

Q Facing the jury, why don't you show us how Greg Smart was kneeling. Why don't you get back up a little, Bill.

A You want me to kneel down?

A I want you to kneel down and show us how Greg Smart was kneeling.

Now, I'm going to ask you to face the jury.

A He was on his knees --

Q Talk loud.

A He was on his knees like this. Pete had his hand in his hair and his head down, and I believe his hands were in his lap.

Q Now, you had your head down. Show us how his head was.

A Like down like this.

Q And Pete's hand was in his hair at that time?

A Yes, it was.

Q Where were you standing in relationship to Greg Smart?

A He was kneeling down, and if he was facing the jury, I would have been right here behind him.

Q Why don't you kneel down and put me where you were standing.

A All right. I was right here.

Q Ask you to speak up.

A Greg was right here.

MR. MAGGIOTTO: Everyone hear him?

Q Place me where you were standing. Tell me when to stop.

A All right, stop.

Q Right here?

A Yes.

MR. MAGGIOTTO: Let the record reflect I'm standing to the left
of the witness, slightly behind.

Q His head was in a downward fashion like that?

A Yes.

Q Now, place me where Pete was standing.

A Directly in front of me.

Q Tell me when to stop. Directly --

A Yes.

Q What was directly behind Greg Smart?

A The wall where the stairs are.

Q You can return to your seat.

-- --
[Witness resumes stand.]
-- --

Q Prior to Greg getting to the floor, had you struck him at
all?

A I don't believe so, no.

Q How was it that you overpowered him?

A Pardon me?

Q How was it that you overpowered him?

A Well [witness crying.] Well, after he got into the house --

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[Tissues handed to the witness by the bailiff.]

- - -

THE WITNESS: Thank you.

A He wasn't struggling very much. He was just asking --

Q What was he asking?

A Just what was going on.

Q What'd you tell him?

A I just told him to shut up.

Q Pete say anything then to him?

A Once he was down on his knees, but I don't remember what that was.

Q How long -- you don't remember what Pete said to him?

A No.

Q What happened next?

A Well, he was kneeling there. There was -- he was -- we weren't going to be able to cut his throat.

Q Why weren't you going to be able to cut his throat?

A Because, just wouldn't be able to, you know, bring ourselves to do it.

Q Why do you say that?

A Well, he was just -- he was kneeling down, you know, in front of us. We just couldn't do it.

Q Where was the knife in relationship to Greg Smart at this time?

A Pete had him by the hair with one hand and had the knife by his face.

Q I'd like to show you what's State's Exhibit Number 39. Does this look like the knife?

A Yes.

Q Is this the knife that Pete Randall had in front of Greg Smart's face?

A Yes, it was.

Q After -- we'll, when you felt you couldn't cut his throat, what happened next?

A I motion to Pete like this (indicating) because that's where I had the gun.

Q Can you stand up and show the members of the jury how you motioned to Pete?

A I just went like this (indicating) because that's where the gun was.

Q Sit down. When you motioned --

MR. MAGGIOTTO: Let the record reflect the witness took his right hand and pointed to his left breast

indicating a motion he did at that time.

Q What happened after that? What did Pete do?

A Pete nodded his head yes.

Q What was Greg doing or saying at this time?

A Well, he was still kneeling there but I don't know what he was saying.

Q After Pete nodded his head yes, what did you do?

A I took the gun out, out of my pocket.

Q I'd like to show you State's Exhibit 40. Is this the gun you had at that time?

A Yes, it is.

Q How do you recognize it?

A I just remember it.

Q After you took the gun out, what did you then do with the gun?

A All right. I took the gun out of my pocket and I cocked the hammer back.

Q After you cocked the hammer back, did Pete or Gregory Smart say anything?

A Pete and Greg were still talking, but I don't remember what they were saying.

Q You weren't paying attention to what they were saying?

A No.

Q Then what happened?

A I cocked the hammer back and I pointed the gun at his head.

Q After you pointed the gun at his head, what'd you do?

A I just stood there.

Q How long was it?

A A hundred years, it seemed like, and I said, "God forgive me."

Q After you said, "God forgive me," what happened?

A I pulled the trigger [Witness crying.]

THE COURT: Take the morning recess.

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[Recess at 10:26 a.m.]

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MR. MAGGIOTTO: May I continue, Your Honor?

THE COURT: Yes, you may.

DIRECT EXAMINATION BY MR. MAGGIOTTO (Continued):

Q How long was the gun out before you shot Gregory Smart?

A I don't know.

Q What part of his body were you aiming at?

A His head.

Q How far away from his head was the gun when you pulled the trigger?

A It was close. I don't know.

Q Why did you say, "God forgive me"?

A Because it's not something that -- I didn't want to kill Greg. You know, I wanted to -- to be with Pam and that's what I had to do to be with Pam, but I didn't want to kill Greg.

Q What happened after the -- what happened after you shot Gregory Smart?

A I ran.

Q Where did you run?

A Out the back door.

Q Who made it out the back door first?

A Me.

Q Now, when you got to the back door, what did you have to do to get out?

A Open the door and -- I don't remember. I just ran.

Q Was it locked, unlocked?

A Unlocked.

Q When you got on the back porch, what happened next?

A Well, there's a rail there so I jumped over it, but -- so I just ran.

Q How long after you fired the shot was it before you ran?

A Roughly a half a second.

Q Now, where was the gun at this time?

A In my hand.

Q After you jumped over the railing, where did you go?

A Through the field. We were going to run back to the back of the plaza, change into our clothes and then go meet J.R. in the car, but J.R. was driving by as we ran out.

Q Now, as you were running through the field, what, if anything, happened?

A Well, I was running too fast and I fell.

Q What about Pete; where was he when you fell?

A Behind me.

Q What happened after that?

A Well, I got up and I was still running. J.R. had stopped the car, and I fell again, and Pete passed me that time. We got to the car.

Q Now, when you got to the car, what did you have in your hands?

A The gun.

Q Anything else?

A No.

Q What about Pete?

A The black bag of stuff.

Q Where was the knife?

A He'd dropped it.

Q Did you drop anything?

A Yeah. Well, when I got in the car, one of my gloves was gone, so I dropped one of my gloves.

Q Do you know how this glove got off your hand?

A No.

Q Just when you got in the car one was missing?

A Yes.

Q You don't have any recollection of that?

A No.

Q What was going through your mind as you were running across through that field?

A I don't really remember what was going through my mind. I know I was really scared.

Q Now, when you got to the car, which way was J.R. facing; towards the back of the plaza, away from the back of the plaza?

A Towards the back of the plaza.

Q When you got to the car, where was Raymond Fowler?

A Front passenger's seat.

Q J.R. was in the driver's seat?

A Yes.

Q Where did you go in the car?

A Back seat behind J.R. Pete got in the back seat behind

Raymond.

Q When you first got in the car, what happened next?

A All right. Pete was telling him to go, to get going, and they was sitting there asking, you know, did you do it, did you do it, did you do it, and Pete was telling them to go. They just kept asking, so then I screamed at them to go and we started going. We got the clothes from down the stairwell.

Q How do you get the clothes from the stairwell?

A Got out of the car, grabbed the duffel bag.

Q Who grabbed it?

A I think I did.

Q Do you know?

A I don't remember, no.

Q After you got -- the clothes were gotten, what happened next?

A Well, we started driving away.

Q And as you were driving away, where were you going?

A Back to Seabrook.

Q And did anything happen on the way back to Seabrook?

A We got out of those clothes because we wanted to get rid of them now, put our normal clothes back on, pulled over on the side of the road somewhere and threw all the black

clothes out. And the shoes.

Q Was everything thrown out at once?

A Yes.

Q And was there any conversation in the car at this time?

A Conversation? Well, J.R. and Raymond was singing some stupid song to a -- try to calm me down.

Q Were you singing?

A Was I singing? No.

Q After you -- where did you change out of your clothes, in the car or at the dumpster?

A In the back seat of the car.

Q After you got rid of your clothes, what happened next?

A Well, we got back into the car and we drove back to Seabrook.

Q Do you know how you drove back to Seabrook, which route you took?

A Oh, which route? No.

Q Now, where were you in the car?

A Back seat behind J.R.

Q Where was Pete?

A Back seat behind Raymond.

Q And where was the gun at this point?

A I think I put it back in my jacket pocket. Oh, no, we

threw that out, so -- in the duffel bag, I think.

Q Are you guessing?

A I'm pretty sure that's where it was.

Q Now, when you got back to Seabrook, what happened?

A Well, I was the first one to get dropped off, so they dropped me off at my house, and then -- I wasn't there, but what I understand was --

Q Well, if you weren't there you can't testify about it.

A All right. It's what I was told.

Q Were you told?

A Yeah.

Q By who?

A J.R. the next day in school.

Q What they did after they dropped you off?

A Yeah, because I asked them. They just said -- he said, "I dropped Pete off and I dropped Raymond off and I went home."

Q Did you go anywhere else that night?

A No, I did not.

Q Did you have any contact with the defendant that night?

A Pam? No. Well --

Q After the shooting.

A After the shooting? Not -- at the wake, but --

Q No, I'm just talking about that night, May 1st.

A Well, she had drove by. She said she saw our car. She flashed her headlights off and on, but we didn't see it.

Q She told you that later?

A Yes.

Q What I'm asking is, after that night when you got home, did you have any contact with the defendant?

A No, I didn't.

Q Like to show you State's Exhibit Number 5,

A Oh, fuck.

Q It's the candlestick by the foot of Gregory Smart. Is that the candlestick you had in your hand?

A Yes.

Q Can you tell us how it got there?

A I -- I put it on the floor.

Q Take a minute. How about the wallet between his legs?

A I don't know how that got there.

Q Do you have any recollection of any conversation about the wallet?

A I don't have any recollection of any conversation. I just know that there was --

Q What about the towel by his head?

A Huh-uh. No.

Q You don't know how it got there?

A No.

Q Do you have any conversation about a towel?

A Not that I remember, no.

Q Did you want to testify here today?

A Did I want to? No.

Q Why not?

A Well, I didn't want to testify against Pam.

Q Why didn't you want to testify against Pam?

A Well, for one thing, you know, I told her I'd never tell on her, and, well, I loved her.

Q When did you have these conversations with her when you said you'd never tell on her?

A The day before Pete, J.R. and myself got arrested.

Q Are you testifying today as part of an agreement with the State?

A Yes, I am.

Q Do you know when you entered into that agreement?

A The date?

Q What month.

A February, I believe.

Q This year, last year?

A This year.

Q Now, prior to entering into that agreement, had you ever

spoken with any member of the Attorney General's Office?

A No.

Q Any police officer?

A No.

Q Where were you at the time when you entered into that agreement?

A Rockingham County House of Corrections.

Q How long had you been at Rockingham County House of Corrections?

A About a month, month and a half.

Q Where had you been prior to that?

A ADC, juvenile pretrial facility.

Q What is your understanding of the cooperation agreement with the State? What are your obligations?

A Well, I have to tell the complete truth. I have to testify against anybody you want me to, and in exchange for that I can plead guilty to second degree murder with a sentence of 40 years to life with 12 deferred.

Q What does 12 deferred mean to you?

A It means if I don't screw up in prison and I don't get in any trouble or anything, I get 12 years taken off, but if I do screw up or anything, then those 12 years can be put back on or left on.

Q What is the maximum amount of time you can serve in this sentence?

A Life.

Q Now, are you aware of a statute in New Hampshire which allows you to apply for sentence reduction?

A Yes.

Q How are you so aware of such a statute?

A How did I become aware of it?

Q Right.

A My lawyer, Mr. Marberg, told me.

Q Do you have any understanding what the State regards your attempt to try and get a sentence reduction?

A Yes. You'll be against me, against it.

Q At the time that you killed Gregory Smart, how old were you?

A Just turned 16.

Q When you say you just turned 16, when was your birthday?

A March 12th. Today.

Q Today you're 17?

A Yeah.

Q How is it that you could break this cooperation agreement with the State?

A By lying, by refusing to testify against somebody.

Q And what happens if you break this cooperation agreement?

A Well, I go to trial. Everything I've told you can be used against me if I get on the stand, and I've already pleaded guilty to second degree murder, but you can indict me for first degree.

Q Do you know what the punishment is for first degree?

A Life in prison.

Q Without parole?

A I believe so, yes.

MR. MAGGIOTTO: Could I have these agreements marked as full exhibits.

MR. SISTI: It's without objection.

MR. MAGGIOTTO: I understand there's no objection.

THE COURT: May be marked.

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[State's Exhibits 59 and 60, being cooperation agreements, marked in evidence.]

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Q I have before me two agreements. I'd like to show you State's Exhibit 59. Do you recognize this?

A Yes, I do.

Q I'm going to ask you to speak into the microphone so the jury can hear you.

A Yes, I do.

Q Is this the agreement that you signed before speaking with the Attorney General's Office?

A Yes, it is.

Q How do you recognize it?

A My signature.

Q This is an agreement you signed before even talking to us, is that correct?

A Yes.

Q I'd also like to show you what's State's Exhibit 60. Do you recognize that?

A Yes, I do.

Q How do you recognize it?

A My signature.

Q Now, beside your signature is the signature of your attorney?

A Yes, Mr. Merberg, yes.

Q And myself and Miss Nicolosi?

A Yes.

Q And that's also true for State's Exhibit Number 59?

A Yes.

Q And can you tell us the date that you signed these agreements?

A 1-22-91.

Q Is that true for both agreements?

- A Yes, it is.
- Q Now, were you aware that Pete Randall and J.R. entered into agreements at the time that you did?
- A Yes, I was.
- Q How did that affect your decision whether or not to enter into this agreement?
- A Well, I refused to enter into an agreement unless J.R. and Pete were going to have one.
- Q Why is that?
- A Because I wasn't going to testify against them.
- Q Why didn't you want to testify against them?
- A Because I feel I got them into this.
- Q Why do you feel like you got them into this?
- A Because that's what happened. I got them into this.
- Q What happens if J.R. or Pete break their agreement?
- A Then I'm supposed to testify against them.
- Q Did anyone ever inform you you can only plead if you had damaging testimony against the defendant?
- A No.
- Q Now, I want to take you back to the relationship you had with the defendant.

Beside being alone with her at her condominium or apartment, where else did you have the opportunity before

the murder to be alone with Pamela Smart?

A Before May 1st? Her office, her car, my house.

Q Did you ever have sexual relationships in her office?

A Oh, no, not in her office.

Q Was there anywhere else you were able to have physical relationship besides her --

A Yes.

Q -- her apartment? Where was that?

A My house and in the car.

Q Where would you go in her car?

A There's a few places. Salisbury Reservation.

Q What is Salisbury Reservation?

A It's like a -- in the summer you go and like, I don't know, camp there, I guess, but in the winter it's just open. There's no one there.

Q How many times did you go there?

A Salisbury Reservation? Four or five times.

Q Where else?

A There's this place in Salisbury. Rabbit Road, I believe it is. It's like a factory, and in the back of it there's a parking lot and there's no one there at night.

Q How many times did you go there?

A Went there once.

Q How many times were you at your house?

A Once.

Q Anywhere else?

A There's a ballpark in Seabrook on Route -- I mean, South Main Street, and there's a parking lot that goes back towards the woods there.

Q What time of day would these rendezvous normally take place?

A Well, there wasn't any set time or anything, just --

Q Mostly at night, mostly after school?

A Mostly after school.

Q Were you ever out drinking with the defendant?

A Yes.

Q How often did you do that?

A With Pam out drinking before May 1st, only a couple times.

Q Cecelia Pierce ever with you?

A Yes.

Q Where would you go drinking?

A Well, one time sticks out in my memory the best. We went to -- she'd come down on a weekend, Friday night or Saturday, and picked me up at J.R.'s house and we went down to this liquor store by Ames.

Q When the defendant came down, who was she with?

A Cecelia.

Q Go ahead.

A So we went to the liquor store down by Ames on Route 1 in Seabrook, and she went to the liquor store and bought a bottle of Southern Comfort, and then she went into Ames and bought a -- two four-packs of wine coolers.

Q Why was the Southern Comfort bought?

A That's what I asked her to buy.

Q You asked her to buy it. Who were the wine coolers for?

A Pam and Cecelia.

Q After the alcohol was bought, what happened next?

A Well, we went down -- there's a place in Seabrook by the middle school, it's called Spherex, it's a factory, and there's no one there at night, so we went down there, parked, and we was talking and drinking.

Q And it's you and the defendant and who else?

A Cecelia Pierce.

Q How long were you there for?

A Forty-five minutes, an hour.

Q And were you drinking Southern Comfort?

A Yes, I was.

Q Had you ever drank Southern Comfort before?

A Once before, in -- it was at least five months prior to.

Q So what happened after that?

A Well, we were sitting in the car, and if you've ever had Southern Comfort you know it's a rather, I don't know, sweet tasting alcohol, so it's -- it tastes like, I don't know, it's like a Kool-Aid alcohol type of thing. It doesn't -- it's really easy to drink. So I was drinking that. We were just sitting in the car talking and stuff. So I didn't notice how drunk I was until I went outside to go to the bathroom, and then I noticed I was pretty drunk. So I got back in the car and then I was sitting in the front passenger's seat. Pam was in my lap and Cecelia was driving, and we went to Salisbury Beach, down where the arcades are and everything.

Q See anyone else that night?

A Yeah, friend of mine, Chris. I believe Danny Blake was with him. And that's all I can remember who was with him.

Q Did you ever see J.R. and Pete that night?

A Yes, we did. That was after we came back from Salisbury Beach.

Q Salisbury Beach was first?

A Yes, I believe so.

Q Why is it that you remember?

A Why do I remember this?

Q Right. Why is this particular night you remember?

A I was with Pam and --

Q And after you went to Salisbury Beach, where'd you go?

A J.R.'s house. We went down to J.R.'s house, see if there was any parties tonight, and I got out of the car and I walked over and I was talking to him. I still had the bottle of Southern Comfort, and, you know, I gave them some and I was asking them, you know, "Any parties tonight?" or "What are you guys doing tonight?" And then Pam came over and she was talking to them.

Q So what'd you do after that?

A After we talked to them?

Q Yep.

A We were going to get some more Southern Comfort for Pete and J.R., but we went to the liquor store and it was closed so we couldn't get anything, and I think me and Pam and Cecelia took off somewhere, and Pete and J.R. took off some place else.

Q Beside your physical relationship, did you express your feelings for each other in any other way?

A Yeah. We wrote, you know, notes back and forth to each other.

Q And how many notes did you write the defendant?

A Around 12 to 15.

Q How many notes did she write you?

A About 12 to 15.

Q How would you get these notes?

A Well, I'd write them in school or at my house that night and when I went to the Media Center I'd give her -- give them to her and like later on she'd have one for me, she'd give one to me and I'd read it later.

Q What was the content of these notes?

A Love letters.

Q Without being too specific, can you give us some idea of the substance?

A Well, they were like, you know, just telling her, you know, I loved her, and she, you know, tell me she loved me. It's -- it's like the same thing, just different words.

Q What else?

A Just, you know, she -- how she liked being with me. She always wanted to be with me, and like that.

Q I'm sorry?

A Like that.

Q Is it embarrassing for you to talk about these letters?

A No, it's not embarrassing. Some of them were sexually explicit. That would be embarrassing.

Q How many sexually explicit letters did you get?

A Well, some were and some weren't. Like something was put in, but there was three in particular.

Q Any one --

A I think it was a three-page note is what it was.

Q Did anyone else see these letters?

A Yes.

Q Who?

A Sara Thomas, Frank Daley, Pete and J.R.

Q How did they -- how did Pete and J.R. see these letters?

A Well, I showed Pete and J.R.

Q How did Sara Thomas see these letters?

A Well, Sara and Pam were down J.R.'s house one day and I was changing oil for them on the cars.

Q Whose car was oil being changed on?

A Both of them. I changed Pam's oil, and I believe it was Ralph changed Sara's oil.

Q Why don't you tell us -- I'm not sure you told us this yesterday -- who Sara Thomas is.

A She's a good friend of mine.

Q How long have you known Sara Thomas?

A I met her in Seabrook Junior High, so three or four years.

Q Tell us about this day with Sara Thomas and Pam Smart at J.R.'s house.

A All right. Well, they came down to change oil, to get their oil changed, and I was doing that, and I took my leather jacket off and I put it on Pam's car so it wouldn't get dirty when I was under her car, and Sara asked me if she could wear it and I said yeah. I forgot the notes were in there.

Q What happened after that?

A Well, she was wearing it and I guess she found the notes and she was reading them, and Frank saw her reading them and Frank came up to her and said, you know, you shouldn't be reading those, Bill's going to be pissed, you're not supposed to see those. Frank came over and told me, you know, Sara read the note -- yeah, there was only one note in my pocket that time. She came over and said to me, "I can't believe what she said. I knew there was something going on between you two. Why didn't you tell me before," and all that. After that I had showed her two other notes.

Q You showed Sara two other notes?

A Yeah.

Q Where do you show Sara these two other notes?

A Library of the school.

Q Why did you show Sara these notes?

A She asked to see them, and -- I don't know. I don't know.

I was just -- you know, I liked -- I wouldn't go around and show them to everybody or anything like that, but I just liked showing them to people.

Q How did J.R. and Pete see them; you showed them to them?

A Yeah.

Q Frank Daley know about your relationship with the defendant?

A Yes, he did.

Q I'd like to show you what's State's Exhibit 54 for identification. Ask you to take a look at that. Do you recognize that?

A Yes, I do.

Q What do you recognize it to be?

A Half of a letter Pam had given me.

Q How do you recognize it as half a letter Pam had given you?

A I remember the paper, and I know that there was more than this because these are song lyrics to a song that she said reminded her of me.

Q Do you recognize the handwriting?

A I recognize her "s's", yes.

Q When was the last time -- how did you get this letter?

A She handed it to me.

Q Where were you when she handed it to you?

A Most likely the Media Center.

Q Why do you say most likely; you're not sure?

A Well, sometimes she'd come up to my locker and give me the notes, but most of the time it was in the Media Center.

Q When was the last time you saw this note?

A The last time I saw this was three or four days ago.

Q And you saw it before testifying today, correct?

A Yes.

Q What did you do with this note after you'd gotten it from Pam?

A I kept it.

Q Where'd you keep it?

A My room.

Q What happened to all the other notes you had gotten from Pam?

A Well, when I had found out I was going to be -- you know, probably going to be arrested, I got home from Connecticut and my mother was coming out of the door as I was walking in, and she said -- she asked me if I needed a lawyer and said she wanted me to go up and talk to Kenny, and she said go in your room, get everything out of your room that has -- that will, you know, link you and Pam. So I went in my room with a brown paper bag and I went through it real quick, about five minutes, and I got everything in there

I could find, put it in the bag.

Q And what'd you do with the stuff you'd put in the bag?

A I gave it to my mother.

Q Do you remember seeing this letter that night when you grabbed the stuff in your room?

A No, I -- there was letters I grabbed and there was passes from Pam, and there were -- there was a round metal medallion type of thing that I got at Salisbury Beach.

MR. MAGGIOTTO: At this time, Your Honor, the State would offer this letter as a full exhibit and ask that it be shown to the jury.

MR. SISTI: That's without objection.

THE COURT: All right. May be marked as a full exhibit.

MR. MAGGIOTTO: Let me clarify the record. I referred to this as 54. It appears I misspoke. It's actually State's Exhibit Number 55.

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[Identification stricken from State's Exhibit 55.]

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[State's Exhibit 55 displayed to the jury.]

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MR. MAGGIOTTO: You want me to continue, Your Honor.

THE COURT: Go ahead.

BY MR. MAGGIOTTO:

Q What was this medallion thing you were talking about that you threw out?

A It's -- at Salisbury Beach they have a few of these machines to put a quarter in, and there's letters around in a -- there's a dial in the middle and you turn the dial, you know, point it at what letter you want. There's two levers. One lever you pull on and it stamps the letter onto the medallion, and the other one you pull down is when you're all finished.

Q What did you do with this medallion?

A What did I do with it?

Q Let me rephrase that. What letters did you put on this medallion or who put any letters on this medallion?

A It said, "Bill and Pam forever."

Q Who made the medallion?

A Well, I had made one and I believe Pam made one. I think it's the one that I had.

Q Do you know what Pam's said?

A I think the same thing, "Bill and Pam forever."

Q Were you with her when she made this?

A Yes, I was.

Q Who else was present?

A Cecelia Pierce.

Q Now, beside the medallion and the passes and notes, was anything else in the room?

A I know I had the directions that she'd given me to memorize in there and I probably grabbed those too.

Q I'd like to show you State's Exhibit 54.

A Yeah, pictures --

Q A through I. Ask you to take a look at these. Tell me if you recognize them.

A Yeah. These are pictures I got from Pam.

Q Can you speak up. I didn't year you.

A These are pictures I got from Pam.

Q Now, when did you ever first see pictures of this nature?

A Of this nature or these pictures?

Q Let me rephrase that. When did you first see these photographs?

A Before February 5th.

Q How is it that you saw them?

A Pam brought them to the Media Center -- well, she told me she had taken them, brought the roll of film to the Media Center, because Kenny and Eileen owns a photo place and I had said maybe not done for free, but 60 percent off.

Q Ask you to speak a little slower and closer to the

microphone.

What happened after you said you could get them developed cheaper?

A Well, she gave me the roll and I took it, gave it to my mother to give to Kenny. I told her, you know, Pam wants these pictures developed. She said all right, gave it to Kenny, Kenny developed them, and --

Q After they were developed, then what happened?

A After we developed them and Kenny told me they were ready -- it's like a one-hour photo place -- we went back the next day, Pam drove up and we got the pictures back from Kenny, and I remember we were looking through the pictures in the car, and I remember Pam was laughing. She thought -- she didn't think they came out good, and when she brought them to show Traci, shows Traci. Traci brought them back the next day, said she didn't want them, was just going to throw them out, if I wanted them I could have them. I said all right, and Cecelia Pierce had a couple too.

Q How many pictures did she give you?

A I don't know. Fifteen.

Q What did you do with those pictures?

A I kept them.

Q I'm sorry?

A I kept them.

Q Then after you kept them, where are they now?

A Well, I'm pretty sure I put them in the bag and gave it to my mom and she got rid of the bag.

Q So these pictures here are not, as far as you know, the actual pictures you had?

MR. SISTI: I'm going to object, Your Honor. There's no foundation for that at all.

MR. MAGGIOTTO: Can I approach, your Honor?

THE COURT: Yeah, why don't you both approach.

AT THE BENCH:

MR. MAGGIOTTO: The objection?

MR. SISTI: Mere speculation for him to answer this question, period.

MR. TWOMEY: He said he put them in a bag and you led him into something he doesn't know. Secondly, at this point in time we have a motion in limine on whether those pictures can be published to the jury. As I understand, those pictures were taken before this affair ever began. They were taken for another purpose, don't particularly have anything to do with this, with the affair itself, and the fact there was sex between

these people is not going to be a contested matter in this case. What Mr. Maggiotto is trying to do again and again is keep reopening the sexual aspects of this case to prejudice the jury. Those pictures there, which, according to this witness' testimony, were taken for another purpose prior to any relationship between him and the defendant, have no relationship to the murder of Greg Smart. The State simply wants to take photos that are tangential to the most collateral degree possible, publish them to the jury to inflame the jury.

MR. MAGGIOTTO: Have you seen them, Your Honor?

THE COURT: I've seen them.

MR. MAGGIOTTO: The State's position is quite clearly that these pictures -- we've not tried to do anything more than what these pictures are. These are not the actual pictures he threw out. That's why Karen Knight testified she had exact duplicates of the pictures and made them and showed them to Elaine Flynn. The purpose of introducing these photographs is that this is

all part of the enticement process. These photographs are fairly skimpy bathing suit and some are provocative poses. We know that on February 5th she went up to Bill, according to this witness' testimony, and said, "Do you ever think about me? I think about you." It's the State's position they are all part of the enticement process. A teacher relationship would not be handing over photographs of this nature, sharing them with him, would not have given them to him. I'm not trying to say they are anything more than what they are. Why is a teacher giving these type of photographs to a student? I'm not saying with the idea of making love to him. I've only said what they are. The Rules of Evidence, 1004 I believe it is, the originals have been destroyed. If you have exact duplicates made from the same negatives, and he says these are the pictures, the same poses he saw and everything, they go in.

MR. TWOMEY:

Rules of Evidence also say you have to weigh the probative value against the prejudicial

effect in this particular case. Again, the affair, the actual sexual intercourse is not in dispute whatsoever. No dispute. I'll tell this Court there's not going to be a dispute. Any point in time these people had a love affair, it was sexually explicit. They were intimate together. What do those pictures now add to that?

THE COURT: Well, defense counsel's first objection regarding speculation is sustained. Defense counsel's section motion in limine is denied. However, the photographs do not need to be published to the jury at this point. They are to come into evidence.

MR. MAGGIOTTO: Okay. Just so I understand. When you said sustained and struck, I'm not sure what you're saying.

THE COURT: He had a motion, he had an objection based on speculation to your last question.

MR. MAGGIOTTO: Uh-huh.

THE COURT: I have sustained that. Paul had a motion in limine to keep out the pictures. That was denied. However, the pictures come in,

introduce them. They will not be published to the jury now. They'll be an exhibit like any other exhibit.

MR. MAGGIOTTO: Okay. I've been showing the other exhibits, Your Honor.

THE COURT: Some of them you have, some of them you haven't. All I'm saying, this one you won't right now.

MR. SISTI: This is just -- again, I need clarification. I'm sorry. These are not exhibits as they stand right now. They haven't been moved as exhibits, from what I understand.

THE COURT: That's correct.

MR. SISTI: Merely marked for identification, and our objection is proper foundation.

THE COURT: I understand that. My ruling stands. No need to talk about it anymore. Let's try the case.

MR. MAGGIOTTO: Okay.

IN OPEN COURT BEFORE THE JURY:

BY MR. MAGGIOTTO:

Q Mr. Flynn, those poses and photographs that I've shown you as 54-A through I. Have you seen these poses of the defendant before?

A I've seen those photographs before, yes.

Q And the photographs you've seen before, are they exactly the same as these photographs that I have in my hand?

A Yes, they are.

Q Is that true for each photograph you see here?

A Yes, it is.

Q Take a moment and look over each one.

A [Witness complies.] Yeah.

Q Now, the photographs that the defendant gave you and asked you if you wanted them, how many did she give you in total?

A I'd say there's about between 12 and 15.

Q Now, there's nine photographs here. Besides these nine photographs, you saw an additional three to six?

A Yeah.

MR. MAGGIOTTO: Your Honor, I would move these in as a full exhibit at this time.

MR. SISTI: Without objection.

THE COURT: All right.

- - -

[Identification stricken from State's Exhibits 54-A through 54-I.]

- - -

Q Now, Bill, when you were hanging out with the defendant, why was Cecelia Pierce with you?

A Well, Pam said it would be less suspicious if somebody saw us together if Cecelia was there, because if they saw us alone it would be more suspicious.

Q Now, beside the time when Cecelia Pierce was there, were you spending time with the defendant when Cecelia wasn't there?

A Before or after May 1st?

Q Well, I mean, the times you went to Salisbury Reservation and the ballpark?

A Oh, yeah, Cecelia wasn't there then.

Q Now, when you were in front of Cecelia Pierce, did you do anything to hide your relationship with the defendant?

A In front of Cecelia? No.

Q How about J.R. and Pete?

A No.

Q How about Traci?

A Yes.

Q Who was Traci?

A Pam's friend.

Q Why did you hide the relationship in front of Traci?

A Because Pam didn't want Traci to know.

Q Did she say why she didn't want Traci to know?

A Well, Traci's friends with Greg, you know, and because if after May 1st, you know, if Traci knew that me and Pam were

seeing each other, that could be brought up.

Q So the entire time up until your arrest you never acted like a boyfriend-girlfriend in front of Traci?

A No.

Q What about any other friend of Pam?

A After May 1st, when she moved down into Hampton, one of her friends came over -- I don't remember her name -- but, you know, I couldn't -- we couldn't act boyfriend-girlfriend in front of her. And before May 1st, another time when another one of her friends had come down with Traci, and we couldn't act that way either.

Q Now, did you ever receive any presents from the defendant?

A Yeah. On my birthday she got me a subscription to a guitar magazine.

Q How did you know about the subscription to Guitar Magazine?

A Well, I came over her office and she said, you know, "Guess what I got you," and everything like that, and then she said she wanted to get me -- to get me this bracelet, gold nugget bracelet, but Greg would realize there was \$500.00 missing from the bank account, and she put the subscription in Cecelia's name so it couldn't be traced back to her.

Q How do you know she did that?

A She told me.

Q Why was she afraid of it being traced back to her?

A After the May 1st if the police found out she was giving presents to some kid named Fill Blynn, they'd probably want to go question Bill Flynn.

Q Any other attempts by the defendant to cover up your relationship?

A No, just we just never did anything in front of people.

Q Any cover-up attempts in March?

A I don't think.

Q You can't remember, that's fine. No?

A No.

Q Now, when did you first see the defendant -- well, let me back up.

The day after the murder, what did you do?

A The day after the murder I went to school because I thought it would be suspicious if I didn't. I mean, I was just paranoid. I thought everything was suspicious.

Q I'm sorry, I can't hear you.

A Well, I went to school.

Q Why'd you go to school?

A Because I thought that if I wasn't there then it would look suspicious, but it was probably more suspicious that I was there.

Q What about J.R., did he go to school?

A Yes, he did.

Q What about Pete?

A Pete went to school, too, I believe.

Q And what happened at school?

A Well, in the morning Frank Daley came up and he said, you know, "Did you guys do it last night?" And we said, "Yeah." We told him yeah. Then second period science class, me and J.R. were in there and Frank's in there too, and Miss Kinsman came in and said, "Bill, Vance," you know, "could I talk to your guys for a minute."

Q Who is Miss Kinsman?

A Guidance counselor at Winnacunnet High School.

Q And what happened then?

A Well, me and J.R. went with her, and Cecelia and Rachel were already with her. We went to the guidance office. It's like a conference room in the guidance office, and she said Greg's husband -- Pam's husband was killed last night.

Q Did she say how he was killed?

A No. She said they didn't know.

Q What happened then?

A You know, we say -- she said that, you know, "I think that

we should go to the wake and," you know, "just support Pam."
And, you know, we said yeah. We didn't want to say no, we're
not going to the wake and thought that would look suspicious.

Q Did you want to go to the wake?

A No, I did not.

Q Did you go to the wake?

A Yes, I did.

Q Did you see the defendant at the wake?

A Yeah, Pam was there.

Q Who'd you go to the wake with?

A Miss Kinsman, Cecelia, Vance and myself.

Q Now, how many days after the murder of Gregory Smart did
you go to the wake?

A It was either the day after or the day after that.

Q And before you'd gotten to the wake, did you talk to the
defendant at all?

A Before I went to the wake? No, I did not.

Q Did you talk to her at the wake?

A Briefly, yes.

Q Can you tell us what happened at that time?

A Well, I walked up to Pam, and Miss Kinsman, Cecelia, J.R.,
myself. Miss Kinsman, you know, Miss Kinsman was saying,
"We're really sorry, Pam." You know, that's what we were

saying.

Q Starting to mumble. I can't hear you.

A All right. Well, you know, we were just saying we're sorry about what happened and everything, you know, and then kind of broke away, and then afterwards she came up to me and J.R. and said, "I can't believe you guys came to the wake. When we walked through the door, I think she said she was shitting bricks.

Q Where was this conversation?

A At the wake.

Q I know, but where in the wake? Was it outside, inside?

A Inside.

Q Now, what was the plan after the murder of Gregory Smart between you and the defendant?

A Well, Pam was going to get the insurance money and she was going to buy a condo closer to me, you know, so we could be together.

Q What did you know about the insurance money?

A At that time I -- my understanding was that there was one insurance policy for \$90,000.

Q And did that understanding ever change?

A Yeah. Like a week after May 1st, Pam had came into school and walked up to me and J.R. at my locker, and she said,

you know, hi, how's it going and everything like that, and she said -- what she said was, "Don't worry about anything. Everything's going according to plan. People are telling me I should move out of the house so I'm going to find a condo closer just like we said."

Q What did she say about the insurance money?

A She said she couldn't believe it, there were two insurance policies, one for ninety, one for fifty, so it was \$140,000.

Q Did there come a time the defendant moved closer to you?

A Yes.

Q Do you know when that was?

A The date?

Q Time period, roughly.

A It was around the end of May.

Q Did you have any discussions with the defendant of what she was supposed to do on the night of May 1st after going to the meeting?

A After going to the meeting?

Q Right. What was she supposed to do when she got home? Did you ever discuss that with her?

A Oh, yeah. She'd asked us how to react, and we told her, "Well," you know, "when you go in there and you see him," just got to be a natural reaction." I said, "Don't even

think about it. Don't even," you know, "worry about it."
She told me that night when she got home she couldn't bring herself to cry.

Q When did she tell you that?

A It wasn't at the wake, and I don't think it was at the lockers. It was sometime after that. She said she just kept asking for Haley.

Q Did there come a time -- well, let me preface that -- what information, if any, did you have about what the police were doing?

A Pam told me that, you know, she couldn't get the insurance money until there was -- the investigation was done that she had -- she wasn't guilty. She said, "The police don't have a clue. They think it was a messed up burglary just like we said." Now they don't suspect her.

Q When was this conversation?

A It was either at the lockers that first time after May 1st or sometime very close after that when she came back to work.

Q Did the defendant ever discuss what she was going to do with the insurance money?

A Yeah. She was going to use it to pay for the condo when she moved closer to me, and she was going to buy a car.

Q What kind of car?

A She wanted a -- either a Camaro or a TA.

Q What's a TA?

A Trans Am.

Q Did you ever go looking for any of these cars with the defendant?

A Yeah, a few times.

Q Can you tell us about any of those times?

A One time was at Dreher-Holloway where J.R.'s mother works.

Q Who went with you on that time?

A Well, we were in Greg's truck. Me, Pam and Michelle Nichols were in the front -- that's J.R.'s girlfriend -- and J.R. and Pete were in the back.

Q What happened at Dreher-Holloway?

A Dreher-Holloway? We went there looking around for cars. I remember that because they have a barrel there and they've got all, you know, lollipops in it, and we were in the showroom waiting for a salesman to come out that Pam -- that J.R.'s mother had requested. Pam came over and asked me if -- you know, she said, "Go get me a lollipop," and I didn't know if she just wanted me to get her one or she was like, you -- I don't know, trying to not act bossy but, I don't know, just like being sarcastic and trying to be --

Q Now, this was happening at the dealership?

A Yeah.

Q Do you remember what time of year this was?

A What time of year?

Q Was it after May 1st?

A Yeah, it was after May 1st.

Q Do you know how long after May 1st it was?

A Not that long. I think it was before she moved into the new condo.

Q And when she told you to get this lollipop, why did you resist?

A Because I thought she was just, you know, like saying, you know, go do this for me.

Q Ask you to speak a little more clearly in the microphone. It's getting hard to hear some of the things you're saying. And then what happened?

A Well, I said, I said, "I know what you're trying to do. You're trying to" -- I don't know what I said -- "You want me to go do this for you in front of Pete." Do you know what I mean?

Q What did she say to that?

A She said -- she said, like, "Fine. Be that way." Like that. And she was mad, but she wasn't that mad right then.

But then when we got back to J.R.'s house, Pete and J.R. and Micky got out, and me and Pam went down to this one place we used to go in Seabrook. It's a dead end road. When the road ends, it goes -- like the marsh is right in front of you. We drove down there so no one goes down.

Q What happened when you got down to the marshy area?

A When we got down there, Pam brought up the lollipop. She said she was mad. She said, you know, "You don't love me. If you did, you would have got" --

Q Bill, you seem to be moving a little bit while you're talking. Some thing's going in the microphone, some don't. What did she say to you at that time?

A She said, you know, "You don't love me. If you did, you would have got that for me." I told her, I said, "Well, to me it was" --

Q I'm sorry?

A "I thought you were trying to be sarcastic," like this, and we got into a fight. And --

Q How did the fight end?

A Well, she dropped me off at J.R.'s house. She was still mad and I was mad. So I went down J.R.'s house. They were in the driveway. And I was pretty mad. And so then she drove up again. She beeped the horn, so I went back up

there and she said, you know, "I was this close to going, taking back my first -- last month's rent on the condo and not moving down here anymore and that would be it," like that, and she asked me if that's what I wanted, and I said no and I apologized for not getting her the lollipop.

THE COURT: Mr. Maggiotto, I'm going to interrupt, and we'll break for lunch and resume at 1 o'clock.

- - -

[Luncheon recess at 11:43 a.m.]

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MARCH 12, 1991 - TUESDAY AFTERNOON SESSION - 1:00 P.M.

IN CHAMBERS:

MR. TWOMEY: I'd like to do this on the record.

THE COURT: Go ahead.

MR. TWOMEY: At the end of the lunchtime break -- it's about one o'clock -- I walked in the courtroom and there were probably 30 people -- well, 20 to 30 people past the bar circling a table. I asked one of the bailiffs what was going on. They indicated that the Court had issued an order that the press could look at the various photographs, exhibits in this case.

I would at this time move that if any special prerogatives or privileges are given to the press, before that is done that we have an opportunity to, one, be heard; number two, be informed of it. I have private, confidential notes sitting on the table right there, not the table they were circling around, but the table behind where they were circling around, and I'm not even in the courtroom. I didn't know they were coming into the courtroom. Quite frankly, I object to what happened, but it's already

happened. I think we would ask in the future if anybody's coming around that bar that's not a member of the bar that we be notified in advance and be allowed to be heard as to whether or not we have objections. I would have had objections to that. That's all I want to say.

THE COURT:

Good point. I didn't think of that. The bailiff came in, asked if the press could see the exhibits. I indicated the exhibits are exhibits and the press can see them. I agree with you, and you'll be notified next time. That's a good point.

MR. TWOMEY:

That's it.

- - -
[In chambers hearing concluded at 1:01 p.m.]

- - -
IN OPEN COURT WITH THE JURY PRESENT - 1:04 P.M.:

THE COURT:

Go ahead.

- - -
[William Flynn resumed the witness stand.]

MR. MAGGIOTTO:

Thank you, Your Honor.

DIRECT EXAMINATION BY MR. MAGGIOTTO (Continued):

Q I want to clear up one point. The letters you'd talked about this morning that were seen by Sara in your coat pocket, were these letters written by you to the defendant or by the defendant to you?

A Pam to me.

Q After the murder how often were you seeing the defendant once she'd come back to school.

A Every day.

Q Where would you be seeing her?

A Media Center, at her house.

Q How far was her house from the school?

A Half a mile.

Q How would you get to her house?

A Well, couple times I went to the Media Center after school and drove there. Then a couple times I just walked there.

Q Did you ever spend the night at her house in Hampton?

A Yes.

Q Now, did you ever discuss with the defendant the details of what happened that night on May 1st?

A No.

Q Why not?

A Well, for one thing, I didn't want her to know, and, two,

she didn't want to know.

Q Why didn't she want to know?

A Why didn't she want to know?

Q Right.

A Because I'm sure she didn't know all the details and stuff.

Q Why didn't you want to tell her?

A I didn't want her to know them.

Q Did there ever come a time when J.R. or Pete got their \$500.00?

A No.

Q Is there any discussions with the defendant concerning payment?

A Yes.

Q Can you tell me about those?

A All right. Well, couple times in the Media Center when J.R. would come over, and one particular time when Pam had brought the truck down because she was going to sell it --

Q Brought the truck to where?

A J.R.'s house. And she was going to sell it, and she wanted me to take the radio out for her so she can keep the radio because it was a Kenwood, it was a nice radio, and so she brought it down and J.R. ended up taking it out, and in the truck are two Kenwood truck speakers, and they're nice

speakers, and J.R. wanted those. He said, you know, "You ought to give these to me." And she, you know, she was saying, no, she wanted them. Then J.R. said, "Well, if you give them to me, you can knock off \$250.00 off the charge." You know, off the payment. And she still said no because she said if she gave them to him she wouldn't want one of her friends saying where are the truck speakers. Then she'd have to say, "I gave them to this kid, J.R.," so he suggested that she give them to him for -- to take \$250.00 off and anyone asked her about it all she had to say was that he was getting the job -- I don't think, even though -- just that he had a job and he was paying her a little bit a week.

Q Who was present for that conversation?

A Pete Randall, Vance Lattime, Pam and myself.

Q Where was Pete Randall during this conversation?

A Well, he didn't like Pam that much, so he was there and he was in the house too, so -- I don't know if he was there for the whole conversation or not.

Q Where was the conversation taking place?

A Outside in the driveway right in Pam's truck.

Q You said that Pete didn't like Pam so much. How did you know that?

A Because he told me.

Q Now, these conversations that took place in the Media Center about payment, who was present for those?

A J.R., myself, I believe Cecelia was there a couple times, and Pam.

Q Did you know why payment wasn't made?

A Do I know why?

Q Yeah, why weren't they ever paid?

A Because we got arrested.

Q When did you get arrested?

A June 11th.

Q So what happened between May 1st and June 11th that prevented them from getting paid?

A Well, she was going to -- she wanted to wait a little while before she started paying. She was only going to pay them a little bit at a time so there wouldn't be a thousand dollars missing out of the account.

Q So up to the time that you'd gotten arrested, except for the speakers no payment was made to J.R. or Pete, is that correct?

A Except for the speakers, J.R. did end up getting the speakers. I talked to Pam about it.

Q Besides that, no other payment?

A No.

Q And you never received any payment?

A Oh, no.

Q Now, let's talk about how you got arrested. Like to bring your attention to June 10th, 1990. Do you remember that day?

A Yes.

Q What happened on that day?

A Well, I'd spent the night at Pam's that night and --

Q Now when you said you'd spent the night, do you remember what day of the week it was on June 10th?

A Sunday, I believe.

Q And when you say you'd spent the night, you mean the previous night?

A Yes.

Q Now, where were you, so this is clear?

A I was at Pam's house in Hampton.

Q This is the new apartment?

A Yes.

Q After spending the night, what happened?

A Well, we woke up and we were still in bed, and J.R. -- I heard the motorcycle pull up so I knew it was J.R. and Pete. They were knocking on the door, right, and I

figured they'll just go away after a minute. Then they started banging on the door, so I got mad and I got up and put some sweat pants on, went downstairs, and I opened the door, and I could just tell by the look on their face and everything that something was wrong.

Q I'm just going to ask you to slow down. Speak a little louder.

MR. MAGGIOTTO: Can everyone hear him all right?

Q Now, when you went downstairs, do you go downstairs alone?

A Yes, I did.

Q And after you opened the door, what happened?

A Well, J.R. and Pete were saying, you know, "Listen, we got to talk to you. Ralph's flipped out. He's going to the police. Pete told him everything."

Q Where was the defendant at this time?

A Upstairs.

Q Did there come a time when the defendant came downstairs?

A About ten, 15 minutes after that, because J.R. -- I opened the garage for him. They put the motorcycle in there and they came upstairs, and then --

Q What conversations took place with the defendant present?

A What conversations? Well, when she'd come down she asked what was going on. We told her. You know, J.R. said,

"Well," you know, "Pete told Ralph everything," and they got in a big fight, "and Ralph's going to go to the police. We don't know what to do. We got to get our stories straight. We got to talk to Raymond."

Q What was the defendant's reaction when she was given that information?

A She wasn't too happy.

Q What happened after that?

A Well, they wanted me to call Ralph and talk to him. So I called Ralph and, you know, I said, "What's going on, Ralph?" He said, "I know what you guys did. Petey told me everything."

Q What'd you say to Ralph?

A I told him that it wasn't true. I said that -- that there was a rumor going around in Seabrook that I'd done it, that me and Pam were involved and that Pete, I and J.R. figured that if Ralph thought I did do it he wouldn't say anything, he'd protect me, but if Ralph thought I didn't do it, it was just a rumor, he might talk about it, say did you hear about this rumor going around?

Q So what do you say to Ralph?

A I told him it wasn't true. I said it's not true. I said don't say anything because if Pam finds out there's

a rumor going around that I did this, then she's going to, you know, she's not going to be able to see me anymore because people, if they see us together might think it was true.

Q Where was the defendant when you were having this conversation with Ralph?

A About three feet away from me.

Q Was she saying anything to you?

A No.

Q After you'd spoken to Ralph, what happened next?

A J.R. called Raymond Fowler, and he was in Maine.

Q Why was Raymond Fowler called?

A Because he was involved in this, and J.R. called him and told him that he had to come down because, you know, Ralph's going to the police and we had to get our stories straight.

Q So after J.R. told Raymond Fowler to come down and get our stories straight, what happened next?

A Well, J.R. went to Tuck's Field -- it's right by the high school -- to wait for him, and they were going to pick him up there and bring him back on the motorcycle but he never showed up. So J.R. came back, called him again, and then went back to Tuck's Field and he still never showed up.

Q So how long were you at the apartment for this time? How long has it been since J.R. and Pete first got there?

A Twenty minutes.

Q So then how far in Maine was Raymond Fowler from Tuck's Field?

A I have no idea. I just know he was in Maine staying at a friend's house.

Q So then what happened?

A Well, Raymond never came because I guess he'd already gone to the police before then, before that day, and --

Q Is there any other phone calls made?

A Not that I can remember, no.

Q Okay. What happened after that?

A After that, all right, we got to the -- Pam's car and we drove to Seabrook.

Q Who got into Pam's car?

A Me, Pete and J.R.

Q Where was the defendant?

A I don't remember this very well, so trying to remember it here.

Q Take a moment.

A She was in the car. She was driving.

Q When you say she's in the car driving, the four of you are

in the car?

A Yes.

Q What happened to the motorbike?

A We left it at Pam's house.

Q How were you feeling at this time?

A I was scared.

Q Who was driving?

A Pam.

Q Where were you sitting?

A Front passenger's seat.

Q J.R. and Pete were where?

A In the back.

Q Now, when you say the defendant's car, is this the CRX?

A Yes, it is.

Q So where do you go in Seabrook?

A Well, we went to J.R.'s house. I think we went to the little store and J.R. went to his house because he was going to -- what was he going to do? -- he was going to check on something. I can't remember what. But what happened after that is Pam drove us back to her house, and on the way back there, because we told her, you know, the cops could be looking for us right now and we didn't know what to do, and she said, "Well, then get out of the car because I don't want anything

to do with you with the cops coming."

Q Where were you when the defendant said to get out of the car?

A Right by her house in Hampton.

Q How'd that make you feel?

A Not very good.

Q When J.R. went to his house to check on something, you were up at the store, where was the defendant?

A She had left. I believe it was because Cecelia's mother was at the laundromat by the store.

Q And how long was she gone for?

A I don't remember.

Q So then she comes back at some point?

A Yeah, she picked us up. That's when we were going back to her house.

Q When she picked you up, where did she pick you up?

A At the little store, I think.

Q Why do you say "I think"?

A I don't remember it that well.

Q And what do you remember after her coming back?

A I remember her saying that she didn't want anything to do with us if the police were, you know, after us now.

Q Did you get out of the car at that point?

A I don't believe so, no.

Q What happened?

A Well, we went to Pam's house, and J.R. and Pete got the road bike and they left, and I was still at Pam's house, and they were going to come back in the car and pick me up at the school, and so --

Q Why were they going to pick you up at the school?

A Because Pam didn't want them coming over to the house.

Q When you say "pick me up at the school," where was the school in relationship to the defendant's house?

A About 200 yards away.

Q Did you leave her apartment?

A Yes.

Q Where did you go?

A To the school.

Q And what happened after that?

A Well, get to the school and I waited. About 15, 20 minutes later J.R. and Pete picked me up and we were going to take off. We started going to Connecticut.

Q Now, when they picked you up, what car did they pick you up in?

A Pete's mother's car.

Q Had you ever seen that car before?

A Yeah.

Q How long were you in Connecticut for?

A Two hours.

Q Where did you go in Connecticut?

A Well, we went to Pete's aunt's house first, talked to her, and I guess we were going to stay there for a couple days or something, and I guess we went to the little store and I guess J.R.'s -- I mean Pete's grandfather had seen us and called Pete's dad and said, you know, "Are they supposed to be here? Are they supposed to have the car?" And he said, "No, they're not, and if they don't get back by 9 o'clock, they're going to call the Connecticut State Police."

Q How do you know all this?

A Pete told me.

Q How long did it take you to get to where you were in Connecticut?

A I don't really remember.

Q And after this conversation, did you stay in Connecticut or did you go back?

A After this conversation? Well, we'd gone to the store, came back, and we made some phone calls. Pete called his mom and dad, and -- well, his mom, and J.R. called his mom and dad.

Q Did you call anyone?

A No, I didn't.

Q Had you spoken to anyone in your family prior to your going to Connecticut?

A Not that day, no.

Q Now, you mentioned that you were at the little store when you were in Connecticut. Is that store different than the store on Collins Street?

A Yes, it's just a store in Connecticut, like a gas station/convenience store.

Q Now, did you go back to Seabrook any time on that day?

A That day, yeah.

Q So how long were you in Connecticut for before you came back?

A Say about two hours.

Q What happened when you got back to Seabrook?

A Well, they dropped me off at my house and they left, and I was -- I was going into my house. My mother came out, and I guess J.R.'s mother called her and she knew about it. She asked me if I needed a lawyer. She said, "And I want you to go upstairs and talk to Kenny."

Q Why talk to Kenny?

A He's a friend of the family's.

Q Did you talk to Kenny that night?

A Yes, I did.

Q Beside talking to Kenny, what else did you do?

A Before I went up to talk to Kenny, I went in my room and -- because my mother told me to get everything out of the room that has to do with Pam. So I went in there and I got the letters and the pictures and the passes and the medallion thing that we got in Salisbury.

Q What'd you do with all that stuff?

A I put it in a brown paper bag and gave it to my mother.

Q What else did you do that night?

A Well, after that I went upstairs to talk to Kenny, and he told me he knew a really good lawyer and that he was going to call him.

MR. SISTI: I'm going to object. All hearsay, Your Honor.

Q Tell us --

MR. MAGGIOTTO: I'll withdraw the question, Your Honor.

THE COURT: All right.

Q Why don't you just tell us -- instead of telling us what was said, did you go anywhere else that night?

A Yes, I went to Haverhill to stay at my uncle's house that night.

Q Who is your uncle?

A Bill Atwood.

Q And why did you stay there?

A Just to get out of Seabrook.

Q And how long did you stay there?

A One night.

Q And what happened the next day?

A When I got up I -- my Uncle Bill owned a couple houses that he was getting ready to sell and I went over there with him and I was helping him with that, and, you know, I told him what was going on and what had happened and everything, and when we got back from there my mother was at his house and we went back to Seabrook and I went over J.R.'s house.

Q Besides talking to your Uncle Bill, had you talked to anyone else about what was going on?

A Just Kenny and my Uncle Bill.

Q And when you went to Seabrook, what time did you get back to Seabrook on Monday?

A On Monday? Afternoon.

Q What happened when you got back to Seabrook?

A Well, J.R. came over and -- in his mother's car, and I -- my mother wasn't home -- I don't know where she was. She might have been upstairs at Kenny's. And we went back to J.R.'s house.

Q Who was at J.R.'s house at that time?

A When I got back there, Pete and his mother came over, and J.R.'s mother and father, J.R. and myself.

Q And what happened after that?

A Well, we just -- we just stayed in the house, you know, sat around, you know, talking to -- and stuff, and then we decided, you know, to get out of the house so we went to the movies.

Q Why did you decide to get out of the house and go to the movies?

A I don't know. We just -- I don't know. We were really nervous and didn't want to just sit there.

Q How was Mrs. Lattime and Mrs. Randall at J.R.'s house?

A They were upset.

Q Was your mother there?

A No, she wasn't.

Q Do you know what time you went to the movies?

A 7:30, I think it was. Yeah, it was 7:30 showing.

Q And who went to the movies with you?

A Pete and J.R. J.R.'s mother drove us over.

Q And what happened at the movies, if anything?

A Well, we watched Total Recall. Came out. I bought us tickets for Another 48 Hours. As we were going into that,

J.R.'s mother came up and said they had warrants for your arrest, so we said all right.

Q Now, when you say J.R.'s mother came out or met you there and said they had warrants for your arrest, was anyone with her?

A Pete's mother, but she was in the car.

Q So after you were given this information by Mrs. Lattime, what happened next?

A Well, we got in the car and we went to J.R.'s house, and I gave her my necklace and my earring and sunglasses and stuff and we drove over to the police station, and that's when we got arrested.

Q Now, had you ever had any discussions with the defendant what to do if you were ever arrested?

A No, I told her not to worry, you know, because she'll never be brought up.

Q Anything else?

A She said, you know, we're only juveniles so the longest we could be locked up was until we're 18. That's about it.

Q And where were these conversations?

A Well, the day that -- June 10th when I was -- well the day that Pete and J.R. left on the motorcycle after they'd told us everything, and we went to Seabrook and back and I was

at Pam's with just Pam.

Q What did it mean that you were a juvenile, you would only be in jail until you were 18?

A Means because I was under 18 they'd have to try me as a juvenile and they can only hold me until I'm 18 and they would have to let me go.

Q Did you go through a certification process in New Hampshire?

A Yes, I did.

Q What happened as a result of that certification process?

A Well, there was a criteria you have to meet. There was four for me and four against me, and Judge Warhall decided to try me as an adult.

Q You're treated as an adult in the justice system, is that correct?

A Yes.

Q Did you and Pam ever discuss that possibility?

A No.

Q Now, once you were incarcerated, did you ever have any discussions with the defendant?

A Once I was incarcerated? No.

Q I'd like to show you what's marked as State's 56 for identification. Do you recognize that?

A Yeah, when I was in ADC my mother said she got a letter from

someone but it didn't have a return address on it and it had a tape in it, so I told her to bring it up, and the next visiting day she brought up the letter and it had this in it and it had a tape in it.

Q Did you recognize that tape?

A Yeah, it was a tape that I'd made and gave to Pam.

Q How do you know it was the tape you'd made and gave to Pam?

A Well, it recognized it, for one thing, and I played it at ADC. It was the same thing.

Q And you made that tape?

A Yes, I did.

Q When did you give it to the defendant?

A The first night that I spent the night over her house before May 1st.

- - -

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

- - -

MR. MAGGIOTTO: I don't have any further questions, Your Honor.

MR. SISTI: Your Honor, can we just approach for a moment?

THE COURT: Certainly.

- - -

[Bench conference - no record.]

THE COURT: We'll take a short recess, ladies and gentlemen.

[Recess at 1:27 p.m.]

THE COURT: Go ahead.

MR. SISTI: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. SISTI:

Q Bill, can you tell the jury whether or not you had lunch on May 2nd, 1990?

A I'm -- honestly, no, I don't remember if I had lunch or not.

Q Do you know a guy by the name of Frank Daley?

A Yes, I do.

Q Do you oftentimes buy his lunch?

A Yes, I did.

Q Buy him lunch on May 2nd, 1990?

A I don't remember.

Q You don't remember. Remember taking money out of Greg Smart's wallet on May 1, 1990?

A No, I don't.

Q You don't? Do you remember whether Randall took money out of his wallet?

A No, I don't.

Q So that wallet's just -- it's just laying there on the floor for no reason at all?

A Well, if it's laying on the floor, I'm sure there's a reason.

Q Well, let's take a look at that photograph. Defendant's A. What's in that photograph?

A A wallet, a ring and keys.

Q Okay. A wallet, a ring and keys. Are you telling this jury you didn't go through Greg's wallet?

A I'm telling the jury if I did I don't remember. I was -- I wasn't in a very calm state of mind.

Q What were you, in a frenzy or something?

A I was scared to death, yes.

Q You were scared to death?

A I was very scared.

Q Yep. Remember ripping a ring off of Greg's finger?

A No, I don't remember.

Q You don't. Do you remember whether Randall did it?

A No, I don't.

Q Any particular reason why that ring would be laying on the floor?

A Not that I know of.

Q Not that you know of. How about the keys, how'd they get there?

A Well, I know that he unlocked the door with them, so they were most likely in his hand.

Q Were you crying over at 4-E Misty Morning Drive when you shot Greg in the head?

A Was I crying?

Q Yeah, were you crying?

A No, I don't think I was.

Q Were you crying when you ran out through the back door and make your escape into an automobile?

A I was very scared.

Q Were you crying on the way from Derry, New Hampshire to Seabrook, New Hampshire that evening?

A That evening? That's quite possible.

Q That's quite possible?

A Well, I was upset. I don't remember if I was crying or not, but J.R. and Raymond were singing that song to try to calm me down.

Q Were you laughing at the song?

A I don't think I was, no.

Q You don't think you were?

A I don't remember that night very well.

Q You don't remember that night that you killed Greg Smart very well?

A I remember it. I just don't remember how I was trying to deal with it because I was scared.

Q Well, let's try to help you remember, okay?

A Okay.

Q All right. People came into this courtroom and stated you were laughing on the way back from Derry, New Hampshire, would they be mistaken?

A I don't really think I'd be laughing that night, no.

Q You shouldn't be laughing, right?

A I don't think I was.

Q I mean that would be inappropriate, right?

A Yes.

Q Yeah.

A If I was.

Q Do you know if you were laughing or not?

A I don't believe I was, no.

Q Do you know if you were talking about the power of killing somebody?

A No, I wasn't talking about the power of killing somebody.

Q I'm sorry?

A I know I wasn't.

Q You knew you were not talking about that?

A Yes, I know I wasn't.

Q You're positive about that?

A I would not have said something like that.

Q You would never say anything like that?

A No, I would not.

Q Right? So if somebody came into this courtroom and spoke about a conversation with you on the way back to Derry, and part of that conversation had to do with the power of killing somebody, that person would be mistaken, right?

A Yes.

Q Do you know if Pete Randall hears things okay?

A Pete Randall?

Q Yeah.

A I believe so, yes.

Q He's got okay hearing?

A I've never checked his hearing for him, so -- but I believe it's all right.

Q I mean, you talk with him all the time, don't you?

A Yes.

Q You talk with him about this case, right?

A Well, when we're talking about this we're mostly talking about how we feel, you know, now, and he told me, you know, when he was on the stand and he saw himself on the news he didn't look very emotional and he said it was because he was

scared and it is -- it's very, very scary up here.

Q Right. He was criticized for not looking very emotional on the stand, right?

A Yeah, Bill Spencer criticized him, the news criticized him.

Q Looking cold and calculated on that stand right there?

A Yes.

Q And Lattime. Lattime was looking cold and calculated for sitting on that stand and testifying the way he did too, in the -- in the --

A I don't think so.

Q No?

A Well, I don't remember seeing anything about that. I just remember on the news they -- they nailed Pete pretty bad.

Q They nailed Pete?

A I don't think it's fair because they don't know Pete. I know Pete. I know he feels bad about this. I know that he wishes it never happened, and if he's up here and he can't express himself because he's scared or whatnot, I don't think the media should be hammering him.

Q You don't?

A No, I don't.

Q They're being unfair with your friend Pete?

A They don't know Pete.

Q They're being unfair with Pete, who forced Greg Smart to his knees while you shot him through the head, are they?

A Yes, they are.

Q In order to be treated fairly by the media, you have to show some emotion up there, don't you?

A No, I don't really care what the media thinks.

Q You don't care?

A No, I care what Greg's parents think.

Q So you're crying for Greg's parents today?

A No, I'm crying because I feel bad about it and I wish I never did it.

Q Were you crying when you were arrested and brought down to the ADC in Concord?

A No.

Q Well, didn't you feel bad and didn't have anything to do with it then?

A Well, it really didn't hit me then. It was sort of I can't get arrested or they don't have anything on me. I wasn't thinking about what I did.

Q Were you crying about it the night before or right before you were arrested at the movies?

A No.

Q Were you crying about it down in Concord?

A No. The night I got to ADC I was crying about it.

Q Crying because you got caught?

A Honestly, yes, that's why I was crying.

Q Yeah. Let's go back a little bit.

Now, you did develop a hatred for Greg Smart, right?

A I didn't like what he was doing to Pam, that's correct.

Q You hated Greg Smart, right?

A Well, yeah, I'd have to say yes, I did develop a hatred for Greg.

Q You developed a hatred for Greg Smart because you wanted to be with Pam, right?

A No. I developed a hatred for Greg Smart because Pam told me that he used to hit her, he'd grab her by the hair and throw her down, that he was never nice to her.

Q Never nice to her?

A Yeah.

Q Abused her, right?

A Yes.

Q You saw bruises on her, right?

A She showed me one one time, yes.

Q Why don't you tell me exactly where that bruise was and what date.

A On her arm. I couldn't tell you what day.

MR. SISTI: Could you stand up, Pam.

A I think a bruise would probably leave her arm after nine months.

Q I know that.

A I'm sorry.

MR. MAGGIOTTO: Objection, Your Honor.

THE COURT: Don't leave me in the dark. What's the basis, as the rules say?

MR. MAGGIOTTO: I'm objecting to the defense counsel's statement of what he knows and doesn't know. I don't think that is a proper form.

THE COURT: Objection sustained. I wish both sides, when they object, would state the basis. That's what the Rules of Evidence say. Objection and state the basis. Don't leave me up here to guess, even though most times I think I probably can.

MR. SISTI: Thank you.

BY MR. SISTI:

Q Which shoulder, which arm?

A It would be her left.

Q You believe or do you know?

A Her left and my right.

Q This arm right here (indicating)?

A Yes.

Q Her left.

A Correct.

MR. SISTI: Have a seat.

Q When was it?

A It was before May 1st.

Q It was before May 1st. Well, was it February?

A It was after February 5th when she'd told me the feelings towards me and before May 1st.

Q Between February 5 and May 1 you saw a bruise on her upper left arm?

A Yes.

Q It was obvious to you?

A It was a bruise.

Q It was a purple bruise, what was it?

A It was like a tan, like brown-yellowish.

Q Was it around Valentine's Day?

A Valentine's Day? That's possible. I don't remember.

Q Well, was it during the month of February?

A I -- honestly, I don't remember. I just know -- what I do remember is that it was between February 5th and May 1st.

Q Well, I'm going to try to narrow it down for me. Was it

before the day that you claim in February that you had your first kiss with her?

A I couldn't say for sure.

Q Well, I mean, how did you see her in the state of undress that she would have been in?

A Well, she was wearing a short-sleeved, kind of a dress like that, but it was shorter sleeved and she's at the Media Center. Cecelia Pierce was there. You can ask her about it. And she showed it to Cecelia and I.

Q A bruise?

A Yes. I didn't see Greg hit her. I can't say that was the bruise from Greg Smart, but, yes, she did tell me a bruise from Greg Smart.

Q Was it before the first time that you had intercourse with her?

A Well, like I said, I don't want to say it was this time or this time, but it was between February 5th and May 1st.

Q I'm trying to --

A Well, I don't want to guess.

Q I don't want you to guess.

Did this anger you when you saw this bruise?

A Yes.

Q Okay. So what month did you become angry with Greg Smart?

A What month did I become angry with Greg? It was after I had sex with Pam the first time. Probably around -- I don't know, probably when she was crying that night.

Q Is this the end of March that we're talking about?

A I don't remember.

Q When you said you had sex for the first time with Pam, when was that day?

A That was at Pam's condo in Derry.

Q When was that day?

A When was that day?

Q Right.

A I want to say it was before she went on the cruise, but I'm not positive.

Q You want to say it was before she went on a cruise?

A Well, I kind -- that's what comes to mind, but I couldn't say yes, it was before she went on the cruise in February.

Q Okay. So you would have seen this bruise or you would have been angry with Greg before she goes on a cruise in February?

MR. MAGGIOTTO: Objection, Your Honor. That wasn't the question asked. The question was asked when he first had sex. Defense attorney now asking if that's when he got angry.

MR. SISTI: Separate question and deals with a time frame.

THE COURT: Why don't you reask the question so everyone's clear.

BY MR. SISTI:

Q Let's go through this again. Before this cruise that Pam goes on, what takes place? Did you have sex with her?

A I think it was before, yeah, but I'm not positive, so I can't say.

Q This is a big thing for you?

A It's a very big thing for me, right.

Q You were a virgin, right?

A Yes.

Q This was a big day for you?

A Yes.

Q Do you remember the day?

A It was nine months ago. I don't remember the day. Sorry.

Q It was nine months ago?

A I remember what happened that day perfect. I just don't remember the date.

Q Well, was it before your birthday or after your birthday?

A I think it was before my birthday.

Q So it was before March 12, 1990, right?

A Yeah.

Q And do you think you had sex with her before she went on the cruise or after?

A I think it was before, but I'm not positive.

Q It's your best recollection it would have been before?

A Yeah.

Q So before this cruise did you have a hatred for Greg Smart?

A Well, if that -- if it was before the cruise that I'd spent the night at Pam's house that first time and she was -- she broke down and was crying on the way back, then, yes, it was

Q So you would have been hating Greg Smart for a couple of months -- over a couple of months before you finally kill him?

A Yes.

Q All right. It wasn't just a spur of the moment thing?

A What do you mean by it was just a spur of the moment thing?

Q Well, you told the jury you had no intention of killing Greg Smart.

A No, I didn't want to kill Greg.

Q You didn't want to kill Greg?

A No, I did not.

Q Did you ever tell any of your friends you wanted to kill Greg?

A Yes, I did.

Q How many times did you tell your friends you wanted to kill Greg?

A I don't know.

Q Many, many, many times?

A No, not many, many, many.

Q Not many, many times?

A Not -- well, there's -- it's not like everyday I'd be commenting on I want to, you know, do this and this.

Q Did you have about 20 planning meetings with your friends?

A After they had decided to help me and a little bit before, I guess around 20. I don't know. I guess, though.

Q Why are you saying 20 then? Why would you agree if it's not true?

A Because I know there were quite a few times.

Q Okay. Now, during these particular planning sessions, it would be you and Lattime and Randall, right?

A Sometimes Raymond Fowler and Pam, too.

Q Over where?

A J.R. would be there at the Media Center, but she really didn't like to talk around J.R.

Q Over at J.R.'s house you had about 20 sessions?

A Well, we wouldn't say like all right, we're going to meet at J.R.'s house at 9 o'clock and talk about this. It would

just like come up.

Q It came up frequently over there, right?

A Yes.

Q It came up, what, all through the month of March?

A I think it was more like April when I was discussing it with them.

Q April?

A I wasn't discussing. I was telling them what Pam said and everything. I think it was around April.

Q So you'd been saying Pam told me this, Pam told me that, right?

A Yeah, I told them that Pam was involved and everything.

Q Really?

A Yes.

Q Through you?

A Yeah, and plus she'd talked about it before, like leaving the bulkhead open, in front of J.R.

Q Did she talk to Randall?

A No, I don't think she did.

Q Talk to Fowler?

A After the attempt with Fowler, yes, she did.

Q She had a little sit-down in the car with Fowler?

A After that night in the car driving back and he held the

knife, and I'm sure Fowler knew it was Pam involved. It's obvious.

Q Are you telling this jury that, let's say, black clothing was Pam's idea?

A Yes, it was.

Q Are you saying sneakers were Pam's idea?

A No, that was Raymond's idea.

Q Are you saying the automobile ride -- J.R.'s automobile, using J.R.'s automobile was Pam's idea?

A No, that was J.R.'s idea.

Q You're attributing the use of a firearm to Pam, right?

A She wanted us to use a gun, yeah.

Q That's her idea?

A Yes.

Q That wasn't an idea that came up just between you guys brainstorming things?

A She wanted to use a gun because I guess the only other alternative would be a knife. She said that would be too messy.

Q So you guys said no knife, right?

A Pam said no knife, yeah.

Q Well, did you agree with her?

A Yeah, I didn't want to use a knife.

Q When did you agree with that?

A I assured her that we'd use a gun the whole time.

Q When?

A Throughout the whole plan.

Q Throughout the whole thing?

A Every time I talked to Pam, and if she happened to say, "Make sure you use a gun, don't use anything else," I'd say, "Yes, I'll use a gun. I promise."

Q You won't use a gun or you will use a gun?

A I will use a gun.

Q And you promised that you won't use a knife, right?

A She didn't want us to use a knife.

Q So you go there -- when do you go there to try to kill Greg the first time?

A Probably late March, early April. Right around there. I didn't go there. I just called her up and said we don't have a car and stuff. That's when she got mad at me.

Q So you just lied over the phone, is that what you're telling the jury?

A Did I lie over the phone? No, I didn't have a car or a gun. I told her the truth.

Q You said, "I'm not going"?

A I said, "Sorry, I can't go up. I tried to get a car. I

tried to get a gun" --

Q Okay.

A -- "but I couldn't." That was a lie because I didn't try to get a car or a gun and she got mad at me.

Q This would have been in April?

A April, March. After my birthday. I know it was after my birthday. Late March, April, right around there.

Q Well, you were trying to get a gun then, weren't you?

A Around there?

Q Yeah.

A Yes, I was, but before. It was after that first attempt because after she got mad at me that first time when I called her. That's when I started thinking, well, she's serious about this and she's going to leave me if I don't do this.

Q That's a time I want to talk about with you. That's a big fear, Pam would break off her relationship with you?

A If I didn't kill Greg for her, yes.

Q Your big fear is Pam would break off the relationship with you?

A If I didn't kill Greg, yes.

Q That's it?

A What do you mean "That's it"?

Q Well, were you worried day in and day out that Pam would leave you?

A Day in and day out, no.

Q You didn't care one way or the other?

A Yeah, I cared. I didn't want her to leave me.

Q Did you want to be with her the rest of your life?

A Yes, I did.

Q Okay. When did that start? When was that desire?

A Probably after the first time we had sex. I don't know.

Q That's when you wanted to be with her the rest of your life?

A Yeah. She said she'd want to be with me the rest of my life.

Q That was on your mind, right?

A Yes.

Q So I mean, if she came to you and said, "Hey, Bill, forget it. I don't want anything to do with you," that would make you feel terrible, right?

A I'd be devastated, yes.

Q Devastated if she broke off the relationship?

A Yep.

Q Devastated if she said something like, "I don't want anything to do with you. I just can't go on with this

affair. I'm going back to my husband"?

A She never would have said something like that. I mean, as in "I'm going back to my husband."

Q That would have devastated you?

A She did say that. Like that time on the phone when I called her and she got mad, she said -- she was saying that's it between us, she said, because, you know, "I can't go on seeing you like this and not being able to stay with you and having to go home to him because of the way he treats me."

Q All right. Breaking off the relationship would have devastated you, right?

A I did not want her to break off the relationship.

Q You had, for lack of a better term, an obsession with this woman?

A Yes.

Q You thought about her all the time?

A Yes.

Q You thought about living with her all the time, right?

A Yes.

Q You thought about the fact that you were separated from her because she was married?

A Say that again.

- Q You were separated from her because she was married; she's in Derry, you've living in Seabrook, right?
- A Yeah.
- Q Okay. And you thought about that, right?
- A Yeah.
- Q Would that help fuel your hatred and your anger, too?
- A I wanted to be with Pam, yes. I didn't want to kill Greg either, though.
- Q We'll get to that. When did the bullets actually get purchased, do you know?
- A I believe it was either two days before or a day before May 1st.
- Q Two days before or the day before?
- A To the best of my recollection.
- Q I mean, if somebody said it was a month and a half before, they'd be incorrect?
- A I believe so, yes.
- Q Somebody said it was on the very day of the murder, they'd be incorrect?
- A It might have been on the very day. I don't think it was, though. I'm pretty sure it was two days to a day before.
- Q Two days or a day before, the rounds are purchased?
- A It was very close to May 1st, yes.

Q And you're saying that Pam gave you the money?

A Yes, she did.

Q Okay. And could you just go through that with me?

A Sure. I told Pam because I didn't have any money at that time, and I told her I need money to buy the bullets, and she said, "How much are they going to cost?" This was at the Media Center. I said they couldn't be more than \$30.00 because I didn't know how much it would cost. So we drove to the bank -- this was during lunch, I believe -- we drove to the bank and withdrew some money and she gave me \$30.00 from it.

Q Now, this would have been a day or two before the murder?

A When she gave me the money? Three days, four days before. Could have been the day we bought the bullets, though. It was very close also.

Q Three or four days before the murder?

A Approximately, yes.

Q Was it within a week of the murder?

A Yes, it was within a week.

Q And how much money again?

A I don't know how much she withdrew. I can't remember.
But she gave me \$30.00.

Q She gave you \$30.00?

A Yes, she did.

Q And the bank was which bank?

A I don't know the name of it. It's in Hampton.

Q It's in Hampton?

A Yeah, it's close to the movie theater.

Q Near the movie theater in Hampton?

A Yeah.

Q Okay. Now, when you got these bullets you knew you were going to use them, right?

A That's what I bought them for, yeah.

Q So this is days before this murder goes down; you already intended to kill Greg?

A Pam said she was going to leave me if I didn't, yeah.

Q You already intended to kill Greg?

A Yes.

Q In fact, you wanted a special style of round?

A I asked J.R. what would be the quickest, most painless way to do it. He said a hollow tip bullet.

Q The quickest, most painless way to do it?

A Correct.

Q The quickest, most painless way to kill somebody, right?

A Yes.

Q And he says get yourself some hollow points, right?

A He told me hollow tips would be the quickest and most painless?

Q Then the gun was already lined up, right?

A Yes.

Q In fact, that gun was lined up, what, weeks before, months before?

A Say like a week or so before.

Q And where did you keep that gun so that it would be ready to go?

A Well, it was kept in J.R.'s father's drawer. We didn't touch it until right around the time we bought the bullets. J.R. took it out of his father's dressing room and we kept it in the camper, kept it in the camper outside.

Q You brought it out to the camper outside?

A Yes.

Q When was this?

A At the maximum, a week before May 1st.

Q Okay. A week before May 1?

A At the maximum.

Q At the maximum?

A Could have been sooner.

Q Could have been what?

A It could have been and probably was sooner to May 1st.

Q How much closer to May 1st could it be?

A It could have been the day before May 1st. Could have been May 1st.

Q Take the -- who takes the weapon?

A J.R. took it out of his father's drawer.

Q And moves it out of the trailer?

A Yeah.

Q And brings it over to the camper?

A Well, the first time I saw it after he'd taken it out of the drawer I believe was in the camper, yes.

Q So the first time you see it, it's in the camper, it's not in the trailer?

A Yes.

Q And J.R.'s there?

A Yes, he was.

Q And Randall's there?

A Yes, he was.

Q And you pick up the weapon and you take a look at it?

A Yes.

Q What do you do with the weapon in front of these two guys?

A Well, Ralph was there and I believe Pete was talking to Ralph so he wouldn't come in the camper. J.R. came in. I

asked him how to open the chamber, and he showed me, and that's about it.

Q That's about it?

A I believe that's when we -- no, that wasn't when we were talking about the bullets.

Q That's not when you talked about the bullets?

A No, we talked about the bullets before then.

Q Did you know whether or not J.R. had ammunition right there on site that would fit that weapon?

A Right there on site, his father had .38 rounds.

Q His father had .38 rounds?

A In his room, yeah.

Q Right in the room?

A Yeah.

Q Okay. What other rounds were there?

A What other rounds?

Q Yeah, what other ammunition.

A I don't know.

Q You don't know?

A I know the other guns he had. I don't know what other ammunition was there, though.

Q You don't know of any other ammunition?

A No.

Q Were you ever involved in getting ammunition to bring over to J.R.'s house?

A Was I ever involved in getting ammunition to bring over there?

Q Yeah.

A We went with George Emond to Big Al's Gun Shop. I had George buy the bullets and brought them back.

Q Any other time?

A Before May 1st?

Q Yeah.

A No.

Q You never -- you never obtained ammunition from another source?

A Not before May 1st, no.

Q After May 1st did you obtain ammunition from another source?

A Well, after May 1st we did have some ammunition, but it wasn't .38. It was -- I can't remember. I remember there was .22 bullets because J.R. has a little .22 rifle. I don't know what else was there, though.

Q Why did you get ammunition after May 1?

A Well, we didn't go for the express purpose of getting ammunition. We just -- in the process of what we were

doing we got ammunition.

Q Process of what you were doing you got ammunition?

A We broke into a storage facility.

Q Where was that?

A Salisbury. It's after May 1st, though.

Q When was it?

A Well, the newspaper said May 5th.

Q The newspaper said May 5?

A Yeah.

Q So is that the day because you read a newspaper?

A Well, I know it was after May 1st, and it's very possible that it was May 5th, yeah. Since the newspaper said so, I guess it was.

Q You just read a newspaper while you were in jail?

A Yeah.

Q And that clears it all up for you?

A No, but it's possible it was May 1st -- I mean, May 5th, but I know it was after May 1st.

Q Well, you were looking for a gun in there, too, weren't you?

A No.

Q You weren't looking for a weapon?

A Ralph Welsh had come up with the idea to break into that

place and we went there, and J.R., Pete, Ralph and myself were there. J.R., Ralph and Pete got out and then they climbed over the fence looking around the place, see if there's anybody in there, and so they came back and said there wasn't anyone in there. We went to Ralph's house and got bolt cutters because they all had locks on them, the storage shed they were going to open up and see what was in there. We never went with a purpose, let's go find a gun.

Q You just went for the purpose of what?

A To see what was in there to take.

Q To steal?

A Yeah.

Q Yes?

A Yes.

Q This would have been just days after you killed Greg Smart?

A If the newspaper is correct.

Q You name the day, when was it?

A I said the newspaper said May 5th. I wasn't sure if it was May 5th. I know it was after May 1st.

Q Was it shortly after you killed Greg Smart?

A I couldn't really say, to be honest.

Q Is there some particular reason why you're blaming Ralph for this particular break-in?

A I'm not blaming Ralph. We were all to blame.

Q And you weren't looking for a weapon then?

A No. I wasn't with them when they got into the shed thing that had the bullets in. But there was bullets in there and gun scopes, but they said they looked and there was no guns.

Q I want to go through with you in as much detail as the prosecution has with regard to this, okay?

When do you claim to have first wanted to be with Pam for the first time?

Q When did -- like forever be with Pam or -- well, it was shortly after February 5th, and, you know, I was attracted to her and, you know, I liked her a lot and everything.

Q Even before that did you make comments to your friends that you wanted to go to bed with her?

A Oh, yeah.

Q Yeah?

A Yeah.

Q Okay.

A Before the 5th?

Q Yeah.

A Yeah.

Q How much earlier than the 5th of February, 1990 was that comment first made?

A It was the first day I saw her.

Q When was that?

A Project Self-Esteem meeting, beginning of sophomore year.

Q September?

A Possibly.

Q 1989?

A Yeah. Well, I'm not saying, yeah, that is September. It was right around there.

Q September or October?

A Yeah.

Q Then you made it your best to get into her group and that sort of thing?

A Yeah.

Q Because you were very much attracted to her?

A Yes.

Q You were hoping very much that she would be attracted to you?

A I wasn't thinking, you know, I hope she's attracted to me. I just wanted to get into her group and get to know her.

Q Get into the group to get to know her, right?

A Yeah.

Q You told all your friends about that, right?

A Yeah.

Q That was no big secret, right?

A Not between my friends, no.

Q As early as the fall of 1989?

A Yeah.

Q In general, did you have much conversation with Pam in January of 1990?

A I believe I was involved in the orange juice commercial then.

Q Anything special then?

A Between us?

Q Yeah.

A No.

Q Why did you want to be in the orange juice commercial?

A When she told me about it, I thought it was a stupid idea. I said yeah because she was going to be there.

Q Because she would be there?

A Yeah.

Q Then in February is when it gets serious, is that what you're saying?

A After she told me, yeah.

Q And you tell your friends about this, right?

A Yeah.

Q You share with them letters and notes and so forth, right?

A Yes.

Q You tell them of your plans to be with Pam for the rest of your life?

A I told them about, you know, Pam wanting Greg dead and everything, and I don't think I said, you know, hey, guys, I want to be with Pam for the rest of my life.

Q Greg was in your way, right?

A Greg was in my way?

Q Right. As long as Pam was with Greg, you couldn't have Pam, right?

A No. As long as I didn't kill Greg for Pam, I couldn't -- I could be with Pam but she threatened to break up with me.

Q So you're telling this jury that the only reason you killed Greg is because you loved Pam, is that what you're saying?

A No, it's because Pam told me to and I loved Pam.

Q And you would do whatever Pam told you to do, is that what you're saying to this jury?

A Whatever Pam told me to do, yes, I probably would back then, yes.

Q It's kind of like you had no brain at all?

A I had a brain. I just -- I don't know, I was in love.
I'm sorry.

Q So, I mean, do you admit that you knowingly killed Greg
Smart?

A That I knowingly -- yeah.

Q Yeah. I mean, you did it, right?

A Yes, I did.

Q All right. You're not saying that you were out of your
mind, are you?

A That I was -- what do you mean, like crazy or something?

Q Yeah.

A No.

Q Are you saying somebody made you do it?

MR. MAGGIOTTO: Objection, Your Honor. Asked and answered.

THE COURT: Objection's overruled.

Q Are you saying that somebody made you kill Greg?

A I wouldn't have killed Greg if Pam didn't want me to, no.

Q So you're saying Pam made you kill Greg?

A Yes.

Q And that that act was really not you?

A I performed the act, yes, but I never would have done it if
Pam didn't tell me to.

- Q You were just like a machine or something like that?
- A She was the first girl I ever loved.
- Q You're saying --
- A I didn't want her to leave me.
- Q You didn't want what?
- A Her to leave me.
- Q Okay. As early as March of 1990 you were attempting to procure a firearm over at Papa Gino's Restaurant in Seabrook, right?
- A I don't remember if it was in March. I don't remember when it was, but I know that I did try to get a gun from Papa Gino's parking lot.
- Q What was the purpose of trying to get that gun?
- A To kill Greg.
- Q To kill Greg, right?
- A Yeah.
- Q Who was helping you try to get that gun?
- A Cecelia told me where to get it. J.R. drove me over.
- Q Now, I know that you've gone through this whole negotiated bargain with the prosecution, but has the prosecution told you that you'd only be charged with one thing?
- A Did they tell me?
- Q Yeah.

A Like they -- no.

Q All right.

A They just said I could -- in exchange for the deal, the bargain was I plead guilty to second degree instead of first. They have -- I don't recall them saying, you know, you're not going to be charged with anything else.

Q Well, is it your understanding that you're going to be charged with other crimes?

A No.

Q What is your understanding?

A My understanding is it doesn't look like I'm going to be charged with it, but I was never promised that I would not be.

Q You were never promised that you wouldn't be, you weren't promised that you would be, is that what you're saying?

A Yes.

Q And you signed that agreement knowing that?

A Yes.

Q You're saying you don't know if you're going to be charged with conspiracy?

A No, I don't.

Q You don't know if you're going to be charged with attempted murder?

A No.

Q You don't know if you're going to be charged with witness tampering or obstruction of justice?

A No.

Q And you don't know if you're going to be charged with, let's say, an attempted theft of a firearm?

A I was told I was going to be. I wasn't told I wasn't going to be.

Q And the prosecutors would know all of this, right?

A I imagine, yes.

Q Well, you talked to them about it, did you?

A Did I talk to them about that?

Q Yeah.

A No, I didn't. And if I did, I don't remember.

Q So you go over to Papa Gino's; you try to steal a firearm to kill Greg back in March of 1990?

A Well, Cecelia had told me about it in front of Pam. So -- and I still wasn't -- I didn't want to do this, but if I would have said, well, look, Pam, I'm not going to do this, I was afraid that she'd leave me. So --

Q So you're saying that basically this attempted theft of a firearm over at Papa Gino's would be Pam Smart's fault, is that what you're saying?

A No, I'm saying the reason I went over there to get the gun was so I could show the -- Pam the gun, and she'd say, all right, he's trying and everything.

Q Are you telling this jury that you did not want to steal the gun back in March of 1990?

A Yes, I did.

MR. MAGGIOTTO: Objection. That wasn't the witness' testimony. Defense counsel is changing it to say he's saying something else.

MR. SISTI: I'm asking --

MR. MAGGIOTTO: If I may be heard. I don't think it's fair to the witness.

MR. SISTI: I'm being fair. I think he can answer it. It's a separate and distinct question.

THE COURT: He can answer it.

MR. SISTI: Thank you.

Q Somebody force you to steal or attempt to steal a gun back in 1990?

A No, I wanted to, but I didn't want to get the gun to kill Greg. I wanted to get the gun to show Pam so she'd think I was trying to -- going through with this and everything.

Q So that gun was just to show to Pam?

A Yes.

Q Just so you could show Pam a gun?

A Yes.

Q What is this going to show Pam?

A That I'm trying to do something about this so she'd think I'm going through with this and she wouldn't leave me.

Q This is also a month where you would have hated Greg Smart?

A Probably, yes.

Q So you're trying to steal the gun and it's during a month where you would have hated Greg Smart?

A I hated Greg Smart because of what he was doing to Pam, but I didn't want to kill Greg Smart.

Q You tried to get a gun again back in March of 1990, didn't you? Did you go over to somebody's house and try to go through a car there?

A Go over to someone's house?

Q Yeah.

A It was the same person's car. It was like that night or the night after.

Q You went over to someone's house and broke into a car?

A Cecelia told me where they lived. I didn't break in. I opened the door. It was unlocked.

Q You were looking for what?

A The gun Cecelia told me was in there.

Q What kind of gun was this supposed to be?

A I have no idea.

Q Do you know anything about guns?

A I know a little bit about guns, yeah. I know, you know, the difference between a pistol and a rifle and automatic, semi-automatic. I'm no expert on guns, though.

Q All right.

A And all Cecelia told me was she had a gun in her car. She didn't know what kind it was.

Q Before you drove to Derry for the first time to try to kill Greg, you were still looking for a gun, weren't you?

A Yeah, me and Raymond went to his house to look for one.

Q You look over at Raymond Fowler's house for a .45 caliber semi-automatic weapon?

A I don't remember what kind of gun it was supposed to be, but we never found it.

Q You look in an attic; you looked in the basement, right?

A Yes.

Q You couldn't find one?

A No.

Q Was that gun just to show Pam?

A No, back then I was serious about it up to the point where it looked like we were going to do it.

Q Here's another suggestion. Did you think you were going over to J.R.'s house and borrowing one of his father's guns to show Pam?

A Yeah, but he wouldn't let me.

Q He wouldn't let you?

A No.

Q He wouldn't let you borrow a firearm just to show somebody?

A Correct.

Q This is the same J.R. that allows you to use a firearm to kill somebody?

A Yes. That was afterwards. He wouldn't back then. I believe he still thought I was crazy for doing this.

Q Why would he think you were crazy? Were you acting a little strange?

MR. MAGGIOTTO: Objection, Your Honor, as to what J.R. would think.

THE COURT: I'm sorry?

MR. MAGGIOTTO: Objection to this request of this witness to testify what J.R. would think and why.

MR. SISTI: I'm asking whether or not he felt he was acting strange or not.

THE COURT: Why don't you reask your question.

Q Were you acting strange or not?

A Was I acting strange? I don't think I was.

Q You don't think you were. Just acting normal?

A Besides talking about Pam and everything, yeah.

Q So J.R. thinks that you're not acting normal and he wouldn't give you a gun?

A No, he didn't. When I say he thought I was crazy, I'm not saying that I was walking around 24 hours a day crazy. He thought it was a crazy thing to do, to go kill Greg.

Q To what? To kill Greg?

A Yes.

Q And then it's better by May 1, it's not crazy?

A Well, he agreed to help.

Q I know. Between the time you first talk to him and May 1, it's not a crazy thing to do?

A Yes, it is a crazy thing to do, but he agreed to help.

Q Just to clarify this, you recruited specifically J.R., right?

A J.R. and Pete, yes.

Q And Pete and Fowler, right?

A Yes.

Q I mean, you're certainly not going to tell the jury that Pam had anything to do with that, right?

A Well, Pam had told me, "Why don't Pete and J.R. help you?"

And I said, "I asked them and they said they think I'm crazy.

Q So now you're blaming Pam for getting these kids involved?

A No.

Q Which is it?

A I got them involved.

Q You and you alone?

A Pam got me involved; I got them involved.

Q You're blaming Pam on getting you involved?

A I never would have killed Greg if it wasn't for Pam.

Q Is that what you were thinking of when you cocked that hammer back right before you shot Greg, were you thinking of Pam?

A I don't know what I was thinking of.

Q I mean, the reason I ask you this is because I want to know what your motive was at the time that you killed Greg.

A My motive was Pam.

Q So you're cocking that trigger back or that trigger back and you're thinking of Pam, is that what you're doing?

A I was there because of Pam. I do not remember what I was thinking.

Q You don't remember what you were thinking at the time you

killed Greg?

A No.

Q Your memory is so unclear that you don't even know why this material is even laying under his body; wallet, ring, keys?

A I was extremely scared, but I don't remember.

Q Were you scared?

A I was very scared, yes.

Q Were you so scared that you were sitting around contemplating whether or not to unscrew a bulb from a light fixture in the hallway? That was before Greg got there?

A Yes, it was.

Q Why don't you tell the jury how many minutes it was before Greg got there.

A How many minutes?

Q Yeah.

A Fifteen, 20 minutes.

Q Fifteen or 20 minutes before you kill Greg?

A Approximately.

Q You're worried about premeditation?

A Yeah.

Q You're worried about how the scene looks?

A Yeah, Pam wanted it to look like a burglary.

Q So this is Pam's fault again?

A What do you mean by "Pam's fault"?

Q Are you blaming not taking the bulb out of the light fixture on Pam now?

A No, I'm saying she wanted it to look like a burglary, and I figured if we took the bulb out it's not going to look like a burglary.

Q You figured that, didn't you?

A Yes.

Q You and your friends used to sit around in planning sessions and used to shoot ideas off each other, didn't you?

A We talked about it, yes.

Q You talked about whether it should look like a bungled burglary, right?

A No.

Q You didn't; are you sure of that?

A Pam said make it look like a burglary. That never changed. That was going to be the whole thing.

Q That wasn't an idea brought up by any of your buddies, like Lattime or Randall?

A That was Pam's idea.

Q Strictly Pam's idea?

A Yes, it was.

Q Your buddies would have nothing to do with suggestions on how that scene should look?

A Yeah, that's correct. Maybe they might have said, well, what you should do is take the stereo out and put it here, here, but it wasn't their idea to make it look like that. It was Pam's.

Q When you were in that apartment on 4-E and you were waiting around before you killed Greg, how much time actually elapsed before you kill Greg?

A From the time we went in the bulkhead doors to the time till then?

Q Yeah.

A I don't really remember.

Q You don't remember that either?

A I don't remember how much time had passed, no. I wasn't watching my clock timing this and everything.

Q No? How about your best approximate?

A Approximate? Say 45 minutes.

Q Forty-five minutes?

A Yeah.

Q And during this period of time you go through an apartment

that you're already familiar with, right?

A Yes.

Q And you go up to the top floor and you ransack the master bedroom?

A Yes.

Q And you bring down a small portable television?

A I believe so, yes.

Q You go through a jewelry box?

A Yes.

Q Why are you going through the jewelry box anyway?

A Pam said to take the jewelry. She wanted it to look like a burglary.

Q Did Pam leave some good jewelry in there for you?

A That day she had a lot of jewelry on, and she'd said -- because she knew what we were doing, going up there that night, so she wore all her favorite rings and stuff.

Q So there wouldn't be any good jewelry up there?

A There was still jewelry left up there. I don't know if it was great jewelry. I know Pete had tested it, put it in bleach or something, and it was like bad stuff.

Q Ever tell Lattime in your presence that she'd leave some nice looking chains or bracelets up there?

A I don't recall.

Q You don't recall that. You get the bag of jewelry, you put it in a bag?

A Pete did, yes.

Q So is that all Pete's idea or what?

A To put it in that bag?

Q Yeah.

A Well, we got the pillowcase and he put it in there, and then we took it downstairs. It was his idea to put it in the black one.

Q Okay.

A But I think when we got the pillowcase off the bed, that was just we -- you know, we knew we were going to do that before.

Q You intended on stealing the jewelry?

A Yeah, Pam told us to.

Q You intended to steal speakers?

A Pam told us to make it look like a burglary. That's what we were doing.

Q Specifically, what kind of speakers were they?

A Either Boss, B-o-s-s, or Bose, B-o-s-e.

Q And what other speakers? Anything else?

A Just those. There was Kenwood speakers, home speakers in there, but they were too big.

Q But you were under strict instructions from Pam that you take the B-o-s-e speakers?

A She said make it look like a burglary, and I told her, you know, well, we'll probably take the speakers and stuff like that because that's what someone would do if they broke into the house.

Q And you referred to the Bose speakers?

A They would have been Boston Acoustics, now that I think about it.

Q Well, what are they?

A It's been a long time since I seen them. When I went to Pam's house, I wasn't sitting there looking at the speakers.

Q Weren't you thinking about the plan, the murder, the botched burglary, the way the scene should look; weren't you thinking about those things?

A Yes.

Q You were casing the place, right?

A I was casing the place.

Q You were looking for things to steal, you were checking out the scene?

A I was there to be with Pam.

Q You were there to be with Pam?

A Yes.

Q Did you get familiar with the layout of the apartment?

A Yeah.

Q Did you get familiar with the surroundings?

A Surroundings? Yeah, she drove us around, saying park here and everything, and going through the plan.

Q You told the jury on direct testimony basically that all you could remember was grabbing Greg when he came in through the door. Was it by the shoulders?

A Yes, I believe it was by the shoulders.

Q And that there was a lapse of time on that you didn't hit him, right?

A I don't believe I hit him, no.

Q So if somebody said you hit him, that person would be incorrect, right?

A To the best of my memory, yes, they'd be incorrect.

Q I mean, you wouldn't remember anything like that, is that what you're telling the jury?

A For the last nine months I've tried to think about this as little as possible.

Q Well, you've been going over this with your friends. Come on.

A No, I haven't.

Q Do you talk to Randall about this?

A We've talked about before this case, but never once, never said, all right, this is what we're going to say, or all right, you say this and I say that.

Q Well --

A Things like that.

Q -- back as recently as June of 1990, you were concerned about getting your story together, weren't you?

A Yeah, that was with Raymond. After that we were arrested, put in ADC and at ADC we weren't allowed to talk to each other until Christmas Eve, and in ADC there's a rule you cannot talk, cannot speak one word to anybody unless there's a staff member in earshot. You're monitored by staff everywhere you go, and once we were allowed to talk to each other, because of our charges and everything, we were monitored all the time. I mean, it was very, very few occasions where we'd be alone somewhere and there wouldn't be anybody there, and never more than three minutes.

Q Talking about the rules of ADC, did you watch Vance Lattime's explanation of the rules of ADC on television?

A No, I didn't.

Q You didn't watch television?

A No, I watched most of Pete's direct, and then I didn't -- I'd go back and forth. I didn't sit down and watch it.

Q You weren't watching?

A The TV's right outside my bedroom.

Q Right outside your bedroom over at the jail?

A My cell. And everyone in Brentwood's watching the case.

Q Are you interested in it at all?

A Am I interested in this case?

Q Yeah.

A Yes.

Q Well, were you interested in your buddy being examined on the stand?

A Yeah.

Q Interested in Lattime being examined on the stand?

A Yeah.

Q Were you interested in knowing whether or not they'd be asked questions like, did you talk over at ADC?

A That doesn't matter, because we've told when Pete was in ADC and J.R. and I were in Brentwood, and there's no way we could have a story conform when we were in ADC. Pete made the deal there; J.R. and I made the deal in Brentwood, so it was made before we were all together and able to talk freely, and once we told the AG's what we knew and everything, we can't change our story. We tell them what we know, and that's what --

Q Can't change your story once you tell these guys what you know, right?

A We couldn't say, all right, this is what we know. We told them the truth. We told them everything we remembered, what we knew, each individually, and then like we couldn't say, well, that and that didn't happen, you know, I talked to Pete and it went like this or --- because if we changed it all of a sudden, all three stories are exactly the same, you know, that's -- they're not going to make the deal.

Q They wouldn't make the deal, that would look bad?

A If we made up this story and it wasn't true, I never would have said, and I'm sure Pete wouldn't, about using a knife or anything like that.

Q What do you mean? What are you talking about?

A Using a knife.

Q Why is that so ridiculous? Is that ridiculous, using a knife to kill somebody?

A I don't know. It's really bad, you know.

MR. SISTI: May we have a short recess, Your Honor?

THE COURT: All right.

- - -

[Recess at 2:45 p.m.]

BY MR. SISTI:

Q Just want to ask you a couple questions about your education.

Did you have a course in school by the name of Crime and Punishment?

A Yes, I did.

Q Yes?

A Yes.

Q When did you have this course?

A Sophomore year.

Q That would have been what year?

A Last year.

Q '89-'90?

A Yes.

Q Were you involved in this particular course at the time you killed Greg Smart?

A Yes, I was.

Q You were?

A Yes.

Q What was the course about?

A Crime and punishment.

Q Well, what sort of projects did you get involved in?

A Well, they had several cases, mock trials throughout the course, and I was usually a lawyer. But on the last one there's a big trial for crime and punishment. It's like either you're a bad guy or a police officer, judge, attorney, and Vance and I were bad guys.

Q What were you?

A Political activists.

Q What'd you do; what was the crime?

A We were protesting the use of fetal pigs in the science department, and our threat was that for every day that they continued to use them -- without that they continued using them, we were going to kill someone in the science department.

Q What was your project?

A It wasn't my idea. It was what -- I was put into it.

Q It was what you were put into?

A Yeah, because Mr. Baron, the teacher, the bad guys in our class were me, J.R. and two other ladies -- girls. One was Traci, and I can't remember who the other one was. That was their idea, and we hadn't come up with an idea yet, so Mr. Baron said we should go into their thing.

Q That you should be the killers?

A Yeah.

Q How long did this go on?

A The mock trial probably went on for about -- about a week.

Q When was this trial?

A When was this trial?

Q Yeah.

A April.

Q April of 1990?

A Yeah.

Q And to prepare for that particular event, did you learn about things like premeditation?

A Yes.

Q And did you learn about different theories of, let's say, conspiracy and that sort of stuff?

A Yes.

Q Was it Lattime's idea or your idea in the presence of Mr. Baron that the event should deal with a killing spree?

A Lattime's idea.

Q And that would have been in April of 1990?

A Yes.

Q And the different court procedures and so forth were discussed during this course?

A Yes.

Q And different types of crimes were discussed?

A Yes.

Q That was a two semester course or one semester course?

A Two semester, half-year course.

Q On June 10th, 1990, when you heard that Ralph Welch went to the police, your mind was on escaping, right?

A I didn't want to get caught, that's correct.

Q And whose idea was it to go to Connecticut?

A I don't remember.

Q You don't remember?

A No. But it -- I want to say Pete because it's Pete's -- oh, no, as a matter of fact, the idea wasn't to go to Connecticut. It was to go to Florida.

Q It was to go to Florida?

A Yea.

Q And you talked to Ralph Welch on the phone, did you?

A Yes, I did.

Q And how long of a conversation did you have with him?

A Not very long. Five, ten minutes.

Q You didn't talk about rumors to Ralph Welch, rumors in the area dealing with you and Pam as being the perpetrators of the crime, did you?

A Yes, I did.

Q The fact of the matter is, you told Ralph --

MR. MAGGIOTTO: Objection, Your Honor.

A I said I did.

MR. MAGGIOTTO: Objection to the form of the question as to what the facts are. The jury determines that.

THE COURT: Why don't you phrase it in another question.

Q Did you tell Ralph the following: That "If Pam ever finds out about this, she'll never talk to me again. If she leaves me, I'll kill myself"?

A Yes. And that "this" that we're referring to is the rumor.

Q Now -- and it was that day that you went to Connecticut?

A Yes, it was.

Q And you returned the following day and you were arrested?

A Yes.

Q You're telling the jury from that day forward you never talked with your friends about the substance of this particular murder?

A No, I said that we never set up a plan or whatever.

MR. SISTI: Thank you.

MR. MAGGIOTTO: No questions, Your Honor.

THE COURT: You may step down, sir. Thank you.

- - -

[Witness excused.]

- - -

THE COURT: Counsel.

- - -

[Bench conference - no record.]

- - -

IN OPEN COURT BEFORE THE JURY:

MR. MAGGIOTTO: State calls to the stand Daniel Houle.

DANIEL HOULE,

called as a witness, being first duly sworn, was examined and testified as follows:

MS. NICOLOSI: Have a seat.

DIRECT EXAMINATION BY MR. MAGGIOTTO:

Q Mr. Houle, would you please spell your last name for the benefit of the reporter.

A H-o-u-l-e.

MR. MAGGIOTTO: May I proceed, Your Honor?

THE COURT: Yes, you may.

Q Mr. Houle, by whom are you employed?

A Metropolitan Life Insurance Company.

Q And how long have you been so employed?

A Eighteen years.

Q Where are you employed working for Metropolitan Life?

A Warwick, Rhode Island.

Q What are your duties and responsibilities for Metropolitan Life?

A Basically, oversee claims that are of an unusual nature, such as homicides, suicides, contestable policies, fraud cases.

Q And what geographical area are you in charge of?

A Right now basically the New England states.

Q How long have you had these responsibilities with Metropolitan Life?

A Approximately ten years.

Q Did you ever become involved in the handling of life insurance policies for Gregory Smart?

A Yes, I did.

Q In investigating the life insurance policies for Gregory Smart, did you become aware of what personal life insurance policies he had?

A We originally knew he had one life insurance policy, and because he deceased within two years of its issuance, we conducted a medical investigation in regards to his medical history, and we already knew he had a life insurance policy, if that's what you're asking.

Q How much was that life insurance policy for?

- A Fifty thousand dollars.
- Q When was that policy entered into? When was it bought, do you recall or do you know?
- A Take a look here. [Witness reading.] He signed the application for insurance on June 13th, 1989.
- Q Who is the beneficiary of that insurance policy?
- A Originally, Pamela A. Smart.
- Q Now, was there any particular rider on that insurance policy?
- A Yes, there was a spouse term rider. Also insured the life of Pamela Smart.
- Q Can you explain that to the members of the jury?
- A That's also for \$50,000. When the insurance was taken out, not only insured the life of Greg Smart, who was the owner of the policy, but also insured his wife. Should she die, he would be the recipient of \$50,000 and still keep the insurance on him also.
- Q Now, the spouse rider on Pamela Smart, did that ever change?
- A It was later converted to her own policy.
- Q When did that conversion take place?
- A Approximately January 23rd, 1990.
- Q What would have to happen in order to convert it from a spouse term rider to her own policy?
- A The basic reasons people do it is so they get cash value

on their policies. If she had retained it under Greg's policy, she wouldn't have any cash value of it. That's basically why, the reason they do it, and Greg Smart would have to have known about this because he was the owner of the original policy.

Q Now, in June, '89 when Pamela Smart was espoused to a rider, any signatures required by her in order to have that benefit; were there any signatures on the application?

A The original application had to require signatures of both parties.

Q And in switching it over to her own policy in January, 1990, did that require signatures?

A Yes, both parties again. Because he was the owner of the policy, he had to agree to the conversion.

Q Now, is this \$50,000 a fixed sum?

A Yes, it is.

Q And what is it based on? How do you get the \$50,000 personal life insurance?

A Basically, it goes by the age of the applicant, what he's willing to pay as a premium, and basically his health.

Q Now, besides the \$50,000 personal life insurance, was there any other insurance policy of Gregory Smart you're aware of?

A Being an employee of Metropolitan Life, he was also eligible

for group life insurance, and he had \$90,000 worth of group insurance with us.

Q Can you explain to the members of the jury what you mean by group life insurance?

A Most large corporations employ their -- when they hire someone they automatically guarantee them a certain amount of term group insurance, and usually it's based on what you make. Now, in our company, what we do is, let's say, you've made \$50,000 in a year. Company also gives you the option of asking do you want coverage one, two, three, four times your salary and you pay for that benefit depending upon how many times you choose. If you chose -- your salary was \$50,000 and you choose coverage two times, upon death you'd get a hundred thousand dollars.

Q Now, when did this group policy first -- when was it first started for Gregory Smart?

A Basically, the coverage starts when the party is hired with the company, and that would have been October 24, 1988.

Q At that time do you know who the beneficiary was?

A At that time it was -- the beneficiary was William Smart, the -- our insured's father.

Q Now, did that beneficiary ever change?

A Yes, it did.

Q Can you tell us when it changed?

A Our change of a change of beneficiary was completed on August 24, 1989, naming Pamela A. Smart relationship spouse as beneficiary to the group coverage.

Q Now, was there any requirement for Pamela Smart to sign any forms in order to be the beneficiary on this group policy?

A No.

Q Now, you said that in order to determine how much insurance an employee would have, he would have to select the particular option of how many times his salary he elected. In this case, do you know what was selected by Gregory Smart?

A On October -- in October of '88 he completed a company options form and he requested that we pay him three times his annual salary.

Q When was this form completed by Gregory Smart?

A I believe October 16th, 1988. Sorry, 1989.

Q Now, would this form require any signatures of Pamela Smart?

A No.

Q Once -- excuse me one second.

Once this form is filled out and someone were to die, how then is it determined how much insurance that individual would get?

A In Gregory Smart's case, since he was an agent, he had a

salary, also commission, and basically what the company would have to do is look back to what he made in commissions and his salary from the prior year, use that figure and basically multiply it by three. They do round it off.

Q Before you determine how much the insurance would be, you first have to determine how much Gregory Smart made the previous year?

A Correct.

Q When you say "make the previous year," talking about a tax year, a fiscal year?

A Tax year. From tax year -- would be the tax year for 1989, not a fiscal year.

Q And once that amount of money is determined, it's times three, and that's the amount of money which is paid to the beneficiary?

A Correct. Basically rounded off, so it's a lump sum figure.

Q Now, do you know when claim benefits were ever filed in this case, request for benefits?

A I believe a notice was sent out to the beneficiary advising that we -- that Gregory Smart did have group benefits. Let's see, on May 9th, 1990 the company sent a request out telling that he did have coverage.

Q Why would the company send a request out to a beneficiary?

A Obviously, some people don't realize they have coverage.

Q What is sent along with this notice?

A Basically, a note of condolences and a form request that a form be signed by the beneficiary and a return of a policy, and upon receipt of those documents the company would then entertain a claim.

Q Do you know when those documents were forwarded back to your office?

A I don't know the exact date, but they were completed on 5-14-90 and returned to -- we probably got them within a couple of days after that..

Q Now, this is the \$90,000 group insurance policy?

A Correct.

Q Do you know when the personal insurance policy claims were filed?

A May 8th, 1990.

Q Now, was \$90,000 ever paid out in this case?

A The \$90,000 was paid out approximately May 31st. Our policy was not paid out because the life insurance -- the life insurance wasn't paid out because it was -- the insured had died two years of issue, conducting normal inquiries, but the group was paid out approximately 5-31-90.

Q It's normal in a group life insurance if the insured dies

two years, you do a medical history check before paying out?

A Correct, yes.

Q Now, how would a beneficiary -- what would a beneficiary have to know in order to know what the insurance would be in this group life insurance?

A Well, basically, we don't issue a physical contract on the group policy. What he would have to know is what the person -- the Metropolitan employee -- made the prior year, and he would have to have knowledge of the option form that the employee completed, whether he wanted one, two or three times his salary.

MR. MAGGIOTTO: Just one moment.

- - -

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

- - -

MR. MAGGIOTTO: I have no further questions.

CROSS-EXAMINATION BY MR. TWOMEY:

Q Thank you for waiting a second, sir. Good afternoon.

A Good afternoon.

Q As I understand it, there's two different policies here; one's a group -- and I caught that word -- the first one called a life or whole life?

A Personal life insurance.

Q Personal life. Now, that first one was \$50,000, am I correct, the personal life?

A The personal life is \$50,000.

Q I could get a chart, but let's pretend we have a chart. Personal life \$50,000, and the beneficiary, Pam in this case, would have signed for it?

A Correct.

Q Okay. There's \$50,000. If the signature's accurate, that's \$50,000 she would know about, right?

A Correct.

Q Okay. At the point she signs it, anyway?

A Correct.

Q Now, the \$90,000 is -- sort of like comes with the job, is that correct?

A A wife probably -- probably a wife might know that he was group coverage, but they wouldn't particularly know the exact amount. They may just -- it may be a general concept that, yes, I'm covered by the company under some group, but even an individual working for the company won't know the specific amount at any one time because I don't think anyone else particularly knows their salary for last year. The equation may not really be available to the employee.

Q Basically, let me see if I understand what you're saying, is that a person and/or spouse or parents or anybody might know he's covered by this group thing, but to know the actual benefit that would be paid out at death, you'd have to know the formula as well as know the specific amount of money made on salary as well as know the commissions for the previous year?

A Absolutely right. It's a figure that's -- that's probably available but you wouldn't know the exact amount, as the personal life policy has right on the face of the policy \$50,000. But a group you would probably know that you're covered, but you wouldn't know specifically the amount.

Q So if you wouldn't know the amount of the group specifically, you certainly wouldn't know the amount if you added the group to the personal together because one of the two numbers is that in the group, the total of the two?

A You could be as sure of the personal life policy, but probably not know the group or the addition of both probably would not know.

MR. TWOMEY: Okay. Thank you very much, sir.

MR. MAGGIOTTO: No further questions, sir.

THE COURT: You can step down, sir. Thank you.

- - -

[Witness excused.]

MR. MAGGIOTTO: The State calls to the stand Norman Katner.

NORMAN KATNER,

called as a witness, being first duly sworn, was examined and testified as follows:

MS. NICOLOSI: Have a seat.

DIRECT EXAMINATION BY MR. MAGGIOTTO:

Q In a nice clear voice, would you please state your name so that everyone in the jury could hear and spell your last name for the stenographer.

A Norman Katner. K-a-t-n-e-r.

Q Mr. Katner, I believe it is, is that correct?

A Yes.

Q Where do you live?

A Ten Blueberry Lane, Rye, New Hampshire.

Q Are you married?

A Yes.

Q Do you have any children?

A Yes.

Q How many children do you have?

A Two.

Q What is your professional background?

A I'm an educator.

Q And what degrees do you hold?

A B.S. in elementary education; M.A. in supervision and instruction; and a Doctor's degree in educational administration.

Q And where are you currently employed, if at all?

A I'm currently retired and working as a consultant at the time.

Q Before you retired, where were you?

A I was Superintendent of Schools in SAU 21 in Hampton.

Q Do you know Pamela Smart?

A Yes.

Q Is she in the courtroom?

A Pardon?

Q Is she in the courtroom?

A Yes.

Q Would you point her out, please.

A Right there (indicating).

Q Now, can you explain for the members of the jury what SAU 21 is?

A School administrative units were formed in 1917 as the

result of soldiers from New Hampshire being inducted into the service and not able to pass the literacy test. The school administrative unit takes from one to 14 individual school districts and handles the business affairs, et al, for those particular schools. At SAU 21, located in Hampton, there are six school districts; South Hampton, Seabrook, Hampton Falls, Hampton, North Hampton and the Winnacunnet District, all separate and independent school districts. It was our function to order whatever they needed -- had to have to pay for those items ordered, to handle their payroll, to negotiate their contracts with the teachers and other employee organizations, to set up the agendas for each of the six school boards that had meetings, to provide them with legal services, to set up their annual district meetings, at which time the budgets were voted on. In general, all business affairs of the individual districts were processed through the school administrative office.

Q Where was this school administrative office for SAU 21?

A Where was it located?

Q Yes, sir.

A It was directly across from the Winnacunnet High School.

Q Were you familiar with the Media Center of SAU 21?

A Yes.

Q Where was that located?

A That was located in the basement of the school administrative unit building.

Q What were your responsibilities as Superintendent of SAU 21?

MR. TWOMEY: Your Honor, there's no relevance. We all know what a superintendent of schools does.

THE COURT: What is the relevance?

MR. MAGGIOTTO: Just trying to lay the background, Your Honor, foundation for this witness' testimony.

THE COURT: Seems to me everyone's familiar with what a superintendent of schools does, generally speaking anyway.

MR. MAGGIOTTO: I'll go on.

Q How is it that you knew Pamela Smart?

A I employed Pamela Smart, I believe on August 22, 1988, into a two-fold position. Number one, to run, direct the Media Center, and at the same time to move more heavily into public relations for the SAU 21, handling the PR or developing a program of public relations for the SAU 21.

Q Can you tell us what governing bodies there are for SAU 21?

A The governing body of SAU 21, like all SAU's, is all of the board members of the component district. In SAU 21's case,

that was 22 board members with 66 weighted votes.

Q When you say "66 weighted votes," that means three votes per member?

A There's a formulae by which school boards get three votes; then based upon the number of teachers gets additional votes up to a maximum in our district, in SAU 21 of 22 -- or 19, 19. Excuse me.

Q So this board of 22 members consists of representatives from all the school boards?

A The joint board consists of all the representatives of all the component district school boards, correct.

Q Besides yourself as superintendent, did you have any assistant superintendents when you were working at SAU 21?

A Yes.

MR. TWOMEY: Objection. Relevance.

MR. MAGGIOTTO: Would you like me to respond, Your Honor? I'm trying to get the names and players before the jury so when they hear the names later.

THE COURT: All right, he may answer.

Q Did you have any assistants at that time?

A Yes.

Q Who were they?

A Fred Engelbach was Assistant Superintendent for Business.

Leon Worthley was Assistant Superintendent for Curriculum.

Q Now, besides the 22-member SAU board that met, can you tell the members of the jury what the Administrative Operations Committee was?

A Because of the size of the joint board, and because by law, they were only required to meet twice a year. Prior to my arrival it was decided that each board would appoint or elect a representative to an Administrative Operations Committee that then would meet between joint board meetings with a superintendent to develop agendas to advise the superintendent if they had no legislative authority, but they were instrumental in creating the agendas for the joint board meetings.

Q Who would attend these Administrative Operations Committee meetings?

A Normally, one representative from each of the six school districts; myself, Leon Worthley at times, and Fred Engelbach at times, depending upon what the issues were.

Q Were you required to attend as part of your job as a superintendent or oversee these meetings?

A Yes.

Q Now, calling your attention to the -- excuse me. Let me back up one second.

Where were these meetings normally held?

A Normally held in a conference room at the SAU office in Hampton.

Q Where is that conference room as you walk into the building?

A As you walk in, in the front door you would go downstairs to your right, upstairs straight ahead, and as you go up the stairs to the next level, it would be directly to your right.

Q So it's in the upstairs, is that correct?

A Right.

Q Calling your attention to the spring of 1990. Were there any Administrative Operations Committee meetings in April?

A In April?

Q Yes.

A There was one scheduled for and held on April 5th. There was another one held on April 12th.

Q Did you attend the April 5th meeting?

A No, I did not.

Q Are you all right? Are you okay?

A Yeah.

Q I thought I saw a little discomfort.

Did you attend the meeting on April 12th?

A Yes.

Q And do you know what the reason for the April 12th meeting was?

A The reason for the April 12th meeting basically was a continuation of the April 5th meeting, at which time we did not complete all of the agenda setting items for the joint board meeting to be held on May 1st. So on April 12th, the items were finished. There were a multitude of items. One dealt with revamping the Media Center in the basement to accommodate -- to accommodate the staff on the upper floor, the business staff on the upper floor. I can't tell you whether it was on the -- I believe it was on the 12th that we also discussed a proposal by the Winnacunnet Board to have Mrs. Smart teach a class in the high school the following September.

Q Now, was Mrs. Smart required to represent herself at that meeting?

A No.

Q How do those meetings normally function?

A The AOC meeting?

Q That's correct.

A Normally, the chairman calls the agenda prior to the meeting. The chairman of the AOC calls the meeting to order and then we would proceed to go down through the items listed on the

agenda.

Q Now, besides this course that might be taught by the defendant, was there any pay raises discussed that evening for anybody?

A There was a pay raise on the agenda for -- you have to understand, the agenda was for the 5th. We didn't finish it on the 5th, so it carried over to the 12th. So on the agenda for the 5th was a pay raise but it was acted upon on the 12th.

Q When the pay raise is acted upon, is that acted upon in a general session of the Administrative Operations Committee?

A That depends. If it's -- usually, pay raises are held in executive session.

Q What does that mean?

A That means that the board excludes people from the meeting who do not have a vested interest in that particular topic, and the provisions of the Open Meetings Act goes into executive session, discusses it, does not necessarily take action, then comes back out and takes action on whatever personnel item that it might have discussed.

Q Now, did you have any discussion -- let me back that up.

On April 12th, 1990, was Pamela Smart at the meeting that night?

A Yes.

Q And where was that meeting?

A That meeting was in the conference room at the SAU 21 office.

Q Now, beside Pamela Smart, were the six board members or representatives from the different school boards present?

A I'm not sure that all six were, but there was a majority, which in this case is five.

Q And besides the representatives from the board members and yourself, who else was there?

A Leon Worthley and Fred Engelbach.

Q Now, is there anybody else besides the defendant at this meeting from the general school employee rolls?

A Not to the best of my knowledge.

Q Did you have any discussions with the defendant on that day as to whether or not she should be at that meeting?

A I -- I really cannot answer that. I believe I have a recollection of advising Pam at lunchtime that it was not necessary for her to attend.

Q Why would it not be necessary for her to attend?

A Well, most of the items in those particular meetings were dealt with by six board members. They're only recommendations. They're not anything that's binding on any of the boards or on the joint board as a whole, and usually about

the only time we had non-board members and/or non-administrative staff members would be if we invited the teachers in to discuss the calendar, which was required by the contract. So very rarely. I would imagine in all the joint board meetings we had, which must have been in six years probably around 15, we probably had three to four SAU employees attend that meeting -- those meetings.

Q Now, do you know how late the meeting went on April 12th, approximately?

A I -- I'm assuming that it went late because there was a lot of business to conduct that was carried over from -- carried over from the 5th. Usually, the meetings would end at 10 o'clock by virtue of a board member indicating they were going to end at 10. I believe that meeting went later. How much later, I can't recall. It would be in the minutes of the meeting.

Q Now, after April 12th were there any other meetings in the spring of 1990?

A Joint board meeting on May 1st.

Q Now, just to distinguish, the joint board meeting is the board you referred to as the 22 members?

A Yes.

Q And --

takes action upon those items that were prepared on April 5th and April 12th.

Q So the April 5th and 12 meetings make recommendations?

A Those are the agenda setting meetings for the joint board, yes.

Q Did you attend the meeting on April -- I'm sorry -- on May 1st, 1990?

A Yes.

Q Was the defendant present at that meeting?

A Yes.

Q Did you have any conversations with the defendant prior to her attendance at the meeting on May 1st?

A Yes.

Q Can you tell us when that conversation was?

A It was on the morning of May 1st.

Q Can you tell us what the substance of that conversation was and who was present?

A A decision had been made and discussed -- I don't know I should say a decision had been made -- a decision had taken place relative to utilizing more space in the basement for the business operations, which were upstairs on the high floor. That meant that the media operation would have to diminish its space to some extent. Mr. Engelbach had been

working on that. Our agendas, by board policy, had to be out seven days in advance of May 1st. However, the final drawings for the particular revision in the basement were mailed on Friday preceding the 30th. That would have been the 27th. All right? And on Monday, the 30th of April, Mr. Engelbach came to me and indicated that I better have a meeting with Mrs. Smart because whereas she'd been in agreement with giving up the space, she was now -- and I believe the word he used to me was renegeing. So I scheduled a meeting for the morning of May 1st to go over what that was all about.

Q Can you tell us who was at that meeting on the Monday -- I'm sorry -- on the morning of May 1st?

A Pam Smart; Fred Engelbach; Leon Worthley; Bruce Casassa, who was chairman of the joint board; and myself.

Q Can you tell us to the best of your recollection what happened at that meeting?

A I think Mr. Engelbach pointed out that it had been agreed upon and the material had gone out to the board members on the preceding Friday, and that now Mrs. Smart didn't agree with what had been presented to the joint board via the mail, and I recall during the discussion Pam indicated that -- and these may not be the exact words -- but that she

would be going that night, in the event anyone asked her questions she would have to answer them.

Q Is that a normal procedure where employees from SAU 21 would be available at these board meetings to answer questions?

A In the six years I was there, probably three times SAU employees had appeared before the joint board meeting, but then in those particular instances when the superintendent had indicated to the AOC that they would be there to discuss a particular program or a change in program.

Q Did you or any of your assistants invite Mrs. Smart to attend and speak at that meeting?

A Not to my knowledge.

Q When she said she would be available at the meeting or go to the meeting to answer any questions, what was your response?

A I believe I said to her, "Pam, you do what you have to do tonight and I'll do what I have to do tomorrow."

Q What do you mean by that?

A I meant I would call her in and discuss with her the protocol of dealing directly with a joint board rather than dealing through the administrative structure that had been created for that purpose.

Q Why would that bother you that you would go talk to her?

MR. TWOMEY: Object, Your Honor, to the opinion, unless he expressed it.

THE COURT: I'm sorry?

MR. TWOMEY: Unless the man expressed it, it's irrelevant. It's just an opinion.

THE COURT: You want to respond?

MR. MAGGIOTTO: I'll withdraw the question.

THE COURT: All right.

Q Did you go to the meeting that night, Dr. Katner?

A Yes, sir.

Q Was Pamela Smart there?

A Yes.

Q Did she speak out?

A No.

MR. MAGGIOTTO: I don't have any further questions, Your Honor.

CROSS-EXAMINATION BY MR. TWOMEY:

Q Good afternoon, Doctor. As I understand it, there were -- between April and the beginning of May, there were three meetings; April 5th, April 12th and May 1st, is that correct?

A I believe that, yes.

Q Okay. And at least one of these was a carry-over from April 5th; April 5th you didn't finish and some of the

agenda --

A Went to April 12th.

Q Okay. And during these meetings there were at least three things that would have a lot to do with Pamela Smart, is that correct; her salary? That was --

A As -- as was everyone else's.

Q Okay.

A But you want me to explain that the Administrative Operations Committee recommends all salaries to the joint board, so it wasn't only Pam's salary that was being discussed, it was the two assistant superintendents, my own, and those who are employed in the SAU.

MR. TWOMEY: If I could just have a moment, sir.

- - -

[Pause - Mr. Twomey reading.]

- - -

Q Her particular salary, there was a separate item on the agenda. Was it --

A Yes.

Q -- separate from all these other employees?

A Yes.

Q Why was that?

A Because she acted by a somewhat different category. There

were the certified salaries and there were the non-certified salaries, non-certified being accounts payable, clerks payroll, clerks, et cetera, and Pam was kind of an in between type of thing. It really didn't fall under administration. It didn't fall on the salary schedule, so we had to set salaries for that by action of the AOC. We would recommend and the AOC would respond. With the rest of the salaries, with non-certified staff, they were on a schedule and we would discuss the schedule with the AOC and they would usually make the recommendation based upon that salary schedule.

Q Okay. Now, if I understand that, all your other non-certified employees for the whole SAU was one motion, one sort of rate structure, salary structure?

A Okay, for the employees of the School Administrative Unit?

Q Right.

A Not all non-certified employees of the SAU. Okay? Only those that work in the SAU office -- well, it is -- it's a little tricky.

Q You lost me.

A Because the SAU negotiates salaries for the balance of the districts, so the only ones that the AOC deals with are those employed directly within that building.

Q Okay.

A Okay.

Q I still don't understand you, but get past that point, okay?

A All right.

Q At this meeting or meetings, whichever it was, there were two salary proposals; one was for Pam Smart all by herself, and the other one was for a bunch of other people together?

A Three, and the two assistants.

Q Okay. So her salary was a separate item on the agenda?

A Right.

Q Then there was -- I told you I could get us past that.

A Okay. Good.

Q There was also the question of the Media Center, correct? Changing the actual place or size of the Media Center?

A Yes.

Q That was an issue there, too?

A Yes.

Q That would be the conditions under which she worked, really where she worked and how much room she had?

A Yes.

Q There was a third thing that had to do with her. If I remember correctly, she had a special proposal; even though she wasn't a teacher, she wanted to teach a course at

Winnacunnet, I think one of the schools, anyway?

A Yes.

Q Okay. So there were three items on those agendas that had particularly to do with Pamela Smart; her own salary, the size and location of where she worked, whether or not she would be teaching in the school on a special basis, right?

A Right.

Q Now, you talked to us about the time when you spoke to Pam on May 1st, correct?

A Yes.

Q At that point in time she indicated that she thought about the changes in the Media Center and was no longer in agreement with them?

A No, I don't think -- I believe that was discussed earlier. I believe that was discussed with me anyway on Monday, the 30th of April, after the plans for the revision had been mailed out on Friday.

Q Okay. That's what I meant to talk about. I'm sorry.

A Okay.

Q At that point in time, this is one day before May the 1st?

A Right.

Q She comes to you and says --

A No.

Q You come to her?

A No.

Q Sorry.

A My assistant superintendent came to me and said, "We better do something because Mrs. Smart is renegeing on going along with this proposal."

Q Okay.

A That's when I called the meeting for Tuesday morning.

Q Okay. Now, the reason -- when your assistant principal said she's renegeing -- is because shortly before this there had been a meeting where Pam said she would go along with these proposed changes?

A My assistant principal is an assistant superintendent with a civil engineering degree, and he had laid out the plans in the basement relative to maximize the use and to maximize the space, and so he had worked with Pam very closely on that. How many times they had met and talked, I have no idea.

Q Okay. But you know or you did know -- anyway I hope you still know -- that it is close to this time as a week before, she had agreed with his recommendations?

A Yes.

Q Okay. So a week before April 30th would have been --

A Wait a minute. Again, I'm not sure. Those are questions you'd have to ask Mr. Engelbach. I'm not sure it was a week before or three days before, exactly when. I know that the plans were finalized and sent out to the joint board members on the Friday preceding the 30th. I'm sure that an agreement had been reached prior to that time, but exactly when I do not know.

Q Do you recall -- and I appreciate that this is a year ago -- do you recall talking to a Detective Charewicz from the Nashua police at some point in time?

A Nashua?

Q I'm sorry. Derry police.

A Yes, I do.

Q Do you recall telling him that Pam and your assistant had talked about this about a week before and that was the amount of time?

A If I said that to him, that's what I said. Right, about a week.

Q I'm just asking if you recall that.

A No.

Q I'm going to show you this report -- it's page 412 -- again asking if this helps you remember.

A Yeah.

Q If you don't remember, say you don't remember.

A [Witness reading.]

Q I should tell you where it is. I'm sorry.

MR. TWOMEY: If I may, Your Honor.

Q I'm pointing down about a third of the way down the page.

A [Witness reading.] That would seem logical. I'm not sure I spoke to him on August 10th at that number. I spoke with a detective on August 10th.

Q Okay. Does that help you remember?

A I -- I would --

Q Forget talking to him. I'm trying to get to when Pam agreed to these changes. Is that about a week before?

A It says this was about one week prior to May 1st.

Q Again, a week prior to May 1st would have been the 23rd, 24th?

A It would have been that week or sometime prior, probably during the week of April 23rd.

Q Right.

A Yeah. When, I don't know.

Q Okay. Now, the last previous meeting of the board had been what, the 12th?

A The last previous meeting of the Administration Operations Committee had been April 12th.

Q Okay. Now, between the 12th and the 23rd and 24th is 11 or 12 days, correct?

A That would do it.

Q Still with me?

A Yep.

Q So 11 or 12 days after this meeting on the 12th, Pamela Smart was saying she didn't have any problem with the Media Center?

A That's my understanding.

MR. TWOMEY: Okay. Nothing further.

MR. MAGGIOTTO: Couple questions, Your Honor.

REDIRECT EXAMINATION BY MR. MAGGIOTTO:

Q Now, you talked about, Doctor, the reutilization of the space in the School Administrative Unit 21 building, is that correct?

A Yes.

Q That wasn't just the Media Center that was going to be affected, it was the whole building, is that correct?

A Well, it was going -- the -- yeah, the whole building would have been impacted. The space in the basement had to be reconstructed to provide offices for those people performing financial functions. If you visited that building, you understand all financial functions are performed on the

upper floor where it's open access to anyone and everyone who walks in, which is somewhat difficult when performing those functions.

Q Anybody, if I could, from the financial part of your building who was at that meeting?

A No.

Q Now, you also testified about -- on cross-examination about the salary that was considered at the April 12th meeting. Would that be something that was discussed in executive session?

A I think it was. I believe the minutes would indicate that it was discussed in executive session.

Q Would the defendant have been part of that executive session?

A No.

MR. MAGGIOTTO: No further questions.

MR. TWOMEY: If I could just have a moment, Your Honor.

- - -

[Pause - Mr. Twomey reading.]

- - -

MR. TWOMEY: Thank you, sir. Nothing further.

THE COURT: Thank you, sir. You may step down.

- - -

[Witness excused.]

MR. MAGGIOTTO: I have one more witness this afternoon.

THE COURT: All right.

MR. MAGGIOTTO: State calls to the stand Fred Engelbach.

FRED ENGELBACH,

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. MAGGIOTTO:

Q Mr. Engelbach, in a clear voice, would you please spell your name for the -- would you please give us your name and spell it for the reporter.

A My name is Fred Engelbach. E-n-g-e-l-b-a-c-h.

Q Mr. Engelbach, by whom are you employed?

A By SAU 21.

Q What is your position with SAU 21?

A I'm the Assistant Superintendent for Business.

Q How long have you been there?

A Five and a half years.

Q During the school year of 1989 to '90, did you have that position?

A I did.

Q What were your responsibilities as an assistant superintendent?

A Basically, managing the business affairs of the six school districts.

Q And at the time that you were working there, did you know Pamela Smart?

A I did.

Q How did you know her?

A She was employed in the same office.

Q Is she in the courtroom?

A Yes, she is.

Q Point her out.

A Sitting there (indicating).

Q Now, calling your attention to April 5th, 1990, did you attend an AOC meeting at --

A I did.

Q Okay. Where was that meeting?

A It was held in the SAU 21 conference room.

Q And do you recall who was present for that meeting?

A The AOC members were present; two assistant superintendents, including myself; Mrs. Smart; and I believe a member of the press.

Q Was Dr. Katner at this meeting?

A No, he was not.

Q Would he normally attend such meetings?

A If he's available, he normally attends these meetings.

Q And were you also present at a meeting on April 12th, 1990?

A Yes.

Q Was the defendant present at that meeting?

A I'm sorry?

Q Was the defendant present at that meeting?

A Yes, she was.

Q Now, in the spring of 1990 did you work on a reutilization or utilization or revamping of the SAU 21 building?

A Yes.

Q For SAU 21?

A Yes.

Q Can you tell us when you started that plan?

A It's been an long-going study, probably begun about a year and a half ago, maybe two years ago. We have been considering rearranging the space for quite some time now.

Q And in the rearranging of the space at SAU 21, did you have any conversations or negotiations with the defendant?

A After the second AOC meeting in which the members of the OAC gave their endorsement to the remodeling plan, I worked rather intensively with Mrs. Smart in planning the space that the Media Center would have in the new building or in the

reconfigured building.

Q You presented your proposals for the plan at which meeting?

A We gave preliminary information to the AOC at the second meeting. Following that meeting, further refinements were necessary to prepare taking the plan to the joint board meeting scheduled for the 1st of May.

Q And that was April 12th that you first presented it?

A Yes.

Q Now, did any of those further refinements affect the defendant's operation of the Media Center?

A Well, yes, they did, because the space that would be allocated to the Media Center was reduced over the space that currently exists.

Q And did you have any negotiations with the defendant concerning the reduction of space?

A I wouldn't call them negotiations, but we jointly worked on a space plan. I took the lead on it. She certainly provided information that was necessary for planning in terms of the materials that needed to be housed. They are materials that require space and shelving. Based on the information she gave me, then I was the developer of the space utilization, which was primarily a shelving plan for the materials.

Q So basically, your conversations with the defendant dealt with shelving, is that what you're saying?

A Yes.

Q Now, when were these conversations with the defendant concerning the utilization of this space? How soon after the April 12th meeting?

A Within a week I started to work on it intensively so it would be ready for the joint board on the 1st of May.

Q Did you ever come to a final plan?

A Yes.

Q Do you know about when that was?

A It was about mid-week before the joint board meeting. That would be most likely Wednesday, the 28th or 29th of April, whatever date mid-week is.

Q Okay. I think you're off by a few days, but the May 1st meeting was what day of the week?

A Tuesday.

Q So you said the prior Wednesday?

A The plan was pretty well finished up, and I recall we made it a point of mailing the plan to each joint board member Friday afternoon so that they would receive it either in the Saturday mail or the Monday mail so they would have an opportunity to study it before the joint board meeting.

Q The mail goes out on Friday?

A That's correct.

Q When were you finished with the discussions with the defendant concerning the space?

A Probably Wednesday or maybe Thursday morning.

Q And at that time was there any problem with the defendant concerning the space?

A No, we -- we had a plan that was mutually agreed on.

Q And did that ever change?

A It did. On Monday morning, which would be April 30th, Mrs. Smart visited my office and stated that there was a problem with the plan.

Q What was the problem with the plan?

A As I recall, she indicated that there had been some materials that existed but we had not -- I guess I had not provided storage space for.

Q And how much storage space or materials are we talking about?

A It was a relatively small amount. In my judgment, it was almost insignificant, because when she explained it, my feeling was that, you know, by adding a single short shelf that that would certainly solve the problem.

Q After speaking with the defendant -- was this on Monday?

A Monday.

Q -- what did you do?

A I could tell from that -- well, during that conversation, I pointed out that there was at least one method of dealing with the shelving, which she felt definitely would not work. I frankly didn't understand why it didn't work and wouldn't work, and she wasn't able to explain it to me, but I do recall that she indicated a very -- I would say a violent objection to the whole plan.

Q And did this require any further meetings with you and the defendant?

A We didn't meet after that concerning the plan. I did feel, though, that it was important to relay that information to the superintendent so that he would understand that what we previously felt was a totally agreed on plan was now considered by the Director of the Media Center to be an inadequate plan and that would be a significant factor when we met with the joint board because the joint board frequently wants to know whether there is total agreement on what we want to do.

Q And because of that, did you attend any meetings with the defendant and the superintendent?

A The following morning there was a meeting in which the superintendent, the two assistant superintendents and

myself and the chairman of the joint board met to go over the agenda items for the joint board meeting. When we got to the point of discussing the agenda item for the space utilization, we discussed briefly where we stood on that matter.

Q When you say "the superintendent," is that Dr. Katner you're referring to?

A That's Dr. Katner.

Q Who just walked out of this courtroom a moment ago?

A Yes.

MR. MAGGIOTTO: No further questions, Your Honor.

CROSS-EXAMINATION BY MR. TWOMEY:

Q Sir, it wasn't just the problem with the shelving, was it? Wasn't there problems with materials to retain, which materials to get out, stuff everything there at the Media Center? Wasn't there a problem --

A During that approximate two-week period in which we worked on the plan, that's one of the aspects that we dealt with.

Q Can you tell us some of the other things that came up in those two weeks, if you recall?

A Well, basically, what we did was review the different types of media materials that would require storage, identified the amount of shelving space that was required for each

category of materials, and then I laid out a floor plan and a shelving plan that would accommodate the materials.

Q Didn't you also ask Pamela to set up the circulation figures; in other words, which stuff is really being used by the students and which stuff is sitting around?

A Yes.

Q So you had her figure out, sort of make choices of which materials to keep and which ones just weren't that necessary?

A That was a desired objective, yes.

Q Okay. I believe you said on direct examination the way you described it was you said that you worked intensively with her during that relatively short period of time. Did you say that?

A Yes, I did.

Q Was it -- were you accurate when you say that, sir?

A I think so.

Q So she worked intensively on this; this just wasn't another little task to do, this was something that was important to her, correct?

A Oh, I feel it was, yes.

Q Okay. Now, I think you said the Wednesday before the last meeting, okay, or Thursday before, one or the other, that you finally went over with it and she indicated at that

point in time she could live with your proposal?

A Yes.

Q So this wasn't a case where from, say, the day after the last meeting -- let's say the last meeting was April 12th -- it didn't appear to you that the day after April 12th she had made up her mind she was going to raise objections and raise objections and raise objections and never agree with you? I mean, that process wasn't going on?

A No.

Q So it's just a day before or two days before, whatever, this May 1st meeting that she told you she couldn't live with the final proposal?

A Yes.

MR. TWOMEY: No further questions. Thank you, sir.

MR. MAGGIOTTO: No questions, Your Honor.

THE COURT: You may step down. Thank you.

- - -

[Witness excused.]

- - -

THE COURT: Ladies and gentlemen of the jury, we'll adjourn tonight until tomorrow, 9:30. Please don't discuss the case, as I tell you every night. Don't read anything, don't view anything. Have

a nice evening. We'll see you in the morning.

[Court adjourned for the day at 4:13 p.m.]

EXHIBIT K

NH Supreme Ct
★ 91-239

ORIGINAL

(Volume I 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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TRANSCRIPT OF GENERAL JURY INSTRUCTIONS
AND
MOTION RE PRESS COVERAGE

Held before the Honorable Douglas R. Gray, Presiding Justice,
at the Rockingham County Superior Court, Exeter, New Hampshire,
commencing on February 19, 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

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FEBRUARY 19, 1991 - TUESDAY MORNING SESSION - 9:35 A.M.

P R O C E E D I N G S

THE COURT: Good morning, ladies and gentlemen. My name is Judge Gray, and we are here to hopefully select a jury. I presume that most of you, if it was not in the letters you received, know by now which case you're here to potentially become jurors on. The name of the case is the State v. Pamela Smart.

I'll tell you right up front, and I'm sure you all know it, this case has received an inordinate amount of press coverage. For whatever reason, I don't know, but it has. We're going to try to find a panel from which we can select 12 jurors and two or three alternates. The case is going to take -- jury selection will take probably two weeks, week and a half to two weeks, because in a case of this nature from the panel we'll individually question each potential juror. The juror will be brought in by himself or herself and the defense counsel and the State's counsel will ask each juror questions for about ten

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minutes each and that juror will be either challenged or accepted by the State or the defense.

We do it this way in a case of this nature -- this is not the way we ordinarily pick jurors, but in a case of this nature because of the case itself, involving a charge of -- which involves murder in the first degree, we normally allow the individual voir dire, it's called, of potential jurors.

We need to know right up front how many people in this group can sit on this jury and how many cannot. I would be kidding myself if I said that most of you have not read or heard or seen something about this case in one form of the media or another. I know most of you have, and I would be surprised if anyone in here didn't know anything about this case. The knowledge or prior knowledge of a case is not enough to disqualify you. The fact that you may have heard or seen or read something about this case is insufficient in and of itself to disqualify you as jurors.

The question is, have you formed any pre-conceptions about guilt or innocence in this or any case in front of a court.

The defendant, Pamela Smart, is present in the courtroom this morning sitting in the jury box between her two lawyers, Paul Twomey and Mark Sisti, of the firm of Twomey and Sisti. Their offices are in Chichester, New Hampshire and they have an office in Portsmouth, New Hampshire.

The State is represented by two Assistant Attorneys General, Diane Nicolosi and Paul Maggiotto, who are also sitting in the jury box.

Pamela Smart is charged with three offenses: conspiracy to commit murder, accomplice to murder in the first degree, and witness tampering. Under our law, both our State and the Federal Constitution, there is a presumption that she is not guilty, and in fact she has said she's not guilty. Our Constitution says that a person charged with an offense in New Hampshire has a right to be

tried in front of judges as impartial as the lot of humanity will allow us to have. That applies to jurors. We want no one on this jury with an axe to grind, with a preconception of guilt or innocence. We want no one on this jury who cannot decide this case solely from the evidence that is presented to the jury, without regard to what they may have heard or read or seen in the media. Those are the types of people who are disqualified from sitting on this jury. There is nothing worse that you could do for the defendant or for the State or for our justice system as a whole than to attempt to sit on this jury if you don't think in your heart of hearts that you can be a fair juror.

If, for example, you've made up your mind about this case because of what you've read, one way or another, you can't sit on this jury. If, for example, you've even been the victim of a serious criminal offense and would hold in your heart of hearts that against the defendant because she's charged

with a criminal offense, we don't want you on this jury. If you have jobs that you cannot leave, that in and of itself is not an excuse. I mean simple inconvenience will not get you off. On Normandy Beach, Korea, in Vietnam and in the Gulf today, there are people who are inconvenienced, but they are there and they were there. That will not get you off, but if you are so concerned about leaving your job that while you sit here for four weeks or five weeks and listen to evidence in this case and cannot concentrate on the evidence, that may get you off this jury. But it will not get you off right up front, if you know what I mean. If it is such an inconvenience that your livelihood, etcetera, depends on it, that may get you off the jury. If you have a vacation planned that you cannot -- you bought your tickets, you're going away within the next three or four weeks, that will probably get you off this jury. We might want to see your airline tickets, however, and I say that not lightly because we've been

there's nothing wrong with it because that's what we pay them to do. But we don't want someone up here sitting in the jury box thinking that because this individual, Mrs. Smart, has been arrested, therefore, she must be guilty. That's the worst thing you can do. This defendant, Mrs. Smart, is presumed to be innocent and that presumption remains unless and until the State dispels that by a standard we call proof beyond a reasonable doubt. So the fact she's been arrested, and in fact there are three indictments here to be tried, means absolutely nothing. It's not evidence at all. She's been indicted by the grand jury. That's a process which is a rather one-sided process because all the grand jury hears is what the State has to say. You people as jurors find the facts in a case based on the evidence, and the person starts out, as I say, with this presumption of innocence. And that is one of our more precious constitutional rights that we are presumed to be innocent. It is difficult to

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convict someone in America. If we made it easy, we would make it easy to convict people who are not in fact guilty. So that's the presumption we operate under. If you cannot form that presumption, if any of you in here think that because she has been arrested, because she has been charged with these crimes she must have done something wrong or she must be guilty, we don't want you on this jury. She demands, I demand, the State demands and you demand and we as citizens demand a fair and impartial jury, as fair as we can possibly get one, if that's possible in Rockingham County, and I think it is.

This case will be tried in Rockingham County. That's why you're all here this morning. This trial will take -- the jury selection, as I said earlier, will take approximately two weeks. The evidence in this case will begin on March the 4th, and the trial will probably be four to five weeks. Am I correct, counsel?

MR. MAGGIOTTO:

Probably.

THE COURT:

The Court will begin at 9 a.m. and the Court will end somewhere between 4 and 4:30 because we know there are jurors who come from the other side of the county and it's rather a long ride home. It's conceivable we would work beyond 4:30 but certainly we would not work beyond 5 on a given night unless the jury were deliberating and decided they wanted to stay.

The jury in this case will not be sequestered during the trial. That means that we will not take you all and put you in motel rooms at night and keep you guarded by a sheriff day and night during this trial. There is a possibility, and a good one, that the jury finally selected will be sequestered during jury deliberations, which lasts for as long as or as little as the jury determines that they will. There is no time limit either way. In a criminal case, if a jury chooses to decide it in five minutes, fine. If they choose to decide it in five days, fine. We had a civil jury, not a criminal jury, here

or that the press is in the courtroom. It's just they're there.

This, however, contrary to what you might have read in the press, is not a media event. It is a very important criminal trial. Very important to Mrs. Smart, very important to the State, very important to all of us as citizens in this Republic. And I guess I'll say again we don't want you on this jury if you've made up your minds for either guilt or innocence. Either way. We can't have you on this jury. We can't have you on this jury unless you can say to yourself, "I would want me on my jury charged with the same offenses that Mrs. Smart is charged with. I would want someone with my openmindedness on a jury trying me." If you can't say that, and I ask you to be honest because this is, as I say, I can't tell you, it's -- all jury trial are important. A charge of this nature is obviously very important. Mrs. Smart doesn't want you on this jury if you cannot be fair, openminded, and have what we call, I guess,

tunnel vision with respect to the facts that you'll hear in this case and are not able to put aside everything you've read and take only the evidence that is produced for you by the State and by the defense, although the defense bears no burden in a criminal case to prove anything. I trust you all understand, and those of you qualified will get further instructions, Mrs. Smart does not have to testify and you can't think anything of that. She can sit there silent as a lamb and you can't think she's guilty because she didn't take the stand. That is the right to remain silent that's in the Fifth Amendment to the United States Constitution and in the appropriate amendments to our New Hampshire Constitution. So the defense in a criminal case has to produce no witnesses, ask no questions. Don't have to cross-examine the State's witnesses, don't have to do anything and you cannot hold that against the defendant. If you can't operate under those rules, we don't want you on this jury. We

don't want you on this jury if you come here thinking, "I may get a chance to get on this jury and I'm looking forward to it." I'm not saying that disqualifies you. It won't if you can be fair. But if you've come forth, you've come because -- I know we've summonsed you all here, we understand that -- but if you're out there thinking, "Boy, I really want to get on this jury because this is going to be something interesting and something different," etcetera, etcetera, we probably don't want you on this jury. What we're looking for is people who are willing to serve on this jury who are willing to listen to the evidence, who are willing to operate under the premise that we've operated under for the last 300 years in this country that someone is presumed to be innocent. That's the kind of person we want on the jury.

If you've made up your minds, I want to know it now, Mrs. Smart wants to know it now, and the State wants to know it now. Mrs. Smart, as I said, is entitled to as fair a

trial as is humanly possible to give her, and so is the State entitled to a fair trial.

There are two sides in this trial, the State of New Hampshire and Pamela Smart. And there are three concerned groups in this trial, the State of New Hampshire, Pamela Smart, and us as American citizens. We want nothing less than a fair trial in this case. I demand it, as I hope you demand it as citizens, and certainly Pamela Smart demands it and the State demands it.

With that in mind, answering me as honestly as you can possibly answer me, how many of you, if you'll raise your hands, feel that you are qualified to sit on this jury. No reservations at all.

Will you people who are qualified, who feel yourself qualified, I'll tell you what's going to happen. I'm going to send you down to that big jury room that has no chairs in it because they're all in here, and we will individually deal with the ones who have problems to see if in fact they are

disqualified from sitting on this jury. After that is done, which will probably take, hopefully, less than an hour, you will be brought back in and given general jury instructions, a more detailed instruction than I've just given you now and individual voir dire, hopefully, will start maybe this afternoon.

So if those of you who are -- well, let me ask counsel, you want to come up here for just a second.

- - -

[Bench conference - no record.]

- - -

IN OPEN COURT BEFORE THE JURY PANEL:

THE COURT: I'll tell you quite frankly we've never had a panel this big in this building, and the reason there are so many of you here is obviously because of the notoriety of this case, so things are a little bit -- if I sound new at this particular procedure it's because it's the first time any of us have done this sort of thing. We've had several

first degree murder cases but I mean not with this many people, so we're not sure how we're handling this this morning.

If those of you who are qualified, who raised your hand, go with the bailiff down in the big room, all I can tell you is we'll be back with you as soon as we can. You want to go out the back of the courtroom here.

- - -

[Group of jurors excused from courtroom at 9:55 a.m.]

- - -

THE COURT: May I see counsel up here again, please.

AT THE BENCH:

THE COURT: What I thought I'd do, see what you guys think, if someone -- if I ask the question how many of you have made up your mind one way or another in this case, that's enough for anybody to knock them off. Why do we need to know anything more than that?

MR. MAGGIOTTO: Fine.

MS. NICOLOSI: That's fine.

MR. TWOMEY: That's fine.

THE COURT: We don't need to know any more than that. We

should check out in the hallway and know who they are.

I'm going to ask a question getting rid of probably a lot of people there. When they leave are they going to be checked out?

THE BAILIFF: They've been checked in, yes.

THE COURT: Okay. We need somebody to check them out.

THE BAILIFF: We'll have somebody do that. Seventy-two left.

THE COURT: Why don't you see if we have someone to check them off. Why don't you go back down and sit down and I'll see how many are going to do this.

IN OPEN COURT BEFORE THE JURY PANEL:

THE COURT: The next question I ask, I'm going to ask you to hold your hands up. Let me preface it by saying if you've made up your mind in this case because of what you've read or heard one way or another, and we don't want to know that, that would automatically disqualify you. If you feel you have a -- can't be fair because of a preconception as to the guilt or innocence of this defendant, we want to know that and need to ask you no further

questions. Don't be ashamed if you have a preconception about this. It's only human.

How many of you think because of what you've read feel you can't change that, this defendant is either guilty or innocent -- I don't want to know which -- because of what you've read?

Okay. I want you people to go. I guess -- can you take them?

THE BAILIFF: We're getting the master list. We'll check them off here.

THE COURT: Where?

THE BAILIFF: As he takes them out.

THE COURT: Don't get up yet.

THE BAILIFF: They're getting the list now.

THE COURT: All we want to do is check you out as you leave. No one's interested in your names for any purpose other than making sure you're here. I guess you've checked in. I know you're all going to get paid some exorbitant fee.

If you'll wait until we get the master list, you're free to go because you can't

decide this case because of preconceptions, either guilt or innocence, and we don't want to know which it is, as soon as he comes back in.

How many did not raise their hands the last time around? Okay. So you have other reasons. We'll deal with them as soon as the other people have left.

Do you have the list?

THE BAILIFF: They're running off a couple of copies right now.

THE COURT: All right. Do you want to take them out this door or the side door?

THE BAILIFF: We can take them out the side door. That's all loaded with reporters right here, so take them out the side door and they can go right downstairs.

THE COURT: Do you want to check them out as they go out the door?

THE BAILIFF: Yes.

THE COURT: They're making a photocopy of the master list of jurors. I'll ask those of you, as soon as that is done, who raised your hand the first

time around, file out that door so we can keep track of you.

MR. MAGGIOTTO: Judge, you want our master list for now? We can get another list later on.

THE COURT: I'm not sure that's the list they work from. They're going to photocopy their list.

- - -

[Pause.]

- - -

THE BAILIFF: All right.

THE COURT: Okay. How you going to do it, Frank?

THE BAILIFF: Here's a copy for you.

THE COURT: I don't need that.

THE BAILIFF: We have Bucky outside the door with another list.

THE COURT: Those of you who raised your hands the first time, file out that side door there. They'll be just checked off. Thank you very much for coming. I know you were inconvenienced. Thank you for coming. We couldn't do it without you.

- - -

[Group of jurors excused at 10:03 a.m.]

- - -

THE COURT: Counsel, might as well start.

MR. MAGGIOTTO: Is there some way we can all crowd around here and make it comfortable for everybody?

THE COURT: I'll tell you -- yeah, I can -- I don't have to sit up here.

MR. TWOMEY: Might want to move the people sitting in front, move them back, have a little space.

THE COURT: Why don't you two guys move that table. Anything plugged in there, Bill? Move it to the side toward them just so the jurors can get up here.

Okay. That's good.

Ma'am?

PROSPECTIVE JUROR: Yes.

THE COURT: You are?

PROSPECTIVE JUROR: Mary Ellen Morse.

THE COURT: Morse?

PROSPECTIVE JUROR: From Exeter. Morse. M-o-r-s-e.

THE COURT: And you can't, Mary Morse. Why not?

PROSPECTIVE JUROR: Well, I'm an English teacher at the high school, and although I don't feel that I have any preconceived notions as to guilt

or innocence, I'm not sure how I'll react to -- if not with prejudice, when I hear anything that pertains to high schools or students.

MR. MAGGIOTTO: Is that Winnacunnet High School?

PROSPECTIVE JUROR: No, it's Exeter High School.

MR. MAGGIOTTO: So it's a separate high school?

PROSPECTIVE JUROR: Yes, it is.

MR. SISTI: I have no questions.

MR. MAGGIOTTO: I don't have any questions.

THE COURT: Okay, you can go. Thank you. I'll check you off here. You can go out the back.

- - -

[Prospective juror excused.]

- - -

THE COURT: Yes, you are?

PROSPECTIVE JUROR: Anita Ewbank.

THE COURT: E-u?

PROSPECTIVE JUROR: E-w.

THE COURT: E-w. Yes.

PROSPECTIVE JUROR: I'm a full-time student at UNH. I -- I could get someone to take the class for me. It would be no problem. I got a photocopy

of my classes that I'm taking.

THE COURT:

That's all right. That's fine. You don't need to stay. You don't need to get checked off again. I've checked you off here.

- - -

[Prospective juror excused.]

- - -

THE COURT:

Yes, sir, your name?

PROSPECTIVE JUROR:

Paul Russo. R-u-s-s-o.

THE COURT:

Russo?

PROSPECTIVE JUROR:

Uh-huh.

THE COURT:

And?

PROSPECTIVE JUROR:

Well, I'm in the Air National Guard. We're very close to being called up because there's a little difficulty in the world situation, and in the middle of March I was supposed to go to the five-day school at Bingham as an arms instructor, then to Texas and then up to Pease to a five-day school, and I don't know, we were just called up and I'd have to leave. So --

THE COURT:

Well, okay. You can go. Thank you. You don't need to check out. We've checked you

out already.

PROSPECTIVE JUROR: Okay.

- - -

[Prospective juror excused.]

- - -

PROSPECTIVE JUROR: Good morning.

THE COURT: Your name is?

PROSPECTIVE JUROR: Steve Burt.

THE COURT: B-u-r-t?

PROSPECTIVE JUROR: B-u-r-t.

THE COURT: Yes?

PROSPECTIVE JUROR: My feeling is, I'm an owner of a convenience store and manager of a mobile home park. I'm concerned being away for an extended period of time. I have a brother who said he'd help me out if he felt it was necessary for me to stay. We'd be asking him to double up.

THE COURT: If you were on the panel and were finally picked as a juror, could you listen to the facts without worrying about your business?

PROSPECTIVE JUROR: I'm not sure that I could. I feel that I could be objective, but I'm just concerned

leaving my brother to run both businesses
on his own.

THE COURT: All right. You can go. Thank you, sir.

PROSPECTIVE JUROR: Thank you.

- - -

[Prospective juror excused.]

- - -

PROSPECTIVE JUROR: Donald Deroo.

THE COURT: I'm checking your name, sir.

PROSPECTIVE JUROR: Donald --

THE COURT: D-e-r --

PROSPECTIVE JUROR: r-o-o.

THE COURT: r-o-o. Okay. Good. And?

PROSPECTIVE JUROR: I sold my home, I've quit my job, and I'm
scheduled to start a new job in Pennsylvania.

THE COURT: Good luck.

PROSPECTIVE JUROR: Okay.

THE COURT: You don't need to check out. You can just
go out the back door.

- - -

[Prospective juror excused.]

- - -

PROSPECTIVE JUROR: Good morning. My name is Linda Valley.

THE COURT: I'm sorry?

PROSPECTIVE JUROR: V-a-l-l-e-y. Excuse me, I've had the flu.
V-a-l-l-e-y.

THE COURT: Yes. Sandown.

PROSPECTIVE JUROR: Sandown. Good old Sandown. My problem is
I have two small children, one 17 months and
one four and a half. I feel as though it
would be a hardship for me at this time.

THE COURT: It would. You're right.

PROSPECTIVE JUROR: If it was any other time, it would be no
problem.

THE COURT: I understand that. You don't need to check
out. You're checking out here, so you can
just leave.

PROSPECTIVE JUROR: Thank you very much.

THE COURT: Thank you.

- - -

[Prospective juror excused.]

- - -

PROSPECTIVE JUROR: Hi. Joann Trites.

THE COURT: T-r-i --

PROSPECTIVE JUROR: T-r-i-t-e-s. First of all, I went to the
same high school with Pam, but like ten years

later. We're a little different age. But I don't know if that disqualifies me, but I do have a problem with my children as far as babysitting and I don't know if -- I could just barely make it everyday and I just don't feel I'd be that reliable.

THE COURT: Okay.

PROSPECTIVE JUROR: Okay. Thanks.

THE COURT: Thank you.

- - -

[Prospective juror excused.]

- - -

PROSPECTIVE JUROR: Hi.

THE COURT: Hi.

PROSPECTIVE JUROR: Patricia Eaton.

THE COURT: I'm sorry?

PROSPECTIVE JUROR: Patricia Eaton.

THE COURT: Yes. Eaton?

PROSPECTIVE JUROR: Yes.

THE COURT: Yes?

PROSPECTIVE JUROR: My father had surgery last week and he's still in intensive care and my mother takes care of my children. She's going to need me.

I'm not going to be able to concentrate
either.

THE COURT: Okay. Okay.

PROSPECTIVE JUROR: Okay.

THE COURT: Thank you very much. You don't need to check
out. We've checked you out here. You can
just leave.

PROSPECTIVE JUROR: Okay.

- - -

[Prospective juror excused.]

- - -

THE COURT: Good morning.

PROSPECTIVE JUROR: Lisa Dickson. I have two small children,
first and second grade. At this point for
the duration of this time I don't have
anyone to take care of them on a permanent
basis.

THE COURT: Okay. Thank you very much for coming.

PROSPECTIVE JUROR: Thank you.

THE COURT: You don't need to check out, ma'am. We've
got you here.

- - -

[Prospective juror excused.]

PROSPECTIVE JUROR: Craig Korowski. Last name, K-o-r --

THE COURT: Yes?

PROSPECTIVE JUROR: I'm a full-time college student at Fordham State. I paid the tuition bill. It's non-refundable.

THE COURT: Okay. Thank you very much. You don't need to check out. We've checked you out here.

[Prospective juror excused.]

PROSPECTIVE JUROR: How you doing? I'm Bret Holmes. I'm going through a divorce in this court very shortly. I don't think it's in the best interest of me to be here, you know, my mind on that and on this too.

THE COURT: Okay. Sounds good to me. You don't need to check out. You can leave through the back door.

PROSPECTIVE JUROR: All right.

[Prospective juror excused.]

THE COURT: Yes?

PROSPECTIVE JUROR: Judith Bowley.

THE COURT: Bowley?

PROSPECTIVE JUROR: Yep. Yes.

MS. NICOLOSI: You can say "Yep."

THE COURT: I'm not going to bite you. He might, but I'm not going to.

What's your problem.

PROSPECTIVE JUROR: I have a son-in-law presently doing time in Maine for trying to kill my daughter. I have a son in Georgia that is there because of accomplice to murder.

THE COURT: You're son's incarcerated in Georgia?

PROSPECTIVE JUROR: Yes.

THE COURT: That's enough. Okay. You can go. You don't need to check out. Thank you very much.

PROSPECTIVE JUROR: Thank you.

- - -

[Prospective juror excused.]

- - -

PROSPECTIVE JUROR: Jeffrey Rodgers.

THE COURT: Rogers?

PROSPECTIVE JUROR: R-o-d-g-e-r-s.

THE COURT: Uh-huh.

PROSPECTIVE JUROR: I'm currently enrolled at UNH right now as a full-time student.

THE COURT: Okay. Thanks.

- - -

[Prospective juror excused.]

- - -

THE COURT: Hi.

PROSPECTIVE JUROR: Hi. Rene Nichols.

THE COURT: Nicholson?

PROSPECTIVE JUROR: Nichols. I have a flight I have to take.

THE COURT: I'm sorry?

PROSPECTIVE JUROR: I have a flight I'm taking on Monday. Vacation.

THE COURT: How long's the vacation?

PROSPECTIVE JUROR: Two weeks. So I won't be back until March 10th.

THE COURT: Okay. Thank you very much.

PROSPECTIVE JUROR: Thank you.

THE COURT: Have a good time.

- - -

[Prospective juror excused.]

- - -

PROSPECTIVE JUROR: Hi. My name is Erosa. E-r-o-s-a. I have two sons that go to Winnacunnet High School. I have nothing against Mrs. Smart, but one of the boys at Winnacunnet I have no like for.

THE COURT: No like for? You mean one of the boys involved in this case?

PROSPECTIVE JUROR: Right.

THE COURT: All right. You're all set. Thank you.

- - -

[Prospective juror excused.]

- - -

THE COURT: Yes, ma'am, your name?

PROSPECTIVE JUROR: Nancy Brett.

THE COURT: Brett?

PROSPECTIVE JUROR: B-r-e-t-t.

THE COURT: And?

PROSPECTIVE JUROR: I'm scheduled to be at dog shows in Bermuda from the 6th to the 11th of March.

THE COURT: Have a good time.

PROSPECTIVE JUROR: Thank you. I have a letter if you wanted to see it.

THE COURT: That's all right. I'll take your word.

- - -
[Prospective juror excused.]
- - -

THE COURT: Good morning. You are?

PROSPECTIVE JUROR: Janet Conroy. Hi.

THE COURT: Conroy?

PROSPECTIVE JUROR: Uh-huh. I have a business that I'm in the process of closing and I don't have anyone working for me. So I don't --

THE COURT: How long's it going to take you to close it.

PROSPECTIVE JUROR: Two to three weeks. We're hoping for the first week of March.

THE COURT: This trial's going to start on March 4th. Is that going to interfere with that?

PROSPECTIVE JUROR: Well, providing I get it closed, it wouldn't, but I can't -- I can't say for sure.

THE COURT: I don't know. What do you think?

MR. TWOMEY: She can go.

THE COURT: All right.

PROSPECTIVE JUROR: Okay?

THE COURT: You're all set. Thank you.
- - -

[Prospective juror excused.]

- - -

MR. TWOMEY: She knows the defendant.

MR. MAGGIOTTO: How do you know that?

MR. SISTI: They live in the same town.

MR. TWOMEY: Pam said she knew her.

PROSPECTIVE JUROR: Hi. I might be able to serve except for this prepaid vacation from this Saturday through to the following Sunday.

THE COURT: Okay. [Document handed to the Court.]
Michael Geanoulis. G-e-a-n-o-u-l-i-s.

MR. MAGGIOTTO: I'm sorry, sir, I didn't get your name.

PROSPECTIVE JUROR: Geanoulis.

MR. MAGGIOTTO: Thank you.

PROSPECTIVE JUROR: What would that mean? Should I --

MR. MAGGIOTTO: I think you're -- I know you're done with us. Where does Mr. Geanoulis go? Home or --

THE COURT: He goes home. Thank you very much.

- - -

[Prospective juror excused.]

- - -

THE COURT: Yes, ma'am.

PROSPECTIVE JUROR: I work for a company that's a --

THE COURT: Who are you?

PROSPECTIVE JUROR: Oh, sorry. Marcia Blackshaw.

THE COURT: Blackshaw?

PROSPECTIVE JUROR: Yeah.

THE COURT: And you what, now?

PROSPECTIVE JUROR: I work -- I have reasons. One, I work for a company that's a subcontractor for defense contracts and we're working Desert Storm stuff and they need me in the office.

THE COURT: So are all those guys over there that don't want to be.

PROSPECTIVE JUROR: I'm trying to help them. Plus the fact I'm involved with a divorce and my lawyer, Mrs. Smart and her mother have all worked for my attorney.

THE COURT: Well, that's probably reason enough right there. Okay. You're all set. Thank you.

PROSPECTIVE JUROR: Thank you.

- - -

[Prospective juror excused.]

- - -

MR. MAGGIOTTO: This is the last one, Your Honor.

THE COURT: Your name?

PROSPECTIVE JUROR: Elena Marie Perry.

THE COURT: Perry. From Derry. And?

PROSPECTIVE JUROR: I was told information related to this case that when I first came in I had a viewpoint on it that I was certain. Then I listened to you and it changed. But another reason is that I have a six month and 20 month and my husband works second shift. If it was sequestered, I would have nobody to watch the children.

THE COURT: I'm sure one of these fellows would watch them for you.

MR. SISTI: What's another couple of kids?

THE COURT: That's fine. Thank you very much.

PROSPECTIVE JUROR: Thank you.

- - -

[Prospective juror excused.]

- - -

THE COURT: Is that it?

THE BAILIFF: That's it.

THE COURT: Well, we got 74 or something.

MR. SISTI: Seventy-two.

MR. TWOMEY: It doesn't look to me we'll get a jury.

THE COURT: Yes, we will. We'll pick a jury.

MR. TWOMEY: You're going to get 55. That means --

THE COURT: Fifty-five?

MR. TWOMEY: Well, 40 strikes and 14 on the jury.

THE COURT: Fourteen or 15. I'm not too fussy about that.

MR. TWOMEY: Whatever.

MR. MAGGIOTTO: Do we have another pool coming in in the next couple weeks for this case alone?

THE COURT: Do we? No.

MS. NICOLosi: We don't have other people noticed?

THE COURT: No.

MR. MAGGIOTTO: Just 150.

THE COURT: Now we'll bring the other panel back in.

MS. NICOLosi: Who's coming in for the Barron case?

THE COURT: Barron?

MS. NICOLosi: In two weeks for that.

THE COURT: I don't know. Ask Ray. Hey, Ray.

CLERK OF COURT: Yes, sir?

THE COURT: How many jurors are coming in for Barron?

CLERK OF COURT: Probably in the vicinity of 90, if we get to that point.

THE COURT: Why don't we take a break.

[Recess at 10:18 a.m.]

IN OPEN COURT BEFORE THE JURY PANEL:

THE COURT: Ladies and gentlemen, you are the 72, I guess, that are left from this morning after my previous remarks. What I'm going to do now is give you what I normally give a new jury panel who comes in, and much of what I said this morning I'll repeat again now, but this is my attempt to tell you what goes on in this courtroom, what will go on during this trial, how this courtroom is set up, the State's burden of proof in a criminal case, and other matters relating to criminal trials in general or trials in general, and somewhat geared to the case at hand.

As I said earlier this morning, this defendant, Mrs. Smart, who is now seated at the rear table with her two attorneys, Mr. Twomey and Mr. Sisti -- the State is at the front table. That's the way it will remain

during the trial. Usually, there are two more tables here. Because of the apparent media coverage attending this trial, there will be chairs set up here as those chairs are set up facing that way for the press, and the press will come into the courtroom through that door over there on the side.

As I said this morning, the defendant in this case is charged with three offenses, conspiracy to commit murder, accomplice to murder in the first degree, and witness tampering.

There is under our law across this country a presumption of innocence. The defendant, any defendant, is presumed to be innocent unless and until the State can convince a jury otherwise by a standard of proof called proof beyond a reasonable doubt, which I'll explain to you in a moment.

As I also said earlier, this trial will commence -- the evidence, the evidentiary portion of this trial will commence on March 4th and counsel estimate it will take

four to five weeks for the evidence to be put in. Then there's the matter of jury deliberations which, as I said earlier, take as long as or as little as the jury determines that it will take based on their review of the evidence.

Between now and March 4th we'll be involved in the individual selection and questioning of jurors to sit on this case. Each juror will be brought in, and we're going to ask you when you leave here to sign up because we can only interview -- because of, you know, each side's going to take about ten minutes to ask each juror questions. That will alternate. First the State, then the defense, then the defense and State. So it will take about 20 minutes for each juror. We could almost say a half hour per juror. So we'll ask you to sign up for the day that you want to come in to be voir dired or interviewed by the counsel, and either the bailiffs or Ray Taylor will have a list, and that process will commence

tomorrow morning, I guess. Some of the counsel asked that it commence tomorrow morning rather than this afternoon. So for those of you who are free tomorrow, we'll take six of you in the morning and six in the afternoon, and then Wednesday -- or tomorrow's Wednesday -- Thursday, Friday, then Monday, etcetera, etcetera. There will be lists to sign up the day of your preference.

Beginning right now, those of you who survive this particular charge that I'm giving you right now and can still sit on this jury when it's done, I'm going to ask you, Mrs. Smart demands it of you, and, in fact, the State demands and I demand it, although we have no way to supervise it, and that is that you cannot now read, listen or view anything more about this trial. I cannot stress that enough. It is very, very important to Mrs. Smart and to the State that you not have any more information than you might have at present

about this trial or the facts in this case.

I don't criticize the press, but what you read in the press is not always necessarily the facts in a case. They do the best they can. They report things that they gather. This case must be decided on what you people will hear, the 12 or 14 of you who -- the 12 of you who finally deliberate this case, it must be decided on -- only on what you hear in this courtroom and nothing else. You cannot discuss this case any further with your spouses, your family, your friends. You can't read anymore. You must consciously avoid reading the paper about this case. When the news comes on at night, if this case is mentioned, you must leave the room or turn off the set. When the radio comes on about this case, you must turn it off or leave its hearing range. I cannot stress to you how important it is. You would not want someone sitting on your case going home and discussing the facts with a friend or a spouse. It would be so

unfair to either side in this case for you to receive outside opinions. You wouldn't want it if you were being tried. We don't want it.

Now, this courtroom is set up as you see it and will be with the exception of the press apparently who will be there (indicating). Normally, as I say, there are two tables but there will be a lot of press in here. This is the State's table with the two Assistant Attorneys General sitting there. That's the defense table. That's the jury box. Those individuals are members of the press. That's the witness stand right there where the microphone is. This is where the court reporter sits and takes down what I'm saying and will take down verbatim everything during this trial. This is where the clerk of court usually sits. It's occupied now by a law clerk. She is an attorney who works for the Superior Court on a one-year basis researching for the judges. The bailiff

will sit here, where the bailiff is, and probably where the bailiffs are up there. There will be other bailiffs around, more than usual in a normal case, not because of this particular defendant but because -- simply to make sure that the press does not interfere with the progress of the trial. As I said earlier, this is not a media event. This is a very important, serious trial, but we expect more press than normally attends a trial, even a first degree murder trial.

When each of you are interviewed by the lawyers, you'll be put on the witness stand, you'll be sworn in. There will be press in the courtroom. I'll tell you right now, there will be no cameras in the courtroom. The press are not allowed to speak to jurors, to write -- to put their names in the paper or to photograph them or to contact them. But they'll be present. You'll be asked questions concerning your partiality. The questions are not meant to be personal, not meant to delve into

your background, but sometimes they can be rather piercing questions. All that we ask is that you answer them fairly.

After you are through being questioned, you'll be asked to step outside in the hall. Each side in a first degree murder case has 20 challenges. They can challenge 20 jurors for any reason or for no reason. Sometimes they exercise all 20, sometimes they don't. All depends upon the type of individual they're questioning. But one side or the other can challenge you simply by saying, "We exercise a peremptory challenge." You then are excused by one of the bailiffs.

If you're selected to sit on this jury, you're brought back into the courtroom and given further instructions by the Court, by myself. Mainly, those instructions are to impress upon you again, and I can't help but impress upon you enough, how important it is that you not obtain any other information or discuss this case any further. And if I

seem to harp on that it's because it is so very important that you don't.

I know most of you have read about this case or seen television. We know that. And you'll be questioned on that by the attorneys.

As I said, we'll attempt to do 12 of you a day, six in the morning and six in the afternoon. Assuming, as I do, that we can reach and -- obtain, I mean, a fair and impartial jury, and we'll settle for nothing less than that, you will be excused until March 4th and you'll be on your own out there exposed to the media, who have their own jobs to do, and your friends and family, who may or may not know that you're, quote, a juror in the Smart trial. You can't discuss it. If I tell you nothing else today of import, I'll tell you that. You cannot discuss it.

On March 4th, assuming we have a jury, you'll all assemble here at the courtroom. We'll try to have 15 of you to serve on

that jury, 14 or 15. Only 12 of you can deliberate. Two or three of you will be alternates, and you won't know who you are. It won't be the 13th, 14th, 15th one chosen, or the 13th and 14th. The alternates are selected at the close of the evidence, and two or three people will be selected as alternates and excused. That doesn't mean that -- you're still on the jury, and that will be done completely at random, so I don't sit up here and select an alternate because I don't like someone's looks. They're absolutely at random. You will be allowed to go home. You're still a member of that jury until the jury reaches a verdict, because if a juror gets sick one of the alternates will be called back in to begin deliberations all over again with the jurors remaining in the courthouse.

Anyway, on March 4th there will be a view, which I presume will take most of the day. Am I correct, counsel? I don't know. I would say probably we'll plan on most of

the day. A view is evidence in the case. You'll be taken to, I understand, Hampton and -- Derry or Londonderry?

MR. MAGGIOTTO: Derry.

MS. NICOLSI: Derry.

THE COURT: And certain things will be pointed out to you by the attorneys. Before that view, each side is entitled to make what's called a preview statement to the jury, which takes two or three or four or five minutes, explaining what we're going -- basically, what they want you to look at on the view. You can't ask questions on the view. Certain things will be pointed out to you -- not facts -- by the attorneys. In other words, they can't say, "I want you to view this telephone pole, and notice it's five feet from this intersection." They can say to you, you know, "Here's this. Please look at this telephone pole and note how far it is from the intersection." They can't give you facts. They can just point out things for you to look at. What you see on the

view is evidence in the case. So remember what you see on the view. It is evidence.

After the view, probably on March 5th, the actual trial and the receipt of evidence will begin.

I should say that during the trial we normally will take a break in the morning and a break in the afternoon. If we start at 9 o'clock, we'll probably take a break at 10:30, and we'll start at probably an hour to an hour and a quarter for lunch. Then we'll take a break sometime in the afternoon. That is to allow you people to have a cup of coffee, to use the restrooms, and also to allow the court reporter to rest because his fingers are rather busy. As I say, we'll end at probably between 4:14 and 4:30 every day.

On March 5th, the first thing you'll hear is the State's opening statement. An opening statement is a preview of what the State expects to come before you. They'll tell you what their case is. At the close

of the State's opening statement, and those opening statements can last half an hour maybe, maybe more, the defense can get up and give an opening statement. The defense is not required to. The defense can postpone it until the State rests or the defense can give it right after the State's opening statement, whatever they choose, and it's immaterial to the Court.

After the openings, assuming -- and I don't assume anything from the defense because they have no burden and no duty to disclose what they're going to do -- assuming they give an opening statement immediately after the State, the State will then begin to call witnesses, one after another. The State will ask questions of them, what we call direct examination. That continues until the State has asked of each witness all the questions it wants. The defense can then cross-examine each witness, and the latitude allowed in cross-examination is much greater, as you'll see, those of you

who serve on this jury or any jury. They can ask different kinds of questions, leading questions, for example. They can be a little bit rougher, I guess, with witnesses on cross-examination, although that's not intended to be rough on them. It's -- cross-examination is a great finder of the truth. Not that direct isn't, but I mean cross-examination has more latitude.

After the State has -- after the defense has cross-examined the witnesses, the State may have what's called redirect, to cover what has been covered only in cross-examination. And the defense may have what's called recross. And it keeps narrowing itself down by what was covered before until both sides are through with the witnesses. That witness is then excused and the next witness comes on, and it goes on until at some point in the trial one of the State's attorneys gets up and says, "Your Honor, the State rests," which means you've heard everything you're going to

hear from witnesses that are called by the State. In other words, the State's case has been presented to you. The defense may then call witnesses, and the process is reversed. The defense conducts direct examination of witnesses called by the defense and the State may cross-examine those witnesses. And that process continues the same way as the State except in reverse until at some point in the trial you'll hear the defense -- one of the defense lawyers get up and say, "Your Honor, the defense rests," which means the evidence, all if it, has been submitted.

The next thing you'll hear is the defense closing argument. The State opens first and the State closes last, because the State has the burden. So the defense will give the closing argument first. Those closing arguments -- and then the State will give its closing argument. Those closing arguments are designed to review the evidence with you, what has been

presented to you, and to persuade you to decide this case one way or another. Those closing arguments probably will take at least an hour, maybe more, and they are a very important part of the trial. They are not, however, evidence. Do not disregard the closing arguments from either side. Do not, however, raise them to the level of evidence in the case. They are argument.

After the closing arguments, the judge, myself, will give you what's called the charge. I will tell you what the law is as it applies to this case, what the elements are of each offense that's charged in the case, how you may review the witness' testimony, and certain other things, much like I'm telling you now, to enable you to reach a decision in this case.

When that is done, you will deliberate, the jury deliberates, and the jury deliberates until such time as the jury reaches a verdict.

There will be three separate verdicts,

one for each of the three charges. The verdicts in any trial involving multiple indictments do not have to be the same. Because you vote one way on one indictment does not compel you to vote the same way on other indictments. You may or you may not, depending upon the evidence that's been presented to you.

Basically, that is how a trial is run.

Now, because the State calls witnesses doesn't mean that they are, quote, State's witnesses, or because the defense may call witnesses doesn't mean for your review purposes that they are defense witnesses. Once this witness, a witness, takes the witness stand, that witness for your consideration is simply a witness. Not a State's witness, not a defense witness, just a witness in the case.

You will treat all the witnesses the same. No witness in any trial is entitled to any special degree of belief or disbelief because of who or what that

witness is. For example, a doctor may testify in this case. Because that person's a doctor doesn't entitle him or her to any greater degree or lesser degree of belief in your mind. It's just another witness. Because a police officer may testify in this case doesn't by that fact alone entitle that officer to any greater or lesser degree of belief. That applies to every witness in this case, including the defendant if she chooses to testify.

As I'm sure you all know, a defendant in a criminal case in the United States of America and in the State of New Hampshire has an absolute right not to testify. One, as I said earlier, of our more precious and sacred constitutional rights is the right to remain silent. Whether Mrs. Smart testifies in this case -- I haven't the slightest idea whether she plans to testify or not, and I don't care and neither do you. She has an absolute right to remain silent if she chooses to do so, and you can think nothing

of that.

It is all too easy for us to say in any criminal trial to any defendant who chooses not to testify, "Well, if he or she's all that innocent, why doesn't she get up and tell us about it or why doesn't he get up and tell us." He or she doesn't have to, and again that is a very fundamental constitutional right. One of the Bill of Rights.

If she chooses to testify, you treat her like you treat any other witness on the witness stand. She's entitled to no greater degree of belief or disbelief because she chose to testify or because she's the defendant in this case. She is just another witness if she chooses to testify. And that applies to any witness who testifies.

In a criminal case, the burden of proof is always, always on the State. The defendant does not have to prove her innocence. The defendant has to prove nothing in a criminal case. As I said

earlier, the defendant in any criminal case may not testify, doesn't have to ask a single question of any witness, doesn't have to call any witnesses. I presume they will but I don't know that. And I presume they will cross-examine the State's witnesses, the ones presented by the State, but they don't have to, and you people who finally wind up on this jury can't think a single thing about that because the burden of proving the case is on the State.

The State's burden is to prove its case beyond a reasonable doubt. The defense has no burden at all. Difficult, not impossible, in America. Someone once said to Justice Oliver Wendell Holmes of the United States Supreme Court, "With all of these protections for the defendants in criminal cases, it's almost impossible to convict someone." Justice Holmes said, "Isn't that the way it should be in America?" It is difficult to convict someone in America but it's done all the time. We don't make it easy to convict

the guilty because if we did we'd make it easy to convict the innocent. So we do make it difficult.

The burden is on the State. That burden is called, as I said, proof beyond a reasonable doubt. Our Supreme Court has said that all the trial judges in New Hampshire and all the juries in New Hampshire will hear the same definition of this concept proof beyond a reasonable doubt, and it is as follows: Under our Constitutions all defendants in criminal cases are presumed to be innocent until proven guilty beyond a reasonable doubt. The burden of proving guilt is entirely on the State. The defendant does not have to prove his innocence. The defendant enters this courtroom as an innocent person and you must consider him to be an innocent person until the State convinces you beyond a reasonable doubt that he is guilty of every element of the alleged offense. If after all of the evidence and arguments you have a

good as you'd like. I also submit to you that the concept of reasonable doubt probably could not be explained any better. Let me say to you that once Mr. Justice Potter Stewart of the United States Supreme Court said, "I can't define pornography but I know it when I see it." If you have a reasonable doubt, you'll know it, whether you can define it or not or whether you can define it better than that definition. That's the definition we live with, and I daresay that I could not define it any better than that, and it is a concept that has probably confused even the most willing of legal scholars over the years. But that is our definition and it works in every jury trial we've had for the last 300 years in this country. That burden, as I said, is always on the State.

Is there anyone here in this courtroom who believes that because this defendant has been charged with a crime that she is probably guilty and must present evidence to

show that she is innocent? And if there is, can you live with the concept that the defendant is presumed innocent until proven guilty and that the State has the burden of proving guilt beyond a reasonable doubt and the defense has no burden to prove anything whatsoever? Anybody have a problem with that concept? If you do we want to know about it.

Now, that concept of proof beyond a reasonable doubt doesn't necessarily apply to every single fact in a trial. The State's not required to prove every single fact beyond a reasonable doubt. The State is required to prove each element of each charge beyond a reasonable doubt. And the sum and substance before you could in any trial render a verdict of guilty, the sum and substance of all the proof must be proof beyond a reasonable doubt of the elements of the crime charged.

There is not a criminal case that has ever been tried by any judge in any

courtroom in this country that has not left questions unanswered. No prosecution or defense can answer every single question. There are 12 jurors. Neither the prosecution nor the defense can get into each juror's head to determine what questions, if any, that juror might have about certain aspects of a trial. The fact that that can't be done does not prevent a jury from rendering a verdict one way or another.

For example, if the charge in a criminal case were driving under the influence of intoxicating liquor, the State has to prove three things beyond a reasonable doubt. That the defendant operated a motor vehicle on a public way in New Hampshire while intoxicated, while under the influence. If a jury was convinced in its own mind that the State has through its testimony proven that the defendant was indeed the operator, that that vehicle was operating on a public way, and that the person operating it was drunk, under the influence, that's what the State

has to prove in that case. There could be two witnesses either for the State or for the defense, two separate witnesses that got up and said, "Yep, I saw the defendant driving that car, I saw him on Route 101 which is a public way, and I saw him intoxicated. After the police stopped him I happened to be there. And the car he was driving was red." And the second witness got up and said, "I saw the same thing. No question it was the defendant. No question he was drunk. No question he was operating. But the car was blue." There's a question that doesn't need to be answered. It isn't important to that decision. But there's a question what color is that car. The State or defense never answered that question. But the defense doesn't have to answer any question. That's an example of every single question -- this isn't Perry Mason on the television. He gets the woman on the witness stand and what happens? It's always in a nice, neat ball, there's no

questions left. That's not the way it happens. The State doesn't have to answer all the questions and can't. The defense doesn't have to answer any questions, but in most cases, and I suggest to you this will be like most cases, the defense will ask questions and the defense will put on witnesses, but still questions remain. It's important that you remember in your mind as jurors in this case that the defense doesn't have to answer your questions. So if you say, "Gee," in deliberations, "Gee, the defense counsel, when he asked those questions of this witness," if he does, "there's some questions I had about that." You can't have questions from a defense point of view unanswered because they don't have to answer a thing. You've got to keep that in mind. The State has to answer what questions have to be answered. And the concept you're dealing with is did the State prove its case beyond a reasonable doubt.

When the jury deliberates, you'll know what the elements of the offenses are, and the question you have is did the State prove its case, prove each element of each charge beyond a reasonable doubt. If they did, as that instruction tells you, you should find the defendant guilty. If they fail to prove any one element of any one of the three charges, you must return a verdict of not guilty.

If, for example, you all went in there, and I'm not suggesting this because I don't know the facts of this case any more than you do, or very little more, if, for example, and I don't suggest this will happen, but you all went in there and you exhausted yourself deliberating and could deliberate no further, and you all agreed we all think she's probably guilty-- I'm not suggesting that's the result you'll reach or should reach, this is just an example, if that was the best you could do, that a defendant was probably guilty, you must then return a

verdict of not guilty. There is no place in the criminal law and in the State's burden of proof for the word probably. It is proof beyond a reasonable doubt or nothing. Anything less than proof beyond a reasonable doubt mandates in this country a verdict of not guilty. Simple as that.

Now, with respect to the evidence. Evidence comes in to a jury under two broad categories of evidence. One is called direct evidence and the other is called circumstantial evidence. We've all watched television. We've all seen in these detective shows on television the suspect say, "They can't prove it. It's only circumstantial evidence." In the law, circumstantial evidence and direct evidence are equal. One is as good as the other. There's no difference.

Now, what are they? Direct evidence is usually the testimony of someone who was there. Usually, it is someone who is in the exercise of his or her senses. I saw

something, I heard something, I felt something, I tasted something. That's direct evidence. It's usually the testimony of someone who was a participant or an observer of an event.

Circumstantial evidence simply means taking reasonable steps, adopting reasonable conclusions to reach the ultimate fact, the fact sought to be proved. For example, if the fact at issue was -- and I use this every single time to the point where I think I'm getting sick of it -- the question before the jury is was there another human being on Robinson Crusoe's island, direct evidence would be Robinson Crusoe come in and testify to the jury, "I woke up in the morning. I looked up, saw the fellow looking down at me and I named him Friday." That's direct evidence. Circumstantial evidence is simply one fact to another fact to a reasonable conclusion. "I woke up in the morning, ladies and gentlemen of the jury, I saw a footprint in the sand, it was

a human footprint and it wasn't mine."

That's circumstantial evidence. You go to bed tonight or you went to bed last night at 9 o'clock and it wasn't snowing, and you got up in the morning and there's snow in your yard. You can't testify directly that it snowed last night unless you stayed up and watched it snow, but you can come in court and say, "I went to bed, no snow on the ground, woke up in the morning, snow on the ground." Circumstantial evidence it snowed last night. That's circumstantial evidence. It is simply adopting reasonable conclusions from facts to lead you to the ultimate fact, the fact sought to be proved.

Now, circumstantial evidence, you are entitled, adopting reasonable conclusions, to follow the path of circumstantial evidence wherever it may lead you, if it only leads you in one direction. If, however, circumstantial evidence, this chain of facts, will lead you to two rational conclusions in a criminal case, and one of

those conclusions is consistent with guilt and the other is consistent with innocence, you must by law adopt the conclusion consistent with innocence. If it only leads you to one path, be it toward guilt or toward innocence, you are free to adopt it. But if you can take two roads, diverged in a yellow road type of thing, one leading toward guilt and one toward innocence, you must take the road toward innocence.

We weigh -- juries weigh the evidence in terms of its quality and not its quantity. We don't weigh evidence by the pound or by the dozen. We don't weigh witnesses or weigh out verdicts on our leanings because the State may produce more than the defense or vice versa. It is the quality of the evidence you hear, its convincing force that counts, not the number of witnesses who testified. And your duty as jurors is to listen to all of the evidence, to keep an open mind, to follow the instructions of the Court, and to fairly and justly reach a

case.

As I said earlier and I'll say again, and I can't stress it enough, Mrs. Smart and the State are both entitled to a jury as fair and impartial as humanity will allow us to have in this courtroom, in any courtroom. We demand nothing less than that, and we can't tolerate as a system of government anything less than that.

Now, how do you judge a witness' testimony? And you'll hear this again during the charge to the jury, those of you who are finally selected as jurors. With respect to each witness who testifies, you can believe everything that witness tells you, you can believe nothing of what that witness tells you, you can believe as much as you want of what that witness tells you. Because you believe a portion of a witness' testimony does not compel you to believe the rest of their testimony. And conversely, you can reject parts of a witness' testimony and accept other parts of a witness' testimony.

The fact that every witness gets up on this witness stand and takes an oath doesn't compel the jury to believe them. I don't suggest to you that any witness will get on this witness stand and lie. I point that out to simply tell you or impress upon you the complete freedom you have with respect to any witness, no matter who produces that witness -- pour me a drink of water, will you. I talk too much, I think -- impress upon you the complete freedom that you have to believe or disbelieve all or any portion of a witness' testimony.

As I said earlier, there's no special weight to any witness; doctors, police officers, whoever testifies in this trial. Treat them all the same and judge them all the same.

Now, how do you know whether a witness is telling you the truth? How do you know whether to believe them or not? Every day of our lives, ladies and gentlemen, we are asked by someone to believe what they're

saying. I'm asking you to believe now what I say. I suppose you're fairly compelled to do it because you're in a courtroom and I'm the judge. But we are all running subjective tests every day when we're asked by someone to believe what that person is telling us. We look at them and judge. We just, you know, use our common sense. That's the best tool we have. And we ask ourself, "Do I believe what this individual's telling me?" Same thing on the witness stand. You'll see each witness who appears on the witness stand. You can ask yourself such questions as does this witness have something to gain or lose by this witness' testimony, was the witness friendly with one party or the other or other witnesses, does the witness have some sort of animosity toward the defendant or toward the State or toward other witnesses? All of those questions -- is the witness biased, does the witness have something to gain, is the witness prejudiced in any way -- all those questions you can

ask and whatever other questions are in your own mind that you use in deciding whether to believe what someone tells you. They are all under oath. Presumably they'll all tell you the truth. As I said, that doesn't bind you to believe them. You treat them the same as you treat everybody everyday. Again, when I -- when they're asking you to believe what they're telling you, as I said, your common sense will tell you.

Let me see if I've left something out here.

What we want from you is to treat this defendant the way that you would want to be treated were you in her shoes, by a jury -- the way you would want to be treated by a jury were you in her shoes. That's what we ask of you. If you can't do that, we want to know it now. We hope you can.

Because you initially raised your hands that said you were qualified to sit on this jury, in your own mind. It is no shame to change your mind.

I have to ask you some questions that we ask every juror in -- in cases. Is there anyone here who expects to gain or lose anything from the disposition of this case? Is there anyone in here related to the defendant or any of the trial lawyers involved in this case? Has anyone here advised or assisted either the State or the defense in the preparation of this case? Has any one of you -- I've asked you this question already, I know -- has any one of you given any opinion or formed any opinion concerning this case? Has any one of you employed any of the lawyers involved in this case or their law firms any time in the past?

As I said this morning also -- I know that in reading the questionnaires, going over your questionnaires, and counsel have also gone over them -- that there were probably 20 to 25 percent of the people responding had relatives in police work. That is not sufficient -- I mean because you have relatives does not mean -- your brother-in-

law might be a cop or your sister's first husband's aunt's son, whatever, might be a police officer -- that doesn't disqualify you. And I won't ask you to raise your hands now. I'll ask you whether, however, any one of you has now or in the past been directly employed by a police force, any law enforcement agency personally, and I'll ask people to come forward who, because of any relative who may be a police officer, thinks that they cannot serve on this jury. As I said, the fact your brother-in-law's a police officer or your cousin or whatever doesn't bother me and I don't think it will bother counsel, although I certainly don't want to speak for them. The question is does it bother you? Can you fairly and truthfully render a just verdict in this case? That is the most important thing we want to know.

As I said before, I can't imagine sitting on a jury or having a juror in any case who has an axe to grind, who wants to

be on this jury to get somebody, either the defendant or the State. That would be the most unfair thing you could possibly do to another human being is to appear on a jury, judging that human being with a point of view of your own, with your private agenda that you won't tell us about. We want, as I said this morning, people who are willing to serve, not necessarily who are aching to serve. And we don't want people who really don't want to serve. You don't want to be on this jury, I'm sure Mrs. Smart or the State probably doesn't want you on this jury. We want attentive people. Above all, we want fair people.

Now, when you deliberate, I can't tell you how to deliberate. I've never seen a jury deliberate, never heard one, and I talk to juries after every jury trial, but not on how they deliberate. A foreperson will be chosen by random, and I presume that foreperson acts sort of as the chairperson of a committee. You will review the evidence and

you do that until you are all convinced one way or another and you'll reach a verdict, and when your verdict is reached, the jury foreperson notifies the bailiff -- nobody listens in on your deliberations -- and you're brought back into the courtroom and the clerk gets up and says to you, assuming it's a woman foreman, just for example, Madame Forelady, has the jury reached a verdict on indictment so and so, alleging the offense of so and so," and the foreperson will say, "Yes." And the clerk will say something to the effect, "How say you, is the defendant guilty or not guilty?" The foreperson says whatever it is. That goes for the three indictments. And at that point I would presume if it's a verdict of guilty -- I'm not suggesting there is or isn't -- the jury is polled. Each member of the jury is polled. If there is a verdict of not guilty, the defendant's discharged, along with the jury, and you all go home and that's the end of the trial.

jury. We'll accept nothing less than that. We want nothing but impartiality. Mrs. Smart demands it, the State demands it, I demand and you -- and you demand it and we'll take nothing less.

Given all those remarks, anybody who can't sit on this jury? All think you're qualified to sit on this jury?

I'll see counsel up here.

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[Bench conference - no record.]

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IN OPEN COURT BEFORE THE JURY PANEL:

THE COURT:

Ladies and gentlemen, I'm going to read you a list of names and these are people who may testify in this case. Doesn't necessarily mean they will. It means they may. If you know these people. If you know these people, and all I'm going to ask you is if your knowledge of them is such that you are unable to render a true and a fair verdict, then we want to know that. And I'll read you the names and their towns, I guess, where

they live. William Flynn, Brentwood, New Hampshire; Corporal Guy Kimball, State Police; Dr. Roger Fossum, Medical Examiner for the State; Sergeant Carlene Thompson, Seabrook Police Department; Mr. Vance Lattime, Sr., Seabrook; Ms. Naomi Lattime, Seabrook; Paul Lussier, Derry police; Mark Myrdek, M-y-r-d-e-k, Myrdek, I guess, New Hampshire State Police; Roger Klose, New Hampshire State Police; Frank Daly, Hampton; Ralph Welch, Seabrook; Patty Weisser, Hampton, Richard Kelly, State Police; Deborah Smart, Manchester; Cecelia Eaton, Seabrook; Leon Worthly, Exeter; Chris Gosselin, North Hampton; Patrick Randall, Concord, Vance Lattime, Jr., Brentwood; Warren Edmonds, New Hampshire State Police; Daniel Blake, Seabrook; Sheryl Mercer, Seabrook; Robert Halvorson, Essex, Connecticut; Sara Thomas, Seabrook; Raymond Fowler, Seabrook; Edda Cantor, Superintendent of the State Prison for Women Facility; Zelda Zelmer, Goffstown; Marianne Moses,

Goffstown; Antoinette Stephan, Goffstown;
Marlena Bauer, Goffstown; Diana Cullen,
Goffstown; Tina Gibney, Goffstown;
Michele Nichols, Seabrook; Daurice Ducharme,
Goffstown; George Moses, Billerica, Mass.;
Kevin Babcock, New Hampshire State Police;
Cindy Butt, B-u-t-t, Seabrook; Rachel Emond,
Seabrook; Vincent Byron, Derry police;
Michael Surette, Derry police; Daniel
Pelletier, Derry police; Charles Sargeant,
Pelham; Barry Charewicz, Derry police;
Lorin Jackson, Derry police; Gerald Scaccia,
S-c-a-c-c-i-a, Scaccia, Derry police; Brian
Washburn, Londonderry; Tracy Collins,
Manchester; Maryjane Woodside, Derry;
David Eastman, State Police; Daniel Houle,
H-o-u-l-e, Rhode Island; Thomas Parille,
Londonderry; Yvon Pellerin, Litchfield;
Paul Dacier, Derry; Kimberly Mercer, Derry;
Cecelia Pierce, Seabrook; Ted Chappel,
Manchester; the Prosecutor or Keeper of
the Records of the Lowell District Court,
Lowell, Mass.; Irene Lavoie, Goffstown;

Theresa Schnell, Derry; a representative of Ticketron in Newington; Mrs. Elaine Flynn, Seabrook; Norman Katner, Rye; Fred Engelbach, Hampton; Michael Welch, Seabrook; Lynne Charleston, Hampton police; Keeper of the Records, New England Telephone in Boston; Patricia Randall, Seabrook; Judy Leissner, L-e-i-s-s-n-e-r, Derry; Christopher Risner; Kenneth Knight, Seabrook; Karen Knight, Seabrook, Harvey Woodside, Derry.

Is this last name scratched off or --

MS. NICOLosi:

No, it's Bruce Dumi.

THE COURT:

Bruce Dumi of Nashua; Dan Goonan, Manchester; Michael Welsh, Manchester; John Wojas, Windham; Linda Wojas, Windham; Beth Wojas, Windham; Priscilla Alford, Goffstown; Walter Panzera, Concord; Brian O'Connor, Manchester; Leona Swan-Haire, Goffstown; Paula Lajoie, Goffstown.

Those are witnesses who may be called by the State and by the defense. The fact that you may know of one of these witnesses

isn't critical. The question is will your knowledge of that witness tend to make you believe, if that witness testifies, believe that witness' testimony or disbelieve it any more than any other witness who testifies? You know, is one of them a friend of yours so that you would tend to believe that witness? One of them, someone might have given you a traffic ticket where you would tend to disbelieve that person.

Anybody have any problem with any of those names such that they can't fairly sit on this jury? Having in mind everything I said this morning, and I couldn't mean it more, impartiality at its utmost is what we want and what we demand and nothing less will do. Problems with any of those names?

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

THE COURT: Sure.

[Bench conference - no record.]

IN OPEN COURT BEFORE THE JURY PANEL:

THE COURT:

There are two more names of possible witnesses. Again, because I read a name doesn't necessarily mean that witness will or will not testify. They are possible witnesses. One more, George Griswold, G-r-i-s-w-o-l-d, from Seabrook; and William Spencer from Manchester.

Now, if you know any of these people, I ask you now, if you know them such that your knowledge prevents you from rendering a true and a fair verdict, if in fact you know any of these people, I'm going to ask you during your individual voir dire to bring that out to counsel, "I know them," so they can ask you questions. Maybe none of you know none of them. I don't know.

What else can I tell you? Anyone have any questions at this point. Any of you have any questions? Now's the time to ask them.

Yes, ma'am.

PROSPECTIVE JUROR:

If a person has a family member that is going to go to trial, is that something that should be known, seriously thought of

or --

THE COURT:

Well, that will probably come out during your individual voir dire. They'll want to do it. The question is does it affect you.

PROSPECTIVE JUROR:

Uh-huh.

THE COURT:

If it doesn't affect you, it won't necessarily disqualify you from being a juror. I mean a lot of us have had a lot of experiences in life, good and bad, etcetera. Question is do they as they relate to this trial make you in your own mind unable to sit on this jury. And I won't even ask you that question now. If it doesn't, I want you to tell people about it.

I know I talk too much. That's the purpose of this individual voir dire is to let the lawyers ask you questions, both the State and the defense, but they can't ask you everything, and I'm going to give them only about ten minutes at each one of you. We'd like to bring up things that your -- if

in fact there are things that you're concerned about.

You know, I can't tell you enough without getting emotional about it how important it is that they have an impartial jury. I can't imagine anything less than that. It's got to be that in this country. It's got to be that way in this trial. That woman (indicating) demands it, the State demands it, you demand it. And I sound corny I say it so much, but I mean it can't be anything less than that. Nothing. If you have problems, tell them to the lawyers when you do the individual voir dire. If you don't, fine. I'm not looking for problems where none exist, but we want a fair jury and we've got to have one and it's really as simple as that. It's not easy being a juror. You may find it interesting, I don't know. It's an awesome awesome burden. Juries have been doing it since 1776 or thereabouts -- 1787, I guess, when the Constitution was finally ratified

and it's been working very well. It's the best system that mankind has devised for the trial of a dispute. It's an incredible system. We'll take finally 12 of you who don't know each other, we'll put you -- we'll take 14 or 15 of you who don't know each other, put you in this box right over here. They'll throw a lot of facts at you. None of you know each other. You'll go deliberate and you'll reach a verdict, and your verdict will be correct, whatever that verdict is. It's an absolutely incredible system. I've been a lawyer and a judge for longer than I want to talk about and I never cease to be amazed at the jury system. It works and it works very well. It is not, however, easy. But it does work. It works because of people like you. We know we have interrupted your lives. We know the hardship it's going to cause you. We know all of that. We don't apologize for it because without you people this system doesn't work. With you it can't fail to work.

With that, before I get maudlin, I guess I'll tell you what we do next.

I'm going to ask you to go with the bailiff. I don't know if Ray Taylor's around, the Clerk of Court, who will -- I guess he told you you'll be paid mileage and \$30.00 a day for your services, which isn't much but probably all the State can afford these days.

We're going to ask you to sign up now beginning tomorrow morning at 9:30. Is that what we said?

MR. MAGGIOTTO:

Yes, Your Honor.

THE COURT:

9:30. Because all these lawyers have to come from Concord and you people have to come from some rather long distances too. We'll try to take six a day, so go out there now and sign up for the day you want to come in, and then just remember what day you're supposed to be here and make sure you're here. And you'll know after the voir dire whether you've been selected to sit on this jury. But I'll tell you again now, and I

can't stress it again enough, right now from this point forward until either you're excused from jury service or until this trial is over, you cannot read any newspaper article about this case. You cannot listen to any television or radio broadcast about this case. I can't tell you how important it is. You can't discuss it at home. You can't even go home and tell your friends what case you're sitting on, because the minute you tell them, not just in this case, in a lot of cases, "Oh, I know something about that case. Let me tell you." Well, that's not the way we do things around here. We don't want your neighbors' viewpoint about what this case is about, or your spouses'. We want yours and yours alone, uninterfered with by any outside sources. That's what we want. That's what we've got to have. You've indicated you can give that.

I'll thank you on behalf of the defense and the State and myself for coming in this morning. Just sign up and we'll begin

tomorrow morning at 9:30 and we'll go from there.

Anybody else have any questions before I leave? Okay, folks. Thank you all very much.

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[Recess at 11:44 a.m.]

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IN CHAMBERS - 12:01 P.M.:

THE COURT: We're on the record.

MR. TWOMEY: It's my understanding from talking to the Clerk of Court, as well as the Court, the Court has had a meeting with representatives of the press, which probably took place Thursday of last week, and that as a result of this meeting the Court's indicated, at least on a preliminary basis, the Court will set up in the area past the bar and to the direct left of the attorneys, the area for the press. The area will be for approximately 30 to 40 press people and directly facing the jurors. In other words, the jurors will be facing the press,

the press will be facing the jurors.

On behalf of Mrs. Smart, we object to the intrusion of any members of the press past the bar. Courtrooms are designed with a lot of considerations in mind, one of which is to allow a jury and counsel and the defendant to focus on what the witnesses are saying. It's not an accident that when you're made a lawyer it's called being admitted to the bar. The bar has an actual function and it's a very important function in the proper demeanor of a courtroom.

I'm concerned, one, about the physical proximity of press people to our left where they are, one, closer to us while we're having confidential communication, and, two, being able to see our lips. I have no idea whether any of those people can read lips or not read lips, but it's certainly easy to overhear conferences between -- you can see mouths moving.

Secondly, and perhaps even more importantly, I'm disturbed about the

distraction on the attorneys from having people make movements, writing, doing all the things that people normally do, reacting to evidence, directly to our left.

I think audiences are -- spectators in a courtroom are placed behind the attorneys to promote the goal of less distraction so the people can focus in on what's important, which is the evidence being adduced from the witness stand.

Third, and by far most importantly, I'm concerned about the fact the jurors will be facing directly looking into the eyes of the press. You'll have 12 to 15 jurors on one side of the courtroom staring directly at 30 to 40 press people.

The question becomes what's going on here and what's important here? Are these jurors supposed to look straight ahead as people normally do or turn to the side and look at the witness? There is the potentiality for everytime various members of the press think that something is

important they'll punctuate and underline it for the jurors through physical reactions to pieces of testimony. In other words, if you have inhalations, gasps from any of the press people, it's going to be highlighted to a far greater extent than you would have from people placed in a situation where the jury wouldn't be looking at them. The same with facial reactions. People do -- any motions or reactions whatsoever, it's only human nature, people do that in the course of trial and it happens in every trial that happens in front of a jury, for which there is no good reason I can see, is going to highlight it.

Third, everytime the press acts as a multi-celled animal and all at once reach for pens and grab and start to write something down, the jury will naturally take nonverbal clues from the press and give greater emphasis to those particular parts in the testimony.

While the Court has concerns and some of

them are justifiable, we share a number of concerns here that can be dealt with in other ways that don't detract from the dignity of the courtroom and distract the participants, including the jurors in this case. The press can be asked to pool -- first of all, pool video and still photography. One still photographer. One camera. That camera can be set up so that it is fed out into the waiting room, which is directly across the hall from the courtroom we're in, whereby all members of the press who want to sit out there can watch the entire trial via a closed feed. In essence, I see no compelling reason to detract from the dignity and integrity of this particular trial, and I find the particular arrangement detracts from centuries of basically courtroom architecture which is designed to promote the dignity of a criminal trial. What -- frankly, the atmosphere we're going to have in there is going to be demeaning, it's going to appear we're gladiators in a

pit surrounded by the howling multitudes, and I see no reason to pander to the press. They can take their chances on getting a seat just like every other citizen in this country. I think they perform an important function but that function is met by allowing for a pooled camera and allowing for closed circuit broadcast directly across the hall. No reason -- this Rule 38 of the Court Rules indicates fairly strict guidelines and indicates that the Court should follow those guidelines in most cases. I don't have Rule 38 in front of me. I didn't anticipate making this motion at this time. I'd suggest my memory of Rule 38 in a normal case camera shouldn't be allowed in a courtroom. It does give the Court the authority or discretion to allow cameras in the courtroom, but I suggest it's getting beyond that discretion afforded the Court to allow people, members of the press past the bar so that they'd interject themselves into the process. They certainly are allowed

to be mute observers of the process but should not be past that bar and not part of the process. I think we run a very grave risk of turning this case into a circus. I cite and ask the Court to consider, one's the -- I think it's in here -- the Scopes trial.

I also ask the Court, if the Court's aware of it, to take memory of the case of Shepard v. Maxwell. I think it was Sam Shepard, tried in Ohio, which the United States Supreme Court indicated there had to be limitations on the press to afford someone a fair trial. The Shepard trial deteriorated into a circus. I'd like to keep this trial from degenerating into a circus at this time. At this point I think the way to do it is keep the press behind the bar, reporting on it in a very unobtrusive manner.

THE COURT:

State?

MR. MAGGIOTTO:

State doesn't object to the motion, essentially agrees with it. We have similar

concerns about the distractions the jury might -- I'm sorry -- the press might cause the jury and I think it was fairly addressed by the defense attorney.

THE COURT:

Okay. That's it.

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[In chambers hearing concluded at 12:18 p.m.]

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THE STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

C E R T I F I C A T E

I, William N. Wojtkowski, Certified Shorthand Reporter within the State of New Hampshire and the New Hampshire Superior Court, do hereby certify that the foregoing transcript is a true and correct transcription of my stenographic notes to the best of my knowledge, skill, ability and belief.

William N. Wojtkowski
William N. Wojtkowski, CSR

Dated: August 2, 1991

EXHIBIT L

ORIGINAL

N H Supreme Ct
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91-239

VOLUME XX 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 1991

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

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- In chambers - p. 2017
- In chambers - p. 2019
- In chambers - p. 2022

MARCH 21, 1991 - THURSDAY MORNING SESSION - 9:15 A.M.

IN CHAMBERS:

THE COURT: This is an in chambers meeting between the State, defense and the Court. Present are the two Assistant Attorneys General, both defense counsel, Mr. and Mrs. Wojas, Chief Deputy Barry Peacock and the law clerk, Kathleen Duggan.

Mr. Sisti has brought to the Court's attention that apparently Mrs. Wojas has received a phone call last night from some anonymous individual stating that -- and I'll let her speak in a moment -- that a juror, specifically Brian Adams, has been talking about this case in public.

I guess; Mrs. Wojas, you can expand on that, if you choose.

MRS. WOJAS: Okay. Want me to be sworn? I do promise to tell the truth.

My name is Linda A. Wojas, W-o-j-a-s. I live at 5 Johnson Road in Windham, New Hampshire.

Last night at 11:38 p.m. I received a phone call, and it was a gentleman who did not

identify himself, and he said, "This is not a crank call. But you need to know something that I have to say."

And I said, "Could you please tell me who you are?"

And he said, "No. But one of the jurors is out there and he's talking about the case. You need to tell your daughter's attorneys."

And I said, "Would you please call them?"

And he said, "No."

And I said, "Well, then could you please tell me where you heard that or who said it?"

And he said, "I don't care to do that. But I'll tell you who the juror is, and the juror's name is Brian Adams."

And then my husband heard part of the conversation. My daughter heard all of it. She heard the conversation with the man because she picked up the phone initially, and he said all of these things to her, and she said, "Mom, can you pick up the phone?" So I heard it myself, what I just told you, and she heard it with me for the second time. Then he hung up.

I didn't hang up. He hung up first. So then my husband said you need to put that on the pencil trap that we have on our phone because we've received terrible obscene phone calls and threats. So I said, yes, that's a good idea. So I called up and I made the statement on the answering machine, which is that we've done in the past, and I stated that at 11:38 p.m. I received a phone call. You don't talk about what the phone call is about. You just say the time, within a two minute time frame, and your name. And so there are several on there from myself because we've received several, and I realize it's not an obscene phone call, but because it probably is relevant I thought that was the right thing to do. And that's in. Thank you.

THE COURT: All right. State want to say anything?

MR. MAGGIOTTO: Not at this time.

THE COURT: Defense want to say anything?

MR. SISTI: No, other than what we've discussed on follow-up.

MR. TWOMEY: I would ask for the State's assistance in several respects. My understanding of the pencil registers is that Mrs. Wojas and we can't go get the

results of that and do anything. The request has to come from the law enforcement agency. I ask the Court or the State to immediately make a request, number one, of the phone company for the number; number two, there's something called fast track where the phone company immediately tells you where the number is and who it's registered to. We would ask in the same conversation when they ask for the number, they ask that fast track -- that the tracing of this number be done.

MR. MAGGIOTTO: There's already a pencil register on the phone. Wouldn't you have to get them to do that? All I'm asking, do you really need us? You have the authority to get the pencil registers. The whole point of getting the pencil register is to keep track of the numbers being called.

MR. TWOMEY: You go to them ask ask for a pencil register. They then trap the calls, but they don't give them back to you. My understanding is they give them to the law enforcement people. Okay, that was done pursuant to a chambers conference we had when the threats were coming in. After

that it was suggested that the Wojases go to the phone company, have a pencil register put on. I think the Sheriff's Department did help with that.

MRS. WOJAS: I could speak about it.

THE COURT: It's not necessary. Either the State or the Sheriff's Department will request that of the phone company. In the meantime, I'm going to call Mr. Adams in chambers privately, but on the record, and inquire of him whether indeed he's been talking about this case, and I know he's been voir dired by both sides about understanding the importance of not talking about the case. I'm going to assume he hasn't been, unless he tells me he has been. We'll go from there.

MR. TWOMEY: I'd like to point something out. Our request would be until some information is back from the phone company and an effort is made to talk to whoever called that the deliberations be suspended because there's a problem if Mr. Adams in fact did talk to someone, chooses not to reveal it to the Court, then this investigation

reveals he did talk to someone last night, by letting the jury to continue to deliberate you've not tainted the entire panel. So our request -- I don't have any idea how long it takes to run one down. My guess is it could be done very quickly.

MR. MAGGIOTTO: First of all, I never heard anything that said Brian Adams was talking about this last night. I want to make that clear on the record. Second of all, I don't think you should suspend jury deliberations because you're going to be throwing a mystery wrench into the process that we have no basis. We've been getting crank calls in this case several times. I have no idea if this is, but you can make a determination after talking to Mr. Admas whether or not you think he has somehow dirtied himself and should be eliminated from the jury process. If it's going to come down to a credibility question between Mr. Adams and this crank caller, it may take three, four, five days to search that out. We can't have a jury, after hearing the evidence in this case, have the deliberations suspended

for four or five days. I'm not sure that's the best way to go.

THE COURT: I'm going to call in, as I said, Mr. Adams and assume he hasn't talked about it, and inquire of him and stress upon him the importance of him being candid with me. If he's candid with me and tells me that he has not been talking about this case, then jury deliberations are going to resume with Mr. Adams. If a problem arises in the future, we'll deal with that problem when and if it arises. That's it. You're all excused.

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[In chambers hearing concluded at 9:23 a.m.]

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IN CHAMBERS - 9:24 A.M.:

THE BAILIFF: Your Honor, Brian Adams.

THE COURT: Good morning, sir.

JUROR ADAMS: Good morning.

THE COURT: Sit down. The reason I've called you in is because someone who is connected with this case last night received an anonymous phone call and the caller, who would not identify

himself, said to the recipient of the phone call, "I have information that one of the jurors in this case has been talking about this case to other people and that that one person by name is Brian Adams."

My question to you, sir, is, and I want as honest an answer as you can give me, since you've been selected on this jury, from the day of your selection, have you discussed this case with anybody?

JUROR ADAMS: Family -- I haven't discussed the contents of the case, just that I'm here. And people have asked, you know, how come you're not on film. They're not allowed to take pictures of it. Just odd questions like that, but not discussing the case itself.

THE COURT: Okay. You have in no way discussed the merits of this case, is that what you're telling me?

JUROR ADAMS: Yes.

THE COURT: With anybody.

JUROR ADAMS: No.

THE COURT: And that's your solemn word to me?

JUROR ADAMS: Yes.

THE COURT: All right. Thank you very much. You can go back down. I appreciate your coming in.

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[In chambers hearing concluded at 9:26 A.M.]

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IN CHAMBERS - 9:58 A.M.:

THE COURT: Okay, this is a hearing in chambers. The following question was received from the jury: "Hearsay rule. Could we please have a definition, i.e., why would one witness be allowed to testify as to, quote, what someone said, and others would not be allowed to testify as to what, quote, someone said."

The Court is going to send back the following answer to that question: "Madam Forelady and members of the jury, the issue of hearsay and the application of the hearsay is purely a matter for the Court. You are to consider all the testimony of the witnesses without regard to hearsay. The admissibility of testimony, whether over counsel's objection or not, is not to be questioned by the jury."

Defense counsel wished the Court to add

something else?

MR. TWOMEY:

Yes. The last sentence -- first of all, the request gives me a problem in that it seems to indicate that someone on the jury feels that the failure to have certain evidence may raise a reasonable doubt. That's the way I interpret that question. The last part of that says that you are to accept the Court's ruling without question. I think the jury has to be told that if a failure to hear certain evidence results in a reasonable doubt as to the guilt or innocence of the defendant, then they must return a verdict of not guilty, period.

I would suggest another way or -- or an alternate way of phrasing that is to say that you must decide this case upon all of the evidence that was admitted into the trial, period. Given the state of that evidence, if you have a reasonable doubt concerning the guilt or innocence of the defendant, you must return a verdict of not guilty.

MR. MAGGIOTTO:

The State's response is that we object to that, that any further instruction be given to the

jury at this time. I think the defense counsel's purely reading something into it and speculating what the jury might be doing, and to give such a response would be sort of sending a message to the jury of what -- an inappropriate message. I'll leave it at that. Nothing from the jury which suggests they didn't hear certain testimony from certain people and they're questioning why. I just think we shouldn't be reading into the jury's questions. We should answer them as simply as possible and the jury will let us know if they have more questions.

THE COURT:

The Court will --

MR. TWOMEY:

I have to point out the last phrase of the Court's thing, you must accept it without question. The concept of having a question in your mind is so close to the concept of having a doubt in your mind. I think the Court's answer as phrased seems to indicate that if the juror has a reasonable doubt based on a failure to hear evidence, whether or not the ruling of the Court's correct or not correct, if they have a reasonable doubt based on a

failure to hear certain evidence, they should come back with a verdict of not guilty. And it appears to -- the instruction appears to mandate that that question, that doubt about the failure to hear the evidence, not about the propriety of the ruling, but the failure of the evidence to be there should be removed from their decision making process, and I think that's incorrect.

THE COURT: All right. Counsel's objection's noted.

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[In chambers conference concluded at 10:01 a.m.]

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IN CHAMBERS - 10:05 A.M.:

THE COURT: We're in chambers at 10:05 on March 21st, and in furtherance of our earlier chambers conference, the pen register at the Wojas household has picked up the following number regarding the anonymous phone case: Area code 603 898-6206, and the name of the individual apparently to whom the phone is listed is Michael Loomis, L-o-o-m-i-s, 18 Pattee, P-a-t-t-e-e, Road, Salem, New Hampshire.

The Court is going to give this to the Attorney General -- Assistant Attorney General with instructions to follow this up and bring him to the courthouse.

What do you want to do with them? Off the record.

MR. TWOMEY:

I'd like to be on the record for a minute.

I'd like the Attorney Generals to go on the record as to who they're going to have follow it up. I have a real problem with the Derry police following it up. The Derry police and the Detective Bureau had a picture of Pam Smart with bars painted across her face. I would ask the State to go to the Major Crimes Unit of the State Police who are not particularly involved in this case, at least to the extent it's a very big case for the Derry police. Just have somebody neutral do it. If that's not done, quite frankly, we're going to send our own people out there. I'm willing to trust the State Police. The Derry police have a personal -- very strong interest in this case.

THE COURT:

I agree with that.

MR. MAGGIOTTO: I don't have a problem with that.

THE COURT: Keeping it away from the Derry police. And I assume what Mr. Twomey has told me is the truth.

MR. TWOMEY: I should say I've never seen the picture. I've been told on two occasions.

THE COURT: I'll accept that.

MR. MAGGIOTTO: I would suggest that the State Police interview them and make a determination -- if there's someone who's coming down, if they interview the person and say we don't know what you're talking about, then bring the results of this investigation and determine whether or not you want to speak to the person in person.

MR. SISTI: We can reserve any comment on that until we see what the quality and quantity of the investigation is.

MR. TWOMEY: In other words, let them go up first.

THE COURT: Fine, let them do that. I would presume what we're talking about, any criminal action instituted against this individual would be harassment. I don't see it's obstructing justice.

MR. TWOMEY: I don't know if there is or is not a charge.
We have to find out if the information's
correct first.

THE COURT: I think so, and see what effect, if any, it
has on the remainder of this trial. Off the
record.

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[Discussion had off the record.]

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[In chambers hearing concluded at 10:10 a.m.]

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