte,
that Mr. Kearney's presence is embarrassing insofar as
your quarters are concerned, you --

MR. FURLOTTE: Oh, no, none whatsoever.
30

THE COURT: You can kick him out.

1 about it, or say what happened and so on, and what is
this all about about. Just say sorry I can't talk
about it at all.

Oh, the other point I wanted to mention to the
5 jury you remember earlier in the week I spoke about
the matter of having time to vote. I take it that
that doesn't pose any great problem for the jury. You
can find your own way to vote either on election night
Monday night after we adjourn here in the afternoon, or
10 Saturday of this week is one of the two -- Saturday
and Monday are the two advanced poll days so if you
can find your way to an advanced poll on Saturday for
your respective -- most of you come from different
electoral districts or whatever they call them,
16 constituencies. If you want to vote on Saturday, you
might be well advised to do that if you intend to
vote and I hope you all do.

So if the jury then would retire first.

(Jury retires.)

20 THE COURT: There was nothing else we had to discuss.

MR. WALSH: There is one thing, My Lord. We had mentioned
to you that prior to the commencement of this trial
there may be occasion where counsel would ask to
absent themselves from the courtroom. I find that
25 tomorrow would be a situation that would certainly
benefit me if I was to be able to absent myself from
the courtroom tomorrow. I have no duties associated
with the Stay application. I would find my time --
I could use the time. I will leave that up to you
30 of course.

1 MR. FURLOTTE: I have only been advised by my client not
to disclose any information to Mr. Kearney about this
case. That doesn't mean I can't talk with Mr. Kearney

THE COURT: And you are aware of this warning that I am
5 giving him that he shouldn't divulge any information
that he might have now.

Well that is all for today and we will now depart
until 9:30 tomorrow morning.

(COURT ADJOURNED)

10

15

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1

VOIR DIRE

THE COURT: This is a voir dire sitting that we are embarking on and of course nothing that occurs here can be reported in the media or talked about outside the courtroom until the whole case is completed.

5

Mr. Walsh was given permission yesterday to be absent and he is absent. It should perhaps be noted for the record.

Mr. Kearney?

10

MR. KEARNEY: My Lord, I would seek the court's indulgence and request that I be -- have permission to be absent today.

In my capacity as amicus curiae, the Stay of Proceedings application here today could involve a matter that I was involved in and it is for that reason that I think it would be in the interests of justice in the administration of justice that I be excused for the day. That is my request.

15

THE COURT: I am not sure whether I read it in some of the material, but I think there was some reference to a case in which you were involved in the thing.

20

Mr. Furlotte, is that --

MR. FURLOTTE: Yes, I am referring and citing the Kearney case.

25

THE COURT: Does the Crown have any -- my inclination is to say Mr. Kearney should be excused today. This hearing is extraneous to the remainder of the trial, assuming it were to go on, so his absence today is not necessarily going to impair his ability to carry on his function through the rest of the proceeding. Does the Crown have any observation on that?

30

1 MR. ALLMAN: No.

THE COURT: Well permission is granted to you,
Mr. Kearney, to be absent. You can sit and listen
if you want to or otherwise.

6 Now you have an application to make, Mr. Furlott

MR. FURLOTTE: My Lord, I believe we were going to deal
first with the matter of Constable Michel Page which
the Crown wanted to -- we were going to have the voir
dire yesterday afternoon as to the limitations of my
10 cross-examination of that witness which the Crown
wanted to be addressed on before I cross-examined him

MR. ALLMAN: My understanding is that was to be Monday
morning. We had some discussion about the time and
date and finished at Monday.

15 THE COURT: Yes, I think that was the arrangement. The
Crown raised the point that they would like to have
him present so that he could get instructions from the
court and we will do that on Monday morning first
thing I assume.

20 Now on this matter I received a Notice of
Motion from you, Mr. Furlotte, a couple of weeks ago,
or ten days ago.

MR. FURLOTTE: Yes, My Lord.

25 THE COURT: I have received the documents which Mr. Allman:
it was you Mr. Allman?

MR. ALLMAN: Yes, My Lord.

THE COURT: Filed with me two days ago, two or three days
ago.

30 MR. FURLOTTE: My Lord, I just gave you a photocopy of
some of the originals here that I have maybe for
the record. The original signed Notice of Motion

1 which you have, and again the documents referred to
 in that Notice of Motion I have. I have marked at
 the top corners number 1 and 2, if that would be
 sufficient?

5 THE COURT: This is a brief?

 MR. FURLOTTE: This is the Crown's brief regarding
 challenge for cause.

 THE COURT: Oh, the Crown's brief. That is referred to
 in the --

10 MR. FURLOTTE: Yes, that is referred to in the --

 THE COURT: As one of the documents that you are
 relying upon. Does the Crown accept the fact that
 this is a copy of their brief?

 MR. ALLMAN: Yes.

15 MR. FURLOTTE: My Lord, there is some original newspaper
 clippings here. Some are just photocopies from the
 libraries which are larger than the ones that I gave
 you in the Notice and it may be easier to read them.
 The other ones you have to strain your eyes somewhat.
20 If the court would like me to introduce these and the
 newspaper clippings.

 THE COURT: These are copies, in some cases originals of
 the ones attached to your affidavit?

25 MR. FURLOTTE: No, not my affidavit, just the list of
 documents that I would be submitting. So I have
 here -- you just received number 1 and here are
 numbers 2 to 39.

 THE COURT: Are they in the same order?

30 MR. FURLOTTE: Yes, they are all in the same order.

 THE COURT: And you say there are 39?

- 1 MR. FURLOTTE: Up to number 39.
- THE COURT: Okay, thank you.
- MR. FURLOTTE: It just may be easier for you to read,
My Lord.
- 5 THE COURT: Yes. What period do those cover may I just
ask?
- MR. FURLOTTE: I will just check my notes here. They
would cover from October 16, 1989 to August 24, 1991.
- THE COURT: The other question I had right at this time.
10 These are from different newspapers aren't they?
- MR. FURLOTTE: Yes.
- THE COURT: But they don't purport to be total -- they
are not all the clippings pertaining to --
- MR. FURLOTTE: Oh, heavens no. Those are just the ones
15 that I am relying on for part of the argument in this
motion. Also, My Lord, number 40 on list of
documents -- I will give you my original affidavit.
That is number 41 in my documents. It is an
affidavit of Sharon Lockwood, the original.
- 20 THE COURT: There is a question of whether this affidavit
is properly sworn, properly receivable in evidence.
It is not entitled in this cause. I will receive it,
but I don't know whether the Crown will have any
representation to make in that regard or not.
- 25 MR. ALLMAN: Which affidavit are we referring to, My
Lord?
- THE COURT: I am referring to the affidavit of Sharon
Lockwood in this case.
- MR. ALLMAN: No, I wouldn't take any issue with that.
- 30 THE COURT: Well, I reserve it to myself to say this is

1 not an affidavit that should be received in the court.
Can you, Mr. Furlotte, indicate any authority in that
to file an affidavit not entitled in a cause or a
matter with the court?

6 MR. FURLOTTE: The Rules of Court, My Lord.

THE COURT: Well here is the commissioner for taking
affidavits. Are you familiar with Mr. Teed's little
booklet on swearing affidavits? Mr. Eric Teed's.

MR. FURLOTTE: No, I am not, My Lord.

10 THE COURT: Well, anyway we are marking it here and treat
it -- I don't intend to make a great issue out of that
aspect.

MR. FURLOTTE: That is number 42, My Lord, the affidavit
of Terrence P. Lenihan. And number 43, the affidavit
16 of Bertin Theriault.

THE COURT: Okay.

MR. FURLOTTE: Number 44, the affidavit of Pierre F.
Roussel. Number 45, the affidavit of Ronald P.
Gaffney; 46, the affidavit of Ruby E. Van Bendegen;
20 47, the affidavit of Hilery T. Hargrove; copy of the
book Terror and Panic in New Brunswick; copy of the
judgment from the Court of Appeal of New Brunswick,
Allan J. Legere v. Rick McLean et al; original
affidavit of Allan Joseph Legere; original affidavit
25 of myself, My Lord.

THE COURT: When an application like this or any appli-
cation is made before me, I usually follow the
practice of asking the respondent what position they
are taking on the matter, just in a general way.
30 I don't want after hearing a couple of hours of
argument to have the Crown say we agree with the
granting of the application. Perhaps I should --

1 MR. ALLMAN: We oppose it.

THE COURT: We haven't even at this stage actually got Mr. Furlotte to sort of describe in general his application, but you are familiar with it.

5 MR. ALLMAN: I am familiar with it and we are opposing it.

THE COURT: You are opposing it. Your affidavits should they be submitted now.

MR. ALLMAN: I believe I already submitted them to you, My Lord. I thought Mr. Furlotte had given you the
10 originals of his affidavits with his Notice of Motion Under that impression I gave you the originals of my affidavits on Wednesday.

THE COURT: So you have affidavits.

MR. ALLMAN: I have affidavits from Donald Gerald Wheaton
15 who refers also to an affidavit of Eddie Richard and an affidavit of Roderick Allen.

THE COURT: You have copies of those, Mr. Furlotte?

MR. FURLOTTE: Yes, I have.

THE COURT: So we can take those as having been filed.

20 MR. ALLMAN: I would ask to file them now formally, if that is required.

THE COURT: Okay. Well now, Mr. Furlotte, go ahead.

MR. FURLOTTE: My Lord, normally an application or a
25 Motion such as this I argue the facts first and the law last. However, in this case, I prefer to refer to case law first and then go through the evidence thereafter.

THE COURT: Well just before you get into that would you
30 preface your remarks with a statement of precisely what you are after.

1 MR. FURLOTTE: I will explain the motion first, My Lord.

My Lord, the motion reads that:--

"The accused, Allan Joseph Legere, will apply to the Court at a time to be set by the Trial Judge for an order that a stay of proceedings be entered on all
5 four counts of first degree murder, contrary to Section 235(1) of the Criminal Code of Canada, and amendments thereto, for which he has been indicted.

The accused claims that the above-mentioned stay of proceedings is warranted upon the following:

10 The accused's right to liberty and security of his person, as guaranteed by Section 7, 11(d) and 15 of the Canadian Charter of Rights and Freedoms, has been denied him and he has been deprived of his right to Fundamental Justice as guaranteed under Section 7 of the Charter through a combination of factors resulting from an abuse of process of the Attorney General of New Brunswick, his agents and police officers, as Officers of the Court and administration of justice."

And the second ground:--

15 "The accused's right against unreasonable search and seizure, as guaranteed by Sections 8 and 15 of the Canadian Charter of Rights and Freedoms, has been denied him through the malicious interference with solicitor-client privileged information and privacy."

The accused shall therefore make a Motion for a stay of proceedings pursuant to Section 24(1) of the Canadian Charter of Rights and Freedoms.

20 Upon the hearing of the Motion, the following Affidavits or other documentary evidence will be presented..." which I have --

THE COURT: Yes. It is not necessary to go through that.

MR. FURLOTTE: --introduced. I don't think it is
25 necessary to get into that at this time.

My Lord, I have supplied yourself and Mr. Allman with photocopies of case law I will be referring to. I believe there was three cases in amongst them which somehow inadvertently got in there, or maybe I had
30 been considering at one time for this and something else, but I will not -- there are at least three of

1 them I will not be referring to.

The other cases I decided to go through them in chronological order as when they were heard in the courts. The first one would be R. vs. Young, which is
5 a decision of the Ontario Court of Appeal. It is reported at 13 CCC, (3d) at page 1. I will be referring to pages 31 and 35 of that decision.

In the Conclusion of the Ontario Court of Appeal states, on page 31:--

10 "I am satisfied on the basis of the authorities that I have set forth above that there is a residual discretion in a trial court judge to stay proceedings where compelling an accused to stand trial would violate those fundamental principles of justice which underlie the community's sense of fair play and decency and to prevent the abuse of a court's process through oppressive or vexatious proceedings. It is a power, however, of special application which can
15 only be exercised in the clearest of cases."

On page 35 --

THE COURT: What year was that application? That wasn't relying on Section 24(1) of the --

MR. FURLOTTE: No, this is the -- it wasn't an -- I believe
20 it was an application. It's just setting out the discretion of the trial court judge.

THE COURT: Well it was relying on the inherent jurisdiction or authority of the court.

MR. FURLOTTE: Yes, authority of the trial court judge,
25 yes, and that was dated June 27, 1984.

THE COURT: You here say that your application is based only on Section 24(1). Had I been drawing your application, I think I would have said 'or alternatively on the inherent jurisdiction of the court.

30 MR. FURLOTTE: No, I am seeking a remedy under Section 24(1), but it is not just based on Section 24(1). It

1 would be based on the violation of Sections 7, 11(d),
15, -- 8 and 15 of the Charter.

THE COURT: But quite apart from Section 24(1), a trial
judge in a case like this would have an inherent
6 jurisdiction to stay proceedings if there were a
denial of justice.

MR. FURLOTTE: Yes, under the doctrine of abusive process.

THE COURT: Or fair play and decency, whatever is
described in the Young case. What year did you say
10 that was, that Young case?

MR. FURLOTTE: That was the Ontario Court of Appeal dated
June 27, 1984. At page 35 the court found:--

"I think this is a case where it is appropriate for
the Court, by the control of its process, to prevent
such unfairness. To subject Mr. Young to a trial
15 now on charges of fraud and perjury would put his
liberty at risk in a manner contrary to those
fundamental principles of justice which are the
hallmark of our criminal justice system and now
entrenched in s.7 of the Charter.

It is my respectful opinion, the trial judge was
right in staying these proceedings, and I would
dismiss the appeal."

20 In R. v. Corbett, reported at 17 CCC (3d). This
is a decision of the British Columbia Court of Appeal
December 14, 1984. At page 146:--

THE COURT: The citation for Corbett?

MR. FURLOTTE: 17 CCC (3d) page 129. At page 146 the
25 court states:--

"I think that in submitting that an accused does not
receive a fair trial within the meaning of s.7 or is
not proven guilty according to law in a "fair"
hearing by an independent and impartial tribunal
if he is liable to be cross-examined on his previous
record. Mr. Young takes too narrow a view of the
word "fair". He seems to regard fairness solely
30 from the point of view of the accused. We cannot so
restrict the concept of fairness. Fairness is a

1 relative term and involves a consideration of the
 interests of the State as well as of the interest
 of the accused. I think this was the prevailing
 view before the Charter came into force, and I
 think, also, that this view is implicit in ss. 7 and
 11(d). The phrase "the principles of fundamental
 justice" in s.7 of the Charter include a number
 of concepts including the concept of fairness, the
 5 concept of innocence until proven guilty beyond a
 reasonable doubt by evidence which is admissible in
 accordance with certain principles."

And I would like to add, My Lord, that those
 evidence and certain principles would also entail the
 laws of evidence.

10 Again, I will repeat:--

"The phrase "the principles of fundamental justice"
 in s.7 of the Charter include a number of concepts
 including the concept of fairness, the concept of
 innocence until proven guilty beyond a reasonable
 doubt by evidence which is admissible in accordance
 with certain principles, the concept of the right
 to make full answer and defence, and the concept
 15 of being tried by a tribunal acting reasonably and
 impartially. Essentially, s.11(d) expresses the
 same concepts. The phrase "principles of fundamental
 justice" in s.7 and the phrase "fair...hearing" in
 s.11(d) surely include justice and fairness from the
 State's point of view as well as from the accused's
 point of view."

The next case I wish to refer to is R. v. Jewitt.

20 This is reported at 21 CCC (3d) at page 7. This is
 a decision of the Supreme Court of Canada, September
 19, 1985. I will be referring to pages 14 and 23.
 At page 14 the court states:--

"Lord Devlin has expressed the rationale supporting
 the existence of a judicial discretion to enter a
 25 stay of proceedings to control prosecutorial
 behaviour prejudicial to accused persons in Connelly
 v. Director of Public Prosecutions, [1964] A.C.
 1254 at p. 1354 (H.L.):

30 Are the courts to rely on the Executive to
 protect their process from abuse? Have they not
 themselves an inescapable duty to secure fair
 treatment for those who come or who are brought
 before them? To questions of this sort there
 is only one possible answer. The courts cannot

1 contemplate for a moment the transference
to the Executive of the responsibility for
seeing that the process of law is not abused.

I would adopt the conclusion of the Ontario Court of
Appeal in *R. v. Young*, *supra*, and affirm that [at p.3]

5 ...there is a residual discretion in a trial
court judge to stay proceedings where compelling
an accused to stand trial would violate those
fundamental principles of justice which underlie
the community's sense of fair play and decency
and to prevent the abuse of a court's process
through oppressive or vexatious proceedings.

I would also adopt the caveat added by the court in
Young that this is a power which can be exercised
only in the "clearest of cases".

10

At page 23 the court states:--

"On a true reading of s. 605(1)(a) of the Code, to
determine whether a stay of proceedings is a
judgment or a verdict of acquittal, we must look
to the substance of the action of the trial judge
and not the label he used in disposing of the
case. Substance and not form should govern. What-
ever the words used, the judge intended to make a
final order disposing of the charge against the
respondent. If the order of the court effectively
brings the proceedings to a final conclusion in
favour of an accused then I am of the opinion that,
irrespective of the terminology used, it is tanta-
mount to a judgment or a verdict of acquittal and,
therefore, appealable by the Crown.

15

We are concerned here with a stay of proceedings
because of an abuse of process by the Crown. While
a stay of proceedings of this nature will have the
same result as an acquittal and will be such a final
determination of the issues that it will sustain a
plea of autrefois acquit, its assimilation to an
acquittal should only be for purposes of enabling an
appeal by the Crown. Otherwise, the two concepts
are not equated. The stay of proceedings for abuse
of process is given as a substitute for an acquittal
because, while on the merits the accused may not
deserve an acquittal, the Crown by its abuse of
process is disentitled to a conviction. No consider-
ation of the merits - that is whether the accused is
guilty independently of a consideration of the
Crown - is required to justify a stay. In the case
at bar the accused admitted that he had sold a
pound of marijuana to an undercover officer. A
consideration of the merits would necessarily have
led to his conviction. The stay in this case
intervenes to prevent consideration of the merits
lest a conviction occur in circumstances which
would bring the administration of justice into
disrepute."

30

1 The next case I refer to is Reference RE Section
 94(2) of the Motor Vehicle Act. It is reported at
 23 CCC (3d) page 289.

THE COURT: I'm sorry I didn't get --

5 MR. FURLOTTE: 23 CCC (3d) page 289. This is a decision
 of the Supreme Court of Canada, December 17, 1985.
 I will be referring to pages 301, 302, and then 309
 to 310. First, 301:--

10 "I am of the view that it would be wrong to interpret
 the term "fundamental justice" as being synonymous
 with natural justice as the Attorney-General of
 British Columbia and others have suggested. To do so
 would strip the protected interests of much, if not
 most, of their content and leave the "right" to life,
 liberty and security of the person in a sorely
 emaciated state. Such a result would be inconsistent
 with the broad, affirmative language in which those
 rights are expressed and equally inconsistent with
 the approach adopted by this Court toward the
 interpretation of the Charter rights in Law Society
 of Upper Canada v. Skapinker (1984), 11 CCC (3d) 481,
 9 D.L.R. (rth) 161, [1984] 1 S.C.R. 357, per Estey J.
 and Hunter v. Southam Inc., *supra*.

15 It would mean that the right to liberty would be
 narrower than the right not to be arbitrarily
 detained or imprisoned (s.9), that the right to
 security of the person would have less content than
 the right to be secure against unreasonable search
 or seizure (s.8). Such an interpretation would
 give the specific expressions of the "right to
 life, liberty and security of the person" which are
 set forth in ss. 8 to 14 greater content than the
 general concept from which they originate.

20 Sections 8 to 14, in other words, address specific
 deprivations of the "right" of life, liberty and
 security of the person in breach of the principles
 of fundamental justice, and as such, violations of
 s.7. They are designed to protect, in a specific
 manner and setting, the right to life, liberty and
 security of the person set forth in s.7. It would be
 incongruous to interpret s.7 more narrowly than
 the rights in ss. 8 to 14. The alternative, which
 is to interpret all of ss. 8 to 14 in a "[n]arrow and
 technical" manner for the sake of congruity, is out
 of the question: Law Society of Upper Canada v.
 Skapinker, *supra*, at p.488 CCC, p.168 D.L.R. p.366
 S.C.R.

1 Sections 8 to 14 are illustrative of deprivations
of those rights to life, liberty and security of
the person in breach of the principles of
fundamental justice. For they, in effect, illus-
trate some of the parameters of the "right" to
life, liberty and security of the person; they
are examples of instances in which the "right" to
life, liberty and security of the person would
5 be violated in a manner which is not in accordance
with the principles of fundamental justice. To
put matters in a different way, ss. 7 to 14 could
have been fused into one section, with inserted
between the words of s.7 and the rest of those
sections, the oft-utilized provision in our
statutes, and, without limiting the generality
of the foregoing (s.7) the following shall be
deemed to be in violation of a person's rights
under this section". Clearly, some of those
10 sections embody principles that are beyond what
could be characterized as "procedural".

Thus, ss. 8 to 14 provide an invaluable key to
the meaning of "principles of fundamental justice".
Many have been developed over time as presumptions
of the common law, others have found expression
in the international conventions on human rights.
All have been recognized as essential elements
of a system for the administration of justice
15 which is founded upon a belief in "the dignity
and worth of the human person" (preamble to the
Canadian Bill of Rights, R.S.C. 1970, App. III),
and on "the rule of law" (preamble to the Canadian
Charter of Rights and Freedoms).

It is this common thread which, in my view, must
guide us in determining the scope and content of
"principles of fundamental justice". In other
words, the principles of fundamental justice are
20 to be found in the basic tenets of our legal
system. They do not lie in the realm of general
public policy but in the inherent domain of the
judiciary as guardian of the justice system. Such
an approach to the interpretation of "principles
of fundamental justice" is consistent with the
wording and structure of s.7, the context of
the section, i.e., ss. 8 to 14, and the character
and larger objects of the Charter itself. It
25 provides meaningful content for the s.7 guarantee
all the while avoiding adjudication of policy
matters."

Page 309:--

"The term "principles of fundamental justice" is
not a right, but a qualifier of the right not to
be deprived of life, liberty and security of
the person; its function is to set the parameters
30 of that right.

1 Sections 8 to 14 address specific deprivations of
 the "right" to life, liberty and security of the
 person in breach of the principles of fundamental
 justice, and as such, violations of s.7. They are
 therefore illustrative of the meaning, in criminal
 or penal law, of "principles of fundamental
 justice"; they represent principles which have
 been recognized by the common law, the international
 5 conventions and by the very fact of entrenchment
 in the Charter, as essential elements of a system
 for the administrative of justice which is founded
 upon a belief in the dignity and worth of the human
 person and the rule of law.

Consequently, the principles of fundamental justice
 are to be found in the basic tenets and principles,
 not only of our judicial process, but also of
 the other components of our legal system
 10

We should not be surprised to find that many of
 the principles of fundamental justice are procedural
 in nature. Our common law has largely been a law
 of remedies and procedures and, as Frankfurter J.
 wrote in *McNabb v. U.S.* (1942), 318 U.S.332 at
 p.347, "the history of liberty has largely been
 the history of observance of procedural safe-
 guards". This is not to say, however, that the
 principles of fundamental justice are limited solely
 15 to procedural guarantees. Rather, the proper
 approach to the determination of the principles
 of fundamental justice is quite simply one in
 which, as Professor Tremblay has written, "future
 growth will be based on historical roots": 18 U.B.C.I
 Rev.201 at p.254(1980).

Whether any given principle may be said to be a
 principle of fundamental justice within the meaning
 of s.7 will rest upon an analysis of the nature,
 20 sources, rationale and essential role of that
 principles within the judicial process and in our
 legal system, as it evolves.

Consequently, those words cannot be given exhaustive
 content or simple enumerative definition, but
 will take on concret meaning as the courts
 address alleged violations of s.7."

26 The next case would be Keyowski vs. The Queen,
 reported at 40 CCC(3d) p.481. It again is a decision
 of the Supreme Court of Canada, April 28, 1988. I
 am referring to pages 482 and 483.

"The availability of a stay of proceedings to
 remedy an abuse of process was confirmed by this
 30 court in *R. v. Jewitt* (1985), 21 C.C.C. (3d) 7,
 20 D.L.R. (4th) 651, [1985] 2 S.C.R. 128. On that

1 occasion the court stated that the test for abuse
of process was that initially formulated by the
Ontario Court of Appeal in *R. v. Young*, (1984)
13 C.C.C. (3d) 1, 46 O.R. (2d) 520, 40 C.R. (3d)
289. A stay should be granted where "compelling
an accused to stand trial would violate those
fundamental principles of justice which underlie
the community's sense of fair play and decency",
5 or where the proceedings are "oppressive or
vexatious" (21 C.C.C. (3d) 7 at p.14, 20 D.L.R.
(4th) 65) at p.658, [1985] 2 S.C.R. at pp.136-7)
The court in *Jewitt* also adopted "the caveat
added by the Court in *Young* that this is a power
which can be exercised only in the "clearest of
cases". (p.14 C.C.C., p.659 D.L.R., p.137 S.C.R.)"

At the bottom of page 482 the court states:--

10 "To define "oppressive" as requiring misconduct
or an improper motive would, in my view, unduly
restrict the operation of the doctrine."

On page 483, the first full paragraph states:--

15 "While I disagree with the majority of the Court
of Appeal that prosecutorial misconduct must be
demonstrated in order to give rise to an abuse
of process, I nevertheless agree with their
conclusion that a new trial was properly ordered
in this case."

Later on in that same paragraph it states:--

"A third trial may, indeed, stretch the limits
of the community's sense of fair play but does
not of itself exceed them."

20 I think, My Lord, the court here has pointed
out and were discussing "what is the communities
sense of fair play", which I will get into later
when I address the facts.

The next case I wish to refer to is Re Lawrence
25 and The Queen, reported at 47 C.C.C. (3d) p.462. It
is a decision of the Newfoundland Supreme Court,
Trial Division, January 17, 1989. I will be
referring to pp. 473-4. At 473:--

30 "As I read the cases cited above, the Supreme Court
has said that principles of fundamental justice
are to be grounded in the basic, bedrock principles
that underpin our system: the fundamental tenets

1 of our justice system, the basic tenets of our
legal system. So far, the court has intentionally
avoided a definition or enumeration of what are
the basic tenets. In time, as Charter cases
progress through the courts, "the basic tenets" will
be identified and "principles of fundamental
Justice" will emerge, assuming a less enigmatic
abstraction.

5 In a real sense, s.15(1) of the Charter - equality
rights - reflects a basic tenet: that every
individual is equal before and under the law and
has the right to the equal protection and equal
benefit of the law without discrimination. It
is not my intention to pursue a review of case-
law on s.15(1) other than to observe that the
section reveals or connotes what I regard as a
10 basic tenet of our legal system, namely, the notion
of fairness and equality; a sense of fair treat-
ment is a rudiment of our legal system. An
injustice, in the sense of unmerited or uncalled-
for treatment in the administration of justice
constitutes a breach of a precept the principles
of fundamental justice embody."

The next case I wish to refer to is R. v. Miles
15 of Music Ltd. It's reported at 18 C.C.C. (3d) p.96.
It is a decision of the Ontario Court of Appeal,
March 16, 1989. I will be referring to pp. 106 and
115. At page 106, states:--

20 "I add that this court, in R. v. D.(T.C.) (1987)
38 C.C.C. (3d) 434 at p.447, 61 C.R. (3d) 168
(Ont. C.A.), has held that the onus of establishing
that an abuse of process has occurred is on the
respondent who must establish, on a balance of
probabilities, that the Crown has acted in an
oppressive or vexatious manner or that the
prosecution is offensive to the principles of
fundamental justice and fair play."

At page 115 in the dissenting view of Blair J.A.
25 it states:

30 "Whether an abuse of process has occurred depends
upon an objective judicial assessment of the
total effect or result of the proceedings. It is
not necessary to establish, in addition, any
impropriety or improper motive on the part of
the police or the prosecutor. In R. v. Keyowski,
(1988), 40 C.C.C. (3d) 481, [1988] 1 S.C.R. 657,
[1988] 4 W.W.R. 97 (S.C.C.), Madam Justice Wilson
said at pp. 482-3 C.C.C., p. 659 S.C.R.:

1572

1 To define "oppressive" as requiring misconduct
 or an improper motive would, in my view,
 unduly restrict the operation of the doctrine
 ...Prosecutorial conduct and improper
 motivation are but two of many factors to be
 taken into account when a court is called
 upon to consider whether or not in a particular
 case the Crown's exercise of its discretion
 5 ...amounts to an abuse of process."

The next case I refer to is Conway v. The Queen,
 reported at 49 C.C.C. (3d). It is a decision of
 the Supreme Court of Canada of June 22, 1989. I
 will be referring to page 302.

10 "Under the doctrine of abuse of process, the unfair
 or oppressive treatment of an appellant disentitles
 the Crown to carry on with the prosecution of the
 charge. The prosecution is set aside, not on
 the merits (see Jewitt, *supra* at p.23), but because
 it is tainted to such a degree that to allow it
 to proceed would tarnish the integrity of the
 court. The doctrine is one of the safeguards
 designed to ensure "that the repression of crime
 through the conviction of the guilty is done in a
 15 way which reflects our fundamental values as a
 society": Rothman v. The Queen (1981) 59 C.C.C.
 (2d) 30 at p.69, 121 D.L.R. (3d) 578, [1981] 1
 S.C.R. 640 (S.C.C.) per Lamer J. It acknowledges
 that courts must have the respect and support
 of the community in order that the administration
 of criminal justice may properly fulfil its
 function. Consequently, where the affront to
 fair play and decency is disproportionate to the
 20 societal interest in the effective prosecution of
 criminal cases, then the administration of justice
 is best served by staying the proceedings.

Stays for abuse of process are not limited to
 cases where there is evidence of prosecutorial
 misconduct. In delivering the reasons of the
 court in R. v. Keyowski (1988), 40 C.C.C. (3d) 481
 at pp. 482-3, [1988] 1 S.C.R. 657, 62 C.R. (3d) 349
 (S.C.C.), Wilson J. made it clear that all relevant
 25 factors, including, but not restricted to, bad
 faith on the part of the Crown, are to be
 considered."

The next case I wish to refer you to is
Re Regina and Elijah. It's reported at 53 C.C.C.
 (3d), p.36. This is a decision of the Ontario
 30 District Court of September 13th or 18th, I'm not
 sure, My Lord, 1989. At pages 44, 45, and 46:--

1 "A backhanded way of talking about fundamental justice and intent that I must apply to the circumstances here, that having come to me from the Supreme Court.

In Reference re. s.94(2) of Motor Vehicle Act (1985), ... (I am going to skip reading the quotes with the cases that they are referring to, My Lord, because I have already referred to them.) I just note from the S.C.R. headnote the observations which I think come from the pen of Mr. Justice Lamer, writing for Dickson C.J.C., Beetz, Chouinard and Le Dain J.J., at p.487:

10 The principles of fundamental justice are to be found in the basic tenets and principles not only of our judicial process but also of the other components of our legal system. These principles are not limited to procedural guarantees, though many are of that nature. Whether any given principle may be said to be a principle of fundamental justice within the meaning of s. 7 must rest on an analysis of the nature, sources, rationale and essential role of that principle within the judicial process and in our evolving legal system. The words "principles of fundamental justice", therefore, cannot be given any exhaustive content or simple and enumerative definition but will take on concrete meaning as the courts address alleged violations of s.7.

In *Keyowski v. The Queen*... a decision of the Supreme Court of Canada, Madame Justice Wilson, talking about s.7 of the *Canadian Charter of Rights and Freedoms*, says as follows [at p.482]:

20 The availability of a stay of proceedings to remedy an abuse of process was confirmed by this court in *R. v. Jewitt*.... On that occasion the court stated that the test for abuse of process was that initially formulated by the Ontario Court of Appeal in *R. v. Young*.... A stay should be granted where "compelling an accused to stand trial would violate those fundamental principles of justice which underlie the community's sense of fair play and decency" or where the proceedings are "oppressive or vexatious".... The court in *Jewitt* also adopted "the caveat added by the Court in *Young* that this is a power which can be exercised only in the 'clearest of cases' " ...

Further on on pp. 482-3 she says this:

30 To define "oppressive" as requiring misconduct or an improper motive would, in my view, unduly restrict the operation of the doctrine. In

1 this case, for example, where there is no
suggestion of misconduct, such a definition
would prevent any limit being placed on the
number of trials that could take place.
Prosecutorial conduct and improper motivation
are but two of many factors to be taken into
account when a court is called upon to
consider whether or not in a particular case
5 the Crown's exercise of its discretion is
re-lay the indictment amounts to an abuse of
process.

She goes on to say on p.483:

10 While I disagree with the majority of the
Court of Appeal that prosecutorial misconduct
must be demonstrated in order to give rise
to an abuse of process, I nevertheless agree
with their conclusion that a new trial was
properly ordered in this case. The appellant
has, in my view, failed to demonstrate that
this is one of those "clearest of cases" which
would justify a stay. The charge is a
serious one. The proceedings have not
occupied an undue amount of time. The
accused has not been held in custody, and,
while he has undoubtedly suffered substantial
15 trauma and stigma from the proceedings and
the attendant publicity, he is probably
not distinguishable in this respect from
the vast majority of accused. A third trial
may, indeed, stretch the limits of the
community's sense of fair play, but does not
of itself exceed them....

Dealing with s.7 she says this:

20 A brief comment on s.7 of the Charter. The
parties to this appeal were agreed that the
common law doctrine of abuse of process was
now subsumed in s.7. The trial judge accepted
this proposition as did all members of the
Court of Appeal although in neither of the
courts below was there much analysis of the
relationship between the two. Bayda C.J.S.,
however, noted, at pp. 74-5...what he saw as
a potential difference in onus: "Counsel for
25 the Attorney-General conceded..."

As said Mr. Justice Bayda [28 C.C.C. (3d) 553,...
(Sask. C.A.)]:

30 "...and rightly so - that if the circumstances
of the present case justly give rise to a
finding of an abuse of process, they would
automatically give rise to a finding of
violation of s.7. The converse should also
be true but for the matter of onus. Had
this case been decided on the basis of s.7,

1 it would have been sufficient for the accused
to prove on a balance of probabilities a
violation of 'the principles of fundamental
justice' as that phrase is used in s.7....
By deciding the case on the basis of 'abuse
of process', it would appear necessary to
apply the 'clearest of cases' onus...in
5 determining whether that same violation of
principles of fundamental justice occurred.
I am unable to give a valid explanation for
the distinction in onus.

At page 46 the court states:

10 "I also raised an argument as to what I as a juror
would think if I convicted of attempted murder and
then heard afterwards that the perpetrator of the
crime had in fact pleaded guilty to a lesser
offence once the plea was accepted by the Crown.

I think, in the words of Madame Justice Wilson and
paraphrasing them somewhat, that such perhaps
tests the community's sense of fair play and
decency. Bearing in mind what I said about the
duty of the Crown...."

15 Now at pages 40 and 41 of that same judgment, My
Lord, is when he mentions the duty of the Crown. At
page 40 he states:

"We must remember that the Crown, as pointed out
by Mr. Justice Estey in one of the cases to which
will refer later, has more than an adversary
position with respect to trials of accused, the
administration of justice and the criminal law.

20 In *Bourcher v. The Queen* (1954) 110 C.C.C. 263,
[1955] S.C.R. 16, 20 C.R. 1, Tashereau J. at p.
267 [translation]:

25 The situation which the Crown occupies is
not that of an advocate in a civil case.
His functions are quasi-judicial. He should
not seek so much to obtain a verdict of
guilty as assist the judge and jury to render
the most complete justice. Moderation and
impartiality should always characterize
his conduct before the court. He will in
fact have honestly fulfilled his duty and
will be beyond all reproach, if, putting
aside any appeal to emotions, in a
dignified manner consistent with his role,
he exposes the evidence to the jury without
going beyond what it actually reveals.

30 In the same case, Mr. Justice Rand says [at p.270]

1 It cannot be over-emphasized that the purpose of
a criminal prosecution is not to obtain a conviction;
it is to lay before a jury what the Crown
considers to be a credible evidence relevant
to what is alleged to be a crime. Counsel have
a duty to see that available legal proof of the
facts is presented; it should be done firmly
and pressed to its legitimate strength, but
5 it must also be done fairly. The role of prosecutor
excludes any notion of winning or losing;
his function is a matter of public duty than
which in civil life there can be none charged
with greater personal responsibility. It is to
be efficiently performed with an ingrained sense
of the dignity, the seriousness and the justness
of the judicial proceedings.

10 Again in *Re Forrester and The Queen*(1976), 33 C.C.C.
(2d)221, 73 D.L.R. (3d)736....Quigley J. of the
Alberta Supreme Court referred [at p.227] to another
quotation.

15 It has always been a supposition in the administration
of criminal justice, that as a general
rule "the prosecuting counsel is in a kind of
judicial position". The idea of a contest
between party and party should not be allowed to
creep in where the prosecutor in a criminal case
is concerned because he might then "forget that
he himself was a kind of minister of justice"...

Mr. Justice Zuber said like words in *R. v. Savion
and Mizrahi*, (1980), 52 C.C.C. (2d) 276, 13 C.R. (3d)
259 (Ont. C.A.), when he said [at p.289]:

20 By reason of the nature of our adversary system
of trial, a Crown prosecutor is an advocate;
he is entitled to discharge his duties with
industry, skill and vigour. Indeed, the public
is entitled to expect excellence in a Crown
prosecutor just as an accused expects excellence
in his counsel. But a Crown prosecutor is more
than an advocate, he is a public officer engaged
in the administration of justice.

25 THE COURT: Just on that point, Mr. Furlotte. Is there
anything in your material to suggest that the Crown
prosecutor has acted here other than with propriety?

MR. FURLOTTE: No, My Lord. I am just bringing this to
the court's attention. I would expect the Crown
prosecutor in arguing this case that he will admit
30 that certain facts exist surrounding the case of

1 Mr. Legere and that the public no doubt feels that
Mr. Legere cannot get a fair trial. I have read
case law --

MR. ALLMAN: Mr. Furlotte expects that quite wrong.

5 MR. FURLOTTE: Oh, probably so.

THE COURT: The thought just occurs to me why are we going
into this matter of the role of the prosecutor?

MR. FURLOTTE: Okay, that is the role -- my argument in
the end, My Lord, will be that it's myself as I am
10 concerned about Mr. Legere, yourself is concerned
about what the community's sense of fairplay is,
which I believe binds the court somewhat, and I expect
Mr. Allman as a Crown prosecutor and an officer of
the court to uphold our fundamental principle of
15 justice and admit also that we ought to take in the
community's sense of fairplay, and that being the
community's opinion. I will let him argue that for
himself.

I have four more cases to refer to.

20 The next case is R. v. E.D. which is reported at
57 C.C.C. (3d) 151. It is a decision of the Ontario
Court of Appeal of June 7th, 1990. I will be referring
to pages 159 to 161. At page 159 the court states:--

25 "After some years of uncertainty, the guiding
principles respecting abuse of process have now
been clearly stated. They were articulated
recently by the Supreme Court of Canada in
R. v. Keyowski....., where Wilson J. for the
court said...:

30 The availability of a stay of proceedings
to remedy abuse of process was confirmed by
this court in R. v. Jewitt...On that occasion
the court stated that the test for abuse of
process was that initially formulated by the
Ontario Court of Appeal in R. v. Young...A

1 stay should be granted where "compelling an
 accused to stand trial would violate those
 fundamental principles of justice which under-
 lie the community's sense of fair play and
 decency", or where the proceedings are
 "oppressive or vexatious"...The court in
 Jewitt also adopted "the caveat added by the
 Court in Young that this is a power which can
 5 be exercised only in the 'clearest of cases' "

More recently," (this is page 160) "in R. v. Conway
 ...

10 ...courts must have the respect and support
 of the community in order that the adminis-
 tration of criminal justice may properly
 fulfil its function. Consequently, where
 the affront to fair play and decency is
 disproportionate to the societal interest in
 the effective prosecution of criminal cases,
 then the administration of justice is best
 served by staying the proceedings."

Further at the bottom of page -- that same page, 160:--

15 "A stay of proceedings is tantamount to an acquittal
 in that it effectively brings the proceedings to a
 final conclusion in favour of the accused: R. v.
 Jewitt...The facts upon which a finding of abuse
 of process is based are critical: R. v. Young...
 The burden is on the accused to prove the abuse
 of process on a balance of probabilities: R. v.
 Miles of Music Ltd...The accused must show that
 allowing the state to proceed against him would
 violate the community's sense of fair play and
 decency or that his trial would be an oppressive
 proceeding. A claim of abuse of process is neces-
 20 sarily fact specific as it expresses society's changing
 views about what is unfair or oppressive. In Re
 Potma and The Queen (1983), 2 C.C.C. (3d) 383...
 (CA) Robins J.A. said:

25 "Fundamental justice", like "natural justice"
 or "fair play" is compendious expression
 intended to guarantee the basic right of citizens
 in a free and democratic society to a fair
 procedure. The principles or standards of
 fairness essential to the attainment of
 fundamental justice are in no sense static,
 and will continue as they have in the past to
 evolve and develop in response to society's
 changing perception of what is arbitrary, unfair
 or unjust.

30 A finding of abuse of process requires a delicate
 balancing of rights and interests, not in the abstract,
 but in the context of society's changing perception
 of what is fair and just."

1 My Lord, in the decision of Allan J. Leqere - and -
Rich McLean, Andre Veniot and McClelland & Stewart Inc.
by the New Brunswick Court of Appeal which date of
decision May 22, 1991. This in itself, My Lord, was
6 an application for an injunction to prevent the book
Terror and Panic in New Brunswick from being published.
Also, it has some aspects of what the community's sense
of fair play may be and what the Court of Appeal of
New Brunswick may consider to be fair play.

10 At page 2 at the bottom -- in the middle of the
bottom paragraph, it says:--

"Here, the application was made, not to prevent a
trial, but to avoid potential harm. The order
sought is for the purpose of upholding the Charter
rights of the appellant to the presumption of
innocence and to a fair trial."

15 At page 3 the court states:--

"In those circumstances, the interests which the
trial judge had to balance were those of the public
in seeing that the appellant will have a fair trial
and the appellant's Charter right to such a trial
as opposed to the private interests of two individuals
and a corporation..."

20 Published comments on.." (this is the second paragraph
on that page)

"Published comments on crimes are not new. Their
effect on the presumption of innocence and the
right to a fair trial has been the subject of
many court decisions. In the fifties, similar
related problems arose. The comments of the judges
who dealt with those problems are applicable today.
I think it is appropriate to repeat them. The
25 presumption of innocence and the right to a fair
trial stand as the cornerstone of the English
system of criminal law which we have inherited and
strive to uphold. The efforts of governments and
Courts to uphold these fundamental rights of a
democratic society must never cease. These rights
are now entrenched in the Charter of Rights and
Freedoms."

30 At page 4 the court states:--

"In R. v. Buller (1954), 108 C.C.C. 352 at 354,

1 Scott C.J. summarizes the conflict and the
consequences involved. He said:

5 There has been a great deal of publicity in
connection with these two pending prosecutions
and I consider it is incumbent upon me to point
out that it is a fundamental principle of our
law that any person charged with an offence is
innocent until he is proved guilty. Thus any
comments on these two cases which could
prejudice" (and I might emphasize it is could
and not would) "could prejudice the two accused
in the minds of the public, and particularly
of the jurors..."

10 But here, My Lord, the court is considered with --
concerned about not just the jurors but also the
public. And I will repeat:--

15 "Thus any comments on these two cases which
could prejudice the two accused in the minds
of the public, and particularly of the
jurors, are forbidden by a long line of cases
reported under the title of "Contempt of
Court".

20 It is part of our constitutional inheritance
that proceedings in Court are public, and fair
reports of what takes place in Court are
privileged and form an inherent part of our
administration of justice. But any press commen
tending to make a reader suppose that guilt
can be assumed or has been established is
another matter altogether."

25 Page 5 states:

30 "In the present case, the question of fact which
the trial Judge ought to have answered, but did not,
was whether the book tended to make the appellant
appear guilty of various crimes he was or might be
charged with. If it does, the presumption of
innocence fades and a fair trial becomes difficult
to obtain. Ther recent cases of Vermette, (supra),
R. v. Keegstra (13 March 1991), Appeal Nos. 17699
and 17701 (Alta. C.A.) [unreported] - ... and
R. v. Sherrat (21 March 1991), 21501 (S.C.C.)
[unreported] provide examples of the difficulty of
selecting an impartial jury where improper
comments had been published. Here, on the evidence,
I am of the view that the book leads, or at least
tends to lead, the reader to believe that the
appellant is guilty.

35 The arguments of the repondents, tha the contents
of their book have already been made public by
the newspaper and that the appellant has achieved

1 notoriety and has himself generated much
publicity do not address the real issue.
Undoubtedly, the publicity and the notoriety
were obtained with the assistance of the news
media, however, it is not the publication of
certain facts that is in issue here, but the
manner in which the facts are presented, and,
more importantly, their innuendos. I believe
5 that it is possible to properly inform the
public and yet, respect and protect the rights
of accused persons to the presumption of
innocence and to a fair trial. I cannot accept
that the selection of an impartial jury be
hampered by a failure to honour the presumption
of innocence."

The next case I wish to cite is William J. Kearney
10 and Her Majesty the Queen. It is in the Court of
Queen's Bench of New Brunswick. The date of decision
was July 22, 1991. At page 5 the Judge finds under
"Effect of Firing" in this case:--

15 "The position of the Attorney General as reported
by the media clearly indicates that the Attorney
General was conscious of the legal rules that
prohibit pretrial publicity that could prejudice
an accused person in the minds of the public
while a criminal matter is before the court or
sub judge."

At page 7 the trial Judge states:--

20 "The Supreme Court of Canada and the New Brunswick
Court of Appeal in a number of cases have recog-
nized the high standard of conduct required by
counsel for the Attorney General. For example
in Boucher v. R., (1955) S.C.R. 16 at p. 23 and
24...Mr. Justice Rand said:

25 It cannot be over-emphasized that the purpose
of a criminal prosecution is not to obtain a
conviction, it is to lay before a jury what
the Crown considers to be reliable evidence
relevant to what is alleged to be a crime.
Counsel have a duty to see that all available
legal proof of the facts is presented: it
should be done firmly and pressed to its
legitimate strength but it must also be done
fairly. The role of prosecutor excludes any
notion of winning or losing; his function is a
matter of public duty than which civil life ther
can be none charged with greater personal
responsibility. It is to be performed with an
30 ingrained sense of the dignity, the seriousness
and the justness of judicial proceedings.

1 Recently the New Brunswick Court of Appeal in
Allan J. Legere v. Rich McLean, Andre Veniot and
McClellant & Stewart Inc. (May 22, 1991) said:

5 Published comments on crimes are not new.
Their effect on the presumption of innocence
and the right to a fair trial has been the
subject of many court decisions. In the fifties
similar related problems arose. The comments
of the judges who dealt with those problems
are applicable today. I think it is appropriate
to repeat them. The presumption of innocence
and the right to a fair trial stand as the
cornerstone of the English system of criminal
law which we have inherited and strive to uphold.
The efforts of governments and Courts to uphold
these fundamental rights of a democratic society
must never cease. These rights are now
10 entrenched in the Charter of Rights and Freedoms.

15 Thus the Court of Appeal is emphasizing the importance
of the presumption of innocence and a fair trial.
The presumption of innocence is in effect a require-
ment of a fair trial. Without that presumption,
criminal trials would be very different. Although
some other legal systems require an accused person
to prove their innocence, that is not our system of
criminal law.

20 The Court of Appeal goes on to say that "The efforts
of governments and Courts to uphold these funda-
mental rights (of the presumption of innocence and
of a fair trial) of a democratic society must never
cease"....Thus the highest court of this province
has in effect said that the Attorney General and
Deputy Attorney General have a duty to uphold the
fundamental rights of the presumption of innocence
and the right to a fair trial. In my view that is
one of the ways for them "to ensure public confidence
in the administration of justice".

At page 10, again, McLellan J. citing from the Legere

case:--

25 "In the present case the question of fact which the
trial judge ought to have answered, but did not,
was whether the book (TERROR Murder and Panic in
New Brunswick) tended to make the appellant (Allan J.
Legere) appear guilty of various crimes he was or
might be charged with. If it does the presumption
of innocence fades and a fair trial becomes
difficult to maintain.

30 In my view the foregoing quotations reflect not only
basic legal theory but also the two great rules of
criminal procedure. Those rules are that "justice
should not only be done, but should manifestly and
undoubtedly be seen to be done" and "nothing is to

1 done which creates even a suspicion that there
has been an improper interference with the course
of justice". R. v. Sussex Justices [1924] 1 K.B.
256 at p. 259... "

Again, that was reported at (1923) All E.R. Rep.
at page 233 at p. 234.

5 Mr. Justice McLellan goes on to state:--

"In this case I find that the Attorney General and
his Deputy by firing the accused and the comments
to the media by the Attorney General "tended to
make the accused appear guilty" and "tended to
interfere with the due course of justice". Thus the
chief law officer of the province and his deputy
not only failed in their duty to uphold the
10 fundamental rights of the presumption of innocence
and the right to a fair trial but also actively
undermined those rights.

Procedural Safeguards

Against this background Counsel for the respondent
says that there are numerous procedural safeguards
to ensure the accused a fair trial in the face of
the pre-trial publicity which has occurred to date.
15 Those safeguards include the juror's oath, the trial
judge's instructions to the jury with respect to
media, the rights of the accused in jury selection,
the screening of jurors by the trial judge, the
criminal standard of proof and in the appropriate
circumstances a change of venue. Also I note that
the Attorney General has appointed counsel from
outside the province to prosecute the case.

20 Those procedural safeguards are ordinarily adequate
to protect the rights of an accused to a fair trial
in the face of pre-trial publicity or inappropriate
remarks or actions. That has been recognized in
many cases such as the Supreme Court of Canada
decision R. v. Vermette, [1988] 1 S.C.R. 985."

Mr. Justice McLellan goes on to state:

25 But in Vermette, a case involving inappropriate
remarks by politicians about a case in the
courts, Mr. Justice La Forest made the point at
page 995 "there is nothing in the evidence to show
that the Attorney General had committed an abuse of
process". From that I infer that the decision would
have been different if the Attorney General had been
one of the politicians who made inappropriate remarks.
Accordingly I distinguish that case and others like
it from this one."

30 Under the heading "Caution to the jury":--

1 "Theoretically a jury could be selected carefully
and then cautioned emphatically that the decision of
the Attorney General to approve the summary dismissal
of the accused after 23 years service should not in
any way affect their decision and that the accused
is innocent until proven guilty beyond a reasonable
doubt. Such a caution would have to be very strong.

5 But that sort of caution would in my view strongly
imply that the Attorney General and his Deputy have
already in effect made a determination of the accused's
guilt. It would also imply that the Attorney General
and his Deputy neither respect the presumption of
innocence nor understand the heavy responsibilities
of their offices to uphold that presumption."

Page 12, he continues:--

10 "In my view such a caution would likely be inter-
preted by the jury as also implying that the
presumption of innocence is an empty legal fiction
to which only lip-service is paid by the highest
law officers of the province.

15 It should go without saying that the presumption of
innocence is not a legal fiction and it is absolutely
not a "technicality". I repeat the observation in
Legere by the Court of Appeal: "The presumption of
innocence and the right to a fair trial stand as the
cornerstone of the English system of criminal law
which we have inherited and strive to uphold. The
efforts of governments and Courts to uphold these
fundamental rights of a democratic society must
never cease. These rights are now entrenched in
the Charter of Rights and Freedoms".

While on page 12 he states:--

20 "In my opinion it is wrong to compel an accused to
stand trial where the Attorney General himself has
put in doubt whether any verdict from a jury would
be just. In my opinion it "would violate those
fundamental principles of justice which underlie the
community's sense of fair play and decency" and
amount to an abuse of the process of the court.
R. v. Jewitt."

26 The last case I wish to refer to My Lord is --
and I apologize. I only have the headnotes. Rebert
v. R. reported at 77 C.R. (3d) at p.145. This is a
decision of the Supreme Court of Canada June 21, 1990.
In this case on the first page of the headnotes it
30 states:

1 "The accused was arrested for robbery. He was
advised of his right to retain and instruct counsel
and was taken to the police station. He contacted
counsel, was advised regarding his right to refuse
to give a statement, and was taken to an interview
room. He was given the usual police caution and
was asked why he had committed the robbery. The
5 accused indicated that he did not wish to make a
statement. He was then placed in a cell. An
officer, disguised in plain clothes, posed as a
suspect under arrest. While in the cell, the
officer engaged the accused in conversation, and the
accused made incriminating statements which
implicated him in the robbery.

The trial judge held that the accused's right to
counsel and his right to remain silent had been
violated, and excluded the statement. The Crown
10 offered no other evidence, and the accused was
acquitted. On appeal, the Court of Appeal held
that the trial judge had erred in rejecting the
statement, and ordered a new trial. The accused
appealed further."

And that being to the Supreme Court of Canada.

The Supreme Court of Canada found -- held and it
15 found:--

"It would be wrong to assume that the fundamental
rights guaranteed by the Charter are cast forever
in the strait jacket of the law as it stood in 1982.
A fundamental principle of justice under s. 7 of
the Charter may be broader than the particular
rules which exemplify it. The right of a detained
20 person to silence should be philosophically
compatible with related rights such as the right
against self-incrimination at trial and the right
to counsel. The scope of a fundamental principle
of justice will depend on the general philosophy
and purpose of the Charter, the purpose of the right
in question, and the need to reconcile that right
with others guaranteed by the Charter."

It continues to state in the headnotes:--

25 "The right of a detained person to silence should
be viewed as broader in scope than the confessions
rule as it stood in Canada at the time of the adoption
of the Charter. The right to silence must reflect
the Charter's concern with individual freedom and
the integrity of the judicial process and permit the
exclusion of evidence which offends these values.

The scope of the right to silence must be defined
30 broadly enough to preserve for the detained person
the right to choose whether to speak to the authorities
or to remain silent, notwithstanding that he or she

1 is in the superior power of the state. On this view,
the scope of the right must extend to exclude tricks
which would effectively deprive the suspect of his
choice. To permit the authorities to trick the
suspect into making a confession to them after he
or she has exercised the right of conferring with
counsel and has declined to make a statement is to
6 permit the authorities to do indirectly what the
Charter does not permit them to do directly. This
cannot be in accordance with the purpose of the
Charter."

My Lord, that is the case law I wish to cite and
before I get into the evidence I feel -- the onus is
on myself to prove a balance of probability that
10 Mr. Legere's rights were violated and I would like
a short recess.

THE COURT: Would this be an appropriate time to take a
short -- you must be tired. You have been talking
for an hour and twenty minutes.

15 MR. FURLOTTE: I probably won't talk the rest of the
weekend.

THE COURT: Pardon?

MR. FURLOTTE: I will probably be silent the rest of the
weekend.

20 THE COURT: You can talk to yourself all you want to. We
will take a fifteen minute break. We will confine it
to a strict fifteen minute break.

(Court Recessed - 11:10 - 11:45 a.m.)

25

30

1 COURT RESUMES - (Accused present.)

THE COURT: Okay, Mr. Furlotte.

MR. FURLOTTE: My Lord, maybe I think I will go through
the evidence of the second ground for a Stay of
Proceedings. It might be a bit shorter and get the
5 short one out of the way.

My Lord, the second ground was that the accused's
right against unreasonable search and seizure, as
guaranteed by Sections 8 and 15 of the Canadian
10 Charter of Rights and Freedoms has been denied him
through the malicious interference with solicitor-
client privileged information and privacy.

I submitted the affidavit of Allan Legere which
states:--

15 "I, Allan Joseph Legere, of Renous, in the County of
Northumberland and Province of New Brunswick, make
oath and say as follows:

1. That I have requested my solicitor, Weldon J.
Furlotte, to file an Action with the Federal Court
20 of Canada to re-establish my rights to solicitor-
client privileged information for future considerations
and necessities.

2. That all statements of facts claimed in my Action
against Her Majesty the Queen are true to the best of
25 my knowledge and belief, a copy of which is attached
hereto marked "A".

3. That for clarity I now reiterate and stress the
following in support of this Motion:

(a) That during January, 1991, the staff at the
30 Atlantic Institute searched material given to me by
my Solicitor, Weldon J. Furlotte, intended for the

1 purpose of preparation for my defence in relation
to the four murder charges before the Court, together
with all the solicitor-client privileged information
regarding evidence, strategy, defence, et cetera.

5 (b) That I objected strongly against the removal of
myself from my cell area where I could observe the
search to ensure that the guards were not reading
the documents received from my solicitor, and the
documents I prepared for my solicitor.

10 (c) That searches of my cell occurred approximately
every second day and lasted approximately a half an
hour at a time.

(d) That upon the guards returning me to my cell I
would find all my documents interferred with and,
15 although I cannot prove that the guards read the
solicitor-client privileged information, they have
admitted that they had to look through all of the
documents to search for weapons.

(e) That one of the guards who searched my cell, and
20 who was going through the solicitor-client privileged
information, was also a member of the Police Commission
for the Town of Newcastle.

(f) That on February 27, 1991, I met with my
25 solicitors, Weldon J. Furlotte and Michael Ryan, to
prepare my defence and we were placed in a visiting
room where our conversations could be overheard and
reported.

Sworn on the 17th day of August, 1991.

30 The Statement of Claim which Mr. Legere has sworn
to in his affidavit that is true to the best of his
knowledge or belief, it states in paragraph 1.

1 The Plaintiff is an inmate of the Atlantic Institute,
Renous, in the County of Northumberland and Province
of New Brunswick, and,

(2) The Defendant is an agent of Her Majesty the Queen
6 namely Correctional Services of Canada, who is
responsible for the orderly conduct and equal treatment
of inmates at Federal Institutions and, in particular,
as represented by the existing Warden, Donald Wheaton,
at the Atlantic Institute in Renous, New Brunswickk.

10 (3) That on or about November 7, 1986, the Plaintiff
was stabbed by another inmate at Dorchester
Penitentiary while awaiting trial.

(4) On or about December 17, 1986, the Plaintiff was
placed in segregation, supposedly for his own protection
15 but without his consent.

(5) On or about January 22, 1987, the Plaintiff was
convicted of second degree murder.

(6) The Plaintiff was in segregation continuously at
Dorchester Penitentiary until he was transferred to
20 Atlantic Institute on or about June 8, 1987.

(7) The Plaintiff was immediately segregated at the
Atlantic Institute, although there were only about
fifty inmates in that prison at that time.

25 (8) In June, 1988, the Plaintiff was given a job as
cleaner for the segregation unit and had access to
all high security file -- high security areas and
inmates.

(9) The Plaintiff escaped from custody on May 3, 1989.

30 (10) The Plaintiff was recaptured on November 24, 1989.

(11) The Plaintiff was returned to the Atlantic

1 Institute on November 26, 1989, and was allowed out
in the yard with any inmate he wanted, with the
exception of a few inmates.

(12) During 1990, the Plaintiff was allowed to speak
6 to his female case worker, Ms. Lynn Chaplin, alone
in the old courtroom, with no windows, for an open
visit.

(13) During November, 1990, acting case worker,
Ms. Suzanne Landry, interviewed the Plaintiff on two
10 different occasions, several weeks apart, in the
old courtroom, where they would be alone for up to
one hour at a time.

THE COURT: The old courtroom what is that?

MR. FURLOTTE: That's the courtroom inside the Institute
15 where inmates are charged with minor offences.

THE COURT: This is at Renous. You are not talking about
the courtroom in Newcastle or anything.

MR. FURLOTTE: It is just a room inside the Institution
which they use for a courtroom.

20 During November, 1990, Ms. Susan Mills of Correctional
Investigation, Ottawa, visited the Plaintiff alone in
the old courthouse area for over a half an hour.

(15) During December, 1990, the Plaintiff had open
visits with his sister, mother and female friend at
25 different times.

Paragraph (16) The Plaintiff is now awaiting trial on
four counts of murder which were laid on December 5,
1990.

30 (17) During January, 1991, the staff at the Atlantic
Institute searched material given to the Plaintiff by
his solicitor, Weldon J. Furlotte, in preparation for

1 the Plaintiff's upcoming trial, together with all
solicitor-client privileged information, in the
absence of the Plaintiff, on a regular basis.

5 (18) The Plaintiff's solicitor objected strongly to
this action to Willie Gibbs, the Deputy Commissioner
of Correctional Service Canada, in person and by
letter.

10 Paragraph (19) The Deputy Commissioner, Willie Gibbs,
refused to protect the Plaintiff's right to solicitor-
client privileged information because additional
costs would be incurred if the Plaintiff was allowed
to be present during the search of his cell.

15 (20) As a result of the position taken by the
Defendant, the Plaintiff had no alternative but to
return to his solicitor all confidential information,
instructions, and directions from his solicitor, and
was thereby prevented from assisting his solicitor in
preparation of his defence.

20 (21) On February 27, 1991, the Plaintiff was origin-
ally denied an open visit with both of his solicitors
at the same time, but was later allowed an open visit
with both solicitors. However, this visit was not
held in the usual place the Plaintiff met with his
25 solicitors, but rather in a room where at least two
hours of conversation between the Plaintiff and his
solicitors could be monitored and recorded.

30 (22) Both solicitors for the Plaintiff, Weldon J.
Furlotte and Michael Ryan, later entered the room
from where the guard could monitor the conversation
between the Plaintiff and his solicitors, and the
amplification of sound from the room where the

1 Plaintiff met with his solicitors was such that you
could hear a pin drop.

Paragraph (23). The solicitors for the Plaintiff
were previously advised by the guard that they should
5 speak low if they did not want to be overheard.

However, the guard was able to hear every word of the
Plaintiff to his solicitors without his knowledge.

(24) Prior to the invasion of privacy as mentioned
in Paragraphs 21 to 23, on or about February 17, 1991,
10 the Plaintiff's cell was searched and a shower curtain
hook was seized as a potential weapon. This hook was
used to heat water in a Pepsi can since June, 1987, and
most guards knew the Plaintiff was in possession of
this shower hook.

15 Paragraph (25). No charge was laid for having the
shower curtain hook in the Plaintiff's possession,
nor was the Plaintiff ever informed that the shower
hook could be classified as a weapon.

Paragraph (26). The Plaintiff has been informed that
20 an inmate, Michael Higgins, had told guards that the
Plaintiff was planning to escape and take a guard or
anyone hostage and take their eyes out.

Paragraph (27). The Plaintiff has never been given the
opportunity to answer the false accusations by inmate,
25 Michael Higgins, and has since been treated as if
the accusations were absolutely true.

Paragraph (28). Because of the false accusations by
inmate, Michael Higgins, the Plaintiff is handcuffed
and shackled with a metal box locked between his
30 wrists, and handcuffs secured with a waistbelt which

1 severely hampers his ability and endurance for visits
with his solicitor in preparation for trial.

(29) On at least two different occasions while the
Plaintiff was on the telephone with his solicitor
5 during their defence -- discussing their defence, a
guard would come on the telephone and limit the
telephone call to two more minutes, after the Plaintiff
and his solicitor had only been speaking for approxi-
mately fifteen minutes.

10 Paragraph (30). The Plaintiff has been in segregation
since November 17, 1986, against his will and for no
justifiable reason.

Paragraph (31). The Plaintiff is suffering severe
mental anguish because of the unequal, improper and
15 illegal treatment by Correctional Services Canada and
as a result therefrom is unable to function and develop
as a normal person.

(32) The treatment towards the Plaintiff constitutes
cruel and unusual punishment which, aside from causing
20 severe mental anguish and instability, maliciously
interferes with the Plaintiff's right to direct and
assist his solicitor in providing full answer and
defence to his upcoming trial.

Paragraph (33). The Plaintiff therefore claims the
25 following relief: (1) An Order to return the
Plaintiff to the general population and not to be
subjected to segregation without just cause, and a
proper hearing before an impartial tribunal. (2) An
Order to assure the Plaintiff complete solicitor-
30 client privileged information, regardless of the cost
to Correctional Service Canada.

1 That was dated at Moncton, New Brunswick, on the 19th
day of August, 1991.

My affidavit, My Lord, in support of the second
ground -- or Stay or Proceedings --

6 THE COURT: May I just ask, Mr. Furlotte, what is the
status of this action now? This was started in
August, mid August.

MR. FURLOTTE: Yes, I have not received a Statement of
Defence as of yet, My Lord.

10 THE COURT: But this has been served on --

MR. FURLOTTE: Yes, I believe in the warden's affidavit
in reply to this motion he acknowledges receipt of the
copy of the Statement of Claim because he does address
it in his affidavit.

15 MR. ALLMAN: And he goes on to state that his Statement
of Defence will be filed shortly.

MR. FURLOTTE: In my affidavit, My Lord, it states,
I, Weldon J. Furlotte, Barrister and Solicitor, of
the City of Moncton in the County of Westmorland and
20 Province of New Brunswick, make solemn affirmation and
say:

1. That upon being notified by Allan Joseph Legere in
January, 1991, that Correctional Services Canada was
invading his right to privileged solicitor-client
25 information, I met with the Deputy Commissioner of
Correctional Services Canada and confirmed our
meeting by letter dated January 23, 1991 (copy attached
hereto, marked "A")

30 Paragraph 2. That I received a letter in response from
the Deputy Commissioner of Correctional Services Canada
dated January 30, 1991 (copy attached hereto, marked
"B");

1595

1 Paragraph 3. That I have prepared and filed an
Action before the Federal Court of Canada (copy
attached hereto marked "C"), and confirm the happening
of events stated in Paragraphs 21, 22, 23 and 29 of the
5 Statement of Claim;

4. That I have never experienced such blatant
disregard for a solicitor and client's privilege —
sorry - that I have never experienced such blatant
disregard for a solicitor and client's right to prepare
10 full answer and defence for a trial with any other
client, or in any other institution, which I am
experiencing with Allan Joseph Legere and the Atlantic
Institute.

And this was sworn on the 20th day of August, 1991.

15 A copy of a letter to William Gibbs from myself
marked "A" attached to my affidavit states:

Dear Sir:

Further to our conversation of January 22 (and this
letter is dated January 23, My Lord) -- Further to our
20 conversation of January 22, 1991 concerning the
invasion of privacy in regards to Mr. Legere's right
to solicitor-client privileged information, I wish to
confirm in writing my strong objections to the policy
Correctional Services of Canada is taking in regards
25 to the search of Mr. Legere's cell in his absence.

As I informed you yesterday, Mr. Legere's cell is
being searched about every second day and the guards
at the Atlantic Institution are removing Mr. Legere
30 completely away from his cell area so that he cannot
observe the search being conducted. Also, I inform you

1 that upon Mr. Legere returning to his cell he finds
the material regarding his outstanding murder trials
being interferred with. However, we do not know to
what degree the guards at the Atlantic Institute are
5 concerning themselves with the material Mr. Legere and
myself are preparing for trial, including our defence
and trial strategies.

I wish to inform you again that I consider the policy
of Correctional Services Canada at the Atlantic
10 Institute to be a serious breach of solicitor-
client privileged information by not allowing Mr. Leger
to remain in his cell area to observe all searches
being conducted in his cell.

15 Regardless of my voicing my concern to you yesterday,
you advised me that you contacted the Warden, Mr. Don
Wheaton, and your decision remains to have Mr. Legere
removed from the cell area when searches are being
conducted of his cell, with solicitor-client
20 privileged information being observed by the guards
in an unknown fashion or degree.

I also inform you that your actions could constitute
grounds for a Stay of Proceedings because Mr. Legere's
Charter Rights are being violated and I may have to
25 seek a court order to prevent the staff at the Atlantic
Institute from having access to the files Mr. Legere
has in his possession regarding the outstanding
murder charges against him.

30 Signed by myself.

I received a letter in response from the Deputy
Commissioner, Willie Gibbs, on January 30, 1991.

1 Dear Mr. Furlotte:

This is to acknowledge your letter dated January 22, 1991, and our previous conversation regarding the search of the cell of your client, Mr. Allan Legere.

5 Correctional Service of Canada's security policy requires that regular searches of cells be conducted to prevent and deter the presence of contraband, mainly weapons and drugs. Such unauthorized objects could be threatening or could lead to the presence of
10 illicit activities that could be threatening to the security of our institutions, inmates, employees, and the general public.

While doing a cell search, employees are told to
15 search every place where contraband could possibly be hidden. Therefore, a correspondence bundle or binder is subject to inspection in order to determine whether contraband is concealed behind or in between papers.

With respect to correspondence subject to solicitor-
20 client privileged information, our policy and practices are clearly established. Employees are not to read this type of document, but for the reasons mentioned above they might have to look through it to ensure that it does not contain concealed or unauthorized
25 objects.

These searches are not conducted in front of an inmate because of the additional security precautions that would be required by such procedures. This would
30 result in an inevitable increase in the time dedicated to this essential security task. You will recognize that from an administrative point of view this is not reasonably feasible when you consider that the

1 Correctional Service is responsible for hundreds of inmates in each institution.

Nevertheless, searches such as the ones conducted in Mr. Legere's cell are carried out by two officers, one of whom performs supervisory duties. This is to ensure that the searches are performed in conformity with specific criteria, which include the respect for confidentiality of privileged correspondence.

10 I trust that the above information will be of assistance in answering your client's concerns.

Signed Willie Gibbs, Deputy Commissioner, Atlantic Region.

15 In my affidavit I confirmed -- in paragraph 3 of my affidavit, I repeat again, that I have prepared and filed an Action before the Federal Court of Canada (copy attached hereto marked "C") and confirm the happening of events stated in Paragraphs 21, 22, 23, and 29 of the Statement of Claim.

20 Paragraph 21, I repeat, states that on February 27, 1991, the solicitor was originally denied an open visit with both of his solicitors at the same time but was later allowed an open visit with both solicitors. However, this visit was not held in the usual place the plaintiff met with his solicitors, but rather in a room where there was two hours of conversation between the plaintiff and his solicitors could be monitored and recorded.

25 Paragraph 22: Both solicitors for the Plaintiff, Weldon J. Furlotte and Michael Ryan, later entered the room from where the guard could monitor the conversation.

1 between the plaintiff and his solicitors and the
amplification of sound from the room where the
plaintiff met with his solicitors was such that you
could hear a pin drop.

5 23. The solicitors for the Plaintiff were previously
advised by the guard that they should speak low if
they did not want to be overheard. However, the guard
was able to hear every word of the plaintiff to his
solicitors without his knowledge.

10 Paragraph 29. On at least two different occasions
while the plaintiff was on the telephone with his
solicitor discussing their defence, a guard would
come on the telephone and limit the telephone call
to two more minutes, after the plaintiff and his
15 solicitor had only been speaking for approximately
fifteen minutes.

My Lord, in further to this last claim with the
guard coming on the telephone, I always felt that when
I was talking to inmates at an institution --

20 MR. ALLMAN: Just a moment. I have an objection to get on
the record here if Mr. Furlotte -- the evidence in
this case consists of the affidavits. I am going to
object to any further information or evidence being
given not under oath.

25 MR. FURLOTTE: My Lord, the position of the defence on
this last aspect is that an inmate or any client --
the inmate in an institution his rights to solicitor-
client privileged information should be protected
as if he was in his own home, if he was in his own
30 office, as if he was not in an institution. I see no

1 reason why when an inmate is talking to his solicitor
that he cannot be on a phone where the -- where he has
privacy in such a degree that guards at the institution
cannot listen in. They cannot pick up another phone
5 and listen in to the call by an inmate. The phone I
suspect -- I don't know who cut in. He never -- well
I guess that is giving evidence.

I guess there is no evidence as to who the guard
was who cut in on the phone, but I would suspect that
10 it would not be the normal operator within the
institution. It would be somebody who is able to
pick up a line and listen in to the telephone
conversation between the solicitor and his client.

15 For these reasons because this is evidence that
inmates, and especially Mr. Legere, are subject to
abuse of the process which can be taken by any guard
in an institution to listen in to a telephone
conversation and the mere fact that an inmate cannot
come to court and prove that somebody is absolutely
20 listening in, the mere fact that it is possible
establishes that the appearance here of justice and
the appearance of protection of clients - inmates are
not being adhered to and especially since the fact
that there is evidence that a guard does come on and
25 speak to inmates and interfere with an inmates
client with his solicitor. That is proof that it can
be done at any time or at the will of any guard.

30 This is not evidence in this case, but when I am
talking to other inmates at institutions and police
-- I get calls in the early hours of the morning to

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1 talk to clients. At any time a police officer wants
to cut in or inform somebody with a client of mine, I
can hear the officer yelling at them in the background
or standing at a distance where they cannot hear our
5 conversation or yelling in the background and there is
no way that they can cut in on those phones that
I am aware of.

MR. ALLMAN: Quite right. This isn't evidence in this
case.

10 THE COURT: One point I wanted to mention here. Along, I
think it was perhaps in February, late February, or
was it March? I'm not sure. I made notes of the
matter at the time in my record book or in my day book.
Unfortunately, it is not in this book. It is in my
15 previous book. I thought it was in this book. I
haven't got my earlier book with me and I can't check
it. Mr. Ryan broached me when he was acting with you,
Mr. Furlotte, in March I would say, the question of
the inability of you and him making suitable arrange-
20 ments for interviewing Mr. Legere at Renous. He
wasn't certain at that time what steps would be taken
and they were contemplating an action or an application
in the Federal Court or something at that time. He
didn't want me to take any action until -- he wanted
25 me to merely be aware of this. I said, "Well, look, if
there is anything I can do to get this thing sorted
out, I will do it." I said, "One thing I might do is
speak with the Crown prosecutors and although they have
no control over the Solicitor-General's department,
30 perhaps they can speak to someone and get this assisted.

1 I believe that with Mr. Ryan -- as a matter of fact
I think Ryan said, "Yes, that would be a good thing."
And I called Mr. Allman at the time.

MR. FURLOTTE: I had approached Mr. Allman myself before
6 I even discussed it with Mr. Ryan to solicitor
everybody's help.

THE COURT: But the upshot -- I just wanted to come to
what I understood to be the upshot of the thing and
that was Mr. Allman spoke to somebody who spoke to
10 somebody and later Mr. Ryan got back to me, or I ran
into him in the Justice Building, or something, and
said, "What has come out of it?" It was my under-
standing that the matter had been resolved. Shortly
after that you will recall back at the commencement
15 of the voir dire I filed certain letters, correspondenc
that I had received from Mr. Legere, and after that I
received from Mr. Legere a letter (which is on the file
and counsel have copies of it. I think perhaps copies
went to counsel at the time.) raising again this thing.
20 It had been written before my -- the letter had been
written before my conversations in the matter with
Mr. Ryan and Mr. Allman and I wrote then to the
solicitors, you Mr. Furlotte and you Mr. Allman, saying
that -- sending a copy of that letter and also saying
25 that it was my understanding that the complaint
referred to had been cleared up and that everything had
been resolved to the satisfaction of the parties. In
any event I heard nothing further about that and I
assumed --

30 MR. FURLOTTE: You are quite correct, My Lord. The issue

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1 was resolved and it took about two months to resolve
it, but it was resolved in April, yes, between myself
and Mr. Ryan hammering at the staff at the Atlantic
Institute. I came up with the suggestion that they
5 have a locked box and they only search it in
Mr. Legere's presence where they originally had denied
to search it in the presence -- to have Mr. Legere
present.

MR. ALLMAN: I don't want to interrupt, but I have to.
10 Mr. Furlotte is giving evidence again. If Your
Lordship reads the affidavit, which is evidence if
I'm correct, of Mr. Wheaton you will see that a
solution was arrived at. It doesn't matter how it
was arrived at. It is evidence that Mr. Furlotte is
15 giving.

THE COURT: Well I realize, Mr. Allman, but I still would
like to delve in to just what happened afterward or
might have happened. What about the matter of
conversations or getting into -- did you have privacy
20 after that?

MR. FURLOTTE: That is the killer, the one where I
addressed, 21.

THE COURT: Well you say there still has been a continuing
problem there is what you are saying.

25 MR. FURLOTTE: No, there is only the one occasion as in
the evidence. There was only the one occasion where
they interfered while we were in a meeting with
Mr. Legere and I. They didn't want -- they originally
wanted, and that is not in the affidavit and I don't
30 know if Mr. Allman will object again --

1 MR. ALLMAN: If Your Lordship wants this to be a compara-
tively wide roaming excursion, then that is alright.

THE COURT: Well I will up to a point permit this. I
realize this is perhaps in the nature of evidence, but
5 I will hear it anyway.

MR. FURLOTTE: When Mr. Ryan and myself arrived on
February 27 to meet with Mr. Legere, we had given
prior notice that we were going to meet. They wanted
to put us in the closed area where there would be a
10 wall and glass between Mr. Legere and ourselves and
talk over the telephone. Well our argument at that
time was how in the heck can we prepare for full
answer and defence and have -- private communications
with our clients when we are over the telephone and
15 the guard is in another room with the glass where he
can see us -- we can't see him but he can see us. I
have been in the room before and he can listen to our
phone conversations and -- so we refused to meet with
Mr. Legere on those conditions. We said there is no
20 way we are going to do this. If we can't meet with
our client under normal circumstances to prepare for
full answer and defence we are not going to bother
coming back to this institution. So that staff member
Eddie Richard and I believe there is an affidavit here
25 from him -- yes, Eddie Richard -- He then called the
Keeper of the segregation unit for Mr. Legere and he
was taking his instructions from the Keeper. So the
Keeper -- I would assume because Mr. Richard came
back to us and says, "Okay, I will let you meet on
30 the same side of the glass in where the inmates sit."

1 There was no other inmates around.

THE COURT: This is February 27th.

MR. FURLOTTE: This is February 27th and --

THE COURT: Well then what happened after that?

5 MR. FURLOTTE: Well, no, I just wanted to tell you the
circumstances. We met in that room. They brought
in tables and chairs for us to sit at so we could
put our paperwork and work at. The telephone hook
was still hung up. I said, "Well can you still hear
10 us in here?" because the telephone was still hanging
there. He says, "Yes, because it is just a receiver
and it is not on a hook like our normal telephones.
You hang it up on a hook and it cuts it off." He
says, "No, it just hangs there and I can still hear
15 everything that is said in through that telephone in
the other room." But he advised us, as in my affidavit
and his affidavit. He advised us that if we didn't
speak too loud that he wouldn't be able to hear us.
So we tried to keep our voice down as low as possible.
20 Sometimes Mr. Legere gets excited. But I think in
general we were able to keep our voice -- you know
not speak too loudly that we thought we were going to
be able to be heard. And we were in there for two
hours. Upon leaving when we finished the investigation
25 the interview with Mr. Legere, we came out of that
room, through the door, and back in where Eddie
Richard was like in the control room. They had another
-- I believe it was another inmate who come in and
not the staff member -- who come in to remove the
30 chairs and tables that we were using in that room.

1 Needless to say it sounded like an earthquake. When
I say you could hear a pin drop, I mean it literally.
You could hear a pin drop in there. There is no way
that a person sitting inside that room could not hear
5 every word that we said. At least that is -- was
Michael Ryan -- I can't speak for Michael Ryan. That
was my opinion. After that they never subjected us
to that treatment again because of our complaint.

THE COURT: Where did you meet after that?

10 MR. FURLOTTE: After that we met where we normally met
before. Beforehand I used to meet with Mr. Legere
in a room in segregation. We never met where the
general population has their visitings. There is an
affidavit from Mr. Richard in answer which basically
16 states: On February 27 I was working in the visits
and correspondence section of the Atlantic
Institution. That on that date lawyers Weldon Furlotte
and Michael Ryan were admitted to the Institution for
the purpose of meeting with inmate Allan Legere. That
20 on that date and time all normal visiting areas were
occupied with the general population inmates and their
visitors. I have never ever met with Mr. Legere
where the general population meets with their inmates
and their regular visitors. They always take me down
25 in the segregation unit and put me and Mr. Legere in a
room there by ourselves which is not normally used for
visiting purposes.

THE COURT: Well the upshot is after February 27th you had
no more problem about privacy in your --

30 MR. FURLOTTE: After February 27th we had no more problems
of that nature.

1 Paragraph 4 of Eddie Richard's affidavit says that
the visit was allowed to proceed using an area of the
visits and corresponding section normally reserved
for closed or restricted visits which does contain
5 electronic equipment for monitoring of conversations
through an intramural telephone system.

Paragraph 5 states: That I did personally advise
Mr. Furlotte and Mr. Ryan that of necessity I had to
assign them this area and that conversations could be
10 overheard if they talked loudly.

6 - That at no time during the visit between
Mr. Legere and his solicitors in that specific area
did I utilize the electronic monitoring capability
or record any part of the conversation.

15 I could accept that he did not record part of our
conversation, but the fact that he did not utilize it,
there is no way he could possibly not hear us because
the system is turned on all the time. I may agree
with him that he did not go and turn the system on
20 deliberately to listen to Mr. Legere's and our conver-
sation, but the system had been turned on while we
were in there and he was able to hear every word.

My Lord, those are the --

25 THE COURT: During the six weeks we sat here on the voir
dire you had no problem at that -- that was through
April, May, June. You had no problem.

MR. FURLLOTTE: That was up and through April. As you are
aware, Mr. Ryan continued until the locked box and the
30 combination lock to Mr. Legere was given to him in
April and the directions that nobody -- that he could

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1 be present whenever they did the search and that nobody
was supposed was supposed to read it and Mr. Legere
was able then to be there. This only occurred in
April and as you aware Mr. Ryan was supposed to do the
5 preparation for the voir dire on the admissibility of
bodily substances and statements and the works which
was scheduled for the end of April. That interfered
grossly with Mr. Ryan's ability to prepare Mr. Legere's
defence. Mr. Ryan had sent I believe correspondence
10 to the institution complaining of that situation and
the conditions after of which they kept Mr. Legere in
the shackles and restraints where he could not write
notes and could not meet for any lengthy period of
time because I believe -- again, this is not in
15 evidence but I guess Mr. Legere could not withstand
long visits. That part of it interfered with
Mr. Ryan's ability to prevent (sic) full answer and
defence.

20 As you probably remember during the voir dire
that Mr. Ryan was supposed to be in preparation for
cross-examination of the witnesses that I had to take
over at one point because up until Mr. Ryan had come
in the case I was able to meet and go over certain
25 aspects of the case with Mr. Legere. And in fact
because I hadn't discussed any of the issues with
Mr. Legere for some time, I was still better prepared,
although not fully prepared, but still better
prepared than Mr. Ryan because I was able to have more
30 contact with my client when we were being able to meet
uninterrupted.

1 THE COURT: Yes, but once the voir dire started here on
April 22nd, there was unlimited opportunity to consult
between counsel and client either here -- I quite
acknowledge the facilities aren't good, but either
5 here or at the gaol in Fredericton in the evenings. I
mean there was no restriction. There is no complaint
about the ability to --

MR. FURLOTTE: Oh, not once Mr. Legere reached Fredericton,
no, there isn't but as you recall Mr. Ryan was
10 supposed to do the -- on the voir dire on the
admissibility of the statements and bodily substances.
That was done right the first week of the voir dire
and --

THE COURT: That is right but he didn't --

15 MR. FURLOTTE: -- to prepare during a trial for a trial is
unthinkable.

THE COURT: Well he did cross-examine all the witnesses.

MR. FURLOTTE: He did the best he could and he didn't
cross-examine all the witnesses. I had to take over.
20 I wasn't prepared, but I was still better prepared
than him because at least I got -- I was able to have
more meetings with Mr. Legere before they started
giving us the hard time I suppose at the institution.

THE COURT: Go right ahead.

25 MR. FURLOTTE: Maybe one aspect I would like to make at this
time, My Lord, is that I think maybe from the evidence
you could see that Mr. Legere and his counsel attempted
to do everything we could to remedy these interferences
as soon as possible so that we could be prepared for
30 a trial. We were not trying to avoid a trial and just

1 letting them go ahead and breach Mr. Legere's rights
so we would come to court and cry 'well our rights
were breached--we can't go to trial--we deserve a
stay of proceedings'. Mr. Legere has done everything
5 --everything possible to -- I guess to find some kind
of remedy to those breaches to correct the situation
so that we would be able to continue on without using
that as an excuse why we should have a stay of
proceedings. We were acting in good faith.

10 That is all I have got to say in regards to the
second ground for a stay of proceedings, My Lord.

Okay, My Lord, for the first ground, states:

15 The accused's right to liberty and security
of his person, as guaranteed by Section 7,
11(d) and 15 of the Canadian Charter of Rights
and Freedoms, has been denied him and he has
been deprived of his right to Fundamental Justice
as guaranteed under Section 7 of the Charter
through a combination of factors resulting from an
an abuse of process of the Attorney General of
New Brunswick, his agents and police officers,
as Officers of the Court and administration of
justice.

20 Those documents I am relying on to support that,
My Lord, is document number 1, which is the brief
regarding the Challenge for Cause which was prepared
by the Crown prosecutor and on page 4 of the Brief
the Crown prosecutor, as agents of the Attorney
General admit, second paragraph:

25 We are prepared to accept that there is an
"air of reality" to a claim that any particular
juror's impartiality has potentially been
affected. That, of course, is very different
from saying that twelve impartial jurors cannot
be found. The challenge process exists to
identify those latter persons and the Crown is
confident they will emerge from the process.

30 My Lord, if I may take, I suppose we could call it
judicial notice of the transcript of the hearing on

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1 July 26, 1991, before yourself when I had made a
motion for an adjournment. On page 26 (sic) it states:

I am quoting yourself, My Lord. It states:--

5 You know, there's no one on the jury list of
jury panel now, I'm sure - I don't know who are
on the panel, I haven't see the list. It will
be going out to counsel a week or a couple of
weeks, whatever the thing is, but I would - you
know, given th background of this whole case
there would be nobody on the panel who hasn't
had the strongest suspicion that Mr. Legere
is probably guilty of one or other or most or
all of these murders, perhaps others. You know, the
publicity does this, the whole circumstance,
10 but this is something that Mr. Legere has
created very largely himself, you know, when
he escapes from penitentiary and stays at large
when four murders of a most gruesome type occur,
whether he is responsible for them or not, he
allows the impression to be built up that he
is responsible for them, and you know, there is a
reign of terror as the book says or whatever.
People are terrorized, a whole community is
terrorized, and this is a natural thing, and it's
15 a natural outcome that people are going to say
yes, sure, this is the fellow who must be
responsible for these. This is totally different,
in my view, from saying that the juror, even
having entertained those suspicions, and perhaps
very strong suspicions, isn't able to say look,
I can act in an unbiased fashion on this and
decide this case fairly. That doesn't mean
they're going to acquit. If he's convinced on
the evidence that the accused is guilty of one
20 count or all counts, he'll find him guilty,
presumably. If he's not convinced, I'm sure that
jurors are quite competent regardless of their
suspicions before of finding an accused not guilty

I suspect you meant an accused guilty in that last
word.

25 My Lord, the evidence I wish to produce now is
to prove to the court that the suspicions of the
people of New Brunswick, the evidence which assisted
them and helped them and which is the cause of them
finding in their own minds that Mr. Legere was guilty
30 of this before he was ever charged. I wish to refer
to excerpts in newspaper articles which are numbered

1 2 to 39.

MR. ALLMAN: My Lord, I am going to object to the admission of this evidence on the following grounds.

As Mr. Furlotte indicated we have already stated
5 in the quotation from our brief that we accept as an
"air of reality" the possibility that any potential
juror has been biased. Given that we have now
selected an impartial jury all of whom have been
subject to challenge for cause and tested by two
10 triers and found to be impartial and this topic would
appear to be entirely irrelevant.

MR. FURLOTTE: My Lord, in answer to Mr. Allman's objection
to the admission of this evidence I would like to
bring to Mr. Allman's attention Mr. Legere is not
15 on trial here today. It is in fact the administration
of justice that is on trial and we are showing that
because of the abuse of the administration of justice
that a stay of proceedings ought to be entered on
behalf of Mr. Legere. So this evidence is not --

20 THE COURT: Well, Mr. Furlotte, can you be a little more
precise. In your Notice of Motion you say the
accused's right to liberty and security of his person
as guaranteed by Sections 7, 11(d) and 15 of the
Charter has been denied him and he has been deprived
25 of his right to fundamental justice as guaranteed
under Section 7 through a combination of factors
resulting from an abuse of process of the Attorney
General of New Brunswick, his agents and police
officer, as officers of the Court and administration
30 of justice. What do you mean by that?

1 MR. FURLOTTE: The position of the defence and Mr. Legere
is not simply that because of the publicity that
because -- blame it all on the news media. There was
publicity out there and therefore he was denied a
5 fair trial. It may be that the jury selection may
have or could have - I am not saying it did that's
for sure because I deny it did - but I can understand
the Crown saying that 'yes the jury selection - we
went through the jury selection and therefore we
10 have already proven that Mr. Legere can get a fair
trial'. We will never know whether or not -- my
position is we will never know whether or not
Mr. Legere can get a fair trial. But, again, aside
from Mr. Legere's rights being violated under
16 Section 7 of the Charter there, there is also at
commonlaw an abuse of process against the Crown for
improper behaviour or improprieties in which they
initiated the media. My argument will be that it's
because of statements of police officers made to the
20 media which inhibits and prevents Mr. Legere from
getting a fair trial.

THE COURT: Well that's what you are talking about when
you are talking about 'abuse of process by the
Crown'.

25 MR. FURLOTTE: That's what I am talking about when I am
talking about 'abuse of process'.

THE COURT: Statements made by police officers to the
media.

30 MR. FURLOTTE: Yes, to the media. And that is the purpose
of these newspaper clippings is to show where the

1 police were reporting certain things to the media
which should never have been reported.

THE COURT: Well there must be a difference between the
Attorney General making statements and police officers
5 making statements.

MR. FURLOTTE: There is case law that improprieties of
police officers working as agents of the Attorney
General, police officers are officers of the court
and the officers of the court should ought not to be
10 violating the fundamental principles of justice.

THE COURT: You say there are cases on that?

MR. FURLOTTE: I believe I just -- in the ones that I
did read.

THE COURT: Which ones -- which particular case was it?

15 MR. SLEETH: Excuse me, My Lord. While Mr. Furlotte is
tending to that, may I be excused briefly from the
courtroom?

MR. FURLOTTE: My Lord, I will just quote R. v. E.D.,
the Ontario Court of Appeal which was citing the
20 Supreme Court of Canada decisions. On page 160 --

THE COURT: R. vs. what?

MR. FURLOTTE: E.D.

THE COURT: E.D.?

MR. FURLOTTE: E.D., yes. That is reported at 57 C.C.C.
25 (3d) p.151. At page 160 it states:--

"A stay of proceedings is tantamount to an
acquittal in that it effectively brings the
proceedings to a final conclusion in favour
of the accused: R. v. Jewitt...The facts upon
which a finding of abuse of process is based
are critical: R. v. Young...The burden is on
the accused to prove the abuse of process on a
30 balance of probabilities: R. v. Miles of Music
Ltd., supra. The accused must show that

1 allowing the state to proceed against him would
violate the community's sense of fair play and
decency or that his trial would be an oppressive
proceeding. A claim of abuse of process is
necessarily fact specific as it expresses
society's changing views about what is unfair
or oppressive."

5 I am claiming that the --

THE COURT: Well that is a statement of the general
principle, but what I am looking for is an example
of a case where police officers made statements to
the press and that has resulted in a stay of
10 proceedings and that is what I am asking you. Have
you a precedent for that?

MR. FURLOTTE: Let's go to the Kearney case.

THE COURT: Well that is the Attorney General. I am
talking about police officers. I mentioned a minute
15 ago --

MR. FURLOTTE: My Lord, I am going -- I will be relying
then on the last case of the Court of Appeal that I
referred to which was R. v. Hebert. The headnotes
that I am submitting, My Lord --

20 THE COURT: Well that was a case where an officer, an
undercover officer went into the cell.

MR. FURLOTTE: Yes, that was a police officer.

THE COURT: Well he didn't make any statements to the
press. That's a different question - a different
25 issue in that case.

MR. FURLOTTE: But the legal principle from the Supreme
Court of Canada is simply that the authorities cannot
do indirectly what the Charter forbids them to do
directly. The releasing of evidence to the media
30 before a person is charged and relating that

1 evidence to the person they have to intend to charge -
not only the evidence that is coming up in court,
but also the evidence as to character, the evidence
as to motive which is not admissible in court. A
5 motive would be admissible in court, granted, but
his character evidence would not be admissible in
court. So they are doing indirectly what they are
not allowed to do directly and we do not even have to
go to the Charter for that. We only have to go to
10 the Rules of Evidence.

I will be showing you in the newspaper clippings
where not only the evidence of the court is being
exposed to the media, not only conclusions that the
jury have to reach have been expressed by police
15 officers to the media, not only the character evidence
of Mr. Legere that was expressed to the media by
police officers, and first and foremost a motive for
murder was expressed to the media and that expression
to the media was made by police officers as to motive
20 which is not even going to be in evidence, and I
believe the court ought to hear all this evidence in
support of Mr. Legere's motion for a stay of proceedings.
I do not believe the Crown has any grounds for
objecting to the admission of this evidence. As a
25 matter of fact it has already been admitted and now
he is saying that I cannot even address it.

MR. ALLMAN: Perhaps I could argue the issue if you wish,
My Lord. I would like to.

30 THE COURT: Well, no, I am prepared to give Mr. Furlotte
some liberty here in dealing with these matters but I

1 am not going through every newspaper report that you
have got here. I have looked through these before,
the ones that were attached to your thing.

MR. FURLOTTE: Yes.

5 THE COURT: If there are particular places here that you
can put your finger on.

MR. FURLOTTE: I have them all highlighted on my copies,
My Lord, and that's all I intend to read. I don't
intent to read all of these.

10 THE COURT: Well I hope not.

MR. FURLOTTE: There is only short little paragraphs I
intend to read to show where the news media is
getting their information from police officers.

15 THE COURT: Well let's go through it. I don't know.--
you know, you can quote from papers on the Miramichi
Leader. This jury - Mr. Allman has made the point
we have been through the process of selecting the
jury. It was done democratically. As a matter of
fact the feedback I had from the thing afterward
20 was the people there on the jury panel and spectators
were rather impressed with the fairness of the whole
thing. They were impressed with the fact that triers,
two ordinary people went out and passed judgment on
whether these people could act impartially or not.
25 You know we have got a jury here that I will say quite
frankly I feel are totally impartial in this thing
and if they feel the Crown has failed in its proof
at the end of the trial, I am satisfied that they will
acquit.

30 MR. FURLOTTE: Mr. Allman may be right and you may be

1 right, My Lord, but again it's a matter of opinion.

THE COURT: Well they have been selected in accordance
with the process. It seems to me now to be perhaps a
little too late to be going back and showing that
5 because the Miramichi Leader on some particular day
suggested something, a newspaper that there wouldn't
be one of those jurors would even know the Miramichi
Leader existed. There aren't too many of them would
know that the Moncton Times Transcript newspaper, or
10 the Evening Times Globe - how many of those jurors --

MR. FURLOTTE: There is one in there, the Daily Gleaner,
maybe they don't read --

THE COURT: They read the Gleaner. They read the
Telegraph.

15 MR. FURLOTTE: Yes, there is lots of the Telegraph Journal
in there and there is at least one of the Daily
Gleaner.

THE COURT: Well I am -- but we seem to be getting into
so much irrelevance in material here. You know,
20 what if the Miramichi Leader came out with a headline
so-and-so is guilty? That would never have reached
these people or at least perhaps if it had been as
sensational as that it might have been reproduced and
have reached them.

25 MR. FURLOTTE: Yes, trying to get off with --

THE COURT: Well, you go ahead. Take a few minutes to
highlight the points that you want to make.

MR. FURLOTTE: My Lord, just to start off slowly it states
30 on The Evening-Times Globe - I will get the dates
better from my --

1619

1 MR. ALLMAN: Are we going through them numerically?

MR. FURLOTTE: Numerical, yes.

MR. ALLMAN: Number 2.

MR. FURLOTTE: Yes, document marked number 2, The
5 Evening Times Globe, day of October 16, 1989, and
the second last paragraph column just at the top it
says:--

His (Legere's) name definitely has to come into
play in that he is unlawfully at large and he
has been involved in crime where there has been
a degree of violence, so he would be a suspect
10 says Munden.

And that is an R.C.M.P. police officer.

At the bottom of the page, at the bottom of that
column --

THE COURT: Well how could that come to a shock to anyone?

15 MR. FURLOTTE: Well I just want to show you how it leads
up --

THE COURT: You read the paragraph before that as well.

The R.C.M.P. issued a statement at suppertime
Sunday ...

20 MR. FURLOTTE: My Lord, it's once you take them altogether.

Some just by themselves, but this is to show you how
the police -- the R.C.M.P. have been leading up it.

At the bottom of that column starts:--

The R.C.M.P. are still trying to determine if the
same individual or individuals broke into two
25 Newcastle homes two weekends ago when an elderly
man was hospitalized after being shot in the
back and then an elderly couple was hospitalized
after being badly beaten in their home. On
Saturday R.C.M.P. officers showed residents in
the Mitchell Street area a police artist's composite
drawing of the person involved in the attack.
Police said the suspect fitted the general
description of Legere but they were not convinced
30 he was involved. The drawing has not been
produced to the media.

1 On the next one marked number 3 which is --
THE COURT: There they are saying the police weren't
convinced that Mr. Legere was involved.

MR. FURLOTTE: Right, at that stage, and I want to show you
5 how the media and the police led up to saying how
they were so convinced that Mr. Legere was guilty
and what evidence they used to determine that.

In the Telegraph Journal dated October 16, in
the first column down about the middle of the column
10 it says:--

His (Legere's) name definitely has to come into
play in that he ...unlawfully at large and he has
been involved in crime where there has been a
degree of violence, so he would be suspect, says
Munden.

So that is the same thing now being stated in the
15 Telegraph Journal which was earlier in the Evening
Times Globe.

Document marked number 4, which again is an article
in the Evening Times Globe dated October 17th. In
the first paragraph under the heading "Legere Not
20 Prime Suspect in Slayings" --

R.C.M.P. officials say escape murderer Allan Legere
is a suspect but not the prime suspect in the murders
of two middle-aged sisters here over the weekend.
"He is a suspect, although I would not say he is our
prime suspect at the time," R.C.M.P. Sergeant Ernie
Munden told reporters on Monday.

25 Now, document marked number 5, which is a newspaper
article in the Telegraph Journal dated October 18th,
1989, at the last column in about the middle of the
page -- I believe I may have marked them off in
pencil somewhere. It says:--

30 Allan Legere, if he is here would not be here and
remains unlawfully at large unless he is being
assisted, Munden says..

1 Now, that is not too much critical to this case,
but I believe it is relevant. The next document is
number 6 which again is a newspaper article in the
Telegraph Journal dated October 24. It states:

5 "The many faces of Al Legere"

The second paragraph says:

To a cop in nearby Chatham it's a face of hatred
and violence coming towards him behind the jagged
edge of a broken beer glass.

Just down a little bit he states:

10 "He has what I call a split personality. You could
talk to him one day and the next day he'd just
glare at you;" says a Chatham police officer who
has had more encounters with Legere than he
cares to remember. "His moods could change very
quick. Just in a matter of minutes he could
change. He could be a very nice person at
times, but once he's changed he couldn't be."

16 Down a little lower it states:

The elderly and people living alone see him in
every shadow and behind every knock on the door.
Although there is no proof he is still in
New Brunswick, Allan Legere has become the
bogeyman.

In the middle of the paragraph of that article in
20 about the middle of the column or in the middle
column in about the middle of the column. It says:

"Legere possesses the verbal communication skills
necessary to play the system and has been quite
adept at doing so," says the Correctional Service
Report on Legere's escape.

25 In just about the middle of the last column in that
article it says:

Police suspect him in connection with a number of
serious crimes that have taken place on the
Miramichi in the last three decades.

30 Not in the last three months - in the last three
decades.

If not directly involved they believe he had others
doing his bidding, much like Charles Manson.

1 Article number 7 from the Telegraph Journal dated
November 13th a big heading "Deaths may be linked
RCMP say". This comes from Newcastle, but it is in
the Telegraph Journal. And it states:

6 Officials of the RCMP Major Crime Task Force at
Newcastle say forensic tests in Ottawa have shown
there may be a connection between three brutal
murders in Newcastle and Chatham in recent months.
Evidence has been taken from the scene of both crimes
and sent to the RCMP Forensic Laboratory in Ottawa
for analysis. The task force officials said the
RCMP Forensic Laboratory in Ottawa has provided
preliminary findings "that allowed us to eliminate
10 further suspects and concentrate our efforts on
others." "It will be several more weeks before
definite results are available." The police had
escaped killer Allan Legere -- The police said
escaped killer Allan Legere continues to be a
suspect in this murder investigation.

And under the heading it states:

15 Preliminary results indicate the May 28th murder
of Annie C. Flam at Chatham and October 13th
murders of Donna Alberta Daughney and her sister
Linda Lou Daughney may have been committed by the
same person or persons.

Article marked number 8, Miramichi Leader dated
November 15th, '89 under the heading "Legere still
a suspect..." it states:--

20 "Late Friday afternoon, the RCMP forensic laboratory
in Ottawa provided some preliminary findings which
allowed us to eliminate further suspects and
concentrate our efforts on others," RCMP said in a
release on the weekend. "It will be several more
weeks before definite results are available, but
preliminary results reveal there may be a connection
between the Falm and Daughney murders and that
they may have been committed by the same person or
25 persons." "Allan Legere continues to be a suspect
in this murder investigation and a warrant continues
to be held by the Moncton police department for his
escape from lawful arrest"(sic).

Document marked number 9 which is an article in the
newspaper Times Transcript dated November 17, 1989,
and in the column just before Father Smith's picture
30 at the bottom it says:--

1 The CBC reported Thursday that they and the weekly newspaper The Miramichi Leader had independently confirmed that the RCMP considers Legere as the only suspect in the slayings.

And it says "see Forensics page 20". On page 20 it says:

5 Those slayings include the death of Annie Flam, 75, a Chatham shopkeeper slain in May, and the beating deaths of Linda Daughney, 41, and her sister Donna Daughney, 45, in a Newcastle house in October. Quoting unnamed police sources, the CBC said police said "police said results of forensic -- on evidence taken from both the Flam and the Daughney crime confirms that the man that they are looking for is Legere." Sergeant Munden would not comment on the report Thursday night.

10 Here they are saying they are getting their information from the police, unnamed police sources saying that the man Legere that was connected with the forensic evidence. On the third page of that article, Times Transcript dated November 17th under the -- the heading is "Terror Continues". And, again, it says there in the first column in the second paragraph:--

15 Reports from the Miramichi say that the police have definitely connected Mr. Legere to three earlier murders in the area, those of Annie Flam and Daughney sisters, Donna and Linda. It is suspected that the police will be making this official very soon.

20 Document number 10 an article in the Evening Times Globe dated November 17, 1989. It states:

Munden had called a news conference for 1:30...

25 It is in the second column.

...today to give reasons the latest news on the murder investigations. He has said that laboratory analysis in Ottawa showed the same person might have committed the other murders.

30 And the second page of that article, copy of that article, the last sentence it states:

Earlier Thursday the CBC and the local weekly newspaper Miramichi Leader said police have narrowed down their list of suspects in three

1 earlier brutal rape murders to one man, Legere.

THE COURT: I'm sorry, that was on -- where did you read that?

MR. FURLOTTE: That would be right at the last sentence

6 on that page.

THE COURT: On the second page?

MR. FURLOTTE: On the second page.

THE COURT: Oh, yes, I see.

MR. FURLOTTE: Document number 11 is again an article

10 from the Miramichi Leader Weekend dated November 17, 1989, and in big headlines it marks "Tests cut list to one, Legere". It states:

Police have narrowed down their list of suspects in two local murder cases to one person, Allan Legere. Police are expected to announce at a news conference

15 today at 1:30 p.m. in Newcastle that Legere is the target of the manhunt. "The decision to eliminate all other suspects and go after Legere is based on laboratory evidence," said a source who cannot be identified.

A couple of paragraphs down further it says:

In the weekend release, the RCMP mentioned the name of just one suspect being sought, Allan

20 Legere.

In the next document, 12, which is an article in the Times Transcript dated November 18th - I might note these are all before Mr. Legere is even captured.

The headlines in the Times Transcript is "Legere is

25 prime suspect in four Miramichi slaying".

Police are now convinced that at least one accomplice is helping escaped killer Allan Legere terrorize communities along the Miramichi River. Police released a sketch Friday of a man they believe is acting either with Legere or on his behalf. Legere, 41, is a suspect in Thursday night's brutal slaying in nearby Chatham that of the 69 year old

30 Reverend James Smith. RCMP on Friday also said Legere is prime suspect in three other slayings in the area since May.

1 On the next page, a copy, under the title "Munden
refuses comments on threats". They are quoting
Munden, and it says:

6 "He said he would come back to the community and
the community would pay. He has voiced that he
would go ahead and seek retribution upon the
community." Munden suspected there were other
reasons to suspect Legere was hanging around
the Miramichi.

10 My argument here is we have the police officer giving
motive to the media as for the murders that Mr. Legere
is charged with and there is not going to be any
evidence before the court of any such motive.

THE COURT: Well would he not be warning the community
to beware and take care?

16 MR. FURLOTTE: They have no evidence that Mr. Legere is
threatening to do this. A police officer should not
be telling the media that Mr. Legere threatened to come
back and take revenge on the community. This is
totally improper for a police officer and an officer
of the court. It is given evidence before a man is
20 even charged.

THE COURT: You are saying that they had no reason to
believe that. Perhaps they did. I don't know.

25 MR. FURLOTTE: Well even if they did, they would have no
business printing it. If they are going to try and
use evidence in court, they should save it for court
and not try Mr. Legere in the media. It continues on:
Munden suspected there were other reasons to suspect
Legere is hanging around the Miramichi.

And he is quoting again, Munden:--

30 "This individual he loves the attention. He thrives
on the attention. He loves the chase. This may be

1 the reason for him still being in the area." He said
he suspected until recently that Legere was hiding
somewhere out of town and then returning to wreck
havoc and quickly disappear. Now he said no one is
sure if Legere is still in the region in light of
the getaway car being found 80 kilometers to the
north in Bathurst. Up until last night I believed
he was in the area. Today I am not sure.

5 And in the last column under the heading "Father Smith
was dedicated to his work", Rivard said -- and Rivard
is the Superintendent of the R.C.M.P. stationed in
Moncton --

10 Rivard said, "If just one person would come forward
with the right information, the case could be
solved."

And Rivard states:

"I am ready to charge Allan Legere in connection
with these murders if he is caught today."

15 On the third page in that third article of that paper
in big print it is marked "Culprit has launched
perverse challenge". And it states in the fourth
paragraph, it says:

20 "You are dealing with a strange character up there.
The murder victims were three women and a priest.
All four died since convicted killer Allan Legere
escaped custody in Moncton last May. Police say
he is the leading suspect and may have an
accomplice."

Just under the heading, the other article where
Legere was shy and was a class bully - mine is a
little cut off here. It says:

25 While police officers call Legere a suspect in
Thursday night's capital murder of Chatham Head
Priest Father James Smith and a prime suspect
in three other residents, they are here convinced --

THE COURT: Residents here.

MR. FURLOTTE:

30 --residents here are only suspect in all the others,
Allan Legere.

That Allan Legere is their only suspect. So we are

1627

1 going from what Munden had stated about the threat
to come back and seek retribution of the community
as part of revenge and we are up here now to
"The culprit has launched perverse challenge," which
5 is trying to tell the community that Mr. Legere
is out to get them.

And 13, document 13 - this is a photocopy of three
articles in the newspaper, Telegraph Journal, dated
November 18th, 1989. We now have "Miramichi Manson"
10 on it. It's not Legere anymore. In the first
column it states:

Police said forensic evidence has led them to consider
Legere, 41, the prime suspect in three brutal murders
in the Miramichi Region since May. He is also a
suspect in Thursday night's slaying of an elderly
priest.

16 In the second column at the bottom it states:

"I have heard information that Legere used to use a
ladder once in awhile for some of his break-ins,"
R.C.M.P. Sergeant Ernie Munden said, "but I have
heard so many stories about him."

Mr. Allman might admit there is evidence of a ladder
20 being used in the Smith case. Underneath that sketch
of the individual it's the big, big letters, "Legere
vowed vegeance". Big bold type. It says:

"Allan Legere threatened to get even with Miramichi
if he ever got out of prison," RCMP Ernest Munden
confirmed Friday. "He has said that he would go
ahead and seek retribution on the community. Other
25 than that I can't go into specifics," Munden told a
news conference. Munden said a complete examination
of all evidence including forensic examinations at
the R.C.M.P. crime laboratory forced the police to
conclude Legere is the prime suspect in the slaying
of Annie Flam on May 29 and Linda and Donna Daughney
on October 13.

And then there is the article, "Keeping an eye on
30 strangers and friends". In the first column it states:

1 If the police were being cagey about the identity
of the ghost that haunts the Miramichi, people
around the town made no secret of their top suspect,
Allan Legere. Officially, the convicted killer
who escaped custody last May is the prime suspect
in the first three murders and is a possible suspect
in a fourth, but in the court of public opinion the
Chatham Head native has been tried, convicted, and
5 sentenced in barbershops, in coffee counters up and
down the Miramichi.

I would submit, My Lord, in the end that's all across
the province and the country.

The next article, number 13 --

10 MR. ALLMAN: 14.

MR. FURLOTTE: Oh, 14 - I'm sorry. -- which is an article
of the Times Transcript dated November 20, 1989, and
under the heading, "Police draw blanks in search for
priest killer" in the second column it states:

15 R.C.M.P. say Legere, based on forensic evidence, is
the prime suspect in the brutal beating deaths of
Linda and Donna Daughney in their Newcastle home
on October and the vicious slaying of elderly
Chatham shopkeeper Annie Flam in May, a sister-in-
law who was also beaten but survived.

Number 15 is an article of the Evening Times Globe
dated November 20, '89, under the heading "Miramichi
20 mourns murdered priest", fourth column it states:

But the RCMP say that they have positive forensic
evidence linking Legere to the deaths of three
women who died after beatings and sexual assaults.
RCMP ...

Now here they have the R.C.M.P. saying they have
25 positive evidence linking and as you know the subject
of the voir dire that that is being disputed by
defence at trial and here the police are saying that
they have positive evidence that definitely gives
the community the grounds upon which to form the
30 opinion that Mr. Legere is guilty.

1 Number 16 is an article in the Telegraph Journal dated
November 20, 1989, and in about the middle of the
column to the right of the page, it says:

5 But the RCMP say they have positive forensic evidence
linking Legere to the deaths of three women who died
after beatings and sexual assaults.

Number 17 it's an article of the Times Transcript dated
November 21, 1989. In the third column at the top of
the page it states:

10 "After his murder conviction in 1986, Legere wrote
several notes containing veiled threats to jurors,
lawyers, and politicians. He has voiced that he
would go ahead and seek retribution on the community."
said RCMP Sergeant Ernie Munden. "If he was able to
get out, he would come back to the community and
the community would pay."

15 Number 18, it's a photocopy of an article in the Times
Transcript dated November 22. Under the heading,
"More than 1400 attend funeral for slain priest", in
the second column in about the middle it states:

They also wondered why three women have died since
May when Legere, who swore vengeance on the community
that helped imprison him and escaped custody in
Moncton six months ago.

20 The second page of that article, the first column,
and the heading is, "Rivard: We know who did it",
and it goes on:

He said in an interview "Legere remains the number one
suspect."

25 THE COURT: Who is this?

MR. FURLOTTE: Rivard is the superintendent of the R.C.M.P.
stationed in Moncton.

30 "We know who did it," leaving no doubt. He said in
an interview that Legere remains the number one
suspect although police later said he had an
accomplice. "We know who did it," Rivard said, "It's
a matter of arresting him."

1 Number 19 an article out of the Evening Times Globe
dated November 22, '89, the big heading "Mountie
convinced Legere killed all", and it states:

"He's my main suspect, my number one if you will,"
Rivard said on the church steps. "We have to finish
5 our investigation to be sure, but in my own mind
I'm satisfied Allan Legere is the prime suspect."

Number 20 out of the Miramichi Leader Weekend dated
November 24, 1989, in big bold print, the heading,
"Rivard strongly believes Legere killed Reverend Smith"

10 There is no doubt in the mind of RCMP Superintendent
Al Rivard that Allan Legere killed Father James V.
Smith. "I may be proven wrong, but I think that's
a logical conclusion to make," Rivard said.

Number 21 which is an article in the Times Transcript
dated November 24, 1989, the heading "Legere Captured".

It states:

15 Police confirmed this morning that Legere, who had
been at large for 207 days is still their prime
suspect in four brutal murders committed during
the time period and in one assault.

Number 22 is an article in the Evening Times Globe
dated November 24, '89, "Legere back behind bars", the
20 article. The third column it states:

"There was also a wallet," one RCMP officer said.
"I hope that wallet is the priest's wallet. Father
Smith's wallet was stolen."

23 is an article of the Times Transcript dated November
25 under the heading "Onlooker shouts Coward Legere"
26 in the second paragraph, second column. It says --
I'm sorry it's just the -- the top of the second
column. It states:

Rivard said the composite sketch of a man thought to
have been an accomplice, which was issued after last
week's slaying of Reverend James Smith in Chatham
Head, was in fact Legere. "Allan Legere has --
30

MR. ALLMAN: Lost.

1 ...lost some 35 to 40 pounds and has cut his hair,"
said Rivard, holding up a snapshot of Legere and
the composite drawing.

And that composite drawing, this drawing here, My Lord,
which will be going in - I suspect will be going into
6 evidence with the snapshot of Allan Legere that was
taken on his arrest.

"What I am suggesting to you is that I am somewhat
satisfied that this accomplice and this picture of
Allan Legere...

Pardon?

10 MR. ALLMAN: It's this composite I think isn't it?

MR. FURLOTTE: Pardon?

MR. ALLMAN: The word is composite I believe. I'm some-
what satisfied that this composite.

15 MR. FURLOTTE: "This composite and this picture of Allan
Legere is one in the same."

THE COURT: May I just inquire at this point where did the
composite picture come from?

MR. FURLOTTE: The composite picture comes from a witness
who saw a man with a rifle and gave the composite
20 drawing.

THE COURT: This was in Newcastle?

MR. FURLOTTE: I believe it would have been over in
Chatham.

THE COURT: Chatham.

25 MR. FURLOTTE: The Chatham side - Chatham Head area. Also,
before the fire was detected there was a man going to
work at the mill around 6:00 o'clock in the morning
or something like that -- but anyway before the fire
was detected -- and he drove in front of the Daughney
30 residence and he noticed a very suspicious looking
character and when he drove up, but the guy got

1 excited and didn't know which way to go and run and he
identifies as looking similar to the composite drawing
and now they are connecting that composite drawing -
the evidence in court - they are suggesting that that
5 composite drawing is Mr. Legere. So here we have this
R.C.M.P. Superintendent putting evidence in the paper
that in his opinion that the man seen outside early
morning in front of the Daughney residence is Allan
Legere.

10 The next article marked 24 is article in the
Telegraph Journal dated November 25, '89. It's marked-
this is the day after Mr. Legere was captured. It's
the big heading is, "The terror ends". If that
doesn't presume guilt, nothing does.

15 In the first column it states:

"The fear is finished," said RCMP Superintendent
Al Rivard, who headed 122 member force looking
for Legere. I am not surprised that he gave up
peacefully. I always considered him to be
somewhat of a coward because of the victims that
we are saying he is suspected.

20 Under the portion "Police hunting for possible
accomplice" on the righthand side of that page, the
last two paragraphs, it says:

25 Yesterday a police officer commented that the
sketch looked a lot like Legere who has lost
weight and had cut his hair short. Rivard
said later he believed the suspected accomplice
and Legere were the same person.

Under the heading "Joy not fear will keep the
Miramichi awake now" in the first column it states:

"I am overjoyed and I feel an enormous sense of
relief," said the Premier.

30 That would be Frank McKenna.

1 In the second column it says:
"This is a day for the RCMP and the Solicitor
General and the community."

And this is quoting McKenna again.

THE COURT: What number are you on now?

5 MR. FURLOTTE: I'm on number 24, at the bottom of page 24.

Frank McKenna is stating:

"I am overjoyed and feel an enormous sense of
relief," said the Premier in the first column.
And the second column he says, "This is a day
for the RCMP and the Solicitor General and the
community."

10 And the third column it states:

"Even former Chatham Police Chief Dan Allen,
who has his share of dealings with Legere,
compared it to the end of the Second World War."

I would submit, My Lord, that the Telegraph Journal
15 tells it all and it tells everybody that Allan Legere
is guilty because the terror ends because he was
captured and therefore everybody would have presumed
Mr. Legere guilty, including the Premier.

The next document, number 25, an article of the
20 Times Transcript dated November 27, 1989. Just a
couple of paragraphs underneath Mr. Legere's picture
it states:

Hutchison said he is convinced Legere didn't
have an accomplice as such during his months
at large, but investigations into the recent
killings are continuing. He wouldn't say
25 when charges, if any, would be laid.

Again, Hutchison is an R.C.M.P. officer. It
states up above "R.C.M.P. Inspector Al Hutchison".

26, copies of the newspaper, The Miramichi Leader,
dated November 29, 1989. It has the front page with
30 Mr. Legere caught and it was a whole paper just on the

1 recapture of Mr. Legere reviewing all the past news
stories and evidence that may have been -- they had or
any comments made by the R.C.M.P. or the police officer
made about Mr. Legere. I just want to touch on a
5 couple that's in there.

As you will notice all the commercials in this
newspaper, you are seeing congratulations by a lot of
people from the Crime Stoppers, the Miramichi Board of
New Brunswick. We have a congratulations to the
10 R.C.M. police departments, "a job well done", from
Morrison Cove, Chatham, New Brunswick, Village of
Douglastown congratulating the police, Town of
Newcastle congratulating the police. We have the Town
of Dalhousie congratulating the police. We have the
15 Town of Sussex congratulating the police. We have the
Solicitor General on page 15(c):

Landry salutes police sources for their work.

In the second column he says:

20 "No doubt the capture of Allan Legere will help
Miramichi residents rest easier. I know all
New Brunswickers feel a sense of relief today,"
said Landry.

He would only feel a sense of relief if he presumed
Mr. Legere guilty.

"Capture a relief for area," says the Premier on
26 page -- the following page. It must be 16(c). 16(c),
yes, up in the lefthand corner. It states:

"Capture a relief for area," - the Premier. And
the Premier states:

30 "He was overjoyed when he heard the news Friday
morning and now he is confident the area can
recover from the fear it was living in."

1 And on the next page, 17(c), where it states:
Legere's case costs about \$400,000 per week.

And the second column it says:

5 Legere's first words to RCMP officer Mason Johnson, whose testimony helped convict Legere in 1987, were, "You short little f..." (which we all know means 'fucker') "How are you?" He also hugged Johnson.

As you know from the voir dire on the admissibility of the statements, that was evidence that could only have been taken during the statement of Mr. Legere which is being revealed to the press.

10 MR. ALLMAN: I can't find that one.

MR. FURLOTTE: Right here. Page 17(c).

On page 19(c) the commercials, or editorials, call them whatever you want, the congratulations to the RCMP and all policing agencies for the successful effort - from the Mayor and members of council of the City of Moncton and right underneath it:

15 In appreciation to all policing agencies for ensuring our safety and peace of mind.
From the Mayor and council of the City of Fredericton.

20 I would submit, My Lord, that a change of venue is totally useless.

The next document, page number 27 which is a copy of a newspaper, The Miramichi Leader, dated December 20th, 1989. In the first column it says:

25 "Gun discovered in Nelson. Police suspect Legere linked. A rifle loaded and cocked was found tied to a fence at the Governor's Mansion in Nelson-Miramichi on Thursday. Police suspect it was put there by Allan Legere. They believe it is one of the guns stolen from the back of a truck at the Morada Motel in Chatham on October 29.
30 It's only logical to assume it is since it is similar to the second gun we have been searching for," RCMP Superintendent Al Rivard said.

1 Number 28, which is a copy of a newspaper article
in The Miramichi Leader dated January 10, 1990. In
the first column it states:

5 One concern may be the use of the new technique
called DNA fingerprinting. There were reports
the process helped point to Legere as a prime
suspect in four killings committed in the
area after he escaped in May.

 Number 29 is an article of the Miramichi Leader
weekend dated October 12, 1990, on "Science on Trial:
DNA fingerprinting faces challenge..." Could break --
10 it's hard -- It could break new ground. I am just
wondering if that is the word, 'could'. But in the
first column it says:

15 No charges have been laid against Legere for
any of the killings. Why? Legal officials
say intricate lab tests are the reason. A
relative new technique called DNA fingerprinting
is expected to play a key role in the case.

 Number 30 is a copy of an article in the Miramichi
Leader dated November 21, 1990. I think it is around
the second page of that. The heading is "Legere
Charged with Four Murders". Once you get to the
20 second page of that, under "Legere Faces Murder
Charges" at the bottom of the first column it says:

25 Munden read a prepared statement to about 20
journalists in the auditorium of the town hall.
This (and he is quoting) "This has been a
difficult time in the history of the
Miramichi. We wish to acknowledge the
patience and understanding displayed by the
community and most media representatives,"
he said. "These have been lengthy and
complex investigations complicated in part
by new procedures in forensic laboratory
testing. All evidence will be presented in
court and cannot be discussed so that the
accused maintains his right to a fair trial
and impartial hearing," Munden says.

30 This is a poor time to deny giving the media
evidence, but it is clear evidence that the police

1 officers, as officers of the court are aware of the
damage that they are doing, could do, and have done.

5 Hutchison, who is also an RCMP police officer,
wouldn't comment on whether DNA testing held up
the laying of charges. DNA fingerprints try
to match tissue samples from an accused with
samples found at the crime scene. DNA is the
blueprint the body uses as it grows. Rivard
said it was forensic testing that the RCMP
laboratory in Ottawa which held it up. "This
could be called a test case because it
involves testing with technology which had
never been used before," Rivard said. "This
type of testing is relatively new. I believe
it is the first in Canada." "Because it is a
10 new procedure and the testing itself is a long
process, the charges couldn't be laid until
now," Rivard said.

15 So these are the top R.C.M.P. officers divulging
to the news media that they do have forensic - top
forensic and DNA testing against Mr. Legere which
again knowing full well that these matters are subject
for voir dire. It would be like giving an accused's
statement to the media before a voir dire is held.

The next one, number 31 --

20 THE COURT: A voir dire, of course, isn't before a jury
is it?

MR. FURLOTTE: No, not before a jury for good reason. It
is like a preliminary hearing. An accused has the
right not to have it published to protect his rights
to a fair trial. We bypass a preliminary hearing
26 at this stage, an accused never had that right to
prevent them from publishing it in a newspaper anyway
with or without defence.

30 The next article, number 31, is a copy of The Time
Transcript dated November 21, 1990 and it says "See
Trial page 14" at the bottom so we go to the next page

1 and in big headlines "Trial will be Canadian Test Case".

In the middle of the column it states:

5 RCMP Superintendent Al Rivard said the investigation took a year because of the meticulous forensic laboratory testing required. Rivard said the Legere murder trial will be a test case in Canada. He said it will be the first time this kind of laboratory evidence will be used in a Canadian murder trial. While Rivard wouldn't come right out and say it's DNA fingerprinting, that's apparently what the RCMP are talking about.

THE COURT: He was wrong in his prognostication.

10 MR. FURLOTTE: Who Rivard or the --

THE COURT: No, Rivard.

MR. FURLOTTE: He was wrong in his prognostication?

15 THE COURT: He said it would be the first case. There have been two murder trials hinging on DNA before this one.

MR. FURLOTTE: Number 32 is a copy of an article in The Daily Gleaner dated November 21, 1990 under the heading "Legere Charged with Murders", it states:

20 "All evidence will be presented in court and cannot be discussed so that the accused maintains his right to a fair and impartial jury," Sergeant Munden said.

Closing the barn door after the horse escaped.

Inspector Hutchison wouldn't comment on whether DNA testing held up the laying of charges.

25 Down a little further it says:

Superintendent Rivard said it was forensic testing at the RCMP lab in Ottawa which held it up. "This could be called the test case for the courts because it involves testing with technology which had never been used before," Rivard said. "This type of testing is relatively new. I believe it is the first in Canada."

30 And that is in The Daily Gleaner.

1 My reason --

THE COURT: That is the first Daily Gleaner that you
were using?

MR. FURLOTTE: Yes, My Lord, and the reason we don't have
5 anymore because Mr. Ryan -- I was supposed to get
newspaper clippings from the Moncton Transcript, the
Newcastle papers, the Telegraph Journal, and Mr. Ryan
was supposed to get the newspaper articles from the
Fredericton Daily Gleaner and the -- I believe he
10 mentioned there was a couple of other local newspapers,
Woodstock or somebody else around this community that
put out newspapers. He was supposed to get them.
He wasn't able to do so for some reason or another
and I was just too pressed for time to get articles.

15 THE COURT: Ryan wasn't in it then was he?

MR. FURLOTTE: Oh, Ryan was in it then. Ryan wasn't in it
when I prepared this, but he was in it -- we were
supposed to -- what was taking so long --

THE COURT: Yes, but November 1990 he wasn't in it.

20 MR. FURLOTTE: Oh, no-no. Neither was I. But it's just
-- what was taking so long to prepare this motion is
because we had to gather all this evidence and we
were not getting the best of cooperation from the
newspapers either. I think they may have thought that
25 Mr. Legere wanted to sue them for defamation of
character.

THE COURT: Why the devil didn't you go up to the archives?
At the University of New Brunswick they have the
whole thing there.

30 MR. FURLOTTE: Well most of these were got at libraries.

1 The Moncton Times Transcript wouldn't provide us
even with references to which newspapers had stories
in them, not for less than \$800.

5 Okay, we are now at 33. 33 is an article in the
Telegraph Journal dated November 21, 1990, and again
in that article in the middle of the fourth column
it says:

10 "This type of testing is relatively new," Rivard
said. "The test itself is a very long process
and it has to take the time that it takes."
Rivard said the Legere murder trial will be
a test case in Canada. He said it will be
the first time this kind of laboratory
evidence will be used in a Canadian murder
trial. Apparently the RCMP are referring to
DNA fingerprinting found in all human cells.
Characteristics from DNA are supposedly -- be
different in every person except twins.

15 I am glad I am just about finished. My reading
is going to the dogs here.

 Number 34 which is an article of the Times
Transcript dated November 22, 1990, states at the
bottom of the page:

20 Experts will keep eyes on Legere trial.

 It says:

 RCMP officers said the reason it took so long
was because of complicated laboratory testing
of evidence.

 It continues on page 11:

25 THE COURT: I'm sorry, what are you on - 34?

 MR. FURLOTTE: I am on 34, yes.

 THE COURT: Oh, on the inside page?

 MR. FURLOTTE: Right at the bottom of the page -- is it
an inside page or the outside?

30 THE COURT: Oh, on the front page. I see it now.

 MR. FURLOTTE: Legere will keep eyes on -- experts will
keep eyes on -- yes. At the bottom it says:

1 RCMP officers said the reasons it took so long was because of complicated laboratory testing of evidence.

And then on page 11 under the case "DNA Never Used in Murder Case" -- under that heading it continues on:

5 While they didn't come right out and say they were using DNA typing, RCMP Superintendent Al Rivard said the Legere trial would be a test case for their kind of evidence in Canada. That supports earlier confirmed reports that police are --

THE COURT: Unconfirmed.

10 MR. FURLOTTE: I'm sorry --

That supports earlier unconfirmed reports that police are relying on this revolutionary new forensic procedure.

Number 35 which is an article of The Times Transcript dated February 5, 1991, in the middle of the column or close to the bottom of the column it states:

15 Crown Prosecutor Jack Walsh, who will be handling the DNA elements in the Crown's case was granted a motion to split part of the voir dire into two portions: a one-week segment beginning on April 22 and a two-week segment beginning on April 29.
20 The Crown also is also ---

That's not -- This cannot be attributed to police officers, My Lord, but the Crown and the newspapers no darn well they are not supposed to -- they knew it was supposed to be subject of a voir dire and yet they are still printing evidence and informing the public as to the reliability I suppose and what evidence may be available to convict Mr. Legere. I am sure the newspapers know very well that they could be found in contempt of court for printing such
25 evidence. I suppose the final argument would be when
30

1 the police officers are also giving this information
to the media to print that they, too, could be found
as parties for contempt procedures. And not only
Court Reporters who would be in contempt of Court,
6 but the police officers was giving them the infor-
mation along with it.

Number 36 is a copy of The Times Transcript dated
May 23, 1991. "The Crown finishes Case for Legere
trial - the Voir Dire." It says:

10 Speculation is much of the evidence being
contested in the voir dire revolves around
new forensic identification techniques
involving the use of --

And I am not going to try it.

15 ...acid or DNA. The genetic coding material
that determines hereditary in all living
organisms.

This is even after the Crown is finished the
case on the voir dire, the media, The Moncton Times
Transcript, is still printing about the subject matter
of the voir dire. Clearly in contempt of Court form.

20 And number 37, again, is a copy of a newspaper,
The Times Transcript, dated June 6, 1991, and the
third paragraph states:

25 A voir dire is a proceeding conducted in the
absence of a jury with the purpose of
determining the admissibility of certain
evidence speculated to mainly involve new
forensic identification techniques using
...(whatever kind of acid) or DNA, the
genetic coding material that determines
hereditary in all living organisms.

30 Again, the news media discussing the subject
matter of a voir dire which we were into. This was
on June 6. At that time --

THE COURT: I pointed out earlier in the last two weeks as

1 you know things that I haven't approved of in that
particular newspaper. We seem to have them beaten
into shape now actually.

MR. FURLOTTE: They are smartening up a little bit, but
5 again I think it is too late, at least that will be
my final argument.

At that time, My Lord, I voiced my concern to
Mr. Allman about them being in contempt of court in
printing this matter and Mr. Allman I guess told me
10 that if I didn't like it -- you know, he kind of
agreed with me, but he didn't know whether or not --
you know, I asked him about laying charges against
them.

MR. ALLMAN: I don't want to get into this. I mean this
15 is absolutely blatant giving evidence and I'm going
to have to give evidence against it. I don't want to
get into this stuff.

THE COURT: Well I don't want discussions between you and
Mr. Allman.

MR. FURLOTTE: Okay. Number 38, which is a copy of the
20 article in the newspaper The Times Transcript dated
August 3, 1991. This is just shortly before -- a
couple of weeks before the trial begins, three weeks.
A full page, all of DNA evidence. There is a big
25 picture of Mr. Legere and numerous articles in
there. It says, "How much weight can it carry
figuring the DNA factor?" And it states:

"Quick facts about genetic fingerprinting."

30 It tells all the facts about it. In the second
column it states:

1 Barry Gaudet, the scientist in charge of
DNA testing at the RCMP forensic
laboratory in Ottawa... (it gives his
name where underneath I believe they
are quoting from him:

5 "If the tests are done properly and inter-
preted properly, DNA testing is a unique
identifier and will be right every time,"
says Dr. John Wayne.

Okay, this is coming from Dr. John Wayne.

10 "If the tests are done properly and
interpreted properly, DNA typing is a unique
identifier and will be right every time,"
says Dr. John Wayne, Assistant Professor of
Pathology at McMaster University in
Hamilton, Ontario, and DNA Consultant to
the RCMP. Gaudet agrees and says, "The
only way to get a false positive is to
mix up samples.

15 Here, My Lord, Dr. John Wayne, is a witness at
the voir dire in this trial and he is out whether
speaking at meeting or at least where the media can
print his comments as to how reliable DNA evidence
is which again was a factor of this voir dire and
is to be a factor of the jury.

20 THE COURT: If I were to ask any juror that we have here
today, "What do you think of Dr. John Wayne's views on
DNA?"

MR. FURLLOTTE: They probably wouldn't remember his name.

THE COURT: They wouldn't have the slightest idea what I
was talking about would they?

25 MR. FURLLOTTE: It's not -- well when I am arguing about
abuse of process here, it's not just the facts that
for us to sit back and try to calculate how much
was the jury influenced by this. It's the improper
procedure and tactical -- we can call it tactical
30 manoeuvres here by the Attorney General or tactical

1 manoeuvres by the R.C.M.P. or wherever we want to
lay the blame. But nevertheless it is definitely an
improper procedure and nothing like this will ever
be tolerated by this country, hopefully, or I would
5 like to move out.

THE COURT: By the time this article was published Waye
had testified in two Canadian murder trials, I think.

MR. FURLOTTE: And what does that have to do with it?

THE COURT: Well, presumably these statements that he has
10 made have presumably reported from other trials, from
evidence at other trials.

MR. FURLOTTE: Yes, but still Dr. John Wayne knows that this
is a matter for a voir dire in every case and when
you are talking about how positive --

15 THE COURT: Well, does this article suggest -- I agree with
your premise that this article, this subject matter,
would have been better left untouched by the Moncton
Times Transcript. They shouldn't have -- I read it
myself. I saw it and I was somewhat shocked by the
20 fact that they would deem to print it at the time,
but that is a different thing of course. Being
shocked about it being printed is not to say that it
means this prosecution can't go ahead. Did Wayne
give a particular -- was he interviewed?

26 MR. FURLOTTE: Well, he must have been interviewed. They
are quoting him. They are saying -- but he may have
given this interview at some seminar and there was
media there to listen to it. I am not saying and I
30 don't know whether he went -- some particular reporter
asked him and he gave the reporter a comment. Where he

1 states that if the tests were done properly and
interpreted properly, DNA typing is a unique
identifier and will be right everytime. You know with
that kind of evidence coming out and Mr. Legere's
5 picture takes up half the page -- I mean we know who
they are referring to.

But anyway I'll --

THE COURT: They point out some of the contrary views. I
haven't read this article in total before. They
10 point out some of the reasons the DNA is no good.

MR. FURLOTTE: Yes, I see one here. It says, "Gaudet
agrees and says that the only way to get a false
positive is to mix up samples." Well that again is
to be tested in court. It's--not in the newspapers.

15 In the next column it states:

"DNA evidence has gone through some 250
admissibility hearings in the United States
and has only been turned down six times,"
says Dr. John Wayne.

Now what kind of influence is that going to have on
20 the jury?

...that the defence resorts in any -- the
defence sort of folds once DNA evidence is
allowed but that's starting to change.

You know he's --

THE COURT: Well, the jury aren't concerned with how many
25 times it's been turned down. I have made the ruling
that it is admissible here and the jury accept that --

MR. FURLOTTE: That's fine for you because at the voir dire
we were able to argue law and other cases and -- but
here I suppose maybe the Crown still feels they might
30 be entitled before the jury to say well look at all

1 these cases have accepted it and they accept it as
 reliable. But for the jury to hear this before --
THE COURT: No, they won't be able to argue matters of
 law like that before the jury. I will be pointing out
5 to the jury -- I mean the Crown will be referring to
 DNA and the weight and so on but they can't quote
 precedents and that type of thing in their address to
 the jury. I will be instructing the jury that it will
 be up to them to decide whether in their mind it's
10 a reliable process, whether the results should be
 accepted, and so on and so on.

MR. FURLOTTE: No, but again my final argument would be
 that -- you know -- where the jury is subjected to
 this kind of information that out of 250 admissible
15 hearings only 6 have been turned down. Well they are
 saying well all the courts are accepting it as being
 reliable and they might --

THE COURT: Turned down - that's not for conviction's sake.
 It has only been turned down on 6 cases where it
20 wasn't allowed to be admitted in court.

MR. FURLOTTE: Yes, that's right.

THE COURT: Which is a different proposition. You are
 past that stage. We are past that stage.

MR. FURLOTTE: The jury is not going to understand that.
25 They are going to get false impressions from this.

THE COURT: Well, they are not going to understand it
 because they have never seen this article. This is
 The Moncton Transcript and I watched The Gleaner to
 make sure or hoping that it wouldn't be reproduced,
30 nor did The Telegraph reproduce it. The Moncton
 paper was the only that did.

1 MR. FURLOTTE: Okay, the last newspaper article, My Lord,
is number 39 which is again out of The Times Transcript
dated August 24, 1991, and heaven forbid it is only
two days before we start picking the jury. It says:

5 The expansive choice of venue symbolizes the
magnitude of what will probably be the Province's
largest ever criminal trial which features
the Atlantic Region's most widely known
accused and what may be the nation's first
full-blown criminal process featuring the
use of DNA as forensic technique.

And the third column it says:

10 At some point this week probably after the
jury is selected and convened at the court-
house, Trial Judge Mr. Justice David Dickson
of Fredericton, Court of Queen's Bench, may
announce his decision on the admissibility
of DNA evidence gathered by some of the
hundreds of police officers and forensic
experts which took part in the case. The
DNA evidence which was contested in a closed
15 six-week voir dire that began in April of
this year.

In the fourth column it says:

Even so, the prosecutorial team of Moncton,
Regional Prosecutor Anthony Allman, Special
Prosecutor Graham Sleeth of Newcastle

20 I will continue. I will start over that
paragraph.

Even so, the prosecutorial team of Moncton,
Regional Prosecutor Anthony Allman, Special
Prosecutor Graham Sleeth, and Newcastle
Prosecutor Jack Walsh are expected to conclude
their case with the DNA evidence presenting
the preceding investigation in chronological
order beginning with Legere's escape.

25 Now here is -- it appears to me that here is a
reporter that is able to say that DNA evidence is
going in. There is a reporter that is able to give
the outline of the Crown Prosecutor's case as the
Crown Prosecutor gave it to the jury before the jury
30 is even selected.

1 THE COURT: Well, I can only assure you that he had no
knowledge of what my decision was because no one knew
what my decision was. You could second-guess me if
you wanted to. Perhaps they were second-guessing the
5 Crown as well. I would imagine that would be the case.

MR. FURLOTTE: My Lord, maybe I will do the book out of
order. There are only a few pages in the book.

THE COURT: Where is that book?

MR. FURLOTTE: Page 94 of the book Terror. At page 94 it
10 says:

"Police were cautious when they announced this
discovery," said Jack Bell, Acting Chatham
Police Chief. These glasses were checked by
an optometrist --

THE COURT: I'm sorry, where are you?

15 MR. FURLOTTE: Page 94.

THE COURT: Where on -- oh, yes, near the top.

MR. FURLOTTE:

"Police were cautious when they announced this
discovery," said Jack Bell, Acting Chatham
Police Chief. "These glasses were checked by
20 an optometrist and are the same type, style
and prescription as worn by Allan Legere at
the time of his escape from custody in Moncton."

Now, we have already heard this evidence in court
and here is the evidence coming out in books to the
media so somehow some police officers are divulging
this information to the media people. At page 95,
25 just the first full paragraph:

The Tanasichucks knew the Flams and police
considered David, along with Legere, a suspect
in the murder of Annie. At the same time
Crown Prosecutor Fred Ferguson called the
Tanasachuks disorganized criminals. They
were so inept that one of the brothers
30 accidentally shot his partner while using a
motorcycle to escape after a robbery. Still,
they couldn't be discounted.

1 Now here is comments coming out from Crown
Prosecutors. I know it is not about Legere, but it
just goes to show how loose that the agents of the
Attorney General are with their tongue.

5 These are books -- on page -- there is no page
number. After page 96 we get to four pages of
photographs and on the front of the last page of the
photographs we have here a picture of Allan Legere
upon his arrest, a picture of him in 1986. That's
10 not bad. It comes from The Times Transcript. But
at the bottom of the picture we have Constable
Rivard -- not constable but Superintendent Al Rivard.
It doesn't say here, but it did say it in the
newspapers - holding up a picture of Allan Legere
15 upon his arrest and a composite drawing of who they
are claiming is one in the same person. It says,

The police sketch of Legere or a man investigated
as first thought was an accomplice and the photo
taken by police upon his capture.'

20 So here -- this is photograph taken of
Mr. Legere upon his capture in a police station they
have issued to the press for the cover of the book
and for many newspaper clippings and comparing it
with other evidence.

25 In the book on page 107, again, at the top of the
page it says:

"If Legere is responsible," Munden said, "he
must be apprehended. If he is not, it is
important not to mislead people into thinking
he is the prime suspect."

30 So we have an admission here of Sergeant Munden,
an R.C.M.P. police officer realizing how important it

1 is that if Mr. Legere is not the prime suspect that it
is important not to mislead the people and he ought
not to be giving out the information.

At page 114, the first full paragraph, it says:

5 At a news conference on October 27, Munden
decided to announce that police had no
evidence linking Legere to the Daughney
killings.

MR. ALLMAN: What page is that?

MR. FURLOTTE: 114. At page 120, the second paragraph from
the bottom it states:

10 The RCMP also said that no further information
would be released until the next Wednesday,
November 15. But those plans changed over
the weekend, when the RCMP announced what
everyone had believed all along: it appeared
the Flam and Daughney cases were the work of
the same person. Something had turned up in
lab tests performed in Ottawa, but they
15 wouldn't say what. The police did say in the
same news release that "Allan Legere continues
to be a suspect in this murder investigation
and a warrant continues to be held by the
Moncton police department for his escape from
lawful custody."

It continues on:

20 It was an artfully worded statement. Legere was
not described as the prime suspect in the
killings, but his was the only name mentioned
in connection with the case. Reporters were
invited to read between the lines. Some
officers had wanted the release to go on the
way and name Legere, but the decision was made
to try the more subtle approach. The attempt
failed. Reporters weren't ready to make the
leap. The RCMP would have to do it.

26 On Monday November 13, CBC-TV's Andre Veniot
reported police had indeed found something in
their lab tests to identify Allan Legere as
the prime suspect. Hair, semen, or both were
involved in the tests. The key to the police
conclusion was a new technique called genetic
fingerprinting, which matched the genetic
make-up of material called during the police
investigation to samples of material taken from
30 Legere.

1 At the bottom of page 121 it states:

The Miramichi Leader's MacLean and CBC-TV's Andre Veniot broke the story a day ahead of a police news ...

I will begin again:

5 The Miramichi Leader's MacLean and CBC-TV's Andre Veniot broke the story a day ahead of a police news conference scheduled to announce it. The news was the talk of the province for about sixty minutes - until 7:05 p.m. November 16.

On page 128, the second full paragraph starting.

10 It says:

For once, police were not stingy with information. Within hours they had released a two-page detailed report --

THE COURT: What page is this?

15 MR. FURLOTTE: 128 the second full paragraph just close to the top. It says:

For once, police were not stingy with information. Within hours they had released a two-page detailed report on what they had discovered. They needed the public's help and knew it.

Second last paragraph states, on 128:

20 The RCMP checked the VIA train schedule. A train had left Bathurst for Montreal only an hour before. They called Quebec Provincial Police for help. During the train stop at Levis, just across the St. Lawrence River from Quebec City, QPP officers boarded the train, and talked to passengers. They were told to look out for Legere, who had a distinctive tattoo on his right forearm. According to a June 5, 1989, wanted poster issued by the RCMP, the tattoo was an eagle's head and a star.

25 The QPP looked at the right arm of a passenger calling himself Ferdinand Savoie. He had "007" tattooed on one arm, but no eagle. However, they failed to check Savoie's left arm. What the officers didn't know was that the description on the wanted poster was accurate except for one crucial detail: the tattoo of the eagle head and star was on Legere's left arm, not his right.

30 THE COURT: Why are you reading all this, Mr. Furlotte?

1 MR. FURLOTTE: I am reading all this to show you that the
people who wrote this book are getting information
from the police officers.

Page 129, the third paragraph from the bottom, it
6 says:

People's anger boiled over onto the RCMP.
When someone asked when police first got to
the rectory, a man shot back, "Too fucking
late, that's when."

That afternoon Superintendent Rivard and
Sergeant Munden told reporters that they
believed Legere had an accomplice - a tall,
10 thin man. They confirmed that Legere was
the prime suspect in the murders of the three
women as well as a suspect in Father Smith's
case (sic).

On page 130 at the top of the page it says:

And why was Legere back on the Miramichi?
"He said he would come back to the community
and make the community pay. He has voiced
15 that he would go ahead and seek retribution
from the community," Munden warned. "Everyone
is a potential victim."

There is only a couple of more pages in this.

At page 135 in the middle of the page it states:

It took police nearly two weeks after the
20 Daughney episode to announce on October 24th
that Legere was a suspect in the murder and
a prime suspect in the Flam attacks.

On page 160 it states:

The sketch was big news. Police has speculated
all along that Legere was getting help from
someone, but could offer no evidence why they
thought so, other than to say that there had to
25 be an accomplice for Legere to avoid capture
for so long.

It continues on. It says:

In fact, to former Chatham police chief Dan
Allen, it looked very much like someone he knew.
Allen was well known for his ability to get
inside the head of a criminal, to see the
world through the eyes of the man he was after.
30 Now he started to mentally turn the illustration
around until he could picture the face in

1 profile. He added weight to that profile.
Yes, Allen thought, the drawing could be only
one man: Allan Legere.

True, it was a Legere thirty or forty pounds
lighter than the one he knew; but that was a
distinct possibility if he was living in the
woods and stealing whatever food he could
5 find.

Allen told the RCMP his conclusions. The idea
was a shocker, but Allen's credibility was
high. Police agreed that their focus would
remain Legere. Any search for an accomplice
would take a back seat.

And on page 177 it states:

10 Police spoke with him for fourteen hours. Or
rather they listened, because he apparently did
not stop talking. When he rambled into a
discourse on religion, one officer who thought
he knew Legere well said to himself, "This
isn't Allan."

Rivard came out to speak with reporters that
night. He had a photograph of Legere in
captivity and the sketch of the accomplice.
15 They were, he told them, one and the same man.
Dan Allen had been right.

MR. FURLLOTTE: ...all along.

My Lord, in relation to the book and all the
reports in the newspapers, it is the defence's
20 position that if the Crown Prosecutors themselves were
not directly involved, it is sufficient that police
officers did this and convinced the people of
New Brunswick that Allan Legere was guilty of these
offences before he was even captured. It was evident
26 to most people what was happening while Mr. Legere
was escaped and the police were under their investi-
gation. It was evident to most lawyers and it was
evident to most of the public. Under the circumstances
I would submit, My Lord, that the Attorney General
30 we can trace his agents right back to him be it through

1 police officers, Crown Prosecutors, Director of
Public Prosecutions, right to the Attorney General.
Nothing was done to curtail the media and the police
officers from continually subjecting Mr. Legere to
5 these kinds of implications and innuendoes. The same
thing would go for the book, Terror on the Miramichi.
The Mount Cashel events in Newfoundland - there was
one of the victims or somebody wrote a book about it.
The Attorney General's office themselves took out an
10 application to the court for a ban on the publication
of that because it would interfere with the ability
-- the other people being charged to have -- to get a
fair trial. It wasn't anybody being charged that
had to go to court to get an injunction to prevent
16 that book from being published.

MR. ALLMAN: I would like to know what the evidence about
this is.

MR. FURLOTTE: I have an article in The Times Transcript
May 24, 1991, where it says "Book Sales Restricted
20 from St. John's, Newfoundland." The name of the book
was Suffer Little Children by Derek O'Brien and --

THE COURT: I am aware that there is a Newfoundland
judgment. Was it an injunction?

MR. FURLOTTE: An injunction.
25

THE COURT: I suppose we have to take judicial notice of it

MR. FURLOTTE: It was a Newfoundland - here in the paper -
it says it was the Newfoundland Justice Department
applied late Tuesday for an injunction against sales
of 167 page autobiography released Friday by
30 Breakwater Books. The Justice Department is concerned

1 is nothing he could do about the newspaper media.
He can't tackle everybody. He is only one man. But
my position is, My Lord, that whether the Attorney
General himself did not take personal part in what
6 happened to these -- and I will repeat - the smear
campaign against Mr. Legere by the media with the
assistance of police officers. The Attorney General
sat back in full advantage of the abuse knowing
full well that it would prejudice Mr. Legere's rights
10 to get a full trial, knowing full well that by
indirectly they could get inadmissible evidence before
the jury to assist in helping to influence them.
It is the attitude of the Attorney General of the
Province that is in question here. It's not just
16 the damage that was done and the possibility of
being able to correct that damage by having some of
the jurors or all of the jurors say that - yes, I
formed an opinion that Mr. Legere is guilty, but if
I take an oath I can set my prejudices aside. Well,
20 I think the defence here has proved on a balance of
probabilities that the jurors have formed the
opinion that Mr. Legere is guilty. Now the onus would
be on them that -- not for us to just take the word
of those jurors that they think they can set their
25 prejudices aside and act fairly and impartially. I
think the onus would be on the Crown to prove that
those jurors can do it because we have the concept
and the proceedings of a fair trial in doubt and when
justice is done, justice must be done undoubtedly.

30

Lastly, in support for the motion for a Stay of

1 the book may prevent several or former Christian
brothers -- Orphanage -- from receiving fair trials
on sexual related charges.

THE COURT: There was you know in connection with this
5 book the application of Mr. Legere against McLean's
and there was a very strong dissenting judgment. You
had a strong Judge of our Court of Appeal who said
there is no harm in letting it go. It said it may
make it more difficult to select a jury.

10 MR. FURLOTTE: That was the dissenting judgment I agree,
My Lord.

THE COURT: That also is what the trial Judge in effect
said.

MR. FURLOTTE: My Lord, my position is the Attorney
15 General's office of New Brunswick forced or took no
interest in preventing that book from being published.
They took no interest in seeing that all the newspaper
medias were playing up the guilt of Mr. Legere.
Mr. Legere himself had to make application to get the
20 book restricted. When the trial Judge wouldn't allow it,
he was forced himself without being able to afford a
solicitor to go to the Court of Appeal to drive it
further to prevent this from being published. He did
everything he could to assure that he could get as
25 fair a trial as possible rather than sit back on his
haunches and let the Attorney General, or police
officers, or whoever abuse the system so he could
come and cry foul in order to get out of a trial. I
think the evidence is that with Correctional Services
30 Canada and the second grounds, with the book, there

1 Proceedings, I just have to deal with the affidavits
that I had sent out to the solicitors of the Province
of New Brunswick in attempt to get the general
opinion of the legal community and of the community
5 of New Brunswick where this trial is being taken place
as to whether or not Mr. Legere's rights have been
violated and whether or not they think Mr. Legere
is getting a fair trial, and what is the community's
sense of fair play as to what the Court of Appeal
10 and all the Courts of Appeal are adhering to rather
than the mere discretion of the Crown Prosecutor or
the Attorney General.

In my affidavit in relation to this it states:

15 I, Weldon J. Furlotte, Barrister and Solicitor, of
the City of Moncton, in the County of Westmorland
and Province of Province of New Brunswick, MAKE
SOLEMN AFFIRMATION AND SAY:

1. THAT I am the Solicitor for Allan Joseph Legere;
2. THAT under my directions, I have caused to be
forwarded approximately seven hundred and
twenty-one (721) form letters and affidavits
to Barristers and Solicitors of the Province
20 of New Brunswick, sample attached hereto
marked "A";
3. THAT I have received only seven (7) affidavits
pursuant to my request;
4. THAT I am submitting all affidavits as received
pursuant to my undertaking to provide the Court
with unrestricted, credible evidence which
could assist the Court.

25 My sample letter reads - and this one was sent
to a male solicitor:

I, together with co-counsel, Mr. Michael Ryan of
Fredericton, am representing Mr. Allan Legere on
four charges of first degree murder which is said
to have occurred (sic) in the Newcastle area.

30 One purpose of this letter is to advise you that
part of the defence will be to make a Pre-trial

1 Motion for a stay of proceedings. This Pre-trial
Motion will be based on the fact that Mr. Legere
would not be able to receive a fair trial due to the
widespread publicity of his guilt before he was
actually charged or tried. It is the position of
the defence that it would be highly unlikely
an unbiased jury could ever be selected.

5 As you well know, in our system of justice an
accused is to be presumed innocent until proven
guilty. The ultimate question to be answered is:
"Is it probable that the jury (all twelve) will
presume Mr. Legere innocent at the start of his
trial?"

10 The other purpose of this letter and enclosed
affidavit is to ask for your assistance in establishing
whether or not, the legal community (Barristers
of New Brunswick) and the general public in your
community, is of the opinion that Mr. Legere's
right to a fair trial has been affected by the
widespread publicity of his guilt.

15 This letter and affidavit is being distributed to
all the lawyers of New Brunswick, except government
employees because of a conflict of interest, for
their co-operation in assessing both the legal and
public opinion in their community. Please feel
free to discuss this issue with your colleagues
and general public if you feel this is necessary
before you complete the affidavit.

20 It is my position that all accused individuals
have rights, and the right to a fair trial should
never be jeopardized to the extent that has
happened in this case. If I am correct in assuming
that most of the lawyers of New Brunswick have
been influenced by the media in presuming the guilt
of Mr. Legere, then I believe that we, as the legal
community of New Brunswick, ought to take measures
to prevent this from ever happening again.

25 I am therefore asking you take a few minutes of
your time to complete the enclosed affidavit and
return it to my office as soon as possible. I am
also asking you to be completely honest and candid
in your opinions, as all affidavits, favourable or
not, will be submitted on the motion. If you
feel the enclosed affidavit is insufficient to
express your opinion, then please feel free to draft
an affidavit which properly expresses same.

Please "X" out the inappropriate underlined words
words or paragraphs in the enclosed affidavit
before execution.

30 Thank you for your anticipated co-operation, I remain...

And the paragraphs of the draft affidavit stated:

1. THAT I have/have never formed or expressed the opinion that Allan Legere is guilty of the murders for which he is charged.

Paragraph 2 states:

THAT the above opinion was formed mainly because of information gained through media sources.

3. THAT I am/am not aware of the general public opinion in my community as to the guilt or innocence of Allan Legere of the said charges.

4. THAT the general public opinion in my community is that Allan Legere is guilty/innocent (sic)...

THE COURT: No, innocence. Guilty slash innocence of the said charges.

MR. FURLOTTE: Yes, it's a typographical error -- innocence of the said charges.

5. THAT I am/am not of the opinion Allan Legere would not be able to receive a fair trial because of the widespread publicity.

6. THAT I am aware the general public -- I will start over --

6. THAT I am aware the general public is/is not of the opinion Allan Legere would not be able to receive a fair trial because of the widespread publicity.

THE COURT: You were choosing as experts one of the only groups in the province whose members aren't even eligible to serve as jurors. Lawyers can't serve as jurors.

MR. FURLOTTE: I was looking for opinions, My Lord.

THE COURT: But, Mr. Furlotte, would not the fact that you got back only seven replies tell you something about the attitude of the legal profession toward this canvass?

MR. FURLOTTE: Yes.

1 THE COURT: Surely it does doesn't it?

MR. FURLOTTE: Yes, it is. The fact that I only got back
seven replies and the majority of them believed that
the media affected even us lawyers and no doubt has
5 affected lawyers, premiers, and even judges, and
Crown prosecutors, and the works. It does have some
kind of an effect on us. We all know how powerful the
media is and electing and throwing out governments.
They can be very effective in helping people form
10 opinions.

The fact that I only got back seven and the majority
of the lawyers were -- found that the media did affect
them and that they did form the opinion that Mr. Legere
was guilty, and the majority of them believed that
15 Mr. Legere could not get a fair trial, and the majority
of them found that the general public opinion in their
area was that Mr. Legere could not get a fair trial.

What this in fact does tell me is that out of all
the letters that I sent out and the lawyers that I sent,
20 how many of them stood to the occasion to defend the
judicial process of selecting jury members? How many
of them wanted or how many of them were too embarrassed
to say that the media affected them? As officers of
the court we like to take pride in being able to be
25 objective and being unaffected by the media and that we
too would like to uphold the principles that an
accused person is innocent until proven guilty and he
should be presumed as such and we should be strong
enough in our own minds and convictions not to allow
30 the media to influence us.

1 I would submit, My Lord, that many of the ones who
didn't answer were too embarrassed to put it in writing
who have it before the court that they were --

THE COURT: I think at one of the pre-trial hearings I
5 believe I am correct in saying that I ventured the
suggestion that you might get ten replies. Did I do
that? I don't know whether I did or not.

MR. FURLOTTE: I don't recall.

THE COURT: Perhaps it was something I was going to do and
10 didn't. You know judicial decisions aren't governed
by gallop polls, or the gallop type polls. I am not
the slightest --

MR. FURLOTTE: I am not putting this in here and then
argue to yourself, My Lord, that you should follow the
15 decision of the legal community. This is -- the onus
is on me to show that what the community's sense of
fairness is and how they feel about Mr. Legere's trial -
the publicity and how has it affected his fair trial?
I think for you to rule and for you to be able to
20 rule as to whether or not the community's sense of
fair play has been affected here or as to what the
community's sense of fair play is, then you have to
know what the community's opinion is and how it has
affected the community.

25 With all due respect, My Lord, when you are
sitting there in judgement it's not how the media
affected your opinion and whether or not you could
sit there and be objective and whether or not this
30 is going to be a fair trial even. As yourself maybe
those twelve members of the jury could sit back and

1 put the prejudices out of their mind and say, yes, I
can judge this case on just the evidence that is
before me and set my prejudices aside even though I
believe he is guilty. However, what does the community
5 feel about that? Does the community feel that
Mr. Legere is getting a fair trial? That is what
the -- Mr. Legere has the right. He doesn't only have
the right to be tried by twelve jurors. He has a
right to be tried by the community to a fair and public
10 trial and if the community feels that the procedure
or the media, with the assistance of the police officers
and the fact that the Attorney General took no steps
in preventing any of this from happening which gives
the appearances at least. In the end Mr. Legere may
15 have gotten a fair trial, according to the jury. They
may have been able to set their prejudices aside. But
when we are talking about the appearances of justice
here, the community is well aware -- or are well
convinced - I can't say aware - but the community I
20 believe is well convinced that Mr. Legere is not going
to get a fair trial. And I believe the community
would support a stay of proceedings in this case. It
is a question here, as a defence lawyer when often on
speaking on sentencing and the courts come before --
25 we can't just deal with specific deterrence and
- you know - rehabilitation and retribution. The main
factor which the courts take in consideration in
sentencing is general deterrence and this is what I am
pleading with this court to do is look at the aspect
30 of general deterrence to prevent this from ever, ever

1 happening again. To excuse or not to grant the stay
of proceedings is not merely to excuse what the police
officers did with the assistance of the media. It's
not merely to excuse the attitude of the Attorney General
5 to sit back and take full advantage of this. It's to
actually condone it and to encourage. So if the stay
of proceedings is not granted, you are in fact
encouraging the police officers to continue this method.

The Supreme Court of Canada in *R. v. Hebert*, I
10 guess, again, the principle is that they found that the
authorities cannot do indirectly what the Charter
prevents them from doing directly. The Attorney General
of this province is indirectly taking advantage of all
of this undue, unwarranted, and unjust publicity where
15 the whole province believes that Mr. Legere is guilty
and it is not Mr. Legere that is going to be on trial.
It's going to be our criminal justice system. I would
plead with the court to take all that into consideration
and abide by the Court of Appeal's decisions and protect
20 the appearance of justice. The public does not believe
that Mr. Legere could get a fair trial and it would be
in accordance with the community's sense of fair play
that he not be tried. I believe the evidence well
establishes that.

25 THE COURT: Are you finished?

MR. FURLOTTE: No, that --

THE COURT: That's all. Thank you very much, Mr. Furlotte.
Mr. Allman, we are --

30 MR. ALLMAN: Mr. Furlotte must be tired and hungry. I
certainly am. I think perhaps half an hour or three-
quarters of an hour for lunch and I should be ready in

1 that time to reply.

THE COURT: Yes. How long are you likely to --

MR. ALLMAN: Oh, it is difficult to anticipate length of
arguments but I would think between thirty and forty
5 minutes.

THE COURT: Shall we take off until 3:00 o'clock. It is
twenty past two now almost. Let's recess until 3:00.
Is this agreeable with you? I mean that gives you the
time you want and then we will hear you and then we
10 will get away.

(Court Recessed - 2:20 - 3:00 p.m.)

COURT RESUMES

(Accused present.)

THE COURT: Now for Mr. Allman.

15 MR. ALLMAN: I am going basically to divide what I have to
say into five parts, which sounds formidable but I assure
you it isn't as bad as that.

I want to make some general comments on the law
and then I am going to look at two issues which
20 Mr. Furlotte has raised.

I am going to look at issue number one. On the
basis of that even if what he alleges is there is true
and there was any abuse, nevertheless a stay should not
be granted. Then I am going to look at it on the basis
25 that what he has searched there is in fact not the
truth, the whole truth, and nothing but the truth.
After that I am going to go through the whole process
with his second point; that is, to say - argue, first
30 of all, that even if true a stay should not be granted
and then argue that in any case it is not the truth,
the whole truth and nothing but the truth.

1 My first area therefore is the general law. In
this regard Your Lordship pointed out that there is
also a common law doctrine of abuse, that Mr. Furlotte's
Notice of Motion relies entirely upon the Charter. In
6 that regard I take no issue.

In the case of Keyowski, K-e-y-o-w-s-k-i, which
Mr. Furlotte cited, Madam Justice Wilson says this:

10 "The parties to this appeal were agreed that
the common law doctrine of abuse of process
was now subsumed in s.7. The trial judge
accepted this proposition as did all the other
members of the Court of Appeal."

She goes on to say "there was some analysis".

My position is that basically the common law right
probably is subsumed for all practical purposes in the
Charter. So I take no issue on that.

15 With regard to the general principles that we have
to consider when we are looking at Charter applications
and stays for alleged abuse, I would like you to refer
you to Ewaschuk, E-w-a-s-c-h-u-k, second edition,
Criminal Pleadings and Practice in Canada. I am going
20 to read, first of all, paragraph 31.8520 and the
citations therein.

THE COURT: Thirty what?

MR. ALLMAN: 31.8520 - because it says more briefly and
more compendiously that I can what my position is.

25 Quote:

"The principles of fundamental justice include
the power of a trial court to stay proceedings
in exceptional circumstances and in the
clearest of cases where the conduct of the
police or Crown is so flagrant and shocking
as to constitute an abuse of the court's
30 process."

The Queen against Young, 1984, 13 CCC (3d), p.1 and

1 Jewett, 1985, 2 S.C.R., 128 at page 136.

"Thus a stay of proceedings to remedy an abuse of process is available where the proceedings are oppressive or vexacious, but some power can be exercised only in the clearest of cases."

5 Keyowski quoted a moment ago and quoted by my learned friend.

"The Court will stay a prosecution where it is tainted to such a degree that to allow it to proceed would tarnish the integrity of the Court, but only when the affront to fair play and decency is disproportionate to the evidence or disproportionate to the societal interest in the effective prosecution of criminal cases."

10 Conway, 1989, 1 S.C.R., 1659.

"Moreover the affront to fair play and decency must outweigh the societal interest in the effective prosecution of criminal cases."

15 MacDonald, 1990, 54 C.C.C., (3d), 97 Ontario Court of Appeal.

Next, part of Ewaschuk that I wish to quote is paragraph 31.21050:

20 "An applicant for a Charter remedy under section 24(1) bears the legal onus of establishing on a balance of probabilities that an infringement of his rights or freedoms has occurred."

There are a number of cases quoted in there. For some reason, best known to themselves, they don't quote the leading case which is that of Collins, which I think is so well known that it probably doesn't even need repeating what Collins said. Collins is found at 25 1987, 56 Criminal Reports (3d) 193.

THE COURT: 1987, 56 --

MR. ALLMAN: 1987, 56 Criminal Reports, (3d), 193, and in 30 essence Collins stands for that proposition that the

1 applicant has the onus of proving on the balance of
probabilities the facts relied on in an application
under section 24(1).

5 The points that I extract from all this are the
following.

10 First of all that a stay irregardless of the merits
of the basic case that the stay is about, the stay
itself should only be granted in exceptional circum-
stances. Usually they are not perhaps necessarily
15 limited to conduct by the police or the Crown that is
flagrant and abusive.

20 The second point is that in weighing any wrong
done, if in fact there was any wrong done, you must
weigh the wrong against the societal interest in
15 effective prosecution of criminal cases and the state's
alleged wrong must outweigh the latter. Moreover,
even before you get into the question of weighing
the abuse to see if it is so exceptional flagrant
or shocking as to outweigh society's interest in
20 prosecuting crime, the Court must first find there is
an abuse and must be satisfied of that by the applicant.

25 Summing up then, the applicant must establish an
abuse. If and only if he does that, he must also
establish that it was exceptional flagrant or shocking
so much so as to outweigh society's interest in
prosecuting crime and in combination the Crown would
submit that is an extremely high onus to meet.

30 I will turn to ground one in Mr. Legere's
application. Again, by noting that ground one asserts
that he has been deprived of his rights through a

1 combination of factors resulting from an abuse of
process of the Attorney General of New Brunswick, his
agents, and police officers as officers of the Court.

5 One point I understood Mr. Furlotte to be saying,
that he was not criticizing the Attorney General or the
Crown prosecutors as his agent. I gathered that he'd
resiled from that position somewhat from time to time
during the remainder of his remarks. So far as the
10 police are concerned, I know of no authority that says
that the police officers are officers of the Court.
Certain police officers have obligations and duties
in the cases such as Hebert illustrated that, but I
know of no authority for the proposition that they
15 constitute officers of the Court.

Assuming, without accepting for a moment, that the
20 police did any wrong because there is certainly no
evidence - no suggestion that the Attorney General -
there was a little suggestion, but I don't think there
is any serious suggestion that the Attorney General or
his agents specifically did anything wrong. Any wrong
then must be through the police.

Assuming that the police did any wrong in giving
information to the press, and I don't accept that they
25 did but assuming that they did, ⁱⁿ the Crown's respectful
submission it is now too late to raise this point.

I don't mean that in some formal technical sense
that there was thirty days to bring a Notice and they
had gone thirty-one days, or anything of that kind. I
30 mean it in a basic fundamental sense. The point about
all this, if it has a point, is that the publicity has

1 affected or may have affected potential jurors and the
Crown conceded in its brief on Challenge for Cause that
there was an error of reality to the suggestion that that
possibility existed in some cases.

5 The cases I will be coming to in a moment, Vermette,
Marostica and so on all say that what you do where
there has been media publicity is you wait until the
jury is selected and then you see what happens. In
this case, for one reason or another, it actually went
10 beyond that. We did wait. We did get a jury selected
and it is simply now too late to argue that the
publicity means that we can't get a jury.

I was served with this motion only after the jury
was selected. I believe Your Lordship, too, received
15 your Notice of Motion only after the jury was selected.

Vermette, a case specifically on pre trial
publicity and none of Mr. Furlotte's cases were on pre
trial publicity. Vermette, a case specifically on
pre trial publicity, and a decision of the Supreme
20 Court of Canada, reported in 41 C.C.C. (3d) at page 523.
I am going to read from the headnote only because it
says it shortly.

"It is only at the stage when a jury is to be
selected that it would be possible to determine
whether the accused could be tried by an impartial
25 jury. There was no evidence indicating that it
would be impossible to select an impartial jury
in a reasonable time. This was a matter of
speculation only. In an extreme case, and this
case would be one, pre trial publicity can lead
to challenge of cause at trial, but it was not
to be assumed that a person subjected to such
publicity will necessarily be biased. Judicial
abdication is not the remedy for an infringement
of ... "

30 THE COURT: Just where are you reading from?

1 MR. ALLMAN: I am reading from the headnote starting Per
La Forest J., McIntyre and Wilson JJ. concurring, a
little ways down.

THE COURT: Oh, yes.

5 MR. Allman: I pause to note that in Vermette, which the
Supreme Court described as an extreme case, the abuse
was - or the alleged abuse was by the Premier of Quebec
in the National Assembly on a matter of considerable
public interest and was directly and specifically an
10 attack upon the persons involved in the alleged offence.
The Supreme Court nevertheless said you wait to see if
you can get an impartial jury. That is what we did in
this case and we got an impartial jury.

In the case of Genest, which is 61 C.C.C. (3d) 252,
15 a decision of the Ontario - I'm sorry - of the Quebec
Court of Appeal. There had been extensive publicity
involving the Hell's Angels. I am talking now from
page 265. They are talking about what the trial judge
did.

20 "The articles traced the history of the social
phenomenon of motor cycle gangs..."

I am omitting some - mention that members of the
Hell's Angels have criminal records - that the organi-
zation lives off crimes and in particular from drug
25 trafficking and that hundred of murders in Quebec can
be attributed to them. There was testimony during the
trial about Hell's Angels and their involvement. The
Quebec Court of Appeal nevertheless did not grant a stay.
That is on publicity specifically and again I repeat -
30 none of my learned friend's quotations came from any

1 The last case I would like to quote to you is
Marostica, M-a-r-o-s-t-i-c-a. That is in 65 Criminal
Reports (3d) at page 191, a decision of the Ontario
Court of Appeal. In that case there was a newspaper
5 editorial which the Court found was improper -
certainly implicitly found was improper. They
described it as the reckless remark of a newspaper
editor. A stay was sought. The Court ruled that it
should not be granted.

10 "Judicial abdication is not the remedy for an
infringement of the sub judice rule by a
reckless newspaper editorial."

 Every case I know of - I stand to be corrected on
this - in which an application has been brought on the
grounds of pre trial publicity for a stay has been
15 refused.

 In the present case the charges were moved from
Newcastle to Fredericton at the accused's request with
the Crown's consent because we apprehended possible
bias in Newcastle. We had a jury selection process
20 involving two days of extensive challenge for cause.
The Crown wrote a brief in support of the defence's
rights to challenge for cause because we wanted to
ensure their rights were respected. The end of that
process was to get a jury that is sworn to be impartial.
25 That jury had to undergo questioning by Mr. Furlotte
and judgement by fellow triers. There is no room for
the suggestion, even the possibility, that jury is not
capable of giving an impartial verdict. That is
30 totally different from the question that concerns
Mr. Furlotte whether the newspaper and other media

1 publicity may have had some initial impact upon those
jurors. Why speculate about what may be the case? We
know because we have a jury that is sworn and has been
tried to be impartial.

5 I therefore suggest that you don't have to consider
the question of whether there has been any wrongdoing,
to use a general expression, by anybody, including the
police and the media.

10 If you find that you do want to get into that, then
these are my submissions.

15 Primarily what the police told the media in this
case was perfectly legitimate and proper. There may
be one or two exceptions and I will refer to them later,
but primarily they were acting perfectly properly. An
escaped convicted murderer who escapes publicly and
takes a hostage cannot expect to do so without
publicity. If soon after his escape a string of
serious - serious is a light word - a string of
20 dreadful murders occurs in the area from which that
person comes, it is foolish to suppose that there is
going to be no discussion and publicity of that. It is
a public event. The public have rights. They are
nervous. They are scared. They are apprehensive.
They have a valid interest in knowing what is going on.
25 The police equally have an obligation to keep the
public informed of what is going on subject always to
other obligations, and I accept that. You cannot
impose upon the public or the police a total ban in
respect of this type of murder.
30

In Ontario, I understand, the police are getting

1 sued at the moment because they didn't sufficiently
publicize some details about a rape case as a result
of which a lady says she got raped. I mention this
only because it illustrates the quandary in which
6 the police find themselves when dealing with the
media.

Primarily what the police did in this case was
keep the public informed in a fairly limited fashion
of what was going on. For example the question of
10 suspect. At one time they were telling the public
that Mr. Legere was a suspect, though not the prime
suspect. Subsequently they told the police (sic) that
Mr. Legere had become the prime suspect. I presume
that is truthful. It seems to me that the public have
15 a right to know that.

I am prepared to accept that there is some of the
items, which my learned friend has gone through in
exhaustive detail, that are undesirable. I think the
book is undesirable and it would have been better not
20 published. I think it is undesirable for the papers
to go publishing articles about D.N.A. shortly before
the trial.

Having said that the suggestion that the Attorney
General should intervene and bring contempt proceedings
25 is a very easy one to make after the event. Banning
the press involves an attack on Section 2(b) of the
Charter because the press have rights of freedom of
expression, also. An unsuccessful attempt to ban
the press merely brings more publicity and encourages
30 them to be bolder than they were before. Rightly or

1 wrongly, no attempt was made to seek contempt of court
proceedings in this case and I would submit that is a
reasonable and understandable decision. Whether it was
right or wrong may be debated, but it was certainly a
6 reasonable and understandable decision especially in
light of the fact that Mr. Legere was taking what
turned out eventually to be successful proceedings of
that kind himself.

I just want to make some comments on some of those
10 specific things from the media outlets that were read
to you.

There were some quotations from some of the
articles that suggested that people were relieved when
Mr. Legere was arrested. I think it would be to put
15 your head in the clouds and to not face reality to
suppose that that isn't true and that people were
relieved when Mr. Legere was arrested and to pretend
otherwise and the newspapers not to say that and to
pretend otherwise would be absurd. When the quotation
20 was made from Premier Frank McKenna to the effect that
he was relieved, I see nothing whatsoever wrong in
that.

With regard to the D.N.A. articles - if the D.N.A.
hadn't been admitted by Your Lordship, I think
25 Mr. Furlotte might have a point. It would certainly
be undesirable to have the jury possibility possibly
knowing about D.N.A. when it wasn't coming before them,
but it is coming before them. They are going to hear,
I would suspect, two or three weeks of evidence from
30 world renowned experts about D.N.A. The suggestion that

1 at the end of that process they are going to be
influenced by an article in the paper published months
before, which we don't even know if any of them read,
is again I would suggest not an acceptable argument.

5 In that regard there is one article, and one
article only, from the Daily Gleaner. It is number
32 and that article doesn't seem to me to be improper
or at least not seriously improper.

10 There was a complaint also about the information
that Mr. Legere's appearance and weight had changed
during the time he was at liberty and there will be
evidence the jury will hear under oath about that.
Again, I can't conceive that they will be affected
by having read something in the paper if they read it
15 and we don't know that they did.

There was evidence about conversations with
Mr. Legere after he was arrested and again Your Lordship
ruled on the voir dire that the conversations, or
at least a portion thereof that we seek to have admitted
20 will be admitted. Again, the suggestion that the jury
is going to remember months afterwards an article
which they may well not have read in preference to
sworn testimony which will be fresh in their mind in
the Crown's submission is not acceptable.

25 While we are on this topic I think Mr. Furlotte
was suggesting that -- he said and I am quoting now.
I wrote this down.

"If the Crown is not directly involved in this
media smear campaign..."

30 I resent the "if". There is no evidence that any

1 Crown has been involved in any way. He said, and I
am quoting again as best I can:

"We can trace it back to the Attorney General or
his agents."

5 If by that he means the Attorney General or the
Crown prosecutors, then he didn't trace it back. He
quoted from Mount Cashel and he said that - I'm sorry -
he made a quotation something about Mr. Ferguson, I
believe it was. The quotation that he mentioned was
10 I believe Crown Prosecutor Ferguson talking about
some people called Tanasichuk. He wasn't talking
about this case. And that is the only example of
what Mr. Furlotte then chose to characterize as the
'loose-mouthed agents of the Attorney General' and I
15 resent that remark. There is no evidence of any
agent of the Attorney General who has been loose-
mouthed in any way with respect of this case.

I therefore submit on the publicity argument
that even if there has been adverse publicity to the
20 accused that might have had some adverse effect, it is
now irrelevant because we have got us an impartial jury
and that by and large the publicity on this case was
not improper. It was no more than telling the jury
what they wanted to know - I'm sorry - telling the
25 public what they wanted to know. It would have no
effect upon a jury. One or two unfortunate items are
certainly not sufficient to justify any kind of
intervention.

I am going to turn to the second topic - the
30 complaint against the Correctional Services of Canada.

1 One more point I should perhaps mention before we
get off the topic of publicity. I provided the
Court with an affidavit from Mr. Allan - Rod Allan -
of a number of letters written by Mr. Legere. I
5 certainly don't suggest that because Mr. Legere writes
letters to the paper that that justifies wrongs being
done to him. Nevertheless, considering the merits of
this sort of case, the cleanliness of the hands of
the person making the application is a relevant
10 consideration - not a final, not a total, but a
relevant consideration. Mr. Legere is not adverse
to publicity himself.

 As I said a moment ago, I will turn to the second
topic. First of all, assuming that the applicant's
15 version to be the truth, the whole truth, and nothing
but the truth, there is no evidence that any wrongdoing
by C.S.C. has affected this trial. There is no
evidence that anybody at C.S.C. has read the papers
of Mr. Legere's. The most that they can say is --
20 that is said is that they might have. There is no
evidence they did. There is no evidence that the
person, the guard, Eddie Richards, did in fact
reproduce or retain anything from that one conver-
sation in February. There is no suggestion that the
25 Crown has any evidence or information as a result of
either of those alleged complaints to search all the
opportunity to hear. It isn't even suggested that the
Crown has got some kind of useful background knowledge
30 from all of this.

 In addition to that, I would submit that Section 24

1 says you can give such remedy as you deem appropriate
and just. There are other remedies. He has taken
one of them, which is in the form of an application
in the Federal Court. It may be, I don't know, that
5 if this was actively interfering on an ongoing basis
with his right to prepare for this trial, he could
have sought relief from you under Section 24(1) some
time ago. I am not saying for sure that that is so.
It is an arguable area, but certainly it wasn't
10 attempted. There are other remedies for the wrongs,
if wrongs there be that have been done by C.S.C. to
Mr. Legere.

The allegation in his second part of the notice
that the interference has been malicious is in my
15 submission without any foundation. There is certainly
no evidence of malice that I can see.

In any event, the version given by Mr. Legere and
Mr. Furlotte on his behalf is not the truth, the whole
truth, and nothing but the truth. I don't propose to
20 read through to you the affidavit of Mr. Richard and
Mr. Wheaton unless you wish me to do that

THE COURT: I have read those.

MR. ALLMAN: In essence my submission is this. They at
least show that there is another side to the coin.
25 They show that the other side to the coin is what you
might expect. C.S.C. are dealing with a person who
has been convicted of murder and numerous other
serious crimes; a person who has escaped at least twice;
a person who has been in possession of contraband on
30 numerous occasions. Persons in that category cannot

1 reasonably expect, whatever Mr. Furlotte may think,
the same degree of privacy and the same total freedom
as other people. C.S.C has obligations to their
other inmates. They have obligations towards their
5 staff. They have obligations of security towards the
inmates themselves, such as Mr. Legere whether he
wants that or not.

In my submission when you look at the affidavits
from the applicant and the affidavits from C.S.C., it
10 is clear the applicant has failed to prove on a balance
of probabilities that there was wrongdoing and
certainly failed to prove that there was any kind of
malice. If there was wrongdoing, which I submit there
was not, it consisted of two things. One - that on
15 February 27th there was some sort of problem about
Mr. Legere talking freely to his lawyers. That problem
seems never to have occurred since February. Two -
that there was a problem at some stage in the past
with their looking through his papers and possibly, not
20 provably, having seen what was in them. That problem
seems to have been solved by their providing exceptional
measures to Mr. Legere in the shape of a locked box
and a lock to which he has the combination. I don't
know what the ultimate result of the argument of the
25 case of Allan Legere against the Correctional Services
of Canada may be, but I do submit that this isn't the
time nor the place to try that issue. I think they
have failed to prove on a balance of probability
anything of what they allege. Even if what they allege
30 were true, given when it happened which seems to have

1 been all of several months ago, it is not appropriate
under Section 24(1) to stay the proceedings in respect
of any of those alleged wrongs.

5 I want to come back to one of the points I made at
the beginning. In deciding this issue you have not
only to consider whether the wrongs done Mr. Legere,
if you find there were any, were exceptional, serious,
or flagrant, you have also to balance them against
the societal interest in preventing, detecting, and
10 prosecuting crime. Considering the very, very serious
nature of the crimes involving this case and the public
interest in their resolution; considering the time and
the expense in preparing for this matter to go to
trial; considering the jury's commitment to this case
15 in terms of swearing to be impartial and in terms of
having attended in this Court for several weeks now
and listened with concentration and effort to the
evidence that has been called before them; considering
the time we are into this trial; considering all these
20 matters; I suggest it is manifestly not appropriate and
just, and those the words of Section 24, to stay
which Mr. Furlotte agrees effectively means to quash
these proceedings.

25 Mr. Furlotte talks about the public and he gave
some opinions. I had always understood it was wrong
for counsel to give his opinions on what people think,
but Mr. Furlotte ventured to give the opinion that the
public in New Brunswick don't think Mr. Legere is
going to get a fair trial. I am not going to venture
30 into that area. I don't know what the public in

1 New Brunswick think.

I do know, however, that the Court is entitled to ask itself this question. Would it conduce to the favourable view of the judicial system in this province, not to say this country, for this case not to go to a jury on the merits and for a jury never to be given the opportunity to decide this issue and for the matter to be quashed, which effectively means dismissed, at this stage of the proceedings?

10 The cases quoted by Mr. Furlotte contain resounding, admirable, and not doubt correct legal statement, generalizations. That is very different from bringing it down to earth in a specific case and as I already pointed out none of his cases arises in circumstances related to either issue one or issue two in his notice of motion.

15 At the end of the day the Crown respectfully submits, as I have already indicated, that to grant a stay in this case would not only not be in the interests of the administration of justice, it would be the exact reverse.

Unless Your Lordship has any questions, those are my submissions.

25 THE COURT: No, I have no questions. Mr. Furlotte, do you have anything to say briefly in the way of rebutting or reply?

MR. FURLOTTE: A few short comments.

30 In relation to the second ground with the interference by the staff of Correction Services Canada with solicitor-client privileged information. The

1 Crown says that there is no evidence that anybody read
the information of solicitor-client privileged
information. The affidavit provided by the defence
is showing not only the opportunity of Correctional
5 Service staff of reading it, but also the facts that
they did in fact leaf through the material, that they
were in fact -- had access to the material for
approximately half an hour every second day over a
couple of month period of time.

10 The affidavit that the Crown produced in evidence
is simply from the warden stating that well he
instructed those employees including a member of the
police commission for the Town of Newcastle not to read
it. There is not one affidavit from any of the
15 employees who did the search who searched through the
solicitor-client privileged information denying that
they read it. So therefore I think it is safe to
assume that they did read it and go through the
material and that is a malicious interference with
20 solicitor-client privileged information and the ability
of counsel and defence -- counsel and accused to
prepare for full answer and defence.

THE COURT: Mr. Furlotte, is there any suggestion that
materials contained in that, and it is privileged and
25 I am not entitled to inquire what the contents were,
but is there any suggestion that any materials contained
in that have been used to the benefit of the Crown or
to the case? Have you any evidence of that so far?

30 MR. FURLOTTE: Solid evidence, no, and I didn't put that
in to --

1 THE COURT: Or unsolid evidence?

MR. FURLOTTE: -- in to evidence as a motion in this but
there has been times that shortly after Mr. Legere and
I discussed and evidence I gave him as to our strategies
5 and weak parts of the Crown's case that shortly there-
after those holes were plugged. I can state one
particular piece -- unless the Crown -- do you have
some --

MR. ALLMAN: Yes, I do. I know Your Lordship said let's
10 be loose about this and so on, but really if he says
he can state something, that is giving testimony. It
is giving testimony not on oath. If what he says in
some way, and I don't know what he is going to say,
-- if it constitutes some sort of a comment or a
15 criticism of somebody else, does that somebody else
get to stand up in Court and make statements about it?
He has his chance to argue this and I think it is
irrelevant.

THE COURT: I don't want to get into this. I am saying
20 have you any reason to believe?

MR. FURLOTTE: I have reason to be suspicious.

THE COURT: You have reason to be suspicious. May I ask
you this Mr. Allman? Are you aware of any information
that has come to you or the other Crown counsel which
25 might have been derived or which you know or might have
reason to believe has come from examination of papers at
Renous Institute?

MR. ALLMAN: No.

THE COURT: Anything else in reply?
30

MR. FURLOTTE: No, that's -- we'd have to find out during

1 that trial. That's not for this -- okay.

Mr. Allman brought up the point that if the DNA had not been admitted by yourself that I would have a point, okay, to address this Court with but because
5 you are admitting the DNA evidence then therefore what is the concern? Mr. Allman is quite right in that. If you had not admitted the DNA evidence, then you would have had to grant a stay of proceedings and a mistrial, if you want to so to speak.

10 THE COURT: I don't think he went that far and it doesn't follow.

MR. FURLLOTTE: I am saying I would be in the position to argue and no doubt be granted a mistrial that if you had not admitted DNA evidence into evidence. Again,
15 to protect --

THE COURT: Were I satisfied that the jurors or all potential jurors--presumably this question would have arisen before the jury were selected I suppose. I would have to be convinced that their minds had been polluted
20 by the thing, that they had read the paper. Suppose this had been published in the Timbuktu Times? That wouldn't interest me in the slightest. Moncton possibly Oromocto Post, perhaps I would stop it.

MR. FURLLOTTE: The question is I don't know why the Court
25 has to be totally convinced that the minds of the jury have not been polluted by any of this evidence. I think that we have to undoubtedly have a fair trial in our Courts all the time, not just in this case. I would venture a guess that the general public, even
30 though a jury has been picked and they swore to be

1 impartial, that the general public probably believe
that the jury can be impartial even though they may
think they can. You cannot set your prejudices aside
just because somebody tells you you probably can. It
5 doesn't work that way and that was not the purpose of
the Charter. The Charter doesn't say that an individual
has the right to be presumed innocent, but he can be
presumed guilty if the person promises not to use his
prejudice when judging him. It is not conditional.

10 THE COURT: You have covered these points before. I think
in your general --

MR. FURLOTTE: Yes, I covered those points before - okay.

THE COURT: Anything else just dealing with what --

MR. FURLOTTE: The DNA evidence is going in, granted.

15 What about the character evidence that was put in all
the newspapers about Mr. Legere? We all know that
character evidence is not admissible in Court and if
for some reason or the other the Crown gets character
evidence in when they ought not to, the Court of Appeal
20 grants a new trial because it may have prejudiced the
accused. Not because it did prejudice the accused,
because it may prejudice the accused. The jury has
been subjected to character evidence after character
evidence after character evidence comparing him with
25 Manson and the likes and serial killers.

THE COURT: Manson - which paper was that in?

MR. FURLOTTE: That was in one of the papers that I read.

THE COURT: I recall it.

30 MR. FURLOTTE: Compared with serial killers, called
psychopath in the newspapers and that's all because
of the police getting Mr. Legere involved. Aside from
the character evidence, the evidence that is all in the

1 newspapers about his motive about killing these
people in Newcastle - revenge on the community. How do
you erase that from the jury's mind? There is the
potential prejudice that jurors likely will not be able
5 to erase the evidence, those facts, from their mind
when they are going to supposedly be objective in
their deliberations.

The appearance of justice has been utterly destroyed
in this case and it doesn't matter what the Crown
10 prosecutor says. The public knows it and you are not
going to change the public opinion. I don't care how
well this trial is conducted. The public has already
formed their opinion. No matter what goes on in this
trial, it is not going to change.

15 THE COURT: Okay, that's all. Thank you. That terminates
the argument on this point. I will take under
consideration over the weekend. I will probably
deliver decision on Monday. It may not be accompanied
immediately by my reasons. I will find those later if
20 necessary, but I will give my bottom line judgment on
Monday. If a stay were granted, of course, that
terminates the matter. If it is not granted, then
the trial proceeds in the normal way.

Mr. Furlotte, would you let me have those cases
25 that you have cited? I think I have all your cases --

MR. FURLOTTE: I gave you copies of them all.

THE COURT: I have those. That's right I have those on my
desk outside. Sorry.

MR. FURLOTTE: The Court Reporter asked me for mine.

30 THE COURT: She needs them.

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1 MR. FURLOTTE: I provided you with all those cases.

THE COURT: That is all for today then I guess. Thank you.

We will see you at 9:30 on Monday.

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COURT ADJOURNED AT 3:45 p.m., September 13, 1991

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