

see her again?

A After May 1st?

Q No, that day.

A Yes.

Q When did you see her?

A Around 7 o'clock.

Q Where did you see her at 7 o'clock?

A At her office.

Q And who were you with at that time?

A My friend, Michael.

Q What's Michael's name?

A Michael Welch.

Q How was it that you saw the defendant at her office at 7 o'clock?

A We were going out to eat and we just drove over to visit Pam.

Q And when you got to the defendant's office at 7 o'clock, who else was present?

A Just me, Michael and Pam.

Q And what happened at that time?

A We just talked to her for a little while and then left.

Q Any discussions about the murder?

A No.

Q When did you first learn of the murder?

A The next day.

Q How did you learn about it?

A I went to school, and during second period a guidance counselor, Miss Kinsman, came to my class and she asked if Rachel and I could leave and said it was an emergency, and then we got out in the hall and we were asking her what was wrong and she wouldn't answer us, and she went to get Bill and J.R. out of class. Then we went to the guidance office and she told us that Mrs. Smart's husband had been murdered.

Q Did she say how he was murdered?

A Yeah, she said he was hit over the head.

Q What happened when she said that?

A Rachel was shocked. Bill and J.R. acted it, they acted shocked.

Q What about you?

A I was shocked.

Q Why?

A Because I didn't think they were going to do it.

Q Why didn't you go to the police at this point?

A Because. I was afraid.

Q What were you afraid of?

A I was afraid I was in trouble.

Q Why did you think you were in trouble?

A Because Pam told me I was.

Q Can't hear you.

A Because Pam told me that I would be.

Q Now, when did you next see the defendant?

A At the wake.

Q Did you have any conversation with her at the wake?

A Yes.

Q What did she say to you at the wake?

A She said she was glad to see me but that she felt uncomfortable with me being there and to tell Miss Kinsman that I was ready to leave.

Q How long did you end up staying at the wake?

A About ten minutes.

Q And who did you go to the wake with?

A Mrs. Kinsman, Bill and J.R.

Q And after you were at the wake and you left after ten minutes, who left with you?

A Mrs. Kinsman, Bill and J.R.

Q So all of you stayed only 15 minutes?

A Yeah.

Q Now, how long was it -- after the murder was it before the defendant returned to school?

A About a week.

Q And after she returned to school, can you describe what you observed between the relationship of her and Bill Flynn?

A They just spent more time together.

Q How do you know?

A Because Pam was always telling me, like me and Bill went out last night and did this and that, and Bill was just at her office more often. He was skipping class.

Q Were you spending as much time with Bill and Pam at night as you were before the murder?

A No.

Q Why not?

MR. SISTI: I'm going to object. Speculation.

Q Is there a reason that you know of?

A Because I wasn't invited.

THE COURT: Objection's overruled as to that particular question.

Q Why were you not spending as much time with them?

A Because I was trying to avoid her.

Q Why were you trying to avoid her?

A Because I wanted to avoid the whole situation.

Q And yet, you hadn't gone to the police?

A Not -- not in May.

Q Now, did you have any conversations with the defendant after the murder about the murder?

A Yes.

Q Can you tell us what these conversations were?

A She just described -- described Greg, and she said there was a candlestick holder on the floor and that his briefcase was on the floor, and she said the dog was locked in the basement, and she said her furniture was ruined.

Q How was her furniture ruined?

A By the police. The fingerprint dust.

Q What else did she tell you?

A She told me she couldn't believe how stupid the boys were that they'd thrown gloves out in the field.

Q When did she tell you this about the gloves in the field?

A When she was discussing the murder.

Q Is this the first time you saw her, couple days after, do you have any recollection?

A It was at least a week. It was when she came back to school.

Q What else did she tell you, anything else?

A That's it. That's all I remember.

Q I'm sorry?

A That's all I remember.

Q And how often were you talking about it after the murder

of Gregory Smart?

A Not often.

Q Did there come a time when the defendant no longer lived in Derry?

A Yes.

Q And do you know where she moved to?

A Yes.

Q Where'd she move to?

A She moved to Hampton.

Q How do you know she moved to Hampton?

A Because I -- I saw her condo.

Q And how many times were you at her condo in Hampton?

A I don't remember.

Q A lot of times, a few times?

A Like three or four times.

Q Now, did you and the defendant ever discuss the police?

A Yes.

Q And what were those discussions?

A Pam just told me what -- she told me what to do if I -- if they asked me to take a lie detector test. She told me like not to answer opinionated questions.

Q Why did she think you would have to take a lie detector test, did she say?

A No.

Q Had the police ever talked to you at this point?

A Yes.

Q When was the first time the police had spoken to you?

A May 21st.

Q And where did they speak to you?

A My house.

Q And prior to speaking to the police at that time, did you have any discussions with the defendant about it?

A Yes.

Q What was said at those discussions?

A She just said to deny everything.

Q And what else?

A She told me that in case they mention fingerprints found in the house to Bill, just say that we'd been up there during February vacation to work on the orange juice commercial.

Q Anything else she tell you?

A I don't remember.

Q I'm sorry?

A I don't remember anything else.

Q Now, what happened to the furniture that got ruined by the fingerprint powder?

A I don't know.

Q Well, did the defendant move into her new apartment in Hampton?

A Yes.

Q Did she --

A She didn't move in new furniture in there, no. She got -- she got new furniture. She didn't move the old furniture there.

Q Did she tell you how she paid for the furniture?

A With her insurance money.

Q Did she ever talk to you how much insurance she had?

A No.

Q Never?

A She wouldn't tell me.

Q What do you mean by she wouldn't tell you?

A She didn't want to discuss it. She --

Q When was it that she wouldn't discuss it?

A After the murder she did say she was sure Greg would have a lot of insurance because he worked as an insurance salesman.

Q Uh-huh. When did she say that; that was before or after the murder?

A Before.

Q How often were you seeing the defendant at this time?

A Not very often.

Q Well, what does that mean? Were you seeing her everyday, once a week?

A Well, during school I saw her everyday.

Q Were you still being an intern for her at this time?

A In May, yes.

Q So when she came back to work a week or so after the murder, did you see her everyday during school?

A Yes.

Q And during those times were you seeing Bill Flynn?

A In her office, yes.

Q That's what I meant, yeah.

A All right. Oh, I was seeing him like dating.

Q Did you see Bill Flynn in her office?

A Yes.

Q Did you ever see anyone else in her office beside Bill Flynn?

A J.R. and Pete once in a while.

Q How often was J.R. there?

A Not often. I only saw him like once or twice.

Q What about Pete; you saw Pete there?

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

Q Now, when did school end that year?

A June.

Q Sorry?

A In June.

Q Do you know the date it ended in June?

A No.

MR. MAGGIOTTO: Judge, could we take the morning recess at this point?

THE COURT: All right. We'll take a short recess.

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[Recess at 10:33 a.m.]

- - -

THE COURT: Go ahead.

BY MR. MAGGIOTTO:

Q Cecelia, I'd like to call your attention to June 10th, 1990. Do you remember that day?

A Yes.

Q Can you tell us, did you see the defendant that day?

A Yes.

Q Can you tell us when you first saw her?

A I went to a concert and we stopped by her house afterwards.

Q Who went to the concert?

A Me and Michael.

Q Michael Welch?

A Yep.

Q When you say you stopped by afterwards, what time of day was it?

A It was night.

Q And where did you stop by?

A Where?

Q You said, "we stopped by at night." Where did you stop by?

A Her condominium.

Q Which condominium was this?

A In Hampton.

Q Who was with you besides Michael Welch; nobody else?

A No.

Q When you got to the condominium, who was there?

A Just Pam.

Q Anybody else?

A No.

Q Can you tell us what happened when you got there?

A She said -- Pam told me to go upstairs, so I told Michael I had to go to the bathroom, and I went upstairs and Pam told me that the boys -- that the boys were discussing the murder, and Ralph had overheard and that Ralph went crazy and he started yelling and screaming, and he -- Pete got in a fight with Ralph and beat him up, and the boys, J.R. and Pete came over her house and she said Bill was already there.

Q When you say the boys were talking about the murder and Ralph Welch overheard it, did she specify who she meant?

A Pete, J.R., and that's all I know.

Q Now, did she say where that took place that Ralph Welch overheard the conversation?

A At J.R.'s house.

Q And you said they came over and Bill was already there. What did she say?

A She told me Bill was at her house, and J.R. and Pete came over and told him what happened.

Q Did she say when they'd come over?

A In the morning.

Q What day?

A That day, June 10th.

Q And what else did she say about when they came over?

A She said they didn't know what to do, and they discussed with her whether they should go to the police or they should just run, and I guess Pete and Bill just -- they took off, and she told me she didn't know where they were going, and she took J.R. back to his house.

Q When she took J.R. back to his house, did she say what time of day this was?

A No.

Q And where did she take him back to?

A She -- she was taking him back to his house in Seabrook.

Q And did she say why she was taking him back to his house?

A Yes, because his parents called and said there was an emergency.

Q And do you know what else happened after that?

A She brought J.R. home and just his uncle was home, and she said -- that's about all I know. I know that my parents saw her at the laundromat but --

Q Well, you can't tell me what your parents say, only what you saw and know. Okay?

A Yep. That's it.

Q What else happened?

A On June 10th?

Q Yes. What else did she tell you, if anything?

A She told me that if Bill and the boys were smart, meaning Pete and J.R., if they were smart they would just say Raymond and Ralph did it since they knew so much.

Q Where was all this conversation with the defendant taking place?

A In the guest bedroom.

Q Upstairs or downstairs?

A Upstairs.

Q Michael Welch present for any part of this conversation?

A No.

Q Where did Michael Welch park his car that night?

A In her driveway.

Q Now, how long were you at the defendant's house for?

A About 20 minutes.

Q And what was the defendant's appearance when she was talking to you about this?

A She appeared to be nervous.

Q Why do you say that?

A Because she just acted nervous and upset. She was talking fast and she was shaking.

Q So what happened after that?

A She asked me if I wanted to stay the night, and I said yes and Michael left, and we left behind him, and I went to my house to get clothes, and then I went to Michael's to get my pocketbook out of his car, and then --

Q Get what out of his car?

A Excuse me?

Q You said to Michael's to get what?

A My pocketbook out of his car.

Q You left your pocketbook in his car?

A Yes.

Q When you left the defendant's house to go to your house to get clothes, what time was this?

A I'm not sure.

Q And who was driving?

A I don't remember.

Q So what happened after that?

A I'm sorry. I was driving. On the way home we got pulled over.

Q Pulled over where?

A Hampton Beach.

Q By who?

A The police.

Q How many police?

A There was a paddy wagon and two or three cruisers and mounted patrolman and cops on motorcycles.

Q And what car were you in?

A Pam's CRX.

Q How long did they pull you over for?

A About five or ten minutes.

Q And then what happened?

A They just pulled us over, and I explained to them that I was -- I didn't have my license, and I asked them what their probable cause was for pulling me over, and they said they'd

tell me in a minute. They told us to hold our hands up so -- and they put the spotlights on us, said they came back and pulled over the wrong car and that we could go.

Q Now, when was this, in your trip going to your house, coming from your house?

A Coming back.

Q From your house?

A Yeah.

Q Now, was this before Michael's house --

A After.

Q Let me finish the question for the stenographer.

It was after Michael's house?

A Yes.

Q Do you know about what time of night it was?

A No.

Q And how did the defendant react when you were pulled over?

A We were just scared.

Q Now, what happened after that?

A We went back to Pam's house.

Q And spent the night?

A Yeah.

Q Now, what happened the next day?

A I went to school, and then I went to Pam's house during

lunch and I was going to stay there and go to sleep and then just go to driver's ed that night, and I -- I got a -- I got scared when I was alone so I called my friend and had her come pick me up and I went to her house and went to sleep, and my mother called and said the police wanted to question me.

Q What time of day was it that you'd gone to sleep at your friend Heather's house?

A Around 2 o'clock.

Q In the afternoon?

A Yes.

Q Why was it you were going to sleep at 2 o'clock in the afternoon?

A I was just tired from being up all night.

Q So what happened after your mother called you?

A She -- my mother called and said that the police wanted to see me, and she was going to pick me up at Heather's house, and she picked me up at Heather's house. On the way to the police station, she said Pam was meeting us there.

Q What police station did you go to?

A Seabrook.

Q About what time did you get there?

A I'm not sure.

Q So what happened when you got to the Seabrook police station?

A Pam was waiting in the parking lot.

Q I'm sorry?

A Pam was there waiting in the parking lot.

Q Who was Pam with?

A Herself.

Q And did you see Pam's car?

A Yes.

Q Did you have any conversation with her at that point?

A She just told me to tell the police that I wanted her to go in with me, and she complained that they'd shut her out of the investigation, that they weren't telling her anything.

Q And who's this said in front of?

A My mother.

Q So what happened after that?

A I went into the police station, and they questioned me.

Q And who questioned you?

A Captain Jackson, Detective Pelletier. I think Barry Charewicz.

Q Is this the first time you'd been to the Derry Police Department?

A This is at the Seabrook Police Department.

Q I'm sorry. Is this the same place you spoke to them the

the last time on May 21st?

A No.

Q Where was the May 21st conversation?

A At my house.

Q And this one took place in Seabrook?

A Yes.

Q Now, how long did you speak to them for?

A About an hour and a half.

Q And who was present besides Detective Charewicz, Detective Felletier?

A My mother and Captain Jackson.

Q What did you tell them?

A I told them I didn't know anything, and I told them the story that Pam said to tell them about the -- filming the commercial during February vacation, Bill going to her house.

Q And how did the police react to the information you gave them?

A They just wrote it down.

Q I'm sorry?

A They just wrote it down.

Q Were they upset?

A They were upset, yeah.

Q Did they say anything to you?

A Yeah.

Q Who?

A Captain Jackson.

Q What'd he say?

A He said that if they found out that I was lying to them, he'd go next door and indict me on charges of --

Q For what?

A Hindering evidence.

Q How did that make you feel?

A Scared.

Q So what happened after that?

A I went to driver's ed.

Q And when you left the interview --

A Yes.

Q -- was your mother present for the entire interview?

A Yeah.

Q So what happened after the interview?

A We walked out to the waiting room where Pam was waiting, and she just said -- she just asked me some questions.

Q What did she ask you?

A She asked how did it go, what did they say, and just typical questions like that.

Q Now, at this point are you aware of whether or not any of the boys had been arrested?

A Yes.

Q Were they arrested at this point?

A Yes. I think so.

Q And what you told them on June 11th, 1990, is that the same information you'd given them on May 21st?

A Pretty much. Except for the story about us going over there on vacation. Pretty much.

Q I'm sorry?

A Pretty much, yeah.

Q You mentioned earlier about the defendant telling you how to take a polygraph test?

A Yeah.

Q What specifically did she tell you to do?

A She told me take the question and to change it around in my mind and -- so that I could answer the question, I'd think I was answering honestly and that way it wouldn't show on the polygraph test.

Q When did she give you this information? When did she tell this to you?

A After I went to the police and I told her that he'd threatened to indict me, and she said that I'd probably have to take a

lie detector test.

Q Now, did you and the defendant ever discuss what would happen if Bill Flynn was arrested?

A Yes, that he wouldn't talk. Pam said that he wouldn't say anything.

Q Who said that to you?

A Pam.

Q When did she say that to you?

A Why?

Q Where, when and why?

A I'm not sure where she said it.

Q What did she just say?

A She just said that -- that she wasn't worried about Bill telling on her because he loved her, he wouldn't -- he promised her he wouldn't say anything, and beside -- and she said that if he told then that's just admitting the murder, and as far as he knew, he was just confessing.

Q If he what?

A If he told of her involvement, that would be admitting to the murder, and up to then he wasn't as far as she knew.

Q Did you see the defendant again after that night?

A Yes.

Q Where?

A I had to go to court with her that Wednesday.

Q Okay. And what court were you going to?

A Newburyport District Court.

Q And what was that for?

A For the accident we got in Salisbury Beach.

Q And who went to court with you on that day?

MR. SISTI: Your Honor, that's all been asked and answered,
I believe.

Q Let me put it in proper time frame. This is the time you
talked about earlier where you went to court?

A Yes.

Q So that was after this arrest on this Wednesday?

A Yes.

Q Besides telling us what you already told us you and Pam
discussed at that time about testifying, did you have any
discussions with her?

A Yes, she asked what people were saying about her.

Q What did you tell her?

A I told her people were saying that she paid the boys a
thousand dollars apiece.

Q What did she say to that?

A She said that was stupid, that she didn't.

Q What else did she say?

A I told her that -- she was saying she gave them the speakers and she said that was stupid, he was going to pay her for them when he got a job.

Q Who was "he"?

A J.R.

Q And had you ever discussed speakers and payment -- I mean, let me rephrase that.

Had you ever discussed speakers with Pam and the fact J.R. had them before this date?

MR. SISTI: Objection, Your Honor, on the grounds it's leading.

THE COURT: Sustained.

Q Is this the first time you'd ever talked about that?

A I don't remember.

Q And what happened after that?

A After we testified?

Q Yeah. Just what was the next -- this was June, this is Wednesday?

A Yeah.

Q Do you know what date that was?

A The 13th.

Q Okay. Did you ever talk to the police again?

A Yeah, the next day.

Q And that was on Thursday?

A Yes.

Q What time of day did you talk to the police at this point?

A It was like 12 at night.

Q And did you contact them or did they contact you?

A We called them.

Q Who is "we"?

A My mother and I.

Q And what time did you call them?

A Around 11.

Q Where'd you call them from?

A My house.

Q And who was present when you called them?

A My mother, My Aunt Shirley, me, my stepfather and my sister.

Q After you called them, what happened next?

A We went to meet them.

Q Where did you go to meet them?

A Dunkin' Donuts.

Q I'm sorry?

A Dunkin' Donuts.

Q When you got to Dunkin' Donuts, who, if anyone, did you see?

A We saw Captain Jackson, but it was closed so we went to Friendly's.

Q And who went to Friendly's?

A Sergeant Byron, Captain Jackson, my Aunt Shirley and my mother and me.

Q Who'd you speak to at that time?

A Captain Jackson and Sergeant Byron.

Q And how long did this conversation take place at Friendly's?

A I'm not sure.

Q And then where'd you go?

A We went back to the Derry Police Department.

Q And what time did you get to the Derry Police Department?

A Around --

Q Sorry?

A -- quarter of one.

Q What happened at the Derry Police Department?

A I sat in a little room and they videotaped -- well, they asked me questions and I answered them about what I'd just told them at Friendly's.

Q And who did the videotaping of you?

A Detective Pelletier.

Q And who else?

A Captain Jackson, and Sergeant Byron asked me the questions.

Q Now, after that night did you have any further involvement with the police?

A After?

Q Yes.

A Yes.

Q And what involvement was that?

A I did -- they put a tap on my phone, and I wore a body wire.

Q When was the first time they put a tap on your phone?

A The 19th of June.

Q And when did you first discuss that with the police?

A The 18th.

Q And how did you feel about doing that?

A I didn't think it would work.

Q Why?

A Because Pam had told me not to discuss anything over the phone because she was afraid her phone was tapped. Her work phone -- her home phone she said not to discuss it in her house because she didn't know if her house was bugged.

Q When did you have these conversations with Pam?

A On June 10th we discussed it in her house. Most of the time we discussed it in her office.

Q Were these conversations with Pam before June 10th, after June 10th?

A Before.

Q Now, who was present at your house for this phone tap?

A Captain Jackson, Detective Pelletier, my mother, me, and I don't remember if there was anyone else.

Q How many phone calls were made, do you recall?

A I called Pam and then she called me back, and then I'm pretty sure I called her again.

Q Now, before doing this phone tap, did you discuss it with your mother?

A Yes.

Q Discuss it with the police?

A Yes.

Q And what, if anything, did they tell you to say or try and say over the phone, anything?

A Just -- just things to try to get her to talk about it.

Q How did they give you information about what to say?

A They wrote it on a slip of paper.

Q And do you know after that day whether or not you had any other involvement with the police?

A Yes, I did.

Q When was that?

A July 12th.

Q Now, between June 19th and July 12th, did you have any conversations or discussions with the defendant?

A If she called my house and I answered the phone, I had to

talk to her, and they weren't lengthy discussions, though, and she'd visit me at work.

Q When you say visit you at work, where was work?

A Papa Gino's.

Q How often did you see the defendant between June 19th and July 12th?

A Probably once or twice.

Q Is that usual?

A No.

Q And what happened on July 12th?

A I wore a body wire and I went to Pam's office and discussed the murder with her.

Q Before putting on the body wire, did you discuss your willingness to do it with the police department?

A Yes.

Q Discuss it with your mother?

A Yes.

Q Were you willing to do it?

A Yes.

Q Now, where was the body wire put on you?

A On my right side.

Q Well, where was this done, at your house or at the police station?

A Oh, at the police station.

Q Which police station was that?

A Seabrook.

Q And do you know what time of day this was?

A I'm not sure.

Q How -- where did you talk to Pam?

A At her office.

Q And in SAU 21?

A Yeah. I was at the police station around noontime because I went there after she got off her lunch break, and that ends at quarter of one.

Q Who were you with when you went to talk to Pam at this time?

A My cousin, Traci.

Q Where was your cousin, Traci, while you were talking to Pam?

A She waited in the car.

Q Did anyone go in with you?

A No.

Q Was anyone inside the office when you were talking to her?

A I don't remember if her secretary was in that day or not.

Q How did she react when she first saw you?

A Surprised. Excited.

Q Now, did you contact her or did she contact you for this meeting?

A I don't think that anyone contacted anyone. I think I just went over there to see her.

Q Just showed up?

A Yeah.

Q Now, how long did the conversation take on that day?

A About a half an hour.

Q Now, after that day, did you ever speak to her again?

A Yes.

Q When was that?

A July 13th.

Q And how did that come about?

A I drove my mother's car over to her office, and I waited in the parking lot.

Q And what were you telling her that you had to see her again for?

A I told her that I had to meet with Captain Jackson, and that he'd called and I was supposed to meet with him and that -- I think I had told her the day before I was supposed to meet with the Attorney General, and Friday I told her that I was meeting with Captain Jackson and said that I wasn't meeting with the Attorney General.

Q Now, tell us what happened on the 13th. Where were you outfitted with the wire?

A At the police station.

Q Which one?

A Seabrook.

Q And how did you get over to SAU 21?

A My mother's car.

Q Anyone with you at this time?

A No.

Q And do you know where the police were in the parking lot at that time?

A They were in a van around the corner, and they were in a car.

Q Now, did you have occasion to listen to the recording of those conversations since those days?

A Yes.

Q Fair and accurate recordings of the conversations you had with the defendant at that time?

A Yes.

Q Now, after the July 13th conversation, how had you left it with the defendant as to when you would see her again?

A That night.

Q And what was the plan?

A She asked if I wanted to come over, and I said if I could get my mother's car I'd come over and we'd go out.

Q What happened that night?

A I left for Missouri.

Q How long were you in Missouri for?

A Until the last -- until like July 30th.

Q Now, before you left for Missouri, do you have any contact with the defendant?

A Not after the body wire, no.

Q So after the body wire you had no contact with her before you left for Missouri, is that correct?

A Right.

Q And what happened when you came back on July 30th?

A I -- on August 1st I called. I did another phone tap.

Q And what was said at that time, anything?

A No. I was just calling her because she'd been calling my house all week, and I told the police that and I just called her to let her know that I'd been away in Missouri and that's why I hadn't been home.

Q And what happened on August 1st after this phone call?

A Pam was arrested.

Q Now, after Pam was arrested, were you ever contacted by the media in this case?

A Yes.

Q And what kind of contact were you getting from the media?

A They were calling me all the time, asking me to go on shows,

to make comments to the newspapers.

Q When did all this start?

A After Pam's arrest.

Q Do you know how soon after Pam's arrest?

A A couple of days.

Q How did they find out about you, do you know?

A Because it was on the affidavit for arrest, or indictment, whatever it is.

Q And you know what newspapers, what media people were contacting you?

A Just about everyone in the area.

Q I'm sorry?

A Just about everyone in the area.

Q And what were you doing at that time?

A Telling them that I had no comment, and then I went on "Current Affair" because --

Q Before going on "Current Affair," did you ever go on TV in New Hampshire?

A Channel 9.

Q Who'd you talk to on Channel 9?

A Bill Spencer.

Q Why'd you talk to Bill Spencer?

A Because he'd called my friend, Rachel, for an interview, and

she was giving one, and she wanted me to come over with her so he could talk to us both at the same time about the boys' arrest.

Q Do you know when this was?

A This was like before Pam's arrest.

Q Okay. So this was before Pam's arrest. Was this before you did the body wires?

A Yeah.

Q After Pam's arrested, were you ever contacted again by Channel 9?

A Yeah.

Q Did you ever talk to them on TV again?

A Yeah.

Q Did they contact you or did you contact them?

A They contacted me.

Q And you said something about "Current Affairs." What was "Current Affairs"?

A It's a show that's on like a half an hour, just like a news coverage show.

Q How did you get in contact with "Current Affairs"?

A The lady, Terri Whitcraft, kept following my friend, Rachel, around, and she was driving her crazy, and Rachel's mother called my mother and begged her to please talk to the

woman so they'd leave her alone.

Q And why didn't she just come to your house instead of bothering Rachel?

A Because she didn't know where I lived, to my knowledge.

Q And after you met with Terri Whitcraft, what happened?

A I -- I went on the show, and then all sorts of production companies were calling me and they wanted to buy my rights to make a movie.

Q Now, do you know when about "Current Affair" was?

A No, I'm not sure.

Q Was it --

A It was -- the day that we taped, it was like August 20th. It was the day of Olde Home Day in Seabrook.

Q Olde what day?

A Olde Home Day. It's just a fair.

Q And where was it taped?

A At my house, and they followed me to Olde Home Day, but I didn't know they were going to do that. They just did that on their own.

Q Uh-huh. And besides "Current Affairs," were you on any other program?

A Yeah, I was on "Hard Copy."

Q What's "Hard Copy"?

A Just a news coverage show.

Q Did you contact them or did they contact you?

A They contacted me.

Q And when was "Hard Copy"?

A It was after "Current Affair."

Q Do you know when?

A No.

Q And what happened on "Hard Copy"?

A I don't -- I'm sorry, I don't understand.

Q Well, what'd you do on "Hard Copy"? Who'd you talk to, do you remember?

A I talked to Dean Vallas, and he just asked me questions and I answered them.

Q And where was that filmed?

A In my house.

Q Do you know when that was filmed?

A I'm not sure. I think it was like early September.

Q Were you paid at all for either of these appearances?

A Yes.

Q What were you paid?

A "Hard Copy" paid me a thousand dollars, and "Current Affair" paid me three hundred.

Q And why did they give you only three hundred?

A The lady said that they don't pay people to go on their show, but I was supposed to babysit that day and the person cancelled and she thought that I cancelled because of them, and I explained to her that the other lady had cancelled but she still wrote me out a check, and I didn't even look at it until they were gone, I didn't know how much it was for.

Q Now, you said production companies were contacting you. How were they contacting you?

A They were calling me.

Q How? I'm sorry, I didn't hear what you said.

A They were calling me on the phone.

Q How many different production companies were calling you?

A I'm not sure how many. Like five or six.

Q Now, who was handling all these phone calls at this time?

A Well, we were getting the phone calls, but we got a lawyer and told -- whenever someone called, we said, "Just call my lawyer."

Q Was your mother working at this time?

A Yes.

Q What does she do?

A She's a nurse's aid.

Q Where?

A In Amesbury at Maplewood Manor.

Q What about your stepfather?

A I'm not sure if he was working or not. He's labor in the union and right now he's laid off.

Q So what point did you hire a lawyer?

A At what point?

Q Yeah, what time? Was it in August, September?

A September.

Q And who hired the lawyer?

A My mother.

Q And what was the lawyer's name?

A Innes. Scott Innes.

Q Did you ever talk to the lawyer about this?

A Yes.

Q And what happened after you contacted a lawyer?

A We just told all the people to call him. And then he -- I decided on the company that I liked. We had companies come to my house and talking to me, and I picked a company, and then he just negotiated like the money part.

Q Which company did you pick?

A Once Upon A Time Productions.

Q Why did you pick Once Upon A Time Productions?

A Because that's the guy I liked the best. He was nice, and

he didn't try to bribe me, and he was just the nicest person.

Q Now, who drafted the contract for you?

A My attorney.

Q And what was the terms of the contract, as far as payment goes?

A If they make a movie then they pay me a hundred thousand dollars, and it goes into a trust fund and I'm not allowed to touch it until I'm like 21 because of the Jackie Cooper law, and that's it. But it's their decision whether they make the movie, and there's nothing in the contract about the outcome of the trial or anything. It's just if they decide to make a movie.

Q And since you entered into that contract -- do you know the date you entered into that contract?

A I'm not sure.

Q Early September, late September?

A I think it was late September.

Q Have you talked to anyone from Once Upon A Time Productions since late September?

A No, my lawyer talks to them.

Q You haven't spoken to anyone?

A Not that I know of.

Q Have they ever contacted you and told you they were or were

not going to make a movie?

A No.

Q And have you ever received any money from them at all?

A Yes.

Q What?

A Two thousand dollars.

Q What was that for?

A They paid me two thousand dollars when I signed the contract.

Q For what purpose?

A For signing my rights.

Q And do you know what the purpose of the two thousand dollars was?

A No.

Q Now, on the tape of -- on your conversation of July 12th, the names Billy, Bill are mentioned.

A Yes.

Q Who are the two Billy's on that conversation?

A Bill Flynn and Billy Springer.

Q And who is Billy Springer?

A He was my boyfriend.

Q And how long was he your boyfriend for?

A For like two weeks.

Q What was that two-week period?

A In May.

Q Now, did you have any conversations about the murder of Gregory Smart with Pete Randall?

A No.

Q Did you ever have any conversations about the murder of Gregory Smart with J.R. Lattime?

A No.

Q After the murder of Gregory Smart, did you have any conversations with Bill Flynn?

A Yes.

Q When was that?

A The day of the wake.

Q After the wake, did you have any further conversations with Bill Flynn?

A I don't remember.

Q Talk a moment to think about it.

A After the wake?

Q After the wake.

A I don't remember.

Q No?

A No.

Q Okay. Did you ever visit or see them at ADC?

A In what?

Q Did you ever see them while they were incarcerated?

A No.

Q Did you ever tell anyone about your knowledge in this case besides the police?

A Yes.

Q Who is that?

A Cindy Butt.

Q Who is Cindy Butt?

A A girl that I worked with at Papa Gino's.

Q When did you tell Cindy Butt?

A Before Greg was killed.

Q How many weeks before?

A I'm not sure.

Q And how did the conversation come up?

A I just told her -- I just said that -- that I -- I had a friend who wanted her husband killed.

Q Where were you at Papa Gino's during the conversation?

A In the upper dining room. We were on break.

MR. MAGGIOTTO: Just one moment, Your Honor.

- - -

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

- - -

MR. MAGGIOTTO: I have no further questions.

CROSS-EXAMINATION BY MR. SISTI:

Q Are you comfortable, Cecelia?

A Excuse me?

Q Are you comfortable? Everything all right?

A Yeah.

Q Good. Let me try to help you remember time a little bit with regard to Cindy Butt. That was the subject area that you were just asked about by the prosecution.

Were you talking to Cindy Butt about this murder about the same time that you were attempting to get a firearm for Bill Flynn?

A I don't -- I don't know what time I was talking to Cindy Butt.

Q Well, you said it was before the murder, right?

A Uh-huh.

Q And can we just estimate? Was it in April?

A I don't know.

Q Well, when did you know that a murder was going to take place?

A Around February or March.

Q February or March?

A That's when I found out.

Q That's when you found out that a murder was going to take place, right?

A That Pam -- that's when I found out that Pam wanted her husband murdered.

Q When did you start trying to get a gun for Bill Flynn to kill Greg Smart with?

A I don't know when the date was.

Q You don't know what the date was?

A No, but Bill asked me if I knew where they could get a gun, and I told them two places. I never went looking for a gun for them.

Q You never went looking for a gun for them?

A No.

Q Bill -- Bill asked you where he could find a firearm?

A I'm pretty sure, yeah.

Q Okay. And what did you tell Bill?

A I told Bill that my father had a gun.

Q Okay.

A And I told him that a girl that I worked with at Papa Gino's had a gun.

Q Did you give Bill a call and say, "The girl with the gun, who has the gun in the car is here at Papa Gino's now"?

A Yes.

Q Okay. Now, that was Bill that you called, right?

A I'm not sure who I called. It was Bill that came.

Q Well, on direct you told Mr. Maggiotto that you called Bill Flynn.

A Yes.

Q Did you call Bill Flynn?

A Yes, I called them.

Q Did you call Bill Flynn?

A I think so.

Q Okay. We're talking about Bill Flynn. This would have been in what, March of 1990?

A I'm not sure.

Q Okay. But this is Bill Flynn. He's just an acquaintance of yours?

A He's a friend of mine.

Q He's a friend of yours?

A Yes.

Q All right. Was he as close a friend as, let's say, Pam Smart?

A I don't know if Pam was really ever my friend. You'd have to ask her.

Q Back when you were trying to find a firearm to kill Greg Smart, did you consider Pam your friend?

A Yes.

Q Okay. Was she a better friend, in your consideration, than Bill Flynn?

A Yes.

Q But it was Bill Flynn that you called so that you could get a firearm to him, right?

A Yes, and Bill was getting a firearm to kill Greg for Pam.

Q Yeah, because that's what Bill told you, right?

A That's what Pam told me.

Q Tell me about the conversation you had with Bill Flynn when you say the woman with the firearm's right here at the restaurant right now.

A I don't remember the exact conversation.

Q Did he say he'd be right over?

A Yeah.

Q Did he say he'd be right over because he just wanted to show Pam a firearm?

A No, he wanted to get a firearm.

Q He wanted to get a firearm so he could kill Greg Smart?

A For Pam, yes.

Q Not to show a firearm to Pam just to placate her, just to say here's a firearm?

A No.

Q Okay. And then that didn't work because apparently Bill goes through the car, right?

A Yes.

Q And he doesn't find the firearm?

A No.

Q Who is this person anyhow that you're setting up for this theft?

A My friend, Tammy.

Q Your friend who?

A Tammy. A girl that I worked with at work.

Q I mean --

A That I used to work with.

Q Does she know that you're setting up something so that somebody's going to steal something from her car?

A No.

Q What's Tammy's last name?

A I think it was Robertson, but she got married and I'm not sure what her last name is now.

Q Did you ever tell Tammy that you were trying to steal a gun from her car?

A No.

Q Oh. Did you know where Tammy lived back then when you were trying to have Bill steal a gun from her car?

A Yes.

Q And did you tell Bill where Tammy's car would be parked that evening?

A It was parked at Papa Gino's.

Q Did you discuss with Bill where Tammy lived?

A I don't remember.

Q You don't remember?

A No.

Q Did you discuss with Bill that if he really needed a firearm you think that your father had a firearm?

A Yes.

Q What kind of firearm did your father have?

A A shotgun.

Q A shotgun. Was Bill interested in that?

A No.

Q He didn't want a shotgun?

A Not that I know of.

Q I'm sorry?

A He didn't want a shotgun.

Q Did he tell you why?

A No.

Q But he wasn't interested?

A He -- he never asked any questions about it or anything.

Q All right. But you gave him that information, right?

A Yep.

Q How did Bill get over to Papa Gino's to steal the firearm, do you know?

A I don't know.

Q Did you ever find out?

A No.

Q But you knew that the firearm was to be stolen and utilized for the express purpose of killing Greg Smart?

A I didn't think that they were going to kill Greg whether they had a gun or not.

Q All right. Let's go through some timing then, all right?

Was this attempted theft of a firearm before this so-called first attempt to kill Greg Smart?

A No.

Q It was after this so-called first attempt to kill Greg Smart?

A I'm not sure when it was.

Q You don't know whether it was in March or April or February?

A Probably like in April.

Q Probably like in April?

A That's what I said.

Q Do you know if it would be within two and a half weeks of Greg's actual murder?

A Could have been.

Q Could have been?

A I'm not sure.

Q You're not sure. Well, I mean, was it during a time that you testified to this jury about that you didn't want to know anything about --

A No.

Q -- killing Greg Smart?

A No.

Q No. Was it like within a few days of that two-week period?

A I don't know.

Q Was it within a month?

A I said I'm not sure.

Q I mean, do you really have no recollection of this?

A I have no idea what day it was or what the date was. I don't know.

Q Isn't that kind of a big thing, though, somebody saying can you get me a gun so I can kill somebody?

A Yeah, and I remember doing that. I remember that conversation. I don't remember when it was.

Q On that same topic, when you had this heart-to-heart, truthful conversation with the police on June 14th, 1990, did you discuss with the police that you were trying to get

a firearm to kill Greg Smart?

A I don't remember.

Q You don't remember.

A I don't think I did.

Q By the way, wasn't that the day that you told Mr. Maggiotto and this jury --

A Uh-huh.

Q -- that you were going to tell the truth to the police?

A Yes.

Q But you didn't tell the truth to the police then?

A I told the truth as I remembered it. It was late at night. I told everything I could remember, and I did tell them, as soon as I remembered about that I told them.

Q Well, okay, like 48 hours later after you got a little rest you give them a call and fill them in?

A I don't remember when I told them. I just remember that I told them.

Q Who did you tell so we can check on that?

A I'm not sure.

Q Now, the Attorney General's Office obviously knows about this attempt to supply a firearm for a murder, right?

A Yes.

Q How long have they known about it?

A I'm not sure.

Q You're not sure?

A Nope.

Q Couple of weeks?

A I'm not sure.

Q Well, how about this, was it before Christmas that they knew?

A I don't know.

Q You have no idea?

A No.

Q You know, was it somebody from the Attorney General's Office, the Derry Police Department or the Seabrook Police Department that you would have discussed this with?

A It was either the Attorney General's Office or the Derry Police Department. I wouldn't discuss it with the Seabrook Police Department.

Q Would it have been in Derry, New Hampshire, would it have been at your home or would it have been in Concord where the Attorney General's Office is located?

A I don't know.

Q You don't know. Now, we didn't get to depose you, but an attorney did get to depose you in this case, didn't she?

A Yes.

Q And didn't that attorney ask you at a deposition your knowledge about whether or not the boys were trying to procure a firearm?

A I think so.

Q Did you tell that attorney under oath whether or not you were involved in an attempt to procure a firearm for Bill Flynn?

A I don't remember.

Q You don't remember.

A No.

Q Do you know when that deposition was taken?

A I'm not sure.

Q If I told you it was taken on Saturday, September 29 1990, does that seem about right?

A I don't know.

Q You don't know. You want to take a look? Maybe that will refresh your recollection.

A Uh-huh.

Q Okay.

MR. MAGGIOTTO: We'll stipulate that's the date.

Q Why don't you take a look.

A [Witness complies.]

Q Did you get to go over that, see that thing?

A Yeah.

Q That's a deposition, right?

A Yes.

Q Did you get to review this before?

A Yes.

Q And you've reviewed it for mistakes and so forth?

A For what?

Q Mistakes?

A Oh, yeah.

Q I mean, I think you did anyways.

A Yes, I did.

Q All right. And then you signed a piece of paper to correct any mistakes on the deposition?

A Yes.

Q All right. I'm going to give you all the time you need. It's 59 pages here, and I want you to be as accurate as you can be, and you can review it yourself. You can point out for the jury where you told that attorney that you were involved in an attempt to go procure a firearm to kill Greg Smart.

MR. MAGGIOTTO: Objection, Your Honor. The witness never said she told that attorney. She said she doesn't know.

Q If you need that to refresh --

THE COURT: Just a moment. Just a moment. State's objection is sustained. The jury will take its recollection of what the witness said on the witness stand.

Q All right, would that deposition aid you in refreshing your recollection as to whether or not you told that attorney about attempting to procure a firearm for Bill Flynn to kill Greg Smart?

A I don't know. What page does it say -- what page is she asking on?

Q Would that deposition --

A I don't think I told her. I don't know.

Q You didn't tell her in this deposition, right?

A I guess not.

Q When you sat down with "Hard Copy" and "Current Affair," and what's the other one?

A Once Upon A Time Productions. I haven't told them anything.

Q You haven't told them anything?

A I just signed a contract with them.

Q You just signed a contract with those people?

A Yes.

Q Let me go back, okay?

A Yeah.

Q Did you tell "Current Affair" anything?

A Yeah.

Q Did you tell them about what you knew?

A Yeah.

Q Did you tell the folks at "Current Affair" about trying to get a gun for Bill Flynn to kill Greg Smart?

A No.

Q Did you talk to the folks at "Hard Copy"?

A Yes.

Q And when you discussed -- I think what you discussed with them was how you couldn't sleep between June 11 and June 14 and were rolling around in your bed. Do you remember that?

A Yes.

Q Okay. Did you get to tell them that you were trying to procure a firearm to kill Greg Smart with?

A No.

Q And when you sat down you did talk with some representative from Once Upon A Time, didn't you?

A Yes.

Q Who was that?

A Kim Thompson.

Q All right. And you're telling this jury that this fellow

just walks up to you and says I'll give you a hundred grand and he doesn't want to know the story from you?

A He didn't tell me what he'd give me. He told my lawyer. And I haven't sat down and discussed the case with them yes, no.

Q You didn't sit down and discuss the case?

A I haven't gone over all the details like I did "Current Affair" and "Hard Copy."

Q So Once Upon A Time wouldn't know anything about you trying to procure a firearm to kill Greg Smart with?

A No.

Q Has the Attorney General's Office or any law enforcement agency said everything's okay, Cecelia, don't worry about trying to get a firearm to kill somebody with?

A No.

Q I mean, you haven't been given any kind of immunity or anything, have you?

A No.

Q Do you think you're going to be arrested for this?

A No.

Q Why do you think you're not going to be arrested for this?

A Because I asked the police if I was going to be arrested and they said no.

Q When did you ask the police whether you were going to be arrested?

A Just the other day.

MR. SISTI: May be approach the bench, Your Honor?

THE COURT: All right.

AT THE BENCH:

MR. TWOMEY: If I could address the Court. To begin with, we've never been informed that this young woman ever told the police that she did -- or the Attorney General or anybody from the State of New Hampshire that she did in fact have an involvement in a conspiracy to commit first degree murder and in an attempt to aid and abet the commission of first degree murder, which is what she's saying here today. At no point in time has the State ever given us any police report or statement indicating that she has in fact told that to either them or any police officers from either Derry or Seabrook. I would know that probably in June or July we filed a Brady request with this Court. We filed written requests, I believe two other motions, requests for exculpatory evidence and Giglio material.

At the beginning of this trial, some place in the first two days, I went up to Mr. Maggiotto and Miss Nicolosi and asked for -- I can't say my exact words, but something to the effect was, don't you have some deals concerning immunity or understandings with some other people other than the ones you've told us about. At that point in time I was referring in my mind to the mothers who had secreted certain items; Pete's mother, et cetera. I think Mrs. Flynn. To this point in time we've never received from the State of New Hampshire the constitutionally mandated information, any understandings whatsoever between this witness and them concerning prosecution or non-prosecution.

I'll be quite frank. There are two possibilities. One is that the State of New Hampshire has denied due process and is doing so consciously. The other is this witness is lying. Quite frankly, I tend to believe the latter, not that these people would consciously withhold that stuff on it.

I suggest we take our lunch break and have

a little bit lengthy matter on this here.

MR. MAGGIOTTO: Wait a minute, Judge. I think he's trying to get a dramatic effect of having this in front of this person and in front of the jury demanding a lunch break. This woman has not involved herself in the conspiracy to commit the murder of Greg Smart. She never once said she agreed for the purpose of having him killed or do any of these acts with the intent, purpose to kill Greg Smart. There is no conspiracy. This woman has been told, the police told her she wasn't arrested because she's afraid they have no legal authority to grant immunity. We have not granted this woman immunity. It's our belief and opinion she didn't involve herself in a conspiracy to kill Greg Smart with a gun that night, not the level of involvement in the conspiracy of murder of Greg Smart, so she wasn't arrested. She may not have told any police officer up to this date, but she's being cross-examined on how she never told the police, and that's what's involved. There's no Brady material here, nothing is exculpatory to the defendant, and in fact if she

was trying to get a gun for the murder of Gregory Smart it only goes to show that the defendant's involved. So I don't know what material you're talking about. No, I'm in agreement with her. No deal, no promise. It's our opinion she wasn't involved in the conspiracy based on all the information we have. There's no big need for a recess at this point. There's no material to turn over. I don't think she ever did tell the cops. They've cross-examined, and I don't think she said in the deposition and I don't think she said when she previously testified. That's all fodder for impeachment.

MR. TWOMEY:

If I could say something. Mr. Maggiotto in one breath says, well, maybe someone told her she wasn't going to be prosecuted. Next breath he says there's no deal whether or not she even had criminal liability to begin with. The statement that you'll not be prosecuted for this is under Giglio v. United States, something that has to be given to a defendant under the due process clause. That's number one. Number two, I would -- he says she's got no criminal liability

whatsoever. I would simply reference the indictment pending before this Court for Pamela Smart, a conspiracy. A conspiracy requires an agreement of two or more people to commit a crime. First of all, this is serious. I believe she testified she was to get the gun to commit murder, but breaking into a car is a crime. Certainly an agreement between her and Bill Flynn to break into a car. It requires one overt act. That phone call was an overt act.

MR. MAGGIOTTO: You have to have the agreement first, Paul.

MR. TWOMEY: The agreement between the two people.

MR. MAGGIOTTO: To commit the murder.

MR. TWOMEY: Breaking into a car. I'm not done talking.

THE COURT: Whether or not there's any criminal liability on the issue of conspiracy to commit theft of the firearm, which there may or may not be, that's your position.

MR. TWOMEY: Our position is that the -- the point before we go any further to have the State of New Hampshire to begin with give us the statement, whether anyone from the Attorney General's Office made promises, and, secondly, to talk to all of the

of the investigating officers who would have had contact with her -- I think it's very limited, I think we're talking two or three -- and find out whether any of those people at any point in time made any statements. Give us a list of those people.

THE COURT: Wait a second. The defense and all parties in this case, including myself, have at least known since the day the first individual testified in this case that there was a claim that Cecelia Pierce attempted to get a gun, to talk to Billy Flynn about getting a gun. That's gone on for the past two weeks. Now, no one has said a word about that. All of a sudden you get her on the stand and confirm what Mr. Flynn said.

MR. TWOMEY: That's not the question, Your Honor.

THE COURT: Why didn't you make this motion two weeks ago?

MR. TWOMEY: The question, first of all, I did ask any more understandings between the State and any witnesses. I asked that of the State. Okay? Right at the beginning of the trial I was told no. The question is not whether -- did they steal the gun or not. The question is, is there

an agreement between this witness and the State. Giglio v. United States. It's not even -- there's no discretion involved whatsoever. The State of New Hampshire has the absolute duty to give any understandings, whether implicit or explicit.

THE COURT: I understand that. I also understand the State is saying there's no implicit agreement between the State and Cecelia Pierce.

MR. TWOMEY: Paul Maggiotto said maybe a police officer did that who didn't have authority.

MR. MAGGIOTTO: No, no, I -- the police cannot grant immunity.

MR. TWOMEY: If a police officer is saying something, that you'll not be prosecuted, under Giglio v. United States, that is material that has to be given to the defense, whether they exceed their authority.

THE COURT: I'll tell you what. You can all discuss it at lunch, which we're about to take.

MR. SISTI: Perhaps I can ask one more question.

MR. MAGGIOTTO: Judge, if you're done, I'd like to put a few things on the record.

THE COURT: We're not going in chambers and put anything on the record.

MR. MAGGIOTTO: No, no, right here. I don't want to go in chambers.

THE COURT: All right.

MR. TWOMEY: Before you do that, why don't you let Mark say one thing.

MR. SISTI: Just ask, this may clarify, if I ask one more question, who's the police officers who made the deal with you.

MR. MAGGIOTTO: Are you finished?

MR. SISTI: Yes, Paul. You may talk.

MR. MAGGIOTTO: Thank you. I think what's going on, defense is trying to force us into a position saying this woman has to have immunity based on what she has done. We have not granted -- no police officer made a deal with her. I assume if she's asked what's her understanding whether or not she's going to be arrested, she'd be told no. That's a decision we have made that she's not because we don't think her involvement in this murder case has reached a level of criminal liability. That's the only understanding.

MR. TWOMEY: How do you know?

MR. MAGGIOTTO: The point is, no police officer -- if a police

told her that she wasn't going to be arrested,
she's already said that. So what's the problem?
She has admitted a police officer told her that.

THE COURT: Everyone done?

MR. TWOMEY: Do you know whether it's true or not about a
police officer telling her that?

MR. MAGGIOTTO: I wouldn't be a bit surprised.

THE COURT: Everyone done?

MR. MAGGIOTTO: Yes.

THE COURT: All right.

IN OPEN COURT BEFORE THE JURY:

THE COURT: We'll take the noon adjournment and resume about
1 o'clock. Thank you.

- - -

[Luncheon recess had.]

- - -

MARCH 15, 1991 - FRIDAY AFTERNOON SESSION - 1:00 P.M.

THE COURT: Good afternoon. Go ahead.

MR. SISTI: Your Honor, could we just approach for a brief clarification before I go forward?

THE COURT: All right.

AT THE BENCH:

THE COURT: What are we clarifying?

MR. SISTI: That last request on the grounds of Giglio, I suppose I should add at this point in time that defense should suggest and should request at this point a motion to dismiss for failure to give the defense material such as this, which is material that's covered by Giglio v. United States with regard to leniency guaranteed or promised to a State's witness.

MR. MAGGIOTTO: There's no guarantees. Do you want me to respond?

THE COURT: Go ahead.

MR. MAGGIOTTO: There has been no guarantees of immunity, no guarantees of leniency. The only thing this witness understand, it's based the information available now she's not being arrested. That's all she knows.

THE COURT: Motion's denied.

MR. TWOMEY: Your Honor, just one other thing, and this probably is apparent but right prior to the break we made a motion for certain information from the State concerning whether or not there was a deal or police officers that have talked to her to determine whether there was a deal. I think that motion hasn't been ruled on.

THE COURT: I guess I'll grant the motion because the State just told you that. I believe the State has just told you that.

MR. TWOMEY: Mr. Maggiotto did not say what the source of that was; if that was his opinion, if he checked with police officers.

MR. MAGGIOTTO: I talked to Mark. You weren't there. I told him the police officer that she was referring to is Captain Jackson. That's all she knows. There's no other police officer that's spoken to her, and, you know, we told her too, based on what we know now it's understood she's not going to be arrested at this point. If she got on the stand and said, "I took part in the murder," then she would be.

THE COURT: All right.

MR. SISTI: Let me add one more case, and I'm glad that he was reminded of it. The police, the Derry police are an arm of the State and this has been defined in Angebella v. New York. If in fact Captain Jackson did make that promise, that should have been given to us prior to cross-examination also.

MR. MAGGIOTTO: It's not a promise. It was a statement where she asked him if she was going to be arrested. Captain Jackson said no. There's no promise.

THE COURT: Okay.

IN OPEN COURT BEFORE THE JURY:

THE COURT: Go ahead.

CROSS-EXAMINATION BY MR. SISTI (Continued):

Q All right, we left off with a police officer promising you that you wouldn't be arrested, right?

A No. I called Captain Jackson because there was an article in the paper saying that to avoid prosecution I agreed to wear a body wire, and I asked him -- I just called to ask who said it, and he said that nobody from his police department had said it that he knew of and that I was never going to be prosecuted in the first place.

Q That you weren't going to be prosecuted?

A Based on what they know now, no.

Q When was this conversation?

A Couple days ago.

Q Couple days ago?

A Yeah.

Q And this would have been an article in the newspaper you were reading with regard to your involvement in this matter?

A Yes.

Q And who was the statement attributed to?

A It didn't say.

Q Didn't say. You've been watching television?

A No.

Q You haven't watched anything?

A The first day I watched a little bit, and Paul Collins said not to watch it.

Q Don't watch any?

A Yeah.

Q Did he tell you not to read the newspapers, too?

A No, but I haven't been.

Q You haven't been reading the newspapers?

A No.

Q So how did you know a couple days ago --

A My mother read that to me. I haven't been reading the testimony of other people, no.

Q Your mother gave you that information?

A Yes.

Q Okay. And that concerned you so you called Captain Jackson of the Derry Police Department?

A Yep.

Q Is that a yes?

A Yes.

Q And Captain Jackson assured you you won't be prosecuted, right?

A He said they weren't going to prosecute me in the first place.

Q That "they" being the Attorney General's Office?

A He just said "they." I didn't know -- ask who he meant.

Q That makes you feel better?

A It made me feel better that nobody's lying about me, saying I wore a body wire just to avoid prosecution.

Q Let me bring up this subject area of attempting to bring up a firearm to kill somebody. Did you go over that with Captain Jackson?

A I don't know.

Q You don't know?

A I don't think so.

Q Well, two days ago, 48 hours ago, do you recall going over that with Captain Jackson?

A No.

Q How about an hour ago, did you go over that with anybody from the Attorney General's Office?

A Yes.

Q Who was that?

A Paul and Diane.

Q Are you going to be prosecuted for attempting to procure a firearm to kill Gregroy Smart?

A No.

Q How do you know that?

A Based on what they know right now, no. If they find out I was involved in the planning or something, then I could be prosecuted, yes.

Q If they find out you were involved in the planning or something, then you could be prosecuted, is that what they told you?

A Yes.

Q Okay. Now, was it your understanding that a firearm was going to be used in killing Greg Smart?

MR. MAGGIOTTO: Objection, being asked and answered several

times now and again in more than --

THE COURT: It has been asked and answered, but I guess she can answer it once more.

MR. SISTI: Thank you, Your Honor.

A Can you repeat the question?

Q Sure. Was it your understanding that a firearm was to be utilized in the killing of Greg Smart?

A Yes, but I didn't think they were going to kill him.

Q With that understanding in mind, did you go out and attempt to procure a firearm to kill Greg Smart?

A I told Bill and Pam where they asked me if a firearm was, and I said yes, and I told them.

Q So now it's Bill and Pam, is that what you're saying?

A Yeah.

Q Before lunch you called Bill, didn't you?

A No.

MR. MAGGIOTTO: Objection as to the form of the question. Mischaracterizing the witness' earlier testimony from this morning.

MR. SISTI: I think it's right on the nose, Your Honor.

THE COURT: Why don't you rephrase it.

MR. SISTI: Thank you.

Q You called Bill Flynn and told him where a firearm could be

procured, correct?

A Yes. What I meant was when I told him in the first place, Pam and Bill were sitting there.

Q When you told him in the first place, Pam and Bill were sitting there?

A In her office.

Q So you're sitting around in this media office. What day was this?

A I don't know.

Q What month was this?

A I don't know.

Q But you can recall that conversation?

A Yes.

Q You can certainly recall, though, a phone conversation?

A Yes.

Q And let there be no question about it, that was a phone conversation with Bill Flynn directly?

A Yes.

Q Now, this would have been again before the first attempt?

A I'm not sure.

Q Well, I mean, was it your understanding that -- and you correct me if I'm wrong, was it your understanding that Pam Smart knew that Bill and Ray didn't have a gun when they

went out on that first attempt?

A Was it my understanding that she knew that they didn't have a gun?

Q Right. On the first attempt.

A Yeah, she said they were going to stab him.

Q That they were going to stab him. Was that her idea?

A She didn't say.

Q I mean, did she plan a stabbing of her husband, is that what you're telling this jury?

A She planned the murder of her husband.

Q Listen to the question. Did she plan the stabbing, the stabbing of her husband?

A No, she did not.

Q Are you telling this jury that before the first attempt Pam Smart knew that a knife was to be used?

A I don't know if she knew or not. She told me that the boys didn't have a gun, that they were going to stab Greg.

Q This is while they're going out to Derry, right?

A I don't know if she told me that the day before or the day after.

Q You don't know?

A No.

Q Let's just go through some timing here, Cecelia.

You stated to the prosecutor this morning that you had to go down to Newburyport District Court and testify with regard to an automobile accident. Remember that?

A Yep.

Q Do you remember telling the prosecutor and this jury that Bill Flynn didn't go down there because Pam didn't want him down there?

A Bill was arrested.

Q Right, but do you remember what you said before lunch?

A Yes.

Q What'd you say before lunch?

A I said before lunch that Bill was arrested before we went to court also.

Q Do you remember saying that you didn't want to be around Pam, that kind of made you scared, you didn't want any involvement with Pam after May 1? Do you remember that?

A Yeah.

Q But don't you also remember saying that you had gone down and visit her all the time down at the Media Center?

A Visit her in the summer?

Q Well, is May the summer?

A May was when I was going to school and I was required to go to her office everyday.

Q So you had to go, is that your testimony?

A Yes.

Q You didn't want to go?

A I wanted to get credit. I needed to graduate.

Q Did you explain to somebody that you didn't want to go?

A No.

Q I mean, there are guidance counselors and so forth there, aren't there?

A Yes.

Q Did you tell any of the guidance counselors that you felt uncomfortable going to Pam Smart, helping her out?

A No.

Q No? Did you express that to anybody?

A No.

Q Your first conversation with the police was May 21, 1990? Is that a yes?

A Yes.

Q And you remember that date. How do you remember May 21, 1990?

A Because it's three days before my birthday.

Q Three days before your birthday you're claiming that you lied to the police?

A Yes.

Q And then your next conversation with the police was 6-11-1990?

A Yes.

Q And again that was a lie to the police, right?

A Yes.

Q Okay. You stated before lunch that while you were speaking to the police on 6-11-1990, it was your impression that the boys were arrested?

A Uh-huh, yes.

Q That was your impression?

A Yes.

Q Where'd you get that from?

A School.

Q From school?

A Yeah.

Q So there were all kinds of rumors and stuff flying around school?

A Yeah.

Q Why don't you tell the jurors some of the rumors that were flying around.

A Well, Miss Kinsman came to my English class and told me that it was going around that some -- the boys were involved in Greg's death, and that -- something about Melissa Fields,

Pete's girlfriend, something about her mother called and said that Melissa -- the boys were taking off or something, I don't know, and then there was a rumor that Pete was in school that day. There were all kinds of different rumors.

Q Between 6-12-90 -- June 11, '90 and June 14th, 1990, you heard another rumor, didn't you. Did you hear a rumor about a young girl that was going to be arrested?

A Yeah.

Q Did you hear the rumor that it was a young girl from Seabrook?

A I heard they were going to arrest a girl for driving up there, uh-huh.

Q This made you nervous?

A Yeah.

Q So on 6-14-90 you go to the police and you tell the police that Pam planned this murder and that she's the one that they should be looking for, right?

A Uh-huh.

Q That's a yes?

A Yes. Yeah.

Q And that you had nothing, nothing to do with it, right?

A No, I told them what I had to do with it all except for the gun.

Q All except for the gun. You told them that you knew it was going to happen?

A Yep.

Q So you weren't surprised when it happened on May 1st, right?

A Yeah, I was.

Q You were surprised?

A Yeah, I was.

Q Didn't you tell us that during the so-called first attempt Pam told you before it happened that it was going to happen?

A The first attempt when they didn't have a car?

Q Yeah.

A Pam told me that it was going to happen, it was going to happen that night, but they couldn't find a car.

Q All right. And then are you telling this jury that on May 1 Pam sat down with you and told you there will be a murder tonight?

A Yeah, she said, "They're going to do it tonight."

Q Then you're saying on May 2nd you're surprised that it happened?

A Yeah.

Q Now, that must mean that you didn't believe Pam if in fact you had a discussion with her on May 1, 1990?

A No, it means I believe Pam thought it was going to happen,

but I didn't believe that the boys were going to do it.

Q You believe that Pam thought it would happen. Okay. Now, this -- was this a lengthy conversation on May 1, 1990?

A It couldn't have been much longer than any other ones. I was only there for the periods that I worked.

Q So you were over -- just give us a general time when you would have been with Pam on May 1, 1990.

A I would have been with Pam for about an hour and a half.

Q And hour and a half.

A And not -- not straight through, though. Like broken up.

Q Like what time would that be?

A Like around 10:40 in the morning for 45 minutes, and 45 minutes in the afternoon.

Q 10:40 to what, like 11:30?

A Uh-huh.

Q Is that a yes?

A I'm not -- I'm pretty sure, yeah.

Q 10:40 to 11:30. Then what's the other critical time?

A It was in the afternoon before two.

Q Before two. Well, give us your best estimate.

A Around 1:30. I don't know.

Q About 1:30?

A Yeah.

Q And you would have been with Pam at 1:30 for what, another half hour, 45 minutes or so?

A Yeah.

Q And that is again another conversation that you would have had with Pam about the killing of her husband, right?

A Yeah, but Pam wasn't in in the morning because she came to work late that day.

Q I'm only asking about the time that you sat down and talked with Pam. Was she in at 10:40 to 11:30?

A I don't think so.

Q So you wouldn't have had a conversation with her on May 1 --

A Until the afternoon.

Q Can I finish the question?

A Yeah.

Q You couldn't have had a conversation with her on May 1, 1990 up until what, noon?

A Yeah.

Q So you're saying that after 12 noon you had a conversation with Pam?

A Yep.

Q Okay. Now, let me try to focus on that, all right? Was it at about 1 o'clock that you had a conversation with Pam?

A I'm not sure.

Q Well, let's tell the jury when school gets out -- over at Winnacunnet High School.

A 2:17.

Q 2:17 p.m., right?

A Uh-huh.

Q Okay. Was it toward the end of the day that you spoke with Pam or was it closer to noon?

A It was eighth period. Eighth period moves on a daily basis, so as to when it was I don't know.

Q Well, it's a Tuesday. What's eighth period, time-wise?

A Around 1:30.

Q 1:30 in the afternoon. And how long did you speak with her from 1:30 in the afternoon?

A Forty-five minutes.

Q Right up to 2:17?

A I don't know if we talked about it the whole 45 minutes, but I was in her office.

Q You were in her office from 1:30 p.m. to 2:17 p.m. on May 1, 1990, right?

A If that's when eighth period is, yes.

Q Well, is that your testimony? I don't know when eighth period is. You tell the jury.

MR. MAGGIOTTO: I object to the tone of voice the defense

counsel is using with the witness. No reason for that tone.

MR. SISTI: I'm not going to intimidate the witness. I don't know when eighth period is.

THE COURT: You may continue.

A Yeah.

Q Eight from 1:30 to 2:17 or is it closer to noon? Isn't it closer to noon?

A I'm not sure.

Q How many periods are there in a day?

A Eight.

Q Okay. And on Tuesday, the last -- I know this sounds kind of ridiculous, but the last period of the day is not the eighth period because of the way things rotate?

A Nope.

Q So it would have been before 2:17 p.m.?

A It would have been before 1:30.

Q It would have been about 1:30?

A From 12:40 to 1:30.

Q 12:40 to 1 p.m. you claim to have this conversation with this woman about killing her husband, right?

A I'm pretty sure.

Q I'm sorry?

A I don't know what time I had the conversation with Pam. I had the conversation with Pam. I just know it was like eighth period. It was when she got into work.

Q I'm sorry?

A It was whenever she got into work. Obviously, she was in her office if I had the conversation.

Q It was whenever she got to work?

A Yeah, she came to work -- I don't know what time she came to work. I don't know, I'm pretty sure it was eighth period. I could have stopped in after school. I don't know.

Q Did you go home by the bus that day, do you remember?

A No.

Q How'd you get home?

A Probably rode with my friend.

Q I'm sorry?

A Probably rode with my friend.

Q Who was that?

A Michael.

Q Michael who?

A Michael Welch.

Q But you don't really have a clear recollection of May 1, do you?

A Not of the time, no.

Q But you did tell the jury that that would be a day that you talked to Pam Smart?

A Yes.

MR. MAGGIOTTO: Objection, Your Honor. Asked and answered several times now.

THE COURT: It has been asked and answered.

Q Was it your testimony this morning that Bill and Pam were looking for somebody else to kill Greg?

A At first.

Q Well, tell me about that. What's that all about?

A She -- there was nothing -- they didn't really talk about it for long. She just wanted Greg killed, and then they didn't know who was going to do it, and then they just decided Bill would -- could do it.

Q When was this?

A At the beginning of March and end of February.

Q I'm sorry?

A End of February, beginning of March.

Q End of February, beginning of March, and you're sure of that?

A I'm pretty sure, yeah.

Q Where would this have taken place?

A Where would what have taken place, the conversation?

Q Yeah.

A In her office.

Q In her office?

A Yeah.

Q Now, there has been a lot of talk in this case about insurance money, and there has been a lot of talk about planning sessions. Why don't you tell the jury what you know about insurance money.

A All I know is I asked Pam -- Pam just said that she was sure it would be a lot of insurance because Greg was an insurance man and she wouldn't tell me how much it was.

Q When was this conversation?

A When I asked her how much she got? I think it was afterwards.

Q It would have been after?

A Yeah.

Q It would have been after Greg was killed?

A Right, but when I -- but when she told me that she was sure she'd get a lot of insurance. It was before Greg was killed.

Q When?

A I don't know.

Q Well, who else was there?

A Just me. Maybe Bill.

Q Just you and maybe Bill?

A Yes.

Q Why do you say "maybe Bill"?

A Because sometimes Bill was there and sometimes he wasn't.

Q But you have no recollection of Bill being there, do you?

A No.

Q During this conversation, right?

A No.

Q You just added that, right?

A Right.

Q You're kind of guessing Bill would be there, right?

A Right.

Q So a number like \$140,000 in insurance was never mentioned to you, is that right?

A No.

Q Tell us a little bit about the Media Center. I mean, you know your way around SAU 21, right?

A Uh-huh.

Q Pam's office, you've been in and out of there, right?

A Yep.

Q She always lock the door, does she?

A I don't know.

Q Well, have you ever been in her office without her?

A Yes.

Q Okay. I take it that the door was open or you had a key, one or the other?

A I never had a key, but the door was open.

Q The door was open. And people could go in and out of her office because it wasn't locked up, right?

A Yeah.

Q So anybody that would be in that general area downstairs in SAU 21 could have come and gone from her office, right?

A Yes.

Q And the other thing -- a little bit more about that office and what goes on there -- she's got what, a secretary right next door to her?

A Yes.

Q Separated by kind of a two by four wall or something?

A Yes.

Q There are people that come and go through that area quite frequently?

A Yeah.

Q I mean, the coffee machines are there, right?

A In the break room.

Q The break room where people take a break. I mean, that's kind of a high traffic area, right?

A Right.

Q Now, not wanting to hang around with Pam after May 1, the fact of the matter is you did hang around with Pam after May 1, right?

A I did or I didn't?

Q You did.

A Yeah.

Q So you weren't terrified of Pam Smart after May 1, right?

A No.

Q So in fact, you went over to her office, right?

A Yes.

Q You went over to her house, right?

A Yes.

Q You even went to the beach with her, right?

A Yes.

Q So saying that you didn't want to be around her would be incorrect, wouldn't it?

A I didn't want to be around her like after June 11th.

Q You didn't want to be around her after June 11?

A No.

Q This is after the police basically told you you were a liar?

A Yeah.

Q And basically told you that you knew something about this murder, right?

A Yeah.

Q And that you knew that Pam Smart must have been involved in this murder, right?

A No.

Q Oh, no? They didn't talk about that?

A No. They asked me if I noticed anything about Bill and Pam, if they were closer than friends, and I said no.

Q What were you lying about to the police on June 11, 1990?

A About the affair. And I lied and said I didn't know anything about anything.

Q About the affair.

A Right.

Q Then between the 11th and the 14th you have this change of heart and you go in and you correct your story?

A Yes.

Q You told this jury that you were shocked on May 2nd.

A Yes.

Q Shocked that Greg was killed.

A Yes.

Q This was not an act, right?

A No.

Q You were truly shocked?

A Yes.

Q And J.R. and Bill were also in the same room with you, right?

A Yes.

Q Why don't you tell the jury how they acted.

A How they acted? They acted like they were shocked.

Q Tell the jury what they did.

A They were just like, "Oh, my God, I can't believe it. Do you have any clues? Do they know who did it?" They were just asking a lot of questions.

Q Like they were sincerely concerned about the situation, right?

A Yep.

Q Even though 12 hours before they killed Greg Smart.

A Yes.

Q Is it your testimony that Pam told you you would be in trouble if you went to the police?

A She told me that she didn't think it would help me any if I went to the police.

Q Why would you be afraid of going to the police, by the way?

A Because I -- I don't know. Pam kept on saying that I was going to get arrested. I just assumed I was going to get arrested.

Q Why?

A I don't know. I thought there's a possibility I could get

arrested. I knew if I went to the police I'd have to testify.

Q Why were you afraid that you would be arrested, I guess that's my question?

A Because I knew about somebody's murder before it happened.

Q You knew somebody was going to be murdered before it happened?

A Yeah.

Q You honestly believed somebody was going to be murdered before it happened?

A No, but I mean, it happened.

Q Now, what this thing all comes down to for you is over the last, I don't know, ten months or so you've got a shot at a hundred thousand bucks, right?

A Yes.

Q Yeah. You've already been paid how much money?

A Probably about thirty-three hundred.

Q About thirty-three hundred bucks. You've been told you're not going to be arrested for anything?

A That they know to date.

Q I'm sorry?

A If something was to come up, I'd get arrested. They didn't grant me immunity or anything.

Q Yeah, like if you'd change your story, right?

A No.

Q They didn't tell you if you changed your story you'd have a problem?

A I'm -- it's not a story. It's not my story. It's the truth.

Q The truth. You're not going to be arrested?

A Not that I know of.

Q And you were -- you claim to have been Pam's best friend?

A Yes.

Q Okay. You know, there was some talk about this orange juice commercial. This is a commercial that had to do with competition throughout the United States, high school kids?

A Yes.

Q This particular commercial involved Pam and Traci Collins, right?

A Yes.

Q You, Rachel, right? Bill, right?

A Yes.

Q Anybody else that I left out?

A No.

Q Okay. And you saw Pam on a very frequent basis, right?

A Yes.

Q And you discussed her domestic situation with her, right?

A Yes.

Q You saw her in long-sleeved shirts and short-sleeved shirts, did you?

A Yes.

Q You saw her in, in fact, a costume in the orange juice commercial, right?

A Yes.

Q Okay. You saw her so that her arms were exposed to you, correct?

A Yes.

Q Can you describe for the jury any bruises on her arms?

A No.

Q Did you ever see any bruises on her arms?

A Not that I remember.

Q Did she ever come up to you and complain about beatings from Greg?

A No.

Q Let's talk about Bill Flynn a little bit. You know him well, don't you?

A He's a friend of mine, yeah.

Q He's a friend of yours and you've known him a lot longer than you've known Pam, right?

A Couple of years longer.

Q Right. Flynn was really, really fascinated with Pam, wasn't he?

A Yes.

Q I mean, it was like infatuation, for lack of a better term?

A Yes.

Q Did he talk about her all the time? Would he?

A Basically, yeah.

Q Did he talk about how he wanted to be with Pam all the time?

A Yeah.

Q He had confided in you, right?

A Not -- I guess so, yeah, because I mean, I was the only other one. It was just me, Bill and Pam.

Q So he talked to you about this affair, right?

A Yes.

Q How much he --

A Not much. Just whenever I saw him.

Q I mean, you were right over there in the condo when they were upstairs.

A Right.

Q All right. I mean, you were right there, right?

A Right.

Q I mean, he'd discussed with you how much he needed her, right?

A He didn't say he needed her.

Q Well, what'd he say?

A He just said he loved her.

Q That he loved her. What else did he say? What else did he say about Pam?

A I don't know. Just that he liked her, that he loved her.

Q That he liked her, he loved her?

A Yes.

Q Did you ever see him upset, upset because of the relationship?

A No.

Q You never saw Bill --

A Not that I remember.

Q Not that you remember. He would show you letters, would he?

A No, Pam would show me letters.

Q Pam would show you letters, and in the letters he would talk about how much he wanted to have sex with Pam, right?

A I don't remember what they said.

Q You don't remember what was in the letters?

A She only read me one from Bill.

Q Did you ever see directions, these directions you talked about?

A Yes.

Q Did you?

A Yes.

Q They were actual directions?

A Yes.

Q When were those drafted?

A Before the last attempt, after the second one.

Q Before the last attempt. Before the last attempt, after the second one? When was it exactly?

A Well, before May 1st.

Q It was before May 1st?

A And it was after the second attempt.

Q And it was after the second attempt that there would have been directions, right?

A Yes.

Q And this would have been because Bill would have needed directions to get to Derry, New Hampshire, right?

A Because he got lost on the last attempt.

Q Because he got lost.

A Yes.

Q When did you see those directions?

A Pam's office.

Q In Pam's office?

A Yes.

Q When was that, by the way, do you know? Was it towards the

end of April.

A The directions?

Q Yeah.

A It was after the second attempt.

MR. SISTI: May I have a second, Your Honor.

- - -

[Pause - Mr. Sisti, Mr. Twomey and the defendant
conferring quietly.]

- - -

Q Now, you were at the Derry residence with Flynn and with
Pam. Do you remember the dates again?

A The dates?

Q Yeah.

A That was the last week in April.

Q Last week in April. And how many days do you claim Flynn
slept over there?

A Tuesday night.

Q Tuesday night.

A Yeah.

Q And with regard to that particular day, did Pam put any
restrictions on either you or Flynn as to where you could
go in that particular condo?

A No.

Q You had the run of the place, right?

A Yeah.

Q So did Bill?

A Yeah.

- - -

[Pause - Mr. Sisti and Mr. Twomey conferring quietly.]

- - -

Q During this morning's session on direct, were you upset at the questions and so forth?

A No.

Q Okay. Just wanted to be sure. I mean, you weren't upset by standing up there -- sitting up there and testifying, are you?

A Yes.

Q You're upset?

A Yes.

Q Were you upset when you talked to Bill Spencer from Channel 9 about the boys? Remember that?

A Yeah.

Q You were upset?

A Not really. I wasn't in a courtroom in front of all these people that I don't know. I was in my own house.

Q Were you in your own house?

A Except for the first time I talked to him we were outside my best friend's house.

Q What did you tell all the folks that were watching television in New Hampshire about the boys?

A That I didn't think they'd do it.

Q That was after May 1st, wasn't it?

A Yes.

MR. SISTI: Thank you.

MR. MAGGIOTTO: No questions, Your Honor.

THE COURT: You may step down. Thank you.

- - -

[Witness excused.]

- - -

MR. MAGGIOTTO: State calls to the stand Cindy Butt.

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

MR. MAGGIOTTO: May we approach, Your Honor?

THE COURT: Yes.

- - -

[Bench conference - no record.]

- - -

NOW AT THE BENCH ON THE RECORD:

THE COURT: This is not on the record yet.

- - -

[Discussion off the record.]

- - -

THE COURT: Go on the record now.

MR. SISTI: I'll tell you why we approached. It really was a defense request. It was for an offer of proof. I believe that the witness Cindy Butt, and I believe the reason the State would be calling her would be to place her on the stand, essentially ask for a prior consistent statement that was purportedly made by Cecelia Pierce to Cindy Butt at Papa Gino's Restaurant sometime before May 1. I'll rely on the record, and I think it's fairly accurate, and I didn't impeach or attempt to impeach nor question this last witness with regard to any conversation she may have had with Cindy Butt. In fact, that is an area that I consciously did not go into. So that in fact what they're attempting to do is bring in an impermissible prior consistent statement where there was no impeachment whatsoever during the course of her cross-examination, the cross-examination of Cecelia Pierce.

MR. MAGGIOTTO: What the problem is, Your Honor, what 801(d)(1) allows you to do is not only a prior consistent statement to rehabilitate someone because of impeachment, but also allows you to bring it in, and I quote, "an implied charge against a declarant of recent fabrication or improper influence or motive."

The whole theory of this defense has been that the three boys and Cecelia Pierce all have improper motives for testifying against Pam Smart. The improper motives either have been money which she's receiving or her own protection, her own fear of being prosecuted for other crimes, and it doesn't have to be just the prior consistent statement to rehabilitate an inconsistent statement. It has to rebut improper motive, influence or recent fabrication. It just boggles my mind, after listening to his opening, the way he's crossed all the witnesses and the implication he's giving this jury since day one to try to say they're not claiming these witnesses have testified because of improper motive or influence. It's just black letter

hearsay rules.

MR. SISTI: I agree it's black letter hearsay rules. If you read the whole rule, Your Honor, it specifically relates to again cross-examination of an individual and challenges those areas that Mr. Maggiotto already stated, and, quite frankly, she was not -- I'm telling you -- wait a minute -- I'm telling you those are areas that were not gone into. If that is what she's on the stand for then it is improper and it would be a prior consistent statement and it would be improper to bring it in during the course of this particular situation. If they want to use it in rebuttal for some purpose, that's different. But, you know, there's no rebuttal even yet.

MR. MAGGIOTTO: I'd like to read it. It's right here. It says, "The declarant" --

MR. SISTI: Read the whole thing.

MR. MAGGIOTTO: "The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement is (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the

declarant of recent fabrication or improper influence or motive." It doesn't have to be an inconsistent statement. She told about the statement of Cindy Butt. They had every opportunity to cross-examine her about it. They chose not to do it, but that's not the point. They're still implying improper motive. They're telling the jury Cecelia Pierce is fabricating this story about Pam Smart. It boggles my mind. That's exactly what their whole defense is, Judge.

THE COURT: Everybody through?

MR. TWOMEY: If I could point one thing out. The State seems to be saying we're seeking to impeach her based on money. I don't believe the word money was gone into on cross-examination. I think Mr. Maggiotto brought it up.

MR. MAGGIOTTO: He said a hundred thousand.

MR. TWOMEY: That's all I have. I have to retract what I said. Mr. Maggiotto's right. The words were said, but I don't think there was any impeachment on it to indicate that was a motive to fabricate.

THE COURT: Okay. Well, the objection's overruled.

MR. SIST: Okay.

THE COURT: Thank you.

MR. SISTI: Yes.

IN OPEN COURT BEFORE THE JURY:

CINDY BUTT,

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. MAGGIOTTO:

Q Have a seat. Could you repeat your name so that everyone in the jury could hear and would you spell your last name for the benefit of the reporter.

A Okay, it's Cindy Butt. B-u-t-t-.

Q Miss Butt, where do you live?

A Seabrook.

Q Who do you live with?

A My fiance, Kurt Tilton.

Q How old are you?

A Twenty-one.

Q Miss Butt, what do you do for a living?

A Right now self-employed selling Tupperware.

Q Besides that, what else do you do?

A I used to work at Papa Gino's.

Q Do you know Cecelia Pierce?

A Yes, I do.

Q How do you know Cecelia Pierce?

A From work.

Q And when you say "from work," what work are you referring to?

A Well, I delivered pizza and she worked in-house as a waitress.

Q And when did you work with Cecelia Pierce?

A From about February of 1990 until when she left, which was I think around October, November of '90

Q What was the nature of your relationship when you worked with her?

A Just friends from work.

Q Did you ever socialize outside of work?

A Once we went grocery shopping.

Q Outside of that, anything else?

A No.

Q I'd like to call your attention to the spring of 1990. Did you have any conversations with Cecelia Pierce?

A Yes, I did.

Q Can you tell us about that conversation?

A One night Cecelia and I were on our dinner break, and I don't

know what we were talking about, but she had said she had a friend named Pam who wanted to find somebody to kill her husband.

Q Do you know when this conversation was?

A The date I'm not sure.

Q Do you know the month?

A It was about a month beforehand, so it had to be about beginning of April, end of March.

Q Now, when you say "a month beforehand," what do you mean?

A It was just like a few weeks beforehand. I don't know the exact date or anything, but it was roughly in that time period.

Q A month before what?

A The actual murder had taken place.

Q Now, where did this conversation with you and Cecelia Pierce take place?

A In the upper dining room of Papa Gino's.

Q What were you doing in the upper dining room at Papa Gino's?

A Eating dinner.

Q And how did the conversation come up?

A I'm not really sure. I mean, I could have been talking about my previous marriage or anything.

Q What do you mean by your prior marriage?

A I've been married before and gotten divorced.

Q Now, did there come a time when you learned about the murder of Greg Smart?

A Yeah, on May 2nd Cecelia came into work quite upset, and I went out back because she was in the back room, and I asked her what was wrong and she had said that her friend Pam's husband had been killed the night before, you know, by -- during a robbery or -- I don't know the exact words she used. So I suggested to her how about, you know, if she goes on a delivery with me later on, so she got in my car and I asked her, "Didn't you tell me about a friend that was planning on having her husband killed?" She said, "Oh, shit, I had forgotten that I told you that." I said, you know, "Well, does anybody suspect anything?" And she said no.

Q Did you go to the police with this information?

A No, I did not.

Q Why not?

A I really didn't want to get involved in the matter. I figured if Cecelia had told me chances are there were other people that knew.

Q When, if ever, did you speak with the police about this?

A I'm not sure of the exact date. It was when the Derry detectives had come to see me to give a statement.

Q And do you recall what month it was?

A Oh, it was June 15th.

Q When was the last time you saw or spoke or socialized with Cecelia Pierce?

A Probably about five and a half months ago. Other than, you know, saying hi to her today, that was about it.

Q Where did you see her five and a half months ago?

A She was walking into Papa Gino's and I think I was on my way out on delivery.

Q What was discussed at that time?

A She just asked me if I was done borrowing one of her tapes.

MR. MAGGIOTTO: No further questions.

THE COURT: All right.

MR. SISTI: I just have a couple questions.

CROSS-EXAMINATION BY MR. SISTI:

Q Can you tell me who Tammy Robertson is?

A She was one of the shift managers at Papa Gino's.

Q Was she like Cecelia's boss or something?

A She was like slightly above us, yes.

Q And when was she working there?

A She worked there from before I was there and she was there still when I left.

Q Okay. She would have been Cecelia's boss and your boss back

in April and March?

A Yeah.

Q Cecelia get along real well with her, did she?

A All right, I guess. I mean, everybody has their bickering moments.

Q No problems with her?

A Not that I know of.

Q Did she act friendly with Tammy?

A For the most part, I'd say.

Q I mean, no animosity or anything like that?

A No.

Q Wouldn't want to hurt Tammy or anything?

A Not that I know of.

Q That is the impression you got from the way Cecelia interacted with Tammy, right?

A Yes.

Q Are you telling the jury that like you're real good friends with Cecelia?

A No, I'm not really good friends with her. We worked together.

Q So you wouldn't know whether or not she was feeding you a line about somebody killing somebody or not?

MR. MAGGIOTTO: Objection, Your Honor.

THE COURT: Sustained.

Q The context of your conversation that you claim to have had, what was the context, if you recall?

A Excuse me?

Q The conversation with Cecelia about her saying, "I have a friend that wants her husband killed."

A She said she had a friend named Pam who was having marital problems and wanted to have her husband killed.

Q Was she like real serious with you, though?

A Yeah, I guess.

Q I'm really questioning -- I got to know it, what's in the upper part of the restaurant.

A Uh-huh.

Q Papa Gino's, right?

A Right.

Q You were sitting across the table from each other?

A Yeah.

Q Were you eating?

A Yes.

Q How does that conversation come up?

A I'm really not sure. I may have been talking about my previous marriage because certain occasions she'd ask me -- she didn't believe I was married before and asked why I'd

gotten divorced and we could have been talking about that.
I'm not positive at this point.

Q Do you know if you were involved in a serious conversation
with her or something lighter than that?

A I mean, I don't think it was all that serious. We just
talked a lot.

MR. SISTI: Thank you.

MR. MAGGIOTTO: No further questions, Your Honor.

THE COURT: You may step down. Thank you.

THE WITNESS: Thank you.

- - -

[Witness excused.]

- - -

MR. MAGGIOTTO: Your Honor, at this time the State rests its
direct case.

THE COURT: All right. Ladies and gentlemen, we'll adjourn
until Monday at 9:30. I'll see counsel around
9 o'clock Monday, if you can get here.

Ladies and gentlemen, it's very important
again, as I tell you every night, do not view,
read or discuss, listen to anything about this
case with anybody. It's very important over
weekend or any night both to the defendant and

to the State and to you and me as citizens.

Have a nice weekend. I'll see you Monday
at 9:30.

- - -

[Court recessed for the day at 1:51 p.m.]

- - -

EXHIBIT F

ORIGINAL

NH Sup. Ct
★ 91-239

VOLUME XIX of XXI

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

* * * * *

THE STATE OF NEW HAMPSHIRE

90-S-1370

90-S-1371

v.

90-S-1372

PAMELA SMART

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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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Arguments:

Defense - p. 1853
State - p. 1902

Jury charge - p. 1968

In chambers - p. 2000

MARCH 20, 1991 - WEDNESDAY MORNING SESSION - 9:27 A.M.

IN CHAMBERS:

THE COURT: All right, defense has filed the following jury instructions -- requested jury instructions which I'll just number by title here.

Function of the Court and jury, which the Court will give in some -- you know, a similar instruction.

Secondly, the indictment is not evidence, which the Court will tell the jury.

Thirdly, that jury recollection controls, which the Court will tell the jury.

The next is direct and circumstantial evidence, which the Court will inform the jury.

The burden of proof charge, which appears to be the Wentworth charge, which the Court will give. The presumption of innocence charge, I'll let counsel speak to that in a moment.

The next is the credibility of witnesses, which the Court will give the same or similar.

Entrapment. I'll let them speak on that in a moment.

And accomplice testimony, which I'll let

the defense and the State address in a moment.

Those are all that have been filed by defense. And the first one which counsel can speak on is the one entitled "Presumption of Innocence" as a separate charge.

MR. TWOMEY: Before Mr. Sisti talks, I asked my office to send down one additional instruction for 9:30. While he's addressing the Court, can I have permission to go out and see if that's arrived yet?

THE COURT: Absolutely, yes.

- - -

[Mr. Twomey exist chambers.]

- - -

THE COURT: Go ahead, Mr. Sisti.

MR. SISTI: Presumption of innocence I thought would speak for itself. I mean, it's not only principle of law, it was explained not only on voir dire but in any preliminary comments that would have been made to the jury.

I don't think there's any question that this instruction not only lends itself to the case but has to be given.

MR. MAGGIOTTO: The State's position is, Your Honor, we obviously don't object to a charge given on the presumption of innocence, but the standard charge and the model jury instruction seems quite appropriate. The problem with this one, it's taking the instruction normally given for circumstantial evidence and putting a twist on it for all evidence, saying whenever the jury has two reasonable interpretations of evidence they have a duty to adopt the interpretation which favors the defendant's innocence. I think what's appropriate for them to evaluate is all the evidence together in context and make a determination what their verdict is or isn't, and I just think this is taking it one step further than your basic presumption of innocence which is set out in the standard instructions.

MR. SISTI: The only response I have to that is that if in fact the the jury does take direct, circumstantial, any evidence, any evidence whatsoever, whether circumstantial or direct, whether it be part of their recollection of the view, whether it be anything submitted to them, as evidence,

presumption of innocence is controlling, and if there are two interpretations and one does lend itself to guilt and one does lend itself to innocence, yes, in fact they have to adopt that which would lend itself to innocence.

THE COURT: Well, the Court will cover the presumption of innocence charge which is included in the Wentworth charge, and will give a charge concerning circumstantial evidence being susceptible of two reasonable conclusions. The Court will decline to give this presumption of innocence charge as written.

MR. SISTI: I guess the specific exception would be the proposed instruction itself with the additional comment that direct evidence also should be interpreted like circumstantial evidence, and evidence on a view should also be interpreted like circumstantial evidence, there is not a difference between any of those sets of evidence. In fact, the Court generally does instruct that there's no difference among those three types of evidence.

THE COURT: Okay, the next is entrapment.

- - -
[Mr. Twomey re-entered chambers during the argument just
above.]

- - -
MR. TWOMEY: In this particular case, Your Honor, we've asked
for two instructions that relate to entrapment.
The one is in the package given earlier. The
second one is called -- entitled "Government
Overreaching."

Basically, the law of entrapment is that
entrapment is normally an affirmative defense.
That is reflected in the standard instruction
from the New Hampshire Criminal Jury Instructions
book, which we've submitted. In the instruction
on entrapment, I should note we're only asking
for entrapment to be instructed on the charge of
witness tampering. We would ask the Court to
let the jury know that that's the only charge
to which that applies. The case law on
entrapment or the law on entrapment is that if
a person -- if a crime would not have been
committed other than due to the inducement of a
police person or an agent of the police, then a

defendant has a right to an instruction. If there's any evidence of this, the defendant has a right to an instruction on entrapment.

There are two kinds of entrapment, and normal kind of entrapment, as I said earlier, the burden of proof is on the defendant and it's an affirmative defense. There's another entrapment which I believe is entitled entrapment by law, or something like that, entrapment per se, where the government conduct is so overreaching and so egregious that the burden of persuasion and burden of proof switches to the State. The State must disprove it beyond a reasonable doubt. In this particular case, therefore, it becomes a defense, not an affirmative defense. In this particular case, what you have is a situation where Cecelia Pierce is clearly an agent of the State, and I believe the State conceded that fact in earlier motions to suppress. She's carrying out a script, orchestrated -- attempting to elicit, to get the defendant to tamper with her at that particular point in time. The egregious nature

of it -- I guess those facts all by themselves are egregious. The particularly egregious nature of the government's action in this case arises out of the stop in Hampton, New Hampshire which we had testimony about from Cecelia Pierce as well as the defendant. Now, I won't go through all the facts of that stop. That was not a speeding stop. That was clearly an arrest. It was a terrifying arrest; lights, spotlights on the people, hands up, don't move, policemen on horses, motorcycles, et cetera. When you have that type of action with no probable cause and no justification whatsoever being directed against a person who is already in a precarious emotional and mental state, that is government overreaching. The result, and the only result, of that is to put the defendant in this case into sheer and stark terror. That's egregious and it's overreaching, and the witness tampering -- the acts that constitute witness tampering in this case are as a result of that. At least the jury should be allowed to consider whether that's true.

THE COURT: All right.

MR. MAGGIOTTO: Well, first, with the government overreaching to stop that evening. First of all, there has been no evidence in front of this jury which connects that stop on June 11th, I believe it was, or June 10th, the phone tap on June 19th or to the body wires on July 12th, 13th, nothing involved by the defense when they had cross-examination of Detective Pelletier. All we have is some information that Cecelia Pierce and Pamela Smart were stopped.

Essentially, what this instruction would be giving the jury is asking them to speculate as to what we're all talking about.

As far as government overreaching, no evidence in front of this jury in any way that the government conceived, contrived and carried out a plan with a sole objective to use the police power to obtain the defendant's conviction, especially in relationship to that stop. So as far as the government overreaching, I don't think there's any basis in the evidence. It's an inappropriate charge as far as entrapment

goes. I mean, it just seems to me defendant never said on the stand that she would have -- never said -- let me rephrase this. The defendant never said on the stand that she was put in a situation which forced her to make comments which she otherwise wouldn't have made. She said exactly the opposite. She went there, intentionally made these comments to Cecelia for the purpose of either finding out what Cecelia knew or with the thought to trying to convince Cecelia Pierce not to go to the police. There's nothing before this jury which suggests that the police did something which put Pamela Smart in a situation which created a substantial risk that she was about to commit a crime that she otherwise was not predisposed to commit. In fact, I don't think any reasonable jury could come to that conclusion. It wasn't developed with the police officers. So that's all.

MR. TWOMEY: The prosecutor said she went there, referring to Pamela Smart. My memory of the testimony is she didn't go anywhere, but contact --

MR. MAGGIOTTO: I misspoke. She went nowhere.

MR. SISTI: As far as specific facts, just one that comes to mind, which is the subject matter of one of the indictments, and specific indictment for witness tampering, is the subject area on the issue of the polygraph. That was the subject area that was specifically brought to the attention of Pamela Smart by Cecelia Pierce. That was not a conversation that was initiated by Smart. I mean, that speaks for itself right there as one specific --

MR. MAGGIOTTO: I don't think the issue is who brings up the subject matter. I think the issue is creating circumstances which forces the defendant or puts the defendant in such a situation that she ends up committing a crime not otherwise disposed to commit. And even Pamela Smart testified that she had previous conversations with Cecelia Pierce about this on the 13th, so I just don't see the evidence.

THE COURT: All through?

MR. TWOMEY: Yep.

THE COURT: Well, with respect to the requested instruction of government overreaching, which was the

purpose for which Mr. Twomey left chambers and received the instruction which has just been brought down from his office, the Court finds there has been no evidence of any government overreaching before the jury. The jury is unaware, based on the evidence so far, as to what that stop on June 10th or 11th involved, and in fact the Court was unaware until it was explained earlier by counsel as to what that stop was all about and whether it was connected to the events of this case. So the Court will not give that instruction. Of course, the defendant's exception is noted.

With respect to entrapment, the Court finds that the entrapment suggested by the defense is the entrapment of or the claimed entrapment of Cecelia attempting to get the defendant to encourage Cecelia to lie. The evidence before the jury is that -- from Pamela Smart's own testimony, that that was indeed her plan, even prior to the wiretap; that her whole defense is based upon encouragement, based upon a plan of admission to prior knowledge and then supposedly

to attempt to get Cecelia to lie so that she would not tell the police about the defendant's plan which Cecelia might have at that point thought to be factual, but which in fact was claimed by the defendant to be a ruse for purposes of getting information from Cecelia. So the defendant has testified that her conversation with Cecelia was willing, voluntary and a part of her plan to apparently gain information from Cecelia. So the Court will not give the entrapment defense charge as requested by the defendant, and that exception is noted as well.

MR. SISTI: Just additionally for the record, the defendant would ask the Court to reconsider that particular ruling, and cite the case of State v. Aubert.

THE COURT: All right. With respect to accomplice testimony, I agree with the defense that the section in their charge concerning the testimony of an accomplice should be considered by you with care and caution because indeed that is what State v. West says. However, the Court's

instruction is going to be quite a bit longer than the defense requests because the Court must, first of all, define the crime of first degree murder for the jury to enable them to determine whether the defendant is an accomplice to first degree murder. So I'll give that last charge -- last paragraph of your charge.

MR. SISTI: Uh-huh.

THE COURT: State v. West indicates that is the law. The first one -- I'm not saying I won't give the first one. I'm saying I'm going to expand on it, that's all.

MR. TWOMEY: May I talk to Mr. Sisti for a moment?

- - -

[Pause - Mr. Twomey and Mr. Sisti conferring quietly.]

- - -

MR. TWOMEY: There were three instructions that I thought were in that packet. I didn't go over it. I asked these be sent down. Didn't realize we didn't have copies for everybody. They're all standard instructions -- actually, two of them I guess are stand instructions from the book. One is false report to a police officer, and I

have another copy of that. I have two. So I'll give them to the State. And the other is hindering apprehension or prosecution. I don't know if I have a copy of that. It's again a standard one.

MR. SISTI: Let's see if it has a number on it.

MR. TWOMEY: I'll skip that one. Just the first one.

MR. MAGGIOTTO: I don't know what you're talking about.

MR. TWOMEY: False report to a police officer. Cecelia Pierce indicated to the jury that she'd been told by Captain Jackson she'd done nothing and had nothing to worry about, among the many things she did, including aiding and abetting a theft, conspiring to commit first degree murder, and aiding and abetting first degree murder. Among the many crimes she committed was a false report to a police officer. The testimony's uncontroverted. Two occasions at least she met with the police, told them she knew nothing about it, and it was a crime. That's a lie, not unlike perjury where you can purge yourself of the crime by telling the truth before you testify. Once you do it,

that's a crime. She admitted to that crime.
She got a walk from Captain Jackson on it.

MR. MAGGIOTTO: Are we going to do the same thing for the defendant every time she talked to every police officer every step down the line?

MR. TWOMEY: She's not being tried on it.

MR. MAGGIOTTO: Neither is Cecelia.

MR. TWOMEY: The defendant is not getting any immunity. No evidence of any immunity on other occasions. Cecelia Pierce was given immunity. In order to determine her credibility, under Davis v. Alaska, I guess to begin with, Giglio v. United States, Brady v. Maryland, Akers v. United States, all those cases the jury has a right to have the evidence in front of them and be instructed on what would have constituted a crime. That's the purpose of that request.

THE COURT: Well, counsel can argue that I guess in their closing argument, but the Court's not going to instruct the jury that Cecelia has committed a crime because the Court, for one reason, does not believe she'd been granted immunity.

MR. TWOMEY: Just to be clear, I didn't want you to say she'd

committed a crime, but, rather, give the
elements of an offense --

THE COURT: Of false report? I'm not going to give the
elements. There's no evidence before the jury
on false report.

What else? Is that it?

MR. TWOMEY: I guess so.

THE COURT: Off the record.

- - -

[Discussion had off the record.]

- - -

[In chambers hearing concluded at 9:45 a.m.]

- - -

IN OPEN COURT BEFORE THE JURY - 10:02 A.M.

THE COURT: Good morning. Mr. Twomey, you may proceed.

MR. TWOMEY: Thank you, Your Honor.

DEFENDANT'S CLOSING ARGUMENT

MR. TWOMEY: Good morning, ladies and gentlemen. I want to start out, before I talk about the case, and thank you folks for willingly sitting through this the last couple weeks. Hasn't been a pleasant time for anybody. Lot of cameras out there, and people. The cameras are there for a reason. People to whom these events that you've watched in here, this is entertainment, okay? They're not out there because they're interested in the law or because they're real empathetic people. They're out there because it's entertainment. Hasn't been entertainment for anybody in this courtroom. Hasn't been entertainment for Pamela Smart. Hasn't been entertainment for Greg Smart's parents, for his family. Hasn't been entertainment for Pamela's family. When a person loses a limb, an arm, say, for a long time afterwards, for years afterwards they feel the arm, and what they feel is an aching pain. A part of them is gone. They feel it. They think it's there and throbs with pain. That's what these people feel.

Who did this? Why'd they do it? How'd they do it? That's what you're here to decide, who is responsible for this? A bunch of little kids who made a mistake and now they're sorry? Now, the State brought in three chronologically aged children who have been found by a court of law to be mature enough to be treated as adults. Three chronologically aged children who have gotten their reward. They don't have to worry about spending the rest of their life in prison. Those three lovely little children in two years can come in this court and ask for time off their sentence. They won't get it the first time. They won't get it the second time. They won't get it the third time. But you know they're not going to grow old in that prison. They got their reward. That's something you have to take into account when you evaluate whether those are the kind of people you want to trust with a decision like this. When they got their reward, what they told you was that they promised the State of New Hampshire they would tell them the truth about what happened May 1st, 1990, in Derry. They didn't

even do that, ladies and gentlemen. Forget about whether they're telling the truth about that woman or not. They did not tell you the truth about what happened in that house. There are a number of reasons you can tell. The most insignificant is the candlestick. That story makes no sense. First of all, there are two stories there. One is that -- I think Pete's story is that Billy dropped the candlestick, okay, and he dropped it on the rug. Billy's story is he placed it down on the tile. Why would he do that, where Greg Smart's going to see it as soon as he walks in the door? Feel the candlestick. Drop it a few times. See if you do anything to that candlestick. As Detective Pelletier told you, that's a heavy, hard object, good for hitting somebody with. I'm not going to tell you we know what happened with that candlestick, but if you look at it you know it wasn't placed on the floor and it wasn't dropped. That's not how it got bent. Something else happened. That's the first reason that you can at least doubt about what they told you happened in that house.

The towel's another reason. Why does the towel appear to be pressed against Greg's head? What does a towel have to do with it? Where is the towel? That's just a question. That doesn't prove anything.

The sounds. That's an interesting thing. Mr. Dacier -- if you recall, I think he was the second person to talk to you folks -- Mr. Dacier told you that he heard -- well, he heard three sounds. The car door's the first one. Let's leave that out for a second. He then heard a door slam. Then he heard another sound that he couldn't differentiate from the first sound. That's not a cap gun in there. I don't know where it is. It's in there somewhere. That's not a cap gun. If you fired that off with a .357 hollow point rounds, with 125 grains of lead in them, with gun powder in them, it's not going to sound like a door. Something muffling that sound. What is it? They didn't tell you about that. Why didn't they tell you about that? Is that because it's something like the light bulb, shows a little more premeditation, cold-bloodedness? I don't know. There was something between that gun and Greg Smart's head.

Think about Mr. Klose. Do you remember him from the laboratory? He talked about the fact there were two major parts of this bullet. One was entered all the way in, the major portion, and the second fragment was just under the scalp. He told you that that could have been because -- there were a couple explanations -- that could have been a bad bullet. Then I asked him, I said, "Well, what are the odds on that?" He said -- first, he said one in a thousand. Then he thought about it for a minute and he said one in a million. Okay. That's a million-to-one shot. Dr. Fossum -- what Mr. Klose said, the other explanation, the one that's not a million-to-one the rest of them if you count up to a million from one, the other 999,999 is that there was an intermediate target, something that could be soft between the gun and the head. I suggest to you that that's consistent. It doesn't prove anything again, and we don't have to prove anything, but it's consistent with something muffling the sound. A towel, a cloth. Maybe not the towel they found there, but there's some explanation for why that bullet fragmented. Some explanation

why Mr. Dacier heard two sounds that sound the same.

Dr. Fossum talked to you about that, too, his testimony again consistent there's something else going on in that house. Dr. Fossum said you see tearing. Okay, that's got to be a very close wound. Doesn't have to be touching, but within inches, okay? You see tearing of the scalp as the gasses come out and expand the scalp. Do you recall that? He says that makes it look like it's close, but we don't see traces of gun powder with -- with his eyes he sees none. Now, Mr. Klose, Roger Klose, saw a few minute places under the microscope or something. What did Dr. Fossum tell you? Dr. Fossum told you that his findings are consistent with an intermediate target, which could be soft, between the gun and the head. Did those boys tell you anything about that?

Most importantly you know they didn't tell you the truth about what went on in that house because of the ring. The ring is lying under Greg Smart. Greg Smart has an abrasion on the third finger. One, two, three. We got a name

for that finger. It's called the ring finger. Dr. Fossum told you that abrasion is consistent with somebody tearing off a ring with force. None of the boys have any explanation why that ring was on the ground. None of them. Something they just didn't want to talk about. They could remember -- they could remember Greg Smart spending three minutes standing up begging for his life. They could remember him on his knees. But they don't want to talk about that ring. Something unspeakable happened with that ring. Something unspeakable happened in that house that they're lying and covering up.

A last reason, and probably irrefutable, probably does make it beyond a reasonable doubt that something else happened in that house, once again Dr. Fossum. When Dr. Fossum was testifying, I knelt here and I had him put the -- trace the trajectory of the bullet front to back. I had him stand behind me. I said, "Dr. Fossum" -- I'm not trying to do it the same way. I didn't even see how he did it, but it's front to back. You saw it. I said, "Dr. Fossum, would you

stand behind me and pretend like you've got a gun and try to get your hand in a position that you can shoot that bullet." Dr. Fossum said it can't be done. On cross-examination (sic) Mr. Maggiotto said, "Well, what if Greg, right before he was shot, turned his head back, is that possible?" He said, "Yes, it's possible." Well, did Billy Flynn, did Pete Randall tell you anything about Greg turning his head? Was Greg Smart able to turn his head? Pete Randall's holding on as hard as he can to his hair. Something happened there. They did something else. They tortured that man in some way that they won't talk about. And they're liars about it. That's the point. They got a deal. They promised to testify, and they came in here and lied about some detail. It doesn't really matter what it is. There's some lie there.

Who are they? Who are these kids? Are they somebody you ought to feel sorry for? Think for a minute the way the prosecution talked to Brian Washburn; the scorn, the derision in their voice when they asked Brain Washburn questions. And think of the way they

talked to Billy Flynn. Who should we be nice to here? Did Brian Washburn commit the crime of trying to keep a secret that his friend asked him to keep as long as he could, then nothing else he could do about it, came forth? He did that. Is that a reason to treat him the way he was treated in front of this jury? How did the State of New Hampshire treat those three boys? Did you hear any derision? Hear any kind of confrontation with them whatsoever? They want you to feel sorry for those boys.

Billy Flynn. Billy Flynn lost his father when he was a child. That's that. No doubt about it. What does it have to do with this case? Why ask Mrs. Flynn, you know, Billy was withdrawn for months afterwards, and that's sad, too, but does it have anything to do with this case? Is the only point of that so that you feel sorry for Billy Flynn? Feel sorry for Billy Flynn if you want, but it doesn't have anything to do with this case.

These boys, the three of them together, have not a shred of moral decency within them, and

you can see that when they took that stand and testified to God to tell the truth. That has absolutely no meaning to those boys. None whatsoever. It's not environment. It's not their parents. It's none of that stuff. If it was that stuff, think about Ralph Welch. Grew up in the same town, went to the same schools, has the same friends, and he even lived in the same house with J.R. Lattime. That's the same environment. What's Ralph Welch -- does he think this is something we should joke about? Ralph Welch cares about this, and his friends make him sick, and if Ralph Welch's friends make him sick, they ought to make you sick.

Who are these boys? Pete Randall, the assassin, the boy whose dream was to be an assassin, and his dream came true. That's something. The boy who sat up there for hours and didn't show one single human emotion. You want to take his word for anything? You want to make a judgment, an important judgment based on his word? I'm not going to say a whole lot about Pete Randall. That's absurd, absolutely absurd.

Pete Randall. After his arrest he tells his mother all about this thing. She wants to know about it. Tells all about it. But he leaves out Pamela Smart. Isn't that funny? Isn't that odd? He doesn't say anything about any ride to Haverhill where she talked about "don't get blood on the couch" or any of those juvenile fantasies. Isn't that funny? Why's he talking to his mother? Assume that he was telling the truth. He's talking to his mother. "Mom, we did this, but this woman, older woman put us up to it." Isn't that the kind of thing you would want to tell your mother? Why protect Pamela Smart? Everybody says he barely knows her. That doesn't make any sense, unless she has nothing to do with it. Like I said, I'm just not going to waste a lot of time on Pete Randall.

Vance Lattime. Who is he? Lattime the liar. Ralph Welch tells you, again Ralph Welch who lives in the same house with him, tells you he's the kind of guy, you'll watch him do something and he'll either be embarrassed about it, not want to get in trouble over it. Even though

he's seen you looking at him while he's doing an act, he'll deny it to you. What's the lie he told? For one thing, he told you that before May 1st he knew from Pamela that she was going to get \$174,000 in insurance. Now, there's two problems with that. The first is that that's completely contradicted by Billy Flynn.

MR. MAGGIOTTO: I object. That's a total mischaracterization of the testimony of that witness.

THE COURT: Jury will take its own recollection of the testimony of the witness.

MR. TWOMEY: That's a complete contradiction with Billy Flynn, who told you she only knew about one policy, the \$90,000 policy, and found out about the other one after May 1st. Well, both of those things can't be true. In fact, neither one of them can be true. Maybe the most important witness you heard in this case, I think his name was Mr. Houle, the insurance man from Rhode Island. What did he tell you and what's important about it? He told you that in regard to the \$90,000 policy, in order to figure out the benefits, you have to go back a year from when the person dies and you have to use a formula, you have to know the commissions, their

salaries. You have to know what Greg Smart -- if he sold the policy that night. That very night he went out on an appointment. Whether he sold one, whether he earned a commission on it, and that information was not available on May 1st, so both Vance Lattime's lying about and Billy Flynn's lying about that. It's just plain impossible. He told you, he said, "Even my agents couldn't figure that out."

Now, what else did Vance tell you? He tells you, well, he's got a problem with the laughing in the car on the way back because he already goofed and told Pelletier about that. He's got to eat that one. He says, "Yeah, there was a little bit of that going on, but over the next couple days and weeks I started feeling remorse and really bad about this." Ralph Welch was asked if there was any remorse. He didn't see any remorse from his friend. That wasn't a couple days and week later. That four or five weeks later. No remorse. No remorse when they're in here on the stand. Old J.R. tells you, "We never talked at the juvenile center, the ADC." Why? "Because it's a rule. They

told us not to." Now, there's a couple of problems. There's rules against killing human beings, and he had no problem transgressing that rule. That's one problem. He's then confronted. Just didn't know we had the letter to his girlfriend. He's confronted with that, and that shows that what he's just said is a lie. What does he do? Does he admit the truth? Of course they talked about the case at ADC. That's human nature. That's not the point, whether they talked there. It is the most important thing in their lives, and of course any three individuals facing the same charge, they did talk about it. That's not the point. The point is they came in here and lied to you about it. When he's faced with essentially irrefutable proof, because it's in his own handwriting from his own mind, told his fingers to make the words, "Bill's leaving. I'm so sorry. We talk all the time whenever the guards aren't looking." You've got the letter. You've got the exact words. When he's faced with that what does he do? Does he fess up and admit the truth?

No. He tells you another lie. He says, "I was just exaggerating." That's as big a lie as the first one.

Vance Lattime, J.R., talked to you about going down to a storage area to get a gun. He said not to get a gun, he talked to you about a burglary. He claimed that he always thought it was before May 1st, but he read some unknown paper that we haven't seen that told him it was after May 1st, it was May 4th. But at any rate, he talks about that, and he wasn't going to get a gun. Ralph Welch was the one with him. Ralph Welch said they wouldn't leave until they found a gun. And he talked to you about all the efforts they made to find a gun. They were consciously looking for a gun. Again, that's just a lie.

MR. MAGGIOTTO: Judge, I have to object to defense counsel continually testifying to what's a lie.

MR. TWOMEY: It's argument, Your Honor.

MR. MAGGIOTTO: Well, if you'd argue the evidence, I wouldn't have a problem.

THE COURT: I would prefer that you suggest to them that it's a lie or submit to them it's a lie rather

than stating it as a fact. I don't think that's proper.

MR. TWOMEY:

All right. Billy the kid. Who is he? He's number three in the gang of five. Is he a little puppy dog that you saw in court? Is that who he is? Little, sad puppy dog? Or is he the kid that, after killing a human being who had begged for his life for three minutes standing, and we don't know how long on his knees, is he the kid right after doing that talks about the thrill, the power, the charge of killing somebody? Which is he, the puppy dog or the thrill killer? He came in here and showed you the behavior of a little puppy dog, but he did demonstrate it that night, May 1st, in Derry, he showed himself to be what he is. Maybe he's a mixed person. Who knows? But you know one thing, he's a thrill killer. No reason for Pete Randall to just talk about that to Detective Pelletier unless it's true. Is he the little boy who cried here, or is he the heartless little punk who laughed on his way to jail after he got arrested? Which one is he? If you don't know

who he is, do you want to take his word for anything, anything at all if you don't know which one he is? You know one thing he lied about. Well, you don't know it. There's some possibility he didn't lie. He told you that within three days prior to May 1st that he went with Pam Smart to a bank in Hampton to get money thirty bucks, to buy bullets to kill her husband. Now that's a pretty simple thing to confirm or not confirm if you've got the burden of proving something beyond a reasonable doubt. Here's the kicker. Go to the bank, get the records. We went to the bank, her bank, got the records. You will look at the records, okay, you'll see that there's nothing that comes out from either the ATM machine or the checking account within three days. You'll see the last one's a check written, I think it's to Shaw's in Derry, or something like that. Mr. Maggiotto on cross-examination brought something to your attention that's evidently true. You can take a credit card and get money out of some of these machines. We don't know whether you can do it

at that particular bank. Well, if the State really wanted to know whether Pamela Smart used a credit card, took money out to buy bullets to kill her husband, it's not that hard, ladies and gentlemen. You get a credit check on the credit card. You go to a credit bureau. Give me a credit check on Pam Smart. Let's know what her credit cards are. You then subpoena into court the records of each and every one of those credit card companies. That's easy. It would take a day, that's all, if you have the burden of proving something beyond a reasonable doubt.

And that's one of the hard points in Billy Flynn's story. That's one of the things you can either -- you can confirm it or prove it to be a lie. If you've got the burden of proving he's telling the truth beyond a reasonable doubt, those few places where you can grab ahold of his story and find out if it's true or not, wouldn't you go do that? And if it wasn't done for you, could you ever say that he's telling the truth beyond a reasonable doubt?

Billy Flynn tells you, "I got those .357 hollow points, 125 gram bullets, and the reason

I did that was for humanitarian purposes." He would like you to believe he thought --

MR. MAGGIOTTO: I object to the characterization.

THE COURT: The jury will take its own recollection of the testimony. It's argument.

MR. TWOMEY: This is argument. He did not say the words "humanitarian purposes." However, what was the impression he left with you? "I wanted to make it get over quick, spare Greg some agony." What's he saying? It's humanitarian purposes.

Roger Klose said the main purpose people buy those bullets, hollow points, is to increase devastation, to increase the odds of killing. Which one do you think is the real reason?

I think if you go through your notes you'll see one of the other boys, I believe -- my memory is, and use your notes -- 15 of you now, there will be 12 of you -- one of the other boys I believe said the purpose of those bullets was to increase devastation. That's not the exact word. Which is true? Is what Billy Flynn told you true, or what his cohort, his fellow gang member, fellow

weasel, fellow vermin told you true, or is what Roger Klose told you true?

Billy Flynn. He gets on the stand and he knows Ralph Welch is -- I can't remember if Ralph already testified or is going to testify. If he's already testified, Billy knows about it because he watches it on TV. But, at any rate, he knows, he's had his own case. He knows Ralph Welch knows about the conversation, and Billy calls up to try to get Ralph to meet him somewhere. He knows about that, so he has to sort of eat that. How does he deal with that? He says, "I talked to Ralph about the rumors Ralph had heard." The whole time Ralph Welch was on the stand, he didn't say a word about rumors in the conversation. He described the whole conversation to you. He didn't say a word about it. What he said was Billy was concerned about what -- not rumors, but two killers -- Billy's friends had told him directly. That's not rumor. And that Billy said the following things, and this order again is not right, use your own notes, "If Pam finds out about this, she'll never speak to me

again. I'll kill myself." Does that get a little sense of deja vu when you hear that? Put that together with something else. Those are the same things that he was always saying to this woman. "If you leave me, I'll kill myself." Ralph Welch had that right.

Let's go back to the house for a second. Pete and J.R. get confronted by Ralph Welch. This is going to tell you something about Billy Flynn, what his friends think of him. Pete and J.R. get confronted by Ralph. They say, "No, no, we're only joking." Ralph leaves the room. He hears something. Now, Ralph's recollection is -- let me think for a minute. I'll try and get it as close as I can. "When Billy finds out about this, he'll be pissed," period. "You know who's next." Close. I'm not sure it's exactly right. I asked Detective Pelletier what one of the other two boys had told him was said. What they said was, "When Billy finds out about this, he'll be pissed." That sort of talk. "He's going to kill Raymond Fowler." "When Billy finds out about this he's going to kill Raymond Fowler."

Is Billy a little puppy?

Now, Billy cried in here, and as a human being you have to feel something. If it's real emotion, if you're a human being, if you're not Pete Randall, who has no emotions, you have to feel something. He has to touch some chord within you. We're not telling you, and the evidence doesn't suggest, that Billy Flynn is the same as Pete Randall. Pete Randall's got the emotions of a slug. No, he doesn't. A rock. A slug, if you hit it with a pin, it moves, it feels pain. Pete Randall doesn't know what human emotions are. Billy's not like that. Pete Randall on this end of the spectrum. Billy Flynn's way over here. Emotions coursing right through his body. The thrill of killing courses through his body. He cries at the drop of a hat. He's obsessed. He's obsessed with love for Pamela Smart. He told you that. He's obsessed with his hatred for Greg Smart. I believe he told you that. If he didn't say that, his friends said it. He's a kid who has emotions. What emotion, what was he thinking

about when those tears came out? Who knows? Who knows what's running inside that mind, the mind of a thrill killer? All three of these boys told you that they wouldn't plead guilty unless all were taken care of. I'm not sure if all three of them said it. Everyone who was asked about it said it. Isn't that touching? The three musketeers.

They also told you -- again I believe it was Billy, use your own recollection -- told you that he wished he hadn't done it, he was prepared to go to trial. He sort of suggested the lawyers tricked him somehow. He was prepared to go to trial. His defense was going to be denial of guilt. What story was he going to tell that jury if he testified in his own trial? Was he going to raise his hand exactly the same way, swear to God; was he going to look 12 people in the eye; was he going to tell a lie again, another lie, a different lie?

MR. MAGGIOTTO: I object. Speculating about Bill Flynn. It's clearly not the testimony of Bill Flynn in this case, given the testimony of Bill Flynn. Just leaving it open like that is really unfair to all witnesses.

THE COURT: I guess I'll remind the jury in any criminal case a defendant in any case has a constitutional right not to take the stand and testify. You may proceed.

MR. TWOMEY: You know he's an actor. You know he can show emotions when he doesn't feel them. The day after Greg Smart's death, Mrs. Kinsman calls a couple of them in the office, and he mopes. Fine, perfectly. That's an act. Was what he did up here an act? Do you know one way or another?

You know, people like all three of these kids -- Cecelia, too -- all four of them, people like these are problems for prosecutors. They're a problem because they're really not human beings worthy of belief. They're bad people, did horrible, horrible things. If someone suggests to you something like, you know, if a crime happens in hell you're not going to get angels for witnesses, you have to have devils and that's why we put these boys on; someone says to you about Cecelia, to catch a vicious something, you have to put a worm on the hook, you don't put a cupcake on the hook; someone

suggests that to you at any point in time, I urge you to reject that suggestion. What that suggestion is a coded message to you to come down to their level, to bring the standards of American justice, proof beyond a reasonable doubt, the presumption of innocence, your skepticism, take all those things and drop them down to the sewer where those people live. Those are things you have to take into account in determining whether or not you want to believe any of those people.

Let's talk about sex for a moment, okay? That was a big part of this case. It was a driving sexual urge, his hormones were a driving force in Bill Flynn's actions. Do you really think it makes any difference what particular position two human bodies were in at a point when they're having sex? Why did the prosecution bring that out? Why in the first 47 minutes -- why in the first hour of cross-examination of Pamela Smart were the first 47 minutes talking about an affair and sexual acts? Does that help you at all? You know they had an affair. You know they were intimate. Do you

need to know about ice cubes? Is that something to titillate you, anger you against her? Is that something kinky? What's the point? How does that get you any further along in your analysis of what happened, whether she's guilty or innocent? Is she guilty of an affair? You betcha. You betcha. She's a married woman. She's not supposed to have affairs. Is she guilty of that? You betcha. Is she guilty of having an affair with someone six or six-and-a-half years her junior? You betcha. Is she guilty of having an affair when she's not in school but essentially in a position of authority, abusing that authority, the trust put in people? Is she guilty of that? Absolutely. No doubt about it. Does that make her guilty of murder? No.

Proof beyond a reasonable doubt. Now, it seems light-years ago that we talked to you -- while choosing you the judge talked about the burden of proof, why it's so important to hold the State to that burden. You can't drop it down.

What are some of the reasons to have a doubt?

First of all, you could go through the boys' testimony. You could go through it at length. Just talk about one thing, the ride to Haverhill. And talk about the differences there. Their made-up stories. Was the gun shown to Pamela, wasn't it shown to Pamela? Was it in the waist, was it in the jacket? You could -- you can go through those things. You can do that for the whole case, and I suggest you may want to do that. I'm not going to do that with you. I'm going to point to four or five areas that have to give you reasonable doubt here. One is the bank. I've already talked about that. As I said before, if you want to prove beyond a reasonable doubt Billy's telling the truth about that, just chase down the records, her credit card records. No big deal.

Cecelia. Quite frankly, I'm not even sure it's Cecelia. May be Billy. I think it's either Cecelia or Billy. One of those two told you that Pamela came back after the funeral, the first time they saw her, and said that she just couldn't cry. That's something where their

story touches other people's reality. Normal people witness things. Was she able to cry? Whether or not she's faking it, was she able to cry? They're saying she came back and said, "I couldn't cry."

Why don't you listen to all the tapes in this case back there. I think the judge is going to give you some sort of device to listen to them. Listen to that 911 tape. Do you think she couldn't cry? Listen to those voices, three people describing it as they're seeing it. Listen to what they say. She was hysterical. She was crying. Why would she go to one of those two kids and say, "I couldn't cry"? The answer is, that's a lie. She did not go to those kids and say she couldn't cry.

Brian. Brian Washburn. He saw her cry. Her shirt was wet. Whether it was sweat, she was hot -- maybe it was sweat -- she was crying. Again, maybe they're crocodile tears like Billy's, but why, if that's true, wouldn't she go to one of those kids and say, "I could make myself cry"? No, that's a lie.

Most important one is Sonia. I talked a

little bit about the way the State treated Brian Washburn. What about the way they treated Sonia? She's guilty of a terrible, awful crime. She loves her best friend. You know, you can cross-examine someone like that that loves somebody without jumping down their throat, without reaching in and grabbing the pancreas and ripping it out. That's what they did to Sonia. Put her right on -- probably over the verge of tears. That wasn't necessary.

Mrs. Flynn. Billy's mother. She did things you know she knew were wrong. She did it out of love for her son. Did we jump down her throat?

What did Sonia tell you. The evil Sonia. Well, she told you one thing, that Pam was crying all the time, talking incessantly about it. But she told you something very important. Told you she was whimpering in her sleep. Try that tonight. Before you go to sleep, try whimpering during your sleep, see if you can do that. If you could whimper in your sleep, would you tell one of these kids that you couldn't even make yourself cry?

Cecelia. Another thing, another reasonable doubt. Let's talk about Cecelia for a moment. Cecelia Pierce told you on May 1st of last year she met with Pam at the school in the Media Center and discussed the upcoming murder of her husband. Again, unfortunately for Cecelia, that's one of the few places where her lie touches reality. Patty Wiser came in here and said Pam came in late. She went to a meeting with the -- I think it's the superintendent, and he testified too about the meeting. She came back. We were ready to go. We went to lunch. We didn't come back until 2:30. Cecelia told you that was -- look at your notes for this again -- earlier than 2:30 because school got out at 2:17. That's just a lie. It could not have happened. The woman was in Portsmouth, New Hampshire or else in a meeting with the superintendent.

Now, Mr. Maggiotto, when recognizing that's a problem for the State of New Hampshire when Patty Wiser says that, Mr. Maggiotto says, well, could they have, you know, passed in the corridors or something like that briefly

somewhere else. That's fine. But that's not what Cecelia said, ladies and gentlemen. Go back and look at what she said. In the Media Center.

Again, the insurance. Just -- it isn't there. That \$90,000 policy. If you took notes on what Mr. Houle said, you know none of the stories those kids say about her knowledge of insurance can be true because you can't figure out \$90,000. Again, that's lie touching reality.

Think about who Cecelia Pierce called with the information on the gun when she's out there trying to figure out if she can steal from her father. Did she call Pamela Smart? Called her friend, quote-unquote friend, Billy. She calls him twice, tries to set up -- first of all, tries to see if her father has one or talks about it anyway. Then her friend, I think her name was Tammy something or other, that she called a friend, and evidently was her supervisor, she steals from that person who's never done anything to her, or she tries to -- sets it up for a steal with her friend, Billy. That's for Billy, not for Pam.

What motivates Cecelia Pierce? I don't

think we have a clue based on this evidence. I don't think there's a clue -- strike the "I don't think" -- there isn't a clue. Was she jealous of something? Who knows. Do you know she's a liar? Yeah. Do you know that she's willing to take part as an accomplice in an attempted first degree murder? Yeah. Listen, she told you that -- well, first of all, she told you she was worried a couple days before trial she might get charged with something. But she told you the police said, "Oh, you didn't do anything. We're not going to charge you. Don't worry about it, Cecelia."

Well, what did she do? What was the crime Cecelia Pierce committed? Well, perhaps most insignificant, she told -- made a false report to a law enforcement officer. That's a crime in the State of New Hampshire. She did it on three occasions. But the State's theory is two occasions. The first two times she tells you, she admits, "The first two times I talked to the police, I went in there and lied, said I didn't know anything about it." That's a crime in the State of New Hampshire.

Captain Jackson says, "You didn't do anything. We're not going to charge you." He told her the third time she went in that she committed a crime. I think she called it obstruction or hindering, something. But what she committed was a false report to a police officer. That's a crime. She got a walk on it. She got a deal, a good deal. Forget about the hundred thousand dollars. That comes after all that. Tells you a little about what kind of person she is, but not much. Really, you can't blame a poor kid for taking, you know, poor in the sense of indigent, for not having money, for taking money. I'm not going to do that. But she committed a crime there.

What else did Cecelia Pierce do? When the judge reads you the charges, he's going to go through all the elements in the indictments against Pamela. Why don't you listen to a couple, okay? Listen to conspiracy. And while you're listening to it and trying to see if it applies to this woman, listen and see if it applies to Cecelia Pierce. Agrees with one or more persons that an act shall be committed, and one -- an overt act is done in furtherance of that

agreement. The over act, there's more than one. The phone call is an overt act. Billy Flynn going down and rifling through a car is an overt act. Driving to the other place, to the house to look for a gun, that's an overt act. Cecelia Pierce is guilty of conspiracy to commit first degree murder. She's out there. She's doing okay.

There's another thing she's guilty of, not conspiracy, but first degree murder -- aiding and abetting in attempted first degree murder. She attempted to get a gun, to help get Billy Flynn get a gun to kill a human being. That's a charge -- I mean, that's a crime. That's a serious crime. She's going to walk. Captain Jackson, because the State of New Hampshire needs her or wants her as a witness, gives her a walk on that. They didn't think she did anything wrong in that.

Let's talk about Pamela Smart. Let's talk about the tapes. Play the tapes. If you have the transcripts, read them. Okay? You're going to see things in there that are damning and

you're going to see things in there that are totally consistent of innocence. You're going to see that those tapes are the product of a messed mind. What gets Pamela Smart to that point? You know, those decisions are ridiculous, they're stupid, no good judgment shown in trying to trick Cecelia Pierce into giving her information. That's absurd. The police were absolutely correct to shut her out of this investigation. She was out of control. There's no criticizing the Derry police about that. What gets her to that point? Why is she out of control that she's doing things that just make no sense? Well, try being 22 years old and having your marriage taken from you, your spouse. Why don't you try that on for size. Why don't you just think that out. Forget everything else in the case and just think, is there a reasonable possibility that that could cause someone such trauma and such stress that they'd act in an irrational manner? What's it like? What is it like when death comes, not after a long illness of your spouse, not when you

prepared and steeled yourself for it, but when it comes absolutely out of nowhere? What is that like? What does that do to a human being? Some people can bear up under that. There are some people that are as strong as anything and can take anything. Some people aren't. Some people break easier than others. After that, add rumors that start flying around town. Cecelia told you there were rumors and Pamela told you there were rumors, and the rumors are all kinds of things. They involve your husband being in the Mafia, they involve him being a drug dealer, they involve you. What does that do to the mind? There's a breaking point. I think -- gee, I don't know what it's called, might be called tensile strength or something on metal, there's a point where something snaps. Okay. Do those rumors help get the metal back or the mind back to its normal state, or does that put more pressure on the mind?

Think about that night in Hampton. She's letting Cecelia drive her car. There's no dispute about what happened there. Everybody agrees about that. They're driving the car along. This is after her husband's killed,

after there are rumors going around, before the boys are arrested. She's driving a car and a force sufficient to retake Kuwait surrounds that car. You have multiple cruisers, like paddy wagons -- which is a racist term, by the way -- you have police officers on horses, mounted police. You have police officers on motorcycles. They surround that car. They put a spotlight directly on your face. It's nighttime. Two young women alone. You go to move your dog. You get screamed at, told to hold your hands up, and you're kept there for ten minutes. Your husband's been killed. What does that do? Where's the tensile strength? Is that enough to snap a human being? Is that enough to cause a human being to act irrationally?

That's not the end of it. One, two days after that happens, while you were in a great mental state from the things that have happened to you before, what happens next? Person with whom you have an affair, a secret affair, it's something you're ashamed of and have to be ashamed of because of the age differences, that

person, the person who you thought was a decent human being, the person who you've seen -- the same side that you folks saw in court here, you've seen that side of Billy Flynn -- that fellow's arrested for the murder of your husband. What's the first thing -- do you want to believe that, okay? You hear that news. If you believe that -- we all have defense mechanisms, okay? If you believe that, that means that you're having the affair, whether or not you're legally guilty of the death of your husband, that means your having the affair led to the death of your husband; that someone you loved, and because you loved somebody, they killed someone else you loved even more, would you embrace that and say, "Good. I'm happy they solved it," or would a person shrink from that and get as far away from that and pray and hope that wasn't true and try to find a way to show that wasn't true? That's a horrible thought.

Listen to those tapes, and you have to -- I'm afraid to suggest -- you really have to listen to all four of them to do this, but

listen to the progression of the voice of Pamela Smart in those tapes. Listen to it at the beginning. Then listen to the progression. You hear with your ears a descent into hell. You hear a person snapping, and that snapping happens somewhere between the first and the last two. Listen to the whispering, the manic kind of talk, the paranoid kind of talk. Listen to it. That is a mind that's not acting anywhere rational. I don't know if you're going to have the transcript of not. If you have the transcript, look for places where Cecelia Pierce said something and Pamela Smart says something that is as if she never even heard a word Cecelia said. I'll give you one example. See if you can find more. At some point in those transcripts Cecelia Pierce -- this isn't even close -- but the word "uncle" came in. She started talking about somebody's uncle who did something and he's in jail for a large amount of time, and, quote, you had your husband killed. That's a quote. I remember that part, et cetera. And you're out on the street. Cecelia says that and Pamela goes -- above that, Pamela's been

talking -- on the transcript been talking about the affair and she answers that statement going right on talking about the affair as if she'd never heard a word Cecelia mentioned.

Now, I want you folks to imagine, not yourselves, but think of it, the stress, a basket case, who has something that she desperately has to prove, something she desperately has to hide, that affair. She's now terrified she's going to be arrested because of the affair, having a conversation, a rational conversation. She's got an agenda: That's hide that affair. No doubt about it. She doesn't deny it. She's got an agenda. If you listen to that tape, half of the time on the last two tapes -- the first two tapes she's following Cecelia's lead -- the last two times, time and time again her responses aren't responses. Her mind is out of control, racing on one course: That affair, and hiding it. Nothing else.

Listen again to the tapes when Cecelia starts talking about somebody looking for the gun. I think it's Mr. Fowler. You're going to

have the tapes. Look at them. Cecelia says he heard they went looking for a gun, and it's clearly the gun to kill Greg Smart. Pamela says "What for?" Cecelia says something else that I don't recall. Pamela says again, "What for?" If she's in on this thing and knows all about it and she knows all about the first attempt, as someone told you, what is she asking what's the gun for? Listen to how many times she brings that conversation back to the affair. Is she talking about hiding a murder or is she talking about hiding the affair? She's clearly engaging in acts that constitute witness tampering, okay, and there's no -- the acts she does, she tries to get Cecelia to lie to the police. No doubt about it. Or to withhold information about it. Not a single doubt about it. But is she trying -- first of all, as human beings you have to decide what impels that. What brings her to that point? In the reasonable doubt instruction, there's an interesting thing. The judge is going to give it to you. At the end of it, it says if you find that somebody -- the State has proven their case beyond a reasonable doubt, you should

-- that's the word I'm underlining with my hand here -- you should find the person guilty. If you find they haven't proven it, you must find the person not guilty. I don't know if I said that right. You should find them guilty if they proved it --

MR. MAGGIOTTO: Judge, I object to counsel giving the law. You're going to instruct the jury.

MR. TWOMEY: I can comment on the instructions, Your Honor.

THE COURT: He can comment on the law.

MR. TWOMEY: There's a difference between should and must. One is mandatory. Must is mandatory. And should is in the normal course of affairs, that's what you should do. The difference is, because sometimes there are circumstances where someone does acts that if you look at them in a vacuum constitute a crime, and those acts she does with Cecelia Pierce in a vacuum is witness tampering. But a jury in our country, that's why we have those two words, has the right not to return a verdict if they feel the circumstances are such that a just result can be reached by a verdict of not guilty, even though the person does those things. But on that witness tampering,

I'm telling you two things. I'm telling you the acts are there, she did them all, and that you shouldn't find her guilty of that because of the factors and what was going on in her mind. She snapped. I want you to listen to those tapes. What you're going to hear there is a woman who had been, over a course of a long time, emotionally drawn and quartered. It's as if they took -- drawn and quartered is when they take four horses and tie them to your limbs and pull them apart. She was being ripped from all sides. She'd been ripped from her love for Bill, her fear from being arrested, her desire to find out what happened, and hopefully it isn't Bill. She's being torn every which way. You're going to hear that in her voice.

Now, you get -- in the United States, you get two verdicts. You get guilty and not guilty. Before you get to guilty, the State has to prove a charge beyond a reasonable doubt. That's true -- that, by the way -- most of our legal system comes from England, and that's true in England. It's not true in Scotland. Scotland has one major difference. They have three verdicts in

Scotland. They have guilty, if the State proves beyond a reasonable doubt; not guilty, if you think the person has proven themselves innocent; and they have a third verdict, not proven. We take the innocent and not proven and put them into one, not guilty. I won't tell you that we have proven beyond a reasonable doubt that Pamela Smart's innocent. I won't say that. I'll tell you that there's multiple, multiple reasonable doubts about whether she's guilty, but won't tell you we've proved the negative. I'll tell you one thing -- forget about what I'll tell you -- one thing is for certain, that the correct verdict in this case is either the not guilty or the not proven, which in America we put together into a not guilty, because there's reasonable doubts.

What happened on Misty Morning Drive on May 1st, 1990 was an abomination. That's the word for it. It comes from the Old Testament. There's a portion of the Old Testament where they talk about the cycle we have in life. You're a child first, you're a teenager, you become a young adult, you marry, you have

children, your parents become grandparents, you grow old, your parents die, and you bury them. That's a proper, normal cycle of life somewhere in the Old Testament. I don't know where. I was in a motel room one night trying to find it. But somewhere in there they talk about parents burying their children, breaking that cycle, that's an abomination. That's what the Bible says, it's an abomination. That's what those kids are guilty of. That's what happened here, nothing else. It's a word that doesn't really describe anything else. Perhaps the Holocaust. Nothing else in the human life really fits that word. The vicious animals who brought you that abomination, it was five of them -- we've only heard really from four of the, haven't heard from Raymond Fowler, don't know much about him -- the four who took part in that, the three boys and Cecelia Pierce, those three boys, at least, they laughed and joked as they set out to kill. Billy Flynn, Mr. Remorse, Mr. Tears, when he went out the first time to kill Greg Smart with Fowler, what did he say to Ralph Welch, kind

of braggadocio, whatever the word is? "We're going to go do Greg Smart." They laughed as they set out to kill. These people who boast of the thrill of killing and the power of killing, they're people who laugh on the way to jail. They've been arrested for first degree murder and it's something funny. They took one life. What they really want to do is take another one. If Billy Flynn can't have Pamela Smart, nobody's going to have Pamela Smart. That's what Billy Flynn wants. What they want is, at the end of this case, they want you to make an awful, horrible mistake, and they want to be able to laugh at you folks. I wouldn't let them do that.

You know, the judge is going to tell you about the presumption of innocence and reasonable doubt. I'm not going over that. Tell you a little story about why that's so important. As I said, those rules of law come from England. England -- there's one big difference in England from here. I told you about a difference from Scotland. In England, they don't have a

constitution and those rules can be suspended at any time. Those rules have been suspended for about -- I don't know how many years, a number of years in cases of IRA -- people charged with working for the IRA.

MR. MAGGIOTTO: I'm going to object.

THE COURT: What's the basis?

MR. MAGGIOTTO: I mean, the basis of the objection is bringing analogies of what may have happened in England with IRA people or other cases.

MR. TWOMEY: I can make analogies, Your Honor. It's closing argument.

MR. MAGGIOTTO: I think he's just trying to scare this jury or something.

THE COURT: It's closing argument.

MR. TWOMEY: As I said, in England they don't have a constitution. They have a Parliament and -- but the courts in some circumstances can do away with juries, do away with beyond a reasonable doubt. They've done that. While we were sitting here in this courtroom, it's either six or eight, I can't remember, six or eight Irishmen and one woman, I think, who had been

convicted 16 years ago of murder were set free, and they were set free because they had been tried in a courtroom where there was no proof beyond a reasonable doubt, where they didn't have the right to confront their accusers, none of the protections that we have here that are so important. Those things aren't cheap. People die in wars for those things. We fought a war to get those rights. It's no accident the first ten of the Bill of Rights amendments to the Constitution are those rights. Those are your rights and our rights. Don't cheat them. Don't bring them down to Billy Flynn and Cecelia Pierce's level. Look at this evidence. Go through it all. Really take your time. You're never going -- we hope you're never going to make a more important decision in your whole life. We certainly hope you don't have to make a more important decision in your life. Do the right thing. Thank you.

THE COURT:

Ladies and gentlemen of the jury, we'll take a short recess now. The rest of the courtroom remain in the courtroom. You just go out with

the bailiff,

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

THE COURT: Yes.

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[Jury excused from courtroom at 10:59 a.m.]

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IN OPEN COURT WITHOUT THE JURY PRESENT:

THE COURT: Before we take a general recess, I want the people in the last row of the spectators' seats on my right to know, you can sleep all you want and you can giggle all you want, but you won't do it in this courtroom.

We'll take a ten minute recess.

- - -

[Recess at 10:59 a.m.]

- - -

THE COURT: Mr. Maggiotto.

MR. MAGGIOTTO: Thank you, Your Honor.

STATE'S CLOSING ARGUMENT

MR. MAGGIOTTO: Good morning, ladies and gentlemen.

Ladies and gentlemen, what the State has proven to you that the evidence shows in this case is that this defendant unequivocally planned, orchestrated and covered up the murder of Gregory Smart, and she did it by setting up her 16-year-old lover, Bill Flynn, at 4-E Misty Morning Drive May 1st, 1990.

Now, the tragedy of this murder gets multiplied several times. Not only is it a tragedy for Greg Smart, whose young life was ended very, very abruptly, but a tragedy for the family of Greg Smart. It's also a tragedy for the family of Bill Flynn, who got roped into this, and as much as we may not like Pete Randall, and as much as we may not like J.R. Lattime, it's a tragedy to their families as well.

Now, in the beginning of my summation, I'm going to call you back to our voir dire process, and you may recall that at that time we all stressed and asked you if you would feel

comfortable applying your common sense to the evidence you heard in this case, and you all said that you'd be able to do that, and you all said that you would be comfortable in doing that, because that's what I'm going to ask you to do, ladies and gentlemen. I'm not going to take you to Ireland. I'm not going to take you to England. I'm going to take you to what you heard in this courtroom. And I want you to look at what you heard in this courtroom, and I want you to examine it carefully. And most of all, what I want you to do is to take that common sense and apply the common sense you heard to that evidence, because when you apply the common sense to the evidence, there will be no reasonable doubt. There will be no doubt at all that this woman is guilty of accomplice to first degree murder, she's guilty of conspiracy to commit murder and she's guilty of witness tampering. Most of all, if you apply that common sense to the defendant's preposterous testimony for the last two days, you'll also come to realize that that was nothing more than a

calculated effort, a last-ditch, calculated effort for this woman to somehow try and distract you from what the inescapable conclusion of what those tapes show, and that inescapable conclusion is that the defendant was involved and is guilty of these crimes.

Now, she does it at a time, ladies and gentlemen, on these tapes when she's so obsessed with solving this crime, she's so obsessed in finding the murderer of her husband that she keeps the most crucial information that anyone could have from the police. She keeps the most crucial witness, Cecelia Pierce, that the police could ever have from talking to the police. And she does it all the time. When she says -- well, it changes. We first heard it was a game to see what Cecelia knew. We then heard later on it was a way to get more information. Then later on heard it go to be the point of confusion. Then we heard later on it was being scared. Then we heard it was being desperate. And today during summation we got to the point of a pencil breaking. Apply your common sense,

ladies and gentlemen. Look at those tapes. Listen to those tapes, and you'll reach the only one conclusion that those tapes leave with you.

Now, the task before you is somewhat obvious, somewhat simple. No question in this case who physically killed Gregory Smart. No question that Pete Randall held a knife to his neck, held his hand in his hair, nodded to Bill Flynn, or Bill Flynn nodded to him, and there's no question that Bill Flynn, after tapping his breast pocket, took out that gun, pointed it down on Greg Smart, and pulled the trigger. No question about that. You don't have to waste a moment of deliberations on who killed Gregory Smart.

There's no question that J.R. told you he drove them up that night. No question about that. We all know that. You don't have to waste a moment of time deliberating on that. And no question all three of them tell you that this defendant is part of the planning; that this defendant knew what was going on; that this defendant was one of the co-conspirators and she

took part in the planning and the commission of the murder. There's no question, ladies and gentlemen, that she claims these three juveniles -- adults -- call them what you will, they're fabricating a story, they're masterminding the most vile concoction that ever came into a New Hampshire courtroom, to get her. No question. Because that's what she says. So the only question you really have to answer is who's telling the truth. And the benefit you have in this case, ladies and gentlemen, is that you just don't have to listen to Bill Flynn, Pete Randall and J.R. Lattime, but you have all sorts of corroborating evidence which will support the defendant's guilt. You have the testimony of Cecelia Pierce. Defendant admits she's got no motive to lie here. You got the testimony of Ralph Welch, and I'll be talking about each of these as I go along. And you also have the testimony of a couple of people that were totally omitted in the defense counsel's summation you're going to hear. I'm going to review with you the testimony of Cindy Butt and

how significant that is in this case. I'm also going to review the testimony of George Moses and how significant that is in this case. And then at some point I'm going over portions of those tapes that you can decide for yourself whether this is a frantic woman, desperate, about to snap, or a cool, calculated operator, rallying the wagons around her, who's talking to lawyers, talking to Cecelia --

MR. TWOMEY:

Objection.

THE COURT:

Basis?

MR. TWOMEY:

Comments on the right to counsel.

MR. MAGGIOTTO:

It's in the tapes, Your Honor.

MR. TWOMEY:

Wilbur v. Ohio.

THE COURT:

I'll sustain the objection to the extent it's comments to counsel, but it is closing argument.

MR. MAGGIOTTO:

You listen to the tapes and you see what she was doing at the time. What you'll see is, as the circle was closing in on Pamela Smart, because Ralph Welch had gone to the police, she's doing everything in her power to set up a defense, to keep Cecelia quiet and keep the police off the trail. And when you do that, ladies and

gentlemen, you'll see that the only fabrication that comes in this case is this defendant's testimony as to what those tapes meant and what happened between her and Bill Flynn.

Now, to demonstrate there's no doubt beyond a reasonable doubt -- there's no reasonable doubt, let's start with the testimony of Bill Flynn. Okay? No question, the testimony of Bill Flynn makes out the elements in this case of conspiracy to commit murder, as well as accomplice to first degree murder. He tells you he and the defendant took part in the planning. He and the defendant sat down and talked about how it was going to be done. He and the defendant talked about getting a gun. He and the defendant talked about making it look like a burglary. He and the defendant talked about wearing gloves. He and the defendant talked about wearing -- tying his hair back. He and the defendant talked about when Greg Smart would be home. He and the defendant talked about where she would be so that she would have an alibi. There's no question that his testimony

just on its face makes out those two charges. He told you about three separate planned attempts that they had in this case. Where she was at that time. Told you about prior attempts that failed. So Bill Flynn's testimony in and of itself proves the case. But the question for you is, do you believe it?

Well, where do we start? One of the things we talked about during voir dire, one of the things we talked about in this case was the manner in which someone testifies. Now, the defense counsel spent, I don't know, 30 minutes on his summation telling us how much he didn't like Bill Flynn, he didn't like Pete Randall, and he didn't like J.R. Lattime, and aren't they despicable individuals. Ladies and gentlemen, they are. No question about it. That's not the issue before us. We didn't put Pete Randall on the stand for you to like him. We didn't put J.R. Lattime on the stand for you to like him. We didn't put Bill Flynn on the stand for you to like him. We put them on the stand for you to evaluate whether or not they were telling the

truth. And you all said whether I'd like this person or not, I'm going to listen to what he has to say, and I'm going to evaluate the testimony that he gives me, and I'm going to compare it to all the other corroborating evidence, and I'm going to make a decision based on that, unaffected by emotion.

Let's start with Bill Flynn? Was he a thrill killer that you saw on the stand? Think about it. About a week ago, maybe eight or nine days, you saw him on the stand. You saw how he testified here before you. You saw how he answered the questions. You saw the emotion coming out of him. That's a thrill killer? Yes, Bill Flynn, sometime after the killing, laughed. I'm not telling you Bill Flynn never laughed again. I'm not telling you Bill Flynn cried for the rest of his life. But when he was in here and he was telling you of his part in the murder, when he was in here telling you about when he had that gun out and he was pointing it at Greg Smart's head, tell me you think that kid felt this was a laughing matter.

You think that kid was joking? No. Do you think that kid was masterminding a vile concoction of lies to get this woman? Is that how Bill Flynn came across to you on that stand? Is that how Bill Flynn looked when he testified to you? I ask you to ask yourselves, remember what you thought when you left this courtroom, what your impression was of Bill Flynn. Keep that in your mind when thinking about whether what Bill Flynn says is true or not true. Bill Flynn doesn't have all the answers. Bill Flynn doesn't dot all the "I's" and cross all the "T's." He can't. He told you himself, lousy memory. A lot of it purposely forgotten, I don't doubt. No, neither should you. But was he a liar? I submit to you, ladies and gentlemen, if Bill Flynn was a liar that was one of the greatest performances you've ever seen in modern times. I want you to think about that when you're evaluating his testimony. And at the same time that this defense counsel spent so much time commenting on his laughter, commenting on his face and commenting on him,

Contrast it from what you saw from the defendant this entire trial. This entire trial, witness after witness got up there and talked about a bullet being put in her ex-husband's head, not one tear of remorse, not one tear of grief. She wasn't shaken up one bit at any time. Contrast that face and mannerism when you compare it to the testimony of Bill Flynn.

Now, contrast it with the mannerisms of the defendant when she testified these past two days. Can anybody have the question out without her having the answer? You don't get a question out before you get a "But this is why. Let me tell you. Cecelia told me this," and so on and so on, "told me that and that's why I said that." She was sitting on the edge of that seat, her face in the microphone. You didn't say boo before the answer came out. It was rapid fire. It was a programmed robot, had every possible answer you could think of before the question was even asked.

Now, ladies and gentlemen, I want you to remember not only how Bill Flynn testified, but

let's talk about what he said. No question, the defendant had a powerful influence over Bill Flynn. She had to get him to commit this murder. He's a little bit of a dumb kid, punk. He's broken into cars, burglarized storage sheds. No question about it. Pam Smart didn't approach the class valedictorian to commit this crime. No question about it. It was Bill Flynn. And he testified to you about the influence the defendant had over him. And he testified to you about the relationship, the sexual nature of the relationship.

Now, why does the prosecution bring out the ice incident in "9 1/2 Weeks"? Are we just trying to get some headlines for the press? No, ladies and gentlemen, that's a detail, a detail that someone like Bill Flynn's not going to forget. It's a detail corroborated by Cecelia Pierce, who says, yeah, she remembers him coming down for ice. It's a detail which will give you some sort of idea what's going on between them. This isn't just a haphazard affair where the defendant has sex with this

15-, 16-year-old boy. This is torrid. This is a torrid affair. This is this kid's first sexual experience. He's way over his head. And I submit she liked it that way. How do you know? Let's talk about the pictures.

Were those pictures taken specifically for Bill Flynn? No, ladies and gentlemen, that's not what we're saying. She didn't get in the bed and, as she said, standing around for Bill Flynn. And you'll see these. Take them to the jury room. Take a good look at them. No, we're not saying that. What we're saying is she tells you, "Oh, I didn't want to go to my regular place because I would be embarrassed, so I gave them to my 16-year-old lover, but not for him to look at because I didn't want him to open up the package. I thought he wouldn't do that." Does that make any sense, when she didn't want to send them to a modeling agency? And that tells you another thing about this woman, what she thinks of herself and her body. She was glad to give them to Bill Flynn. It was all part of the enticement process. Not only

do you have pictures, ladies and gentlemen, and you have the sex in her condominium during "9 1/2 Weeks," Bill Flynn told you about other rendezvous, couple of times at Salisbury Reservation, couple of times at his house, couple other times in the car. What's the point of bringing this all out to you? We don't care that they had sex at this place or that place. It explains to you the nature of the relationship. I mean, she's totally deceiving her family and friends and her husband about this affair. And I submit to you she was very good at it. None of them had a clue that it was going on. I mean, the art of deception is something that she's very good at. It's to show you, hey, this is how it happens; if you're going to have sex with a 16-year-old boy you're going to do it at Salisbury Reservation, you're going to do it down the beach in the car, you're going to do it somewhere where no one else is going to see it. That's the point of bringing it out to you. Same with the letters. What do the letters tell you in this case? Okay, Bill

tells you, "Yeah, I got eight or nine letters saying how much she loved me. Some were sexually graphic." We didn't drag it out of him exactly what the graphic detail was in these letters. We weren't bringing it out for that purpose to embarrass the defendant. We're bringing it out to show you what kind of relationship this is.

According to her, it starts late March and ends in late April. For every love letter she would have to have sent him, she would have to send a Dear John letter the way she talks, she talks about breaking up all the time. But Bill Flynn is getting these love letters, some graphic, sexually explicit. What's the point? It explains the whole. It explains how a 16-year-old kid who can say, "You really want me to murder your husband because, yeah, we're not going to be together? Okay. Okay. You must be right. I'll do it." That's the point of bringing it out. Do you think the defendant is being candid and honest with you because she admits, "Yes, I wrote him letters"? You know how she answered that question when I said,

"Were they sexually explicit?" "Apparently, I guess." Who's she kidding? Who's she kidding? She admits the letters to you because she's got to. She knows Sara Thomas has seen the letters. It's all in the tapes how Sara Thomas had seen the letter. Can't get in this courtroom and deny those letters. She admits everything she knows there's going to be witnesses to corroborate. She's got no choice.

Now, another interesting thing about her claim that this relationship was something that she tried to break off several times, you notice how we got no details about that, how I said this and that and how he said this and that? We never got any details about that. You know why? Because there are none. Never happened. But when you ask Bill Flynn about the first kiss, he can tell you step by step how it happened. When you ask Bill Flynn about "9 1/2 Weeks" at her condominium, he tells you step by step how it happens. If you want him to, he can tell you everything. "We broke up eight or nine times. Oh, yeah, he's a liar."

That's how she tells you it happened.

Why do I bring this out to you, ladies and gentlemen? Just to give you an idea of the nature of the relationship and the differences in the way they testified.

Now, the important thing to remember here is Cecelia Pierce. No question in this case that Cecelia Pierce is a confidant of the defendant. She's the only person in the whole wide world who knows about the affair. She's the only person who's with -- Cecelia -- the defendant and Billy Flynn when they have sex sometimes, downstairs watching the movies. She's the only person who's the cover for them when they go out. She doesn't know anything about these affairs breaking up. She didn't tell you anything about Bill Flynn and the defendant trying to break up.

Now, with this kind of hold on Bill Flynn, it was very easy for her to justify the murder in this case. The defendant clearly told him of the abuse that Greg Smart did to her. He told you yeah, and let me go on a side point for

a second. Defendant's talking so much about the dignity she wanted her husband to be buried with. What was the first thing she told you? First thing is, "My husband had an affair," which I submit to you was sort of suggesting an explanation as to why she had an affair. And the second thing she tells you is, "I remember talking about it near Christmas because around Christmas he threw me out. He didn't intentionally hit me, but I was locked out. We had to call his parents," et cetera, et cetera, et cetera. Why does she admit that? She knows Bill Flynn's going to come in here and talk about it, Cecelia Pierce is going to come in here and talk that they knew about it because she told them. Do you think that's how she described it to Bill Flynn, that he just brushed me accidentally, nothing really serious, he doesn't abuse me? No, I'm sure she milked it. Sure she justified to herself and justified to Bill Flynn why she should have this affair and why her husband was no good. No question. The marriage was lousy. This defendant, practicing

her art of deception, tells everybody in the press after the murder how happy they all were, telling everybody and her friends how everything was going just fine, and they always wanted to be together. But Brian Washburn told you Easter weekend, a couple of weeks before the murder, Greg Smart is saying, "It's really lousy between us. It's really screwed up. I had an affair. Pam had an affair. It's terrible." Never hear that from the defendant. You know why? Doesn't want anybody to get suspicious after the murder. Doesn't want anybody prowling around to figure out what the problems were. Took every possible step she could to make sure nobody knew about it. Now, notice how contradictory that was to every statement she gave to friends, she gave to the police and she gave to the press.

Let's talk about why not get a divorce. Seems pretty simple, right? She testified on examination, "All I would lose is maybe the furniture if we'd split up, and Haley might be an argument and possibly four to six thousand dollars in our

checking account or savings account would have to be split up." But no real problem here getting a divorce, except to suggest to you why she did this. It's not the money, ladies and gentlemen. We're not suggesting to you she killed Greg Smart for the insurance money. Not suggesting she killed him for the furniture. Think about what the divorce would have done to this woman who, I submit to you, is very, very concerned with her image and very, very concerned with the professional reputation. You'll hear that comes out on the tape. If she got a divorce, the affair's going to come out. It's going to ruin her reputation. Professionally, she's going to lose her job. You don't think that's going to be a big stain on this 22-year-old that she had an affair with a 15-year-old boy, little after turned 16? You don't think that's going to trouble her career down the line? You think she wants all her family and friends to know about it? That's just one of the reasons. She told Bill Flynn, "Greg would probably never leave me alone." Why deal with

that messy situation? To her it was easier to do the murder. She had a willing participant.

Now, you hear about the progression of how this murder takes place with Bill Flynn. He doesn't come in this courtroom and tell you, "Well, we had sex, we liked each other, and next day decided to kill him." That's not what he tells you. What he tells you, first starts out doesn't know whether to get a divorce or whether to kill. From there it goes to, well, the only real alternative is maybe to kill. When does it come that finally she says to him and he really thinks maybe there's something to it? He's being driven home after one of those evening trysts during "9 1/2 Weeks." And afterwards she breaks down and she cries and says, "Look, this can't go on. This is, you know, this can't continue. We got to do something about this." And Bill Flynn, by that time her hook is so deep in that kid's psyche, so deep in that kid's hormones, that he's going to be a willing participant, he's going to do it.

Now, he tells you about how it goes from there. Not the next day they have this great plan all worked out and they're going to do it. Says first, "I try and find somebody to do it." He's a 16-year-old kid from Seabrook, doesn't know anybody who's going to commit a murder. He doesn't know anybody, and he tells her that, "Look, I can't find anybody to do that." Eventually tries, he approaches Pete and J.R. first, and they told you he's nuts and he tells you that he told them he was nuts. Eventually, before that, he approached Raymond Fowler to get Raymond Fowler to help. He tells you about everything he was doing every step of the way to get this accomplished. What's the point of telling this all to you? The point is that it has the ring of truth to it. Not something sort of saying we fell in love, decided to kill her husband.

So what does he tell you? He tells you about three attempts, ladies and gentlemen. He tells you the first attempt, "I didn't even try anything. She said she was going to be at a

meeting. I just went home. I didn't have a car, didn't have a gun, called her up. I said, 'Look, Pam, I can't do this. I don't have a gun. I don't have a car.'" What does he say happens? He says she's infuriated. She yells at him, says it's over between us, little bit turn of that hook into his psyche. He's destroyed. He does think it's over. Okay. What does he say the next day? She comes along and says, "Don't worry about it. There's another meeting and you can do it then." What do you know, ladies and gentlemen, there's a meeting on April 5th at AOC that the defendant goes to, and you also heard that that meeting is continued that night until April 12th. And Bill Flynn tells you about another attempt where Pam Smart's at a meeting. He tells you about this attempt, how he gets Raymond Fowler, borrows her car and goes up there to commit the murder. Purposely gets lost, gets cold feet. Comes back, calls Pam and says, "We were late. Didn't do it." But she wasn't too angry this time, too. What do we find out? We found out

one night Bill Flynn gets dropped off to pick up Pam Smart's car by Chris Gosselin, Andy Blake, bunch of other boys, while she's at a meeting at SAU 21. What do you know, there's a meeting April 12th that she goes to. Bill Flynn tells you, "She wasn't so upset when I got back to pick her up because she said there was one more meeting." And when's that meeting? May 1st. What's that? That's a school board meeting. And I also point out to you, ladies and gentlemen, on each of those days when Pam Smart's telling Bill Flynn that he could commit this murder, you should check Greg's day planner. Just so happens on May -- April 5th -- I'm sorry, I may have said May but I meant April 5th -- he has appointments at night. Again on April 12th, appointments at night. And again on May 1st he's got appointments at night. What did Bill Flynn tell you? Pam Smart would tell him where Greg was going to and when Greg was going to come home. He told you that Pam Smart was going to make sure she had an alibi by going to a meeting. What do all these three situations

show? The exact same thing. Greg Smart was not going to be home. He was at appointments Pam Smart was going to be having her alibi at meetings.

Now, we talk about Dr. Katner and what these meetings were for. Defendant clearly had a legitimate interest in going if she wanted to for the salary and media course, things of that nature. But Dr. Katner told her she didn't have to go, very rubber stamp, the AOC meeting, no further purpose for her to be there. In fact, I submit the defendant thought it was getting suspicious going to these meetings. That's why she causes a little bit of a stink with the shelf space. After she had the plan and told Fred Engelbach it was all set, she creates a purpose of a stink to the point of threatening her job. Dr. Katner said, "You go tonight and do what you got to do, and tomorrow I'll do what I got to do."

You know, little interesting detail Bill Flynn's given you about that attempt that night. He told you on the night they made love to

"9 1/2 Weeks" she danced for him, which is another way of sinking that hook in him, Van Halen was on the tape. They played the song "Black and Blue." He told you when he got in the car that night and turned the key on, there was a tape in the cassette holder and it was Van Halen's "Black and Blue." Do you think that was coincidence? No. Do you think Bill Flynn has the creativity to kind of make up that kind of detail so he can give it to you, so he can sound more credible through his tears? Is that what you thought Bill Flynn was doing? I submit to you based on what you saw, no way.

Now, defendant suggests in her testimony that the week before Greg Smart's killed she has a major breakup with Bill Flynn. Notice how she testified about this. She said, "Well, Bill said he was first going to kill himself. He was crying and then he stopped as if a light went off in his head." When this happened that Wednesday or Thursday of that time, that was the impetus for him to kill Greg Smart. If this was the impetus for him to go off and do the

killing, how could Bill Flynn possibly make up this story in retrospect about where Greg Smart would be, about what the meetings were and get it right? How could Bill Flynn have done that? He couldn't have, ladies and gentlemen. He wasn't making it up. He's telling you what that woman told him. He's telling you what this woman planned.

She also said how Bill Flynn was there Tuesday night, did the dishes and threw the garbage out, and tried to suggest that Bill Flynn knows where the bulkhead is because he had to go out and throw the garbage. Remember that line of questioning? What point or purpose does that have? Does that make sense to you? Tuesday night they had sex together and everything was great; it was a couple of days later in her office that they broke up. So ask yourself, how did Bill Flynn get in that night? There's not a single piece of evidence to suggest that the house was broken into. Nothing. They try to suggest to you maybe Bill Flynn left something open. Didn't mention it in summation. Must be

because it wouldn't work. The breakup was after that night. Really doesn't make sense, does it?

Let me ask you something about does this make sense to you. If this relationship is so turbulent between the defendant and Bill Flynn, Bill Flynn thinks after it breaks up he can go kill Greg Smart and she would come running back into his arms? What did she tell after the murder? "I saw Bill Blynn. Saw him once in my house and once at Dreher-Holloway to look at a car." If Bill Flynn committed a murder and she saw him in school, why wasn't he chasing after her in her version? That's not the truth. The truth is he did the murder for her, and they got together as much as they could without her friends knowing it, at school, after school, the new condominium, which is only across the field from Winnacunnet High School.

Now, how did J.R. and Pete first get involved? He told you, "First we told him he was nuts." Told you the process of so we could have the stereo equipment. No question, J.R.'s a thief when it comes to stereo equipment.

No question, Pete Randall is a cold, calculated murderer. Again, I didn't put him on the stand for you to like him. Put him on the stand for him to tell you what happened. You know, I submit this crime would not have happened without Pete Randall. Bill Flynn needed a Pete Randall to pull this off. And that's the function and the chemistry that Pete Randall provided. But how did they get involved? He's slowly enticed after talking about taking stereo equipment. Bill tells you that he offers a thousand dollars without conferring with Pam. And then Pam's says, "No, no, no, five hundred bucks. That's too much. They're going to get suspicious if that much money is missing." So he goes back and he tells that to J.R. and Pete. And I want you to remember those amounts, five hundred dollars and a thousand dollars, because it's going to become important later on when we talk about the testimony of Ralph Welch. So defense counsel tells you that this is a total fabrication, made up by Bill Flynn, Pete Randall and J.R. when they're incarcerated at ADC, when

they're incarcerated in Brentwood. Is that what he's trying to get you to think about and what he wants you to believe? Okay, ladies and gentlemen, if they wanted to they could have made up an entire story. They had all sorts of time to sit around at ADC and talk about what happened. They had all sorts of time to come up with the great fabrication. If they were going to do that, ladies and gentlemen, why didn't they do a much better job?

Let's talk about what Pete tells you. Pete says, "The only time I spoke with Pam Smart was, I was in the car on the way down to Haverhill, and the reason I spoke to her at that time was because I wanted to go over the plans. I wanted to make sure everything was set. I wanted to make sure this was going to be pulled off the way it was supposed to be pulled off." Now, if Pete Randall and Bill Flynn and J.R. wanted to make up a good story, why didn't Pete Randall tell you about all sorts of conversations he had with the defendant? Why didn't they say that the defendant came over to J.R.'s house a

couple of times and sat around J.R.'s bedroom and made up stuff? Why doesn't he tell you that he stopped by the Media Center once or twice and she gave him information or talked direct to him about payment? Pete Randall doesn't tell you those things. Pete Randall doesn't tell you anything but what he knows to have happened. And you know why? He doesn't like the defendant. He tells you that, too. He doesn't hide his motivation here to make himself look better. It would be easy for him to sit up here and say, "I killed Greg Smart because I felt sorry for the defendant. She told me he was an S.O.B., was abusing her, had to get rid of him." He tells you, "I did it for Bill. He was going to do it for this woman. I was going along." Was it part of a thrill for Pete Randall? I think that's a fair conclusion. I think Pete Randall had some kicks out of this, and I hope he spends the next 28 years to life thinking about it, because that's where he's going to be. I'm not asking you to feel sorry for him, and I'm not asking

you to feel sorry for him and I'm not asking you to accept him, except to listen to him. That's all I'm asking you to do.

Same with J.R. J.R. could have told you all sorts of stuff. He tells you, "Look, the only time I really talked to Pam was once in her office when she was on the speaker phone when arguing with Greg. Afterwards she said, 'I got to have it done.'" Another time at his locker when Pam comes up and says, "I left the bulkhead open and the door open." He tells you "I'm at the Media Center all the time." He could have told you all sorts of stuff about Pam Smart. He could have made up all sorts of stuff. But do they tell you that? No. They both tell you that initially all the information was coming from Bill. I submit to you, ladies and gentlemen, that makes sense because that was the nature of the conspiracy. As it started, this defendant and Bill Flynn were the conspirators, and Bill Flynn was a satellite out there trying to bring in the other people. They don't have to tell you that. They could have

said all communications came directly from Pam Smart, but they don't, and the reason is because they're not fabricating their testimony. They're not making it up. If they wanted to make it up, why not correct all these little inconsistencies? Why not correct the business about the bullets? Pete Randall thinks it's that day; Bill Flynn thinks it's a day before or so; J.R. thinks it's a month. I mean, they've been sitting together in their cells for, you know, how many months? Why didn't they say, "Hey, let's get that bullet thing together before we go talk to the AG's Office." They didn't do that. They're not afraid to tell you they have different recollections. And Bill Flynn, it doesn't show up in the defendant's bank account, the \$30.00 that Bill Flynn believes she withdrew that day. I don't know what she did at the bank that day. I don't know if Bill Flynn has it right. That's not the issue in this case. Not every "I" is dotted and "T" crossed. But if they wanted to fabricate this story, they could have cleared those points.

Same thing with the ring. The most important thing you should know about the ring is what Pete Randall says. "He talked to me about his wedding ring. It flipped me out. I wasn't going to take his wedding ring off."

What did Dr. Fossum tell you? Single gold wedding band on the defendant's (sic) left hand. How did this other ring get off? I don't know, ladies and gentlemen. Did Greg Smart, in his panic, when Pete asked for his chain, start taking off his other jewelry, taking out his wallet? Did they take off the ring but don't remember? Do you think they were taking notes about what was happened minute after minute? No. They're scared out of their minds. Killers? Yes. Perfect reporters of everything that was happening that moment? No.

But if they were liars and their whole point was to come in here and lie, you can't dispute that ring, you can't dispute that wallet, how easy it would have been for Pete and Bill to say, "Hey, you took off the ring; I got the wallet. What do you say?" "Okay, yeah,

yeah." Sounds simple. Really simple. Not done.

Let's talk about insurance. And I think this is probably one of the most significant things we could talk about. I think Mr. Twomey will agree with me when he said Pete Randall said \$174,000, Pete Randall actually said \$140,000.

MR. TWOMEY: I'll stipulate I was incorrect.

MR. MAGGIOTTO: All right. No question. Two policies here, \$50,000 and \$90,000. Pete Randall told you what he knew was, he said, "I knew it was \$140,000 in insurance." Did he tell you when he knew that? He didn't say before the murder or whether he knew it after the murder. J.R. said, "I knew it before the murder." No question about it, J.R.'s wrong. Is J.R. getting his dates mixed up? Maybe. Is J.R. lying? Maybe. Is he embellishing? Maybe. I don't know. What's really significant here in this case about the insurance money is what Bill Flynn tells you. Bill Flynn said, "I specifically remember that after the murder the defendant came up to me and said, 'There's more money than even I thought.'" And Bill Flynn said, "I

thought she had a policy for \$90,000 and another one for \$50,000. I wasn't sure which one she knew about."

MR. TWOMEY: Objection. Doesn't conform to the evidence.

MR. MAGGIOTTO: You remember it.

THE COURT: Jury will take their own recollection.

MR. MAGGIOTTO: He said, "\$90,000 rings a bell and I knew eventually it was \$140,000." Just what Mr. Houle from the insurance company told you two policies, couldn't know which one, \$90,000 might have been known but probably unlikely she would know about the \$50,000, Bill Flynn gets the 90 and 50 mixed up. But what's significant here is he knows if they broke up before the murder she's got very little to do with Bill Flynn. How does he know? How does he know about the \$140,000? I submit to you he knows because her story's a fabrication. They're talking. There's no breakup. He's with the defendant every step of the way.

Now, there's a witness in the case whose significance I cannot overstate. I want you to focus very closely on this next witness,

Ralph Welch. What is the significance of Ralph Welch? Think about what he told you. He said that on June 9th Pete Randall and J.R. said to him that they committed the murder of Gregory Smart. And what else did he say they told him? Pete Randall said, "I'm getting \$500.00 from Pam Smart." J.R. said, "How do you think I got these speakers? From Pam Smart." At the time that J.R. and Pete Randall were speaking to Ralph Welch, there was not a clue to the police that these guys were involved. Nobody was after them. There's absolutely no motive in the world for them to lie. No motive at all. What does Ralph Welch tell you? That Pete Randall and J.R. said about their involvement with the defendant before the murder is absolutely true. There's no fabrication here. They're talking about it before they're even arrested. They never thought Ralph Welch was going to go to the police. They thought he was a close and trusted friend. And what else does Pete Randall say that night? Brings us back to the insurance. Pete Randall said, "I don't know where the

money's coming from, but she's got \$140,000 of insurance." How does he know that? He's got a connection to Pam Smart.

Now, you want to stretch your imagination, you could say, well, Bill Flynn gave him this information. Let me ask you something. Bill Flynn doesn't have to lie to Pete Randall and J.R. to get them to commit a murder for him. That's one thing you know about Pete Randall. You don't have to get Pete Randall -- you don't have to lie to him to get him involved. "Come on, Pete, let's do it." And Pete says, "Okay, let's go." You don't have to lie for these guys, and he wasn't. Ladies and gentlemen, they're not lying to you. They're telling you what was going on.

And, you know, in the benefit that you have in this case, it just gets better. I mean, based on that testimony alone I submit to you you have all you need to convict this woman of conspiracy to commit murder, to convict this woman of accomplice to first degree murder. But you got more. You got the testimony of Cecelia

Pierce.

Cecelia Pierce is totally unconnected to Bill Flynn, J.R. and Pete. I mean, yeah, she worked on the OJ video with Pete and J.R., you know, they hung out together with Pam Smart sometimes. But these kids don't hang out with Cecelia Pierce. You saw the kind of guys they were. You saw what Cecelia Pierce was like. They're not in the same crowd. And they all told you that. You don't have one piece of evidence in front of you to suggest that Cecelia Pierce is in any kind of cahoots with Bill Flynn and J.R. and Pete Randall. Cecelia Pierce's information independently corroborates the testimony you heard from those guys. And when you think about Cecelia Pierce, let's talk a little bit about who she is. When does she first meet the defendant? Project Self-Esteem. Just like Bill. She's a 15-year-old sophomore girl, pretty face, a little overweight. She meets dynamic Pam Smart. Dynamic Pam Smart takes a liking to her. She becomes her intern. They become good friends. You don't think this

this is a boost to Cecelia Pierce? You don't think Cecelia Pierce is kind of riding Cloud 9 with her relationship with Pam Smart? You bet she is. You bet it's a thrill for her. She's also privy to her secrets. Who in the world gets the right to know about the affair between Bill Flynn and Pam Smart? Cecelia Pierce. Nobody else. Cecelia Pierce was very, very special. And what does she tell you? She tells you the same thing Bill does. Started having an affair gradually. They liked each other from a distance, then got together, then started having sex. She was there sometimes. She also told you that, of the progression of how the planning went, first talking about divorce and murder, then didn't know what to do. Eventually it became a decision that they would kill. She knew it was supposed to look like a burglary; that he was supposed to wear dark clothes; they were supposed to wear gloves; supposed to park at the plaza; that the defendant would leave the door open. Gave you all that information. Start thinking about it. Why is

Cecelia Pierce giving you this information?

If Cecelia Pierce was lying about this stuff, and didn't really know it, where's she getting it from? Is she getting it from Bill Flynn? Now she's getting it from Bill Flynn? What do you think? You think Cecelia Pierce is going to say, "Okay, Bill, you want to kill Pam Smart's husband? Let's not help her. She's doing a lot for me. I really like her. Let's stick it to her." That's not what happens in this case. She's there. She's privy. She knows what's going on.

What else did she tell you about? She tells you she knows about the prior attempt. She tells you that the defendant told her that she left the keys for Bill Flynn to go up there and commit the murder one day; that Greg Smart would be -- was already home; that they couldn't do the crime; that Raymond Fowler was with Bill; that the defendant was at a meeting. And she also tells you, Cecelia Pierce tells you that someone came in while the defendant was at that meeting and she had to hide behind that bookcase. And Bill

Flynn told you the same thing. And you know that's one of those things that the defendant took the stand and admitted. Why? Just wants to explain why these two witnesses are saying that. It's all part of the calculated robotic response to the testimony your heard.

So ask yourself, why is Cecelia Pierce lying if this vile concoction of testimony is all a fabrication? Think about it, and think about it carefully. Why would she kill Pam Smart's husband without telling her.

Now, did Cecelia Pierce look at a gun at Papa Gino's? Absolutely. She doesn't deny it. Ask yourself, why was she looking for a gun? She tells you how it happened. "Bill Flynn and Pam are in the office talking about a gun. They ask me and I tell them" Why, ladies and gentlemen, does she at that time want to see Greg Smart killed? Mr. Twomey's ready to convict her. Kind of surprising coming from a defense attorney. He's ready to convict her in a second. Why does she say, "Yeah, I know where a gun is"? She wants to belong, be part of it.

Dumb, yes. But did she call up Bill Flynn and tell him to come look for the gun? Yes. Why does she do that? Wants to please Pam. She doesn't do anything else in this case. Not going to be arrested in this case. You think she's going to be lying because she's got some sort of fear? Why would she lie about Pam and say, "Yes, I looked for a gun, and I'll tell you everything about Pam and how Greg Smart was killed." She doesn't have to lie. Pam may be the first person in a long time gave her self-esteem. She wouldn't bring in Pam. That wouldn't make sense. And the reason is, it's not a fabrication. It's the truth. And it's corroborated by Pete, by J.R., by Bill and Ralph Welch and Cecelia Pierce.

She also tells you about the same information you get from Bill Flynn. Defendant was uncomfortable with seeing her there. Bill Flynn told you she was -- excuse the expression -- shitting bricks. She also tells you about June 10th, 1990 -- isn't that funny? -- where the defendant says about June 10th, 1990, she

knows someone may have seen Bill at the condominium, give an explanation why he's there. Bill happens to be coming over after watching a movie and stays until three in the morning. What do you know about that day? Bill Flynn tells you J.R., Pete come over. They have the conversation with Ralph Welch; that he calls Ralph Welch, tries to convince him it's a rumor, tries to meet with him so he won't go to the police; says, "Yes, I'm going nuts or kill myself if Pam finds out." Not because Pam didn't know. He didn't want her to be upset again, annoyed, angry like she was the last two times he screwed up.

What do you hear? You hear from Cecelia Pierce that she comes over later that day and Pam Smart takes her upstairs and tells her all about it. You know that's true because the police went to Pam Smart's house to see who was there and saw a car in the driveway, ran the plates and found out it was Michael Welch's car, Cecelia Pierce's driver who brought her there that day. Ask yourself why were the police

going to Pam Smart's house? Why was Pam Smart's car stopped later that night? You know why, ladies and gentlemen. Because Ralph Welch had gone to the police already. And Ralph Welch told the police what J.R. and Pete told him, that they were to get \$500.00 from Pamela Smart. That's how he got the speakers. The police thought she was involved and went to her house, stopped her car. They were looking for the boys but they didn't find them. All kind of makes sense.

Now, think about it. The boys are arrested June 11th. Yeah, I think that's the date, June 11th, Monday. Cecelia Pierce goes to the police on June 14th, June 15th, spills her guts out. After that, the police ask her to wear a wire and starts going to talk to Pamela Smart. If Cecelia Pierce was part of this fabrication that the defense would like you to believe exists in this case, when did she get the information? From June 11th or June 14th. I think one thing that's quite clear, everything was a panic in this woman's life. It was panic in Cecelia's

life. She got called down to the police on June 11th. Very worried about being arrested. She heard rumors on the street. Came back to the police June 14th. When did she get together with Bill Flynn, Pete Randall and J.R. Lattime to cook up this brew? No chance. You didn't hear one piece of evidence of Cecelia Pierce getting together with those guys to discuss the murder. It didn't happen. Cecelia Pierce is just telling you what she knows from her observation. She doesn't get everything right. She doesn't get it like the boys got it. She remembers some things different. But that's what she's testifying about, her memory, not theirs, not some concocted story. This is the benefit you have in this case. This is what makes your deliberations so much easier. You don't just have to rely on those boys, but you got Ralph Welch. If you don't like Ralph Welch, you got Cecelia Pierce. So you got more to assure you there's no reasonable doubt in this case.

Ladies and gentlemen, it just gets better.

One person the defense did not comment on in summation is Cindy Butt. Think about Cindy Butt, our last witness, a very short witness, but whose significance again cannot be overstated. If anybody in your jury room talks to you about what about fabrication, I ask somebody, throw out the name Cindy Butt. Why is that name so important? What does she tell you? She tells you that, "A month or weeks before Gregory Smart is killed, I'm having a conversation with Cecelia Pierce. I'm not sure, but I think we're talking about my divorce." And what does Cecelia Pierce say to her at that time? "I have a friend, Pam, whose marriage is lousy and wants to kill her husband." That blows any fabrication theory out the window. There's no motive for Cecelia Pierce to lie at that time. Is Cecelia Pierce someone envisioning that she might be arrested, she better make up a story against Pam Smart? Absolutely not. Cindy Butt unequivocally demonstrates that Cecelia Pierce is telling the truth. You know why? Because she tells somebody way before there's any

possible reason for her to lie. It's consistent with someone telling the truth every step down the line. And what are you supposed to think in this case? Cindy Butt took a drink of this vile toxic soup we heard about in opening, so she came into court to lie? Absurd. Absolutely absurd. Barely ever sees Cecelia Pierce. Never talks to her. She doesn't even know who Bill, J.R. and Pete are. She doesn't know the defendant except to say that she's Pam, and we confirm we're talking about the same Pam because the night of the murder the bell goes off in Cindy Butt's mind and she says, "Hey, you told me about this once before. Does anybody suspect anything?" What does Cindy Butt say -- Cecelia Pierce say? "Wow, I didn't know I told you. You know, don't say anything." I don't know if she says that, but Cindy Butt doesn't say anything until we go after her. Where do we get the information? Cecelia Pierce. You have that in this case, ladies and gentlemen.

Think about one other thing. If Cecelia Pierce was fabricating this entire story, how

could she possibly think that she could fool the Derry Police Department that she's going to get information by wearing a wire from Pamela Smart? I mean, is Cecelia Pierce going to do some sort of mind game that this defendant did? Cecelia Pierce going in and match wits with this college graduate, the 3.8 cumulative average, say, "I'm going to trick you into saying incriminating stuff because I need to avoid being arrested or getting in trouble"? Ridiculous. Yeah, pretty dang ridiculous because it's not true. The truth is Cecelia Pierce told you, "I knew Pam was involved from the beginning. I really started to question my own motivation here and not going forward, talking to the police. Yes, I was a little scared I might be in trouble." So she comes clean. She comes clean and tells everything she knows. There's a lot more we can say about Cecelia Pierce than we can about this defendant. She never comes clean when approached by the police that summer. She never comes clean to her friends. She never comes clean to anyone. And I don't even have to talk to you

about movie rights. I think the defense agrees with me that's a non-issue in this case, came way after the fact, way after this defendant really started the media circus by talking to Channel 9 twice within the week after her husband's death. Nothing to do with it. No dispute on that point.

One other person the defense didn't talk about. That was George Moses. George Moses. Another short, sweet witness. His importance can't be overstated. What's the significance to you of George Moses? Well, in the summer of 1990, Bill Flynn, Pete and J.R. aren't saying anything. That's what the defendant's counting on, they don't say anything. The only problem she's got is Cecelia Pierce. Cecelia Pierce is the only person giving any evidence against her. So what does George Moses tell you? He tells you, "I meet the defendant at prison when I'm visiting my mother. She calls me up within a couple days after that. She says, 'Hey, George, would you be willing to lie for me? Would you be willing to say you heard Cecelia

Pierce lie?" George, kind of dumb kid, says, "I don't know. Maybe. I got to think about it." I don't know what he said. It doesn't matter. What's important is what she said to him.

Now, was it dumb for Pamela Smart to call up this kid and do it? Yeah. Real dumb. Was it the act of a desperate woman doing desperate things? Yeah. And she said yesterday she started acting rationally after she was arrested. Maybe not. What was the point? Why call George Moses? Because he went to Winnacunnet High School. His story would have some legitimacy because he could say he saw Cecelia Pierce there. Did she call because his mother's an inmate and maybe be more likely to do it? That's possible.

Another little factor here to demonstrate that her concern about Cecelia Pierce is so great. It's because Cecelia Pierce is telling the truth and she's got to discredit her. And you know what George Moses tells you is true because you've got the phone records between August 26th, and he says it's a couple weeks

after I visit and see the defendant, there's four phone calls placed from the prison to his residence in Massachusetts, and he tells you, "A long time after that my mother called me up, say hi. 'Whoa, whoa, whoa, don't get involved in anything. Anybody comes talk to you, just tell them the truth.'" And he says, "Okay, mom, I will." Look at the phone records, phone call October 30th from the Goffstown Women's Prison to George Moses. Corroboration of the conversations. And he says, "I remember that phone call sometime around the time I spoke to Danny Pelletier." What does Detective Pelletier tell you? Spoke to him around November 1st. Just another indication of the truth of what's going on.

Now, ladies and gentlemen, I know I've been talking to you a long time and I know you're probably tired and you're maybe hoping this would end soon. But I think it's really important to show you how this evidence just keeps building up and how this evidence just keeps laying on top of each other. You don't

have to look at one factor. You don't have to look at one witness. You can look at all of them. They just keep supporting each other and supporting the guilt, and that makes it so much easier for you in this case. You don't have to remain unhelped and say, "Oh, my God, this whole case relies on that one witness or that one statement." No way. You got all sorts of corroboration here. You have Ralph Welch, Cecelia Pierce, Cindy Butt, George Moses. You could go in that jury room right now and I submit to you you would have no problem finding this defendant guilty of accomplice to first degree murder, conspiracy to commit murder based on what Cecelia Pierce, tampering, too. You could do it. We could stop right here. But you got a lot more. You got a lot, lot more. You got this defendant's own words on tape. Not once. Not an offhanded comment. But on tape. Two times on June 19th, July 12th and July 13th.

What does she tell you? Let's think about her testimony a little bit, how ridiculous that was. She tries to get up here and tell you an

explanation for that incriminating evidence. Ask yourself, what choice does she have? She can't deny those tapes exist. She can't deny those statements have been made. She can't deny what she said. She's got to come up with a reason. What does she tell you? "Well, first, I was trying to get information from Cecelia Pierce so that I could do my own investigation." When she's got the information and it's something she should go to the police with, she has a justification for not going forward. "Before I went to the police, I really had to talk to Bill." When that excuse doesn't make it any longer, her next excuse is, "Well, I didn't want the affair to come out." And then she switches back, "Well, I was trying to get information." Then "I just didn't want the affair to come out." Then saying, "I was conducting my own investigation." Then saying, "I was scared." Did that look like a scared woman to you on the stand when she was testifying? Did that look like a woman who wouldn't be in control of a 15-year-old girl when she wanted to talk to her, a woman

who couldn't set her mind out and say exactly what she wanted to say and make decisions like that and stand up under the embarrassment of an affair if it could solve her husband's murder. I submit what that woman was was a woman who is doing everything in her power to distract you from looking at the significant evidence that those tapes are, to somehow take you away from the inescapable conclusion of what those tapes show. Again I tell you it's a last-ditch effort to somehow, some way explain the most incriminating evidence you could ever ask for in a case. The only thing we're missing is a videotape of her conversations with Bill Flynn about the murder. But what you got is the audio tape of Cecelia Pierce.

MR. TWOMEY: May we approach, Your Honor? We don't need a record.

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[Bench conference - no record.]

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IN OPEN COURT BEFORE THE JURY:

MR. MAGGIOTTO: Okay, ladies and gentlemen, I've been talking

for my hour. I have to speed it up. I only have about ten more minutes I can share the evidence with you, and I'm going to do it rather quickly, if Bill doesn't mind.

Simply, I want you to think about several things when you consider the defendant's testimony. Think about her history of deception. Think about how she had no problem lying to her friends and living a lie with her relatives. Think about how she had no problem taking the stand and lying about the presence of Bill Flynn in that car. Think about how she had no problem looking at Daniel Pelletier from the Derry Police Department in the face and saying, "This is the honest to God's truth, I don't know why they would have done this case." Ask yourselves that. How she can do that, look them in the eye and say, "The honest to God's truth, I don't know a motive. The honest to God's truth, I don't know why you're bothering Cecelia." Think of that history. Think of that background when you're determining is that a witness you want to trust. Is this a witness who you're

going to discount all the testimony you heard of Ralph Welch, Cindy Butt, Bill Flynn, on the stand? Is this the kind of witness you're going to throw out those tapes and ignore them? Based on what she says, I submit to you, no.

I'd just like to take a moment or two to show you a portion of those tapes to demonstrate her involvement in this case. You know, ladies and gentlemen, when you listen to those tapes in the jury room, and I suggest to you that you do that, you listen really carefully, listen to her tone, listen to the pace of her voice, listen to how she talks to Cecelia Pierce, and you make a determination who's controlling the conversation, and you make a determination, is this a woman about to snap or is this a woman in a panic because now Bill Flynn's arrested. This is a woman who's now fearful that Cecelia Pierce might go to the police. This is a woman who's sure that the police might be at her doorstep at any moment. Keep all those things in the back of your mind when you're considering the defendant's conversation.

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All right, let me just show you a couple of these. July 12th, 1990. What does Pam Smart tell you? "I'm not worried about anything except the police. I think Ralph -- I mean, if Pete or J.R. or Bill says that I did it."

"Right."

"Right, then they can arrest me?"

Okay. Then she's telling Cecelia, "There's no way I'm ever going to say anything about you." Little example of the subtle manipulation and pressure.

What does she say down here? Notice the whisper, her expression, the conspiratorial tone. "But the problem is my heart is like F'ing having a heart attack, like I can't even F'ing believe this because why would they have told Ralph? If they never would have told Ralph, you know."

What is she doing here, ladies and gentlemen? She's lamenting about the situation she's in. She's not telling you she's trying to get information from Cecelia Pierce. She's not trying to make sure or she's not in a frantic

mood, having a nervous breakdown. This is a woman lamenting that they told Ralph.

Another one, July 12th. Just quick. I don't have time to go over all these, ladies and gentlemen. You can listen to the tapes. I'm just going to make a few highlights. "Did you now -- seeing what had happened, wouldn't you rather have just divorced Greg?"

"Well, I don't know, you know. Nothing was going wrong until F'ing they told Ralph." Continuation of the same lament. Continuation of the same problem. I mean, she doesn't say, "Well, you know, I don't know. They killed my husband. I didn't have anything to do with it." This isn't just telling Cecelia Pierce that she knew about it. She's saying that her plan was not going wrong until they told Ralph. And that's true. Until they told Ralph, nothing was going wrong.

What does she say? "It's their stupid ass faults (sigh) that they told Ralph, you know." She's even blaming them. She gets them involved and she's blaming them.

I'm being a little more selective, ladies and gentlemen. I can't show you them all. Just have a couple more.

What does she say here? Is this a woman who's trying to get information from Cecelia Pierce? Is this a woman who doesn't know what she's doing? Read it in context. All she's telling Cecelia Pierce, "I've been a really good friend to you. I really like to be a good friend to you. I'd like to continue our friendship. I've done things for you." What this is is a subtle manipulation, pressure, to make sure Cecelia Pierce doesn't go to the police, because if she does, what does she say? "When I think I've been a very good friend to you and that's the thing. Even if you send me to the F'ing slammer or you don't, and if anybody sends me, it's going to be you, and that's the big thing, and that's what it comes down to."

That's what Pamela Smart is worried about when talking to Cecelia Pierce, not that the affair's going to come out. She's worried about going to jail for the rest of her life. She's

worried about the police knowing what Cecelia Pierce knows. And right from there, where does she get? Right back into the manipulation, the tampering. "But what good is it going to do you if you send me to the F'ing slammer? Because if you think that's going to be the end of your problems. Don't think it's the end of your problems if you confess. No, because it's going to be, your whole family's going to be like, F'ing, well, you knew about a murder. How could you have lived like that? And the newspapers are going to be all over you, how could you have known about that, you know. All your friends are going to be like what the F, you know, and you're going to be on the witness stand a million times, you know."

"Remember that time you let Bill use your car to go up there?"

"Where?"

"Up to your house."

"Yeah."

"Well, that time if he hadn't forgotten directions, he could have killed Greg then."

"I know. I really" --

"I wouldn't have even have spent the next week with you. I know, but if" --

"I know, but it's history now because, you know, we can't talk about shit that should have happened."

That's to tell you, ladies and gentlemen, this is Cecelia Pierce saying, "I knew about the murder before it happened." She's corroborating what Bill Flynn tells you, there was a prior plan, they all knew about it. She's admitting it right here. "Hopefully my phone wasn't tapped when you said that because I could have shit when you said that." What does she say? "I'll just say that you meant like why, why if, you couldn't understand why I would have killed Greg." Why is she saying that to Cecelia Pierce? "Why I would have killed Greg." She told you time and time again yesterday that what she was doing was just saying that she knew about it and was doing nothing more. What she's doing here, ladies and gentlemen, is starting to make up their defense when they get caught.

I have one last one to show you. There's more. I didn't get to them. Doesn't matter. You take your time in the jury room. You listen to the tapes. You have all the time in the world. This board pretty much encapsulates pretty much everything you need to know.

What's Cecelia Pierce say? "If Raymond hadn't run his friggin' mouth off, this would have been the perfect murder."

What's the defendant say? "Right."

What's perfect about it, ladies and gentlemen? The planning. And how do you know that? Cecelia Pierce says, "Because they set everything up" --

Defendant says, "No shit."

-- "to look like a burglary just like you said."

Just like that defendant said to set it up like a burglary. And what does Pam Smart do? She confirms it. "No shit. So it's not my fault. I F'ing Raymond" --

She did her part. She set it up. She got them in there. She told them how to do it.

They're the ones that screwed up, so it's not her fault. If Raymond had not run his mouth off, everything was set up perfect. No shit. Do you need any more? You don't need any more, ladies and gentlemen.

And now the most significant thing is on this board, the last thing I'd like to point out to you. She's talking about J.R., probably the first one to "roll" because he's only driving the car. What does she say about J.R.? She says, "He's going to say you knew about it beforehand, which is the truth."

"Right. Well, so then I'll have to say no, I didn't, and then they're going to believe me or they're going to believe J.R., 16 years old, in the slammer. Then who, me with a professional reputation and a course that I teach. That's the thing."

Cecelia says, "All right."

"They are going to believe me."

This woman has counted on from day one that if this case ever came to court she could put herself on the stand with her background,

with her intelligence, with her ability to answer questions, and pull one over on you, ladies and gentlemen. And I submit to you, based on the evidence you've heard today, don't let her do it. She'd have to be the most unluckiest person in the world to have all these kids come in here and testify about what they know, with the corroboration of Ralph Welch, the corroboration of Cindy Butt, the evidence that just happened to go and talk to Cecelia Pierce on a day she chooses to make incriminating statements, on the day that she's wired. And it's not that she's the unluckiest person in the world, ladies and gentlemen. It's because the evidence shows she's guilty, and I ask you on behalf of the State of New Hampshire that you bring back guilty verdicts, accomplice to first degree murder, conspiracy to commit murder and witness tampering. Thank you.

THE COURT: We'll break for lunch, ladies and gentlemen, and resume at 1:45 p.m.

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[Luncheon recess at 12:26 p.m.]
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MARCH 20, 1991 - WEDNESDAY AFTERNOON SESSION - 1:44 P.M.

JURY CHARGE

Gray, J.: Ladies and gentlemen, you've heard the evidence in this case. You've heard the arguments of counsel. It is now my duty to instruct you as to what the law is and its applicability to this trial, and it is your job then to reach a decision on this case.

First of all, I want to thank you for your attention during this trial, and I thank you on behalf of all of the parties involved in this trial. It's been a rather long one, and I frankly hate to select three of you at random and let you go because I noticed you during the trial and you all have been very attentive. We'll select alternates at the close of the charge.

In order to reach a fair and a just verdict in this trial or in any trial, it's important that you understand a definition of the offenses that are charged in this case. It's important that you understand how convinced you must be one way or another in deciding this case. And it's important that you understand what to consider in deciding whether to believe or disbelieve any of the witnesses who testified in this case. Your job is to follow all of the instructions that I give you and not to single

out any one or more instructions as having any greater weight with you. Treat these instructions all as having the same weight. Your job is to decide this case on the facts, as you find those facts to be, to decide this case on the law, as I instruct you as to what the law is, and to decide this case without fear, without favor, without bias and without sympathy toward any party in this case.

I have told you before and I will tell you again, these three indictments that have been brought in this case are not evidence. They are, as you know, a procedural device by which an individual is brought in front of you, the petit jury, to try. So the fact that this defendant is charged with these offenses is not evidence.

There is, as you know, and I'll review with you in a moment, a presumption of innocence in any criminal trial.

The statements by the lawyers are not evidence. They are designed to, first of all, review what is coming with you in their opening statements, and, secondly, to argue to you in closing statements, their closing arguments how they view the case and how they view the evidence and how they hope that you'll view the evidence. If your recollection of any of the facts or testimony as presented to you by the lawyers in their closing arguments differs from what the lawyers told you, you take your

own recollection of what the evidence and the testimony was in this case. If the lawyers' statements concerning what the law is to be applied to this case differs from what I'm telling you now, you take what I tell you to be the law. If I'm wrong, there's a way to correct that.

During this trial many objections were made by both sides, and there were many bench conferences by both sides. In objecting, a lawyer is simply doing his or her job in representing his or her client. And in my rulings on those objections, I'm simply doing my job to apply the law as I understand it to those objections. Don't count the number of times that I agreed or disagreed with any one lawyer as some indication of how you might think I feel about this case. In this and in any trial, criminal or civil, the Court is completely and absolutely impartial. The job of deciding this case is entirely the responsibility of the jury.

I speak the way I speak. If I emphasize or if you think I emphasize the words "guilty" or "not guilty" while I'm speaking to you this afternoon, that is simply the way I talk. I do not intend any emphasis on any words. My vocal tones, my actions are simply the way I speak and the way I am. It is not any indication -- if any of you see any untoward or undue vocal tones -- any indication of the way you might think I think about

this case. Again, the Court is totally and absolutely impartial. And I needn't remind you again that the job of deciding this or any case is on the jury and not on the Court.

In your deliberations you are not to consider the possibility of punishment. The issue of possible punishment in any criminal trial is not a function of the jury. My mention of this is no indication that you should decide this case a particular way, because I mention this in any criminal trial. The possibility of punishment is beyond the province of the jury. It is purely the province of the Court. So you're not even to consider it.

Now, in this and any trial evidence comes to the jury -- and I know I've discussed this with you on prior occasions -- under two broad categories of evidence, direct and circumstantial evidence. Those two broad categories cover most of the evidentiary questions in front of the jury. Direct evidence usually comes to the jury through the evidence of someone who was in the exercise of his or her senses. Either that person heard something, that person saw something, that person felt something. It is commonly the testimony of someone who was present at the scene of an event. That's direct evidence. Circumstantial evidence is simply evidence which comes to you through a chain of facts. It is a proof of one or more facts

which would lead you to the reasonable conclusion that the ultimate fact exists. It is, and I believe I gave this to you during the general charge before this trial started, my old Robinson Crusoe scenario. If Robinson Crusoe were to come to court, the issue being was there another human being on his island, were he to come into this courtroom and say to you, "When I woke up in the morning I looked up and I saw a human being looking down at me and I named him Friday," that's direct evidence. He could also come into court and testify, "When I woke up in the morning I saw a footprint in the sand, it was a human footprint and it wasn't mine," that's circumstantial evidence, evidence that there was indeed another human being on his island by his reasonable use of different facts.

Circumstantial evidence and direct evidence have equal weight in the eyes of the law. One of them is as good as the other of them. If in a criminal case circumstantial evidence can lead you to two rational conclusions, one of which is consistent with guilt and the other of which is consistent with innocence, you must adopt the one consistent with innocence. If circumstantial evidence can only lead to one rational conclusion, be that pointing toward guilt or be that pointing toward innocence, you are free to adopt that. But if it can lead to two rational conclusions, one pointing toward guilt, one pointing toward innocence, you

must adopt the one pointing toward innocence. If it comes to a fork in the road, one sign says guilty, the other says innocence, you must take that path toward innocence.

In your consideration of the evidence, you are to consider its quality and not its quantity. We do not weigh evidence by the pound. We weigh it by its convincing force.

There are no property rights in witnesses. The fact that the State in this case called more witnesses than the defense means nothing to you. Once a witness takes the witness stand, that witness is no longer a State's witness or a defense witness, that witness is simply a witness for your consideration. There is no such thing as a State's witness or a defense witness. Once the witness is sworn in, they are all just witnesses. No one has any property rights in witnesses.

With respect to each witness who testified in this case, and I know this has been reviewed with you before, you may accept all of that witness' testimony, none of that witness' testimony, or as much of that witness' testimony as you choose to accept. Conversely, you may reject all of it, none of it, or any portion of it which you choose. You have complete freedom to believe anything a witness tells you or nothing of what a witness tells you or any portion of what a witness tells you. The fact they all took an oath to tell you the truth does not bind you to

believe them. I am not suggesting to you that any witness lied to you on the witness stand. I simply point that out to you to impress upon you the complete freedom you have to believe or disbelieve all or any portion of any witness' testimony who testified in this trial.

You are to treat all of the witnesses the same. By that I mean that a witness' position in this trial, employment in life, station in life, does not by that fact alone entitle that witness to any greater degree of belief or any lesser degree of belief in your mind. For example, the fact that police officers testified in this trial does not by that fact alone, that is, their being police officers -- they being police officers, entitle them to any greater degree of belief in your mind or any lesser degree of belief. The fact that a doctor testified in this trial does not by that fact alone, being a doctor, entitle him to any greater or lesser degree of belief in your mind. The fact that the defendant testified in this trial does not by that fact alone entitle her to any greater or lesser degree of belief in your mind. Treat them all the same in your consideration of their testimony. And in treating them all the same, there are certain things that you can consider in deciding whether to believe these witnesses. And as this trial started I believe I went over with you in quite a great detail some of the things you can consider

in deciding whether to believe or disbelieve witnesses' testimony. Some of these things are, did the witness have an interest in the outcome of this trial; did the witness have something to gain or lose by his or her testimony; did the witness have some motive in testifying the way the witness did; did the witness have friendliness or animosity with other witnesses, with the defendant or with the State; did the witness have any bias or any prejudice which would influence the witness' testimony; did the witness make any prior inconsistent statements. A prior inconsistent statement is a statement made prior to the witness' testimony in court. If you find any witness made any prior inconsistent statements, you may use that prior inconsistent statement only in deciding whether to believe or disbelieve the witness' testimony in court from the witness stand. In short, as I said to you before, we use every day in our lives certain objective and subjective tests in deciding whether to believe or disbelieve what people are telling us. And we go through this every single day whether we realize it or not. And that great tool that we have and we use every day is called our common sense. If you use your common sense, you will have no problem in deciding whether to believe or disbelieve witnesses' testimony in this case. You may use the witness' demeanor on the witness stand. Ask yourself the question, do I believe what this person

is telling me? Use your common sense. It will serve you well.

In a case of this nature, and in all criminal cases, the burden of proof is on the State. As I've told you before, and we've gone over with you in the individual voir dire process, the defendant doesn't have to prove her innocence. The State has to prove the elements of each offense beyond a reasonable doubt.

Our Supreme Court has said so that all juries in the State of New Hampshire will receive the same instructions regarding the definition of reasonable doubt that we will all use the same instruction, which 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 her innocence. The defendant enters this courtroom as an innocent person, and you must consider her to be an innocent person until the State convinces you beyond a reasonable doubt that she is guilty of every element of the alleged offense. If, after all the evidence and arguments, you have a reasonable doubt as to defendant's having committed any one or more of the elements of the offense, then you must find her not guilty.

A reasonable doubt is just what the words would ordinarily imply. The use of the word reasonable means simply that the doubt must be reasonable rather than unreasonable. It must be a

doubt based on reason. It is not a frivolous or fanciful doubt, nor is it one that can be easily explained away. Rather, it is such a doubt as remains after consideration of all of the evidence that the State has offered against it. It is such a doubt based on reason as remains after all of the evidence that the State has offered against it. The test you must use is this: If you have a reasonable doubt as to whether the State has proved any one or more of the elements of the crime charged, you must find the defendant not guilty. However, if you find that the State has proved all of the elements of the offense charged beyond a reasonable doubt, you should find the defendant guilty. That is our definition of reasonable doubt.

This case involves three separate charges by the State, and I won't read each indictment, nor will you have the indictments in the jury room with you, because they are not evidence. But in my defining the offenses I believe I will tell you substantially what the indictments say. The first indictment alleges the offense of conspiracy to commit murder. And the first by number only is what I mean. The second alleges the offense -- well, strike that. The second alleges the offense of accomplice to first degree murder. And the last indictment, the third one by number, alleges the offense of tampering with a witness. And I'll take them in that order, and by taking them in one order or

another, I do not intend to signify to you the importance of one over the other. They are all important indictments. They simply are numbered as a matter of docket control in the court, but I'll define these elements to you in that order. And during your deliberations you will have with you what I'm going to read you now, the elements of the offense, because I usually find that the first question from a jury in any criminal trial is, "Will you please redefine the offenses?" So you will have that with you in the jury room, my charge which I'm about to read to you now as it defines the elements of these three offenses with which this defendant is charged. And the first one is conspiracy to commit murder.

Under our law a person is guilty of conspiracy if, with a purpose that a crime defined by statute be committed, he or she agrees with one or more persons to commit or cause the commission of such crime and an overt act is committed by one of the conspirators in furtherance of the conspiracy. In this case the State must prove beyond a reasonable doubt three things. First, that the defendant acted purposely. Second, that the defendant agreed with one or more individuals to commit or cause the commission of the crime of first degree murder. And third, that an overt act was committed by one of the conspirators, any one of them, in furtherance of the conspiracy.

Now, here the State alleges that the defendant agreed with William F. and other persons to cause the crime of first degree murder of Gregory Smart, and that in furtherance of the conspiracy she met with William F. on numerous occasions between March 1, 1990 and May 1, 1990 and had conversations with him relating to that murder; that William F., whom we now know as William Flynn, traveled to Derry in April 1990 in the defendant's car; that on or before May 1st, 1990 William Flynn procured a handgun; that on May 1st, 1990 William Flynn traveled to Derry with others; that on May 1st, 1990 William Flynn and one other person entered the residence of Gregory Smart; that on May 1, 1990 William F. and one other person ransacked Gregory Smart's residence to make it appear that a burglary had taken place; and that on May 1, 1990 William F. shot Gregory Smart in the head.

Now, again, there are three elements; that the defendant acted purposely; defendant agreed with one or more individuals to commit or cause the commission of the crime of first degree murder. Lastly, that an overt act was committed in furtherance of the conspiracy. The mental state here is purposely. A person acts purposely with respect to a material element of an offense when her conscious object is to cause the result or engage in the conduct which comprises the element. The State

must prove each element beyond a reasonable doubt. However, the State is not required to prove each overt act alleged. The State is required to prove at least one overt act, as well as the remaining elements of the offense, beyond a reasonable doubt. Neither is the State required to prove that the crime was actually or successfully committed. The essence of this offense is the agreement and any overt act in furtherance of the agreement. Now, again, you will have this definition with you because that's simply a definition of the offense. The next one is a little bit more complicated in its definition, and I'll try to explain it as I go along.

The next allegation is accomplice to first degree murder. The defendant is charged with being an accomplice to first degree murder. To prove that the defendant was an accomplice to the crime of first degree murder, the State must prove beyond a reasonable doubt that the crime of first degree murder took place and that the defendant was an accomplice. The State is not required to prove that a particular individual committed the crime of first degree murder, but only that the crime of first degree murder took place and the defendant was an accomplice to the crime. That requires the Court to define for you what is first degree murder. This defendant is not charged with first degree murder, and so in this charge I have used the term "an

actor" which means in this case William Flynn. William Flynn, as you know, has not pled guilty to first degree murder, but, rather, to second degree murder. That makes no difference, as I will explain to you later. So the first thing I'm going to do is define for you the crime of first degree murder, with which this defendant isn't charged.

The definition of the crime of first degree murder has two parts. The State must prove each of the two parts of the definition beyond a reasonable doubt. Because the State, to prove an accomplice, has to first prove a first degree murder was committed, so they have to prove these things to you beyond a reasonable doubt. The State must prove that an individual -- the indictment alleges that individual to have been William Flynn -- caused the death of another person. This means that the death of another person -- the indictment alleges that other person to have been Gregory Smart -- was the direct result of that individual's action, and that that individual acted purposely. First degree murder is causing the death of another person purposely. Purposely mean two things, both of which the State must prove beyond a reasonable doubt. First, that that individual specifically intended to cause the death of another person. It is not enough that the individual knew his actions would cause death. He must have wanted to cause death. Second,

the State must prove that the individual's acts in causing death were deliberate and premeditated. The State must prove beyond a reasonable doubt that the individual acted with premeditation and deliberation. Usually there is no direct proof of a person's state of mind at the time he acted, so you must examine all of the facts and circumstances to decide this. And I'm going to list a number of factors here for you to consider in deciding whether the individual, whom we shall refer to as the actor henceforth, acted with premeditation and deliberation. You should consider these factors and all of the evidence presented during the trial in deciding this issue.

First, you may examine the actor's conduct before the homicide. You may consider whether the actor planned the homicide; whether he acted secretly, whether he brought a weapon with him to the scene of the homicide, whether he had a motive to kill this particular individual, whether he made any threats or statements showing that he planned the homicide. Second, you may examine the actor's conduct during the homicide. You may consider whether he used a deadly weapon, whether the manner of killing was particularly brutal, whether multiple wounds were inflicted, whether wounds were inflicted on vital organs, whether the homicide was at a place where the actor's acts would not be detected or at a time when others would not

be present. Third, you may examine the actor's conduct after the homicide. You may consider whether he attempted to conceal the killing, whether he made any statements after the homicide. In deciding whether the State has proven premeditation and deliberation, ask yourselves the following questions: Was there space and opportunity for reflection? Did the actor think over what he was about to do? Did he coolly form a subtle purpose? Was his mind sedately and considerately made up to take life? The basic question you should ask yourself in deciding whether the actor acted with premeditation is this: Did the actor think about or plan the killing beforehand? A killing that occurs on impulse is not first degree murder. The actor must have weighed the pros and cons and thought about the moral consequences of killing someone. However, there is no particular time required for premeditation and deliberation. The human mind acts with celerity, which means rapidity, speed, and that celerity is sometimes impossible to measure. If the killing results from choice made as a result of thought, however short the time between the intention and the act, it is sufficient to characterize the killing as deliberate and premeditated. The purpose here is to rule out the act of a mind abandoned to impulse and frenzy. There must have been thought, however long or short it may have been. Those are the requirements of the

crime of first degree murder which the State must prove beyond a reasonable doubt. Additionally, the State must prove that this defendant was an accomplice to the crime of first degree murder. To prove the defendant was an accomplice, the State must prove, first, that the defendant helped another person plan or commit the crime of first degree murder. Here the State alleges that the defendant aided William Flynn in the planning or commission of the murder of Gregory Smart by taking certain actions, including advising him to wear black clothes to avoid detection, advising him to wear gloves so as not to leave fingerprints, advising him to rearrange the victim's residence so it appeared to have been burglarized, providing him with directions to the victim's residence, and with information as to what time the victim should be returning home, absenting herself from that residence on both the evening of the murder and on a prior occasion when William Flynn attempted to commit the crime, and providing William Flynn with her car so that he would have transportation to the victim's residence on the prior occasion when William Flynn attempted to commit the murder. And, secondly, that the defendant did so with the purpose of promoting or facilitating the commission of the offense. This means that the defendant's acts were designed to help the other person, the actor, commit the offense. In other words, the State must prove

that the defendant had the purpose to make the crime succeed. Now, in this and in the other conspiracy definition that I gave you, I listed certain acts that the State alleges and certain acts in this one that the State alleges. Those are allegations by the State. Those come from the indictments, and those indictments are not evidence. They are, and these acts alleged are, what the State charges, what the defendant did. That's what the State says the defendant did. The defendant has said she is not guilty and has pled not guilty and has testified that she is not guilty.

Now, it is not sufficient for the State to prove that the defendant intended to commit a different offense than the principal. Let me say that again. It is not sufficient for the State to prove that the defendant intended to commit a different offense than the principal. The defendant must share the same criminal intent as the principal. Thus, the defendant is only guilty as an accomplice if she committed acts which were designed to commit a crime that both she and the principal, William Flynn, intended to commit.

An accomplice may be convicted on proof of the commission of the offense and of her complicity therein even though the person claimed to have committed the offense has been convicted of a different offense or a different degree of offense. So the

fact is that William Flynn has pled guilty to second degree murder. In your consideration of this, accomplice to first degree murder, you need not consider the fact that he has entered a plea of second degree murder. An accomplice may be convicted upon proof of the commission of the offense and of her complicity therein though the person claimed to have committed the offense has been convicted of a different offense or degree of offense. However, the testimony of an accomplice should be considered by you with care and caution. You may consider whether the accomplice has an interest in the outcome of this case. You should weigh his testimony carefully, the testimony of any accomplice carefully and give it such weight as you think it deserves. You should reject such testimony if it appears on its face to be bald perjury, preposterous or self-contradictory. That's the definition of an accomplice to first degree murder and includes the definition which the State must prove beyond a reasonable doubt of the crime of first degree murder. They may prove that if you find the facts to have been sufficient to that, even though someone has entered pleas of guilty to a lesser degree of murder.

The last crime with which this defendant is charged is tampering with a witness. The crime of tampering with a witness as alleged in this case has three elements. Thus, the State must

must prove beyond a reasonable doubt that the defendant, believing that an official proceeding or investigation was pending or about to be instituted, attempted to induce or cause a person to testify or inform falsely or withhold testimony, and did so purposely. Official proceeding as used in this case means any proceeding before a judicial, administrative or other governmental body authorized by law to take evidence under oath. Investigation means the preliminary gathering of facts and other data for the purpose of instituting an official proceeding. Again, purposely is defined the same as it is in the conspiracy definition. A person acts purposely with respect to a material element of an offense when her conscious object is to cause the result or engage in the conduct which comprises the element. It is not necessary that the person tampered with actually inform or testify. It is only necessary that the defendant believed that the person was a potential witness.

Here, the State alleges that the defendant purposely attempted to induce or cause Cecelia Pierce to withhold information and provide false information about the circumstances of Gregory Smart's death by denying any knowledge of her, the defendant's, involvement in the death of Gregory Smart or her illicit affair with William F. by telling a false story about William F.'s presence at the defendant's apartment prior to the

death of Gregory Smart and by instructing Cecelia Pierce how to pass a polygraph test while lying. That's what the State alleges. That's what the defendant denies. But again you'll have this with you in the jury deliberation room.

Now, those are the elements of the three offenses charged in this case. The State has the burden of proving each and every element of each charge beyond a reasonable doubt. The State does not have to prove every single fact in a criminal case beyond a reasonable doubt. The burden is on the State to prove the elements of the offense beyond a reasonable doubt.

I want to review this to make sure I haven't left anything out.

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[Pause - the Court is reading.]

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You will have with you in the jury deliberation room all of the exhibits in this case, including the tapes, which are just one more exhibit for your consideration. I don't single them out for any importance by my mentioning them, but they are going to be submitted to you along with something that is not evidence in this case, and that is the transcript of those tapes. You will be provided with a recording machine so that you can play the tapes if you wish, and you are provided with a transcript so

you can follow the tapes if you wish, the vocal portion of the -- audio portion of the tapes. I want to impress upon you that the transcripts are not evidence. To the extent that when you listen to the tape the tape differs from the transcript, you are to take the tape as the evidence. If, for example, you see words in the transcript which you don't hear on the tape -- I'm not suggesting that you will -- but if you do hear words, see words in front of you that you can't hear on the tape, disregard those words. If you cannot hear them while you're reading along with the tapes, then you are to disregard those words. To the extent that the tapes in any way differ from what you're reading along with them in these transcripts, you take what the tapes say, not what the transcript says.

You will have with you during your deliberations your notes. You didn't have them this morning because I didn't want you taking notes while counsel was arguing, and I didn't want you to take notes while I was giving you these instructions. But you will have those notes with you in your deliberations. Do not -- let me start again. To the extent that your recollection of the testimony and the evidence in this case differs from what you see in your notes, take your own recollection rather than your notes.

This case is a very important case. Because the press is

here, however, and has been through this trial, and you've been, I must say, magnificent in your ability to ignore the fact that there are many press and many people in this courtroom, this is a very important case for the defendant, it's a very important case for the State, it's a very important case for you and me and all of us in here as American citizens, the press, however, has not made this case any more important than any other criminal case. Every single case in this courtroom is important, along with this one.

You are free in this case, in any case, to deliberate for as long as or as little as you choose. Your verdicts on each one of these indictments must be, as I'm sure you know, unanimous verdicts. Your verdicts on these indictments need not be consistent. You may find one way on one indictment and another way on another indictment. You may find the same on all three indictments. Makes no difference. But you will render a separate verdict on each indictment. As I said, and as you know, your verdict must be unanimous.

I needn't impress upon you the seriousness of your responsibilities in any criminal case. It's a very serious responsibility being a juror. When you reach a verdict you will be brought back in. The Clerk of Court will ask the defendant to rise and face the foreperson of the jury, whoever that may be,

and we'll take the indictments in the same order as they are numbered, and they are numbered, as I say, for no particular reason except docket control. The Clerk will ask the foreperson to stand and the Clerk will say, for example, "As to indictment number 1370, alleging the offense of conspiracy, has the jury reached a verdict?" And the foreperson will say, "Yes." And the Clerk will say, "What say you, is the defendant guilty or not guilty?" And the foreperson will simply render the verdict of the jury, whatever that might be. And the Clerk will then go through the same procedure on the second indictment, 1371, and the third indictment, 1372.

Should you have any questions during your deliberations, I urge you to ask them. The procedure to ask questions is simply have the foreperson write out whatever question it may be, and ring the buzzer for the bailiff. The bailiff will bring it to chambers. I'll have counsel in and we'll attempt to answer that question in writing. If we can't answer it in writing, we'll call you back into the courtroom and I'll attempt to answer it then.

As I said earlier, you'll have all the exhibits with you in your deliberation room. You may not relisten or rehear or reread any of the testimony of the trial. You can't send out and ask that the doctor's testimony be read to you. That's not permissible.

To the extent that you find differences in witnesses' testimony, it is your job to resolve those differences. That's why you're here.

May I see counsel for a moment.

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[Bench conference - no record.]

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NOW AT THE BENCH ON THE RECORD:

MR. TWOMEY: I had a couple things. The first was on the accomplice. This is a -- part of this is basically our problem. We asked for two instructions, I believe. One instruction is the accomplice that has to do with -- there's the offense of accomplice to first degree murder, okay? You gave that instruction. And right after that you gave the instruction that -- I'm not sure if it was termed testimony of a co-defendant, may have been termed testimony of an accomplice, referring to Flynn and those guys as accomplices, okay? But they were put right next to each other. I think it was very confusing. You were talking about the person one sentence earlier, which was the defendant.

So I'd ask the Court to re-give an instruction on testimony of co-defendant's as opposed -- as you did with the other things. I had them as other persons charged in this offense, Flynn, Lattime, Randall.

THE COURT: I see what you're saying.

MR. TWOMEY: It sounded very confusing to me, Your Honor, quite frankly because of the way they run together.

MR. SISTI: What you may want to do is somehow or another separate that from that particular instruction.

MR. TWOMEY: I'd suggest --

MR. SISTI: And title it co-defendant.

THE COURT: I don't know that you want to do that because I may -- I'm not going to read that so that it sounds like you should reject testimony of all the co-defendants who are accomplices, bald face.

MR. SISTI: What I'm saying, you can accept hers or reject his. I think the instruction in the case law we have on instructions goes one person is charged with something and other people have been previously charged with the same offenses brought against them. Defendant has a right

to have the jury told that that kind of testimony pursuant to a deal should be examined with caution.

MR. MAGGIOTTO: He gave that. I think you gave that charge.

MR. TWOMEY: You did, but it was in the context where he'd just been using the word accomplice and sounded like her.

THE COURT: I'll be happy to read this one you gave me to clear it up.

MR. TWOMEY: Can I take a look at that?

THE COURT: That's yours or mine. Just seems to me it may not have been anything.

MR. TWOMEY: I think this makes it. At least I'd use other persons charged as an accomplice, but makes it clear you're not talking about her and her alone. I didn't want to use the word accomplice at all.

MR. MAGGIOTTO: Can I see what you're being asked to read?

THE COURT: I see what he's saying, but I don't think it hurts.

MR. MAGGIOTTO: Just some sort of preparatory comments that -- I don't want you to emphasize this to the jury.

THE COURT: Well, I'll do something. All right, I'll do

something.

MR. TWOMEY: Okay. Two other things. One is the defendant has an objection to the instruction about punishment, it's not the province of the jury, and ask that the jury be instructed in a case of first degree murder that the punishment is in fact the province of the jury, not the Court, that the Court has no discretion whatsoever. The only case law in that particular fact is in capital cases in states where the punishment falls directly from the conviction. The circuit courts have indicated it's reversible error not to tell the jury that. I recognize those cases are under the Eighth Amendment. We argue in this particular case not under the Eighth Amendment, but Part 1, Article 15, the right to a jury and an informed jury. They should know the consequences of their actions, including the fact that there's a mandatory life without parole penalty.

MR. MAGGIOTTO: Do you need me to respond?

THE COURT: No. I'm not going to do that.

MR. TWOMEY: One other thing. The Court indicated on the

transcripts that if there were words that they didn't hear, they should ignore them. That's correct. You said if the words in the transcripts were not on the tape they should ignore that. We ask the Court to also say if the ordering of the words is incorrect or if words are said at the same time orally -- I'm talking about the doubling effect here. Obviously, that they should again not assume that one came after another just because it's in the transcript.

MR. MAGGIOTTO: I think that's covered. You indicated what they hear on the tape.

THE COURT: Yeah, they're going to know what they hear. I'll tell them something about the tapes.

MR. TWOMEY: Thank you.

IN OPEN COURT BEFORE THE JURY:

THE COURT: Ladies and gentlemen, with respect to the tapes, I told you if you read words that you don't hear, disregard those words. If you hear what we -- you've all heard about a doubling effect. If you can't make sense of it yourselves with a reasoned approach to it, then disregard it. Understand what I'm saying? You got to be able to listen to these tapes and make sense of them. If you can't make sense of them, they're not of aid to

to you, don't try to -- if you can't initially figure out in a doubling situation what word came first, if you can't reasonably figure it out, then disregard it.

With respect to the accomplice testimony, this will not be in the deliberation room with you. However, I don't think you'll need it. If you find that the testimony of the accomplices, standing alone -- the accomplices in this case being the individuals, the juveniles -- proves the defendant's guilt beyond a reasonable doubt, then you should find the defendant guilty. The State is not required to support the testimony of an accomplice by other evidence. That's what I meant to say. However, the testimony of an accomplice should be considered by you with care and caution, which is in your instructions, and you may consider whether an accomplice has an interest in the outcome of the case and weigh the testimony carefully and give it such weight as you think it deserves, and reject such testimony if it appears on its face to be bald perjury, preposterous or self-contradictory. That's with respect to the three juveniles involved in this case. The defendant is accused of being an accomplice. As with any witness' testimony, you may accept or reject all or any portion of it that you choose.

Now, I have the, depending upon what names are drawn, unpleasant or pleasant task of selecting three of you as

alternates. I have this out in no particular order. I've shuffled them and put them out upside down on my desk. I don't even know your names individually, and I'll just pick three at random and I'll read those off and those are alternates and may leave the courthouse and go home. I'll remind those three that you're still on this jury in the event one of the 12 who remain up here become ill or otherwise indisposed, and I ask you therefore not to discuss the case, not to read anything or view anything. Should one of the jurors become indisposed, one of these alternates will be called back in and jury deliberations will commence anew because an alternate simply can't come in and pick up where someone else left off. Hopefully, this won't occur. The three names I'm holding, and I still don't know who they are, will be called as soon as a verdict is reached and let known that they can be dismissed and go about their lives.

James Watt, Salem; Catherine Whittemore, Stratham; Edmund Wesolowski, Salem. I don't even know which three that is, quite frankly. You three are alternates.

I'll pick another name here and this person will be the foreperson of the jury. Norma Honor, Atkinson. I don't even know who that is.

Will the three alternates raise your hands. I don't know who you are. Three in a row. Personally, I thank you very much.

I don't know whether you wanted to deliberate this case or didn't want to. I thank you very much. You can go home. Please don't talk to the press or anybody else because you three may be called back, one or more of you may be called back. Thank you all very much.

Norma Honor. Who is Norma Honor? You're the forelady of this jury. Will you serve as forelady of this jury?

JUROR NO. 10: Yes, I will.

THE COURT: When you come back in, will you two gentlemen fill up the jury box so the first six seats are filled, and would you, sir, switch seats with the forelady.

Thank you all very much. The three of you may go, and the rest of you can go down and we'll bring the exhibits down to you and have the elements brought down to you and we'll have the transcripts brought down to you, and I believe we'll find a tape recorder.

MR. MAGGIOTTO: Excuse me, Judge. I don't see any reason why they shouldn't use our system, if you want.
It's on wheels.

THE COURT: As long as someone knows how to run it.

MR. MAGGIOTTO: Yeah.

THE COURT: All right.

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[Jury excused to commence deliberations at 2:33 p.m.]

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IN CHAMBERS - 4:31 P.M.:

MR. SISTI: It's about 4:30 in the afternoon on the 20th of March. At this point in time we're going to renew a motion to sequester the jury. I think we've already filed that motion and I'm pretty sure the Court has taken it under advisement. So I suppose before I make a record on it, I'd have to know whether or not there was a ruling on it.

THE COURT: I don't believe there was.

MR. SISTI: I think everybody's going to be in agreement with regard to wall-to-wall media coverage now existing in the building. You can't walk on either the first or second floors without running into somebody. It's literally swarming with media, both print and electronic media. Additionally, we've noticed there's at least one gentleman --

MR. TWOMEY: Two.

MR. SISTI: Two, out in front of the building with signs. I don't recall the exact writing on the signs.

I think one of them said, "Pam is innocent."

MR. TWOMEY: "Pam is innocent. Free Pam Smart. In America you're innocent until proven guilty."

MR. SISTI: The flavor of this thing's changed a little bit with regard to the media. They're swarming. And the other thing that kind of concerns me than all this little vignette, four o'clock in the morning I turned on the television and there was a news show on and it was the lead story, I mean, and it was a nationally syndicated show. At six o'clock in the morning I turn a news show on and again that was -- there was coverage of this case. The front page of every newspaper in this State has carried an article on this case. I think most of the northeastern publications have carried an article on this case on the front page.

I guess my fear is an inadvertent taint of a juror at this particular juncture, everybody in this room I know wants this case to come to a verdict without a problem between the beginning of deliberations and verdict.

I think that by not sequestering this jury

we're running a major potential problem, and it may not be an intentional taint of a juror, but I'll tell you, just seeing the way a CNN reporter handled himself out in the lobby after this Court had ordered that no questions be asked of the defendant scares me with regard to what is going on right now. That particular situation can best be explained by Barry Peacock, who had to literally take the gentleman and slam him against the floor to keep him away from our client.

MR. TWOMEY: The man, I'm told, while on the floor, after having been thrown to the floor, was still sticking his microphone up in Pamela's face while making her way down the hallway.

MR. SISTI: I don't know how you're going to control him, Judge. The folks that have been here, the local folks from the media from beginning to end. It does seem they know the rules. But you've got a completely different crew out there right now. They're from all over the place. I can't even identify the number of people that are handling this thing.

THE COURT: What's the State say?

MR. TWOMEY: Could I add a couple of things? One is, two examples of the publicity. The Boston Herald, I guess it is, when you open it up today, for the past three months they've had a -- in the Gulf section where page after page will have the -- completely be the war in the Gulf, and at the top it will say "In the Gulf." They now have a Pam Smart section like that. I can't remember, something that goes across the top and every story's about an aspect of this.

I have in front of me in the Court's chambers today's Union Leader, March 20, 1991 headline of that is "Pam: If I was guilty I would have plea bargained like the rest of them." That's a headline that goes from one side of the paper to the other, and in far larger -- it's in larger type than they normally use. The interesting thing about this is, this is inadmissible evidence. This statement was made in trial but stricken from the record. Now, this particular problem, the jury heard this and knows it was stricken. What do we do

if a juror sees something like the suppression, something that they didn't hear at all and that is going to taint them? If you walked into any store in this state, this statement, which is not evidence in this case, is going to jump out at you. What are we going to do if there's something again not part of the evidence but far more damaging than something like that? Nowhere you can go to escape this. The only thing you can do is -- once ESPN, any other station on any cable system got blanket coverage of this, that's all I can say.

MR. SISTI:

It's a tricky question now. Paul Maggiotto brought it up this morning. I don't know if this jury has been properly placed on notice that sequestration could have been a possibility. I think that the Court did allude to it, though, in the general voir dire. I guess my problem is we'd have to be very careful with regard to instituting sequestration at this point in time so that it would at least be somewhat reasonable to these folks. They'd have to be able to make contact with families, have to be given the

opportunity to collect their belongings and check into a hotel. But I think that we're running into problems here if we're not going to monitor the media and then you just can't do it. WEVO was carrying this. Now, I've never heard of National Public Radio carrying stuff like this before.

THE COURT: What's the State say?

MR. MAGGIOTTO: I guess we share the concerns, Judge. We don't want to have anything happen to the trial at this stage. Part of what I'm thinking, is there some way to get the jury out of the building to another location? In other words, is there some way -- the problem seems to be immediately around this building -- is there a way to put them on a van and have another location to rendezvous in the morning and brought here and brought back to that spot rather than sequestering them, if it's impractical to sequester at this time. I don't want to lose jurors -- "Gee, I didn't think I'd be sequestered. I have to get off the jury." I wonder if there's other practical considerations to consider to avoid

the press in the building.

MR. SISTI: We can go to those other alternatives. I think we should probably make a first-round inquiry as to whether or not it's going to somehow or another inconvenience somebody to the point they can't continue conveniently as to the deliberations. We have to go to a second point. Anything's better than what's going on right now. The media is out of control, is what I'm saying.

THE COURT: Well, what does the Clerk have to say?

MR. MAGGIOTTO: When was the last time a jury was sequestered?

MR. SISTI: We've had it in other counties.

MR. MAGGIOTTO: I'm just curious.

MR. SISTI: In Merrimack we had a sequestration in State v. Bruno. Gagne's trial was sequestered for deliberations. I'm trying to think.

MR. TWOMEY: Used to be done a whole lot in Hillsborough County. Doesn't seem to have been done a lot in the last eight years or so.

MR. SISTI: I think Siel's trial they were sequestered because of trial two where there was a mistrial.

THE CLERK: We could certainly arrange to get the jurors

into their cars. I think they literally have to be escorted probably by the bailiffs one at a time almost to their cars. I note the Court has indicated the intention to block off part of the back parking lot for parking. I don't know, seems to me there's two issues. One is the issue of the amount of news coverage they might be exposed to. I think how we can deal with press coverage is another issue. I'm not sure, except the Court obviously instructing them when they leave today in great detail what they shouldn't be doing.

THE COURT: Anything else?

MR. SISTI: No. I just thought it should be brought to the Court's attention.

THE COURT: Well, we have arrangements for them to park down in the back tomorrow and come in the back door. I don't know how we can deal with people with signs up that say Pam's guilty or Pam's innocent or whatever the signs might say. Even if we have them on a bus, they're going to see that sort of thing, except by further instructions not to, you know, don't look at

the signs. First thing anybody would do is look at the signs. I suppose I can go talk to the jury and see if they're opposed to being sequestered tonight and have them make phone calls to spouses to make delivery arrangements with their spouses, whatever. We'll bus them back and forth. Can we get 12 rooms over at the Hearthside Inn or whatever it is?

THE CLERK: We'll find out.

THE COURT: Why don't I go speak to the jury rather than bring them back into the courtroom, because the press will come in with them, see what their feeling is about that.

THE CLERK: You know, Judge, the only thing I'd add -- this is just a thought -- I believe it's Channel 9 that puts down at the end of the newscast that editing facilities and supplies compliments of Best Western. It's conceivable wherever the jury is taken, press people would be staying from out of town.

MR. SISTI: That's true, but they'd have the Sheriff Department there to --

THE CLERK: Just suggesting it's not an error-free process

at that point.

MS. NICOLOSI: We stayed at a Hampton Inn for a good part of the trial. I don't remember seeing anybody from the press.

THE COURT: I'll inform them that tomorrow night and future nights that they'll be sequestered. We can find a motel. We'll find one. They'll be sequestered and they'll be -- they are to park their cars down here and lock them and the cars will be -- always be someone here during the night. The State Police can swing through here and look at their cars, and we'll do that.

MR. SISTI: Can you explain to them that it's because of the -- it's nothing they did. You know, I mean --

THE COURT: I'll tell them the press is out of control, there are people with signs up, which I'll ask them not to look at as they leave or if they look at them, completely disregard them.

THE BAILIFF: I just got a report there's one man down between the two front doors with a sign saying she's innocent.

MS. NICOLOSI: Can't we have a bailiff go out and say put that

sign down?

THE COURT: You have a balliff tell them if that sign is up when the jury leaves, he'll be charged with interference with the administration of justice.

This doesn't need to be on the record.

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[Discussion had off the record.]

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[In chambers hearing concluded at 4:48 p.m.]

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