

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.
.....

Proceedings of November 1, 1991

Dolores Brewer,
Court Reporter.

1 NOVEMBER 1, 1991 - R. V. ALLAN JOSEPH LEGERE

(Accused viewing proceedings from holding cell.)

THE COURT: Before we bring in the jury there's a couple
of things I want to mention. One is I normally
5 advise counsel before their summations begin what
verdicts I am going to leave to the jury in my charge
and I merely want to confirm that the verdicts I will
be leaving will be in the case of Annie Flam the four
10 traditional verdicts of first degree murder, second
degree murder, manslaughter, and not guilty. In the
case of the other three alleged victims I will be
leaving three verdicts, first degree murder, second
degree murder, I would eliminate manslaughter in
15 their case, and the third alternative in those cases
would be not guilty. This is in line with the dis-
cussions that I had with counsel on Wednesday after-
noon in chambers when I heard their representations
in respect of the law that I should deal with in the
20 charge.

One other point I wanted to say for the record
and that is that I have given a lot of thought to the
question of whether I should direct that the accused
be returned to the courtroom for the summations. I
25 have concluded that no useful purpose would be served
in departing from the present arrangement whereby at
the accused's own request he is watching the pro-
ceedings through the monitoring device.

One other third very small point and that was I
30 believe the clerk brought to my attention the fact that
the piece of - the back of the earring which had been
put in by someone, Mr. Walsh or Mr. Allman, Mr. Allman
I think on Tuesday of this week marked as exhibit

1 39-A had actually already been included as an
exhibit number 38, so there is that duplication
there. Counsel are aware of that are they?

MR. ALLMAN: We were advised of it. I am sure the Clerk's
5 right but we will check it out at lunchtime and just
make a hundred percent sure and if that's the case
it could just remain as 38.

THE COURT: Well, if it's correct it doesn't need any
further mention. Well, could we have the jury in
10 then, please, Mr. Sears.

(Jury called; all present.)

THE COURT: Now, members of the jury we have come to that
point in the trial as I indicated on Tuesday that the
counsel address you and the first counsel will be Mr.
15 Furlotte.

DEFENCE ADDRESS TO JURY:

MR. FURLOTTE: Ladies and gentlemen of the jury first of
all I would like to thank you for what I believe to
be perfect attention that you have been giving to
20 this evidence over the past two months. I don't know
if this trial has met your expectations as the soap
opera that the judge promised you at the beginning of
this trial. I just hope in some aspects you weren't
25 expecting some episodes like L.A. Law, Perry Mason,
or Ben Matlock. In these courts we do not have
scripts to be followed. As a defence lawyer I suppose
in comparison to television programs, I don't have a
private investigator to go out and investigate the
30 crime and come up with evidence that the police
weren't able to come up with. In our system of justice

1 we are dealing with real life and we have to deal
with reality. Sometimes the issues and the facts and
the conclusions are quite foggy.

5 I believe at this time I think it would be help-
ful to you if I explain the function of the Court and
its officers. Unfortunately, this could not be done
at the beginning of the trial. I think it may have
shed some insight as to how you could have assessed
the evidence a little better at that time through the
10 trial rather than try to look back on it.

I don't recall what the trial judge stated to
you in his opening address about a judge and jury
trial but I know some judges they describe a judge
and jury trial as the judge and jury are acting as
15 a team. He's the judge of the law and you are the
judge of the facts, and at the end of the trial you
will apply the law to the facts as you have found
them.

20 Also, as officer of the court is crown counsel,
and as you have a duty and a function to perform and
as the judge has a duty and function to perform, both
crown counsel and myself as defence counsel also have
functions to perform. Probably the best way of ex-
25 plaining the role of counsel is, if I could just read
it out, the role of crown counsel, it says:

30 "Crown counsel is a minister of justice
rather than an advocate. His duty is to
see that justice is done rather than to
convict the accused. He should present
the case for the prosecution moderately.
He should call all credible witnesses,
whether favourable or not to the
prosecution and must not hold back un-
favourable evidence. He should conduct

1 the cross-examination of defence
witnesses, especially the accused,
fairly. He should be scrupulous to
adduce only such evidence as is
properly admissible and should not
press the reception of evidence
which though technically admissible
5 has a probative value which is out-
weighed by its prejudicial effect.
Thus he should obtain a ruling from
the Court before putting any question
which might be prejudicial because the
mere putting of a question may cause
prejudice. In argument he should avoid
appeal to passion, misstatement of
facts or expression of opinion."

10 "Defence counsel should be fearless
in the discharge of his paramount duty
to his client. Defence counsel has a
duty to adduce admissible evidence
which is strictly relevant to his own
case and assists his client whether or
not it prejudices anyone else. He is
to do so by lawful and not unlawful
means. All through he never forgets
what he owes to himself and to others.
15 He will not knowingly misstate the law,
he will not willfully misstate the
facts though it be to his gain for his
client."

Also in the Code of Professional Conduct for
Barristers again they discuss the duties of a
20 prosecutor and duties of defence counsel.

"DUTIES OF A PROSECUTOR.

When engaged as a prosecutor the
lawyer's prime duty is not to seek
a conviction but to present before
the trial court all available credible
evidence relevant to the alleged crime
in order that justice may be done
25 through a fair trial upon the merits.
The prosecutor exercises a public
function involving much discretion
and power and must act fairly and
dispassionately. The prosecutor should
not do anything that might prevent the
accused from being represented by counsel
or communicating with counsel and to the
extent required by law and accepted
practice should make timely disclosure
30 to the accused or defence counsel, or to
the court if the accused is not repre-
sented, of all relevant facts and known

1 witnesses whether tending to show
guilt or innocence or that would
affect the punishment of the
Accused."

"DUTIES OF DEFENCE COUNSEL.

5 When defending an accused person the
lawyer's duty is to protect the client
as far as possible from being con-
victed except by a court of competent
jurisdiction and upon legal evidence
sufficient to support a conviction for
the offence charged. Accordingly, and
notwithstanding the lawyer's private
opinion as to credibility or merits, the
lawyer may properly rely upon all
10 available evidence or defences in-
cluding so called technicalities not
known to be false or fraudulent."

I think basically the opinions of counsel, Mr.
Allman and myself, are totally unimportant. What we
think of the evidence you can give it very little
15 weight. No doubt, as you are probably aware, there
has been many voir dices throughout this trial where
we argued the admissibility of evidence. Some has
been let in, some hasn't. Both crown counsel and
myself, and also the judge, we have been subjected
20 to a lot of information that is irrelevant that may
or may not prejudice the accused, that may or may
not prejudice the crown's case. In order to have a
fair trial you are only subjected to the evidence
which is relevant and which should be admissible.
25 The fact that we, both the crown counsel and myself
and the judge, are subjected to all kinds of hearsay,
innuendos, opinions, that puts us in a very distaste-
ful position where we cannot be objective and we
cannot be biased. Therefore, our opinions deserve
30 very little weight. Basically speaking, my opinion
is not worth any more than Allan Legere's. So there-

1 fore when I express my opinion to you later on in
reference to the weight maybe that you should be
giving some of the evidence you can listen to it,
keep an open mind, but also bear in mind that I am
5 not here to convince you that you should follow my
opinion any more than you should be convinced that
you should follow the crown's opinion or the judge's
opinion.

10 As a team I believe - I think I mentioned -
some judges tell the jury that both the judge and
jury act as a team. It is my opinion, ladies and
gentlemen, that as officers of the court the jury,
the judge, crown counsel and defence counsel, we're
15 all a team and we are all to act as a team. We're
here to see that justice is done. Just as it is not
the crown's position to see conviction but rather to
see that justice is done, defence counsel - it is
not my position to get an accused person off at all
20 possible costs. My position is to see that justice
is done also. That if the accused is going to be
convicted it is going to be done fairly. So in a
sense we are all here to protect the system - our
system of justice.

25 That brings us to the function of a trial. I
look at a trial as simply as a continuation of a
criminal investigation which had been begun by the
police. In a sense we are all here to brain-storm
the evidence to see what can be made of it, keeping
30 in mind all the time that the presumption of
innocence and that the onus is on the crown to prove
guilt beyond a reasonable doubt, and all the time

1 keeping an open mind regarding the evidence.

Now, the foundations of our criminal justice
system is that the presumption of innocence and the
crown must prove its case beyond a reasonable doubt.
5 Reasonable doubt is nothing but common sense. It's
a real doubt. The crown does not have to prove its
case with absolute certainty, but in a sense it does
have to prove its case with moral certainty. A
reasonable doubt is something that you can put your
10 finger on and say this is why I doubt it or I doubt
it because this here, and you would doubt with con-
victions for a particular reason.

As defence counsel my primary duty is to the
court not to my client. I make this fact known to
15 my clients, especially in serious cases, before I
represent them so that they know where they stand
with me and I like to know where I stand with them.
I am here principally to uphold the principles of
justice. I am here to protect our system of justice.
20 I am here to ensure that my client gets a fair trial.
I am here to question whether the crown has sufficient
evidence to prove its case beyond a reasonable doubt.
That is not always the case so don't be surprised if
at the end of the trial the crown hasn't been able to
25 prove beyond a reasonable doubt the case against
Allan Legere. Out of my last six jury trials I have
been involved in, four of them the accused had been
acquitted because the crown was not able to prove
30 its case beyond a reasonable doubt. One of them was
five charges; the accused was acquitted on three
charges and convicted on the other two. The other

1 one he was acquitted at trial. I appealed it and
won the appeal. A new trial was ordered. After the
new trial was ordered the crown withdrew the charge
that it had originally charged the accused with.

5 So it's not all the time that the crown has enough
evidence to go to trial and to find an accused guilty
beyond a reasonable doubt. We are here, again, to
protect the presumption of innocence and the only
way that can be protected is through a fair trial.

10 This case in particular is extremely difficult
for myself to ensure that the accused get's a fair
trial. It is going to be more difficult for you as
jurors to assess the evidence because of the wide-
spread publicity about Mr. Legere and, in particular,
15 his character evidence. Usually in normal jury
trials character evidence is not admissible because
it may unduly prejudice the minds of the jurors.
They might think because of such a character he's the
type of person who might commit that type of an
20 offence. That's irrelevant. It's not to be given
any weight whatsoever. If during the process of a
jury trial somehow the witness blurts out the
character evidence of the accused, happens to state
he's got a criminal record, it's not only grounds for
25 an appeal but most judges will declare a mistrial right
away. So that goes to show you how irrelevant
factors must be protected against coming before the
Court and before a jury. Because I'm sure most of you
30 have been subjected to publicity about Mr. Legere, you
are going to have to take extra precautions to make
sure that you are relying on the evidence alone when-

1 ever you deliberate and not anything you have read in
the newspaper or anything you might think of Mr.
Legere.

5 Our system of justice is designed to protect
the innocent from wrongful conviction. It's not to
give guilty people loopholes to escape conviction or
punishment. It's been longstanding in our system of
justice and principles that it's better to allow nine
10 guilty people to go free than to convict one innocent
person.

I'm sure many of us have experienced the
feelings of being accused of something we didn't do.
Much worse is to be punished for something that you
didn't do. I only need mention I suppose the more
15 popular case in the Maritimes is the case of Donald
Marshall being convicted of something that he hadn't
done and being punished of something he hadn't done.
That's just one example of the many wrongful con-
victions.

20 I leave here a clipping out of a newspaper
"Birmingham Six Freed After Sixteen Years In Prison"
because their system of justice had failed them. I
believe those people had been convicted on scientific
evidence which later proved fallible. It wasn't as
25 good as they thought it was.

30 So when we are looking at the evidence we have
to be careful and to give the evidence proper weight.
Our duty - and I say our duty, not just mine or the
crown or the judge's, but your duty, all of us as
officers of the court, is to protect our criminal
justice system from falling below the standards we

1 set for our own protection. If we don't, it may be
Allan Legere wrongfully convicted today, but it might
be us or our loved ones wrongfully convicted
tomorrow. As a team we are not here to protect
5 Allan Legere. We are here to protect and uphold our
criminal justice system. If the evidence is clear
and sufficient to show guilt beyond a reasonable
doubt then convict. If there is any doubt whatsoever
you must acquit.

10 What you have heard in court so far has been
evidence. You haven't heard any facts whatsoever.
The facts are for you to decide. You look at the
evidence; you discuss the evidence amongst yourselves;
and you will decide what is reliable then as being a
15 fact. The weight that you want to give to the
evidence to decide whether or not it is factual is,
again, a matter of common sense. There is a heavy
onus on the crown to prove evidence as factual. This
was shown by how meticulously the crown felt it
20 necessary to prove continuity of exhibits and site
security throughout their investigation. They leave
nothing to doubt. You don't presume anything in
hopes to prove guilt. You have to prove the facts.
People are not proven guilty on assumptions.

25 In assessing how much weight to put on the
evidence you have to rely on the credibility that
you give to some of the witnesses. Some of the
witnesses that you have heard there is no doubt to
30 question their credibility. Others you may have
reason to question their credibility. Again, this
is strictly a matter of common sense and your own

1 personal experiences with people. You must consider
whether or not the witness had any reason to be bias,
whether because of the person's job or whether they
have been influenced by the media. As you will note
6 that I took special precautions with the jury to
ensure that Mr. Legere got an impartial jury. I
believe five of you had never formed an opinion be-
fore and seven of you had. I don't doubt your
competence and your veracity and when you say that
10 although you may have formed an opinion, and I don't
know whether your opinion was whether Mr. Legere was
probably guilty or probably innocent, but regardless
as to what it was I don't doubt your competence and
15 your own ability to set your prejudices and bias
aside and assess this on the evidence. And I am sure
after instructions and once you realize what your
duties are here that you will be able to do that.
Of course you can't blame defence counsel for doing
the best he can to assure that his client gets a fair
20 trial and there is no doubt that I would have pre-
ferred to have had twelve jurors who had never formed
the opinion before. That way I can be assured that
a person does not have any biases to set aside, al-
though you should be able to set your biases aside if
25 you had any. No one knows how strong they were. They
may have been very slight. But I am sure by the time
you finish your deliberations or by the time I finish
addressing you and Mr. Allman addresses you you will
30 be able to objectively look at the evidence. You
will be able to be instructed to do that.

1 When you are assessing the credibility of certain
witnesses those witnesses did not have the benefit of
the explanation of our legal justice system that you
are getting so, therefore, some of these witnesses who
5 come before the court, a lot of them were from the
Newcastle area, a lot of them would be bias against
Mr. Legere, so you have to assess the evidence that
they gave in relation to their potential bias. I
can't say they were biased, maybe they were totally
10 objective, but then, again, maybe they weren't. We
don't know that. So you have to be cautious when you
assess the evidence of the different witnesses that
come before the court.

15 The position of the crown in Mr. Allman's
opening address basically told you that it was all
circumstantial evidence. Circumstantial evidence
merely means that there is no direct evidence. There's
no eye witnesses. I think I would just read a few
20 comments from Mr. Allman's opening address just to,
again, familiarize yourself with the position the
crown has taken in this trial. On page 23 of the
transcript Mr. Allman states:

25 "I want to make some general observations
about the way Crown's evidence is going
to be dealt with. First of all, all
these charges that we're going to be
dealing with are based primarily on
what the lawyers call circumstantial
evidence. I'm not going to go into a
legal explanation of that, the judge may
do that and he's the judge of the law.
It's sufficient for the moment if you
understand that the Crown intends to
30 prove its case here by proving a whole
variety of circumstances which do not in
and of themselves, considered individually,
necessarily prove Mr. Legere's guilty.

1 It's only when you consider them all
in combination fitting and locking
together that their strength and their
meaning becomes apparent."

At page 24 Mr. Allman states:

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

At page 76 Mr. Allman continues:

20 "The Crown's allegation in each case
therefore is that this evidence should
satisfy you that Mr. Legere was a party
to each murder. I used the expression,
a party, and I used it deliberately.
The Crown is not alleging and doesn't
need to allege that Mr. Legere acted
alone. Let me put it another way, the
Crown was not obliged to prove a
negative, namely that nobody else had
any involvement in any of these things.
Whether Mr. Legere had help from out-
siders during his time at liberty we
don't know and the Crown submits it
doesn't matter, because the question
you have to ask is not was somebody
25 else involved in some way but was Mr.
Legere a party to these offences.....
From the Crown's perspective the
question is was Mr. Legere involved.
It's impossible for the Crown to prove
a negative, how can we prove that no-
body was there? You can prove that
somebody was there but proving that
somebody wasn't there is a - that no-
body else was there, is a very diffi-
cult thing to do, so it's possible that
30 during this trial you will hear other
names mentioned as having been suspects

1 and you may hear evidence, a piece of
evidence of one kind or another, that
suggests that somebody else may have
had some involvement in something....
The question that is meaningful, and
it's the question you have to deter-
mine, is was Allan Legere a guilty
party to count one, to count two, to
5 count three, to count four.

If you have a reasonable doubt you
should acquit,"

I would just like to correct Mr. Allman here. If
you have a reasonable doubt you must acquit.

10 "but if you find that the multiplicity
of combined and mutually supporting
circumstances are, as the Crown submits
they are, virtually overwhelming,
certainly sufficient in the Crown's
submission to satisfy you beyond a
reasonable doubt of his guilt on any
one or all of these charges, it's
equally your duty to convict."

15 The Crown asks that you look at the facts,
and here you are looking at the evidence rather than
the facts, you will decide what the facts are --

20 "that you look at the facts we will
present rationally and free from
sympathy or prejudice of any kind and
deliver the verdict that your conscience
requires you to give based upon that
evidence and that evidence only."

With that remark of Mr. Allman, I would ask of
you the same thing, without sympathy or prejudice of
any kind, deliver the verdict that your conscience
requires you to give based on that evidence and that
25 evidence alone. So to objectively look at this case
and to get Mr. Legere's conduct or character out of
your mind. It's the evidence that's on trial here,
not Mr. Legere. If at the end Mr. Legere is connected
30 to the evidence then so be it.

1 Let's look at some of the pieces of the jigsaw
puzzle and see whether or not the evidence supports
the Crown's opinion that it has a strong case. I
think during the trial it was mentioned by the Judge
5 about either Crown counsel or any counsel if they
have to get up and shout it kind of shows they got a
weak case. I have been asked many times or told many
times that gee, the Crown's got 240 witnesses, almost
40 expert witnesses, they must have a strong case.
10 Well, I think maybe there's another way to look at
it. If you need 240 witnesses and 40 expert witnesses
to prove a point it just proves maybe how weak your
case is, not how strong it is.

15 In here, this case, we have two new scientific
techniques, the foot impressions inside boots which
is a new science, and we have DNA which is a new
science.

20 Aside from looking at the evidence that the
Crown has presented in a circumstantial case you
must also look at the evidence that is not presented
or not looked for. In other words, it's not just
the pieces of the puzzle that you will have to look
at in forming a conclusion at the end, there might be
25 missing pieces of this puzzle, and it's those missing
pieces might tell more than what the pieces show. It
may paint a different picture. This, again, is some-
thing which is taken into consideration as to what
may be a reasonable doubt.

30

1 In the Crown's pieces of the puzzle all we have
to do is look at the first witness the Crown called,
Robert Winters. The evidence of the Crown's first
witness let them down. One piece of the puzzle you
5 can, I would submit, could almost just throw away,
not even consider. The first witness, Robert Winters,
testified about Allan Legere's escape. As far as that
testimony goes that just gives say Allan Legere, or
anybody else, any other couple million people, the
10 opportunity to commit an offence. Opportunity alone
is not sufficient for conviction. It's not even
sufficient to be suspicious. But the important part
of Robert Winters' testimony that fell by the wayside
was when under direct examination he testified that
15 at the time of his escape Allan Legere was in hand-
cuffs, leg shackles and a waist chain. If it was
left at that, with the evidence that followed from
Kevin Mole and Nina Flam, it would almost appear that
whoever attacked Nina Flam had a waist chain on
20 similar to the ones inmates are restrained with. This
is just an example of how necessary it is for Defence
counsel to be totally and fully prepared for trial.
If I had not known what attempt the Crown would make
to fit this piece of evidence in with the other
25 evidence given, somebody might just sit by and not
even think about cross-examining that witness, but on
the cross-examination of Robert Winters it was found
out that when Allan Legere escaped the handcuffs were
left behind, the leg shackles were left behind and
30 the waist chain was left behind. So if somebody who
attacked Nina Flam was wearing a restrictive waist

1 chain then it wasn't Allan Legere unless he broke
back in maybe to Atlantic Institute and stole a waist
chain and put it on, or had one somewhere else.
There would be no reason for him to wear a waist
5 chain.

So this is the type of jigsaw puzzle pieces
that can fall apart on the Crown and it's at the
end -- Then, again, it's up to you to decide this
is evidence. I can't tell you whether you should find
10 that Allan Legere did have a waist chain or did not
have a waist chain. It's up to you to assess the
credibility of witnesses and to assess the evidence
and decide whether or not it's a fact you can rely
on.

15 The evidence of Corporal Kevin Mole who had
taken many statements from Nina Flam, assumed that
Mr. Legere when he escaped still had a waist chain
on. This is an indication of how dangerous it is
to assume things. It's a good indication that if you
20 are going to find something have the solid evidence
so that you can prove it. Corporal Kevin Mole also
mentioned another inmate who had escaped around the
same time, David Tanasichuk, and he is assuming - he
took the stand, that David Tanasichuk where he
25 escaped from they are not restrained. They don't
have handcuffs and waist chains and leg irons under
normal circumstances. I believe his statement was
on they can just walk away if they want but, again,
30 this is hearsay evidence and he's assuming things.
This is evidence that was before you. How about
evidence that was not before you? Is there any

1 evidence that nobody else escaped during that period
of time or was on the loose who may have been wearing
a waist chain? We don't know that. Maybe a waist
chain is not even important. That's for you to
5 decide.

The evidence of Kevin Mole is upon Allan Legere's
arrest November 24th, 1989 he noticed that Allan
Legere had light brown pubic hair. Of course he
told Nina Flam that Allan Legere had light brown
10 pubic hair. Why he did that is anybody's guess.
Again, you have to assess the credibility of witnesses
and whether or not they may be bias and whether or
not they are seeing what they want to see. Nina Flam
had told them many times that the person who attacked
15 her had light pubic hair. I believe on occasions it
was blond - anywhere from blond to light grey to
light brown. Did Kevin Mole see what he wanted to
see. Anybody who saw anything move in the Newcastle
area it was usually Allan Legere. The man of a
20 thousand faces and in a thousand places. So whether
or not Allan Legere had light brown pubic hair on
the day of his arrest, you also have to look at the
evidence of Duff Evers, the hair and fiber expert
from the Sackville Laboratory, R.C.M.P. Sackville
25 Laboratory. He testified the color of the hair seized
from Allan Legere by Kevin Mole ranged anywhere from
medium grey-brown to dark brown and that's through a
microscope, and if you looked at it on the person it
30 would appear dark rather than light. Aside from Kevin
Mole being at the police station that morning when the
pubic hair was taken there was four other police

1 officers who saw Allan Legere naked, the two police
officers who did the strip search, Constable Ken
MacPhee and Luc Bolduc, and then inside after the
strip search there was Constable Ron Charlebois and
5 Seargeant Mason Johnston. Why is it that it's only
Kevin Mole who testified that Allan Legere had light
brown pubic hair.

Kevin Mole admitted taking statements from Nina
Flam where Nina Flam had described her attacker and
10 described the attacker's voice, that both the voice
and the size of her attacker was similar to a person
she knew, John Marsh. John Marsh has been eliminated
as a suspect but that still leaves the intruder or
attacker as being similar in size-wise to John Marsh.
15 Gerald Marsh testified in court, who is a relative
of John Marsh, and he described John Marsh as being
a slight man, around 150 pounds. At the time of
Allan Legere's escape he would have weighed somewhere
around 195 pounds, I believe, 190 pounds. You will
20 have to rely on your own memory for this. I haven't
had time to go back through all my notes and I didn't
make notes of everything. So anything I tell you
about in relation to the evidence please rely on your
own memory and not mine. The question is could Allan
25 Legere have lost 40 or 45 pounds in the short time
that he escaped until the attack on Nina Flam which
was, I believe, somewhere around 25 days. Again,
this will be something for you to decide as to how
30 much weight you want to put on the description given
by Nina Flam as to her attacker.

1 I will just read through some of the notes I
made on Nina Flam's testimony. Nina Flam testified
that shortly after 11 her daughter Natalie had phoned
her and it was sometime after that phone call that she
5 was reading and she heard somebody come up the
stairs, and the person put a hand on her mouth and
said 'Don't make a noise and I won't hurt you.'
The lights were still on and it was a male voice. He
told her that his name was Gerald and he lived down
10 by Kerrs, that he needed three thousand dollars be-
cause his girlfriend needed an abortion. He also
asked where the safe was. He also asked her what the
blue thing was downstairs, the box for Lotto 6-49.
She stated he went downstairs, came back because he
15 couldn't open it and she told him how to do it and
he went down again and he still couldn't get it open.
I believe also that she told him that there was money
in one of the other bedrooms where he left and he
went and he looked for it and he couldn't find it.
20 That he punched her when she couldn't tell him where
the money was. He punched her on the chin. One time
he came back and he said that if she wouldn't tell him
where the money was that he would rape her and that
25 he raped her. She said he had a chain around his
waist. She says she did get a glimpse of the chain.
The chain was loosely around his waist. There was a
square thing and a piece hanging down around 8 to 10
inches. She said his size - that he was thin, had a
30 thin waist, his pubic hair was light brown. He said
he was going to set fire to the house and look like
an accident. He started the fire and put the

1 closet -- Started the fire in the closet and put
the lights out. She said her hands were behind her
back and he cut the pantyhose or whatever it was her
hands were tied. So it appeared when he lit the
5 fire he untied her. Why did he untie her? Was it
because he wanted her to escape or because he didn't
think she could escape whether she was tied or not.

I believe as you will recall her testimony she
said after she was - as soon as the intruder left the
10 room that she got up and she opened the door in the
hall and when she got out the person pushed her back
in. Pushed her in on top of the fire. Then she got
out and she started out in the hall again and the
person was still there but she ran down the hall and
15 I believe to one of her daughters' bedrooms. She
stayed there a very, very short time. She knew she
had to get out and then she went down the stairs
holding on to the railing. She got to the bottom and
then she heard the glass break and two men came in.
20 She was only aware of one person there that night.
She also stated that he seemed to know a little bit
about her family. Something about questioning whether
her daughter, Nancy, was going out with John Smith
and that her daughter, Nancy, was 23 years old when
25 her daughter was actually 31 at the time, but she did
have a daughter 23 years old. That her daughter,
Nancy, who used to go out with John Smith was home
that weekend and that they went out together that
30 weekend. So it would appear that maybe whoever
attacked Nina Flam saw John Smith out with Nancy on
that weekend and thought it was the younger daughter.

1 The evidence from John Smith was that Allan
Legere knew John Smith; he also knew Nina Flam's
daughter Nancy, but Allan Legere would also know
that Nancy was not 23 years old from the length of
5 time that he had known her. So there is no way
Allan Legere, it would appear, and it's for you to
decide, that Allan Legere could have assumed that
Nancy was 23 years old. If it was Allan Legere who
recognized or who saw John Smith and Nancy out on
10 that weekend he would have known Nancy and he would
have known it was not the younger daughter, 23 years
old.

 That person also told Nina Flam that it didn't
15 matter what he did, words to that effect, that the
bad guy was going to get blamed for it, meaning
Allan Legere because Allan Legere was escaped at the
time. You will have to ask yourself would Allan
Legere commit this crime and then tell the person
20 that it doesn't matter because he's going to get
blamed for it anyway.

 John William Smith who used to go out with Nina's
daughter Nancy stated that he went out with her
between 1976 and 1984 or '85 and that at the time he
25 said Nancy was 33 years old but she looked 25 or 26.

 The evidence of Sergeant Dan Chiasson, R.C.M.P.,
was one of the first on the scene to take photos.
In exhibit P-6, photo number 4, you will see a
surgical glove and there was a hair found in that
30 surgical glove. That hair as it turned out was not
consistent with the hair of Allan Legere. There
were numerous hairs - I just forget the exact number

1 there now, that were found in the house, some in
Annie's bedroom, some in Nina's bedroom. They were
consistent as being light in color as Nina Flam saw
the person with light brown or light-colored pubic
5 hair. The hairs found in that house I believe were
consistent as being light in color. All those hairs,
again, proved not to be consistent with the hair of
Allan Legere, even the facial hair found on Annie
Flam's mattress, and there was a reddish hair caught
10 in the necklace of Annie Flam.

As you will recall from the evidence, there was
considerable amount of money found throughout the
house in different drawers, in jewelry boxes. I
believe the testimony was somewhere around three
15 thousand dollars. It may have been between three
and five, I don't recall. It makes one believe as
to what exactly was the motive for this criminal
offence. It appears at first that it's robbery.
If it was robbery it would also appear that the
20 person was not very smart in being able to find the
money in the house, not even in the usual places
because one place has a locked drawer that wasn't
even searched in the store area.

25 The Crown, I assume, will be asking you to
conclude that Annie Flam was sexually assaulted.
The only evidence that Annie Flam was sexually
assaulted, from my recollection, is that because of
the way she was found. She was found with her
30 panties partly rolled down in the back, and I be-
lieve photo number 41 in P-6 shows a body clad in the
underpanties, and if you go through exhibit P-6 you

1 will see how when the body was uncovered as to the
position of the underpants.

I believe the evidence of Doctor MacKay was that
there was no evidence of a sexual assault, at least
5 not of intercourse. Of course sexual assault is not
just intercourse, and the Judge will be charging you
on what the law is in relation to sexual assault.

Corporal Godin took two photographs of the
broken jaw of Annie Flam. Aside from taking the two
10 photographs and conferring with expert witnesses he
returned to the scene of the crime to see if any
debris could have caused the broken jaw. He found
the charred lumber was quite light, however, at the
time that he went back when he searched and at the
15 time when they recovered Annie Flam if it was on fire
it would be light because it would have burned up,
but was it fully burnt at the time that it fell down
on Annie Flam or were there heavy pieces and then
burnt after it had fallen. That's in relation to the
20 two by fours falling from the ceiling. There was
also the sheetrock that would have fallen down which
also could have broken Annie Flam's jaw.

Doctor MacKay testified that the mechanism of
25 death of Annie Flam was that she vomited and inhaled
the vomit and choked to death. He said the cause was
a blow to the jaw, pain, or fear. His only reasonable
assumption, it was caused by some other person.
Again, it's an assumption and what he determines a
30 reasonable assumption you may not and others may not,
and other people may agree with him. I questioned
him, I believe, that Annie Flam could have fainted

1 from fear, she could have fell down and fractured her
jaw aside from it being fractured after she was dead
and laying in the bed.

5 There was no evidence as to Annie Flam's
general health at the time from the family physician.
Doctor MacKay did not even inquire as to what her
general health was. There was no evidence as to
whether or not she was on medication although there
was evidence that she had some kind of a cardiac
10 problem.

On redirect examination by Mr. Allman of Doctor
MacKay, after my cross-examination, Doctor MacKay
said he still hadn't changed his opinion. His
opinion is that it's a reasonable assumption caused
15 by some other person, by a blow to the jaw. As you
will remember on cross-examination I asked Doctor
MacKay about an opinion he gave in a Moncton case and
that his opinion was that Moncton case it was still
homicide although the Crown withdrew the case because
20 the Crown saw there was a reasonable doubt Doctor
MacKay would not recognize it. But then, again,
Doctor MacKay doesn't have to use court standards
beyond a reasonable doubt. He could use the opinion
that yes it's probably homicide but probably is not
25 good enough in a court of law. So you will have to
ask yourself does a doubt also exist in this case?
Is it homicide? Is it murder? Or is it something
else? Is there a reasonable possibility that the
death was caused by fear which caused her to vomit
30 while lying on her back? Could it have happened
while she was undressing to go to bed? Just because

1 she was unclothed does not necessarily mean that her
attacker undressed her. It's one assumption you can
draw. There are many others you can possibly draw.

5 Gerald Marsh testified that he was a neighbour
of Annie Flam and that she usually closed around 11
P.M. and there was attempted robberies of Annie Flam
a couple of times before, so this would not be some-
thing unique.

10 Joe Ivory testified that on May 16th that he saw
a man coming around the shed and going across the
lawn when he was going from I believe a workshop to
his home one evening, that that person heard him and
he ducked out of sight. That he was just walking un-
til he heard him and he thinks the individual started
15 to run but he's not sure. On May 27th he says he came
home on a Saturday afternoon; that his hockey gear
was gone - hockey bag was gone and all the hockey
gear was on the floor in the garage; that it was there
the day before. So it would appear that possibly
20 sometime during the evening of May 26 or early hours
the morning of May 27th that somebody come in and
stole his hockey bag. Joe Ivory also testified that
on May 31st he came home from the cottage and the
lights shone on this person and that the person run
25 through the gate and Joe Ivory chased him with his
car. That the person was wearing a light grey
jacket, tight jeans, white running shoes, and he was
running low and fast.

30

1 Wendy Ivory testified, I believe she's the wife
of Joe Ivory, that on Monday morning, returning home
from the cottage after the fire the night before, the
contents of the hockey bag were all over the floor.

5 There's a little discrepancy here in the
testimony of Joe Ivory and Wendy Ivory where he says
it's a Saturday; she says it's a Monday; but then,
again, it may be that Joe come home alone Saturday
and saw it and then she came home Monday and saw it,
10 but it wouldn't be a discrepancy that you would have
to give great consideration to. But Wendy Ivory also
testified that her mother-in-law was missing two
pounds of sausages and a large order of meat was
missing, I think she stated something like over a
15 hundred dollars. Now, I didn't get whether that was
over a hundred dollars worth of meat missing or that
she had a hundred dollars worth of meat - an order of
a hundred dollars worth of meat and some of it was
missing. That it would appear somebody on the loose
20 in and around that area was stealing food. She says
the second time on June 1st a person with shoulder
length, curly black hair, a husky fellow, an average
height, and that would have been the second time she
says on June 1st is when Joe Ivory would have chased
25 this individual with the car. I suppose one would
have to look that if somebody is out two or three days
after the killing of Annie Flam and the assault of
Nina Flam would this same person be out two nights
after, three nights after, in the very same vicinity
30 looking to do break and enters to steal food. It
appeared that maybe no money was stolen from Flams

1 but if it was a person that needed food why didn't
they stock up in food from the break and enter into
the grocery store? Why would they have to be two
nights later out looking to steal food? And if it
5 would be the same individual would it be an individual
who knew that say a murder had been committed just
two nights before, be back in that area looking to
be captured? These are all things you must take into
consideration when you are deliberating.

10 The evidence of Lloyd Hannah was I believe the
day after this individual was chased with the car he
found a pair of glasses which evidence shows and
shows strongly that those glasses belonged to Allan
Legere. So it would probably be safe to conclude
15 that it wasn't somebody else running around wearing
Allan Legere's glasses who fell in a hole and lost
the glasses. Probably safe to conclude that it was
Allan Legere wearing those glasses. That's strong
evidence. So if you relay those glasses which be-
20 long to Allan Legere as Allan Legere wearing them at
the time it would appear that this person is out at
the Ivorys stealing food approximately two days after
the murder - or the alleged murder of Annie Flam.
Again, would a person who had committed murder or who
25 had even thought that a murder was committed, would
he be back in that area? There's no evidence that
Allan Legere would know that a murder was committed.
There's no evidence that Allan Legere would even know
30 that there was a fire at the place of Annie Flam's if
he had been out living in the woods somewhere which,
again, seems to be proclaimed by the police force.

1 As in the Crown's opening address at page 74
it states:

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

 What other evidence do you have in Annie Flam
besides DNA evidence? The Crown's submission in a
circumstantial case is that you cannot use any one
15 piece of the puzzle to convict. It must be used in
conjunction with the other evidence to show guilt.
In the Flam case there is absolutely nothing which
suggests Allan Legere was around the Flam residence,
in the Flam residence, or committed any of these
20 offences. The description given by Nina Flam of her
assailant is that it was a thin person, something
about the size of a neighbour, John Marsh, who
happens to be about a hundred and fifty pounds. The
25 person had light brown pubic hair. Any of the hair
samples left at the scene do not match Allan Legere's.
The hair outside in the surgical glove does not match
Allan Legere's. The description and the evidence
tends to exclude Allan Legere from the person who
30 attacked Nina Flam. The only thing to possibly
connect Allan Legere to the Flam is the DNA evidence
which, again, has to be considered.

1 When you look at DNA evidence I would submit
that it should not be taken in isolation and you
should have more than DNA evidence to find beyond a
reasonable doubt that Allan Legere would be guilty,
5 even if you rely on the figures given by the R.C.M.P.
probabilities which I am not suggesting you do, even
if that was the case, you should not rely on DNA
evidence alone.

10 When you look at the other evidence in the Flam
case it is not as the Crown suggests that it all
points toward Allan Legere. The DNA evidence points
towards Allan Legere, the other evidence points away
from Allan Legere. That, I would suggest, would be
15 strong evidence to suggest that maybe something
happened with the quality control and quality
assurance of the R.C.M.P.'s testing laboratory. May-
be there has been mix-ups in the lab. There's no way
that you or anybody can tell after the tests are
20 done, not even the technician himself, Doctor Bowen,
would be able to tell whether he made a mistake, but
when you look at the other evidence in the circum-
stantial case it looks as if possibly there was a
mistake made in the lab and samples or somehow
25 evidence got mixed in with the known sample of Mr.
Legere.

30 Aside from the evidence in the Flam theme to
suggest that maybe, just maybe, there has been a
mistake made in the lab, there is also a puzzling
piece of evidence from the Daughney case. Vaginal
swabs were taken of both Linda Daughney and Donna
Daughney. Sandra Lumgair, a serologist at the

1 Sackville Laboratory, tested all those swabs, the
body swabs and the vaginal swabs, for seminal fluid.
Seminal fluid was found to exist on the body swabs.
There was no seminal fluid on the vaginal swabs.
5 But when you look at the gel where the evidence
samples were run with Mr. Legere's and Mr. Murphy's,
in lane 12 the male fraction of the vaginal swab
reportedly taken from Donna Daughney, exhibit P-103,
it was found that there was male DNA in that lane.
10 If you may recall from the autorads in that lane,
the bands were similar to Donna Daughney's. So in
all respect her own DNA was - when they tried to
separate her DNA - some male DNA, whatever, from that
vaginal swab hers was always transferred over so they
15 claim, that's why there's the five probe match from
the female fraction to the male fraction. They said
it's her own that transferred over there. And when
they run the monomorphic probe for the sex probing
they found that there was no male DNA in the female
20 fraction, lane 11, but there was male DNA in the male
fraction lane 12, but yet any test prior to that
showed that there was no seminal fluid on that
vaginal swab. So how did male DNA get spilled or
transferred or put in that lane number 12.
25

As you may recall I asked Doctor Shields about
the possibility of errors made in the lab and he said
yes, there could be errors, mix-up of samples, and I
asked him about the spillage or the transfer from one
30 lane to another, possible DNA from one lane getting
over into another lane, and I forget exactly what
term he gave but he said something like unlikely or

1 highly unlikely or he didn't think that was a feasible
error. Well, it appears that that error was made.
If that error could be made in lane 12 why couldn't
that error be made in other lanes?

5 So for one purpose alone, that there's no way
that the Crown can come and prove to you that the
tests were done right. They can come and tell you
and convince you that well, on the interpretation of
these tests it looks like strong evidence, but there
10 is no way they can prove to you that these tests were
done properly. With evidence of blind proficiency
testing from other laboratories it has been proven
that they make mistakes and that innocent people
could be found guilty because of their mistakes. I
15 would suggest to you, Ladies and Gentlemen, that that
alone in itself is reason not to convict anybody on
just DNA evidence.

At page 73 of Mr. Allman's opening address Mr.
Allman states:

20 "The experts we'll be calling are
going to try and explain to us
sufficient about this so that you
can determine whether you feel you can
rely upon their evidence and to en-
able you to determine how much importance
to place upon their findings. In this
regard we ask only that you use the
collective common sense of the twelve
25 of you. You are not, you never will
be, scientists. Scientists are not
gods and they're not always right, but
like any other scientific application,
as lay people we listen to the ex-
planation and what they have to tell
us and what we say to ourselves, can
I rely upon that."

30 And, again, to remind you, page 23 of Mr.
Allman's address, where he states:

1 "It's sufficient for the moment if
you understand that the Crown intends
to prove its case here by proving a
whole variety of circumstances which
do not in and of themselves, con-
sidered individually, necessarily
prove Mr. Legere's guilt. It's
5 only when you consider them all in
combination fitting and locking to-
gether that their strength and their
meaning becomes apparent."

Aside from the quality control issue of DNA
evidence, you have heard the testimony of the Crown's
expert witnesses, five of them, and you have heard
10 the testimony of Doctor Shields, the Defence expert
witness. I would submit to you Ladies and Gentlemen
that because the Crown has five witnesses and the
Defence has one witness that in itself is to be given
very little consideration as to what kind of weight
15 you are to place on DNA evidence. I believe just off-
hand you will recall that even the Crown's expert
witnesses state that there is a considerable amount
of controversy as to the reliability that can be
placed on the figures generated by the R.C.M.P. or
20 the FBI or the forensic laboratories. That much of
it is in dispute except for making the matches and
getting your initial test DNA profile. But what does
that tell you. It doesn't tell you much if you don't
do the frequencies properly.
25

The evidence for the Defence was to show that
you cannot use a general population data base for
Canada; that it's not proper to use the R.C.M.P.
general data base; that it's not proper to use the
30 Toronto data base or the Montreal data base for other
areas of the country. It's likely not even proper to
use those data bases for even Toronto, for even

1 Montreal in those because Canadians are not a homo-
genous society. We do not randomly mix. We tend to
stay close to home. But there's lot of people who
move away from home and there you will find random
5 mating but you got to realize whenever you move to
the big cities everybody from all over the country
is moving to the big cities so that sample population
that they are taking, whether from Toronto, Montreal,
Ottawa or wherever, it is from people from all over
10 the country. Now, if all those people from all over
the country have their own little pockets and sub-
populations which Doctor Shields tried to show in the
Newcastle area, it's not good enough to take samples
from this group, that group, that group and that
15 group unless they're all the same. That was the
purpose of Doctor Shields' evidence to show that the
substructure does exist, not able to prove how much
of it exists, as to what degree it exists, but never-
theless that it does exist.

20 In D15-1 Doctor Shields did his own band
matching in Mr. Legere's case in relation to five
individuals from the Newcastle area because it's on
the autorad of the first gel which was put into
25 exhibit there's 22 lanes there and there were only
five people from the Newcastle area on that gel.
There was Mr. Murphy, Mr. Legere, the Daughney
sisters and Nina Flam. So he had originally did
his calculations on those five. The other five
30 suspects were done on a different gel, or at least
a different membrane. In exhibit D15-1 he had
showed you the probabilities of the sample of Lewis

1 Murphy matching with Linda where they shared four
bands. Using the R.C.M.P. data base which they con-
sidered to be valid the probability of Murphy and
Linda Daughney sharing four bands was 1 in 10,807.
5 The probability of Mr. Legere sharing four bands with
Murphy was 1 in 2749. So here they both shared four
bands, both pairs, but the difference is when one of
them the probabilities is 1 in 10,807, the other one
is 1 in 2749. So a lot depends on the frequency at
10 which these bands are shared by the population and
the correct population. The probability of Mr. Legere
sharing four bands with Donna turned out to be 1 in
5616, and the probability of Mr. Legere sharing two
bands with Nina was 1 in 9 and that was 2 bands on
15 the same probe, and because there was a lot of common
sharing on that band it was only 1 in 9 - or in that
probe I should say.

Doctor Shields also using the R.C.M.P. data base
and their statistics, their method, found that the
20 joint probability of picking out those sets of people,
Murphy with Linda, Legere with Murphy, Legere with
Donna and Legere with Nina, the probability of picking
these five people at random and seeing how much their
bands match those chances are only 1 in one hundred
25 and forty-nine trillion six hundred and sixty million.
So basically the chances of that happening, if the
R.C.M.P. data base is correct, is only one in one and
a half trillion. Something is wrong. Either all
30 these bands don't match as Doctor Shields found, or
something is wrong with the R.C.M.P. data base or
their theory is wrong, that you cannot use the

1 Hardy-Weinberg formula to multiply the two bands within
a loci and you cannot use the product rule to get the
probabilities across loci.

5 He also found the probability of three unrelated
individuals sharing the same band, Legere, Murphy and
Donna or Legere, Murphy and Linda, would be 1 in
1095, and that's just a probability of them sharing
one band.

10 So when the R.C.M.P. and their expert witnesses
are coming to court and they're telling you that well
the probability of somebody else out there sharing
these 5 loci with Mr. Legere is 1 in 310 million or
whatever, and Doctor Shields comes to court and says
15 yes and the probability of these joint occurrence for
these five unrelated individuals, of them sharing the
bands that they do, is 1 in 1½ trillion, there's an
awful lot of coincidences going on in the Newcastle
region. Is all of this by chance or is there some-
thing wrong?

20 Doctor Shields also showed you in his evidence,
and which is D15-5, paragraph 5 or page 5, whatever,
how he compared match probabilities of Mr. Legere
with the different data bases and that a five locus
25 match in the R.C.M.P. data base would show 1 in 310
million, in the Toronto data base it would be 1 in
341 million, and in the East Indian data base would
be 1 in 2 million. For a four locus match in the
R.C.M.P. it would be 1 in 35 million; in the Toronto
30 data base it would be 1 in 28 million; in the Chinese
data base it would be 1 in 469 million. So you can
see the discrepancies in the comparisons of the

1 method used by the R.C.M.P., the differences that it
will generate depending on what the bin frequencies
are in the different data bases, and if you don't
get the proper bin frequencies you don't know that you
5 are coming up with the right numbers. You don't know
if they are too high, you don't know if they are too
low.

On the summary chart which was put into evidence
by Doctor Bowen, P-162, the probability here for a
10 two probe match is 1 in 7400. As you will recall,
when Doctor Bowen was testifying he declared that the
1 chance in 5.2 million was - I believe the term he
used was 'remote', and I could be corrected on that,
and for the 1 in 310 million, 'extremely remote'.
15 At least qualifications to that effect. I asked him
in cross-examination, I said 'What qualification would
you put on the 1 in 7400?', and he stated 'That would
be consistent with Mr. Legere.'. Never stated that it
would be remote, never stated that it would be
20 probable, just that it would be consistent. The same
way hair and fiber experts come to court and whether
they calculate their probabilities at 1 in 4500 or 1
in 200 they come to court and they say it's con-
sistent. The same with serologists, the difference
25 in the blood, regardless of what the probabilities are
they will come to court and say they are consistent
because they cannot generate these generous numbers.
So 1 in 7400 would be considered consistent, not even
30 probably.

1 When I cross-examined Doctor Carmody as you re-
call I asked him - there's no three probe match on
this summary chart, so I asked him on the average
what would a three probe match generate on the R.C.M.P.
5 data base and his answer was something like 1 in
four hundred and some thousand. When I asked him
also if he was familiar with the Baptiste case in
B.C., there was a person of Indian descent was an
accused, and there was a three probe match and using
10 the Indian data base the three probe match come out
as 1 in 9000, so to see the difference, again, when
you are using proper data bases a three probe match
can drop from 1 in four hundred and some thousand to
1 in 9000 when you are using a proper data base.

15 The Crown's expert witnesses don't debate that,
that the probabilities can drop that much when you
use proper data bases, but the Crown's expert wit-
nesses as I understand is that they are stating that
there would be no significant - or they're not saying
20 significant difference, they're saying there would
be no forensic difference whether you used the R.C.M.P.
data base from Ottawa or the data base generated in
Toronto or the data base generated in Montreal. The
Defence's argument is that there are statistically
25 significant differences between these data bases
generated in Ottawa, Toronto and Montreal. Just be-
cause you run a person's profile through either one
of them it doesn't mean that everyone is valid there-
fore no matter what figure you come out with it's
30 good enough. There's no forensic meaningful
difference because you still have a rare event.

1 But what the statistical significant difference does
between these data bases is it shows that there is
substructure. There is no way that those tests can
tell how much substructure exists within those. If
5 a person belongs to a small community where there is
common sharing of bands like Doctor Shields believes
there is for the Newcastle area, that doesn't prove
inbreeding on an incestual manner. It just shows
that this is a closer knit society with less random
10 mating than maybe other communities.

THE COURT: Mr. Furlotte I will leave it to you to decide
whether you want a recess at any time and to say
when if you do.

15 MR. FURLOTTE: Okay. I believe the jury got in a little
late but maybe what I will do, Ladies and Gentlemen,
is I have prepared some general comments on the
problems with DNA analysis and I will just read this
off and then that will finish me up with the Flam
20 case and then after recess I will begin on the
Daughney cases and continue on with the Smith case.

There's a question as to whether the reliability
as to whether it's safe to conclude the probabilities
as suggested by the R.C.M.P. Again, I just ask you
25 to use your common sense approach. In this case you
should decide two issues: whether the Crown has
carried it's burden of proving that the R.C.M.P. DNA
test is generally accepted as reliable by the
scientific community and, two, whether the Crown has
30 carried its burden of proving that the procedure for
computing the statistical frequency of DNA prints is
generally accepted as reliable by the scientific

1 community. The critical question facing you is
whether a general scientific consensus has been
achieved. It is not your responsibility to decide
which party to a scientific dispute is correct and
5 which is incorrect. You need only decide whether
scientists generally agree or disagree concerning
the reliability of a new technique. If the Crown did
not prove that there is general agreement by the
scientific community in their relevant fields, that
10 the novel techniques are reliable, then the burden
has not been met and the novel scientific evidence
must not be given any weight. You should not be
asked to resolve questions of reliability that the
scientific community is unable to answer.

15 Mr. Allman may argue that a reasonable reliability
test requires only evidence that in fact the novel
technique is reliable without the need for general
acceptance by the scientific community, that it is not
necessary for the Crown to show that there is no
20 disagreement as to reliability within the scientific
community. However, I would argue that if there is
evidence of disagreement within the scientific
community as to the reliability of the novel technique
then the burden on the Crown is to prove that the
25 disagreement is not substantial, not founded, not
warranted, and irrelevant. You must look at the
degree of resistance by the scientific community be-
fore accepting the novel technique as reliable. If
30 evidence shows that concerns by reputable scientists
are valid and that the issues are yet unresolved by
the scientific community the Crown would be hard-

1 pressed to ask you to resolve those issues and declare
the novel technique as proven to be reliable or valid.
If the R.C.M.P.'s predicate experiments would not be
generally accepted as reliable, reproducible or valid
5 then the DNA evidence should not be given any weight.
Reproducibility in particular is a very discreet
issue. Similarly, if the R.C.M.P.'s methods for
calculating a statistical probability is not generally
accepted as reliable in the population geneticists'
10 community then you should not be asked to resolve
that controversy. After hearing such a large number
the average person will find it difficult to be in-
terested or even patient in trying to decipher and
analyze such evidence. It is then difficult to be
15 able to pay attention to questions about band
shifting, matches, substructure and population
genetics theory. It is easy to jump on the number
and not have to grapple with the theories and what
they're actually saying.

20 Media attention given to the DNA testing, re-
gardless of type, has given it an aura of infallibility
such that jurors are unlikely to suspend belief in
defective results even when technical errors in the
testing procedure leading to unreliable results are
25 pointed out. Thus such evidence is likely to be far
more prejudicial than probative unless kept in a
proper context. Consequently, to ensure that an
accused will not be unfairly prejudiced you must be
convinced of the reliability of the evidence to a
30 very high degree of certainty. If you are unsure
whether the R.C.M.P.'s methods are generally accepted

1 as reliable in a scientific community or if that the
issues are being debated by the scientific community
and that more research is necessary before reliability
decisions can be made, or if you find that more time
5 is needed for the scientific community to examine the
R.C.M.P. studies and data, the evidence cannot be
given any weight.

The Crown bears the burden of proving that the
DNA evidence is reliable. That burden ought to in-
10 crease as the potential prejudice from the scientific
evidence increases. In this case, given the enhanced
aura of special reliability that surrounds DNA
fingerprinting, the burden must be a heavy one re-
quiring a very high degree of certainty. Since DNA
15 evidence has the apparent power to prove essential
elements of a case, and in this particular case
identity, beyond a reasonable doubt, it follows that
the burden on the proponent of such evidence to prove
that the method is generally accepted as reliable by
20 the scientific community should approach beyond a
reasonable doubt or certainly be some unit of measure-
ment greater than a proponderance of the evidence.
You need only conduct a fair overview of the subject
sufficient to disclose whether scientists significant
25 either in number or expertise publicly oppose the
technique as reliable. The needed consensus is that
of scientists, not courts. As you will recall I put
that question to Doctor Carmody, would it be fair for
someone like myself to settle the dispute between
30 scientists and his answer was something like definitely
not. So how can the Crown ask these scientists to

1 come to court and ask you to resolve that.

Expert testimony in other cases support the claim that there is general disagreement among scientists. How the Crown can hope to prove that
5 R.C.M.P.'s novel technique as reasonably reliable when there exists general disagreement within the scientific community is beyond comprehension or at least beyond common sense. In the face of a weak effort by the Crown to show scientific acceptance
10 or reliability it is unmistakably clear that the R.C.M.P.'s binning and calculation of frequencies have not been accepted by the scientific community and is not considered as reliable by the only people qualified to make that decision.

15 The statistics are based on assumptions which have not been verified. Tests for independence which could be run have not been run. I believe Doctor Carmody says he hopes to have one completed within
20 a year. Additional studies which could answer troubling questions have not been done or completed and the procedures themselves, having just been published, have not undergone sufficient scientific scrutiny in view of all the opposition to the claims
25 made by the R.C.M.P. All of this argues powerfully against the Crown's contention that these procedures are reliable and acceptable.

30 The Office of Technology Assessment Report does little to salvage the R.C.M.P.'s method for calculating frequencies on the probability of a match. The report acknowledges the extensive debate amongst scientists on the fundamental questions concerning population genetics. Of far greater concern, because it will be

1 a statement of scientists rather than of government,
is the soon to be completed findings of the forensic
DNA analysis committee on the National Academy of
Science. As you recall, Doctor Shields testified
5 that there is a preliminary report out by the
National Academy of Science which has been put into
evidence in other criminal cases and at least although
it's a preliminary finding and possibly they could
change their mind or revise it, the consensus is from
10 the National Academy of Sciences that it's not proper
to use the Hardy-Weinberg formula and the product
rule to calculate the frequencies; that what the
forensic laboratories should be doing until Hardy-
Weinberg is proven and until linkage equilibrium is
15 proven is simply to use the size of the data base.
If your data base is 700 people and you can't find a
match within those 700 people then the chances would
be 1 in 700, similar to that position that the hair
and fiber analysts are taking with theirs. They had
20 a data base sample of 200. They generated frequencies
in the 1980s and I believe even back as far as the
1970s that using the same procedures for DNA that it
was 1 in 4500. They are backtracking from that now.
The evidence was that well there's a lot of contro-
25 versy about whether or not it's proper to do that.
The National Academy of Sciences is simply saying the
same thing. Backtrack and use your data base, your
empirical science, because otherwise it's not reliable
until you prove the facts on which you base your
30 opinion.

1 The R.C.M.P. has not done adequate research on
the degree of measurement error in its test to allow
a likelihood ratio to be computed. Crown witnesses
admit that an upper confidence interval ought to be
5 applied. Unfortunately, for matters of scientific
certainty or probability it is unknown whether it is
proper to use a 95% upper confidence or a 99% or
something in between as an upper confidence interval.
However, an upper confidence interval does not
10 correct for substructure. It is not valid to use the
Hardy-Weinberg formula or the product rule unless
the tests are run on a homogenous population, a
population which mates randomly and is well mixed.
Evidence of substructure is evidence that populations
15 do not mate randomly. When genetically different
subgroups are pooled together in a sample data base
one finds a greater number of homozygotes than would
be expected under Hardy-Weinberg assumption. As you
recall, in my cross-examining of the Crown's expert
20 witnesses that in some of the loci when they checked
for homozygotes the expected rate would be about 10%
and in two of the bins they were 67 and 68%, and
there was only one of them that met the expected.

25 Substructure can also be proven to exist if one
finds a statistical significant difference in bin
frequencies of two populations so tested. The
R.C.M.P.'s approach to computing statistics is
neither valid nor accepted by the scientific
community. The most serious problem is that the
30 R.C.M.P.'s approach depends on the assumption that
the Caucasian population has no substructure and is

1 randomly mating, an assumption proven as blatantly
wrong. It is a universally accepted principle that
the existence of undetected population structure
invalidates the use of the Hardy-Weinberg formula and
5 the use of the product rule when computing the
frequencies of genetic characteristics. Examples
given in court illustrate that computations relying
on assumptions lead to serious errors where there is
undetected population structuring. Simply put, if
10 there is structure among Caucasians then the R.C.M.P.'s
method of calculating statistics is totally erroneous.
The Crown has failed to prove that the R.C.M.P.'s
computations are not erroneous. The Crown has not
15 proven that the degree of substructure is not greater
than that revealed by the Defence. Since the degree
of substructure revealed by the Defence is statistically
significant the defence has shown there is at least
substructure to a degree of statistical significance
20 which invalidates the use of the Hardy-Weinberg
formula and the product rule. The R.C.M.P.'s approach
to computing the frequency of the DNA prints is
seriously flawed, not only because of its failure to
evaluate the degree of substructure but also because
25 there is no attempt to validate the statistical
independence on which the product rule depends. To
use the product rule as the R.C.M.P. does without
verifying statistical independence is not acceptable
by the scientific community.

30 The Crown is, again, relying on another assumption
without justification, a method which claims that
North American whites constitute a single homogenous

1 reference population to which all forensic cases can
be compared, is as a matter of science invalid and
unreliable. Not only is the reference population
unreliable for estimating an allele's frequency at a
5 single locus, the multiplication method across loci
is equally invalid. You are merely multiplying your
mistakes. The fact that frequencies have been cal-
culated for two subgroups, the FBI and the R.C.M.P.
data base, that does not justify the use of either
10 one or an average of the two. This evidence merely
tells scientists that substructure definitely exists
within Caucasians. It does not give any indication
as to what degree substructure exists or as to how
many different subgroups exist. Substructure is a
15 quantitative issue. Since we do not know how much
substructure there is and we do not know by what
factor there may be an overestimate or an under-
estimate it is impossible to render a scientific
opinion on whether some particular methods on
20 correcting bins did or did not compensate for some-
thing which we don't know. Without the numbers which
express the extent of genetic diversity due to sub-
structure, as a matter of common sense much less
reasonable scientific certainty, no one can tell how
25 much of a number is needed to compensate. Again, you
can't put a number on that which you have not in-
vestigated. It is uncalculable.

The issue here is not quantitative disagreement
30 between experts on the extent to which the R.C.M.P.'s
estimate is wrong. Rather, the issue is fundamentally
one of foundation and validity. There exists no

1 underlying data nor a procedure for which an expert
can in a scientifically acceptable fashion offer an
opinion as to how far off the estimate is. The
R.C.M.P.'s estimate is an unacceptable estimate with
5 or without an upper confidence interval. When we
don't know what the right answer is and we don't know
how far we are from it due to substructure, then any
number is unacceptable scientifically. It's an un-
acceptable procedure in science to float numbers for
10 which there is such uncertainty. If the procedure
itself is scientifically unacceptable as opposed to
an erroneous result arrived at using an acceptable
procedure, then the threshold test for reliability
has plainly not been met. The issue here is not the
15 numbers but rather first principles.

The testimony is from even the Crown's witnesses
they admit that in theory to be able to use the
Hardy-Weinberg formula and the product rule to
20 generate these numbers you must have Hardy-Weinberg
equilibrium, you must have linkage equilibrium, and
there cannot be any substructure to a significant
degree. The Crown has proved that there is sub-
structure to a significant degree - or the Defence
25 has proved there's substructure to a significant
degree. The Crown admits that they have not proved
Hardy-Weinberg. The Crown also admits that they have
not proved linkage equilibrium. Doctor Carmody hopes
to have those tests in about a year's time.

30 Reproducibility is a must for scientific
evidence to be accepted by the scientific community
and the courts. In view of the FBI's problems in

1 reproducibility of its data base the Crown could
hardly expect you to accept the bin frequencies
proclaimed by the R.C.M.P. after only one attempt
and no attempt thereafter to verify or validate
5 its accuracy. The FBI's test and retest data pro-
vided an excellent representation of its laboratory's
poor quality control and absence of reproducibility.
The FBI's tests and retests were performed on the
same Caucasian data base that it relied upon to
10 calculate frequencies in case work. If their
frequencies are unreliable then so too are the
ultimate probabilities being offered in cases. The
R.C.M.P. has not offered any proof of reproducibility
of bin frequencies. In fact evidence showed that
15 the R.C.M.P. could not at times match Mr. Legere's
own samples. The Accused's DNA, as with FBI agents,
would fit into different bins on different tests.
I believe Doctor Waye also admitted that if they run
his test on different days he might be fitted into
20 different bins simply because it could be out by
2%. On one test Mr. Legere's was estimated as being
out by 5.5%.

Given the resolution limitations of its gel
25 electrophoresis and the highly polymorphic nature of
the VNTRs they employ, the R.C.M.P. system cannot
distinguish where one allele begins and another ends.
Unlike a discreet allele system a quasi-continuous
allele system cannot in theory or in practice declare
30 definitively that a known and unknown sample share
the same discreet allele at a locus that is a real
match, nor can a quasi-continuous system identify a

1 known and unknown sample as being the same length.

The evidence is clear that in principle it is improper to use the Hardy-Weinberg formula and product rule. It is improper to assume the conservative
5 measures or correction factors provided by the R.C.M.P. validate the use of a theory or proposition which is not supported by its first principles. The product rule may only be applied where certain foundational showings are made. The product rule cannot be
10 applied to identifying characteristics unless a valid foundation is first laid for the probability assigned to each of the characteristics and unless the mutual independence of each of the characteristics is established. And here I would like to remind you
15 when they say the mutual independence of each characteristic is established that's for linkage equilibrium as the example used in that there is a correlation between blond hair and blue eyes. You would not expect to be able to generate the
20 probability of somebody having blond hair and blue eyes by going out in the public and taking an estimate as to how many people - or a poll as to how many people have blond hair, how many people have blue
25 eyes, and then multiply the two to find out whether or not you are going to get blond hair and blue eyes, and that's what linkage disequilibrium is all about. Blond hair and blue eyes is a combination of disequilibrium. Scientists have not proven that
30 there is no such connection between RFLPs in different loci.

1 The Crown has not made the necessary showing
that the VNTR markers used by the R.C.M.P. are
statistically independent. The R.C.M.P. assume these
markers are independent because they assume that the
5 Caucasian population is homogenous and randomly
mixing and is therefore in Hardy-Weinberg equilibrium
and linkage equilibrium, but these assumptions are not
generally accepted by the scientific community and
have not even been tested in a scientifically
10 appropriate manner. The Crown's position is that it
is asking you to rely on all those assumptions because
it would be too technically demanding upon them if it
had to be proven. In view of all the controversy the
Defence's position is, prove it.

15 In one respect DNA evidence is no different from
any other proffer of statistical evidence. To satisfy
the threshold of reliability the proponent must pre-
sent a scientifically valid foundation for the
assertion that the factors to be multiplied are in-
20 dependent. If a scientifically sound, factual
foundation for independence is not established, as it
has not been in this case, then the statistical
evidence is unreliable. Use of the product rule is
invalid and the ensuing probabilities are meaningless.
25 Not only does the R.C.M.P. use procedures which the
scientific community does not accept, the Crown has
clearly failed to meet the required showing that the
R.C.M.P.'s statistical procedures are valid. One
cannot totally ignore the valid criticism of the
30 scientific community of population geneticists that
a laboratory cannot compensate for unquantified sub-

1 structuring by taking a conservative measure in the
calculation of initial alleles and genotype frequencies.
One pertains to correlation; the other pertains to
your estimate of individual facts and you can't
5 penalize yourself on bin frequencies to make up for
a problem of first principles.

I believe Doctor Wayne in his testimony testified
that anybody with eyes can interpret these autorads
and draw a conclusion. That when it comes to
10 measurement imprecision you always rely on the eye.
You don't rely on the computer, you don't rely on
measurements. There is a lot of technology that has
gone into these tests aside from simply computer
measurements. This is considered to be circumstantial
15 evidence. It's not considered to be evidence like
personal identification, eye evidence. From the
Crown's experts they rely mostly on their eyesight.
The test done on Mr. Legere and the evidence has been
a single test. Can't be reproduced. There's not
20 enough evidence left. So we can't do it again. We
can't see if there's any mistakes. So basically what
the Crown is asking you is to rely on a single test
which is less reliable than the human eye.

25 Maybe the Judge will instruct you on the law as
to the weight to be placed on single eye witness
identification in criminal cases. I expect identifica-
tion of single eye witnesses, unless there is some
valid reason to show that the person is absolutely
30 right because for potential error, does not deserve
much weight either, so the Crown in this case on the
DNA evidence is asking you to place more weight on

1 this scientific evidence, on circumstantial evidence,
then it would be asking you to rely on direct
evidence, eye witness identification.

5 Before I let you go and we take our break I
would just like to remind you that in this case I
ask you to be objective and in this trial it's going
to be very easy to be objective. I ask you not to
put Allan Legere on trial but to put the evidence on
trial, and in here it's not Allan Legere on trial,
10 DNA evidence is on trial and under those aspects I
expect that you can be completely objective.

THE COURT: We will take a 15 or 20 minute break. We will
try to keep it as limited as possible because Mr.
Furlotte undoubtedly has more ground to cover and we
15 want to try to get on to Mr. Allman this afternoon.
(Jury excused.)

MR. ALLMAN: Before we do, My Lord, I'm sorry, I have a
couple of matters I wanted to address to you. Could
20 you stay in a moment so I can do it. I know one
never interrupts counsel during his closing address
and I refrained from interrupting during counsel's
closing address. There was no many things I could
object to and I want to object to some of them now
25 just so that Your Lordship doesn't forget them later.
I object extremely, strongly, to Mr. Furlotte
directing the jury on the law regarding scientific
acceptability and general acceptability. I thought
we had a voir dire about that and I thought Your
30 Lordship ruled on it. He was usurping the Court's
function in giving legal directions. He also gave

1 legal directions on expert testimony, on what it
required. I don't think he should have done that.
He made a factual reference to the contents of a
report, the N.A.S. report, which is not in evidence
5 and the contents of that report in evidence, and he
testified as to that and we can't cross-examine him
and he was absolutely wrong to do so. He testified
as to results in other cases, we can't cross-examine
him, and he was absolutely wrong to do that. And he
10 said that DNA evidence is on trial, not Allan Legere,
and I submit that's also factually wrong.

I would like Your Lordship to bear those things
in mind and if I am right in saying that the things
he said are wrong I would like Your Lordship to so
15 direct the jury.

THE COURT: All right, I will take that into consideration.

(RECESS - 11:50 - 12:15 P.M.)

(Accused viewing proceedings from cell block.)

20 (Jury called, all present.)

MR. FURLOTTE: Ladies and gentlemen, in relation to the
Daughney case I just refer you to the evidence of
some of the witnesses in that case, and Corporal Ron
Godin on October 14th took a video of the scene of
25 the crime. If you will recall the video, or you will
be able to see the video again while you are in the
jury room, there was blood at the bottom of the steps
on the ground leading up to the back door. There was
five steps leading up to the landing and there was
30 blood on one of the steps and some blood on the ground.
There was an earring recovered in the gravel driveway
where an "X" is marked. I have my copy here but as

1 you will recall this was the diagram of the house and
the driveway and there was an earring here, and later
on there was another earring found close to that one,
and those were found in a pool of blood. Also in the
5 video you will recollect that in the same general area
where the earrings and the pool of blood was found
there was a broken eye lense. Also in the video, as
Corporal Godin searched - panned through the house
you will see a pair of glasses on a coffee table in-
10 side and in P-33, photograph number 3, you will also
see a pair of glasses in Donna Daughney's bedroom on
one of the bureaus. As I mentioned earlier, it's not
just the pieces of the puzzle that the Crown has
placed before you but there's probably pieces that
15 are missing, and the pieces that are missing is who
owns the broken eye glasses out in the driveway.
There's no evidence before you as to what that
prescription is, whether it's possibly one of the
Daughney girls, or possibly belonging to the assailant
20 who attacked which would appear to be Linda Daughney
out in the driveway because it's her jewelry that's
out there, her earrings. As you will recall, Mr.
Legere had already lost his glasses. Didn't have
any. Later went to Montreal to find some. Had
25 between June 1st and this was October 14th - had Mr.
Legere for some reason went out and got new glasses
in between that time and then this could be, again,
another pair of glasses that he may have lost or
30 broken? What would be the probabilities that the
Crown would not go out and get the prescription
checked and bring that evidence before you? I don't
think we need experts to determine that.

1 The evidence also shows that there was a hundred
and eighty dollars in quarters in the kitchen cup-
board. There was 18 rolls of quarter, \$10.00 each.
And the video shows a jewelry box and a purse at the top
5 of the stairs. There's no evidence before this court
what was in that jewelry box, whether there was any
money left in the purse.

 The evidence of Seargeant Dan Chiasson who took
photographs, P-33, the photographs in P-33, picture
10 number 4 shows a globe on the floor of the veranda,
and a closer look upon those pictures you will find
it's not just the globe but it's the whole fixture
looking to likely be replacing that back fixture.
There was evidence, and the Crown has been suggesting
15 through the trial, that it's similar fact evidence as
to a light being unscrewed at Father Smith's residence.
That likely the culprit was running around unscrewing
light bulbs before breaking into the houses. I don't
think it's all that an important piece of evidence
20 but the evidence would appear to be that at the
Daughneys - and it's for you to find - that there was
no evidence of the light being on at the Daughney
residence during any time that evening, not being on
and then being later turned out around 11 o'clock or
25 so.

 Photographs 16 and 17 in P-33 shows the damaged
back door, the latch being broken off and, again,
comparing that to the Smith residence which had a
30 similar latch broken off and I believe similarly the
catch on the inside of the door frame jammed in.

1 But I believe, and I can't say for certain, but I
believe it was Sergeant Dan Chiasson that in the Smith
case on cross-examination testified that that was
common for break and enters, that type of damage to
5 doors, so that's not something unique to the person
who would have broken into the Daughney residence and
the Smith residence.

Also in redirect from Sergeant Dan Chiasson there
was part of a print was found on one of the boxes out-
10 side in the Daughney yard and that print was from a
running shoe, and as you note the evidence was from a
running shoe and not a boot. This would be in
October 14th which the Crown's expert witnesses put
Legere at least wearing boots to a significant degree
15 and it would probably suggest that maybe that time of
the year Mr. Legere was wearing boots and not running
shoes although he had running shoes the day that he
escaped. There's at least two pairs of boots that
they contend Mr. Legere had been wearing for a long
20 period of time, or at least long enough to leave the
imprints in them. And the Greb boots were well worn,
so to speak, and I believe a witness testified they
would be ready to be thrown out they had been worn
25 so much.

Testimony of Reginald Falconer was that he
spotted a body on the floor at the foot of the bed
which from the evidence you will find I believe that
it was Linda's body in Donna's bedroom at the foot of
30 Donna's bed, and the fire that was in the closet in
Donna's bedroom had either went out or was put out.
There was no way of telling.

1 Testimony of Constable Pierre LeFebvre was that
he attended the body in Halifax; that he seized hair
and fibers from the bodies. Testimony from Gary
Verrett on cross-examination indicated that the hairs
5 found at the Daughney residence and off the bodies
was similar to hair of Allan Legere. You might note
that the Crown did not offer this as evidence. I got
this out in cross-examination. So the question is if
there's evidence that points towards Allan Legere like
10 some of their other evidence why did they not want it
in evidence? Your guess would be as good as anybody's.

 Constable Pierre LeFebvre testified on cross-
examination that he did not know what happened to the
rings Linda had on at the time of the autopsy. When
15 Doctor MacKay performed the autopsy on Linda Daughney
she had her rings on her fingers and he in his
testimony he described the rings and how many there
were because he had them in his notes, but did not
have in his notes as to whether or not he took jewelry
20 off of Donna Daughney but he admitted that it was
possible he did take jewelry off of Donna Daughney
and didn't put it in his notes.

 Doctor John MacKay testified the death of Donna,
25 the cause of death was shock and asphyxia as a result
of a beating. There was scratches on her throat which
indicated possibly the assailant was not wearing
gloves. Doctor MacKay testified that the stab wounds
were intended to intimidate and not to kill. The
30 death of Linda was caused by a combination of a
beating and the fire, or the smoke. Again with Linda
it may be questionable, and from the evidence all any-

1 body can do is speculate as to what may have happened
there that evening. Linda could have been beaten in
the house along with Donna. There was fires set in
her bedroom as well as Donna's bedroom. She could have
5 went to escape and a fight, which appears something
happened out in the yard, that could have happened
or occurred when she was coming home, that could have
occurred after the fire was lit and she went to
escape. It is not known whether she was in the house
10 at all times after the fire was started or she had
left the house and went back in to rescue her sister.
Nobody said your job was going to be easy.

The testimony of Sandy Lungair, the serologist,
she had found the swab of vaginal origin from Donna
15 Daughney had no seminal fluid present and that's what
I mentioned last in the autorad where there should
not have been any seminal fluid or male DNA in the
vaginal swab of Donna Daughney but nevertheless when
they run DNA on it somehow there was male DNA in
20 there. Now there's no way of knowing I suppose
whether it was seminal fluid or what it was, only the
fact that it was male DNA, and the question is how did
it get there. There was two swabs of vaginal origin
from Linda Daughney and also there was no seminal
25 fluid on those. There was seminal fluid found on the
body swab of Donna Daughney and on the body swab of
Linda Daughney, then it was shipped to Ottawa for
DNA analysis.

30 Sandra Lungair testified that there was 23
suspects. If you will recall Sergeant Dan Chiasson's
testimony when I asked him, and he's a fingerprint

1 expert, that when they have suspects and they have
fingerprint evidence do they stop running the finger-
print evidence on the first suspect that it shows it's
their fingerprint or do they run the fingerprints
5 through all the suspects and he said no, it's only
good police work I believe to run the fingerprint and
check all the suspects with that print. You don't
stop at your first conclusion.

The only evidence before you is that there were
10 seven suspects checked for DNA analysis. Why not the
other 16 suspects who were not checked for DNA?

Gerald Robichaud who was in toxicology at the
forensic laboratory in Sackville testified that the
carbon monoxide for Linda was at a 23% saturation
15 level which could cause nausea, weakness and dis-
orientation. Now, it may be possible that Linda was
outside, went back in, got nausea from the smoke
attempting to save her sister, vomited and passed out.
And, again, it's a matter of speculation.

20 The testimony of Gary Verrett who has testified
that now doing hair and fiber tests there's a screening
tool for checking out hairs and he stated that the
data has probabilities of 1 in 4500 dated back to 1970.
I believe Doctor Carmody testified that there was
25 another report done by Gaudet, head hair and fiber
expert for the R.C.M.P., was again put out in the
1980s which he came to the same conclusion. He
personally stated that he - out of 200 samples he
found that it was an exclusion of 1 in 199. He would
30 not go beyond the size of his data base.

1 Faye Hachey who was a friend of Linda, close
friend, who they were at Tim Horton's that evening
and they had left Tim Horton's around 11 P.M., she
stated that Linda was wearing a jean jacket, jeans
5 and a burgundy sweater, glasses and no purse. She
always wore her earrings and rings. Something you
would want to look at in the evidence of Faye Hachey
is that she was wearing a burgundy sweater. If you
will check exhibit 35 you will find out that Linda
10 had a green type of sweater or pullover on. Again,
you will have to decide is that an indication that
she was undressed, started getting dressed to go out.

The fire marshal, Melvin Vincent, stated that
15 the fire in Linda's room had been burning for 1 to
2 hours and the fire in Donna's room had only been
burning for 10 to 15 minutes which would be consistent
with maybe Linda putting the fire out, going into her
room, or from outside going in there to rescue her
20 sister.

There was evidence from Constable Michel
Fournier who was the police artist who does the
composite drawings of sketches of suspects from the
eye identification of witnesses. He said the
25 technique is used as an identification tool. It's
used as an elimination or positive identification.
So that's either to eliminate suspects or as positive
identification. He prepared the P-54 which is this
sketch, a description given to him by William Skidd.
30 William Skidd testified that on the night of October
29th, morning of October 30th, and he also testified
that it was the night that the clock was turned back,
the other ones who testified that the night the clock

1 turned back was on the 28th, he says it's the 29th
so it's probably the best reference point but that's,
again, for you to decide, would be the night the clock
was turned back, it's something you might remember
5 rather than the actual date, it was after 12 A.M. he
saw an individual carrying two rifles, one in each
hand, and this is the individual that he saw carrying
two rifles, one in each hand.

Now, you may recall from the testimony of Antoine
10 Guitard who was staying at the Morada Hotel on a
hunting trip had two rifles stolen. The rifle cases
were left behind and two rifles were stolen that
evening. So it's for you to decide whether or not,
or if it's safe to conclude that this individual
15 stole the two rifles from Antoine Guitard. He was
described as being - having a thin narrow face and
patches of a beard. He had freckles or pine needles
or dirt on his face. He was around six feet tall;
he had brownish hair; doesn't know what he had on his
20 head, could be a liner out of a hard hat; in his
twenties, he thought around 25 years old; thin like
he hadn't filled out yet. He had a long thin nose.
And he prepared that composite drawing with the help
of Constable Michel Fournier.
25

Mark Manderson testified that on the morning of
October 14th, this would have been some two weeks
before William Skidd had seen this fellow with the
two rifles, and the morning of the Daughney incident,
30 that he saw a suspicious male outside on the street
near close to the Daughney residence. The first
thing that he noticed was the hat. It was like a

1 pilot's hat. The only thing sure, he had a prominent
nose. It was large. I believe on cross-examination
of Mark Manderson he had described it as a hawk-like
nose. On direct testimony he was shown P-54, the
5 composite given by William Skidd, and he stated that
he had saw that approximately a year to a year and a
half ago and that he really couldn't make any com-
parison. Other than the hat, the hat liner was
similar, he couldn't say anything about the color of
10 his hair. On cross he admitted that in his statement
he had been ready to come to court and testify that
it was similar to the composite drawing prepared by
William Skidd but by the time court rolled around he
wasn't all that sure.

15 What's important, I would suspect, is that the
evidence of John MacLean, which again is October 28th
1989, again he states that it's the night the clock
was set back, that around 12:05 the old time he saw
someone go by his house, out the window. He went
20 out the back door and went around the front and the
man was standing at the front door. He turned around
and pointed a gun at him and he said go back in the
house and go to sleep. Later on he found the windows
of his car and truck had been broken out. He
25 described the guy as - the person as being dark
complexion, dark hair, and a packsack on his back.
The guy was slim, not overweight. Medium length hair,
no beard or mustache. He also testified on direct
30 examination that it compared very close to the photo
on the book entitled "Terror in New Brunswick" (sic)
which has Allan Legere's picture on the front. On

1 cross-examination I questioned him as to whether or
not he would have been influenced by the book, but
two important pieces is that he described this person
as being similar to the person on the cover of the
5 book. He did not mention that the person was carrying
two rifles, one rifle or a gun. I don't recall
whether he said it was a rifle or a gun. There was
no mention of him wearing a hat or a hard hat liner.
He was shown P-54 and he said there was not much
10 resemblance to the person he saw without his hat.

So you will have to decide whether the evidence
of John MacLean has Allan Legere outside his door, or
you will have to decide whether or not the evidence
of William Skidd has Allan Legere outside his door.
15 It would appear from the evidence that they both can't
be right because they're different descriptions. Of
course it could be possible that Allan Legere was not
outside either man's door. It would be very sketchy
evidence to rely on eye witness evidence. As a
20 matter of fact I believe William Skidd testified that
he did not recognize the person being outside his
door as Allan Legere. So if this person outside
William Skidd's residence was carrying the two rifles
stolen from Antoine Guitard, and the evidence is that
25 Allan Legere had possession of one of those rifles
upon his arrest, so if you accept that this person
stole the rifles you also have to accept that somebody
else out there was stealing things for Allan Legere,
30 or at least stealing things and somehow Allan Legere
ended up with them later.

1 The testimony of Corporal Robert Bruce and
Corporal Gaetan Tomassin, and I believe Corporal
Gaetan Tomassin was the dog man from Moncton I believe
with the - I'm not sure of his dog's name, but anyway
5 at around 11 P.M., and I believe that was the same
evening, October 28th, they attended the residence of
Betty Flanagan at 92 Henderson Street. I believe
Corporal Tomassin had the dog on a track and he lost
it once he got out to the street. They later attended
10 the residence of John MacLean who stated that the
person outside his residence looked something like the
cover of the guy in the book. Corporal Tomassin's
dog immediately picked - and this was at 12:45 at the
residence of John MacLean. John MacLean's testimony
15 was that he saw the person at 12:05 so there would be
some 40 minutes from the time that he saw this
individual until the time the police arrived.
Corporal Tomassin testified that his dog immediately
picked up a scent from outside the residence of John
20 MacLean and started tracking and they started running.
The evidence, as I recall, is that Corporal Tomassin
met up with a man somewhere down on the beach, the
river bank, and it appeared to be a rifle in the man's
left hand. Again, Corporal Tomassin mentions one
25 rifle and not two rifles. The person appeared to be
about six foot, a lumber jacket, lumberjack jacket,
and it was green and black. The man appeared to have
work boots on. There was prints left in the wet sand
appeared to be boot prints from work boots. Again,
30 what we do not have in evidence if that was Allan
Legere that Corporal Tomassin was chasing, we have no

1 evidence as to the type of prints left in the sand.
Were those prints the same as the Greb boots found
at the motel in Bathurst or were they the same as
the gorilla boots found on Allan Legere's feet at the
5 time of his arrest, or were they totally different
all together? Again, this non-evidence is not much
help but it does leave questions unanswered.

Corporal Tomassin testified that the man possibly
had a beard because he was dark around the face area.
10 The suspect said "Don't come near me or I'll fuckin'
kill you.". The tone level was the same. He didn't
appear to be out of breath. So would it be the same
individual who he was tracking from Mr. MacLean's
residence at that distance away or was it another
15 different individual that he just happened to come
across through the night? Of course there was a 45
minute break from the time - or 40 minute break from
the time the individual left Mr. MacLean's residence
until the police arrived so whoever it was would have
20 a 40 minute start and be that much further away. So
it might be that this individual was just strolling
around by the time Corporal Tomassin caught up to him
and therefore would not necessarily have to be out of
breath. Corporal Tomassin later walked the area and
25 it appeared to be 4 to 5 kilometers. So there's two
questions. It could be that this person was just
strolling around which allowed Corporal Tomassin to
catch up to him or it might not be the same guy that
Corporal Tomassin was chasing or tracking from the
30 residence of Mr. MacLean.

1 Constable Michael Kerr during that same evening,
he was one of the four individuals who was tracking
this individual up around the track area when shots
were fired, he had found a knapsack with 18 bottles
5 of beer along the track area and that they were full
and unbroken. There is no testimony that any one of
the officers saw the individual they were chasing
drop this knapsack full of beer. Of course the
question remains if Sergeant Tomassin was chasing
10 this person for 4 or 5 kilometers on the dead heat
and this person had 18 pints of beer on his back he
would have to be in extremely good shape. So what is
the probabilities of it being the same person?

 The evidence of the Williams', Joseph Wayne
15 Williams and Joseph Roderick Williams, these were
the witnesses that became aware of during the trial
and between them, along with Constable Michel Fournier,
compiled this composite drawing as a person they saw
on the corner of the morning of October 14th. The
20 first witness, Joseph Wayne Williams, spotted this
individual at 5:10 A.M. The other individual,
Joseph Roderick Williams, spotted the individual at
5:30 A.M. standing by a railroad track. The Crown
may or may not be suggesting that this is Allan
25 Legere. Everybody's opinion, I suppose, deserves
the same weight. Anybody's guess is good.

 Joseph Wayne Williams testified that when he
spotted this individual he was driving 10 to 15 miles
30 per hour and he looked out the side window and the
headlights at that point had widened out so that he
could see the individual. The person appeared to be

1 five foot nine, 40 to 45 years old, weighed 170
pounds. On the other hand Roderick Williams, when
he saw the individual at 5:30 A.M. on October 14th,
1989 he described the individual as being five foot
5 eight to five foot nine, white plaid shirt, 35 to 40
years old, and weighed about 170 pounds.

Constable Michel Fournier testified that he did
both composite drawings, not only the one by William
Skidd but he also did the composite drawing by the
10 Williams and he did the composite drawing by Sean
Branch which is exhibit P-91. The evidence of at
least one of the Williams testified that the person
they saw was similar to - aside from the composite
drawing they compiled was also similar to - the person
15 they saw was also similar to exhibit P-91, the
composite drawing of Sean Branch. Constable Michel
Fournier stated that he found the composite drawings
were similar and that he turned these over to Sergeant
Poissonier in 1989. Aside from P-91 by Sean Branch
20 which, as you will recall, was a suspect in the
Russell case in Newcastle, Constable Fournier also
did another composite drawing of the same assailant
which was done by Mr. Russell. So he had done
composite drawings from two different eye witnesses
25 to the Russell incident. If these composite drawings
and I should say in particular P-91, if that at all
resembles Mr. Legere, why weren't Sean Branch and Mr.
Russell called as witnesses? Other witnesses were
called to try to prove Allan Legere responsible for
30 other unrelated incidents in the Miramichi area.

1 There was also the knapsack of Mr. Perdue.
Mr. Perdue was called to identify the knapsack as
his. That would be the one that had the beer found
in it.

5 P-119 was a jacket owned by Jerry Haddow which
he was brought into court to testify that Allan Legere
was wearing or had possession of his jacket at the
time of Allan Legere's arrest.

10 The gorilla boots, Wilfred Dyck was brought in
to testify that the boots Allan Legere had on at the
time of his arrest were his.

John MacLean was brought in to testify that the
person he saw was probably Allan Legere who broke into
his car and truck.

15 Hiroshishi Takikashi was brought in to testify
that P-118, the AIWA radio, was his, which was found
on Allan Legere at the time of his arrest.

20 William Wilson was brought in to testify that
the watch, exhibit item P-116, was his, which was
found in the possession of Allan Legere at the time
of his arrest.

25 Why are those witnesses important? To show that
Allan Legere was committing break and enters. Or at
least try to show that Allan Legere was committing
break and enters in the Newcastle area. But the
evidence of Sean Branch and Mr. Russell would not be.

30 As you will recall, the evidence of Sergeant
Gary Verrett on cross-examination testified that at
the Russell residence at the time of the assault
there was a baseball type cap left by the assailant
of which a number of hairs, and I believe it was 8
hairs, were found in the baseball cap and there was
one hair found on the housecoat of Mrs. Russell after

1 she had been beaten and they were similar to hair -
consistent with hair of Allan Legere. It would
appear I suppose therefore from the evidence that
this individual in P-91 is likely to have hair con-
5 sistent with Allan Legere. There's no way we can
absolutely prove that because we don't have that
individual, but when you are looking at other
alternatives and possibilities and as to why the
evidence in the Daughney case and this individual
10 seen outside the Daughney residence in P-92 resembles
very strongly this individual right down to the same
plaid shirt who was seen at the Russell incident.
Hair similar in Russell, similar to Allan Legere;
hair similar at Daughneys' to Allan Legere.

15 Allan Legere may not be the common thread.
P-92 may be the common thread running through the
hairs left at the scene at Daughneys and the hairs
left at the scene of Russells. As you will recall,
the Crown did not call evidence to show that the
20 hair at Daughneys' was similar to Allan Legere's.
I brought that out on cross-examination. And just to
jump ahead a bit, the same as the hair found similar
to Allan Legere's at Father Smith's which was proven
by DNA evidence at least one of the hairs was not
25 Allan Legere's, proven by DNA. How important is
this? That is for you to decide.

30 There were a number of individuals, as you will
recall, who identified the jewelry - some of the
jewelry belonging to Donna Daughney, and I believe
they were all referring to the red ruby ring which
they were certain belonged to Donna Daughney and there
was some probables of the diamond cluster ring

1 belonging to Donna but they had seen a lot like that
ring therefore they couldn't say with all certainty
it was Donna's. One similar to it but since they had
seen a lot like it they couldn't be certain. There
5 was also some of those witnesses testified that some
of the rings found - or some of the rings that were
seized from the pawn shop in Montreal were similar to
Linda's rings, but yet were they Linda's rings or
were they likely mistaken that they were Linda's
10 rings. As you will recall, Linda had quite a few
rings on her hand at the time of the autopsy. Nobody
knows what happened to them. If those were Linda's
rings then it's questioned how did they get in the
pawn shop. So it would be likely to conclude that -
15 safe to conclude maybe that they are not Linda's
rings even though they appeared to be to some of the
witnesses. So they were probably mistaken. Could
they be mistaken with the other rings, the diamond
cluster which they thought was Donna's diamond
20 cluster, and could they have been mistaken with the
red ruby ring?

The mother, Mary Anne Geikie, was only able to
identify the big ring, red ruby ring, because of the
25 stone. She did not, since she had known the
Daughneys, did not see any other identification marks
on the ring which she could extinguish. However, the
daughter, Kellie Geikie, said that well there was
indentations on the side of the ring. Now, on cross-
30 examination you might recall that I brought out that
at first she thought that those indentations were
small diamonds rather than just indentations. If you

1 will recall from the evidence there was also a bag
with two little small diamonds in it and it's possible
when she was shown the jewelry she thought well those
tiny little diamonds must have come off the ring.
5 It's just drawing foregone conclusions without really
thinking about the evidence. Again, Kellie Geikie, the
22 year old daughter of Mary Anne Geikie, testified
that Linda would wear between 4 and 5 rings which
was found to be true at the time of the autopsy.
10 Also on cross-examination of Kelly Geikie she at
first thought that the diamond cluster was Linda's
rather than Donna's and then realized that no, Donna's
was bigger than Linda's.

I'm trying to find which witness here, one of the
15 witnesses, yes, Joanne Johnson, who was a nurse for
25 years and she identified the ring as belonging to
her Aunt Alice who had died in 1982 and but she had
never saw the ring after that. Even though she had
visited the Daughneys she had never saw the ring
20 after that, but she stated she had been a nurse for
25 years and never saw a ring like it before. I
would suspect that the Crown, aside from having these
witnesses testify that they had never seen a ring
like that before and that's why they are identifying
25 it as Donna's ring, and it might very well be Donna's
ring, they had Joanne Johnson testify that as a nurse
for 25 years I believe she saw a lot of rings as being
a nurse attending women or such and she had never saw
one like that before. Would it have been more
30 appropriate for the Crown to call a couple of
jewellers in if they wanted to prove how common or
uncommon or how unique that ring may have been.

1 I will admit that while there appears to be
strong evidence that the red ruby ring belongs to
Donna because nobody saw one like it before, there is
no evidence that it was not in the jewelry boxes or
5 was not found in the house thereafter by whoever
looked after the estate or that it was even searched
for. It would have been nice, I suppose, to have
witnesses come to court and testify that well we
checked the jewelry boxes, we did not find Donna's
10 diamond cluster ring, we did not find the rings that
were missing. You may have no problem at all de-
ciding that that was Donna's ring regardless. Aside
from that there's no evidence that the ring was
stolen. There's no evidence as to how long it may
15 have been missing. There's no proof as to who sold
the jewelry, only that the person used the I.D. of
Fernand Savoie. As you will remember from the
testimony of the person at the pawn shop, he could
not identify Mr. Legere as the person who pawned the
20 jewelry.

There is no evidence as to who used the I.D. of
Fernand Savoie to check into the hotel in Montreal,
only that Allan Legere was in the room one time when
two hotel staff cleaned the room. So from the time
25 that Allan Legere may have been in Montreal he was
seen for approximately a half hour out of that whole
time. The hotel clerk could not identify Legere as
the person who registered for the room. The signa-
30 ture on the registration slip was not identified as
Legere's handwriting. The person at the pawn shop
was Morley Thompson, you will recall, who was not

1 able to identify Mr. Legere as the one selling the
ring or the other jewelry.

 The I.D. of Fernand Savoie was used on the
train by someone who didn't have any tattoos on the
5 right arm. There was three police officers who
checked Mr. Legere. None of those three police
officers said Mr. Legere only rolled his sleeve up
to the elbow. One of the police officers, and I
believe it was Constable Gerard Lemieux, testified
10 when they were checking an individual to see whether
or not he had tattoos on his right arm that there
was two men in the seat and that it was a double seat
turned around and they had been sleeping in the
double seats. I don't know how many of you have
15 traveled on a train and whether or not double seats
are used by strangers, whether they're usually used
by friends who want to sit facing one another. That,
your general experience will have to guide you.

 The police on the train were looking for someone
20 from 190 to 200 pounds with tattoos on their right
arm. As you are probably well aware by now, at the
time of Mr. Legere's arrest he weighed far from 190
to 200 pounds. So were the police officers merely
25 looking for people with tattoos on their right arms
from somebody who fit that general description?

 The testimony of Constable Regis Cote testified
that the purpose of them being on the train was to
identify Allan Legere which would fit the description,
30 and his general description he had Mr. Legere at 200
pounds, dark hair, possible beard or mustache, and
also to verify the right arm of the suspect.

1 Constable Regis Cote testified that he remembers the
name Fernand Savoie from Buctouche. Says he remembers
the name because he stated he was originally from
New Brunswick and he goes at times to Moncton and
5 because Buctouche was close to Moncton compared to
other areas supplied by other passengers. Again,
he says he remembered the name Fernand Savoie from
Buctouche. Was it actually the name he remembered,
Fernand Savoie, or was it the name Buctouche that he
10 remembered?

Denis Lemelin from the Levis Police Force he
described looking for a description for Legere and he
was told it was 190 pounds and five foot ten. He
testified that the person they checked out did not
15 have a tattoo on the right arm and that with him and
Mr. Regis Cote at the time was Gerard Lemieux. The
individual that they had showed them papers. He did
not recall the name but it was a French name. He
handed it over to Regis Cote or Gerard Lemieux. He
20 was shown a photo line-up and I believe he identified
Mr. Legere. That was some 13 days after Mr. Legere
had been captured and his pictures had been in the
papers.

25 Constable Gerard Lemieux testified that there
was two people sitting in the seats and he was standing
back while Constable Cote was talking to the
individual. That the individual was asked to remove
his coat and roll up his sleeve. That they were
30 looking for a star and an eagle on the right forearm
and a complete eagle on the upper arm, and that this
individual had the car registration of Fernand
Savoie. They did not find any tattoos on the arm

1 although the sleeve had been rolled up to the
shoulder.

 The question you will have to ask yourself, was
that Allan Legere with no tattoos? Was it Allan
5 Legere as the police officers testified that Allan
Legere only rolled - told them he only rolled his
sleeve up to the elbow contrary to what the police
officers testified themselves in court? Could it
have been somebody else other than Allan Legere who
10 they were checking with the I.D. and Allan Legere
being the other person in the seat? Could there be
two people using the I.D. of Fernand Savoie? I think
the evidence is clear that Allan Legere used the I.D.
of Fernand Savoie to get glasses in Montreal. That's
15 not - can't be in dispute. When he was captured he
still had the I.D. of Fernand Savoie on him. How
many people could have used that I.D. of Fernand
Savoie?

 I found myself with insufficient time to prepare
20 for the Smith case so I will have to wing it. In the
Smith case, as I go through the evidence, that on
November 15th, 1989 you will recollect that Corporal
Kohut was a dog handler who was searching for some-
25 body in the track areas in I believe it was around
Chatham Head, and that he had followed tracks left
by a lone male. He described these tracks as a lone
male because of the boot marks. Because of the big
boot marks. Again, there is no evidence that a print
30 check was being made as to those boot marks, whether
or not those boot marks were similar to the Greb
boots found in the motel in Bathurst or the gorilla

1 boots that Allan Legere was wearing at the time of
his arrest. Since it is November 15th, 1989 had those
boot marks, had they been similar to the gorilla
boots being worn by Allan Legere on the day of his
5 arrest it would put Allan Legere in those boots on
November 15th rather than the Greb boots that the
Crown is trying to put him in. They believe, other-
wise they wouldn't have brought that evidence before
you, they believe that it was possibly Allan Legere
10 who this Corporal Kohut was following. Would it not
be important evidence to know what type of boots
Allan Legere would have been wearing on November
15th? If Allan Legere was in the gorilla boots on
November 15th then he would not have been in the
15 Greb boots and he would not have been in the boots
that the Crown is attempting to associate with the
killing of Father Smith.

Corporal Ron Godin testified in the Smith case.
He was again on the scene to gather evidence with
20 Sergeant Dan Chiasson. He was qualified as a finger-
print expert and fingerprint comparison identification.
As you will recall there were a number of finger-
prints found in the Smith residence, none of which
25 matched Allan Legere. There were fingerprints found
around the filing cabinet area. There appears from
the book of photographs of the blood splatter expert,
would be Sergeant Gorman, that there was fingerprints
up on the wall and door area in the area where Father
30 Smith had been laying on the floor and possibly being
kicked. We do not know whether those particular
prints were eliminated as Father Smith's or those

1 were particular prints the police were not able to
eliminate but we do know that none of them were Allan
Legere's.

5 The evidence of Doctor John MacKay was Father
Smith, general terms, received a terribly bad beating
which was consistent with torture and that he died as
a result of the beating. It's at this point also that
10 Doctor MacKay testified that he was of the opinion
that Father Smith died from the same hand as the
people who killed Linda and Donna Daughney and Annie
Flam. As you will recall I objected at that time to
15 him forming that opinion, that he was not an expert
enough to give that opinion and it's a conclusion
that anybody can draw for themselves with or without
the help of an expert. On the other hand it could
be beneficial, that opinion, to the Defence. If all
20 people died from the same hand and the evidence
proves or at least shows that it's probably not Mr.
Legere who killed Father Smith then you would have to
find if you follow his opinion that it could not be
Allan Legere who killed either the Daughneys or
responsible for the death of Annie Flam. However,
25 whether or not Doctor MacKay's could be advantageous
to the Defence, it is not a proper opinion for this
expert witness to follow, to give. It is your opinion
that counts and not the opinion of an expert witness.
An expert witness is no better - his evidence is no
30 better and can take no more weight than any other witness
that is going to testify before you. Now witnesses,
you can accept some of their evidence, none of their
evidence or all of their evidence. That discretion
is totally up to the juror.

1 Sergeant Victor Gorman was the blood splatter
expert who testified on searching the Smith residence
that there was no other evidence except the assailant
and Father Smith present. The evidence which supports
5 that Mr. Legere was not present is the pulled hair
found on Father Smith's leg which was checked for
DNA and found to exclude Mr. Legere. The evidence
which helps to support the fact - a fact that Mr.
Legere was not present is a blood smear which was
10 found on the outside door frame which consisted of
blood consistent both with Father Smith and somebody
other than Father Smith. That blood which was con-
sistent with somebody other than Father Smith - which
was not consistent with Father Smith, also showed,
15 according to police file records, that it was not
consistent with Allan Legere's blood either. So
that if there's only one other person present besides
Father Smith the hair found on Father Smith's leg
says it's not Allan Legere, the blood on the door
20 frame says it's not Allan Legere. If you will recall
my cross-examination of Sandra Lungair, the serologist,
who I had a difficult time to get that the results of
the blood tests from that door frame was not consistent
with Mr. Legere, she said that she would not state
25 that opinion because it's a report that had been done
by somebody else, she didn't do it herself, so she
would not rely on that evidence herself to give that
opinion because, as you will recall, the blood test
30 that was done on that was off a knife that was used
to stab Allan Legere while he was in Dorchester
penitentiary. I would submit, Ladies and gentlemen,

1 that the Crown and the Police relied heavily on that
report in excluding that blood as being Allan Legere's.
If they were not satisfied with that report or they
were not satisfied with that the blood found on the
5 knife used to stab Allan Legere was in fact Allan
Legere's blood, they had Allan Legere's blood to do a
proper check. As you will recall, when Allan Legere
was captured he received a kick in the face and while
he was in the cell area that he blew his nose on to
10 toilet tissue which was lots of blood on the toilet
tissue. They sent that to Ottawa for DNA analysis
and the rest of the bloody tissue was returned to
Newcastle, the exhibit person. So they must have
relied and were quite confident that the blood on the
15 knife which was run in their laboratory in the test
that they were able to get a blood typing or grouping
of Allan Legere's blood, and I would submit, again,
that they are completely satisfied that it was not
Allan Legere's blood on the door frame mixed with
20 Father Smith's blood. There are two crucial pieces
of evidence which supports the fact that Allan Legere
could not have been in the boots at the time that
those boots were in Father Smith's house.

25 Duff Evers on testimony also stated that he
doesn't support the study that the probability of
somebody else out there having the same hair standard
similar would be 1 in 4500. He said others support
that study but there is great controversy over it.
Oh, he said others don't support that study either.
30 There's great controversy over it. So, again, we
have the hair and fiber experts backing off from

1 generating probabilities through the same type of
system that DNA analyses are generated.

That brings us to the evidence of Corporal
Denis Robitaille. He testified that he searched
5 Father Smith's car in Bathurst after it was located
and he itemized everything that he found in the car
and he took pictures, and if you will notice in the
Smith case, that pictures of inside the car you will
see pictures of pruning shears, you will see pictures
10 of a key found underneath a mat, and you will see
pictures of other items that were found in the car.
Nowhere in the car do you find a picture of a knife
in a black sheath which is described to be similar to
a Buck knife. The evidence of that knife, which is
15 P-71, was evidence in a report, continuation report
dated July 31st, 1991. That's after this trial
actually began because this trial began back in April
of this year with the voir dire. That knife the
Crown is attempting through the evidence to suggest
20 that that knife belonged to Antoine Guitard. As you
will recall, Antoine Guitard testified that he had the
two rifles stolen at the Morada Motel along with some
other items, rifle cases and shells and a whole list
of things, a couple of knives. However, Antoine
25 Guitard was also called back for further cross-
examination and he testified that at the time the knife
was missing he did not think he would be able to
identify his Buck knife. He thought he might be able
to identify the other knife but the Buck knife he
30 wouldn't be able to identify it because they're too
common, and at the time he thought that "Buck" was

1 marked on the sheath. The knife that was found
underneath the front seat of Father Smith's car did
not have "Buck" marked on it. It had some other
figures marked on the sheath, and aside from looking
5 similar to the knife that Mr. Guitard had missing he
testified the only way he might be able to identify
it is by the scratches on it from sharpening the
knife some year and a half before that. How well
this identification is or settles with you that for
10 you to draw the conclusion that it's probably the
same knife, that's for you to decide.

Aside from the evidence of Antoine Guitard
there's evidence of Chatham Police Officer Corporal
or Constable Carnahan who testified that in his
15 investigation of the break at the Morada Motel and
the theft of the rifles and such that there was a
number of articles recovered, okay, and in particular
he mentioned the cases and the empty box shells and
he mentioned a belt and a knife, and if you will
20 recall, it was on questioning by the Trial Judge that
the Trial Judge asked Constable Carnahan about the
stuff that was recovered and the rifle cases - the
rifles had originally been in cases but the cases
had been recovered - and my recollection is that
25 Constable Carnahan testified that everything was re-
covered except the rifles. So if everything was
recovered except the rifles it could not possibly be
Antoine Guitard's knife underneath the front seat of
30 Father Smith's vehicle. Such common knives could have
been left there by the person who stole Father Smith's
car. If it was, it would appear to be the only item

1 left behind by the thief, or it could have been a
knife that belonged to Father Smith. There was a
lot of stuff in the car.

As you will recall the evidence from the Smith
5 case is that the evidence was that somebody stole
Father Smith's car around 6:45. A lone male was
seen leaving with Father Smith's car. One person
leaving with it, the person who no doubt was in -
who was in the Greb boots. Supposedly. At least
10 that's the evidence the Crown is hoping to rely on.
There's evidence of Malcolm Wilkinson who was a
petroleum inspector driving to Bathurst, as you will
recall, and he is the one who reported that the car
at the Keddy's Motel in Bathurst had been broken into
15 and that he had got to Bathurst about 8 o'clock. He
had passed a car which appeared at the time - he
thought it was the same car that was broken into at
Keddy's. At the time he observed two individuals in
the car. One at the time, and I keep saying at the
20 time, that's the time he made his statement, at the
time he thought looked like this individual. At
trial he later retracted that and said that well now
he's not sure and now he doesn't think it's the same
car because if it was the same car it would have had
25 to get to Bathurst after him, after 8 o'clock, and
that would be after Mr. Legere was supposed to have
bought a ticket at the train station. Now this
individual who he thought was in the car he thinks
that that was a female. So on redirect he said he
30 now believes it was a different car and he now be-
lieves that this individual was a female rather than
this composite drawing.

1 Michael Murty was the ticket agent at Via Rail
in Bathurst who came to court and stated that he
sold the ticket at around 7:45. He only sold 14
tickets that night and he believes he only sold 2
5 tickets after he sold to this particular person at
7:45. The two tickets after that were sold to I
believe senior citizens. He stated that in his mind
he would say it looked like the Accused. I'm not
sure if besides his stating that that he give
10 positive identity or not. On cross-examination you
will recall that that same night that this individual
that he recalls buying the ticket who looked like the
Accused is that he was questioned by police about it
and he reflected just a few hours after he sold this
15 ticket on the individual that he sold the ticket to
and at that time he was certain that it was not Mr.
Legere, but yet from the composite drawing he was
shown that it looks like Allan Legere and he was able
to come into court and see Mr. Legere in the box and
20 say that yes it looks like the person I saw getting
on the train. So how can Mr. Legere's appearance
change so much and yet be so similar? If he would
have been able to recognize Allan Legere now he would
have been able to recognize Allan Legere then.
25

 If you find as a finding of fact that that was
Allan Legere that he sold the ticket to, and if you find
as a finding of fact that Allan Legere was on the train
that evening, how did Allan Legere get on that train?
30 It appears from the evidence the person in the Greb
boots in Father Smith's from the hair left at the
scene, from the blood left at the scene, that it was

1 not Allan Legere in the boots. So did this person
steal the car, go out and pick up Allan Legere, and
head on to Bathurst?

5 The Crown in its opening address is not con-
tending that Allan Legere was the only person in-
volved in these crimes. That all they have to prove
is that he is a party to the offence. Well, to be a
party to the offence you at least have to be at the
scene of the crime to be a party to the offence.
10 There's no evidence that anybody was at the scene of
the crime in Father Smith's other than the person in
the Greb boots.

15 Let's talk about the Greb Boots. We had three
expert witnesses come to court to suggest to you that
Allan Legere made the impressions in those boots.
None of them could testify that Allan Legere was in
the boots in the month of November, nor could they
even testify Allan Legere was in those boots in the
month of October, just that he had worn those boots
20 for a long period of time. That's if you accept that
those prints were actually made by Allan Legere which
there is room for doubt.

25 Sergeant Kennedy testified how he made the com-
parisons. He testified that he was on this case for
a year and spent probably about a good six months
steady trying to gather the evidence to put Mr.
Legere in those boots. One has to ask themselves
after six months or a year's steady work are you
30 going to admit failure or are you going to interpret
the evidence to show that you were successful. I am
not suggesting that Sergeant Kennedy would come to

1 court and lie to either save face or to prove that
his work was fruitless or not fruitless, but one has
to look at the bias of these expert witnesses, that
they are so involved in their work, they are so
5 confident that what they are doing is right. They
have a slanted view. So one has to take that into
consideration.

On direct examination Sergeant Kennedy testified
that it was highly probable that it was Mr. Legere
10 that made the impressions in the Greb boots. They
had to be worn for a long time. After cross-examina-
tion and bringing out myself the discrepancies in the
measurements of the casts and the measurements of the
15 insoles and showing the discrepancy in the measure-
ments, and one measurement out by 6.6%, that even
exceeds what DNA laboratories find acceptable or un-
acceptable. There is no scientific approach to this
the way the DNA experts came into court to try and
20 support their conclusions. There's no way the data
base can be used to generate numbers of probabilities
so that you could qualify the likelihood or rareness
or possibilities.

After the cross-examination of Sergeant Kennedy
25 Mr. Budsiak from the FBI testified and on direct
examination he only testified that - at least from
what I recall and it's your memory that counts here -
on direct examination of his testimony was that well
it was probably Mr. Legere or somebody else with the
30 same morphological characteristics. So it appeared
at that time that the expert witnesses coming in,
highly probable dropped down to probable. Now, as

1 you will recall during cross-examination when I stated
to Mr. Budsiak as to what he had said on direct
examination that it was probable, Mr. Allman objected
and said that's not what he said, he said it was
5 highly probable, and according to Mr. Allman's
memory he thought the guy said highly probable.
Well, it is probable that he was supposed to say
'highly probable' but did not say 'highly probable'.
Did he reduce that to probable because he heard my
10 cross-examination of Doctor Kennedy (sic). There-
after when Mr. Allman suggested that it was highly
probable during cross-examination he got back into
the term 'highly probable' which was very leading.
So much for Mr. Budsiak's testimony.

15 Doctor Bettles when he took the stand we went
from 'highly probable' to 'maybe probable'. Doctor
Bettles' opinion was that it's consistent with Mr.
Legere or somebody else with the same morphological
features. Not consistent. He said could be. He
20 said it could be Mr. Legere or someone with the same
morphological features.

So I would suggest, Ladies and Gentlemen, after
these expert witnesses had the benefit of listening
to the cross-examination they may, I'm not saying
25 they did, they may have watered down the strength of
their opinion to some degree.

Whether you accept the fact that it could be
Mr. Legere who made the impressions in the Greb boots,
whether you accept the fact that it's probably Mr.
30 Legere who made the impressions in the Greb boots,
whether you accept it as a fact that it's highly

1 probable Mr. Legere made the impressions in those
boots, the other evidence, the hair sample and the
blood sample, tends to reduce those probabilities to
nil, because if it was Mr. Legere in those boots at
5 the time of the offence then how could he leave a
hair with DNA in it which is not his? How could he
leave blood at the scene of a crime which is not his?
Would somebody be that smart to go out and collect
evidence to leave at the scene of the crime to throw
10 the investigators off? Hardly. That would be
grasping for straws.

 If you can connect - or if you do decide to
connect Mr. Legere at all to the person who was in
those Greb boots at the time of the killing of
15 Father Smith you must connect Legere at the scene
of the crime which would show him a party to that
offence. It would not be a criminal offence to
associate with somebody who committed a criminal
offence. You have to be a party; you have to have
20 the intention to commit that offence yourself and to
be a party to that offence. I could walk down the
street with any friend at all and if that person
decides to commit a criminal offence I'm not a party
to the offence just because I happen to be with him
25 at the time. There has to be an intention to be a
party to an offence.

 There has been much evidence in this court which
tends to show the character of Mr. Legere: one, that
he escaped from a prison; two, that while he was on
30 the loose he may have been committing other criminal
offences, break and enters for to steal food, to get

1 clothing, to get anything. This in itself should be
put on a back burner. The fact that Mr. Legere is
this type of a person shows little weight in as to
whether or not he committed these actual crimes.
5 There's a lot of people out there who commit break
and enters for one reason or another. The fact that
somebody has the potential to commit a crime is not
proof to any degree as to whether or not that person
would have committed a crime. So when I mentioned
10 to you earlier about trying to be objective in this
matter and deliberating on just the evidence that has
been before this court, there has been evidence before
this court which indicates that Mr. Legere is not
maybe the straightest guy in the world, nevertheless
15 I would ask you to put those thoughts of Mr. Legere's
character, his dispositions in court, put that on a
back burner and judge the evidence which is directly
or indirectly related to the offences themselves.
It's only then that you can totally be objective to
20 decide whether or not the Crown has proven its case
beyond a reasonable doubt in every case.

When I mentioned to you that in this case that
DNA evidence was on trial not Allan Legere, I didn't
mean it strictly that Allan Legere is not on trial
25 here, but that's just a way to objectively assess
the evidence. You set Mr. Legere on the back burner
for now; you decide whether or not the DNA evidence
is reliable; you decide whether or not the other
evidence is reliable in finding that as a fact
30 situation and, as I stated, it's only once you find
these as factual situations that I think then you can

1 bring Mr. Legere back into the fold and say well this
is a fact and yes Mr. Legere is connected to this
fact, that's a fact and Mr. Legere is connected to
that fact. Or there may be a lot of evidence which
5 suggests an event and you will find that the evidence
is just not strong enough and you can't rely on that
as being a fact, so you can in essence throw that
fact out. How many pieces of the puzzle are you left
with? Well, the pieces of the puzzle that are
10 crucial to the Crown's case is, one, the DNA
evidence in the Flam and the Daughney case, and the
crucial aspects of the evidence for the Crown's case
in Smith is who was in the boots at the time they
tracked through Smith's residence and at the time
15 that Father Smith was killed. If you can't find
with moral certainty that Allan Legere was in those
boots there's no other evidence to put him at the
scene of the crime, and under those circumstances
you would have to acquit Mr. Legere.

20 If you find in relation to the DNA evidence
that it's not safe to use this evidence, it's a
scientific technique that is growing, has potential,
and we will all be thankful when it is sufficient to
use as being reliable, but this type of evidence is
25 not merely to use it to convict a particular accused.
This type of evidence has to be deemed reliable for
everybody. As mentioned, we are here to protect our
system of justice. We're here to make sure innocent
people are not convicted. We are here to make sure
30 the Crown proves its case beyond a reasonable doubt.

1 DNA evidence must be safe not just for Mr. Legere,
it must be safe for any one of us. We are here to
protect our interests; we are not here to protect
Mr. Legere's interests.

5 Having said all that, Ladies and Gentlemen, I
would submit that there is room for doubt in a lot
of this evidence, what you will decide collectively,
and collectively your common sense will prevail.
Collectively, there's no one can judge this case any
10 better than you. There is not a single person in
this world that could give this decision better
judgment. It's strictly a matter of common sense.

Thank you.

15 THE COURT: Thank you very much Mr. Furlotte. Just before
we adjourn, the request was made yesterday that we
swear in -- When the jury retires in due course
tomorrow there will be some constables required to
look after you and it was suggested that they be
sworn today. Are they available? We will have those
20 sworn today, that will save them coming back tomorrow.
Some of them wouldn't be required perhaps until
Sunday.

(Andrew Fortune, Richard Tucker, Linda Hanselpacker,
George Melvin, Dale Kozak and Kathy Arseneault sworn
25 as Constables.)

30 THE COURT: The other Constable who will be acting will be
Mr. Sears but he was sworn, you may recall, at the
start of the case so it's not necessary to swear him
again. However, they have no function to perform yet
until you do retire.

We will adjourn until 3 o'clock and finish off
this aspect this afternoon.

(RECESS - 1:55 - 3:00 P.M.)

1 COURT RESUMES - 3:35 P.M.

(Jury called, all present.)

(Accused viewing proceedings from cell block.)

THE COURT: Just before I call on Crown counsel to speak,

5 I just wanted to say a word to the jury. I understand that one of your number was a little indisposed over lunch hour and we have delayed, of course, the afternoon sitting here accordingly. I have spoken with counsel. I have put to them the possible
10 alternative of perhaps going over to tomorrow morning if that were desirable or necessary, but I do understand the jury are probably prepared to go ahead now. It will require, Mr. Allman suggests, two and one-half
15 hours of concentrated effort to hear what he has to say. Do the jury really feel they would like to go ahead tonight? I'm just pointing out --

MS. LANCASTER: Yes, My Lord, we're prepared.

THE COURT: All right. If anyone is indisposed or becomes
20 indisposed through the afternoon let us know and we will also have a recess if you wish it, Mr. Allman, and if you feel the jury perhaps should have a recess, you can let us know when the appropriate time comes.

25 All right, Mr. Allman, then your address for the Crown.

(CROWN ADDRESS TO JURY AS FOLLOWS.)

MR. ALLMAN: Members of the jury, like Mr. Furlotte, I
30 would like to thank you for the attention that you have paid throughout this case. Being a member of a jury is a very onerous duty in any case and I don't suppose there's been a case that's been as onerous

1 as this. Your duties have been above and beyond the
call of most ordinary juries.

I am very conscious of the fact that I am
starting to address you at 20 to 4, and that one of
5 your number wasn't very well over lunchtime. You have
paid such good attention so far I can only ask you
this: when I come to get towards the end of my
address in a couple hours' time, please try and pay
the same attention to me at 6 o'clock as you paid to
10 Mr. Furlotte at 10 o'clock.

I told you when I opened this case to you back
in August that we would begin with an outline of the
evidence that the Crown hoped and expected to call.
Now we come to the closing and it is now the summation
15 of the evidence that the Crown wants to suggest to
you that we have called.

As Mr. Furlotte pointed out to you, quite
rightly, the speeches, my speech and his, represent
the lawyers' opinions, the lawyers' summations as to
20 what the evidence was, and as he also rightly pointed
out, what counts is what you got from the witnesses
rather than what we have got. I don't agree with
him that our opinion is unimportant. If it were
unimportant we wouldn't have troubled to spend seven
25 hours talking to you. I would like to think that
what I am going to say to you now is of some
importance. It is true that what counts is what you
got from the witnesses. That doesn't mean that you
should not pay close attention to the speeches of
30 counsel. They are not unimportant.

1 Unlike Mr. Furlotte I do not propose to intro-
duce to you a discussion of a number of cases from
other countries or other cases from this country,
nor do I propose to discuss my last six jury trials
5 with you. I propose to get immediately into the
topic that we are concerned with, this case. I have
two themes and they're going to run through this
address to you. One theme is that I am going to be
referring back regularly to my opening because I want
10 you to see and to understand the continuity of the
Crown's position from day one to this date. That's
my first theme. My second theme, which indeed I
mentioned in opening, is that the Crown's evidence
being circumstantial, in other words not consisting
15 of eye witnesses to the crimes, is going to be proved
by proving a whole variety of circumstances which in
combination fitting together and mutually supporting
each other acquire strength and significance
sufficient to convict the Accused. That's what I
20 said in opening, that's what I say in closing.

I did indeed use the analogy of a jigsaw puzzle
in opening and before I get into the evidence in
detail I am going to take one piece of the jigsaw
puzzle simply as an illustration so that when I'm
25 going through the rest of it you can understand better
my jigsaw puzzle analogy and how it works. I am going
to take one piece of the puzzle and show you how it
slots in to five or six other pieces and then those
30 pieces slot into the big picture. I will come back
to the evidence I am going to be discussing later at
its appropriate moment. As I say, at the moment it's
in simply as an example. The jigsaw puzzle piece I

1 chose as an example is Fernand Savoie. That jigsaw
piece connects all the way around it into other
pieces. You will recall that when arrested identi-
fication papers, a driver's license I think it was,
5 and another document in the name of Fernand Savoie
were found on the person of Allan Joseph Legere.
You will recall that Mr. Savoie testified that those
items were stolen from his car between October the
7th and November 17th at a time when Mr. Savoie was
10 living at the Governor's Mansion, the Governor's
Mansion being that little yellow pin at the very
bottom by the river. And we will begin by asking
this question: was Allan Legere on the 8:38 train
from Bathurst to Montreal on November 16th? Well,
15 Michael Murty identified him. He identified him
from the identification photographs, eight people,
and he said the person I saw was number six which we
know was Mr. Legere. And he identified him in court
and pointed to him. He said that's the man I sold
20 the ticket to at 7:47.

One of the police officers, I think it was
Constable Lemelin, identified Mr. Legere as being
the person who was on that train that left Bathurst
25 for Montreal in Levis, Quebec. Allan Legere told
the police when he was arrested that he took a train
trip to Montreal. So there is evidence that Mr.
Legere was on the train. Where Fernand Savoie fits
in is this way. One of the other police officers
30 checking the people on the train remembered checking a
Fernand Savoie from Bathurst. He remembered that the
man, though he had a French name, didn't speak French.

1 That means that unless somehow Mr. Legere acquired
Fernand Savoie's identification sometime after the
17th, it was him that had the I.D. of Fernand Savoie
on the train. We know he had it on the 24th when he
5 was arrested. It seems logical to conclude that it
was he that had it on the 17th on the train.

We know that somebody checked into the Queen
Elizabeth Hotel on the 17th, checked into room 1026,
used the name Fernand Savoie. We know that Mr. Legere
10 was the occupant of room 1026. We have two maids who
testified to that. So that would justify you in con-
cluding that it was Allan Legere using the identifica-
tion of Fernand Savoie who checked into the Queen
Elizabeth Hotel on the 17th, a few hours after that
15 train was checked in Levis, Quebec.

There isn't a word of evidence to suggest that
anybody else other than Fernand Savoie and Allan
Legere ever had that I.D. and Fernand Savoie had had
it stolen from him between the 7th and the 17th.
20

Now, if you accept that bit of evidence where
else does the jigsaw puzzle of Savoie fit in? Allan
Legere, alias Mr. Savoie, being the occupant of 1026
at the Queen Elizabeth Hotel, fits into another jig-
saw puzzle. It fit into the train and now it's going
25 to fit into some pawn and jewelry stores. We know
the occupant of room 1026 telephoned a number of local
jewelry or pawn shops. We have evidence that somebody
using Savoie's I.D. sold items of jewelry to Morley
30 Thompson. If you accept that the possessor of
Savoie's I.D. was in fact Mr. Legere, then it's Mr.
Legere that was selling those jewels and, of course,

1 you know that the jewels now fit into two more jigsaw
puzzles. They fit into Mary Susan Gregan's which puts
him on the Miramichi at an early stage of these
events and far more important, of course, they put
5 him in possession of the jewelry identified as Donna
Daughney's. So there's Fernand Savoie fitting into
the train; Fernand Savoie fitting into the jewels.

The Fernand Savoie jigsaw piece relates to
another piece, the eye glasses. You remember the
10 evidence of Joe Ivory about chasing somebody and eye
glasses being dropped and the evidence that the eye
glasses found matched Legere's prescription. The way
it fits into the Savoie jigsaw piece is that we have
evidence that Allan Legere, alias Fernand Savoie,
15 bought glasses the same day he got to Montreal. He
was in possession of Mr. Savoie's I.D. then. And that
relates back to the topic of the glasses dropped near
Joe Ivory's house.

The Savoie jigsaw piece fits into another. The
20 identification was stolen from Mr. Savoie's vehicle
during a time when he was living at the Governor's
Mansion somewhere between October 7th and November
17th. That fits in with the evidence of a number of
other people, Takikashi, Haddow, Wilson, Savoie,
25 Perdue and so on, the gist of which is that Mr. Legere
was stealing things from the Governor's Mansion in the
late summer and fall of 1989 so we have evidence
putting him in the area. You can see for yourself
30 how far that is from Father Smith's and from the
Daughneys'. That evidence puts him in that area at
that time.

1 So you see how it works. You have got that one
jigsaw piece and then you have got ones that fit
there, and there, and there, and there. They all
fit around that piece.

5 As I said, I have only used that at this stage
as an example so that you understand the way this
jigsaw type of case works, the way that the pieces
all lock together. You will see that same phenomena,
and I will repeat it to you to make sure you see it,
10 whenever it comes back again throughout the course of
this evidence.

I told you in opening that we would take a
chronological approach. We would begin at the be-
ginning and we would follow the events as they
15 occurred and we would end at the end with the last
event which was the completion of the DNA tests.
Now, that approach made for simplicity but it did
produce this result, that we spent a lot of the first
part of this case calling evidence that didn't appear
20 to prove a great deal against Allan Legere as such,
but you understand now that we had to go through
that laborious process of proving the most basic
matters like where these offences occurred, who the
victims were, that their deaths were homicide, that
25 Mr. Legere escaped, that he was on the Miramichi,
and it would have been forgivable if you had wondered
for a while when is the Crown going to get around to
Allan Legere. Of course those of you who had the
30 opportunity to listen to my opening, and anybody else
who had listened to my opening and paid attention,
would have known what was going on and would have
known that it was coming later, and it did.

1 I propose now to review the Crown's evidence.
I mentioned about the time frames and that it begins
with the escape of Allan Legere on May 3rd, 1989
which was proved by the evidence of Correctional
5 Officer Winters, and through the admissions that Mr.
Legere made to the police about how he escaped. The
time frame finished with the capture of Mr. Legere
by Corporal Barter on November 24th. The significance
of that - we know it so well that maybe the
10 significance of it is escaping us. The significance
is that every one of these murders occurred during
the time when Mr. Legere was at liberty.

I dealt when I opened with some matters in fairly
general terms and I can do so again. In respect of
15 each of the persons named, Annie Flam, Linda Daughney,
Donna Daughney, James Smith, I submit we have shown,
and it isn't disputed, they died on or about the day
alleged in the indictment at or near the place
alleged in the indictment. We do have to prove that.
20 I heard nothing in the evidence, nothing in the
address of Defence counsel, to suggest that that was
in dispute and I am not going to lengthen my address
by going into that any more. I said in opening that
we had to prove that each death was a homicide which
25 basically means a killing by another person. I also
forecast that there would be little or not controversy
about that and my forecast wasn't entirely correct.
From what I understood during the trial and from what
30 I understood of Defence counsel's address, there is
no dispute that Donna Daughney and James Smith were
killed directly by some other person, but there was a

1 suggestion of some kind as regards Linda Daughney
and Annie Flam's deaths. As to Linda I think the
suggestion was that perhaps she got beaten up out-
side and was still alive after the beating and made
5 her way into the burning house, was overcome by smoke and
then died. There are two comments I would like to
make on that. The first is that it's a wholly
improbable scenario. As Doctor MacKay, the pathologist,
remarked, why do you go looking for improbable
10 scenarios when there's a simple obvious explanation.
Look, if you feel the inclination to do so, at
Linda's autopsy photos and considered that she
sustained, among others, a broken nose, a fractured
upper jaw, a fractured lower jaw, two black eyes so
15 swollen that she be blind, and then ask yourself if
she really went back into that house after a beating
outside. In any event the exact process of Linda's
death is irrelevant. It doesn't matter whether she
got beaten up outside, beaten up inside, beaten up
20 outside and inside. Somebody gave her a beating and
the cause of death according to the pathologist was
blunt trauma injuries to the face associated with
carbon monoxide poisoning. The carbon monoxide
poisoning alone would not have killed her.

25 Now, to some extent this is a legal question for
the Judge but the Crown's submission is that on any
scenario, even the improbable one which Mr. Furlotte
put up for your consideration, the beating was the
30 basic cause, certainly a sufficient cause to con-
stitute a cause in law and that that would be
sufficient. There was nothing to suggest that Miss
Daughney was anything other than a homicide victim.

1 So far as Annie Flam is concerned I think the
suggestion there is that she may have had a heart
attack merely from seeing or hearing her intruder.
There is, of course, no evidence to that effect. My
5 recollection of the medical evidence is that like
most older people her heart wasn't in as good a shape
as it had been when she was young but she had
apparently been that way for quite a few years and
had contrived to survive the trials and tribulations
10 of ordinary life. And, anyway, there's the broken
jaw which the doctors, both of them, and the anthro-
pologist said was caused by blunt trauma. The
suggestion that some object falling on her caused
that blunt trauma is negative by two things. First
15 of all Corporal Godin who had the advantage over us
of being there said that there was no debris on the
body or near the body that could have broken her
jaw, and, secondly, the anthropologist testified that
20 the nature of the injury was much more consistent
with a blunt trauma, an object such as a fist being
hit at her. If an object in the hands of an intruder
or the fist of an intruder hit Annie Flam it seems
inconceivable that she was already dead from a heart
25 attack. I mean did Annie Flam collapse of a heart
attack and then the intruder hit her in the face hard
enough to break her jaw and then lay her out as you
can see in the photographs? Any other alternative
would be pure speculation.

30 Doctor MacKay said that not having been at the
scene and anything being theoretically possible, he
couldn't say, but the only rational conclusion,

1 this was the expert testimony, the only rational
conclusion and it's the one he said in direct and
cross-examination, is she died from the pain and
the shock caused by the blow.

5 I was wrong in forecasting that nobody would
seriously suggest that Linda Daughney and Annie Flam
weren't homicide victims but at the end of the day
the Crown submits to you there is in truth, no doubt
about it, those two ladies were not accident victims
10 or suicides or anything of that kind, they were
homicide victims just as much as Donna Daughney and
James Smith.

15 Clearly all of these killings were cruel and
cowardly killings of vulnerable victims, but the
question, and the main question we have to ask, is
who killed them? I propose to turn to that now.

I suggested that we would prove to you that all
the killings occurred in a small geographical area.
Did we? The answer to that is to look at the aerial
20 photograph, P-1, and you can see vividly displayed
there everything. All three murders, the red, the
green and the blue pin, all the incidents of the
sightings, the Governor's Mansion where things
happened, the residences where Mr. Legere formerly
25 lived according to various witnesses, every one of
them, every single one of them is displayed in the
area depicted by that photograph. Practically all
of them are within a marginal distance of that rail-
road track that I am pointing to you now. Runs like
30 a line through the entire case.

1 I said we would call evidence that the Accused
was a native of that area and would be intimately
familiar with it. Mary Susan Gregan knew the
Accused from early years as a customer at her bank
5 and before that he lived at Kerr's Trailer Park which
is the yellow pin at the very top. Mrs. Geikie
remembered that Mr. Legere lived at Chatham Head for
many years. In fact he grew up there. That's where
he was living when his only brother died many years
10 ago.

Constable Carnahan pointed to one of the pins,
I believe it was pin number six, and he said that
Allan Legere used to live there in days gone by. I
believe it was that one. I'll tell you that - you can
15 look for yourselves. Constable Carnahan was talking
about Mr. Legere living in that area. Defence
counsel extracted from the officer that that informa-
tion was based upon what he had been told by other
people but at that point Mr. Legere helpfully inter-
20 jected by calling out '75 to '77 indicating, we sub-
mit, that that was the time frame when he lived there.

If you look at those pins you will see that they
are all located close to the sightings and all the
killings.
25

Assuming that you accept then that this all
occurred in a small area, in an area that Mr. Legere
was familiar with, during a time when Mr. Legere
was at liberty, I'll move on to the chronological flow
30 of events.

1 According to Correction Officer Winters Allan
Legere escaped on May 3rd wearing a parka and white
running shoes. Prior to his escape he had been in
restraints which Mr. Winters testified were recovered.
5 In that regard you will have to decide whether or not
you accept, reject or don't know whether Mr. Winters
is correct about that or not. The chains are a
red herring, Members of the Jury, in any case. If
you find that they were items that Mr. Legere took
10 with him out of the Pen that's significant. If you
find that they weren't items that he took with him
out of the Pen then they are meaningless. It doesn't
mean -- It means we don't know where the attacker
got those chains. It doesn't mean we know the
15 attacker wasn't Mr. Legere.

 On May 10th, seven days after the escape, Mary
Susan Gregan saw a man at her window. You will
remember that she knew Mr. Legere from the fact that
he used to be a customer in her bank and then earlier
20 than that a neighbor in Kerr's Trailer Park. Mary
Susan Gregan's house was in Chatham. When she looked
out the window she believed that the person she saw
was Allan Legere. In November, after his flight from
the Miramichi after Father Smith had died, we know
25 that Mr. Legere, or there's every reason to believe
Mr. Legere pawned or sold jewelry. Mrs. Gregan
positively identified a Nefrititi brooch and a diamond
cluster ring which came from the items that were sold
30 in Montreal. She positively identified them as being
hers. If you accept that, especially in combination

1 with the fact that she thought she recognized the
man, that would put Mr. Legere on the Miramichi seven
days after his escape. And that matches what he told
the police because he told the police something to
5 the effect that he was on the Miramichi a few days
after the escape having hitchhicked up from Moncton
and got a chicken dinner enroute at Rogersville.

On or about May 17th, seven days later, Cathy
Mecure saw a man she identified as being Allan
10 Legere. She knew Mr. Legere because he was a friend
of her husband's and had visited their house. It was
a sunny day; the person she saw wasn't very far away;
there were no obstructions between her and that
person; and she called the police right away. If
15 you accept Cathy Mecure's evidence then he was on
the Miramichi in the area depicted on that photograph
P-1 near to all the killing sites on or about the 17th
of May, just a few days before the first killing.

The next chronological event is the killing of
20 Annie Flam. She lived and run a grocery store at that
location, the red pin, for about 50 years or so and
obviously in a small area she would be known to any
local people. Mr. Legere was a local person. She
had a chat to Nina around 10:30; she closed up around
25 11. A neighbor, Mrs. Jenkins, bought some pop at
about that time. Another neighbor who used to keep
an eye on the store saw Annie closing up around 11.
Mrs. Jenkins noticed that Annie didn't pay very much
30 attention to customers, she was busy with a TV, and
that possibly an intruder might have slipped by her
into the house without her noticing. And Nina said
the same thing.

1 Around 11 a waitress called Kay LeGresley who
worked at Pizza Delight went out into the alley by
the Pizza Delight. That's practically next door to
the Flams. She saw a man with white sneakers in the
5 alley.

 Nina Flam had a telephone call from her daughter
around 11. She read for a while and then fell asleep
and she woke up to hear an intruder coming upstairs.
So we know that it would be 11 or sometime after 11
10 when this occurred. Before we get into the identifica-
tion or the identity of this intruder let's consider
who he was, who he wasn't, who he could have been.
In other words, what really can Nina Flam tell us in
terms of her observations about this person, and the
15 basic answer is very little. You have got to recall
the circumstances. The intruder was masked at all
times. Most of the time a pillow was over Nina
Flam's head. Nina Flam normally wore glasses. Her
20 eyesight without them wasn't very good but the
intruder took her glasses away from her. At best
all she ever did was catch a glimpse of his overall
looks and a little bit longer look at the pubic
area, and nobody could hope to give or be expected
25 to give in those circumstances a great deal of in-
formation. When you factor in to those difficulties,
the circumstances in which she was viewing her
intruder, the fear, the violence inflicted upon her,
the pain she endured, the humiliating sexual aspects
30 of the case, it's an amazing thing that she could
remember anything. What few things did she notice
about her intruder? She described him as thin but

1 she went on to make it absolutely clear that all she
was talking about was his waist. She was asked what
part of his body did you see to say he was thin and
the answer was, and I am quoting, "Just the waist.",
5 unquote. She had a glimpse only of his shoulders.
That's all. In regards to the thin waist remember
what Corporal Mole said when he saw the naked Allan
Legere in the cell, and I think Constable Charlebois
said the same. They both observed that while his
10 upper body was well developed his waist, as well as
his legs, was thin, which is just what Nina Flam had
said. She described her attacker's pubic hair as
light brown. Duff Evers, the hair expert, noted that
15 assessing colour is very subjective, what I call
light brown you might call medium brown. Or so it
depends on many surrounding circumstances, the
lighting, the background. For example a white skin
pubic area might make a different. The thickness or
20 sparseness of the hairs, and in that regard remember
Corporal Mole's observation that Mr. Legere's pubic
hair was very thin, rather like he hadn't been wearing
underpants all summer. And, again, you have got to
consider the awful circumstances under which that
25 poor lady was observing his pubic area. But given
all those limitations and for what it's worth she
thought the pubic hair was light brown, and Corporal
Mole when he removed some of Allan Legere's pubic
hair in the cell noticed that it was light brown, in
30 fact it surprised him because it was such a difference
from Mr. Legere's head hair it was so much lighter.

1 Again, for what it's worth, I suppose you could look
at the pubic hair in exhibit 50, the hair in the box
that Mr. Furlotte opened and inspected and then
closed up again, and then said to Mr. Evers, and I
5 am quoting: "Now, Mr. Evers, once hair are cut would
they tend to lighten up with time?", and the answer
was, and I am quoting, "Not in my experience. As
long as they are in a pill box like that they should
be fine." And he was then asked: "And those are the
10 pubic hairs?" and he got the reply "Yes."

Given the comments I made earlier, I don't know
that it is of enormous strength any more than it
would be of enormous strength if she got the hair
color a little bit wrong. It's a fact. You can give
15 it whatever weight you deem appropriate.

She described her attacker as in his forties or
thirties. Mr. Legere was 41 at the time. She
couldn't recognize her attacker's voice. She thought
at one moment, quote: "For a very, very short time",
20 unquote, that it resembled the voice of a local man,
John Marsh, but clearly she wasn't within a million
miles of saying that it was John Marsh. Essentially
she was saying that it was a local type voice. It
wasn't a peculiar accent like mine for instance. And,
25 of course, Allan Legere was a local. It is fair to
say that when Allan Legere's voice was played to her
on a tape she couldn't identify it, but you should
recall in that regard Corporal Mole's observation
30 that he has known Mr. Legere's voice to change a good
deal under different circumstances and the circumstances

1 under which he saw Nina Flam would have been very
emotional ones indeed, assuming that you find that
it was him.

5 She said that she had seen Allan Legere in the
store a couple of times in the seventies but she
didn't know whether her attacker was or was not
smaller than Allan Legere. The bottom line is that
in terms of visual identification her evidence was
understandably very limited and in essence her
10 position on this was put very clearly in answer to
some questions - clarifying questions put by Defence
Counsel, Mr. Furlotte, and I am going to quote this
exchange.

15 "Q. I know you can't say who the attacker
is but can you say it is not Mr. Legere?

A. I don't know.

Q. You seen him well enough for that, didn't
you?

20 A. No."

She couldn't say that it was Allan Legere and she
couldn't say it wasn't Allan Legere in terms of what
she observed about him. In terms of other observations
and conversations she said that her attacker had a
chain around his waist, a portion hanging down and
25 something square on it. I've already dealt with that.
If it was an item taken by Allan Legere from the Pen,
and that's your finding, it would be significant. If
you conclude that Allan Legere didn't take anything
30 with him when he left the Pen it's simply meaningless.

1 It does not mean that Allan Legere wasn't the
attacker because he didn't take the chain from the
Pen. It simply means that we don't know where the
chain on the attacker came from, whether it was Mr.
5 Legere or somebody else.

She said that apparently the intruder had some
knowledge about her family background. He called
her Nina and Mrs. Bernie. The evidence was that her
husband's name was in fact Bernard but he died I think it
10 was in 1973 so obviously her attacker's memory would
have to go back that far which suggests it wasn't a
young boy that she was dealing with. Her attacker
discussed, with inaccuracies, her daughter Nancy and
her boyfriend or ex-boyfriend, Mr. Smith. John Smith
15 testified that Allan Legere had in the previous years
been acquainted with the Flams, especially with him
and Nancy. Obviously the attacker was confused and
didn't remember the details, which would fit.

Probably if it was Mr. Legere he would remember some-
20 thing about John Smith and something about Nancy but
he wouldn't remember the details. There is no
suggestion that they were buddies or anything of that
kind, just that they were somewhat acquainted in the
25 past.

Her attacker asked her if she was still working.
Her evidence was that she had quit work a couple of
years before in 1987. In 1987 Mr. Legere would have
been in the Penitentiary and would not have known,
30 therefore, that she had quit.

1 Her attacker claimed to be somebody called
Gerald from Kerr's and interestingly Mary Susan
Gregan's acquaintance was with Mr. Legere when he
was a resident at Kerr's Trailer Park.

5 Her attacker put his penis in her mouth. Mrs.
Flam testified, and I am going to quote again:

"Then he did say, and this was his words,
he had to get hard because he said 'You
know what it's like when you have been
10 away for a while.'."

There was evidence that Allan Legere had been
arrested in 1986 and escaped in May, 1989. It's a
matter for you what interpretation you put on the
words 'You know what it's like when you have been
15 away for a while.', but certainly it would fit Mr.
Legere's situation. He had been away for a while.

Those comments about her husband, her children,
her former work, and her attacker having been away,
I told you in opening and I tell you now do not prove
20 that Allan Legere did this but they are factors,
weights that you can legitimately put into the scale.

There was evidence that her attacker showed an
interest in jewelry and there is evidence about Mr.
Legere selling stolen jewels.
25

There was evidence about him going to and from
Annie's part of the house to Nina's and back. When
Nina inquired about Annie he said 'Annie's all right.
and he was asking about where the money was in Annie's
30 part of the house. So obviously he was in contact
with Annie. He put a knife to Nina's throat and
there's evidence of a sharp instrument being used on

1 Smith and Donna Daughney. He tied Nina's hands with
nylons. Knotted nylons were found at the Daughneys.
And, incidentally, Mr. Furlotte wondered why on one
of those occasions the attacker cut the nylons.
5 Speculation, and I'm not going to speculate very much
in the course of this address, but if the theory is
you are going to leave the person in the house to
look as though they are the victim of a fire it's
going to look kind of odd to the firemen when they
10 come and find the victim of the fire with their hands
tied behind their back with nylons. He strangled -
or he tried to strangle Nina and he threatened her
with a knife. He, and this is a quotation, pulled
the blankets around her like a child and tucked her
15 in. That links up with the Daughneys as we will see
later. He set fires. He told her he was going to
set fires and she could realize that he was doing
just that. That links up with the Daughneys as we
will see later. He raped her and semen was found in
20 her vagina and semen was found on the Daughneys.
She tried to escape but he pushed her back into the
flames but as fate would have it she survived to be
rescued by the policeman, Danny Pugh.

25 The Defence suggested to Mrs. Flam and then
forcibly suggested to Corporal Mole that she was
induced to say what she did somehow by Corporal Mole.
That was a hurtful suggestion to a brave lady and to
a decent policeman. He denied it and she denied it
30 and it wasn't in fact substantiated when we sat and
listened to the reading of the transcript of the
talks between her and Corporal Mole. On the contrary,

1 those transcripts showed that soon after the
incident in dreadful circumstances, her lying in
hospital burnt, she could give a clear and reasonably
coherent account which corresponded very largely to
5 what she said on the witness stand, and the suggestion
that it was put into her mouth by Corporal Mole is,
we submit, simply not credible.

At the end of the day the evidence of Nina Flam
comes to this. She couldn't identify Allan Legere;
10 she couldn't exclude Allan Legere; and there were
things said and done by her attacker that could point
towards Mr. Legere. Obviously our case against Mr.
Legere does not depend entirely upon her evidence.
It's the DNA plus the similarities between the Flam
15 case and the other murders and then you can supplement
those basic matters by the points I have just been
touching on in relation to Nina Flam's evidence.

One last word about Nina Flam's evidence. Nothing
in her evidence suggested the presence of another
20 attacker. She never heard anything; she never saw
anything. Nothing that the attacker talked about
suggested that there might be somebody else in Annie
Flam's half of the house.

I am going to turn to the time between the Flam
and the Daughney deaths. Joe Ivory suffered three
incidents. A week or so before Annie's death he
disturbed an intruder. Then there was another
occasion when some items were stolen from his freezer
and his hockey kit bag was taken and some frozen food
30 and I seem to remember somebody stuck his hand in a
piece of pie. He took a piece of pie with his.

1 Sounds to me like somebody was living on the run.
I don't know what your opinion is on that. It's a
matter that you have to assess. But the main thing
that happened to Joe Ivory is this. Incidentally,
5 Joe Ivory's house is very close - it's pin number 4,
to Annie Flam's residence. The main thing that
happened to Joe Ivory is this. Three days after
Annie's death he disturbed a prowler in the back of
his house. Mr. Ivory was in his car and he pursued
10 the prowler but the man escaped behind a nearby
house. That house had a hole in the ground where
some workers were building a deck. Lloyd Hannah,
one of the workers, found eye glasses there the next
day which presumably were lost by the fugitive.
15 Those glasses matched Mr. Legere's prescription.
Claude Brunet, one of the eye specialists we called,
said that he was the only person - his firm was the
only one that sent frames to the Pen, 18 frames were
ever sent, and only one with that prescription. Both
20 the eye specialists, Mr. Marney and Mr. Brunet, said
in answer to questions from Mr. Furlotte that that
prescription was unique. If you accept that it points
strongly to Mr. Legere still being in the immediate
area just after the Flam death. And you will recall
25 a piece of evidence from Fernand Savoie that backs
that up, the fact that Mr. Legere bought glasses in
Montreal. I'm not sure if that actually is in
dispute because Mr. Furlotte was speculating on the
question of whether the murderer would still be in
30 the area, and I think he was - I had the impression
that he was pretty much admitting that those were

1 Mr. Legere's glasses. Maybe I got that wrong - you
heard him a few hours ago, but certainly that was
the impression I got. Now, I have no way of knowing
whether murderers would or would not be in the area
5 a few days after the killing. That's pure speculation.

I am going to move on to the Daughney deaths.
Just as Allan Legere was acquainted with the Flams
he was acquainted with the Daughneys. You will re-
call the evidence of Mr. Black and Mr. Hawkes that
10 the Daughneys and Allan Legere used to go in 1986 to
the fitness centre and when there Mr. Legere expressed
to both men on separate occasions a sexual attraction
to Donna. As I said in opening, the fact that he had
a relation or knowledge of the Flam and Daughney
15 women doesn't prove he killed them but it doesn't
mean that you can ignore it. It is a factor to which
you can give whatever weight you feel proper.

You heard the details about the Daughneys'
deaths. There can, the Crown submits, be no argument
20 that they were attacked in or at their home and
sexually assaulted. I note in passing that the
question of what is meant by a sexual assault is some-
thing upon which the Judge will direct you, that being
a matter of law which is the prerogative of the Judge
25 alone, but essentially it's clear that there was
sexual activity without consent in the case of the
Daughneys. I don't think anybody has ever suggested
that the Daughneys consented to have sexual activity
with whoever was present. I'll deal later with the
30 details about the Daughneys, the nylon cords, and the
similar injuries and the fires. I've got a separate
section to deal with that.

1 The two principal aspects of the evidence which
link Mr. Legere to the Daughneys are the DNA and the
jewelry. As to the DNA I will consider that later
in a separate section. But as I now proceed to dis-
5 cuss the jewelry I want to make a very important
point. It's the one that I said at the beginning
was one of my basic themes. You don't look at these
items, these pieces of evidence in isolation. I am
going to be submitting to you that the ring evidence
10 links Mr. Legere to the Daughneys. Later I am going
to be submitting to you that the DNA evidence links
Mr. Legere to the Daughneys. When you look at the
ring evidence you can say to yourself by golly that's
what the DNA says too, and when you are looking at the
15 DNA you can say yes, and that fits with the ring
evidence doesn't it. It is the combined mutual
supporting strength of all these items of evidence
that's so important.

20 I'll deal with the ring evidence. All the ladies
that we called about the ruby red ring said it was a
very distinctive one, they had never seen one like
it. Mrs. Johnson, the nurse, who has seen many
womens' hands has never seen a ring like that. It's
25 in evidence as an exhibit. You can look at it and
form your own opinions about it. The suggestion that
we should have called some jeweller to say how unique
a ring is from somebody who has been suggesting that
you can't say these things unless you have got a data
30 base seems a rather odd one. Mrs. Joanne Johnson
positively identified that ring as one formerly owned
by her Aunt Alice and she said that all Aunt Alice's
possessions went to Donna and Linda when she died.

1 Mrs. Diane Wetmore, a lifelong friend of the
Daughneys, Donna Daughney anyway, testified that
she knew that ruby ring was Donna's, she knew Donna
had inherited it from Aunt Alice, she had discussed
5 that ring with Donna. All three female Geikies with
certainty testified that that ruby ring was Donna's.
Now the Geikies were practically family to the
Daughneys. There was about the evidence from the
Geikies, I submit, a touching and poignant certainty.
10 That ring was the ring that one of them used to laugh
about to Donna. She was remarking it was so large it
was like a hooker's ring. That must have been a
vivid and painful memory for that woman. But even
more vivid and even more painful is you all saw when
15 Kellie Geikie was crying in front of you, looking at
that ruby ring, the ring that she had talked to Donna
about and said that when Donna died she would like to
inherit that ring. I would submit to you that the
collective strength of the evidence of all those
20 witnesses should leave you in no doubt at all that
that ruby ring was Donna's. Then you could add into
it the diamond cluster which the witnesses described
as identical to Donna's. And they weren't prejudiced
witnesses. They were very fair. They said right out
25 the cluster is identical to Donna's but it isn't an
unusual ring so we're not going to pretend that there
isn't another one out there like it, though there was
not a little bit of evidence about that. I don't know
30 if you remember that Diane Wetmore mentioned that the
ring - the diamond cluster that Donna got she had been
with her when they bought it and she had tried it on

1 and it was just a little bit too big for Diane
Wetmore, just a little bit too big, and she tried
it on in court and the ring - the diamond cluster
was just a little bit too big for her finger.

5 Again, it's the fitting of these jigsaw pieces.
The extraordinary coincidence that at one and the
same time the identical red ring of a distinctive
style and the identical diamond cluster ring both
show up in Montreal in one jewelry bundle if in fact
10 they are not Donna's but somebody else's.

I listened carefully to Mr. Furlotte's comments
on the rings. He talked about Linda's rings and about
the fact that the girls, the Geikies said some of the
rings looked like Linda's rings but they never said
15 they were Linda's, just they looked like it. He said
practically nothing about the red ruby ring. I
suggest to you that there is no valid reason for
doubting that that red ruby ring, even if not the
others, and probably others too really, but at least
20 the red ruby ring was Donna's ring. That the evidence
those women gave was completely reliable.

We know that a man using Fernand Savoie's I.D.
sold those rings to Morley Thompson in Montreal
November 20th. Allan Legere was in Montreal in room
25 1026 at the Queen Elizabeth Hotel. The person who
checked in to room 1026 used the identification of
Fernand Savoie. Allan Legere, using the identifica-
tion of Fernand Savoie, bought glasses on the 17th at
Greiche and Scaff's. We know Allan Legere had Mr.
30 Savoie's identification upon him when arrested and
the inference is overwhelming that during the time

1 from when he left Bathurst to when he was arrested
Mr. Legere was operating and using the identification
of Fernand Savoie and that it was Mr. Legere that sold
those jewels. And if you accept that, the significance
5 is obvious. If you accept that Allan Legere was in
possession of jewels belonging to Donna Daughney,
Donna and Linda were victims of a homicide and there
is no reason to suppose - I think counsel almost did
suggest that but maybe not - there's no reason to
10 suppose that the ladies gave the jewels to Mr.
Legere on some other occasion or that he got them in
some other fashion. The only rational conclusion is
he took those jewels in aspect of the incident when
he killed them. And as I pointed out earlier, in
15 your thinking about the jewelry link and deciding if
it is a link, remember the DNA. What are the chances
that somebody other than Allan Legere left identical
DNA semen on the Daughneys and that Allan Legere came
20 into possession of jewels identical to those belonging
to the Daughneys. If the two things combined, either
one of them is tremendous, the two things combined are
even more powerful.

I am going to deal now with an area of evidence
25 that's to some extent confusing. I said it was con-
fusing when I opened. You will recall I mentioned in
opening the man seen on the Daughneys' street that
morning. I didn't mention about the other man who
was seen down by the railroad tracks though I did
30 tell you in my opening that I wouldn't cover every
area of evidence and I said, quote, "It is possible,
even probably, that we will call evidence and

1 witnesses that I won't mention in my opening.",
unquote, and I told you to consider that evidence
exactly like any of the other evidence.

5 Briefly then, there was evidence that a person
was seen on the street near the Daughneys at about
5:45 A.M. by Mark Manderson. There is evidence that
a person was seen by the two Mr. Williams at 5:10 and
at 5:30 near the railway tracks which was a little
bit further away from the Daughneys but not very much.
10 Mark Manderson was driving when he saw the man on
Mitchell Street. It was dark; there was no street
lighting. He saw the man in his headlight, quote,
'for two seconds, perhaps two and a half or three
seconds', unquote. During those two or three seconds
15 the man turned and bent down the effect of which Mr.
Manderson said was to, quote, 'severely limit the
view of his face', unquote. In fact all Mr. Manderson
got therefore was a two or three second view of a
profile. After his car had passed the man he drove
20 on but then he stopped and looked back through the
rear window. The man was now 50 to a 100 feet back
of Mr. Manderson and there was, quote, 'virtually no
lighting. It was very dark, just moonlight perhaps.',
unquote. This time he got a longer view, four or five
25 seconds. Given that there is no reason to suppose
Mr. Manderson ever saw that person before, and given
the very limited opportunity he had to see the man,
obviously his description must be taken with great
30 caution. The main thing he noticed was what the man
was doing. He described him, and I'm quoting, 'With

1 his back turned towards me, his head canted to the
ground, his feet stationary, arms a bit out, upper
body bobbing a bit, weaving from side to side, and
his head was down.', unquote. Must have been a pretty
5 bizarre sight and it would obviously have been the
main thing you would have noticed for those few
seconds. He described as best he recalled it the
person's clothing, the main thing he recalled there
being an odd piece of head gear like a hard hat liner
10 or a pilot's hat. The man he saw had his pants
pulled up at the ankle and a loose fit baggy top
garment. He described him as not an old man. He
said he had the agility of a man in his mid to late
twenties but that's all he based his age on, and
15 there are as we all know, unfit and unagile twenty
year olds and very fit and very agile forty year olds.
He wasn't saying that the man was twenty. He was
saying the man was as agile as a twenty year old.
The man appeared to be about five ten, slight, not
20 skinny, not a pot belly. His face, seen in silhouette
only, had a prominent or large nose described in his
statement to the police as sharp facial features with
a long hawk-like nose, and you will recall that when
Corporal Mole saw Allan Legere in the police station
25 that day one of the things he noticed was the long
sharp features and prominent nose. Mr. Manderson
wasn't able to give a clear description of the hair
because of the problem of distinguishing where the
hat ended and the hair began and he didn't think the
30 man had a beard. He had at one time noted some

1 resemblances between the sketch, P-54, and the man
he saw but on oath in court he made it quite clear
he was not saying P-54 was certainly the man he saw.
As he pointed out, P-54 is full face. All he saw,
5 and that for a few seconds only, was a profile under
far from ideal conditions. P-54 you will recall was
a sketch done based upon Bill Skidd's description.

Now, Bill Skidd saw a man two weeks after the
Daughneys'. The man who had two rifles walked
10 calmly across Mr. Skidd's lawn. P-54 came from Mr.
Skidd's information and he gave you a verbal
description in court of a man with a thin narrow
face, a little beard stubble on it, and freckles or
pine needles on his cheeks, Caucasian, around six
15 foot, shaggily dressed in a dark blue shirt, brown
pants and work boots like Kodiak work boots, and on
his head he wore an object and what it was Bill Skidd
is puzzling about to this day. Something like a knap-
sack. We should recall that Mr. Skidd's viewing time
20 was six seconds. In fact Bill Skidd checked on that
later on. He went out and paced across his lawn to
see how long he had seen that person. So just as Mr.
Manderson's view was pretty limited so was Mr. Skidd's.
25 A sudden unexpected six second vision of a person you
don't expect to see is not what you would call great
observation.

Was the man Mr. Skidd saw Allan Legere? Mr.
Furlotte has pointed to some evidence that suggests
30 he wasn't. There was the fact that the man was
apparently 25 years old and had a thin narrow face.

1 On the other hand we know that Mr. Legere's appearance
in late November, 1989 was very different from his
normal look. We have that from Corporal Mole and
also from Sergeant Mason Johnston who said that he
5 wouldn't have recognized Mr. Legere who he knew well,
across the street. The 25 age estimate was based on,
quote, 'His build. He was like a young man that
hadn't filled out yet.', unquote. And you should
consider the possibility that what Mr. Skidd saw was
10 the reverse of that, a 40 year old who had lost a
good deal of weight rather than a 25 year old who
hadn't yet filled out. He said the man had red hair
but that was because of the fluorescent lighting at
that location. Certainly you can't say that Bill
15 Skidd positively identified Mr. Legere. In fact he
told Mr. Furlotte that he didn't recognize the man
as Allan Legere and he had known Allan Legere 20
years before. But equally, he wasn't saying it wasn't
Allan Legere. He was just doing the best he could
20 to describe the person he saw during those six
seconds. But there is evidence could lead you to
conclude that Allan Legere was in the area that night
being chased by Corporal Tomassin. The man Tomassin
25 chased was clearly well aware of the area, he could
keep on hard to see paths, he knew where to get over
fences, he shot safely over the cliff which the un-
fortunate police officer didn't. The fugitive knew
the area and we know Mr. Legere knew the area. The
30 man was clearly fit, fit and agile as a 20 year old
to outrun a dog one would suppose. The man Skidd
saw had two guns and there's evidence two rifles were

1 stolen on the 28th from Mr. Guitard and one of those
rifles was certainly in Allan Legere's possession
on his arrest because you will remember that the one
he threw out matched the identification serial number
5 on Mr. Guitard's rifle. Lastly, Mr. Legere boasted
to the police after his arrest about his escape from
the dog man and the shooting incident.

So those are all pieces of evidence which could
suggest that it was Mr. Legere that Skidd saw that
10 day two weeks after the Daughneys'. So do we go back
from there and say was the person that Mr. Manderson
saw Allan Legere and the answer is it's impossible to
say for sure it was or it wasn't. You have got to
remember that the circumstances of Mr. Manderson's
15 viewing did not permit a certain identification by
him.

We should recall John MacLean who encountered an
armed intruder that night. I had the impression - or
I submit to you that the correct impression was that
20 Mr. MacLean perhaps had a slightly better view than
anybody else because he actually encountered the man
face to face. They had a little conversation even.
He described the man he encountered as bearing a very
close resemblance to the photograph on the book, that
25 photograph is an exhibit, P-114, which Mr. Furlotte
noted purported to be a photograph of Allan Legere.

If you find that the man on Mitchell Street was
the man Skidd encountered, the man Manderson
30 recognized, and that that man was Allan Legere that's
clearly significant but only because of the DNA
evidence. The DNA evidence, if you accept it, is

1 powerful evidence. It puts Mr. Legere in the
Daughney house, it puts him in physical contact
with the Daughney women, and the coincidence of Mr.
Legere being in the Daughney house and being seen on
5 the street that morning would be considerable. If
you can't say that the man on the street was Allan
Legere then it's of no help either way. It's just a
neutral fact. If you say to yourself the man on the
street wasn't Allan Legere then the evidence loses
10 all its point. I know that sounds at first like
heads I win, tails you lose, but if you think it
through it's true. It's not an offence to be on the
street in the morning. It's not an offence even if
you dress peculiarly and you're bouncing up and down.
15 There is nothing apart from DNA, if you accept that
man was Legere, that says that that man was ever in
the Daughney property or had anything to do with the
killing. If it was Allan Legere on the street and
it's Allan Legere's semen on the Daughneys it's
20 significant. If it wasn't Allan Legere on the street
but it was Allan Legere's semen on the Daughneys the
man on the street is a red herring because there is
absolutely nothing to connect that man to the house,
to any involvement in the killings, to any knowledge
25 of the killings.

The same logic applies to the man seen by the
Williamses. They gave a description of a man they saw
at 10 past 5 and half past 5 down on the - down by
30 the tracks. One of the items that's an exhibit is
the sketch that was prepared and which I think they
said was 80% accurate of the man they saw. You can

1 read that for yourself. Probably the most significant
thing about what they noticed was that the man had
like a heavy frame but he looked as though he had
got run down. I'm sure the word used was run down,
5 a good deal. There are similarities between the man
that the Williamses saw and the Mr. Legere that we
have seen in court but it's a matter for you whether
those similarities are such that you think that the man
down by the tracks was in fact Mr. Legere. But in
10 any event the same logic applies. If it was Allan
Legere's semen on the Daughneys and it was Allan
Legere down on the tracks that's significant. If
it was Allan Legere's semen on the Daughneys and it
15 wasn't Allan Legere down at the tracks that man is
a red herring because there's nothing that puts that
man in the house, there's nothing that connects that
man to the killing, there's nothing that says that
man knew anything about the killing. Test it this
20 way: suppose we proved, absolutely proved for sure
that it was Mr. Legere on the street or on the tracks,
and then suppose we didn't have the DNA and the jewels
to connect him to the house. In other words the only
evidence we have got on this supposition against Mr.
25 Legere is it's been proved for sure that he was near
the house that morning. That wouldn't be the be-
ginning of a case against Mr. Legere. It might be
suspicious but it's a long way from proof. If the
man on the street wasn't Allan Legere there's nothing
30 that says that the man on the street was involved in
the killing or had any knowledge of the killing.

1 The Crown's case in this matter, the Daughney
matter, doesn't depend - doesn't begin to depend
upon your finding that the man on the street or the man
on the railway tracks was Allan Legere. It might help
5 if you did but it certainly is not the foundation or
even one of the principal underpinnings of the Crown's
case.

Mr. Guitard's rifles and Buck knife and sheath
got stolen October 28th. We know that Mr. Legere was
10 in possession of one of them when arrested. You will
recall that Mr. Guitard matched the serial number on
the rifle to the box that the rifle had come in so I
don't think there's any argument about that. Given
that initial fact of his possession of Mr. Guitard's
15 rifle two other jigsaw pieces connect here. One,
this is the important one, is that a Buck knife and
sheath were found under the car seat in Father
Smith's abandoned car. The Defence have been
suggesting up front that the officer who found that,
20 Constable Robitaille, wasn't telling the truth. As
far as I can understand it that was because it wasn't
mentioned in his investigation report, but it was
mentioned, we found out, in his exhibit report, which
is where it is supposed to be, and it was neatly
25 located in between two other items so he couldn't
have inserted it as an afterthought. If you find,
as you should, that the Buck knife and sheath were
found in that car that night what does that mean?
30 Antoine Guitard looked at that knife and the sheath
in court and he said it was identical to the knife
and sheath he had had stolen and, more particularly,

1 he remembered that he had scratched the blade on
his stolen knife - on his own knife rather, by using
the wrong type of stone to sharpen it and lo and
behold the knife that was found in the Priest's car
5 had similar scratches on it's blades. That identifi-
cation was further enhanced when Mr. Guitard was
brought back and he noticed some marks on the outside
of the sheath which he said, my recollection is, that
he remembered those marks as having been on the sheath
10 before. It may be said literally that's not a
positive identification and in a sense you can't give
a totally positive identification unless there is
something unique about an item like say a serial
number. All you can say if the item isn't as unique
15 as a serial number is, and in essence this is what
Mr. Guitard did say, it's either mine or it's exactly
like it, even down to the identical scratch marks on
the blade and the marks on the sheath.

20 Incidentally, Mr. Furlotte said that Constable
Carnahan said that all the items stolen from Mr.
Guitard were recovered. That isn't my recollection,
I don't know what yours is, and it wouldn't make
sense. How could Mr. Guitard be coming to court to
25 say my stolen knife was shown to me in court today
if his stolen knife had been returned to him by
Constable Carnahan the next day. I don't think
Constable Carnahan did say that and it wouldn't make
sense.

30

1 Again on the subject of the knife and the
sheath, we come back to the question of not viewing
facts in isolation. We know Mr. Legere had Mr.
Guitard's gun on November the 24th. We know the
5 Priest's car was driven to Bathurst on the evening
of November 16th having left the rectory at around
6:45. We know it takes an hour and a couple of
minutes to get to the Via Rail station. We have
10 Michael Murty identifying Mr. Legere at that station
at 7:47, just the right driving time. It is a
remarkable coincidence that the Priest's car and Mr.
Legere both show up in Bathurst that night and a
knife identical to Mr. Guitard's happens to be in
15 the car which is about a two minute drive and a ten
minute walk away from where Mr. Legere is now located,
the same Mr. Legere who when he's arrested has
Antoine Guitard's rifle upon him.

 Besides the Antoine Guitard connection there are
20 two other incidents that took place between the
Daughney and the Smith killings which I have already
basically dealt with so I can be quite brief. One
is the chase by Corporal Tomassin. That was a very
vivid and dramatic story, made excellent newspaper
25 copy, but its evidentiary importance wasn't as great
as that of some other items.

 Given the circumstances already discussed,
especially Mr. Legere's conversation on arrest,
there is reason to believe he was / ^{the} fugitive that
30 night October 28th. If he was in fact the fugitive
it puts Mr. Legere on the Miramichi on October 28th,
and that's a useful fact but nowhere near the

1 significance of things like the DNA, the credit cards,
the rings or footprints.

Constable Tomassin couldn't give a very good
description of the person he was following either.
5 It was dark, he was running, and for obvious reasons
he never got very close to the armed fugitive. The
events of that whole night are confused and difficult
to follow as you would expect of a chase through the
night when a person is seen briefly by a number of
10 people. The point of that evidence was to put him on
the Miramichi on the 28th and there's plenty of other
things that do that anyway. There's the AIWA radio,
the boots, the Alberta trade certificate, the
Mercedes Benz jacket, all stolen from the Governor's
15 Mansion in the period from late summer to fall of 1989
all recovered from Mr. Legere upon his arrest. There
is Mr. Legere's statement to the police that he was
on the Miramichi a few days after his escape, he
stayed in camps in the woods, he lived well for a
20 time but he was forced out by the arrival of Mother
Winter. It certainly would appear that Mr. Legere
got up to the Miramichi as soon as he could and that
he spent his time on the run in the area that he knew
so well, the area that was home, the area shown on
25 P-1.

The other evidence that originates from this
time frame between the Daughney and the Smith killings
is Fernand Savoie and I have already covered that.
30 I told you I would cover over it again though so I
will, briefly, but just because I do it briefly don't
forget that it's very important. Fernand Savoie was

1 working at the Governor's Mansion. He put his new
vehicle registration and insurance cards in his glove
compartment. They were stolen between October 7th
and November 17th when he stopped using that car for
5 the winter. Mr. Legere was in possession of that
card when he was arrested on November the 24th. He
was in possession of that card when he bought the eye
glasses on November 17th. There was evidence that
Mr. Legere using that I.D. took the train to Montreal
10 on November 16th to 17th, lived at the Queen
Elizabeth Hotel in Montreal from the 17th to the 23rd,
bought the eye glasses in Montreal on the 17th, sold
Mary Susan Gregan's and, still more important, Donna
Daughney's jewelry to Morley Thompson on November the
15 20th using the I.D. Fernand Savoie.

This is all important because it links Mr.
Legere to the Smith killing in terms of the proximity
in time and place of his trip from Bathurst to
20 Montreal to the Smith killing and the finding of the
car and the finding of a knife and the boots. It
links into the Daughneys via the jewelry. It links
into Mary Susan Gregan. It links into Joe Ivory.
Obviously the main connections there are the rings
25 to the Daughneys and the car, knife and boots to
Smith.

On November 15th Dogmasters Barter and Kohut
were tracking a possible sighting by Francois Cormier
on Dickson Road. He described the trackings began at
30 yellow pin 14, went on to 15, and lost it at 16. The
track was about an hour or two long and there's
Father Smith's rectory. The Crown suggests that that
would fit the scenario of Mr. Legere being hotly

1 pursued and having to take refuge somewhere. The
rectory is conveniently close to this spot where the
fugitive's track was lost.

5 We know Father Smith was alive on the evening
of the 15th because Peter McCafferty took his
mother's mass card money over. We know he didn't
show up on the 16th, the congregation got concerned,
and after 7 o'clock we know the body was discovered
and we have seen the photographs and the videos which
10 make it abundantly clear that Father Smith was
tortured, killed and robbed. I should say tortured,
robbed and killed.

15 There's evidence that Father Smith's car was
taken from its garage at 6:45 on the 16th. You
remember the next door neighbor, Mrs. Murdock,
checked her clock, it was 6:45. She looked out, she
and her daughter heard a honking noise and they
looked up and they saw a car's rear lights come on
inside Father Smith's garage, the door of which was
20 open, and of course they didn't know whether it was
a car going in or a car coming out because all they
saw was the lights. The honking fits the physical
condition of the car found abandoned at Keddy's,
Bathurst. The side of the steering column was
25 damaged. The horn in the center of the steering
wheel was damaged. In fact a broken piece of horn
was found in the garage. The evidence from the GM
mechanic was consistent with the situation that some-
30 body who didn't have much time to start the car went
in sideways through the column. In fact the mechanic
says that was just about the right way to do it. That

1 that could set off the horn and that the person would
bash the horn in an attempt to stop it honking.

There is also evidence from taxi driver, Mr.
Hancock. He saw a blue car exit the rectory parking
5 lot at 6:45. He said it was a blue Chev. Father
Smith's was a blue Oldsmobile. The GM mechanic says
that those are both GM products distinguishable only
by their taillights and grille so it's easy to under-
stand where the error crept in. His evidence con-
10 firms that of Mrs. Murdock and vice versa though
either would be quite sufficient to have that car
leaving at 6:45.

We know that car was found abandoned at Keddy's
Motel, Bathurst, later that same evening. The person
15 who found it swore at trial that he did not believe
the car he saw on the road to Bathurst was the same
car he found abandoned. He had reflected upon it and
his sworn evidence at trial was that it wasn't the
car that he had passed and in fact that car had a
20 woman in it. That car is a red herring. We know
that the Priest's car was found abandoned at Keddy's
Motel that evening.

We have the evidence I have already mentioned
25 that Mr. Legere bought a ticket at Bathurst Station
at 7:47 for the 8:28 leaving for Montreal. We know
that a test drive from the rectory took one hour to
get to Keddy's and a couple minutes more driving to
the station and then it would be a ten minute walk
30 from the station to the motel or vice versa so the
timing was just dead right. It's clear that if
Allan Legere was the driver of the Priest's car that

1 left at 6:45 P.M. he could have arrived at the
station, bought his ticket, left the station, and
Mr. Murty said that he did leave the station, driven
to Keddy's, abandoned the car and, also, we say the
5 boots, and walked back to catch the train. It would
make sense for a fugitive who proposed to catch that
train to abandon the car which connected him to the
crime somewhere away from the station but he couldn't
abandon it too far away because he's going to be re-
10 turning on foot. A parking lot where a car could
hope to go undetected for quite a time would be per-
fect. Keddy's being a minute or two driving time,
and ten minutes walking time from the station would
be perfect. We submit that's a rational scenario.

15 Remember that in that car was found what we
submit was Mr. Guitard's knife and sheath which would
connect Mr. Legere to that car via the possession of
Guitard's rifle.

20 I told you in opening that the car, like so many
of these jigsaw pieces, fit into several others. The
finding of the knife, coupled with the Guitard rifle,
links Mr. Legere to the car. The car leaving the
rectory at 6:45 links it to the killing. Mr. Legere
25 buying the ticket at 7:47 links him in terms of time
to the arrival of the car in Bathurst. Incidentally,
with regard to the car you may remember, though there
were glove marks on the rear window - no, I'm sorry,
on the rearview mirror and there were also glove
30 marks on the Cooler bottles found in Father Smith's
house which may mean that the person who was involved
wore gloves for some of the time.

(RECESS - 4:50 - 5:20 P.M.)

1 (Jury called, all present.)

(Accused viewing proceedings from cell block.)

MR. ALLMAN: I was talking about the finding of the car
and I was pointing out to you that it links back to
5 the finding of the knife and the sheath and I was
going to point out that like all these jigsaw puzzles
it's got another link in a different way and that
link is with what I am going to call the foot
evidence. Now, the foot evidence is to Father Smith
10 what the DNA is to the women. Actually the foot
evidence breaks down into two parts. First there's
evidence that puts certain boots into the blood that
was in the Smith house and, second, there's evidence
that puts the feet of Mr. Legere into those boots.

15 Here's where the car fits in. You will recall
the car was found abandoned in Keddy's parking lot.
The wet pair of Greb Kodiak boots were found very
near to the car dumped just inside an area where
construction work was being done. The fact that it's
20 so close to the car is significant and the fact that
a good place to hide work boots temporarily would be
a work site is the same thing. The person was
trying to hide the car and he was trying to hide the
work boots temporarily. The fact that those boots
25 are found in that location is significant. In-
cidentally, they also found there a jacket smelling
of wood smoke which might just fit somebody who had
been in the woods lighting campfires for a while.

30 There was a funny thing about the Greb boots.
They were larger than Mr. Legere's feet. So, for
that matter, were the gorilla boots. You might think

1 that's because he couldn't go into a store and buy
himself the right fitting size. But be that as it
may, the boots were found at that location of Keddy's,
and I am going to deal with part one, putting the
5 boots in the house, and on that you will recall the
evidence of Sergeant Chiasson, an expert in identifica-
tion and footwear comparisons. He compared the boots
found at Keddy's with the imprints on the two church
publications. Those publications are exhibits; they
10 are in evidence before you. One was located in the
rectory kitchen, one was in the study at the deceased's
feet and you can see that in the video and in the
pictures. You will remember that the expert on blood
splattering, Sergeant Gorman, said that that seemed
15 to be the two places where the main attacks occurred,
the kitchen and the office. There was blood all over
those two rooms. There was blood in other rooms as
well but there was blood all over the kitchen and
blood all over the office. Whoever made those im-
20 prints walked through that blood in that office and
in that kitchen.

One other thing about the boots is that they were
thoroughly washed. There was blood found in the sink
25 and the boots when found were wet through and there
was liners inside them as if to keep the wearer's
feet from the wet. We would suggest that that's be-
cause those boots didn't just walk through the blood,
they created the blood. They were the weapons that
30 were used to deliver that awful beating to the Priest,
There was so much blood on those boots that he didn't
just wash the bottoms, he washed the whole boot.

1 Sergeant Chiasson dealt with the first question:
did the boots found at Keddy's make the bloody prints
in the kitchen and in the office, and, very simply, he
said yes, they did. He explained how all these
5 identification types of evidence work. The first
thing you do is you ask yourself the general question
are they the same style and size boot. If the
answer is no, forget it. Obviously if the boot is
a totally different size say, it's what the DNA folks
10 call an exclusion so you don't need to go on any
further. If they match in general, and they did in
this case, then you go on to look at the accidental
characteristics the boot acquired over the time it
was worn. It's obvious common sense that a boot, as
15 you wear it, it will get nicked, it will get cut, it
will get worn, and the longer you wear it the more
nicks, cuts and wear it will get so it will get more
accidental changes and more different from any other
boot. Let me point out that there are no statistics
20 on this and there never can be because you can't run
statistics on what is by definition an accidental
happening, an accidental circumstance. But we have
lived for a long time and we don't have to have
25 statistics for everything. There is something called
common sense and common sense will tell you that some-
where along the line a piece of footwear gets so many
accidental characteristics that it becomes unique.

 Sergeant Chiasson noted, and his diagrams are
30 in evidence, I believe it was 11 accidental character-
istics, he drew the lines pointing to them, common
to the boots found at Keddy's and to the prints at

1 the scene of the Priest's death, and he said that
that was more than enough in his expert opinion to
say that those boots made those prints. In fact
there were even a couple of extra characteristics
5 that he didn't even bother to put on his chart be-
cause he had got so many it was superfluous to do it.
And yet again you don't look at that in isolation,
Sergeant Chiasson's opinion. Those boots which didn't
belong to anybody at Keddy's because nobody claimed
10 them were found abandoned, semi-hidden, the same as
the Priest's car, close to the Priest's car. So in
considering Sergeant Chiasson's opinion of those
boots made those prints you can derive support for
it if you needed it from the fact that those boots
15 were found where they were. It's obvious that those
boots right next to the car are the boots that
tramped through the blood at the scene. There is no
doubt, reasonable or unreasonable, about that.

20 Other similar footprints besides the ones in
the kitchen and the office were found around the
house. There was a set coming up the outside porch
and there was a mark that could have been a Greb boot
on the garage door. And I just want to put aside a
25 red herring here. I think you probably know it's a
red herring but, still, there was another boot mark
on that garage door but the experts said it was an
old one, it had been there since the wooden door had
been in the lumber yard, and they were disappointed
30 because they thought it meant - they knew it meant
that doesn't have anything to do with this case, so we
can forget that one.

1 Obviously the finding that those boots made those
prints is an important positive finding. There is
another important finding and it's a negative finding.
There were no footprints from any other footwear in
5 that house. No other boot, no other shoe, no other
sneaker. There was blood in substantial quantities
in that house, especially in the kitchen and in the
office. I will come back to this point later but at
the present let me just say this. It strongly in-
10 dicates that only one person was ever in that house.
If there was a second person he was either very lucky
or very careful because he managed to avoid all that
blood. In fact I got the impression, and I'll come
back to this again later, that Mr. Furlotte conceded
15 that only one person ever went into that house. He
said something to that effect. It follows that if
that person was Allan Legere he must be guilty. So
I guess that's the question. Was Allan Legere the
person who wore those boots that walked through the
20 blood in the house, assuming you find, as you must
in the Crown's submission, that those were the boots
that walked through the house. So that's aspect two
of the foot evidence, linking Mr. Legere's feet to the
boots and on that we called three experts. We called
25 the R.C.M.P. Officer, Sergeant Kennedy; we called the
FBI agent, Mr. Budsiak; we called a foot doctor, Mr.
Bettles, and I am going to try and summarize their
evidence but before I do let me make a few preliminary
30 remarks.

1 When you think about it, all these comparison
sorts of evidence, it's the same type of evidence
whether it's boot to print, foot to boot, known DNA
to unknown DNA. What you do is you take two items
5 and you compare them to see if they appear the same.
Compare the bloody print to the boot. Do they look
the same? You compare the boot to Mr. Legere's feet.
Do they look the same? You compare the DNA on the
bodies, on the autorads, to the DNA taken from Mr.
10 Legere. Do they look the same? If the answer to
that question is yes then you go on to stage two and
say okay they're the same, what does that mean? How
likely is it that this is a coincidence? How un-
likely is it a coincidence? Do they look the same
15 because they are the same or do they look the same
because it just happens to be a coincidence? It's
the same process in all those similarity kinds of
tests. So let's look at what the experts said on this
stage two, the boot to feet comparison.

20 Sergeant Kennedy took us in detail through the
tests and comparisons he made. His primary approach
was comparing the casts that he took from Mr. Legere's
foot which we know represents Mr. Legere's foot, with
25 the unknown, the Greb boots found near the car, though
he also compared them with the gorilla boots. They
are the ones Mr. Legere wore when he was arrested.

 Now you saw and you heard Sergeant Kennedy. You
watched the video that he used to demonstrate how he
30 performed his tests, and we suggest to you that the
similarity between the feet of Mr. Legere and the
marks on those Greb boots was uncanny.

1 Now you can to a limited extent perform the same
test yourself. You can take the boot and you can put
it on the cast and you can put it on the plans. But
you should remember that isn't what Sergeant Kennedy
5 did. He said that it took him a long time, a lot of
work, the use of many different lights and many
measurements with calipers to come to his conclusion.
He didn't just take something and go oh yuh, looks the
same to me. It was months of work with measurements
10 and special lights before he came to the conclusion.
He made two comparisons really. One was the com-
parisons where the marks in the boot compared with
what he calls the morphology. That, you will remember,
is the shape and structure of Allan Legere's foot.
15 The marks in the boots matched exactly the wear marks,
the sweat marks, the size, etc., of Mr. Legere's
feet.

 The second thing he looked at was the accidental
20 characteristic. There was a nail or a staple pushing
up in the left boot heel. It aligned to the insole
in the shoe. That in its turn aligned to the bread
bag in the position where the wear was. That in its
turn aligned to an indentation in Mr. Legere's heel.
25 That's a fact. When the cast was taken to a laboratory
iron, rust colored, was found embedded in that mold.

 That's a remarkable characteristic in the Crown's
submission. How many people out there are there whose
feet match Mr. Legere's exactly, in general, and have
30 also been walking around for a while with a heel with
a little hole in it and a nail through the boots. I
don't know what the statistics are on that. I know

1 what common sense says and I submit so do you.

Sergeant Kennedy had an opinion based upon the match of the accidental and the morphological characteristics. He said those boots were worn,
5 quote, 'by Allan Legere or someone whose feet had the same morphological and accidental characteristics as Allan Legere.'.

What was his opinion on the second aspect, the chance of that perfect match being a coincidence?
10 I want to make an important point about Sergeant Kennedy's evidence and it applies to Bettles and Budsiak too. In DNA you are dealing with something that doesn't change because basically the experts said the DNA doesn't change. You can generate a data
15 base upon known samples and you can get statistical estimates on chance matches, but you can't really do that with feet especially when you are talking about something like an accidental characteristic, the nail in the boot. There is no way you will ever get a
20 data base on what is by definition an accident. But that doesn't mean you can't use your common sense to say what are the chances of that being an accident. You can also to some extent use a sample. Sergeant
25 Kennedy did just that. He generated a study of over 900 pairs of feet, in other words over eighteen hundred individual feet. The object of doing that wasn't to run Mr. Legere's feet through that data base, it wasn't that at all, it was just a general
30 study to see how different or similar feet are. Sergeant Kennedy made 32 measurements, I think it was, per pair of feet, and he found that he could always

1 come up with an individual foot on his computer after
a limited number of measurements. To make the test
tougher, to give an accused the benefit of the doubt
even greater, to make the chances of an accidental
5 match even larger, he extended those measurements
five or ten millimeters on either side. That wasn't
an error factor. That was the exact reverse. It was
done in order to demonstrate even more strongly how
very, very different feet are, because now you aren't
10 asking the question how many feet are there that are
absolutely identical, you are asking the question
how many feet are there that are even close. Maybe
if I can give you an example. Suppose the question
is how many men in a thousand are a hundred and
15 ninety-seven millimeters high? The answer might be
one or two, I don't know. If you ask the question
how many men are there between a hundred and ninety
and two hundred you will get a larger number. So
it's giving a person a greater chance of it being an
20 accident, and even with that greater chance Sergeant
Kennedy said after four or five or six runs through
I could always come and find a distinctive foot in
there. So what he was saying based upon those tests
was feet are different. Feet all have five toes, a
25 ball and a heel, but your left foot is generally
different from your right foot and both your feet
normally will differ from everybody else's out there.
And that isn't a very surprising result. We know
that everybody's face - or almost everybody's face
30 has two eyes, two ears, a nose and a mouth, but we all
know also that faces are different. We know that

1 fingerprints are unique. So it isn't any great
surprise that body parts like feet are different.
They are probably different at birth and then as you
use them over your life they get more different.
5 A jock's feet are going to be different from a couch
potato's and a wood worker's from an office worker's.
It makes sense. We submit you can and should accept
that opinion. Feet are different. Therefore, it is
highly unlikely that another pair of feet other than
10 Mr. Legere's made the marks in the Greb boot and highly
probable that Mr. Legere's feet did in fact make those
marks.

Sergeant Kennedy did run Mr. Legere's feet on
his computer but that wasn't the test. He made it
15 very clear what he was doing was combining his
opinion on aspect one that Allan Legere or somebody
with identical, morphological and accidental feet
characteristics wore those boots with his finding on
aspect two, feet are different.

20 I don't know how you can pin down words like
'probable' or 'highly probable' or 'highly unlikely'.
It all comes down to a question of common sense and
the common sense question that you are going to have
to ask yourself is this: what real chance is there
25 that somebody out there in the world at large happened
in November, 1989 to have identical feet to Allan
Legere's, including that remarkable alignment of the
nail up through the insole and the bread bag into the
heel where it fits Mr. Legere. Common sense, not
30 data bases, common sense says that isn't possible.

1 I am going to turn to Mr. Budsiak. He was a
highly qualified witness. He wrote a book on
identification evidence. He had testified all over
the United States on the question of could feet be
5 matched to shoes, and he went through the same two
stage process as did Sergeant Kennedy. You compare
for similarities, if you find they are the same what
are the chances. As to aspect one, the comparison,
his approach was slightly different from Kennedy's
10 because Kennedy's comparison was mainly, not entirely,
but mainly the known, which was the cast, with the
unknown which was the Greb boots. Now, Budsiak's
main comparison was between the known Greb boots and
a different unknown, the gorilla boots. It absolutely
15 and totally was not the case that what he compared
was the known gorilla boots with the known cast be-
cause that would have been as pointless an exercise
as you can well imagine. And if you look at his
charts you will see on one side there's photographs
20 of the gorilla boots, on the other there's photographs
of the Greb boots, down the middle there's photographs
of casts, and he's got lines linking them all up which
demonstrate vividly what he said orally that what he
was doing was he was comparing the known, the gorilla
25 boot, to the unknown, the Greb boot, to the known,
the cast. That's a very beneficial exercise I think
because he's asking the same question as Kennedy but
coming at it from a slightly different angle so you
are getting the opinion from two different angles.
30 It can't be said that Budsiak just went out and did
the same test as Kennedy. He didn't. He did his own.

1 It's his independent conclusion. And his view on
aspect one was they all matched. He said they were
worn by the same person or by two people with exactly
the same feet characteristics including the accidental
5 characteristics. As to aspect two, the chance of an
accidental match, he was acquainted with Sergeant
Kennedy's studies and he also knew of studies from
the U.S. Army and he had done a study of his own, and
it was his opinion that feet, especially after many
10 years of use, are distinctive in their makeup, simply
based upon their size and structure quite apart from
the additional temporary presence of a temporary
accidental characteristic like the nail in the heel.
So Budsiak, like Kennedy, came to the conclusion on
15 aspect two that feet are different.

There was a little bit of dispute between Mr.
Furlotte and I about whether Mr. Budsiak said
probable or highly probable in direct evidence.
My recollection is he said 'highly probable' and
20 Mr. Furlotte says he said 'probable'. Fortunately,
we don't need to worry too much about that because
Mr. Furlotte did ask him in cross-examination and in
cross-examination he used the words, and I have it
25 quoted, 'highly probable'. I believe he said 'highly
probable' from beginning to the end. Certainly by
the end of his testimony there was no doubt he was
saying 'highly probable'.

Finally, we come to Doctor Bettles. On aspect
30 one, matching feet to boot, I am not going to belabor
that. He basically said the same, the casts matched
Allan Legere's feet. He noted one additional

1 characteristic. There was a callus on one foot of
Mr. Legere on the cast which matched a crack in the
boot and he thought that that was connected caused
by the crack in the boot. That's what had caused
5 the callus on the foot. His main significance, how-
ever, was on aspect two, the question of the chance
of an accidental match. Now he was a foot doctor
with many years of practical medical experience. He
had examined, I suppose, thousands of feet over the
10 years. He saw I think it was three or five hundred
patients a week. There is no substitute in life for
that kind of experience. It is absolutely literally
hands-on experience, and based upon that experience
he gave us his opinion that feet are different. That's
15 a quote. You might just recall his anecdote about
how sometimes his nurse or secretary pulls out a
file card and says somebody, Mr. Smith, is coming in
tomorrow for an appointment and Doctor Bettles can't
put a name to Mr. Smith but he looks at the
20 description of the feet and he says oh yeah, I know
who that is. In other words Doctor Bettles knows
people by their feet like you and I know people by
their face, and there's just no substitute for some-
body whose got that kind of experience. It isn't a
25 statistic; it doesn't come out of a computer. There's
no data base. It's the factual observation of a man
that's made his living for many, many years looking
and looking close at feet, and it deserves your
30 respect. He said feet are different and combining
both these aspects said it is highly probably that
Allan Legere wore those boots.

1 So what's the bottom line about all this? The
uncontradicted evidence of three experts independently
considering this situation on aspect one is the Greb
boots and Mr. Legere's feet match. They were worn by
5 Mr. Legere or someone with the same shape and
structure of feet, and the same accidental character-
istics right down to that indentation in his heel
which matched the nail in the boot. On aspect two it
was their unanimous opinion that human feet differ
10 from one person to another and combining their aspects
and their opinions on both the end of the day they
all said - I think they said all along and certainly
at the end of the day they all said it is highly
probable that Mr. Legere was the wearer of those
15 Greb boots.

 Now, in considering expert evidence, whether
it's the feet or anything else expert, the DNA, it's
true you don't have to accept their evidence. As Mr.
20 Furlotte said, it's your prerogative to reject an
expert's or anybody else's evidence. But before you
do that, surely you would want some basis for re-
jecting it. How do we deal with experts in ordinary
life, and we all do. If we are sick we go to a
25 doctor; if we're sued we go to a lawyer; if we have
got a problem with a car we go to a mechanic; and I
suppose we go to the best lawyer, the best doctor,
the best mechanic that we can afford, and we put the
facts to the expert and he looks at the facts and he
30 gives his opinion and now we have got to decide are
we going to rely on his opinion or not. When coming
to that conclusion we would consider how renowned and
expert is he. Has he explained it to us in terms that

1 make sense to us as laymen or laywomen? Does it
seem reasonable and to fit common sense? We aren't
going to have all the background information of the
expert. A doctor can maybe look at an x-ray and
5 tell us things that we can't get from it, and the
mechanics always look at those little diagnostic
computers of theirs and tell us what's wrong with
our car and why it's going to cost us a fortune to
get it fixed. Maybe we don't understand all that but
10 at the end of the day and in the absence of some
reason to do otherwise we are going to say well he's
the expert and it makes sense to me, we'll accept his
opinion. Now, looking at the feet experts in that
light, we have called an R.C.M.P. expert who had
15 worked many hours and weeks and months on this; an
FBI expert who wrote a book on identification and who
has testified all over the States; we called a man
who has looked at more feet than one cares to think
about. Their qualifications are excellent. Their
20 opinion, their unanimous opinion that the Greb boots,
the cast and the gorilla boots matched. They ex-
plained it to you. They demonstrated it to you so
that you could see for yourself this wasn't some
highfalutin technology. It was demonstrated to you
25 right here in court and it fits. Their opinion that
feet are different was explained and supported to
you, in the case of Kennedy and Budsiak by studies,
and in the case of Bettles by a lifetime of pro-
30 fessional experience. That expert view that feet
are different fits common sense. That's what you
would expect. Their unanimous opinion that it is

1 highly probable that Mr. Legere wore the Greb boots
makes sense and though you can't put a number on it
the chances of another person out there having
identical feet to Allan Legere, including that heel
5 mark seems, if I can borrow a phrase from the DNA
people, remote. There is no rational basis for any
finding that anyone else wore those boots other than
Mr. Legere.

10 Again, as so often it's my theme throughout,
there is another supporting coincidence. It's obvious
that the killer abandoned those boots at Keddy's
sometime after he had abandoned the car on the 16th.
We know, if you accept Murty's evidence, that Mr.
15 Legere was in Bathurst just about the right time that
night and let's ask ourselves this question: what are
the chances that Mr. Legere was at the Bathurst train
station about 7:47 and at the same time down at
Keddy's there's another different person who happens
20 to have feet exactly like Allan Legere, even down to
a heel mark. A two minute drive, a ten minute walk
away there are two separate people with those features.
The Crown's submission is that that is an incredible,
using the word in its proper meaning, absolutely
25 unbelievable, coincidence.

Well, I think we have finished with the feet.
We have already discussed the evidence to the effect
that Mr. Legere bought a ticket at 7:47 and was on
the train at 8:30, I forget the exact time, that left
30 Bathurst to Montreal on the 16th. There's Mr. Murty's
evidence. He was identified on the train by one
officer. Another officer remembers Fernand Savoie's

1 I.D. being produced on the train. There's the fact
he checked into the Queen Elizabeth Hotel on the
17th which just fit with the train arriving. There's
the fact that he told the police when he was arrested
6 that he had taken a train to Montreal.

I just want to point out very briefly at this
moment a little bit about the business about the
tattoo. It is correct that the officer testified
his recollection is the man he saw rolled the sleeve
10 right up, and I'm sure he believes that in his mind.
Mr. Legere told us, however, told the police who told
you, what happened was that didn't happen. He didn't
roll his sleeve all the way up. I'm quite sure that
officer believes and I'm quite sure that officer
15 wants to believe that it was really rolled up all the
way, but Mr. Legere who, darn it all, should know,
told the police that he got away because in fact he
didn't roll his sleeve all the way up. While we are
on that little topic let me also mention the guy who
20 was sleeping beside him. Mr. Legere told the police
that he pretended to be with that person to the
police, to the police who checked him in Levis.

We submit that there's every reason to believe
25 that Mr. Legere was the man on that train, the man
who bought the 7:47 ticket. Mr. McMurty's (sic)
identification on that point is good. He didn't
recognize Mr. Legere when he saw him because the
Legere he expected to see was the old Legere, the
30 Legere that had been seen in pictures. But as soon
as he was shown, and it wasn't an identification kit,
as soon as he was shown those six - or was it eight,
eight photographs, he said oh the man I saw was

1 number six, Allan Legere, and in court he said the
man I sold that ticket to was that man, Allan Legere.
He positively identified him as the person who bought
the ticket at 7:47. Now if you accept that he was
5 the man on the train it connects back to the finding
of the car, the knife, and the boots which I have
already gone through, and like all these jigsaw
puzzles it has another connection on the other side.
It connects forward to the finding in July, 1990 of
10 Father Smith's credit cards under that bridge over
the Matapedia River. As regards the credit cards
there isn't even a question about their identifica-
tion. They are unique. They've got numbers on them.
It's clear that Father Smith's cards somehow got to
15 that spot and it's only rational to conclude that they
did so after his death. How did they get there? The
obvious rational conclusion is because somebody
threw them out the window or flushed them down the
toilet. Incidentally, we may remember that Mr.
20 Legere seems to like flushing things down the toilet.
There was a blocked toilet at the Queen Elizabeth
Hotel.

If you wanted to dispose of dangerous possessions
25 that linked you to a murder flushing them down the
toilet of a train would be a good way to do it and
a perfect spot would be in the middle of the woods
while the train was going over a bridge, over a river.
The chances, I don't know that we can put a mathe-
30 matical figure on this, that those cards would fall
into the river and thence into oblivion would seem
excellent but it didn't happen. Now surely that's a
logical, a rational and a sensible inference. Are

1 we really going to have to worry about credit cards
getting blown three-quarters of a mile along the
frozen river, thirty feet up into the air and landing
on an abutment under a bridge? I want to make a point
5 here. A favorite question lawyers to experts and
others is is it possible that such and such a thing
happened, and it's a very hard question to answer
honestly because almost anything is possible. It's
possible there's been a coup while we have all been
10 in here today and that now Canada is governed by a
military alliance, and you can make up lots of
equally silly theoretical possibilities that you
can't actually say can't possibly be true.

15 The workmen who found those cards had never run
a test, and I don't suppose anybody had ever run a
test to see how far and in what way credit cards fly,
so being honest they have to say to Mr. Furlotte that
that scenario is possible. But what I submit you can
20 say and anybody using common sense can say, I suppose
it's theoretically possible, and I don't for one
minute believe it, I don't for one minute accept the
flying credit card theory. If you accept the
rational conclusion that someone dumped them out of
25 that train what follows? Out of a train over that
river. What follows? That's the only track that
goes from Bathurst to Montreal. It's a track we have
every reason to believe Mr. Legere was on at some
point in time. In fact it was probably, the evidence
30 indicates, the night the Priest was slain.

1 It's a fact, according to our witnesses, that
snow and gravel get plowed on the track and there is
evidence that the first real snow storm of the
winter that year was on November 24th when Allan
5 Legere was captured, and that all fits with the cards
being dumped before the snow arrived and being found
when the snow had melted and those men went up to
inspect the bridge. That would seem to fit with the
cards disappearing between the 16th and the 24th of
10 November, and if you accept that you have to ask your-
self the coincidence question again. Did somebody
other than Mr. Legere dump those cards? Is it a
coincidence that boots which match Mr. Legere's feet
show up near the car which belonged to Father Smith
15 just about the same time Mr. Legere showed up in
Bathurst, and is it another coincidence, yet another
one, that another person than Legere took a train to
Montreal and abandoned Father Smith's cards along the
same track that we know Mr. Legere must have taken
20 when he went to Montreal.

You will recall when I opened I told you that the
Crown's case consisted of a series of interconnected
facts and that you have to say to yourself are these
connected or is it just a coincidence, and I suggest
25 to you that we have got far far beyond what anybody
can think were coincidences.

I am going to deal very briefly with the events
of Mr. Legere's capture. Like the Tomassin incident
30 they were dramatic; like the Tomassin incident their
significance isn't as great as that of some of the
other items. Mainly the conversations that Mr. Legere

1 had with the people, Gomke, Golding and Mercer, are
simply to confirm much of what we already know.
Those conversations confirmed he had escaped from
prison, he had gone to Montreal. He bought new
5 glasses in Montreal. He talked to the off-duty
Constable Mercer about a priest. I told you in
opening that she couldn't say what priest or when
but it does appear that Mr. Legere talked to her
about breaking into a priest's house looking for
10 money and talking to a priest about it being a sin
to have bingo at church. It's for you to say what
priest he was talking about.

When he was asked some questions by Mr. Golding
about the killing of the priest he neither admitted
15 or denied that killing.

I'll try and deal briefly with what he said to
the Newcastle R.C.M.P., but before getting into what
he said let me just remind you of some of those
20 physical observations, the light brown pubic hair,
the thin waist, and the fact that his appearance
had changed so much that Mason Johnston wouldn't
have known him across the street which is a relevant
fact when you are thinking about the identifications
25 during that summer.

Mr. Furlotte I think suggested that the police
evidence about Mr. Legere's conversations wasn't true
and that Mr. Legere didn't really say the things that
they attribute to him. You are going to have to
30 assess Sergeant Mason Johnston, Corporal Kevin Mole,
and Constable Charlebois on those points. I submit
they gave their evidence clearly and honestly.

1 They gave you a vivid impression of a man talking
up a storm, a motor mouth. He was talking quickly.
He was hopping around from topic to topic. He would
say the same thing two or three times. So it's very
5 understandable how it was hard for them to get any-
thing down except the basic essentials and hard to
differentiate between what he said then and what he
said then and what he said then. And, anyway, most
of what he said simply went to confirm what other
10 evidence shows anyway. His talks about the shooting
and the dog, about the trip to Montreal, about the
escape on the train, about the shave in Montreal, about
the fancy hotel, there's other evidence which fits
all those which says that he was telling the truth.

15 It looks as though when he was captured Mr.
Legere wanted - was eager to talk, which is very
understandable. He had just had an exciting few
months of freedom. He had been escaping the police
in New Brunswick. He had escaped the police on the
20 train. Been living as a fugitive in the woods and
then in a swanky hotel. He had an interesting story
to tell and he had never had an audience to tell it
to and now here are the police, the police he had
been evading for so long. He had finally got himself
25 an audience and he talked without thinking what he
was saying, and in the course of that talk he did say
two things, probably just passing comments to him
but they are quite important. He said that he had
30 spoken to nobody all that summer. He only ever met
two people, the guy fishing, and that was at the lake
that you can see that curve there, and the other

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1 person he met was the man on the Morrissy Bridge,
that's the lower of the two bridges, who said "Hi
pal" or "Hi Al" as they passed each other. On that
same point he also said that he had been reading the
5 papers that summer and it appears that the papers
had been talking about a possible accomplice, and
Mr. Legere told the police in words appropriate to
a layman and perhaps not to a lawyer's summation
that the accomplice was bullshit, and he should know
10 and I'm not disposed to disagree with it.

I am going to turn to the DNA evidence. Before
I do so let me make a preliminary observation about
the DNA evidence. DNA is sometimes termed genetic
fingerprinting. If you accept that the fingerprint
15 here points to Mr. Legere then in a very real sense
it is better than ordinary fingerprinting and here
is why. Depending upon the facts it may be possible
in a certain case to explain away a fingerprint on
let's say a table or a window. We don't know when
20 or how fingerprints get where they do. You remember
the expert evidence that fingerprints can be there
for days or weeks, even months, and of course they
can get there very innocently. We know that there
were fingerprints - unidentified fingerprints at a
25 number of these crimes and there's no way of knowing
who they were because we don't know who had been in
the Flam, the Daughney and the Smith residence for
the last few months. Fingerprints can get there for
any reason and in any fashion. But it's kind of
30 hard to explain away semen found in a woman's
vagina, and it's kind of hard to explain away semen

1 found on a thigh or stomach, and there's only one
sensible explanation for how semen gets in those
locations, that's sexual contact between the man and
the woman in question. I suppose sometimes there
5 may be a question about whether the woman was con-
senting or not but nobody's ever raised that question
here and nobody believes for a millionth of a second
that the Daughneys consented to any sexual contact.
So if you find that that was Allan Legere's semen
10 there is only one possible explanation for it and
that would be sexual assault on the victim in question.

When it is said that the DNA put Mr. Legere in
the house that's true as far as it goes, but it goes
a good deal further than that because if that's Mr.
15 Legere's semen it doesn't just put him in the house
it puts him in intimate physical contact with the
Daughneys. So if you do find that it was Mr. Legere's
DNA it's better than ordinary fingerprinting because
it puts him in contact with the Daughneys.
20

I told you at the outset of the trial about
the DNA, that the evidence to be presented in this
area as to how human DNA is typed and the probabilities
calculated would involve testimony from molecular
25 geneticists, biochemists, population geneticists,
from forensic, medical and research fields, and I
told you back then that DNA typing was used for many
purposes other than courts. You have seen all that
for yourselves. I told you back then that describing
30 this area of science or statistics wasn't like
describing how to ride or repair a bicycle and that
it shouldn't surprise you this is a complex subject.

1 You have seen that for yourselves, haven't you just?

His Lordship will explain to you about the law on individual pieces of evidence, particularly scientific evidence. I would just note, subject to
5 His Lordship's directions in this regard, that the Crown is not required to prove every individual evidence beyond a reasonable doubt and the DNA is just a piece, though a very vital piece, of individual evidence.

10 I would also point out to you, Members of the Jury, that you are not required to completely understand all the intricacies of DNA typing whether the RFLP technique or population genetic issues. To
15 require that with any scientific evidence, particularly DNA, would be to require a fiction, that is to expect complete comprehension by a jury of laypersons in the learning environment of a trial.

I told you back in August that the experts would be obliged to make every effort to inform and explain
20 these things to you so that you could determine whether to rely upon their evidence. You need to know whether you can do that to determine what importance to place upon their findings, and I suggest that the Crown's experts fulfilled their obligation in that regard.
25 Again, we ask only that you use your collective common sense. Using that, we would suggest that you can, quote, 'rely on certain basic DNA evidentiary conclusions'. The ultimate decision, of course, as
30 to what you rely on is for you but we are suggesting you can rely on these following things. I won't mention all of them because there just isn't the time,

1 but these I think, submit, you can rely on. You can
rely upon the evidence of Doctors Waye, Bowen and
Fourney, all very highly qualified DNA typing
specialists, particularly with respect to forensic
5 DNA typing. You can rely on the evidence that Doctor
Kidd is very highly qualified in the use of DNA RFLP
typing in the scientific research in the medical
world. You can rely on the combined evidence of
Doctor Waye, Doctor Bowen, Doctor Kidd and Doctor
10 Fourney that DNA RFLP typing is a safe and reliable
technique for differentiating between individuals for
forensic, in other words court purposes, and I don't
remember Doctor Shields ever saying otherwise. You
can rely on their combined evidence that this technique
15 is carefully, scientifically and skillfully controlled
and conducted at the R.C.M.P. Central Forensic
Laboratory in Ottawa.

The Defence expert, Doctor Shields, made
absolutely no criticism whatsoever of the R.C.M.P.
20 technique. I believe I recall him saying that he
didn't see any evidence of anything wrong with the
R.C.M.P. methods. I find it peculiar to hear Mr.
Furlotte insinuate that there was something wrong
with the R.C.M.P. methods when his own expert never
25 said there was and if I recall it right in fact, said
that he found no evidence of anything wrong with the
R.C.M.P. methods.

You can rely on the police and civilian evidence
30 that preceded the DNA evidence that the substances
used in these tests were taken from the individuals
that they reportedly come from, and the persons they

1 come from are listed and I'm not going to read them,
P-160 and P-163. You can rely upon their evidence
combined that in this particular case the RFLP
technique was carefully, scientifically and skill-
5 fully controlled and conducted. There is no evidence
of anything going wrong with that whatsoever. As a
result we -- I want to refer to one thing here. Mr.
Furlotte suggested that the evidence that male DNA
was found in the vagina of Donna Daughney somehow
10 compromises the DNA typing evidence. Doctor Shields
didn't but apparently Mr. Furlotte thinks that's a
problem. Does it surprise you that only the most
sensitive probe, it was a sex typing probe, was able
to observe and detect male DNA in that sample. It
15 would have been a very minute amount, not able to be
seen by even the most sensitive of the regular poly-
morphic probes. Does it surprise you? It shouldn't,
because it would be consistent with the attacker
having penetrated Donna Daughney's vagina and with-
20 drawing at the time of ejaculation and depositing
the majority of the semen on her body. The semen
that was on the body of Donna was only able to be
typed by two probes. Does it then surprise you that
even DNA typing of the most sensitive kind with the
25 sex typing probe was only able to detect a minute
amount using the whole swab and the conventional
serology, Sandy Lumgair's tests, couldn't find that
trace amount. It doesn't compromise the DNA test in
30 the least. Doctor Shields who looked at these things,
and he looked at the autorads, he never said that that
was any kind of a problem.

1 As a result, we submit you can rely upon the
combined weight of the evidence of Doctor Wayne,
Doctor Bowen, Doctor Fourney and Doctor Kidd that
the DNA typing tests revealed, among other things,
5 that all the others suspects run, including Lewis
Murphy, were excluded as the person who left the
semen in Nina Flam or on the Daughney sisters' bodies.
You can rely upon the combined weight of the expert
evidence that of the two vaginal swabs taken from
10 Nina Flam understandably one contained more DNA than
the other simply because there was more semen on that
one and the swab with the small amount of DNA the
scientists could only look at one section and compare
it with the DNA extracted from the known hair sample
15 taken in 1986 and '89 and the blood of Allan Legere,
and at that one polymorphic area there was a match.
That's on exhibit 162. You will take these with you.
The other polymorphic areas looked at were incon-
clusive. On the swab with the larger amount of DNA
20 they were able to make comparisons at four highly
polymorphic areas. The band patterns at the four
polymorphic areas matched Mr. Legere's, two being in-
conclusive. That, again, is on P-162.

25 With regard to the Daughneys you can rely upon
the combined weight of the experts' opinion that of
the two semen swabs taken from the Daughneys, one from
Donna, one from Linda, Donna's had a lesser amount of
DNA but it did match the banding pattern at the same
30 two polymorphic areas of Mr. Legere's DNA and at the
same two areas of the DNA from Linda's body swab.
That's on P-162. On the swab with the majority of
the large amount of DNA extracted from it, Linda's

1 body swab, the scientists made comparisons at 5 - 5
polymorphic areas, and the band patterns matched with
the band patterns at the same five polymorphic areas
of Mr. Legere's DNA with one being inconclusive. You
5 can rely on the combined weight of the evidence of
all the experts, including Doctor Shields, that those
were matches. Doctor Shields didn't dispute any of
the matches. Maybe there was a couple more that he
would have called but he didn't dispute any of them.
10 The evidence of all the experts, including Doctor
Shields, was that these matches mean that the semen
left in Nina Flam and the semen on the Daughney
sisters is consistent with having derived from the
same person, Allan Joseph Legere. You can and should
15 rely on the combined weight of the evidence of all
the experts, including Doctor Shields, that the only
two possible conclusions that can be drawn from such
a match is that the semen was in fact left by Mr.
Legere or it was just a coincidence and somebody else
20 with identical DNA patterns left that semen. That
was Doctor Shields' opinion as well.

To help you with the question was it a coincidence
please consider the following. You can and we submit
25 should rely on the combined weight of the evidence of
Doctors Waye, Bowen, Fourney and Kidd that apart from
identical twins, identical twins, they have never seen
a four or five probe match at these highly polymorphic
DNA areas between different individuals, even between
30 full siblings, full brothers. Doctor Shields gave no
evidence contradicting that statement.

7 Doctor Shields himself upon cross-examination
made the following admissions in this trial: (a) a
four or five probe match, which we had here, at these
highly polymorphic areas, without any developing - any
5 mathematical probabilities, he would consider a rare
or exceedingly rare event. Doctor Shields admitted
that without developing mathematical probabilities
it would be rare or exceedingly rare coincidence for
someone other than Mr. Legere to have left that
10 semen. You may remember Doctor Shields agreed that
you, members of the jury, could take that statement
with you to the jury room. He admitted that it would
be rare for the semen to match Mr. Legere's blood and
hair unless the semen was from Mr. Legere and he said
15 that if the semen was from Mr. Legere then he would
obviously expect it to match the DNA patterns in Mr.
Legere's hair and blood.

The Crown would submit to you that the con-
20 clusion we can draw from all the experts, including
Doctor Shields, based on all those opinions is
sufficient to remove from you any reasonable, rational
belief that these matches are mere coincidences.
Common sense we submit tells you that. It drives
25 you to but one conclusion, Allan Joseph Legere left
that semen in Nina Flam and on the bodies of the
Daughneys. Although the Crown doesn't believe it's
necessary for your decision on this aspect to go any
further, the Crown experts did provide you with
30 additional evidence in the form of numbers. These
probability estimates of a coincidental match in a
Caucasian population are set out in exhibit P-162 in

1 the form of best estimates and in P-167 in the form
of 99.7 per cent confidence intervals which fit around
that best estimate. I'm submitting to you that it may
not even be necessary to worry about the numbers, that
5 we can live with the proposition that these are rare,
extremely rare, figures. But let us look at the
figures. The Defence argues through Doctor Shields
that these probabilities aren't reliable because gene
frequencies vary within races and across races.
10 That's substructure. So how do we know that the
R.C.M.P. data base reflects New Brunswickers,
particularly the Miramichi region where these crimes
were committed.

15 Doctor Carmody testified and said that it is
virtually certain that there must be New Brunswickers
in the R.C.M.P. data base. He gave evidence about
the composition about the CFB Kingston base and the
extreme unlikelihood of there being no New Brunswickers
20 in that data base unless there's reason I suppose that
New Brunswickers are all scared of giving blood.
Contrary to Mr. Furlotte's assertion Doctor Carmody
did do statistical tests, the Hardy-Weinberg
equilibrium and linkage equilibrium, and he found no
25 deviations that in his opinion would affect his
calculations. You may remember that he was talking
about something called a nonparametric median test
which had been recommended by a U.S. statistician
called Seymour Geiser. He did do those tests. That
30 allele frequency differences within races and
across races is recognized, but Doctor Kidd and Doctor
Carmody have clearly stated that in their opinion for

1 forensic purposes, particularly within Caucasians,
those differences have no real effect. That's been
demonstrated in the comparisons that Doctor Carmody
did between the R.C.M.P. numbers generated in this
5 case and with the Montreal, Minnesota and FBI data
which is in exhibit P-167. The differences are that
under the Montreal system for the five locus probe,
I'll just deal with that as an example, in Montreal
1 in three five six million. You remember it was
10 one in three hundred and ten million best estimate
for the R.C.M.P. one. Montreal - one in three five
six million; Minnesota - one in four 0 two million;
FBI - one in six hundred and ninety-eight million;
15 the point being that every one of those gets rare
and rarer, and rarer and rarer. Ask yourself if it
would make any difference to your judgment whether the
right figure is one in three hundred and ten million,
one in three hundred and fifty-six million, one in
20 four hundred and two million, or one in six hundred
and ninety-eight million.

What effect is there if the semen sample wasn't
left by a Caucasian? There's absolutely no evidence
about that. Remember the testimony of Doctor Kidd,
25 the most favorable data base for an accused is the one
to which he belongs, in this case Caucasian. That
statement is supported by calculations that Doctor
Shields made regarding Chinese and East Indian data
bases which is in exhibit D-15(5), and I would ask
30 you to look at those numbers.

1 The Defence through Doctor Shields argues things
like background band sharing and inbreeding. It's
not necessary to review with you his conclusions be-
cause that evidence was presented to you so recently,
5 but I want to point out to you one important piece
of evidence. Doctor Kidd and Doctor Carmody disagree
with Doctor Shields. Why is that important? Well,
ladies and gentlemen, when you come to weigh the
opinion of experts you are entitled to look at their
10 credentials and experience. Simply put, to give you
just one example, Doctor Kidd is, we would submit,
to human, not owls, human population genetics what
Wayne Gretzky is to hockey, and Doctor Shields is not,
we submit, of the same caliber. In fact his lack of
15 knowledge of the community about which he purported
to be testifying and which he was saying was so
highly inbred was astounding. The Crown asks you to
use your common sense on that.

20 The final point to be made by the Crown on
Doctor Shields' evidence as to the probability numbers
is so what. What possible difference can it make if
it's one in eleven million as Doctor Shields says,
based upon individuals from the Miramichi region.
25 Even if you accept that finding what possible
difference can it make to the issue of whether this
is a coincidental match. If the total male population
of Canada that could even remotely have contributed
that semen is, as Doctor Shields estimated it was in
30 cross-examination 10 million males, how can that
evidence, his figures is one in eleven million, suggest
any reasonable, rational common-sense way that the
semen was left with somebody else. Once you get to

1 a certain figure it doesn't matter if you get any
higher. It's like filling a jug with water. If it's
full it's full. What difference does it make? What
difference does it make whether it's one in eleven
5 million or one in three hundred and ten million?
Either of them exceed the available male population
of Canada, not the available population of New
Brunswick, the Miramichi, Eastern Canada. They exceed
the available population of Canada as males.

10 Doctor Shields went on to throw up a one in
thirty-seven figure for full siblings, brothers;
three thousand and something for half siblings and
eighty-thousand or something, I can't remember what,
for cousins, but he admitted that those had absolutely
15 no relevance unless, first off, they existed, about
which there's no evidence, though the evidence of
Mary Geike is that Allan Legere's only brother died
a long time ago, and secondly, if such relatives
20 existed they would still have to be around and
available and potential contributors of which, again,
there is absolutely no evidence. We suggest that to
get into that aspect would be to speculate in the
extreme and I expect His Lordship may direct you upon
the law in that regard.

25 Without the probability figures, without the
match, you are driven to only one conclusion, that
the matches aren't coincidental. The Crown or the
Defence probability figures drive you further into
the realm, we submit, of practical impossibility for
30 anybody else to have left that semen other than Allan
Legere. Those matches were not, we submit, coincidental

1 The principal pieces of evidence, and I'm coming
towards the end now and I'm going to try and review
some things in general terms, the principal although
certainly not the only evidence upon which the Crown
5 relies is, so far as the murder of Father Smith is
concerned, the evidence that puts Mr. Legere's feet
in the boots and the boots in the house; the time and
place of the finding of the car and the knife
happening to match with Mr. Legere showing up in
10 Bathurst; the knife being found in the car being the
same as Mr. Guitard's and in Mr. Legere's possession
Mr. Guitard's rifle; the finding of the credit cards
under the bridge that Mr. Legere went over. That's
15 the principal things. In the case of the Daughneys
the principal things are Mr. Legere's possession of
the rings and the DNA; and in the case of Annie Flam
it's the activities and conversations of the attacker
and the DNA. That is if you want to look at each of
20 those incidents one by one by one by one. But, again,
I'll come back to my basic theme, that isn't what you
do, it isn't what you should do. The Crown submits
that you can look at the links or similarities between
each of these crimes. The Crown says that there are
25 a number of similarities or links suggesting
forcibly to these crimes all committed by one person.
In other words you can use this kind of evidence to
say, as you have done before, are these similarities
or links coincidences or do they connect by the fact
30 that these are all the crimes and the actions of one
person?

1 There are the pathological similarities. With-
out going through the medical evidence in unpleasant
detail, all the deceased were the victims of blows
with a blunt instrument, could be a fist, especially
5 to the face. Except that the degree of violence
seemed to escalate chronologically they were,
according to Doctor MacKay, "remarkably similar in
pattern". In the case of Father Smith and Donna
Daughney there were very similar "S"-shaped cuts on
10 the face and neck whose sole apparent purpose,
according to Doctor MacKay, would be to cause pain.
If you can feel inclined to do so look at those "S"-
shaped marks on the face of Father Smith and the face
of Donna Daughney. It's like an "S" signature.
15 Doctor MacKay's conclusion at one time was, flat out,
one person committed all these crimes. He went on to
qualify that and explained very clearly what he meant
by that was it was either one person or one other
20 person who happened to be using exactly the same
methods on each occasion. That conclusion of Doctor
MacKay, and expert opinion, seems to agree with the
sensible layman's. The similarities are so strong it
is reasonable to conclude they are not coincidental.
25 Incidentally, as I have already mentioned, Nina Flam
was threatened with a knife. It was put to her
throat. That's a pretty good basis from which to
start and you could stop right there but we won't,
because there's more.

30

1 The Flams were elderly sisters-in-law sharing
premises. The Daughneys were sisters sharing
premises. All the victims, Father Smith, the
Daughneys, the Flams, were vulnerable victims.
5 Allan Legere knew the Flams; Allan Legere knew the
Daughneys. The Flams, the Daughneys and Father Smith
all lived close to places where Allan Legere had
lived himself. All the killings occurred during the
time frame when Allan Legere was temporarily at
10 liberty.

 At the Flam residence the killer set fires to
cover his tracks. He did so at the Daughneys. Not
just setting fires but setting them in closets in
bedrooms using available material that was found on
15 the spot, without any accelerants. Exact same modus
operandi in both cases. That's what the fire experts
said. It's a remarkable coincidence that two
different people with identical DNA patterns happened
to use not just the same idea of fire to cover up,
20 exactly the same method to do it. There's evidence
that the killer tied his victims up with nylons at
the Flam and the Daughneys. Another chilling little
touch - actually it's not that little, is this, Nina
Flam's attacker "tucked me in like a child". When
25 the fire fighter, James Matheson, found the body of
Donna Daughney on the bed he, quote, "couldn't really
remove the body. It was tucked into bed.", unquote,
so he had to haul the bed clothing off her and it
30 was, quote, "difficult to remove", unquote. How
many killers, members of the jury, tuck their victims
in when they leave them? I have no statistics and
I don't suppose there's a data base on that but

1 common sense says probably one. It's such a remarkable and peculiar feature that we suggest that is a criminal repeating his technique.

5 There are other similarities besides these. For example the same method of a broken latch on the storm door of the Daughney and Smith's. The same unscrewed light bulbs at the rear of the Daughney and the Smith's. These independent similarities are powerful. When you put them all together the only
10 conclusion can be that there is ample evidence for you to conclude these were in fact the work of one man. It is for you to decide that certainly. You are not bound by anybody's opinion, but if the evidence
15 all says that, and it does in the Crown's submission, that is the conclusion to which you should come. These similarities, these tremendous similarities, were not coincidences; they were the work of one person and Allan Legere was that person and you can
20 use each one of them to link all those killings together.

I am going to deal very briefly with some of the things that the Defence said in closing. We submit that much of what you heard from the Defence was, to
25 put it frankly, red herrings dragged across the trail to divert your attention from the evidence that you did hear.

During the course of the trial there were many questions put by Defence Counsel to investigate the
30 investigation to see what the police did, to see who else was ever suspected, suggesting the police inventing evidence, suggesting that the police suppressed

1 evidence. I submit the evidence is the police acted
properly at all points. Kevin Mole didn't invent
Mr. Legere's conversations. Constable Robitaille
didn't pretend to find that knife.

5 Evidence that the Defence has used to support
its arguments, like the blood on Father Smith's door
frame and the hair on Father Smith's leg, were made
known to the Defence. You must have seen Mr. Furlotte
opening page after page after page of that kind of
10 information. It's all a red herring anyway.

You swore on oath at the beginning of this case
to come to a true verdict, quote, "according to the
evidence". It isn't your function, it's improper,
and it would be contrary to your oath for you to go
15 speculating upon what other information exists that
wasn't presented to you. I urge you strongly to
stick to what you have heard and not to go speculating
upon the other items raised as red herrings by the
Defence.

20 Mr. Furlotte asked why we called some witnesses.
I think he was talking about the people from the
Governor's Mansion. Well, certainly Fernand Savoie's
evidence - I think you have figured out by now why we
called Fernand Savoie, and the reason we called
25 Hiroshishi Takikashi and all those others is to link
up, to put him in the region, to show what he was
doing at that time and where he was.

Mr. Legere talked about the Dore and Russell
30 incident. You don't know enough about the Dore and
Russell incident to make any intelligent observations
upon it. It wasn't properly before you. It is

1 irrelevant, it is prejudicial, and that's why it
wasn't called.

5 The stuff about there not being a boot print
taken when Corporal Tomassin chased the man, that's
a purely negative fact. It wasn't taken. It doesn't
mean it wasn't Mr. Legere; it doesn't mean it was.
It just says nothing. We don't know why it wasn't
taken although if I remember right the footprints
were on the sand beside the Miramichi River. I don't
10 know whether the Miramichi River is tidal and I'm not
going to speculate. It's just a simple fact we don't
know why that isn't here and you shouldn't speculate
about it. I urge you to stick to what you have heard
and not to go rambling off on what you haven't.

15 I told you in opening that we allege Mr. Legere
was a party to each murder. A party. Mr. Furlotte
quoted portions of this. I said that we weren't
obliged to prove that he acted alone. I said it was
20 possible there would be evidence of other suspects or
other - or that somebody else was involved. Mr.
Furlotte read that bit to you but he skipped out one
sentence and I'll repeat it to you. "I am emphatically
not saying that somebody else was involved. I am
25 saying that isn't the question you have to consider."
By accident or design that sentence was omitted when
it was read. We still submit it is a question that you
don't have to deal with, but the Defence has raised it
so persistently that I feel it necessary to look at it
30 briefly but while I'm doing so never forget the Crown's
basic position is it's a red herring whether there was
or was not somebody else involved.

1 There are really two separate matters I want to
touch on, one is suspects in general, the other is
specific evidence. As to suspects in general you've
heard about that. I said in opening, quote, "Obviously
5 after a murder there are a great many suspects.
Potentially, everybody is a suspect in the process of
weeding out.", unquote. You have heard how easy it
is to become a suspect. In a sexual assault case
known sex offenders are suspects simply on that basis
10 until they have been eliminated. An anonymous tip.
Check into A.B., he's the kind of guy that might do
this, makes you a suspect with a tip file. A
suggestion from Defence counsel to the police can
make somebody a suspect. The moment we thought that
15 somebody's voice resembled your attacker's can make
you a suspect. It doesn't take very much to be a
suspect. The police involved have sworn on oath that
so far as they are concerned they have eliminated for
police purposes all other suspects than Mr. Legere.
20 I am not going to go into that in detail and it isn't
positive evidence that Mr. Legere did it. It is
simply put in to cover this point which Mr. Furlotte
seems to have so much difficulty with.

25 As to the specific evidence in each incident I
will touch on that. In the Flam incident there is no
direct evidence - there's no evidence anybody else was
in that house. Nina Flam only saw one person. The
conversation she had with one person indicated that
30 person was in contact with Annie. He said "Annie's
all right" and so on. He was checking into Annie's
money. As to the Daughneys there's no direct evidence

1 that somebody else was in the house at the time of
the attack. Neither Daughneys survived and the semen
on both their bodies is the same. There is direct
evidence of somebody being on the street near the
5 Daughneys and somebody being near the railroad tracks
that morning but, as I have already pointed out, that
isn't evidence, absent the DNA, that connects either
of those individuals to involvement in the crime.
There is no hard evidence of accomplices in the
10 Daughney or Flam incidents. There is hairs that
float around and I'll deal with hairs in a moment.

As to Father Smith there are two pieces of
evidence I want to consider. One is the hair found
on his pant leg. DNA testing said that hair wasn't
15 Allan Legere's although it matched in ordinary hair
comparison tests. Incidentally, if the police were
involved in a cover-up how come they didn't suppress
the hair and how come they didn't suppress the blood?
Also, incidentally, it's interesting to see Defence
20 counsel relying on DNA when it suits them. There
are two problems with the hair. Hair, as the experts
pointed out, is very easily transferred. It falls
out. It's combed out. It comes out if you scratch
your head and once out it transfers easily. We don't
25 know and we never will know how and when that hair
got on to Father Smith's leg. It could have got there
before Father Smith came back to the rectory that
night. It could have come from an outsider, got
transferred to let's say a policeman's leg or an
30 ambulance person's leg and thence to Father Smith
because hair is easily transferrable according to the
expert. Of course it could have come from another

1 attacker but we just can't say that because we have
no idea when or where that hair got there, and the
same applies to all the other hairs in all the
other scenes. That's why, if you want to know why
5 hair isn't introduced, it's because we've got DNA
which everybody says is infinitely better than hair
evidence. Hair evidence is subject to that problem
that hair is easily transferrable. It's also subject
to the problem that statistics about hair are not
10 agreed. The 1 in 4800 Doctor Carmody and Duff Evers
said they don't agree with that. So hair evidence is
a very iffy question.

The second piece of evidence is the blood smear
on the outside door frame. Now here one expert, Mrs.
15 Lungair, said that part of that blood wasn't Father
Smith's or Allan Legere's. And the other expert, the
blood splatter expert, Sergeant Gorman, said it was
all one continuous smear so it looks as though one of
them is wrong. In that regard I would remind you of
20 Doctor Kidd's comments that the standard blood com-
parison, unlike DNA, is subject to a high error
factor, for example things like bacterial contamination
can cause problems. Even assuming, however, that Miss
25 Lungair is right and Sergeant Gorman wrong, all that
shows is that somebody got his blood on the outside
of the door. There is no evidence that that person
went inside. There is abundant footprint evidence,
if you accept it, that the boots Mr. Legere wore went
30 in, especially to the kitchen and the office. There
is no evidence that anybody else went in that house.

1 The evidence in the house strongly suggests that the
wearer of the bloody boots was the person who did the
killing. There is no evidence that anybody else
entered that house or took part in that killing.

5 You will remember that Sergeant Gorman said that there
was no evidence of a struggle outside the house. It
was in the kitchen and the office that the violence
basically occurred.

10 At the end of the day it amounts to this. There
is that one puzzling piece of evidence in Father
Smith's case that suggests that just possibly some-
body else was around. There is no evidence in any
case that somebody else took part in the killings
and, anyway, if somebody else was involved, of which
15 there isn't any evidence, that isn't a defence since
the question, to come back to where I began, is was
Allan Legere a party, not was Mr. Allan Legere the
sole party. And I submit that Mr. Legere said it
perfectly, if inelegantly, the accomplice theory is
20 bullshit. And, as I understood the Defence, I got
the impression that they too are not now relying upon
any suggestion that two people were involved, because
they were arguing that the hair and blood evidence
shows that only one person who wasn't Mr. Legere
25 killed Father Smith. On the second part of that that
it wasn't Mr. Legere I've already commented, but
inherent in that proposition is that the Defence
accepts that only one person was involved certainly
30 in the killing of Father Smith.

1 I am coming very close to the end now, you will
be relieved Members of the Jury. I am going to touch
very briefly on the question of first degree murder.
I'm not going to get into the law at all about this.
5 This is a matter for the Judge to explain to you.

But I am going to tell you the things that we rely
upon to justify findings of first degree murder.

We submit that with regard to Annie Flam there
is evidence that the killer was trying in a planned
10 and deliberate fashion to kill her or to cause her
such serious bodily harm that he knew it would likely
result in her death. He was certainly trying in a
planned and deliberate fashion to kill or harm Nina.
He told Nina she was going to die. He pushed her into
15 the flames, he tried to cover up his involvement, and
it doesn't seem very sensible or logical to take all
those steps in regard to Nina if you are intending to
leave Annie alive behind you. What do you think was
going to happen to Annie, assuming that she was alive,
20 in the fire that he was setting. Remember that he
set fires in her closets as well and you can infer
from that, we submit, a deliberate plan to kill or
seriously injure in a fashion which he knew might kill
Annie Flam. There is also evidence of sexual assault
25 in Annie's case. Remember that sexual assault isn't
the same as rape. Any nonconsensual sexual contact
would do. According to Nina Annie went to bed in
pyjamas which sounds likely enough for an elderly
30 lady, but when found she was naked except for her
panties which were rolled down at the rear. If you
find that condition, naked except for the rolled down

1 panties, was caused by her attacker, and I don't
think there can be any other rational explanation
we submit that would justify a finding of sexual
assault. There's also the fact that both the Daughneys
5 were sexually assaulted and we know Nina was sexually
assaulted. So we say that in the Flam case there's
evidence of sexual assault.

 In the Daughney case it's obvious there is
sexual assault - evidence of that. The semen on
10 their bodies which nobody suggests resulted from
consensual activity, is evidence of sexual assault.
There is evidence that the Daughneys were confined
against their will in the house for some time.
Doctor MacKay commented one has the impression that
15 none of these people died quickly and the nature of
the injuries inflicted, especially the torture
injuries, suggest a killing over an extended period
of time during which those ladies would be confined
against their will. That's the second basis, sexual
20 assault, confinement. Finally, as to the Daughneys,
if you accept that Mr. Legere killed Annie Flam it
is inconceivable that he then broke into the
Daughneys, beat them harder than he had Annie and
25 didn't realize full well that what he was doing was
killing them or was inflicting such serious injury
that it would be likely to kill them. That would
mean the killings were planned and deliberate killings
all planned and deliberate serious injuries of the
30 kind I have explained. So in the Daughney case there
are three things: sexual assault, forcible confine-
ment, planned and deliberate.

1 As to Father Smith there are for obvious reasons
no indications of sexual assault but there is evidence
of confinement. Of all the killings it looks as
though his took the longest. The violence took place
5 in two separate rooms. It would appear he was beaten
and tortured to get information about the safe. He
was obviously confined for a substantial period of
time against his will. There is also evidence of
planning and deliberation. If you find that Allan
10 Legere killed Annie Flam and then killed the Daughneys
it is inconceivable that he did not appreciate when
he laid that terrible beating on Father Smith breaking
most of his ribs and severely damaging his face. It
is inconceivable I say that he did not deliberately
15 plan to inflict a beating that he knew could or likely
would kill an elderly priest. How long does it take
before you can figure that kind of thing out?

The Crown, therefore, submits that there are
20 two bases for first degree murder in the case of
Annie Flam; three in the case of the Daughneys; and
two in the case of Father Smith; and subject to how
His Lordship will direct you, we will say any one of
those is sufficient - we don't have to prove them all
25 any one of them in any one of those cases is
sufficient in that case if you find it to be true to
justify a finding of first degree murder.

I am not going to indulge in comments about the
role of Crown counsel; the role of Defence counsel;
30 anything of that kind. I think you know what our
roles are and you know what your role is. I am going
to come back and finish by reading to you what I said

1 in my opening because I told you that continuity is
one of the themes that I've tried to stress. Let me
just read this to you. I am going to change it very
slightly because it's my closing now but basically
5 these are my exact words. "If you have a reasonable
doubt", a reasonable doubt, "you should" - Mr. Furlotte
says 'must', I know there's a difference, "you should
acquit, but if you find that the multiplicity of
combined and mutually supporting circumstances are,
10 as the Crown submits they are, virtually overwhelming,
certainly sufficient in the Crown's submission to
satisfy you beyond any reasonable doubt of his guilt
on any one or all of these charges, it's equally your
duty to convict."

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

25 That was the Crown's position on August the 26th.
It remains the Crown's position ten weeks, over 240
witnesses, and getting on for 200 exhibits later, and that's
all that we asked of you then and that's all that we
30 ask of you now.

Thank you for the attention you have paid
Members of the Jury.

1 THE COURT: Thank you very much Mr. Allman. Well, we will
adjourn now until tomorrow morning at 9:30 and for
the last time in this trial I will warn you again
not to talk to anyone about this matter. You won't
5 have to hear that from me again. But, please, you
have had a long day and you've heard a great many
words spoken and please put it out of your head now
and have a good rest until tomorrow morning. You
still have got to hear my dissertation on the law
10 and certain other matters and so keep an open mind
until you have heard everything you're supposed to
hear, and tomorrow noon or whenever you do retire
will be the proper time to consider your verdicts.

15 So if the jury then would please go and leave.
I think I did tell you when you come tomorrow be pre-
pared to stay, I gather overnight, probably.

(Jury excused.)

20 Before we adjourn completely, or recess, there's
one suggestion I want to make - or a request I would
make of Mr. Furlotte and that is would you, Mr.
Furlotte, sometime between now and the morning dis-
cuss with your client, the Accused, the matter of his
attending tomorrow morning. If he wishes to or not.
25 I'm not sure that I should leave it in his hands to
decide that question but if he has -- he's out now on
his own request, plus of course my order because of
his behavior, but if he wishes to come in and under-
take to behave himself as the Code of Conduct requires
30 I'm perfectly prepared to have him back, and I would
be obliged if you would explain that to him and
perhaps in the morning you could let us have the

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benefit of your advice or your feelings on that.

MR. FURLOTTE: I'll discuss it with him My Lord.

THE COURT: It would have to be on the understanding, of

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course, that if there were any further disruption

with the process of the Court he would have to go

out again.

MR. FURLOTTE: I am sure he understands that by now.

THE COURT: He should. He's into the Guinness Book of

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World Records now I think for expulsions.

(COURT ADJOURNS - 6:45 P.M.)

TO

NOVEMBER 2, 1991, 9:30 A.M.)

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