

VOLUME I

C A N A D A

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

JUDICIAL DISTRICT OF FREDERICTON

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

ALLAN JOSEPH LEGERE

VOIR DIRE PROCEEDINGS held before Mr. Justice  
David Dickson at the Burton Courthouse, Burton,  
New Brunswick on the 22nd and 23rd days of April,  
A.D., 1991.

APPEARANCES:

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

Weldon J. Furlotte, Esq., )  
Michael Ryan, Esq., ) for the Defence.

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Dolores Brewer,  
Court Reporter.

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
1. S/Sgt. Mason Johnson	25 (stood aside)		
2. Cpl. Giles Turgeon	39	50	57
3. Cpl. Kevin Mole	58 (stood aside)		
4. Cpl. Ray Brennan	109	113	---
5. Duff Evers	114 (stood aside)		
6. Cpl. Kevin Mole	123 (stood aside)		
7. Sgt. Gaetan Germain	149	165	172
8. Cst. Robin Britt	172	---	---
9. Brian Golding	176	190	---
10. Cpl. Terry Barter	201	211	---
11. Cpl. Gary Lutwick	223	234	---
12. Cst. Linda Dugas	241	247	---
13. Cpl. Donald Vesey	251	259	---

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VD-2	Empty plastic bag.	Page 42.
VD-3	Copy of a law decision.	Page 49.
VD-4	Metal pill can.	Page 118.
VD-5	Box of slides (hair samples).	Page 122.
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Weldon J. Furlotte, Esq., and Michael Ryan, Esq.,  
for the Defence.

.....  
THE COURT: Well now is a continuation of the trial of the  
Queen versus Allan Joseph Legere, and I wonder if I  
could have the appearances, please.

MR. ALLMAN: Tony Allman, Graham Sleeth, Jack Walsh on  
behalf of Her Majesty, The Queen.

MR. FURLOTTE: And Weldon Furlotte and Michael Ryan on behalf  
of Mr. Legere.

THE COURT: The same as before. Well now we're in open  
court right at the moment and this trial was begun  
with the arraignment of the Accused at Newcastle on  
December 5th last and at that time an application was  
made for change of venue and the venue was changed to  
the Fredericton judicial district and the trial date  
was fixed at that time for February 4th. As a result

of pretrial hearings or a pretrial hearing - a couple of them, it was agreed that we would proceed on that date only with motions or with interlocutory applications and there were a couple of motions of that sort made. Among the motions made at that time - or among the applications made was that we resolve into a voir dire under section 645.1, I believe it is, of the Criminal Code to consider certain matters which had to be considered in the absence of the jury and before the jury were actually selected. That motion was granted and today was fixed for the commencement of that voir dire hearing. So we will now, unless there is any objection, we will resolve into a voir dire session and we are now in a voir dire session.

I must at the outset of the voir dire session remind all persons present that nothing that occurs during the voir dire session can be publicized outside this courtroom, talked about by any of the persons present, broadcast in the media, or published in the media in any way. I might just draw your attention to -- there is a section 648 of the Criminal Code which says:

"Where permission to separate is given to members of a jury under subsection 647(1), no information regarding any portion of the trial at which the jury is not present shall be published, after the permission is granted,"

that is the permission to separate is granted -

"in any newspaper or broadcast before the jury retires to consider its verdict."

And that is made an offence punishable on summary conviction if -- that is the noncompliance with that section. That doesn't apply here, of course, because

there is no jury and there has been no permission to separate given to any jury. But the same section applies mutatis mutandis - or the spirit of the section applies even in these circumstances, and there is that restriction of course on the publication.

I may be coming back to this from time to time during the voir dire but that is -- I'm afraid I have to do that. I'm obliged to do that to ensure that there is compliance with that restriction. And I do want to point out - I don't know whether there are members of the media here or not - but I do want to point out that any transgression of that rule could have the most serious consequences not only for the trial itself but there's a good deal of expense put into a trial of this nature, in any long trial as far as that is concerned, and also it's an unpleasant thing for a Court to have to institute proceedings for contempt about somebody who doesn't follow the restriction.

Now, we're in the voir dire and at the last hearing when we were in voir dire it had been indicated that the crown would have certain questions it wanted decided as to the admissibility of evidence with regard to body substances and I believe, as well, certain statements allegedly made by the accused. The idea was that we would commence today and devote this week to hearing evidence on those matters and then on the following week, April 29th, that is a week from today, we would start - assuming we were through the first aspect of it, we would start on April 29th and consider certain questions arising out of the

admissibility of DNA typing comparisons and so on. I think the indication was that that would perhaps take a week and a half to complete.

I have had a notice from the defence counsel, Mr. Furlotte, to the effect that he would seek an adjournment of that second aspect of the voir dire. I presume, without going ahead with it right now Mr. Furlotte, it is your intention to pursue that further?

MR. FURLOTTE: Yes.

THE COURT: Well what I suggest is that we leave that until either later in the morning or perhaps until just after lunch when we come back this afternoon and we will hear the representations on that application at that time. Mr. Allman you wrote a letter, I guess, which constituted a reply I think to the notice and --

MR. ALLMAN: Also a brief on law from Mr. Sleeth. Together that constituted our position.

THE COURT: And I have had that brief on law. But both counsel have had that. Well, we'll deal with that if not this morning later just before lunch, we'll deal with it after lunch this afternoon when we come back.

There were other applications made to the court. I can't recall offhand whether they were pursued fully or not. The Crown had given an indication that it wanted to amend the indictment in certain respects. The defence I believe indicated that it might wish to apply for particulars or something of that nature with regard to several of the counts. There's no harm done in leaving those matters until later on in this voir dire. As a matter of fact I'd say let's leave it to the end of this voir dire and we can consider those matters then.

Now, also I believe it was the understanding that the crown would at the outset of the voir dire give some sort of an outline of its total case, perhaps an abbreviated version of what would normally be the preliminary address to the jury after the jury has been selected. We are proceeding here under the provision that a voir dire can be held before a jury is selected. Normally if a voir dire were held after the jury were selected the court would be apprised, as would the jury, of what the case is all about through crown counsel's address to the jury. We don't have the benefit of that here. And then having done -- You intend to do that Mr. Allman I gather?

MR. ALLMAN: Yes.

THE COURT: And then having done that if you would then zero in and perhaps define as well as you could the subject matter of the voir dire itself so that we know exactly what we're considering. I take it that counsel have had some discussions between each other since we last met and I don't know whether you have made any progress or have been able to reach any agreement as to what facts or matters pertaining to the voir dire might be agreed to or where there might be shortcuts in calling witnesses or whatever. I'll leave that up to you. Either you have or you haven't - I don't know. But if you see an opportunity to do that as the voir dire moves along I do urge you to do it because there may be certain technical points that can be shortened up. It's not unusual in a voir dire, actually, on some points in a normal trial to avoid the calling of witnesses entirely. Counsel can sometimes state what

the problem is, they can state their agreement on the thing and if it's just a matter of law the ruling can be made without the necessity of calling evidence and that may be the case you will find with some of the questions here.

Now, Mr. Allman, would you like to make your opening statement?

MR. ALLMAN: Yes, My Lord. In accordance with Your Lordship's suggestion I do propose to make an outline of the crown's case. I should explain at the outset it is only an outline. It doesn't represent by any means every detail of the crown's case.

THE COURT: May I interrupt for a minute. (Brief discussion about loud speaker system not working.)

Mr. Allman, go ahead.

MR. ALLMAN: As I say, My Lord, this is only an outline and it is only for the purpose of indicating the rest of the evidence and where the DNA fits in. Mr. Walsh is handling the voir dices so he can indicate to you the specific aspects of the two voir dices' evidence.

My Lord in general terms, that is to say in relation to all four charges, the crown is going to call evidence in respect of each of the four persons named as victims in the indictment. The evidence will be evidence of people who are believed to have been the last to see the deceased alive; evidence of the discovery of the body; and pathological evidence as to the cause of death and based on that evidence we believe we shall establish the date as alleged in the indictment, place as alleged in the indictment, and the fact that the cause of death was homicide. That

will leave in each case the issue of whether the homicide was murder and the issue of what, if anything, links the accused to the homicide.

With regard to each homicide being murder, we believe the pathological evidence as to the extreme severity and large number of injuries inflicted will establish that whoever inflicted those injuries intended to kill the victim. That's by way of a general opening and it's the same for all four charges.

We will bring evidence that all the killings occurred in a very small geographical area. It's approximately four miles from the Flam residence to the Smith residence, one further mile from the Smith residence to the Daughney residence. So we're talking a total of about five miles.

The crown will lead evidence to the effect that the accused was a native of that area, very familiar with it and with its inhabitants. The crown will lead evidence that the accused was, to use the colloquial expression, "on the run" during the relevant time having escaped from custody prior to the first killing and being recaptured after the last killing, thus we believe establishing opportunity plus motive.

There will be various pieces of evidence establishing his presence in the general area prior to, during the time of, and after some of the killings. All that is general evidence relating to all the charges.

In respect to the specific charges the crown will do the following additional things. On the Annie Flam case the principal civilian witness will be her sister, Nina Flam. She will testify as to

encountering a male intruder who entered her room after she had gone to sleep. She will testify about his activities and conversations thereafter. Apparently he talked about a safe and he looked at and made comments about her jewels. He made remarks indicative that he possessed local knowledge and knowledge about the activities of Nina Flam and the Flam sisters some years earlier. While committing sexual assaults on Nina Flam he experienced erection problems and made a remark something to the effect 'That's what happens to a person who has been away for a while which the crown will submit may relate to the accused having been in custody prior to this incident. Nina Flam was basically prevented from viewing her assailant's face. The assailant told her not to worry about Annie. She was in bed and it would look like she died in her sleep overcome by smoke. He told Nina Flam that he was going to start some fires or start a fire.

Nina Flam feigned death. The assailant left. She was aware that fires were being set. In fact expert evidence will confirm that four fires were set in that residence.

There will be evidence that Mr. Legere was seen in the vicinity in the weeks preceding the Flam incident and that jewels stolen from a house near the Flam residence was later sold in Montreal by Mr. Legere after the last killing. There will be evidence that he was seen in the vicinity after the Flam incident and that he was chased behind a residence where the next day eye glasses matching a pair pre-

scribed for Mr. Legere were found.

In respect to the Daughney murders the specific evidence after evidence about the time, place and cause of death will be that somebody forcibly entered the Daughney residence and that the exterior light bulb at the point of entrance was unscrewed. There will be evidence that two fires - separate fires were set in the premises. There will be evidence relating to jewelry subsequently pawned by the accused in Montreal. Witnesses will identify some of that as being definitely Daughney property and some of it as very similar to Daughney property.

There will be evidence that on the day the Daughneys died a man was witnessed apparently trying to avoid being seen on their street. Two weeks after the Daughney incident there was a shooting at or near an R.C.M.P. officer. A witness to that helped the R.C.M.P. prepare a composite drawing of the suspected shooter. Later on that composite was shown to the person who had witnessed the suspicious man near the Daughney residence the day they died and according to that man the composite of the shooting suspect exactly resembled the man he had seen acting in a suspicious manner on the street that day.

Finally, and to link all this together, part of the voir dres will indicate that Mr. Legere told the police soon after his arrest he had indeed while at liberty shot at or in the air near an R.C.M.P. officer.

There will be evidence that Mr. Legere used to go to an exercise club in Newcastle from October, '85 to November, 1986; that Donna Daughney also went to that club and that Mr. Legere on occasion expressed sexual interest in Donna.

In the Flam case there was evidence of sexual assault on Nina Flam, and in the Donna and Linda Daughney case there was evidence of sexual assault, namely seminal fluid, found on their bodies. In both incidents there was evidence of arson which presumably was done to destroy or attempt to destroy evidence. In both cases a similar approach was used, that is to say the method was the same - setting clothing on fire; the location was similar - in bedroom closets; and in both cases there was no use of accelerants. In both the Flam and Daughney incidents there was evidence that the victims were or may have been tied up. In both cases jewelry was involved. In the Flam case the assailant expressed an interest in - or an initial interest in the Flam jewelry but then expressed no interest as apparently it wasn't worth anything. Jewels stolen from a house near the Flam house were later pawned by Mr. Legere in Montreal. Jewelry identified as the same as or similar to Daughney jewelry was pawned by Mr. Legere in Montreal. In both cases the entry into the residence seemed to have been done in the late evening or early morning.

All the female deaths and indeed the death of Father Smith also, involved very violent beatings. Nina Flam's assailant threatened her with a knife. Knife marks resembling each other were found on the

bodies of Donna Daughney and Father Smith.

Just as at the Daughney residence, an exterior light bulb was unscrewed, the same thing happened at the Smith scene.

All four victims came from what might be described as vulnerable categories, that is to say either elderly or females living alone.

In every case there is evidence of searching for money.

In respect of the three female victims the crown's case against Mr. Legere lies substantially upon DNA evidence. Mr. Walsh at the hearing on February 4th outlined the process involved and the purpose of that evidence and I believe he is going to have some comments again on this topic today before entering into the voir dire proper.

Essentially the purpose of the DNA evidence is to put Mr. Legere in contact with the victims and in their residence at or about the time they died. The crown wants to lead expert evidence to the effect that findings of seminal fluids located on the bodies of Nina Flam and the Daughney sisters match various known samples from Mr. Legere, these known samples being the subject of the first voir dire, and the crown also wants to lead expert evidence as to the conclusions that can be drawn from such a match. Those conclusions collectively, it is submitted, will strongly implicate the accused.

The DNA evidence in and of itself is critically important. When you add to it the substantial additional material that I have just outlined that

additional material thereby becomes of considerably enhanced significance.

Turning to the death of Father Smith and, again, having called basic evidence about time, place and cause of death, the specific evidence we intend to call at the moment involving the accused includes the following. The evidence will establish that Father Smith was alive at 5:30 P.M. on November 15th. His body was found on the 16th after a call to the R.C.M.P. from a person who had been to the rectory and found the door open around 10 past 7.

Evidence will indicate that Father Smith's car was driven from his garage on the 16th around 6:45 P.M. by a male driver who wasn't Father Smith, the inference being that Father Smith was dead at that time. That car was found abandoned in Bathurst at 9:52 P.M. the same day. There will be abundant evidence that Mr. Legere caught the Bathurst to Montreal train departing Bathurst on the 16th, that's the day the car left Smith's garage, at 8:28 P.M. That evidence will include the clerk who sold Mr. Legere a ticket at Bathurst; police from Levis, Quebec who encountered Mr. Legere while on the train; and evidence of Mr. Legere's presence in Montreal on November the 17th having checked into the Queen Elizabeth Hotel there.

The police have conducted tests and it is possible to drive to Bathurst from Newcastle in the time frame in question. In other words the person who drove the Smith vehicle out of the garage around 6:45 could feasibly have parked the car in Bathurst and gotten to the train station in time to catch the

8:28 train.

As I indicated, the Smith vehicle was found parked in Bathurst, apparently abandoned. Close by a pair of Greb boots were found. We intend to call identification evidence linking those boots to prints found at the scene of Father Smith's death.

Second, there will be evidence to the effect that when Mr. Legere was arrested he was wearing boots which were seized and subsequently he provided the police with casts of his feet. Detailed comparisons were made regarding distances, angles and markings and the interior of the two sets of boots and the casts of his feet which Mr. Legere provided. These will indicate that in all respects the three things compared were the same and that there were no distinctions. In this way the crown hopes to link Mr. Legere to the boots found near the car and the boots to the crime scene, that is to say the scene of Father Smith's death.

I have already indicated that there is evidence that Mr. Legere took a train trip from Bathurst to Montreal right after Father Smith died. That train line travelled over a railway bridge in Quebec 25 miles west of Campbellton. On August 7th, 1991 the C.N. work crew happened to be at that bridge and they found on an abutment below the bridge Father Smith's N.B. Tel card. Ultimately, this information regarding this find was relayed to the police and they attended and found nearby Father Smith's American Express and Visa cards. The location of this find cannot be accessed by vehicles and it's sufficiently remote

that it's unlikely to be accessed by foot. The Crown will suggest the inference is that these cards were discarded from a train going over the bridge but by chance failed to reach the stream at the bottom. C.N. plows in winter clear these tracks and the bridge of snow and gravel so it would be quite feasible for a card discarded in November, 1990 to lie covered on the abutment during the winter.

In the Smith case there was, for obvious reasons, no evidence of sexual activity and hence there was no semen and no semen was DNAed, whereas in the Daughney and Flam cases semen was found and was, of course, subject to DNA analysis.

The Smith case, like the other two incidents which involved the other three deaths, all concerned entry into somebody else's house and a death caused by a very severe beating and, as I already indicated, there is evidence of a knife being used on Nina Flam and on the Daughneys and on Smith; and this matter of the exterior light bulb unscrewed at the Smith and Daughney residences; the fires starting at the Flam and Daughney residences; and the property being taken from the Smith and Daughney residences. The evidence in the Smith case, therefore, though dissimilar in the sexual aspect, is related to the other two incidents in terms of time, that is to say during Mr. Legere's period of freedom; the location - that is to say in the small geographical area we are talking about; method - I have already gone through the various similarities of method; and to some extent, setting aside the sexual aspect, motive - that is to say theft.

In addition, there is evidence arising out of Mr. Legere's subsequent trip to Montreal, his activities in Montreal which connects to all three incidents and therefore to all four deaths.

In essence, that's a very brief outline of the crown's case as it stands at present and subject to anything Your Lordship may say I propose to hand the matter over now to Mr. Walsh who is going to look after the voir dres from here on in.

THE COURT: Well we'll hear from Mr. Walsh then.

MR. WALSH: Thank you My Lord. With respect to the voir dire commencing today and the admissibility of bodily substances and statements allegedly made by Allan Legere, the crown filed a brief with this court and with defence counsel several weeks ago related to the brief on the admissibility of certain bodily substances that form the subject of this particular matter and in that brief I attempted to outline generally the substances in question and their significance to the DNA voir dire to occur and begin next week. The substances, as I pointed out, My Lord, involve scalp and pubic hair purportedly taken of Allan Legere in 1986, scalp and pubic hair purportedly taken of Allan Legere at the time of his arrest in 1989, and blood removed from a kleenex purportedly having been discarded by Allan Legere again at the time of his arrest in 1989. They constitute the crown's allegation that they constitute the known standards of Allan Legere that were used to compare with the bodily substances obtained at the crime scenes in relation to these particular matters.

As the time frames would indicate, My Lord, the evidence will extend over a considerable period in terms of the actual time frame. The voir dire will commence with evidence related to the seizure of these substances, the scalp and pubic hair in 1986 then we will proceed through to 1989 and the seizure of those items in 1989. As a result, it will be necessary in the crown's opinion to properly and clearly present the evidence in an intelligent manner with some of our witnesses to call them and then ask that they be stood aside, with the court's permission, and recalled at a later time, and it's for the purposes of a clear presentation of the evidence in as much as it involves segments of time involved.

The crown also, My Lord, on Friday I believe it was, filed a proposed witness list for the voir dire. It was also filed with defence counsel. I would make note of two corrections to that - amendments to that list. With respect to number 27 I have shown Dr. John Wayne and in fact it should have been Dr. Ron Fourney, and that I would ask - I would amend that particular list to indicate that the 27th witness proposed to be called on this voir dire this week will be Dr. Ron Fourney. You will also note, My Lord, on the witness list that witnesses 6, 7 and 8 relate to Mr. George Martin, Miss Ellen Cook and Irene Hildebrand. I have spoken to Mr. Ryan with respect to these witnesses. They will not be required to be actually called and I'll refer the court to their place in this particular voir dire at that time.

That's with an agreement with Mr. Ryan, defence counsel, and crown counsel their evidence being unnecessary at this particular point. Hopefully there may be an additional witness that Mr. Ryan and I will be able to agree on as the voir dire commences.

The other aspect, apart from bodily substances, will be - and concurrently with the seizure of some of these bodily substances, there will be evidence with respect to oral statements that the crown wishes to have entered into evidence made at the time of his arrest in 1989 and this evidence will be presented concurrently.

To give the court some insight as to how the crown proposes to proceed, again, I have pointed out that it will be necessary in our opinion to stand certain witnesses aside and recall them in the order I have indicated. In addition, it is the crown's intention to follow the directions of the Supreme Court of Canada that they have given in the last couple and several years in relation to the types of evidence that they wish to be presented and in relation to the questions of whether or not a charter right has been complied with and whether or not if it has not been complied with whether or not the evidence should be excluded. Using the Supreme Court of Canada cases as a blueprint, it will be the crown's intention to call evidence we expect on the areas of good faith - good faith reliance by police officers on legal precedent, on reasonable and probable grounds associated with the investigation and associated with certain officers to explain their behavior. Also evidence with respect to alternative

investigative techniques available to the police and exercised to the police during the investigation. In addition, evidence with respect to the historical basis for any claimed police rights in this particular matter.

To address these areas it will be necessary, My Lord, to use witnesses and/or sources of information that will normally not necessarily go before a jury. Their relevance and significance relates to the questions of the legal admissibility of the evidence and once the legal admissibility is determined by this court some of that evidence certainly would not be relevant to a jury nor would such evidence be presented to a jury.

That concludes my opening, My Lord. I would at this time seek your permission to call my first witness.

THE COURT: You have, I gather, discussed with defence counsel the question of the admissibility of these various items and you are satisfied -- We'll hear from them perhaps, but they do object, do they?

MR. WALSH: Oh yes My Lord.

THE COURT: I mean there's no agreement between you?

MR. WALSH: There is no agreement, no, with respect to the admissibility.

THE COURT: Is it Mr. Ryan or Mr. Furlotte? Mr. Ryan you are dealing with these matters of the bodily substances? You are zeroing in on these four - is it four or five - five different items that are referred to. Those are what you are concerned with?

MR. WALSH: That's correct My Lord.

THE COURT: And you take the position, Mr. Ryan, that none of those are admissible or should be admitted?

MR. RYAN: That's correct My Lord.

THE COURT: Is there anything else you want to say about those particular items at this point?

MR. RYAN: Not at this point My Lord.

THE COURT: There was also a suggestion that the voir dire would extend to other matters of statements or something. Is that a -- are you dealing with that this week or is that --

MR. WALSH: Mr. Sleeth will be dealing with the statement aspect, however, in the presentation of the evidence some witnesses will both involve admissibility of bodily substances - questions related to that and the statements. In that case I will be responsible for the direct examination of those witnesses. In those instances where the officer or the witness will simply be presenting evidence in relation to the alleged oral statements Mr. Sleeth will conduct the examination in relation to that. His responsibility though is with respect to oral statements and mine is with respect to bodily substances aspect.

THE COURT: Are they going to be dealt with simultaneously?

MR. WALSH: Yes.

THE COURT: The matter of the statements?

MR. WALSH: That's correct My Lord.

THE COURT: Well Mr. Allman didn't refer to any statements in his summary. Do you care to say anything about where the statements fit in so that I will have a little overview of the significance of the statements or where they fit into --

MR. WALSH: Fine My Lord. Upon his arrest in November of 1989 you will - which I expect that you will hear evidence with respect to the actual arrest, at this voir dire we intend to call evidence of his activities immediately preceding his arrest and at the arrest, at the scene, plus where he went from the time of his arrest, where the police officers took him, up until the police station; at the time he was - to use the terms - was being booked in at the R.C.M.P. station; up until the point where the police officers actually took him into an interview room to conduct an interview. You will hear evidence - and there will be oral statements that the crown alleges will be made or having been made been made by Mr. Legere. There will be evidence I would expect you will hear that Mr. Legere was very talkative and as a result he did make statements and comments in which when it fits in with respect to the context of the cases Mr. Allman has provided to you it will provide confirmation with respect to his whereabouts and certain of his activities. Some of the statements in themselves and by themselves may not appear to be of any particular importance or relevance but when these particular statements are compared to the actual crown's position as to its case as Mr. Allman has related, My Lord, you will find that from the crown's point of view that some of these oral statements that were made are particularly relevant and important.

THE COURT: But on this voir dire you are not going to be troubled, surely, with establishing through witnesses that the accused was a prisoner in wherever he was - Renous Institute or whatever, and that he escaped on a certain date and that he was on the loose for a

certain period.

MR. WALSH: No, My Lord, not on the voir dire.

THE COURT: But is this significant? I mean are you agreed on that? Can you agree with defence counsel on some general - on the general picture?

MR. WALSH: I would expect that we have narrowed down the issues - or we have presented our issues. In the presentation of the evidence related to the bodily substances it necessarily involves testimony associated with Mr. Legere's -- or the police activity in particular, the police investigation from the time he did escape, it's necessarily included to explain some of the reasons - the basis for the police action. So it necessarily requires the police officers in giving their testimony in relation to why certain bodily substances, for example, were used or sought that the court will get, I would expect, an understanding of the factual basis of the background associated with the particular investigation. But when it comes to the oral statements it would be the crown's intention to zero in from the time just leading up to his arrest in November, 1989 through to the time that he is brought into the interview room. I expect and I hope that during the voir dire that these matters will become clear.

THE COURT: Well, all right then, and you have about what - 23 or 32 is there, or 23 or --

MR. WALSH: I have a list of 27 witnesses. We have agreement at this point on three that we will not require. That brings the list down to 24. You will note, My Lord, that there are a couple of witnesses that will be necessary for the crown to stand aside and recall

at a later time and they are included in that number.

THE COURT: There are some people included on your list who weren't on your original witness list.

MR. WALSH: The original witness list that we filed would be related to the actual trial and as I indicated in my opening remarks some of the evidence that we intend to lead at this voir dire is obviously the question - it's related to legal admissibility of some of these substances and as I indicated, My Lord, it will not be necessary - once the court rules on the legal admissibility some of these witnesses and some of their evidence would not be relevant to the jury's determination.

THE COURT: Well, I don't take too generous a view of that because normally it is necessary to call most of the witnesses. I know the point you're getting at and I can see the -- but I would say most of them would certainly be required again because a court on a voir dire - assume it says yes evidence is admissible, it makes that bare ruling but it's predicated on the fact that usually that the same evidence is presented before the jury to substantiate admissibility.

MR. WALSH: That's correct, My Lord. In fact the vast majority of these witnesses are on our witness list and are intended to be called at the trial. There is one in particular, for example, that I wouldn't expect it would be either relevant or necessary to call at the trial and I give you an example would be Sergeant Germain. His evidence is going to be related to - partly related to his conduct with an investigation in the summer of 1989 and certain alternative in-

vestigative techniques that were exercised in attempts to obtain certain bodily substances which would not be relevant to the jury's consideration after this court rules on whether the substances that we actually used are admitted.

THE COURT: Well, I can see your thesis applying in the case of the - possibly in the case of the samples taken - the body substances taken in 1986 because I suppose there is a legal question involved there as to whether they are obtained from a proper source or whatever. You get them from the court files or police files or somewhere? Police files I believe at the present time.

MR. WALSH: Yes. It will become clear I expect during the voir dire and I think at the end of the voir dire the court will have a better understanding through the evidence as to the crown's position in relation to what witnesses will be necessary at this voir dire in relation to the trial, but the vast majority except for the isolated exception will be - if the court rules that this evidence can be admitted, will be required certainly for the trial, yes. But there will be the isolated instance where a witness - the crown does not believe a witness would be relevant to the actual trial.

THE COURT: All right. May I just ask this too before you finish. That is it had been represented earlier that statements of all witnesses or affidavits or whatever may have been obtained from them, copies of those things had been provided to defence counsel. Does that apply as well to these people on the voir dire list?

MR. WALSH: Yes, My Lord. Yes.

THE COURT: You may have exceeded what is strictly required but I'm not suggesting in asking that that the defence are necessarily entitled to all that information but --

MR. WALSH: Yes, My Lord. In fact with Sergeant Germain, for example, he's not in our regular briefing books for trial but we prepared a separate one and provided notice to Mr. Ryan as to what he was generally prepared to testify to and, as well, I believe that one other witness we've added to his - what evidence he would actually relate so it's related to the issues here.

THE COURT: Well, now, do you want to call your first witness now? You don't want to say anything Mr. Ryan at this stage I gather?

MR. RYAN: I have no opening statement, no My Lord.

THE COURT: You are free to make any comments you want to.

MR. RYAN: No.

MR. WALSH: With the court's permission then, My Lord, I would call Staff Sergeant Johnston.

THE COURT: One other thing I suppose we should have settled and that is this is one witness you indicate you may be standing aside and bringing back later. Mr. Ryan you will have to make up your mind I suppose when the application is made to stand the witness aside whether you want to cross-examine on this aspect of it at this stage or do you want to wait until he is totally finished, but you understand, I gather, from the statements what he's going to be stood aside for or what he's going to be recalled for.

MR. RYAN: Basically I do, My Lord, yes.

THE COURT: Basically. So you are in somewhat of a position  
to decide when you want to cross-examine him.

MR. RYAN: Yes, My Lord.

STAFF-SERGEANT MASON JOHNSTON, called as a witness on  
the voir dire, having been duly sworn, testified as  
follows:

DIRECT EXAMINATION BY MR. WALSH:

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

A. My name is Mason Johnston. I'm a member of the Royal  
Canadian Mounted Police presently stationed in  
Moncton, Westmorland County, New Brunswick.

Q. How long have you been a member of the Royal Canadian  
Mounted Police?

A. For 25½ years.

Q. And what is your present rank?

A. I am a Staff-Sergeant.

Q. Would you tell the court, please, whether with respect  
to this case - this voir dire involving Allan Joseph  
Legere, do you know Allan Joseph Legere?

A. Yes, I do.

Q. How long have you known him?

A. Approximately over 20 years.

Q. Is he present in court today?

A. Yes, he is.

Q. Where is he?

A. He's in the prisoner docket between two uniformed  
R.C.M.P. members wearing a white striped shirt.

Q. Would you tell the court, please, in relation to this  
voir dire involving certain bodily substances of  
Allan Joseph Legere and certain statements of Allan

Joseph Legere what your involvement would be?

A. Yes. The 24th day of June, 1986 I was in charge of Moncton General Investigation Section. I was in Newcastle, New Brunswick investigating the murder of John Glendenning. As a result of my investigation into this death and information I obtained on the 23rd and 24th days of June, 1986 from two known reliable sources and one of unknown reliability, I had reasonable and probable grounds to believe that Allan Legere was involved in the murder of John Glendenning. As a result of this I requested that Newcastle Town Police keep a lookout for Mr. Legere. I received a call from the Newcastle Town Police and at approximately -- This was quite a while ago, My Lord, if I could use my notes that I made at the time.

MR. WALSH: To refresh his memory My Lord.

THE COURT: Yes, as far as I'm concerned. Any questions you want to ask about the notes Mr. Ryan?

MR. RYAN: Let's see if he has them first, My Lord, he's pulling them out. Is there a date on those notes. Sergeant?

A. Yes, there is.

MR. RYAN: And what is the date, sir?

A. This notebook started in May of '86 and finished in October of '86.

MR. RYAN: And is it entirely in your handwriting, sir?

A. Yes, it is.

MR. RYAN: And anyone else make notations in that book for you?

A. No.

MR. RYAN: Did you ask anyone else to review that notebook  
and transcribe what's in there, sir?

A. No one has ever.

MR. RYAN: Nothing further, thank you.

THE COURT: Okay.

MR. WALSH: As a result of the call from Newcastle Town  
Police, Sergeant Johnston, what if anything did you  
do?

A. I met Allan Legere on the King George Highway at  
approximately 15:40 hours.

Q. That is in the Town of Newcastle?

A. Town of Newcastle on the 24th day of June. Mr. Legere  
got out of his blue Datsun, a 240 Z, blue in color,  
and he said "Mason Johnston" and I said yes. I told  
him he was under arrest for the murder of John  
Glendenning and I read him the police caution and  
police warning.

Q. And did you read that off of anything?

A. Yes, I read it off of a card.

Q. And do you have that card with you today?

A. I have a card with me today.

Q. Would you be able to remember the basis of the charter  
warning and the caution that you gave?

A. Yes. It's just the standard warnings that we give and  
at that particular time I told Mr. Legere on the 24th  
day of June at approximately 15:40 that "I am arresting  
you for the murder of John Glendenning" and I told him  
"Before you say anything it is my duty to inform you  
that you have the right to retain and instruct counsel  
without delay." I asked him did he understand this  
and he said yes. Then I read him the standard police

caution which is: "You need not say anything. You have nothing to hope from any promise or favour and nothing to fear from any threat whether or not you say anything. Anything you do say may be used as evidence."

Q. And what, if anything - what if any acknowledgement did you get to that?

A. "Okay", and Constable Bergevin who was with me at the time placed the handcuffs on Mr. Legere and placed him in the police car. We took him back to the cells in Newcastle and allowed him to call a lawyer.

Q. And do you have any knowledge as to whether or not he was able to retain counsel?

A. Yes. He was able to retain counsel because he was allowed to use the phone and lawyer John Trevors from Chatham arrived at 16:20.

Q. Arrived where?

A. At the Newcastle R.C.M.P. police cells. Legere was removed from the cell and placed with his lawyer who had a private conversation with Mr. Legere. After Mr. Trevors and Mr. Legere finished their conversation Mr. Legere was placed back in the police cell. At that particular time, acting on confidential information, we were required to obtain search warrants. We spent considerable time obtaining two search warrants to search two homes in the Town of Newcastle. The searches were made which went into the evening of the 24th of June, 1986 and after the searches were finished I arrived back at the cells at Newcastle when I was finished with these other important matters that I had to do.

Q. What time did you arrive back at the Detachment approximately?

A. At approximately 10:30 at night.

Q. And what of the results of your search warrant?

A. We found some stolen articles from the John Glendenning residence.

Q. And how did this finding fit with the information that you had received preceding Mr. Legere's arrest?

A. This confirmed that this information was reliable that I had been acting on and believed reliable in the first place when we obtained the search warrants.

Q. And what, if anything, did you do when you got back to the police station?

A. At approximately 11:50 on the 24th day of June I talked to Allan Legere because I had been cleared up of all these other matters that I was required to do and I told him that I would like to take some hair samples from him. Legere said I would like to call my lawyer. I said "No problem.". He was allowed to call his lawyer, however the line was continuously busy.

Q. Do you know who he was attempting to call?

A. Yes. He was attempting to call John Trevors. The line was busy. We waited. Had general conversation which I really don't remember. Legere tried on several occasions and the line was continuously busy. Mr. Legere said "I think he must have took his phone off his hook.". He said "Can I call his brother, Darrell, to go over to John's place to get him to call me?". I said "Yes, you can call whoever you please."

He called Darrell Trevors. I don't know what was said but Mr. Legere told me that Darrell didn't want to go over to John's place. At this time I asked him again did he want to give hair samples and he said "No, I don't want to incriminate myself.". He said "I would still like to get ahold of my lawyer.". He then asked if he could call his girlfriend and I said "Yes, you can call I told you whoever you want.". So he called his girlfriend to go over to John Trevors' place to call - that would be to call Mr. Legere.

John Trevors called. Mr. Legere spoke to Mr. Trevors in privacy. After his conversation with Mr. Trevors Mr. Legere told me that he did not want to give hair samples and his lawyer told him not to give the samples.

Q. Sergeant Johnston why did you want hair samples from Mr. Legere at that time?

A. I became a policeman in 1965 and from basic training and up until that point hair samples were a standard method of investigation. I visited the scene of the Glendenning murder. There was hair samples found at the scene of the murder. I had knowledge of hair samples being found at the autopsy of John Glendenning. All through my service, whether it was a murder or a break and enter or a sexual assault investigation, as a general method of investigation we always requested hair samples from the accused. This is the first instance in my service up until that date which would be in my 21 years service at that particular time, that I was told that the person didn't want to give them.

Q. And what happened when you were told that?

A. At that particular time I thought that I should seek legal advice from crown counsel because that was the first time I had run across that. As I said, I have been doing this as a standard police practice for all these years. So a call was placed to crown counsel in Fredericton, Graham Sleeth, and the matter was discussed with Mr. Sleeth.

Q. What time would this have been, approximately, Sergeant Johnston?

A. This would be approximately 1:05 on the 25th day of June.

Q. 1:05 in --

A. In the morning. A.M.

Q. Okay. And what happened next?

A. Mr. Sleeth was home. He stated that --

MR. RYAN: Well are we going to get into Mr. Sleeth's hearsay evidence? I mean I understand what the Staff Sergeant is trying to relate - he's trying to relate a story, but without conversation, please.

MR. WALSH: My Lord if I may. We will have a long day - probably a long week because part of what I have explained to the court and set out in my brief is that part of what is required to relate to the court, according to the Supreme Court of Canada, is the police officers' reasonable and probable grounds in relation to any actions they have; to the police officers' good faith in relation to, for example, any legal advice they may have sought or any law that they may have been relying on; these factors necessary --

THE COURT: Well why don't you do this through the witness?  
Rather than have him say what Mr. Sleeth told him say  
after a conversation with Mr. Sleeth what were his  
beliefs as to his position. Doesn't that do  
practically the same thing without getting into the  
conversation?

MR. WALSH: Fine My Lord.

THE COURT: If you have to call Mr. Sleeth as a witness  
that's going to put him out of the trial as a counsel  
isn't it?

MR. WALSH: No, My Lord, but the problem we have, My Lord,  
is that throughout this particular voir dire part of  
what reasonable and probable grounds - to establish  
reasonable and probable grounds or good faith  
reliance on some established advice or practice my  
understanding is that the courts will allow hearsay -  
what otherwise would be hearsay because we're not  
asking that the evidence that is elicited be taken  
for the truth of it but simply for the purposes of  
showing that it was made and relied on by the officers  
to give conclusions because some of the things that  
were said would be important.

THE COURT: I think though surely for the witness to say  
that as a result of his conversation with Mr. Sleeth  
he got the impression that his rights were to do so  
and so, and so and so, and so on.

MR. WALSH: Fine My Lord. Thank you. Sergeant Johnston  
would you tell us --

A. At this particular time, approximately 1:05 A.M. on  
the 25th of June, 1986, as a result of my conversation  
with Mr. Sleeth I felt that I had the legal authority

to take hair samples from Allan Legere, however, as a result of my conversation I had to wait for a phone call from Mr. Sleeth.

Q. What was the purpose of the second phone call to be?

A. I was waiting for confirmation of a case that Mr. Sleeth told me he was well aware of, however, that he wanted to check. A call was received back from Mr. Sleeth at approximately 1:30 A.M.

Q. Who would have been present when the call was received and under what circumstances was the call taken?

A. There was myself, Constable, now Corporal, Kevin Mole of the R.C.M.P., Sergeant Mike Segan - then Constable Mike Segan. Mr. Sleeth was put on speaker phone.

Q. And that would allow you to do what?

A. That would allow everyone in the room to listen to what Mr. Sleeth had to say. And as a result of the conversation with Mr. Sleeth I learned of a certain case called the Alderton case.

Q. Do you know what court and what country that case came from?

A. As a result of my conversation with Mr. Sleeth I learned that it was an Ontario Court of Appeal case and as a result of this conversation with Mr. Sleeth I knew that I could take the hair samples, that I could use reasonable force, no violence or assault, and at that particular time at approximately - after finishing the conversation with Mr. Sleeth that reinforced my belief in all my service that I had a legal right to take these hair samples as an investigative aid. And, as I said, I would not have even called Mr. Sleeth if Mr. Legere -- because Mr. Legere refused and his

lawyer told him not to. So, as I said, as a result of my conversation with Mr. Sleeth I reinforced my own views that I had a legal right to take these hair samples.

Q. And as a result of that what, if anything, did you do or what, if any, instructions did you give?

A. I at that time directed Sergeant Gilles Turgeon, then Constable Gilles Turgeon, to take the hair samples from Allen Legere. Myself, Constable Turgeon, Constable Vautour and Corporal Gary MacNeil, now Sergeant Gary MacNeil, went into the cell area.

Q. What time would this be approximately?

A. Approximately 1:44 A.M. Mr. Legere still stated that he did not want to give the samples. We said that we were going to take them. Mr. Legere did not resist. There was no effort on our part to restrain or to fight with Mr. Legere. He stood there and Constable Turgeon proceeded to remove hair samples from Mr. Legere pulling hair from his beard. At that time Mr. Legere stated that he would prefer to do it himself and he pulled the hair from then on himself. Constable Turgeon combed hair from Mr. Legere's hair and beard and also cut hair.

Q. What parts of the body did he remove or take hair from - Constable Turgeon?

A. The head and the beard.

Q. And what happened then?

A. As far as hair samples go Constable, now Sergeant Turgeon, looked after putting them into bags and when we were finished with Mr. Legere he was taken back to the cell area and locked up.

Q. Now, did you have any connection with respect to the continuity of any of those items that were taken?

A. No, I did not.

Q. This Alderton case, how much of this Alderton case were you told about at that particular time other than given the name?

A. I was read portions of it on the telephone and, as I said, I reinforced my own views as a result of what was read to me on the telephone and what was told to me verbally on the telephone by Mr. Sleeth.

Q. Did you ever have occasion to see this case after that fact?

A. Yes, I have. Out of curiosity I read it before Mr. Legere's preliminary inquiry, before the trial, and as a matter of fact I read it yesterday.

Q. And you say before the preliminary inquiry, before the trial, that was the Glendenning matter?

A. Yes, in the Glendenning matter.

MR. WALSH: My Lord with your permission I would like to have this item marked for identification.

THE COURT: Let me see, what sort of policy should we adopt on these -- Let's call the items marked for identification on the voir dire as VD-1. There may be other items we will call A, B, C and D and so on. I want to -- There are perhaps certain letters of a procedural nature and that sort of thing that I might want to use letters on. So we'll call this VD-1. Voir Dire 1. VD-1. What is this? It's a paper writing of some kind.

MR. WALSH: It's a copy of a case purporting to be The Queen V. Alderton.

(Clerk marks copy of Alderton case VD-1.)

DIRECT EXAMINATION CONTINUED:

MR. WALSH: Staff Sergeant Johnston I am going to show you this particular item that has been marked voir dire 1 - VD-1. Would you look at it for me, please, and tell me whether or not you can identify it.

A. Yes. This is the Ontario Supreme -- Court of Appeal case, the Alderton case, that I previously testified to and that I have read on three different occasions. And from my memory it's the case that Mr. Sleeth quoted to me on the 25th day of June, 1986.

THE COURT: Mr. Walsh does this purport to be the original case in the actual sheets that the witness read or is this just a copy of the Alderton decision?

MR. WALSH: It's a copy of the Alderton decision. I have given notice to Mr. Ryan some time ago - formal notice of my intention to introduce it. It's a copy of the decision and the officer testified that he read it yesterday.

THE COURT: Okay.

DIRECT EXAMINATION CONTINUED:

Q. In relation to the matters of 1986 and the matters that we are dealing with on this voir dire, Sergeant Johnston, are there any other matters that you wish to relate to the court? You have had further involvement since 1986 in relation to this particular matter here?

A. On the 1st day of July.

Q. I see.

A. I went to Dorchester Penitentiary, however, is that --

Q. Okay. Perhaps if you could just indicate whether or not you had occasion in 1986 to be involved in the taking of any other bodily substances from Mr. Legere.

A. Yes. In 1986 on the 1st day of July a search warrant was obtained to take hair samples from Allan Legere and on the 1st day of July, 1986 myself, along with Constable Turgeon, went to Dorchester Penitentiary and executed a warrant on Mr. Legere and Constable Turgeon obtained hair and -- head and beard hair samples from Mr. Legere.

Q. Were you aware, Sergeant Johnston, whether or not there were any other bodily substances taken from Mr. Legere between the time of the hair samples of the head and beard on the date you indicated you were involved in and July 1st? Were there any other -- Were you aware of any other samples being taken?

A. I was aware that there was a pubic hair sample taken but I was not involved in it in any way.

Q. Who was involved in that?

A. Constable Raymond Brennan, now Corporal Ray Brennan.

Q. Was he a member of your investigating team?

A. Yes, he was also a member of the Moncton General Investigation Section at that time.

MR. WALSH: At this time, My Lord, with the Court's permission I am going to ask that Staff Sergeant Johnston be stood aside to be recalled later.

THE COURT: Well you have finished with Staff Sergeant Johnston insofar as these matters are concerned?

MR. WALSH: That's correct, as far as the matters of 1986, yes. I am going to recall him later in this voir dire.

THE COURT: For 1989 matters?

MR. WALSH: That's correct.

THE COURT: Well now Mr. Ryan do you want to cross-examine  
at this point or do you want to --

MR. RYAN: My Lord I think prior to making a decision on  
that, although I have given it some thought I haven't  
really solidified that with co-counsel this morning,  
I would ask for a brief recess to give me opportunity  
to talk to counsel and also to my client here for a  
minute or two, and just to get myself orientated as  
to whether I'm going to wait until the last time  
Staff Sergeant Mason Johnston is called to direct all  
my questions then. That's what I'm thinking.

THE COURT: Well, it's 8 minutes to 11. Perhaps it's a  
convenient time to have a recess anyway for 10 minutes  
for a mid morning break and then we'll go on until  
about half past 12 and start again at 2 o'clock if  
that's agreeable with counsel.

So you are stood aside. You shouldn't discuss  
the case with anyone, of course, Staff Sergeant, until  
all your evidence is completed.

A. Yes, My Lord.

THE COURT: When do you envisage this witness being called  
back to complete his testimony?

MR. WALSH: You will note on your trial list there My Lord  
that Sergeant Johnston is slated to be recalled as  
number 21 on the trial list.

THE COURT: It puts him under the injunction that he can't  
discuss the matter for some days.

MR. WALSH: Yes. Again, My Lord, we have weighed the question  
of whether we would elicit all the evidence at once on  
in the fashion we have. We felt that for the sake of

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voir dire.

clarity and an intelligent presentation of the  
evidence this was necessary. I hope to be borne out  
by that at the end of the --

THE COURT: All right, that's fair enough. Could we have  
Mr. Legere taken away and then I'll withdraw.

(RECESS - 11:00 - 11:10 A.M.)

(Accused present in prisoner's dock.)

THE COURT: Now, Mr. Ryan, did you want to speak?

MR. RYAN: Yes, My Lord. During the recess I came to the  
decision that with respect to Sergeant Johnston he  
is going to be available to cross-examine at a later  
date and I will do so with respect to this first part  
of the voir dire testimony at that time.

THE COURT: Okay. Well, you did apply, Mr. Walsh, to have  
Staff Sergeant Johnston stood aside?

MR. WALSH: Yes, I have made that application My Lord.

THE COURT: All right, so you are stood down for the  
present Staff Sergeant.

Now you have another witness?

MR. WALSH: My Lord with your permission Sergeant Gilles  
Turgeon.

SERGEANT GILLES TURGEON, called as a witness on the  
voir dire, having been duly sworn, testified as  
follows:

DIRECT EXAMINATION BY MR. WALSH:

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

A. My name is Gilles Turgeon. I am presently employed  
with the R.C.M.P.

Q. What is your rank?

A. Sergeant.

Q. And how long have you been employed with the R.C.M.P.?

A. Better part of 18 years. Almost 18 years.

- Q. Where are you presently stationed?
- A. Regina, Saskatchewan.
- Q. What are your duties in Regina, Saskatchewan?
- A. Firearms Instructor.
- Q. And would you tell the court, please, in relation to the voir dire and related to the admissibility of certain bodily substances of Allan Legere and certain statements of Allan Legere what if any involvement you would have had?
- A. The 24th of June, 1986 I was stationed in Newcastle, New Brunswick and I was involved in the taking of facial hairs and scalp hairs from Allan Legere.
- Q. Would you tell the Judge, please, how that came about? What the circumstances were related to that.
- A. At approximately 23:50 hours - 11:50 P.M. on the 24th myself, Sergeant Mason Johnston at the time, Corporal Hudon from Bathurst Ident and Constable Joe Vautour, we were with Allan Legere in the cell block area of the Newcastle Detachment and a request was made to have his hairs, and as a result of a discussion between him and Sergeant Johnston at the time Allan Legere was taken to a phone and we came back sometime later.
- Q. What was Mr. Legere's position before being taken to the phone?
- A. His discussion with Sergeant Johnston was quite simply that he refused to cooperate.
- Q. And what did you do then?
- A. He went to a phone. He had conversation with somebody who I don't have any personal knowledge of. We came back on the 25th of June at approximately 1:44

whereupon I started taking some hair samples from his beard, mustache and scalp.

Q. And under whose instructions did you take these samples?

A. Sergeant Johnston.

Q. And who was the Chief Investigator on that particular case?

A. He was.

Q. And were you involved with respect to any discussions leading up to the actual taking of these samples?

A. I wasn't involved in the request. Sergeant Johnston took care of that. I was present when the discussion took place and then the only discussion I had with Allan Legere was as to how I was going to take these samples.

Q. Would you describe for the Judge, please, how you actually went about taking samples from him?

A. The hair samples were -- The beard, the mustache and the scalp were all separated but in each case they were combed, plucked and cut.

Q. And would you describe to the Judge, please, exactly what if anything you did with the items you actually received?

A. I put them in a plastic bag, tagged it and I personally brought these samples to Sackville.

Q. Now when you say put it in a plastic bag would you put all the hairs in the bag that you received or --

A. From each area. All the hairs taken from the scalp were put in one plastic bag; all the hairs taken from the mustache were put in a plastic bag; and all the hairs taken from the beard were put in a plastic bag. Different bags.

Q. With respect to the scalp area how did you obtain hairs from the scalp area? Would you tell the judge, please?

A. Again, I combed, plucked and then I cut.

Q. And did the combed, plucked and cut hairs from the scalp area all go into the same bag?

A. Yes.

Q. What if any markings did you put on the bag with respect to the scalp hairs?

A. I used an item seal tag and I put my initials, date and time that I seized these hairs.

THE COURT: The question here, when you say plucked what do you mean? You pulled out?

A. Pulled.

THE COURT: Pulled. Well you didn't cut the same hair you plucked?

A. No.

THE COURT: You cut some and you plucked some?

A. Yes.

MR. WALSH: At this time, My Lord, I would like to have this item marked for identification.

THE COURT: That would be VD-2. Flat plastic bag with hair samples, is it?

MR. WALSH: The bag is empty.

THE COURT: Empty plastic bag.

(Clerk marks empty plastic bag VD-2.)

MR. WALSH: There is not very much room on the bag, My Lord, and I would be a little afraid that some of the markings might be covered over by the fixture of the thing.

THE COURT: What are we doing? Putting something else on?

DIRECT EXAMINATION CONTINUED:

- Q. Sergeant Turgeon the individual you have identified as Allan Legere that you removed the hair from is he present in court?
- A. Yes, he is.
- Q. Where is he?
- A. He's to my left in the prisoner docket box or the prisoner box sitting between the two uniformed members.
- Q. I am going to show you this item that has been marked voir dire VD-2. Would you look at that, please, and tell me if you recognize that particular item?
- A. Yes. It has my initials, date and time that I seized or that I placed these tags on the bag in question and it has also my initials, date and time that I received it from Sackville.
- Q. And how did you identify that particular bag? What if any markings did you use to identify it?
- A. My signature and initials in my own handwriting as well as the numbers that I put on the -- the file numbers and what have you of my own handwriting.
- Q. And what if any hairs again went into this particular item?
- A. Scalp hairs.
- Q. And what if anything did you do with this particular item marked VD-2 after you put the hairs in that bag? What did you do with the bag?
- A. I kept it in my possession. We had a vault at the Detachment at the time of which I was the only one that had a key to it and all the items I was seizing for the John Glendenning case I would put in that vault. This exhibit here went into that vault until

approximately 10:30 the next morning when I made a patrol to Sackville and handed that exhibit, along with others of course, to Duff Evers of the hair and fiber section in Sackville at the lab.

Q. And after you handed this particular item to Mr. Evers when again did you see this particular item?

A. That plastic bag came back to me on the 7th of August, 1986.

Q. And when it came back to you on the 7th of August, 1986 how was it returned to you?

A. By registered mail.

Q. And is that the standard practice?

A. Yes.

Q. And what if any difference would there have been with respect to the contents of the bag from the time that you gave it to Mr. Evers until the time you received them bag?

A. There was none.

Q. You indicated that you had placed hairs in the bag. Were there any hairs in the bag when you received them back?

A. No. No. Like I just mentioned, there were no hairs in the bag when I received it from Sackville on the 7th of August.

Q. Were there any hairs in the bag when you turned them over to Mr. Evers?

A. Oh definitely, yes.

Q. And what if anything did you do with this particular item after you received it back on the 7th of August did you say?

A. Yes.

- Q. And that would have been what year?
- A. '86.
- Q. And what if anything did you do with this particular item after that?
- A. I kept it in my possession until we introduced it in court at the John Glendenning trial.
- Q. I see. And would you describe how that was introduced to the court at the trial? Do you remember what if any number it would have been given at the particular trial?
- A. Well it was given the number GT56 and the reason for that - we have procedure in the R.C.M.P. where we give - we assign each item we seize for purpose of investigation - we give an exhibit number - what we refer to as an exhibit number and that's through our own administration, however, to simplify things because we had so many exhibits with the lab to introduce them in court we gave them numbers GT - and this one here happened to be GT56 which is Gilles Turgeon 56.
- Q. And was this a number assigned by you or assigned by the court?
- A. No, it was assigned by myself.
- Q. And when it was actually presented in court who presented it in court?
- A. I did.
- Q. And can you tell the court whether or not it was admitted into evidence?
- A. Yes. Yes, it was.
- Q. And what number did the court give to it?
- A. C-11.

- Q. And do you see that particular designation on that particular item?
- A. I see 56 on it. Identification number 11 by somebody else's handwriting right here.
- Q. And I show you markings on the lower right-hand corner of this particular bag. Do you recognize that?
- A. Yes, that's exhibit C-11, I'm sorry. I didn't catch that one.
- Q. When did you next after you introduced it into court did you have occasion to turn it over -- Did you have occasion to do anything with it after it was introduced into court?
- A. Well at that time, because there was so many exhibits and we had a safe that weighed quite a bit and et cetera, the judge - the presiding judge at that trial assigned me as the exhibit man even for the court so I kept continuity of all the exhibits that were introduced into court for the trial period which lasted approximately 3 weeks. On the 21st of January, 1987 that exhibit, along with all the others involved in the trial, were turned over to George Martin who was the Clerk of the Court.
- Q. And did you have occasion to see this particular item after you turned it over to Mr. Martin?
- A. Yes.
- Q. When?
- A. This morning.
- Q. And in whose possession was this particular item when you received it this morning?
- A. I don't know the name of the individual but I can point him out in court.

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voir dire.

Q. Would you just point him out for me, please?

A. Okay. He's the individual the first -- second row,  
glasses. He just stood up.

Q. You are referring to Mr. DiGiacinto?

A. Yes.

Q. Now, apart from the hairs you took on the night in  
question, the scalp and beard hairs that you took,  
did you have occasion to receive any other items in  
relation to bodily substances of Mr. Legere with re-  
spect to the Glendenning murder case?

A. Yes.

Q. Would you explain to the Judge what?

A. On the 27th of June, 1986 I received from Ray Brennan  
- Constable Ray Brennan at the time, again, a plastic  
bag containing samples of hair. I marked them. I  
put my initials, date and time that I received it from  
him and those items, again, were locked up in this  
vault - this vault we had for the Glendenning murder  
case, and on the 1st of July, 1986 I made a patrol  
again to Sackville and handed those - that particular  
bag with the hair samples to Mr. Evers again.

Q. What number would you have assigned to that particular  
bag that you received from Constable Brennan?

A. GT69.

Q. And did you ever have occasion to see that particular  
bag again?

A. Yes. I received it on the same date as GT56 on the  
7th of August. I received it from Sackville through  
the registered mail system and I kept it in my  
possession until we disposed of it.

- Q. When you handed that particular item you marked 69, the plastic bag, over to Mr. Evers was there anything inside the bag?
- A. Yes, there were hair samples.
- Q. And when you received it back through the mail was there anything in the bag?
- A. No, there was nothing left.
- Q. And was that particular item introduced at the John Glendenning murder trial?
- A. No, it wasn't.
- Q. And what if anything did you do - or where is that particular bag at this present time?
- A. It was destroyed on the 21st of June, 1987 before I was transferred to Regina.
- Q.. And for what purpose would it have been destroyed?
- A. Because it was not used in the case and time had expired to the point where it was of no use to us so we were disposing of exhibits.
- Q. And did you --
- A. Or, I'm sorry, items that were seized for investigational purposes.
- Q. And is this a normal practice?
- A. Yes.
- Q. And was there anybody present when you actually did this?
- A. Yes, Constable Kevin Mole, today Corporal Kevin Mole, was with me.
- Q. And at the time you destroyed the bag was there anything inside the bag?
- A. No, there wasn't.

Q. Sergeant Turgeon I am going to show you another document. With the court's permission I'll have it marked for identification.

THE COURT: This is VD-3. A copy of a law decision is it?

MR. WALSH: Yes My Lord. Purports to be a case.

(Clerk marks copy of law case VD-3.)

MR. WALSH: Sergeant Turgeon I'm going to show you an item that's marked voir dire VD-3. Would you look at it for me, please, and first of all tell me whether or not you have ever seen that item before and whether you have ever read that item.

A. Yes, I recognize it.

Q. And when did you first see that particular item?

A. On Saturday. This past Saturday, the 20th I believe.

Q. And did you have occasion to read it?

A. Yes, I did.

Q. Can you tell the court whether or not any of the writings in that particular document appear familiar to you?

A. Yes. The names appear familiar. Names like Mason Johnston, Allan Legere, John Glendenning, myself. I'm mentioned in there.

Q. And any circumstances familiar to you?

A. The circumstances appear to be those that were relevant to the John Glendenning trial and this appears to be the appeal of the John Glendenning trial.

Q. There was testimony from Sergeant Johnston with respect to July 1st - taking some hairs on July 1st. Would you explain whether you had any involvement in that and what if any connection those would have to the other items you have identified.

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voir dire.

A. On the 1st of July Sergeant Mason Johnston and myself we took off from Newcastle. As I mentioned before I had GT69 with me and on the way down we made a stop into the Dorchester Penitentiary where we seized some more facial and scalp hairs from Allan Legere in the same way as we had seized on the 24th - or sorry, on the 25th.

Q. Did you have any document to support your action?

A. Yes, there was. There was a search warrant.

Q. Were any of those particular hairs introduced on the John Glendenning trial?

A. There was an introduction made I believe and how it went is that the Judge ruled that in view of the fact or the way that it was obtained by search warrant it was inadmissible or -- I don't know the exact wording.

Q. Did you offer it into evidence at that --

A. No, those were not introduced.

Q. The July 1st. How many John Glendenning murder trials have you actually testified in?

A. One.

MR. WALSH: I have no further questions My Lord.

THE COURT: Mr. Ryan.

MR. RYAN: Yes, My Lord, I'm going to have a look at the exhibits, please.

CROSS-EXAMINATION BY MR. RYAN:

Q. Corporal Turgeon what was your rank in June, 1986?

A. Constable.

Q. Were you stationed in Newcastle or Moncton?

A. No, I was stationed in Newcastle. I was on General Detachment.

Q. In June of 1986?

A. That's correct.

Q. And were you present when Allan Legere had been arrested?

A. No, I wasn't.

Q. So where did you first see Legere in June of 1986?

A. The 24th of June, 1986 I saw him later on that night when we were going to obtain these hair samples.

Q. And did you see him in the early morning hours of June 25th?

A. No, I didn't. Oh, sorry, early morning hours, yes I did. 1:44 I started taking hair samples.

Q. And who was present with you at that time?

A. When we took the hair samples?

Q. Yes.

A. There was Mason Johnston - Sergeant Mason Johnston was present in the cell block. There was also Constable Joe Vautour and Corporal Gary MacNeil.

Q. Allan Legere present?

A. Yes. There was 5 of us all told.

Q. Was there anybody else in the cell?

A. In the cell? Not that I believe.

Q. And you say that the only discussions you had with Mr. Legere was how you were going to take the sample, is that correct?

A. That's the only discussion I had directly with him. There was discussion between him and Mason Johnston.

Q. And other people, yes, I understood that. So did you have scissors with you at that time?

A. Yes.

- Q. And were you holding them in your hand?
- A. Yes.
- Q. And how did you ask Mr. Legere about these samples that you were going to take?
- A. I told him that I needed to comb, pluck, which is taking the roots with the hairs, and then cut. And I needed approximately 100 samples - or 100 hairs for the sample.
- Q. And did you have a comb in one hand?
- A. Yes, we had three combs for that particular incident.
- Q. So did you try to pull any hairs out yourself?
- A. Yes, I did.
- Q. Did you use tweezers?
- A. No, I used my hands.
- Q. Used your hands.
- A. Yes.
- Q. And what area did you pull hairs from?
- A. His beard.
- Q. Yes.
- A. And then -- I pulled some and then he said - he says something to the effect that it was hurting him so he offered to do it himself, and then he pulled the rest of the hairs out himself.
- Q. Had you been pulling them one at a time or more than one?
- A. No. Maybe 3 - 4 - 5.
- Q. Grabbing and pulling?
- A. Yes.
- Q. That's from the beard?
- A. From the beard, mustache and scalp, yes.

Q. So you pulled some from here - from the beard first?

A. Yes.

Q. And then the mustache?

A. Well I don't know the order to be exact.

Q. But you pulled from all three areas first?

A. Yes.

Q. And then Mr. Legere offered to assist because it was  
paining him? Is that what --

A. That's correct.

Q. And you put all the samples in one bag from that  
incident?

A. From the beard the three types -- Sorry. I obtained  
the sample from the beard let's say three different  
ways. Okay? Combing, cutting and plucking. All  
those went into one bag.

Q. One bag.

A. One bag. The mustache the same thing and the scalp  
hairs the same thing.

Q. So this item then that is marked here today as VD-2,  
this little plastic bag, that is hair from what area?

A. From the scalp.

Q. The scalp.

A. From the head area.

Q. And what type of bag is that, sir?

A. It's a plastic bag.

Q. Is that standard issue or a grocery store bag or --

A. I couldn't tell you where we purchased them but it is  
common to have these bags in our detachments and use  
them for exhibit-collecting and what have you.

Q. And how long have you been using that type of bag as  
an exhibit-collector?

A. Years.

Q. Years?

A. Yes.

Q. Do you know the brand name?

A. No, I don't.

Q. And there are markings on this particular bag and there's tape on different areas. Some of them have markings and labels on them. How was that bag sealed?

A. I sealed it with what we call an exhibit tag. It's an R.C.M.P. exhibit tag. I sealed it and put my initials on the tag itself with the date and time that I took the hairs and then I put a second tag and wrote in proper so that everybody could understand it the file number, exhibit number, et cetera. Or item number if you want. See the first one that went on to seal it was this one here, okay, and I quickly put my initials, date and time. Then after we had finished, shortly thereafter I put a tag with -- As you can see I wrote my full name instead of just initials and what have you.

Q. So where is the top of this bag?

A. It's right here folded underneath the --

Q. The top is folded underneath this seal?

A. Yes.

Q. And how does the Sackville Lab get this bag open, empty its contents and then seal it back up again?

A. I don't know.

Q. They did that, didn't they?

A. I would assume, yes.

Q. And then it appears you were the exhibit man for this particular investigation?

A. Yes, I was.

Q. And you received on June 26th, would that be correct, another bag from Constable Brennan?

A. 27th.

Q. 27th. Okay. And do you know the contents of that bag you received from Constable Brennan?

A. It appeared to have hair samples inside it. That's about all I can tell you. I did not place them inside the bag. All I had was the plastic bag which was clear, identical to that bag there, and there was hair samples inside.

Q. And that was number GT69?

A. Yes.

Q. Now, in the exhibit we have here - this is GT56, how many hairs would have been in that bag?

A. I didn't count them to tell you the exact numbers. It would have been approximately 100.

Q. Approximately 100?

A. Yes.

Q. And the other two bags that you took samples from the facial and the mustache?

A. About the same amount.

Q. Did you ever receive those other two bags back from the Sackville Lab?

A. Yes, I did.

Q. And where are they now, sir?

A. Where they are now I don't have no --

Q. Okay, they came back into your possession --

A. They could be either with the court still or back at the detachment or wherever. I don't know.

Q. They came back into your possession?

A. Yes, they did come back into my possession.

Q. Now you have indicated that you received bags through registered mail. Do you recall whether you received those bags through registered mail?

A. Yes. I received all of them back by registered mail all at the same time.

Q. All at the same time. What date was that, sir?

A. The 7th of August.

Q. Of 1986?

A. That's correct.

Q. Now, you have indicated that exhibit -- you indicated your marked number GT69 bag it came back empty as well?

A. That's right.

Q. And you destroyed that in 1987 in June?

A. June 21st, 1987. That's correct.

Q. How was that destroyed?

A. I cut it up with the scissors and I threw it in the garbage.

Q. And you did not destroy this bag? It wasn't in your possession at that time?

A. It wasn't in my possession. That the court kept.

Q. Okay. And the bags that -- I'll just go back to August 7th, 1986. You received a number of packages registered mail or was it just one package?

A. One package.

Q. From Sackville.

A. One package containing these exhibits.

Q. And that came from Sackville?

A. Yes.

Q. And were there any contents in any of the bags that you had sent to the Sackville Lab when you received them back?

A. The hair samples, no. There might have been other items - I'm not sure - that maybe the contents were in the bags. But the hair samples there was no more hairs in any of those bags.

Q. They were all gone?

A. Yes.

Q. Why would they send you empty bags back?

A. For continuity. When we testify in court for the sake of continuity.

Q. Now, you indicated that you travelled with Sergeant Johnston to Dorchester Penitentiary, is that correct?

A. On the 1st of July, yes.

Q. And your eventual destination was where?

A. Sackville.

Q. Now, at that time you had a search warrant, is that correct?

A. Yes.

Q. But you didn't have a search warrant when you obtained the samples from Allan Legere on June 24th, is that correct?

A. Well we had made the request on June 24th. We actually took the hair samples on June 25th early hours and, no, we did not have a warrant.

MR. RYAN: Thank you. No further questions.

THE COURT: Re-examination?

MR. WALSH: One question My Lord if I may be permitted.

REDIRECT EXAMINATION BY MR. WALSH:

Q. Sergeant Turgeon you were questioned by Mr. Ryan with respect to where you get these bags and you indicated something to the effect that they use them - you use them regularly.

- A. Oh yes, I had a briefcase full of them, especially in this particular case - I needed lots of them.
- Q. I just want to clarify whether or not you're saying that you reuse the same bag or you --
- A. Oh no, no, no, no, no. When you use a bag it's new, okay, or appears to be new. You put an item inside and then we don't use that bag again.
- Q. And when you used this particular bag was there any item inside it before you put the hair in it?
- A. No, there wasn't. I made sure of that.

MR. WALSH: I have nothing further My Lord.

THE COURT: Thank you very much, Sergeant, you are excused  
I guess at least as far as the voir dire is -- You are not standing this witness aside?

MR. WALSH: No, My Lord, he's going back to Regina.

My Lord with your permission Corporal Kevin Mole.

CORPORAL KEVIN MOLE, called as a witness on the voir dire, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

- Q. Would you give the court your name, please?
- A. My name is Kevin Michael Mole. I am a member of the Royal Canadian Mounted Police and I am presently stationed in Fredericton, in the County of York, Province of New Brunswick.
- Q. And your present rank?
- A. My present rank is corporal.
- Q. And how long have you been a member of the R.C.M.P.?
- A. 14 years.
- Q. Would you tell the court, please, your involvement in relation to the voir dire involving admissibility of certain bodily substances of Allan Legere and certain statements of Allan Legere? Would you give

the court, please, your initial involvement in this matter?

- A. Yes, My Lord, in June of 1986 I was stationed at Newcastle Detachment. That's in Newcastle, Northumberland County, Province of New Brunswick. At that time I was involved in the investigation of the murder of John Glendenning on June 21st, 1986 in the Black River area of Northumberland County.
- Q. And I take it you were an investigator on that file?
- A. Yes, I was one of the file coordinators - of the two file coordinators.
- Q. And who would have been some of the other investigators involved?
- A. The file investigational team comprised of myself, Constable Bergevin from the Moncton General Investigation Section, Constable Raymond Brennan, also from that section, Constable Jean-Maurice LeBlanc also from that section in Moncton, and the Chief Investigator at that time was Sergeant Mason Johnston in charge of the General Investigation Section.
- Q. And what are your duties as a file coordinator?
- A. Basically to keep the investigational notes and prepare the file, correlate the evidence. Prepare the file eventually for court.
- Q. And would you tell the court, please, your involvement in relation to one Allan Joseph Legere. Do you know Mr. Legere?
- A. I know Mr. Legere, yes. He's sitting in court this morning. He's to my far left. He's between the two R.C.M.P. officers seated with a white shirt, black hair, black mustache.

Q. Prior to 1986 did you know Mr. Legere?

A. I didn't personally know Mr. Legere prior to June of 1986.

Q. And would you tell the court, please, your involvement in relation to Mr. Legere in that particular case?

A. Within a few days after the murder of June 21st, June 24th I was aware of information that had been received by Sergeant Johnston to the effect that Allan Legere was involved in the murder of John Glendenning with two other subjects. I was aware that he had received information from confidential sources - from two separate sources and I was also aware of information that was being received from a source of unknown reliability at that time to the effect that Mr. Legere had been involved in the planning of a robbery at the Glendenning home; that subsequent to the robbery the two other subjects had fled the area; and that Mr. Legere had also, we thought at that time, had left the area on the 24th of June.

Q. And were you given any other details in relation to Mr. Legere's involvement?

A. Basically his involvement was with the boys and the two other coaccused and their planning of the robbery and their flight after the robbery and murder.

Q. Were you given details associated with that?

A. Yes, I was.

Q. And what if any decision was made in that particular investigation as to what to do with respect to Mr. Legere?

A. As a result of the accumulated information on the 24th of June it was decided that every attempt should be made to arrest Mr. Legere and the other two subjects.

Q. And what was the purpose of arresting Mr. Legere?  
Why did you want to arrest Mr. Legere?

A. It was decided that Mr. Legere should be arrested for  
the murder of John Glendenning.

Q. What was your belief with respect to the reasons for  
that arrest?

A. I believed that Allan Legere had committed the murder  
of John Glendenning.

Q. And what was your involvement in relation to this  
particular matter?

A. On that particular day a request was made with the  
local police forces to advise if they had located  
Mr. Legere. That he was to be arrested by our Force  
for the murder and we wanted to know his location.

Q. And what happened next?

A. That evening of the 24th I was aware that Allan  
Legere had been arrested in the Newcastle King George  
Highway area by Sergeant Johnston and returned to the  
office along with Constable Bergevin.

Q. And what happened next?

A. I was aware that Mr. Legere was placed in the cell and  
that from that time on we continued on with our  
investigation. We were in the process of doing  
several searches and following up information where  
the other two accused - the other two persons were at  
that time. Mr. Legere remained in the cell that  
evening.

Q. And what was your next involvement?

A. The investigative team -- As a member of the  
investigative team I was aware that there were hair  
samples at the scene of the Glendenning, in particular  
there were some that were found on the body of Mr.

Glendenning at the autopsy. As a result of that a decision was made to attempt to seize hair from Mr. Legere.

Q. For what purpose?

A. For identification purposes.

Q. And what if any efforts were made in that regard?

A. I was aware that a request had been made to Mr. Legere to provide samples of his hair. I was also aware that Mr. Legere had refused and that as a result I was party to a conversation where a request had been made to a crown prosecutor in the Fredericton area to provide advice as to what our next avenue would be.

Q. And what if any involvement did you have in that particular process? Corporal Mole I'm going to just ask you just to speak up a little louder.

A. Sure. As a result of the conversation with the crown it was decided that hair samples could be taken. That case law had been referred to us - a recent case in the Ontario Court of Appeal, that the taking of hair samples upon incident of arrest would be -- we would have the grounds to do it.

Q. And were you referred to any particular name of any case at that time?

A. Yes. The prosecutor at the time referred us to the Queen Versus Alderton.

Q. How did this advice - in what form was this advice received? Were you on a phone by yourself?

A. At the time what we had done is we had asked the prosecutor to return our call and when he did we advised him that he was being placed on a speaker phone - it's a vantage telephone, so that the team of investigators could hear the conversation and the

replies to our questions.

Q. And apart from the name what if any other information was given to you with respect to the case itself?

A. That we would treat the seizure of the hair as an incident to arrest. That we would be allowed to take hair using as much force as was necessary, however, not to use violence.

Q. This particular case in the speaker phone conversation - was any parts of this case referred to you?

A. Yes. As a matter of fact several passages in the case itself were read to us over the speaker phone.

Q. Did you ever have occasion to see that particular case or have any connection with that case after that particular time?

A. After that particular time I was provided a copy of the Alderton case for our TIP file in Newcastle - the Glendenning case, by the Newcastle crown prosecutor. At that time I was able to read it at that particular time in June and I referred to it several times during the case. And recently, yesterday, I refreshed my memory by reviewing the case again.

Q. I am going to show you this item that's been previously marked voir dire VD-1 for identification. Would you look at that item for me, please, and tell me whether or not you recognize that item?

A. Yes. It appears to be the Court -- Ontario Supreme Court decision that I read in 1986 and again this past week.

Q. How does the case that you read in this particular document compare to what you had been told back that night in 1986 over the speaker phone?

- A. I was satisfied that we had the grounds based on our advice and that case to seize hair at that particular time.
- Q. And how does this particular item that I have just shown to you compare with what you were told of the Alderton case back in 1986?
- A. It would appear to be the same.
- Q. As a result of that particular advice what, if anything, happened next?
- A. I was aware that Sergeant Johnston, Constable Turgeon, Constable Vautour and Corporal MacNeil had gone to the cell area and seized facial and head hair from Mr. Legere.
- Q. And then what, if any, involvement did you have?
- A. That would have been in the morning of the 25th - the early morning hours of the 25th. Later that day on the 25th and again on the 26th discussions were carried out with the local crown prosecutor in Newcastle as to further exhibits that we felt we needed.
- Q. What kind of things?
- A. We required pubic hair standards from Mr. Legere. We hadn't obtained any the previous evening.
- Q. Why?
- A. At that particular time we had discussed removing hair samples and our main concern at that time was the murder and hair samples that were at the scene that we felt -- Upon reflection we realized that a sexual assault had occurred and that information was coming in that there was a possibility that there could be pubic hairs at the scene and that we also had hair on the body of John Glendenning that we weren't sure if

it was head hair or pubic hair at that time. So a decision was made with the crown prosecutor on the 26th of June to request from the court a warrant to seize pubic hair from Mr. Legere.

Q. Why did you go by warrant at that time and not by the Alderton decision, the advice you had been given previously?

A. We had reviewed the Alderton decision and in reflection we had thought -- We weren't certain that because of the time period that was involved -- He had been arrested prior to 6 o'clock and we hadn't seized the hair until nearly 2 o'clock in the morning so quite a period of time had passed. In that decision there the incident of arrest was immediate and in our particular case some seven hours had passed so we were -- Actually we were second-guessing ourselves, and we required further hair samples and we knew that this particular case would not apply.

Q. Why did you think this case wouldn't apply to obtaining the pubic hair samples?

A. The obtaining of pubic hair samples two days later would not be an incident to arrest.

Q. And did you in fact obtain a warrant?

A. Yes, I did.

Q. And what, if anything, was done with respect to that warrant?

A. I obtained a warrant --

Q. From?

A. From the Provincial Court in Newcastle, Judge Andrew Stymiest, and as a result of that the warrant was executed by Constable Raymond Brennan and Constable Mike Segan.

Q. Were you present when that was executed?

A. No, I was not.

Q. And did you have any connection -- What was your understanding at that particular time in relation to identification using hair? What was your understanding at that point in time back then?

A. Following the original samples that were seized on the early morning of the 25th I had occasion to speak with lab personnel at the Hair and Fiber Section at the Crime Lab in Sackville and I was unaware that hair samples -- I was unaware of exactly the process of comparing hair samples, and as a result of my inquiries I was informed - or I became aware that to examine scalp hair samples - to identify scalp hair samples to a standard the standard would have to be scalp hair. If pubic hair were found at the scene then we would have to have pubic hair to compare it to. I was unaware of that previous to that time.

Q. And Corporal Mole did you have any other connection in relation to these particular items?

A. In the -- Following the conviction of Allan Legere in January, 1987 there was an appeal that was heard in April of 1988. Prior to the appeal I was asked to take the trial exhibits from the Newcastle Courthouse at the Clerk's Office and transport them here to Fredericton to the Registrar's office.

Q. And did you in fact do that?

A. Yes, I did.

Q. And on what date did you do that?

A. That was on the 7th of April, 1988.

Q. I am going to show you a particular item that has been marked voir dire VD-2. Would you look at that for me, please, and tell me whether or not you can recognize that particular item?

A. This appears to be one of the exhibits that I brought from Newcastle to Fredericton here on the 7th of April, 1988.

Q. Do you know whether or not that contains any exhibit number assigned by the court back during the trial?

A. I recognize our police reference number, 56, that it was seized by and the date that it was seized. I see the clerk's name marked by Ellen Cook on the 7th of January, 1987, and George Martin would be the clerk of the court that I received it from in Newcastle on January 21st, 1987. His -- well it would appear to be his name there, and it's marked "C-11, R. V. Legere".

Q. Now how does the identification C-11, R. V. Legere, compare with any of the exhibits that you took to the Court of Appeal?

A. What I did is when I went to the Clerk's office in Newcastle I received a list of all the trial exhibits. We verified the exhibits and I transported them to the Registrar's office here, and one of the exhibits on the list was C-11.

Q. And did it indicate on the list what it was purported to be?

A. Yes, it was a scalp hair standard.

Q. And who did you turn your exhibits over to including that particular item there? Who did you turn them over to at the Court of Appeal?

- A. I turned them over to Mr. Sandy DiGiacinto.
- Q. Was there anyone else at the Court of Appeal at the time when you first arrived with the items?
- A. When I first arrived with the items I met an Irene Hildebrand at the Court of Appeal and I requested that I have a place - a secure place to put the exhibits and she requested that I wait for Mr. DiGiacinto to arrive, and I waited in the downstairs area with her until he arrived and opened up the locked bond room that they have in the basement at the Justice Building. At that time I placed all the exhibits that I had received from Mr. Martin directly into the room, including the safe and all the other items.
- Q. Would that item in your hand have been included?
- A. Yes.
- Q. And what if anything took place between you and Mr. DiGiacinto, if anything, at the conclusion of placing the items in a safe place?
- A. I received a copy of the report I had brought down listing the exhibits, signed, dated and stamped by the Registrar. I watched him sign his name.
- Q. And when was the next time you saw this particular item that I have just referred to?
- A. This past week in Fredericton here at the Registrar's office.
- Q. And under what circumstances did you see it?
- A. I met with Mr. DiGiacinto and we went to the exhibit room to look at the exhibits and to refresh my memory, and I had my list with me and I looked at item C-11.

- Q. And do you have any doubts about the fact that that is in fact the same item that you brought to Newcastle?
- A. None at all.
- Q. And did you take possession of it when you looked at it this past week?
- A. No, I did not. It was shown to me.
- Q. Whose possession did you leave it in?
- A. With the registrar.
- Q. And when did you next see this particular item?
- A. Just a few moments ago when you handed it to me.
- Q. Now, did you have occasion to involve yourself with respect to any of the other items - materials associated with bodily substance in 1986?
- A. In 1986 I was involved in the preparation of a warrant - the request for a warrant on the 30th of June, 1986 in Newcastle. I received as a result a warrant from Judge Andrew Stymiest for which I gave the warrant to Sergeant Johnston and Constable Turgeon to execute the warrant at the Dorchester Penitentiary the following day.
- Q. Again, Corporal Mole, I'll ask you just to speak up a little bit. Did you have occasion to have any other involvement with any items?
- A. In 1986?
- Q. Yes. Or at any time after that.
- A. In 1989 I was involved in the collection of several exhibits.
- Q. Sergeant Turgeon gave some evidence this morning with respect to destroying certain items. Did you have any involvement in any of those?

- A. In 1987 following the Court of Appeal hearing I attended with Constable Turgeon to review the exhibits that we had. I still was in charge of the investigation at the Newcastle Detachment. We reviewed the exhibits on the 21st of June, 1987 - it was after the trial - and we reviewed the exhibits that were not used at the trial and several items belonging to the Glendennings were returned and other items that had not been used at the trial were destroyed.
- Q. Corporal Mole I am going to show you an item marked on the voir dire VD-3. Would you look at that for me, please, and tell me whether or not you can identify that and whether that has any relevance to you?
- A. This appears to be the case of the New Brunswick Court of Appeal decision on The Queen versus Allan Legere, 1988.
- Q. And what if any connection would that case have been to any of the items that you took from Newcastle to Fredericton?
- A. This would have been an appeal of the conviction and sentencing for the murder of John Glendenning in 1986. The exhibits - the trial exhibits that were used during the trial were the trial exhibits that I transported to Fredericton here that I previously testified to and it was in regards to that particular case.
- Q. Corporal Mole I would just ask you if we could back up a moment, please, back to at the time of the arrest of Mr. Legere in June, 1986. You had indicated to the court that you had been given details, part of which you used to formulate your grounds for arrest.

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dire.

Could you give the court some of the details that you were apprised of - you were aware of?

A. Most of the details that we were working on at the time had to do with the two coaccused, what their actions were following the murder and their attempts at flight. The direct involvement of Mr. Legere was of a -- almost specifically involved the two boys. We didn't have particular eye witness evidence at the scene or anything. What we had were a plan by Mr. Legere with the two accused to do a robbery at the Glendenning home; that as a result of the robbery a murder occurred and that several items had been brought back to the Newcastle area; that a safe had been broken open and that the contents removed; that the items had been split amongst the three; that some items had been thrown away in the river because they could be identified. That Mr. Legere was concerned about whether or not the boys had - the other two co-accused had left the area. And I think there was a comment - I'm not sure of exactly the wording - but he was glad that they had gotten away. And, like I say, we weren't sure at that time whether he was still in the area.

Q. In relation to this particular trial did you have other involvement in relation to this voir dire?

A. Yes, I did.

Q. Commencing when?

A. The 29th of May, 1989.

MR. WALSH: At this time, My Lord, as indicated in the witness list, with the court's indulgence and permission I would ask that Corporal Mole be stood aside.

THE COURT: All right. Again, Mr. Ryan, do you want to examine now or --

MR. RYAN: No. As with the previous witness, Staff Sergeant Mason Johnston, My Lord, we would wait until he has completed his testimony and cross-examine on all parts of the voir dire evidence given.

THE COURT: Mr. Walsh may I ask why are you endeavoring for the purpose of voir dire to establish continuity of possession and so on of the empty bags? I see you have Mr. Evers down as a witness. You are calling him, I gather, to -- He will establish - or I suppose you hope to establish through him that he took possession of the scalp hairs and he what - examined them or something will come out I suppose.

MR. WALSH: That's correct My Lord.

THE COURT: But why is it necessary to --

MR. WALSH: Well it's important, My Lord, in terms of the fact, as you are aware, that when they do testing the continuity is associated with providing the court evidence, obviously, of the fact of where the hairs actually came from and where they went, and it fits in with Mr. Evers testimony of the fact that he received a package and that we hope that his evidence will be --

THE COURT: And those hairs were put in at the trial. They were probably, presumably, put in through Mr. Evers or someone else in --

MR. WALSH: Well the practice, My Lord - at least the practice that I have been used to, and that was in fact followed at the Glendenning trial is that the package constituted the evidence - the continuity and the evidence of the hairs because the hair and fiber

people they put the hairs on slides and identify them and slides are hard to manage, etc., etc.

THE COURT: I agree with you. That's always been the practice. I have often wondered what is the purpose of it really. Once the hairs are out of the package what significance are the bags after that really. They do have certain markings on and they are helpful to show but as far as --

MR. WALSH: They form at least some form of tangible evidence that can be seen. I realize that the hair is removed but as Your Lordship is aware with forensic testing of any sort they get removed and they get handled, used up in testing, etc., etc., but that is the practice that I have been used to and the practice I know is followed.

THE COURT: Well, there's no harm done. It takes perhaps a little more time than is strictly necessary but it's all right. Let's not disturb the present practice.

MR. WALSH: I wish that My Lord. I'm attempting to be as careful as possible.

THE COURT: Well now you want to delay your cross-examination so you are stood aside Corporal and you shouldn't discuss the case with anyone, of course, until after your evidence on the voir dire is finished.

How does that work, Mr. Walsh, if a witness completes his evidence on a voir dire? Can he talk to anybody about the case if he's going to be called again at the trial?

MR. WALSH: I have never had that -- You're asking me a question that's been posed to me for the first time. I would have to give some thought to that My Lord. If you wish my opinion on it I would prefer to have some time to think about it.

THE COURT: Well I would require time if you were asking for my direction too.

MR. WALSH: Well, you see part of the problem obviously would be - would be associated with preparation of crown counsel prior to the trial. If evidence is given at a voir dire related to some aspects of the evidence he's going to give at trial yet we have to prepare for a trial and it may involve other aspects it becomes a very difficult procedure.

THE COURT: It's perhaps a question that becomes a little more pertinent too now that voir dire's are permitted before a jury is selected. There was never the time lag earlier when the voir dire was carried out during the course of the trial. Or not the same time lag. I am not suggesting this is of any great importance Mr. Ryan but do you have any thoughts on that just from an academic point of view or had it ever occurred to you?

MR. RYAN: No, I would take the same stance as Mr. Walsh in that respect My Lord. I actually had thought about it a little bit but I haven't done any research or anything like that. I have been more geared up for the preparation of the voir dire itself. But it is a question that before we're done we are going to have to address.

THE COURT: I have always worked on the assumption, you know, that most witnesses who were stood aside never obey the injunction anyway but I shouldn't say that out loud should I?

MR. WALSH: Well, these particular police witnesses I expect that that injunction will be obeyed to the letter.

THE COURT: I expect it to be. Well now what time are we? We're 20 past 12. Who is your next witness? You want to get rid of Mr. DiGiacinto and get him back to work I suppose, do you?

MR. WALSH: Yes. That would be -- Mr. Ryan has agreed that Mr. DiGiacinto's testimony will not be required. I simply would point out that Mr. DiGiacinto -- they're in essence then - they would be consenting - Mr. Ryan can correct me if I'm wrong, that they would be consenting that Mr. DiGiacinto did in fact receive the item that's been marked VD-2; that he did in fact receive that from Corporal Mole as Corporal Mole testified to; that he has kept it in his possession or in safekeeping in his control up until today where he has brought it to the court and it has been entered - at least marked for identification; and that this particular item relates to the reported case that has been marked VD-3 for identification.

THE COURT: And who is Mr. DiGiacinto? Is he with the Fredericton Police?

MR. WALSH: I'm sorry My Lord. A. M. DiGiacinto is the Registrar of the Court of Appeal for the Province of New Brunswick for the record.

MR. RYAN: And that's accepted for the record My Lord.

THE COURT: Court of Queen's Bench as well?

MR. RYAN: Sometimes.

THE COURT: So you are excusing that witness then, are you?  
Are you through with him?

MR. WALSH: And perhaps at this time, My Lord, we could also deal with the evidence of Mr. Martin, Miss Cook and Miss Hildebrand. My understanding would be that they would be consenting to the evidence that Mr. Martin was in fact one of the clerks on the John Glendenning murder trial. That Mr. Martin did in fact take custody of the -- One of the items that he took custody of would have been what has been marked here as VD-2. That he in fact turned that item over to Corporal Mole in conformity with Corporal Mole's testimony - at least his direct examination, and that particular - that would be Mr. Martin's testimony. I stand to be corrected.

MR. RYAN: Defence accepts that as Mr. Martin's proposed testimony and we would dispense with Mr. Martin My Lord.

MR. WALSH: Miss Cook and Irene Hildebrand's testimony would be simply that Miss Cook was a clerk during that particular trial. They alternated the clerk. It would be for continuity only. And, again, Irene Hildebrand was involved in the chain of continuity inasmuch as she was the first person Corporal Mole attended on at the Court of Appeal.

MR. RYAN: Defence would accept that that would be the evidence to be presented by Miss Ellen Cook and Irene Hildebrand My Lord - both those individuals.

THE COURT: So you are not finding it necessary to call them?

MR. RYAN: No.

THE COURT: May I ask, the hairs that were taken from VD-2 what happened to that? This will come out presumably but --

MR. WALSH: Yes, it will. Mr. Evers will testify as to removing them from the bag, putting them on slides and then evidence will be called later in this particular voir dire in relation to this particular trial here that Mr. Evers at the request of the R.C.M.P. removed some of the hairs from the slides, put them in containers, and these containers were sent to Ottawa and they were actually used as a known standard of Allan Legere.

THE COURT: This is in '89?

MR. WALSH: '89.

THE COURT: But I mean you will fill in the gap through Mr. Evers showing that the hairs were retained by him.

MR. WALSH: That's correct.

THE COURT: From '86 onward?

MR. WALSH: That's correct My Lord.

THE COURT: Or someone.

MR. WALSH: Yes. That's the crown's intention.

THE COURT: Do you want to do anything more now?

MR. WALSH: I have a relatively short witness but since he will not be stood aside and is subject to cross-examination I think it is probably best if we could start after. It's up to you My Lord. Whatever you prefer.

THE COURT: Do you have any feelings Mr. Ryan? Do you want to get this --

MR. RYAN: I will be cross-examining My Lord if the witness proposed is, I think, Mr. Brennan.

THE COURT: Who is this witness?

MR. WALSH: That would be Corporal Brennan.

MR. RYAN: I'm likely to cross-examine.

THE COURT: That might be a little longer, or at least it's going to take longer than five minutes, or ten, isn't it. So perhaps --

MR. WALSH: My direct wouldn't take more than five but I expect cross-examination.

THE COURT: Well let's come back this afternoon then.

(Discussion re noon recess.)

THE COURT: What about exhibits Mr. Pugh? Do you have facilities for looking after -- There are no exhibits yet but these things marked for --

CLERK: There's no room to keep them in.

MR. WALSH: If I may make a suggestion My Lord. The R.C.M.P. have a room here in the side in which they have a locker that has been built inside that particular room and that particular room has been alarmed in their absence, and there is places to lock the lock of this compartment that the clerk could look at. Perhaps he could look at it after lunch and report back to you whether he considers it to be suitable for his purposes. And as far as these items here they're not exhibits yet.

THE COURT: Are you suggesting that, for instance, in the evening or overnight that things could stay there?

MR. WALSH: Yes. In fact I think if the clerk over lunch hour was to discuss some of the matters with the people in charge of this particular building we might be able to reach an agreement between defence and the crown as to - and something that you would be --

THE COURT: There is no overnight employee in this building as I understand it.

MR. WALSH: No, but in fact the building is alarmed - at least certain rooms in this particular premises are alarmed and there has been security measures taken. And we could let the clerk - could be advised of that and he can report to you to see if they are suitable to you.

THE COURT: Well, Mr. Pugh, you will make some enquiries along that line and have a look at that room and so on to see what you think of it. I am a little concerned - not right at this stage of the trial but later presumably there will be other exhibits coming in and so on and they certainly have to be secured properly. But you have a look at this Mr. Pugh. The R.C.M.P. Detachment here in Oromocto would have some facility there I suppose, would they, to lock the things up.

MR. WALSH: I couldn't comment My Lord. Perhaps Mr. Pugh, again, we could discuss it at lunchtime and find out what's all available and then he could report to you what is available. I wouldn't have any real knowledge of that.

THE COURT: All right. I don't particularly like the idea of putting court exhibits in the custody of one of the parties - or not one of the parties but somebody responsible essentially to one of the parties, the

crown, but it is a practice that's followed without any great difficulty, particularly if the clerk were to take them to that place of safekeeping and see that they were - pick them up there.

Well, we will deal with that. This other matter of the adjournment there, do you want to talk about that first thing this afternoon?

MR. FURLOTTE: Yes, I would prefer that.

THE COURT: Okay then, we'll adjourn until 2 o'clock. Take Mr. Legere out, please, first.

(Accused removed from courtroom.)

(NOON RECESS - 12:30 - 2:00 P.M.)

THE COURT: Well now the Accused is present. All counsel are present. We will resume the voir dire hearing.

Mr. Furlotte you had some representations you wanted to make with regard to the timing of the voir dire. Would you care to say what you would like.

MR. FURLOTTE: Well My Lord in a letter to yourself and a copy to the Crown Prosecutor April 15th, 1991 - it's a short letter so I will read it just for the record. It states:

"Dear Sir:

RE: Allan Legere

I wish to advise you that on April 22, 1991, I will be making a Motion for an adjournment on the hearing of the Voir Dire on DNA evidence scheduled to begin April 29, 1991.

I informed both Anthony Allman and Jack Walsh by telephone on March 28, that there was a good chance I would not be totally prepared for the Voir Dire on April 29, 1991. I also informed them at that time that I would be in a better position to re-evaluate the situation in about 2 weeks and if I thought then that I could complete my preparation in the last week or two before the hearing,

I would not request the adjournment. However, I now find myself in the position where I believe it will take another one to two months to fully prepare for cross-examination of the Crown's five expert witnesses and prepare my own evidence.

The subject matter and quality of tests performed are too extensive, complicated and questionable to be able to prepare full answer and defence in the period of time I have been given thus far. It is my intention to argue those points upon my request for a short adjournment.

I would have preferred to give both you and the Crown more than two weeks notice before the hearing on DNA evidence, however, I also wanted to be certain that I could not be prepared in time."

My Lord I have received a copy of the Crown's response to my letter which was addressed to yourself and maybe before I go any further I could just address a few of these comments.

In the first paragraph of the crown's letter to yourself states:

"The present schedule of dates was ordered by the Court based on the defence's position of January 9, 1991 and February 4, 1991 that it satisfied them."

My Lord as --

THE COURT: Well I wonder if rather than dealing with the Crown's arguments if you shouldn't make out your prima facie case, Mr. Furlotte, for -- Why don't you ignore for the moment the crown's case and you convince me that you haven't had an opportunity. This trial has been underway for 4 months since December 5th. On January 9th -- and the commencement date at that time was set for February 4th, and then at our pretrial conference on January 9th we decided, as you recall, or at least I indicated at that time that I would grant some further time beyond February 4th for the commencement of evidence and we talked at

that time, or at least I had in mind and I let counsel know that I had in mind starting the voir dire on March 4th and then getting it out of the way during the month of March, then getting the trial proper with the jury selected underway on the 2nd day of April and that would have given us April, May and June, three months, to do the trial which I felt then and still feel --

MR. FURLOTTE: My Lord --

THE COURT: Well just let me finish my review here. Then that would have finished us up by the end of June. Now when we met again on February 4th the crown represented it was having difficulty -- You sought more time on it at that time and the crown also, through Mr. Allman, acknowledged - or said they would have some difficulty in getting witnesses lined up at that time because of other commitments and holidays and so on. And then we agreed that -- it was then agreed that April 22nd, which was then over 2½ months away, would give adequate time. This is for the voir dire session. So you take it from there.

MR. FURLOTTE: Thank you My Lord. My Lord I know this trial has been underway for some 4½ months but I did not receive the material on DNA evidence at the first day of Mr. Legere's appearance on December 5th. I was provided with volumes upon volumes of other evidence that the crown was going to produce but nothing on DNA evidence itself. The only benefit I had to the DNA evidence for a considerable period of time was some volumes on case law which have been incoming since that date which I have put together here, and

from reading the case law and only the case law I thought I had a fair understanding of what DNA evidence was about and that possibly --

THE COURT: Well that would take about one week to read, wouldn't it? I mean I went through quite a bit of it.

MR. FURLOTTE: Well you have read the case law I would imagine the same as I have.

THE COURT: That would take about a week to read. You would read everything on DNA in one week.

MR. FURLOTTE: But that doesn't give you the understanding of it in one week.

THE COURT: Well it doesn't qualify me as a doctor of genetics, nor you, nor any one of us but we don't have to be doctors of genetics to --

MR. FURLOTTE: I would submit, My Lord, nor does it qualify anybody who reads the case law an understanding sufficient enough to come to court and test the evidence that is coming before it.

Since February 4th I have sent to the United States, the American Lawyers Defence Association, for whatever assistance they could provide me on DNA evidence. To present a case on DNA evidence I received all this material from the American National Defence Association. I can guarantee you it takes more than a week to go through this.

THE COURT: Which two or three cases did they tell you to read to get the essence of the whole thing? They didn't tell you to read all that.

MR. FURLOTTE: You can't get the essence of the whole thing in two or three cases. There are so many aspects of the whole DNA that you have to go through. I had to

read all that. Some of it, granted, was not useful but nevertheless I had to go through it in order to find out what was useful to me.

Aside from this evidence that I had to go through or this material that I had to go through to get a good understanding of what the case is against Mr. Legere, I have had to prepare volumes for the preparation of cross-examination.

THE COURT: Well no, don't bother getting all that stuff out. I mean it's not --

MR. FURLOTTE: Well I just want to show the court that I have not been sitting on my behind doing nothing for the past few months. I have had to prepare them, photocopy, prepare questions, index everything so I could cross-reference it, and when I say I got a thousand questions for the crown's expert witnesses I'm not exaggerating. I have here --

THE COURT: You're arguing against yourself. If you have a thousand questions now why would I give you another month?

MR. FURLOTTE: Because they have to be refined My Lord. It would save much time from the court and the crown's case that I could probably cut the time in half simply by having more time to prepare, plus I would be able to concentrate more on specific issues and there are further questions that I have to study in order to be able to put proper cross-examination to the crown's witnesses.

Here's a volume of the documents the crown intends to introduce into evidence to support its case. I have prepared a volume of documents for myself in

addition to the crown's documentary evidence which I will want to submit into evidence.

THE COURT: I'm sorry, you say documents you want to put into --

MR. FURLOTTE: Yes.

THE COURT: What are these? Cases or --

MR. FURLOTTE: No, not case law. Just validating articles and such that deal with DNA evidence. But this is a tremendous amount of material that I have to go through. I have not formulated all my questions from my own documents. I haven't had time to go over those documents with my own expert witness who I was only able to obtain the interests of one in the early part of this month. As a matter of fact on April 3rd I sent, after trying to contact many other expert witnesses to get an interest in this case, unfortunately most of them are tied up at this time of the year either testifying in other cases or a lot of them have simply had their fill of coming to court and trying to express their position on the matter. I am sure the crown experiences the same problems. So On April 3rd I forwarded this by courier service to a Doctor William Shields of the State University of New York hoping to -- much of the material that I got from the crown hoping to gain his interest in becoming a witness. He wasn't interested in becoming a witness just to come and reiterate everything he said in the past unless there was something in the case in particular that could gain his interest. So I sent that to him. I explained in my letter to him what I was concerned about, certain things, and evidently it gained his

interest in that he did agree to come to court and act as a witness. However, I only got approval to retain this expert witness on April 11th, 1991. I had to get an estimate of what this expert witness would cost so I had to send him the material so he could give me an estimate of how long it would take him to prepare and how long it would take him to testify in court.

I might add when you're reading through your case law that I am sure you have come across Doctor Eric Landers testifying in different courts in Cashreau and in Yeats and in the Cashreau case Doctor Landers who is an expert witness - it took him 350 hours to prepare for that trial and he already knows everything about DNA evidence. So when it takes a person of Doctor Landers stature that long to prepare for trial I am sure that might give you some indication as to how long it takes some ignorant person like myself who didn't even know what DNA was until I had taken on this case to prepare in order to be able to do cross-examination of all the crown's expert witnesses and to bring out issues that have never been brought out before in the crown's case and in previous cases. I don't think I have to take the position of Mr. Walsh that I should know everything; that I have been provided with everything that I need be in order to learn about DNA evidence. I am not going to stand still and just accept whatever education Mr. Walsh cares to throw my way on DNA evidence. I feel a greater responsibility to my client and to our criminal justice system to go beyond that. I would like to --

THE COURT: Well in fairness to Mr. Walsh I think he's just trying to be helpful.

MR. FURLOTTE: Oh Mr. Walsh has been extremely helpful.

THE COURT: He's not saying that that's what you have got to be satisfied with.

MR. FURLOTTE: No. But --

THE COURT: As a matter of fact I think --

MR. FURLOTTE: I could not be -- I'll admit I could not be half as prepared as I am had it not been for the assistance of Mr. Walsh. In that aspect the crown has cooperated immensely, however, it just simply is not enough at this stage of the game. I would like to state for the record and tell this court, as I tell most of my clients, that as a lawyer my first and primary duty is to the court and our criminal justice system. I am an officer of this court and I owe the criminal justice system all due respect and I in turn I expect as much respect as the crown prosecutor and as a trial judge because we are all officers of the court attempting to accomplish the same thing, to administer our criminal justice system as effectively as I can. My clients happen to fall under the criminal justice system and when I protect the criminal justice system I'm protecting my clients. I advise my clients of the position that I take in representing them and that's all my clients, and I intend to do my best to see that Mr. Legere and the public gets a fair hearing in this case and that means my being able to provide Mr. Legere with full answer and defence.

I might remind the court that it's the accused person who is entitled to a quick and speedy trial. It is not the crown.

I don't have to go too far -- I was not able to spend all my time since December 5th on Mr. Legere's case. I had other case loads that I had to work out and to go to trial with. There was one case in February that had a jury trial in Newcastle. I was not able to get out of it. I had to spend much time on that. But that case is a prime example --

THE COURT: I think you told us at Newcastle on December 5th that you had, am I right, 6 or 7 jury trials coming up?

MR. FURLOTTE: 6, and I was able to get out of 5 of them. But there was one I just couldn't get out of. And in that case that case had --

THE COURT: I think I forecast that, didn't I? I said 1 out of 6 will go to trial.

MR. FURLOTTE: Well one of the six would have -- I was able to get other solicitors to take the other cases. That's why I was able to get out of them but this one I had already started the case and did the preliminary hearing.

THE COURT: There weren't reelections or changes of plea?

MR. FURLOTTE: Well, an accused person is entitled to --

THE COURT: Yes, but were there? I mean did the cases just fold up? 5 out of 6 folded up with reelections or changes of plea?

MR. FURLOTTE: Not in my docket.

THE COURT: Well, I won't press this.

MR. FURLOTTE: But just that case in Newcastle in February that had been scheduled to go to trial I believe it was in November sometime but, again, I had to ask for an adjournment because I was not ready for trial. My client at that time had no criminal record and he was in remand but we weighed the pros and cons of going to trial unprepared or waiting for full preparation and going to trial at a later date and we opted for full preparation of that trial. We asked for an adjournment and got a three month adjournment and at the trial in that case I was able to come up with evidence which exonerated the accused from violently raping his daughter for over a five year period of time. Fortunately her first boyfriend came back from Ontario and we were able to get him as a witness to testify that she was a virgin when he went out with her.

That's just an example of the prime importance of the ability to provide full answer and defence for an accused person and I only have to go back again to another Newcastle affair with Allard Venoit last year in Newcastle where he was in remand for nine months. The crown wanted a quick and speedy trial and I said no. I said this is too complicated a case. I have to go out and prepare my own defence. As a matter of fact by the time we were ready for trial I had more witnesses lined up for the defence than the crown had. I think the crown had 18 witnesses and I had about 22. But by the time I was finished providing full answer to that the crown entered a stay of proceedings. They did not wish to proceed with the case because I was able to provide full answer in defence. But I can

assure you that if we went to trial whenever the crown wanted to go my client would probably be doing about 10 months in the penitentiary.

That's just an example of the necessity that the courts must grant an accused person the ability to provide full answer and defence. It's not sufficient to say that he's entitled to full answer and defence; he has to have the opportunity to do so just as the Supreme Court of Canada has found that it's not sufficient just to inform an individual that he has a right to a lawyer upon his arrest but they have to provide him with the opportunity to do so.

THE COURT: The Criminal Code refers to the right to make full answer and defence after the crown's case is in. Section 650 of the Criminal Code.

MR. FURLOTTE: Well, if you want to allow the crown I guess -- How can I provide full answer and defence, and full answer and defence is not just my presenting direct evidence, full answer and defence also comes on cross-examination, and if you allow the crown to present their case without giving me the opportunity to prepare for full cross-examination then there is no way that the accused is getting a full answer and defence, and there is no way it can be corrected.

THE COURT: Well I just throw that up as an academic matter. Section 650 does provide that, doesn't it.

MR. FURLOTTE: Well I think the common law, as well, provided sufficient case law that you're allowed full answer and defence on cross-examination because cross-examination of a witness will not be impeded.

THE COURT: Oh I quite appreciate that myself.

MR. FURLOTTE: It's just that, My Lord, we're only three weeks into this month and I can go through my time notes and I have spent over a 100 hours so far in April in preparing for this case but it's just too massive, it's just too complicated, and there is no way that I feel comfortable in going to court at this time and being able to cross-examine 5 expert witnesses.

I think the crown prosecutor has basically said it all in his own submission to you on what the law was. On December 5th he gave us both a brief on what the courts might decide on the admission of DNA evidence. At page 17 of his brief he states:

"To get back to the second consequence of the use of the relevancy/reliability over the Frye standard, Bessner, comments:  
'It is stated that lawyers on the whole prefer the Frye test to the relevancy test as they can successfully litigate the application of Frye and establish that the forensic technique has gained general acceptance within the relevant scientific community even if they have very little knowledge about the technical aspect of the technique. However, when the focus shifts from admissibility to weight as it does under the relevancy approach, the lawyer requires a more sophisticated understanding of the scientific technique.'

In Mr. Walsh's own words he says:

"I don't know if I can agree that lawyers under different admissibility standards require different levels of understanding, because it is all tied to one key element - preparation. Without the preparation necessary to understand the technique and interpretation and, conversely, without the understanding of the technique and interpretation necessary to prepare for the trial, the prosecutor risks being the sole cause of what must always be guarded against, confusing or misleading the jury.

Simply put, trial counsel cannot take a pedestrian approach to this forensic field and expect the experts to assume complete responsibility for this evidence. Without a thorough knowledge of the field there are a number of things counsel will not do properly:

- (1) Counsel will not know what experts will be needed.
- (2) Counsel will not know the strengths and weaknesses of those experts, which has a bearing on No. 1.

It should be noted that the lawyers will be the best judge of what the legal requirements are and they must critically approach their own evidence. They cannot allow the experts to control the conduct of the DNA portion of the trial nor do these experts want to. Unfortunately an ill prepared counsel will force the experts into this role.

- (3) Counsel will not know what evidence to provide to the judge or jury.
- (4) Counsel will not know how to present the evidence in the clearest form.
- (5) Counsel will not know how to effectively counter contrary expert evidence.
- (6) Counsel will not know what legal rules are applicable to the opinions given."

Simply put, My Lord, with the time that I have been given, counsel for Mr. Legere does not know everything that he ought to and I need more time to prepare my cross-examination of the crown's expert witness. And since I have informed my own expert witness, Mr. Shields, that approval has been given for him to prepare for this trial, I have not had the opportunity to consult with him and I was hoping to do that today, to at least go over some of the issues that I am concerned with and for him to point out some of the issues that I am to be concerned with.

I expect that I would need another month, and I have a problem with Mr. Shields that if I am granted that extra month to prepare that he tells me he will not be available after June 1st and then I may have to go out and look for a different expert witness to be available within that time period that this court might set.

I was hoping when I took Mr. Legere's case in December, having been advised by different crown prosecutors that this case was going to take extensive preparation, I was going to have to drop my whole law practice in order to prepare for it and it probably would take six months to prepare for a trial, the trial might last four to five months - I was willing to accept that responsibility but at that time I, maybe wrongfully, but I was expecting to go to court and charges being laid against Mr. Legere, and that I would be given the opportunity to prepare for trial, advise the crown and the court that I was ready for trial, and we would set a date. It just never dawned on me that matters would be attempted to be pushed forward at such a rapid pace. For just simple break and enter charges --

THE COURT: A rapid pace? A trial that gets underway ten months after. The trial proper is starting --

MR. FURLOTTE: The trial proper is starting right now.

THE COURT: -- late August which is -- Yes, the trial has started but --

MR. FURLOTTE: The trial has started. We're in a voir dire.

THE COURT: You know here's a ten month delay on this thing. You were daydreaming if you thought you were

going to dictate the whole schedule of the trial in conjunction with crown --

MR. FURLOTTE: You're not daydreaming when you look at the caseload and the evidence that they're bringing into court. That's not daydreaming.

THE COURT: They didn't seem to run into any of this difficulty with the Bourguignon case in Ontario - in Barrie, Ontario.

MR. FURLOTTE: There was one murder charge in the Bourguignon case. Here we have four.

THE COURT: That has nothing to do -- I'm talking about DNA. You're talking about DNA. As far as the murder charges go, the actual acts of murder, my god you could prepare for those in two weeks. In any murder trial you could or any other criminal case.

MR. FURLOTTE: In the Cashreau case when the Frye hearing on DNA took 12 weeks, you know, you don't prepare for one of these 12 week hearings in two or three months.

THE COURT: In Bourguignon it took four days in the voir dire, I believe, and it took a day and a half at trial for Canada's first DNA trial.

MR. FURLOTTE: I can guarantee you it's going to take much longer.

THE COURT: In a murder trial. A day and a half it took the trial, and those were experts, you know, and the experts were examined. The defence called experts.

MR. FURLOTTE: The defence called one expert, the same expert I'm calling.

THE COURT: Well he knows what he's going to say.

MR. FURLOTTE: The expert knows what he's going to say, yes, I hope so.

THE COURT: That was less than a month ago that he testified there.

MR. FURLOTTE: But I don't know what the expert is going to say.

THE COURT: He could tell you in a half an hour on the telephone.

MR. FURLOTTE: And Mr. Walsh has stated it is not good enough that the expert comes to court and provides all the evidence.

THE COURT: Well, go ahead.

MR. FURLOTTE: I have to have a very good understanding of this evidence that's coming out in order to provide a reasonable argument either against its admissibility or, if the grounds are there for it being ruled inadmissible, and if I fall short in that I fall short in serving my client.

I would like to point out one last point. When I realized that I might not be given enough time to prepare for trial when representing Mr. Legere on December 5th that I made a motion to be able to withdraw from the case and let more competent counsel provide Mr. Legere with defence. If I'm not competent enough to meet up to the crowns' expectations or the court's expectations Mr. Legere should not be faulted for that and if I am a bit slow then Mr. Legere should be given - or at least his lawyer should be given that extra time to catch up.

We have to realize or understand what are we most concerned with here? A quick and speedy trial or a fair one? And I would opt that the court elect a fair trial over a quick and speedy one.

I will do everything I can to cooperate with the crown in getting this trial underway in a quick fashion. I have -- this is the documents here that I have that I want to get into evidence. Unfortunately, copies of these I have just taken out of my volumes and I could probably obtain better copies but it is going to take time and the crown has offered to assist me in that/<sup>if</sup>they can provide cleaner or better copies or just agree to these going in they would do so. I don't mind giving the crown copies of all this before they even present their case just as I want full disclosure of the case that's against Mr. Legere. I have no objections to giving them full disclosure of my case - or my arguments. The court here is seeking the truth of the matter, the truth of the reliability or the admissibility of this evidence, and I have no qualms with the truth. But usually in my practice I always find that time is on the side of truth. And if you rush things --

THE COURT: Is it your intention Mr. Furlotte to put these documents in as exhibits or as argument?

MR. FURLOTTE: I want to put these in as exhibits, and I would like to get them in on cross-examination so I can let their expert witnesses deal with them. If I just put them in through my own expert witness then they may want to extend time again to get their expert witness to come and rebut this. Let's do it once and for all --

THE COURT: Well if you are going to put it in through their expert surely you will give it to them in advance so their expert can look at it and read it.

MR. FURLOTTE: Right. But it gives them the opportunity to rebut it right away by putting it in through their expert witnesses. And that's just more efficient for the court. It saves time and they wouldn't have to worry about lining up expert witnesses after they have let them go to come back and rebut evidence by the defence.

All I am seeking here, My Lord, is truth but, as I say, the truth takes time to come out at times and especially in this case it is going to take time. Personally I feel confident that if I am given enough time to prepare properly for Mr. Legere that I suspect there won't even be a trial.

THE COURT: Now, who is speaking for the crown in this particular --

MR. ALLMAN: Before I make any submissions on this I am not clear in my own mind what time frame Mr. Furlotte is talking about and I would like to know that before I make any comments on it. I understand he has got an expert. I understood him to say that that expert would not be available until after June the 1st. Does that mean that he won't be calling that expert? If that's the case then we have no idea when we're talking about, if we're talking about him calling that expert and that's going to be in the month of May, i.e. before June, which is what we were already talking about anyway. The other thing I would like to know is whether he has any comments on the compromise suggestion that we made in our letter because that also might fit in with his situation regarding Mr. Shields. I don't know what timetable he is talking about and I would like to know before I say anything.

THE COURT: Well I think I'm left a little unclear about that too. Mr. Furlotte do you mean you are not going to call -- You want longer than June 1st I take it. You want a month or two months you say.

MR. FURLOTTE: I'm saying it would take me a month -- I believe right now it would take me another month to prepare properly for cross-examination and my own evidence and, unfortunately, as I stated earlier, that would bring us right up to almost the 1st of June and then my witness is not available after the 1st of June so I may have to go and look for a different expert witness which I don't know how long it will take. It took me quite a while to convince Mr. Shields to take the case. So I'm left in limbo there also. I can't set a date. But I have been advised from the crown that if you do grant an adjournment that they can't get their witnesses back in a month or two months. That it might take them six months to get their witnesses back and reschedule. So I mean I'm sure the court could appreciate that if it takes them six months to get their witnesses together that, you know, why should I be expected to go out and get my witnesses in two months. I think I deserve fair and equal treatment here.

One point I did not mention which I should, just last Friday I again received more DNA evidence of tests were done over and these were dated February 19th and I received them last Friday. Well they started on February 19th but I guess the analysis was done on April 10th. And, again, from my quick perusal of this evidence I see how there is contradictory evidence in relation to the other tests that

were performed which, again, has to be assessed by myself and my expert witness. If the crown keeps throwing more evidence at me that they're bringing into court and --

THE COURT: Well it would take your expert witness about 10 minutes to tell you what questions to ask of the crown's expert witness about it, wouldn't it?

MR. FURLOTTE: Yes. I don't expect this to create that much problem but it's just to show the court that I don't know if any more is coming or not.

THE COURT: It wouldn't create any problem.

MR. FURLOTTE: But I did contact my expert witness on the weekend and he requested more information from the laboratory in Ottawa and I informed Mr. Walsh this morning and he is going to attempt to get that and, hopefully, once we have that information it won't take too long to assess either but, again, I don't know how long it is going to take to get that information and if even I'm going to have it before the trial is scheduled to start.

THE COURT: Well now Mr. Allman has asked about the time framing. I'm not sure you're much more enlightened now perhaps than you were before.

MR. ALLMAN: Perhaps I could see if I understand it and Mr. Furlotte can tell me if I am right or wrong.

Your Lordship will recall that in my letter of April 16th I said in summary there seemed to be three alternatives: proceed on schedule - obviously he's opposed to that; proceed on schedule with the suggested accommodations to the defence. They were set out in the body of the letter. I take it he's

opposed to that. And, three, adjourn the DNA to a date as yet uncertain, and I take it that's what he is advocating, and when we say a date uncertain we really do mean a date uncertain because we have no idea whether or when Mr. Furlotte will have an expert other than Mr. Shields. That's my understanding of his position. Alternative one is unacceptable; alternative two is unacceptable; and alternative three is the one that he wants using the words 'date as yet uncertain' to mean exactly that.

THE COURT: Well do you want to comment on that. That's a fair summary, isn't it?

MR. FURLOTTE: It is, definitely, and just in answer to that, if we don't proceed on schedule the crown has advised me that it's probably going to take six months before they can get their witnesses lined up. I'm sure --

MR. ALLMAN: I don't want to interrupt Mr. Furlotte but we're getting into stuff that I'm going to ask for a recess because we want to talk about what Mr. Furlotte has said. I should point out that we have not had any advance notice of the details of any of these arguments and we want to talk about them. I just want -- and I am going to be asking you for a five or ten minute recess.

MR. FURLOTTE: That's fair.

MR. ALLMAN: All I want to know is before we start talking, the crown counsel, I want to know what it is Mr. Furlotte is asking for so we can come up with sensible comments on it, and I would just like to know is what I said accurately reflecting what he wants.

THE COURT: Well your answer to that is yes, is it? Has Mr. Allman fairly summed up what your position is?

MR. FURLOTTE: Basically, yes. Now that my expert witness also has had time to assess the information that I have given him, at least to a degree, I don't know but I think it may have gained his interest enough that he will cancel his appointments after June 1st and he may be available after June 1st. I would have to verify that with him. That possibility is there.

THE COURT: You're changing your story.

MR. FURLOTTE: No, no, I'm not changing. I'm just telling the court what Mr. Shields has told me that he is not available after June 1st.

THE COURT: That's what we've got to accept then.

MR. FURLOTTE: But since I talked to him after that time he has not changed his opinion but I get the feeling that he's interested enough in this case that he may change his opinion.

THE COURT: What do you want to do Mr. Allman?

MR. ALLMAN: I'd like, as I say, a five or ten minute adjournment to reflect upon what Mr. Furlotte said. As I say, all we had from him was the letter that he's put in before Your Lordship, and the details of what he was going to say weren't known to us. We would like five or ten minutes to reflect upon them and make comments.

THE COURT: Well that's probably fair enough. You have no objection to a recess here? So we will recess for 15 minutes.

(RECESS - 2:40 - 3:00 P.M.)

(Accused present in prisoner's dock.)

THE COURT: Now Mr. Allman.

MR. ALLMAN: My Lord the crown is and always has been sensible of the necessity of Mr. Furlotte being prepared and the necessity for Mr. Legere to get a full trial and defence. Mr. Furlotte made reference at one point in time to this case being pushed on. I think he was suggesting it was pushed on by the crown. We have never asked for a trial date and successive trial dates have been suggested - January, February, April and September. We have always accommodated the court and Mr. Furlotte. We have never asked to this date for any early trial date. In my respectful submission we have made every accommodation that could reasonable be asked of us in terms of trial date including a suggestion in my letter of yet another accommodation which is not acceptable to Mr. Furlotte.

Despite all that we are prepared to make a further accommodation if the court sees fit. In my letter I said on page 2 and 3 that we contact the expert witnesses for the crown to see what alternate dates they might have. As I pointed out in my letter we have made a lot of arrangements on the basis that things were going to go ahead on these dates and altering those arrangements is difficult but we have done it.

We didn't know until about 15 minutes ago precisely what Mr. Furlotte's new timetable was. Now we do know. Based upon that there are two alternatives that we can suggest additional to the

one I suggested in my letter but I want to caution the court before I do - this is conditional upon one problem. We have been able to contact four of our witnesses in respect of these other dates. The fifth we haven't been able to contact but we think we can contact tomorrow. So I would ask that you understand that this not be graven in stone until tomorrow and if I could request Your Lordship not to decide about the adjournment until tomorrow. In essence, we can get for sure four of our witnesses here in June - June 17th, though that would be difficult and it's not a preferred date. We can get them here in July, the 22nd, starting July the 22nd, or starting July the 29th. That would effectively mean the month of August. Subject, as I say, to the fifth witness that we don't know about.

There are two comments I would like to make about that proposed timetable assuming the 5th witness comes through when we check with him tonight. Number one: it would have to be understood there could be no further adjournments. We feel we have been very, very flexible, very understanding, and we can't keep getting people on and getting people off, and included in that is Mr. Walsh who is ready to go and it's very difficult to be put off course at the last possible moment. So it would have to be on the record there be no further requests for an adjournment if this adjournment is granted.

The second thing is we had discussed the provisional date of September the 3rd for the trial proper. It's of very grave importance to the crown that that date remain. There is a danger if we

start the voir dire late in July - early August, if Mr. Furlotte really does have his thousand questions per witness, that that would push us into September, middle or late September, on the voir dire. That would disorganize our arrangements to start in September which are much more complicated even than these arrangements because we have got so many witnesses. So it would have to be understood that this is condition upon Mr. Furlotte being able to say that the result of all this adjournment would be, as he did say in his comments to you, that it's going to get him able to cut down his thousand questions a witness and be much more prepared and hopefully zero in so that we will still be able to accommodate the trial date.

Now that's basically our position and I would like Your Lordship not to decide upon it until we have had a chance to check with our last witness that in fact those projected dates are convenient.

I should perhaps also just say one other thing. We are ready to proceed with the DNA voir dire evidence on April 29th. That is still our preferred course. But if Your Lordship were minded to grant an adjournment these are the alternatives that we could come up with.

THE COURT: You're suggesting subject to the third witness you suggest what - the week of June 17th?

MR. ALLMAN: June the 17th - beginning June the 17th, but that is not as good a week. I am advised there might be some difficulty in arranging for that week.

THE COURT: I can tell you it's impossible because there is a trial going on in Fredericton that week which will require two reporters and there are only three available now - or there will be then.

MR. ALLMAN: We are throwing out dates that we know, obviously, subject to any dates that the court and any other constraints. If June the 17th is out because of court problems then we're talking --

THE COURT: At least I would say it's probably out. I don't know how the -- I'm sure it's out.

MR. ALLMAN: Then if it is out we're talking the end of July. That's the next alternative.

THE COURT: You're talking July 22nd?

MR. ALLMAN: 22nd or 29th. To begin.

THE COURT: I might say, again, that you mentioned the date September 3rd which was a date that I had mentioned way back months ago as the date for jury selection. My thinking has changed on that because of the lack of availability of adequate courtroom space to select a jury. We will have to move that forward to August 26th. I thought perhaps I -- Did I not advise counsel of that --

MR. ALLMAN: We weren't aware of that.

THE COURT: But anyway -- I did say, mind you, somewhere along the line and it's in print somewhere that it could be -- That was a tentative date suggested and I think it's in the last minutes of the pretrial hearing or something I said it might be the end of August - advanced to the last week in August. I can say that the only way we can get a theater or a place large enough is August the 26th.

MR. ALLMAN: The problem with that, of course, is that given Mr. Furlotte's comments upon how long -- Like we don't know how long the voir dire is going to last. We can speak for ourselves but we can't speak for Mr. Furlotte. It looks as though if we started July 22nd or July 29th you are running into a very limited space of time before August 26th so we would have to make some decisions about whether August the 26th was still the target trial date.

THE COURT: Your other suggestions contained in your letter were (a) that there be a delay after the crown would go ahead and present its witnesses on the DNA aspect starting next Monday. I think the indication had been that it would take about a week or 8 days - 10 days. A week I think.

MR. ALLMAN: What we thought was -- Basically the letter sets it out but the suggestion there was Mr. Furlotte take the rest of this week - not be here on this voir dire - that gives him some time to prepare. We do our two weeks or so of DNA voir dire which gives him evenings and weekends to prepare, and then an adjournment of a week or so at the end of our voir dire to enable him to get his final preparation of his witnesses if he wants to call any. But my understanding is that that's not acceptable to Mr. Furlotte so I wasn't pushing it. But basically we are trying to put up as many suggestions as we can.

THE COURT: Your other suggestion about his devoting the rest of this week was predicated on the notion that Mr. Ryan would be handling this aspect of the voir dire this week --

MR. ALLMAN: Yes, it was.

THE COURT: Which isn't a very satisfactory thing from Mr.

Furlotte's point of view or from the defence point of view really because perhaps Mr. Ryan, as he indicated this morning, he wanted the benefit of Mr. Furlotte's advice on some aspect or other.

MR. ALLMAN: I recognize that the second suggestion --

THE COURT: That could be accommodated to some extent perhaps by leaving the argument on this aspect of the voir dire, the first week, until after all the voir dire evidence is in.

MR. ALLMAN: I recognize that the suggestion that we made, suggestion number two in our letter, is not perfect. But there doesn't seem to be a perfect.

THE COURT: Suppose you fix some date in July and Mr.

Furlotte then comes along and says sorry but I have lost Doctor Shields. Now he's not available as an expert and I'm looking for another fellow and I can't get one until next February. What do you do then?

MR. ALLMAN: That's what I said in my argument a moment ago. I mean I think we have accommodated. I think we have accommodated to a reasonable limit and I think if a further adjournment is granted today Mr. Furlotte should be in a position to indicate that he's confident that he can go ahead on whatever date you grant to him. I say today - I should have said tomorrow because, as I say, we still got to check with our last witness.

If I can respectfully suggest, what perhaps we should do is this: call a halt to this now; we will go and make the check with our last witness tomorrow and advise you first thing in the morning if in fact

that witness can accommodate the dates we have run by the court and then Mr. Furlotte can say anything further he has to say and Your Lordship can make a decision.

MR. FURLOTTE: I will call Mr. Shields also.

THE COURT: What do you mean call a halt to this morning?

MR. ALLMAN: I mean call a halt to the topic of an adjournment. Mr. Furlotte has expressed --

THE COURT: Oh I see, yes. But you are going on with this aspect.

MR. ALLMAN: Oh yes, we will continue with this voir dire and delay the adjournment decision until tomorrow.

THE COURT: Well, it would perhaps be worthwhile having the benefit of Mr. Furlotte's response to this and I ask for this without suggesting in any way that I am going to accede to the crown's suggestion or to any requests that you make. What is your reaction to what Mr. Allman has said Mr. Furlotte? Do you come along in other words in July and say sorry but I have lost Shields and I can't get another expert until 1996?

MR. FURLOTTE: It would be my intention to call Mr. Shields today, either if I can still get him at the university or get him at home this evening, and find out for certain whether or not he can come after June 1st, say in August sometime, and I also would be in a better position tomorrow to have a little more firm commitment to this court.

THE COURT: Well we'll adjourn the discussion on the matter of the adjournment until tomorrow morning at 9:30 o'clock, and I may hear further representations or I may not.

- 109 - Cpl. Brennan - direct on  
voir dire.

Now you have got another witness, Mr. Walsh, on  
this.

MR. WALSH: My Lord I call Corporal Ray Brennan.

CORPORAL RAY BRENNAN, called as a witness on the voir  
dire, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

- Q. Would you give the court your name, please?
- A. Yes. My name is Raymond Joseph Brennan.
- Q. And your occupation and rank?
- A. Yes. I am a member of the Royal Canadian Mounted  
Police, I hold the rank of Corporal, and I am  
presently stationed in Saint John, County of Saint  
John, Province of New Brunswick.
- Q. Now would you tell the court in relation to the voir  
dire involving Allan Joseph Legere and the admissibility  
of certain bodily substances of Allan Joseph Legere  
what if any connection you would have had in this  
particular regard?
- A. Yes. On the 26th of June at approximately 1:55 P.M. —
- Q. What year?
- A. 1986. After discussion with Corporal Kevin Mole,  
myself and now Sergeant Michel Segan entered the cell  
block area of the Newcastle Detachment and we entered  
the cell block with a warrant to obtain hair samples  
from Allan Legere.
- Q. And who did you receive the warrant from?
- A. From Corporal Mole.
- Q. And Allan Legere, is he present in court here today?
- A. Yes, he is.
- Q. Where is he?

- A. He's seated to my left in the prisoner's docket wearing a white shirt. He's seated between the two R.C.M.P. members.
- Q. And what particular thing did you actually do when you entered and met Mr. Legere at that time?
- A. We entered the cell block area. Mr. Legere was in one of the cells. We went to him. I told him -- I identified myself and Sergeant Segan and told him that we were there with a warrant to obtain hair samples.
- Q. What kind of hair samples?
- A. Pubic hair. Explained that to him and he got up and walked over towards the cell - the cell door. At that time the guard opened the cell door and Mr. Legere came out.
- Q. And then what if anything happened?
- A. I explained the contents of the warrant to Mr. Legere and we proceeded to take hair samples.
- Q. Would you describe to the judge, please, how you actually went about taking hair samples and what you did with them?
- A. Mr. Legere - he was wearing sweat pants. He pulled the front of the sweat pants down just partway to expose the pubic hair area.
- Q. Was there any other part of that part of the anatomy was exposed to you?
- A. No. He just pulled them down far enough to expose the upper portion of the pubic area.
- Q. And then what happened?
- A. I took a fine tooth comb from a plastic wrapper, gave that to Mr. Legere and he started to comb the pubic area to obtain some hair.

- Q. Now this comb - where did you obtain this comb from?
- A. This was purchased locally and it came in a plastic wrapper. It was sealed.
- Q. Could you tell whether or not there was anything on the comb before it was used?
- A. The comb was examined and there was nothing on it.
- Q. Continue, please.
- A. Mr. Legere combed his pubic area several strokes and nothing was coming out so we asked him to pluck the hair himself and he proceeded to pluck the pubic area and he was having difficulty. One one or two or three hair, I believe, came out that way and at that point we decided to take clippings using a pair of scissors. Sergeant Segan left the cell block area --
- Q. Now what did you do with the hairs that Mr. Legere had pulled - plucked out at that time?
- A. I was holding a plastic bag and I just held it open and Mr. Legere put the hair that he plucked into the bag.
- Q. And this plastic bag, what if anything was in the bag before the hair went into it?
- A. The bag was examined. There was nothing in it.
- Q. And continue, please.
- A. Sergeant Segan left the cell block area, he was gone less than a minute, and he came back with a pair of scissors. At this point Allan pulled on the pubic hair and Sergeant Segan took three clips of hair.
- Q. Using?
- A. The scissors. And Allan Legere was holding the hair and Sergeant Segan just took the clippings.
- Q. And then what happened to the hair that was clipped?

- A. Allan put them in the plastic bag that I was holding.
- Q. And is this the same plastic bag that you mentioned before?
- A. Yes.
- Q. Then what, if anything, happened?
- A. Then after that we put the fine tooth comb in the bag with the clippings - the hair clippings, and Allan Legere was returned to the cell block - to the cell.
- Q. And what, if anything, did you do with the actual - the bag?
- A. The bag was marked for identification by myself, the time, date, initials, case number, and it was secured in an exhibit locker.
- Q. And then what if anything did you do with it?
- A. The following day I turned the exhibit over to Sergeant Turgeon.
- Q. I see. And would you have assigned any -- Sergeant Turgeon testified this morning with respect to assigning numbers to it. Did you have any connection in relation to assigning numbers to the --
- A. No, I did not.
- Q. Did you hand over any other bags containing hair to Sergeant Turgeon or Constable Turgeon then, during that investigation?
- A. No, I did not.
- Q. Did you ever have occasion to see that particular item since that day?
- A. No, I have not.
- MR. WALSH: I have no further questions My Lord.
- THE COURT: Mr. Ryan, cross-examination?

CROSS-EXAMINATION BY MR. RYAN:

- Q. Corporal you said you obtained a warrant from Corporal Mole, was it?
- A. Yes.
- Q. And what did you do with that warrant?
- A. A copy of it was given to Allan Legere. The original warrant there was a backing completed on it and it was returned - I believe it was returned to the court.
- Q. Returned to the court?
- A. Yes.
- Q. Which court would you have returned it to on June 26th?
- A. I don't believe I returned it. I believe Corporal Mole returned it to the court.
- Q. So you returned it to Corporal Mole?
- A. Yes.
- Q. And did you identify the number of plucked or pulled hairs that you were able to obtain?
- A. Not exactly. I would say there would be somewhere between 50 and a 100.
- Q. Plucked and pulled?
- A. Total, yes.
- Q. And how many cut?
- A. That's including cut. Excuse me. Plucked and pulled would be somewhere between 3 and 5. There weren't very many.
- Q. And then the balance would have been cuts? With scissors.
- A. Cuts, yes.
- Q. Did you have occasion to examine the scissors before they were used?
- A. I don't believe there was anything on them. They were right in front of me.

Cpl. Brennan - cross on  
voir dire..  
Mr. Evers - direct on voir  
dire.

Q. But you didn't cut?

A. Pardon me?

Q. You weren't the person that cut?

A. No, Sergeant Segan was cutting.

MR. RYAN: Nothing further, thank you.

THE COURT: Reexamination?

MR. WALSH: None, My Lord.

THE COURT: Thank you very much Corporal.

MR. WALSH: Call Duff Evers My Lord.

DUFF EVERS, called as a witness on the voir dire,  
having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

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

A. Adolphus James Evers, surname spelled E-v-e-r-s.

Q. And your occupation?

A. I am in charge of the Hair and Fiber Section at the  
Forensic Laboratories, Sackville, New Brunswick.

Q. And how long have you been doing work in relation to  
hair and fiber?

A. I have been in the Sackville Laboratory for approxi-  
mately 21 years. Prior to that I was in Vancouver  
Laboratory for 3 years, and prior to that I was in  
the Ottawa Laboratory for a short period.

Q. Would you tell the court, please, in relation to the  
matter of Allan Joseph Legere in relation to the  
admissibility of bodily substances whether or not you  
have any evidence associated with that particular  
matter.

A. On June 25th, 1986 I received a number of articles  
from Constable Gilles Turgeon at the Forensic  
Laboratory. One of these articles was a scalp hair  
sample.

Q. Mr. Evers I am going to show you a document that has been marked on the voir dire VD-2. Would you look at that item for me and tell me whether or not you can identify it?

A. I identify this item by my initials, date and case number as well as exhibit number 56 present on the plastic bag, and on two of the attached labels.

Q. And would you please tell the court when you first saw that particular item.

A. This is the item that I received from Constable Turgeon on the 25th of June, 1986. This article contained a number of human scalp hairs, 75 to be exact. I removed the scalp hairs and used the scalp hairs as a known scalp hair sample. I then returned the article by registered mail on August 5th, 1986, registered mail number 639, attention Constable Turgeon.

Q. And what, if anything, would have been in the bag at the time it was returned?

A. Probably nothing.

Q. And what if anything did you actually do with the hairs that you removed from that particular bag?

A. The 75 hairs that I removed from the bag were put on microscope slides and I subsequently used them in my scalp hair comparisons.

Q. And how many slides would these have entailed?

A. The hairs were mounted on 13 separate slides.

Q. And what kind of hairs would they be? You have indicated they were scalp hairs but what kind of condition would they be? Would they be all the same kind or would they be different?

- A. They were all scalp hairs. I found hairs that were in an atrophied condition, that is that the hairs had fallen out at the scalp. I also found hairs with root sheaths present and the hairs ranged in length up to 12 centimeters.
- Q. And did you have occasion to testify or have anything to do with what was contained in that particular item at any previous trial?
- A. I did.
- Q. Would you describe or tell the judge when that was and what was the nature of your testimony.
- A. I testified on scalp hair comparisons in a murder case in Newcastle. I believe the surname was Glendenning. I don't recall the date.
- Q. And did you refer to any particular item associated with that item there?
- A. I did, yes.
- Q. And the items were?
- A. Scalp hairs that I found on other articles.
- Q. The hairs that you had removed from that particular item and put on the 13 slides would you tell the judge, please, where those hairs have been since the time you first received them until now.
- A. When the hairs are mounted on microscope slides the hairs are retained in our possession, in particular these hairs were maintained in my possession in my locked exhibit locker.
- Q. And do you have the 13 slides with you at this point in time?
- A. I do.

- Q. Has anything been removed from those slides -- Was anything removed from those slides after you put the hairs on them back in 1986?
- A. Yes.
- Q. And was that in relation to this particular case?
- A. The case that I'm appearing on today?
- Q. Yes.
- A. Yes.
- Q. And when approximately would you have done that?
- Removed them.
- A. This was done in 1989 and 1990.
- Q. Now, I am going to back up again Mr. Evers. Did you have occasion to receive any other item from then Constable Turgeon?
- A. Yes. I also received a pubic hair sample. This was marked in part exhibit 69. It was a clear plastic bag with ziplock. It contained one label. The label was marked in part with initials, 69. Also was marked 86-10 59. Also 86-238. There were additional initials. And the date 86-06-26 with 13:55 hours. Also additional name Turgeon with a date 86-06-27, and a time of 12:02 hours.
- Q. And what, if anything, did you do with the pubic hair sample?
- A. The pubic hairs were removed from the plastic bag. A number of the pubic hairs - or majority of the pubic hairs I mounted on microscope slides. The additional pubic hairs I put in a separate pill box which I retained.

- Q. And when you put them in the separate pill box what if any markings did you put on this particular pill box?
- A. Simply sufficient to identify them as to case number, exhibit number and what it was.
- Q. What, if anything, did you do with the bag that you received from Constable Turgeon that you removed the pubic hairs from?
- A. That bag was returned as well, registered mail, number 639 on the 5th of August, 1986, along with my exhibit number 56.
- Q. What if anything would have been in the bag that was returned 69?
- A. Again, it would probably be empty.
- Q. This pill box that you indicated you put pubic hairs in from that plastic bag, do you have that in your possession?
- A. Yes, I do.
- Q. Could I see that, please? I would ask that this item be marked for identification My Lord.

THE COURT: VD-4.

(Clerk marks pill container VD-4.)

- MR. WALSH: I show you this item that has been marked VD-4. Would you look at it for me, please, and tell me whether you can identify that.
- A. I identify this article by my initials, the case number which was signed by the laboratory, my exhibit 69, and I put a -- I had written "pubic standard"
- Q. And can you remember what kind of pubic hairs would have been placed in that particular pill box?

- A. I know that there were cut as well as pulled pubic hairs. I don't know what percentage was what.
- Q. And in whose possession did this particular item remain after you actually put the hairs in the pill box?
- A. It was retained in my possession in my locked exhibit locker.
- Q. And both the slides and this particular item that you refer to, would they have been under your control?
- A. Yes.
- Q. Your sole control?
- A. Yes.
- Q. And did you have occasion to do anything with respect to the items contained in that pill box at any time after that?
- A. Subsequently, I removed a certain number of pubic hairs. I looked for pubic hairs that had a hair follicle attached. I removed these and turned them over to someone else.
- Q. And what year would that have been?
- A. Again, that would be 1989.
- Q. And that would be related to this particular case?
- A. Yes.
- Q. With respect to the pubic hairs that you mounted on the slides did you have occasion to testify in the previous trial - the Glendenning trial - with respect to any of the pubic hairs that you obtained?
- A. No, I did not.
- Q. And the slides in which these pubic hairs had been put they have been in your possession as well?
- A. Yes.

- Q. Is there any particular reason why you would need hair from the scalp, for example, and hair from the pubic hair?
- A. Yes.
- Q. Is hair hair or is there a difference?
- A. There is a difference. It can be determined where the hair comes from on the body. The reason that we require scalp and a pubic hair sample is that when one is doing a comparison you require a hair of the same origin or the same location so you must do a scalp hair comparison to a scalp hair - known scalp hair sample.
- Q. Historically, Mr. Evers, how much history is associated with the use of hair forensically for hair comparison?
- A. Hair standards are required all the time. I receive several hundred each year.
- Q. Does that several hundred refer to separate cases?
- A. I don't recall right off. It would be different cases. And hair comparison has been around for some time. I believe the first time it was used in the Maritimes was in 1951. It is a standard method of forensic comparisons.
- Q. And the section that you are a head of is called what?
- A. The Hair and Fiber Section.
- Q. And what particular kinds of hairs are preferable to your particular task, to your job?
- A. We request that the hairs have a root, that is that the hairs be removed from the scalp by way of pulling.
- Q. What if any difference is there between that and atrophied hair?

A. Each person has a large number of hairs on their scalp that is in fact in an atrophied condition. Those are the hairs that you lose through normal routine loss, about a hundred hairs each day. These hairs have an atrophied or shriveled bulb. They can be differentiated from an actively growing hair which has a hair follicle present when it is forcibly removed.

MR. WALSH: My Lord at this time, again, I am going to ask that Mr. Evers be stood aside, however, I have a point. Mr. Evers has referred to 13 slides from which he had, apparently, he testified that he removed from the bag that has been marked for identification and put on slides. He had them in his possession. I wonder what the court's direction is with respect to whether or not you wish them to be marked or whether or not you would consider the bag itself to be of sufficient continuity associated with that item for the voir dire. It was the crown's intention to simply rely on the bags because of the unsuitability of actually handling slides but in view of your comments this morning I wonder whether --

THE COURT: Well you have the slides Mr. Evers?

MR. EVERS: Yes, I do, My Lord.

THE COURT: Are there hairs in them now?

MR. EVERS: Yes there is, My Lord.

THE COURT: These are scalp hairs?

MR. EVERS: Yes.

THE COURT: Well why not put them in evidence? Why not mark them now and then they'll become the responsibility of the court and you can pass them back. This seems to be the simplest thing here.

MR. EVERS: I'll simply leave them in the container, My Lord, that they're in.

MR. WALSH: And this box that you are handing to me has the name "Microscope slide box", is brownish in color, has a little white sticker on it, this contains the 13 slides you have referred to?

A. Yes.

THE COURT: VD-5.

(Clerk marks box containing slides VD-5.)

MR. WALSH: Well at this time, My Lord, I would ask that with your permission that Mr. Evers be stood aside.

THE COURT: Mr. Ryan you want to delay your cross-examination?

MR. RYAN: Yes, My Lord, that would be the defences' intention to wait until the witness has given his full testimony prior to cross-examination.

THE COURT: When does Mr. Evers come up again Mr. Walsh?

MR. WALSH: Mr. Evers is shown as number 24 My Lord.

THE COURT: Which means he's around for another couple of days.

MR. WALSH: Yes. We're hoping that that at the end of today I will have a better idea of how fast we are going and maybe he can be able to absent himself from this city until he is required to come back.

MR. RYAN: I have no objection to that My Lord. That would be A-OK.

THE COURT: Okay.

MR. RYAN: As a matter of fact, My Lord, just for the record and for the crowns' ease, any of the witnesses who have been stood aside and are going to testify at a later date I don't require them to be in the courtroom or in the building even until they are ready.

THE COURT: Well I had assumed that if they had other duties to perform they could go ahead and do it as long as they --

MR. RYAN: That was never asked; that's why I raised it My Lord.

THE COURT: Well, that's -- I don't mind them being excused, certainly, from the courtroom or even from the city as long as they are available within bounds of when the time comes for them to resume their testimony, and not hold the proceedings up.

Okay, now you have got another witness?

MR. WALSH: Yes, My Lord, I would call Corporal Kevin Mole. Recall. He's being recalled My Lord.

THE COURT: You are still under oath Corporal.

CORPORAL MOLE: Yes, My Lord.

CORPORAL MOLE, recalled, having been previously sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH CONTINUED:

- Q. Corporal Mole would you please tell the court what, if any, further connection you had with respect to this matter, in particular this case?
- A. On the 29th of May, 1989 I was at that time stationed in Moncton at the General Investigation Section and I was called to work on the murder investigation of Annie Flam. That's in the Town of Chatham, County of Northumberland, Province of New Brunswick.
- Q. And what was your particular role in that investigation?
- A. I was one of the file investigators in that particular investigation.

- Q. And would you tell the court, please, in relation to the issues that we're dealing with here what your connection would be.
- A. On the 21st of June, 1989 during the investigation I had a conversation with lab personnel in Sackville, New Brunswick regarding exhibits that had been examined from the surviving victim, Nina Flam. My conversation about those exhibits focused on the report that spermatozoa had been found on one of the swabs of Nina Flam's examination. She was the surviving victim in the fire at the Flam residence. I made a request on that date for information regarding possible DNA analysis.
- Q. And what was your -- why did you raise that?
- A. At that particular time I was under the understanding that if bodily fluids were discovered they could be analyzed at the lab and it would give me an indication - or give the investigator an indication of who may have been responsible for that particular offence.
- Q. And what was your understanding about what, if anything, such bodily fluids had to be compared to? At that time what was your understanding?
- A. At that particular time I wasn't aware that DNA required any type of standard to compare the found substance with.
- Q. And where did you get the idea to even raise the idea of DNA with the lab?
- A. Up until that point I had been under the impression that there were no bodily substances other than the hair at the scene. When I learned that there had<sup>d</sup>

been spermatozoa found in the swabs at the lab regarding the surviving victim I made the inquiry about DNA from personal knowledge.

Q. And what was your next involvement with relation to this particular matter?

A. As a result of the conversation I had with lab personnel in Sackville I made arrangements with the Doctor Chalmers Hospital in Fredericton to learn the blood grouping of the surviving victim, Nina Flam. I was advised that -- or as a result of that I learned that her blood grouping was A-positive and I provided that to the lab at that time. I was also aware that from the survivor I would need a blood sample to provide to the lab. The victim in this particular case had undergone several blood transfusions and I was advised by the hospital personnel that 30 days would be required -- at least 30 days would be required from the final transfusion. I was advised by the lab personnel at our crime lab in Sackville that a saliva test should be taken. On the 26th of June, 1989 I had a conversation in regards to that particular topic, collecting of the saliva sample from the surviving victim, and as a result of conversations with the lab I realized that I was also required -- the investigators were also required to provide a standard of any possible suspects to compare for DNA analysis.

Q. Were you aware of how many actual swabs were available from the bodily substances at the Flam scene?

- A. I was under the impression that there were three.
- Q. What, if anything, did you do as a result of the information that you received up until this point in time?
- A. Following receipt of this information I attempted to locate bodily substances from the main suspect - or the prime suspect in this matter who was Allan Legere.
- Q. And is he present in court today?
- A. Yes, he is.
- Q. Is he the same person you are pointing to - that you pointed out before?
- A. That I identified in my earlier testimony, yes.
- Q. Continue, please.
- A. I was aware at that time from conversations with the lab personnel in Sackville that there were hair standards from Allan Legere available from the 1987 trial. Samples that we had seized previously in 1986.
- Q. Which would have been related to what?
- A. Which would have been related to the murder of John Glendenning on the 21st of June, 1986.
- Q. And what, if anything, did they tell you about those standards?
- A. I was advised at that time that there was a process - a DNA process where the root hair could be analyzed and compared for DNA.
- Q. Continue, please.
- A. Rather than use that particular hair, attempts were made to locate other bodily substances.
- Q. Would you tell the judge, please, you had been told by the lab that they were there, why did you need to go looking for something else?

- A. At that particular time we were aware of the request for Mr. Legere for leave to appeal to the Supreme Court of Canada - his request, and we were aware of the decision of the Appeal Court in New Brunswick in 1988 and that we weren't totally satisfied that the hair was -- the issue of the hair had been settled. It was still before the courts.
- Q. Now, what about -- you say to the Supreme Court of Canada. What issue did you know was before that court?
- A. The appeal in 1988. The appeal of the conviction for the murder of John Glendenning. One of the issues in it was the seizure of hair in 1986 from Mr. Legere's body. And on two occasions or 2 samples of hair at that particular trial, one source of hair came from during the initial arrest and one source of hair was as a result of a warrant of seizure about 15 days after his arrest.
- Q. And do you know - did you have any information as to whether or not those issues were still alive in the Supreme Court of Canada or to be alive?
- A. At that particular time I was aware that they were still before the Supreme -- well that the issue of a possible appeal was still before the Supreme Court of Canada.
- Q. And as a result of that what did that lead you to do?
- A. We were aware that a search of Mr. Legere's cell in the week following the murder in Chatham, there had been a search at his cell and a hair brush had been seized, and I was aware of that fact and that there were hairs on the brush. In that particular case we

weren't satisfied regarding the continuity or the ownership of the hair brush or the hair that was on the brush. Whether it was Mr. Legere's. Subsequent to that, on the 29th of June, 1989 I attended at the Chalmers Hospital here in Fredericton where I met with the victim, Nina Flam. On that particular date, following an interview with her, I received a saliva swab that I requested to provide to the lab. The following day I made inquiries at the Sackville Detachment of the R.C.M.P. regarding clothing exhibits and a knife exhibit from a 1986 case involving the stabbing of Allan Legere while he was an inmate at Dorchester Penitentiary.

Q. Why were you making those inquiries?

A. I was attempting to locate other bodily substances other than hair - the hair that we had. We were attempting to locate the clothing that he was wearing at the time that he was stabbed in November of 1986 and any other exhibits that would have his blood on it that were seized at the time.

Q. And what was the purpose of trying to get these items?

A. They were being sought so that we could use them for comparative analysis with DNA.

Q. And what was your results of this particular inquiry?

A. I learned that the clothing that Mr. Legere was wearing on the evening that he was stabbed had not been seized by the police. They had been destroyed by the penitentiary and that some of the other clothing that he had was no longer available to us.

That the only remaining exhibit that would have any blood on it was a knife that had been used to inflict the wound on Mr. Legere.

Q. And what if anything did you do with respect to that item?

A. After a conversation with the lab technician at the Sackville lab I returned to Sackville Detachment and I received the knife from the exhibit custodian, Constable MacPhee, and I returned that to the lab in Sackville.

Q. And what did you want to do with it at the lab?

A. I turned this knife, as well as the saliva swab that I received from Mrs. Flam, I turned both exhibits over to Mrs. SandyLungair, a serologist at the Crime Lab, and requested that she use those in her determination of DNA analysis. Whether they were suitable. I was advised at that time that the knife did not appear to have enough blood or any type of substance to allow that type of an analysis to be made. She did keep the knife though.

Q. And what if any decision did you make after finding that out?

A. It was decided at that point that we had no other known standards from Mr. Legere to compare and we requested that the hair seized in 1986 be used for analysis.

Q. And had anything changed in relation to the court challenges in relation to that at that point?

A. No, not at all.

- Q. Why did you feel it was still necessary?
- A. We felt that we had exhausted our inquiries to a point where we had no other alternative at that time. The murder had occurred one month previous and we hadn't located Mr. Legere and it was very important to make that determination whether he was involved or not.
- Q. What if any opinion did you have with respect to Mr. Legere's involvement with respect to the Annie Flam matter?
- A. At that particular time I was satisfied that Mr. Legere had taken Ann Flam's life and that he had attempted to murder Nina Flam and had sexually assaulted her.
- Q. Would you give the court, please, what if any grounds you had for that belief?
- A. I had interviewed -- During my investigation I had interviewed the surviving victim, Nina Flam, on several occasions up until that point. As a result of my conversations with her I was satisfied that certain things that had been said to her would lead me to believe that Allan Legere would be responsible. In addition to that --
- Q. What things?
- A. I was aware that the person responsible had gone into the house; was very aware of the local community. That he gave the impression that he was excited and in a hurry. That he looked for a safe. He was pre-occupied with the finding of a safe which to me was familiar in relation to the story of the Glendennings and how a safe - it was very important to find the safe, open it up, and remove it from the household.

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voir dire.

In addition to that, Mrs. Flam advised me of conversation where the suspect had told her that he had been away for a long time as he was explaining his inability to maintain an erection. That left me with the impression of a person who had been either put away or had been away out of main stream for quite a while. I was aware that Allan Legere had escaped from a federal penitentiary on the 3rd of May that same year, and I was aware that there were sightings of Mr. Legere in Newcastle and in particular on May 22nd, one week before the murder, in the Chatham area, and he was positively identified by a witness. I was aware that following the murder - two days following the murder on the evening of the 1st of June that a person was within a block of the murder scene. A person had been seen trying to break into a garage and had been chased by the owner of the home with a vehicle. That this person had escaped and we had believed he had fallen and hurt himself and a subsequent search of that area where we believed that the person had fallen we recovered a pair of eye glasses - prescription eye glasses. On the 3rd of June I took possession of those glasses and I had them -- I took them to Moncton where I had an optical technician examine the glasses and compare them with the information that I had about Mr. Legere's prescription and he was satisfied that those glasses were Allan Legere's glasses. This would be on the 3rd of June.

I can't recall what other grounds but --

- Q. You had mentioned the Glendenning -- you referred to a safe at the Glendennings. What if any knowledge of the Glendenning matter had any bearing on your opinion with respect to the Flam matter?
- A. As one of the main file investigators with the Glendenning file, I was very aware of the circumstances in that particular case.
- Q. What if anything about the fires? Were the fires of any concern to you?
- A. There had been conversation in the Glendennings that one of the three persons in the home had said that they wanted to burn the house down and that there had been conversation amongst the three that they weren't going to do it. In the Flams in particular there was an attempt by the perpetrator to hide his crime by setting fires in several areas of the home, in particular in the closets.
- Q. Did you have -- That was an opinion that you held back when?
- A. Shortly after the murder. Within a few days.
- Q. What if anything did you do next? You had decided -- You have indicated that you decided that you wouldn't use the hairs from '86 in this DNA test.
- A. That's correct.
- Q. What happened next?
- A. On the 6th of July, 1989 I was made aware of correspondence that had been received from the Central Forensic Laboratory in Ottawa. This is a laboratory that would do the testing for DNA in Canada and I was advised at that time that the correspondence eliminated the possibility of DNA analysis using

hair. At this time the technology wasn't available at the lab and it wouldn't be available for some time. At that particular time we received advice of another process known as the ELISA was available. Although it wasn't as definite as DNA it may provide some investigational avenue for us to pursue.

Q. By doing what?

A. As I understand it, it could tell us -- With using a blood grouping of the suspect it would be able to tell us whether or not the suspect could be within a certain group of people who possible could have committed the crime or possible had that bodily substance that they found.

Q. And what if anything did you decide to do in relation to that advice for ELISA?

A. We refused it. We had only a small number of exhibits. Only one of the three swabs had been analyzed at that time was my understanding and the other exhibits we wanted to keep for DNA analysis. Our main concern was to have a standard to compare it with. I understood that the DNA analysis would be -- We would get the ultimate results. We would be able to say without a doubt. With ELISA I understood that we would be able to put the suspect within a certain group and at that particular time it wasn't satisfactory so we continued to look for standards from the suspect to use against the -- or to use with the DNA.

Q. At the point in time on July 6th -- was it July 6th did you say?

A. July the 6th.

Q. 19 --

A. 1989.

Q. At that point in time when you were told that they couldn't use hair as a standard at that point what, if any, source would you have had available to you other than hair?

A. I had no other source at that time.

Q. What if any other involvement or what if anything else did you do then?

A. We continued with our investigation. On the 25th of July, 1989 myself and then Corporal Gaetan Germain, we travelled to the Renous Penitentiary, Atlantic Institution in Renous, where we met with the institutional Preventative Security officer, Peter Roberts, and requested that we again search Mr. Legere's personal effects in the hopes of -- At that particular time we were looking for anything. We still hadn't located him. We weren't sure where he was. We felt he was still in the area. It was hoped that there may be some avenues somewhere in his personal effects that we could pursue to find out where he is, and any other evidence that we could find.

Q. And what happened as a result of that?

A. As we sifted through his personal effects I located a small piece of paper from a Doctor Labbe dated the 28th of March, 1989 stating that a human tissue, and in brackets - I believe it was in brackets, (a wart), an analysis was now available.

Q. What did you do when you spotted that?

A. That led us to believe that Mr. Legere had been involved in removal of a wart that had been done by this Doctor Labbe. We made inquiries with the prison to find out who Doctor Labbe was and would it be possible that any type of day surgery had taken place.

We contacted the local crown prosecutor in Newcastle. We advised him that we were of the discovery of this information and that there was now a possibility that there may be skin or some type of medical exhibits available. At that particular time we were advised that there was case law - Supreme Court of Canada case law, I think it was the Supreme Court of Canada, Queen V. Diamond, that covered the seizure of bodily substances with the use of a warrant.

Q. And what happened then?

A. We returned to Newcastle and on the 26th I made inquiries with the regional laboratory in Moncton with the Department Head, the Department of Pathology, regarding any type of analyses that were being done in the institutions or in Newcastle or Chatham at the Hotel Dieu hospital where these tissues were being examined at or where they were being kept. As a result of my conversation with a William Scarrow at the Moncton Hospital I was advised - or I received information that pathology -- That was the regional pathology lab for the Northumberland County and that would include any day surgery that was done at the institution. I made further inquiries with Mr. Scarrow to see if it was possible that any exhibits would be in their possession and I was advised

that that was the case, that there was a biopsy there.

Q. And what if anything did you do as a result of that information?

A. On the 27th of July, 1989 I attended with Corporal Germain and the local crown prosecutor in Newcastle to help prepare the warrant.

Q. And was in fact a warrant prepared?

A. I didn't personally attend but I understand the warrant was executed on the following day, the 28th.

Q. By what officer?

A. By Corporal Germain in the company of the exhibit custodian, Robin Britt, Constable Robin Britt.

Q. Continue.

A. Subsequent to that I learned on the 2nd of August, 1989 that the seizure of the wart would not provide -- The Central Forensic Laboratory had advised that the seizure of the wart would not provide an optimal standard. That the hair was preferred and that the wart would not be suitable. And at that particular time the hair was not available. The technology had not been available to us. Prior to that on the 6th of July, if I could just go back, on the 6th of July when we were advised that the technology for hair - the DNA analysis - the technology for hair was not available in Canada, we asked through our supervisors that the analysis be -- pursue the possibility of having the analysis done outside of Canada, perhaps the United States with the Federal Bureau of Investigation or else in Scotland Yard in Europe. Following that we received information that there were three

labs that were recommended or accepted by the courts and two were in the United States, one was a private lab in Ontario, but we were advised at that time that they would not be able to handle our case either until the new year, 1990, at that time.

Q. Continue, please.

A. Well on the 2nd of August we were at a point at that particular time when DNA analysis, as far as we were concerned, would not be done until at the very earliest Christmas and that would be done at the lab in Ottawa. At that particular point we had no other alternative as far as the DNA analysis was concerned.

Q. Were any other suggestions made to you at that time?

A. Again, the issue of the ELISA technique was brought up. It was on the 8th of August a decision was made that we had pretty well no alternative at that time. We were advised that the ELISA technique could eliminate Allan Legere or could eliminate our suspect. If the tests were successful it could do one of three things: it could eliminate him; it could put him into that group; or it could tell us nothing. So we chose at that particular time - we had received assurances from the lab that the only swabs that would be used would be the one swab that had already been examined at the lab in Sackville. There was half of that swab remaining and that could be used for ELISA and that would be enough.

Q. What about the other two swabs?

A. They would remain untouched and they would be held for DNA analysis.

Q. Was that important to you?

A. That was very important. We didn't want to touch those exhibits.

Q. As a result of that decision what happened?

A. I made further inquiries on the 6th of August with the hospital in Moncton regarding the blood grouping. Whether or not when Mr. Legere was stabbed in November, 1986 whether there was a blood grouping on his file there or --

Q. Why was that important to you?

A. The ELISA technique requires that the investigator provide to the lab personnel the blood grouping of both the victim and the blood grouping of the suspect.

Q. So what efforts did you make to find the blood grouping?

A. As a result of conversations with the pathology lab in Moncton I was advised that there should be a form on the medical file for all inmates at the institution and it should be called a cross match form for blood grouping.

Q. When you say institution what are you referring to?

A. The penitentiary, Corrections Canada. I was aware that Mr. Legere would have a medical file at the Atlantic Institution in Renous. On the 10th of August I made a request under section 8(2)(e) of the Privacy Act to the Institution requesting information - particular information from them.

Q. What did you want to know on that request?

A. I wanted to know if the blood grouping was on the medical file.

- Q. And did you receive a reply to that request?
- A. Yes, I did. The Institutional Preventative Security Officer acting on behalf of the Deputy Warden at the time provided our investigation with the information that Mr. Legere's medical file did in fact have a form with the blood grouping on it.
- Q. And what, if anything, did you do as a result of that information?
- A. As a result of that information and in addition to the other grounds that we had previously laid out, we returned to the crown and requested a warrant to search the medical records at the Institution at the Health Care Unit at the Institution to ascertain what Mr. Legere's blood grouping was.
- Q. And was in fact a warrant executed?
- A. Yes, it was.
- Q. Who was the officer that was responsible in charge of that warrant?
- A. Corporal Gaetan Germain.
- Q. And was he an investigator as well?
- A. Yes, he was. He was the main - the chief investigator of the Flam investigation.
- Q. And what was the result of the execution of the warrant?
- A. We attended at the Institution. There was a form on the file that was -- I noted it. It showed that Mr. Legere's blood grouping was O-positive. The form was seized by Corporal Germain.
- Q. And what did he do with that information?
- A. We immediately notified the lab that Mr. Legere's blood grouping was O-positive. Our exhibits had

already been transported there on that day by  
Constable Britt who was our --

Q. Do you know what items were actually sent for the  
ELISA technology?

A. To do the actual ELISA technology there was a portion  
of a swab and the saliva sample from Mrs. Flam.

Q. And then what happened?

A. Those were the two exhibits that were to be used with  
the ELISA technology. The following day --

Q. Any of the things that you were saving for the DNA  
did that consent for the ELISA technology?

A. I believe that the two other swabs were sent at that  
time and they were to be held there for DNA analysis  
at a later time.

Q. Continue, please.

A. I am not certain in that but I believe there were  
four exhibits that went and I believe that the two  
other swabs went at that time.

Q. Okay.

A. The agreement was that those other exhibits were not  
to be used for anything but the DNA. The following  
day at around supertime we received confirmation  
from the lab that of the three choices that we had  
to eliminate the suspect Allan Legere or to put him  
in that group where he possibly could have been the  
person responsible or the third option was they  
couldn't tell, well we had the third option - they  
couldn't tell.

Q. Did they give you a reason?

A. They advised us that the victim was a secretor and  
that the secretor would mask the suspect - or did  
mask the suspect in this particular case.

Q. Where did that leave you at that point?

A. At that particular point we had nowhere else to go. We had exhausted all our attempts to locate suitable standards for DNA and we were told that DNA now would not be available with the standards that we had until December at the earliest, probably in January, 1990, so we were at a dead end at that point for DNA.

Q. What happened next in relation to this matter we're dealing with on the voir dire?

A. On the 14th of October, 1989 I received a call to attend with several other investigators to Newcastle to assist in the investigation of the murders of Donna and Linda Daughney in Newcastle.

Q. And did you in fact involve yourself in that investigation?

A. Yes, I did.

Q. And would you tell the court, please, as a result of your initial involvement in that investigation what, if any, conclusions that you drew?

A. From viewing the scene, listening to the evidence being presented and gathered by the investigators, I was satisfied that the same person who had committed the murder of Ann Flam, attempted murder of Nina Flam, was in fact responsible for the -- in my mind responsible for the Daughney murders.

Q. And who was that person in your mind?

A. In my mind that person was Allan Legere.

Q. And would you tell the court, please, what were you relying on as a result of the Daughneys -- or from the Daughney investigation to arrive at that conclusion, please, for your grounds?

- A. My grounds for believing that at that time, I had been to the scene of the Glendenning murder in Black River in 1986; I had been to the scene at the Flam residence; and I had visited the scene at the Daughneys, and in the three instances there I had viewed photographs and had seen the body of John Glendenning and I had seen that there had been facial injuries, in particular broken bones. That was the case in the three murder investigations. The Flam and the Daughney investigations there were incidents of where the culprit appears to have started a fire to mask his crime, in particular the use of setting fires in several areas in the home, not using an accelerant. It wasn't believed an accelerant was used. The fact that there was stab wounds on the girls. That I knew there had been a knife used at the Flam - that it had been held to Mrs. Flam's throat.
- Q. What about the stab wounds at the Daughneys' --
- A. I was aware that the -- Although I hadn't viewed the bodies immediately we had been told that there had been stab wounds in the throat of one of the girls. That there was -- I was aware that there had been a sexual assault at the Flam residence. I was aware that there was an appearance at first of a sexual assault at the Daughneys. Their clothes were -- The positions of the bodies and the clothing that they had on. I was aware that there had been in the Glendenning case, again in the Flam case, incidents where the victims were tied - had been tied. That there was an indication as well at the Daughneys that nylons had been used to tie the victims.

With regards to the Flam and the Daughney murder investigations I was aware on each occasion that the perpetrator would have probably commenced the assault after 11 or 11:30 in the evening in both cases. Our initial investigation of the Daughney girls would put one of the girls arriving home in the 11 or 11:30 range alive.

Q. How does that compare with the Flam?

A. Well, Mrs. Flam, in our conversations with her, would put the time of the entry into the home at sometime after 11:30. Entry into her room, apparently, sometime after 11:30. The times in that particular case were important.

It was evident at the two scenes and as well probably at Glendenning, but as well at the two scenes in 1989 that the person responsible had stayed in the home for quite a lengthy period of time. Those are things that are similar in the two cases. Like I say, I was satisfied that Mr. Legere had committed the first murder and when comparing the types of things that went on in both houses, the Ann Flam - I was aware that Ann Flam had a broken jaw; Mr. Glendenning had broken bones in his face. I knew that the Daughney girls - I had been told at the autopsy that they had broken bones in their face, their upper and lower jaws. Because of the severe burning to Ann Flam I'm not sure of what type of beating she would have sustained but I know the autopsy showed that she had a broken jaw.

Q. As a result of that particular source of information you used to base your opinion what, if anything, else happened in relation to the issues here?

- A. We investigators were advised within a few days after the Daughney discovery that the two girls had been murdered, we were advised I believe on the 17th that the DNA analysis would now be available and that the DNA analysis using the hair as a standard is now available at the lab and they would do it immediately.
- Q. And what decision was made with respect to the hair and the standard? What decision was made of what standard to use with respect to Mr. Legere?
- A. It was decided at that particular time that the only known standard that we had that was suitable for analysis was the hair that had been seized in 1986 and it was decided at that time that we had to use it.
- Q. What if any options did you have in your mind?
- A. I didn't believe we had any option at all at that point.
- Q. Were you aware in relation to when the Daughneys were killed as to when the actual approval for DNA typing had been given?
- A. The discovery of the Daughney girls - their bodies were discovered in the early morning of October 14th. I understand that we had received correspondence at my headquarters here in Fredericton on October 13th advising that the DNA analysis was available and that the correspondence was dated on the 6th of October so basically here in Fredericton my superiors were advised on the 13th of October, we discovered the bodies on the 14th of October, and on the 16th - 17th of October discussions began regarding the DNA, that it was available.

Q. Corporal Mole did you have any other connection in relation to the investigation of these particular crimes after the decision was made to send the substances for DNA typing?

A. Yes.

Q. When did you next --

A. I continued on the investigative teams and the next involvement I believe would be - that you are referring to would be the 24th of November when I met Mr. Legere.

Q. That's the 24th of November, 1989?

A. 1989.

MR. WALSH: My Lord at this time again I would ask that Corporal Mole be stood aside.

THE COURT: What phase are you going on with this witness after this?

MR. WALSH: That would be I would start with respect to the arrest of Mr. Legere in November of 1989.

THE COURT: And, Mr. Ryan, you want to delay --

MR. RYAN: Again, defence is going to adhere to the same tactic, My Lord, and we are going to wait until Corporal Mole has given all his testimony before cross-examination.

THE COURT: Okay, thank you. Corporal you are stood aside. The same conditions apply to you as earlier when I reminded the other witnesses they can't talk about the case until the evidence is complete.

Who is your next witness?

MR. WALSH: Sergeant Gaetan Germain My Lord.

(Discussion re adjournment and order of calling witnesses. Exhibits locked in police room locker, Clerk having possession of key.)  
(ADJOURNED 4:45 P.M. TO APRIL 23, 1991 @ 9:30)

COURT RECONVENES - 9:30 A.M., APRIL 23, 1991

(Accused present in prisoner's dock.)

THE COURT: This is a continuation of course of the trial that we were concerned with yesterday. There are one or two housekeeping matters that I wanted to attend to. There was the application of Mr. Furlotte - or at least - yes, a Notice of Motion I guess you would call it, by letter or by fax, that Mr. Furlotte had given to the court. It was received on April 15th with regard to the application for the adjournment and there was a letter from Mr. Allman to the court replying or answering in some respects the notice received from Mr. Furlotte. That was received on April 18th. And there were certain other papers that I feel should be part of the court record. They are not evidence in any way but they are - and for that reason I reserved the letters A, B, C and so on through the alphabet to indicate any papers like this. These should be kept, I would advise you Mr. Pugh as clerk, away from the exhibits. Put them in an envelope. Mark them and put them in an envelope. They are not of any great concern to me but perhaps they will be to an appeal court or something one day.

One is the faxed letter from Mr. Furlotte to the Court, to myself, dated April 15th, 1991 and that was dated the same day. Would you mark that exhibit "A". Counsel on both sides are aware of these documents. There is the copy of my letter to Mr. Allman and to Mr. Ryan dated March 18th which I sent following the receipt of -- No, I'm sorry, that isn't it. There is the letter from Mr. Allman to the Court and that is this letter here, Mr. Pugh, and would you mark that

"B". That letter is dated April 16th and I received it on April 18th. I think it might have been delivered to my chambers on the 16th but I was away instructing a Bar Admission Course on jury trials for two days and didn't get it until the 18th.

There is memorandum which I prepared on December 10th which reviewed the topics discussed at a pre-trial hearing held under Section 625.1 of the Code at Newcastle on December 5th following the sitting at which the accused was arraigned. And that's an eight page memorandum, copies of which went to all of the counsel who had been in attendance at the pretrial hearing, and to the clerk of the Newcastle Judicial District as well who had also been present. Would you mark that "C".

And another eight page memorandum which I prepared on January 18, 1981 which reviewed the topics discussed at a second pretrial hearing held at Fredericton on January 9th, 1991 which was attended by all of the counsel involved at that time. Mr. Sleeth was absent that day because of other duties and the Clerk of the Court had also attended that. And that would be exhibit number "D" - or not exhibit, marked "D" for reference purposes.

And three other documents: one is a letter dated March 10th, 1991 which I received from the accused in this case on March 18th by registered post and which deals with various topics and I would ask you to mark that with the letter "E".

A copy of a letter dated March 18th, the same day I received that letter, sent by me to Mr. Allman and to Mr. Ryan, to both of whom copies of Mr. Legere's letter of March 10th had gone according to the letter itself, and that letter would be marked "F".

Another letter from Mr. Legere to -- at least these letters are signed by Mr. Legere and they were postmarked Renous and I have no reason to believe they didn't come from him. A letter from Mr. Legere to myself dated March 15th, 1991 and received by me on March 26, 1991. Copies of that letter had gone to the crown prosecutor, Mr. Allman, to the Attorney-General of New Brunswick, and perhaps to others, I don't know, but that letter will be marked "G".

With regard to Mr. Legere's letter of March 10th I sent copies of that to the two people I wrote to on March 18th. It was a very short letter and I took no further action with regard to the letter which bears the date March 15th. I take it that counsel on both sides are aware of those letters. Are defence counsel aware of the second letter?

MR. RYAN: Yes.

THE COURT: You are.

MR. FURLOTTE: We have not received a copy of the second letter. I do not have his copy of the second letter.

MR. RYAN: I have My Lord.

THE COURT: You got it. I wrote to Mr. Ryan after the first letter only because Mr. Ryan had been indicated as a person who had been copied with that letter -- or to whom a copy had been sent. I didn't send it to you --

MR. FURLOTTE: That's fine.

THE COURT: -- on that account but I'm treating -- And similarly with crown counsel. I sent it to Mr. Allman because it had been indicated a copy of the letter had gone to him and I didn't correspond to the other solicitors.

Now, just briefly, I intend to get ahead with our next witness here first thing this morning but very briefly -- Well, we'll go ahead with the next witness. I was to deal with this matter of the application for the adjournment. I will do that either before or immediately following the mid morning recess this morning.

You have another witness Mr. Walsh?

MR. WALSH: Yes, My Lord, I wish to call Sergeant Gaetan Germain.

SERGEANT GAETAN GERMAIN, called as a witness on the voir dire, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

Q. Would you give the Court your name, please?

A. My name is Joseph Gaetan Yves Germain.

Q. And your occupation?

A. I'm a peace officer and I'm a member of the Royal Canadian Mounted Police.

Q. Since?

A. November, 1972. I am presently stationed in Caraquet in the County of Gloucester, Province of New Brunswick. I have been there since the 23rd of October, 1989.

Q. And what is your role in Caraquet?

A. I am responsible for the detachment up there.

Q. And your rank is?

A. Sergeant.

Q. Would you tell the court, please what if any involvement you would have had in this particular matter and in this voir dire dealing with the admissibility of certain bodily substances of Allan Joseph Legere or certain statements of Allan Joseph Legere.

A. Before my posting in Caraquet I was stationed with the General Investigation Section at the Moncton Sub-division and on the 29th of May, 1989 I was sent to the Miramichi area, to Newcastle, to investigate a homicide of Annie Flam that had occurred in Chatham, in the County of Northumberland, Province of New Brunswick. I was an investigator and I was designated as the Chief Investigator in that case along with other investigators, members of the R.C.M.P., and this title of this job enabled me to be aware of all the information that was collected by the investigators assigned to the case. As a result of all this information I obtained on the 28th of July - I presented an Information to Obtain a Search Warrant to Judge Andrew Stymiest of the Provincial Court in Newcastle.

Q. And what was the purpose of this application for a search warrant?

A. The purpose of this application was to obtain a search warrant in order to search the pathology department at the Moncton City Hospital in Moncton, New Brunswick.

Q. What were you seeking and why?

A. I was seeking a -- I was looking for a wart. A white tissue cassette containing a wart and also a form, a Province of New Brunswick form, pertaining to this wart, to this tissue cassette.

Q. As the Chief Investigator why did you want this particular item?

A. I wanted this particular item for the purpose of DNA analysis - testing.

Q. What if any person did you believe this particular substance belonged to?

A. I had reasonable grounds to believe that this bodily substance belonged to Mr. Allan Legere.

Q. And did you in fact obtain a warrant?

A. Yes, I did obtain a search warrant and accompanied by Constable Robin Britt I searched the pathology department of the Moncton City Hospital on that same date on July 28th, 1989.

Q. And what if anything did you obtain?

A. I obtained a white tissue cassette and I also obtained a form pertaining to this white tissue cassette.

Q. Who actually would have seized those items?

A. They were seized by Constable Robin Britt.

Q. Would you have been present at the time?

A. I was present at the time. While searching for the form that pertained to the white tissue cassette I also observed in the - attached to that form a form that was dated back in 1986 and on that form it says that there was a blood clot that had been removed from Mr. Legere for medical reasons in 1986. This blood clot was being kept at another location in the

City of Moncton which was about approximately one mile from the hospital itself.

Q. And what kind of a location was this? Were you able to find out?

A. If I recall right it was what they called "Wallace The Movers". It's a big building where it was kept in storage there.

Q. And now this particular item, this wart that you were looking for, where would that have been stored?

A. That was stored at the Histology Department in the Pathology Department, also, at the Moncton City Hospital. That was stored there but the blood clot was stored at another location.

Q. What if anything did you do as a result of this particular seizure?

A. As a result of this seizure I advised our forensic lab in Sackville - made them aware of the seizure, that we were in possession of the wart, and also the availability of the blood clot. As a result of this later on on July 31st of that same year, 1989, I made a return to the court which consisted of a Report to Magistrate, I believe Form 5.2, along with the original of the Search Warrant and also with an Order of Detention. This was made to Judge Stymiest of the Provincial Court.

Q. Did you obtain an order to detain the substances you had seized, or the items that you had seized?

A. Yes, I did.

Q. Do you have any documents pertaining to that particular search?

A. Yes. On the 16th of April, 1991 I stopped over at the office of Judge Stymiest and obtained a certified

copy of the Information to Obtain A Search Warrant, and also a certified copy of the search warrant, a certified copy of the Report to Magistrate, and a certified copy of the Order of Detention.

MR. WALSH: With the court's permission, My Lord, I would like to have several items marked for identification. An item purporting to be an Information to Obtain a Search Warrant I would ask to be marked for identification.

THE COURT: This will be VD-6.

MR. CLERK: Is that for an exhibit or identification?

MR. WALSH: Identification.

MR. FURLOTTE: Could we have a look at those first?

MR. WALSH: I would like to have them marked and --

THE COURT: Well wait until they are marked first. Well these are all simply marked for identification. All these things, yes. Nothing is being admitted as exhibits at the trial yet. VD-6 this would be. That's the Information to Obtain a Search Warrant.

MR. WALSH: That's correct My Lord.

(Clerk marks Information to Obtain A Search Warrant VD-6.)

MR. WALSH: I have provided a notice --

THE COURT: And we will give those to -- or you can pass them on as soon as --

MR. WALSH: Yes, My Lord, I have given notice to defence counsel with copies of these particular documents earlier.

THE COURT: And the next one?

MR. WALSH: The next item I would ask to be marked purports to be a Warrant to Search dated the 28th of July, 1989. I believe the previous item was dated the same date.

THE COURT: The Warrant will be VD-7.

(Clerk marks Warrant to Search VD-7.)

THE COURT: The next item?

MR. WALSH: Is a Report to a Justice dated 31st July, 1989.

THE COURT: VD-8.

(Clerk marks Report to Justice VD-8.)

MR. WALSH: And the next item is what purports to be an  
Order of Detention dated July 31, 1989.

THE COURT: That will be VD-9.

(Clerk marks Order of Detention VD-9.)

THE COURT: Would you show those to Mr. Furlotte.

MR. WALSH: Yes, My Lord. I note, My Lord, Mr. Furlotte is  
reading the entire document. I would have hoped to  
save time when I provided notice in advance with  
copies of these documents.

THE COURT: May I ask this Mr. Walsh of you. You are  
putting these matters - or you are having them marked  
on the -- The wart, for instance, these documents  
pertain to the wart essentially?

MR. WALSH: Yes, My Lord.

THE COURT: Are you going to seek to have these declared as  
admissible at the trial before the jury?

MR. WALSH: No, My Lord.

THE COURT: This is what? Just back --

MR. WALSH: This is related to --

THE COURT: Why are you presenting it now?

MR. WALSH: These are related to, as I indicated yesterday,  
these are related to the issues that the Supreme  
Court of Canada has said it important in regard to  
charter compliance. They are related to the issues  
of good faith in terms of the question of good faith

by the police officers, whether or not they relied on any particular procedure, what alternative investigative techniques they actually conducted, what if any grounds they had to conduct the procedures that they actually did conduct. That's the purpose behind laying this foundation on this particular voir dire. As I indicated yesterday -- In fact I believe I did mention the fact that Sergeant Germain, for example, I said would not actually be a witness or is not intended to be a witness at the actual trial. These are related to legal admissibility questions only.

THE COURT: I see. Thank you.

DIRECT EXAMINATION CONTINUED:

- Q. Sergeant Germain I am going to show you an item that's been marked on the voir dire VD-6. Would you look at that for me, please, and tell me whether you can identify it.
- A. Yes, I recognize my signature here on the page 6 as the informant.
- Q. Which document is that?
- A. That's an Information to Obtain a Search Warrant.
- Q. And on what date did you swear that information?
- A. That was on the 28th of July, 1989.
- Q. And the contents that you have sworn there were true to the best of your knowledge?
- A. Yes, it is.
- Q. And what kind of a copy of the document is this?
- A. This is a certified copy from Judge Andrew Stymiest.
- Q. I will show you this document marked on the voir dire VD-7. Would you look at that, please, and tell me whether you can identify that document?

- A. This is a certified copy of the Provincial Court.  
It is a copy of the Warrant to Search that I had  
obtained from Judge Stymiest on the 28th day of July,  
1989.
- Q. And these documents related to your testimony up until  
this point?
- A. Yes.
- Q. And this particular document marked on the voir dire  
VD-8, can you look at that for me, please, and tell  
me whether or not you can identify that.
- A. This is, again, a certified copy of a Report to a  
Justice in the form 5.2 that I recognize it by my  
signature on page 2 and my initial on page 1. This  
is the report made by myself on July 31st, 1989.
- Q. Related to what?
- A. Related to the Search Warrant that I had previously  
obtained.
- Q. And this particular document, the last one, VD-9 that  
has been marked, could you look at that for me, please,  
and tell me if you can identify that.
- A. This is also a certified copy from the Provincial  
Court of an Order of Detention that I presented on  
July 31st to the Provincial Court. It is an Order  
of Detention pertaining to the documents seized - the  
exhibit seized as a result of the execution of a  
search warrant.
- Q. And it was signed by who?
- A. Signed by Judge Andrew Stymiest.
- Q. And what kind of a copy is this?
- A. It is a certified copy.
- THE COURT: May I just see that?

MR. WALSH: What, if anything -- You have indicated that up until this point, Sergeant Germain, that you obtained a search warrant and made a return of the items before the Justice of the court, Judge Stymiest. What if anything occurred next?

A. After that on August 2nd, 1989 I became aware that DNA analysis could not be done before early 1990 and at that time I also became aware that a wart was not an optimal sample. It was not the best sample. It was not suitable. As well as the blood clot that was also available was not suitable because of the continuity.

Q. Continuity?

A. Continuity, yes.

Q. Well what was the concern? Would you explain to the judge, please, what your concern about continuity would have been?

A. Well the blood clot had been removed in 1986 and it was stored at another location other than the hospital and we didn't know at that time who had possession of the blood clot.

Q. What if anything happened then?

A. I also became aware that same date on August 2nd, like I said, that the DNA will not be available before early 1990 but I also became aware that there was another test that could be done and it was called ELISA. This test was being available to us and was being suggested to us. Now, there was going to be some other checking to be done on this and as a result of this on the next day, on August 3rd, 1989, I was advised and I became aware that the ELISA test

had to be done in Ottawa and at that time it could be done with a saliva sample from the surviving victim, Miss Nina Flam, but we also needed the blood grouping of both the surviving victim and the suspect.

Q. What was your understanding of what if any benefit the ELISA test would do for your investigation?

A. Well to me in my own word was that it was either going to include the suspect on a - as per blood grouping, exclude him or they might not have been able to tell us anything because of reasons that I didn't know.

Q. What, if any, concerns did you have with respect to the substances that you had already obtained up until that point in time?

A. The main concern that we had was that there was three swabs that were obtained that were sent for analysis. Those swabs were obtained from the surviving victim and we wanted to make sure that two of those swabs would not be touched. One swab had already been analyzed by our lab and we wanted to make sure that the other two swabs that were left would not be touched for ELISA. They would be saved for further DNA testing. Now when they convinced me that they could do it with the swab that was already analyzed we didn't have any other choice so we said it was okay to do ELISA but we needed the blood grouping of Mr. Legere. Now on August 4th, as a result of a conversation with Miss Pat Allain who is a serologist at the forensic lab in Ottawa I became aware then that the DNA analysis - DNA testing would not be done. It was not visible to do them until after Christmas. That was mainly because of the manpower situation and that they also

were undergoing major renovations at our lab in  
Ottawa.

On August 10th, as a result of information that  
I had obtained from the investigators, I presented an  
Information to Obtain a Search Warrant to Judge  
Robert Martin of the Provincial Court in Newcastle.

Q. What were you seeking?

A. I was seeking a form from the Atlantic Institution  
in Renous from the medical file of Mr. Legere and  
that form contained the -- supposed to contain the  
blood grouping of Mr. Legere.

Q. And what was that form to be used for?

A. That form was to be used with the ELISA testing.

Q. Did you in fact obtain such a warrant from Judge  
Robert Martin?

A. I in fact obtained a Search Warrant from Judge Robert  
Martin on August 10th and on that same day myself and  
Corporal Mole executed that search warrant at the  
Atlantic Institution in Renous. We searched the  
medical file and seized a form that was in the medical  
file and contained the blood grouping of Mr. Legere.  
As a result of this search we advised our forensic  
lab in Ottawa of the result of the search and the  
blood grouping of Mr. Legere. And the next day,  
August 11th, I became aware by the forensic lab in  
Ottawa that they couldn't give us any result with the  
ELISA testing. That they were not able to give us  
anything. I was told that the surviving victim, Miss  
Nina Flam, being a secretor was masking the suspect  
in this case, Mr. Legere. So as a result of this I  
made a report to Magistrate on August 14th, a report

to Magistrate with the original of the search warrant that I had previously obtained from Judge Martin with an Order of Detention, and I made that return to the Provincial Court, to Judge Martin's court in Newcastle.

Q. And do you have any of the documents associated with that particular search with you?

A. I also on the 16th of April last, 1991, I obtained a copy of these documents - a certified copy of these documents from Judge Martin's court.

Q. Would you produce those documents for me, please?  
I would seek the court's permission, My Lord, to mark a series of documents for identification.

THE COURT: Yes.

MR. WALSH: The first one purports to be an Information to Obtain a Search Warrant sworn to on the 10th of August, 1989.

THE COURT: That will be VD-10.

(Clerk marks Information to Obtain Search Warrant VD-10.)

MR. WALSH: The second document purports to be a Warrant to Search dated August 10, 1989.

THE COURT: VD-11.

(Clerk marks Warrant to Search VD-11.)

MR. WALSH: The next document purports to be a Report to a Justice dated August 14th, 1989.

THE COURT: VD-12.

(Clerk marks Report to a Justice VD-12.)

MR. WALSH: And this purports to be an Order of Detention dated August 14th, 1989.

THE COURT: VD-13.

(Clerk marks Order of Detention VD-13.)

MR. WALSH: I would also point out that prior notice of the intention of the crown to introduce these documents were provided to defence counsel along with copies of the documents.

THE COURT: What is that notice given under? Is that under --

MR. WALSH: I have a copy of the notice here My Lord.

THE COURT: But I mean what is your authority for giving that? Is that required? That's not required.

MR. FURLOTTE: It's not required.

MR. WALSH: I don't know if it was -- My concern was I wasn't sure if it was strictly required. To be safe I decided to take the high road, give notice, give lots of notice and provide copies.

THE COURT: I'm not criticizing your practice. You just got my curiosity aroused. If it had been required what would it have been required under? I mean what were you thinking of? The Evidence Act?

MR. WALSH: I was concerned whether or not a certified copy of a document under the Canada Evidence Act and -- Section 23 of the Canada Evidence Act deals with certified copies and the document arose out of a court and the document was being certified so I wasn't sure so to be safe I gave notice.

THE COURT: Well, anyway, notice was given.

DIRECT EXAMINATION CONTINUED:

Q. I am going to show you a document that has been marked for identification on the voir dire, 10. That's dated August 10th. Would you look at that for me, please, and tell the court if you can whether you can identify it.

- A. This is a certified copy of an Information to Obtain a Search Warrant. This Information I recognize my signature on the page 6 as the informant. That was presented to Judge Robert Martin on August 10th, 1989 in Newcastle.
- Q. And what kind of copy does that document purport to be?
- A. This is a certified copy.
- Q. That you obtained from where?
- A. From the Provincial Court in Newcastle, Judge Martin's court.
- Q. And the item that has been marked on the voir dire VD-11, would you look at that for me, please, and tell me whether or not you can identify that document.
- A. This is a certified copy from the Provincial Court of a Warrant to Search, the warrant that I have obtained as a result of presenting the Information to Obtain a Warrant. This was obtained from Judge Martin's court on the 10th day of August, 1989 and I had put in my initial and the date when I did the return.
- Q. VD-12?
- A. VD-12 is a certified copy from the Provincial Court of a form 5.2 which is a Report to a Justice made by myself. I recognize my signature in the bottom and it is as a result of the execution of the Search Warrant that I previously mentioned.
- Q. And VD-13?
- A. VD-13 is a certified copy, again, from the Judge of the Provincial Court of an Order of Detention that was presented to Judge Martin on August 14th, 1989, along with the Report to Magistrate.

Q. Before actually obtaining an Order of Detention, following your return of each warrant did you obtain the opinion or consent of any particular person?

A. Before both search warrants were obtained I had consultation with the other investigators, along with the crown prosecutors in Newcastle.

Q. Did you consult anyone before you obtained the Order of Detention from Provincial Court Judge Stymiest or Provincial Court Judge Martin?

A. I consulted, again, with the crown prosecutors in Newcastle.

MR. WALSH: At this time, My Lord, I'm going to --  
These documents from the time you picked them up in Newcastle until today in whose control and possession have they been in?

A. They were always in my possession.

MR. WALSH: My Lord at this time I am going to ask that these documents - two sets of documents be entered as an exhibit for the crown, that have been marked in relation to Sergeant Germain's testimony.

THE COURT: What documents are you talking about now?

MR. WALSH: I am referring to the documents I just had marked for identification. I wish to have them entered as an exhibit on the voir dire. That would be documents marked 6 to 13.

THE COURT: Okay, they are exhibits. As far as I'm concerned everything that's marked for identification - I don't know whether it becomes an exhibit - but it's before the voir dire and has the status really of an exhibit.

MR. WALSH: I wasn't sure if --

THE COURT: That doesn't mean that merely because it's  
marked for identification at the voir dire that it  
is automatically entered at the trial.

MR. WALSH: I will withdraw my motion then My Lord. The  
practice varies. Some courts I have been required to  
actually enter the document as an exhibit on the  
voir dire but if the court wishes to do it in this  
particular fashion --

THE COURT: Well I think we'll treat everything as an  
exhibit on the voir dire. Everything that we're  
giving these VD numbers to.

MR. WALSH: Thank you My Lord.

DIRECT EXAMINATION CONTINUED:

Q. Sergeant Germain what, if anything, occurred next?

A. On August 14th, as I said, I made the return to the  
judge and at that time we had run out of all the  
options to find other bodily substance we had. They  
couldn't do DNA testing before early 1990 so we left  
it there, and that was October 17 that I was informed  
by my headquarters here in Frederiction - I became  
aware at that time that the DNA testing of hair was  
now available at the forensic laboratory in Ottawa.

Q. What had occurred in the meantime?

A. In the meantime we continued the investigation.  
Nothing had been done through -- We didn't know what  
to do, what was left to do to get other bodily sub-  
stances, and ELISA couldn't give us anything.

Q. What if any other crime happened between then and the  
time of October 17th.

- A. On October 14th there was the double homicide of the Daughneys in the Town of Newcastle and, again, on October 17th I became aware about DNA.
- Q. What if any standards were going to be sent for DNA on the 17th?
- A. The standards that were going to be sent for DNA testing were, if I recall right, were the two untouched swabs and the hair of Allan Legere that were used in the Glendenning case back in 1986.
- Q. Were you responsible - or did you have an investigative role with respect to the Daughney murders?
- A. I was just there as an investigator amongst with the other investigators.
- Q. Was there a chief investigator assigned to the Daughney murders?
- A. Yes, there was.
- MR. WALSH: I have no further questions My Lord, thank you.
- THE COURT: Cross-examination Mr. Ryan.

CROSS-EXAMINATION BY MR. RYAN:

- Q. Sergeant do you recall approximately when Allan Legere was at large?
- A. I believe it was on May 3rd, 1989.
- Q. Were you involved in any way with the investigation with respect to Mr. Legere's escape?
- A. No, I was not.
- Q. Were you aware that he was in fact at large?
- A. Yes, I was.
- Q. And you were stationed in May, '89 in Moncton I take it?
- A. Yes, I was.

Q. Were you aware that there was an investigation that was ongoing with respect to the recapture of Allan Legere?

A. Oh yes, I was.

Q. Had you attended with any of those investigators to Renous Prison or Dorchester or anything like that during May of 1989?

A. No. No. This investigation was being carried out by the Moncton City Police.

Q. And Moncton City Police did not ask for R.C.M.P. assistance?

A. Oh, we provided some assistance. Like myself all the police force were aware but nothing specific like attending meetings or -- At least myself I was not involved in this.

Q. Now, you became involved with the Flam case on what date?

A. On May 29th.

Q. And did you come up with possible suspects for that particular crime?

A. Yes, I did.

Q. And how many did you have?

A. Oh to give a number it would be very hard to give a number.

Q. It was a large number, was it?

A. Yes.

Q. More than 10?

A. I would say more than 10.

Q. And on July 28 you appeared before Judge Stymiest for an application on a search warrant, is that correct?

- A. That's correct.
- Q. And how many suspects did you have in the Flam case at that point in time?
- A. Oh I can't remember. Allan Legere was always a prime suspect. How many we had at that time I don't remember that.
- Q. Would it still have been more than ten in July of 1989?
- A. I don't know. I can't say if it was more or less than ten.
- Q. So on July 28th, 1989 did you only have one application for search warrant or did you have applications for search warrants for other suspects as well?
- A. I had one application for --
- Q. One application.
- A. -- for a search warrant, yes, for Mr. Legere, who was the prime suspect.
- Q. Well, I guess what I am wondering, during the course of your investigation in this matter did you make other applications for search warrants for other suspects?
- A. Before July 28th or after?
- Q. Let's start with before July 28th.
- A. Not myself, no.
- Q. Were you aware of any that were made?
- A. Not that I can remember.
- Q. Now, after July 28th.
- A. Not myself.
- Q. And are you aware of any others being made by any other investigators?
- A. For search warrants?

Q. Yes.

A. I can't remember. I can't remember that. If there was a search warrant made for other persons - for other suspects.

Q. Now, you indicated that through your first search warrant that you obtained from Judge Stymiest that you found out information about a blood clot, is that correct? You weren't aware of the blood clot at the time that you made an application to Judge Stymiest?

A. That's correct.

Q. And somehow you found out. How did you find out about this blood clot?

A. It's when I was looking for the form that was matching the white tissue cassette. There was a little card attached to the form and that card was dated in 1986 from a Doctor Dubois, I believe, and it said that there was a blood clot that had been removed for medical reasons from Mr. Legere.

Q. And eventually you obtained that blood clot?

A. No, I did not.

Q. You did not. And the location of that blood clot, again, was Wallace The Mover, is that correct?

A. Well, it was in a warehouse where Wallace The Movers are. It's a big building. It's about I would say approximately one mile from the Moncton City Hospital and it's a big warehouse they have up there and I was told that it was in that building somewhere.

Q. And did you ever go to that building?

A. I never did.

THE COURT: These are hospital records stored there, were they?

A. That's right My Lord.

THE COURT: I mean you're not suggesting that Wallace The Mover took over blood clots?

A. No, not at all. The building was described to me as Wallace The Mover. It's a big building and that's where the hospital - I was told that that's where the hospital keeps their exhibits, I guess, or any seized items.

MR. RYAN: In cold storage or something? Would that be --

A. I don't know what type of storage it is but it's being kept there for years.

Q. So you have indicated that in May of 1989 with respect to the Flam case that Mr. Legere was a prime suspect?

A. Yes, he was.

Q. And was that known throughout the Force?

A. Well I wouldn't say throughout the Force but --

Q. Well in the Forces in New Brunswick.

A. From the investigators in the Flam investigation.

Q. Now, what about Corporal Mole? You are familiar with him?

A. Yes, he was one investigator in the case.

Q. He was one of the investigators.

A. That's right.

Q. Now where did he fit in the chain of command with respect to this particular investigator, the Flam murder?

A. Well he was a member of the General Investigation Section in Moncton. I was also a member of this section, and he was there as one of the investigators along with myself and other investigators. But from having worked at the Newcastle Detachment for I believe six years he was more aware of the location and

the area, and being involved also in the Glendenning case he had more knowledge of it if I can say that.

- Q. So would you say that he was senior to you with respect to that investigation?
- A. With respect to --
- Q. Not in rank but, you know, just with respect to --
- A. Well he had more knowledge, yes.
- Q. And the ELISA test, now when did that actually occur, do you recall?
- A. When it was done in Ottawa?
- Q. Um-h-m-m. Approximately.
- A. Exhibits were sent on August 10th and I got results on August 11th.
- Q. August 11th, so right away?
- A. Yes.
- Q. Do you recall who reported the results of that test?
- A. That was a Mr. Les Macey.
- Q. From the Ottawa lab, is he?
- A. Yes.
- Q. And who did he report the results to?
- A. Who did he report the results to? To me.
- Q. To you. Now, you were one of the -- Is the indication that you were the chief investigator of the Flam case?
- A. Yes, I was.
- Q. And did you interview the survivor from the Flam case?
- A. No, I did not.
- Q. You never talked to Nina Flam?
- A. No.
- Q. And were you ever aware of the statements that she might have made to the investigators?
- A. Oh yes, I was. Yes, I was.

Q. And from her statements did she identify someone fitting the description of Allan Legere?

A. Well I didn't know Mr. Legere so --

Q. Well, you're the investigator and you have been talking to other investigators.

A. Yes.

Q. Some of them presumably Legere. Corporal Mole indicated --

A. Yes.

Q. Okay. From the statements at that point in time, in May or in June, 1989, was there an identification available to you to indicate Allan Legere was the prime suspect for that crime?

A. Oh there was -- Yes, there was a lot of --

Q. There was other things, is that what you are saying?

A. There was a lot of indication from the investigators and from the investigation itself that pointed to Mr. Legere. Like I said, he was the prime suspect. So that was amongst the conversation that Corporal Mole had with the surviving victim and other investigations also that were coming in.

Q. And were you aware that Corporal Mole's investigation and through his discussions with Nina Flam indicated somebody other than Legere? Are you aware that Nina Flam actually said that it wasn't Allan Legere?

A. If I am aware that Nina Flam said it wasn't --

Q. Are you aware that she said that?

A. Yes.

MR. RYAN: I have nothing further. Thank you.

THE COURT: Re-examination?

MR. WALSH: Yes.

REDIRECT EXAMINATION BY MR. WALSH:

- Q. Sergeant Germain who was the person responsible for eliciting information from Nina Flam?
- A. Corporal Mole was responsible. Had all the contacts - and numerous contacts with Mrs. Flam.
- Q. Who would have the most information with respect to what Nina Flam has said and why she has said it?
- A. Corporal Mole.
- Q. And are you aware -- were you able to subsequently determine why or under what circumstances Nina Flam made the comment that it wasn't Mr. Legere?
- A. Under what circumstances?
- Q. Yes.
- A. Well at that time Mr. Legere was still at large and she was --
- Q. Were you able to find out why she actually made such a statement?
- A. No.

MR. WALSH: Thank you.

THE COURT: Thank you very much Sergeant.

MR. WALSH: Constable Robin Britt.

THE COURT: I think it is taken for granted the witnesses are excused as soon as they have testified unless they are stood aside or to be recalled.

CONSTABLE ROBIN BRITT, called as a witness on the voir dire, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

- Q. Would you give the court your name, please?
- A. My name is Constable Robin Britt, a peace officer, member of the Royal Canadian Mounted Police, presently stationed at the Campobello Island Detachment, Charlotte County, Province of New Brunswick, I have been so

employed for the last 5½ years.

Q. With respect to the issue of the admissibility of certain bodily substances of Allan Joseph Legere on this voir dire and/or statements of Allan Joseph Legere would you please tell the court what your involvement would have been?

A. Yes. It was on October 25th, 1989 I received two metallic boxes containing hair samples from Mr. Legere. I received that from Mr. Evers at the Sackville Lab in New Brunswick.

Q. And you received them from who?

A. Mr. Evers.

Q. Could you tell us what if any role you were playing at that time period?

A. I was the exhibit man for the Flam murder.

Q. Do you have those boxes that you received from Mr. Evers?

A. Yes, I do.

Q. The two boxes - two metal boxes, did they have any identifying features or numbers on that at the time that you received them from Mr. Evers?

A. Yes.

Q. What numbers did they have?

A. One was 69A and the other one was 56A.

Q. And what if anything did you do with those particular items and in whose control and custody were they kept?

A. In my possession until the 14:25 on the 25th of October, 1989 where they were turned over to Doctor John Bowan at the Central Forensic Laboratory in Ottawa.

Q. And who turned them over to Doctor Bowan in Ottawa?

A. Myself.

Q. And did you have any other items to take at that time?

A. Yes.

Q. Did you in fact take other items at that time?

A. Yes, I did.

Q. And did you have occasion to see the two items that were turned over to -- These two particular items you are saying you turned over to Doctor Bowan when again did you see these particular items?

A. On March 25th, 1991.

Q. And under what circumstances did you see these items on that date?

A. I received them personally from Doctor Bowan.

Q. Where?

A. In Moncton, New Brunswick.

Q. And how did the items compare with at the time that you actually turned them over to Doctor Bowan?

A. They are the same.

Q. Do you have any doubt about that?

A. Because I can tell. I got my initial "R.B." which stands for Robin Britt; the date - 89-10-25; the time and Sackville, New Brunswick.

Q. From the time that you received them from Mr. Evers until the time you turned them over to Doctor Bowan did you ever open these particular packages?

A. No, as they were sealed.

Q. And what if anything have you done with these items since you received them from Doctor Bowan?

A. I kept them in my possession.

Q. Until when?

A. Until today.

MR. WALSH: At this time, My Lord, I wish to have item referred to as 56A marked on the voir dire.

THE COURT: VD-14.

(Clerk marks metal can VD-14.)

MR. WALSH: The next item is 69A My Lord.

THE COURT: VD-15.

(Clerk marks metal can VD-15.)

MR. WALSH: What was your understanding in October of 1989--  
What was the date again in October you went to Ottawa?

A. October 25th.

Q. What was your understanding of what you were taking  
your items up for?

A. For DNA testing.

Q. Had you ever been to Ottawa previous to that date in  
relation to the Flam murder?

A. Yes.

Q. And when was that?

A. That was August 10th, 1989.

Q. Did you have occasion to bring items up at that time?

A. Yes, I did.

Q. And what if any understanding did you have as to what  
you were taking items up for at that time?

A. For the ELISA test.

Q. Would you tell the court, please, whether or not any  
of the items that you took for the ELISA test were  
any of the items that you took for DNA testing in  
October?

A. The ones I brought October 25th were different ones  
from August 10th, '89.

MR. WALSH: I have no more questions My Lord.

THE COURT: Cross-examination?

MR. RYAN: I don't think so, My Lord, thank you.

THE COURT: Thank you very much Constable Britt. You have  
got another witness?

MR. WALSH: My Lord if you wish we could have our morning  
break at this point and Mr. Sleeth will be conducting  
the examination of several witnesses following that,  
if it's appropriate to the Court, or we can continue.

THE COURT: Why not go a few more minutes. Get along with  
the next one here for a while.

MR. SLEETH: Call Brian Golding.

BRIAN GOLDING, called as a witness on the voir dire,  
having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

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

A. My name is Brian Leslie Golding and I'm a truck  
driver.

Q. And how long have you been a truck driver for Mr.  
Golding?

A. The past two years.

Q. Mr. Golding have you ever testified in a court of law  
before?

A. No, I haven't.

Q. Just be calm, Mr. Golding, and speak in a loud voice.  
Mr. Golding I am going to ask you first do you know  
an individual by the name of Allan Legere?

A. Yes, I do.

Q. The person you know by that name is he present in this  
courtroom today?

A. Yes, he is.

Q. Where is he, please?

A. He's seated to my left between the two R.C.M.P. officers in the blue sport coat.

Q. Presently talking to a man in a black gown?

A. Yes, sir.

MR. SLEETH: Mr. Furlotte. I would ask that the record show, My Lord, that he has identified the accused in the dock.

Would you please relate to His Lordship and to this court the circumstances which brought you into contact with that man you have just identified beginning, please, with the date and place.

A. Okay. Well the place would have been Sussex, New Brunswick; the date was November 24th, 1989. I was on a run from Montreal to Halifax, Nova Scotia. I had occasion to stop into Sussex as there was a snow storm and I needed to clean my windshield so I simply pulled into the Four Corners Irving station located right in Sussex in New Brunswick and I got out of my truck to go get a squeegee from over by the fuel pumps. While I was doing that I noticed that there was a car there at the fuel pumps and a man was putting fuel in the car and he was talking to the lady I noticed who was driving and really I didn't pay much attention to it other than that. I came back to my truck. I climbed up on the truck to wash the windshield and just as I was doing that I noticed the car went tearing out of the parking lot. I mean it was going fast enough that I noticed it rather than just seeing a normal car pulling out. And the man who had been fueling the car was chasing it on foot.

And, you know, I kind of thought it was a little strange but I didn't -- I still didn't pay much attention until the man turned directly around and started walking back towards the truck. So I climbed down off the truck. I figured he was going to ask me for a drive or something so I climbed down off the truck. As soon as he approached me he pulled out what I seen was - I thought was a gun, and was pretty sure it was a gun, and he said simply "Come on, let's get out of here." And I kind of hesitated. I wasn't really sure what was going on and, you know, he said again, he said "Come on, let's get out of here right now." So he brought me around to the driver's side of the truck. He put me in the truck first. He asked me to get in first so I got in and all the way across to the passenger side and he climbed into the driver's side. He told me to switch places so I could drive. I was moving a little slow because I wasn't - you know, I wasn't sure what was going on here. It was taking a while to settle in. And he was, you know, telling me to hurry up and let's get out of here. I got in the driver's seat and just about the time I did that there was another tractor trailer about to pull into the yard and he said "I want you to leave before that tractor trailer stops." So I got my truck in gear and as I pulled out on to the roadway he indicated he wanted me to head towards Moncton so I took the eastbound on-ramp back up to the Trans Canada Highway to head for Moncton. As we were going up the on-ramp he kept at me to go faster. "Let's go faster." And the truck - I have a tractor

trailer that weighs 55 tons. It was a snowy night and it takes a little while to get going, eh. And I obviously wasn't moving fast enough for him because he reached across with his left foot and put it down over the top of mine on top of the fuel pedal. You know, at that point I was scared and the way it came out was I started yelling at him. I said, you know, "Look, if you want me to drive this truck you have to leave me alone and let me drive it and I please wish you would stop pointing the gun at me."

He was with me, I guess, for, you know, 3½ hours and I must have mentioned it 50 times "Please stop pointing the gun at me, directly" and I couldn't get him to do that. He said he didn't trust me and so he had to point the gun at me.

When I told him that about at first there about, you know, to leave me alone and let me drive and not point the gun at me he told me as long as I did what he said he wouldn't have to hurt me but he said he could easily kill me and take the truck if he had to. And then he said again, he said "But" he said "if you really knew what kind of person I am you would believe me and you wouldn't have to worry about it" and I think I said something to him like well it's a little hard to believe while I'm looking at the gun, eh.

Anyway, we went up the road. Not much was said between, you know, we were just driving along, probably going about 40 miles an hour, again, because it was snowy and my first winter driving a truck so I wasn't used to it. As we got closer to Petitcodiac there's a truck weigh station just on the other side of River

Glade, New Brunswick and I thought about that and I said to myself well I've got to mention it to him because you are required as a tractor trailer -- a commercial vehicle is required to stop if the scale is open. And I tried to mention it to him and he didn't want to hear about it at all. He just - you know - he said "Don't stop. You are not to stop for anything. Just keep going." And I kept trying to tell him, you know, that we have to stop. If we don't stop, you know, then maybe the police will come after us. Anyway he told me again not to stop; just to keep going. And as we approached the scale there's a big sign on the side of the road that tells you if it's open or not and it was open. So I started to pull in. I put my signal light on and started to slow down as if I was going to pull in. At that time he turned and looked at me and he said -- He leaned right over on me and he put the gun up against my side and he said "Don't stop." He said "I can feel the devil coming up inside me." And he had this really crazy look in his eyes and so I figured okay, I'm not going to stop. I kept on going by the scale. Normally if you were to go by that scale you know they would see you. There's great big windows in front of the scale. This night the scale house operator had his back turned talking to another driver and never even noticed us go by. I couldn't believe it. So anyway we kept going.

Not much was said until we got to Moncton. When you climb Lutz Mountain right by the Forestell's Truck Stop there's -- he indicated he wanted me to take --

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Route 126 is right there. He wanted me to take that north to Newcastle. A lot of fellows will go down - there's an exit road right there. It's not meant to go down but he wanted me to go down that road and I told him that it was too snowy and that it was too steep at night for me to try that and we should go all the way down the Mountain and take the proper exit for the road. He didn't really like that too much but he said okay. He said do what you - do that, just don't take too long.

Q. Mr. Golding I don't want to interrupt your train of thought too much at this point but if you could just slow down just a little bit as well as you speak. You're a very rapid speaker.

If we could for a moment, Mr. Golding, before continuing from your location near Forestell's, when you first came in contact with this person who had this gun that you were talking about, did he identify himself? Did he give his name?

A. Oh yeah, that was when we first started out.

Q. What did he say then?

A. Once we were going down the Trans Canada he said "I'm Allan Legere you know", and I looked at him -- He didn't look like the person who I had seen, you know, in newspaper reports and, you know, on television. He didn't look anything like that. I could smell - you know - I could smell booze and, you know, I didn't believe him. And he went on to say, you know, he said "I'm a suspect in these murders that have taken place in the Miramichi" and, again, me not believing him I said "Well did you do it?" and he didn't confirm it or deny it. All he said was "It doesn't matter

whether or not --

MR. LEGERE: Don't start your goddamn lying! Tell him the truth!

MR. SLEETH: Keep answering witness.

MR. LEGERE: You never got hurt. Tell him the truth.

THE COURT: Mr. Ryan I want to tell you that if we have any interruptions of this nature - I want you to make your client aware that if there are any interruptions of this nature --

MR. LEGERE: I don't care what you --

THE COURT: -- he will go back to the cell and he will listen to the proceedings that are taking place here on a loud speaker. Now he has the choice: either to behave himself in the courtroom or to listen to the proceedings out there. Now it's just as simple as that.

MR. LEGERE: A little hard to bear, Your Honour.

MR. RYAN: Well, My Lord, perhaps then I could request that we have our morning recess now and I can go through that with him and point out to him the features that the Court has designed for it.

THE COURT: Well, I think that would be -- Did you have something to say Mr. Sleeth?

MR. SLEETH: I was just going to say, My Lord, before you answered that the witness - I would like him to have an opportunity here, as well, to complete his testimony.

MR. LEGERE: You can send me back to Renous if you want Your Honour. I'll go back there today.

MR. SLEETH: But if the Court wishes to - sees the need for a recess, certainly, yes.

THE COURT: Yes. I don't know whether you were here yesterday but I have been warning the witnesses that as we recess when a witness is on the stand he's not allowed to discuss the case with anyone until your testimony is all over so you must observe that. I'm sure you will.

Well, defence counsel understand what my position is?

MR. RYAN: Yes, My Lord.

THE COURT: On this. And I do urge you to -- and I want to make it clear. I am not going to tolerate this sort of nonsense --

MR. LEGERE: Oh, go away, go away, go away.

THE COURT: -- at all, and if the Accused prefers to spend the next what - six months in the cell in there --

MR. LEGERE: Don't threaten me!

THE COURT: -- listening to what's going on --

MR. LEGERE: Don't fuckin' threaten me! You're already denying me the rights to a lawyer. You're going to probably make him go ahead when he's not even prepared for a case and you got the fuckin' gall to threaten me. You're not god you know! I don't mind being fair but you better be fair too.

THE COURT: Counsel understand my position?

MR. RYAN: We do My Lord.

THE COURT: We'll remove the accused, please.

MR. LEGERE: You are coming in, are you?

MR. RYAN: Yes.

MR. LEGERE: Pisses me off. Nobody gets hurt and he's lying like a son-of-a-bitch.

MR. GOLDING: I don't know what I'm lying about man.

MR. LEGERE: Tell the truth. Don't be lying.

MR. GOLDING: I am telling the truth. I'm going to tell  
the truth. That's all I'm here to do.

(Accused removed from courtroom.)

(RECESS - 10:55 A.M. - 11:45 A.M.)

THE COURT: Now, we are continuing with this witness.

(Accused present in prisoner's dock.)

I just want to point out, again, for the benefit  
particularly of the media that we are in a voir dire  
and nothing that occurs in the voir dire can be pub-  
lished or reported.

So Mr. Sleeth do you want to continue with this  
witness.

MR. SLEETH: Thank you My Lord.

DIRECT EXAMINATION CONTINUED:

Q. Mr. Golding at the time we broke you had been  
commenting and relating things which had been said  
to you and I believe you concluded by saying Mr.  
Legere had neither confirmed nor denied murders but  
it didn't matter, and then what else was said after  
that by Mr. Legere?

A. Well the last sentence that was said there was "It  
doesn't matter anyway because the cops are going to  
have me framed for them."

Q. Okay. Now if you would, please, before I interrupted  
you you were relating how you had passed by Forestell's  
and you were to head up towards Newcastle. Could you  
just, please, take it from there.

A. Okay. Like I was saying, we came down and took the  
proper exit on to the 126. Mr. Legere started  
talking a little more then. Let's see. He related

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voir dire.

the events prior to coming up to - meeting up with myself. He told me about taking the train to Saint John. He had drank in a local bar there. Didn't tell me which one. He told me about getting in with the taxi driver and making him take him towards Moncton. He told me about them going off the road. They had gotten out of the car and flagged down the lady going the other way that I had seen in Sussex and then that's what brought them up to where I had seen them.

He was talking one point about -- This is along the same part of the route. He was talking about -- He had called himself a survivor and, you know, he had said that he had -- he had been telling me how he had sort of hid out in the woods around Newcastle, you know, in the time period of from when he had escaped I guess in May to present - until he told me that when it became too cold and that was sort of - wasn't an option he had any more. He had mentioned about helicopters because I had known they had had helicopters out there too looking for him, and he said, you know, if he had a fire or something going that he would just snuff it out right around then, you know, when he heard them coming.

We kept going along. He asked me to turn off the heater and to put down the window on his side. It was a power window and the button's right beside me on the dash so I put the window down for him. And he mentioned that he had been up for a couple of days straight and he was pretty tired so he needed the cold air to stay awake. And I remember asking him if I

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could put my jacket back on and a pair of gloves so I could drive because it was quite cold and that was okay.

We kept driving along. Not too much more was said and I didn't really look over at him that much but when I looked over at him finally his head was down and he had fallen asleep - nodded right off. And at that point where we sat in the truck it's quite a narrow cab and we were sitting right close together and the gun was right about here and I thought of maybe trying to get it but then I then thought u-m-m, one of us will get shot and it will probably be me seeing as that was the way it was pointed, eh, and so I just left him alone and I finally -- I just hollered at him. He had introduced himself previously as Allan Legere so I just hollered at him, I said, you know, to wake up. And he woke up and he asked me where we were and we were just the other side of Rogersville which is, you know, before you come to Newcastle. He asked me to start slowing down and I asked him why and he said he didn't want to get into Newcastle until about 6 o'clock and at that time it was 20 to 5 so I told him, you know, I said even if we slow down I said, you know, we're going to get to Newcastle a long way before 6 o'clock, so I asked him if we could stop which was okay. So we stopped just along -- It was in a restaurant parking lot is what it was. It was closed. This would be 4 o'clock - or was 20 to 5 in the morning. Let me think now. I asked him why he wanted to get there at 6 o'clock and he said because he wanted to get a plane at CFB Chatham

that boarded at 6 o'clock and he wanted to be there to get that plane. I asked him what kind of plane it was and he said it was - he thought it was a four engine propellor plane. I guess before I asked him that I asked him where he planned to go with it and he had said to Iran and that's when I asked him what kind of plane it was and he told me -- I said, you know, I didn't think a plane like that could fly overseas. He had thought about that for a minute and then he, you know, he started saying about how he shouldn't have told a lady that had been with him previously about his plan because he figured she probably would have went and told the police by that time.

So then he asked me how difficult it would be to drive the truck. You know - I was willing to give it up if he wanted it so I told him it wasn't very hard to drive it but he didn't think it would be easy enough with the trailer on it. So I told him I thought we could drop the trailer pretty easy. And there was an old back road not too far away. We went down into the road until there was no houses or anything around and I got out, he came out with me, and dropped the trailer. And almost as soon as we done that he decided no, he was going back to Newcastle, he wanted to get the plane after all, so we turned around and got back out to the 126 and we started heading into Newcastle again.

Just before we come into Newcastle - and I didn't know the area at that time very well so I couldn't pinpoint the exact location, but I remember him

saying just right out of the blue - he said "Turn up this road right here" and so I did it. We weren't going very fast. Probably going less than 30 miles an hour. And I seen a set of headlights coming up behind us and I mentioned it to him and he looked out into the mirror to see, you know, who it was, and as they got closer I could see the little red and blue light going in the windshield so I mentioned that to him and he just said "Keep going. Don't stop. Just keep going." And we went along maybe half a mile or so like that and I said to him "I don't think we can keep going here forever" and he was real calm, he just said "Okay, pull over." When the truck stopped I looked at him and he was looking in the mirror to see what was going on behind us and I didn't think he was paying attention to me so I bailed out and I ran back towards the cops. I had my hands above my head and I just said "He's got a gun! He's got a gun!" And that pretty well concluded the trip there.

Q. You mentioned several times a gun. What type of gun did it appear to be to you?

A. I couldn't really tell at the time. Visually I couldn't tell what it was. It was dark, understandably, in the cab. I believe he said it was a Browning three 0 eight and I remember at one point he showed me a bullet. Just held it up so I could see it while I was driving along. He just said very simply, he said, you know, "If this hits you" he said "you won't walk away from it." And that would be - that would be the gun there.

Q. Now at the outset of your testimony you made a brief mention of his appearance and I wonder if you could just elaborate on that. Expand on how he appeared. What did he look like?

A. Well, the only way I had been familiar with him before was just, you know, strictly through what I had seen in the media and he had been, you know, quite a big man by his pictures but the gentleman who had been with me was, you know, quite a bit smaller. His hair was quite short. He was clean-shaven. You know. He didn't look the way he had in the pictures.

Q. At the time when there was discussion about this plane for Iran do you recall any other comments made by Mr. Legere to yourself at that time?

A. I'm sorry, I probably -- There probably was more, I can't remember.

Q. Mr. Legere wanted you to take -- You have already related how he wanted you to drive him about. Were there any other things he wanted from you that he asked of you at any time?

A. Okay. Well that was when that there was talk about the plane I remember now he asked me for my wallet. He wanted my I.D. He didn't want the money in it and he didn't want my personal effects and my pictures of my girlfriend and my mother and father and he made a point of taking those out and handing them back to me. And I remember asking him at the time - he had told me previously, this was right at the very first of the trip, he had told me he was 41 and I was only 24 at the time and I remember asking him, you know, you think you are going to be able to pass for 24. He kept the

wallet however. I got it back afterwards.

Q. A minute ago you related how you -- your expression was you bailed out. You left the truck and ran down toward the police vehicles. What did you see take place after that?

A. Well, to tell you the honest truth, what it was that pulled us over was the dogmaster van, one of those Chevy Suburbans. They put me behind that and I sat on the bumper with my back to the truck and, you know, the dog was barking at me in the truck and stuff but I was just very relieved to be out of the situation and to tell you the truth there was cars whizzing around and stuff and I didn't really pay a lot of attention after that.

MR. SLEETH: Thank you very much Mr. Golding.

THE COURT: Now, cross-examination Mr. Ryan?

CROSS-EXAMINATION BY MR. RYAN:

Q. Mr. Golding could you approximate how long you and Mr. Legere were travelling together?

A. Can I approximate it?

Q. Can you approximate it?

A. Yes. I remember I had looked at the clock when I got out of the truck in Sussex. It was shortly after two in the morning. I believe when we got to Newcastle the arrest was made at 5:30 so it would have been just about 3½ hours.

Q. And you say the conditions were snowy. Did it storm that whole 3½ hours?

A. No. About halfway up the 126, you know, a good way toward Newcastle it did stop snowing. There was snow on the ground but it did stop snowing.

- Q. And you indicated a gun was being pointed at you. Was that the same gun you have described as a three  
0 eight Browning? Is that what you described the  
gun as?
- A. Yes.
- Q. Is it the same gun you are talking about or was there  
another gun?
- A. There was only the one.
- Q. There was only the one gun. That was shown to you -  
that gun?
- A. What I could see of it, yes.
- Q. And when you first saw it did you note where it came  
from?
- A. I'm not sure I follow the question.
- Q. Well --
- A. You mean what store it was bought in? Where it came  
from on his person?
- Q. When you first saw it whereabouts did it appear from?  
Did it come out of a bag?
- A. It was wrapped in a bag when I seen it. To tell you  
the truth I wasn't expecting to see a gun pulled on  
me so I really wasn't looking at him, you know, that  
way. I was looking at his face as he came towards  
me. You know, when he came and said, you know, come  
on, let's go, that's when I looked down and there was  
the gun. I didn't see, you know, where he pulled it  
out of or whatever.
- Q. Now during this 3½ hours was the gun ever off you?
- A. Okay. Well, let's see, as I described before most of  
the time we sat - when we sat in the truck it was

laying across his lap pointed in my general direction. I guess when I got out -- I got out once to use the bathroom and once to use the -- to unhook the trailer. My back was to him both times and I couldn't, you know, couldn't swear that it wasn't pointed at me.

Q. And while you were driving could you tell which direction the gun was pointing?

A. I've got a -- On that particular truck I was driving it wasn't illuminated inside but it did have a red light underneath the dash that lights up just about where your feet are and with that light coming up you could see, you know, could see the general outline, plus it was pretty close and I was using the gear shift so my hand would have been fairly close to it.

Q. But you told him not to point the gun at you or you weren't going to carry on with your trip, isn't that correct?

A. At the very first of it?

Q. U-m-m.

A. The way I put it was if you want me to continue to drive, you know, I would appreciate it if you didn't. I didn't say it like that, mind you. Now the language was a lot more colorful. But --

Q. Did you see him point the gun away from you then?

A. No, he said he couldn't. He said he had to -- You know. He didn't trust me and, you know, that he couldn't afford, you know, for me to -- to take the chance.

- Q. Did you ever see the gun pointed parallel to his legs?
- A. Parallel to his legs?
- Q. Yes. If he was sitting in the passenger seat.
- A. But the way he was sitting in the passenger seat for most of the time wasn't as I am sitting directly in the chair. He was sort of sitting with one leg just a little bit off of it so he was not quite on an angle - just on a little wee bit of an angle and, you know, he just sat like this. He was leaning forward, you know, and --
- Q. Leaning forward?
- A. You know. But the gun, like I say, it was on an angle across his lap. That I remember now. Like I was concentrating on driving too, you know. This is from glances.
- Q. It was storming and --
- A. Exactly.
- Q. -- you were having to drive at a reduced speed you have already testified.
- A. U-m-m.
- Q. And whose idea was it to drop the trailer off?
- A. Well, when he was talking about taking the truck I did say as well, you know, I said it would be easier you know. Like I was willing to give it all up. It didn't matter to me. I didn't want to hang on to it so I did say it would be easier, you know.
- Q. So you suggested that you drop the trailer off?
- A. Sure.
- Q. And had you ever been in the area where the trailer was dropped off? Was that your first time there?

- A. On that particular road it was. It's a no truck road. It's a road that commercial vehicles are not supposed to be on. I didn't know it that night but it wouldn't have been a road I would have regularly taken, you know. I have travelled the 126 before but not that particular road.
- Q. And you were the person that detached the trailer from the cab I take it?
- A. Yes.
- Q. And you indicated at one point that you smelled booze or alcohol on him. Was that when you first encountered him or --
- A. Well, you know, I did smell it the whole time but I mean I noticed it right at the first when he first started talking.
- Q. And did he consume any alcohol while he was with you?
- A. No.
- Q. Did you have any alcohol in the vehicle?
- A. No.
- Q. And you were requested to turn your heater off I take it?
- A. Yes.
- Q. And to roll his window down. Well, you had a push button, was it?
- A. Yeah, it was just a little button right beside the steering wheel.
- Q. Automatic --
- A. Yeah, it's got a little electric motor on it that turns it down.
- Q. And you noted he was asleep at some point after that so it didn't keep him awake I take it, eh?

- A. I guess not, no. He just nodded off, you know. He wasn't - he was asleep.
- Q. Well, you said you had to yell at him to wake him up.
- A. Well I wanted to make sure he got it the first time. I didn't want to whisper or -- I didn't want to -- You know, again, I didn't want to scare him.
- Q. You didn't want to startle him but you yelled at him?
- A. Well, I guess I did, yeah.
- Q. How many times did you have to yell at him?
- A. Just the once. He snapped right up.
- Q. And at any other time had you noted him nodding off?
- A. No, that was the only time.
- Q. That was the only time that you saw him?
- A. Yes.
- Q. Well I take it that while you were watching the road that you weren't watching him the whole time.
- A. Exactly.
- Q. So are you fairly precise in saying that you only saw him nod off the one time?
- A. Yes, because I only saw him do it the once. He might have done it other times, you know, I would have been concentrating on driving. I wouldn't have noticed. I only physically myself saw him do it once.
- Q. Okay now, you said nodding off. What's the difference between that and sleep in your opinion?
- A. Well, to me sleeping is you're in bed, you know, you are laying down. Nodding off is when your head falls forward.
- Q. And he was sitting in an upright position then I take it?
- A. Yes.

- Q. With his head slumped over?
- A. Yes.
- Q. What about leaning against the door frame? Did he lean back?
- A. Geez, you know, maybe he could have. Like, again, I'm looking over at him at glances. I'm keeping my direct observations or whatever you want to call it on the road. I wasn't -- You know, I was just sort of taking glances.
- Q. And you have got a red light that's under your dash?
- A. Yes, it's mounted up underneath there.
- Q. It's mounted under your dash. So the light would go towards the floor?
- A. Exactly.
- Q. So you couldn't tell whether his eyes were open or closed most of these times that you were glancing at him and he wasn't talking all the time either, was he?
- A. Not the whole time, no, but when he nodded off that's when I noted there had been quite a period of silence before that. I couldn't see his eyes closed to tell you the truth, no. No.
- Q. Could you see them open?
- A. No, I couldn't either way. He had glasses on which would have reflected the dash lights.
- Q. And you say you spotted a vehicle behind you when you were approaching the Newcastle area.
- A. Yes.
- Q. How far away from Newcastle were you at that time?
- A. I think, as I mentioned earlier, I am not that -- I still really am not that familiar with Newcastle to

- approximate how far I was, you know. At that particular time I couldn't tell you for sure. I couldn't even tell you -- I couldn't find the road I was on now to tell you the truth.
- Q. So you indicated to your passenger that there was a vehicle coming behind or how did you let him know that you were aware of this vehicle?
- A. I think, you know, once I noticed it in my mirror I said there's somebody coming up behind us.
- Q. Did he already know that?
- A. I believe so.
- Q. He was aware as well?
- A. I think so, yes. I can't say for sure.
- Q. And with respect to the vehicle did you see lights other than headlights?
- A. Not at first. It was still a fair ways back and it was only when they got closer that I realized, you know. I could see the little -- It was just one of those little lights that go in the windshield.
- Q. So how long was the fact that that vehicle with its lights flashing and the time you stopped - how much of a period would that have been?
- A. I couldn't even guesstimate to tell you the truth. I wasn't thinking too much about how long it took.
- Q. But it wasn't a very long time or it was a long time? You knew what it was, did you not?
- A. In exact minutes?
- Q. No. You knew what that vehicle was.
- A. Not at first.

- Q. But when you saw the lights - flashing lights.
- A. Yes. Then I realized that it was the police.
- Q. And did he know it was the police?
- A. I didn't really ask him I don't think.
- Q. Did you not tell him that they were flashing lights?
- A. I told him that.
- Q. And you can't guess how long from the time that he was aware of the flashing lights until you actually stopped?
- A. Let me think. We turned on the road. We hadn't gone very far but it was far enough down the road so that when that other vehicle turned on as well I could see its headlights but not identify what it was and where it was one of those dogmaster vans it just looked like a pick-up or a half ton coming up behind us so initially I didn't have any reason to believe that it was the police until I seen the light when they approached us.
- Q. You had your vehicle stopped. How did you stop? In the normal fashion? Applying the brakes.
- A. Well, on a tractor trailer, you know, you've got your regular brake and you've got a parking brake. What I did was just as the vehicle was rolling to a stop I grabbed the parking brake which would have made the vehicle jerk as it came to a stop, and then I was - you know the rest.
- Q. And then you left the vehicle. Was there anything said to you just prior to your leaving the vehicle?
- A. The last thing I remember was just, you know, a very calm "Okay, pull over.", and I don't remember anything after that.

- Q. You don't remember him saying anything to you about "This is it."?
- A. Not directly, no. Like I say, again, I was looking more for a way out of it than I was paying attention to a lot.
- Q. So then you exited the vehicle and did you walk or run or --
- A. I ran.
- Q. Where did you run?
- A. Directly toward the officers that were -- They had gotten out of the vehicle by that time and I just ran directly towards them with my hands above my head because they had guns and I wasn't sure if they knew who I was or not.
- Q. Were their guns out?
- A. Yes.
- Q. They were unholstered?
- A. They had rifles.
- Q. They were holding rifles?
- A. Yes.
- Q. Pointing them at you?
- A. No.
- Q. Where were their guns pointed? As you passed them.
- A. I didn't go by them. I --
- Q. Oh, you stopped in front of them.
- A. I just came up to them, yes. And then they just grabbed me, you know, and took me behind the Surburban.
- Q. Did you see your passenger leave your truck?
- A. No. Again, once I got behind the Surburban I sat on the bumper. My back was to what was going on behind me and I just -- I didn't want nothing more to do

with it to tell you the truth. And I heard things,  
you know.

Q. Well what did you hear?

A. Well just voices, you know, cars going, doors, you  
know, that type of thing. Nothing specific.

Q. And did you hear any conversation between Mr. Legere  
and the officers?

A. No, sir.

Q. You heard nothing like that?

A. No. I would have been, you know, a little ways back  
from where the truck was.

Q. Well how much of a distance?

A. 25 yards maybe, I don't know exactly.

Q. And your curiosity didn't peak you to have a look  
around and see what was going on?

A. No.

Q. Did you hear any gunfire?

A. No, sir.

Q. Did you hear any warnings called out by the police?

A. I knew they were hollering but I couldn't tell you  
exactly what was being said.

Q. Did you hear any punches or kicks or anything like  
that?

A. No, sir.

Q. When was it during the course of the 3 1/2 hour drive  
that you actually believed your passenger was Allan  
Legere?

A. I didn't.

Q. Never did?

A. No.

Q. At no time?

A. No.

MR. RYAN: No further questions. Thank you.

THE COURT: Re-examination?

MR. SLEETH: I have no questions for re-examination My Lord.

THE COURT: Thank you very much Mr. Golding and you are excused from this part of the trial, subject to what further instructions counsel give you.

Well now it is quarter past 12. I think we will adjourn then until 2 o'clock this afternoon.

(Accused removed from courtroom.)

(NOON RECESS - 12:15 - 2:00 P.M.)

COURT RESUMES: (Accused present in prisoner's dock.)

THE COURT: Now, you have another witness Mr. Sleeth.

MR. SLEETH: Yes, My Lord, call Corporal Barter.

CORPORAL TERRY BARTER, called as a witness on the voir dire, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

Q. Would you please state for the court your full name.

A. My name is Terrance Michael Archie Barter, spelled B-a-r-t-e-r. I am and have been a member of the Royal Canadian Mounted Police since the 6th of February, 1967.

Q. And you are presently stationed where, please, sir?

A. I am presently stationed in Chilliwack, Province of British Columbia.

Q. And is there any particular service in the R.C.M.P. which you are assigned to?

A. Yes. I am a member of the Police Dog Services and I have been since the 20th of February, 1971.

- Q. Have you been to New Brunswick before your appearance on this occasion, sir?
- A. Yes, I have.
- Q. Would you briefly relate to the court when it was that you were last in New Brunswick then?
- A. On the 14th of November, 1989 I came to Moncton, New Brunswick to assist in an investigation. I was seconded to the members of Moncton Subdivision there. We arrived in Moncton on the 14th of November. On the 15th of November we were briefed as to our requirements, looking for an escaped convict suspected of three brutal murders, very violent offences, and we went to Newcastle, New Brunswick on that evening.
- Q. What was the name of that escaped person?
- A. The name of the person was Allan Legere.
- Q. Were you given a description?
- A. Yes, we were.
- Q. And the people who briefed you on this person you said in Moncton were senior members of the Force?
- A. Yes, senior members of the Moncton Subdivision. At Newcastle we met the members of the Emergency Response Team and were briefed there as to our duties accompanying the Emergency Response Team in the investigation.
- Q. Now you used the expression 'escaped convict'. Do you know what sentence this individual had been serving at the time?
- A. Through conversation I learned that the suspect had been sentenced to life for murder and had escaped while on a trip to the hospital some months previous.

- Q. And you also said a moment ago, you referred to a question of suspicions involving other murders. Were you -- During that time period did you have occasion to visit any scene of a violent murder in that area?
- A. On the 17th of November I was searching an area in Chatham Head, Northumberland County, Province of New Brunswick and had occasion to go into a rectory at the Catholic Church at this location where a homicide had occurred. The interior of the house in the study and in the kitchen was a lot of -- there was human tissue there and it was very messy and there was obviously considerable violence had occurred there.
- Q. You mentioned now that you had conversations with members as well. Did you discuss that particular event and who would be the major suspect for it with other members?
- A. Yes. The major suspect was, again, Allan Legere.
- Q. Now, if you could, please, I would like to bring you forward to the 24th of November and I would ask if you could relate special matters you want to draw to the attention of the Court that occurred on that date.
- A. On Friday the 24th of November at approximately 5:00 A.M. we were activated as a -- We had a meeting and were advised through conversation that a sighting had occurred on this subject Legere and that the possibility existed he was coming back to the Newcastle area, and I was directed to a location just out of the Chatham Head area on the highway 1-2-6. At the time I was accompanied by Corporal Gary Lutwick and the police service dog. We were driving

- an unmarked police vehicle at the time. We went out to a roadblock scene on the 1-2-6 road and stood by there for a time. A short time later one of the members of the roadblock approached us and we were advised through conversation that a truck had been seen going down the Barnaby River Road and asked us to go and check this vehicle as it was a no-truck route and a semi-trailer should not be travelling down there. This was approximately 5:20 - 5:25 hours
- Q. Corporal, is there any special reason why you were particularly concerned with trucks in relation to Mr. Legere at that time?
- A. Yes. In the briefing earlier we had learned that a man had hijacked a taxi in Saint John, New Brunswick and then a motorist and was believed to have hijacked a truck - a semi-trailer unit.
- Q. What link was there between that and Mr. Legere from what you were told?
- A. We were told that people thought it was Legere coming back.
- Q. I'm sorry to have interrupted there. Would you please continue?
- A. Corporal Lutwick and myself drove down the 1-2-6 to the road 118 and we turned right on to the 118. I radioed back to the members just confirming that the 118 and the Barnaby River Road were the same road. They told me they weren't. By this time we had gone over a little rise on this road and I could see a tractor unit without the trailer travelling approximately two-thirds of a kilometer ahead of us. We were able to pick it out in the headlights of our

- 205 - Cpl. Barter - direct on  
voir dire.

police car. It was still dark. I radioed that there was a tractor unit running this way and that we were going to check it. We came up behind it. We noted that it was an orange tractor unit. The license plate was obscured by snow. I radioed this back again and through radio conversation were advised to be careful as the tractor unit in question that was missing was orange, although it had a trailer.

At this time we were following at approximately 50 kilometers per hour. I activated the emergency equipment in the police car, red light on the dash, and the vehicle didn't slow down. Continued at about 50 kilometers per hour for about 40 seconds to a minute. Then it slowed down and just stopped in the center of the road. It was a two lane paved road. There was a hesitation and nothing happened for a few seconds. We radioed we had it stopped. And then the driver's door on the tractor unit opened up and a man jumped out and came running back to us yelling "It's him! He's got a gun! He's got a gun!". He was very agitated. We were both out and had the doors open on the vehicle and were outside the vehicle at this time. We quickly patted the person down. He was not armed. We put him behind the police vehicle and then Corporal Lutwick and myself advanced and Corporal Lutwick had conversation - was yelling at a person he had seen in the tractor unit. He was to the right of the right rear of the truck; I was to the left rear - further to the left where I could still see the person that we had behind the truck.

- Q. What sort of equipment did you and Corporal Lutwick have as you approached that truck?
- A. We were both armed with rifles.
- Q. What type of rifles, please?
- A. I had an M16 A1 and Corporal Lutwick had an MP5. A clear cock MP5.
- Q. The individual who came running from the driver's side of the truck and came running down saying he's got a gun, have you seen that person since that date?
- A. Yes. I saw him today on the witness stand - appeared very much the same, and the previous day he was here.
- Q. And do you recall his name now?
- A. No, I don't.
- Q. He testified when in relation to you?
- A. The witness immediately before lunch.
- Q. I'm sorry, now you and Corporal Lutwick are by the truck?
- A. Yes, we're at the rear of the truck and to the sides. Corporal Lutwick was yelling at the person in the truck and I heard him yell at the person to put their hands on the window sill and I saw a pair of hands come out on the driver's side, the left-hand side of the vehicle. The hands went back in again and then an object was thrown out which I could discern to be a type of rifle. At this time I went closer to the left-hand side of the truck and was almost 90 degrees to the driver's cab. This is a large tandem conventional cab truck. The person again put their hands out and they were told -- We yelled at him - I yelled at him this time to come out and to lie on the ground with their hands above them. The person

said "I'm no problem. You got me. You got me." as he was coming out. My comment to him was I said "Shut up and lie down you cocksucker.". The person did.

Q. Did he say anything when you told him that?

A. Not at that time. He got out, he knelt down, and then laid down. This is approximately ten feet from the gun immediately adjacent to the cab of this large truck. Both Corporal Lutwick and myself were there. As the suspect got out and after he had thrown the gun I put my rifle down and had my handgun out when he came out. Corporal Lutwick stayed with the person and I went back about - back to the police car, about 60 feet, and I got a pair of handcuffs to handcuff him, and immediately returned. As I was bending down to put the handcuffs on this person he brought his hands back and started to get up. I had just started to bend down. At this time I kicked him in the head to maintain control of the situation with what I considered a dangerous criminal.

Q. How forceful was that kick? How much force did you exert?

A. I didn't bring my foot back. I merely put my left foot forward probably two feet quickly into the head. He yelled. He did not start bleeding. I then handcuffed him with his hands behind his back.

There was some radio conversation then. I radioed that I had a suspect in custody and they were asking me if it was Legere. I replied to the members via radio I didn't know. They asked me again and I replied I didn't know. At that time he said "Sure I'm Allan Legere. You got me." I then advised members

by radio that he has identified himself as Legere.

At that time, following that, I read him the police warning. He was still lying down. I advised him that he was under arrest for escaping lawful custody and that he was not required to say anything, that anything he did say may be given in evidence, and I said do you understand that, and he said "Yes, I do.". Following that I read him a section of the Charter of Rights. I advised him that "It's my duty to instruct you that you have the right to retain and instruct counsel without delay. Do you understand?". The reply was "I understand.".

Shortly after that I took his belt off. There was a couple of pouches on his belt. I left them there.

Some other members came to the scene and they also identified him as being Legere. Leg irons were placed on the subject at the location. I helped him up, walked him back to the front of the police vehicle which would be approximately 50 to 60 feet back from the location where we were. At this time - or at the time I put the handcuffs on him he changed in nature. Prior to the handcuffs being placed on the suspect he was very cowardly and meek, a whining individual. After the handcuffs were placed on he began to change. He said to me --

Q. How do you mean?

A. His demeanor changed. He said to me back at the truck, he said -- he says "You kicked me." He says "You're just a fuckin' animal. You're as bad as me." I made no comment to that. He asked me my name.

I said "I'm Corporal Barter. I'm with the Mounted Police." He asked me where I was stationed. I replied that he would have to get that out of the Freedom of Information Act. And then he said to me "Look, I'm no problem. I didn't hurt the police-woman. I could have hurt a lot of you guys. I didn't hurt the guy with the dog."

Shortly after that -- At this time I emptied all his pockets. He was standing back at the police vehicle in front of it. I took a number of articles off, put them on the hood of the car, and Legere was then taken away by other members and placed in a marked car.

The time of the arrest is 5:45 hours because it was necessary for me to ask someone the time. I didn't have my watch with me that morning. It was still dark. It was a cold morning. It was minus 12 degrees.

- Q. Corporal, the person whom you have been referring to throughout, the person whom you handcuffed and to whom you gave the warning and the caution, is he present in this courtroom today and, if so, sir, where?
- A. Seated in the prisoner's box in the center with the dark jacket on.

At the time of the arrest his hair was much shorter. He weighed less and he had no facial hair as to a mustache, and he was wearing a blue ski jacket, jeans, work boots, and he had a black toque - or dark colored toque.

- Q. I'm not so sure that I heard exactly this demeanor shift. Prior to the handcuffs going on how was Mr. Legere behaving?
- A. Very meek. Very snivelling. He was afraid. He was a person that showed a great deal of fear.
- Q. You also mentioned about an object that was thrown out from the truck. What was that, please?
- A. I later -- I thought it was a rifle at the time. I later had a chance to examine it on the ground and it was a sawed-off rifle. It was a lever-action with a sling on one end of it, a leather sling. The barrel was sawed off at the end of the chamber on the front. There was no stock on the rifle. The metal lever actually would be the back of the gun and the gun was in a cocked position.
- Q. Was it loaded?
- A. I made no examination or test as to the gun.
- Q. At the time that you had Mr. Legere on the ground and he moved what concern, if any, did you have at the time that you placed your foot against him?
- A. That he was still armed. That he was going to possibly have a knife or a further handgun or some other weapon on him.
- Q. Would there have been any special reason why you would have thought of a knife at that time or just natural to?
- A. Just natural and with the type of investigation that we had been involved in.

MR. SLEETH: Thank you Corporal.

THE COURT: Cross-examination Mr. Ryan.

CROSS-EXAMINATION BY MR. RYAN:

- Q. Corporal where were you stationed prior to November the 14th when you came to Moncton, New Brunswick?
- A. Chilliwack, County of Westminster, Province of British Columbia.
- Q. And you are still stationed there?
- A. I am.
- Q. And you were the driver of the van on the morning that Allan Legere was arrested?
- A. Yes.
- Q. And your position is what with the R.C.M.P.?
- A. I am in charge of the Chilliwack Subdivision Police Dog Services.
- Q. Police Dog Services. And you came to New Brunswick in what capacity, sir?
- A. As a dog handler.
- Q. What was happening with the individual who first exited the cab of the truck while you were approaching the truck itself?
- A. He was at the back of the police Suburban slumped up against it sitting on the back bumper.
- Q. And had you handcuffed him or restrained him in any fashion prior to departing from your vehicle?
- A. No.
- Q. Did you give him any instructions at that point?
- A. We told him to sit there and be quiet.
- Q. Was he talkative or making noises? Is that why you asked him to be quiet?
- A. We just told him to sit there and be quiet, we had other things to do, and didn't have time to take a statement from the man at this time.

- Q. Did he want to give you a statement right at that time?
- A. We didn't ask.
- Q. So you weren't familiar with the roads in the area I take it where you made the arrest?
- A. No, I wasn't.
- Q. Corporal Lutwick, was he familiar with the area?
- A. I don't know.
- Q. Now, you indicated that you tried to establish radio contact to see if route 118 was the same route as another road, is that correct?
- A. Yes. I did establish radio contact.
- Q. Are you familiar with Corporal Lutwick? Had you worked with him before?
- A. No, I hadn't.
- Q. Was this your first time out on a patrol with him?
- A. It was our first time out together, yes.
- Q. Now, Corporal Lutwick was the first one to approach the semi trailer cab I take it, is that correct?
- A. No. We approached together from the rear of the vehicle.
- Q. Two different sides?
- A. That's right.
- Q. And he was on the driver's side or the passenger side?
- A. At first he was on the passenger side and I believe we shifted over. I shifted --
- Q. He crossed in front of you?
- A. No, I believe we both shifted over to the left. That would be where the focus of the vehicle was after.
- Q. And Corporal Lutwick he was the first one to yell to the person inside the cab I take it.
- A. Yes.

- Q. And what did he say?
- A. I don't recall his conversation.
- Q. Well it wasn't a conversation, it was instructions I presume.
- A. Yes. He was telling the person something. I'm not sure what he told him but whatever he told him it seemed to work because the guy put his hands out.
- Q. It seemed to work because the hands appeared.
- A. U-m-m.
- Q. And they were empty?
- A. At the time, yes.
- Q. And the hands disappeared for a moment or two?
- A. Yes.
- Q. And then an object was thrown out, is that correct?
- A. That's right.
- Q. And could you tell when that object was thrown out what it was?
- A. I put the flashlight on it. It looked like a gun to me.
- Q. And this person that was still at your vehicle, he had told you that there was a gun?
- A. That's right.
- Q. So you saw the gun and you knew where it was.
- A. I saw a gun and I knew where that one was, yes.
- Q. Now, you ordered -- At this point I guess is when you start directing the person inside the vehicle, is that correct?
- A. As he's coming out, yes.
- Q. As he's coming out. Corporal Lutwick didn't say anything at that time?
- A. He may have been. I was closer to the vehicle then.

- Q. At that point you were closer?
- A. Yes, I was 90 degrees to the vehicle.
- Q. Well 90 degrees isn't a distance but --
- A. Well it gives you an angle though.
- Q. Well how far away was Corporal Lutwick?
- A. I'm not sure. I was focusing on the vehicle. I was perhaps 12 - 15 feet away in the ditch immediately adjacent to the vehicle.
- Q. So you saw the person in the cab better than Corporal Lutwick, would that be correct?
- A. Oh as I moved up I'm sure I did yes, as he started coming out.
- Q. And this semi cab, how high off the ground would it be?
- A. Which part of it?
- Q. The door. The door that was exited.
- A. Oh the door probably -- The bottom of the door would be 4 - 5 feet up.
- Q. 4 or 5 feet off the ground. And this person that came out of that cab how did he actually get his feet on the ground? Did he climb down a ladder or jump? One leg at a time.
- A. Well if he jumped he would have taken both legs. He come out and then hopped down to the ground, down on his knees and laid down.
- Q. Did he come out with his back towards you or his front towards you?
- A. I believe he came out to us with his front towards us.
- Q. Do you recall whether this semi cab had any steps to it for a person to exit?

A. I think it had a step there.

Q. So this person came out with his front to you. Did he stumble or fall?

A. I don't recall.

Q. Did he move towards you?

A. Well he had to come towards us to get out of the truck.

Q. Did he move towards you once he got his feet on the ground?

A. Well we told him to lie down and put his hands above--

Q. Right there by the cab?

A. Right beside the cab.

Q. So first he kneeled down?

A. U-m-m.

Q. And then --

A. Went down.

Q. Then he went forward.

A. Yes.

Q. Did he put his hands out in front of him to go forward?

A. He did, yes.

Q. And where were his hands when he was lying down on the ground?

A. When I left his hands were out in front.

Q. Out in front of him?

A. Yes.

Q. Stretched out?

A. Yes. And as I came back he pulled them in and started getting up.

Q. Pulled them in?

A. U-m-m.

- Q. Okay. Let me ask you, were his hands fully extended over his head while he was lying down?
- A. I don't know if they were fully extended. They were over his head in a similar position to yours.
- Q. With his elbows unlocked? Free?
- A. I'm not sure if his elbows were locked or unlocked. He had clothes on.
- Q. But stretched out in a fashion.
- A. Above his head.
- Q. Above his head. And on the ground palm down?
- A. I believe so.
- Q. That's when you left?
- A. Yes.
- Q. That's how you left him. How was his face?
- A. How was his face?
- Q. U-m-m. Was it nose down to the ground? Side?
- A. I don't recall.
- Q. You don't recall. Did that person talk to you at that point?
- A. He said the words as he was coming out of the truck. He said a few words.
- Q. Well now he was down on the ground. Did he say anything to you?
- A. I don't recall whether he said anything or not. He followed instructions pretty well.
- Q. But what you saw on the ground when you left to go and get your handcuffs was a person who had given up, wasn't it?
- A. I saw -- Yeah, he was there and he had given up, yes.
- Q. He wasn't offering any resistance?
- A. Not at that time, no.

- Q. When did he offer resistance?
- A. I perceived that he began to offer resistance when I came back with the handcuffs. He pulled his hands in and started to get up when I --
- Q. He pulled his hands in. Now, did he pull his hands in to the side of his body or by the side of his head?
- A. Pulled them in underneath him to push himself up.
- Q. Pulled them underneath him.
- A. Well, they'd be under his body. In order to get up he would have to do that. He started to get up.
- Q. Now why weren't his hands behind his back. You had the handcuffs.
- A. I hadn't put them on yet I guess.
- Q. Okay, you hadn't ordered him to do that yet.
- A. That's right.
- Q. I see. Well what about Corporal Lutwick. Did he not order him to put his hands behind his back?
- A. Not at the time, no.
- Q. Well how were you going to handcuff him? What was your intention?
- A. To handcuff him.
- Q. Yes, okay, but when you left he had his hands over his head. Was that the way you were going to handcuff him with his hands over his head?
- A. I probably would have put one handcuff on right there and had him put his hands behind his back and put the other one on him.
- Q. That's what you would normally do, is that correct?
- A. Sure.

- Q. Well isn't it true that while the prisoner was laying down and you came back to him that he had raised his head to say something?
- A. When I was gone?
- Q. When you came back. You went to your car to get the cuffs and -- went to your vehicle and got the cuffs and came back.
- A. No.
- Q. Did you happen to hear any conversation between Corporal Lutwick and this person on the ground?
- A. No, I didn't.
- Q. So now at the time you say he was raising himself up off the ground was he on his knees?
- A. No, he wasn't on his knees then.
- Q. He actually only had -- Well how much of him was off the ground when you --
- A. He was starting to get up off the ground when I kicked him.
- Q. Starting to get up off the ground.
- A. Yes.
- Q. Correct?
- A. Yes.
- Q. And did you tell him not to? Tell him not to move.
- A. I had already told him not to move.
- Q. When was that? When you were gone back to your car to get cuffs?
- A. No. Before that, yes.
- Q. Before that?
- A. Yes.
- Q. And did you tell him not to move at any other time?
- A. I don't believe.

Q. So for you it was easier to give him a kick in the face rather than say don't move.

A. It was faster and more efficient at the time when he wasn't listening and it was a perceived threat and I responded.

Q. A perceived threat, yup, from this person that had just given himself up and had been laying on the ground. Isn't it possible that all the man was doing was raising his head?

A. Is that a question, sir?

Q. Yes, sir, I ask you isn't it possible that all the man was doing was raising his head?

A. Well he raised his head with the rest of his body and when his body comes up and --

Q. Well how much of his body left the ground?

MR. SLEETH: My Lord the witness should be allowed to answer. He was interrupted halfway through on his response to Mr. Ryan's last question.

THE COURT: Yes, not too fast Mr. Ryan. We'll give him a chance to answer. Anything else you had to say? Did you finish your answer?

A. I'm not sure My Lord.

MR. RYAN: I am fast.

THE COURT: I forget what the question was.

MR. RYAN: Well the question was isn't it possible that the person on the ground was raising his head?

A. When one raises their head their body comes up too and this is why the perceived threat existed to me and the head being attached to the body where it was he would have to put his hands underneath him. He did it very quickly and this is why I kicked him.

Q. Now, with respect to the head being attached to the rest of the body and if one rises the rest rises, how much of the rest had risen?

A. Well he was getting up. Probably from his waist up was in a semi push-up position.

Q. From his waist up?

A. Yes.

Q. With his arms supporting him?

A. Yes.

Q. Well why wouldn't it have been just as easy to kick his arm out?

A. They're smaller.

Q. I'm sorry?

A. They were smaller and the way I was positioned I was just bending down to him and that's where I kicked him.

Q. But his arms being -- Okay, fine. What was Corporal Lutwick doing at that particular juncture?

A. My attention was focused on Legere but Lutwick was covering him with a weapon.

Q. Covering him? With a weapon?

A. Yes.

Q. Corporal Barter in your testimony during direct you stated that your first words to the person who was in the cab of the vehicle were something to the effect "Get out of there you cocksucker." Is that correct?

A. Yes.

Q. Those were your first words?

A. Yes. I told him to get out of the vehicle and he replied "I'm no problem. I am. I am." And "You got me. You got me.". At that time I said "Lie down and

shut up you cocksucker."

Q. So you told him that?

A. Yes, I did.

Q. Now those words "You got me. You got me.", did they spark something in you that made you respond in such a fashion?

A. No.

Q. No. But you responded in that type of language?

A. Yes.

Q. Had you run into this individual before?

A. No.

Q. Had you known him before?

A. Personally?

Q. Yes.

A. No.

Q. You had some sort of animosity towards this individual, is that correct?

A. No.

Q. Well, so if I see you in the hall am I going to get the same type of response?

A. Depending on the situation. If I am arresting you as an armed suspect you may, sir.

Q. Arresting a person who was an armed suspect.

A. You may get that response if you are the armed suspect if that's what your question is.

Q. After Mr. Legere was kicked you were the person who read him his rights and his warning, is that correct?

A. Yes.

Q. And at the time that Mr. Legere was handcuffed how many other officers were on the scene?

A. I believe I handcuffed him. There was only Corporal Lutwick present when he was handcuffed.

Q. Were there any other officers in the vicinity?

A. They arrived shortly after.

Q. And at any point in time did you see Corporal Lutwick with his foot on the prisoner?

A. No.

Q. Never saw that?

A. No, I didn't.

Q. But he saw you kick the prisoner I take it?

A. I don't know. I presume he did. He was right there.

Q. Did you seize any evidence at the scene?

A. I took all the contents of Mr. Legere's pockets. I took his shoe laces. Removed his belt. It was left at the scene. And all the contents from his pockets I put in a pack belonging to myself and I subsequently turned these effects over to an investigator at the Newcastle Detachment at 10 A.M. that morning.

Q. Which investigator was that?

A. Constable Davis.

MR. RYAN: Nothing further Corporal, thank you.

THE COURT: Re-examination?

MR. SLEETH: Thank you, no My Lord. I would ask that the witness be excused.

THE COURT: Thank you Corporal.

MR. SLEETH: Call Corporal Lutwick.

CORPORAL GARY LUTWICK, called as a witness on the  
voir dire, having been duly sworn, testified as  
follows:

DIRECT EXAMINATION BY MR. SLEETH:

- Q. Would you, as well, give your full name and your occupation for the court, please.
- A. My name is Gary Robert Lutwick. I am a peace officer, regular member of the Royal Canadian Mounted Police, presently stationed in Richmond, Ontario in the county of South Carleton.
- Q. Are you assigned to any special division or unit of the Royal Canadian Mounted Police?
- A. Yes. I am an Instructor at the Dwyer Hill Training Center which is a training center for the instruction of Emergency Response Team members and Special Emergency Response Team members for police forces throughout Canada.
- Q. And prior to going there did you ever serve in New Brunswick at any time?
- A. Yes. I was stationed in New Brunswick from 1977 to 1983.
- Q. And I would ask you now to take your mind to the fall of 1989 and ask you if you had occasion to come to New Brunswick during that time period?
- A. Yes. In the fall of 1989 in the month of November, the 20th, I was a member of a task force that was sent from Ottawa in Ontario - a four member task force comprising of trained emergency response team members. We were requested to come down to New Brunswick to assist in the apprehension and search for Mr. Allan Legere in the Newcastle/Chatham Head area of New Brunswick. We arrived on the 20th of

November, 1989 in Newcastle and at that time we were assigned to the New Brunswick Emergency Response Team. I had taken special duties during my stay as a -- assisting Corporal Barter as a tracker with his dog.

On the 24th of November, 1989 at approximately 5:00 A.M. I was made aware of circumstances which had taken place in Saint John, New Brunswick involving the suspect, Mr. Allan Legere, who was presently at large for escaping lawful custody from the penitentiary in the Moncton area.

Q. For what? Do you know what he had been sent to the penitentiary for? Had you been told?

A. He had been incarcerated for a murder charge.

Q. And what else would you have been told by R.C.M.P. members upon your arrival in New Brunswick?

A. I was aware that Mr. Legere was a prime suspect in at least three murders in the Newcastle/Chatham Head area at the time since his escape.

Q. If you would then, would you please continue? You were assigned to Dogmaster Barter.

A. Yes. On the morning of the 24th of November, 1989 I was assigned to assist Corporal Terry Barter, the dogmaster, in duties at a roadblock which had been set upon route 126 just outside Chatham Head on the road to Moncton. We were to go to the roadblock and be of whatever assistance we could to regular members who were stopping vehicles at that point.

We left the hotel where we were staying at approximately 5:15 and headed directly over to the checkpoint - the roadblock, arriving there at approximately 5:30 in the morning.

We had been briefed prior to our departure and I was aware of circumstances in Saint John being that Mr. Legere was a suspect in an abduction which had taken place involving a taxi driver as well as a female member of the R.C.M.P. in the Sussex area, and that subsequently he may also be involved in the abduction of a truck driver who was driving a transport truck.

Q. Well how many persons other than yourself participated in that briefing - or were given this briefing?

A. There were all the members that were present in the "J" Division Emergency Response Team at the time so there would be approximately 8 to 10.

Q. With the dogmaster Barter?

A. Including the dogmasters. There were two. Corporal Barter and I attended the roadblocks; spoke momentarily to the officers that were there. I recognized two: Corporal Don Vesey and Constable MacPhee - Ken MacPhee who I had known from my previous tour in New Brunswick. At that time we received - or I became aware of information that there was a tractor trailer truck seen in the Barnaby Road area in South Nelson. The information was that the truck was on a road which was not frequently - or not supposed to be used by trucks of that nature so it was a restricted road for trucks, and that this was highly irregular.

Corporal Barter and I decided that we would make a patrol to that area seeing that it was not very far away and see what the situation was seeing that there was also some similarity between the two vehicles, the

one that was in the Barnaby Road area and the one that was involved in the abduction.

We travelled south on highway 126 until we came to the intersection of route 118. There was some confusion between Corporal Barter and myself as to which was the correct road, by that the Barnaby Road. We had no sooner turned off onto highway 18 heading south when we observed a lone tractor trailer heading south as well. There was no trailer attached to the tractor at that time. We thought we would give it a check so we pulled up behind it. It was a Mack conventional truck with a sleeper on the rear, orange in color, and it was traveling about - I don't know - 30 - 40 kilometers an hour south on the road.

We pulled up behind it, put on the emergency equipment in the police dog vehicle, and followed close behind the truck for some distance, approximately a kilometer or so. During that time the vehicle failed to come to a stop. It travelled along at its present rate of speed.

As I said, we followed it for about a kilometer. At that point the vehicle quickly came to a stop and immediately a male exited the driver's door and ran back to the police vehicle where Corporal Barter and myself were located. We quickly exited the police vehicle. I was standing on the passenger side of the vehicle behind the door and Corporal Barter was on the driver side of the police vehicle at the time.

The male individual ran back quickly to the police vehicle. He had his hands in the air and he was shouting "He's got a gun! He's got a gun!".

He was very, very agitated, very scared looking. The gentleman had dark curly hair, almost shoulder length. He was wearing a light-colored shirt and dark-colored vest over top and he had jeans and boots on. He was approximately 30 years of age. He ran back towards Corporal Barter's side of the police vehicle and disappeared from my sight momentarily as he did so.

At this time the truck was still running; the driver's door was still open and there was no one else visible in or around the truck from my vantage point. I walked back towards the rear of the police vehicle and at that time noticed the individual who had exited the vehicle in that area. I had a good look at him and I satisfied myself that this was not the suspect, Allan Legere, as this individual was much too young. I quickly frisked him, checked him for any weapons he may be carrying, and satisfied myself that he was not a threat. At this time the individual again told me "There's a guy in the truck and he has a gun." I told him to stay where he was and I quickly went back to the front of the police vehicle.

Again, at this time there was no movement from the truck and the driver's door was still open and the vehicle was still running. Assuming that there was still someone inside the vehicle with a firearm of some sort I yelled to the individual to come on out of the vehicle with his hands up. I shouted that several times. I shouted that the first thing I wanted to see come out the door was his hands.

After a few seconds a pair of hands came out the driver's door and I could see them from about the forearm towards the fingertips. That's all I could see at that point. I did hear someone from inside the vehicle saying "I'm coming out. I'm coming out." After that the hands disappeared and moments later - seconds later an object was thrown out the driver's door and fell to the pavement in front - or at the side of the vehicle on the road. The particular article looked to be some sort of firearm. It had a definite metallic finish to it. Had a definite metallic clatter to it when it hit the pavement and I recognized a rifle sling which was attached.

At that point I continued yelling to the individual inside the vehicle to come on out and wanted him to place his hands on the door frame. The hands came out onto the door frame and then there was further conversation from inside the vehicle saying "I can't get out this way.". I told the individual to come on out anyway as he had been instructed with his hands on the door frame. At that point an individual came out with his hands on the door frame and stepped down on to the tank steps of the truck. The individual was a male wearing a light-colored toque, yellow, and had on a dark blue ski jacket, winter type with a liner in it, a lined puffy type. He had on blue jeans and brown or tan-colored work boots.

I instructed the individual to step down onto the pavement, move forward, get down to his knees, and prone out on the ground. He did as he was

instructed and at that time I approached from the rear on his left side - from his left side. I approached the individual. At that time I noticed Corporal Barter off to my left-hand side near the ditch area of the road and he moved forward and he was shouting commands as well at the time, and he approached the individual who was on the ground from the individual's head area. He had no sooner arrived near the individual then he returned back towards the police vehicle out of my sight. At that point I moved up close to the individual. I had a firearm in my possession, a rifle. I took a cover position of the individual telling him to stay down and not to move.

The individual was speaking coherently at that time into the ground. I was not able to make out too much of what he was saying. He did say "I'm okay. I'm giving up."

Q. Excuse me, Corporal, you said -- you just concluded saying he was speaking coherently and then you indicated you were having difficulty understanding.

A. Incoherently, sorry. Incoherently into the ground.

Q. What sort of state was he in?

A. At that point he seemed to be a little bit scared because I did not make any sense of what he was saying other than "I'm okay. I'm giving up." Other than that I couldn't really tell as he was face down. I was not able to see his face at that point.

After instructing the individual to stay down and not to move he started shifting around a number of times. I again told him to stay down, not to move

I put the foot of my boot up in the area of the back of his head and his neck and forced him down to the ground. I did this twice after he repeatedly moved around.

At that point Corporal Barter quickly came back and had a pair of handcuffs. As he approached the individual he, again, he -- sorry, he kicked him in the head in the area of the forehead with his foot.

Q. How did that come about? Can you expand on that please? Can you describe to the court what you saw taking place?

A. While I was covering the individual he was continually moving around and obviously wanting to start a conversation almost, and shift around. He seemed to want to try to diffuse the situation and not follow commands.

Q. He wanted to what? Not follow commands you said?

A. Yes. As I had given him several commands not to move and he still continued to shift around. At that point after Corporal Barter had kicked him, Corporal Barter proceeded to search the -- or handcuff the individual and then search him. I participated somewhat in the search although I did not get as close as Corporal Barter did to the individual. We completed the search - a body search at that time, and after the individual was handcuffed he was rolled over on to his side and at that point I had a good look at his face. His toque was removed. He had short, dark curly hair. He was clean-shaven. He was a man about 40 - 45 years of age. At that time he looked very pale. Very scared.

The articles that he had on his person that I noted was a wide leather belt around his waist containing two black pouches. The belt and the pouches themselves looked very much like a piece of military or police kit - the Sam Brown we call them. Ammo pouch type thing with a belt. He also remarked that he had a knife and these items were taken off him by Corporal Barter and placed on the ground beside us.

Q. When were these taken off him?

A. They were taken off him while he was still on the ground. Shortly after that a female member arrived on the scene assisting us. She responded that it was Allan Legere and I, myself, after having a good look at the individual's face was convinced it was Allan Legere myself from photographs I had seen earlier.

Q. The person whom you have been referring to as Allan Legere and the person who you were involved with in all these matters, is he present in this courtroom today and, if so, sir, where?

A. Yes, he is. He's the individual between the two uniformed policemen wearing the dark jacket with the white shirt in the docket to my left.

MR. SLEETH: Yes, My Lord, the record should show that the witness just identified the accused, Allan Legere, in the dock.

A. Shortly after the female member arrived on the scene Constable MacPhee and Corporal Vesey as well arrived and the individual was shackled about the ankles and basically brought back towards the police vehicle.

If I could go back for a moment My Lord. While Terry Barter and I were there alone I had occasion to hear Corporal Barter advise the individual on the ground that he was under arrest for escaped lawful custody and that he also gave him the standard charter and the standard police warning.

Q. What do you mean by standard charter and standard police warning?

A. He advised him that he had the right to retain and instruct counsel without delay and he also advised him that he need not say anything, he had nothing to hope from any promise or favour and nothing to fear from any threat whether or not he says anything.

After the individual was moved back towards the police vehicle and the other members were present I moved back into the background and sort of relaxed my cover position as it were and let the other members take control of Mr. Legere. From that point on I had no conversation with the suspect.

Q. Corporal when did you and Corporal Barter first have an actual opportunity to perform a proper search of Mr. Legere, that person you had down on the ground?

A. We started the initial search just as soon as he was handcuffed.

Q. After being handcuffed?

A. Yes. He was handcuffed first and then we started the body search. You can appreciate it's difficult to do a full search while a person is on the ground so therefore it was continued once he was stood up and back at the vehicle. Basically his pockets were emptied and that sort of thing.

Q. Now you also mentioned how you had placed your foot on the back of his head twice and how you also talked about Corporal Barter striking him. How did he react? What did he say about these things?

A. There was no reaction from Mr. Legere's part on my actually putting my foot on the back of his head and forcing him now. He may have commented but I certainly did not hear what the answers were.. It was not done in a striking manner. It was done in a pushing manner.

Q. In a what manner?

A. In a pushing -- I pushed. It was a steady push.

Q. Okay.

A. I felt it was necessary to control the individual. At that time I was basically alone. I had a weapon and I did not want to come in too close contact with the individual so I tried to maintain control of him until Corporal Barter was present.

Q. And what, if anything, did you hear said by him about Barter?

A. His reaction to Corporal Barter actually striking him in the head area was he said "What did you do that for? You didn't have to do that. You're as bad as me.", and it was an after-reaction rather than a spontaneous reaction.

Q. How often, if at all, did he comment about it after that that you heard?

A. I don't recall him commenting about it again after that at all.

MR. SLEETH: Thank you Corporal.

CROSS-EXAMINATION BY MR. RYAN:

- Q. Corporal, it appears that at the time both you and Corporal Barter approached this truck cab that you were both giving instructions to the occupant inside, is that correct?
- A. There may have been some overlap, yes.
- Q. Can you recall as opposed to what you said what Corporal Barter was saying to the person inside?
- A. To be quite honest with you when I was giving commands I thought that I was coordinating the move from the vehicle to the ground. If Corporal Barter was yelling instructions as well that may be the case.
- Q. Was he yelling contradictory instructions as to what you were saying?
- A. No. I can't say that he was and I can't say that he wasn't. I can only say that the individual seemed to be following the instructions that I was giving him.
- Q. So he was following your directions?
- A. I'm not saying that he wasn't following directions of Corporal --
- Q. But it seemed --
- A. Yes, that's correct.
- Q. You shouted something out and the individual did that?
- A. Yes.
- Q. And you're saying that it's possible that Corporal Barter was also shouting the same thing out and the individual was doing it?
- A. Yes, that's correct.
- Q. Okay, I understand that, but for some reason just as soon as the individual is on the ground your commands

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voir dire.

- are not longer listened to but Corporal Barter's are.
- A. In what way, sir?
- Q. Well, the knelling down and the face down were those your commands or Corporal Barter's?
- A. Those were probably Corporal Barter's, yes.
- Q. And at that point that the person in the vehicle is out of the vehicle and on the ground how far were you away from the individual?
- A. At which point, sir?
- Q. At that point when he's out of the vehicle and his feet are on the ground.
- A. I would be about probably 9 or 10 meters when he first stepped down off the tank steps.
- Q. And somebody else, presumably Corporal Barter's directions, told the individual to get on the ground, is that correct?
- A. I believe that I initially instructed him to do that.
- Q. So were you still walking at that point?
- A. No, I was stationary. I did not approach the individual until he was down.
- Q. Until he was down on the ground?
- A. Yes. Yes.
- Q. And how were his hands?
- A. Once he was down on the ground his hands were out in front of him.
- Q. Out in front of him. So when he was down on the ground and his hands were out in front of him how close were you then to the individual?
- A. When the individual got down on the ground I moved up. Right up beside him to his left-hand side down towards his legs and hip area. Yes.

- Q. Did you say anything at that point?
- A. I told him to stay down and not move.
- Q. Now, again, how was the individual's face?
- A. His face was in the ground.
- Q. In the ground.
- A. Yes.
- Q. Nose down into the ground?
- A. Yes.
- Q. Nose down. And was his nose down in the ground when Corporal Barter left to go get the handcuffs?
- A. Yes, I guess so.
- Q. Now at this point in time you are by yourself with this prisoner?
- A. Yes.
- Q. Did you know who that prisoner was? Your prisoner right then.
- A. No.
- Q. And the prisoner moved?
- A. Yes.
- Q. How did the prisoner move?
- A. Shifting his upper body. Moving his hands back.
- Q. Moving his hands back?
- A. Yes.
- Q. Away from the top - over his head?
- A. Yes.
- Q. Towards where?
- A. Towards his shoulders.
- Q. Towards his shoulders?
- A. Yes.
- Q. Did he move his head?
- A. Yes, I assume he moved his head.

- Q. And you placed your foot on the back of his head?
- A. Yes. The back of his head, his neck area, the top of his shoulders.
- Q. Crossways?
- A. I couldn't say.
- Q. Well, straight on? Were you astraddle this individual?
- A. No, I would have taken a step forward with one foot, put my weight across his neck and pushed down.
- Q. And you had to put your foot on his head more than once I take it?
- A. Twice I believe.
- Q. Now, what was -- what would be the type of surface that was there on the ground?
- A. Asphalt.
- Q. Asphalt?
- A. Yes.
- Q. And had it been snowing in that area that day do you recall?
- A. There was no snow on the pavement itself. There may have been snow in the ditches.
- Q. In the ditches.
- A. Yes.
- Q. And would there have been mud in the ditches too?
- A. I don't know. I didn't check the ditches.
- Q. Now, the place where the prisoner had his face, where was that? Was it on the asphalt or --
- A. Yes, it was on the asphalt.
- Q. On the road?
- A. Yes. Right on the road surface.

- Q. Did you still have your foot on the individual's neck when Corporal Barter came back?
- A. No, I did not.
- Q. When did you remove your foot?
- A. As soon as I forced the individual down to the pavement again.
- Q. And Corporal Barter wasn't there at that time?
- A. No.
- Q. Was he on his way back?
- A. I assume he was.
- Q. And you stayed right there when Corporal Barter came back?
- A. Yes.
- Q. And you had told the suspect not to move?
- A. Yes, I had.
- Q. And Corporal Barter told him not to move?
- A. I believe so.
- Q. And Corporal Barter kicked the prisoner at that point, eh, is that correct?
- A. When he came back yes he did.
- Q. Now, what kind of a blow would that kick have been?
- A. In what respect, sir?
- Q. Well, was it one that you could hear across a field or could you hear the impact?
- A. No, I would not say it was hard enough to make a sound. It was a kick from the knee rather than from the hip if that's any help.
- Q. Did the prisoner react when he was kicked? Was there a body movement?
- A. No, other than the fact that the individual laid down again. There was no other body movement and no specific comment that I heard at that time.

- Q. Well what about a jerking of the head?
- A. No, I did not notice anything like that.
- Q. And how long were you and Corporal Barter together before another R.C.M.P. member showed on the scene?
- A. I would say from the time we stopped the vehicle I would say in the neighborhood of 3 - 4 minutes.
- Q. 3 - 4 minutes?
- A. Yes.
- Q. Had you been aware other vehicles were on their way to the scene?
- A. Not specifically. I assumed they were but I had no specific information that they were.
- Q. Did you or Corporal Barter make a call?
- A. Corporal Barter had a portable radio I believe at the time which I did not hear any conversation with respect to that.
- Q. Now, did you hear Corporal Barter's comment to the individual inside the cab before he exited the cab?
- A. Which was, sir?
- Q. Told him basically to shut up you cocksucker. Do you remember that? Did you hear those words?
- A. I vaguely remember some words to that effect, yes.
- Q. Did you say anything like that?
- A. No, sir, I did not.
- Q. And did you have a rifle in your hands while you were holding the prisoner down?
- A. I had a carbine, sir.
- Q. What type of carbine?
- A. It's a Heckler and Cox MP5 assault carbine firearm. 9 mm. caliber.

- Q. And were you pointing that at the prisoner?
- A. Yes, I was.
- Q. You say you heard Corporal Barter give the standard police warning?
- A. Yes.
- Q. Is that the same warning you give?
- A. The exact words that Corporal Barter gave I could not say again. I did not make specific notes on them. It sounded similar to the one that I would give, yes.
- Q. Sounded similar. And then there was a response to that warning?
- A. I do not recall what the response was, sir.
- Q. And any other warnings or words given in connection to a charter warning or anything like that that you heard?
- A. Yes, they were familiar to the ones that I would normally use.
- Q. And a response give to that, do you recall?
- A. No, I do not.
- Q. And did you take charge of any of the personal items or exhibits?
- A. No, I did not.
- Q. That you removed from the prisoner?
- A. No.
- Q. And it wasn't until a female member of the R.C.M.P. arrived that the prisoner was identified as Allan Legere, is that correct?
- A. She identified him as Allan Legere, yes.
- Q. She identified him?
- A. Yes.
- Q. And you indicated that at that point you agreed that that's who it was?

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A. Yes, I was satisfied in my own mind once I had a good look at his face that it was him.

MR. RYAN: Thank you, no further questions.

THE COURT: Re-examination?

MR. SLEETH: No, My Lord.

THE COURT: Corporal I suppose that having regard to the percentage errors in estimates of age that you gave when you get back to Ontario you are going to tell them that the judge in this case is over a hundred.

A. No, I would not say that My Lord.

THE COURT: Thank you. We'll recess for 10 minutes.

(Accused removed from courtroom.)

(RECESS - 3:15 - 3:35 P.M.0

COURT RESUMES: (Accused present in prisoner's dock.)

THE COURT: Now, another witness.

MR. SLEETH: My Lord, Linda Dugas.

CONSTABLE LINDA DUGAS, called as a witness on the voir dire, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

Q. Would you please for the record, witness, give your full name spelling your last one, please.

A. Marie Linda Dugas, that's D-u-g-a-s. I am a peace officer; a member of the Royal Canadian Mounted Police; presently stationed in Newcastle, New Brunswick.

Q. And in the fall of 1989 where were you stationed?

A. I was stationed in Newcastle, County of Northumberland, Province of New Brunswick.

Q. Do you know a person by the name of Allan Legere Ms. Dugas?

A. Oh yes, I do.

Q. Is that person present in this courtroom today and, if so, where, please?

A. Yes, he is. He is sitting in the prisoner's box between the two uniformed members. He's wearing a dark jacket and a white shirt.

Could you describe in relation to the matter present before this court on this voir dire the circumstances which brought you into contact with that person whom you have just named beginning with the date and the place?

A. On the 24th of November, 1989 we had received information at Newcastle Detachment stating that there was a tractor trailer enroute towards Newcastle. The vehicle had been hijacked in the Sussex area. We had reasons to believe that the person that did the hijacking might be Allan Legere, therefore, we set up roadblocks all around the -- on all the roads leading into Newcastle, and I was at a roadblock set up on highway 126 just outside -- just in the community of Nelson. At approximately 5:30 or so we received information that a tractor trailer had been seen on the Barnaby Road area. That's a non-trucking road. Knowing that we had a tractor trailer on the way, the dogmaster, Corporal Barter and his partner, Corporal Lutwick, decided to go down and check it out. They turned off on highway 118 and shortly after -- Highway 118 was a short distance away from the roadblock, approximately 1 kilometer or 1.5 kilometers. Shortly after turning on to that road they contacted us by radio. Corporal Barter was the one calling

and he stated that there was a tractor with no trailer but there was a tractor indeed going on highway 118.

As he approached the vehicle he stated that he could not provide us with a plate number - license plate number because the license plate was covered with snow.

Q. What did you do then in response to all this?

A. We were still at the roadblock but I was standing just on the - inside the door of the vehicle. The door was open on the driver's side. He then stated--

MR. RYAN: Well, Mr. Sleeth, with respect to he stated - he stated, My Lord, we went through this a little bit yesterday morning. I would prefer that the witness carry on in a proper fashion without hearsay type of evidence being offered. I understand that we are going to have some leeway on this and it's very simple that the officer be able to --

THE COURT: Well it's good training for a police officer to sort of avoid the hearsay, isn't it Mr. Sleeth, so you can get the witness back on track a little.

MR. SLEETH: My Lord, I would agree. I would just note though, as well, that on a hearing of this nature the hearsay evidence as the means of determining why particular things were done --

THE COURT: Yes. Well, I --

MR. SLEETH: But we will avoid --

THE COURT: Your point is well taken but it's still good training.

MR. SLEETH: I'll still follow your direction My Lord.

DIRECT EXAMINATION CONTINUED BY MR. SLEETH:

- Q. As a result of conversations you had with other police officers there would be certain things that you did. What were they, please?
- A. Okay. As a result of information received that the said tractor was not stopping upon the members engaging their emergency equipment on their vehicle I proceeded to highway 118. Just after Corporal -- Just after hearing from the other members that --
- Q. Excuse me, you heard from other members?
- A. I heard from other members.
- Q. And then after you heard from those members you did certain things. What were they?
- A. Okay. The last radio contact that I had stated "It's him." I then proceeded into my police vehicle and left and went to the scene down the road that the members had taken. Upon arriving there at the scene I found the members' police vehicle parked. The members were out of their vehicle. There was a tractor approximately 50 feet in front of the police vehicle. The two members were leaning over a male subject on the ground.
- Q. And by the two members which two members are we talking about now, please, Constable?
- A. Corporal Barter and Corporal Gary Lutwick.
- Q. And could you at that stage see to the point where you could identify the person that they were over?
- A. No, I was too far away.
- Q. So just go on then with what you did and saw, please.
- A. I still had my shotgun on the seat of my police car. I ran over to assist them bringing my firearm with me. I ran over to assist them or to see if they

needed assistance. Upon arriving there Corporal Barter stood up, asked me --

- Q. Corporal Barter stood up. Where?
- A. Stood up next to this male subject on the ground and asked me if I could identify this person.
- Q. All right. Did you at any stage then identify the person who was there with Corporal Barter and Corporal Lutwick?
- A. The man in question turned and looked at me. He was lying on the ground. Turned and looked at me and as he looked at me I said "Yes, that's him.", and he replied "It's me."
- Q. And that person was?
- A. Allan Legere.
- Q. Present in this courtroom today?
- A. Yes, he is. Shortly after I arrived, within moments two other members arrived and Allan Legere was in the process of being searched when I arrived by Corporal Barter and Corporal Lutwick. He was then escorted to the front of the Surburban, the police vehicle, asked to lean against it while he was being searched properly and during that time he stated that "You don't have to rough me up. I could have hurt that policewoman. I knew she was a cop all along and I didn't."
- Q. What was Mr. Legere's demeanor like at that time that you observed?
- A. While he was on the ground I didn't notice anything until the time that he turned to look at me. Then he had a rather cocky attitude when he said "Yeah, it's me" after I said that he was indeed Legere.

- Q. And later as you observed him?
- A. I kind of backed off more or less letting the male members go ahead of me simply for the purpose of searching him so I was in more or less the background, there if assistance was required.
- Q. And were you able from your position to observe any involvement that Corporal Barter would then have had with him?
- A. I believe Corporal Barter was the one searching him but I can't say for sure. There was more members arriving and there was quite a few members at the scene after awhile there.
- Q. Was there any conversation or things said by Corporal Barter to Mr. Legere that you heard or observed at that time?
- A. I can't recall.
- Q. You said at the start of your testimony you gave an hour you said 5:30. What time of day was this? Morning or afternoon?
- A. It was in the morning.
- Q. How talkative was Mr. Legere during the time that you were there?
- A. The only thing that I recall him saying was this part about "You don't have to rough me up. I could have hurt that policewoman. I knew she was a cop - one of you guys, and I didn't."
- Q. Was there anything else you observed at the scene? Any other physical objects?
- A. Not when I first got there but after the other members took over I had time to look around and I noticed a sawed-off firearm on the ground and I believe there was a wallet between Mr. Legere and the truck.
- MR. SLEETH: Thank you.

THE COURT: Cross-examination?

CROSS-EXAMINATION BY MR. RYAN:

- Q. Constable, what time did your shift start on the 24th of November, 1989?
- A. 6 o'clock in the evening of the 23rd.
- Q. And when were you due to go off shift?
- A. 2 o'clock in the morning, early hours of the 24th of November.
- Q. Early hours of the 24th and you did not go off shift?
- A. No, I didn't.
- Q. So you stayed on duty?
- A. Yes, I did.
- Q. And had you been on patrol on the shift that started at 6 o'clock on the 23rd?
- A. I had been in the earlier parts of the shift but I had been doing paperwork towards the end of the shift there.
- Q. And do you recall what kind of day it was, the 23rd of November, 1989? What kind of conditions? Sunny day? Rainy day? Snowy day?
- A. I can't say that I recall. I remember it was cold on the 24th.
- Q. Cold?
- A. Well the morning of the 24th so that would have been the night of the 23rd. It was cold.
- Q. And you were stationed at a roadblock you have indicated, is that right?
- A. Yes, I was.
- Q. How many vehicles were at that roadblock?
- A. Two marked police vehicles plus the dogmaster's Surburban, an unmarked vehicle.

- Q. Three vehicles?
- A. Yes.
- Q. And what time did you get to your station where the three vehicles set up the roadblock?
- A. The two marked police cars had been set up about maybe two kilometers north of the last roadblock that we had been at for maybe 40 minutes and then we moved to this new location and we had been there maybe another half hour at the most.
- Q. So during that time do you recall if it was snowing?
- A. No, I don't believe it was snowing at that time.
- Q. Had it been snowing?
- A. I can't remember the earlier parts of the evening. I just know that it wasn't snowing at that time.
- Q. And you say it was quite cold?
- A. Yes, it was.
- Q. Was there snow on the ditches and the sides of the road where you had set up these roadblocks?
- A. At the roadblocks I can't say that I remember. I remember at the scene because I had to go through a ditch in order to put the police line around a pole.
- Q. Okay. And at the scene --
- A. There was a bit of snow in the ditches.
- Q. Wet snow or just new fallen snow?
- A. I can't remember. I just remember it was snow. I can't remember.
- Q. Was there crust on the snow?
- A. I can't say I recall.
- Q. And when you approached the two officers who were leaning over the prisoner you had a - you carried a gun with you?
- A. Yes, I did

- Q. What type of gun was that?
- A. A 12 gauge shotgun.
- Q. Did you put that shotgun away at some point in time during the time you were at the scene?
- A. Not while Allan Legere was lying on the ground I didn't.
- Q. At any time after that?
- A. Yes, I did. After other members got there, actually I asked another member to hold the shotgun while I ran back to my vehicle to get my gloves because my hands were cold.
- Q. Did you unholster your service revolver?
- A. Only after I came back.
- Q. And what did you do with that?
- A. I was just on standby more or less and I had my sidearm ready.
- Q. You had your sidearm ready. Was it out of the holster?
- A. Yes, it was.
- Q. Was it pointed at Mr. Legere?
- A. I can't recall if it was but I had it out until he was placed in the police vehicle.
- Q. You had your gun out?
- A. Yes, I did.
- Q. And there were two officers there when you got there and did you indicate that another two officers arrived within moments of you getting out of your vehicle?
- A. Yes, they did. Yes, they did.
- Q. Was it two other officers or two vehicles? I wasn't clear.
- A. Two officers in the same vehicle. The other two officers there had been at the same roadblock that I had been at.

- Q. Did you notice what they were doing?
- A. Not really. At that time I was just paying attention to Mr. Legere on the ground.
- Q. And you were in the area where there was a sawed-off gun I take it?
- A. I was on the opposite side. The gun was between Legere and the truck and I was on the other side. So the gun would have been on his right-hand side and I was on his left.
- Q. Now did you secure the gun or do anything with that weapon?
- A. I didn't take care of the scene at all at that time.
- Q. But you stretched a police cordon around the area I take it?
- A. That's right.
- Q. Anybody assist you doing that?
- A. I believe so but that was after Mr. Legere had been removed. Brought to the detachment.
- Q. And the two other officers when they arrived on the scene were their weapons unholstered?
- A. I can't say that I recall. They would have run up behind me more or less and I didn't really pay attention.
- Q. Well until Mr. Legere was placed in the police vehicle do you recall whether you saw the other officers with their weapons out?
- A. No, I can't recall.
- Q. Did you hear any shots?
- A. No, I didn't.
- Q. Did the two officers you saw leaning over the prisoner, did they have weapons?

- A. Yes, they did.
- Q. And were those weapons trained on the prisoner?
- A. Mr. Barter I don't believe had his firearm with him or at least I didn't notice it because he was leaning over the prisoner. Corporal Lutwick did. I believe it was pointed at him but he was at the lower end like more towards Legere's legs and I was more like towards the head so I wasn't really -- I was just watching to make sure Legere didn't get up.
- Q. How did he get to his feet?
- A. I believe they helped him up because he was handcuffed behind his back.
- Q. You didn't help him?
- A. No, I didn't.
- Q. You were covering --
- A. That's right, the others.
- MR. RYAN: No further questions, thank you.
- THE COURT: Re-examination Mr. Sleeth?
- MR. SLEETH: No My Lord. Corporal Vesey.

CORPORAL DONALD VESEY, called as a witness on the voir dire, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SLEETH:

- Q. Would you as well, please, witness, state your full name and your occupation for the court?
- A. My name is Donald Patrick Vesey. I am a Corporal with the Royal Canadian Mounted Police stationed in Fredericton, New Brunswick at "J" Division Financial Section.

Q. I would ask you if you would, please, Corporal, to take your mind back to the fall of 1989 and at that time did you have occasion to be attached to some other unit or section with the R.C.M.P.?

A. Yes. In November, the 24th, and prior to that for two days I was assigned as a member of the proactive unit assigned to patrol the area of Newcastle as a result of the crimes that were committed up in that area. On the 24th of November I was working the shift midnight to eight in the morning. I was assigned to be accompanied by Constable Kenneth MacPhee and we were assigned to patrol the area of Chatham Head and Newcastle throughout the shift.

THE COURT: Excuse me just a minute, Corporal, please.

Mr. Sleeth what are we getting at here in the voir dire? What is this relating to? We seem to be doing an awful lot of repetition here really.

MR. SLEETH: Well, first of all, My Lord, I believe that it's essential in order that we admit -- if this court is to rule admissible any statements made by this person that we establish that there has been no violation at any stage of any of his charter rights.

THE COURT: Yes, but what -- have we heard the statements yet that are all important?

MR. SLEETH: We have already heard a series My Lord.

THE COURT: Well, you mean these statements made --

MR. SLEETH: Of things - remarks made by --

THE COURT: These remarks that were made after the Accused allegedly got out of the vehicle and so on.

MR. SLEETH: Yes, My Lord, which are remarks made by the detained person to persons in authority.

THE COURT: In authority.

MR. SLEETH: And which we will want to introduce, which will have a significance that would become more apparent I believe when linked with evidence that is going to be presented at the trial proper. But the admissibility of those statements themselves is a clear issue and the making absolutely certain that the court can see that there has been no violation of this man's rights either in the old term of free and voluntary, without fear of prejudice, without promise of favour, and also in the more modern concept of no violation of his rights under section 10(a) or 10(b) of the Charter. It is essential I believe, My Lord, that this Court hear, unfortunately, a lot of additional evidence. Because the Supreme Court of Canada has reflected on several occasions, My Lord, when rejecting crown evidence that had the lower court and the Supreme Court of Canada itself been in a better position to understand the reasonable grounds for the police officers to do certain things and to act in certain ways then they have left it open - the evidence might have been in their eyes admissible. This being the case, My Lord, it now becomes, unfortunately, and it's no enjoyment for the crown either, it becomes necessary to go into much more detail than would have been done previously in order to give you a full picture.

THE COURT: I think you're right. Okay.

MR. SLEETH: I'm sorry, My Lord. Would you continue, please, Corporal.

- A. On the 24th of November, as I mentioned earlier, 1989, I was working the midnight to 8 shift - 8 in the morning shift. I was accompanied with my partner, Constable Ken MacPhee, Kenneth MacPhee, and we were assigned to patrol the Chatham Head/Newcastle area just on general patrol in case there was any sightings of Mr. Legere.

That night, early hours of the morning, and as a result of conversations with our supervisor, we were told to set up a roadblock on highway 126 outside of Chatham which we did. We were accompanied by Constable Linda Dugas as well in her police vehicle.

Now, if you would, please, Corporal, and I'm sorry to interrupt you here, but without going into any conversation there were certain reasons which you would have had in your mind as to this roadblock that was being set up. Why was it being set up at that location in relation to Mr. Legere?

The roadblock was being set up because as a result of information received there was - we had information that there was a hostage-taking and there was a tractor trailer with logs proceeding towards Newcastle/Chatham area from the area of Sussex on highway 126 and this is the reason that we decided that we were ordered to set up the roadblock to intercept this vehicle.

And just one other question if I could, please, Corporal. Why in particular in relation to Allan Legere would you have been assigned to that area? What special concern was there in relation to Allan Legere at that point?

- A. Allan Legere was a subject of a large scale manhunt. We were involved in trying to locate and apprehend this individual because he had escaped custody and that he was wanted for escaping custody and that he was a suspect in several other crimes that occurred in the Newcastle area.
- Q. What type of crimes?
- A. Crimes of murder.
- Q. And what had he been in custody for at the time he escaped?
- A. Murder.
- Q. Thank you. Now, I'm sorry, I can stop interrupting. Go now to your roadblock.
- A. Fine. We sat up our roadblock accompanied by Constable Dugas in her cruiser, approximately 1.5 kilometers toward Chatham from the intersection of highway 118 on the 126. We had set up our roadblock and we had manned the roadblock and had checked several vehicles and were then joined by Corporals Barter and Lutwick in a police service dog panel van, and they were to assist us in the roadblock. We had been at that roadblock with those two members for approximately I would say ten to fifteen minutes when more radio communication was received and as a result of this radio communication Corporals Barter and Lutwick proceeded to intercept - or try to intercept a suspect vehicle that was travelling up and down the South Barnaby River Road. A few - I would say a minute or two later, and monitoring the radio because there was quite a bit of radio communication at the time, and as a result of communication from Corporal Barter we immediately

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voir dire.

left our roadblock and proceeded in the area where they were to render assistance. Since Constable Dugas was familiar with the area and being stationed there she led the way. Corporal MacPhee and myself followed. This was approximately 5 - I would say about 5:30 to 5:40 in the morning on the 24th of November, 1989.

We turned on to highway 118 and travelled a distance of approximately 1.9 kilometers and we came to the scene where we noticed - where I noticed a tractor trailer parked - just the tractor parked on the right-hand lane of the road facing in the direction that we were going. The motor was running and the taillights were on.

We immediately got out of our vehicle and we rushed to where we noticed Corporal Barter and Corporal Lutwick standing in the area of a man who was on the ground. The man was on the ground on the left-hand side of the tractor and when I approached him I happened to glance down at him. He was handcuffed behind his back laying on his back. I glanced at the man and having several photographs and descriptions of Allan Legere I did not at the moment recognize him as being the man in question due to his condition. The man on the ground was quite thin; he was clean-shaven; shortened hair; greyish black hair. I then asked Corporal Barter who was beside him has he been identified and I received an affirmative reply and then Mr. Legere looked at me and said "Yeah, it's me. It's me."

Surveying the situation I could see that it was well under control and I decided at that time that I would check out the tractor - the interior of the tractor to make sure that, you know, there was nobody in there and so on. So I quickly glanced in the tractor. I climbed inside and looked in the back in the sleeper and there was a knapsack in the back, sort of a valise style, sitting there, and there was a pair of glasses lying on the floor on the passenger side. Satisfying myself there was no one else in the tractor, I got out and I went around to the other side and I glanced at the scene for a few minutes and then once Mr. Legere was up on his feet and was being escorted to the dog panel van, which was parked behind the tractor approximately 60 feet or 70 feet, approximate, I rendered assistance by holding on to Mr. Legere while Corporal Barter was searching him, emptying his pockets to make sure everything was removed from his person. At that time, and I had not spoken to Mr. Legere, he was talking and talking quite a bit at that time, and he was complaining of a sore jaw and he was saying "Take it easy. Take it easy.", and he mentioned "I did not hurt that woman cop.", and then he said "I could have" I understood it to be blown away "lots of you guys in Newcastle - you were all around me, but I didn't. Take it easy." At that time Corporal Barter was emptying his pockets and putting them into a satchel that he had with him, the contents, and he took possession of those contents.

I then glanced at Corporal Barter and I did mention to him has he been given his notice and rights and charter and it was indicated by Corporal Barter that he had been given his charter notice and rights. At that time I was satisfied that things were proceeding okay and then he was put into a police cruiser with Constable MacPhee and one other member. I'm not sure who it was - the other member. I believe it was a member of the ERT team.

Q. Did you have any further involvement with Mr. Legere after that?

A. No. No more further involvement.

Q. Just a few last details, please, Corporal. You mentioned the man was - I believe you said he was talkative. How talkative was Mr. Legere when you were there?

A. Well he was talkative. I was more concerned with keeping control of him and not letting him escape and I couldn't take notes of everything that was said but it seemed to me that he wanted to talk and he just wanted to -- just to talk and "Be careful." "Don't hurt me." And so on, so forth. And that he didn't hurt anybody - or any of us and so not to hurt him.

Q. I appreciate that you didn't have an opportunity to take notes but just how talkative was he?

A. He was talkative. In my estimation he was. He was talking freely.

Q. Thank you. And also you mentioned that you searched the truck and then you named a number of objects that you said you found in it. Did you observe anything

else that you want to mention to the court within that area when you were looking around?

A. Yes. Where Mr. Legere was on the ground I noticed several items that were near him. There was what appeared to be a sawed-off rifle with lever action. To me it looked like a three 0 eight as I am familiar with some firearms in that caliber. I didn't touch them; I just observed them. There was also a brown wallet and there was a beige-colored toque laying on the ground. There was also a small brown sack laying on the ground all within two feet of each other in that area. I believe two feet of each other and right beside where Mr. Legere was.

Q. Finally, Corporal, I don't know if I did this with you before but the person who said that he was Allan Legere and the person you were referring to was on the ground and so on, is he present in this courtroom today and, if so, sir, where?

A. Yes, he is. He is present sitting in the prisoner's box beside two uniformed R.C.M.P. officers in a dark colored blazer and a white shirt.

MR. SLEETH: No further questions of the witness.

THE COURT: Mr. Ryan?

CROSS-EXAMINATION BY MR. RYAN:

Q. Corporal you stated that on November the 24th it appeared that it was your second day in the Newcastle area? Is that how I understood your evidence?

A. Yes. I believe it was probably my third shift there. I had arrived from Fredericton I believe on the Sunday. We were to relieve a few members who had been up there before and that's why, and I was assigned to

the shift of midnight to eight A.M. in the morning.

Q. And you were a member of the proactive unit?

A. Proactive unit. This is a term we used, yes.

Q. What does that mean?

A. Well proactive just means saturated patrols, preventative patrols, and more or less a visible presence in the area to show police presence in the area to calm the local population and so on, and to assist in any apprehension of Mr. Legere if it came to that.

Q. And is that different than a member of the ERT unit?

A. Yes, it is. I would say. If you are looking into specifics, an ERT unit is a specialized unit generally assigned to violent situations involving firearms whereas this unit was strictly mainly patrols and to assist when necessary if Mr. Legere was located.

Q. Now I notice on your red serge that you wear two badges on your left sleeve, one depicting crossed - looks like pistols --

A. That's right. Revolvers.

Q. And one depicting crossed rifles.

A. That's right.

Q. Am I given to understand that those may signify you have some sort of expertise with firearms?

A. Well, what it does, these are badges that signify minimum basic marksmanship in the use of the firearm, revolver, and there are certain qualifications we have to meet every year in order to be able to wear these badges, and they are minimum qualifications.

- Q. So I understand you are minimally qualified?
- A. That's correct.
- Q. And you arrived at your roadblock post at approximately what time in the morning of the 24th?
- A. I would say we set up our roadblock -- Constable MacPhee and I had set up an earlier roadblock at approximately 2:30 in the morning but we had moved -- and manned that roadblock for approximately an hour or so and we had moved the roadblock to the area that I described earlier, 1.5 kilometers from the intersection of 118.
- Q. And Constable MacPhee was he driving your unit?
- A. That is correct.
- Q. And how close behind Constable Dugas were you from the time that she arrived on the scene? Were you very --
- A. We were immediately - immediately behind her.
- Q. Immediately behind her.
- A. Because she knew where everything was and we didn't know the area so we followed her and we were right behind her.
- Q. Now, I take it you were present in court this afternoon and heard her testimony?
- A. That's correct.
- Q. When you arrived would you say that the two officers other than Constable Dugas were still in the process of looking after a prisoner?
- A. Yes. I would say that the prisoner was under control and being well looked after by those officers present when I got there, and it was within a short few seconds I would suppose of Constable Dugas. We were behind

her and we had to use caution and so on before we stopped. We were going at an accelerated speed to get there and we arrived just after she did.

- Q. Now, when you arrived on the scene the person that you described as the prisoner, what position was he in?
- A. He was laying on his back with his hands handcuffed behind his back.
- Q. Behind his back.
- A. On the ground.
- Q. And did you unholster your weapon at that time, sir?
- A. I had my weapon out of my holster when I got out of the police vehicle. When I noticed that the scene was in control - everything was under control I put my revolver in my storm jacket pocket.
- Q. And did you take control of the scene?
- A. I was there at the scene until the vehicle was towed away.
- Q. So you stayed there until --
- A. Stayed there completely through until approximately 11:30 - 12 o'clock in the late morning.
- Q. That same morning I take it?
- A. That's correct. So there was several other members arrived at the scene after that, senior-ranking members, and anyway the scene was watched and secured
- Q. And you indicated that you started the midnight shift
- A. That's correct.
- Q. Do you recall it snowing that evening or the early morning hours of the 24th?
- A. There was snow on the ground. When I arrived at the scene where Mr. Legere was there was spatterings of snow. I know the MacDonald house beside us and the

Manuel house on the other side there was snow on the lawn and there was snow in the ditches. I just can't recall right away whether it was actually snowing that night. It was very cold.

Q. And you indicated that you overheard Mr. Legere talking freely?

A. Yes.

Q. Were people talking back to him?

A. People were -- I didn't talk to him at all but I couldn't hear anybody talking back to him. He was just freely talking --

Q. He was talking.

A. -- especially about what I had mentioned in court about his sore jaw and take it easy and those kinds of things.

Q. Was he rambling?

A. No, he was very articulate. I could hear everything that - you know - I could hear those words.

Q. You could hear the words?

A. Yeah, I could hear the words. He wasn't mumbling. He seemed to be just talkative. Agitated I suppose. Excited.

Q. Excited. Nervous?

A. He could have been, yes.

Q. Relieved?

A. He could be. He could have, yes.

Q. Scared?

A. I suppose he could have been frightened some as well. I mean he was in a situation there.

Q. Are you familiar with a Constable Luc Bolduc?

A. I know Constable Bolduc.

Q. Was he at the scene at that time?

A. He's a member of our ERT team but I can't recall if he was. There was so many members there that I just couldn't recall Luc being there. He could very well have been.

Q. Was he at the scene when you arrived?

A. No.

Q. Did Mr. Legere ask for a doctor?

A. I did not hear anything, no.

Q. Did you hear him ask for a doctor or a lawyer?

A. No.

MR. RYAN: No further questions, thank you.

THE COURT: Re-examination?

MR. SLEETH: No, My Lord.

THE COURT: Thank you very much Corporal.

MR. RYAN: My Lord I know that the hour is a little bit early yet but I would ask for a couple of minutes recess. I want to speak to my client on the messages that he passed to me, if you don't mind.

THE COURT: Well, all right. Would it facilitate things if we all got out of the courtroom rather than having to take the accused to the cell block area?

MR. LEGERE: I could stand over there and I could talk to you right here.

MR. RYAN: That would be fine.

THE COURT: Everybody out of the courtroom then for five minutes and then we'll come back. I would like to get one more witness through.

(SHORT RECESS.)

THE COURT: Are we still ready to do one more witness?

MR. ALLMAN: My Lord the next witness I am advised by Mr. Sleeth is quite a lengthy one. It's 17 minutes to 5 now and we don't think it's probably the best thing

to do to call him. We wonder if this might be a convenient time -- I did tell Your Lordship yesterday that we would make inquiries of our last remaining witness. I wonder if Your Lordship wanted to hear information about that now or do you wish some other time?

THE COURT: Well, I was going to deal with -- Yes, as far as the additional evidence today goes I think we had better call that off now and we will start in the morning with that witness. Yes, I would be pleased to hear -- You were going to make some inquiries or other.

MR. ALLMAN: My Lord we did make inquiries last night and indeed this morning. The July dates are - basically is this. We can start July the 15th or July the 29th. July 22nd, the timetable the way we have got it set up, isn't good. We can start the 15th or the 29th. There are some problems attached to this especially in light of Your Lordship's remark that we are now scheduling or contemplating scheduling August the 26th for the jury.

Mr. Walsh thought his voir dire evidence on DNA would last about two weeks but that was before Mr. Furlotte remarked about how many questions he had. Of course Mr. Furlotte also said he may be able to fine those questions down, but really we're very much in a guesstimate area about that two weeks. Then there has got to be Mr. Furlotte's expert evidence. We don't know how long that will take. And then it may be that Your Lordship would want some time to reflect upon the evidence before giving your judgment

on that evidence. And if we're running into a period of 4 - 5 - 6 - 7 weeks you can see already mathematically that there is a risk of an overlap with the August 26th date. That's a matter that's a concern to us. But in terms of availability of witnesses we can start July the 15th or July the 29th.

I might just add that is going to inconvenience crown counsels' summer arrangements but we will gladly put up with that.

THE COURT: You were going to --

MR. FURLOTTE: Yes. I was able to contact my expert witness, Doctor Shields, last evening and he is ready to accommodate myself and make himself available for the July adjournment if it is -- He would be available anytime in August which I suspect the crown's case will take at least two weeks, so he would be available as soon as the crown completes their case.

THE COURT: Well, here is what I am going to do about this. Mr. Furlotte has made an application. It's sort of, as I think Mr. Allman pointed out yesterday, it seems to be an application for sort of an open-ended adjournment. The suggestion was that either one or two months or something in that range would be required, and it was sort of coupled with a suggestion that Doctor Shields would not be available after June 1st which was sort of inconsistent. And then the suggestion was made that possibly Shields would have to be abandoned as the defendant's expert witness and another expert would have to be sought, and that would

possibly take longer and get into the fall before the voir dire could be completed. That seemed to be what was emerging from that.

The Crown had responded by letter to Mr. Furlotte's original letter. There were two suggestions made in that letter in which the crown offered to try to accommodate the defence. One was that the crown's end of the voir dire on DNA, as well as on the body substance end of it, proceed as planned and that a week be taken when the crown completed and the defence be given a week recess to prepare for the defence end of the DNA voir dire. There was also the suggestion I think by Mr. Allman in his letter that the crown would be prepared to have the court waive the necessity for the attendance of both defence counsel. It apparently had been suggested that Mr. Ryan would be handling the first week of the voir dire and that that might relieve Mr. Furlotte, if he so sought, to take those days off to devote to preparation for the voir dire.

Now that is a possible thing I had laid down -- or I hadn't laid down - I had advised counsel at one of the pretrial hearings that I felt most strongly that counsel, as in any jury trial, counsel should be present for both sides. All sides should be present right through the whole trial because if you get -- Perhaps it's not quite as important in a voir dire as it is in the trial proper but certainly counsel who are to address a jury at the close of a jury case must have been present throughout the trial because they can't -- they don't know what went on if they weren't present through the trial. It isn't as

significant.

In speaking to the matter yesterday Mr. Allman made certain further proposals and he suggested the dates of June 17th, I believe, as a possible week for that and then two dates in July I believe. The dates he suggested then were the 22nd or the 29th - those two weeks. Mr. Allman has suggested today that instead of the week of July 22nd the week of July 15th would be satisfactory although he points out the difficulties that one is going to get into if we are aiming at an August 26th jury selection date.

I will confirm that the jury selection - the tentative date fixed for that is Monday, August 26th at 10 o'clock. That must take place before school opening because the only place that I can see that we can get a satisfactory place is in a school and that will only be available before school opening the day after Labor Day, and I am not going to get stuck with jury selection after that. That represents a delay of nine months from the time when the arraignment was done here and there is no jury trial that shouldn't start within nine months of its commencement. I am ashamed really that it would have to go on as long. I realize there are maybe certain circumstances here that made it difficult to get ahead faster but it is an extraordinarily long time to keep a trial going, and if we are to complete it this year we simply have to get going at the end of August with the jury portion of the trial.

When I was assigned to this trial I was told by the Chief Justice - I was asked if I could devote six months to this - I would be through in June they said, and I said there is no jury trial that I'm going to spend six months on. I have had enough of them that I can move ahead a little more quickly than that. I thought probably we would be finished in May. And here it is - you know - it's going to be November now, in any event, before the thing is over. I don't care for my own part. I am prepared to devote the time to it. I have other duties - other judicial duties. I have the responsibility though of ensuring that this trial proceeds at an expedient pace and that it's completed as soon as feasible, bearing in mind that it's got to be a fair trial for the accused, for the crown, for the public. There is a great deal of expense involved in this. One of my duties is to ensure that there isn't more expense involved than is necessary.

There is also the problem -- It's not an easy thing to say well we'll just move about as a convenience to one side or the other, or to serve some person or some other person we will change this about from day to day. There are a lot of factors to be taken into consideration. There is the availability of courtrooms. We're inconveniencing the Provincial Court by using their facilities here. I told them earlier we would require this for about three weeks from April 22nd, this week, on, and they would be clear of us then until the fall. They have things scheduled. They have warrants returnable and that sort of thing.

There are the matter of the reporters. In Fredericton now we're down to I think four reporters in the Fredericton Judicial District. Mrs. Brewer here goes on her holidays in a week's time or something like that which is why she is taking a turn at this early on. I have had difficulty arranging with the Chief Reporter to have the reporters' participation in this staggered so that they can try as much as possible, as I had indicated to counsel earlier, to try to get a running transcript on this thing so that counsel would have available a reasonably up-to-date transcript. That's becoming more difficult all the time.

The matter of court space I have spoken of. The Provincial Court I have spoken of. There is the convenience of witnesses has to be considered. You know when you talk about bringing witnesses in in the summertime it's a very difficult thing to do. You can get them. You can make them come in but it's unfair to witnesses to bring them in in the summertime when you've got a climate like ours here. That's not the overriding consideration but it is a consideration.

The dates which the crown proposes, June 17th is out. It's absolutely impossible because of the fact that the scheduling of this trial having been done as it was - that was a consideration and a major consideration in the scheduling of another two week murder trial in Fredericton, a retrial there, which commences on June 17th. And the resources of the

court reporters will be fully utilized on that case, along with other civil cases that are scheduled for the same time.

There is custodial facilities there would be a conflict in there too and that's another consideration in all these things.

That period is totally out.

Now, as Mr. Allman points out just now and as he appreciates, and I'm sure you all do, if we get into the July dates we are simply running up too close against the August 26th date that I envisage for jury selection. The jury notices would have to go out at the end of July, certainly by the 1st of August, in that area, and I am not going to have jury notices going out while a voir dire is yet incomplete because we would get into a devil of a mess. As a matter of fact I become more impressed every day with the notion that the longer this trial runs on the more difficulties and unforeseen difficulties are going to arise through the thing and the more difficult it is going to be to conclude the whole trial. That is a situation that I am not going to allow to develop.

Doctor Shields is, as I understand, the expert for the defence. He is available at the latter part of May or so it was indicated yesterday even though it was suggested since then that he can be available later. The Crown experts have been scheduled already for next week and the one who is from out of the country, as I understand from what Mr. Walsh said yesterday, he is scheduled for a week from Monday, a week from the 29th. I am right there, am I?

MR. WALSH: That's correct My Lord.

THE COURT: The 29th plus one week in advance of that.

I think two things are apparent, one with regard to Mr. Furlotte's application and one is that I think he underassesses his own competence and preparedness to get ahead with the matter in some degree. He has spent, he says, a 100 hours on this already this month before the voir dire commenced. He must have spent a good many hours last month as well, and he says he has a thousand questions prepared now which Mr. Furlotte has offered to cut down if he has a little more time but, obviously, Mr. Furlotte is much closer to being prepared for this than perhaps he realizes himself.

The other aspect in which -- The only other comment I have to make about Mr. Furlotte, and this is nothing personal Mr. Furlotte, but it is an inclination I think on your part to over-estimate difficulties. You will recall when this case started last December that you felt it was going to take weeks to get a change of venue application set up and you sought an adjournment on that account and I said look, try me on that, make the motion, and in five minutes the motion was made, it was granted and the venue was changed. There was no difficulty about it at all. And, you know, this plea for weeks and weeks of delay and adjournment just evaporated like that. And then it would take months to line up an application for a stay of proceedings because a direct indictment had been preferred and time was given for that, not the months that were sought or the weeks and weeks that were sought, but that whole

thing evaporated and nothing more -- The announcement was made later that that intention was abandoned. There have been other aspects along and I needn't go into all those things.

I am going to make this -- It is not a proposal. I am going to decree it as the program for the course that this voir dire will take. I would ask you to get out your calendars if you have calendars there available and follow this through. It represents to some extent a compromise in the matter.

This week we are devoting it to the body substance and the statements aspect. We have gone through 17 witnesses out of 27 at the present time. I don't know how much longer the others will be but it looks very much to me as though we could conclude by perhaps Thursday, or Friday. It may be Friday but we are going to get through this week. I think that's certain. We have made good progress through this week. We have sped along quite quickly here and this has been despite certain lost time that we have had. Hopefully it would be completed on Thursday. If it's not Thursday it will be Friday. I would suggest that we leave the matter of argument on the body substance matters until a later stage of the voir dire.

The next thing I propose is that the voir dire on DNA will start next Wednesday, a week from tomorrow, on May 1st. The 1st day of May. It will go on on the 1st, 2nd, and 3rd of May, that's Wednesday, Thursday and Friday, and it will continue the following week through the week up until the 10th, say, or as long as it takes. Surely those eight days

would cover adequately the time I think that the crown envisaged, including cross-examination on that matter.

Now, if that is done it leaves hopefully Friday of this week, it leaves Saturday, it leaves Sunday, it leaves Monday, it leaves Tuesday. Those are five full days when defence counsel, crown counsel will have to prepare for cross-examination on the DNA. Now there is no way in the world that counsel shouldn't be able to prepare in five days. I include Saturday and Sunday because when counsel get involved in murder trials they have to be prepared and they are prepared and they always do devote those days and the full time through the course of the trial to the matters at hand.

If Mr. Furlotte wants to take advantage of the suggestion that he be excused for the balance of the voir dire on the body substance thing I am prepared to go along with that. Mr. Furlotte will have to decide himself. It may be that if Mr. Furlotte works in the office allotted to the defence counsel here in the building that he's available to give advice to Mr. Ryan, if required, and can study the - prepare for the DNA matters out in the office and still be available if required. If that is done then that gives the additional two days, Wednesday and Thursday, which makes a total of seven days, plus the other five, for preparation for DNA. But that's a decision that Mr. Furlotte has got to make himself.

I did suggest that the argument on the DNA be left until later on in the voir dire, towards the end of the voir dire, and the DNA argument and the body substance argument can be done at the same time. Hopefully by then a full transcript of this week's proceedings will be available and Mr. Furlotte would have a chance presumably before then to review those transcripts and prepare or assist Mr. Ryan in preparing the argument at that time. Even if he weren't here for this voir dire during the balance of the week he would have the advantage of those transcripts. And I think I have the assurance of the court reporters - the Chief Court Reporter that is, that a transcript will be available for this week's activities.

Now, we would start the DNA on Wednesday, the 1st, go on the 2nd, the 3rd. We would take the days 6, 7, 8, 9 and 10 if the crown requires all that. That would complete the crown's case on the DNA. We would take the following week off. This is adopting Mr. Allman's suggestion that there be a week's gap in between which would give the defence counsel an opportunity to prepare for the rebuttal or the defence on the DNA question, and that would start on the Tuesday, the 21st. The 20th of May is a holiday. How long that takes I don't know. I would think three days. There are four days that week and certainly four days would look after that I'm certain. Mr. Furlotte has indicated that there is one expert witness and so that week would look after it. Then I suggest that if it only takes one day or two days

then we go ahead with the argument on both the body substances and on the DNA during that week on the 23rd and 24th say. The Crown mentioned the possibility of rebuttal evidence on DNA and I can foresee that perhaps happening but, again, it may not. If it doesn't well we'll get into argument at the close of the DNA. But that can either be done, depending on how long the defence on the voir dire for the DNA takes whether argument can proceed on say the 23rd or 24th or whether it goes over to the week of the 27th. We can devote one or two days or whatever is necessary for the argument on both body substances and DNA on the 27th.

I would hope that during that week in between the crown's presentation of its direct evidence on DNA and the week, 8 days or 9 or 10 or whatever it is later when the defence start, that during that period the transcript of the crown's direct evidence or direct case on DNA would be made available to all counsel so that they would have that. We have to take some chances on what the reporters can come up with.

I think that covers about everything that I have to say. There are two points I make about this. One is that it had been indicated that Doctor Shields would be available in the latter part of May and had set the latter part of May aside for his attendance. This envisaged his being called the 21st or 22nd of May or 23rd, 24th which presumably coincides with the time he is available - or the time it was represented that he would be available in any event.

With the crown's case Doctor - whoever he is, somebody that was coming on the 6th -- Doctor - who was it?

MR. WALSH: Kidd My Lord.

THE COURT: Kidd. Well, you can decide either if you want to keep him in the same order and the same number of days from the start. You may have to have him come later that week. I don't know whether you can arrange that or not but there must have been some fluidity and some flexibility in the crown's programming of these people and if you are starting only two days later surely it is not going to throw out the availability of your witnesses too much.

Well now that is it gentlemen, and that is what I am prescribing. So we will now --

MR. FURLOTTE: My Lord one other matter. I indicated yesterday that I had Doctor Shields scheduled for May 27th. Does that mean if he cannot appear on May 21st that I don't have a defence witness at all?

THE COURT: Well if he absolutely can't get here I suppose we would have to consider the 27th - bringing him here on the 27th and then putting -- I'm sorry, I understood you to say late May and I thought this sort of tied in with it.

I'm not so totally inflexible that I can't -- I want to get through this by the end of May. I want to get through this voir dire and the argument on the voir dire. You have indicated, Mr. Furlotte, that you have a great deal of documentary material to put in that's going to require --

MR. FURLOTTE: I may not have that evidentiary material now. I don't think that I can gather it all up in that period of time.

THE COURT: Well, put it in in bulk or something. I don't know. I'm not going to try to tell people what evidence they should put in or not.

Do the crown have anything to say on that? Suppose the defence presentation went over to the week of the 27th, does that cause any great problem with you people?

MR. ALLMAN: No, My Lord, we will do whatever we can to accommodate Mr. Furlotte.

THE COURT: But Mr. Furlotte I think you will find that if you talk to Doctor Shields nicely you will probably stand as good a chance of getting him here on the 21st and 22nd or along that week as you will the next week. These people are flexible. American experts sometimes like to call the shot on these things. The Crown - I don't know what difficulties they run into with their man. But you have got to be a little tough with these people. There's another man in Bar Harbor, have you considered him?

MR. FURLOTTE: I have. Doctor Nadeau?

THE COURT: Yes.

MR. FURLOTTE: I called him and he's not available.

THE COURT: You are familiar with the Arizona case. Give that to Mr. Furlotte anyway. I have got another copy I will give to the crown, Mr. Walsh, if he wants it. It's just an article on that Arizona case taken from the New York Times. One of my neighbours gave it to me a couple of days ago but it tells about Nadeau from the Jackson Institute in Bar Harbor, Maine, which

is only three hours drive from here. Perhaps he can come up. He would seem to me to be the type of expert witness that you might very well want.

Well I'm not here to be helping one side or the other. I'm trying to be fair but I want to say it's important this thing -- But I think this schedule gives everybody the opportunity.

So we will adjourn then until 9:30 tomorrow morning. We will go on and we will try to get through, and the sooner we get through with the body substance voir dire the sooner Mr. Furlotte is freed up for his DNA work.

(Accused removed from courtroom.)

(COURT ADJOURNS - 5:10 P.M.)

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

B E T W E E N:

HER MAJESTY, THE QUEEN

- and -

ALLAN JOSEPH LEGERE

AFFIDAVIT

1. THAT I am a stenographer duly appointed under the Recording of Evidence by Sound Recording Machine Act.
2. THAT this transcript is a true and correct transcription of the record of these proceedings made under Section 2 and certified pursuant to Section 3 of the Act.
3. THAT a true copy of the certificate made pursuant to Section 3(1) of the Act and accompanying the record at the time of its transcription is appended hereto as Schedule "A" to this affidavit.

SWORN TO at the City of )  
Fredericton in the Province )  
of New Brunswick this 2nd )  
day of May, A.D., 1991. )

BEFORE ME: )

Verna M. Peterson )  
Verna M. Peterson )  
A COMMISSIONER OF OATHS )

Dolores M. Brewer  
Dolores M. Brewer

MY COMMISSION EXPIRES  
DECEMBER 31, 1994

RECORDING OF EVIDENCE BY SOUND RECORDING MACHINE ACT

FILE:

CERTIFICATE

I, Dolores Brewer of Fredericton, New Brunswick  
certify that the sound recording tapes labelled:

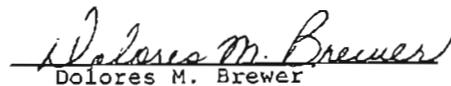
HER MAJESTY, THE QUEEN

- and -

ALLAN JOSEPH LEGERE

initialled by me and enclosed in this envelope are the  
record of the evidence (or a portion thereof) recorded  
on a sound recording machine pursuant to Section 2 of  
the Recording of Evidence by Sound Recording Machine Act  
at the Trial (Voir Dire) held in the above  
proceeding on the 22nd & 23rd day(s) of April, A.D.,  
1991 at Fredericton, New Brunswick, and that I was the  
person in charge of the sound recording machine at the  
time the evidence and proceedings were recorded.

DATED at Fredericton, New Brunswick this 23rd  
day of April, A.D., 1991.

  
Dolores M. Brewer