IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

HER MAJESTY THE QUEEN

- and -

ALLAN JOSEPH LEGERE

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

APPEARANCES:

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

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

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VOLUME XXII - Jury Charge and Verdict

November 2 and 3, 1991.

VERNA PETERSON
COURT REPORTER

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BETWEEN:

HER MAJESTY THE QUEEN

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ALLAN JOSEPH LEGERE

Charge to the Jury delivered by Honourable Mr. Justice David M. Dickson at Burton, New Brunswick, on the 2nd and 3rd days of November, A. D. 1991.

APPEARANCES:

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

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

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(COURT RESUMES AT 9:30 a.m., NOVEMBER 2, 1991.)

THE COURT: Now, before we have the jury, did I understand, Mr. Furlotte, you wanted to say something about Mr. Legere's attendance?

MR. FURLOTTE: Yes, My Lord, Mr. Legere advised me that out of the three addresses to the jury, mine and Mr. Allman's and your own to be done shortly, that he would have preferred to have heard my address, he thought it was more important, and now he feels that if he wasn't entitled to listen to the one that was more important to him, then it would be fruitless to hear any of the others, so he declines your invitation to come back in the court room.

THE COURT: Can we have the jury, please?

(JURY CALLED - ALL PRESENT.)

(ACCUSED IN HOLDING CELL.)

THE COURT: Ladies and gentlemen of the jury, the time has now come for me to deliver what is known as

the judge's charge to the jury, and I will be endeavouring to cover quite a few fields and I'll try to do it as concisely as possible.

One thing I'd like to say at the start is one of the counsel in commencing his summary yesterday suggested that the judge at the start of this trial had promised a soap opera. Well, that statement was totally and utterly wrong, I promised no such thing, and I referred to a soap opera when the jury was being selected and I did it in a totally different context. I said at that time that it had been my experience in this trial before that that a lot of people were seeking leave to be excused from jury duty. You will recall, you people were present at the time, and I said that that was regrettable because in my experience I'd never known a juror who regretted having served on a jury, it had been my experience that jurors found jury service an interesting experience and I was sure that in this trial that would be the case because it was scheduled to go on for quite a few weeks with a great diversity of issues involved, and new issues involved which the newspapers had been reporting upon but which I couldn't mention that day, namely the DNA aspect, and I said that I was sure that the trial would be found by any juror selected to be much more interesting than sitting at home watching a soap opera, I used it in that context. I didn't promise this would be a soap opera and I hope you won't feel that it has turned into any soap opera.

It has been a long trial, an interesting trial. Certainly it's taken a lot of routes that

have been different from other trials. We've had a lot of lighter moments, perhaps, over the ten weeks we've been sitting, and that's a good thing because it relieves the tension at times and that is not to be criticized at all as long as we maintain the dignity of the court setting and the dignity of the trial.

Now, of course, we come to the all-important and very serious matter of deciding on the guilt or innocence of the accused, Mr. Legere, who is before the Court charged with four counts of murder, first degree murder.

You have been selected to decide whether the accused did or did not commit the offences with which he is charged. By the laws of our country you are created judges to determine his guilt or innocence. Your responsibility as judges is a heavy one and not to be undertaken lightly or capriciously but seriously and courageously having in mind your duty to the state and to the community. One of the functions of the state is to protect the life and property and liberty of all its citizens. Crime must be suppressed and when detected the offender must be dealt with according to law.

Your responsibility and duty to the state and your community is to ascertain in this case whether a crime has been committed, or a number of crimes committed, and if so, whether the accused committed any, some, or all of those crimes. Needless to say, you also owe a high duty to an accused person to see that he or she is not improperly convicted.

Probably this is the first experience for many of you on a jury and therefore to the best of my ability I must explain to you all the relevant aspects of a trial by jury with particular reference to the charges in this case against the accused.

My first duty is to explain to you the functions of the judge and jury. The judge presiding at a trial by judge with a jury is the sole arbiter of the law. It's my duty to advise you as to the law which is applicable in this case and you must accept my advice in that respect. On the other hand, the jury is the sole arbiter of the facts. It's your duty to decide what the facts are in this case from the evidence that you have heard. During my remarks I may, and undoubtedly will, consciously or unconsciously express my opinion with regard to some of the evidence which has been given by a witness and I may even indicate what I think should be believed. If I do that I want to emphasize that you are in no way bound by my opinion as far as the facts are concerned. Any evidence on which I may comment may have left in your minds a very different impression from the impression that it has left in my mind. It's your duty to place your own interpretation upon the evidence. It's your duty to weigh the evidence and to come to your own conclusion as to what you believe and what you do not believe. It's your duty to exercise the same independence of judgment in weighing my comments as to questions of fact as you are entitled to exercise in weighing the testimony of the

witnesses and the addresses of counsel.

You have through the trial been separating overnight and I hope that you have followed my instructions not to discuss the case with anyone. It is a case that has received a good deal of publicity in the papers and press and although I have cautioned you from time to time about reading, or about believing at any rate, what you may see on television or hear on the radio or read in the newspapers, remember it may be an accurate account or it may be an inaccurate account, so I ask you to put anything that you have heard or read about the case out of your minds and concentrate solely on what you hear here in the court room. You must decide whether the accused is or is not guilty solely from the evidence that you have heard here in the court room during the trial, and in approaching the case you must be entirely impartial when considering your verdict. You must put out of your mind all prejudices and preconceived notions. You must decide on the guilt or innocence of the accused without fear, without favour, and without prejudice of any kind in accordance with the oath which you have taken.

Well, now I will deal with what is known as the presumption of innocence. It's a presumption which is woven deeply into the fabric of our law in Canada and in fact it's now enshrined, as they say, in the Charter of Rights and Freedoms. Simply put, it means that an accused person is presumed to be innocent until the Crown has satisfied you beyond a reasonable doubt of his guilt. It's a presumption which remains with the accused

from the beginning of the case until the end. The presumption only ceases to apply if, having considered all the evidence, you are satisfied that the accused is guilty beyond a reasonable doubt of some one or other of the counts on which he's charged.

Then I'll go on to the question of the onus or burden of proof. The onus or burden of proving the guilt of an accused person beyond a reasonable doubt rests upon the Crown and it never shifts. There is no burden on an accused person to prove his innocence. The Crown must prove beyond a reasonable doubt that an accused person is guilty of an offence with which he's charged before he can be convicted, and if you have a reasonable doubt as to whether the accused committed the offence with which he is charged it's your duty to give the accused the benefit of the doubt and to find him not guilty. In other words, if after considering all the evidence, the arguments of counsel, and my charge, you come to the conclusion that the Crown has failed to prove to your satisfaction beyond a reasonable doubt that the accused committed any one of the four murders with which he's charged here it's your duty to give the accused the benefit of the doubt and to find him not guilty of that charge.

A question that may come to your minds is what is meant by the words reasonable doubt. A reasonable doubt is an honest doubt, a real doubt, not an imaginary doubt conjured up by a juror to escape his or her responsibility of finding someone guilty whom they really feel to be guilty.

It must be a doubt which prevents a juror from saying, I am morally certain that the accused committed the offence with which he is charged. In other words, it isn't sufficient that you come to the conclusion at the end of the case that the accused might be guilty or is probably guilty, you have to be certain in your own mind that he is guilty before you can find him guilty of a charge.

Perhaps at this point I should make some reference to Mr. Furlotte yesterday in his address referred to a number of cases that he had tried recently and he suggested that in a certain number of those cases the accused had been acquitted because of reasonable doubt. Well, that was a most improper statement for him to make, it's a most outlandish statement. I don't even accept the validity of it unless it were conclusively proven to me that that were the case. A solicitor, a lawyer, would have no way of knowing the grounds on which any juror or jury dismissed an appeal(sic) against an accused, whether it was on the ground of reasonable doubt or on any other ground, and I ask you to ignore that statement that he made in that regard totally and completely. The matter of applying reasonable doubt or of acquitting people is not a numbers game. Each case is decided on its own merit. In this case, if you have a reasonable doubt of the Crown's ability or what it has done in proving the guilt of the accused, then you apply reasonable doubt. If you don't have that reasonable doubt and you are satisfied that the Crown has proven its case in respect of a particular count, then

you must find the accused guilty of that.

The next subject I'm going to speak about is the credibility or the truthfulness of witnesses. You've had in this case an opportunity of hearing evidence from a great many witnesses. Some of them have perhaps given slightly varied accounts of what occurred. Some have been explicit in what they've said, others have been, perhaps, more hazy or fuzzy. You must bring to bear on the question of the credibility or the truthfulness of a witness your experience as men and women of affairs. You may believe all the evidence given by a witness, a part of the evidence given by a witness, or none of the evidence given by a witness.

When deciding on the credibility of a witness or the weight you are going to give to the evidence of a witness, you should consider what chance the witness had to observe the facts to which he or she testified, how capable the witness is of giving an accurate account of what he or she saw or heard. You must decide whether the witness is biassed or prejudiced to the extent of letting that bias or prejudice influence his or her evidence. You must decide whether the witness has any interest in the case, is he trying to establish something in his own interest or in the interests of someone else.

Well, now, those are some of the factors which must be considered when deciding upon the credibility or the truthfulness of a witness or the weight to be attached to the evidence of a witness. There's always the possibility that a

witness is prejudiced or biassed and in such circumstances is giving a coloured account of what he or she saw or heard. Also there's always the possibility that a witness has been discussing the case with others or perhaps reading about it in the newspapers before a trial begins and has gradually built up an account of what took place which the witness may believe to be true but which is more the result of rationalizing as to what took place rather than what the witness actually heard or saw with his or her own ears or eyes.

You must have regard for the fact that many witnesses will testify to things in respect of which they had a very limited opportunity to observe. Different people here have talked - I just give this by way of example - different witnesses here have talked about seeing people on the road or outside the scene of the crime or in the woods or somewhere, and many of these witnesses have not been able to give any detailed account of who they saw or perhaps even to recognize the person, any person they might have seen, but you must have regard for what opportunity did they have to see. If someone sees someone come up to a window in front of his house and observes him for three or four seconds or six seconds he doesn't really have very much of an opportunity to determine what that person looks like or who that person is. We had here a number of witnesses who - I give this as an example, the taxi driver from Saint John was with Mr. Legere in his taxi, a person who later turned out to be Mr. Legere, undoubtedly, he was in the taxi for a

long time with him and later in the car of the young R.C.M.P. officer, the lady officer, and the two of them were with Mr. Legere, but he couldn't identify Mr. Legere.

You know, it's been said that there are three occupations who are never able to identify any of the customers who patronize them. One group are taxi drivers, a second group are pawnbrokers, a third group are madams in houses of prostitution. We have the example here not of madams of houses of prostitution but we have the example of the pawnbroker who was another person who couldn't recognize the man with whom he had done business in Montreal. He did identify him as the person who did business with him under the name of Mr. Savoie, Fernand Savoie, whose identity he was carrying at the time, but he couldn't picture the face. Mind you, that may have been quite a legitimate thing, perhaps he couldn't.

You have other witnesses who may be vague. Look at the policemen on the train to Montreal City who quite obviously checked - two or three of the Levis Municipal Police quite obviously checked a person who could only have been Mr. Legere, and what did they do? They got him to roll up his sleeve. One would get the impression that perhaps one or two of those officers weren't really too anxious with finding the person they were looking for, but everyone hasn't the same competence in life, I suppose. I wouldn't say those officers when they testified here were not telling the truth. I think one did recognize or did purport, anyway, to identify the accused in

the witness stand, but probably they're not witnesses in whom one would repose a great deal of trust as far as credibility was concerned. In that regard I point out that one of them was very explicit in saying that the name he had checked was the name of Mr. Savoie on the driver's certificate, driver's license or whatever it was, and that he recalled that name, and you remember that he said it had the address Buctouche and he was familiar with Buctouche and he was also surprised that the man whose arm he had checked had a French name but wasn't able to speak French, and he recalled it in that way, so there are - oh, there are other little examples one can get. When Sergeant Thomassin, the dog man, chased the person through the woods and along the railway track he was assisted by another R.C.M.P. constable, or several as a matter of fact at the time, I believe one constable's name was Kerr, and Sergeant Thomassin said that the person they were chasing fired a shot at them, they took to the ditch beside the railway track, and then a few seconds later another shot was fired, both shots coming about 30 yards ahead and so on. That was Sergeant Thomassin's account.

I think Constable Kerr it was, and I believe I'm correct in this, testified that there were three shots fired. He said there was one shot fired and then he said he ran on another 50 yards toward the shot and then there were two more shots fired. Well, that's a discrepancy but that doesn't make liars out of either one of those gentlemen. It simply means that one chap was

perhaps a little more excited than the other or perhaps didn't quite remember just how many shots there had been, but it indicates the fact that people can make mistakes in that type of thing.

I will be saying something about the expert witnesses - well, I might as well say it now. You have heard here, I think, some 35 witnesses who have been qualified as experts for the purpose of the trial and they have expressed opinions. I explained to you earlier the reason they're qualified as experts is to permit them, unlike ordinary witnesses, to give opinions on the subject matter in which they have an expertise. I think there were some 35 expert witnesses testified in this trial, or about that number, anyway, some in important matters, others perhaps in less important matters, but you're entitled to bring your judgment and your assessment as to the validity that you're to attach to their testimony, the credibility or what you believe, what you accept, you attach it in the same degree as you would to ordinary witnesses and you make your assessment in the same way. You determine whether they know what they're talking about or whether they don't know what they're talking about. If you have conflicts in experts, and there were certain conflicts in some of the DNA experts, Dr. Shields and some of the others there were certain conflicts there and I'll come to that matter later how you resolve that type of question, but the mere fact that a person is declared an expert doesn't mean that everything he says is the gospel truth and that every opinion

he gives is totally valid, but you must have regard for the degree of his expertise, the degree of his or her training, and their ability to give an accurate opinion on things.

If you have a reasonable doubt as to the accuracy of the evidence given by any witness or the weight you should give to such evidence you must give the benefit of that doubt to the accused and not to the Crown.

The accused has been present in court through most of this trial; not all, but through most of the trial. He was given the opportunity of being present today. I asked his counsel to speak with him and if he wished to be present he could be present. He elected not to be. He has no right to elect whether or not he will be present but on the basis of his desire not to be present I have again ordered him kept out of court for today, but I want to make it clear that he had the opportunity to be here and I would have much preferred him to have been present because I've told you before I feel uncomfortable with an accused out of the court room, it's the first time I've had that experience. When I say something I like to say it in front of the people who are concerned with it and not in one sense behind their back, although he's perfectly aware of what I have been saying and what I will be saying and what I am saying now.

You are entitled the same as with any witness to make an assessment of the accused and what you have observed of him here in the court room. There have been outbursts from time to time, I

ask you not to attach too much importance to those. I've pointed out to you before that it must be frustrating for a person who is restrained and who is at present serving a sentence to - there must be frustrations on his part and you must allow for that fact with an accused person, but at the same time you can observe what you see about him and you can observe his size, does his size relate to descriptions of people that you've heard witnesses testify about. You can see that he's a muscular gentleman, at least from the waist up, and would find it quite competent, presumably, to overpower a hundred-pound woman, 75 years old, four-foot-eight, as Dr. McKay said Mrs. Flam was, if he were the person who did that. I take that as an example, or he would find it probably quite possible and quite easy and simple to overpower Father Smith if he in fact was the person who overpowered Smith. Smith was a man, I believe 69 years of age the evidence was, at the time of his death.

You may observe the accused's voice, he has spoken on different occasions. You remember the evidence of Nina Flam was to the effect that the man who she says assaulted her in her home spoke like any Miramichier, or like herself. Well, you have heard Miramichiers here on the witness stand, you've heard the accused speak. Does he speak like other people from that area? I think you'll probably say, as I noted myself, there's not very much difference in the way Miramichiers speak from the way the rest of us speak. Perhaps if you're from the Miramichi you can tell better.

One witness spoke about seeing the man in silhouette, he had a large nose or a hawklike nose. I don't know how important that evidence was. It looked very much from his evidence as though the person whom he saw just outside the Daughney house on the morning of October 14th was the person who had been in and had some part in assaulting and killing the two Daughney girls. You can assess from the appearance of the accused whether that description of the nose might fit if he were thinner. You make up your own mind, you've had the opportunity to do that. I'm not suggesting there is a parallel, that it does correspond, I'm saying that that is the type of thing that you are privileged to make your assessment on here.

When he was re-arrested he tended to be loquacious with the police officers. He was described as motor-mouthed by one or two of the officers. Have you noted a tendency here to be loquacious? This is the type of thing you're entitled to consider.

There is one thing I want to say while I'm speaking of the accused, and that is you are all aware that when he escaped from Renous Institution via the Moncton Hospital on May 3rd of 1989 he was serving a sentence in that institution, Renous Institution, which is a penal institution. You're not to take that into account. The mere fact that he may have been convicted of something, anything, before that and was serving a sentence in respect of that conviction is no indication of his guilt on any of the charges that he's charged with at

the present time, so put that out of your mind, please, totally, and you must also put out of your mind the fact that he may have been charged, as he indeed was charged subsequent to his re-arrest, with having escaped custody from that institution, and I believe he was also charged with taking hostages in the persons of the taxi driver from Saint John, the R.C.M.P. officer, and the truck driver, Mr. Golding, who drove from Sussex back up to the Miramichi area in the truck with him, but the accused has been sentenced, he's been convicted and he's been sentenced on those counts of hostage-taking and of escaping jail. He's paying the penalty for that and the mere fact that he was convicted of those things doesn't make him guilty of these particular crimes here and you mustn't relate those to him.

There have been other suggestions through this trial, and his counsel yesterday acknowledged this in his summation, that the accused may have been guilty of breaking into the Governor's Mansion in the Chatham Head area on occasion during that period when he was on the loose and perhaps of stealing things or of stealing food here or there or something, and that again is not - he's not here being tried for any break and enter that may have occurred during that period. Those are totally different things, he's not being tried for that.

I make another point here, and that is he's not being tried here for any offence in respect of Nina Flam. If Nina Flam's evidence were to be believed her assailant would of course be

committing aggravated sexual assault and God knows what other types of offence in that episode at Chatham on May 28, 1989, but there's no charge against the accused in that respect and you're not to consider him as guilty or possibly guilty of any offence in respect of Nina Flam.

The Crown have contended, and do contend, of course, as they've made clear, that he in fact was the person in the Flam house and the person who did assault Nina Flam, but that's important in this case only inasmuch as it may tend to show that he was the person who did or who may have assaulted her sister-in-law, Annie Flam, prior to her death and that caused her death. There's no offence in respect of Nina Flam with which the accused is concerned here. It's not possible in a criminal case to associate any crime other than murder with a murder charge, which is presumably the reason why the four charges or the charges in the present indictment are limited only to murder charges. They couldn't include sexual assault or any other type of charge with that.

Now I will deal with the offences with which the accused is charged in this case. The particulars of the four offences and when and where they are alleged to have been committed are set forth in the indictment which is this document here, or at least this photocopy of it, the Clerk has the original indictment, and you'll be taking this indictment with you to the jury room when you retire. I will read the indictment through for you.

"ALLAN JOSEPH LEGERE stands charged that he did:

COUNT 1:

on or about the 28th day of May A. D., 1989, at or near the Town of Chatham in the County of Northumberland in the Province of New Brunswick did commit first degree murder on the person of ANNIE FLAM, contrary to Section 235(1) of the Criminal Code of Canada and amendments thereto;

COUNT 2:

on or about the 13th day of October, 1989, at or near the Town of Newcastle in the County of Northumberland in the Province of New Brunswick did commit first degree murder on the person of DONNA DAUGHNEY contrary to Section 235(1) of the Criminal Code of Canada and amendments thereto;

COUNT 3:

on or about the 13th day of October, 1989, at or near the Town of Newcastle in the County of Northumberland in the Province of New Brunswick did commit first degree murder on the person of LINDA DAUGHNEY, contrary to Section 235(1) of the Criminal Code of Canada and amendments thereto;

COUNT 4:

on or about the 15th day of November, A. D., 1989, at or near Chatham Head in the County of Northumberland in the Province of New Brunswick did commit first degree murder on the person of JAMES SMITH, contrary to Section 235(1) of the Criminal Code of Canada and amendments thereto."

Now, in order for the Crown to succeed in its prosecution in this case they must prove in respect of every count that, one, the accused did on or about the 28th day of May, 1989, in the case of Annie Flam, and the other dates in respect of the other people - that the offences, if an offence did occur, occurred on those particular dates that are alleged in the counts. I don't think there's any question about that and I don't think there's any difficulty in your determining that those were the dates on which the offences occurred if offences did occur. That must be

proved and all of these of these ingredients must be proved to your satisfaction, of course, beyond a reasonable doubt. And then it must be proven that the murder of Annie Flam, if it did occur, occurred at or near the Town of Chatham in the County of Northumberland and Province of New Brunswick. Again the Crown has to prove that the offence occurred there and they've got to prove that beyond a reasonable doubt, and again I don't think you'd have any difficulty in accepting that as having been proven, and in respect of Donna Daughney and in respect of Linda Daughney that the offences occurred, or the alleged offences, occurred at or near the Town of Newcastle in the County of Northumberland and the Province of New Brunswick. Well, there's been ample evidence that the Town of Newcastle is in the Province of New Brunswick and that the Daughneys did reside and the place where they met their death was on Mitchell Street, was it, whatever the name of the street was, within the Town of Newcastle, so you can take that as proven, but then the other ingredient of these charges which the Crown must prove beyond a reasonable doubt is that the accused was the person who did commit first degree murder on the person of Annie Flam, that he was the person who did commit first degree murder on the person of Donna Daughney and on the person of Linda Daughney and that he was the person who did commit first degree murder on the person of James Smith, all contrary to Section 235(1), and that of course is what the trial is about.

Now, the question that comes up is what is

murder, what constitutes murder, what constitutes first degree murder, and here to get this we have to go to the Criminal Code of Canada which is the statute of the Parliament of Canada which sets out criminal offences, and first degree murder and second degree murder being among them.

Strictly to find out what murder is one has to go to a definition of homicide as provided by the Code. You needn't concern yourself too much with this word homicide which you've heard in this trial before or with the term culpable homicide or non-culpable. They have certain meanings which I'll explain to you but this is just by way of preface, really.

Section 222 says: "A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being". If someone causes the death of another human being you commit homicide.

Subsection (2): "Homicide is culpable or not culpable". Now, the word culpable means blameworthy, blameworthy in the eyes of the law or in the eyes of society, so homicide is either blameworthy homicide where a person is blamed for what he's done or it's not culpable, which means it's not blameworthy homicide, you've perhaps committed a homicide or you've killed someone else accidentally or by mistake or - not the wrong person by mistake but you didn't intend to kill anyone at all.

"Homicide that is not culpable is not an offence." In other words, if it's not what is known as blameworthy homicide, then it's not an

offence.

Culpable homicide, that is homicide for which a citizen would be held to task by his country, breaks down into three types, there's murder or manslaughter or infanticide. I'm not going to dwell on infanticide because we're not here concerned with that type of thing. There is a separate section under the Criminal Code which provides that where a young mother or any mother, I guess, may kill a very infant youth shortly after birth that is known as infanticide, and there are special provisions of the law which provide to that type of homicide which might otherwise be considered - it used to come under the term murder, and it's been made a somewhat lesser offence now and can be dealt with differently as infanticide.

The Criminal Code goes on: "A person commits culpable homicide when he causes the death of a human being, (a) by means of an unlawful act", like clubbing somebody over the head with a sledgehammer, or by doing certain other things. That is the only thing we're interested in here, really, and I'm not reading to you the parts of the Section that don't apply.

"A person commits culpable homicide when he causes the death of a human being by means of an unlawful act." In other words - well, we'll get into the type of unlawful act there might be.

> "Culpable homicide is murder where the person who causes the death of a human being means to cause his death or means to cause him bodily harm that he knows is likely to cause his death and is reckless whether death ensues or not."

There are other types of things that technically

come within murder but those are the only types of things that we're concerned with here. The person must mean to cause the death of that person who's been killed or he must mean to cause him bodily harm that he knows is likely to cause his death and is reckless whether death ensues or not, and in this case, of course, you have to determine whether each of these people, these alleged victims, were killed by someone who meant to cause their death or meant to cause them bodily harm that he, the assailant, knew was likely to cause the death and was reckless whether death ensues or not. In other words, you see that for there to be murder there must essentially be intent. If you don't intend to kill someone there can't be murder, there must be the intent either to kill or to cause bodily harm. There must be an intent to cause bodily harm that the assailant knows is likely to cause death and he's reckless whether death ensues or not. I'll be coming back to these to consider them in respect of each of the victims in due course but I'm just running through the law now to show you what type of thing constitutes murder and so on.

Then Section 234 says: "Culpable homicide that is not murder or infanticide is manslaughter" so all types of culpable homicide, that is blame-worthy homicide, that aren't murder - forget about infanticide - that aren't murder amount to manslaughter. Manslaughter, in other words, is something where you don't have the intent to kill or the intent to inflict that type of bodily harm that could result in a murder charge. If I back

my car out onto the street out of my driveway and I hit one of my neighbours going by, I look out to see if there are any other cars but he or she has just come out of another driveway and I've been, perhaps, careless in some degree and haven't seen that other car and the other car hits me or I hit the other car and the other driver is forced off into the ditch, the car rolls over and the person is killed, the other driver is killed. It's blameworthy, it's a blameworthy act on my part, I've been responsible for killing that other driver in a blameworthy fashion, but it is - there was no intent on my part to inflict that type of injury or that death so that is manslaughter, that would be classified as manslaughter and not as murder.

If I back my car out with the intention of hitting my neighbour going by and saying, I'm going to kill that S.O.B. because I don't like him, then that can be murder even with my car, but there are other details of criminal negligence causing death and so on that I needn't get into here. Manslaughter is very similar to criminal negligence causing death. It used to be in the old days that when someone killed someone else with a car you were charged with manslaughter. Now you're charged with criminal negligence causing death if a death results from your accident and there's been very gross negligence.

So we get this distinction that where there's blameworthy homicide, culpable homicide, there are two types, there's murder, where there is intent or intent to inflict that gross body

injury, or there's manslaughter.

In all four cases here the accused is charged with murder, murder of a particular kind, I'll come to that in a minute, but he's charged with murder, and the burden is on the Crown of proving that Mr. Legere in the case of Mrs. Flam meant to cause her death or meant to cause her bodily harm that he knew was likely to cause her death and was reckless whether death ensued or not, and similarly with Donna Daughney and with Linda Daughney and with Father Smith, there must be that intent, and if that intent is missing, you feel the Crown have failed to prove it, then you step down to any included offence, and I'll be coming to that later as well, or you acquit the accused.

Now, the accused here is charged with not just murder but with first degree murder, and the definition of first degree murder is given in Section 231 of the Criminal Code: "Murder is first degree murder or second degree murder. Murder is first degree murder when it is planned and deliberate", and then subsection (4), I'm skipping certain parts here that aren't of interest to us in this particular case, or that have no application - but then subsection (4) goes on: "Irrespective of whether a murder is planned and deliberate on the part of any person murder is first degree murder when the victim is", and then falling within certain categories. Again, this is not applicable here and I mention it simply because you will be aware of this to some extent and the question may come up in your mind.

When the victim is a police officer or a police constable or a sheriff or a sheriff's officer or other person employed for the preservation and maintenance of the public peace while acting in the course of his duties, or if the victim is a warden or a deputy warden, a jailer, a guard, or another officer or a permanent employee of a prison acting in the course of his duties, that can be first degree murder, but here we're not concerned with this type of thing because there's no suggestion that Mrs. Flam or the Daughney girls or Father Smith fell within any of those categories.

But then quite apart from a murder having to be planned and deliberate to be first degree there is another section which provides - and I'll again read only the relevant parts of it here that we're concerned with -

> "Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder in respect of a person when the death is caused by that person while committing or attempting to commit an offence under one of the following sections."

One section that we're not concerned with here is hijacking an aircraft. If you kill someone when you're hijacking an aircraft that's not just murder, that's first degree murder, or certain hostage-taking is first degree murder, but again we're not concerned with those.

The two sections that we're concerned with are Section 271, "where the death is caused by that person while committing or attempting to commit the offence of sexual assault", that is one, or, "while committing or attempting to commit

the offence of forcible confinement", so if when the death is caused the perpetrator of the death, the assailant or whatever, is doing one of those things, either committing a sexual assault or attempting to commit a sexual assault, or is attempting or is actually committing a forcible confinement, then the murder - intent being present, of course, there must always be that intent - is committing a first degree murder, and that is so whether the murder was planned and deliberate or not, regardless of whether it was planned and deliberate, so you have three situations really in which murder becomes first degree murder: one, when it is planned and deliberate; secondly, where a sexual assault is being attempted or committed; and thirdly, where a forcible confinement is being attempted or committed.

Now, for sexual assault one has to go to assault, what is an assault, an ordinary assault.

"A person commits an assault when,

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly.

(b) he attempts or threatens, by an act or gesture, to apply force to another person, if he has, or causes that other person to believe upon reasonable grounds that he has, present ability to effect his purpose; or

(c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person".

That is a general assault. If I strike somebody in the face with my fist I'm committing an assault. If I raise my hand as though I'm going to strike somebody else in the face with my

fist and I threaten thereby to do that and to apply force to him, then I'm committing an assault; I don't have to touch him, I'm committing an assault.

Then we come to sexual assault, and sexual assault is simply an ordinary assault or what may be an ordinary assault with some sexual implication or connotation to it. The word sexual isn't defined in the Criminal Code and we're left to imagine what sexual does mean, but it has been defined - well, anyway, I was going to quote from something here and I don't seem to be able to find it, but there must be sexual connotation. If a man makes an advance toward a woman and grabs her by the breasts or grabs her around and throws her down on the ground and is going to sexually assault her, that is a sexual assault. I don't think I have to explain what sexual assault is.

If you take a woman and throw her on the bed and remove her clothes and say, "I'm going to penetrate you, I'm going to have intercourse with you", and she doesn't consent to it, that is an assault, there's no question about that type of thing. If you penetrate a woman or you have sexual intercourse with her without her consent, that is a sexual assault on a person, and I think that adequately explains what is meant by a sexual assault.

Here you will have to determine whether - you may have to determine whether the accused or some other person was committing a sexual assault on Mrs. Flam, a sexual assault on Linda Daughney, a sexual assault on Donna Daughney, her sister.

The other section that we were concerned with here and which may elevate murder to first degree murder is if the person is attempting to or is committing the offence of forcible confinement, and that is defined by Section 279 of the Criminal Code:

> "Everyone who, without lawful authority, confines, imprisons, or forcibly seizes another person is guilty of an offence."

So if you confine without authority, if you confine, if you imprison, or if you forcibly seize another person, you're guilty of an indictable offence. Well, the question that will come up here in your minds is, if you resort to this clause of the definition of first degree murder, was Annie Flam, when her death occurred, was she being forcibly confined. Was Linda Daughney, when her death occurred, being forcibly confined? Same with Donna Daughney, was she being forcibly confined by the perpetrator of whatever acts resulted in her death. Was Father Smith being forcibly confined when those acts took place which resulted in his death? Each of those offences, or the attempt or the actual commission would have to be proven to your satisfaction beyond a reasonable doubt before you would be entitled to elevate murder to first degree murder.

I have used the expression planned and deliberate, that would be one thing that would constitute first degree murder. The Crown must prove all of the ingredients I have told you about in order to prove either first or second degree murder. There must be intent, in other words, or the intent to kill or the intent to injure in such

a way that you're reckless whether death ensues or not and if you knew that death was likely to result.

However, when a person is charged with first degree murder there is an additional element the Crown must also prove. Murder is first degree murder when it is planned and deliberate. Therefore you must be satisfied beyond a reasonable doubt that the alleged murder was planned and deliberate before you can return a verdict of guilty on the charge of first degree murder. However, if you are satisfied that the Crown has proved all the ingredients I just told you about but you are not satisfied that the alleged murder was planned and deliberate, then the accused would be found not guilty of first degree murder but would be found guilty of second degree murder.

Now, I will explain the meaning of planned and deliberate so that you will be able to make this decision if you find that the Crown has proved all the ingredients I just told you about. The words planned and deliberate have different meanings. You should give the word planned its ordinary meaning, that is, arranged beforehand. In other words, a person plans to do something if he or she forms a design or scheme for doing it. However, you should understand that planning something is not the same as doing it intentionally. Therefore a person can mean to kill someone without having planned to kill the person. For example, suppose Jane Smith has a bad temper, she gets into an argument with someone and kills the other person during the argument even though she

was not intending to kill the other person before the argument started. In this example Jane Smith might have intended to kill the other person but she did not plan to kill him, and then the other end of that expression, planned and deliberate, the word deliberate also means something more than intentional, it means careful thought, carefully thought out, not hasty or rash. A person commits deliberate murder when he or she thinks about the consequences before committing the murder. In other words, he or she thinks about the advantages and disadvantages of committing the murder, so here in this case you have got to determine, as I have said, whether the Crown has proven beyond a reasonable doubt that there was intent to kill each of these four persons or to cause them such injury that their death could be foreseen and at the same time being reckless as to whether death ensued or not, and then you go on to determine whether the murder is first degree. That establishes it as murder if you're satisfied of that.

Then you go on to determine whether it's first degree murder, and as I say, the Crown then must have proven - before you can find it's first degree murder they must have proven beyond a reasonable doubt that it was planned and deliberate, thought out a little beforehand; it needn't be a great time, but planned in advance, not a day in advance, two weeks in advance, a year in advance, perhaps ten minutes in advance, but thought out before it's actually done, or, regardless of whether it's planned and deliberate, if it's done while committing or attempting to

commit a sexual assault as I've described it, or if it's done while committing or attempting to commit a forcible confinement, as I've explained it, those would make murder first degree murder.

I'll be coming back to those, a consideration of those matters and applying them to the actual circumstances after a short time, but there are some other things I want to deal with before I do that. One is the matter of circumstantial evidence. You've heard that expression used by counsel in their summations. It's been explained to you already, I believe, that there are two types of evidence in cases. One is direct evidence, another is circumstantial evidence.

Both direct evidence and circumstantial evidence are admissible as a means of proof. Sometimes circumstantial evidence is more persuasive than direct evidence. The evidence of one witness may contradict that of another but the circumstances of an event are often not in dispute. I will explain the difference between these two types of evidence by way of example.

Well, now here is the first example. Suppose a woman is on trial for murder. It's alleged that she killed a man by stabbing him to death. A witness testifies that he saw the accused, the accused woman, stab the victim with a knife. Now, that would be direct evidence that the accused stabbed the victim. Direct evidence has two possible sources of error. First, the witness might be lying for one reason or another. Second, the witness might be mistaken when identifying the accused as the person who did the stabbing. On

the other hand, if the witness is not lying or is not mistaken, then the proper conclusion is that the accused stabbed the victim.

Now the second example. Take the same accused and the same allegation that she killed a man by stabbing him to death. A witness testifies that he heard a noise and went into the room where he found the accused standing over the body of the victim with a knife in her hand. That is circumstantial evidence that the accused stabbed the victim since there is no direct evidence from the witness that he saw the actual stabbing. In this example there are three possible sources of error. First, the witness may be lying. Second, the witness may have mistakenly identified the accused. Third, there is the possibilityly of drawing the wrong inference arising from the circumstances.

For instance, assume the witness is truthful and not mistaken about the identity of the accused as the person with the knife in her hand. It is still possible the accused did not stab the victim. The accused may have been outside the room when the victim was stabbed. She may have heard the same noise, entered the room before the witness, and innocently picked up the knife. After doing so the witness came into the room and saw the accused with a knife in her hand. If that actually happened it would of course be wrong to infer or conclude that the accused stabbed the victim even though the witness was not lying or mistaken.

As you can see, you must be careful when

dealing with circumstantial evidence because of the possibilities of error. Before basing a verdict of guilty on circumstantial evidence you must be satisfied beyond a reasonable doubt that the guilt of the accused is the only reasonable inference to be drawn from the proven facts.

I should also caution you that an inference is a much stronger kind of belief than conjecture or speculation. If there are no proven facts from which an inference can be logically drawn it's impossible to draw an inference. At best you would be speculating or guessing, and that is not good enough. An accused must not be convicted on a guess no matter how shrewd that guess may be.

Now, in the present case, as counsel have stated already, all of the evidence is circumstantial, and you must have regard to the matters that I've just spoken of when you consider that evidence. It's not unusual in criminal cases for all or most of the evidence to be circumstantial and for there to be no direct evidence at all, because most people when they commit crimes don't go out and summon a lot of people to come and watch them do it, they do it surreptitiously, behind everybody's back, and they try to conceal what they've been doing, and usually when you try to prove the commission of an offence the Crown are up against proving it by circumstantial evidence. They have to put different pieces of evidence together like the woman here who contributes what she saw and somebody else saw something else and so on in the illustration I gave. You have to put that together to build up

the case. That doesn't mean that circumstantial evidence alone is not good enough to obtain a conviction, because if circumstantial evidence is strong enough and satisfies you of the guilt of the accused, then it's just as good as direct evidence.

I want to say, too, that in applying the reasonable doubt rule I've said earlier that an accused cannot be found guilty if you have a reasonable doubt as to his guilt. In the case of circumstantial evidence you apply that same rule but you do it to all of the evidence that's adduced and not to each individual bit of evidence. You put all of the evidence together and you determine whether there's a reasonable doubt within the context of all the evidence you've heard all together. The individual items of evidence do not have to be proved beyond a reasonable doubt. The facts are not to be examined separately and in isolation with respect to the reasonable doubt rule. If evidence favouring the defence leaves jurors in a state of doubt after considering such evidence in the context of the whole of the evidence, then they are to acquit.

We'll have a recess shortly but there are just two or three general matters that I'd like to discuss before we recess. One is that of composite drawings. I wonder sometimes why they are ever allowed in trials as exhibits at all. Composite drawings are merely something made by police artists as a tool of investigation to try to uncover the perpetrators of the crime. If

someone has seen someone a police artist may go to a witness or a potential witness and that witness gives a description of the person he saw. He says he had a long nose and he had a very narrow face and he had cross-eyes or as the case may be, or he had - his eyebrows were much higher over his eyes than most people's or something, and the artist then using - and he had great floppy ears like Prince Charles - the police artist then draws a composite drawing of that person that's described. It may be handy to other policemen, it may be handy even to other witnesses, for police to show to another witness and say, does this look like the person you saw, did you see the same person. The artist usually, as we saw in this case, will sometimes put on the witness's conpetence in describing what he saw eight out of ten or seven out of ten, as was done in the case of one of the witnesses here. It's never a perfect thing, it's not intended as a drawing or as a portrait, but it's intended merely to convey the notion that that person depicted has certain particular features.

We had an example in this case. You remember the Irving Oil man, wasn't he, or the oil dealership man, who drove from Newcastle to Bathurst and he passed a car and when he found the Oldsmobile car of Father Smith in Keddy's Motel yard at Bathurst he thought that that was the same car that he had seen on the road to Newcastle in which he had seen two people travelling, and he was shown one of the composite sketches described here which was meant to be of a male individual

and he said, "Yes, that is the person I saw in that other car. It was an old woman I saw as a passenger in the other car". Well, now, he related an old woman to the sketch that had been prepared by the police artist, so different people see these in different lights.

One of the sketches here draws somebody with two big tabs on their head and a helmet or a hat on that they couldn't describe, they thought it might be a hard hat liner. One of the witnesses who had seen one of these people who was running through the woods and had been to his house said that he thought the person he saw through his window or who accosted him with a rifle in his yard or something seemed to have a knapsack around his head. Some people do carry knapsacks, you know, with the straps around their forehead, and particularly if you have a heavy load of a dozen and a half pints of beer in the knapsack or something you may very well carry it around your head. I mention beer because that was the occasion on which the 18 pints of beer in the knapsack were later found out in the spot where a shot had been fired the night before. It might be the way, and perhaps what the person saw and perhaps what he was describing was a knapsack.

The young man who played in Theatre New Brunswick who testified who came here from British Columbia with the long name described his knapsack, and as a matter of fact his knapsack is in evidence and you'll have an opportunity to see it when you go to the jury room. It had two brass things on the side - I think brass or metal things

on the side, and were those brass things on the side the thing that somebody saw when they gave that description to the police? I forget just who it was who gave the composite drawing description to the police, but what I'm saying is don't get too concerned about composite drawings.

There was quite a bit of the evidence here devoted to continuity evidence in describing how an exhibit that had been seized was passed from one police officer to another and to a lab technician and to another lab technician back to somebody else who photographed it and back and so on and brought right up to the date of trial almost in some cases. Well, the purpose of that, of course, is to show, where it's material, in some cases it's not too material - where it's material to show that that exhibit hasn't been tampered with, that proper care has been taken of it, that its condition has remained the same right up to the period of trial if that is of consequence. In a great many cases it's not. For instance, the two rifles that are in evidence, they're not going to be tampered with a great deal along the way. They could be, I suppose, but just through physical use they're not going to change very much.

It is most important, of course, if you remove a body of a victim to a laboratory in Halifax and you go over that body for marks or stains with a luma-light, was it, or whatever they called that peculiar type of advanced lighting they use now in these tests. You go over that and it discloses the presence of that

stain on the body and you're finally, you know, several months down the line, or perhaps a few months down the line you're going to be taking DNA sampling or testing of that stain, it's most important that the stain taken be established and proven to be the same stain that was tested in the DNA laboratory and also that it wasn't tampered with or mixed up with somebody else along the way, and that, of course, is most important in the case of those items that were sampled. That is why the Crown here, I suppose, has been obliged, and certainly in all cases they do it, to go right through in great detail to show how those samples were dealt with and treated until they reached their final destination.

There are certainly insofar as the DNA testing is concerned certain double-checks on that, because one might say, well, perhaps the semen taken from the leg of Donna Daughney and the semen taken from the chest area - one witness said abdomen, I think the evidence seemed to favour that it was on the chest between her two breasts where that sample was taken - that that semen was in fact Mr. Legere's semen. You know, perhaps it could have been changed with somebody else along the way. I say there are certain built in safe-guards because here other samples of Mr. Legere's DNA were taken, hairs taken in 1989 after his arrest and so on, and they were run on a separate autorad against those semen stains and even against the - if not against the semen stains against the hairs that had been taken from him in 1986 when he was at Dorchester Penitentiary, and

they checked out as being his, so that provided in that case an assurance that the semen sample which purported to be Mr. Legere's was in fact his, but in considering this matter of continuity you can't go back, of course, there's no way you can go back now and check and say, well, now, was everything proven right through.

Before it was admitted into evidence I had to pass upon the matter as being acceptable, you've got to rely upon me to a certain extent in that regard, and also I'm not aware of any objections by counsel as to continuity in that regard.

There is the necessity here of considering each count separately. You can't lump these things all in together and say because we may feel that the accused was guilty of this offence he is automatically guilty of all the others. That is not how the law works and you must consider each count absolutely separately and independently so that you've determined whether the accused is guilty of each particular count. That doesn't mean, of course, that you can't consider all of the evidence pertaining to all of these different homicides because they're all in evidence, that evidence applies equally to any of the homicides, so you are entitled to consider any piece of evidence as applicable to another, but not the guilt itself of an individual. If, for instance, the accused were guilty - you considered him guilty of murdering Father Smith, that doesn't make him automatically guilty of murdering the Daughney girls, for instance. You may feel that when you consider the similarities in

circumstances, the setting of - not the setting of fires in their cases but the nature of the injuries inflicted, the 'S' designs cut into faces or into bodies - faces, I guess, and when you consider other factors you may say, well, there's an overlapping there that applying the principles of circumstantial evidence makes it proven beyond a reasonable doubt that he did both murders, but you don't automatically say because he's guilty of one murder that he would be automatically guilty of another.

I think I will stop there and we'll have a recess for about 15 or 20 minutes and then I'll continue on. I think I've covered over half of what I intend to say, anyway, so that will be some relief to you, so would the jury then please go out?

(BRIEF RECESS - RESUMED AT 11:30 a.m.)

(JURY CALLED - ALL PRESENT. ACCUSED IN CELL.)

THE COURT: The next item I wanted to deal with was one aspect of the evidence. The accused here made certain - had certain conversations with the officers who re-arrested him on November 26th, I believe it was. I never can remember if it was the 28th or 26th - 26th, I think - at Newcastle or in the Newcastle area, and they testified as to certain statements he made at that time, and you are entitled, of course, to take into consideration the content of those statements to determine what effect they have on the overall picture here.

You must determine, of course, firstly

whether he did in fact make the statements, are the police officers telling the truth when they say that he said what he did say, are they giving an accurate account of what he may have said to them. I'm not going into all the statements that were made, I just want to tell you some of the things that you have to consider there. You have to assess them, were they true. Even if you're satisfied they were made by the accused were they true, were the statements truthful, or were they boasts or something that he had invented, invented stories that he was telling. You have to assess yourselves what weight you want to attach to it. I think Mr. Allman reviewed yesterday in his summary the nature of the different statements made. He pointed to one statement where the accused had said all that nonsense about there being an accomplice was B.S. and so on. If you believe that he made that statement, then perhaps you want to determine what he may have been referring to when he made it. Was he referring to an accomplice in his escape from prison? Perhaps not, because he did refer to the fact that - I think in other statements he made to the police on that same occasion he referred to or suggested that some of the guards at the Renous Institute had in fact helped him; perhaps unwittingly, but had given him some sort of devices or something which had aided his escape, so perhaps he wasn't referring to his escape when he was talking about accomplices, when he referred particularly to them.

Was he referring to accomplices in his

avoiding the law when he was at large? Again you might feel that perhaps he wasn't because he said that he had - as we were reminded yesterday, he said that he had been alone all through the summer and had met only two other persons or something. Probably his statement that he had met only two other persons was not perhaps a correct statement. I won't say it was perhaps untruthful, false, perhaps just boastful, because he also spoke about reading the newspapers daily and eating high off the hog and so on during the period of his being at large, but you have to determine whether when he was talking about no accomplices was he talking about the escape or was he talking about no accomplices in any of the instances with which he was connected. He had been told at that stage before those conversations - initially on his arrest he had been told that he was being charged with being unlawfully at large and having escaped from the penitentiary. Subsequently and before, I think, most of these conversations took place with these officers he was told that he was being charged with the murder of Annie Flam. Was he referring to that when he said there were no accomplices? Well, you attach what weight - there was no very clear indication on that. He certainly at that time avoided - he wasn't under questioning at that stage by the officers at all, he was rolling along and making his own conversation repeatedly, as they say, and over and over again and the same types of statements and talking very freely. I don't think you'd feel that there was much doubt about it being voluntarily, he

wasn't under any particular pressure, he seemed to want to get these stories off his mind, but when he said there was no accomplice or the accomplice business was bullshit and so on was he referring to the Flam murder? He very carefully avoided in those conversations any reference to the murders themselves, as you will recall from the officers' account, if you believe the officers' account. The officers seemed, I think you'd agree, to be telling a fairly straightforward account. They made notes immediately afterward, or some of them did, and they were quite explicit and you may feel, of course, that they got together later and said we'll cook a good one up against this guy and convict him for sure and put words in his mouth and so on, but on the other hand you may feel they were telling the truth in how they reported it.

As to the nature of the statements he made at that time, he said that he had fired at a police officer or fired over the head of a police officer when chased on some occasion, he'd been chased by dogs. Presumably the occasion that he talked about firing over the head was on the occasion on October 28th, the same night that the two rifles were stolen - were missing, stolen undoubtedly, by someone from Mr. Guitard's truck which was parked at the Morada Motel in Chatham when he and eight or nine other guys from the North Shore were headed on a hunting trip down to the Miramichi country and he discovered his rifle and all his hunting stuff missing, and it was that same night that Sergeant Thomassin with his dog chased someone who may have been Mr. Legere onto

the railway tracks and down the railway track. He was fired on in the vicinity of the Morrissey Cove area where you see this clutter of pins here, and #10 I think it was, or #12 on the map, but you'll have a list of those pin areas when you go to the jury room, and if that was the occasion and if it's right that Mr. Legere fired over the heads to frighten this officer that night, then that of course puts him as the person who was there on that night, on October 28th, and it also, of course, puts him much closer to the Guitard truck and from the taking, but of course one of the rifles taken from Guitard was later found in his possession when he was recaptured and could only have been carried by him to Montreal from Bathurst after he bought the ticket in the railway station. It probably accounts for why the ticket seller said that he stood off to one side and seemed to be concealing something. Well, probably it was the rifle that he was concealing at that time. At that time he must have had with him that rifle. He had the boots, the Gorilla boots which he was wearing at that time and which were taken from him when he was recaptured, and the radio, the small portable radio that was taken and which had been stolen from somebody else in the Governor's Mansion, and there may have been some other items, but he was carrying those items. I think there was a knife as well.

The knife that Guitard had lost was not recovered by Constable Carnahan. I've checked my notes of his evidence, he didn't say that he found everything except the rifles that Guitard had

lost, this came up yesterday in the summary. He said he found various items in the yard of the Morada Motel, he didn't say he found all the items that had been reported missing, and he listed those items. There were cartridges and some cartridge shells and a couple of bandoliers, a package of red tape and some other items, as I recall, that he mentioned finding.

Now, I'm sort of jumping around a bit here but Guitard said in his evidence that that knife was his, the black knife and the sheath, and that was the knife that was recovered from Father Smith's car in Bathurst. There's some question as to whether that was in fact his knife or not and he was challenged as to whether in fact he could identify it, and he said well, it was his as far as he could tell, and you know, if any one of you had a hunting knife how would you go home and identify it? He identified it by the grinding marks on the blade where he had tried to sharpen it and where somebody else after that had tried to resharpen it and had messed it up a bit or something. He couldn't recall exactly where the number was on it. I forget what the name of the manufacturer of the knife was, but he said he thought that was his knife and I think you'd probably feel that that was the knife that was found.

Well, what else did Mr. Legere say that night? He said that he had lived alone in the woods, had been living alone in the woods, and he made various other statements about how well he was living and so on. I needn't go into any of

the other aspects of that, you will recall from the evidence what he said. I think you probably are finding that a lot of the evidence given by the witnesses is coming back to you now as you're reminded of some of the aspects of it, but you can take those things into account and see where they fit into the overall picture. I'm talking about the statements made or attributed to the accused when he was recaptured.

Evidence was given as to all the circumstances of his recapture, from his taking hostage the taxi driver in Saint John and driving to Sussex and then taking the R.C.M.P. girl when the taxi went off the road and so on, it made quite an interesting tale, the whole thing. It wasn't perhaps of all that much significance insofar as proof of the person responsible for the murders was concerned except that it placed him with the rifle that had been stolen and taken down here and it showed that he carried that rifle, you remember, across his lap pointed at poor Golding in the truck. Golding says, "How do you expect me to drive with you pointing that weapon at me", and it was loaded the whole time, and you know, he left no doubt about it.

When you talk about his freely flowing conversations with the police officers in the police station after his capture it was no doubt - Mr. Allman referred yesterday to the fact that, well, he had a lot to tell after being at large for seven months and having been to Montreal and all these sophisticated experiences and so on. I would say you might feel that perhaps it was

promoted more by a feeling of euphoria over having been recaptured without having been killed in the process, and I would say that that would perhaps promote a euphoria in his mind more than anything else that day, but that doesn't have a great deal of bearing on the issues here in this case. I'm not going to say anything more about that evidence, that aspect of the evidence.

I do want to run through the different homicides, and I'll do this as briefly as I can. Most of the facts, you know, in this case have been covered already by counsel in their addresses yesterday, and I think reasonably accurately. They perhaps put each their own view or slant on the significance of these different items but the summary of the events has has served well to remind us of exactly what happened, but I think it is important, perhaps, to look at the different homicides or the circumstances of the homicides to determine what is the chance of this being first degree murder and what is the likelihood of it being second degree murder, and I'd like to explore each of the three instances, not in the context that the accused necessarily perpetrated the murders but that someone perpetrated the murders.

Let's look at Father Smith first because that was the last one and perhaps the one closest in our minds. There's no suggestion that there was more than one person in Father Smith's house. There is some talk about a blood stain on the back door. There's something about a hair on Father Smith's leg that was found. Well,

everybody loses 50 hairs, was it Mr. Evers said a day, and perhaps some lose more, but you know, it could be anybody's hair got on his leg there. The paint on the door, I think the evidence of one of the witnesses was that it was one sort of conglomerate smear of paint on the door, but regardless whether some other person may have put that hair there or may have put blood on the door there is no evidence whatever that - you could never conclude that a second person was involved in that attack on Father Smith because there was just no marks made in the blood and the blood covered the floor completely in those two rooms, the den and the kitchen, and the hallway in between, and the blood was tracked downstairs and it was practically all made by - or the tracks seem all to have been made by this Kodiak Greb boot, in fact the one that was later found in Bathurst in the trash can at the construction site, but anyway, whoever went in there, the assailant, what did he do? He arrived about nine o'clock at night and he stole the ladder first from the man who had the old German Shepherd dog that was deaf and blind next-door, he put the thing up against the patio - I'm just exploring this not to speculate on what might have happened but to see how it fits within the framework of the known evidence that we have - he put the thing up. Smith was watching television, the television set was on, wasn't it? Somebody turned it off later, somebody pulled the plug out and made the VCR go at 12:00, blink at 12:00, which could only be done by pulling the plug out, I suppose. Smith was

watching television and somebody started up the ladder or made a clatter with the ladder out on the patio with the idea of going through the patio door. Smith went out on the patio and was seen by the woman across the way who saw him standing there with his hands behind his back as he sometimes did, looking down over the side of the patio roof, the garage roof - patio floor, garage roof, to see who might be there. She was alarmed, she thought that he must have heard an intruder of some kind, or a prowler, and he was there a few minutes and then he disappeared and went back in the house, the blinds were pulled in the house at the time. There was an alarm system on the back of the garage corner with a sensor that went from the porch to the corner of the garage, it didn't go on that occasion. Another witness said he didn't usually turn that on till about eleven o'clock at night. Smith went back in. The intruder did what then? He went around to the back door and he broke the aluminum door, he pushed it similarly to the one that was pushed at the Daughney house, the latch. That may have been just a coincidence. The latch was broken on that aluminum door and he entered in there. Smith probably heard it. Smith went around to the back door to see what this noise was. The intruder went in and he accosted Smith in the kitchen.

Smith quite obviously - and this was about nine o'clock at night, wasn't it, this was about the time that the woman across the way saw Smith on his patio, so at nine o'clock at night Smith is there. Dr. MacKay said that the stomach contents

of Father Smith, the state of the stomach contents, while it was difficult to assess the matter totally, would suggest that he may have died about five to six hours after he had last eaten. Well, if you assume that he had eaten at suppertime, five o'clock, six o'clock, he'd been at the hospital up till five-thirty visiting one of the other gentlemen who testified, and then if he went home or if he went somewhere else and ate his supper five or six hours would put him about twelve o'clock. That may only be an estimate, but it would seem that Smith was kept being tortured around and cut and killed and kicked and pounded and hit for probably five or six hours before he finally died. That could very well be, perhaps it was less time than that.

I mention this in the timing. What did he do in that time? He was in the kitchen. He made two pools of blood. You remember Sergeant Gorman, the police expert on crime reconstruction, who only went part-way with the crime reconstruction, he said that all the blood on the walls, or most of it, seemed to come from Smith while he was lying down. There's no suggestion that there was any blood other than Smith's apart from this little smear on the door outside. There was other blood on the door outside which was Smith's and which very possibly rubbed off a jacket or something of the assailant when he used that door to come in and go out again after that, and there was some tracked downstairs into the basement where it was found on the floor down there, again tracked down by the assailant because Smith certainly had no

opportunity to go down to the basement again.

Undoubtedly the assailant was there after two things, I'd say. He was there after money from Smith and he was there after Smith's car keys, and Smith's car keys were never found except a set under the mat of the car in the front seat of the car the next day at Keddy's in Bathurst where it was discovered when the search of the car was made. Now, whether that was the principal set of keys that he used and that's where he kept them, we don't know. There was no evidence of any other keys that I can recall being found in the house and presumably the assailant didn't get it because he had to remove the key cylinder from the steering wheel and throw that away on the garage floor, I think it was, and use the pair of rose cutters, the pair of pliers, the bush cutters or whatever they call those things, he had to use that to turn the cylinder. You remember the garage man said you couldn't turn it by hand, you had to turn it with a pair of pliers? That's what the rosebush thing that was found in the front seat of the car at Bathurst was used for, but anyway, where were we? He's after money or he's after car keys, and he doesn't get either from Smith, and Smith refuses and he says, "I want you to open up the safe", and finally, you know, is this six o'clock or is it seven or is it eight or nine or ten or eleven o'clock at night, probably before those hours, he's dragged into the den, taken into the den. He must have been in a terribly weakened condition from the first business out in the kitchen at that time. He

was literally tortured there, and I don't know whether it was all with an effort to get this money and keys out of him or not, but then Smith goes in and Smith died on the floor in the other place, in the den near the safe. He was rolled over by the assailant, his body was turned over so the assailant could get at his hip pockets. You saw in the pictures the hip pockets pulled out, and his wallet and whatever else he had was obviously - money or whatever he had would be taken from those pockets, they were empty, and they were torn, and Smith was rolled over because there are no gyproc marks on the - the assailant in the meantime, before he rolled him over and tried to get his money, had tried to get into the safe and tried to cut around the side of the safe door and get through the wall both there and on the outside hall into the safe and knocked all the gyproc down, and if you look at the pictures you'll see that Smith had no gyproc on the back of his trousers. Why not? Because he'd been lying off to one side with the back of his trousers on the floor when that was being done, so obviously the motive was to get a car, was to get money from Smith. Obviously the intention was to catch a train to get to Montreal, the assailant, I suppose, that's why the car was taken up there and abandoned.

I'm not considering at this time who might have done this, I'm just saying the assailant, whoever the assailant was.

What did the assailant do after that? He decided he'd better look at the car and see what

he could do so he went out the back door and he went down to the garage and he went through the garage doors and he went in. He couldn't get in the car, he had no key, so he broke the window, the glass was over the garage floor.

He then wanted to go upstairs again. He found the tools down there in the garage, he found the crowbar and the pick and the axe and all that other heavy stuff with which he might get into the safe after all, so by then, you know, perhaps it's becoming daylight by then, perhaps it's the next morning. We don't know the time frame of this, you know, one has to guess a little at this, but it's not going to be very convenient, particularly if he's not going to catch a train till the next afternoon out of Bathurst, or the next evening. It's not going to be very convenient to have to run back and forth to the house through the back door in the daylight where people can see him, so what does he do, he breaks down the door leading into the storage room so he can get upstairs that way, which he does.

Well, I go through this merely to - or at least my purpose in this was merely to show how this fits in with somebody being there, one person being there, having the motive of stealing money, stealing car keys, planning this thing. You've got to decide is it planned and deliberate, was this purpose or this plan formulated during this four or five hours that he was there.

As I spoke before, to be planned and deliberate it doesn't have to be planned the day before or the week before. It was all a very

deliberate thing. The television was blatting upstairs so the plug was pulled out and it left the VCR going, I think I mentioned that before. The assailant took his boots and his jacket, probably, tried to wash them or did wash them off, the boots anyway, in the sink, left some smattering of blood in the sink, washed the boots off. You'll have to ask yourself, does this account for why the boots found the same day, later that night in Bathurst, were the same boots that were washed off in that sink and had the blood washed off them.

He may have made a lunch, he probably drank two bottles of Bacardi cooler, whatever it's called there, Breezer or whatever it was, which he may have found or brought in. He may have made a lunch. There were paper bags, bread bags, found empty, or were those meant as replacements for Kodiak boots, the empty paper bags that were left, or perhaps he took the bread out and made a lunch if he was going to have a train journey or going to have a journey to Bathurst or something, but anyway, the time was filled in the next day until about six o'clock or half-past six he went back down through the basement out into the garage, he started the car, he was confounded by the fact that the horn blew. The horn blew five or six, four or five times inadvertently, because where he had hooked up the wires to get the ignition going he inadvertently started the horn, when the engine started it started the horn going, and the woman next-door heard the horn blat three or four times, you remember she testified, so what did he

do? The assailant then pulled off the horn rigging on top of the steering wheel, tore the whole thing off, he was desperate to get it stopped immediately before it attracted too much attention and tore that whole thing off, and it was found either in the car or on the garage floor, I forget which now, and then at a quarter to seven he drove away in a great haste for Bathurst, and whether it was the accused driving or not, that's up to you to decide. In any event, the accused about an hour after that car left bought a ticket for Montreal on the train. Evidence was given that you could conveniently reach at a moderate rate of speed, a reasonable rate of speed, Bathurst and the Bathurst station within that time.

If it was the accused who was in the Smith house, and you'll have to determine this from all of the evidence, what would he have had with him at that time? Well, he would have been carrying the rifle which he had with him when he was recaptured, the heavier of the two rifles or the larger calibre bore, sawed off, or he had that rifle with him. He would have had probably the - well, it's up to you to decide - he would have had the hunting knife and the sheath which he left in the car, whether deliberately or not. He would have had the radio that he had, he would have had the identification that he was found with later of the man - what was it, a plumber's license or a Workmen's Compensation license or certificate or something that was taken from a man at the Governor's Mansion, one of the workmen there. He

would have had the identification of Mr. Savoie, the man from Buctouche who lost his driver's license and identification out of the car. He would have had those things, and he would have had the Gorilla boots wrapped up in a bag, probably a knapsack on his back or something, and carrying those boots. I'm saying if the accused was the person in Smith's house, because it was there that he took off the Greb boots, would have washed them and changed, probably, into the other boots. There was no indication of wetness on the car floor or blood on the car floor where the Greb boots might have tracked blood in there, so presumably the Gorilla boots were put on before the car went to Bathurst. This is if the accused - mind you, if the accused were there, well, you'd probably come to the conclusion that it had been the accused who had confronted one of the witnesses earlier that evening at about 6:45 back at Morrissey Cove, back here near where the accused used to live and where most of his preambling seemed to have taken place, who started the chase there, and you remember the day before the evidence was that the resident there had a dog that started to bark at about half-past six at night, and he'd gone out in the yard and tried to find out what was disturbing this dog, it was a most unusual thing, and he couldn't find anything. Then the next night, that was the day that Father Smith was killed, or probably died - the next night the dog went out again at six-thirty and started to bark, and the man went out again and couldn't see anything, but one of the neighbours

looked out and saw a man going into the woods, and the police were called and Corporal Kohut, I believe his name is, the dog handler, came with his dog and chased after a person, they were about an hour and a half, he said, later - chased after that person and up onto the railway tracks and headed for Chatham Head along the railway tracks, and where did they stop, they stopped - now, I don't know what time this would be, seven o'clock, running all the time, the dog pulling, and seven o'clock, eight o'clock, nine o'clock, half-past eight, they wound up a quarter of a mile at the little yellow dot over there just south of the green dot. I don't know how far that is, four or five blocks or a quarter of a mile from Father Smith's rectory.

Now, if it was the accused, of course, he had with him - he must have intended at that time to get out of the country. One of the things he told the police up in Newcastle was that Mother Nature had driven him out, and it was then November 15th and it was getting cold. He had no money, probably. He couldn't last all winter fleeing the police and with the pressure on him with dogs and so on in that area, so he would - he must have decided pretty much at that time carrying the extra boots with him, carrying the gun and so on, he must have pretty much decided that this was going to be it, if he succeeded in getting some money somewhere he'd take off and go up there.

Well, now, you've got to decide do all these pieces that Mr. Allman has referred to - do they all fit together and prove what Mr. Allman

contends they do? The boots, as the Crown admits, are a most important aspect of this proof that it was the accused who killed Smith.

You've heard the evidence of the three experts, Sergeant Johnston and the man from the FBI in Washington and the foot doctor from Prince Edward Island, all of whom testified and expressed in fairly strong terms the notion that those boots had been worn by the accused, that it was very probable that they had.

Now, they approached it from the point of view of scientists, perhaps particularly Sergeant Johnston and the American chap, who said that - as scientists seem disposed to do they say, well, it's a probable thing, we can't say with certainty that it was his boots, but who else, they say, would have a nail mark up through the heel, who else would have the big toe and the next toe a certain distance apart and certain other characteristics on a foot, who else in the country could possibly have that sort of arrangement. Well, you people have got to look at the photographs and so on and decide whether they knew what they were talking about.

I want to point this out to you, that you're not constrained in the say way they are. They were giving expert opinions. They were asked, can you say positively that this was Legere wearing these, and they say no, we can't say positively. They say in effect, we can't say positively but we're almost absolutely sure, or whatever expressions they used. It's probable, they say. You people can go farther than that, you people

can take into consideration other circumstances and you can weight it up against their opinions to decide whether in your opinion those boots were Mr. Legere's, those Kodiak boots that were found discarded in Bathurst and which had been worn back in the Smith rectory were in fact Mr. Legere's.

You can take into account the fact they had paper bags in them and Mr. Legere had been at large and perhaps was using paper bags to protect his feet from the damp and so on, or the water, with boots that were pretty old and about to be discarded at that time. You can take into account the fact that the boots were wet when found. They were very wet, they were soaked through. Would this indicate that they had been washed in Father Smith's kitchen sink, or perhaps you attach no significance to it. The condition of the boots, a small thing, they were pretty well worn and torn, I think the evidence was - if they were the accused's they would have been worn, of course, all summer, and probably running quite a few miles over railway tracks and through woods and so on.

There may be other aspects of the evidence that you can associate with the boots or not as the case may be, but I'm not going to say anything more about that.

On the question of whether there was a planned and deliberate attempt to - there's no question but what Smith was killed with intent by whoever killed him, I don't think you'd have any difficulty in concluding that. He was murdered, there was no manslaughter or anything else, he

was murdered, there was nothing accidental about it. All his ribs were broken, or six ribs on one side and seven on the other. His jaws were broken, his eyes were - he had been choked, bruise marks on his neck, and all the numerous cuts. You can look again at the pictures of his body and at the autopsy and there's no question but what he was killed. The man was killed, he was tortured, as the doctor said, Dr. MacKay.

But the question was was it planned and deliberate or was he being held in confinement at the time that his death occurred? Well, you people will have to decide that for yourselves, whether he was held in confinement or not, and also whether there was a deliberate - whether it was planned and deliberate within the definitions that I advised you earlier.

I say again in his case, in Smith's case, if you come to the conclusion it was the accused and you're satisfied that it was planned and deliberate or done while he was committing or attempting to commit the offence of unlawful confinement, then you would find him guilty of first degree murder. If you find that he did it with intent to kill and it was the accused, if you find that, the accused who killed Smith, then you find him guilty of second degree murder. If you are not satisfied of those items, that the Crown has proven that, and there is any reasonable doubt in your mind, then it's your duty to find the accused not guilty on that count.

Now I'd move along to the Daughney sisters, and I'm not going through any great scenario

there. Donna Daughney was last seen painting the window of her house at about 10:30, 10:15 in the evening by the man who lived across the street next-door. He said she'd been painting there all evening. Somebody else at another house had seen her painting earlier.

Her sister had gone to the Tim Hornet - what's his name, Tim Hornet I call him - doughnut place, anyway, and she left there, I think it was about 11:30, or shortly after eleven o'clock she walked part-way home with her friend and the friend went home and she kept on going to her house, so she arrived, one could assume, at about 11:30 at night. Now, the fire was discovered the next morning at quarter to six - quarter to six or quarter to five? That was October 14th at 7:35 in the morning the fire was discovered, the next morning, by the gentleman who was driving by, and he happened to see the smoke there and he stopped, and actually it was at 5:45, that's a quarter to six that morning, that Mr. Manderson had been driving by that corner on his way to work or somewhere and he saw this mysterious, suspicious-looking character behaving in an odd way and showing indecision and bouncing up and down, you remember he said he was a weird sight or a bizarre sight or something. He saw him there. There'd be a very strong suspicion that whoever he saw was the man who had been in the Daughney house. It's not conclusive at all. The fire was put out at about seven o'clock or shortly after seven o'clock. The Fire Marshall said the fire in Linda's room had been burning longer and had been

burning for one hour to two hours. The fire in Donna's closet, the front closet, had burned only fifteen minutes, in his opinion, and perhaps had gone out by itself, but if you went back an hour or two hours before seven o'clock it would mean that the man - the fire may have been just about started the time that man was seen on the street. In other words, he may have just about lit the fires about that time and then gone out on the street and started off. It ties in from a time point of view, you see, but if that were the case it would mean that that man was in the Daughney house from when, twelve o'clock at night till 5:45, 5:30 in the morning, 5:45. He was in there for five hours if he was there, and all of this business with the Daughney girls, their being sexually assaulted by whoever the assailant was, both them being sexually assaulted quite obviously from the sperm found on them later. This took place over that period.

Now, we're all at a loss to know just how this blood got outside. I don't know that it's material to the case how it got outside. The earring was found outside. It would look very much as though perhaps an assailant entered there before Linda got back from the Tim Horton doughnut store and that Linda came along later and was accosted outside, or more likely, it would seem to me. Remember Linda's bed was made up and I think, if I recall correctly, there was evidence of knotted nylons in Linda's room as well as in Donna's room. The assailant seemed to tie these people up with nylons and knotted ropes and

things. There were several knotted pieces of drawers or something, panties or something, found on the steps leading downstairs, the main steps of the Daughney house, and what seems probable is that Linda had been tied up in that room up there and perhaps the assailant was there when she arrived home or perhaps not, perhaps the assailant went in afterward. The assailant went in through the one door of the building, he pulled the lock off, because when the firemen got there, there was no catch on the lock, and you remember the fireman leaned against or grabbed hold of it and the door opened automatically and the fireman fell in on his knees on the floor inside, so there's no question where the assailant went into that building and where he went out, he went out the same way, and did he tie Linda onto her bed in her bedroom and did he put some of these puncture holes or knife wounds in her or beat her and hit her? What, both jaws broken on her, I think she had both jaws broken, and she had been strangled, she had bruises on her neck, one eye had a hemorrhage which - the pathologist suggested that she'd been strangled, or at least partly strangled, not strangled to death but partly strangled, and anyway, having been tied to the bed did she escape down or try to get out of the thing and run and try to flee from the building and did an assailant chase after her and stab her further down in the yard and more blood, or the blood down in the yard, and have a scuffle down there where she lost her earrings and she would be dragged back into the house or taken back into

the house or carried back into the house and upstairs again? She was finally found on the floor by Donna's bed. You remember Donna was found tucked into bed, this sort of a ritual of being tucked in so that when the fires were lit and somebody came along they would think that they had been burned to death in bed.

Donna died of punches and beatings, the pathologist said, and partly by aspirating her own vomit and so on. The other girl, Linda, was found on the floor. She hadn't been put back into bed or been got back into bed, she died on the floor in Donna's bedroom beside Donna's bed, and she had been very badly beaten, as your photographs will show, and she had 23 per cent reading of carbon monoxide in her lungs which suggested she had inhaled a lot of smoke, whether in her own bedroom or in Donna's room, more likely in her own room where the fire was set and had been burning for some time. It may have been that that prompted her to run out of the building, perhaps, and then be dragged back in again, but anyway, the medical evidence was that the 23 per cent carbon monoxide reading would not cause her death but would contribute to her death, and together with her beating and perhaps - I can't recall whether there was regurgitation of her stomach contents in her case, or aspiration of the stomach contents, but she died as well.

Anyway, what I'm getting at here is that whoever the assailant was this took place over what, a four-hour period or a five-hour period, this whole business. Does it indicate planning

and deliberate? Again it was murder, unquestionably, by someone, and if it was planned and deliberate, planned even from minute to minute as it went along with the setting of the fires in the closet and so on, if that preceded their deaths, or did the deaths occur while the confinement was being attempted or committed, illegal confinement, or in the course of a sexual assault? Well, you could probably take your pick there and you end up with a first degree murder decision, but as far as someone doing it goes.

Then you come to the question of was it the accused or not. Well, again you've heard the evidence on this, you've heard the evidence reviewed on this. The Crown say in their case, we put our stock in two things. One was the jewellery that was found and sold by - that was found in Montreal and which had been sold by the accused under another name, but quite obviously if you follow these things through it was obviously the accused, Mr. Legere, who sold those items of jewellery. Were those items of jewellery in fact Donna and Linda Daughney's? You've heard these witnesses, these girls, friends of theirs, the other lady who lived across the street and so on, and someone said yesterday they were almost like family, and they say yes, of course, those were the Daughneys' rings, or brooches and jewellery and so on. Well, you'll have to think about was that their jewellery. You've heard the very explicit evidence of these people and they didn't seem to be out to lie about it. I omitted to refer earlier to the Nefertiti ring which had been

stolen from Mrs. Gregan back on May 10th. That was before the Flam incident. Mrs. Gregan was the woman who worked at the Bank of Montreal and who saw a person that she says was Mr. Legere at her front window, and she got away from the window immediately, this was 12:30 at night on May 10th after she'd got home from playing bridge, and she knew Mr. Legere because she had seen him at the bank and she had also lived near him in the same subdivision or something a few years before that. I think her subdivision is marked with one of the pins on the plan, but she's one of those pins there sort of in the centre of the thing, and she told, you remember, about looking out, heard a noise like an animal in the bush in front of the house and looked out and saw it was a person that she identified as Mr. Legere. He had escaped a few days before that. You've got to ask yourself, was she mistaken? You know, was she persuaded that was Mr. Legere because she knew that he was on the loose and that any prowler could be Mr. Legere? You've got to consider this, was she right or wrong in this, but nevertheless, two days later - two, three days later, the Nefertiti ring which she had taken off that night after the bridge party and put on her dresser in front of the open window she found to be missing, so it's not too hard to deduce that the Nefertiti ring was taken by whoever was there. As a matter of fact, it was among the rings that was sold in Montreal and recovered from the pawnbroker, and sold by the accused up there.

The jewellery the Crown put their faith in

in respect of the Daughney matter, but they also rely, as they acknowledge, very strongly on the DNA evidence, and I'm going to have very little to say about the DNA evidence, not because I underestimate its importance in any way, I can't imagine anything more important, perhaps, in this case than the DNA evidence, but it's been - the notion of the DNA evidence and the testing, the DNA typing and so on, has been very thoroughly canvassed not only by counsel in their summations but by the evidence of the six expert witnesses that you've heard just over the last couple of weeks or so, and also I don't think there's any great issue about the DNA evidence involved. The significance of the DNA evidence, of course, is in respect of these semen stains that were found on the two Daughney girls and semen found in the vaginal swab of Mrs. Flam, and the Crown say that that matches up with Mr. Legere's DNA.

If it does match, and if you're satisfied of that and if you're satisfied it is Mr. Legere's DNA, or Mr. Legere's semen, rather, that doesn't, of course, make him automatically guilty of the murder. It is again circumstantial evidence that he might have been connected with the Daughney homicides, and you've got to consider that fact along with the other evidence of the jewellery and the circumstances and the similarity with the other homicides and so on, if that has significance. You've got to weigh all those factors.

Now, insofar as the DNA is concerned, the witnesses have testified that it is generally accepted in the scientific community that the DNA

typing technology is a proper forensic tool in this day and age. It's only a few years old, it was only in 1985, only six years ago, that DNA came into being through the efforts of a professor in England. Oddly enough, I might interject, its first use was in acquitting a person who had been accused of murder over there. The DNA established that he was not the guilty person at all and it did establish that another person was the guilty person. However, I'm not sure whether that came out in the evidence or not.

DNA has been used, DNA typing has been used. Its use has been advanced, as you've heard, in the United States. Not as quickly in Canada because it was only in 1988 and '89 that the laboratory facilities were established in Canada for its use. It's been expanded now, as was indicated, since the Ottawa R.C.M.P. Lab was established. Provincial laboratories have been established in Montreal and in Toronto by the two larger provinces of Canada, and the use of DNA typing is sort of in its infancy in this country but that doesn't mean that it's any less authentic or viable a forensic tool than it would otherwise be.

You've heard the evidence of these witnesses. Dr. Kidd, I suppose, would be one of the outstanding authorities, judging from his C.V. and pedigree, in the world on DNA typing, and these witnesses, the Crown witnesses as well as Dr. Shields, the witness for the defence, have acknowledged that DNA typing is in effect here to stay and that it's an authentic thing when properly carried out and properly done.

The evidence of the Crown experts on this field was that it is properly carried out by the R.C.M.P. They say in effect that the R.C.M.P. Lab is one of the best in the world. I'm not sure they used that but that was the implication of what they said in their evidence, and Dr. Kidd in particular had examined the methods and had reviewed what had been done by Dr. Waye, by Dr. Bowen. Dr. Fourney, who is one of the founders of the R.C.M.P. Lab had done the same, as I recall his evidence, and they told of the tests they've done and so on. They were criticized in cross-examination for not having established blind tests and that sort of thing. Well, Kidd conducted the tests, you know, they were all testing each other on these things. Dr. Waye said that the practice in that lab is nothing is turned out without being double tested by people who are familiar.

Dr. Shields said that he, while not contesting in any way the matches which they made on the autorads and the findings which they made as far as matches were concerned using the different probes and so on, he found no fault with that, but he made it subject, of course - he said he had no knowledge of their methods there in Ottawa, or at least whether they had observed the proper quality control and so on. The other witnesses say there was the proper quality control. There's nothing to suggest there wasn't the proper quality control. As a matter of fact, the results they produce, the mere fact they have been able to make matches and double-check their matches by the third autorad that they ran earlier

that I spoke about would suggest that they must be doing the right work.

The only question that seems to arise in this matter of DNA typing is the question of whether the database they're using is the proper one, is it taking into account the possibility of the existence of substructures on the Miramichi or in Canada. You've got the evidence of Dr. Kidd who's done extensive work in subcultures, not only on this continent but elsewhere, and he says look, subcultures couldn't make any appreciable forensically significant difference, I think was the expression used by most of these people, and he said it couldn't make any difference.

The other Canadian experts say the same. Dr. Carmody who is certainly one of the leading experts in this country and perhaps on the continent in the matter says the same, these are the proper things. They say we're allowing for confidence windows and confidence intervals and so on and this whole thing reflects the matter as it should be, and Dr. Shields questions the database that's used and he produces statistics. He's essentially a statistician. He's been perhaps criticized by the Crown here, or at least there's some suggestion that because he deals with animals other than humans that he might be less qualified to deal with these things than one who had put most of his effort into human beings as Dr. Kidd seems to have been dealing more with human beings. I'm not impressed with that argument because I think there's been an awful lot of work in science and in research done on animals that has been just

as beneficial as if it had been done on human beings themselves. Dr. Carmody, I think his record was essentially with - his early record, at any rate, was essentially with other than human beings, as I recall his qualifications, so I'm not impressed with the argument that Dr. Shields wouldn't necessarily know merely because he'd been working with chipmunks and foxes and skunks and whatever else was listed, and people.

However, time may prove that the others disagree with Shields. Time may prove that Shields perhaps is on the right track, but what does Shields say, really? Shields says yes, you produce a probability factor in the case of the five probes where Mr. Legere's semen was established as being on the body swab found on Linda Daughney, he said, "You establish that at one in 310 million", the Crown's experts do, and he says, "I would put that at one in eleven million". Well, what is the difference, really, between one in eleven million? He acknowledges, you know, one in eleven million is still a pretty improbable factor. It might mean that perhaps somewhere else in Canada there's one other person who would match but that other person in Canada who matches Mr. Legere or whose bands would match if his DNA were tested, if there is such a person exists within that one in eleven million in Canada, he probably didn't sell jewellery to a pawnbroker that may have been taken out of the Daughney residence, so that would eliminate him, and you know, you put these things together. So what I'm getting to here is you apply to the findings of these

scientists the same thing that I was suggesting you apply in the case of the boots. You people are entitled to take into account all of the relevant circumstantial evidence and you don't have to be governed just totally by what the scientists alone say in deciding whether it's likely that that semen was from Mr. Legere or not.

Dr. Shields said, as the others did as well, look, really, when you've got a five match probe or a four match probe as was done in the case of Nina Flam, the figures really, the frequency figures or the probability figures are really of no significance at all anyway because the mere finding of the match makes it exclusive enough that it would be improbable that anyone else but Mr. Legere would have contributed that semen, so you don't have to be concerned about these figures of one in 5.2 million or one in 310 million as far as the evidence goes. You say that it's been adequately proven and agreed, in fact, that it would be most improbable that anyone other than Mr. Legere had contributed that semen.

Forget about discrete alleles, forget about Hardy-Weinberg theory equilibrium, forget about polyzygotes, monozygotes, even. I don't understand those things and you don't either and we're not expected to understand them, we're not scientists. We have to look at the evidence of those scientists and say look, what is the general impression we get from them, what is the state of this science, the state of this technology today, and I would suggest to you it's your decision to make but I think you would probably be inclined to

think that this is a science that's here to stay and that's adequately functioned in this case, but that is a decision that you have to make, your impressions. You may have understood Dr. Carmody's new equation that he devised when I didn't.

I don't want to take too much longer but there are still a few things, I'll be perhaps fifteen minutes more.

That's all I can say about the Daughneys. You know the alternative verdicts there in respect of each of the Daughney girls, is it first degree murder or second degree murder or not guilty. You have to decide between one of those.

What you will have to do in each of these cases is decide was there an intended murder, was Mr. Legere the man who did it, did he intend to murder, if you're satisfied that he was the one involved there. Did he intend to murder, and then you go on from there and then was it planned and deliberate and so on, was it the type of murder that would make it first degree murder rather than second. If you're not satisfied that it was Mr. Legere who did it at all or that there is a reasonable doubt in your mind that it was him, then you find him not guilty.

Well, now, to go on to the Flam homicide, Mrs. Flam, I pointed out earlier that what happened to Nina Flam is important only insofar as it's an indication of what might have happened to her sister-in-law, Annie Flam. Annie Flam, I said, weighed a hundred pounds. Dr. McKay said it was hard to measure her because her legs were all

contracted up and so on but he would put her under five feet, probably four-foot-eight, a very, very small woman, 75 years old, with a heart condition, and she was in that room. I'm not going to review everything that happened in the Flam residence. You would accept, I think, the account that Mrs. Flam, Nina Flam, gave on the witness stand. She was cross-examined interminably and she didn't budge in her story. It must have been most difficult to tell and to reveal some of the things that had happened to her, having oral sex with this assailant and forcing himself on her in that way and asking her if her husband made her do that sort of thing. You will recall, you heard, as a matter of fact, the transcript read of the interview she gave with Constable Mole a couple of days later in the burn unit at the hospital in Fredericton where she was under a police guard and where she was having difficulty breathing, where she was in fact almost at death's door herself, and her story then didn't vary from what she told here on the witness stand and there couldn't be - I would suggest to you, you may feel otherwise, and it's your prerogative to decide if you so feel, but I would think that you would feel that her story was not put in her mouth by Corporal Mole or by anyone else, that she told this story and it was her own account.

She couldn't identify Mr. Legere, she thought at first that it might be this man John Marsh who lived down the street a way, from the voice and from the size and the fact that he'd been there at the house a few days before, but she says that she

entertained that notion only very temporarily and then decided it wasn't Marsh. Marsh was subsequently excluded, not that it's of any significance whether he was excluded or not but he was in fact excluded as the evidence has indicated by the police in their subsequent examinations.

Again in the Flam case I'm not going into all the evidence. The entry was made probably, if it's of any significance, through the front door, through Mrs. Flam's store. The other girl who lived down the street and who was in and out of the store three or four times a day went in for a Coke that night. She said Mrs. Flam was watching the television and she didn't notice her come in and she said, "I could have gone right through the house", and to get to Nina's place you had to go through one door on the ground level, as you recall. The assailant probably entered that house what, sometime after eleven o'clock, one would imagine. As a matter of fact, Nina Flam says she was talking to her daughter on the phone after eleven and that shortly later she heard someone coming up the stairs and that was the person who accosted her, and when Nina got out of the house it was about four o'clock in the morning, as I recall, I have it written here somewhere - yes, it was 3:50, ten minutes to four in the morning, that the fire was first noticed by the passersby, and she was got out by the fireman at about four o'clock in the morning, so her ordeal in the house lasted - and the assailant had left the house just minutes before she did because you remember he pushed her back into the door. He tucked her into

bed, undid her knots in nylons on her hands, took the pillow off her head, didn't give her back her glasses, or at least there's no evidence of that, then left, and she got up and tried to struggle back and he was waiting there at the door and pushed her back in again, and then she went out into the back bedroom and then very shortly after, a few minutes later, came downstairs on her own. The assailant had left by that time and she came down and was passed out, practically, at the foot of the stairs and was rescued by the fireman - policeman or fireman - fireman, I think it was. So her ordeal lasted from half-past eleven at night until four o'clock in the morning. This wasn't just a bang-bang affair, I was going to say, this was something that went on for almost four hours, this ordeal. She was raped, she was beaten. I forget just exactly what - she didn't suffer a - or did she suffer a broken jaw? Annie Flam's jaw had been broken. I just can't recall now, but Nina was very lucky from the injuries that were inflicted on her to survive. She had been sexually assaulted in the grossest of ways, and a variety of ways.

Her testimony is questioned because she says that her assailant had a chain around his waist, and I would think you would believe that, her statement that he had a chain around his waist, that he even tried to put that chain and did put the chain inside her, inside her vagina, and you know, inflicting that sort of thing. What difference does it make where the chain came from, whether somebody still had it on when they escaped

or whether somebody didn't have it on? What difference does it make? She says there was a chain and she's not shaken in that statement, and one would believe that there had in fact been.

Well, now, the DNA, I'm not going into DNA again with respect to that, but the swabs taken from her vagina at the hospital in Newcastle that night, immediately after the event, when compared with the hairs and the DNA containing - hairs and so on taken from Mr. Legere indicate that there is a strong probability that they compare, that they are matched, and that that semen in her vagina came from Mr. Legere.

The summary chart, Exhibit P-162, which you will be looking at later, puts the likelihood of any other person having contributed that semen to her vagina at one in 5.2 million. If you don't believe that figure what would it be, one in a million. Dr. Shields didn't suggest any figure on it, but if you accept those things, then that of course puts Mr. Legere there, but that is your decision to make, whether you feel that the Crown has satisfied you in proving that it was Mr. Legere or not.

If you're not satisfied that it was Mr. Legere, of course you find Mr. Legere not guilty on the count in respect of Annie Flam. If you find that it was Mr. Legere and if you're satisfied that he intentionally killed her or intentionally inflicted injuries on her which he would know would have the effect of resulting in her death and was reckless whether death ensued or not and you're satisfied of that beyond a

reasonable doubt, then you would conclude that he murdered her. Then you say, as you would have done in the case of others if you reached that stage, was it planned and deliberate on his part or did he do it while he was illegally confining her, or did he do it while he was illegally sexually assaulting her - not illegally, sexually assaulting her would be illegal without her consent. She was found in bed with nothing on. She normally wore pajamas, she had no pajamas on - according to her sister-in-law. There were panties pulled down below the crotch area or the abdomen area. What significance that is, you don't know.

In Mrs. Flam's case I'm going to leave to you an additional possible verdict, not that I'm suggesting it's the one that should be followed but if you should hold to the view that her death was accidental, that perhaps someone went in there and merely frightened her and she died of a heart attack and later the room was set on fire after she died and then a timber fell down from the roof and broke her jaw, then you would find the accused not guilty of murder, either first or second degree, but guilty of manslaughter. This is if you are satisfied beyond a reasonable doubt that it was the accused who did this you'd find him guilty of manslaughter. If you're not satisfied that it was accidental, then you would find him guilty of murder and you'd go on to explore whether it was first degree or not.

With regard to the jaw, an anthropologist, you recall, testified, and also a pathologist from

Ontario, the Chief Pathologist of Ontario, who had reviewed the X-Rays or the photographs, photographs, I guess, and it was pointed out that the break in the jaw was back here. It wasn't a heat break caused through the fire, it was from a blow, one or two blows, I think Dr. McKay said. It was very difficult, of course, to ascertain the extent of all her injuries because of the burnt condition, almost mummified condition of her body as a result of the fire. It was suggested by the pathologist that she had died not of the fire but she had died before the fire occurred. There was no evidence of carbon monoxide in her lungs and she had died as a result of the blow or blows to her face and the beatings she had taken in the facial area and probably as a result of the pain and the trauma resulting from that she had vomited and aspirated some of her own vomit, and that had resulted in her death. What time she died one doesn't know. She may have died earlier in the evening.

The suggestion of the Fire Marshall was that the fire in her room may have been burning as much as one or two hours, I think I'm correct in that. Yes, that is what he said. He said it would have been burning a lesser time in the other room. Obviously in both cases - Nina Flam says she was choked and she pretended or feigned death or feigned that she wasn't breathing. It wasn't quite clear from her evidence whether that happened immediately before her assailant untied the knots and so on and left the room. That was the way I took it, I'm not sure how you took that

evidence, but the fire had been set in Annie's room, one would have to say, with the idea of covering up the death, covering up the homicide from whatever cause. The fire quite obviously was started in Nina's room with the notion that she was probably going to die in the fire if she weren't dead already and that her body would be discovered with the hands untied and so on and it would be thought to be some sort of an accidental fire. It wasn't very well conceived, it was conceived by a very stupid person, whoever the assailant was, but it's up to you to decide whether the evidence establishes the accused as the assailant or not and which of these alternative verdicts you do.

Before I give you my final instructions there's one other thing I'm obliged to do and that is to repeat the theory of the defence in the matter. Well, now, you've heard this very adequately and competently argued by Mr. Furlotte yesterday and I'm not going into the detail of that at all. The theory of the defence essentially is that the Crown have failed in the burden on it if they're going to obtain a conviction against the accused of establishing beyond a reasonable doubt that it was the accused who was responsible for any of these homicides, and it's the urging of the defence and part of the theory of the defence that there is room for that reasonable doubt and that when you entertain that reasonable doubt in respect of any of the counts or any one of the counts you have got to find the accused not guilty of that particular count.

I'm not going through all of the bits of evidence which the defence allege give reason for that doubt. They have referred to the hair found on Father Smith, they have referred to the paint on the door which could not be attributed to Mr. Legere or to Father Smith and which might conceivably suggest that there was some second person involved. They suggest that there is no adequate proof that Mr. Legere was the person who drove Father Smith's car to Bathurst that night. They suggest that the person who found the car indicated that there was somebody else, that car had been driven by somebody else with an old woman or somebody driving as a passenger in that car, there had been a second passenger in that same car that night. That witness said it was only the taillights that he was going by when he thought it was the same car. He was the man I referred to earlier who identified the passenger in the car as the person in the composite picture.

It's been suggested that the assailant may have taken Father Smith's car and have taken the accused as a passenger to Bathurst and that the accused had no part in the slaying of Father Smith and that it was pure coincidence that the accused happened to be on that train that night.

There are a lot of other things. Well, the suggestion of the defence is the identity cards or the bank cards, credit cards, found on the railway track were not necessarily put there through the flush on the train that night but were possibly picked up by a snowplow or something on the highway to Halifax and carried back there and

coincidentally dropped at that particular spot or blown there from the adjoining highway or something like that.

There are other factors, I'm not mentioning all of the facts that Mr. Furlotte has brought out and has relied upon in his argument, and on the Daughneys there was certainly no positive identification; in fact there was no identification at all of Mr. Legere being in the area of the Daughneys unless you could take some relationship between the man whose silhouette was seen by Mr. Manderson that morning at 5:45 on the corner there and Mr. Legere.

The defence also says in respect of the DNA typing that there is no adequate proof of quality control or that these tests were properly done in the laboratory of the R.C.M.P. and that they can't adequately be relied upon.

In the case of the Flam murder the theory of the defence is essentially the same, the probability of a reasonable doubt in your mind that the accused was in fact guilty and the inability of Nina Flam to identify the accused, the fact that she at one time thought it might be somebody else, even if only temporarily, and all of these other things.

The defence of course point out that the accused can't, because he may have been involved in break and entries at Governor's Mansion or involved in other crimes, be responsible - could not automatically be held responsible for these crimes and that they have no bearing on these crimes.

Well, now, that is the theory essentially of the defence and I don't know how I can better describe it than that, but I am doing nothing to derogate from the arguments that Mr. Furlotte has used and the defences that he has advanced in his summaries and I direct your attention to those. It's not my purpose to urge you to accept the theory of the defence or to reject it. I am simply obliged in the course of a charge to the jury to outline what the theory of the defence is and I'm not expected to do that in the detail that defence counsel himself does in his own summation.

Now, we have just about reached the end of this charge. I will now deal with your duties as jurors in the jury room. It is your duty to consult with one another and to deliberate with a view to reaching a just verdict according to law. Each of you must make your own decision whether the accused is guilty or is not guilty of any count of which he's charged. You should do so only after consideration of the evidence with your fellow jurors and you should not hesitate to change your mind when convinced that you are wrong.

Since this is a criminal trial it is necessary that you should be unanimous in your verdict, or in the four verdicts that in fact you'll bring back, one on each count. In other words, it is necessary that each and all of you should agree in whatever verdict or verdicts you may see fit to return. Unless you are unanimous in finding the accused not guilty on any count you cannot acquit him on that count, nor can you

find a verdict of guilty on any count unless you are unanimously agreed that he is guilty on that count. Let me urge you to make every effort to reach a conclusion one way or the other in respect of each of the counts.

I will be sending with you to the jury room a verdict sheet, which is this piece of paper here. It's written in my own handwriting but I don't think you'll have too much difficulty in reading it, and this reads, "Verdict Sheet, Count #1, Annie Flam", and it gives you the four verdicts, four alternative verdicts that you could arrive at depending on how you decide this matter in respect of that Count #1. The first reads, "Guilty as Charged (First Degree Murder)", or (b), Not Guilty of First Degree Murder but Guilty of Second Degree Murder", or "(c), Not Guilty of Either First or Second Degree Murder but Guilty of Manslaughter". This is the only count in which I'm leaving manslaughter as a charge to you, and I explained that earlier, or "(d), Not Guilty". Now, you've got to decide, if you are unanimous, on one of those four verdicts in respect of Annie Flam on Count 1.

Now, having decided that, then you take the indictment which is this piece of paper here and the chairperson - chairper, I said I was going to call you - the chairperson, anyway, writes on the back of this, "Count #1" - you don't have to put Annie Flam, you can if you want to, and then your verdict, "(d), Not Guilty", or "(c), Not Guilty of Either First or Second Degree Murder but Guilty of Manslaughter", or (b), or one of these, "Guilty as

Charged". You write that finding that you make under Count #1 on here, and then you do the same with Count #2. Count #2 on the Verdict Sheet says "Donna Daughney, (a), Guilty as Charged (First Degree Murder)", or "(b), Not Guilty of First Degree Murder but Guilty of Second Degree Murder", or "(c), Not Guilty", so you take whichever verdict you come to there and you write, "Count #2 Donna Daughney", if you like, and the verdict that you have arrived at.

These verdicts on here, there's no significance to the order in which I write them. I've written them just as it's customary to write them on a verdict sheet and I'm not trying to tell the jury anything when I write them in any particular order.

"Count #3, Linda Daughney, Guilty as Charged (First Degree Murder)", or "(b), Not Guilty of First Degree Murder but Guilty of Second Degree Murder", or "(c), Not Guilty", and you write that verdict under Count 3.

Then "Count 4, James Smith. (a), Guilty as Charged (First Degree Murder), (b), Not Guilty of First Degree Murder but Guilty of Second Degree Murder, or (c), Not Guilty", and you write that there, and then the chairperson writes on here the word chairper, and signs that. The chairperson is the only person who signs the back of the indictment, but the chairperson of course only does that when all members of the jury are in agreement with the verdict that is arrived, the verdicts that are arrived at.

Well, now, you take with you this indictment

and you will be taking with you as well all of the exhibits, and there are as you know some - P-167 is the last of the Crown exhibits and D-15(5) is the highest number of the defence exhibits, so all of those exhibits, both Crown and defence, of course, will be going with you and you will certainly want to look at some of those exhibits. You won't want to go through them all because there are some that aren't of great significance as far as examination is concerned. I'm not going to send the light box or light table out with you because you're not going to want to examine autorads to see if the scientists made the right matches or not. It's their job to do that and there's agreement among them that the right matches were made, so you don't have to get into that type of thing.

The videos will be going out as exhibits. You're not going to be given the video machine to see outside. I would remind you that there are photographic exhibits which pretty much duplicate the videos anyway and which will probably suffice for your purpose. If the jury finds it's necessary to want to look at a video or any particular video of one of the boots or any of the three houses you can request to come back, send a note through the constables, and you can be brought in and we can show the video again on the screen. You wouldn't have the benefit of having the oral presentation that went with the video, but I doubt very much if you're going to want to see the videos because you've got that information essentially on your photographs there

and you've had it described by two counsel and by myself, a lot of it.

You will be taking with you as well a copy of the exhibit list which has all these exhibits listed and which you can by ready reference refer to.

There is another list here that we've had made and counsel have agreed that it will go with you to the jury room, and that is a list of the pin locations on Exhibit P-1, the aerial photograph up here, so that when you see 1, 2, 3, 4, 5, up to 17, as you recall, printed on there, by reference to this sheet you'll know what those refer to. For instance: Cathy Mercure residence; Michael Sproul residence; John Smith residence; Joe Ivory residence; where Lloyd Hannah found glasses; Morada Motel; former residence of Allan Legere per Constable Carnahan; John McLean's residence; Betty Flanagan's residence; Corporal Thomassin commenced tracking on railway track; Pin 10, a former residence of Allan Legere per Corporal Bruce; Pin 11, Thomassin saw lights of Water Street; Pin 12, Thomassin went on bank to beach; Pin 13, William Skidd residence; Pin 14, Roland Roach residence; Pin 15, Corporal Rick Kohut commenced tracking on railway track; Pin 16, Corporal Rick Kohut loses track; Pin 17, Governor's Mansion. Well, those are the list and you can refer to that.

The list of the witnesses is given on the back of the indictment, it's attached to it. I've had the Clerk and with the consent and agreement of counsel strike out the names of the witnesses

who appeared on the original indictment and who weren't called. There were some whose evidence was agreed to and there were others who the Crown didn't feel necessary. The name of the defence witness, Dr. Shields, of course doesn't appear on this, this is merely the list of the Crown witnesses, and there were names added and it may be of some help to you if you're trying to recall just what they may have said.

If there are matters that you want to be reminded about insofar as evidence is concerned you may request at any time to come back in and we'll try to find the matters for you. I have kept - I think I've written 350 pages of hand-written notes here through the trial so I've kept fairly extensive notes of everything that's been said by all the witnesses, and perhaps it could be agreed if you do want to be reminded of something I might be able to find it in those notes. I might not, too, or if absolutely necessary we could have the reporters read back or play back or read back from the transcript but we have had different reporters here and it would be rather difficult to get back and find anything, so if you can, probably your memory will serve yourselves as well as - collectively anyway, will serve yourselves as well as mine will or as well as the reporter will.

I think the idea is that you go to lunch first so I wouldn't be worrying about considering this then. As I've said earlier, you can take all the time you want to to consider the matter. You certainly won't want to be doing it today. If you

want to return tomorrow - if you have concluded your consideration you may return your verdict tomorrow or Monday or Tuesday or whenever you're ready. You will be locked up in the meantime, but not as in the old days, they give you food. Originally a jury was deprived of food and sustenance until they returned their verdict. We're less hard now.

You have a solemn duty to perform. You have a duty to the state and to the accused. You have taken an oath to try this charge upon the evidence without fear or favour and to render a true verdict. Honour that oath and you will have performed your duty faithfully.

And I might have added if you have any difficulty about the law or you need any further instruction or repetition of anything I've said or want any elaboration on that you can merely request and all the time that you're sitting in the jury room we will be sitting by available to be recalled if you want to come into the court room again.

The constables have been sworn. Would you escort the jury out, then, please?

(JURY RETIRES AT 1:15 p.m.)

THE COURT: At this point, or having completed a charge I usually ask counsel if there are any glaring omissions from my address, particularly on matters of law. I don't invite comment on whether I've dealt with evidence adequately or not and I usually tell defence counsel that if I have made

omissions of any kind they would probably be well advised to let me, as I say, stew in my own juice. Crown counsel may sometimes offer suggestions as to omissions or whatever. Have you anything, Mr. Allman?

MR. ALLMAN: Yes, My Lord. There were three matters of law and also one of fact. I noticed Your Lordship's remark about not talking about facts but there was one I wanted to mention simply because I think it was a slip of the tongue. Your Lordship at one time, in fact I think a couple of times, talked about the smear on the outer door at Father Smith's, and you called it paint. It's actually blood and I'm sure Your Lordship realized it was blood. I think somehow there was a slip of the tongue there but I think it should be corrected, with all due respect.

THE COURT: I didn't mean paint.

MR. ALLMAN: You did say paint. I knew it was a slip of the tongue but it should be corrected. At one time you talked about manslaughter as being an accident. My understanding is that - I think it's appropriate to tell the jury that a pure accident for which no one was to blame would not be manslaughter.

Two more things, at one time again - it's very difficult in a long charge, especially with double negatives, to avoid these things, but at one point I had you down as saying something to this effect, "if you are not satisfied that it was just an accident, then you would convict the accused". I certainly got the impression from that that inadvertently Your Lordship had reversed the onus of proof. I don't know if Mr. Furlotte

got the same impression or not.

THE COURT: What was I talking about at that time?

MR. ALLMAN: You were talking about Annie Flam and the various verdicts there, and at one point you put a double negative in. I can't remember the exact words but there was one point that just caused me a little concern that a jury might have got a wrong impression about a reverse onus there. The last thing I wanted to mention is that I believe there are authorities that say it's incumbent upon the judge in explaining to the jury that they must be unanimous to also specifically explain to them that they have the right to disagree, though of course exhorting them within reasonable language to try and render a unanimous verdict, and I would ask Your Lordship to explain to them that they do have the right to disagree though there's no reason to suppose any other jury could do any better and they certainly should do their very, very best to reach a unanimous verdict.

I think those are the only points I wanted to mention.

THE COURT: There is a little bit of difference of opinion on this matter of the unanimous opinion. In the form which covered that particular part of the jury charge and which I've been using for 27 years now I have that crossed off. I used to use it and then I was persuaded that there was no necessity of saying that, that if they weren't able to agree they could come back and say they couldn't and then I would talk to them about it, so I'll have to think about it, I'm not -

MR. ALLMAN: Well, as to that, certainly I don't have the law at my fingertips on that point. I thought the

law was you should say about the right to disagree and certainly my motto is always better safe than sorry, and I would respectfully ask Your Lordship to do that but again, perhaps Mr. Furlotte may have some input on that point as well apart from whatever else he's got to say.

THE COURT: Do you have anything, Mr. Furlotte, you want to say?

MR. FURLOTTE: Well, My Lord, I agree with all the comments made by Mr. Allman. When you referred to paint on the door it was on two different occasions rather than one, and also as to your referring to manslaughter if it was accidental, I believe as Mr. Allman stated if it was purely accidental then it would be not guilty. I think manslaughter is basically that if somebody is killed during the commission of an offence and there was no intention to kill or to cause serious bodily harm that was likely to lead to death, that is manslaughter, not if it's accidental.

There was one other aspect which both Mr. Allman in his opening address and yourself in your charge to the jury referred. Again, you don't like to change your charge to the jury in relation to facts but Mr. Allman stated that Dr. Shields admitted that a four or five-probe match was rare and maybe extremely rare, and you stated the same thing. However, that was not Dr. Shields's testimony. Dr. Shields's testimony was that a four or five-probe match in unrelated individuals would be a rare occurrence. For related individuals he did not consider a four or five-probe match a rare occurrence.

THE COURT: Thank you very much. Did you have anything

else?

MR. FURLOTTE: I believe that's all.

THE COURT: I will think about these matters and I don't think there's a great deal of urgency about it. Perhaps this afternoon I will consider whether I should recharge on these points.

MR. WALSH: What time, My Lord, would you want us back here?

THE COURT: The jury are going to lunch now, twenty after one. They would be back at half-past two, I suppose. Perhaps we should say half-past two. I think we have to keep standing by as long as they're in the jury room. I think the notion with the jury was that they would about half-past five or thereabouts go to dinner - supper, and then would come back and work a couple of hours this evening, so that means we have to be here till probably nine o'clock this evening.

MR. FURLOTTE: My Lord, maybe there was one other matter in Mr. Allman's address when he stated to the jury that the expert testimony in relation to the foot evidence was unrebutted testimony. That may leave an assumption to the jury that there's an onus on the defence again to prove otherwise, and that is not the case.

THE COURT: Do you have any comment to make, Mr. Allman, on these two points that Mr. Furlotte has raised?

MR. ALLMAN: I only remember the second one because the others, I think, were all in agreement with me. The unrebutted testimony point, that's a simple statement of fact. I don't think it - it fits still perfectly with the direction Your Lordship gave them. They don't have to accept the evidence of the experts, rebutted or unrebutted. They can

reject it, you told them that. I don't think that that would cause any problem.

THE COURT: Yes, well, I'll think about these things. We will adjourn now until two-thirty. We don't have to sit at two-thirty, I'm merely saying that I'm going to be back here at two-thirty, and if I'm calling the jury back in or if the jury request to come back in, then I'll give counsel half an hour's notice, anyway. I would fully anticipate that they will not be returnign a verdict today. They could do but I believe they're going to want to look at quite a few of these exhibits, and we'll sit tomorrow. They will come back at nine-thirty in the morning and so will we.

MR. ALLMAN: If Your Lordship's decision is upon any of the points we've raised to recharge, I would think it would be appropriate to do so at two-thirty. I mean I'm sure the jury are going to go now and have lunch and they may do some talking but probably it's going to be mostly just lunch, and if our points are valid points I'd like them corrected for the jury as soon as possible rather than allow them to linger in their minds. If, of course, they're not valid points, that's a different thing, but I would respectfully suggest that if you feel the points that I and Mr. Furlotte raised have validity in them the time to address them to the jury is two-thirty.

THE COURT: Thank you very much.

(ADJOURNED FOR LUNCH BREAK AT 1:25 p.m.)

(COURT RESUMED AT 2:30 p.m.)

(JURY CALLED - ALL PRESENT.)

(ACCUSED IN HOLDING CELL.)

THE COURT: This is sort of a little supplement to my charge, not a long one. After I complete a charge it's always my practice to ask counsel if I have made any slips or errors or omissions and if there's anything else they feel I should touch upon. I discourage any suggestion that I should deal otherwise with the evidence than I do but questions of law, essentially, or any slip-ups I've made even in the evidence, and they brought two or three matters to my attention which are perhaps not that serious but I felt the proper thing to do was to instruct you on them.

One was in referring to the blood smear or the smeared blood on the frame of the porch door, the aluminum frame, I believe it was, at the porch door of the Smith rectory, I used the word paint, the paint smear, and I may have done that a couple of times. I don't think that misled you at all, I think probably you realized I meant blood, but it was the feeling of counsel that I should perhaps correct that, so I do. It was blood, not paint, I was referring to.

A second matter was I said this morning that Dr. Shields agreed that a four or five-probe match would be a rare event without considering the probabilities. In other words, ignore the probabilities and the probability figures or tables completely and it would still be a rare match and that he also had suggested that it would be rare

or exceedingly rare for anyone other than Mr. Legere to have left that semen. He did, in fact, say that, Dr. Shields, on cross-examination by Mr. Walsh, but on re-examination he modified it by saying that that would apply but not in the case of - it would be a rare match but not in the case of related individuals, individuals related to Mr. Legere, so I just make that slight modification. I think also his figure of one chance in eleven million applied to the case where you were considering unrelated individuals and you'd get a smaller figure, I think it was one over 311 thousand or something like that. I may not have the right figure there but there was a smaller figure that would apply in the case of cousins and siblings and so on. However, I'm not going any further into that than I have done.

The third point, and a very small one, was that the form from which I was reading some of the instructions with regard to the duties of a jury contained a paragraph suggesting that while it's very desirable that you should reach a unanimous verdict of guilty or not guilty, nevertheless you're not bound to reach that verdict. I didn't feel it necessary to say that, and as a matter of fact, I don't usually make a practice of doing it, but some appeal courts sometimes have suggested that judges should make plain to jurors that they don't have to agree if they can't agree, and so I do point that out to you at this time. I don't think it's necessary, I think I made it rather clear this morning that you all make up your mind individually on each count as to what the verdict

should be and then you discuss it and you try to get together and reach the same verdict, and it's only when you do agree that you can bring in a unanimous - you must bring in a unanimous verdict when you do bring it in. Everybody, all twelve, must be agreed on whatever verdict you bring in. What I'm saying really is that if eleven people agree and one doesn't, that one shouldn't join the others just to - against his or her conscience. Unless completely satisfied that he or she can agree with the others he shouldn't do it. I do urge you to reach agreement because you could imagine that in a case, perhaps, particularly like this one with the effort that's gone into it, hopefully you would be able to reach an agreement.

One other matter was I may have got caught up when I was talking to you about leaving the manslaughter charge to you in the case of Annie Flam. I may have got caught up in some double negatives in suggesting that if it were an accident something might happen. I just want to make clear what would constitute manslaughter. You remember I said that a person commits culpable homicide, that's blameworthy homicide, when he causes the death of a human being by means of an unlawful act, and then culpable homicide is either murder or manslaughter, forgetting about infanticide. It's either murder or manslaughter, and culpable homicide is murder where the person who causes the death of a human being means to cause his death or means to cause him bodily harm that he knows is likely to cause his death and is reckless whether death ensues or not. In other

words, if there's intent to do that unlawful act which causes the death of a human being it is murder, and all other types of culpable homicide, for our purposes at least, are manslaughter. All other types; in other words, if someone kills someone by an unlawful act and doesn't intend to do it, then it would amount to manslaughter. You remember I gave the illustration this morning, and quite correctly, of backing out of my driveway and my neighbour comes along and I look, I have looked, it's not gross negligence on my part but it's just modest negligence, and I look back. Well, I've done an unlawful act and I've caused my neighbour to drive into the ditch and kill himself or herself and there was no intention on my part f to kill anyone or to cause injuries which would kill, so it's not murder but it would or could be manslaughter.

In relation to the Flam incident, if you feel that Mr. Legere, of course, was not connected with the Flam incident at all or if you have any reasonable doubt as to whether he may have been connected with that or not, you would find him not guilty completely. If you find that he did some unlawful act there, if he was present there, if he was unlawfully in the house even, then you would have to decide did he intentionally cause the death of Mrs. Flam or did he intentionally try to injure her and was reckless whether her death resulted or not, and if he intentionally tried to cause her injury which he should have appreciated would result in her death, then it would be murder if there was that intent. If he were there

and caused her death through some unlawful object, and about the only example I could think of is suppose he broke into that house and she were in bed at the time and the minute she saw a stranger in her room she died, it killed her, the shock of the thing killed her, it couldn't be said necessarily that he intended to kill her, and that would be an example of manslaughter, and if a situation like that arose then you would bring in a verdict of manslaughter and not murder. If you are satisfied that there was that intention on his part it's murder, so I think I have explained that. I have clarified, I think, the points that I fell down in before, and those are the only points that I have and we won't have you back again unless you want to come back yourselves, so would the jury please be excused?

(JURY RETIRES AT 3:05 p.m.)

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(COURT RESUMES AT 1:45 p.m., NOVEMBER 3, 1991.)

(ACCUSED IN HOLDING CELL.)

THE COURT: Before the jury are brought in I might tell counsel the purpose of this meeting. I had a message through the constable from the jury inquiring about different matters and I instructed him to inform them that we'd deal with them in court, of course, and I thought I should read them out to you first so that you'd be aware. I'm not going to hear further argument on any of these points, they're rather simple matters although I think it's important to clarify it for

the jury, so what I propose to do after I've read these is call the jury in and I'll deal with these matters and send them off again.

The first question is what is the line between first and second degree murder knowing that first degree means planned and deliberate. Well, of course, first degree can mean a little more than planned and deliberate and I will deal with that, and the second point is definition of second degree - murder, presumably that means. Well, the answer to that, of course, is encompassed in the distinction.

Definition of reckless, again that can be dealt with fairly simply, and then a third thing, "Please explain if an assailant repeatedly hits a person in an agitated state resulting in death without plan or thought, which category does this fall in", and then another fourth question, "If only hit once which results in death, which category".

Well, of course what I propose to do here, actually, is to start with homicide and go through these different categories, what is murder, what is necessary to constitute murder, and then the distinction between first and - and I'll explain the categories of murder first, any murder, that is, second degree murder essentially, and then I'll show what additional has to be proven to show first degree murder, and then I will deal with these two last questions specifically and I may take each of the three or four episodes here and go through them and relate them to the different matters that have been raised. Any comment from any counsel on that?

MR. ALLMAN: The only thing that occurs to me is that if talking about first degree murder and planned and deliberate, that might cause them to concentrate solely on that as though that was the only definition of first degree murder. That was the only thing that was concerning me.

THE COURT: Oh, I'll be pointing that out to them. I'll be doing essentially what I did before. I'm not accepting the suggestion that I didn't do it adequately before but -

MR. ALLMAN: I wasn't suggesting that either.

THE COURT: No, but jurors, when they get away from this thing and get talking about it they begin to say to themselves, what did he say now, exactly, about the difference between first and second, and they don't have this written down as we do and after they talk about it for a while they probably become a little confused. So would you bring the jury in?

(JURY CALLED - ALL PRESENT.)

THE COURT: I've had a communication from the jury setting out different questions that I believe the jury would like a bit of elaboration on, and I can quite appreciate that while all of these points have been touched on before, I think most of them at any rate, after a jury of laymen deliberates for a while undoubtedly you begin to forget some of the niceties of differences between some of these terms, and that's quite understandable and it's not unusual for a jury to want some clarification.

I'll just recite the different questions as I understand them just to make sure that they are right. What is the line between first and second degree murder knowing that first degree means planned and deliberate. I'll read these all through and then I'll come back to them.

I would just like to comment there that first degree murder, of course, as I'll be illustrating in a minute, can involve something more than just planned and deliberate. There are other alternatives. Forcible confinement is one and sexual assault is the other category, so there are actually three categories which can make ordinary murder into first degree murder, and then the second question is definition of second degree. I will be dealing with that in just a minute as I go along.

Third was definition of reckless. Actually that is a rather simple thing to dispose of. Reckless, as someone has written before, it doesn't have a special meaning in the law; therefore you should give it the ordinary meaning, just the ordinary dictionary meaning, which is careless, careless of the consequences of one's action. Really it just means careless, careless of the consequences of one's actions, heedless or lacking in prudence or caution; in other words, you don't care about what happens as a result of what you do. If you do that, you're reckless. If you drive a bicycle down the street and you close your eyes and drive for a while, or your car, and say, "I don't care what happens", you're being reckless, you don't care about the

consequences, and that's an example of recklessness.

The third point here, or another point, was, "Please explain if an assailant repeatedly hits a person in an agitated state resulting in death without plan or thought, which category does this fall in", and then the final question, "If only hit once which results in death, which category". Well, I'll come back to those last two more explicit questions when I've dealt with the general law and reviewed it and I hope you won't feel if I go through it in too much detail again that I'm underestimating your intelligence, it's not a question of that, but I just like to make sure that you do understand, and then having explained it I'd like to run through the three or four different scenarios here in respect of each of the victims and indicate to you the practical application of these things again, perhaps. This is all in enlargement of what I said before, of course, and you should still have regard to what I did say earlier.

Section 222 of the Criminal Code, you remember I said, provides that, "A person commits homicide when, by any means, he causes the death of a human being". He could do that either directly or indirectly, but I'll leave out here the words that don't apply. "Homicide is culpable or not culpable. Homicide that is not culpable" - and culpable, you remember I said, means blameworthy - "is not an offence", and you remember I gave the example if I back out of my driveway and I happen to hit with some degree of negligence - I

don't do it in a totally reckless fashion, but I back out with some degree of negligence and I hit my neighbour's car as she drives by and she goes in the ditch and is killed, I have committed homicide. I have caused her death but I haven't done it in a blameworthy fashion. Her estate may sue me and look for damages or I may be prosecuted by the police for not observing the traffic laws, but I haven't committed culpable homicide, anything for which I could be blamed for a criminal offence, but blameworthy homicide, that is culpable homicide, does constitute an offence under the law, and it's divided into three types. There's murder or manslaughter or infanticide, and I explained to you that infanticide, you can forget about that because that just involves the death of small babies or children, and then the law provides, when does a person commit culpable homicide. Well, he commits culpable or blameworthy homicide, either murder or manslaughter, when he causes the death of a human being by means of an unlawful act. There are other instances but as I explained to you the other day, yesterday, we're not concerned with those other special provisions.

I'll read it again, "A person commits culpable homicide" - and that means for our purposes murder or manslaughter - "when he causes the death of a human being by means of an unlawful act". Well, then, when you cause the death of a person by means of an unlawful act when is that murder and when is it not murder? "Culpable homicide is murder where the person who causes the

death of a human being" - by the unlawful act - "means to cause his death", or secondly, "means to cause him bodily harm that he knows is likely to cause his death and is reckless whether death ensues or not".

If I hit someone with my fist and I don't intend to cause his death - there must be intention for there to be murder, there must be an intention to cause the death. If I hit a person in a fight on the street and I don't like the fellow and I hit him with my fist and he falls down and dies as a result, which is unlikely, I'm not committing murder. I'm doing an unlawful act in striking him. I would be committing something less than murder, and we're not concerned with it here directly, but it would be manslaughter, it would amount to manslaughter, but there has to be intention for me to commit murder, an intention to cause death.

That is one of the grounds, there has to be an intention to cause death. If I hit him and say, "You've done something to me and I'm taking this sledgehammer and hitting you over the head and I'm going to kill you", and I do that and I intend to cause his death, that is murder, or suppose someone says something offensive to me or we have a discussion, a rational discussion, and I decide that, look, I don't like this fellow, I'm going to hit him over the head with a sledge-hammer, and I hit him over the head with a sledge-hammer. Now, I mean to cause him bodily harm, when I hit him with a sledgehammer I mean to cause him bodily harm, quite obviously, and if I know

that it's likely to cause death, and if I hit someone over the head with a sledgehammer I should know that it's likely to cause his death, and I'm reckless whether death occurs or not, ensues or not, I say to myself whether expressly or I think it to myself, "I don't care, I'm giving no thought to the result of this, I'm going to hit him anyway with that sledgehammer over the head", that again would be murder. I don't expressly intend to cause his death but I intend to inflict body injury on him that I should know or do know is likely to cause his death and I'm reckless whether death ensues or not.

Let's take Annie Flam's case as an example. Suppose I'm an assailant and I go into her bedroom, for whatever reason I go into her bedroom, either to steal from her or to compel her to give me money or to have sex with her or to do perhaps a combination of those things, but I go in there anyway for some purpose like that, and she doesn't come across either with sex or with money and she refuses to tell me where her money is hidden in the house, and I say to myself, as the assailant I say to myself, "I'm going to kill you because you won't do that", and I hit her in the face and I kill her or she dies as a result of it. Well, I have intended to cause her death, assuming I'm the assailant and that happens.

Suppose I don't intend to cause her death, I have no idea of causing her death but I strike her in the face a good blow, or I strike her a blow in the face that I know or should know is likely to cause her death, she being a 75-year-old, under

100-pound woman, and I strike her and I should know that that blow I've hit her, or struck her, is likely to cause her death and I'm reckless. I say, "I don't care whether her death results or not, I'm going to hit this old lady here on the bed", or wherever she is, "and I'm going to hit her a good blow", either out of anger because she won't give the money or perhaps with the idea of compelling her to, perhaps with the idea of quieting her down while you go and see if you can persuade the sister to provide sex, the sister-in-law, or to provide either sex or to disclose where the money is in the house.

In that case I'm not expressly intending to cause her death when I hit her, but I'm hitting her knowing that the blow I'm striking that older woman is likely to cause her death and I'm reckless, careless, in not considering whether it causes her death or not. I say, "I'll do it to her anyway, I don't care". Well, that equally would be murder. That would be an example where you don't have the express intention but the other situation exists.

With Annie Flam I might just go on to illustrate there, it doesn't make any difference if I hit her once or hit her a multitude of times. If I have either of those intentions, then I've committed murder, and I can strike her once or I could strike her multiple times.

I told you earlier that I was leaving in Annie Flam's case a second alternative verdict of manslaughter, unlike in the other cases because I don't think there's any conceivable way

in the other cases that manslaughter could possibly apply, and that may be the same in Annie Flam's case but in case you should feel differently that alternative verdict is left open for you.

Suppose the assailant had gained entry to her house with the idea of stealing or something in there and he went to her bedroom or she heard him, even, before he got to the bedroom, and he yelled out, "I'm looking for money", or, "I'm here to rob the house", or something or he tells her - she's lying on the bed or in bed and he tells her, "I'm going to rob you", or, "I'm going to rob this house, I want your money", and before he does anything she faints dead away and dies or gets sick to her stomach and regurgitates, and there's nothing he's done. He had no intention whatever, he didn't cause her any - he perhaps in a very mild way caused her to pass out and get sick to her stomach and regurgitate and so on, but he had no knowledge that this would be the reaction. Well, now, if that sort of thing happened he would be guilty of manslaughter. He perhaps by shouting out or by threatening her, by an unlawful act of suggesting that he was going to rob her of her money, he would be causing her death, but in a way in which he had no intention of doing that. If you felt that were the situation here by the assailant, whoever the assailant is, you would return a verdict of manslaughter if you were satisfied of that beyond a reasonable doubt but you weren't satisfied of the intention.

Now, that's an unlikely scenario here, one must say, because you'd have to say well, how did she get the broken jaw in that example I've just given. The suggestion has been made in argument that perhaps she fell on the floor or fell against the counter, or alternatively, perhaps she was hit after the fire was started by one of the falling timbers falling down from the roof. The argument, of course, and it seems to make some logic against the falling business and injuring herself in a fall, is if she had fallen down she would likely hit her chin as one of the experts described. I think it was the coroner from Ontario or perhaps the anthropologist or perhaps Dr. MacKay, but somebody explained if you fell you usually fall on your chin, you don't break your jaw midway through back here in one of these radiating fractures that go up through the bone. If she fell against a cupboard or a commode, and I think there was some sort of a small table there beside the bed from the photographs - if she fell against that, and she could hit her jaw back here and break it. The pain, as the pathologist suggested, caused her to swallow her vomit or breathe in her - aspirate, I think was the expression - aspirate her vomit that she was bringing up from her stomach - caused her to vomit first and then she aspirated that vomit and she died. Well, one would have to say if a person suffered that pain and broke her jaw in a manner like that by falling against the table outside, surely she would have fallen on the floor. How would she ever get back into bed in that condition and then become sick in bed and

aspirate there? It just wouldn't make very much sense. You may feel differently, and it's your decision or your opinion that counts in this thing.

Suppose that her death had been caused in this way, I'm illustrating. Then you say, well, how else, then, could her jaw have got broken? Well, the notion has been suggested that perhaps a timber fell when the fire was set subsequently. The fire was set after, I think you'll take from the evidence was set after she died. There was no carbon monoxide found in her lungs and Dr. MacKay said that the fire didn't play any part in her death, it was the pain and the suffering and the trauma from the blow to her jaw and the aspiration which caused her death. That was his opinion. If you found that she aspirated and vomited and so on merely by being told that somebody was in the house or in the room to rob her, that would be flying in the face of the suggestion of the expert, but you're entitled to come to that conclusion if you so desire.

It may be that she died - or it could be that she died in that fashion and that her broken jaw is explained in that fashion. Then you must say to yourself, well, how did the fire get started, what does that indicate? I suppose that might be rationalized by saying well, he moved from there, either before she died or after she died, in to see what he could obtain from the sister-in-law, Nina Flam, in the other part of the house, and that when she wouldn't come across with money and he had had sex with her and so on he'd decided

Look, I'm in a terrible mess now, I've got to burn this house down and destroy all the evidence of my assault on Nina Flam and whatever has happened to Nina Flam, if she's been scared to death or whatever, and so I'll set fire. You have the fact that the fire was set in Nina's room perhaps as much as an hour, as the Fire Marshall said, an hour or perhaps - I think he said an hour, perhaps two hours, one to two hours before the fire had - I think I'm correct in the figure but it was set substantially before because the fire had progressed much more rapidly or much further in that part of the house than it did in the other.

What I'm saying to you is that manslaughter is a pretty farfetched verdict in a case like that, but if you are satisfied that there wasn't an intention on the part of her assailant to kill her or to strike her in such a way that it caused her death and that the assailant should have known that it would cause her death to strike her that hard and that he didn't give a damn whether he killed her or not when he hit her, then it would be murder.

In the case of the other episodes, Father Smith, I don't think you'd have any difficulty coming to the conclusion there, but it's your privilege to make your own decision on the thing and I'm not telling you what you have to decide, but the facts are so clear there that the assailant quite obviously intended to cause his death. One would think so from the extent of the injuries that Father Smith suffered. I drew

out a scenario for you yesterday which seems to suggest itself. I'm not inventing facts or inventing evidence when I do that. He seems to have been attacked or assaulted first in the kitchen, and one can only assume that he was asked for his money and for his car keys, perhaps for food or something else, and he's been stabbed there or he's been cut with a knife or wounds have been inflicted there or he's been kicked or punched or something has happened to him there. He bled over the floor, he was on the floor, and blood spurted up, as one of the experts suggested, onto the wall in different places, and there were two pools of blood on the floor, and then later he's taken into the other room, either dragged or made to walk or led or something, one would have to say with the idea of opening the safe. Someone was trying to compel him to open that safe and he doesn't do it and then he dies. He bleeds further, there was no death before he went in there because he was still alive, he was continuing to bleed and there were very substantial quantities of blood in that other room, and he dies in there, and this was perhaps - as I indicated to you yesterday, perhaps as much as five hours or maybe more, maybe less, but about five hours after he'd had his supper which might have meant about twelve o'clock, and if the assailant had gone into his house about nine o'clock, which the evidence would seem to suggest, then he'd been in there for - the assailant had been there for about three hours, so this was all continuing over quite a long

period of time, but you'd have to say that there was an intention to kill him. You know, somebody, as I said yesterday, probably jumped on him with the boots and broke all his ribs, and the pathologist said you'd have to apply force to break ribs probably by a heavy weight, jumping and pounding and crushing those ribs. You don't break six ribs on one side and seven ribs on the other side by striking him with your fist in the ribs. I suppose you could if you did it repeatedly but it's more likely that it was done by the feet.

So certainly if there weren't an intention to kill Father Smith there must have been intention to inflict the type wound that one would know would cause his death and with reckless abandon as to what happened.

There's one thing you must remember, I told you yesterday or pointed out to you that he died in the room by the safe, and I suggested to you that he'd been rolled over so that his pockets could be got at, and I think you'd agree that that's a reasonable inference to make from the fact that there was no gyproc on the back of his - was it the back or the front - on the front of his trousers, there was no gyproc on the front, and perhaps you've had an opportunity to examine the photographs and you've seen that for yourself, and he was rolled over, which means that he was dead while the assailant was working on the safe, and you know, that is a factor that you can - I mean here was a man working on - man or woman working on the safe and going around to the back side of the safe and trying to get in there and knocking

gyproc down and breaking the safe handle and breaking the head off the axe and using the sledgehammer and the crowbar and all the other tools that were found there which were brought up from the garage, and very possibly after Smith died, but regardless of the fact that a body is lying there, here is an assailant working on the safe. Well, that would surely indicate a recklessness and a carelessness as to what he might have done, and it would also indicate what his intention had been with regard to Smith.

Now the Daughneys with regard to murder. Well, there again, you know, the multiple injuries and the attempt to cover up the episode by fire afterwards, the fact that one of those girls probably got out of the house and was dragged back in or was taken, led back in or made to go back in, the fact the other girl was tucked into bed, Donna, tucked into bed, the fact that nylon ropes were used. I said yesterday I couldn't recall whether it was done in the back bedroom or not but it was in the front bedroom, Donna's bedroom, there were nylon pieces lying around with this great pile of clothes. The drawers had been opened, the top drawers had been opened, which indicates that someone was looking for something in there. A jewellery box was found on the top of the stairs which shows that someone was taking the time, and this happened, as I indicated to you yesterday, over a period of - your guess is as good as mine, midnight to quarter to five in the morning, four or four and a half hours. This wasn't just happening in ten minutes, it wasn't

just an in and out again thing, this was happening over quite a period. I don't think you'd have any difficulty. I didn't try yesterday to create a scenario with regard to the Daughney thing except for saying that perhaps the younger sister was dragged out in the yard or got away trying to escape. There's some evidence that she may have been in her own - well, one doesn't know, really. If the two women were in there together when an assailant went in, he probably could only have said, well, I can't deal with two of these women together, what am I going to do, and he may have hit one and knocked her out, perhaps the younger sister, and dragged her in and put her on her bed or into her bed and perhaps knocked the other girl out, Donna, at the same time in her bedroom.

This is a certain amount of speculation about how this may have happened but if the younger sister - and then at some later stage, you know, perhaps he's tried to have sex with them. The assailant could only have tried to have sex to put - or somehow semen got put on. If you assume that it was put on by the assailant that night there was no suggestion that either one of them had been out having sex with somebody else that night and then going back to their house.

Perhaps then at some stage he decided, well, a good idea would be to light fires here, and perhaps the assailant was the same person who had done it five months before in the Flam house, and he said I'll do it the same way as I did in the Flam house but I'll do a better job of it this

time, I won't mess it up so that one lives, I'll set these fires, so he goes in and he sets a fire in the younger sister's room and that burns for an hour and he goes in and perhaps tries to have sex with the other girl or she's come to or he hits her again or something and finally he lights a fire in her place. In the meantime the first girl has come to and she's run out in the yard, the fire and the smoke woke her up, so he drags her back in. You know, there could have been so many different scenarios developed there that night it's almost impossible to - there's only one person who could tell, I suppose - well, the victims aren't around, of course, to do it.

Perhaps when the assailant took the younger sister back in he had to drag her into Donna's room, and at that time he says, look, I've got to get out of here, let's hope these fires burn and the place is destroyed before I'm found out, and away he goes, and Donna is killed, struck again. Both of them had both jaws broken, up and down, and they land - she was on the floor, as I pointed out yesterday, beside the bed.

I don't think you'd have very much difficulty finding that he at some time through that evening, through that night, developed the intention to kill both of them, or if he didn't intend to do that expressly he intended to cause them such bodily injury that he knew would be likely to cause their death and that he was reckless that death ensued or not, and of course if either of those situations prevails, then it's murder.

Then we go on to - I've dealt with Annie

Flam, I've dealt with the Daughneys, I've dealt with Smith, in respect of murder and in respect of the question of intention.

Then you go on to decide well, now - if you've decided that, that there was murder there, then you go on to decide was it first degree murder or was it second degree murder, and everything that isn't first degree murder is automatically second degree murder, of course. If you can go on then and determine that it was murder of a special kind, then it falls into the first degree murder, and there are really three types of murder that in any of these instances could, if you feel the facts or the circumstances were sufficiently strong or the evidence is sufficiently strong to prove it, and that means beyond a reasonable doubt, there are three situations that could turn any of those murders, if that's what you decide they were, into first degree murders, and one was if they were planned and deliberate, and I advised you yesterday about what planned and deliberate means. Planned means arranged beforehand. It's just a very simple meaning, thought out beforehand or arranged beforehand. It doesn't have to be done days in advance or hours in advance. As long as there's some planning put into it, perhaps a half an hour before or fifteen minutes, but there's got to be a little consideration and planning put into the thing, how are you going to do it.

The word deliberate means carefully thought out, not hasty or rash. In other words, it's not a spontaneous thing. If I go into a room with the

intention of killing someone and I turn a gun on him and I shoot him - well, I don't know that my example really illustrates what I want it to, but suppose I'm in a quarrel with somebody and I pick up a rifle and I shoot the person I'm quarreling with. I don't put any planning into it or any deliberation into the thing, I do it spontaneously. I intend to kill him, and I do kill him, you can't say that that was planned or deliberate, but suppose I have been thinking for some days about killing somebody and I decide that I will go to his house and I will go in and kill him. I don't tell him, of course, but I go to his house and I take a gun with me and I go in and seek him out and I shoot him. Well, I've planned that, I've planned it before I went there, it's not a spontaneous thing.

Well, now, that is one way that murder can become first degree murder is where you're satisfied beyond a reasonable doubt that it was planned - not planned or deliberate, but planned and deliberate. They mean somewhat the same thing but they've got to be both.

Then there's another situation where it can become first degree murder.

> "Murder is first degree murder in respect of a person when the death is caused by that person while committing or attempting to commit an offence under one of the following sections;
>
> Section 271,(sexual assault); or
>
> Section 279,(forcible confinement)",

and I'm reading just the relevant portion of this subsection, forcible confinement. Those are the

two situations. Suppose I take them separately.

Sexual assault; I go to the Daughney house and I go in and I have decided that I'm going to inflict pain on those people or I'm going to kill them, and in the course of that I have decided that I'm going to either have sex with Donna Daughney or I'm going to attempt to have sex with her and I'm in the process of attempting that or I am actually committing sex with her, or a sexual assault on her, which doesn't have to mean penetration and all that stuff as I explained to you yesterday. Merely saying, "I'm going to rape you", which rape is not a legal expression now, the only people who continue to use it are the feminist movement people who insisted it be done away with, but have intercourse is what I'm talking about, and I say to somebody, "I'm going to have intercourse with you", and I proceed to undo my pants or take my pants down or whatever to suggest that I really intend to do that and I make an advance toward them. Well, I'm committing a sexual assault on them, or certainly once I've touched that person or grabbed the victim and torn her pants off or something, that's a sexual assault, so if I do that against the consent of that person I am committing a sexual assault.

Now, if you are satisfied beyond a reasonable doubt here in the case of Donna Daughney that concurrent with the inflicting of of these wounds intentionally that caused her death, and recklessly, that there was a sexual assault involved, then that would make the murder of Donna Daughney first degree murder; similarly

with Linda, and you have the fact that there was semen on - whoever it was put on there by, that's a separate question. You have the suggestion that there was sexual assault. Both bodies were naked, practically naked, when they were removed. Was it one or both? One had just a sweater on, I think both had sweaters on, as I recall, but nothing on underneath. They were, you know, in a condition that didn't suggest for a minute that they had gone to bed that way. They had outdoor sweaters on or T-shirts or something, and Linda was, you remember, black from the midriff down where the sweater had been up around her breasts or something and she was burned or sooted and blackened from there down and was totally white from here up to her neck, and I think her face was black. Her feet were white because she had socks on.

If you find that there was a sexual assault involved and occurring concurrently with the inflicting of the injuries which caused their death, then that is first degree murder in their case.

Now, there's a third type of situation which could result, and that is if either one of those people were being forcibly confined when the injuries were inflicted, then that would make it first degree murder, too.

Now, in Smith's case he was forcibly confined. If you think for a minute if Father Smith had said, "Look, you've hurt me with that knife or whatever you're using, I'd like to leave now and go to the hospital" - if you think he

would have been permitted to leave, well, he wasn't forcibly confined, but there was no question of that, there couldn't have been in his case. He was told, "Look, you stay here for as long as it takes for you to make up your mind to give me those car keys or that money", and he was tortured and cut and so on and when he didn't produce in the kitchen he was taken into the other room where presumably other injuries were inflicted on him, and one would have to - I think in Smith's case there was certainly no question of a sexual assault, there was no suggestion of that. Both the assailant, presumably, and the victim were males and it would be unlikely, but in Smith's case I think one could say, well, look, surely it was planned and deliberate that he would be killed ultimately, either because there was an intention to kill or because there was an intention to wound him, injure him as was done. In addition there was the forcible confinement aspect to the Smith case.

In the Daughney case was there forcible confinement? Certainly if Linda was dragged back into the building or compelled to go back into the building she was confined, that speaks for itself. The other woman was struck, both jaws are broken, she was put into a bed or was on the bed or was in the bed. Again you can apply the test, could either one of those women have said, "I'd like to leave now, I'm sick and tired of this nonsense that I'm being subjected to", would she have been allowed to leave. Well, I think the question is obvious.

In Annie Flam's case, if you conclude that there was the intention to kill her or to inflict with a fist or a blunt instrument the type of injury on her which caused her death and there was that recklessness that I spoke about and the knowledge that the type of injuries inflicted would be likely to cause her death and if you feel that there was either a sexual assault or a forcible confinement or planning and deliberation existent at the time and you're satisfied of that beyond a reasonable doubt, then it would be first degree murder, and you've got to be convinced beyond a reasonable doubt that there was sexual assault or attempted sexual assault going on at the time, concurrently with the inflicting of the injuries, and similarly with forcible confinement.

You may ask yourself if the assailant was in there and he did insist to Annie Flam that she produce her money or that she submit to sex, which may have been the case, or either one, and he had said, "I'll give you ten minutes to think about it. If you don't I'm going to hit you or I'm going to force you to", and she doesn't and he argues with her or she doesn't come across, he finally says, "Well, I'm going to hit you or I'm going to make you do what I want, I want you to produce the money", and he strikes her. Well, she's been forcibly confined. It may have been fifteen minutes, it may have been an hour, it may have been two hours, but if you feel there was forcible confinement there and you're satisfied of that, then it's first degree murder, and the same with sexual assault in her case.

There are three evidences of sexual assault. One is she was naked in bed, or presumably naked in bed except for the small pair of panties that was found, and you remember - I think she was under the bedclothes and the bedclothes were taken off her and the debris which fell down was removed and there was no evidence of any pajamas or anything found by the people who found her body. There was the fact she was naked in bed which would be a somewhat extraordinary thing, I suppose. There was the fact that she had on some sort of small panties and those were pulled down. Well, it's perhaps slim evidence of sexual assault but, you know, if someone said, "Get into bed there, get your clothes off and get into that bed", or pulled down her pants or caused her pants to get down, that would amount to a sexual assault, certainly.

I suppose you would have to consider as well the fact that her sister-in-law was - if you believe Nina Flam's account was submitted to a sexual assault. What happened to her certainly amounted to a sexual assault and you would be entitled to take into account the fact that if she were treated in that fashion over a period of several hours from half-past eleven, say, till half-past three or four o'clock in the morning, quarter to four, and abused in the fashion she was, you might ask yourself would it not be likely even to the point of being beyond a reasonable doubt that Annie Flam was perhaps subjected to the same thing, but that's up to you to decide and you've got to be satisfied beyond a

reasonable doubt, as I've said, on all these elements.

In all of these illustrations I've given I've talked about an assailant doing these things. Before, of course, here, and I make this plain, before you can find that the accused is guilty of either murder, first degree murder or second degree murder, or murder at all or even of manslaughter, you've got to find that he was the person, and you've got to be satisfied beyond a reasonable doubt that it was the accused who was the assailant and that it was he who did these injuries, and I'm not going to deal with that aspect of it now, I've dealt with that aspect of it before, but I remind you that what I've been saying, and I'm talking about an assailant generally, if you're satisfied beyond a reasonable doubt that it was the accused who was in Annie Flam's house then you just substitute the word accused for the word assailant in the illustrations that I've given, and similarly in the case of the Daughneys and the case of Father Smith.

Well, now, I hope that that explains to you the difference between first degree and second degree murder, and I've touched upon the question of manslaughter there, and I think I've also answered the questions that you've asked. If an assailant repeatedly hits a person in an agitated state, well, the agitated state doesn't really make much difference. It's a question of what his intention was when he was doing it, what was his recklessness, what was his knowledge about the likelihood. A person can't go into somebody's

house and say, "Oh, look, I got excited when I went in there and I killed you, I'm sorry about that, I was agitated at the time when I did it".

There are circumstances, I might say, where a person may kill another person intentionally and it may be as a result of provocation. If I meet somebody on the street and I say to him, "I don't like you, you're an S.O.B.", and he says, "You've called me an S.O.B. and I'm going to kill you", and he in a state of emotion takes a knife out or a gun or with his fist hits me and kills me, and he has intended to do that. I'm not going into this in detail but he can plead that this was done in a state of emotion and - I forget what the words of the Act are but he does this spontaneously while in a fit of temper and he kills me because I've provoked it, I've provoked this attack on myself and he's killed me, and in that circumstance one can reduce murder to manslaughter even and say look, he wasn't guilty of murdering me, he was guilt of manslaughtering me or killing me by manslaughter because I provoked him, but there's no question here, there's no suggestion of provoking. You know, if someone went into Annie Flam's bedroom and said, "I'm going to steal from you", and she said, "If you're going to do that you're an S.O.B.", he could hardly plead that he got mad then and killed her because she called him an S.O.B. after he threatened to rape her or kill her. You know, that wouldn't make sense, so it hasn't been suggested here that that would amount to anything that should reduce murder to manslaughter and it would be most farfetched to

imagine it would.

Well, the other question was if the victim is only hit once and that one hit results in death, which category does it fall. I've dealt with that in what I've said.

I've explained that all to the best of my ability. If you have any further question or if you want a repetition of what I've just said you can come back in and ask me, so would the jury then please retire again?

FOREPERSON: Thank you, My Lord.

(**JURY RETIRES**.)

THE COURT: We'll adjourn now.

MR. ALLMAN: There are just a couple of concerns I had about what Your Lordship was saying there, two. One is regarding the sexual assault matter. Your Lordship told them repeatedly that it has to be concurrent and I don't think that in fact that is - concurrent means at the same time as. I think that's not what **Pare** says. I'd just like to read **Pare**, what it says in **Tremeear**, because this is what I would like Your Lordship to put to them. "The phrase, 'while committing' does not require that the underlying offence", sexual assault, "and the murder occur simultaneously" - I would say or concurrently. "It is sufficient if the murder and the underlying offence are connected and form part of the same transaction." I'm apprehensive lest the jury think that it would only be murder if the sexual assault and the murder, assuming they find those to have existed,

took place literally simultaneously. I'm a little concerned about that.

THE COURT: Well, the Act says "while committing or attempting to commit an offence", and I'm going to leave it at that. I'm not going to complicate it.

MR. ALLMAN: Couple of other things. Just a slight concern about this, does Your Lordship feel that you adequately explained this to them, that if they have a reasonable doubt whether the assailant intended with one or more blows - whether the assailant intended to cause death or whether he intended to cause bodily harm which he knew was likely to cause death and was reckless whether death ensued or not, that if they had a reasonable doubt on that they should come back with a verdict of manslaughter? I know it's difficult because one gets so convoluted with all these things, but I'm just wondering whether Your Lordship felt you did do that - whether it's clear to -

THE COURT: I really do think I did. I tried to work reasonable doubt into what I said as frequently as I could and I worked it in about every place I could. Perhaps I left it out somewhere or other but surely the general impression they got from what I said today, supplementing what I said yesterday -

MR. ALLMAN: Yes, supplementing that, that's right.

THE COURT: No, I'm satisfied on those points. We'll adjourn further.

(COURT ADJOURNS.)

(COURT RESUMES AT 5:00 p.m., NOVEMBER 3, 1991.)

THE COURT: Could we have the prisoner brought in whenever you're ready - the accused, rather, I'm sorry.

(ACCUSED IN DOCK.)

THE COURT: I understand the jury are prepared to return, Mr. Constable?

CONSTABLE: Yes, My Lord.

THE COURT: Bring them in, please.

(JURY CALLED - ALL PRESENT.)

CLERK: Members of the jury, who is your chairperson?

JUROR LANCASTER: I am the chairperson.

CLERK: Letitia Lancaster, are you agreed upon your verdicts?

CHAIRPERSON: Yes, we are agreed upon our verdicts.

CLERK: On Count 1 of the indictment do you find the accused guilty of first degree murder, guilty of second degree murder, guilty of manslaughter, or not guilty?

CHAIRPERSON: Guilty as charged, first degree murder.

CLERK: On Count 2 of the indictment do you find the accused guilty of first degree murder, guilty of second degree murder, or not guilty?

CHAIRPERSON: Guilty as charged, first degree murder.

CLERK: On Count 3 of the indictment do you find the accused guilty of first degree murder, guilty of second degree murder, or not guilty?

CHAIRPERSON: Guilty as charged, first degree murder.

CLERK: On Count 4 of the indictment do you find the accused guilty of first degree murder, guilty of

second degree murder, or not guilty?

CHAIRPERSON: Guilty as charged, first degree murder.

CLERK: Members of the jury, hearken to your verdicts as the Court has recorded them, you say the accused is guilty as charged on all four counts. So say you all?

JURY MEMBERS: Yes.

THE COURT: Thank you very much. Would you stand, Mr. Legere, please? Mr. Legere, you have been found guilty on all four counts charged against you in the indictment. I order under Section 100(1) of the Criminal Code that you shall be and are prohibited from having in your possession any firearm or ammunition or explosive substance for that period of time which commences today and which expires on that day which falls ten years after the time of your release from imprisonment. For that purpose release from imprisonment means release from confinement by reason of expiration of sentence, commencement of mandatory supervision or grant of parole other than day parole. As part of this order of prohibition I fix under Section 100(13), of the Criminal Code a period of 30 days measured from today as that reasonable period of time within which you may surrender to a police officer or firearms officer or otherwise lawfully dispose of any firearm or any ammunition or explosive substance lawfully possessed by you prior to the making of this order of prohibition, and in respect of the convictions entered against you by the jury, that of guilty on all four counts contained in the indictment, on each of them I sentence you to imprisonment for life without eligibility for parole until you have served 25

years of your sentence. Would you remove the prisoner, please?

MR. LEGERE: The trial isn't done yet, Your Honour. We'll have round number 2.

(Prisoner Removed.)

THE COURT: Before we adjourn I would like to say just a few things, primarily for the jury's benefit, perhaps.

There is one other order that I will make and I don't have to make this in the presence of the accused. I order the guns, the two rifles, rather, sawed off rifles, and the knives and any other weapons which have been entered as exhibits - I declare them forfeited to the Crown and I order that in due course, when the appeal periods have expired and so on, those be turned over to the Officer Commanding 'J' Division of the R.C.M.P. for disposal.

My remarks are going to be brief here, I'm not going to keep you any longer than I have to, but I do want to thank the Officers of the Court, Mr. Pugh and the constable and the court reporters who have acted through this trial. This trial started, you know, on December 5th last year. It has gone on for almost eleven months now. We had several sittings. December 5th it started in Newcastle. There were several sittings and on April 22nd we started a six-week sitting, a voir dire sitting in which we considered the admissibility of certain evidence and so on, and now we've spent another ten weeks at it so it's an extremely long trial, and I do thank the court officers. I thank the police officials both of the R.C.M.P. and the Sheriff's Department for their assistance, Corrections Canada, and all the

other numerous people who have been involved in this trial.

I complement the counsel on the job they have done. Counsel for the Crown have done a most meticulous job in preparing a difficult case, a most involved case, and I complement you gentlemen on that, and I complement the defence counsel, I thank you as well as Crown Counsel for your assistance and cooperation through the trial. Mr. Furlotte, you've shown an ingenuity and innovativeness, I think, in finding every argument you could possibly do to defend your client, and that hasn't been an easy job given the circumstances, including the lack of cooperation I'm sure that on occasion you - the cooperation that's been missing at times. You've had a very difficult client to deal with.

I want to thank principally the jury, of course. You've been most dutiful and responsible in carrying out your duties. It's been a difficult job even today, and the experience you have just been through now must be a difficult one and I thank you for it.

I don't believe it's any part of a trial judge's job to comment on a jury verdict one way or the other and I'm not going to break that. The fact that I don't comment on it doesn't mean that I disagree or doesn't mean that I agree. My job is to conduct the trial as a referee and to provide as fair a trial as one can in the circumstances, your job is to return the verdict, and if you don't criticize me I won't criticize you. I will say this, don't lose too much sleep over your verdict.

It's not an easy job, you know, to sit in judgment on your fellow man or fellow person, I suppose you'd say today. It's not an easy thing at all, and you know, one of the reasons is that when you're sitting in judgment on your fellow man or the person charged before the Court you're really sitting in judgment on all of society. You're sitting in judgment on yourselves, on me, and all the members of our society today, because every person who gets involved in criminal activity and who may be convicted of criminal activity is a product of our society and when you think of the influences there are existent today, every television program, practically, you see, most every movie you see, just filled utterly and utterly with violence, and this is the sort of thing that our people are being brought up with today. Is it any wonder, you know, when you think of it that there's beatings within families, there's molestation of children, there's beating of children, neglect of children and that sort of thing.

Look at another thing I just might point to. I'm not trying to preach a sermon just because it's Sunday but I think some of these things bear saying. Look at the lack of control over handguns and automatic weapons. In the United States they're just crazy on this theme of everyone having the right to bear arms, and you know we're almost as bad in Canada today. It's absolutely ridiculous that anyone should be allowed to buy or use or have or own an automatic weapon other than the people who are required for police protective services or military or other service purposes to

have that sort of weapon. It's totally wrong that people should be able to go into a store, with a license or not, and the sooner, of course, our authorities realize that the better it will be, and the same applies to handguns as far as I'm concerned.

However, I'm not going on with that thing. I hope you don't think I'm a bleeding heart about this matter of violence and weapons because I don't think I am. I spent the first five and a half years of my life as a professional gun-slinger. I wore a handgun at my side all of that period as a member of the Canadian Forces overseas in the Second World War, and don't think that I haven't seen my share of violence. I spent nine months from the Normandy Beaches to the Rhine crossing and I saw a great deal of violence both received and dished out, so I'm not really a bleeding heart on this thing, but I have little sympathy with these people who suggest that for some reason or other in society today you've got to have automatic weapons and carry handguns and all that sort of thing.

Now, having divested myself of those thoughts I don't think I have very much more to say. I want to warn you that under Section 649 of the Criminal Code it's made an offence for any member of the jury to disclose the deliberations which took place within the jury confines other than what has been made public in open court, and of course the only thing you've made public in open court is the verdicts. You can talk about your verdicts but you can't talk about anything that went on in the jury room. If you do that you're

committing an offence and I hope that you will follow that restriction and obey it.

I'm sorry that last night you were exposed to certain videoing by some elements of the media. I've done my best to keep that sort of thing under control and I don't blame any of the local media for this. People have come in from outside, as I understand, and they don't get told about these things and they don't bother to learn about it, and they act aggressively and they do that sort of thing, but my order was that the jurors not be videoed on these premises, that's as far as I can go, and that order is continued until you see your way off these premises this evening, and I would go farther than that, I would ask the media not to endeavour to contact you, not to endeavour to interview you. You can't talk about what went on behind the jury walls but they shouldn't even be asking you to give your impression of serving on the jury and that sort of thing. If they do, tell them to go take a jump in the lake. I think I used that expression once before, didn't I? I'm not going to be interviewed by the press and the lawyers, I'm sure, will obey the ethical standards of their profession and they won't be interviewed by the press - by the media, I should say, not the press.

I said at the start I may not have promised what it was suggested yesterday I may have promised at the start of the trial, but I think I did indicate that you would find any criminal trial, not just this one, any criminal trial entertaining - not entertaining, interesting and educational. I didn't mean to say entertaining.

It is, I suppose, entertaining in a degree as well, but you found it educational.

You know, in this case you've had what, upwards of 35 expert witnesses talking in everything from dog handling to DNA or deoxyribonucleic acid, I can finally pronounce that word and I hope the rest of you can, but you know, you've been privy to a trial where this DNA typing business has been before the Court. You've probably had the privilege of hearing more scientists or more people scientifically trained testifying as to the DNA thing than will ever happen again in this country in any criminal trial.

DNA, I think you'll agree, is something that's here to stay and it represents a tremendous forensic instrument for the investigation of crime. I would say perhaps for the benefit of the media more than anybody else but at the voir dire before we finished on June 7th Dr. Kidd had been on the stand - it was before June 7th, it was somewhere along in the early part of June. Dr. Kidd was on the stand and he had been on the stand for some days, and when he got through his testimony I put a question to him from the Court, what is the future of DNA, where do you see DNA going over the next few years and in the immediate future, because you know it's only six years old now, really, and it's going to make tremendous strides, and he gave an answer which amounted to a chapter in a book. You could just take the answer that he gave. He talked for several minutes on it and it was a precise, articulate exposition on where DNA was heading, and if the media are interested they would be well advised to

dig out through the court reporters his answer to that question and any related questions and they have a ready-made article or story, so I think we've all been privileged to take part in this trial where DNA has been sort of - it hasn't been on trial in any sense of the term, necessarily, but we've been exposed to it and it will play, you can be sure, a part in a great many trials in the future, and it will avoid a great many trials in the future.

I pointed out yesterday in my charge that the first use made of DNA in England was actually to secure the acquittal of a person charged with murder and the subsequent acquittal as well of the person who was actually responsible.

I read in the New York Times just a day or so before this trial started about a black man in New York City who eleven years ago was convicted of rape down there and has been in prison ever since and specimens of certain clothing had fortunately been held in cold storage by that particular county, Westchester County in the United States, where the law provided that exhibits must be held. They were able to dig that out and through the administration of DNA typing they were able to prove that he wasn't the man who had been convicted, and he has been released just this past July or August of this summer, so DNA is a two-way street, it can convict people and it can acquit, and even today it's probably acquitting more people and removing more suspects than it is actually convicting people.

So having said that, go, I believe your dinner is arranged for you. The constable said

you are having turkey tonight. Put lots of gravy on it, enjoy it. Good luck, goodbye.

(COURT ADJOURNS AT 5:20 p.m., NOVEMBER 3, 1991.)