

goes on and I may be parolled at an earlier date.

Q That's up to the Court, is that correct?

A Yes.

Q You understand that is not part of any agreement you entered into with the State?

A Yes.

Q Was that made clear to you?

A Yes, it was.

Q Do you have any understanding of what the State's position would be at such a request on your part?

A They would probably deny it. They would argue against it.

Q You understand you have no promise or agreements nor anything from the State concerning the State's position of such an attempt on your part to lessen the sentence?

A Yes, I do.

Q What is the maximum amount of time you could serve in prison?

A Life.

Q Now, if you were to have gone for trial for your charges, what would have been your sentence?

A Life without parole.

Q Was it your understanding you could -- how could you screw up this agreement with the State?

A I could lie or withhold information.

Q And if upon that occurrence, what happens to you?

A If the State wanted to, they could reinstate first degree murder, accomplice to first degree murder charges on me.

Q And try you for a maximum sentence?

A Yes.

Q What else could the State do?

A Or they could just go ahead and let me plead guilty to second degree murder but take away their recommendation and suggest that I get the maximum.

Q It's your understanding that would be in the sole discretion of the State?

A Yes.

Q Now, where were you incarcerated at the time you took this plea with the State?

A ADC in Concord.

Q And where was Bill Flynn and J.R. Lattime at that time?

A Brentwood.

Q They had already been moved to Brentwood?

A Yes.

Q Is Brentwood another name for the Rockingham County Correctional Institute?

A Yes, it is.

Q At the time you had entered this plea with the State, were you aware of any plea negotiations going on with Bill Flynn and J.R. Lattime?

A I was told they were also pleading.

Q How did that make you feel?

A Better.

Q Why?

A Because I didn't want to testify against my friends.

Q Why didn't you want to testify against your friends?

A Because they've been my friends for a really long time.

Q Now, did you ever meet with any of the other attorneys in this case besides your own to discuss this plea agreement?

A Yes, I have.

Q What attorneys were those?

A Marsha Kazarosian, J.R.'s attorney.

Q Was J.R. present at this meeting?

A Yes, he was.

Q Did you at any time during that meeting discuss what you would testify to or what you would say?

A No, I did not.

Q What was the purpose of that meeting?

A Just so we could both understand it. We were both going to plead guilty.

Q What were you to understand?

A We were talking about whether we were both going to plead guilty or go on and go to trial.

Q Did you ever discuss with J.R. what you knew at that meeting?

A No, I did not.

Q Or anytime prior to your plea?

A No, I did not.

Q Now, what is your understanding now as far as testifying against your friends, J.R. and Bill Flynn? Let me rephrase that.

As you sit here today, are you aware that Bill Flynn and J.R. Lattime have entered into agreements with the State?

A Yes.

Q What is your understanding of your requirement to testify against them?

A If either one for any reason drops out of the plea negotiations with the State, I'm to testify against them.

Q Now, what about Raymond Fowler?

A What I -- from my understanding, he's just going to go to trial and I may have to testify against him also.

Q Was it your understanding you had to testify against anyone and everyone --

A Yes.

Q -- who might be involved in the murder of Gregory Smart?

A Correct.

Q Now, when was the first time you were involved in the planning or ever heard of the planning of the murder of Gregory Smart?

A March.

Q March of what year?

A 1990.

Q How did you first hear about it?

A Bill came into the back room of J.R.'s house, and me and J.R. was sitting around listening to some music, and Bill said he wanted to kill Greg Smart.

Q What did you say to Bill?

A Asked him why and told him he was nuts and stupid.

Q And did Bill discuss any reasons at that time why he wanted to kill Gregory Smart?

A Yes.

Q What did he say to you?

A He told me that Pam was unhappy in the marriage, and that supposedly Greg hit her and everything, and she didn't want a divorce because if she got a divorce she'd get no money, she'd lose her car, lose her house, she'd lose everything

and she didn't want that.

Q Were you aware of the nature of the relationship between Pamela Smart and Bill Flynn at that time?

A Yes, I was.

Q How were you aware of it?

A Bill had told me.

Q What did Bill tell you?

A Told me they were having an affair.

Q Did you believe him?

A Yes.

Q Now, after that first initial conversation with Bill Flynn, had you agreed to help him kill Gregory Smart?

A No, I had not.

Q How did it go on from there?

A He kept on talking about it, and after a while I realized he was serious so I decided to help him.

Q And can you tell us how long had he been talking about it before you decided he was serious and you decided to help him?

A Couple of weeks.

Q And how often would Bill Flynn talk about it.

A Probably once a day.

Q Now, where would Bill Flynn talk about it with you?

A Usually at J.R.'s house after school.

Q And who would be present for these conversations?

A Bill, myself, J.R. and on some occasions Raymie.

Q Now, did you know a girl by the name of Cecelia Pierce?

A Yes, I did.

Q How do you know Cecelia Pierce?

A From school.

Q Was she a friend of yours?

A No.

Q Did she hang out with your crowd?

A No, she did not.

Q Did you at any point or at any time have any discussions with Cecelia Pierce concerning the murder of Gregory Smart?

A No, I did not.

Q Now, up to that time, you were still going to Winnacunnet High School, is that correct?

A Yes, I was.

Q Did you ever hang out or visit the defendant in her office at the SAU 21 building?

A No, I did not.

Q Let me ask you, what was your feelings towards the defendant at this time?

A I disliked her.

Q Why did you dislike her?

A Just didn't really like her.

Q So you weren't friendly with her, you didn't hang out with her, you didn't go over there to her office at all?

A I was social with her when we talked. I said hi and stuff, and say hi and stuff back because Bill liked her. That's as far as it went.

Q Now, when you were discussing with Bill Flynn -- I should say Bill Flynn was discussing Gregory Smart, what kind of discussions would you have?

A Bill would ask ways to kill him, and we'd all suggest ways to kill him.

Q What kind of ways did you come up with?

A Drive-by shooting was one idea, a mugging gone bad, different things.

Q What do you mean by a drive-by shooting?

A Bill had known where Greg worked. He knew he was an insurance salesman. To steal a car and just one day pull up and shoot him.

Q Why didn't you do that?

A Stealing a car and doing that would have been way too risky.

Q What other kind of ideas did you come up with?

A Pretty much the only one I can think of beside that was to

attempt to mug him, make it look like we were attempting to mug him and just shoot him.

Q As Bill was having all these discussions with you, were you taking him serious at this point?

A After a while, yes.

Q How long a period was it when you weren't taking him serious or was there a period when you were?

A A period of a couple weeks where I weren't taking him serious.

Q After you started taking him serious, do you try to talk him out of it?

A After I started to take it serious, no.

Q Why not?

A Because his mind was set on it.

Q Was J.R. taking part in these discussions as well?

A Yes, he was.

Q Can you tell us approximately what month or time period was that you understood it to be serious and your conversations were serious?

A Month of April.

Q April of 1990?

A Yes.

Q Did there come upon a time -- let me rephrase that.

Did there come a time when you had a set plan and you understood what the plan was going to be?

A Probably the last week in April.

Q Can you tell us at that point what the plan was?

A Bill had known through Pam that Greg was going to be home late on May 1st, and that she had a meeting May 1st that was until 10 o'clock, so that covered her from being home, and it was decided upon that would be the night to kill him, and the plan was to make it look like a botched burglary, that he walked in during it.

Q What were you going to do inside the apartment to make it look like a burglary?

A Ransack the house, take certain items.

Q Now, how was it determined that you were going to get into the apartment at that point?

A Bill had told -- Pam had told Bill earlier that the bulkhead and the back doors would be left open, and on our ride to Haverhill she had also told me.

Q Make it clear for the jury, when you say Pam told Bill, you weren't present when Pam was talking to Bill, is that correct?

A No, I was not.

Q So this is a conversation that Bill said to you --

A Yes.

Q -- this is what the defendant said --

A Yes.

Q -- is that correct?

A Correct.

Q Now, did you have any discussions prior to coming up with the final plan of weapons that you would use?

A We had discussed purchasing a handgun in Haverhill.

Q From who?

A From a street dealer I had known.

Q Of what name?

A Zeppelin.

Q What do you mean by "street dealer"?

A He sold coke, and pretty much you could hock stolen goods from him -- you could sell them to him.

Q And did you have any discussions with Zeppelin about a weapon?

A I had asked him one time. He said he could get me it, and he gave me an estimate of around a hundred to three hundred dollars. I asked Bill, "If you want a gun that way, you're going to have to get the money from Pam or from some place."

Q What happened with that plan?

A He didn't get the money, so I didn't get the gun.

Q Were there any other attempts to secure any other weapons?

- A Myself, Raymond and Bill Flynn had looked in Raymond Fowler's attic for his father's handgun, but we couldn't find it.
- Q You never found his handgun?
- A No, we did not.
- Q So what gun did you end up deciding to use?
- A J.R.'s father's.
- Q Now, you said J.R.'s father. J.R. lived with his father and mother?
- A Yes, he did.
- Q Can you tell us what kind of gun collection J.R.'s father had?
- A Assortment of shotguns, rifles and two handguns.
- Q And what handgun or rifle did you decide you would use?
- A He had a .38 Charter Arms snub-nose pistol that we decided to use.
- Q And what was J.R.'s feelings about using his father's gun?
- A He disliked the idea of using it.
- Q Why not?
- A Because it was his father's gun and we couldn't get rid of it after we used it, so if anything ever happened the police could get ahold of the gun.
- Q Why couldn't you get rid of it after you used it?

A Because his father would notice it missing.

Q So why is it that you then decided to take J.R.'s father's gun?

A We had taken it as a safety precaution in case we had to use it or if anybody came out while we were in the apartment to show them the gun and they'd back off so we could run.

Q And -- what discussions, if any, did you have concerning transportation to Derry.

A We were going to steal a car, but decided if we got caught in a stolen car that would end it right there, we'd get busted for being in a hot car, so we had decided -- first, we thought we may use Pam's.

Q I'm having a hard time hearing you. Direct the microphone closer to you, if you would.

A We were going --

Q Okay.

A At one time we had discussed using Pam's CRX but since it was so noticeable in fact that it had been seen around there that it lived there, we decided not to use that, and we came upon the decision to use J.R.'s grandmother's car.

Q Give the jury some indication about how many times you discussed this with Bill or J.R. and Raymond. Are we talking about one, two discussions, talking about three or

or four? Can you give us some idea of how the progression of the discussions went?

A We must have discussed it at least 20 times.

Q I'm sorry?

A At least 20 times.

Q Where would these discussions take place?

A Mostly in J.R.'s house.

Q Anywhere else?

A A couple of the discussions had taken place in Raymond's house.

Q Ever discuss it at Bill's house?

A No.

Q And where did you guys normally hang out after school?

A J.R.'s house.

Q Why was J.R.'s house the house to hang out on?

A Parents let us all hang out there.

Q And besides yourself and J.R. and Pete -- I'm sorry -- Bill and Raymond, who else used to hang out there?

A Ralph. Frank Daley would come down on occasion.

Q Now, up to this point was Ralph Welch aware you were talking with Bill about planning the murder of Gregory Smart?

A No, he's not.

Q Now, let's talk about the ammunition. Tell us where you

got the ammunition.

A Bill gave George Emond the money to buy a box of .38 caliber bullets.

Q Why didn't you just take bullets from J.R.'s father?

A We weren't sure if he'd notice them missing.

Q And when Bill gave the money to George Emond, do you know where the money came from?

A I am not sure, but I was under the impression that Pam gave him the money.

Q You didn't see any money trade hands?

A No, I did not.

Q That's just the impression that Bill gave you?

A Yes.

Q Do you have any idea about how much the bullets cost?

A Under \$20.00

Q Now, besides what Bill told you about the relationship between him and Pam Smart, did you ever see anything, did you ever see Pam and Bill together?

A Yes.

Q Where would you see them together?

A She had brought -- she used to bring him down to the house and drop him off everyday because they worked on an orange juice commercial together, and on one night she brought him

and Cecelia Pierce down to the house, and Bill had been drinking Southern Comfort.

Q How do you know he had been drinking Southern Comfort?

A He still had the bottle.

Q Let's just back up. Where were you at this time?

A At J.R.'s house.

Q Who else was there with you?

A Who was home?

Q Well, who was with you? Were you hanging out with his parents, just J.R.?

A Just me and J.R. were hanging out, but his mother and father were home.

Q What did you see?

A Bill came down with Pam and Cecelia in the CRX. Then we had all went out front into the front yard, and Bill was hanging off Pam and stuff, but he was drunk, and then decided they wanted to go down to Salisbury Beach so we let them go down Salisbury Beach, and me and J.R. split.

Q What do you me by "Bill was hanging on Pam"?

A He was hugging her and hanging off of her and stuff.

Q How was Pam reacting to Bill's hanging on to her?

A Holding him up.

Q Was Bill old enough to drink at this point?

A No.

Q Cecelia drinking, as far as you knew?

A I'm not sure.

Q What about Pam?

A She didn't seem to have been.

Q And how long were you with them at that time?

A Probably about a half an hour.

Q Now, do you ever recall a time in April of 1990 of dropping Bill Flynn off at Winnacunnet High School?

A Yes.

Q Can you tell us what you recall about that day?

A We had went to the mall to buy concert tickets earlier that day, myself, Bill, J.R., Raymond, a friend of Raymond's, Danny Blake, and another kid we knew, Chris Gosselin, whose car we were using.

Q Do you remember what kind of car it was?

A A blue Chevrolet -- a blue Ford Escort.

Q You mentioned Danny Blake. Is Danny Blake a friend of yours?

A Yes.

Q What kind of friend was he?

A Just a kid I knew.

Q Someone you knew as well as Bill and J.R.?

A No.

Q Just a friend of a friend?

A Yeah.

Q Now, you went to buy concert tickets for which concert?

A Motley Crue in Providence.

Q Did everybody buy tickets at that time?

A I'm pretty sure, yeah.

Q Do you know?

A I had bought a couple, Chris Gosselin had bought one, Danny Blake had bought one, and I believe Raymond had bought one, too.

Q How many trips did you make to the mall to buy tickets?

A I think two.

Q You made two yourself?

A Yes.

Q Was this on the same day or separate days?

A Separate days.

Q Now, on the way back from the mall, what, if anything, was happening inside the car?

A On the way up to the mall we were fooling around. I mooned some lady, but on the way back everything was normal. We just dropped Bill and Raymond off at the school.

Q When you say you mooned the lady, just for the benefit of

what you --

A Dropped my pants and showed her my ass.

Q This was to another car driving on the highway?

A Yes.

Q Any other kind of horsing around that made you remember this particular trip?

A Yeah, the fact we were all crammed into the Escort.

Q Where were you crammed?

A The back of the hatchback.

Q And do you recall what time it was that you dropped Bill off at the high school?

A No.

Q All right. Can you tell us what happens when you get to Winnacunnet High School where you drop off Bill? Who's with him?

Q We drop him off in front of the -- it's the administration building, and him and Raymie got out, went around back. I guess they were going into Pam's office.

Q When you saw them get out, did you see where they went?

A I'm not sure if they went through the front door or the back. I wasn't paying any attention.

Q You just saw them get out of the car?

A Yes.

Q Now, did you know where they were going at that time?

A I knew they were going to see Pam. That's it.

Q And you didn't go with them?

A No, I did not.

Q And after you dropped them off -- you weren't driving, correct?

A Correct.

Q Where did you go then?

A Back to J.R.'s house.

Q And did you see whether they actually went into the building or what they did?

A No, I weren't paying any attention to them.

Q And, I'm sorry, where did you say you went?

A Back to J.R.'s house.

Q Now, what is your motivation for taking part in this murder?

A Bill was my friend and I didn't want to see him get caught for committing murder, and there were financial gains, but my main motive was to help Bill because he was my friend.

Q What makes you think Bill would have gotten caught?

A That from -- later I -- I learnt there was an earlier attempt where they had gotten lost, or that's what I was told at the time, so I figured he wasn't doing something

right.

Q So this earlier attempt, you had nothing to do with any earlier attempt to kill Gregory Smart?

A No, I did not.

Q Your only knowledge of it is what you were told?

A Yes.

Q It was after that at some point that you decided that you better help Bill?

A I had known about the planning before that, but that was when I decided to help him, yes.

Q Now, you said there were financial considerations. What was your understanding of the financial considerations?

A Through Bill I was told that we were allowed to take anything we wanted out of the house, including the stereo, VCR, jewelry, and there was to be a payment of \$500.00 apiece.

Q What did that payment start out as, do you recall?

A As a thousand. Then it was dropped to \$500.00 apiece.

Q Why? Do you know why it was dropped to \$500.00 apiece?

A I do not know.

Q Where was the money going to come from?

A From the insurance policies that Pam collected.

Q And how much money was Pam to collect?

A \$140,000.

Q Now, was that information given to you by Pam or by Bill?

A By Bill.

Q Now, do you know, are you familiar with or know of any payment to J.R.?

A He was given a set of Kenwood box speakers that belonged to Greg.

Q How do you know they were given to J.R.?

A Because they were in his room, and I watched him unhook the stereo.

Q Where were you when he unhooked the stereo?

A Sitting on the back of the pickup truck.

Q Whose pickup truck?

A Greg's.

Q How is it that you were sitting on the back of Greg's pickup truck?

A It was down in Bill's -- yeah, J.R.'s yard. He was unhooking the stereo for Pam.

Q You mean the stereo inside the pickup truck?

A Yes.

Q Was the defendant there at the time?

A Yes.

Q Did you overhear discussions between her and J.R.?

A No, they were sitting in the cab talking for a little while but I wasn't paying attention. I -- it was a nice day and I was just sitting on the truck and laying around.

Q So your understanding of what the speakers were for was something that you were told afterwards?

A Was that it would be half of J.R.'s payment.

Q Now, did you, in fact, ever receive any money in this case?

A No, I did not.

Q Did you personally ever make any demand of the defendant that she make payment to you?

A No, I did not.

Q Did you ever talk to her about it after the murder, the payment?

A No, I did not.

Q Why not?

A It wasn't something I wanted to bring up, and that was it.

Q Now, did you ever spend any time with Bill and Pam, the defendant, after the murder?

A We had all went places a couple of times. I'd been over her house a few times, her new condo in Hampton. We'd been to the movies together. The four of us.

Q Do you remember when you went to the movies?

A Pretty close to that, pretty close to when we got busted.

Q You say "busted." You mean arrested?

A Yes.

Q Who went to the movies that night?

A J.R., myself, Bill and Pam.

Q Did you ever see the defendant and Bill at J.R.'s house?

A Couple of times. They were -- one time they were in the camper. When I came down, there was -- her car weren't in the yard so I went to go in the camper because no one was in the house, and Bill yelled, "Whoa, whoa, I'm in here," and so I left the camper. And then a couple minutes later J.R.'s car -- I mean J.R. came down the driveway in Pam's car.

Q Honda CRX?

A Yes.

Q Now, when Bill and Pam were in that camper, did you ever see Pam eventually outside the camper?

A She came out of the camper later on. I didn't see her get out. She was just in the yard later on.

Q Do you have any idea when that was?

A Later on in the night. I weren't sure about the time.

Q Did you have any conversation with them?

A Not really.

Q Okay. You said you weren't sure of the time. Do you have

any idea when the date was?

A No.

Q This was after the murder?

A I'm pretty sure.

Q Now, did you ever go shopping with Pam or Bill?

A We had went to Dreher-Holloway looking at Trans Ams and Firebirds.

Q When was that, do you remember?

A After Greg's death.

Q Right after, weeks after?

A Weeks, I'd say.

Q How did that happen?

A Her and Bill were down the house. It's the same day that J.R. -- around the same day or the same day that J.R. took the stereo out of the truck for her. We'd all -- J.R., Bill, Pam and Michelle Nichols, J.R.'s girlfriend, were all sitting around and Bill and Pam came down -- well, no, Pam came down. Bill was with her. I'm not sure how -- if he was here at the house or not, but we wound up all going to Dreher-Holloway.

Q Why'd you go to Dreher-Holloway?

A To look at Trans Ams because Pam wanted to buy --

Q Why that dealership?

A Because J.R.'s mother worked there.

Q Do you know what her name is?

A Diane. Well, her real name is Naomi Lattime but she goes by Diane.

Q Could you give the jury an idea what this camper is like at the house?

A It was only a mobile home we hung around in and listened to the stereo and hung around.

Q Where was this mobile home or camper in relation to J.R.'s house?

A To the right side of the house in his yard.

Q So it was just parked, is that the idea?

A Yeah.

Q Now, did you have any other discussions with the defendant concerning your involvement or her involvement in the murder of Gregory Smart after May 1st, 1990?

A On I believe it was June 9th or 10th, just before we were arrested, well, actually a couple days before we were arrested, myself and J.R. went to her condo to tell her and Bill that the night before I had told Ralph what we did.

Q Now, when you say you went to her condo, where was her condo at this time?

A In Hampton.

Q Now, this is different from the condo you went to to kill Gregory Smart?

A Yes, it is.

Q Now, when you say you went there in the morning, about what time in the morning was it?

A I think it was around 9 or 10, maybe 11.

Q And who did you go there with?

A J.R.

Q How did you get there?

A On a road bike.

Q As you rode to this condominium and you got there, where was Bill?

A He was already at the condo.

Q And did you just walk in, ring the doorbell, what happened?

A Rang the doorbell couple times. No one answered, so we started knocking on the door. Bill came down and let us in. We told him something was seriously wrong. Went upstairs.

Q You went upstairs?

A Yeah.

Q To where?

A Into the condo, there's a flight of stairs that you go up and you come out in the condo.

Q Okay. After you went up those set of stairs into the condo, you told them something was seriously wrong, then what happened?

A Pam was coming down from upstairs, so we all sat around in the living room and told them what happened.

Q What did happen that made you go to Pam Smart's house that day?

A The night before, Ralph Welch came to J.R.'s house. He had been talking to Danny Blake, who had been talking to Raymond Fowler, and he knew bits and pieces about the murder.

Q When you say "Ralph Welch came to J.R.'s house," what do you mean by he came to his house?

A Well, he lived there, but it was -- I don't know, maybe 11 o'clock at night and we had just got in, and Ralph came in a little bit after us.

Q What, if anything, did he say to you at that time?

A He asked us if we had anything to do with killing Greg Smart.

Q What'd you tell him at first?

A No.

Q Then what happened?

A Then he left the room, and J.R. said, "Jesus, Bill's going

to be pissed," and I said, "Yeah, and Ralph came -- jumped back in the room, jumped on top of me and started tickling me.

Q What was he saying?

A "I heard you. I heard you. Tell me -- tell me now what you were talking about."

Q What did he mean by "I heard you. I heard you"?

A He was listening outside the door and we didn't know it.

Q When J.R. said, "Bill's going to be pissed," what was that referring to?

A Raymie talking.

Q Now, when you say "Raymie," you mean Raymond Fowler?

A Yes.

Q He was the fourth individual with you on the night of May 1st, 1990?

A Yes, he was.

Q After Ralph Welch came back in the room and jumped on you, what happened then?

A I started to tell him what happened the night of May 1st. Then I told him, "Well, wait a minute." We went outside and I told him what happened May 1st.

Q Now, who was around when you told him?

A Myself, J.R. and him.

Q Where was J.R.'s parents?

A Asleep.

Q What time of night was this?

A 11:30, quarter of 12, maybe.

Q Do you know what day of the week this was?

A January 9th, I think it was Sunday, I believe. June 9th.  
Sorry.

Q And you started the conversation in the bedroom?

A Yes.

Q What made you go outside?

A Just in case Diane got up to go to the bathroom or something  
and happened to be walking down the hall and hear it.

Q Did you go outside?

A Yes.

Q How long did you talk to Ralph Welch for?

A About a half an hour.

Q What happened after that?

A He freaked out.

Q What do you mean by "he freaked out"?

A He got all -- like he got all nervous and stuff and asked  
us what we were going to do, kill him now, and stuff.

Q Kill who now?

A Ralph.

Q Why did Ralph say that?

A He just -- he freaked out when we told him we killed -- that that had happened.

Q So then what happened?

A He took off and went --

Q Who took off?

A Ralph.

Q Did there come a time when you saw Ralph again?

A The next day.

Q Where do you spend the night?

A Up J.R.'s house.

Q And what happened the next day?

A The next morning Ralph came in the house -- well, came in the bedroom, sat down on my bed. I got up. And he said, "I don't want you and Bill around the house anymore," and I told him no way, I would come around when I felt like it. And he told me, well, if I didn't stay away from the house he was going to make me stay away from the house because he didn't want me around the baby, which was J.R.'s nephew -- it was his sister's son -- and I said, "Look, I'll come around when I feel like it." So he told me, well, if I came around he was going to -- you know, we were going to fight, and he said I ought to step outside right then. I

said, "Fine." We walked up the driveway, and halfway up the driveway he jumped me. We got into a fight.

Q What was J.R. doing during this?

A Sitting there watching.

Q And how long did you fight for?

A Maybe about ten minutes.

Q Then what happened?

A Ralph got up, started walking down the driveway towards the house. We started walking off towards my house, and he told us, "Look, I don't" -- he said, "I don't want either one of you coming back here." He was crying. So we just walked down to my house, got the road bike and went to Pam's house.

Q How far from J.R.'s house is it to your house?

A About a mile.

Q So you walked to your house?

A Yeah.

Q Why did you decide to go to the defendant's house?

A We had to tell them that I had told Ralph and that he didn't take it right.

Q Were you surprised by the reaction of Ralph Welch?

A Yes, I was.

Q Why?

A Because I had known him for over 11 years.

Q What did you think would happen when you told Ralph Welch?

A I thought he'd be shocked at first, but since he'd known me for so long that he wouldn't say anything about it.

Q Did Ralph Welch say anything to you that he was going to the police?

A Not at first, no.

Q What did you then do?

A We had went -- once we were over at Pam's house, we had Bill call Ralph from Pam's house to his girlfriend's house in North Hampton and try talking him into believing it was just a joke.

Q Before that phone call was made, let's back you up to when you walk into the condominium unit in Hampton where the defendant lived.

By the way, how close was that condominium unit to Hampton High School -- I mean to Winnacunnet High School?

A The athletic fields separate them.

Q So all you got to do is walk up the athletic field and you go to the defendant's condominium?

A Pretty much, yeah.

Q So when you drive the bike there -- this is a motorbike, correct?

A Yeah.

Q You go inside the condominium unit, tell Bill something is wrong, you say Pam comes downstairs, is that correct?

A Yeah.

Q What, if anything, do you say to the two of them at that time?

A I told her that I had told Ralph but that I hadn't directly mentioned her, and I told Bill that I wasn't sure if he was going to go to the cops or not, but right now he was at Michelle's house so we should try calling him and see if we can't talk him out of it.

Q And how was Bill -- what was Bill's reaction to this news about Ralph Welch?

A He didn't like it. He got scared for a little bit. Then we called and tried talking him out of it.

Q And how did the defendant react to this news?

A She was upset by it.

Q And after, what was Bill's purpose in calling Ralph Welch at that time?

A To see if we could talk him into believing it was just a joke.

Q And what success did Bill have in doing that?

A None whatsoever.

Q I'm sorry?

A He didn't talk him out of believing it.

Q Now, were there any other phone calls made at that time at the condominium unit?

A Yes, we called Raymond in Maine.

Q What was that for?

A To have him come down to Hampton so we could talk to him to get all of our stories straight.

Q What do you mean by get all of your stories straight?

A That way if the cops came and decided to question us, we would know what to say.

Q After you called Raymond in Maine, what happened?

A He told us he'd come down, so we sent J.R. over to Tuck's Field in Hampton to wait for him.

Q When J.R. went to Tuck's Field in Hampton to wait for him, where were you?

A I was at the condominium still.

Q What happened next?

THE COURT: All right, I'm going to interrupt. We'll adjourn for the evening.

Ladies and gentlemen, please leave your notebooks in your seats. The bailiff will pick them up, make sure no one else will read them. and they'll be on your seat in the morning. At

the end of this trial your notes will be destroyed. Please leave them in your seats for not.

Have a nice evening. Please don't discuss this case. Have a nice evening, and we'll see you in the morning at 9:30.

- - -

[Court adjourned for the day at 4:12 p.m.]

- - -

# EXHIBIT H

ORIGINAL

N.H. Supreme  
★ 91-239

VOLUME XVIII of XXI

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

\*\*\*\*\*

THE STATE OF NEW HAMPSHIRE

v.

PAMELA SMART

\*\*\*\*\*

90-S-1370  
90-S-1371  
90-S-1372

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JUN 25 1993

TRANSCRIPT OF TRIAL PROCEEDINGS

Held before the Honorable Douglas R. Gray, Presiding  
Justice, and a Jury, at the Rockingham County Superior Court,  
Exeter, New Hampshire, commencing on March 5, 1991.

APPEARANCES:

For the State:

Paul A. Maggiotto  
Diane M. Nicolosi  
Assistant Attorneys General

For the Defendant:

Mark L. Sisti  
Paul J. Twomey  
Attorneys at Law

\*\*\*

Court Reporter:

William N. Wojtkowski, CSR

I N D E X

<u>Defense Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
1. Pamela Smart			1762	1768
2. Patricia McGuinness	1771	1773	-	-
3. Brian Washburn	1775	1792	1814	-
4. Patty Wiser	1820	1826	-	-

Defense rests - p. 1826

MARCH 19, 1991 - TUESDAY MORNING SESSION - 9:38 A.M.

THE COURT: Good morning.

- - -

[Pamela Smart resumed the witness stand.]

- - -

THE COURT: Go ahead.

MR. MAGGIOTTO: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. MAGGIOTTO (Resumed):

Q Yesterday we were talking about how you went to Dreher-Holloway on May 31st.

A Yes.

Q And that was the boys' idea?

A I don't remember specifically whose idea it was. It was just a general idea.

Q Were you looking for a car at that time?

A At that time, yes.

Q And besides going to Dreher-Holloway, you made other attempts to look for a car?

A Yes, but I never had a specific car in mind or made any financing arrangements on a car.

Q You went to Coast Pontiac six days later, did you not?

A I don't remember. Maybe.

Q You don't remember if you went, you don't remember it was

six days later?

A Where is Coast Pontiac?

Q Portsmouth.

A Yeah. Yeah, I did do that with Traci Collins, I believe.

Q And you went with Traci Collins, right?

A I think so.

Q And you had your car appraised?

A I might have, yes.

Q And you told them you didn't have to make any financing arrangements because you were going to pay cash?

A I don't know. Maybe.

Q And at that time you'd already gotten insurance money to some extent in this case, correct?

A Some, yes.

Q Ninety thousand dollars?

A Yes.

Q And you were still waiting for the \$50,000 policy to come in?

A Yes.

Q Now, yesterday you talked a little bit about divorce. You were asked by Mr. Twomey that if you were to get divorced what actually would you lose. You said you shared furniture four to six thousand dollars in savings, correct?

A Approximately, yes.

Q And you each had your own car, correct?

A Yes, we did.

Q Now, if in the spring of 1990 you had gotten a divorce from Greg Smart the affair might have become public, right?

A If I had gotten a divorce?

Q Yeah.

A If I made it public, I suppose.

Q Or if Greg made it public.

A Yeah.

Q And if your affair had become public, what do you think would have happened at Winnacunnet High School or -- I'm sorry -- at SAU 21 where you worked?

A I would assume that I wouldn't be working there any more.

Q You'd have lost your job, right?

A Probably.

Q How do you think it would have affected your opportunity to look for additional jobs in school districts knowing that you had an affair with a 15-, 16-year-old boy?

A I doubt that I would apply to another school district, but that wouldn't mean I couldn't get a job anywhere else ever.

Q Do you think it would have helped or hurt your professional reputation at that time?

A Hurt.

Q How do you think your family and friends would think about you essentially taking part in ruining the marriage that you had for less than a year by having a sexual affair with a 15-, 16-year-old boy?

A I don't know how my family and friends would feel.

Q Well, do you think your family or friends would approve?

A Probably not.

Q You seem unsure.

A I don't think that they would stop being my friend and never talk to me again. But --

Q No, but the question was whether or not they'd approve, and you say probably not. Do you have any doubt in your mind that they would look upon this as quite inappropriate behavior for you?

A Well, I'm not the first person in America that ever had an affair.

Q Uh-huh. But that wasn't my question. My question was, don't you think they would look at you and say this was quite inappropriate behavior?

A Yes.

Q But if Greg was dead, you wouldn't have to expose the affair, would you?

A No. Unless like this happened.

Q And you could keep the affair secret as long as you chose, right?

A I don't know that. I don't know that Bill wouldn't have exposed it or Cecelia wouldn't have.

Q And Bill and Cecelia were the only people who were part of your inner circle at this time who knew about the affair?

A Apparently not. According to Bill's testimony, J.R. knew, Pete knew, Frank Daley knew, Sara Thomas knew.

Q And then you come into court and now admitted it because all those people know, right?

A No. I've admitted the affair because it's the truth, and that's what I'm telling right now.

Q And now you've decided to tell the truth?

A Yes.

Q Uh-huh. Let's go back to where we left off yesterday.

I think one of the last questions I'd asked you yesterday was you said that you told Cecelia Pierce on June 13th, 1990 that you knew about the murder?

A Yes.

Q And that was a total fabrication on your part in order to try and get Cecelia Pierce to talk, correct?

A I told her that I'd known about it beforehand, which was a

fabrication.

Q That's what you wanted her to know so you might be able to get information through Cecelia Pierce?

A Yes.

Q And you now know testifying that Cecelia Pierce went to the police on June 14th, June 15th and gave them all sorts of information on this case, correct?

A Yes.

Q And as you sit here today you know that the information Cecelia Pierce gave to the police on June 14th and June 15th inculpated you in this crime?

A Yes.

Q So now, testifying before this jury, you say to us the day before I told Cecelia Pierce I was involved or I knew about the murder beforehand, right?

A Right.

Q And is that the first time you ever told Cecelia Pierce that you had anything to do with the murder?

A I didn't tell her that I had something to do with it. I told her that I'd known about it.

Q Okay. So why don't you tell the members of the jury everything you told Cecelia Pierce that you knew about the murder.

A I just told her that I'd known about the murder before it

was going to happen.

Q So that's the only thing you told her?

A Yes.

Q Only knew about it --

A Well, there was a conversation afterwards.

Q What's the conversation afterwards?

A I told her that, and she said, "How come Bill didn't tell me that you knew about it?" And I said, "Why? You knew about it?" And she said, "Yes." And then she went on to talk about a couple things that I'd never heard about beforehand.

Q Okay. Why don't you tell us what Cecelia Pierce told you that you'd never heard about beforehand.

A That there was a prior attempt on Greg's life.

Q Okay. So you're saying June 13th --

A There's a couple things. Do you want me to go through all of them?

Q Yes. I'm asking you. Prior attempt. What else?

A She had told me there had been a time she had gone to look for a gun with Bill at Papa Gino's, and she had told me that Raymond was with Bill the first time. And --

Q Anything else?

A That they'd taken my car.

Q Anything else?

A That -- that Bill had done it, and that Pete and J.R. were with him. But, see, I can't really remember because there was a lot of things going around in the newspapers at the same time, too, and some of the things she was telling me were in the -- also in the papers, so I'm not sure what exactly came out when.

Q Uh-huh. And this is all the information you got from Cecelia Pierce before --

A Oh, and she told me that they'd dropped gloves at the scene. She said gloves. More than one.

Q Where was she getting all this information?

A I had assumed that Bill had told her.

Q So what you're telling this jury today is that Cecelia Pierce and Bill Flynn are having all these conversations about the murder of your husband which you know absolutely nothing about, is that it?

A Yes. They testified to that also.

Q Right, but they also testified that you knew all about it and were part of it.

A Right.

Q That's the part you're saying no?

A Right.

Q All right. Okay. And you're telling this jury that the murder of your husband occurs and Cecelia Pierce, who is a good friend of yours, for the whole year and a half and all through that summer never says anything to you about it until two days after the boys are arrested?

A No, I didn't say she's never said anything to me about it. We talked about it almost every day like I talked to everybody about this.

Q And you talked about it every day, she never once told you, "Hey, I'm really sorry your husband's dead, but I can help you here figuring out who it was"?

A No. She did say she was sorry Greg was dead.

Q What you're telling this jury is that Cecelia Pierce intentionally withheld information from you concerning the murder of your husband?

A Probably because she had some involvement herself.

Q Okay. So what you're telling this jury is Cecelia Pierce wanted your husband dead?

A No, I'm not saying that at all.

Q Well, you just said she had some involvement.

A In procuring a firearm.

Q Let me finish the question, okay? Then you can answer. Why did you think Cecelia Pierce had involvement in the

death of your husband?

A I didn't think she had any direct involvement as far as I didn't believe that she was there on the night of the murder, but I believe she had some knowledge of it.

Q Okay. And you think Cecelia Pierce would intentionally withhold this information from you and from the police and never clue you in?

A Yes.

Q And why would she do that?

A That's what I was trying to figure out.

Q You have no idea as you sit here today?

A I have an idea now.

Q That's what you told us yesterday, that she wanted to be the center of attention?

A No, my idea now is she had her own involvement in this in procuding a firearm with Bill; therefore, she was trying to protect herself.

Q So the way Cecelia Pierce was going to protect herself was not going to come in and telling the police, "Hey, I tried to get a firearm. Let me tell you about Bill Flynn, who did this murder," and all that stuff; her way of protecting herself is to come in and make up this entire fabrication about your involvement to save her skin about a firearm --

A It wasn't an entire fabrication.

Q Excuse me, Mrs. Smart. I'll let you answer the questions.  
Please don't interrupt my question.

A I'm sorry.

Q It's difficult for Bill.

A Did you finish?

Q She came in with this entire fabrication just to get you in trouble, to wrongly send you to jail, to wrongly accuse you of murder, falsely accuse you of everything, match her wits against yours because she tried to get a firearm at Papa Gino's?

A No, everything she said was not an entire fabrication because she did tell the police that I had known about the murder beforehand, and I did tell her that.

Q How do you know she told that to the police?

A How do I know that? Because she just said that on the stand, plus I read it in the paper.

Q When did you read it in the paper?

A After I was arrested.

Q So after you're arrested now you're starting to put together what Cecelia Pierce had done, right?

A I was trying to put this case together from the day Greg was murdered.

Q Uh-huh. We talked about that yesterday and how you were trying to put it together, and how you helped the police put it together, right?

A No, I don't know that I did.

Q You called the police over to your house to talk about a chip on the wall?

A Yes.

Q You pointed out to the police a dented candlestick?

A Yes.

Q You did all those things?

A Yes, I did.

Q You're really going out of your way to tell the police everything they need to know to try and solve this, is that right?

A Yes, except for the affair.

Q Except for the affair?

A Right. I was ashamed of the affair. I still am today.

Q Let's -- now, on 6-19 you talk to Cecelia Pierce, right?

A On the telephone, yes.

Q Yeah, okay. And you were talking to Cecelia Pierce -- I mean, your plan now is to try and get more information, right?

A Not over the phone, it wasn't.

Q Well, just in general with Cecelia Pierce, correct?

A No, not -- at June 19th my plan was to try and stop her from going to the police and turning me in.

Q That's only because it was on the phone?

A No, that was my plan everywhere. That was my plan during the body wire conversations also.

Q I see, your plan switches?

A I told you my plan switched on June 13th when she --

Q June 13th, what's your plan?

A My plan was originally when the day started to get more information from her and by the time the day was over she'd told me that she was scared and that she was going to go to the police, and she was --

Q She told you Bill had done it?

MR. TWOMEY: Objection, Your Honor. He interrupted her.

A Right.

THE COURT: Objection --

THE WITNESS: And I'm almost finished.

THE COURT: She may finish.

A And she had told me that she was going to the police and she was going to tell them that we, meaning she and I, knew about the murder beforehand, and, of course, I automatically panicked because I didn't want her to do that. So my intention from there on out was to try and talk her out of

going to the police.

Q So why didn't you go to the police before her and straighten the whole mess out? Why didn't you go to the police and say, "Hey, you know, I was just talking to Cecelia. Oh, my God, she knows Bill, this kid, did it. I was wrong from the beginning. I'm really embarrassed about my affair. Please don't tell anybody about it, but now you can solve the murder of my husband, now you can tell the Smarts how their son died, now you can tell the world how this senseless thing has a sense to it." But you didn't go to the police on June 13th after talking to Cecelia, correct?

A Because I was scared. I was afraid, and I had heard rumors that I was going to be arrested and I was afraid, yes.

Q All right. Now, I didn't really ask you why, but I'll gladly have you tell us --

MR. TWOMEY: Objection, Your Honor. The question started with "why."

A It started with "why."

Q I thought it was yes or no. But, okay, you didn't go, and the reason was why?

A Because I was scared and I was afraid.

Q Scared and afraid. Of this 15-year-old girl?

A No, I was scared and afraid of this entire murder. I was scared and afraid and confused of everything that was going

on and all the rumors that I was hearing.

Q And you thought the best way to solve that, the best way to deal with this fear, the best way to handle this confusion and all your fears is not honesty is the best policy, go to the police and tell them everything, let them sort it out, because in the end you know you're telling the truth and nothing will happen; your decision is to withhold information and to start playing mind games with Cecelia?

A Yes, at the time that was my conclusion.

Q Okay. Now, on June 19th you had phone call conversations with Cecelia Pierce, right?

A Yes, I did.

Q Okay. Now, you tell Cecelia Pierce, "If they ask you to get a lie detector test, which I doubt they will, then you just -- you just say you're going to get yourself a lawyer first and any lawyer will tell you not to"?

A Right.

Q Okay. Did it ever occur to you to encourage Cecelia Pierce to take the lie detector test, to say something to Cecelia Pierce like, "Hey, just go talk to them. Don't worry about the lie detector test. You can handle that thing. Just give them a statement," because you would know, of course,

that the police would find something out about the murder, right? I mean, if you encouraged her to take the lie detector test --

A Right.

Q -- police might know who killed your husband?

A Right, but she'd be on the lie detector test saying I was having an affair and I knew about it beforehand, and all those things, which I didn't want her to say.

Q So why don't you just be honest with the jury and tell us it was more important to you that this affair, which would link you to Bill and then to the murder, not come out, over all this expression on your part that "I'm obsessed with solving this crime; I'm obsessed with finding out who murdered my husband;" but you're not so obsessed that you're willing to tell the police what you know, are you?

A I wanted to solve it in my own mind, in my own life first.

Q Then what were you going to do, make a citizen's arrest?

A No, I wasn't. At some point, obviously, I would have gone to the police with it.

Q So, Pam Smart, a 23-year-old student teacher, was going to use her own investigation skills, do her own investigation, not tell the police what she knows, talk to Cecelia Pierce, go out and talk to whoever else she knows, then of course write a report and mail it in, or what were you going to do?

MR. TWOMEY: I object to the form of these questions. They're multi-part questions. They can't be answered yes or no. Numerous assumptions. Essentially speeches.

MR. MAGGIOTTO: It's cross-examination, Your Honor.

THE COURT: Cross-examination. Objection's overruled.

A First of all, I'm not a teacher. And second of all, yes, that -- that was my intention, to figure it out on my own. My husband was murdered. I was not thinking rationally. And unless you've gone through something like this, then maybe you can't understand.

Q So, in other words, now what you're saying is this talk with Cecelia is the product of some irrational behavior on your part?

A I'd say.

Q So it's not a conscious decision to find out information from her?

A It was both. It was a very confused state.

Q So later on, the same phone call conversation, you say to Cecelia Pierce, you're talking about the OJ video, and she says she's looking for her copy, and you say, "Well, the Department of Citrus doesn't like the video anyway, you know." And Cecelia says, "But I told him that the

superintendent had all the copies," talking about somebody from the press who wanted a copy.

And you say, "But according to J.R., Raymond and Ralph said" -- doesn't come out in the tape.

And you say, "That's Raymond and Ralph, you know what I mean? Just say you don't, and that's it, you know."

And you say, "Yep." And you say, "I mean, they can't arrest and convict him on the word of another person."

And Cecelia says, "Well, like you said," -- "like you said" -- "they can always switch it around and say that Raymond and Ralph did it."

And you say, "Right, and that's it, you know, how would Raymond and Ralph know, know anything, you know, because maybe somebody told them that or that somebody else said" --

MR. TWOMEY: Objection, Your Honor.

THE WITNESS: Is this a question?

MR. TWOMEY: Is this a question or reading into the record --

MR. MAGGIOTTO: I'm getting to the question, Your Honor. It's the foundation.

MR. TWOMEY: Appears to me he's putting in a transcript. If you want to put in a transcript, he should do it through a witness.

MR. MAGGIOTTO: Judge, I have specific questions designed for each statement.

THE COURT: The objection is overruled.

MR. MAGGIOTTO: I don't want to give it out of context. Trying

to give the jury the full context.

BY MR. MAGGIOTTO:

Q The last statement you said, and I'll repeat it, "Right, and that's it, you know, Raymond, how would Raymond and Ralph know, know anything, you know, because maybe somebody told them that or somebody else said that they did, you know what I mean? They can't -- you're not gonna get convicted of murder on someone else's opinion, you know what I mean? Like if you were missing that night or something like that."

How do you know what is according to J.R.?

A I don't -- what was the statement that I said about J.R.?

Q You said, "But according to J.R., Raymond and Ralph said" --

A Right.

Q You said, "That's Raymond and Ralph, you know what I mean? Just say you don't and that's it, you know." I mean, didn't you tell us yesterday that when J.R. and Pete and Bill were at your house you went upstairs because Bill said leave us alone, and you stayed upstairs for 45 minutes, right?

A Right, and "according to J.R." meant according to what I had heard J.R. was saying, because I had also heard what Ralph and Raymond were saying and I had heard what the entire Town of Seabrook were saying and what the police were saying

and the newspapers were saying.

Q What did you hear J.R. saying?

A I heard that J.R. was saying that Ralph and Raymond had done the murder.

Q You heard this from J.R.?

A No, I heard it from Cecelia. Cecelia said J.R. was saying, "I heard J.R. was saying up in ADC that Ralph and Raymond had done the murder."

Q So on June 13th, what time of day -- I mean on June 19th, right?

A Right.

Q Right. J.R. has been in ADC for three, four days, and you're saying rumors have gotten back?

A On June 19th he's been there for nine days.

Q June 11th, it's eight days, right?

A Right.

Q You say rumors have gotten back about what J.R. is saying at ADC?

A Absolutely. Rumors were getting around about everything.

Q And you're saying that J.R. was saying, "What about Raymond and Ralph"?

A Like I said, J.R. never said this directly to me, but I had heard that J.R. was saying that Raymond and Ralph had committed the murder themselves and were blaming it on Bill, Pete and J.R.

Q I'm sorry.

A Raymond --

Q So why would you say to Cecelia, "Just say you don't know, and that's it, you know"?

A Because I'm telling her to say that she doesn't know anything.

Q Later on when Cecelia says to you, Well, like you said, they can always switch it around and say that Raymond and Ralph did it,"

A Right, because that's what I had said. J.R. can say whatever he wants up in ADC. I don't know what he's saying. They can always switch it around and say Raymond and Ralph did it.

Q Why are you telling this to Cecelia Pierce?

A Because we had had discussions previous to this about it.

Q About what?

A About the possibility of Raymond and Ralph doing the murder.

Q And so now this time after Cecelia Pierce has told you on June 13th that Bill Flynn has done the murder, which is news to you, five, six days later you're now saying -- you're talking about somebody else may have done the murder?

A Yes, I did not want to believe Bill Flynn committed this murder.

Q So there's nothing anybody could have done to convince you

that Bill Flynn committed this murder?

A At that point, no.

Q And so for that reason --

A I still -- I still even after his arrest didn't believe that he had done it.

Q Because Bill Flynn's not that kind of guy who's going off and mastermind a murder, is he?

A I don't know.

Q I'm sorry?

A Apparently, yes. He pleaded guilty to the crime.

Q Uh-huh. But you never thought that, right? I mean, your opinion of Bill Flynn, he couldn't do that?

A Murder someone?

Q Right.

A No, I didn't think so.

Q To this jury you're going to say, well, yes, now it did happen?

A He said he did it. I don't think he'd plead guilty to a crime if he wasn't guilty.

Q Now, when you say to Cecelia, "They can't -- you're not gonna get convicted of murder on someone else's opinion," who you talking about? Who's this "they," the police?

A She -- no, she said I believe Bill, Pete and J.R. were possibly going to say that she had known about the murder

beforehand and that she was worried that if they said that, the police would arrest her.

Q So you're giving her comfort at this point?

A Right, I told you I was doing everything I could to try and get her not to go to the police.

Q And at this point it was strictly because of the affair?

A No, I just -- I said earlier that it was also because I had told her that I had known about the murder beforehand, that I didn't want her to say that.

Q Was it your big fear you would get wrongly accused if Cecelia Pierce went to the police?

A That's what happened. That's why I'm sitting here today.

Q Right. So you don't think it was more important back then to go to the police and straighten out first, put your embarrassment aside and say, "Hey, before this goes any further, let me tell you what happened"? You don't think that was important to do, do you?

A I wish I would have made that decision way back then and none of us would be here today.

Q Is that what you want this jury to believe?

A Yes, I want this jury to believe the truth.

Q And they'll make that decision, right?

A I hope so.

Q And that will be based upon all the different times you said

you were telling the truth, but in fact you kept things to yourself, right?

A I've said to this jury that I did keep things from the police. I've not denied that. I've not denied that I was trying to hide an affair. You're absolutely right. I did not want the whole United States of America to know that I'd had an affair.

Q But you were willing to risk being wrongly accused. In your version of what happened, you would risk the murderer go free. You would risk you being wrongly accused. You even said yesterday that you thought Bill Flynn was wrongly arrested because they'd heard about the affair.

A I wasn't willing to risk that. I was scared and I was trying to make decisions, and I was 22 years old and I make the wrong decisions.

Q Isn't it possible that the other side of the coin, what's really happening here is, if Cecelia does go to the police she might tell what she really knows and Cecelia Pierce might be telling exactly what she told this jury when she testified, that you knew about it from the beginning and were all part of it?

A No, because that would be a lie.

Q In your opinion?

A In my opinion.

Q And that's what you want this jury to believe, right?

A Yes.

Q Now, Cecelia Pierce hangs up the phone. She tells you that the police are coming over, right?

A I guess.

Q And then you call her back a few moments later, right?

A Right.

Q And you called her back, and one of the things you say to her, you say, "They're on trial, and that's it, and so you just, you know, answer the questions and that's it. They're gonna try and get you to talk and to confess and, you know, they're gonna say, 'We know you know' and all that, you know, try and make you nervous, but all you have to do is just maintain the same story, you know, and that's it, that, you know, you don't know, and that's it, you know. As far as, as far as where you were that night, I would get the story straight, you know, so that they don't get suspicious and wonder where you were and all that, you know? But just answer their questions and don't offer any information, you know?"

And she said, "Yeah, I know that, I'm just -- I don't know, I'm nervous 'cause, you know, the TV keeps on saying

they're gonna arrest a girl for driving them up there."

A Right.

Q You say all this, you call Cecelia Pierce back to tell her don't confess?

A Right.

Q You call her back to -- just to answer the questions, don't offer any information.

A Right.

Q Did you ever think to say to Cecelia Pierce, "Look, don't tell them about the affair but tell them what you know about Bill"?

A No.

Q Never entered your mind?

A No, because then she would have said I knew about the murder beforehand. When I was talking about getting her story straight was when she had originally gone to the police -- well, they'd come to her, I guess, and they asked where she was the night of the murder and she had told them that she was at work at Papa Gino's, and they found out later that she was really at her aunt's house, and I told her that she better get the story straight because it was the truth. It was -- that wasn't a lie.

Q When did she tell you this?

A Shortly after the murder sometime that her -- I think she said her mother had told the police that she was at Papa Gino's that night and she wasn't really, and she wasn't trying to lie, her mother wasn't trying to lie either, but I just figured if she got that straightened out then they wouldn't call Papa Gino's and find out she wasn't there and then think she was involved like at the murder scene or something.

Q And now a very few moments later --

MR. TWOMEY: Can we get a page number?

MR. MAGGIOTTO: Page 3, Q2.

Q -- you say to Cacelia -- she's worried about being arrested because the paper said a girl was going to be arrested.

A Right.

Q Do you remember you tell her she didn't have a car, it's not going to be her? Do you remember telling her that?

A Right, I was trying to calm her down.

Q You say, "Or, or whoever it was. But you have to realize that if the police were going to arrest someone it would probably have happened already. So obviously that was just a false report because by the time that they went -- heard about Bill and all them and the time they arrested them it was like friggin' two hours, you know what I mean, or whatever, it wasn't a long five-day period. You know what I'm

saying?"

And she says, "Yeah."

So you say, "So that's it, you know."

And she says, "Well, obviously Bill and them must not be saying anything or we would have been arrested already."

You say, "Well, I don't know what they're saying."

Cecelia says, "Yeah."

And you say, "That's the thing, if they're saying that we knew then the police can't bust us because we're saying that we didn't know, and that's it, you know what I mean?"

A Right. Is this a question?

Q Yeah, the question is, is she saying that Bill and them were talking you'd be arrested, right?

A Exactly.

Q Now, how would Cecelia know that if Bill and them were talking that you would be arrested?

A Because I told her that Bill knew that I knew about the murder.

Q Now you're telling us that you told her that Bill knew that you knew about the murder?

A Exactly. I told her I knew before the murder beforehand, and if Bill committed the murder then obviously I would have

known and Bill would have known that I knew.

Q But knowing about the murder beforehand doesn't necessarily make you involved?

A I think it does.

Q Okay. So when you're saying -- now you're saying to Cecelia that you not only told her that you knew but also told her that Bill knew you knew, and that when Cecelia was thinking this, you're saying to her -- she's saying to you if Bill talks he's going to inculcate you?

A Exactly.

Q I mean, it's really well the way this works. No matter what Cecelia Pierce says, you're able to talk about it in such a way that the two of you know exactly what you're talking about but you never had any detailed conversations about what you actually knew, right?

A Exactly.

Q You only told Cecelia Pierce that you knew about the murder and that you told Bill you knew about the murder and nothing more?

A Right. If you notice on the tapes, she's the one talking about all the details of the murder, and I'm sitting there agreeing.

Q The jury heard the tapes and they'll make that decision of

what is actually said and who's doing all the talking and who's just sitting there answering questions, and they'll listen to that, right?

A Yes, they will.

Q Okay. Are you afraid to let the jury do that for themselves?

A Absolutely not.

Q So now Cecelia Pierce is telling you, "If they're talking, we would be arrested," right?

A Right.

Q Okay. So obviously Cecelia Pierce, in your mind, must have an incredible fear that Bill then has detailed information about her involvement?

A You'd have to ask Cecelia. I don't know what her feelings were. I can only comment on what mine were.

Q You tell me what you think it meant when Cecelia said if Bill and them were talking she was going to be arrested.

MR. TWOMEY: Objection. Calls for speculation.

MR. MAGGIOTTO: Explains her actions on the tapes, Your Honor. On the tapes and her conduct after the fact.

THE COURT: Objection's overruled.

Q Tell us what you thought it meant.

A Specifically what again?

Q Specifically?

A Yeah. What --

Q A person tells you that if the guy in jail starts talking I'm going to be arrested, what does that mean to you?

A That she had some involvement.

Q That she had some involvement. She knows probably a lot more about this murder than you knew -- thought of before, right?

A Right, I didn't know how much involvement, but --

Q So after June 19th you don't go and tell the police that night, "My Lord, I can solve the murder. Let me tell you what Cecelia just told me," right?

A No, I was thinking about trying to get ahold of Bill to -- because I wanted to confront Bill with the information Cecelia had given me and see if he would tell me whether or not he had done it.

Q Didn't you think that would be very suspicious? Here you are worried about the affair coming out and you're telling this jury what you were going to do is go see your ex-lover who is in jail, arrested for the murder of your husband and have a visit with him?

A That's exactly why I didn't go and was trying to think of a way to contact him without being that obvious.

Q So you were going to -- you know, how were you going to do that?

A I was thinking of ways to do it, and I did do it by sending a tape over.

Q So that tape that Bill referred to with that letter was from you?

A Yes, it was, and I knew when he got it and played it he would know it was from me, and I was hoping he would call me to talk to him, but he never did.

Q Your ex-lover who killed your husband, who's now in jail, and has testified he got the tape from you, and you can't dispute that because the letter exists, you're now saying "Oh, yeah, I sent that," but clearly for innocuous reasons, right?

A The reason being what I just said.

Q Yeah. When does your loyalty switch? When does your loyalty switch away from your embarrassment away from your affair, away from keeping this quiet from everybody and letting the world decide what really goes on here, and when does it switch to solving the murder of your husband, which you said and professed many millions of times was the number one thing on your mind? When does it switch?

A That was part of the whole thing.

Q The only time it switched is when you came into this court?

A No.

Q You didn't tell any of the police prior to your arrest about it, right?

A Greg was dead. I didn't feel like dragging either one of us through the mud.

Q I see, Greg was dead, so it no longer mattered, right?

A No, that's what mattered.

Q That mattered more than anything that Greg was dead, but not that much, though, really?

A That mattered more to me than anything.

Q It mattered more to you than anything, so explain to us again why you're worried about embarrassment and you're worried about being exposed about having an affair took precedence over you telling the truth?

A Because I was confused and I was stressed out. I had no information at all. And when something like this happens, people don't always act correctly, they don't always act rationally, and I used very poor judgment, and I'm sorry for that, but I did not have anything to do with the murder of my husband.

Q And honesty's the best policy in your book, right?

A Apparently not always.

Q Now, the very next day you have a full opportunity to talk to the police, right?

A Contact that I initiated, yes.

Q You initiated?

A Yes, I did.

Q Okay. They wanted to talk to you about the certification hearings coming up, correct?

A I called them up and asked them why no one was talking to me about anything since the kids had been arrested, and how come I had no information once again.

Q But June 29th is when they came to you and talked to you about maybe having to testify at a certification hearing?

A Right, because I said I wanted to help in any way in getting them certified as adults.

Q Now, you wanted to get Bill Flynn, right? Isn't that what you just said? You wanted to know anything you can to get them certified as adults, right?

A If he murdered Greg, I wanted him in jail.

Q Right, and if he was going to be certified as an adult, the full thrust of the criminal justice system would be thrust upon Bill Flynn, right?

A Yes.

Q And that's the same conversation we talked about yesterday when they said, "We need a little help on the motive here," you said, "Beats me, guys"?

A Right, because I did not think that an affair was a motive for murder.

Q So not only are you talking two different things to Cecelia about pretending you were involved, telling her not to go to the police to save the affair, you're also telling this jury that you really wanted to get them certified and wanted to help in any way you can, and you keep saying you want to go to the police and tell them and be helpful; at the same time you're telling this jury you're not going to tell them what they need to know, you're making that decision?

A Right.

Q Because if you told them what you knew they'd find out the connection to the murder, wouldn't they?

A They had pretty much established that.

Q They'd already pretty much established your connection to the murder?

A They'd established that I had had an affair.

Q I'm sorry?

A They had established that I had had an affair.

Q So on June 20th they'd already know, is that what you're telling this jury?

A I think they did.

Q Did you ever say to them, "Hey, you know about my affair."

I'm really making some mistakes here. I'm really screwing up. Let me come clean with you"? Did you ever tell them on June 20th? Yes or no.

A Nope.

Q In fact, they asked you about Cecelia, you -- in fact, they didn't ask you about Cecelia, you went out of your way to talk about it?

A Right, I wanted to try and throw them off the track of her.

Q And the reason you want to throw them off the track is because you haven't quite finished your own little investigation yet, right?

A Exactly.

Q It's now a month and a half that Greg has been murdered, and you, Pamela Smart, your own investigation is just getting underway and you need more time?

A Exactly.

Q Did you think you could do it better than the police?

A I didn't care.

Q What were you going to do if you finished your investigation, Cecelia told you she was involved, Bill Flynn tells you he's involved; he says straight to your face, "Pam, I loved you so I killed him," what were you going to do then?

A I would have gone to the police.

Q Only then would you have gone to the police, right?

A Right, I wouldn't have believed it unless I heard it from Bill's mouth.

Q So your excuse to this jury of having never helped the police with this information is strictly because you hadn't finished your own investigation, right?

A And I told this jury that I don't -- I didn't want the affair to come out.

Q I know, and that's obviously given the choice between telling what you know, you know -- let me rephrase this.

In every circumstance we've seen over the past two days when it's come to a choice between exposing you in your embarrassment with this affair and helping anybody, families understand this murder, the police investigate and start putting the pieces together, the affair always has won out?

A I was not convinced that Bill did the murder, so that's not even a choice that I made.

Q Yeah.

A Because if I was convinced that he did it and then I didn't talk about the affair, then that would be different than the fact that I wasn't convinced that he did it.

Q Are you done? Now, the question is, did the affair always win out? Yes or no.

A No, that was a constant struggle in my head. Not always.

Q Okay. So tell us when you decided to tell what you knew instead of keeping the affair secret up until June 20th. You tell us.

A I didn't. There wasn't a time.

Q I'm sorry?

A There wasn't a time.

Q Going back to the question when the choice came down to whether telling of the affair or giving the police information, up to this point the affair always won out?

A Yes.

Q So now you're talking to the police June 20th, the day after you talk to Cecelia Pierce on the phone, few days after she first tells you all the information she has, and this is what you say to them. Page 45. "Yeah, well, the only concern I really have honestly is I'm -- I'm -- I -- I don't know if I agree with how Cecelia, poor Cecelia, is being treated in all this. I really don't know that I agree with that. I mean, Cecelia I highly doubt had anything to do with anything about this. She's not even friends with those guys as far -- with the exception of knowing them in school. I mean, she never went out with them on the weekends or --"

Danny Pelletier says, "Yeah."

And you continue, "-- or anything like that. And I mean, this is all just way too hard for someone like her to be involved with, I think -- and she keeps feeling like she -- like she's being, you know, I haven't talked to her a lot but I talked to her a couple of times that she's, you know, being accused of all these things that she doesn't know and now her parents are like, 'Well, maybe you shouldn't talk to Pam until this is over,' and all that. And I kind of, you know, I kind of resent that because I mean, she's my intern and, yes, school's over now, but" --

And then Danny Pelletier goes on about her being your intern.

A Right. I just told you that I was trying to keep the police away from her.

Q Not only were you lying to the police by omission, by not telling them about the affair --

A Right.

Q -- you're even consciously making an intentional decision not to be truthful with the police about what you knew about Cecelia?

A Exactly. The police weren't truthful with me.

Q The police aren't truthful with you?

A They weren't.

Q Why don't you tell the jury what the police told you about talking to the press shortly after the murder of your husband.

A About the press?

Q Yeah, what did the police tell you, any one of them?

A I believe Loring Jackson told me that it wasn't a good idea to talk to the press, and that's one specific person.

Q Didn't they specifically tell you not to reveal details of the homicide because that would impinge on the investigation?

A Right.

Q And within three days of your husband's death, you're on TV with Bill Spencer saying this is a burglary, not a drug case?

A Right, because everyone was saying that Greg was a drug dealer, and Greg was not a drug dealer. Greg was a good person, and I didn't -- I did not want him buried with people on the news saying that this must be a Mafia killing and drug related and all these things.

Q So that was more important to you than letting the police do their job and figuring out who committed the crime?

A Giving Greg some dignity, yes, that was more important to me.

Q You were afraid if the police did their investigation, the dignity wouldn't come out?

A Not then. You should have heard what the news was saying.

Q It was important to you at that time to make sure that you got your version out as soon as possible that this was a burglary.

A That's what I was told by the police it was.

Q You talked to Bill Spencer not only before Greg was buried but you did a full 15 minute interview with him in your house four or five days after that, right?

A Right, and I talked about Greg.

Q And you also talked to the Union Leader, the Derry News?

A I sure did.

Q You talked to them all?

A Yep.

Q And the police had been telling you not to talk to the press, correct?

A They didn't say don't talk to the press. They said sometimes the press mixes your words up, which I definitely learned that lesson.

Q And you disregarded all that?

A Yeah.

Q No, did you talk to the press?

A I said yes.

Q At some point after that the press started saying, you know, we're not going to give you any more information at this

point, you couldn't be trusted?

A The press?

Q The police. I'm sorry.

A Did they say those words to me, is that what you're asking me? They never said those words.

Q They didn't tell you, but I'm saying they stopped giving you information shortly after that, right?

A They never gave me information before that. They didn't even tell me Greg was shot. I found out Greg was shot on the radio while I was driving down the road.

Q And that was what, the very next day?

A Right.

Q When the autopsy report was released, right?

A Right, and I'm the victim's widow and I found out on the radio.

Q But they told you about their investigation in New Jersey, didn't they?

A They mentioned something about being in New Jersey.

Q They were looking at leads in New Jersey, right?

A I think they said something about a gun ring or something.

Q They also told you about investigating some people in Greg's past, Kim Silver?

A Yes.

Q Okay. So they told you about that, right?

A I told them about that.

Q They came to you, though, and asked you about it and told you what their investigation showed, right?

A No, they never told me what their investigation showed. They just asked questions.

Q And they came to you and told you about it?

A They asked me about it.

Q And did you ever go to the police and say to them, after June 19th or during this interview on June 20th, and say, "Look, I know you guys are a little annoyed at me and I know you guys haven't been giving me stuff. Let's make a trade here. I have some great information. I'll give you my great information if you give me your information." Did you ever say that on June 20th?

A They didn't seem too concerned with anything I had to say.

Q They didn't? I mean, they talked to you for 45 minutes on tape; they didn't seem too concerned?

A Yeah, about certification.

Q So you tried to tell them. Is that what you're telling this jury, you tried to tell them but they wouldn't hear?

A No.

Q You're telling this jury they didn't seem too interested in information about who might have killed your husband, is that what you're telling this jury?

A They didn't seem too interested in my opinions or theories.

Q Did you offer the opinion that Cecelia Pierce knows about

this crime?

A No, I didn't.

Q You did just the opposite; I read it a second ago.

A Right.

Q You did just the opposite?

A Right, and I just said that.

Q And, you know, you have to admit that because it's on tape, right?

A I have to admit that because that's the truth.

Q You have to admit to this jury you were hiding the information about Cecelia Pierce from the police because it's right there on the tape; there's no way you can ever deny that, could you?

A If I was guilty, I would have pleaded guilty and plea bargained with the rest of them.

MR. MAGGIOTTO: Oh, Judge, strike as not responsive.

THE COURT: Jury will disregard that statement.

MR. TWOMEY: Your Honor, can we approach for a minute?

THE COURT: All right.

- - -

[Bench conference - no record.]

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IN OPEN COURT BEFORE THE JURY:

BY MR. MAGGIOTTO:

Q Now, your attempts to distract the police from Cecelia Pierce go way beyond your saying just that she's scared and I think she's being poorly treated, right?

A Are you talking about a specific instance?

Q I mean, when you talked to the police on June 20th, the very next day, you not only say that Cecelia Pierce is not connected to the crime, but you say that you counseled her to tell the absolute truth, right?

A I said that to the police.

Q Well, let me read it to you. Page 48.

A Uh-huh.

Q Danny Pelletier says to you, "But Cecelia's mother, getting back to that, thinks that we're treating her poorly or thinks the police are." And you say, "Yes" -- or "Yeah, Cecelia does too, I think."

Danny Pelletier says, "Should leave her alone or" -- and it's inaudible.

And you say, "She feels like she's being accused and that she didn't do anything and that -- I mean, for a 15- or 16-year-old kid, I guess, you know, if you're accused of something that you didn't do, I mean, nobody, I mean even me, I'm 22, I don't want to be accused of something I didn't do, but for a young person I would think that that would be

awful, especially if you see other people getting arrested, you know, that they are -- that were around you or whatever, I mean it probably would have to be scary. I would think --"

And Detective says, "Uh-huh."

You said, "You know, even if you're not guilty."

And Danny Pelletier says, "Well, she's just one of probably over a hundred people we've talked to since --"

And you interject, "Right, I'll tell her that."

And Danny Pelletier says, "-- since May 1st."

You say, "You know, I say they're just doing their job and, you know, just answer, just tell them the truth and that's it. You just answer the questions and whatever."

And she says, "But I tell them the truth and they tell me they think I'm lying. And, you know, I don't know what to tell you, Cecelia, I can't control the police. I'm very sorry that this has happened to you. I mean, as far as the press goes, they're bothering me and calling my secretary."

Now, you tell the police on that day that you've counseled Cecelia Pierce to tell the truth and just answer the questions?

A Right.

Q That's a bold face lie.

A Right.

Q Just as the other thing about your information of Cecelia Pierce's involvement is a bold face lie.

A Yes.

Q And you know that this is on tape and has been on tape since June 20th, 1990, correct?

A Audio tape?

Q Yeah, audio tape.

A I guess, if you say.

Q Well, I mean, you know, I could play it for you right now and you'd hear it, right?

A I believe you.

Q I'm sorry?

A I believe you, if you --

Q Danny Pelletier could come in and testify about what went on at that day, right?

A Right.

Q And on June 20th were you trying to impress the police with your own honesty?

A Was I trying to impress them?

Q Yeah.

A I don't think so.

Q Well, wasn't it the same day you said, you know, my honest to God's truth, I'm just going to tell you my honest to

God's truth in this case?

A Which is that I didn't think that the three kids did it.

Q But when it came to Cecelia Pierce, is your honest to God's truth something you decided you no longer needed at the moment?

MR. TWOMEY: Could I get a page reference to that, Mr. Maggiotto?

A Right.

MR. MAGGIOTTO: It's 32 or 35, 37. Her honest to God's truth.

MR. TWOMEY: Thank you.

Q So your honest to God's truth just switches as we go along.

A Right then and there it did.

Q Okay. Now, the police you know didn't want you really to talk about the investigation, right?

A I don't know what the police wanted from me.

Q Well, how about some answers? Did you think the police wanted some answers from you?

A After the arrest, no, because they didn't contact me until June 20th or something.

Q So because they didn't contact you right away, you decided the police must not want answers, so I guess I don't have to tell them about my affair with Bill Flynn or what Cecelia Pierce knows? Is that what you're telling the jury?

A Yes, I contacted them and I contacted the Attorney General's Office. I believe I spoke with Diane.

Q And that gives you the right not to tell the truth, is that it?

A That does not --

Q Because you contacted the AG and you contacted the police, that gives you the right to say what's the truth and what's not?

A No. I made a mistake.

Q You've made a lot of mistakes so far in this case, haven't you?

A I sure have. Yes, I have.

Q Was killing your husband one of those mistakes?

A No, it wasn't.

Q Was not getting a divorce, maybe that was one of the mistakes, you should have gotten divorced but you didn't?

A No, I didn't want to get divorced.

Q I mean, it sure looks to me you're trying to cover up what Cecelia knows from the police, doesn't it?

A Right, because I told her that I knew something, which I didn't really know.

Q You're playing a double standard with something, with Cecelia Pierce's mind, right?

A I didn't know what I was doing at this time. It doesn't make sense to me now.

Q Do you know what you're doing now?

A Right this minute?

Q Yeah.

A Yes, I'm telling the truth.

Q Uh-huh. You know that and you're testifying at your trial in front of this jury, right?

A Right.

Q And now this stuff is on tape and has to be responded to, right?

MR. TWOMEY: Been asked at least four times already, Your Honor.

THE COURT: It's been asked and answered.

Q And you know that the other tapes we have that, we haven't talked about, exists, and that's your voice on the tape, right?

A It sure is, and I don't begin to say to this jury I can explain every action I took between May 1st and now.

Q Right. You didn't know at the time you were talking to Cecelia Pierce she was wired, right?

A The thought crossed my mind, but, no.

Q Sometime after that you found out she was wired?

A Yeah, when I was arrested.

Q So now you got to explain those tapes, right?

A I had to explain them anyways.

Q You got to explain all your actions up to now?

A Right, and there's some that I just can't explain.

Q Now, this conscious decision on your part not to tell the police about the murder -- I'm sorry -- about your affair with Bill Flynn or what Cecelia Pierce might know extended

beyond the police, right?

A To my friends.

Q And also to the press, right? I mean, you even made statements to the press that would support your little theory of secrets between you and Cecelia and not letting anybody else know, right?

A I guess. I don't -- I'm not sure.

Q Do you remember telling Nancy West from the Union Leader, the very next day, you say to her, "The Smarts said the police were interested in how she perceived the youths' emotional development when they were interviewed recently. The police asked how she showed their emotional maturity level, Smart said, and down below Smart said she didn't know Randall well and believed he was a freshman in the alternative program. None of the boys had any reason to want to hurt her husband, Smart said, they had never met."

A Right, they did never meet him, and I didn't think they had a reason to hurt someone. This is a murder we're talking about, not just hurting someone.

Q I'm sorry?

A Not just hurting someone. This is taking someone's life.

Q And we've gone over this a few times, so I'll make it brief. The important thing to determine in a murder is the motive, right?

A Excuse me?

Q An important thing to determine is the motive, right?

A Yes.

Q Okay. So the point I'm asking, the question I'm asking you is, besides talking to Cecalia, besides not telling the police, okay, the police have been telling you not to talk to the press about the case or prefer you didn't, right?

A Right, but the press has a way of convincing people to come forward, too. I was fed the same line over and over that people -- you need to tell what Greg was like, and people should get a chance to know Greg and just things like that, and if -- Bill Spencer said to me that if we keep doing the story and keep it in the press then people will be more aware of it and it will put pressure on the police to solve the crime.

Q On June 21st you're still worried about talking about Greg so your worry about talking about is to tell the press, which means to tell all of New Hampshire, in the Union Leader exactly what the police were talking to you about the day before in one of their investigations?

A The whole State of New Hampshire already knew there was an ongoing process to certify the juveniles as adults.

Q And the whole State of New Hampshire knew the police were

talking to people at Winnacunnet High School and everybody that the police were talking to was being released to the general public?

A I don't know.

Q Well, you just said everybody knew about the certification process.

A Yeah, there was articles in the paper every day and broadcasts on the news every night saying updates on the certification, and they were listing -- I remember seeing articles on the eight criteria for certification and how exactly a juvenile gets moved into the adult system and --

Q Why don't you tell the jury who else was interviewed by the police who talked to the press and said what they said. Why don't you just name any other person from Winnacunnet High School who made comments to the press and said this is what I told the police.

A I don't --

Q Take all the time you need.

A Another teacher you mean or --

Q Anybody.

A I don't --

Q Not students. Just of anybody who was going to testify or the police were thinking of having testify at the

certification hearing.

A I was told I wouldn't be testifying at the certification hearing.

Q That wasn't my question. Do you remember my question?

A Who else?

Q Yeah.

A I don't know. I don't know who the police interviewed.

Q Well, you just said it was all over the news and all over the press.

A About the certification procedure, not specifically who was being interviewed. Well, it did say teachers and counselors.

Q You were the only person who went to the press and gave an inside look at what the questions --

A I did not go to the press. The press came to me.

Q And you just can't say no, can you?

A I tried, but they were following me around in my car. They waited outside my work and followed me back to my condo. There was repeated phone messages left.

Q June 21st Nancy West was following you around, is that what you're telling this jury?

A As a matter of fact, yes, Nancy West was. She was in a little white car and she waited outside my work. She drove back to my condominium in Hampton, waited while I sat in there and ate lunch. I came out of the condo, she followed my car back,

beeped the horn, flagged me over. I was scared out of my mind because I didn't know who she was, and asked if she could come back to my office, and I said no. She followed me back to my office, came downstairs in my office and started talking to me, and I just ended up talking to her. But, yes, she did follow me.

Q What's the words "no comment" mean to you?

A That you don't want to talk to someone. But every time they put no comment they made it sound like I didn't care about anything. So --

Q So you were worried about the image you would have in the press, right, that you were --

A I was worried --

Q That you were someone who didn't care.

A Yeah, because I did care.

Q And you were so caring about the murder of Greg Smart you obviously told about to her that these boys had absolutely no reason -- or Bill Flynn particularly had absolutely no reason to kill your husband?

A Right. I don't think an affair -- not everybody in America who has an affair ends up having their spouse murdered.

Q Right. And not everybody in America whose spouse is murdered and the ex-lover is arrested, correct? Right?

A There are occasions, yes.

Q And when they're arrested as a suspect, you think it might be something that's important, right?

A Probably.

Q So is this another conscious decision, one more time, not to tell the truth, correct?

A A conscious decision in an irrational state, yes.

MR. MAGGIOTTO: Judge, the next area I'm going into is a little bit lengthy. This might be a good time for the morning break.

THE COURT: We'll take a recess.

- - -

[Recess at 10:39 a.m.]

- - -

BY MR. MAGGIOTTO:

Q So after June 20th, you talked to Cecelia Pierce again in detail when?

A A few times after that.

Q In detail?

A Yeah, on the phone a couple times. In detail about what?

Q The case.

A No, not really.

Q Okay. And when's the next time you talk to her in detail about the case?

A There was small details at a meeting at Papa Gino's when I

stopped by her work one day.

Q What were the details at that meeting?

A There was more talk about the previous attempt on Greg's life, and there was talk about her going to the police and being questioned.

Q Now, why would Cecelia Pierce come into court and tell us about that conversation at Papa Gino's if it were to show that you and her talked about it?

A I believe she did say that I stopped by Papa Gino's one day.

Q And talked about the attempt?

A Yeah. She had found my license. I don't know if that rings a bell.

Q When else did you talk to her, before July 12th?

A There was a phone call at my office.

Q What was that conversation?

A I don't remember specifically. Just about the case.

Q So Papa Gino's you talked about the attempt, there's a phone call at your office, then she comes visits you on July 12th, right?

A Right.

Q Okay. Now --

A There was some time between the phone call at my office

must have been closer to the end of June, because there was a time period between that --

Q Right.

A -- July 12th.

Q She comes talks to you in your office, right?

A July 12th?

Q Yeah.

A Yes.

Q You give her a hug because you haven't seen her for a while, do you remember that?

A Right. That's what I mean, right.

Q So now between June 19th and July 12th, which is a period of a little less than a month, you still have not decided to go to the police with the information about Cecelia Pierce, right?

A Right, I was --

Q And your intention, as you told this jury, was to keep the affair quiet?

A I was trying to think of ways to get ahold of --

Q I'm sorry?

A That was a time period I was trying to think of ways to get ahold of Bill.

Q When she told you about the attempt on this night at Papa Gino's --

A Which she had already told me about before.

Q -- you talked about it again, right?

A Briefly.

Q I mean, did you think Cecelia Pierce knew information, was involved in this case, or did you think she was just fooling?

A I had a hard time believing there had been a previous attempt on Greg's life, and I was having some trouble distinguishing between rumors and reality because there were some rumors that I'd heard that I knew definitely weren't true because they were rumors about me.

Q You know, I thought my question was, did you think Cecelia Pierce was involved with the murder of your husband or had significant knowledge?

A Yes, I just --

Q Okay. That was my question, right?

A Yes. And I just said I thought she had some information.

Q Did you understand it?

A The question?

Q Yeah.

A I thought so.

Q Okay. Well, if you don't, let me know and I'll try to make it clear. So you think she had significant knowledge, you think she knows what she's talking about, still your plan at Papa Gino's is to go talk to Bill?

A Right. Well, I was at Papa Gino's to eat. But --

Q You were at Papa Gino's to eat and you talked to her. Still, after that it's not to go to the police, it's to go to Bill, right?

A Right.

Q Now, prior to that, all right, you had discussed this case many times with all sorts of your friends as to what had happened to Greg. Tell us what friends you went up to and said, "This is what Cecelia Pierce is telling me, what do you thing I should do with this information?" And tell us the friends you told and tell us what friends you told that Cecelia said there was a prior attempt, Cecelia said that Bill did it, that Cecelia said --

MR. TWOMEY: Could we have one question at a time, Your Honor?

Q Take any one.

A The answer to all of them is none.

Q Not a single one, right?

A There were friends I talked to about Cecelia's possible involvement, but not about anything specific.

Q Right. But you never told them what Cecelia was telling you?

A No, because they would have told me to go to the police.

Q This all goes back to because that would lead to the affair, right?

A Among other things.

Q Your friends are so close to you that you can't risk a little embarrassment with your friends about the affair?

A No, there was more than that. There was more concerned than just the affair.

Q So there was more concerned than just the affair?

A Yes. I believe I previously stated that I had heard rumors that I was going to be arrested, and that was obviously a concern of mine.

Q You heard rumors you were going to be arrested. In your mind you knew that was wrong, right, you shouldn't be arrested?

A I knew I hadn't committed a crime, but I wasn't sure about --

Q And you knew that --

MR. TWOMEY: Your Honor, he's cutting her off again.

Q Did you have a chance to finish your answer?

A I wasn't sure that I would be arrested.

Q But you were worried about it?

A Yes, I was very worried about it.

Q It was on your mind, right?

A Excuse me?

Q It was on your mind.

A Yes.

Q It was on your mind you were going to be arrested?

A I knew I might be.

Q Might be. Okay. And Cecelia Pierce -- you said to Cecelia Pierce, "I know about the murder," which was a total fabrication, is what you're telling us, right?

A Yes.

Q So now you go, "Uh-oh, there's rumors I'm going to be arrested; here's a girl who knows about the murder, or so it appears, and I've given her information which is a fabrication on my part," right?

A I didn't give her any information except that I knew beforehand. No details of the crime or anything like that.

Q But you made it clear that you knew about it, right?

A Just that I knew about it.

Q And you said earlier on direct -- I mean, on cross, you said, before the break, you said that if you thought the police knew you knew about it that would be enough to arrest you, right?

A Right.

Q Okay. So you gave the incriminating information to Cecelia Pierce which, in your testimony, is false?

A Right.

Q Okay. So tell us when you went to the police to straighten it all out.

A I never got the chance.

Q So from June 19th to July 12th, you know now around July 12th that you might be arrested, correct?

A Yes.

Q Okay. Up to July 12th when you know you might be arrested --

MR. TWOMEY: Can we approach for a moment, Your Honor?

THE COURT: All right.

MR. TWOMEY: We'll need a record of this.

THE COURT: All right.

AT THE BENCH:

MR. TWOMEY: Your Honor, on June 26th, 1990 -- 22nd, I'm sorry, I both called the Attorney General's Office and sent them a letter invoking my client's right to be silent and right to counsel, among other things. The other things would be the Code of Professional Responsibility. This line of questioning at this point in time after the defendant has invoked -- the prejudice is improper. Doyle v. Ohio.

MR. MAGGIOTTO: Go ahead.

MR. TWOMEY: I would just move at this point in time, number one, for dismissal.

MR. MAGGIOTTO: Move for dismissal?

MR. TWOMEY: That was the remedy given in Doyle v. Ohio. In the alternative, and we don't want that, it's not an alternative, I suggest to the Court -- if the Court declines to dismiss the case, I suggest the Court admonish the prosecutor not

to talk about points in time after the defendant has asserted her constitutional rights not to talk to the police, and that's a direct assertion. I believe it's in the Court's file in our objection on the tapes. I ask the Court to take judicial notice of the content of the letter.

MR. SISTI: I would add for purposes of the record, state case law, State of New Hampshire v. Duhamel which is supportive with regard to this particular argument and that it was a direct reference with regard to a time period when Mark Duhamel was represented by counsel, and a question from the Attorney General's Office at that point in time basically had to do with a period in time where he, Duhamel, had requested counsel, had asserted his Fifth Amendment privilege.

MR. MAGGIOTTO: Well, first of all, they're wrong on Duhamel. Duhamel was a situation where the defendant was arrested and the prosecutor had commented on his post-arrest silence from the time he was arrested and to the time he testified at trial,

he never told anybody, and I've consciously avoided that because I agree, if I were to comment how after she was arrested she didn't come clean at the time of her arrest that would be improper. But conduct prior to the arrest is fair game for cross-examination. The tapes talk about her talking to a lawyer. It's fair game as to why she was talking to a lawyer. There's no constitutional right that's being affected here. Her right to counsel attaches when she's arrested, her right to remain silent attaches during custodial interrogation.

THE COURT: All right, I already ruled on it in your motion.

MR. TWOMEY: The testimony is uncontroverted that my client was seized by we believe it's the Seabrook police, by policemen on horses, on motorcycles, in paddy wagons and cruisers. That is an arrest. I'll cite the case of State v. Brodhead. I believe 116 N.H., which indicates no magic words are necessary to effectuate an arrest. From that point on until the present, she had a right to remain and no comment can be made upon it after that point. She was seized, held

for ten minutes, had to put her hands up. If you read Brodhead, simply a police officer pulled her over and asked her to get out of the car. The Supreme Court said that's an arrest.

THE COURT: Just a moment. Just a moment. The motion's denied. I've previously ruled on it.

MR. TWOMEY: Okay.

IN OPEN COURT BEFORE THE JURY:

- - -

[Pause - Mr. Maggiotto and Ms. Nicolosi conferring quietly.]

- - -

BY MR. MAGGIOTTO:

Q All right, so now we're getting to July 12th, right?

A Yes.

Q On July 12th -- let's just set the scene, if we could. Cecelia Pierce comes to talk to you in your office, right?

A Right.

Q Up to that point you've heard rumors you might be arrested, correct?

A Right.

Q You hear rumors, so now -- well, let me withdraw that. That's in your mind when you're talking to her, right?

A Not just that rumor but a number of rumors.

Q That's certainly one of them?

A Exactly.

Q And up to this point you're still -- your testimony is that Cecelia Pierce had been saying right along incriminating stuff which connected her to somehow in the involvement of the murder?

A Right.

Q Okay. And that is stuff up to this point you've decided not to inform to the police or anyone?

A Right.

Q All right. So the only two people in the whole world who know about what's going on with you and Cecelia and what's being said between the two of you are you and Cecelia?

A Other than the fact that I had mentioned to friends that I thought that she might know more than she was saying.

Q Right, right, you mentioned to friends you might -- that Cecelia might know stuff and you never told them anything, right?

A What specifically I thought she knew?

Q Yeah.

A No.

Q Never told them anything specifically. So on June 12th, what's your plan?

A I had no plan. I was just sitting in my office working.

Q Well, when Cecelia came and started to talk to you, why were you talking to her?

A Because she was talking to me.

Q So this was just general, normal, casual conversation between you and Cecelia?

A In the beginning, yes, and then she started discussing the fact that -- I believe she was supposed to be interviewed by the police or the Attorney General or something.

THE COURT: Mr. Maggiotto, you said June 12th. Is that what you meant?

MR. MAGGIOTTO: No, I'm sorry, Your Honor. I meant July 12th.

THE WITNESS: July 12th.

Q Do you understand I'm talking about July 12th?

A Yes, July 12th. And like I said, she had indicated she was possibly going to be interviewed I believe that day or the next or something.

Q So is this the time when you then start trying to get information from Cecelia Pierce?

A No, at this point I was trying to stop her from going to the police and from saying what she knew.

Q When is it you try and get information from Cecelia Pierce?

A Before June 13th.

Q So the only time you were trying to get information from

Cecelia Pierce is June 13th?

A No.

Q When?

A June, basically the times before June 13th, and then also on July 12th and 13th I received information, too, although I didn't specifically set out to because I didn't even know she was coming over.

Q Well, once you started talking to her, the question is, were you trying to get any information from Cecelia Pierce on July 12th?

A Yes.

Q And were you trying, be fair to say, pump her for information so you could know what she knows?

A Sure.

Q And were you trying to get this information so you could answer in your own mind whether or not it's worth your going to the police to tell about your affair with Bill Flynn?

A No, I wanted the answers because I wanted to know if Bill had committed the murder. Why, how, those things.

Q All right. And this is something you wanted to do alone before you wanted to involve the police, correct?

A Right, because I didn't want to go to the police and accuse someone of murdering someone if --

Q Okay.

A -- if I wasn't sure that they had.

Q I show you a transcript of the July 12th interview, marked for identification purposes, State's 81. Why don't you show us what questions you asked to get information from Cecelia Pierce in detail. Why don't you take your time.

MR. TWOMEY: Is that this one, Paul?

MR. MAGGIOTTO: Yes.

Q And show us all the questions you asked. Why don't you list them for us where you were trying to get information from Cecelia Pierce about this crime.

A Okay. First of all, in order to get information you don't always have to ask a question. In conversation with her, information came out.

Q So Cecelia was doing all the talking, right? You were just --

A No, not at all.

Q Why don't you show me the big blocks of talking that Cecelia Pierce was doing that you got her to do by talking to her.

A Doesn't have to be a big block of conversation to have information in it.

Q Yeah. Did I say, Mrs. Smart, that this was the only way you could do it? Is there some reason why you just can't

go through the transcript and show this jury --

A Sure.

Q -- where you tried to do what you said you were trying to do.

A Sure.

Q Okay.

A Well, the first incident would be in the first few pages where I'd seen her old boyfriend, Billy, and he'd told me that she was going around saying that I'd murdered Greg myself. So there was talk about that in order to see if she'd truly said that, but she basically said no, and that was the end of that. I believe that she wasn't saying that.

Q So after talking about Billy, you surely must have said, "What could you have possibly said that you told Billy that I knew," right?

A No, I just wanted to know if she told Billy that I had murdered Greg myself.

Q Okay. But how was that designed to get information from Cecelia Pierce about what she knew about the case?

A That wasn't. You asked information, period.

Q No, I meant information you were trying to get from Cecelia Pierce about the case. Why don't you show us the next area where you were trying to get information from Cecelia Pierce, questions you asked and the blocks of information she gave.

A Okay. She says on page 5 that Ralph is telling the whole town everything. And I say, "Yeah, but Ralph doesn't know anything. That's what I mean."

And she says, "Ralph knows what he heard."

And then I say, "Right, because Ralph, some reporter, told me that Ralph said that I was having an affair with Bill," and I wanted to know by saying those statements if she knew what Ralph knew, if anything.

Q Right. Let's go over that. That's a good example. She says, "Ralph is telling the whole town everything."

You say, "Yeah, but Ralph doesn't know anything. That's what I mean."

A Right.

Q Cecelia Pierce says, "Ralph knows what he heard."

And you say, "Right, and Ralph heard, uh, uh, cuz, cuz, Ralph, the reporter told me Ralph said that he heard that I was having an affair with Bill but it's not enough to arrest me because Ralph heard," right?

A Right.

Q Why didn't you ask Cecelia Pierce right then and there, "Gee, what did Ralph hear?"

A Because I didn't want to sound like I was a police officer in an interrogation.

Q You were so afraid if you asked the one question which might lead you to get information about what Cecelia knew, you don't ask it because you might seem like an investigator, is that it?

A No, I didn't have to ask a question. I said Ralph doesn't know anything, and I figured if she knew that Ralph knew something that she would reply by saying, oh, yes, Ralph, whatever Ralph knows.

Q But she didn't, right?

A Right, so therefore I concluded that Ralph didn't know anything.

Q Oh, so because she didn't --

THE COURT: Gentlemen, the important thing of this trial is obviously a fair trial, and one of the other important things is to make a record of this trial. We can't do that with constant clicking of shutters. I don't know how many pictures you need of one individual. Try to limit it, and if you don't limit it, I will. Thank you.

Q Okay. All right. So you didn't go on because you didn't want to seem like an investigator, right?

A No, because she said that Ralph didn't know anything and didn't answer back to me, so I just assumed Ralph didn't know anything.

Q How did you think you were going to get all the information without asking questions?

A Because when I'm in a conversation with somebody, I don't have to ask questions in order to get information.

Q Show me the next block where Cecelia Pierce gives you all sorts of information.

A [Witness reading.] Okay, page 8.

Q So from five we're now on page 8, right?

A Right. I'm trying to go through this quickly.

Q Well, take your time. It's your trial.

MR. TWOMEY: Your Honor, that transcript's 32 pages long. He wants her to go through the whole thing, perhaps give her a break to read the whole thing. I think it's inappropriate with the pressure on the stand to read the document like that on the stand. It's 32 pages. Wants to ask about particular pages, let him do that, but I think the question as it stands asks her to digest an entire document without having the time or opportunity to do it.

MR. MAGGIOTTO: Judge, I'll take the document back, just have her tell from memory what questions she thought she was asking.

THE WITNESS: Well, if you gave me this and let me take it to a room I could go over every specific single example.

Q You want more time to go over it --

A I can do it like this --

Q -- and come up with what you said and why you said for everything, is that it?

A Well, I obviously can't remember --

THE COURT: Just a moment. Just a moment. Is the witness uncomfortable doing it that way?

MR. MAGGIOTTO: I'll gladly take it back, Your Honor.

Q Is it uncomfortable, Mrs. Smart?

A No, but I want to be as accurate as possible and I want to have a chance to go through this.

Q Well, I'm just asking you, can you tell us without even looking at it? I mean you were there July 12th, right?

A Right.

Q Why don't I make this easy. Here.

A I'd rather have this.

Q You'd rather have it?

A Yeah.

Q Oh, okay, she'd rather have it. Tell us without even going through the document just what kind of questions that you asked from your memory on July 12th. I mean, this isn't a

minor conversation. This is a long conversation with Cecelia Pierce, right?

A Right. And I --

Q Just sort of tell us what you were thinking you had to say in order to get Cecelia Pierce to talk to you.

A Just talk about it, and every time I was around her, and we just started talking about it, information came out.

Q So you thought you would just talk about it?

A Right, she would say something like, "I can't believe they'd dropped a glove," or something, and I'd say, "Oh, yeah, right, I can't believe that either," but that was the first time I ever heard that, okay, so then now I knew that they dropped gloves or glove or whatever.

Q After hearing that it never occurred to you to say, "Yeah, what did they tell you about the glove?"

A No.

Q So it never occurred to you to push the point a little bit to try and get a little bit of this information?

A Just the fact that they'd dropped gloves was information.

Q That was enough for you?

A I suppose.

Q Okay. I mean --

A There's other -- that wasn't the only information.

Q But this is a point, right?

A Right.

Q This is a point she's now told you that you haven't heard before, you say?

A Right, but I'm supposedly acting like I knew about this beforehand, so I'm not going to sit there asking her 200 questions about it.

Q Didn't you tell us a few moments ago that the whole point of saying and acting like you knew was to try and get information?

A Right.

Q Mrs. Smart, you're a college graduate, right?

A Yes.

Q What do you hold degrees in?

A Communication.

Q From where?

A Florida State University.

Q What's your degree in, communications? I'm sorry -- did you graduate with any kind of honors?

A Yes.

Q What were your honors?

A I graduated with a degree of distinction.

Q Degree of distinction. What was your cumulative grade point average?

A I believe it was 3.85.

Q 3.85. You're a pretty smart person, right?

A Not now.

Q Uh-huh. 3.85. You're talking to a 15-year-old girl in your office, right?

A Right.

Q Is that right?

A Yes.

Q Cecelia Pierce wasn't, you know, a wizard, was she?

A No, but I was also having -- having a lot of stress at the time. My husband was murdered. I was on medication. There was a lot going on.

Q So what you're telling this jury is you wanted to get information from Cecelia Pierce, and the whole point of talking to her on July 12th was to get such information, but you weren't so good at it because you were under the stress, is that it?

A I guess. I don't if you're asking me to analyze the whole situation. I'm not a psychologist.

Q I'm asking you to tell us why you didn't bother asking a question or a little bit more about the glove, and you said you were afraid of looking too much like an investigator.

A Right.

Q And I'm saying, didn't you think you could have gotten more

information about the glove from Cecelia Pierce without giving yourself away?

A What else do I need to know? They dropped a glove.

Q What glove are you talking about, what did they tell you about the glove. I don't want to tell you what they told you. You tell me what they told you.

A Just that they'd dropped a glove. Well, she said gloves, originally.

Q So you didn't pursue it?

A I don't know what -- how -- what question there is to pursue. I didn't really care what type of glove.

Q What other types of thing from your memory, that you remember, asking, getting information from Cecelia Pierce?

A About Raymond.

Q Okay. What did you ask her about Raymond to get her to talk about Raymond?

A I say, on page 8, that Raymond is a liar, and she says that he's saying he didn't know anything, that he got out at some store and told a lady that he was there for about a half an hour. She thought he was going to rob the place, and that's why she remembers.

Q You're on page 8?

A Right --

MR. TWOMEY: Near the bottom of the page.

A -- near the bottom.

Q So your way --

A Now, wait, I'm not done,

Q Oh, I'm sorry. Go ahead.

A And so I say, "See, I heard that," which is this is a rumor, and I was about to say, see, I heard what I'd heard about Raymond because it was in the paper that he'd been in some pizza store or something like that. And then she goes on to say about Raymond, and then she asks me if Raymond knew about the murder beforehand, and my answer is, "I don't know. I don't know."

Q So did you ask her what she knew about Raymond?

A No, just by mentioning Raymond, she went on to say that supposedly Raymond didn't know anything and he was in a store, and her last response is, "I don't know. I guess he got out at the store," so she says I don't know. So, in other words, she doesn't know what Raymond knows.

Q But you never asked -- why did you say Raymond's a liar? I mean, you know at this time that Raymond went to the police on June 10th or 11th and told them that he had nothing to do with this case, right?

A Right, because it sounded a little fishy to me that Raymond was in a car on the way to Derry with three people who supposedly murdered someone and he didn't know anything

about it.

Q When you're telling Cecelia Pierce what Raymond said to the police that he was in the car and didn't know anything about it, you say to Cecelia Pierce Raymond's a liar?

A Right.

Q In fact, Raymond was lying, because you know he knew something about it?

A No, I didn't, but just by reading the paper, I assumed, I think we all did, that Raymond wasn't being totally truthful.

Q Let me ask you why you said this to Cecelia Pierce?

A Are we done with the last question?

Q I'm sorry?

A Are you done with the last question?

Q Yeah, I'm done with the last question.

A All right.

Q You say to Cecelia Pierce, "But right now they're," talking about lawyers you've spoken to.

A What page?

Q Page 15, at the bottom.

A Right.

Q "But right now they don't have to do anything unless I'm arrested, and if I get arrested then they have to do" -- excuse the expression -- "shit, but if I get arrested the only way I would ever confess to, uh, the affair would be if

they had a note from Sara, and if that" --

Cecelia Pierce says, "Do you know where that note went?"

You say, "No, I -- um, Bill has it. I could have sworn Bill said he ripped it up."

I mean, what was your plan if they didn't have a note?

A Right, that's obviously a prime example of where I said I'm not telling the truth because there's no note in this courtroom from Sara. That's not why I'm admitting to the affair. I'm admitting --

Q You heard Sara say that she saw a note?

MR. TWOMEY: She's being interrupted again, Your Honor.

THE COURT: Let her finish.

A Just because Sara saw something doesn't mean it existed.

Q But on July 12th, 1990, you didn't know what Sara had in her possession; you just knew they were talking to Sara, didn't you?

A I was told from Cecelia that the Derry police had a note from Sara.

Q Right, and you know that Sara had been at J.R.'s house when you were there?

A I definitely knew she'd seen the note.

Q So you had the thought that maybe Sara did have a note, right?

A Right.

Q And only then, only then do you say here would you admit the affair, right?

A Right, which obviously isn't true because there's no note, and I've admitted the affair right now.

Q You admit the affair after everyone's come into court and testified about the affair?

A Right. I admitted it beforehand, though, also, to my friends.

Q Let's talk about that. Why don't you tell the members of the jury how close in time it was to Mr. Sisti's opening that you decided to tell your friends about the affair?

A Approximately three days.

Q Approximately three days. So you knew in three days your attorney was going to stand up in court and say, "My client had an affair. Keep an open mind. She had nothing to do with the murder," so then and only then is when you tell your friends?

A Yes, and the reason being for that was because I was instructed from my attorneys do not let out my defense beforehand, which I believe was good advice, and that's what I was doing. But there was a time when I realized that the defense would come out, obviously when the trial began, and I love my friends enough that I thought they should hear it

from my mouth.

Q Is that what you were telling them on July 12th, telling Cecelia Pierce that you were thinking of your defense so that, you know, you thought you'd better tell her you'd admit the affair?

A No.

Q What were you thinking back on July 12th?

A I was thinking back on July 12th that I had to stop Cecelia Pierce from going to the police.

Q So it's more than just you get information; it was make sure she didn't go to the police, right?

A I said that earlier today.

Q And you also say -- and you were pretty good at getting her not to go to the police, right?

A Apparently not, because she'd gone a month before that.

Q Right, but you were good at making her feel she'd have trouble going to the police?

A I was trying to make her feel like -- that we had to stick together and that she would get arrested.

Q And this is all a ruse on your part?

A What?

Q Your telling Cecelia Pierce that the two of you had to stick together because you were both involved in this crime

was a ruse on your part, right?

A Right.

Q Page 18 you say to Cecelia Pierce -- you're telling her, "So if you know after the fact, you're not an accessory. If they try and tell you that if you confess you know before the fact and all that --"

She goes, "Yeah."

You say, "Don't confess, okay?"

And you say, "All right, that's not true, they will F'ing arrest you and you will be an accessory."

Cecelia says, "Uh-huh."

"You will. No matter what plea bargain B.S. they tell you."

Cecelia laughs.

You go, "I'm serious, okay, don't forget that because my lawyer told me, and that that's the thing. If J.R. comes forward and says, if I'm going down, Raymond, so are you, and that Raymond knew, and then Raymond's going to be arrested, even though he already turned state's evidence, he will be arrested as an accessory."

Now, was this designed to get Cecelia Pierce to talk to you?

A This was designed to get Cecelia not to go to the police.

Q Okay.

A I don't even know if that's correct information about accessory to murder. I just made that up.

Q But that's what you were telling her?

A Right. Same thing about lie detectors. I don't know anything about lie detectors, either.

Q You told her you got that from your lawyer?

A Right, but my lawyer didn't tell me.

Q You were worried about Cecelia Pierce getting you involved because you said to her you knew about it, right?

A Right.

Q Okay. And you were also worried at this time that you might be arrested?

A Right.

Q So here you are, July 12th, giving Cecelia Pierce -- and you even think she might be bugged on that day, right, because you say that to her?

A Right.

Q So you're now saying to her even more stuff about making you look bad, right?

A I didn't even care if she was bugged. I didn't care about anything at that time except for the information that I thought I was getting.

Q Okay. You didn't care about anything except not disclosing the affair to the police, right? You didn't care anything about not disclosing this little affair and your relationship and what you knew to your friend? You didn't care about anything except not disclosing what Cecelia Pierce had told you to the police, right? I mean, all that was still on your mind.

A I didn't even care if I got arrested.

Q So why didn't you go to the police and say, "Maybe you're going to arrest me because I had an affair. Maybe I did something stupid but let me straighten it out now"?

A Because I was scared.

Q And your fear for yourself was rampant over everything else, right?

A I was desperate.

Q So it's not only -- so now is it only you're acting somewhat irrational, you say, and you're saying you're desperate, right?

A I was.

Q You're now saying that this was not just an attempt to get information, right?

A I never said that that was the only reason for this.

Q Is that what you're going to say about everything in your July 12th and July 13th tapes that these were just your attempts to get Cecelia Pierce not to go to the police

because you didn't want to be -- you didn't want to have the affair come out?

A And I didn't want to get arrested.

Q I'm sorry?

A And I didn't want to get arrested.

Q Let's go to page 19 and 20. You say at the bottom of 19, "Because all I can say is that no matter what they try and make you talk about (sigh), if I were you, I didn't know a damn thing."

Cecelia says, "Well, all I know is that I had to come and talk to you because, I mean, I don't know what to do. I have to go talk to the Attorney General. I'm just sick of lying, you know."

You don't ask her at that point what she's lying about, do you?

A I knew what she was lying about.

Q So then you say, "Well, you know, I'm just telling you that if you tell the truth, you're going to be an accessory to murder."

"Right."

"So that's your choice. And not only that, but what is your family going to think? They're going to be like, Cecelia, you knew about this, you know."

She says, "Yeah."

"Everybody" -- you say then, "Everybody in town is going to be like F'ing, you know, Cecelia. So if I were you, once you say no, they leave you alone."

A Right.

Q She goes, "Uh-huh."

You say, "Once you say yes, they never leave you alone, you know."

"Yeah."

"And that's the thing, you know. I know it's too late now though, you know."

Tell us about that. I mean, is this just another attempt to prevent Cecelia from going to the police?

A Right, that's what I'm saying. Don't -- that if you -- I'm telling you if you tell the truth you're going to be an accessory to murder.

Q Right. So you're scaring Cecelia Pierce that she shouldn't go to the police?

A Exactly.

Q And you're scaring her that she's going to be arrested for murder?

A Exactly.

Q I mean, what is the jury to think? You have an affair with a guy in jail, who is arrested for killing your husband, you

don't tell the police. You get information from Cecelia Pierce during the summer that she's involved, and again you don't go to the police. Here on this day you're really making extreme efforts to scare her about accessory to murder and that her family's going to be on her, not to go to the police, right?

A Uh-huh.

Q You're saying it's because you were desperate?

A I expect the jury to see what was going on here.

Q Why didn't you tell the police so the police could see what was going on there right after July 12th and right after July 13th?

A Because I wasn't thinking rationally.

Q When did you start thinking rationally in this case?

A After -- after I was arrested and thought about it, I guess.

Q Were you thinking rationally when you sat here through everybody's testimony and listened to the tapes and got ready to testify?

A Got ready?

Q Yeah.

A What do you mean "got ready"?

Q You tell me, what does get ready mean to you?

A Get ready sounds like prepared, but I wasn't prepared or prompted.

Q So you never talked to anybody; you just got up there and

testified, right?

A As a matter of fact, yes.

Q My question to you is, were you rational when sitting here and listening to everybody's testimony, taking notes before you testified?

A Yes, I was.

Q Now, on page 20, right after that section I just read to you, Cecelia says, "Did you know, seeing what had happened, wouldn't you rather have just rather divorced Greg?"

You say, "Well, I don't know, you know. Nothing was going wrong until they F'ing told Ralph."

How do you know what they had told Ralph?

A Because it was all over the news and in the papers.

Q And what was in the papers that they'd told Ralph?

A Bill Spencer was on the news saying that Ralph had gotten beat up because he had gone to the police, and that in the paper it had said that they had told a friend about what they'd done, and, plus, there was rumors all over Sea-- Ralph was walking all around Seabrook telling everybody about it.

Q So what did it mean when you say nothing was going wrong?

A For them.

Q Oh, for them. That didn't apply to you?

A No.

Q All right. So when you're trying to tell this jury when you and Cecelia were talking about you should have just divorced Greg, right, wouldn't you rather have just divorced Greg, and rather had just divorced Greg, you say, "I don't really know. Nothing was going wrong until they F'ing told Ralph"? You think she's talking about the boys' decision, right? What would the boys' decision have to do with whether or not you had divorced Greg?

A Because I -- I had told her that I knew about this murder beforehand, which obviously meant that I'd wanted the murder, which was a lie, and so she's saying wouldn't you have rather divorced Greg, and I'm saying, no, I don't know. What am I going to say, "No, I -- yes, I should have just gotten a divorce," or, I mean --

Q Well, you say, I don't know, you know. Nothing was going wrong until F'ing they told Ralph," is what you said. Now you're saying not only did you tell Cecelia that you knew about the murder, but now you're telling this jury that when you really kind of told Cecelia because you knew about the murder you had some sort of planning involved. I mean, what is it?

A Obviously, if you know about a murder beforehand, you're involved.

Q Okay. But you're saying now that you had some idea of the

planning?

A If you know about a murder and it's -- a murder's going to happen, then I suppose, yes, you're part of the plan.

Q You're saying the only reason you said that is because of what you -- because of Cecelia knowing, you were saying to Cecelia that you'd known about the murder, which is a fabrication?

A That's what I said.

Q And this is more of a fabrication, right?

A This whole entire thing is a fabrication.

Q On your part?

A Yes. On both of ours because she knew she was being recorded so it's a fabrication on her part, too.

Q Right.

A She --

Q She came in to ask you questions and got you talking?

A Right. She was given a list of questions from the police.

Q Where does Cecelia Pierce admit to anything on there that you were successful in getting out of her?

A Of course she admits to nothing because she was working for the police.

Q Your attempt there was to try and get information from her. Did you get any information from her at all?

A Yes, yes, I did.

Q That she admitted to her involvement in this crime?

A She had already told me that previously.

Q I know, but the whole point was try and get more. You didn't get any more, did you?

A Yes, I did.

Q Tell us what more you got.

A I was earlier, and you told me we were finished with the question.

Q I see. Now there's all sorts of information which you got from Cecelia Pierce, right?

A Absolutely, yes.

Q What do you do with that information?

A Absolutely nothing, besides trying to sort this all out in my mind.

Q When did you sort it out in your mind?

A I didn't. I tried, I said. I still haven't sorted this out in my mind.

Q And you also in there, you recall telling her how to deal with lie detector questions, right?

A Yeah, but I don't know anything about lie detector tests. I don't know anybody who's ever taken one.

Q And you also told her if she ever took the stand she would get ripped apart, right.

A I don't know. Probably. I guess. Yeah, I remember that.

Q Do you want me to show you the spot?

A Yeah, I remember that.

Q Okay. You told her if she ever took the stand, she'd get ripped apart, right?

A Right.

Q And you say to her that the only reason that they think she knows something is because of some stupid person that called up and said F'ing old Cecelia, do you know?

A Right.

Q What was that about?

A The police had told Cecelia and she'd told me that some person called up the Derry police and said Cecelia Perkins, at the time they said, which isn't her last name, knew about the murder, and so did Pam.

Q So now on page 25 you say, "Cecelia Pierce, don't think it's the end of your problems if you confess. No. Because it's going to be your whole family's, it's going to be like F'ing well, you knew about a murder. How could you have lied" -- I'm sorry -- "How could you have lived like that, and the newspapers are going to be all over you and how could you have known about what you know, and all your friends are going to be on the witness stand a million times, now you're going to be on the witness stand, like, he's going to put

you on there and he'll say, 'Well, did you know?' And you'll say, 'No.' 'Did Pam know?' 'Did Bill?' Whatever. I don't know, whatever. They're going to ask you, 'Did you work for Pam? Did you stay at her house? What'd you guys do?' 'We watched a movie,'" right?

A Right.

Q I mean you said to her don't confess, right?

A Yes.

Q This is just another attempt -- a few pages later -- of trying to get her not to go to the police?

A This whole conversation is an attempt for that.

Q You'll agree with us the whole conversation on July 12th, 1990 was your attempts to make sure Cecelia Pierce did not go to the police?

A And to get information.

Q And to get information. And your reason for having Cecelia Pierce not go to the police is not because you were involved in this case, but because you didn't want the affair to come out, right?

A Yes, plus I'd told her that I was involved.

Q And you knew that at that time Cecelia Pierce might be going to the police because she told you way back on July 13th she was thinking of going to the police, correct?

A June 13th. Yes.

Q June 13th, she was thinking of going to the police?

A Yes.

Q So on this day rather than minimize incriminating statements you might make, you're making a hell of a lot more, right?

A Right, and -- exactly. It doesn't make very much sense.

Q Doesn't make very much sense, but you're arguing that because you were desperate?

A Right. When someone you love is murdered you do things that maybe you wouldn't have done beforehand.

Q You know about the tapes, right?

A What do you mean I know about --

Q Eventually, you learned about these tapes, correct?

A Yes.

Q I mean it's nothing you can do to say these tapes don't exist, correct?

A I could say it's not my voice, but that would be a lie.

Q Right, you could say it's not your voice, but then Pelletier could testify and Cecelia Pierce could testify and all the other policemen who were there surreptitiously could testify it was your voice on these tapes, right?

A Right. Yes.

Q Yes or no?

A Yes.

Q So now you have given us an explanation for all your incriminating statements on these tapes, right?

A I've given you the truth.

Q The jury will determine what you've given us -- whether that's the truth, right?

A Well, I can tell you that I know I'm telling the truth.

Q Do you accept that?

MR. TWOMEY: Objection, Your Honor. He's asked that at least five times.

MR. MAGGIOTTO: Judge, she obviously keeps trying to tell this jury she's telling the truth, and I think we should let them decide.

THE COURT: Objection's overruled. The jury will decide this case when the evidence is all in.

MR. MAGGIOTTO: I'm sorry, Judge?

THE COURT: I said, the jury will decide the case when the evidence is all in and they've been properly charged.

BY MR. MAGGIOTTO:

Q Page 26 you say, talking about J.R., you say, "I feel bad for" --

Cecelia says, "I feel bad for him because he really didn't do anything."

You say, "You have to remember through this whole thing that he did -- they're F'ing old enough, you're old enough to make your own decisions."

She says, "Yeah."

You say, "They did this all. I did not force anybody to do anything. They made their own decisions."

What's that about?

A Because they murdered Greg. I didn't force anyone to murder Greg. They made their own decision to go murder him. They drove up there for 45 minutes, they went into the house and they waited for him, and they're the ones who brought him to his knees and held a knife to his throat.

Q And that's why you say right after there, "Yes. No, I didn't" -- she goes, "at least you didn't pay them."

You go, "Yes. No, I didn't pay them. They made their own decisions, you know. Remember that throughout this whole thing don't, don't feel bad, even though I do, too. I know it's hard not to, but remember they made up their own minds and they would -- I don't even know what happened in my house. I don't know who was there or who waited in the car." Right?

A Which is the truth.

Q But you didn't want Cecelia Pierce to feel bad about the boys and go in and say what she knew, right?

A Feel bad about them? I'm the one saying they're old enough, they made their own decisions.

Q You say to her don't feel bad for them, right?

A I say don't -- yeah. Yes, I do.

Q Why didn't you just go to the police and stop feeling bad for Bill Flynn, J.R., Pete and tell them what you knew and lead them to Cecelia Pierce and -- so Cecelia Pierce could deal with it?

A Because I felt bad about the whole situation.

Q I'm sorry?

A I felt bad about the whole situation.

Q And your way of feeling bad about the whole situation and rectifying it, is keeping everything you know to yourself, correct?

A Yes.

Q That's what you did on July 12th?

A Yes.

Q Okay. The very next day Cecelia Pierce comes back and talks to you again, right?

A Yes.

Q And you pretty much go through the same kind of stuff on July 13th that you went through on July 12th, right?

A Right.

Q You're doing everything in your power to prevent Cecelia Pierce from going to the police?

A Yes.

Q You're also trying to get more information from her?

A Yes.

Q Was this some sort of reverse psychology on her that if you scare her to death about she's going to be an accessory to murder; if you scare her to death about a lie detector test; if you scare her to death about how her family's going to be on top of her, the press will be on top of her, that she might open up and tell you all sorts of things, is that what you thought would work?

A I don't know what it was.

Q Well, you tell us. I mean, you were there trying to get information from her, and you're the one saying all these things. What were you trying to do there?

A To tell you the truth, I don't even remember the whole entire day because I was under a lot of stress, like I said. I was in -- on medication and I was -- my mind was racing. I was confused. I was scared. I'd heard rumors. I was in a state of hysteria and desperation, and I believe that my voice on the tape lends to that.

Q Lends to that. I mean, now we got -- on the 13th, we've just added medication and we just added hysteria, two more things that you are telling this jury explains what you say, right?

A I don't think they explain it. I don't think there's an

explanation for this whole situation.

Q So, in other words, what you're telling this jury is, "I can't explain why I said all these incriminating things on the tape, but trust me"?

A Yeah, I'm saying that I cannot explain every single statement that I said.

Q Should this jury trust you like the police trusted you were telling them the truth on June 20th?

A No.

Q Should the jury trust you like the Smart family trusted you when you were talking to them about who might have murdered their son?

A I don't know. I don't know if the Smart family trusted me. I don't know who trusted me. The police --

Q Should this jury trust you like all your friends trusted you all the time you were not telling them prior to your arrest about Cecelia Pierce, what she knew, and your involvement with Bill Flynn?

A Those are different circumstances.

Q So in different circumstances different things are the truth, is that the idea?

A I wasn't in a court of law when I was talking to my friends.

Q That's makes a difference, right?

A It sure does.

Q So now when the tapes are in existence, when they're here before you, right, when you can't deny their existence, you decide, oh, okay, this now what I'm telling you is the truth, right?

A When I'm in a court of law right here under oath.

Q I mean, it's also going on in the summer; you know the guy who you were having an affair with killed your husband?

A I didn't know that, no. I didn't know that.

Q But assuming you were involved in this case, you now know Bill Flynn has been arrested?

A I'm not going to assume that I was involved because I wasn't involved.

Q Right. But you surely didn't want any connection between you and Bill made to the police, right?

A Yes.

Q You started talking to a -- lawyers, right?

A For information, yes.

Q And you started talking to Cecelia Pierce, finding out as much as she could, and doing everything you could to make sure she wouldn't go to the police, right?

A Yes.

Q And you're telling this jury that you did everything in

your power not only on June 19th but on July 12th and also on July 13th, everything in your power to make sure Cecelia Pierce did not go to the police and say what she knew about you, not because you were involved in this murder but only because of the affair, is that what you're telling the jury?

A Yes, I was not involved in this murder.

Q And then after that July 13th, two conversations with Cecelia Pierce, you're not arrested till August 1st, correct?

A Right.

Q During that time you're still feeling confused; you're still not sure what to do. Do you ever go to the police and try and tell them what's going on so you could straighten this mess out knowing all the things you said to her on July 12th and July 13th?

A I kept trying to get ahold of Cecelia, but apparently she was in Missouri, and I was trying to figure out ways to get ahold of Bill, and I did try.

Q So you needed more information from Cecelia; what she gave you on the 12th, what she gave you on the 13th wasn't enough, right?

A I wanted someone to tell me that these kids weren't involved, is what I wanted.

Q Cecelia told you they were involved, but you chose not to let the police know that, right?

A I didn't want to hear that.

Q Okay. So tell us, why is Cecelia Pierce coming in -- I'll withdraw that question. You didn't want to hear it, right?

A I didn't want to hear that these kids had done this to Greg, no.

Q Right. And so you said you were going to do your own investigation to find out; when you find out the stuff, you still say to this jury, "I didn't go forward because I didn't want to hear it," right?

A Right.

Q The truth of the matter is you didn't want Cecelia Pierce to go to the police because Cecelia Pierce was the only person out there besides the boys who were arrested who could link you to this murder, isn't that correct, Mrs. Smart?

A No.

Q And you didn't want to do -- you didn't want to have Cecelia Pierce talking to the police, right?

A I didn't want to go to jail for a crime I didn't commit.

Q So why didn't you go to the police and straighten it out before you got arrested?

A Because I didn't consider the police to be my allies at that point.

Q You had no problems going to them on June 11th when

Cecelia Pierce was going to be interviewed?

A Right.

Q You stopped going to the police after the boys got arrested?

A Right. The doors were slammed right in my face.

Q Right. And you never said to them at that time that "I have information that can help you"?

A No.

MR. MAGGIOTTO: I have no further questions.

THE COURT: We'll break for lunch. One o'clock.

- - -

[Luncheon recess taken at 11:45 a.m.]

- - -

MARCH 19, 1991 - TUESDAY AFTERNOON SESSION - 1:02 P.M.

- - -  
[Pamela Smart resumed the witness stand.]  
- - -

THE COURT: Mr. Twomey, you may proceed.

MR. TWOMEY: Thank you, Your Honor.

REDIRECT EXAMINATION BY MR. TWOMEY:

Q Pam, I just have two or three things to ask you about, things that came up during your cross-examination.

Yesterday Mr. Maggiotto asked you some questions about one of the State's exhibits, which is a little piece of note paper. You indicated they were words to a song.

A Yes.

Q Do you recall that?

A Yes.

Q I think you told Mr. Maggiotto that it was a religious song, do you remember that?

A Well, it's by a religious band.

Q Okay. Can you tell Mr. Maggiotto and everybody else the name of the band, the name of the song?

A The name of the band is Stryper, the name of the song is First Love.

Q Now, did you have that record set?

A I had the album and I might have also had the CD. I'm not sure, but I know I had the album.

Q Are the words to the songs on anything that comes with either the CD or the record?

A Yes, the words are on a lyric sheet inside the album.

Q And if someone were to look at that lyric sheet and read all the words to the songs on that album, would they be able to tell that was a religious album?

A Definitely. There's -- on the outside cover on the front and the back there's references to -- directly to the Bible.

Q Now, you also talked a little bit about insurance money with Mr. Maggiotto.

Before Greg died, did you know how much insurance you were getting?

A No, I did not.

Q When did you come to find that out?

A The exact amount or --

Q Yeah, the amount of money.

A I believe a week or so after the murder.

Q Can you tell us how you came to find out?

A Okay. Obviously, after the murder I was contacted by the insurance company to find out what was missing from the

house for claims purposes, items that might have been stolen and things like that, and the insurance people who were doing the investigation were from Greg's office so they were people that I knew, and we met I believe at the Smarts' residence about a week after the murder, and I was told that there was one life insurance policy for \$50,000 and that there was a group life policy but nobody knew how much that was.

Q Okay. At some point in time did you get any paper documents from the insurance company?

A Concerning the second policy?

Q Concerning any of them.

A I'm sure. I don't remember exactly what. I know I got something about the second policy.

Q Where did you keep those kinds of documents?

A In an expandable folder that we had with all the bills and car titles, things like that.

Q Where did you keep that?

A In the house in a closet.

Q How long did it stay there?

A It's been there for as long as we've lived together. Even when I lived in Florida, I had it.

Q At some point in time you move out of Derry. What happens

to the folder?

A There were things taken out of the folder that I put into another folder that had to do with issues at hand, as far as cars, like the four-wheeler that Greg had. There was information on that, the truck that he had, the insurance policies, and I had some I think newspaper articles or something, and I had those all in a tan folder.

Q Where was that folder kept?

A That was kept with me in my office inside my calendar.

Q And again, where is your office?

A SAU 21 building in Hampton.

Q When you left the office during the course of the day, did you take that with you?

A No, it was on top of my desk.

Q Now, you mentioned in Mr. Maggiotto's -- a question or two about it, that you were on medication during the point in time the last two of these tapes were made. Do you recall that?

A Yes.

Q Would you tell Mr. Maggiotto what the kind of medication was?

MR. MAGGIOTTO: I object. I've had my opportunity. I'd rather she tell the jury. The jury's the one that has to decide. Mr. Twomey doesn't have to have her address her questions directly to me. This

isn't a conversation with me.

MR. TWOMEY: I'll withdraw it. I'll note that Mr. Maggiotto chose how to ask his questions.

BY MR. TWOMEY:

Q Go ahead, tell the people in the jury what medication you were on.

A Prozac.

Q What is Prozac for?

MR. MAGGIOTTO: Objection, Your Honor.

Q Okay, why were you taking Prozac?

MR. MAGGIOTTO: Judge, could we approach?

THE COURT: What's the basis of the objection. You don't need to approach.

MR. MAGGIOTTO: I mean, she's not an expert. Are we going to have access to all her information she was talking to her doctors.

MR. TWOMEY: I'll withdraw it.

THE COURT: All right.

MR. TWOMEY: I'll withdraw it.

Q On the last page of one of those tapes you talked to Cecelia Pierce about where you're going after you see her.

A Right.

Q Do you recall that?

A Yes, I do.

Q Is what you said to her then correct?

A Yes.

Q True?

A That I was going to the psychiatrist?

Q Right.

A Yes.

Q Now, Mr. Maggiotto -- well, strike that.

Do you recall being asked about times when you might have asked for information from Cecelia on I think it's July 12th?

A Yes.

MR. MAGGIOTTO: What page?

MR. TWOMEY: Page 19. If I may approach, Your Honor.

Q I'm now going to show you State's Exhibit 81 for identification and ask you to take a look at the bottom part of that page.

MR. TWOMEY: That's page 19.

A Yes.

Q Did you ask Cecelia -- does that help you remember whether you asked Cecelia any further questions for information?

A Yes.

Q What's all that about there?

A I say -- Cecelia says that Raymond had just gotten out of jail when he was looking for a gun, and I --

Q What do you say?

A I say, "What for?"

Q What does Cecelia say?

A Cecelia says, "He thought that Raymond could get it for him."

Q What do you say?

A "What for?"

Q Well, didn't you know Raymond was getting that gun for the first attempt to kill your husband?

A No.

Q Did you take any part whatsoever in the planning of the death of your husband?

A Absolutely not.

MR. TWOMEY: Nothing further. Thank you.

RE-CROSS-EXAMINATION BY MR. MAGGIOTTO:

Q Mrs. Smart, the conversation on page 19 is when Cecelia told you that Raymond had just gotten out of jail, right?

A I believe I say, "Did you know Raymond just got out of jail?"

Q Well, Cecelia says that he just got out of jail -- I'm sorry, you did. "Did you know Raymond just got out of jail?"

Cecelia says, "Yeah, I knew that."

You say, "What for?"

Okay?

A Right.

Q Would you agree with me that "what for" refers to why

Raymond was in jail?

A Right, I'd heard Raymond was in jail, but I didn't know what for.

Q Now, the insurance policies you were talking about that were left on your desk. This is all before the murder, right?

A Wait a second. I didn't say there was insurance policies left on my desk.

Q With this billfold that you left on your desk.

A No, that -- maybe I said it.

Q Maybe I misunderstood.

Q Right. What happened was that the -- there was one insurance policy in the billfold, but that billfold itself stayed inside the house. There were things from that that I took out in a separate folder and brought to work. One of those wasn't the insurance policy itself, but there was notes concerning insurance.

Q Okay. But you --

A And phone calls and letters and things like that.

Q You would agree with me it wasn't until you got the notice from Metropolitan Life Insurance Company that there was a group policy based upon your husband's salary that you learned the amount of the group policy, right?

A Yes, I didn't know before the murder.

Q And that was after the murder, correct?

A Right.

Q About a week or so, is what you said.

A A week or so I found out there was a policy, but I'm not sure I found out until -- I think the letter came to me like in the middle of May that said how much it was.

Q Are you telling this jury that your taking Prozac made you say what you said on the tapes on July 12th and July 13th?

A No, I'm not saying that at all.

Q Is that your voice on the tapes on July 12th and July 13th?

A Yes, it is.

MR. MAGGIOTTO: I have no further questions.

THE COURT: Redirect?

MR. TWOMEY: Nothing further.

THE COURT: You may step down.

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[Witness excused.]  
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MR. SISTI: Defense would call Patricia McGuinness to the stand.

PATRICIA McGUINNESS,

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. SISTI:

Q Why don't you grab a seat there. I'll clear this for you.

For the jury, could you state your name and spell your last name.

A My name is Patricia McGuinness. M-c-G-u-i-n-e-s-s.

Q Where are you employed?

A For the Bank of New Hampshire.

Q And what are your duties at the Bank of New Hampshire?

A I'm a branch manager.

Q And during the course of being employed as a branch manager by the Bank of New Hampshire, do you have certain access to bank records?

A Yes, I do.

Q Now, you walked into the courtroom with a folder.

A Right.

Q Will you tell the jury what's in there?

A We have copies of statements and cancelled checks and a signature card from Pamela's account, which was joint with her husband.

Q Can you tell the jury more specifically what we're dealing

with with regard to these documents?

A We have copies of statements and cancelled checks from March 23rd, 1990 to June 25th of 1990. They are copies of the specific checks that have been processed through her account.

Q Would those particular checks reflect where the money was going to, you know, on the photocopies?

A Right, we have every document from those statements copied here, which shows where all her money went from that account.

Q Would there also be information with regard to automatic teller machines?

A Yes, ATM transactions are on there also.

Q If an ATM transaction took place, let's say, a few days before May 1, 1990, would that be reflected on those documents?

A Yes, they would.

MR. SISTI: Your Honor, at this time I'd like those marked as full defense exhibits.

MR. MAGGIOTTO: No objection, Your Honor.

THE COURT: All right.

- - -

[Defendant's Exhibits G-1 through G-4, being bank records, marked in evidence.]

MR. SISTI: Thank you for coming.

THE COURT: Just a moment, ma'am.

CROSS-EXAMINATION BY MR. MAGGIOTTO:

Q Hi.

A Hi.

Q Miss McGuinness, is it?

A Yes.

Q My name is Paul Maggiotto. I'm an Assistant Attorney General. We've never met, right?

A Right.

Q Okay. The documents that you brought in are the account that belong to Gregory Smart, Pamela Smart, correct?

A Right.

Q And it reflects the withdrawals on that particular account, right?

A Yes.

Q And when you say it reflects the withdrawals of an ATM machine, you mean any card which was related to that account using an ATM machine, right?

A Correct.

Q Now, besides bank cards which can be used at ATM machines, isn't it true that a lot of ATM machines you can use credit

cards, correct?

A Yes.

Q Okay. Now, if I used by MasterCard at my bank, the statement doesn't show up on my bank account, it shows up on my MasterCard, right?

A Yes.

Q If I use my American Express or another credit card or another bank's card at that ATM machine, it doesn't show up on my bank account, it shows up on the account to which that card applies to, right?

A Yes.

Q If I walk into your bank and have a check that doesn't come from my account, comes from somebody else's account, that I choose to cash, right, it shows up on that person's account, not my bank account, right?

A Right.

MR. MAGGIOTTO: I don't have anything else. Thank you very much for coming.

MR. SISTI: Thank you.

THE COURT: You may step down. Thank you.

THE WITNESS: Thank you.

- - -

[Witness excused.]

MR. TWOMEY: We call Brian Washburn, Your Honor.

THE COURT: All right.

BRIAN WASHBURN,

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. TWOMEY:

Q Please have a seat, sir.

A Thank you, sir.

Q Could you state your full name and please spell it for the court reporter, your last name.

A Brian Washburn. W-a-s-h-b-u-r-n.

Q Where do you live, sir?

A Londonderry, New Hampshire.

Q What do you do for work?

A Self-employed. I do screen printing, stuff like that.

Q Did you ever know an individual named Greg Smart?

A Yes.

Q How do you know Greg Smart?

A I'd met him through friends that I'd met when I first moved

here in like '83. Just -- he was acquainted with the people that I'd met in school and stuff.

Q Can you tell the people in the jury what your relationship was with Greg Smart, if it developed, how it developed?

A We'd ended up hanging out on weekends, go over to his house, just about do everything together, basically.

Q How would you describe the strength of your relationship?

A Very strong. He was my best friend.

Q When was the last time you talked to Greg Smart?

A Sunday before he was killed.

Q How did that come about?

A My girlfriend had a birthday party at our house and him and Pam came up and helped celebrate with her parents and stuff like that, and then after that we went back to their condo, and we usually did that on Sunday night, to play cards or watch TV and stuff like that.

Q You mentioned your girlfriend. Tell the people her name.

A Traci Collins.

Q Now, I asked you earlier when the last time you talked to Greg Smart. Is that the last time you saw him or last time you talked to him?

A Now, that was the last time I saw him. The last time I talked to him was the day he was murdered.

Q Tell the people on the jury about that.

A It was a quick phone call. He called me at work and asked me if I wanted to go to lunch. I said I couldn't because I had to have the tires put on my car.

Q Was that -- Mr. Washburn, was that something unusual for Greg Smart to ask you?

A No, we used to go to lunch all the time. Probably twice a week.

Q I want to ask you some questions, take you back a little bit.

Did you ever have occasion to go to Atlantic City with Greg Smart?

A Yes, about three times.

Q Do you recall the last occasion you went to Atlantic City with Greg?

A Yeah, it was in April.

Q When, about?

A It was in April. I'm pretty sure it was the weekend of Easter. I'm not positive, but --

Q Did anything unusual happen while you were down there with Greg that weekend?

A Well, unusual, kind of, but most of it was pretty normal. It's just when we were playing -- we were playing baccarat,

and usually when he's in Atlantic City he's always happy because he liked to do that, and he was winning a -- well, I don't know if he was winning but he'd won a couple of hands and stuff and he was really excited, and he was sitting there ordering a lot of drinks of stuff, and I asked what was wrong. He kind of rolled his eyes and said everything was all screwed up and, like, what do you mean? He says, "Don't tell anybody this," he said, "but," he said, "I screwed this other girl," and -- and it just -- he said he'd slept with this other girl and that everything was all screwed up, and I interrupted him, asked him who, and he said it was no one that I knew. And then I said -- no, then he said that it was -- just everything was screwed up because anytime him and Pam got in a fight that was all she was bringing up. And then I asked him how Pam found out, and he said that he'd told her. And I just said to him, I said, "Why'd you tell her? I mean, what did you think, she would never bring it up again?" And he said that they'd had some talk or something and that they'd agreed that it wouldn't be brought up. But that's all he said. He said that that's all she brought up whenever they argued. But I'd -- I've seen them argue before and he'd never brought it up before that.

Q Did you have occasion to go over to where Greg lived or that area the night he was murdered?

A Yes.

Q And did you see this woman right here?

A Yeah.

Q Okay. And who am I touching?

A Pam Smart.

Q Could you tell the people on the jury where you saw her and what was going on?

A At Greg's parents' house. I'd gone out with my girlfriend that night and I'd just gone home and went to bed, and I got a call from my girlfriend and she said that Pam had called her and said that Greg was dead. I was -- I was like, "What are you talking about?" She said she didn't know. She just said that Pam called and was -- was all hysterical and Greg was dead and to come down to Greg's parents' house. So then I called Greg's parents' house and talked to his dad, and he said that it was true, and I just kind of sat there for -- like totally shocked, and then I told my parents and I drove over to his parents' house and went inside and saw everybody. There was all kinds of people there, relatives.

Q Did you see Pamela?

A Yes.

Q Where did you see? Describe her physically.

A When I came in she was either sitting or kneeling on the floor, and when she saw us she started bawling, because me and Traci came -- well, actually, Traci came, but me and her came in the room at the same time. She started crying, and I just kneeled down and we hugged. She just asked why, why would someone do this. It was just the way she was all -- she was real hot, like her clothes were like kind of moist and wet. I don't know. It was -- I don't know what it was. But --

Q Did you feel that?

A When I gave her a hug and stuff she seemed like -- I don't know, she was just real warm.

Q Do you recall the Fourth of July that year?

A Yes.

Q What did you do?

A We were at a party at one of my friend's house. He had an outdoor like barbecue with the swimming pool and stuff like that. And Pam came over for a little bit, like a half hour or something like that, and then me and Traci ended up going home, and I'd had a lot to drink, and we were out in the sun playing volleyball and stuff like that. When I

came home I wanted to go to bed because I was tired and had a headache, and then I believe she called but I don't really remember or not, and Traci said that Pam was going to be coming over. And --

Q Did she in fact come over?

A Yes, she did.

Q Describe for the jury her behavior on that evening.

A She was crying when she came to the door and stuff. She just started bawling and stuff when she saw us, and she came in and had her dog with her. She said she was upset.

MS. NICOLOSI: Objection. Hearsay.

THE COURT: Sustained.

Q Go ahead, describe her behavior during the course of the night.

A She just said that --

MS. NICOLOSI: Objection.

THE COURT: Sustained. Can't say what someone else said.

MR. TWOMEY: That's my fault.

Q Mr. Washburn, when I say describe her behavior, I mean physically what you were seeing.

A She just came in and describing -- and saying that she was upset because she missed Greg and stuff like that.

MS. NICOLOSI: Objection.

THE COURT:           Objection's sustained. Jury disregard it.  
                          You cannot say what someone else said.

BY MR. TWOMEY:

Q    Again, just physical things you see with your eyes. Pretend your ears are covered.

A    She was just crying and sitting on the floor.

Q    How long did that continue or how did the evening -- if her behavior changed, tell us if it changed, if it did.

A    She started talking to -- to us and telling us what was wrong.

Q    Don't --

A    I know, I won't say --

Q    Okay.

A    It's just after she got talking, got it off her chest, she seemed to feel a lot better. She just like opened up, you know. Just felt a little better. She said it was just some reason she just went off, and it was just -- just something she missed about Greg or something.

Q    Now, was that typical or atypical? By that I mean, usual or unusual for her behavior in the period after Greg's death until the middle of the summer in the times you saw her?

A    The times I usually saw her was like when I would drop my

girlfriend off to stay at her house or something like that, and she was usually never like that when I saw her. It was like the second time I've ever saw her other than the wake and the funeral, the second time I'd seen her cry when I'd been near her and stuff.

Q Why would you drop your girlfriend off to stay at her house? How often did that happen?

A Right after it happened, like the night that it happened, my girlfriend stayed at her place, and she would just stay at her mother's house a couple times with her, and her place with Pam a couple times because she said she didn't want to be alone.

Q We just talked about July 4th. Do you recall another evening when Pam's -- a little bit after that when Pam's behavior might have been out of the ordinary?

MS. NICOLOSI: Objection. Leading.

THE COURT: It is a bit leading. Why don't you rephrase it.

Q Do you recall another evening -- well, when's the next time you saw her after the Fourth of July, if you recall?

A I don't know, but I know -- I mean, I've seen her many times where she's always been asking questions and stuff like that, but I remember one time when I was at her house, I don't know what day it was, but I know it was at night

because we'd just come back from going to the beach or something like that, and I mean, she'd always -- even in front of other people like Traci and stuff like that, she'd said about ways she wanted to try and find out what was going on. She wanted to talk to Bill's mom to find out if she knew anything about why he was arrested and --

MS. NICOLOSI: Your Honor, I object at this point. If we could approach.

THE COURT: Is it the same objection?

MR. TWOMEY: If we could approach.

MS. NICOLOSI: Object. It's hearsay.

MR. TWOMEY: Like to make an offer of proof at this point.

THE COURT: All right.

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[Bench conference - no record.]

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NOW AT THE BENCH ON THE RECORD:

MR. SISTI: Okay, Your Honor, specifically, we'll be offering the following, that the response from Brian Washburn will be that Pam discussed, among other things, it was her belief that Cecelia had something to do with this, and that other statements including that Pam was thinking of doing things

to elicit information and to gain information with regard to this homicide came out, and specifically, if we have to get into further questions in order to narrow down the time, it will be the summer of 1990. I believe it will be July, in fact, of 1990 when this behavior was noted and these statements were made. During cross-examination of Pamela Smart by the State of New Hampshire this area came into question. In fact, it was a sharp series of questions from the State of New Hampshire putting that particular issue in doubt. We're offering this as a prior consistent statement, first of all.

MS. NICOLOSI: Okay, my response to it being offered as a prior consistent statement is that as of this time we haven't established when this statement was made to this person. He testified on direct that he doesn't know the date of the statement that was made. Unless we can place it in time, it can't come in as a prior consistent statement.

MR. SISTI: Just to combat recent fabrication, Your Honor, I can assure the Court that it was said prior to today.

MR. MAGGIOTTO: Prior to motive.

MS. NICOLOSI: It has to be prior to a motive to have to fabricate.

MR. SISTI: Again, it was prior to an arrest. If that's what we need, that will be established.

MR. MAGGIOTTO: It's prior to statements she made with Cecelia Pierce on tape is what the issue is here.

MS. NICOLOSI: That's right.

MR. SISTI: I think that can be done, too.

THE COURT: Why don't you ask when the statement was made. He can answer that.

MR. TWOMEY: Okay.

MS. NICOLOSI: This statement has to be made prior to conversation with Cecelia Pierce on the 12th and 13th.

THE COURT: I understand that.

MS. NICOLOSI: Placed before that.

MR. SISTI: I would state that would be incorrect. It -- in fact, it should be made prior to Pamela's knowledge of the taping. Not the statement that was made, if we're actually going to test and bring in this as a prior consistent statement in order to rebut an allegation or insinuation.

MR. TWOMEY: I'd just note one thing. There was taping all

the way to August 1st. Certainly prior to August 1st, no question about that.

MS. NICOLOSI: We'll stand on our objection.

THE COURT: If it's prior to July 12th, I'll let him answer that.

MR. TWOMEY: My guess -- my guess, what I believe from the police report, not from him. Talking to him, he'll say between July 10th and July 13th, and I'm not sure of the exact date it's going to be. I'm not sure he's going to be sure.

MS. NICOLOSI: There has been no testimony from Pamela Smart that she had any conversation with Cecelia Pierce after the 13th of July where that plan would have been implemented. This witness had to have been told before that for it to be a prior consistent statement about her intent to do something.

MR. SISTI: Let me just put for this record there was a conversation with Cecelia Pierce as late as August 1st, 1990, and that I think is an uncontroverted fact.

MR. TWOMEY: You have a tape recording of it.

MR. MAGGIOTTO: The point here is a witness, Pam Smart couldn't

testify to a statement --

THE COURT: I didn't hear you.

MR. MAGGIOTTO: That's all right. She said it all.

THE COURT: If it's prior to July 12th, I'll let him answer.  
If it isn't, I won't let him answer.

IN OPEN COURT BEFORE THE JURY:

BY MR. TWOMEY:

Q Mr. Washburn, we were talking -- we were in the middle -- let me finish before you start talking. You might anticipate the wrong question. We were in the middle of telling you about seeing Pamela on another occasion different from July 4th, and you started to tell us something about that and we stopped. Now I'm going to ask you a question. What can you tell us about when this happened?

A When what happened? When I saw her again after July 4th or --

Q Yes, when -- when you were telling us about a specific time that she started telling you things. You mentioned Mrs. Flynn.

A Well, she'd mentioned that a couple of times. That's why --

Q Do you know when those times were?

A I don't know exactly. They were different times.

Q Do you know, were any of the conversations that you were

about to talk about, those areas when she mentioned her intentions to do things, were any of them before July 13th?

A Yeah.

Q Okay. Tell us about some before July 13th with you.

A The only -- I don't know exactly what day they were before July 13th, though, because the thing is she'd said a lot of things many different times, that she'd said things like -- she'd said she wanted to go lay down in the middle of the road in Seabrook and stop the first person who came by in a car because they seemed to --

MS. NICOLOSI: Your Honor, I object to this as being hearsay.

THE COURT: Sustained. Jury will disregard it.

MR. TWOMEY: Could I go back, Your Honor, and try to lay a foundation for that statement?

THE COURT: You can try to lay the foundation. I suppose the State will decide whenever it wants to object to it.

Q Do you recall if that was said prior to July 13th?

A To be honest, I couldn't say. I don't know. I just know she'd said it many times.

Q Do you recall any other statements she made about intentions of things she was going to do in finding out about what happened to her husband? Do you recall any other statements

about those made either on July 13th or prior to?

A Any other statements like that?

Q Yeah.

A Yeah.

Q Pam Smart tells you of things she's going to do.

A Yes, yes, she'd said that -- one thing she said she wanted to do is go find some of Bill's friends to ask them if they knew anything about this.

MS. NICOLOSI: Objection. Hearsay.

THE COURT: Sustained.

MR. TWOMEY: If we could approach, Your Honor.

THE COURT: Same conversation we had a moment ago?

MR. TWOMEY: Yes, I think that the witness has just testified this was before July 13th.

THE COURT: What do you say to that?

MS. NICOLOSI: Witness testified about something we haven't heard in this courtroom at all. Certainly can't come in under the exception you're speaking of.

BY MR. TWOMEY:

Q Let me get specific with you, Mr. Washburn. Did Pamela Smart tell you before July 13th anything about going to talk to Cecelia Pierce because she suspected her?

A She didn't say she was going to -- she'd just indicated to

me that she thought that maybe Cecelia and Rachel knew something about this.

Q What did she say she was going to do because of that?

A What she said to me was, "I wonder if I act like I know something about this if they'll say something to me?"

Q What -- did you respond to that?

A Yeah.

Q What did you tell her?

A I told her not to be an idiot, but I used a different word.

Q Okay. Probably a word you don't want to say here?

A Right.

Q Okay. Think about that time, that conversation, okay? What was her behavior like at that time? How did she appear? Again with your eyes and ears. You don't have to say the words, but tell me what you were seeing with your senses?

A She was just rambling, just throwing things out, I could do this, I could do this, I could do this, just whipping ideas off her head, I don't know, saying things about the car and --

MR. TWOMEY: I have no further questions. Thank you. These people may have some questions for you.

CROSS-EXAMINATION BY MS. NICOLosi:

Q Good afternoon.

A Hi.

Q We've met before, right?

A Yep.

Q Mr. Washburn, the first time you spoke with the police was on May 3rd, two days after the death of your best friend, right?

A Yep.

Q At that time you spoke with a man named Michael Surette, right?

A No.

Q Who'd you speak with?

A Detective Pelletier.

Q And Mr. Pelletier, Detective Pelletier asked you questions about what you might know about the death of your friend, Greg Smart, right?

A Yep.

Q And at that point you told him that you didn't know of any motive at all for this crime?

A Right.

Q You said you didn't know of any suspect, right?

A Yep.

Q And you said that everything was going perfectly fine in Greg's life, right?

A Yeah.

Q Didn't know anything at all that you could tell them that might help them find who killed your best friend, right?

A Well, that I didn't think that that had anything to do with -- with it.

Q What you told them was, you didn't know anything to help them find the killer of your best friend, right?

A Yes.

Q You didn't tell them that Greg Smart had had an extramarital affair?

A No.

Q You didn't tell them that Greg Smart told you that he knew that Pamela Smart had had an affair, right?

A Right.

Q As a matter of fact, you didn't even tell the jury that right now, did you?

A No.

Q Okay. You didn't tell them anything about this conversation while you're gambling with poor Greg being sad just two weeks before his death, did you?

A No.

Q You never thought that maybe a scorned lover of the defendant might have been Gregory Smart's killer?

A I didn't -- I didn't know at the time that she was having an -- the affair still, and I didn't know who it was with.

Q But you knew that Greg Smart thought that she was having an affair, right?

A All he'd said was that she is too.

Q She is too.

A That's the only thing he'd mentioned about it.

Q So it's possible there's a scorned lover out there that could have killed Gregory Smart, right?

A Yeah.

Q Okay. And it's possible that a scorned lover of Gregory Smart could have killed him, right?

A Right.

Q You didn't tell the police that, right?

A No.

Q Okay. When did you go to the police and tell them all about that?

A About the affair part?

Q Right.

A I told Pelletier -- well, see, the thing I'd tried to do on many occasions was to get them to know it without me actually telling them.

Q When did you actually come out and say expressly to a

detective of the Derry Police Department about these affairs?

A I don't know the exact day, but it was probably, I'd say, maybe two weeks ago. I don't know, to be honest.

Q March 11th sound about right?

A Yeah. Yeah.

Q That was right while this trial was going on, right?

A Right.

Q Now, you'd told a person named Tom Perilla about this before you told the Derry Police Department?

A Yeah.

Q And Tom Perilla was a very, very good friend of Gregory Smart's?

A Yes.

Q And Tom Perilla told you he was going to tell William Smart, Greg's father, about it, right?

A Yeah.

Q And he said go to the police?

A I told him I was going to the police.

Q You told him if you didn't go Tom Perilla would go?

A That's why I told him, because I told him I was going to the police. You can ask him that.

Q Now, you told about this affair after you heard about the defendant's lawyer's opening statement admitting an affair,

right?

A Yes.

Q Okay. You watched the whole trial on TV and you saw that opening statement, right?

A Yes.

Q And you told about this affair after Pamela Smart told your girlfriend that she was going to tell everybody about her affair with William Flynn, right?

A Yeah. I actually -- see, what happened is, is Monday night Traci told me that she had something she wanted to tell me.

Q Monday night when?

A The day before the trial started.

Q The day before the trial started you heard that?

A Right.

MR. TWOMEY: The witness hasn't finished his answer. She interrupted.

Q Excuse me. Please finish.

A She told me that she had something she wanted to talk to me about because she'd talked to Pam Saturday, and before she said anything, I said she's had an affair with Bill.

Q So Saturday Traci Collins tell you -- Monday Traci Collins tells you that Saturday, the Saturday before the opening statement, the defendant told her about the affair, right?

A Right.

Q Okay. Now, Traci Collins and the defendant are very, very close friends, aren't they?

A Yeah.

Q Traci Collins has visited the defendant in prison regularly, right?

A Yes.

Q And you yourself have gone a lot, haven't you?

A Yes.

Q As a matter of fact, August 1st to September you went to visit her more than every week while she was in prison, right?

A What do you mean "more than every week"?

Q Well, I'm saying did you go on a more regular basis to visit the defendant from August 1st to September 1st than four times, more than four times?

A Yeah.

Q Every week you went to see her with your girlfriend?

A Yeah.

Q Now, Traci Collins also told you in that conversation that she told Gregory -- that the defendant told Greg Smart about the affair on April 27th, right?

A Yeah. Well, actually, she didn't -- Traci didn't tell me

that. Pam told me that.

Q Pam told you that directly?

A Yes.

Q Okay. But Gregory Smart told you on the 14th or 15th during this Atlantic City trip that he knew about the defendant's affair, right?

A Yeah. All he said was that -- he was complaining about how everything was all screwed up because every time they had an argument she would bring that up. Then he said he didn't think that was going to last much longer because she had too. That's what -- was all he said about it.

Q You met me before, right?

A Yeah.

Q At the Derry Police Department?

A Yes.

Q And we asked you to come speak with us, right?

A Yes.

Q And you met Mr. Maggiotto there as well?

A Yeah.

Q And you came on your own?

A Yeah.

Q You told us you were neutral, you wanted to tell us everything you knew to put it before the jury so they could

decide whether this person was guilty or not guilty?

A Right.

Q And we asked you any problems in the marriage that you know of, right?

A Right.

Q Didn't tell us, did you?

A I told you about what Terry had told me. That was -- that was one of the things I'd tried to tell the police so I wouldn't have to say -- this is going to sound stupid, but the reason I didn't was Greg asked me to promise not to tell anybody and I tried to do that as long as I could.

Q Greg asked you not to tell anybody before he was murdered by somebody, right?

A Right.

Q But you didn't tell us at the police station while we're preparing this case, did you?

A No.

Q Let's talk about the conversation that you and the defense attorney discussed about Cecelia Pierce. Now, you spoke with the police about that conversation when, in August sometime, right?

A I know it was right after the -- I'd gone to that suppression hearing for the tapes and stuff like that.

Q Maybe the bail hearing?

A Yeah, whatever. I don't remember what it was.

Q The bail hearing was mid-August, August 13th.

A I know the day I went it was on a Monday.

Q August 13th sound right?

A I guess so. I don't know for sure.

Q And you spoke with the police four days after the bail hearing, right?

A Yes.

Q Where was the conversation between you and the defendant about Cecelia Pierce?

A At her house.

Q And her house is where?

A In Hampton.

Q Who was present during the conversation?

A Traci was at the house, but she wasn't in the room. She was in the room for the first part of it, which was like the part about when she said she wanted to lay in the road and stuff like that.

Q Anyone else in the house that evening?

A No.

Q Did you and Traci come together to visit Pamela Smart?

A Yes.

Q Who drove?

A I did.

Q Did you leave together?

A I'm pretty sure we did. I'm not sure if it's the night we slept over, because we slept over there one night. Then we all went to the beach the next day, like me and Traci and Pam and Heidi. I don't know. That's the thing. I don't know exactly what day it was because there was many different times when she'd said stuff like that. I couldn't pinpoint a day. I don't know.

Q But you know -- let me ask you this. Traci Collins kept a pretty detailed calendar around that time?

A Yeah.

Q Would that help you refresh your memory about what day you went to the beach, maybe?

A Probably, yeah.

Q Let me show that to you.

I'm showing you a calendar that is July, 1990. Do you recognize the calendar?

A Yes.

Q Whose is that?

A Traci's.

Q I'm pointing you to the 14th of July. Can you tell me

whether that refreshes your recollection?

A Yeah.

Q About when you went to the beach.

A Yeah, says it's Heidi, Pam and me.

Q That was the day you were talking about?

A It was that night. It was that Friday night.

Q The 14th?

A The night before we went -- no, the 13th.

Q So the 13th would have been the night you and Traci stayed over at the defendant's house?

A Yes.

Q Not the 12th?

A No.

Q On the 12th when you visited together -- let me ask you this. Now, are you saying that that conversation happened on the 13th or you don't know?

A I don't know. All I know is it was at night at her house, and I think I've only been to her house at night twice.

Q When was the other time you'd been to her house?

A I don't know the exact date, but it's in the calendar somewhere, I think.

Q Let me bring this calendar --

A I think I dropped Traci -- I brought Traci to Pam's apartment

and dropped her off because she was sleeping there.

Q We know you stayed over on the 13th. That's one night.

A Right.

Q Let me show you what's written on the 12th and ask you if that refreshes your recollection. Excuse me.

A I think it was more -- where are the nights that she slept at Pam's?

Q There are many. All right.

A I don't know.

Q So the 13th is a possibility?

A Right. All I know is it was at night. I remember that.

Q When you spoke with the police you said that it was either the 10th or the 13th, right?

A I guess so, if that's what -- I told them that, whatever it said in Traci's calendar is the night that I was at her house and that had to have been what night it was.

Q So the bottom line is you don't know when this conversation took place?

A Right.

Q If you said the 10th, why would you have said the 10th?

A Because I was at her house at night, I guess. I don't know.

Q But there's nothing in this that reflects you being at her house at the 10th, right?

A I don't know. Does it say that Traci was at Pam's at all?

Q Want to take a look at it again?

A Yeah. [Witness reading.] Yeah, it was the 10th, because that's when Traci slept at Pam's.

Q Okay.

MR. TWOMEY: Would you repeat that. I couldn't hear it.

THE WITNESS: I said, yes, that it could have been on the 10th because that's when Traci slept at Pam's.

Q So on the 10th you drove down, you left your girlfriend at Pam's?

A Yes.

Q She slept over and you went back to Manchester?

A Yes. I remember because I had to drive home with one contact in because I'd ripped one.

Q Now, this conversation either happened on the 10th or the 13th?

A It could have been. If there was any other times -- I'm pretty sure I was only there twice at night, though. I have no idea. It could have been a different night. I don't know the exact date.

Q All right. You spoke with the police, you said most likely it was the 10th?

A I said most likely it was the 10th or the 13th because those were the only times I knew I'd definitely been there at

night because Traci had it in her calendar.

Q Now, you remembered this conversation -- just give me a moment.

The conversation you had with the defendant, she said she wondered if Cecelia Pierce or Rachel Emond knew anything, right?

A Yeah.

Q She didn't tell you that she knew that Cecelia Pierce knew something, right?

A She said she thought that they might know something.

Q Did she tell you why she thought these two high school girls knew something?

A Just because they hung out with Bill.

Q She didn't tell you that Cecelia Pierce was acting strange?

A No.

Q She didn't tell you anything that Cecelia Pierce had done that would lead her to this wondering whether she was involved or not?

A No.

Q Did she tell you in that mid-July time that she'd already started implementing this plan to get information from Cecelia Pierce on June 13th?

A Did she tell me before that?

Q Did she tell you that she'd already tried the scheme on July 13th?

A No, all she'd said -- she brought up the idea should -- she thought they knew something about -- she was wondering if I talked to them and pretending like I knew something about it they would start saying, stuff like that, and I told her not to be an idiot.

Q She didn't state to you she'd already tried this before?

A Right.

Q And she didn't tell you that she'd told Cecelia Pierce that she was involved in the murder and had lied to her to get her to say this, right?

A No.

Q And you told her God, that's crazy. It was a crazy idea, wasn't it?

A Yeah, I just told her not to be an idiot. I said, "If Cecelia doesn't know anything about it, where do you think the first place she's going is?"

Q What did she say to that?

A She said, "Well, yeah, you're right."

Q Did she tell you, "Boy, Cecelia told me she's going to the police because I already told her I was involved"?

A No, that was about it. Then she came up with just other

ideas and stuff like that.

Q Did she tell you that Cecelia Pierce might be bugged, that she was worried about that?

A No.

Q Did she tell you she was afraid to talk to Cecelia on the phone because her phone would be tapped?

A She never mentioned Cecelia to me, really, other than that one time.

Q And you told her it was crazy, that she shouldn't do it because if Cecelia wasn't involved where is the first place Cecelia would go, the police. What'd she say to you?

A She said, "Yeah, you're right, I guess."

Q She agreed with that?

A Yeah.

Q You recalled this conversation at the day of the bail hearing, right?

A Yeah.

Q That was the first time you'd heard anything about body wires, right?

A Yeah.

Q First time you heard on July 13th this defendant had made what the State represented to be pretty incriminating statements to her friend, Cecelia Pierce?

A Yeah.

Q You heard that that date was July 13th right around the time that this conversation you say happened?

A Right.

Q You never thought about that before, right?

A No.

Q You never thought when this defendant said that she wondered whether Cecelia Pierce and Rachel Emond knew something, never crossed your mind that maybe you should call the police and tell them that she's got suspicions about people?

A When she said that, no, because she was -- I mean, if that was the case, I would have to tell them that she wanted to go lay in the road in Seabrook and talk to the first person that came by. She was always saying crazy stuff like that.

Q You don't know whether the conversation with the defendant happened after those body wires or before, right?

A I have no idea.

Q Now, you went to the beach on the 14th, you said, with the defendant?

A Yeah.

Q Did you ask her whether she'd attempted to try this scheme to ask Cecelia?

A No.

Q Did she tell you that she'd tried it?

A No.

Q Did she tell you whether she'd tried it with Rachel?

A No.

Q Did she tell you -- did you ask her that?

A No.

Q No conversation about it at all?

A No.

Q Did she even tell you she'd seen Cecelia Pierce just yesterday and the day before?

A No.

Q Cecelia's name never even came up?

A Not that I remember, no.

Q You remembered about the conversation right after the bail hearing, right?

A Yeah.

Q And you tossed around a little thought, what should I do with this information, and who did you go to first?

A I told her lawyers. Actually, the first person I told was Traci.

Q After you told Traci, who did you tell?

A Her lawyers.

Q You went to the defense lawyers before you went to the police?

A Yes.

Q Now, you're the person who said you wanted the State to have all of the information that could possibly help find the killer of your best friend?

A I'd called the police on the same day to make an appointment with Pelletier, and he said he couldn't see me until Friday.

Q But you went to these people first?

A That's because they could see me first. If Pelletier had said to come in, I would have gone to him first.

Q And who'd you talk to when you went to the defendant's attorneys?

A Paul, and I think it was Gagnon, I think. I'm not sure who else was there.

Q Did you try and narrow down that date, was that important?

A Not really. I just had told them about the conversation. I basically told them that it was at night at Pam's house, but I didn't know the exact date. But I said Traci's calendar had said that she was there like two nights.

Q Later did you and Traci sit down and try and narrow down the date?

A Kind of. We like went through her calendar to try to remember events, like we know sometimes when she would sleep over to Pam's, but I would just take her over to her

mom's house in Windham and then they would go from there to Pam's house.

Q When you talked with Traci about it, did you personally arrive on a particular date, whether it was the 10th or the 13th?

A No, we just said it could have been either day. I said I didn't know.

Q But it sure would be better if it was the 10th for Pamela Smart, right?

A I could have been. I have no idea when it was. If that was the case, I would say it was the 10th.

Q Let me show you your statement. Do you remember this statement that you filled out for the police?

A Yep.

Q It's page 441. The beginning of it says, "On July 10th," then in parenthesis, "or the 13th, but I believe the 10th," parenthesis, "I was at Pam's house."

Why the preference for the 10th?

A I don't know.

Q Do you have a lawyer, Brian?

A Yes.

Q Who is your lawyer?

A What's his name? Hold on a second. Frank Zimler.

Q What is he representing you on?

A Because I'd gotten many contracts and checks, people sending me checks in the mail and stuff.

Q Sending you checks for?

A They wanted my rights to a movie.

Q What's the movie related to?

A This trial.

Q What's the size of the checks that you're receiving?

A I received one for \$2,000.

Q What's the lawyer doing for you?

A Because I didn't know -- I said I didn't want to do anything with it, so I gave it to him because I didn't know how to read contracts or what to do with it.

Q Stuff like that that you want nothing to do with it, why don't you say no?

A I didn't say I didn't want nothing to do with it. I said I didn't want to deal with it.

Q It's okay to enter into contracts and make money off the death of your best friend, right?

A Everybody else is. It's not -- I don't know.

Q Okay.

A No, it's not all right.

Q Let me just get this straight. First time you talked to

the police, you lie, you say you don't know anything, right?

A Any -- I said anything related to the case. I didn't think that was related to the case.

Q After you hear about this bail hearing and you hear about the tapes, then you say, "Oh, I've got this piece of information that I forgot about," right?

A Yeah.

Q Okay. And then after you hear the opening statement of this defendant, then you go to the police and say, "Oh, I got another piece of information that I forgot about"?

A No, I'd been trying to let them know about this without me telling them beforehand. I mean, I was the one who went to Pelletier and told him about what Terry had told me.

Q Why didn't you just tell him the information?

A Because I didn't want to tell him. I didn't want to get involved with it.

MS. NICOLOSI: Okay. Thank you.

REDIRECT EXAMINATION BY MR. TWOMEY:

Q Brian, why -- let me ask you the same question Miss Nicolosi just asked you. Why didn't -- why did you wait -- strike all that. Let me start over again.

When did you first tell me, Sisti or Pamela about what Greg had said in Atlantic City? How long ago was that? Was

that six months ago?

A No.

Q Was it about the same time you went and told the police about it?

A Yeah.

Q Why did you wait so long to tell us about it?

A Because I didn't want to tell anybody about it. I didn't even tell Traci about it. I didn't even tell Traci about it.

Q You didn't tell Traci, you didn't tell Pam or her lawyers, and you didn't tell the police. Would you look at the jury and tell them why you didn't want to tell anybody about that?

A Because he's asked -- Greg had asked me to promise not to tell anybody.

Q The prosecutor showed you -- refreshed your recollection with a document. I'm going to show you one. I don't have the exact one. Let me show you this. Is this a similar document except for there's some pink marks on it?

A Yeah.

Q The one she showed you have any marks on it?

A I don't think so.

MR. TWOMEY: Okay, I'd like one of the two marked for identification -- as a full exhibit, Your Honor, at this point in time.

MS. NICOLOSI: Your Honor, I'd object to this. If they want the substantive content of this they can call Traci Collins to the stand. At this point it's filled with hearsay.

MR. TWOMEY: I think the rules -- should I approach, Your Honor?

THE COURT: Let me see one of them with the markings.

- - -

[Pause - the Court is examining the document.]

- - -

THE COURT: You asking for the whole document to come in or just the --

MR. TWOMEY: The entire document was given to the witness to refresh his recollection, and my memory of the Rules of evidence, Your Honor, is that if a party refreshes a witness' recollection the opposing party can put the whole document in.

THE COURT: If you refer the witness to a single page in Encyclopedia Britanica, does that mean the whole set comes in?

MR. TWOMEY: No, no. I don't know what to do, cut out words?

THE COURT: I believe you can cut out the sections referred to, which is the 12th, 10th and 13th.

MR. TWOMEY: I have no problem with that. Perhaps at the break we can cut out the 10th -- I think the 10th, 11th, 12th, 13th, 14th are all I could recall.

MS. NICOLosi: If I could be heard on it. This was used to refresh a witness' memory, and the evidence before the jury is what he recalled from having looked at it. This wasn't evidence admitted by the State so that Rule 106 applies. This witness testified, and there's no need for this document to come in as substantive evidence. I didn't use it that way.

THE COURT: All right. Well, do you want to further respond to that, Mr. Twomey?

MR. TWOMEY: I think, and again I don't have the rule in front of me, although I just tried to get it, I think the rule is if an attorney gives any document whatever to a witness to refresh recollection, the other party can put in what the witness is shows as a full exhibit. Quite frankly, I don't think it's that important. I don't want to keep arguing about it. I'll just go on, if the Court wants me to.

THE COURT: 106 says when a part of a document is introduced that the remainder which is relevant can come in. I'm going to sustain the State's objection to that.

MR. TWOMEY: Okay.

THE COURT: Although you can refer to it if you wish to refresh his recollection.

MR. TWOMEY: Okay.

BY MR. TWOMEY:

Q I'm going to show you again the same document the State showed you. Is there anything on July 10th that refreshes your recollection about what you might have done?

A Says, "Slept at Pam's."

Q Does that mean you slept at Pam's?

A No, that means Traci.

Q Would you recognize that handwriting there?

A Yeah.

Q Did you tell the police when you first went to them with this information that you thought it was probably the 10th and perhaps it was the 13th?

A Yeah.

Q Is that still what you think?

A Yeah, I guess. I -- it could be any of the dates I was

there. I'm not exactly sure what exact date it was.

Q Brian, what was running through your mind when the prosecutor asked you that question is it right to take money in the death of your friend?

MS. NICOLosi: Objection.

THE COURT: Sustained.

Q Greg Smart your friend?

A Yes.

Q Do you have strong feelings about Greg Smart?

A Yes.

Q Do you still have strong feeling about him?

A Yes.

MR. TWOMEY: Nothing further.

THE COURT: Take a short recess.

- - -

[Witness excused.]

- - -

[Recess at 2:07 p.m.]

- - -

IN OPEN COURT BEFORE THE JURY:

THE COURT: Mr. Twomey, it appears that upon a review of the rules of evidence that the relevant portions of that document which I previously ruled were

not admissible are in fact admissible. They may be excised from the whole and entered as an exhibit, and they will be. That's, I presume, the 10th, 13th and 14th.

MR. TWOMEY: Can we do that, Your Honor, after the end of the session today?

THE COURT: Yes, you may. You may proceed, Mr. Sisti.

MR. SISTI: Thank you, Your Honor. At this time the defense would call Patty Wiser to the stand.

PATTY WISER,

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. SISTI:

Q Please take a seat. For the record, could you state your name and spell your last name, please.

A Yes, Patty Wiser. W-i-s-e-r.

Q And how are you employed?

A I'm employed at SAU 21 for the Media Center. I'm a Media Assistant.

Q And are you currently employed in that position?

A Yes, I am.

Q What does that entail?

A Many duties. A lot of secretarial duties, and right now the running of the Media Center, keeping up with the school orders that come in. We serve 11 schools and deal with the learning materials, instructional material that go out to the schools.

Q Do you know Pam Smart?

A Yes, I do.

Q And just for the record, can you point her out, please.

A Sitting right there (indicating).

Q Just describe what she's wearing.

A A green suit.

MR. SISTI: Let the record reflect that she's been identified.

Q I'm going to take you back to 1990, if I could. How were you employed back in 1990?

A As the Media Assistant or Pam's secretary at the time, which is the same job. But --

Q Basically, the same thing you've already told the jury?

A Yes.

Q And I want to take you to a specific date and ask if you have a recollection of it. May 1, 1990. Do you have a recollection of that date?

A Yes.

Q With regard to May 1, 1990, were you working that day?

A Yes.

Q And can you tell the jury what time you went to work and how your day progressed?

A I go in at 8 o'clock in the morning, and during the morning I just went on with regular chores in the office, and I believe Pam had come in late that morning because she was going to a meeting that evening, and that was a regular doing. If she had a meeting in the evening, she would come in late in the morning and then work through the meeting. And then around -- shortly before noontime the whole office, the entire office went to Portsmouth to celebrate Secretary's Day, I guess, and we all left to be in Portsmouth at the Library Restaurant around -- we had to be there at noon for lunch.

Q Okay. You had to be at the restaurant at noon. Did you allow yourself some driving time to get there?

A Yes, we probably left around quarter of 12, thereabouts. I'm not sure of the exact time.

Q What was the occasion for going to the Library?

A It was Secretary's Day. We did this every year. The whole entire building would go out for lunch for a couple hours.

Q Now, between quarter to 12 on May 1, 1990, and the time you

returned, who were you in the company with?

A The entire time we were with the entire office except for the people in the cars.

Q Was Pam with you?

A She wasn't in the car going down, but in the restaurant we were all together.

Q Did she arrive at the same time?

A Yes, we all drove down and got there within minutes of each other.

Q And I take it that you had some lunch or something?

A Yes.

Q About what time did you return to the SAU 21 building?

A I'm not exactly sure, but I would say around 2:30.

Q About 2:30 in the afternoon?

A Yes, uh-huh.

Q Do you know what time the students are let out of school at Winnacunnet High School?.

A Around 2:15 or 2:20. I'm not exactly sure.

Q Were you present at SAU 21 before or after the kids were let out of school?

A I was there the whole day until approximately 4 o'clock except for the time we were at lunch.

Q And were the kids let out of school before you returned

from the Library Restaurant?

A I would assume so, give or take a few minutes. I'm not sure what time we got back exactly.

Q All right. Let me ask you a specific question. Do you have any recollection whatsoever of Cecelia Pierce being in the Media area at all on May 1, 1990?

A I don't have a recollection of it because she was in and out. She may have come in in the morning to do some work, which she -- she came in every day normally to work because she was working for us at the time, and she may have come in during her study period and done her work and then left.

Q Uh-huh.

A But I don't recall exactly what time that would have been.

Q Okay. Do you have any recollection whatsoever of Cecelia Pierce being present in the Media area when Pam Smart would be present in the Media area?

A I don't have a recollection of that, but Pam was not in the Center, physically she wasn't in our office area very much until after we got back from lunch because she'd come in late. Then she had a meeting with the superintendent upstairs and then we waited for her to come out of that meeting so all of us could leave together. And so I would say that --

Q So --

A -- the possibility of her being there at the same time is not correct, you know, I don't think she was there.

Q Let me just ask you a couple other things with regard to this Media Center. You knew Pam's work habits, I take it?

A Sure.

Q You knew where her physical office was?

A Yes.

Q Did students have access to her office?

A They would go in and out if she was there, and Cecelia went in everyday whether Pam was there or not because we would leave her work in a folder and she would just go in and do her work and then go back to class.

Q I guess that's my question.

A Yes.

Q Was the door locked?

A No.

MR. SISTI: If I could just have a moment, Your Honor.

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[Pause - Mr. Sisti, Mr. Twomey and the defendant conferring quietly.]

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MR. SISTI: Thank you, Patty.

CROSS-EXAMINATION BY MS. NICOLOSI:

Q Hi.

A Hi.

Q You don't have any specific recollection of Cecelia Pierce being there in the morning or the afternoon, but it's possible their paths crossed at some point during the day?

A They could have, but I don't have a recollection of it.

Q All right. It's a long time ago.

A Yes.

MS. NICOLOSI: Nothing further.

MR. SISTI: Thank you.

THE COURT: You may step down. Thank you, ma'am.

THE WITNESS: Thank you.

- - -

[Witness excused.]

- - -

MR. SISTI: Defense rests, Your Honor.

THE COURT: All right. Ladies and gentlemen, the State's rested and the defense has rested, and tomorrow will be closing arguments and charge and you'll begin deliberations tomorrow.

There are some matters to go over in the morning with defense counsel -- I mean with

defense counsel and the State's counsel. So I'll ask you to come in tomorrow morning at 10 o'clock, at which time final arguments will begin. So tomorrow, 10 o'clock. Please don't discuss the case at home, don't read anything, listen to anything. Have a nice evening. We'll see you tomorrow at 10. Thank you.

- - -

[Jury excused for the day at 2:38 p.m.]

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IN CHAMBERS - 2:41 P.M.:

THE COURT: All right, we're in chambers after defense has rested, and defense has several motions to make.

MR. TWOMEY: Yes. At this time, Your Honor, I'd like to renew my motion to dismiss based on the insufficiency of the evidence taking into account all of the evidence at this particular juncture. I'd like to adopt by reference all my remarks made at the end of the State's case. That's all I have to say on that motion.

MR. MAGGIOTTO: I'll adopt our remarks as well.

THE COURT: Motion's denied. Another motion?

MR. TWOMEY: I'd like to renew and in a sense make a new

motion to suppress all the tapes in this particular matter based on the evidence that was adduced from Cecelia Pierce concerning the nature of the stop of the defendant. She indicated that -- I won't go through all of it. She indicated that stop -- again, I'm talking before the boys' arrest when they're driving to the beach is the point in time for reference. In particular testimony, she indicated that there's ten minutes while they're held. There are policemen on horses, paddy wagons, motorcycles and cruisers. She indicates that a spotlight was put on them throughout that period of time. She indicates that they were made to hold their hands up, and I believe the defendant's testimony corroborates some of those details.

What that means is that on that particular day the defendant was arrested. The Court's original order was based I think upon the believe that there was no need for Fifth and Sixth Amendment protections because an arrest hadn't occurred and adversary proceedings had

not taken place. In other words, it wasn't a formal indictment pending. I think the testimony from Cecelia Pierce indicates that in fact an arrest had taken place, and while there was not a formal indictment you have to reanalyze what the situation is where there has been a full-blown arrest.

I again cite State v. Brodhead. Again, I have to guess at the cite. I think it's 109 New Hampshire. It's a case -- I think Governor Thomson was in a car, saw somebody speeding, told his driver to pull over, stop the guy. He did stop him, and then because Governor Thomson was busy, and another trooper came to the scene, the first guy left. At any rate, in that particular case the question became what was an arrest, and the Supreme Court indicated "no magic words are necessary to effectuate an arrest," and indicate just the simple action of the state trooper/chauffeur of the governor pulling the man over, and I think he had him get out of the car, and something else, that in fact was an arrest. That's a far lesser

intrusion on the liberty of the citizen than what Cecelia Pierce said occurred to my client on that date in June. Once you accept it as an arrest, there's a subsequent invocation of Fifth Amendment right to remain silent, no further questions by the police. I think the State already conceded or I think it at least, apparently from the record, that Cecelia Pierce was an agent of the police on each and every occasion she goes to talk to my client. They are then, after an invocation of the right to remain silent and invocation of Sixth Amendment right to counsel, the police are initiating contact with a defendant and I think the analysis is significantly different and mandates the suppression of the tapes and the testimony.

As a final matter, there's a cite, Gouledi v. the United States, I don't have a cite but I believe it's 1951, which indicates that a court even after a suppression matter has been fully dealt with, if further information comes to the court's attention at any point in time in the

proceeding the court has an obligation to basically re-examine the suppression question the court believes that evidence was illegally seized, the court has an obligation at any point in the proceeding, whether or not a motion is even filed, in the first instance to effectuate and protect the constitutional rights of citizens. That's all.

THE COURT: Motion's denied.

MR. SISTI: One additional housekeeping matter. There's a letter from Vance Lattime, Jr. to his girlfriend that is marked for identification at this juncture -- I think it's Defendant's D. I don't have the list in front of me. The letter specifically deals with comments that he makes to his girlfriend with regard to communication among all three individuals held at ADC at the time of the writing of the letter. It was marked for identification. I offered it as a full exhibit. The Court stated on the record that it was being taken under advisement. I'd move at this time to have the identification stricken and move that letter in as a full exhibit.

THE COURT: State want to respond to that?

MR. MAGGIOTTO: We would object to it.

MS. NICOLOSI: I think the State's objection was there was a portion of that letter that was used in impeaching Vance Lattime, Jr. and the rest prejudicial and unrelated to the part defense counsel was impeaching with him. I think we'd said no objection to that portion read into the record relating to the communication between he and his girlfriend.

MR. MAGGIOTTO: He's talking ADC.

MS. NICOLOSI: Yeah, but the remainder we'd object to. No reason for it to go in. We don't need it for contextual understanding.

MR. SISTI: I do need it as a contextual understanding where he was and who he was talking about, who he was communication with, so that this jury can understand whether it was just a mere exaggeration, as Mr. Lattime stated from the stand, or whether or not he was drafting a letter that would have been contemplated as being a personal and private matter specifically with his loved one and wouldn't be circulated

so there would be an inherent indicia of reliability in the letter so that the full context of that letter would indicate it was not exaggeration and that there's conversation among these three individuals at ADC in Concord prior to December 24th, 1990 when they claim that's when they began to speak freely among themselves when the court order was lifted.

MS. NICOLosi: I think that Mr. Sisti says he needs the remainder of that letter to be admitted for what is perfectly well established by the testimony of Mr. Lattime. He testified that he didn't know defense counsel had the letter, that he wrote it to his girlfriend. He admitted that he wrote the words. It was directly related to the subject matter that he was testifying to. He said that the girl that he had been seeing, he had been seeing for awhile, and the rest of it just isn't probative and it's prejudicial and there's no reason for it to come in. I would say its probative value is not outweighed by its prejudicial nature.

MR. SISTI: It's relevant, it's probative and a proof

favorable to the defendant, so the additional argument would be that we ask that it be admitted under Part 1, Article 15.

THE COURT: Go ahead.

MR. MAGGIOTTO: I was going to add for the record, the purpose of the record was to impeach the prior inconsistent statement as admitted by the witness. The defense doesn't get to put it in because he wants to offer favorable proof to his case. It's well established that just because it's favorable to the defendant's case doesn't mean the rules of evidence are abrogated. So the State objects. It was used for the purposes he wanted to use it for. The witness admitted it. It's not a prior inconsistent statement to be admitted for that purpose and no reason.

THE COURT: Defense motion's granted. I'll allow it in.

MR. SISTI: Thank you.

MR. TWOMEY: Just one last thing about the calendar of Traci Collins. I don't have a copy that I haven't highlighted. Can you give --

MS. NICOLOSI: I think I have a pencil mark on it, but I think

that's it.

MR. TWOMEY: Can we go somewhere and --

THE COURT: I think the pencil mark surrounds the whole date of the note.

MS. NICOLOSI: What is it exactly that the Court ruled we're going to allow to go before the jury?

THE COURT: 10th, 13th, 14th.

MS. NICOLOSI: There's writing that goes up the side along the 10th that relates to the subject matter we were talking about.

THE COURT: Well, if you can agree what the writing is. If you can't, excise it. You can add the words at the bottom.

MR. TWOMEY: Okay. How about Miss Nicolosi and I compare my copy with the highlight on it with hers and then try to reach an agreement. If not, come to the Court in the morning, let the Court decide it.

THE COURT: All right.

MR. TWOMEY: We'll do that and then take it to the court reporter.

MR. MAGGIOTTO: Anything else?

MR. TWOMEY: No.

[Identification stricken from Defendant's Exhibit D.]

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[In chambers hearing concluded at 2:51 p.m.]

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